

Ala. Code 1975, §13A-12-191*
Dissemination or Display of Obscene Matter

[*These instructions apply only to offenses committed before 10/1/2024]

The defendant is charged with the dissemination or display of obscene matter.

A person commits the crime of dissemination or display of obscene matter if he/she knowingly disseminates or displays publicly any obscene matter containing a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The defendant disseminated or displayed publicly an obscene matter containing a visual depiction of a person under the age of 17 years;
- (2) The person under the age of 17 was engaged in an act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct;

(AND)

- (3) The defendant did so knowingly.

[Read as appropriate]: You may infer from the following factors whether or not the person displayed or depicted in any obscene matter is under the age of 17 years:

- (1) The general body growth and bone structure of the person;
- (2) The development of pubic hair or body hair on the person;
- (3) The development of the person's sexual organs;
- (4) The context in which the person is placed by any accompanying printed or text material;
- (5) Any expert testimony as to the degree of maturity of the person. [13A-12-193(b)]

The existence of any or all of the factors listed shall not operate to change the requirement that before any conviction may be had, the State must convince you beyond a reasonable doubt that the person engaged in the act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct in the visual depiction is under the age of 17 years. [13A-12-193(c)]

[Read as appropriate]: The State shall not be required to establish the identity of the person alleged to be under the age of 17 years who is engaged in any of the acts described which are visual depiction. [13A-12-194]

Disseminate is to transmit, distribute, sell, lend, provide, transfer, or show, including through electronic means. [13A-12-190(1)]

Display Publicly is the exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare, depot or vehicle. [13A-12-190(2)]

A Public Thoroughfare, Depot or Vehicle is any street, highway, park, depot, or transportation platform or other place, whether indoors or out, or any vehicle for public transportation, owned or operated by government, either directly or through a public corporation or authority, or owned or operated by any agency of public transportation that is designed for the use, enjoyment, or transportation of the general public. [13A-12-190(3)]

Obscene:

- (a) When used to describe any matter that contains a visual reproduction of breast nudity, the term shall include all of the following:
 - (1) Applying contemporary local community standards, on the whole, appeals to the prurient interest;
 - (2) Is patently offensive;
 - (3) On the whole, lacks serious literary, artistic, political, or scientific value.
- (b) When used to describe matter that is a depiction of an act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, genital nudity, or other sexual conduct, the term means matter containing a visual reproduction that itself lacks serious literary, artistic, political, or scientific value.

[13A-12-190(13)]

[Read as appropriate]: Where the circumstances of the

dissemination or public display of matter indicates that it is being commercially exploited by the defendant for its prurient appeal, such evidence may be considered in determining whether the matter appeals to the prurient interest, is patently offensive, or lacks serious literary, artistic, political or scientific value. [13A-12-195]

Breast Nudity is the lewd showing of the post-pubertal human female breasts below a point immediately above the top of the areola. [13A-12-190(10)]

Local Community is the judicial circuit in which the indictment is brought. [13A-12-190(14)]

Sado-Masochistic Abuse means either of the following:

- (a) Flagellation or torture, for the purpose of sexual stimulation, by or upon an individual who is nude or clad in undergarments or in a revealing or bizarre costume;

[OR]

- (b) The condition of a person who is nude or clad in undergarments or in a revealing or bizarre costume being fettered, bound, or otherwise physically restrained for the purpose of sexual stimulation. [13A-12-190(5)]

Sexual Intercourse is intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal. [13A-12-190(7)]

Sexual Excitement is the condition of human male or female genitals when in a state of sexual stimulation. [13A-12-190(6)]

Masturbation is manipulation, by hand or instrument, of the human genitals, whether one's own or another's for the purpose of sexual stimulation.

[13A-12-190(8)]

Genital Nudity is the lewd showing of the genitals or pubic area. [13A-12-190(11)]

Other Sexual Conduct is any touching of the genitals, pubic areas, or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification. [13A-12-190(9)]

Matter is any book, magazine, newspaper, or other printed material, or any picture, photograph, motion picture, video cassette, tape, record, digital video disc (DVD), video compilation, or electronic depiction in a comparable format, or an image, file, download, or other content stored, or reproduced by using a computer or electronic device or other digital storage, or any other thing, articles, or materials that either are or contain a photographic or other visual depiction of a live act, performance, or event. [13A-12-190(12)]

Visual Depiction is a portrayal, representation, illustration, image, likeness, or other thing that creates a sensory impression, whether an original, duplicate or reproduction. [13A-12-190(15)]

A person *knowingly* disseminates or publicly displays obscene matter when the person knows the nature of the matter. A person knows the nature of the matter when either of the following circumstances exist:

a. The person is aware of the character and content of the matter;

(OR)

b. The person recklessly disregards circumstances suggesting the character

and content of the matter. [13A-12-190(4)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of dissemination or display of obscene matter, then you shall find the defendant guilty of dissemination or display of obscene matter.

If you find from the evidence that the State has failed to prove any one or more of the elements of dissemination or display of obscene matter, then you cannot find the defendant guilty of dissemination or display of obscene matter.

Use Notes

In proving that a person in a visual depiction who is engaged in an obscene act is under the age of 17 years, the State is not required to introduce into evidence a birth certificate, produce testimony as to the date of birth of such person, or produce testimony of any person who knows or is acquainted with the person alleged to be under the age of 17 years. If the defendant or the State intends to rely on a birth certificate to prove the date of birth of any person in the visually reproduced matter, such defendant or the State shall file with the clerk of the court in which the action is pending, at least 15 days prior to trial, a notice of an intention to rely on an official, certified copy of a birth certificate together with a copy of the birth certificate. [13A-12-193(a)]

The depiction of an individual less than 17 years of age shall constitute a separate offense for each single visual depiction. [13A-12-190(16)]

[Approved 04-24-26]