

**Ala. Code 1975, §13A-12-192(a)\***  
**Possession of Obscene Matter with Intent to Disseminate**  
**[\*These instructions apply only to offenses committed before**  
**10/1/2024]**

The defendant is charged with possession of obscene matter with intent to disseminate.

A person commits the crime of possession of obscene matter with intent to disseminate if he/she knowingly possesses with intent to disseminate any obscene matter that contains 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 possessed an obscene matter that contained 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;
- (3) The defendant possessed the matter with intent to disseminate the matter;

(AND)

- (4) 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 the factfinder 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 which are visual depiction. [13A-12-194]

*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]

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

*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)]

*Sado-Masochistic Abuse* means either of the following:

(a) Flagellation or torture, for the purpose of sexual stimulation, by or upon a person 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 restrained for 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)]

**[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)]

*Genital Nudity* is the lewd showing of the genitals or the 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)]

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

A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense, when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

You may consider the evidence of a transfer of the visual depiction from an electronic device to any other device, program, application, or any other place with storage capability which can be made available or is accessible by other users, as evidence of possession with intent to disseminate. However, it is up to you to decide whether the State proved this beyond a reasonable doubt and what weight to give it. If proven to you beyond a reasonable doubt, you may consider this evidence along with all the other evidence. [13A-12-192(a)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of possession of obscene matter with intent to disseminate, then you shall find the defendant guilty of possession of obscene matter with intent to disseminate.

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

### **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]**