

Alabama Code 1975, §13A-12-197*

Production of Obscene Matter of Person Under 17

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

The defendant is charged with production of obscene matter of a person under

17.

A person commits the crime of production of obscene matter of a person under 17 if he/she knowingly films, prints, records, photographs or otherwise produces 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, (Name of defendant), filmed, printed, recorded, photographed or otherwise produced an obscene matter;

(2) The obscene matter contained a visual depiction of a person under the age of 17 years;

(3) The person under the age of 17 years was engaged in an act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct;

(AND)

(4) The defendant did so knowingly.

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)]

Local community means 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 means 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 (Flogging) 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 physically restrained for the purpose of sexual stimulation. [13A-12-190(5)]

Sexual intercourse means 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)]

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 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)]

There is no requirement that the State produce the physical photographs taken by the Defendant in order to find the Defendant guilty.

[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]: It is an affirmative defense to prosecution under this division if the actual individual purported to be under 17 years of age and engaged in sexually explicit conduct was an actual individual 17 years of age or older at the time of the offense. [13A-12-193(d)]

Sexually explicit conduct is actual or simulated conduct that includes sadomasochistic abuse, sexual excitement, sexual intercourse, masturbation, breast nudity, genital nudity, or other sexual conduct. [13A-12-190(14)]

[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]

A person acts *knowingly* when the person knows the nature of the child sexual abuse material. A person knows the nature of the material when either of the following circumstances exist:

a. The person is aware of the character and content of the material.

(OR)

b. The person recklessly disregards circumstances suggesting the character and content of the material.

[13A-12-190(4)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of production of obscene matter of a person under 17, then you shall find the defendant guilty of production of obscene matter of a person under 17.

If you find from the evidence that the State has failed to prove any one or more of the elements of production of obscene matter of a person under 17, then you cannot find the defendant guilty of production of obscene matter of a person under 17.

Use Notes

In proving that an individual in a visual depiction who is engaged in any sexually explicit conduct is under 17 years of age, the state is not required to introduce into evidence a birth certificate, produce testimony as to the date of birth of the individual, or produce testimony of any person who knows or is acquainted with the individual alleged to be under 17 years of age. If the defendant or the state intends to rely on a birth certificate to prove the date of birth of any individual, the 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 that violates this division shall constitute a separate offense for each single visual depiction. [13A-12-190(16)]

[Approved 04-24-26]