

**Ala. Code 1975, § 13A-12-200.5(2)(a)**

**Employing Minor in Establishment that Displays or Disseminates Material Containing Nudity or Sexual Conduct**

The Defendant is charged with hiring or employing a minor in an establishment that displays or disseminates material containing nudity or sexual conduct.

A person commits the crime of hiring or employing a minor in an establishment that openly and knowingly displays or disseminates material containing nudity or sexual conduct if he/she hires or employs a minor in an establishment that openly and knowingly displays or disseminates material containing nudity or sexual conduct.

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

- (1) The defendant (name of defendant) employed a person (name of victim);
- (2) The person employed was a minor;
- (3) The defendant employed the minor to work in an establishment that openly and knowingly displayed or disseminated material containing nudity or sexual conduct; **(AND)**
- (4) The defendant acted **[Insert appropriate mens rea element – see Use Note]**.

*A minor* is an unmarried person under the age of 18 years. [13A-12200.1(16)]

*Material* is any book, magazine, newspaper, printed or written matter, writing, description, picture, drawing, animation, photograph, motion picture, film, video tape, pictorial representation, depiction, image, electrical or electronic reproduction, broadcast, transmission, telephone communication, sound recording, article, device, equipment, matter, oral communication, live performance, or dance. [13A-12-200.1(15)]

*Sexual Conduct* is: **[Read as appropriate]:**

- a. Any act of sexual intercourse, masturbation, urination, defecation, lewd exhibition of the genitals, sado-masochistic

abuse, bestiality, or the fondling of the sex organs of animals;  
**(OR)**

b. Any other physical contact with a person's unclothed genitals, pubic area, buttocks, or the breast or breasts of a female, whether alone or between members of the same or opposite sex or between a human and an animal, in an act of sexual stimulation, gratification or perversion. [13A-12-200.1(22)]

*Sexual Intercourse* is intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, and whether between persons of the same or opposite sex or between a human and an animal. [13A-12-200.1(23)]

*Sado-Masochistic Abuse* means: **[Read as appropriate]:**

a. Flagellation or torture, in an act 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 binding or physical restraining of a person who is nude or clad in undergarments or in a revealing or bizarre costume in an act of sexual stimulation.

[13A-12-200.1(21)]

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)] The term means knowingly doing an act involving a material when the person knows the nature of the material [13A-12-200.1(13)]

**[Read as appropriate]:** The following shall be affirmative defenses to a charge of violating this section as it may relate to a particular minor: **[Read as appropriate]:**

- a. The minor exhibited to the defendant, his/her agent or employee a draft card, driver's license, birth certificate, marriage license or other governmental document purporting to show that such minor was not an unmarried person under the age of 18 years and the person to whom the document was exhibited did not otherwise have reasonable cause to believe that the minor was an unmarried person under the age of 18.
- b. A parent or legal guardian accompanied the minor or consented to the act charged.
- c. The defendant is the parent or legal guardian of the minor.

d. The act charged was done for a bona fide medical, scientific, educational, legislative, judicial or law enforcement purpose. [13A-12-200.5(3)]

**[Read as appropriate]:** A person shall not be deemed to have violated the provisions of this subsection, relating to display for sale, by displaying material harmful to minors in sealed wrappers or behind opaque covers commonly known as "blinder racks" so that in either event the material is located at a height of not less than five and one-half feet from the floor, the lower two-thirds of the material is concealed from view, the content of such material is not available for inspection by minors, and other reasonable efforts are made to prevent minors from perusing the material. [13A-12-200.5(2)(a)]

**[Read as appropriate]:** This section shall not be applicable to employment of minors in establishments that sell or rent video cassettes or films that contain nudity or sexual acts if the cover of the video cassettes or films does not contain a depiction of nudity or sexual acts and the video cassettes or films are displayed in a form that cannot be viewed without electrical or mechanical equipment and the equipment is not being used to produce a visual depiction of the material contained in the video cassette or film. [13A-12-200.5(2)(b)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of employing a minor in an establishment that displays or disseminates material containing nudity or sexual conduct, then you shall find the defendant guilty of employing a minor in an establishment that displays or disseminates material containing nudity or sexual conduct.

If you find that the State has failed to prove beyond a reasonable doubt one or more of the above elements of employing a minor in an establishment that displays or disseminates material containing nudity or sexual conduct, then you cannot find the defendant guilty of employing a minor in an establishment that displays or disseminates material containing nudity or sexual conduct.

### **Use Notes**

The statute does not state a specific mens rea element. Insert the appropriate mens rea element considering the indictment and the evidence before the court. There are few, if any, strict liability offenses in the Code. See Commentary for 13A-2-3 and 13A-2-4(b). There are four mens rea elements in the Alabama Code: intentionally, knowingly, recklessly, and with criminal negligence. See 13A-2-2.

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 the conduct. Ala. Code § 13A-2-2(1).

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

3. A person acts recklessly with respect to a result or to a circumstance when (he/ she) is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. Ala. Code § 13A-2-2(3).

4. A person acts with criminal negligence with respect to a result or to a circumstance when (he/she) fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. A court or jury may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence. Ala. Code § 13A-2-2(4).

There are no definitions for displays or disseminates. However, there are definitions for "display for sale" and "disseminate publicly." [See 13A-12200.1(5) and (6)].

This instruction is only for felony offenses where a minor has been employed.

**[Approved 04/24/26]**