

Alabama Code 1975, §13A-12-200.11
Objectionable Performances

The defendant is charged with objectionable performances.

The defendant commits the crime of objectionable performances if the defendant is a business establishment or a private club, and it shows or allows to be shown for entertainment purposes the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, **(OR)** the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, **(OR)** the depiction of covered male genitals in a discernibly turgid state.

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

- (1) The defendant was a business establishment or a private club;
- (2) The defendant showed or allowed to be shown for entertainment purposes: **[READ AS APPROPRIATE]**
 - (a) The human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; **(OR)**
 - (b) The female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; **(OR)**
 - (c) The depiction of covered male genitals in a discernibly turgid state;

(AND)

- (3) The defendant acted [Insert appropriate mens rea element - see Use Note]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of objectionable performances, then you shall find the defendant guilty of objectionable performances.

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

Use Note

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 offense 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 that conduct. [13A-2-2(1)]
2. 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)]
3. A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense 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.
[13A-2-2(3)]
4. A person acts with criminal negligence with respect to a result or to a circumstance which is defined by statute as an offense 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. [13A-2-2(4)]

[Approved 11-01-24].