

Alabama Code 1975, §13A-12-200.2(a)(3)
Production of Obscene Material or Device

The defendant is charged with production of obscene material or device.

A person commits the crime of production of obscene material or device if he/she knowingly produces, or offers or agrees to produce, any obscene material or any device designed or marketed as useful primarily for the stimulation of human genital organs for any thing of pecuniary value.

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

- (1) The defendant produced, or offered or agreed to produce any obscene material or any device designed or marketed as useful primarily for the stimulation of human genital organs;
- (2) The defendant did so for any thing of pecuniary value; **(AND)**
- (3) The defendant acted knowingly.

Produce means to create, make, write, film, produce, reproduce, direct or stage. [13A-12-200.1(19)]

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)]

Obscene means that:

- a. The average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest; and
- b. The material depicts or describes, in a patently offensive way, sexual conduct, actual or simulated, normal or perverted; and

- c. A reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, political, or scientific value. [13A-12-200.1(17)]

Sexual Conduct means:

- 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 means 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:

- 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)]

Material not otherwise obscene may be obscene if the distribution of the material, the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of prurient appeal.
[13A-12-200.2(1)]

For any thing of Pecuniary Value means in exchange for, in return for, or for consideration consisting of, whether wholly or partly:

- a. Any money, negotiable instrument, debt, credit, chose in action, interest in wealth, or any other property whether real or personal, tangible or intangible; or

- b. Any offer or agreement to pay, furnish or provide any money, negotiable instrument, debt, credit, chose in action, interest in wealth, or any other property whether real or personal, tangible or intangible.
[13A-12-200.1(9)]

The Defendant has been previously convicted for a violation of this statute.

A person acts *knowingly* with respect to conduct or to a circumstance described by 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 doing an act involving a material when the person knows the nature of the material. [13A-12-200.1(13)].

A person *knows the nature of the material* when any one of the following exists:

- a. The person knows the nature of the material;
- b. The person has reason to know the nature of the material;
- c. The person has a belief or reasonable ground for belief as to the nature of the material which warrants further inspection or inquiry of the character and content of the material.

[13A-12-200.1(14)]

[Read as appropriate]: It is an affirmative defense that the act was done for a bona fide medical, scientific, educational, legislative, judicial or law enforcement purpose. (13A-12-200.4)

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

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, then you cannot find the defendant guilty of possession of obscene matter.

Use Note

This section does not apply to public libraries, or public school or college or university libraries, or their employees or agents acting on behalf of the legitimate educational purposes of such public libraries, or public school or college or university libraries. [13A-12-200.10]

[Approved 11-02-24]