

**Ala. Code 1975, 13A-6-240(a)(2)\***

**Creating a Private Image**

**\* [These instructions apply only to offenses committed on or after 10/1/2024]**

The defendant is charged with creating a private image.

A person commits the crime of creating a private image if he/she knowingly creates, records, or alters a private image when the depicted individual has not consented to the creation, recording, or alteration and the depicted individual had a reasonable expectation of privacy against the creation, recording, or alteration of the private image.

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

- (1) The defendant created, recorded, or altered a private image of another individual, **[insert name of the individual depicted]**;
- (2) The depicted individual, **[insert name of depicted individual]**, had not consented to the creation, recording, or alteration of the private image;
- (3) The depicted individual, **[insert name of depicted individual]**, had a reasonable expectation of privacy against the creation, recording, or alteration of the private image; **(AND)**
- (4) The defendant knowingly created, recorded, or altered a private image.

*Private image* means a photograph, digital image, video, film, or other recording of an individual who is identifiable from the recording itself or from the circumstances of its transmission and who is engaged in any act of sadomasochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct. [13A-6-240(b)]

**[Read as appropriate]:** *Private image* includes a recording that has been edited, altered, or otherwise manipulated from its original form.

[13A-6-240(b)]

**[Read as appropriate]:** *Sadomasochistic abuse* is:

**[Read as Appropriate]:**

a. Flagellation or torture, for the purpose of sexual stimulation, by or upon an individual who is nude or clad in undergarments or in a revealing or bizarre costume; [13A-12-190(10)(a)] **(OR)**

**[Read as Appropriate]:**

b. The condition of an individual 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)]

**[Read as Appropriate]:** *Sexual Intercourse* is intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between individuals of the same or opposite sex or between a human and an animal. [13A-12-190(13)]

**[Read as Appropriate]:** *Sexual Excitement* is the condition of human male or female genitals when in a state of sexual stimulation. [13A-12-190(12)]

**[Read as Appropriate]:** *Masturbation* is the 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(7)]

**[Read as Appropriate]:** *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(1)]

**[Read as Appropriate]:** *Genital nudity* is the lewd showing of the genitals or pubic area. [13A-12-190(5)]

**[Read as Appropriate]:** *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(8)]

A "reasonable expectation of privacy" includes but is not limited to, either of the following circumstances:

- a. The individual depicted in the private image created it or consented to its creation believing that it would remain confidential; **(OR)**
- b. The sexual conduct depicted in the image was involuntary.[13A-6-240(c)(1)]

**[Read as appropriate]:** There is no reasonable expectation of privacy against the transmission of a private image made voluntarily in a public or commercial setting. [13A-6-240(c)(2)]

**[Read as appropriate]:** No Internet service provider, or its affiliates or subsidiaries, search engine, or cloud service provider shall be held to have violated this section solely for providing access or connection to or from a website or other information or content on the Internet or a facility, system, or network not under that provider's control, including transmission, downloading,

intermediate storage, or access software to the extent the provider is not responsible for the creation of the content of the communication that constitutes a private image. [13A-6-240(h)]

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

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

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

**[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]**

#### **Use Notes**

Three separate acts amending this section, all effective October 1, 2024. were signed by the Governor on April 18, 2024. She signed 2024-96 first, then 2024-98, & last 2024-97. Technically then Act 2024-97 prevails and these instructions are based on that premise. The acts substantially make the same changes but there are differences.

Proof of a prior adjudication or conviction is an element necessary to the charging instrument to charge the felony version of this offense. If the court submits this "element" to the jury, it will become necessary to decide in what manner and at what point this element is charged to the jury.

[Approved 11/01/24]