

1 SB272  
2 165767-2  
3 By Senators Stutts, Melson, Albritton, and Glover  
4 RFD: Judiciary  
5 First Read: 18-MAR-15

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8 SYNOPSIS: Under existing law, sodomy in the second  
9 degree requires both lack of consent due to mental  
10 defect and that the perpetrator be more than 16 and  
11 the victim be under 16 years of age, but older than  
12 12 years of age. Under existing law, sodomy in the  
13 first degree requires forcible compulsion or that  
14 the victim possess a mental defect or be physically  
15 helpless, or the perpetrator be more than 16 years  
16 of age and the victim less than 12 years of age.  
17 Under existing law, a person under age 16 is  
18 incapable of consent.

19 Under existing law, one circumstance in  
20 which a person commits the crime of sexual  
21 misconduct is when he or she engages in deviate  
22 sexual intercourse with another person under  
23 circumstances not covered by sodomy in the first  
24 degree or sodomy in the second degree, and consent  
25 is not a defense to prosecution under this  
26 circumstance regardless of the age of either party.  
27 This provision of the existing sexual misconduct

1 law was declared unconstitutional by the Alabama  
2 Court of Civil Appeals in Williams v. Dallas  
3 County.

4 This bill would revise the sexual misconduct  
5 law to require lack of consent or obtaining consent  
6 through the use of fraud or artifice.

7 This bill also would create the crimes of  
8 rape in the third degree, sodomy in the third  
9 degree, and sexual abuse in the third degree to  
10 apply to circumstances where the perpetrator of the  
11 crime is less than 16 years of age and the victim  
12 less than 12.

13 This bill would also add rape in the third  
14 degree, sodomy in the third degree, and sexual  
15 abuse in the third degree to the list of offenses  
16 defined by the Sex Offender Registration and  
17 Notification Act as sex offenses.

18 Amendment 621 of the Constitution of Alabama  
19 of 1901, now appearing as Section 111.05 of the  
20 Official Recompilation of the Constitution of  
21 Alabama of 1901, as amended, prohibits a general  
22 law whose purpose or effect would be to require a  
23 new or increased expenditure of local funds from  
24 becoming effective with regard to a local  
25 governmental entity without enactment by a 2/3 vote  
26 unless: it comes within one of a number of  
27 specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates  
2 funds, or provides a local source of revenue, to  
3 the entity for the purpose.

4 The purpose or effect of this bill would be  
5 to require a new or increased expenditure of local  
6 funds within the meaning of the amendment. However,  
7 the bill does not require approval of a local  
8 governmental entity or enactment by a 2/3 vote to  
9 become effective because it comes within one of the  
10 specified exceptions contained in the amendment.

11  
12 A BILL  
13 TO BE ENTITLED  
14 AN ACT

15  
16 Relating to various sex crimes; to amend Sections  
17 13A-6-65, 13A-6-70, 15-20A-5, and 15-20A-6, Code of Alabama  
18 1975; to require as an element of deviate sexual intercourse  
19 that the act occur with lack of consent or consent obtained  
20 through fraud or artifice; to create the crimes of rape in the  
21 third degree, sodomy in the third degree, and sexual abuse in  
22 the third degree to apply where the perpetrator is less than  
23 16 years of age and the victim less than 12; to provide  
24 further for the definition of sex offense; and in connection  
25 therewith would have as its purpose or effect the requirement  
26 of a new or increased expenditure of local funds within the  
27 meaning of Amendment 621 of the Constitution of Alabama of

1 1901, now appearing as Section 111.05 of the Official  
2 Recompilation of the Constitution of Alabama of 1901, as  
3 amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 13A-6-65, 13A-6-70, 15-20A-5,  
6 and 15-20A-6, Code of Alabama 1975, are amended to read as  
7 follows:

8 "§13A-6-65.

9 "(a) A person commits the crime of sexual misconduct  
10 if:

11 "(1) ~~Being a male, he~~ He or she engages in sexual  
12 intercourse with ~~a female~~ a person of the opposite sex without  
13 ~~her the~~ the consent of that person, under circumstances other than  
14 those covered by Sections 13A-6-61 and 13A-6-62; or with his  
15 or her consent where consent was obtained by the use of any  
16 fraud or artifice; or

17 "~~(2) Being a female, she engages in sexual~~  
18 ~~intercourse with a male without his consent; or~~

19 "~~(3)~~ (2) He or she engages in deviate sexual  
20 intercourse with another person without his or her consent  
21 under circumstances other than those covered by Sections  
22 13A-6-63 and 13A-6-64 or with his or her consent where consent  
23 was obtained by the use of any fraud or artifice. ~~Consent is~~  
24 ~~no defense to a prosecution under this subdivision.~~

25 "(b) Sexual misconduct is a Class A misdemeanor.

26 "§13A-6-70.

1           "(a) Whether or not specifically stated, it is an  
2 element of every offense defined in this article, ~~with the~~  
3 ~~exception of subdivision (a)(3) of Section 13A-6-65,~~ that the  
4 sexual act was committed without consent of the victim.

5           "(b) Lack of consent results from:

6           "(1) Forcible compulsion; or

7           "(2) Incapacity to consent; or

8           "(3) If the offense charged is sexual abuse, any  
9 circumstances, in addition to forcible compulsion or  
10 incapacity to consent, in which the victim does not expressly  
11 or impliedly acquiesce in the actor's conduct.

12           "(c) A person is deemed incapable of consent if he  
13 is:

14           "(1) Less than 16 years old; or

15           "(2) Mentally defective; or

16           "(3) Mentally incapacitated; or

17           "(4) Physically helpless.

18           "§15-20A-5.

19           "For the purposes of this chapter, a sex offense  
20 includes any of the following offenses:

21           "(1) Rape in the first degree, as provided by  
22 Section 13A-6-61.

23           "(2) Rape in the second degree, as provided by  
24 Section 13A-6-62.

25           "(3) Rape in the third degree, as provided by  
26 Section 2 of the act adding this amendatory language.

1           "~~(3)~~(4) Sodomy in the first degree, as provided by  
2 Section 13A-6-63.

3           "~~(4)~~(5) Sodomy in the second degree, as provided by  
4 Section 13A-6-64.

5           "(6) Sodomy in the third degree, as provided by  
6 Section 3 of the act adding this amendatory language.

7           "~~(5)~~(7) Sexual misconduct, as provided by Section  
8 13A-6-65, provided that on a first conviction or adjudication  
9 the sex offender is only subject to registration and  
10 verification pursuant to this chapter. On a second or  
11 subsequent conviction or adjudication of a sex offense, if the  
12 second or subsequent conviction or adjudication does not arise  
13 out of the same set of facts and circumstances as the first  
14 conviction or adjudication of a sex offense, the sex offender  
15 shall comply with all requirements of this chapter. The  
16 sentencing court may exempt from this chapter a juvenile sex  
17 offender adjudicated delinquent of sexual misconduct.

18           "~~(6)~~(8) Sexual torture, as provided by Section  
19 13A-6-65.1.

20           "~~(7)~~(9) Sexual abuse in the first degree, as  
21 provided by Section 13A-6-66.

22           "~~(8)~~(10) Sexual abuse in the second degree, as  
23 provided by Section 13A-6-67.

24           "(11) Sexual abuse in the third degree, as provided  
25 by Section 4 of the act adding this amendatory language. The  
26 sentencing court may exempt from this chapter or reduce the  
27 registration period pursuant to subsection (c) of Section

1 15-20A-28 of a juvenile sex offender adjudicated delinquent on  
2 sexual abuse in the third degree.

3 ~~"(9)(12)~~ Indecent exposure, as provided by Section  
4 13A-6-68, provided that on a first conviction or adjudication  
5 of a sex offense, the sex offender is only subject to  
6 registration and verification pursuant to this chapter. On a  
7 second or subsequent conviction or adjudication of a sex  
8 offense, if the second or subsequent conviction or  
9 adjudication does not arise out of the same set of facts and  
10 circumstances as the first conviction or adjudication, the sex  
11 offender shall comply with all requirements of this chapter.  
12 The sentencing court may exempt from this act a juvenile sex  
13 offender adjudicated delinquent of indecent exposure.

14 ~~"(10)(13)~~ Enticing a child to enter a vehicle, room,  
15 house, office, or other place for immoral purposes, as  
16 provided by Section 13A-6-69.

17 ~~"(11)(14)~~ Sexual abuse of a child less than 12 years  
18 old, as provided by Section 13A-6-69.1.

19 ~~"(12)(15)~~ Promoting prostitution in the first  
20 degree, as provided by Section 13A-12-111.

21 ~~"(13)(16)~~ Promoting prostitution in the second  
22 degree, as provided by Section 13A-12-112.

23 ~~"(14)(17)~~ Violation of the Alabama Child Pornography  
24 Act, as provided by Section 13A-12-191, 13A-12-192,  
25 13A-12-196, or 13A-12-197.

26 ~~"(15)(18)~~ Unlawful imprisonment in the first degree,  
27 as provided by Section 13A-6-41, if the victim of the offense

1 is a minor, and the record of adjudication or conviction  
2 reflects the intent of the unlawful imprisonment was to abuse  
3 the minor sexually.

4 "~~(16)~~(19) Unlawful imprisonment in the second  
5 degree, as provided by Section 13A-6-42, if the victim of the  
6 offense is a minor, and the record of adjudication or  
7 conviction reflects the intent of the unlawful imprisonment  
8 was to abuse the minor sexually.

9 "~~(17)~~(20) Kidnapping in the first degree, as  
10 provided by subdivision (4) of subsection (a) of Section  
11 13A-6-43, if the intent of the abduction is to violate or  
12 abuse the victim sexually.

13 "~~(18)~~(21) Kidnapping of a minor, except by a parent,  
14 guardian, or custodian, as provided by Section 13A-6-43 or  
15 13A-6-44.

16 "~~(19)~~(22) Incest, as provided by Section 13A-13-3.

17 "~~(20)~~(23) Transmitting obscene material to a child  
18 by computer, as provided by Section 13A-6-111.

19 "~~(21)~~(24) School employee engaging in a sex act or  
20 deviant sexual intercourse with a student, as provided by  
21 Section 13A-6-81.

22 "~~(22)~~(25) School employee having sexual contact with  
23 a student, as provided by Section 13A-6-82.

24 "~~(23)~~(26) Facilitating solicitation of unlawful  
25 sexual conduct with a child, as provided by Section 13A-6-121.

26 "~~(24)~~(27) Electronic solicitation of a child, as  
27 provided by Section 13A-6-122.

1           "~~(25)~~(28) Facilitating the on-line solicitation of a  
2 child, as provided by Section 13A-6-123.

3           "~~(26)~~(29) Traveling to meet a child for an unlawful  
4 sex act, as provided by Section 13A-6-124.

5           "~~(27)~~(30) Facilitating the travel of a child for an  
6 unlawful sex act, as provided by Section 13A-6-125.

7           "~~(28)~~(31) Human trafficking in the first degree, as  
8 provided by Section 13A-6-152, provided that the offense  
9 involves sexual servitude.

10           "~~(29)~~(32) Human trafficking in the second degree, as  
11 provided by Section 13A-6-153, provided that the offense  
12 involves sexual servitude.

13           "~~(30)~~(33) Custodial sexual misconduct, as provided  
14 by Section 14-11-31.

15           "~~(31)~~(34) Any offense which is the same as or  
16 equivalent to any offense set forth above as the same existed  
17 and was defined under the laws of this state existing at the  
18 time of such conviction, specifically including, but not  
19 limited to, crime against nature, as provided by Section  
20 13-1-110; rape, as provided by Sections 13-1-130 and 13-1-131;  
21 carnal knowledge of a woman or girl, as provided by Sections  
22 13-1-132 through 13-1-135, or attempting to do so, as provided  
23 by Section 13-1-136; indecent molestation of children, as  
24 defined and provided by Section 13-1-113; indecent exposure,  
25 as provided by Section 13-1-111; incest, as provided by  
26 Section 13-8-3; offenses relative to obscene prints and  
27 literature, as provided by Sections 13-7-160 through 13-7-175,

1 inclusive; employing, harboring, procuring or using a girl  
2 over 10 and under 18 years of age for the purpose of  
3 prostitution or sexual intercourse, as provided by Section  
4 13-7-1; seduction, as defined and provided by Section  
5 13-1-112; a male person peeping into a room occupied by a  
6 female, as provided by Section 13-6-6; assault with intent to  
7 ravish, as provided by Section 13-1-46; and soliciting a child  
8 by computer, as provided by Section 13A-6-110.

9           "~~(32)~~(35) Any solicitation, attempt, or conspiracy  
10 to commit any of the offenses listed in subdivisions (1) to  
11 (31), inclusive.

12           "~~(33)~~(36) Any crime committed in Alabama or any  
13 other state, the District of Columbia, any United States  
14 territory, or a federal, military, Indian, or foreign country  
15 jurisdiction which, if it had been committed in this state  
16 under the current provisions of law, would constitute an  
17 offense listed in subdivisions (1) to ~~(32)~~ (35), inclusive.

18           "~~(34)~~(37) Any offense specified by Title I of the  
19 federal Adam Walsh Child Protection and Safety Act of 2006  
20 (Pub. L. 109-248, the Sex Offender Registration and  
21 Notification Act (SORNA)).

22           "~~(35)~~(38) Any crime committed in another state, the  
23 District of Columbia, any United States territory, or a  
24 federal, military, Indian, or foreign country jurisdiction if  
25 that jurisdiction also requires that anyone convicted of that  
26 crime register as a sex offender in that jurisdiction.

1           "~~(36)~~(39) Any offender determined in any  
2 jurisdiction to be a sex offender shall be considered a sex  
3 offender in this state.

4           "~~(37)~~(40) The foregoing notwithstanding, any crime  
5 committed in any jurisdiction which, irrespective of the  
6 specific description or statutory elements thereof, is in any  
7 way characterized or known as rape, carnal knowledge, sodomy,  
8 sexual assault, sexual battery, criminal sexual conduct,  
9 criminal sexual contact, sexual abuse, continuous sexual  
10 abuse, sexual torture, solicitation of a child, enticing or  
11 luring a child, child pornography, lewd and lascivious  
12 conduct, taking indecent liberties with a child, molestation  
13 of a child, criminal sexual misconduct, ~~or~~ video voyeurism, or  
14 there has been a finding of sexual motivation.

15           "~~(38)~~(41) Any crime not listed in this section  
16 wherein the underlying felony is an element of the offense and  
17 listed in subdivisions (1) to ~~(37)~~ (40), inclusive.

18           "~~(39)~~(42) Any other offense not provided for in this  
19 section wherein there is a finding of sexual motivation as  
20 provided by Section 15-20A-6.

21           "§15-20A-6.

22           "(a) (1) The indictment, count in the indictment,  
23 information, complaint, or warrant charging the offense may  
24 include a specification of sexual motivation or the  
25 prosecuting attorney may file an allegation of sexual  
26 motivation in any criminal case classified as a felony or  
27 Class A misdemeanor if sufficient admissible evidence exists

1 that would justify a finding of sexual motivation by a  
2 reasonable and objective finder of fact.

3 "(2) If a specification is included in the  
4 indictment, count in the indictment, information, complaint,  
5 or warrant charging the offense the specification shall be  
6 stated at the end of the body of the indictment, count in the  
7 indictment, information, complaint, or warrant and shall be in  
8 substantially the following form: "SPECIFICATION or  
9 SPECIFICATION TO THE FIRST COUNT. The Grand Jurors (or insert  
10 appropriate name) further find and specify that the offender  
11 committed the offense with a sexual motivation."

12 "(3) If the prosecuting attorney files an allegation  
13 of sexual motivation, it shall be filed within a reasonable  
14 time after indictment to give sufficient notice to the  
15 defendant.

16 "(b) If the indictment, count of the indictment,  
17 information, complaint, or warrant charging the offense  
18 incudes a specification of sexual motivation or if the  
19 prosecuting attorney files an allegation of sexual motivation,  
20 the state shall prove beyond a reasonable doubt that the  
21 defendant committed the offense with a sexual motivation.

22 "(c) The court shall make a written finding of fact,  
23 to be made part of the record upon conviction or adjudication  
24 as a youthful offender, of whether or not a sexual motivation  
25 was present at the time of the commission of the offense  
26 unless the defendant has a trial by jury.

1           "(d) If a defendant has a trial by jury, the jury,  
2 if it finds the defendant guilty, shall also find a special  
3 verdict as to whether or not the defendant committed the crime  
4 with a sexual motivation.

5           "(e) If there is a finding of sexual motivation, the  
6 finding shall be made part of the record of conviction or  
7 adjudication.

8           "(f) For purposes of this section, sexual motivation  
9 means that one of the purposes for which the defendant  
10 committed the crime was for the purpose of the sexual  
11 gratification of the defendant.

12           "(g) This section shall not apply to sex offenses as  
13 defined in subdivisions (1) to ~~(38)~~ (41), inclusive, of  
14 Section 15-20A-5."

15           Section 2. (a) A person commits the crime of rape in  
16 the third degree if, being at least 12 years old, but less  
17 than 16 years old, he or she engages in sexual intercourse  
18 with another person less than 12 years old.

19           (b) Rape in the third degree is a Class A  
20 misdemeanor.

21           Section 3. (a) A person commits the crime of sodomy  
22 in the third degree if, being at least 12 years old, but less  
23 than 16 years old, he or she engages in deviate sexual  
24 intercourse with another person less than 12 years old.

25           (b) Sodomy in the third degree is a Class A  
26 misdemeanor.

1                   Section 4. (a) A person commits the crime of sexual  
2                   abuse in the third degree if, being at least 12 years old, but  
3                   less than 16 years old, he or she engages in sexual contact  
4                   with another person less than 12 years old and more than two  
5                   years younger than the person who is at least 12 years old but  
6                   less than 16 years old.

7                   (b) Sexual abuse in the third degree is a Class A  
8                   misdemeanor.

9                   Section 5. Although this bill would have as its  
10                  purpose or effect the requirement of a new or increased  
11                  expenditure of local funds, the bill is excluded from further  
12                  requirements and application under Amendment 621, now  
13                  appearing as Section 111.05 of the Official Recompilation of  
14                  the Constitution of Alabama of 1901, as amended, because the  
15                  bill defines a new crime or amends the definition of an  
16                  existing crime.

17                  Section 6. This act shall become effective on the  
18                  first day of the third month following its passage and  
19                  approval by the Governor, or its otherwise becoming law.