

1 HB374
2 165767-2
3 By Representatives Rowe, Hill (M), Ball, Pettus, Rich, Wood,
4 Greer, Fridy, McCutcheon, Treadaway, South, Henry, Boothe,
5 Givan, Harper, Weaver and Faulkner
6 RFD: Judiciary
7 First Read: 31-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.