

1 SB196
2 188695-3
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 18-JAN-18

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8 SYNOPSIS: Existing law defines certain acts as crimes
9 and establishes penalties.

10 This bill would make technical revisions and
11 updates to Chapters 1 to 4 of the Criminal Code.

12 This bill would define the term law
13 enforcement officer, specify that the terms
14 marihuana and marijuana are interchangeable, and
15 revise the definition of vehicle.

16 This bill would establish the conditions
17 under which a corporation or other entity may be
18 held criminally responsible for any offense.

19 This bill would further describe the
20 circumstances in which a law enforcement officer,
21 including a guard at a detention facility, is
22 justified in using deadly physical force.

23 This bill would define entrapment and
24 specify that entrapment is a defense to
25 prosecution.

26 This bill would provide for the crime of
27 criminal facilitation.

1 Amendment 621 of the Constitution of Alabama
2 of 1901 prohibits a general law whose purpose or
3 effect would be to require a new or increased
4 expenditure of local funds from becoming effective
5 with regard to a local governmental entity without
6 enactment by a 2/3 vote unless: it comes within one
7 of a number of specified exceptions; it is approved
8 by the affected entity; or the Legislature
9 appropriates funds, or provides a local source of
10 revenue, to the entity for the purpose.

11 The purpose or effect of this bill would be
12 to require a new or increased expenditure of local
13 funds within the meaning of Amendment 621. However,
14 the bill does not require approval of a local
15 governmental entity or enactment by a 2/3 vote to
16 become effective because it comes within one of the
17 specified exceptions contained in Amendment 621.

18
19 A BILL

20 TO BE ENTITLED

21 AN ACT

22
23 Relating to crimes and penalties; to amend Sections
24 13A-1-2 and 13A-1-4 of the Code of Alabama 1975; to add
25 Section 13A-1-5.1 to the Code of Alabama 1975; to amend
26 Section 13A-1-8 of the Code of Alabama 1975; to add Section
27 13A-1-12 to the Code of Alabama 1975; to amend Sections

1 13A-2-1, 13A-2-2, 13A-2-3, 13A-2-5, 13A-2-6, 13A-2-20,
2 13A-2-21, 13A-2-22, 13A-2-23, 13A-2-24, and 13A-2-26 of the
3 Code of Alabama 1975; to add Sections 13A-2-27, 13A-2-28,
4 13A-2-29, 13A-2-30 to the Code of Alabama 1975; to amend
5 Sections 13A-3-1, 13A-3-2, 13A-3-21, 13A-3-22, 13A-3-24,
6 13A-3-25, 13A-3-27, and 13A-3-28 of the Code of Alabama 1975;
7 to amend Sections 13A-3-30, 13A-3-31, 13A-4-1, 13A-4-2, and
8 13A-4-3 of the Code of Alabama 1975; and to add Section
9 13A-4-6 to the Code of Alabama 1975; to make technical
10 revisions and updates; to revise and add definitions; to
11 provide for culpability; to establish conditions for criminal
12 culpability of a corporation or other entity; to provide
13 further for the use of deadly physical force by a law
14 enforcement officer; to provide for entrapment; and to provide
15 for criminal facilitation; and in connection therewith would
16 have as its purpose or effect the requirement of a new or
17 increased expenditure of local funds within the meaning of
18 Amendment 621 of the Constitution of Alabama of 1901.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Sections 13A-1-2 and 13A-1-4 of the Code
21 of Alabama 1975, are amended to read as follows:

22 "§13A-1-2.

23 "Unless different meanings are expressly specified
24 in subsequent provisions of this title, the following terms
25 shall have the following meanings:

26 "(1) BOOBY TRAP. Any concealed or camouflaged device
27 designed to cause bodily injury when triggered by any action

1 of a person ~~making contact with the device~~. This term includes
2 shall include, but is not limited to, improvised explosive
3 devices, guns, ammunition, or explosive devices attached to
4 trip wires or other triggering mechanisms⁷. Also included are
5 sharpened stakes, nails, spikes, electrical devices, lines or
6 wires with hooks attached, and devices for the production of
7 toxic fumes or gases.

8 "(2) BURDEN OF INJECTING THE ISSUE. The term means
9 that the defendant must offer some competent evidence relating
10 to all matters subject to the burden, except that the
11 defendant may rely upon evidence presented by the prosecution
12 in meeting the burden.

13 "(3) CLANDESTINE LABORATORY OPERATION. Any of the
14 following:

15 "a. Purchase or procurement of chemicals, supplies,
16 equipment, or laboratory location for the unlawful manufacture
17 of controlled substances.

18 "b. Transportation or arranging for the
19 transportation of chemicals, supplies, or equipment for the
20 unlawful manufacture of controlled substances.

21 "c. Setting up of equipment or supplies in
22 preparation for the unlawful manufacture of controlled
23 substances.

24 "d. Distribution or disposal of chemicals,
25 equipment, supplies, or products used in or produced by the
26 unlawful manufacture of controlled substances.

27 "(4) CRIME. A misdemeanor or a felony.

1 "(5) DANGEROUS INSTRUMENT. Any instrument, article,
2 or substance which, under the circumstances in which it is
3 used, attempted to be used, or threatened to be used, is
4 highly capable of causing death or serious physical injury.
5 The term includes a "vehicle," as that term is defined in
6 subdivision (15).

7 "(6) DEADLY PHYSICAL FORCE. Physical force which,
8 under the circumstances in which it is used, is readily
9 capable of causing death or serious physical injury.

10 "(7) DEADLY WEAPON. A firearm or ~~anything~~ any other
11 instrument manifestly designed, made, ~~or~~ adapted, or used for
12 the purposes of inflicting death or serious physical injury.
13 The term includes, but is not limited to, a pistol, rifle, or
14 shotgun; or a switch-blade knife, gravity knife, stiletto,
15 sword, or dagger; or any billy, black-jack, bludgeon, or metal
16 knuckles.

17 "(8) FELONY. An offense for which a sentence to a
18 term of imprisonment in excess of one year ~~is authorized by~~
19 ~~this title~~ may be imposed.

20 "(9) LAW ENFORCEMENT OFFICER. An officer, employee,
21 or agent of the State of Alabama or any political subdivision
22 thereof who is required by law to:

23 "a. Maintain public order;

24 "b. Make arrests for offenses, whether that duty
25 extends to all offenses or is limited to specific offenses;
26 and

1 "c. Investigate the commission or suspected
2 commission of offenses.

3 "(10) MARIHUANA. Whether the illegal substance
4 possessed is spelled "marihuana" or "marijuana," the offense
5 is no less the same. The terms marihuana and marijuana are
6 interchangeable.

7 ~~"(9)~~ (11) MISDEMEANOR. An offense other than a
8 violation for which a sentence to a term of imprisonment not
9 in excess of one year may be imposed.

10 ~~"(10)~~ (12) OFFENSE. Conduct for which a sentence to a
11 term of imprisonment, or the death penalty, or to a fine is
12 provided by any law of this state or by any law, local law, or
13 ordinance of a political subdivision of this state.

14 ~~"(11)~~ (13) PERSON. A human being, and where
15 appropriate, a public or private corporation, an
16 unincorporated association, a partnership or other legal
17 entity, a government, or a governmental instrumentality.

18 ~~"(12)~~ (14) PHYSICAL INJURY. Impairment of physical
19 condition or substantial pain.

20 ~~"(13)~~ (15) POSSESS. To have physical possession or
21 otherwise to exercise dominion or control over tangible
22 property.

23 ~~"(14)~~ (16) SERIOUS PHYSICAL INJURY. Physical injury
24 which creates a substantial risk of death, or which causes
25 serious and protracted disfigurement, protracted impairment of
26 health, or protracted loss or impairment of the function of
27 any bodily organ.

1 "~~(15)~~(17) VEHICLE. Any ~~"propelled vehicle,"~~ as
2 defined in subdivision (9) of Section 13A-8-1. The term
3 ~~includes any propelled~~ device by which any person or property
4 is transported on land, water, or in the air, and includes
5 motor vehicles, motorcycles, motorboats, and aircraft, and any
6 vessel, whether propelled by machinery or not.

7 "~~(16)~~(18) VIOLATION. ~~An~~ A state offense for which a
8 sentence to a term of imprisonment not in excess of 30 days
9 may be imposed.

10 "§13A-1-4.

11 "(a) No act or omission is a crime unless made so by
12 this title or by other applicable statute or ~~lawful~~ ordinance.

13 "(b) All common law offenses and affirmative
14 defenses are abolished."

15 Section 2. Section 13A-1-5.1 is added to the Code of
16 Alabama 1975, to read as follows:

17 §13A-1-5.1.

18 The common law year-and-a-day rule is expressly
19 repealed. A prosecution may be instituted for murder,
20 manslaughter, or unlawful homicide regardless of the time that
21 has elapsed between the act or omission that caused the death
22 of the victim and the victim's death.

23 Section 3. Section 13A-1-8 of the Code of Alabama
24 1975, is amended to read as follows:

25 "§13A-1-8.

26 "(a) (1) Except as otherwise provided herein, the
27 procedure governing the accusation, prosecution, conviction,

1 and punishment of offenders and offenses is not regulated by
2 this title.

3 "(2) This title does not bar, suspend, or otherwise
4 affect any right or liability to damages, penalty, forfeiture,
5 or other remedy authorized by law to be recovered or enforced
6 in a civil action, regardless of whether the conduct involved
7 in the proceeding constitutes an offense defined in this
8 title.

9 "(b) When the same conduct of a defendant may
10 establish the commission of more than one offense, the
11 defendant may be prosecuted for each such offense. ~~He~~ The
12 defendant may not, however, be convicted of more than one
13 offense if:

14 "(1) One offense is included in the other, as
15 defined in Section 13A-1-9; ~~or~~

16 "(2) One offense consists only of a conspiracy or
17 other form of preparation to commit the other; ~~or~~

18 "(3) Inconsistent findings of fact are required to
19 establish the commission of the offenses; or

20 "(4) The offenses differ only in that one is defined
21 to prohibit a designated kind of conduct generally and the
22 other to prohibit a specific instance of such conduct."

23 Section 4. Section 13A-1-12 is added to the Code of
24 Alabama 1975, to read as follows:

25 §13A-1-12.

26 The Alabama Supreme Court shall adopt pattern
27 indictment forms for use in cases in which indictments

1 charging offenses defined in the Code of Alabama 1975, are
2 returned. The Alabama Supreme Court shall also adopt pattern
3 verdict forms and pattern jury instructions for the trial and
4 sentencing aspects of cases tried.

5 Section 5. Sections 13A-2-1, 13A-2-2, 13A-2-3,
6 13A-2-4, 13A-2-5, 13A-2-6, 13A-2-20, 13A-2-21, 13A-2-22,
7 13A-2-23, 13A-2-24, and 13A-2-26 of the Code of Alabama 1975,
8 are amended to read as follows:

9 "§13A-2-1.

10 "The following definitions apply to this Criminal
11 Code:

12 "(1) ACT. A bodily movement, and such term includes
13 possession of property.

14 "(2) VOLUNTARY ACT. An act performed consciously as
15 a result of effort or determination, and such term includes
16 the possession of property if the actor was aware of his or
17 her physical possession or control thereof for a sufficient
18 time to have been able to terminate it.

19 "(3) OMISSION. A failure to perform an act as to
20 which a duty of performance is imposed by law.

21 "(4) CONDUCT. An act or omission and its
22 accompanying mental state.

23 "(5) TO ACT. Either to perform an act or to omit to
24 perform an act.

25 "(6) CULPABLE MENTAL STATE. Such term means
26 "intentionally" or "knowingly" or "recklessly" or with

1 "criminal negligence," as these terms are defined in Section
2 13A-2-2.

3 "§13A-2-2.

4 "The following definitions apply to this Criminal
5 Code:

6 "(1) INTENTIONALLY. A person acts intentionally with
7 respect to a result or to conduct described by a statute
8 defining an offense, when his or her purpose is to cause that
9 result or to engage in that conduct.

10 "(2) KNOWINGLY. A person acts knowingly with respect
11 to conduct or to a circumstance described by a statute
12 defining an offense when ~~he~~ the person is aware that his or
13 her conduct is of that nature or that the circumstance exists.

14 "(3) RECKLESSLY. A person acts recklessly with
15 respect to a result or to a circumstance described by a
16 statute defining an offense when he or she is aware of and
17 consciously disregards a substantial and unjustifiable risk
18 that the result will occur or that the circumstance exists.
19 The risk must be of such nature and degree that disregard
20 thereof constitutes a gross deviation from the standard of
21 conduct that a reasonable person would observe in the
22 situation. A person who creates a risk but is unaware thereof
23 solely by reason of voluntary intoxication, as defined in
24 subdivision (e) (2) of Section 13A-3-2, acts recklessly with
25 respect thereto.

26 "(4) CRIMINAL NEGLIGENCE. A person acts with
27 criminal negligence with respect to a result or to a

1 circumstance which is defined by statute as an offense when he
2 or she fails to perceive a substantial and unjustifiable risk
3 that the result will occur or that the circumstance exists.
4 The risk must be of such nature and degree that the failure to
5 perceive it constitutes a gross deviation from the standard of
6 care that a reasonable person would observe in the situation.
7 A court or jury may consider statutes or ordinances regulating
8 the defendant's conduct as bearing upon the question of
9 criminal negligence.

10 "§13A-2-3.

11 "The minimum requirement for criminal liability is
12 the performance by a person of conduct which includes a
13 voluntary act or the omission to perform an act which he or
14 she is physically capable of performing. If that conduct is
15 all that is required for commission of a particular offense,
16 or if an offense or some material element thereof does not
17 require a culpable mental state on the part of the actor, the
18 offense is one of "strict liability." If a culpable mental
19 state on the part of the actor is required with respect to any
20 material element of an offense, the offense is one of "mental
21 culpability."

22 "§13A-2-5.

23 "(a) A person is criminally liable if the result
24 would not have occurred but for his or her conduct, operating
25 either alone or concurrently with another cause, unless the
26 concurrent cause was sufficient to produce the result and the
27 conduct of the actor clearly insufficient.

1 "(b) A person is nevertheless criminally liable for
2 causing a result if the only difference between what actually
3 occurred and what he or she intended, contemplated, or risked
4 is that:

5 "(1) A different person or property was injured,
6 harmed, or affected; or

7 "(2) A less serious or less extensive injury or harm
8 occurred.

9 "(c) When causing a particular result is a material
10 element of an offense for which absolute liability is imposed
11 by law, the element is not established unless the actual
12 result is a probable consequence of the actor's conduct.

13 "§13A-2-6.

14 "(a) A person is not relieved of criminal liability
15 for conduct because he or she engages in that conduct under a
16 mistaken belief of fact unless:

17 "(1) ~~His~~ The person's factual mistake negatives the
18 culpable mental state required for the commission of an
19 offense; or

20 "(2) The statute defining the offense or a statute
21 related thereto expressly provides that such a factual mistake
22 constitutes a defense or exemption; or

23 "(3) The factual mistake is of a kind that supports
24 a defense of justification as defined in Article 2 of Chapter
25 3 of this title.

26 "(b) A person is not relieved of criminal liability
27 for conduct because he or she engages in that conduct under a

1 mistaken belief that it does not, as a matter of law,
2 constitute an offense, unless his or her mistaken belief is
3 founded upon an official statement of the law contained in a
4 statute or the latest judicial decision of the highest state
5 or federal court which has decided on the matter.

6 "(c) The burden of injecting the issue of mistake of
7 law under subsection (b) ~~of this section~~ is on the defendant,
8 but this does not shift the burden of proof.

9 "(d) A mistake of law, other than as to the
10 existence or meaning of the statute under which the defendant
11 is prosecuted, is relevant to disprove the specific state of
12 mental culpability required by the statute under which the
13 defendant is prosecuted.

14 "§13A-2-20.

15 "A person is criminally liable for an offense if it
16 is committed by his or her own behavior or by the behavior of
17 another person for which he or she is legally accountable as
18 provided for in this article, or both.

19 "§13A-2-21.

20 "A person is legally accountable for the behavior of
21 another person if he or she is made accountable for the
22 behavior of such person by the statute defining the offense or
23 by specific provision of this title.

24 "§13A-2-22.

25 "(a) A person is legally accountable for the
26 behavior of another if, acting with the culpable mental state

1 sufficient for the commission of the offense in question, he
2 or she causes an innocent person to engage in such behavior.

3 "(b) As used in this section, an "innocent person"
4 includes any person who is not guilty of the offense in
5 question, despite his or her behavior, because of:

6 "(1) Criminal irresponsibility or other legal
7 incapacity or exemption.

8 "(2) Unawareness of the criminal nature of the
9 conduct in question or of the defendant's criminal purpose.

10 "(3) Any other factor precluding the mental state
11 sufficient for the commission of the offense in question.

12 "§13A-2-23.

13 "A person is legally accountable for the behavior of
14 another constituting a criminal offense if, with the intent to
15 promote or assist the commission of the offense:

16 "(1) ~~He~~ The person procures, induces, or causes such
17 other person to commit the offense; ~~or~~

18 "(2) ~~He~~ The person aids or abets such other person
19 in committing the offense; or

20 "(3) Having a legal duty to prevent the commission
21 of the offense, ~~he~~ the person fails to make an effort he or
22 she is legally required to make.

23 "§13A-2-24.

24 "Unless otherwise provided by the statute defining
25 the offense, a person shall not be legally accountable for
26 behavior of another constituting a criminal offense if:

27 "(1) ~~He~~ The person is a victim of that offense; ~~or~~

1 "(2) The offense is so defined that ~~his~~ the person's
2 conduct is inevitably incidental to its commission; or

3 "(3) Prior to the commission of the offense, ~~he~~ the
4 person voluntarily terminated his or her effort to promote or
5 assist its commission and either gave timely and adequate
6 warning to law enforcement authorities, or to the intended
7 victim, or wholly deprived his or her complicity of its
8 effectiveness in the commission of the offense. The burden of
9 injecting this issue is on the defendant, but this does not
10 shift the burden of proof.

11 "§13A-2-26.

12 "A person is criminally liable for conduct
13 constituting an offense which he or she performs or causes to
14 be performed in the name of or ~~in~~ on behalf of a corporation
15 or entity to the same extent as if such conduct were performed
16 in ~~his~~ the person's own name or behalf."

17 Section 6. Sections 13A-2-27, 13A-2-28, 13A-2-29,
18 and 13A-2-30 are added to the Code of Alabama 1975, to read as
19 follows:

20 §13A-2-27.

21 For the purposes of Sections 13A-2-26 to 13A-2-30,
22 inclusive, the following terms shall have the following
23 meanings:

24 (1) AGENT. A director, officer, employee, or other
25 person authorized to act in behalf of a corporation or entity.

26 (2) HIGH MANAGERIAL AGENT. Any of the following:

27 a. A partner in a partnership.

1 b. An officer of a corporation or entity.

2 c. An agent of a corporation or entity who has
3 duties of such responsibility that his or her conduct
4 reasonably may be assumed to represent the policy of the
5 corporation or entity.

6 §13A-2-28.

7 (a) If conduct constituting an offense is performed
8 by an agent acting in behalf of a corporation or entity and
9 within the scope of his or her office or employment, the
10 corporation or entity is criminally responsible for an offense
11 defined:

12 (1) In this title where a person is made subject
13 thereto;

14 (2) By law other than this title in which a
15 legislative purpose to impose criminal responsibility on
16 corporations or entities plainly appears; or

17 (3) By law other than this title for which strict
18 liability is imposed, unless a legislative purpose not to
19 impose criminal responsibility on corporations or entities
20 plainly appears.

21 (b) A corporation or entity is criminally
22 responsible for a felony offense only if its commission was
23 authorized, requested, commanded, performed, or recklessly
24 tolerated by:

25 (1) A majority of the governing board acting on
26 behalf of the corporation or entity; or

1 (2) A high managerial agent acting on behalf of the
2 corporation or entity and within the scope of his or her
3 office or employment.

4 §13A-2-29.

5 (a) An individual is criminally responsible for
6 conduct that he or she performs in the name of or on behalf of
7 a corporation or entity to the same extent as if the conduct
8 were performed in his or her own name or behalf.

9 (b) An agent having primary responsibility for the
10 discharge of a duty to act imposed by law on a corporation or
11 entity is criminally responsible for omission to discharge the
12 duty to the same extent as if the duty were imposed by law
13 directly on him or her.

14 (c) If an individual is convicted of conduct
15 constituting an offense performed in the name of or on behalf
16 of a corporation or entity, he or she is subject to the
17 sentence authorized by law for an individual convicted of the
18 offense.

19 §13A-2-30.

20 (a) It is an affirmative defense to prosecution of a
21 corporation or entity under Section 13A-2-28(a)(1) or (b)(1)
22 that the high managerial agent having supervisory
23 responsibility over the subject matter of the offense employed
24 due diligence to prevent its commission.

25 (b) It is not a defense to prosecution of a
26 corporation or entity that the crime is one of violence or one
27 involving a specific intent.

1 Section 7. Sections 13A-3-1, 13A-3-2, 13A-3-21,
2 13A-3-22, 13A-3-24, 13A-3-25, 13A-3-27, and 13A-3-28 of the
3 Code of Alabama 1975, are amended to read as follows:

4 "§13A-3-1.

5 "(a) It is an affirmative defense to a prosecution
6 for any crime that, at the time of the commission of the acts
7 constituting the offense, the defendant, as a result of severe
8 mental disease or defect, was unable to appreciate the nature
9 and quality or wrongfulness of his or her acts. Mental disease
10 or defect does not otherwise constitute a defense.

11 "(b) "Severe mental disease or defect" does not
12 include an abnormality manifested only by repeated criminal or
13 otherwise antisocial conduct.

14 "(c) The defendant has the burden of proving the
15 defense of insanity by clear and convincing evidence.

16 "§13A-3-2.

17 "(a) Intoxication is not a defense to a criminal
18 charge, except as provided in subsection (c) ~~of this section~~.
19 However, intoxication, whether voluntary or involuntary, is
20 admissible in evidence whenever it is relevant to negate an
21 element of the offense charged.

22 "(b) When recklessness establishes an element of an
23 offense and the actor is unaware of a risk because of
24 voluntary intoxication, his or her unawareness is immaterial
25 in a prosecution for that offense.

26 "(c) Involuntary intoxication is a defense to
27 prosecution if as a result the actor lacks capacity either to

1 appreciate the criminality of his or her conduct or to conform
2 his or her conduct to the requirements of law.

3 "(d) Intoxication in itself does not constitute
4 mental disease or defect within the meaning of Section
5 13A-3-1.

6 "(e) In this section:

7 "(1) "Intoxication" includes a disturbance of mental
8 or physical capacities resulting from the introduction of any
9 substance into the body.

10 "(2) "Voluntary intoxication" means intoxication
11 caused by substances that the actor knowingly introduced into
12 his or her body, the tendency of which to cause intoxication
13 he or she knows or ought to know, unless he or she introduces
14 them under circumstances that would afford a defense to a
15 charge of crime.

16 "§13A-3-21.

17 "(a) Defense. Except as otherwise expressly
18 provided, justification or excuse under this article is a
19 defense.

20 "(b) Danger to innocent persons. If a person is
21 justified or excused in using force against a person, but he
22 or she recklessly or negligently injures or creates a
23 substantial injury to another person, the justifications
24 afforded by this article are unavailable in a prosecution for
25 such recklessness or negligence.

26 "(c) Civil remedy unimpaired. Any justification or
27 excuse within the meaning of this article does not abolish or

1 impair any civil remedy or right of action which is otherwise
2 available.

3 "§13A-3-22.

4 "Unless inconsistent with other provisions of this
5 article, or with some other provision of law, conduct which
6 would otherwise constitute an offense is justifiable and not
7 criminal when it is required or authorized by law or by a
8 judicial decree or is performed by a public servant in the
9 reasonable exercise of his or her official powers, duties, or
10 functions.

11 "§13A-3-24.

12 "The use of force upon another person is justified
13 under any of the following circumstances:

14 "(1) A parent, guardian, or other person responsible
15 for the care and supervision of a minor or an incompetent
16 person, and a teacher or other person responsible for the care
17 and supervision of a minor for a special purpose, may use
18 reasonable and appropriate physical force upon the minor or
19 incompetent person when and to the extent that he or she
20 reasonably believes it necessary and appropriate to maintain
21 discipline or to promote the welfare of the minor or
22 incompetent person.

23 "(2) A warden or other authorized official of a
24 jail, prison, or correctional institution ~~may~~, in order to
25 maintain order and discipline, may use whatever physical force
26 is authorized by law.

1 "(3) A person responsible for the maintenance of
2 order in a common or contract carrier of passengers, or a
3 person acting under ~~his~~ that person's direction, may use
4 reasonable physical force when and to the extent that he or
5 she reasonably believes it necessary to maintain order, but he
6 or she may use deadly physical force only when he or she
7 reasonably believes it necessary to prevent death or serious
8 physical injury.

9 "(4) A person acting under a reasonable belief that
10 another person is about to commit suicide or to self-inflict
11 serious physical injury ~~upon himself~~ may use reasonable
12 physical force upon that person to the extent that he or she
13 reasonably believes it necessary to thwart the result.

14 "(5) A duly licensed physician, or a person acting
15 under ~~his~~ the physician's direction, may use reasonable
16 physical force for the purpose of administering a reasonable
17 and recognized form of treatment which he or she reasonably
18 believes to be adapted to promoting the physical or mental
19 health of the patient if:

20 "a. The treatment is administered with the consent
21 of the patient or, if the patient is a minor or an incompetent
22 person, with the consent of his or her parent, guardian, or
23 other person responsible for his or her care and supervision;
24 or

25 "b. The treatment is administered in an emergency
26 when the physician reasonably believes that no one competent
27 to consent can be consulted and that a reasonable person,

1 wishing to safeguard the welfare of the patient, would
2 consent.

3 "§13A-3-25.

4 "(a) A person in lawful possession or control of
5 premises, as defined in Section 13A-3-20, or a person who is
6 licensed or privileged to be thereon, may use physical force
7 upon another person when and to the extent that he or she
8 reasonably believes it necessary to prevent or terminate what
9 he or she reasonably believes to be the commission or
10 attempted commission of a criminal trespass by the other
11 person in or upon such premises.

12 "(b) A person may use deadly physical force under
13 the circumstances set forth in subsection (a) ~~of this section~~
14 only:

15 "(1) In defense of a person, as provided in Section
16 13A-3-23; or

17 "(2) When he or she reasonably believes it necessary
18 to prevent the commission of arson in the first or second
19 degree by the trespasser.

20 "§13A-3-27.

21 "(a) A ~~peace officer~~ law enforcement officer is
22 justified in using that degree of physical force which he or
23 she reasonably believes to be necessary, upon a person in
24 order:

25 "(1) To make an arrest for a misdemeanor, violation,
26 or violation of a criminal ordinance, or to prevent the escape
27 from custody of a person arrested for a misdemeanor,

1 violation, or violation of a criminal ordinance, unless the
2 ~~peace officer~~ law enforcement officer knows that the arrest is
3 unauthorized; or

4 "(2) To defend himself or herself or a third person
5 from what he or she reasonably believes to be the use or
6 imminent use of physical force while making or attempting to
7 make an arrest for a misdemeanor, violation, or violation of a
8 criminal ordinance, or while preventing or attempting to
9 prevent an escape from custody of a person who has been
10 legally arrested for a misdemeanor, violation, or violation of
11 a criminal ordinance.

12 "(b) A ~~peace officer~~ law enforcement officer is
13 justified in using deadly physical force upon another person
14 when and to the extent that ~~he~~ the law enforcement officer
15 reasonably believes it necessary in order:

16 "~~(1) To make an arrest for a felony or to prevent~~
17 ~~the escape from custody of a person arrested for a felony,~~
18 ~~unless the officer knows that the arrest is unauthorized~~ To
19 defend himself or herself or a third person from what he or
20 she reasonably believes to be the use or imminent use of
21 deadly physical force; or

22 "~~(2) To defend himself or a third person from what~~
23 ~~he reasonably believes to be the use or imminent use of deadly~~
24 ~~physical force.~~ To effect an arrest, or to prevent the escape
25 from custody, of a person whom the law enforcement officer
26 reasonably believes:

1 "a. Has committed or attempted to commit a felony
2 involving the use or threatened use of a deadly weapon or
3 dangerous instrument;

4 "b. Is attempting to escape by the use of a deadly
5 weapon or dangerous instrument; or

6 "c. Is likely to endanger human life or to inflict
7 serious physical injury to another by the use of a deadly
8 weapon or dangerous instrument unless apprehended immediately.

9 "(c) Nothing in subdivision (a) (1), ~~or~~ (b) (1), or
10 (f) (2) constitutes justification for reckless or criminally
11 negligent conduct by a ~~peace officer~~ law enforcement officer
12 amounting to an offense against or with respect to persons
13 being arrested or to innocent persons whom ~~he~~ the law
14 enforcement officer is not seeking to arrest or retain in
15 custody.

16 "(d) A ~~peace officer~~ law enforcement officer who is
17 effecting an arrest pursuant to a warrant is justified in
18 using the physical force prescribed in subsections (a) and (b)
19 unless the warrant is invalid and is known by the officer to
20 be invalid.

21 "(e) Except as provided in subsection (f), a person
22 who has been directed by a ~~peace officer~~ law enforcement
23 officer to assist ~~him~~ the law enforcement officer to effect an
24 arrest or to prevent an escape from custody is justified in
25 using physical force when and to the extent that he or she
26 reasonably believes that force to be necessary to carry out
27 the ~~peace officer's~~ law enforcement officer's direction.

1 "(f) A person who has been directed to assist a
2 ~~peace officer~~ law enforcement officer under circumstances
3 specified in subsection (e) may use deadly physical force to
4 effect an arrest or to prevent an escape only when:

5 "(1) ~~He~~ The person reasonably believes that force to
6 be necessary to defend himself or herself or a third person
7 from what he or she reasonably believes to be the use or
8 imminent use of deadly physical force; or

9 "(2) ~~He~~ The person is authorized by the ~~peace~~
10 ~~officer~~ law enforcement officer to use deadly physical force
11 and does not know that the ~~peace officer~~ law enforcement
12 officer ~~himself~~ is not authorized to use deadly physical force
13 under the circumstances.

14 "(g) A private person acting on his or her own
15 account is justified in using physical force upon another
16 person when and to the extent that he or she reasonably
17 believes it necessary to effect an arrest or to prevent the
18 escape from custody of an arrested person whom he or she
19 reasonably believes has committed a felony and who in fact has
20 committed that felony, but ~~he~~ the private person is justified
21 in using deadly physical force for ~~the~~ that purpose only when
22 he or she reasonably believes it necessary to defend himself
23 or herself or a third person from what he or she reasonably
24 believes to be the use or imminent use of deadly physical
25 force.

26 "(h) A guard or ~~peace officer~~ law enforcement
27 officer employed in a detention facility is justified:

1 ~~"(1) In using deadly physical force when and to the~~
2 ~~extent that he reasonably believes it necessary to prevent~~
3 ~~what he reasonably believes to be the escape of a prisoner~~
4 ~~accused or convicted of a felony from any detention facility,~~
5 ~~or from armed escort or guard; In using deadly physical force~~
6 ~~upon another person when and to the extent that the guard or~~
7 ~~law enforcement officer reasonably believes it necessary in~~
8 ~~order:~~

9 "a. To defend himself or herself or a third person
10 from what he or she reasonably believes to be the use or
11 imminent use of deadly physical force; or

12 "b. To effect an arrest, or to prevent the escape
13 from custody, of a person whom the guard or law enforcement
14 officer reasonably believes:

15 "i. Has escaped or is attempting to escape by the
16 use or threatened use of a deadly weapon or dangerous
17 instrument; and

18 "ii. Is likely to endanger human life or to inflict
19 serious physical injury to another by the use of a deadly
20 weapon or dangerous instrument unless apprehended immediately.

21 "(2) In using physical force, but not deadly
22 physical force, in all other circumstances when and to extent
23 that ~~he~~ the guard or law enforcement officer reasonably
24 believes it necessary to prevent what he or she reasonably
25 believes to be the escape of a prisoner from a detention
26 facility.

1 "(3) "Detention facility" means any place used for
2 the confinement, pursuant to law, of a person:

3 "a. Charged with or convicted of an offense; ~~or~~

4 "b. Charged with being or adjudicated a youthful
5 offender, a neglected minor, or juvenile delinquent; ~~or~~

6 "c. Held for extradition; or

7 "d. Otherwise confined pursuant to an order of a
8 criminal court.

9 "§13A-3-28.

10 "A person may not use physical force to resist a
11 lawful arrest by a ~~peace officer~~ law enforcement officer who
12 is known or reasonably appears to be a ~~peace officer~~ law
13 enforcement officer."

14 Section 8. Sections 13A-3-30, 13A-3-31, 13A-4-1,
15 13A-4-2, and 13A-4-3 of the Code of Alabama 1975, are amended
16 to read as follows:

17 "§13A-3-30.

18 "(a) It is a defense to prosecution that the actor
19 engaged in the proscribed conduct because he or she was
20 compelled to do so by the threat of imminent death or serious
21 physical injury to himself or herself or ~~another~~ a third
22 person.

23 "(b) The defense provided by this section is
24 unavailable if the actor intentionally or recklessly placed
25 himself or herself in a situation in which it was probable
26 that he or she would be subjected to duress. The defense is
27 also unavailable if ~~he~~ the actor was negligent in placing

1 himself or herself in such a situation, whenever negligence
2 suffices to establish culpability for the offense charged.

3 "(c) It is no defense that a person acted at the
4 command or persuasion of his or her spouse, unless such
5 compulsion would establish a defense under this section. The
6 presumption that a woman is subject to compulsion when acting
7 in the presence of her husband is abolished.

8 "(d) The defense provided by this section is
9 unavailable in a prosecution for:

10 "(1) ~~murder~~ Murder; or

11 "(2) ~~any~~ Any killing of another under aggravated
12 circumstances, as provided by Article 2 of Chapter 5 of this
13 title.

14 "§13A-3-31.

15 ~~"The Alabama Criminal Code adopts the present case~~
16 ~~law on entrapment.~~ (a) It is a defense to prosecution if the
17 actor engaged in the proscribed conduct was entrapped as
18 provided in this section.

19 "(b) Entrapment occurs when a state officer or
20 person under the officer's control incites, induces, lures, or
21 instigates a person into committing a criminal offense which
22 that person would not have otherwise committed and had no
23 intention of committing. Conduct merely affording a person an
24 opportunity to commit an offense does not constitute
25 entrapment.

26 "(c) To raise the defense, a defendant must
27 initially present the evidence that the government conduct

1 created a substantial risk that the offense would be committed
2 by a person other than one ready to commit it.

3 "(d) The defense of entrapment is unavailable when
4 causing or threatening bodily injury is an element of the
5 offense charged.

6 "(e) A person prosecuted for an offense shall be
7 acquitted if he or she proves by a preponderance of evidence
8 that he or she was entrapped. The issue of entrapment shall be
9 presented to the trier of fact.

10 "§13A-4-1.

11 "(a) A person is guilty of criminal solicitation if,
12 with the intent that another person engage in conduct
13 constituting a crime, he or she solicits, requests, commands,
14 or importunes such other person to engage in such conduct.

15 "A person may not be convicted of criminal
16 solicitation upon the uncorroborated testimony of the person
17 allegedly solicited, and there must be proof of circumstances
18 corroborating both the solicitation and the defendant's
19 intent.

20 "(b) A person is not liable under this section if,
21 under circumstances manifesting a voluntary and complete
22 renunciation of his or her criminal intent, he or she (1)
23 notified the person solicited of his or her renunciation; and
24 (2) gave timely and adequate warning to the law enforcement
25 authorities or otherwise made a substantial effort to prevent
26 the commission of the criminal conduct solicited. The burden

1 of injecting this issue is on the defendant, but this does not
2 shift the burden of proof.

3 "(c) A person is not liable under this section when
4 his or her solicitation constitutes conduct of a kind that is
5 necessarily incidental to the commission of the offense
6 solicited. When the solicitation constitutes an offense other
7 than criminal solicitation which is related to but separate
8 from the offense solicited, defendant is guilty of such
9 related offense only and not of criminal solicitation.

10 "(d) It is no defense to a prosecution for criminal
11 solicitation that the person solicited could not be guilty of
12 the offense solicited because of:

13 "(1) Criminal irresponsibility or other legal
14 incapacity or exemption; ~~or~~

15 "(2) Unawareness of the criminal nature of the
16 conduct solicited or of the defendant's criminal purpose; or

17 "(3) Any other factor precluding the mental state
18 required for the commission of the offense in question.

19 "(e) It is no defense to a prosecution for criminal
20 solicitation that the defendant belongs to a class of persons
21 who by definition are legally incapable in an individual
22 capacity of committing the offense that ~~he~~ the defendant
23 solicited another to commit.

24 "(f) Criminal solicitation is a:

25 "(1) Class A felony if the offense solicited is
26 murder.

1 "(2) Class B felony if the offense solicited is a
2 Class A felony.

3 "(3) Class C felony if the offense solicited is a
4 Class B felony.

5 "(4) Class A misdemeanor if the offense solicited is
6 a Class C or D felony.

7 "(5) Class B misdemeanor if the offense solicited is
8 a Class A misdemeanor.

9 "(6) Class C misdemeanor if the offense solicited is
10 a Class B misdemeanor.

11 "(7) Violation if the offense solicited is a Class C
12 misdemeanor.

13 "§13A-4-2.

14 "(a) A person is guilty of an attempt to commit a
15 crime if, with the intent to commit a specific offense, he or
16 she does any overt act towards the commission of such offense.

17 "(b) It is no defense under this section that the
18 offense charged to have been attempted was, under the
19 attendant circumstances, factually or legally impossible of
20 commission, if such offense could have been committed had the
21 attendant circumstances been as the defendant believed them to
22 be.

23 "(c) A person is not liable under this section if,
24 under circumstances manifesting a voluntary and complete
25 renunciation of ~~this~~ his or her criminal intent, he or she
26 avoided the commission of the offense attempted by abandoning
27 his or her criminal effort and, if mere abandonment is

1 insufficient to accomplish such avoidance, by taking further
2 and affirmative steps which prevented the commission thereof.
3 The burden of injecting this issue is on the defendant, but
4 this does not shift the burden of proof.

5 "(d) An attempt is a:

6 "(1) Class A felony if the offense attempted is
7 murder.

8 "(2) Class B felony if the offense attempted is a
9 Class A felony.

10 "(3) Class C felony if the offense attempted is a
11 Class B felony.

12 "(4) Class A misdemeanor if the offense attempted is
13 a Class C or D felony.

14 "(5) Class B misdemeanor if the offense attempted is
15 a Class A misdemeanor.

16 "(6) Class C misdemeanor if the offense attempted is
17 a Class B misdemeanor.

18 "(7) Violation if the offense attempted is a Class C
19 misdemeanor.

20 "§13A-4-3.

21 "(a) A person is guilty of criminal conspiracy if,
22 with the intent that conduct constituting an offense be
23 performed, he or she agrees with one or more persons to engage
24 in or cause the performance of such conduct, and any one or
25 more of such persons does an overt act to effect an objective
26 of the agreement.

1 "(b) If a person knows or should know that one with
2 whom he or she agrees has in turn agreed or will agree with
3 another to effect the same criminal objective, ~~he~~ the person
4 shall be deemed to have agreed with such other person, whether
5 or not he or she knows the other's identity.

6 "(c) A person is not liable under this section if,
7 under circumstances manifesting a voluntary and complete
8 renunciation of his or her criminal purpose, he or she gave a
9 timely and adequate warning to law enforcement authorities or
10 made a substantial effort to prevent the enforcement of the
11 criminal conduct contemplated by the conspiracy. Renunciation
12 by one conspirator, however, does not affect the liability of
13 another conspirator who does not join in the abandonment of
14 the conspiratorial objective. The burden of injecting the
15 issue of renunciation is on the defendant, but this does not
16 shift the burden of proof.

17 "(d) It is no defense to a prosecution for criminal
18 conspiracy that:

19 "(1) The person, or persons, with whom defendant is
20 alleged to have conspired has been acquitted, has not been
21 prosecuted or convicted, has been convicted of a different
22 offense or is immune from prosecution, ~~or;~~ or;

23 "(2) The person, or persons, with whom defendant
24 conspired could not be guilty of the conspiracy or the object
25 crime because of lack of mental responsibility or culpability,
26 or other legal incapacity or defense, ~~or;~~ or;

1 "(3) The defendant belongs to a class of persons who
2 by definition are legally incapable in an individual capacity
3 of committing the offense that is the object of the
4 conspiracy.

5 "(e) A conspirator is not liable under this section
6 if, had the criminal conduct contemplated by the conspiracy
7 actually been performed, he or she would be immune from
8 liability under the law defining the offense or as an
9 accomplice under Section 13A-2-24.

10 "(f) Liability as accomplice. Accomplice liability
11 for offenses committed in furtherance of a conspiracy ~~is to~~
12 must be determined as provided in Section 13A-2-23.

13 "(g) Criminal conspiracy is a:

14 "(1) Class A felony if an object of the conspiracy
15 is murder.

16 "(2) Class B felony if an object of the conspiracy
17 is a Class A felony.

18 "(3) Class C felony if an object of the conspiracy
19 is a Class B felony.

20 "(4) Class A misdemeanor if an object of the
21 conspiracy is a Class C or D felony.

22 "(5) Class B misdemeanor if an object of the
23 conspiracy is a Class A misdemeanor.

24 "(6) Class C misdemeanor if an object of the
25 conspiracy is a Class B misdemeanor.

26 "(7) Violation if an object of the conspiracy is a
27 Class C misdemeanor."

1 Section 9. Section 13A-4-6 is added to the Code of
2 Alabama 1975, to read as follows:

3 §13A-4-6

4 (a) A person is guilty of criminal facilitation if,
5 acting with knowledge that another person is committing or
6 intends to commit an offense, he or she knowingly provides the
7 other person with means or opportunity for the commission of
8 the offense.

9 (b) Criminal facilitation is a:

10 (1) Class A felony if an object of the offense
11 facilitated is murder.

12 (2) Class B felony if the offense facilitated is a
13 Class A felony.

14 (3) Class C felony if the offense facilitated is a
15 Class B felony.

16 (4) Class A misdemeanor if the offense facilitated
17 is a Class C or D felony.

18 (5) Class B misdemeanor if the offense facilitated
19 is a Class A misdemeanor.

20 (6) Class C misdemeanor if the offense facilitated
21 is a Class B misdemeanor.

22 (7) Violation if the offense facilitated is a Class
23 C misdemeanor.

24 Section 10. Although this bill would have as its
25 purpose or effect the requirement of a new or increased
26 expenditure of local funds, the bill is excluded from further
27 requirements and application under Amendment 621 because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

3 Section 11. This act shall become effective on
4 January 1, 2019.