

1 HB238
2 172700-2
3 By Representative Collins
4 RFD: Judiciary
5 First Read: 16-FEB-16

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8 SYNOPSIS: Under existing law, it is a Class C
9 misdemeanor for a person to distribute harmful
10 material to a minor. This bill would provide that
11 it is a Class A misdemeanor for an employee of a
12 K-12 public or private school to transmit obscene
13 material to a student.

14 This bill would also further provide for the
15 penalties for certain sexual offenses by school
16 employees perpetrated upon students and would
17 subject certain school volunteers to the criminal
18 penalties.

19 Under existing law, certain out-of-court
20 statements made by a child under 12 years of age
21 are admissible in evidence in criminal proceedings
22 involving child physical offense, sexual offense,
23 and exploitation. This bill would specify that the
24 out-of-court statements made by a child under 12
25 years of age at the time the statement was made are
26 admissible in those proceedings.

1 Under existing law, certain individuals and
2 professionals are required to report suspected
3 child abuse or neglect to law enforcement or the
4 Department of Human Resources. This bill would
5 reference a specific definition of child abuse or
6 neglect for notification purposes.

7 Under existing law, the Department of Human
8 Resources licenses child care facilities and
9 establishes minimum standards for their operation.
10 A "child" is defined under the law as a person
11 under 19 years of age, a person under the
12 continuing jurisdiction of the Department of Human
13 Resources, or a person under 21 years of age in
14 foster care. This bill would authorize an
15 individual under 19 years of age who has graduated
16 from a high school with a Child Development
17 Associate Credential to work in a day care center
18 and would revise the definition of "day care
19 center" to include pre-kindergarten.

20 Also under existing law, there are no
21 specific provisions providing penalties for sexual
22 abuse by a foster parent and the offense would be
23 prosecuted as any other sexual offense involving an
24 adult and a minor. This bill would provide specific
25 criminal penalties for sexual offenses by foster
26 parents against foster children, and would specify
27 that a conviction would subject a defendant to

1 registration under the Alabama Sex Offender
2 Registration and Community Notification Act.

3 Amendment 621 of the Constitution of Alabama
4 of 1901, now appearing as Section 111.05 of the
5 Official Recompilation of the Constitution of
6 Alabama of 1901, as amended, prohibits a general
7 law whose purpose or effect would be to require a
8 new or increased expenditure of local funds from
9 becoming effective with regard to a local
10 governmental entity without enactment by a 2/3 vote
11 unless: it comes within one of a number of
12 specified exceptions; it is approved by the
13 affected entity; or the Legislature appropriates
14 funds, or provides a local source of revenue, to
15 the entity for the purpose.

16 The purpose or effect of this bill would be
17 to require a new or increased expenditure of local
18 funds within the meaning of the amendment. However,
19 the bill does not require approval of a local
20 governmental entity or enactment by a 2/3 vote to
21 become effective because it comes within one of the
22 specified exceptions contained in the amendment.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to children; to add Section 13A-6-82.1, to
2 the Code of Alabama 1975, to create the crime of a school
3 employee transmitting obscene material to a student; to amend
4 13A-6-80, 13A-6-81, 13A-6-82, Code of Alabama 1975, relating
5 to sexual conduct by school employees, to further provide for
6 the crimes of sexual contact or soliciting a sex act with a
7 student; to amend Section 15-25-31, Code of Alabama 1975, to
8 provide for the admissibility of certain out-of-court
9 statements by children under the age of 18 years in certain
10 child abuse and neglect criminal proceedings; to amend Section
11 26-14-3, Code of Alabama 1975, to reference a specific
12 definition of child abuse and neglect in mandatory child abuse
13 and neglect reporting provisions; to amend Section 38-7-2,
14 Code of Alabama 1975, to revise the definition of day care
15 center; to add Section 38-7-20 to the Code of Alabama 1975, to
16 authorize an individual under 19 years of age with certain
17 credentials to work in a day care center; to provide specific
18 criminal penalties for sexual offenses by foster parents
19 against foster children; to amend Section 15-20A-5, Code of
20 Alabama 1975, as last amended by Act 2015-463, to specify that
21 a conviction of a sex offense by a foster parent would subject
22 a defendant to sex offender registration; and in connection
23 therewith would have as its purpose or effect the requirement
24 of a new or increased expenditure of local funds within the
25 meaning of Amendment 621 of the Constitution of Alabama of
26 1901, now appearing as Section 111.05 of the Official

1 Recompilation of the Constitution of Alabama of 1901, as
2 amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 13A-6-82.1 is added to the Code
5 of Alabama 1975, to read as follows:

6 §13A-6-82.1.

7 (a) A person commits the crime of school employee
8 distributing obscene material to a student if he or she is a
9 school employee and distributes or transmits, by any means,
10 obscene matter that depicts sexual intercourse, sexual
11 excitement, masturbation, breast nudity, genital nudity, or
12 other sexual conduct to a student.

13 (b) A school employe distributing obscene material
14 to a student is a Class A misdemeanor.

15 Section 2. Sections 13A-6-80, 13A-6-81, 13A-6-82,
16 Section 15-20A-5, Code of Alabama 1975, as last amended by Act
17 2015-463, 15-25-31, 26-14-3, and 38-7-2, Code of Alabama 1975,
18 is amended to read as follows:

19 "§13A-6-80.

20 "(a) For purposes of this article, school employee
21 includes a teacher, school administrator, student teacher,
22 safety or resource officer, coach, ~~and~~ volunteer or any other
23 school employee.

24 (b) For purposes of this article, a "student" is
25 defined as any person enrolled or attending classes in a
26 licensed or accredited public, private, or church school that

1 offers instruction in grades K-12, regardless of whether
2 school is in session.

3 "§13A-6-81.

4 "(a) A person commits the crime of a school employee
5 engaging in a sex act ~~or deviant sexual intercourse~~ with a
6 student ~~under the age of 19 years~~ if he or she is a school
7 employee and engages in a ~~sex act~~ sexual intercourse as
8 defined by Section 13A-6-60(1) or deviant sexual intercourse
9 as defined by 13A-6-60(2) with a student, regardless of
10 whether the student is male or female. Consent is not a
11 defense to a charge under this section.

12 "~~(b) As used in this section, sex act means sexual~~
13 ~~intercourse with any penetration, however slight; emission is~~
14 ~~not required.~~

15 "~~(c) As used in this section, deviant sexual~~
16 ~~intercourse means any act of sexual gratification between~~
17 ~~persons not married to each other involving the sex organs of~~
18 ~~one person and the mouth or anus of another.~~

19 "~~(d)~~ (b) The crime of a school employee engaging in
20 a sex act ~~or deviant sexual intercourse~~ with a student is a
21 Class B felony.

22 "§13A-6-82.

23 "(a) A person commits the crime of a school employee
24 having sexual contact with a student ~~under the age of 19 years~~
25 if he or she is a school employee and ~~engaging~~ engages in
26 sexual contact, as defined by Section 13A-6-60(3), with a
27 student, regardless of whether the student is male or female.

1 Consent is not a defense to a charge under this section. The
2 crime of a school employee having sexual contact with a
3 student is a Class C felony.

4 "(b) A person commits the crime of a school employee
5 soliciting a sex act with a student if he or she is a school
6 employee and solicits, persuades, encourages, harasses, or
7 entices a student to engage in a sex act including, but not
8 limited to, sexual intercourse, as defined by Section
9 13A-6-30(1), deviate sexual intercourse, as defined by Section
10 13A-6-30(2), or sexual contact, as defined by Section
11 13A-6-30(3). The crime of soliciting a student to perform a
12 sex act is a Class A misdemeanor.

13 ~~"(b) As used in this section, sexual contact means~~
14 ~~any touching of the sexual or other intimate parts of a~~
15 ~~student, done for the purpose of gratifying the sexual desire~~
16 ~~of either party. The term includes soliciting or harassing a~~
17 ~~student to perform a sex act.~~

18 ~~"(c) The crime of a school employee having sexual~~
19 ~~contact with a student is a Class A misdemeanor.~~

20 "§15-20A-5.

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

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

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

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

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

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

16 "(6) Sexual torture, as provided by Section
17 13A-6-65.1.

18 "(7) Sexual abuse in the first degree, as provided
19 by Section 13A-6-66.

20 "(8) Sexual abuse in the second degree, as provided
21 by Section 13A-6-67.

22 "(9) Indecent exposure, as provided by Section
23 13A-6-68, provided that on a first conviction or adjudication
24 of a sex offense, the sex offender is only subject to
25 registration and verification pursuant to this chapter. On a
26 second or subsequent conviction or adjudication of a sex
27 offense, if the second or subsequent conviction or

1 adjudication does not arise out of the same set of facts and
2 circumstances as the first conviction or adjudication, the sex
3 offender shall comply with all requirements of this chapter.
4 The sentencing court may exempt from this act a juvenile sex
5 offender adjudicated delinquent of indecent exposure.

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

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

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

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

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

18 "(15) Unlawful imprisonment in the first degree, as
19 provided by Section 13A-6-41, if the victim of the offense is
20 a minor, and the record of adjudication or conviction reflects
21 the intent of the unlawful imprisonment was to abuse the minor
22 sexually.

23 "(16) Unlawful imprisonment in the second degree, as
24 provided by Section 13A-6-42, if the victim of the offense is
25 a minor, and the record of adjudication or conviction reflects
26 the intent of the unlawful imprisonment was to abuse the minor
27 sexually.

1 "(17) Kidnapping in the first degree, as provided by
2 subdivision (4) of subsection (a) of Section 13A-6-43, if the
3 intent of the abduction is to violate or abuse the victim
4 sexually.

5 "(18) Kidnapping of a minor, except by a parent,
6 guardian, or custodian, as provided by Section 13A-6-43 or
7 13A-6-44.

8 "(19) Incest, as provided by Section 13A-13-3.

9 "(20) Transmitting obscene material to a child by
10 computer, as provided by Section 13A-6-111.

11 "(21) School employee engaging in a sex act or
12 ~~deviant sexual intercourse with a student~~ having sexual
13 contact or soliciting a sex act or sexual contact with a
14 student, as provided by ~~Section~~ Sections 13A-6-81 and
15 13A-6-82.

16 ~~(22) School employee having sexual contact with a~~
17 ~~student, as provided by Section 13A-6-82~~ Foster parent
18 engaging in a sex act, having sexual contact, or soliciting a
19 sex act or sexual contact with a foster child as provided by
20 Section 4 of the act adding this subdivision.

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

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

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

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

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

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

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

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

13 "(31) Any offense which is the same as or equivalent
14 to any offense set forth above as the same existed and was
15 defined under the laws of this state existing at the time of
16 such conviction, specifically including, but not limited to,
17 crime against nature, as provided by Section 13-1-110; rape,
18 as provided by Sections 13-1-130 and 13-1-131; carnal
19 knowledge of a woman or girl, as provided by Sections 13-1-132
20 through 13-1-135, or attempting to do so, as provided by
21 Section 13-1-136; indecent molestation of children, as defined
22 and provided by Section 13-1-113; indecent exposure, as
23 provided by Section 13-1-111; incest, as provided by Section
24 13-8-3; offenses relative to obscene prints and literature, as
25 provided by Sections 13-7-160 through 13-7-175, inclusive;
26 employing, harboring, procuring or using a girl over 10 and
27 under 18 years of age for the purpose of prostitution or

1 sexual intercourse, as provided by Section 13-7-1; seduction,
2 as defined and provided by Section 13-1-112; a male person
3 peeping into a room occupied by a female, as provided by
4 Section 13-6-6; assault with intent to ravish, as provided by
5 Section 13-1-46; and soliciting a child by computer, as
6 provided by Section 13A-6-110.

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

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

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

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

25 "(36) Any offender determined in any jurisdiction to
26 be a sex offender shall be considered a sex offender in this
27 state.

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

12 "(38) Any crime not listed in this section wherein
13 the underlying felony is an element of the offense and listed
14 in subdivisions (1) to (37), inclusive.

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

18 "§15-25-31.

19 "An out-of-court statement made by a child under 12
20 years of age at the time of the ~~proceeding~~ statement is made
21 concerning an act that is a material element of any crime
22 involving child physical offense, sexual offense, and
23 exploitation, as defined in Section 15-25-39, which statement
24 is not otherwise admissible in evidence, is admissible in
25 evidence in criminal proceedings, if the requirements of
26 Section 15-25-32 are met.

27 "§26-14-3.

1 "(a) All hospitals, clinics, sanitariums, doctors,
2 physicians, surgeons, medical examiners, coroners, dentists,
3 osteopaths, optometrists, chiropractors, podiatrists, physical
4 therapists, nurses, public and private K-12 employees, school
5 teachers and officials, peace officers, law enforcement
6 officials, pharmacists, social workers, day care workers or
7 employees, mental health professionals, employees of public
8 and private institutions of postsecondary and higher
9 education, members of the clergy as defined in Rule 505 of the
10 Alabama Rules of Evidence, or any other person called upon to
11 render aid or medical assistance to any child, when the child
12 is known or suspected to be a victim of child abuse or
13 neglect, shall be required to report orally, either by
14 telephone or direct communication immediately, and shall be
15 followed by a written report, to a duly constituted authority.

16 "(b) When an initial report is made to a law
17 enforcement official, the official subsequently shall inform
18 the Department of Human Resources of the report so that the
19 department can carry out its responsibility to provide
20 protective services when deemed appropriate to the respective
21 child or children.

22 "(c) When the Department of Human Resources receives
23 initial reports of suspected abuse or neglect, as defined in
24 Section 26-14-1, including suspected abuse or neglect
25 involving discipline or corporal punishment committed in a
26 public or private school or suspected abuse or neglect in a
27 state-operated child residential facility, the Department of

1 Human Resources shall transmit a copy of school reports to the
2 law enforcement agency and residential facility reports to the
3 law enforcement agency and the operating state agency which
4 shall conduct the investigation. When the investigation is
5 completed, a written report of the completed investigation
6 shall contain the information required by the state Department
7 of Human Resources which shall be submitted by the law
8 enforcement agency or the state agency to the county
9 department of human resources for entry into the state's
10 central registry.

11 "(d) Nothing in this chapter shall preclude
12 interagency agreements between departments of human resources,
13 law enforcement, and any other state agencies on procedures
14 for investigating reports of suspected child abuse and neglect
15 to provide for departments of human resources to assist law
16 enforcement and other state agencies in these investigations.

17 "(e) Any provision of this section to the contrary
18 notwithstanding, if any agency or authority investigates any
19 report pursuant to this section and the report does not result
20 in a conviction, the agency or authority shall expunge any
21 record of the information or report and any data developed
22 from the record.

23 "(f) Subsection (a) to the contrary notwithstanding,
24 a member of the clergy shall not be required to report
25 information gained solely in a confidential communication
26 privileged pursuant to Rule 505 of the Alabama Rules of

1 Evidence which communication shall continue to be privileged
2 as provided by law.

3 "(g) Commencing on August 1, 2013, a public or
4 private employer who discharges, suspends, disciplines, or
5 penalizes an employee solely for reporting suspected child
6 abuse or neglect pursuant to this section shall be guilty of a
7 Class C misdemeanor.

8 "§38-7-2.

9 "Terms used in this chapter, unless the context
10 otherwise requires, have the meanings ascribed to them in this
11 section. When not inconsistent with the context, words used in
12 the present tense include the future, words in the singular
13 number include the plural number, and words in the plural
14 number include the singular number, and the word "shall" is
15 always mandatory and not merely directory:

16 "(1) CHILD. Any person under 19 years of age, a
17 person under the continuing jurisdiction of the juvenile court
18 pursuant to Section ~~12-15-32~~ 12-15-117, or a person under 21
19 years of age in foster care as defined by the Department of
20 Human Resources.

21 "(2) CHILD-CARE INSTITUTION or INSTITUTION FOR CHILD
22 CARE. A child-care facility where more than 10 children are
23 received and maintained for the purpose of providing them with
24 care or training or both, or transitional living program
25 services, but does not include:

26 "a. Any institution for child care which is under
27 the ownership or control, or both, of the State of Alabama, or

1 which is operated or certified or licensed by another agency
2 or department of the State of Alabama;

3 "b. Any juvenile detention home established and
4 operated by the State of Alabama;

5 "c. Any bona fide boarding school in which children
6 are primarily taught branches of education corresponding to
7 those taught in public schools, grades 1 through 12, or taught
8 in public elementary schools, high schools, or both elementary
9 and high schools.

10 "(3) CHILD-PLACING AGENCY. A public or private
11 child-care facility which receives, places, or arranges for
12 the placement of any child or children in adoptive or foster
13 family homes or other facilities for child care apart from the
14 custody of the child's or children's parents. The term
15 "child-placing agency" includes, but is not limited to, all
16 agencies established and maintained by a municipality or other
17 political subdivision of the State of Alabama to protect,
18 guard, train, or care for children outside their own homes,
19 but does not include any circuit court or juvenile court or
20 any duly appointed juvenile probation officer or youth
21 counselor of the court who receives and places children under
22 an order of the court.

23 "(4) DAY CARE CENTER. Any child-care facility
24 receiving more than 12 children for daytime care during all or
25 part of a day. The term "day care center" includes, but is not
26 limited to, facilities commonly called "child-care centers,"
27 "day nurseries," "nursery schools," "pre-kindergartens,"

1 "kindergartens," and "play groups," with or without stated
2 educational purposes. The term further includes, but is not
3 limited to, pre-kindergarten, kindergarten, or nursery schools
4 or other daytime programs operated as a part of a private
5 school and receiving children younger than lawful school age
6 for daytime care for more than four hours a day, with or
7 without stated educational purposes. The term does not include
8 any of the following:

9 "a. Kindergartens or nursery schools or other
10 daytime programs operated by public elementary systems or
11 secondary level school units or institutions of higher
12 learning.

13 "b. Kindergartens or nursery schools or other
14 daytime programs, with or without stated educational purposes,
15 operating no more than four hours a day and receiving children
16 younger than lawful school age.

17 "c. Kindergartens or nursery schools or other
18 daytime programs operated as a part of a private school and
19 receiving children younger than lawful school age for four
20 hours a day or less, with or without stated educational
21 purposes.

22 "d. Facilities operated for more than four hours a
23 day in connection with a shopping center or service or other
24 similar facility, where transient children are cared for
25 temporarily while parents or custodians of the children are
26 occupied on the premises or are in the immediate vicinity and

1 readily available. The facilities shall meet local and state
2 fire and health requirements.

3 "e. Any type of day care center that is conducted on
4 federal government premises.

5 "f. Special activities programs for children of
6 lawful school age including, but not limited to, athletics,
7 crafts instruction and similar activities conducted on an
8 organized and periodic basis by civic, charitable, and
9 governmental organizations provided local and state fire and
10 health requirements are met.

11 "(5) DAY CARE HOME. A child-care facility which is a
12 family home and which receives not more than six children for
13 care during the day.

14 "(6) DEPARTMENT. The Department of Human Resources
15 of the State of Alabama.

16 "(7) FACILITY FOR CHILD CARE or CHILD-CARE FACILITY.
17 A facility established by any person, group of persons,
18 agency, association, or organization, whether established for
19 gain or otherwise, who or which receives or arranges for care
20 or placement of one or more children, unrelated to the
21 operator of the facility, apart from the parents, with or
22 without the transfer of the right of custody, in any facility
23 as defined in this chapter, established and maintained for the
24 care of children.

25 "(8) FOSTER FAMILY HOME. A child-care facility in a
26 residence of a family where the family receives a child or
27 children, unrelated to that family, for the purpose of

1 providing family care or therapeutic family care and training,
2 or transitional living program services on a full-time basis.
3 The types of foster family homes are defined as follows:

4 "a. Boarding home. A foster family home wherein the
5 foster family receives a child or children and receives
6 payment for their care. The number of children so received
7 shall not exceed six, unless the children are of common
8 parentage.

9 "b. Free home. A foster home which does not receive
10 payment for the care of a child or children and which may or
11 may not receive the child or children for the purpose of
12 adoption.

13 "(9) GROUP DAY CARE HOME. A child-care facility
14 which is a family home and which receives at least seven but
15 no more than 12 children for care during part of the day where
16 there are at least two adults present and supervising the
17 activities.

18 "(10) GROUP HOME. A child-care facility where at
19 least seven but not more than 10 children are received and
20 maintained for the purpose of providing them with care or
21 training or both, or transitional living program services.

22 "(11) MATERNITY CENTER. A facility in which any
23 person, agency, or corporation receives or cares for one or
24 more minor pregnant girls, except that the term does not
25 include hospitals.

26 "(12) NIGHT CARE FACILITY. A child-care facility
27 which is a center or a family home receiving a child or

1 children for care during the night. A "night care facility" is
2 further defined as follows:

3 "a. Nighttime center. A facility which is
4 established to receive more than 12 children for nighttime
5 care.

6 "b. Nighttime home. A family home which receives no
7 more than six children for nighttime care.

8 "c. Group nighttime home. A child-care facility
9 which is a family home which receives at least seven but no
10 more than 12 children for nighttime care and where there are
11 at least two adults present and supervising the activities.

12 "(13) RELATED. Any of the following relationships by
13 blood, marriage, or adoption: Parent, grandparent, brother,
14 sister, stepparent, stepbrother, stepsister, half brother,
15 half sister, uncle or aunt, and their spouses.

16 "(14) TRANSITIONAL LIVING FACILITY. A child-care
17 facility or program that is designed to give opportunities to
18 practice independent living skills to eligible persons at
19 least 16 years of age and under 21 years of age in foster care
20 in a variety of residential settings with varying degrees of
21 care and supervision."

22 Section 3. Section 38-7-20 is added to the Code of
23 Alabama 1975, to read as follows:

24 §38-7-20.

25 Nothing in this chapter shall preclude an individual
26 under the age of 19 years who has graduated from a high school
27 with a Child Development Associate Credential from being

1 employed by a day care center, as defined in subdivision (4)
2 of Section 38-7-2.

3 Section 4. (a) A person commits the crime of
4 engaging in a sex act with a foster child if he or she is a
5 foster parent and engages in sexual intercourse, as defined by
6 Section 13A-6-60(1), or deviant sexual intercourse, as defined
7 by Section 13A-6-60(2) with a foster child under the age of 19
8 years who is under his or her care or supervision. Engaging in
9 a sex act with a foster child is a Class B felony.

10 (b) A person commits the crime of engaging in a
11 sexual contact with a foster child if he or she is a foster
12 parent and engages in a sexual contact, pursuant to Section
13 13A-6-60(3) with a foster child under the age of 19 years who
14 is under his or her care or supervision. Engaging in sexual
15 contact with a foster child is a Class C felony.

16 (c) A person commits the crime of soliciting a sex
17 act or sexual contact with a foster child if he or she is a
18 foster parent and solicits, persuades, encourages, harasses,
19 or entices a foster child under the age of 19 to engage in a
20 sex act including, but not limited to, sexual intercourse, as
21 defined by Section 13A-6-30(1), deviate sexual intercourse, as
22 defined by Section 13A-6-30(2) or sexual contact, as defined
23 by Section 13A-6-30(3). The crime of soliciting a sex act or
24 sexual contact with a foster child is a Class A misdemeanor.

25 (d) Consent is not a defense to a charge under
26 subsections (a), (b), or (c).

1 (e) For the purposes of this section a foster parent
2 is an individual licensed by the Department of Human Resources
3 who provides care and supervision to a foster child under the
4 temporary or permanent custody of the department.

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

13 Section 6. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.