

1 HB582  
2 185700-1  
3 By Representatives Butler and Nordgren  
4 RFD: Judiciary  
5 First Read: 02-MAY-17

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8 SYNOPSIS: Under existing law, a person commits the  
9 crime of custodial sexual misconduct if he or she  
10 is employed by certain governmental agencies and  
11 engages in sexual conduct with another person in  
12 the custody of the Department of Corrections,  
13 Department of Youth Services, a sheriff, a county,  
14 or a municipality.

15 This bill would further define the term  
16 employee.

17 This bill would further define the crime to  
18 provide that a person commits the crime of  
19 custodial sexual misconduct if he or she is an  
20 employee and engages in sexual conduct with a  
21 person under the supervisory, disciplinary, or  
22 custodial authority of a community corrections and  
23 punishment program or an alcohol or drug abuse  
24 court referral and treatment program.

25 Amendment 621 of the Constitution of Alabama  
26 of 1901, now appearing as Section 111.05 of the  
27 Official ReCompilation of the Constitution of

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

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT  
22

23 To amend Sections 14-11-30 and 14-11-31, Code of  
24 Alabama 1975, relating to custodial sexual misconduct; to  
25 provide further definitions; to further define the crime to  
26 protect persons under the supervisory, disciplinary, or  
27 custodial authority of a community corrections and punishment

1 program or an alcohol or drug abuse court referral and  
2 treatment program; and in connection therewith would have as  
3 its purpose or effect the requirement of a new or increased  
4 expenditure of local funds within the meaning of Amendment 621  
5 of the Constitution of Alabama of 1901, now appearing as  
6 Section 111.05 of the Official ReCompilation of the  
7 Constitution of Alabama of 1901, as amended.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 14-11-30 and 14-11-31, Code of  
10 Alabama 1975, is amended as follows:

11 "§14-11-30.

12 "When used in this article, the following words  
13 shall have the following meanings:

14 "(1) CUSTODY. Any of the following:

15 "a. Pretrial incarceration or detention.

16 "b. Incarceration or detention under a sentence or  
17 commitment to a state or local penal institution, any  
18 detention facility for children or youthful offenders.

19 "c. Parole or mandatory supervised release.

20 "d. Electronic home detention.

21 "e. Parole or probation.

22 "(2) EMPLOYEE. Either of the following:

23 "a. An employee or contractual employee of any  
24 governmental agency of the state, county, or municipality that  
25 has by statute, ordinance, or court order the responsibility  
26 for the care, control, or supervision of pretrial or sentenced  
27 persons in a penal system or detention facility.

1           "b. An employee, agent, or contractor of a facility  
2 who provides supervision, treatment, care, custody, control,  
3 or authority over a person, pretrial or posttrial, who is not  
4 a contractual employee of a governmental agency of the state,  
5 courts, or municipality, pursuant to a referral or court order  
6 by the state, county, or municipality.

7           "(3) SEXUAL CONDUCT. Any of the following acts:

8           "a. Sexual intercourse. This term shall have its  
9 ordinary meaning and occurs upon a penetration, however  
10 slight; emission is not required.

11           "b. Sexual contact. Any known touching for the  
12 purpose of sexual arousal, gratification, or abuse of the  
13 following:

14           "1. The sexual or other intimate parts of the victim  
15 by the actor.

16           "2. The sexual or other intimate parts of the actor  
17 by the victim.

18           "3. The clothing covering the immediate area of the  
19 sexual or other intimate parts of the victim or actor.

20           "c. Sexual intrusion. Any intrusion, however slight,  
21 by any object or any part of the body of a person into the  
22 genital, anal, or oral opening of the body of another person  
23 if that sexual intrusion can reasonably be construed as being  
24 for the purposes of sexual arousal, gratification, or abuse.

25           "§14-11-31.

1           "(a) It shall be unlawful for any employee to engage  
2 in sexual conduct with a person who is in the custody of any  
3 of the following:

4           "(1) ~~the~~ The Department of Corrections.".

5           "(2) ~~the~~ The Department of Youth Services.".

6           "(3) ~~a~~ A sheriff.".

7           "(4) ~~a~~ A county, ~~or~~."

8           "(5) ~~a~~ A municipality."

9           "(b) It shall be unlawful for any probation or  
10 parole officer, law enforcement officer, or any other employee  
11 of a law enforcement agency to engage in sexual conduct with a  
12 person who is under the supervisory, disciplinary, or  
13 custodial authority of the officer engaging in the sexual  
14 conduct with the person.

15           "(c) It shall be unlawful for an employee to engage  
16 in sexual conduct with a person who is under the supervisory,  
17 disciplinary, or custodial authority of any of the following:

18           "(1) A community corrections and punishment program  
19 created pursuant to the Alabama Community Corrections and  
20 Punishment Act, Article 9, commencing with Section 15-18-170,  
21 of Chapter 18, Title 15.

22           "(2) An alcohol or drug abuse court referral and  
23 treatment program created pursuant to Chapter 23 of Title 12.

24           "~~(c)~~ (d) Any person violating subsection (a) ~~or~~,  
25 (b), or (c) shall, upon conviction, be guilty of custodial  
26 sexual misconduct.

1           "~~(d)~~ (e) Custodial sexual misconduct is a Class C  
2 felony.

3           "~~(e)~~ (f) For purposes of this article, ~~the consent~~  
4 ~~of the person in custody of the Department of Corrections, the~~  
5 ~~Department of Youth Services, a sheriff, a county, or a~~  
6 ~~municipality, or a person who is on probation or on parole,~~  
7 shall not be a defense to a prosecution under this article."

8           Section 2. Although this bill would have as its  
9 purpose or effect the requirement of a new or increased  
10 expenditure of local funds, the bill is excluded from further  
11 requirements and application under Amendment 621, now  
12 appearing as Section 111.05 of the Official Recompilation of  
13 the Constitution of Alabama of 1901, as amended, because the  
14 bill defines a new crime or amends the definition of an  
15 existing crime.

16           Section 3. This act shall become effective on the  
17 first day of the third month following its passage and  
18 approval by the Governor, or its otherwise becoming law.