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3 HOUSE JUDICIARY SUBSTITUTE FOR HB57
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8 SYNOPSIS: This bill would create the offense of
9 aggravated theft by deception and establish
10 penalties for violations.

11 This bill would provide for sanctions for
12 parole violations relating to a conviction of
13 aggravated theft by deception.

14 Under current law, crimes of moral turpitude
15 are defined.

16 This bill would provide that aggravated
17 theft by deception is a crime of moral turpitude.

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 crimes and offenses; to add Section
17 13A-8-2.1 to the Code of Alabama 1975, to provide for the
18 crime of aggravated theft by deception; to amend Sections
19 15-22-33, 15-22-54, and 17-3-30.1, Code of Alabama 1975, to
20 provide sanctions for parole violations relating to aggravated
21 theft by deception; to provide that aggravated theft by
22 deception is a crime of moral turpitude; 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-8-2.1 is added to the Code of
5 Alabama 1975, to read as follows:

6 §13A-8-2.1.

7 (a) A person commits the crime of aggravated theft
8 by deception if he or she does any of the following:

9 (1) He or she commits a theft of foreign or domestic
10 funds, cash, or cash equivalent, that includes, but is not
11 limited to, stocks, bonds, investments, or retirement
12 accounts, that exceeds two hundred thousand dollars (\$200,000)
13 in value, if obtained by deception.

14 (2) He or she commits a theft of public funds or
15 revenue of any state, county, or municipal government agency
16 or department, or any governmental or political subdivision
17 that exceeds one hundred thousand dollars (\$100,000) in value,
18 if obtained by deception.

19 (b) The limitations period for any prosecution under
20 this section does not commence or begin to accrue until the
21 discovery of the facts constituting the deception, after which
22 the prosecution shall be commenced within six years.

23 (c) Aggravated theft by deception is a felony with a
24 range of punishment of five to 30 years' imprisonment and a
25 fine of up to sixty thousand dollars (\$60,000) per violation.

1 (d) Notwithstanding any other law, the maximum
2 probation period shall not exceed 10 years unless otherwise
3 authorized by law.

4 (e) A conviction for aggravated theft by deception
5 shall be treated as a Class A or Class B felony for purposes
6 of Section 15-18-8.

7 (f) A person may be charged with attempt, criminal
8 solicitation, or criminal conspiracy to commit aggravated
9 theft by deception if he or she engages in the conduct defined
10 in Sections 13A-4-1, 13A-4-2, or 13A-4-3. A violation shall be
11 punished the same as if the crime was completed pursuant to
12 this section.

13 Section 2. Sections 15-22-33, 15-22-54, and
14 17-3-30.1, Code of Alabama 1975, are amended to read as
15 follows:

16 "§15-22-33.

17 "No person released on parole shall be discharged
18 from parole prior to the expiration of the full maximum term
19 for which he or she was sentenced unless the Board of Pardons
20 and Paroles chooses to discharge the parolee earlier based on
21 review of the parolee under guidelines established pursuant to
22 subdivision (6) of subsection (b) of Section 15-22-37 and the
23 parolee was not convicted of a violent offense as defined in
24 Section 12-25-32 or a violation of Section 13A-8-2.1. The
25 Board of Pardons and Paroles, however, may relieve a prisoner
26 on parole from making further reports and may permit such

1 prisoner to leave the state or county if satisfied that this
2 is for the best interests of society.

3 "§15-22-54.

4 "(a) The period of probation or suspension of
5 execution of sentence shall be determined by the court and
6 shall not be waived by the defendant, and the period of
7 probation or suspension may be continued, extended, or
8 terminated. However, except as provided in Section 32-5A-191
9 relating to ignition interlock requirements, in no case shall
10 the maximum probation period of a defendant guilty of a
11 misdemeanor exceed two years, nor shall the maximum probation
12 period of a defendant guilty of a felony exceed five years,
13 except as provided in Section 13A-8-2.1. When the conditions
14 of probation or suspension of sentence are fulfilled, the
15 court shall, by order duly entered on its minutes, discharge
16 the defendant.

17 "(b) The court granting probation may, upon the
18 recommendation of the officer supervising the probationer,
19 terminate all authority and supervision over the probationer
20 prior to the declared date of completion of probation upon
21 showing a continued satisfactory compliance with the
22 conditions of probation over a sufficient portion of the
23 period of the probation. At least every two years, and after
24 providing notice to the district attorney, the court shall
25 review the probationer's suitability for discharge from
26 probation supervision if the probationer has satisfied all

1 financial obligations owed to the court, including
2 restitution, and has not had his or her supervision revoked.

3 "(c) At any time during the period of probation or
4 suspension of execution of sentence, the court may issue a
5 warrant and cause the defendant to be arrested for violating
6 any of the conditions of probation or suspension of sentence,
7 upon which the court shall hold a violation hearing. No
8 probationer shall be held in jail awaiting such violation
9 hearing for longer than 20 business days, unless new criminal
10 charges are pending. If the hearing is not held within the
11 specified time, the sheriff shall release the probation
12 violator unless there are other pending criminal charges. A
13 judge shall have authority to issue a bond to a probationer
14 for release from custody.

15 "(d) Except as provided in Chapter 15 of Title 12,
16 any probation officer, police officer, or other officer with
17 power of arrest, when requested by the probation officer, may
18 arrest a probationer without a warrant. In case of an arrest
19 without a warrant, the arresting officer shall have a written
20 statement by the probation officer setting forth that the
21 probationer has, in his or her judgment, violated the
22 conditions of probation, and the statement shall be sufficient
23 warrant for the detention of the probationer in the county
24 jail or other appropriate place of detention until the
25 probationer is brought before the court. The probation officer
26 shall forthwith report the arrest and detention to the court

1 and submit in writing a report showing in what manner the
2 probationer has violated probation.

3 "(e) After conducting a violation hearing and
4 finding sufficient evidence to support a probation violation,
5 the court may revoke probation to impose a sentence of
6 imprisonment, and credit shall be given for all time spent in
7 custody prior to revocation. If the probationer was convicted
8 of a Class D felony and his or her probation is revoked, the
9 incarceration portion of any split sentence imposed due to
10 revocation shall be limited to two years or one-third of the
11 original suspended prison sentence, whichever is less.
12 However, in all cases, excluding violent offenses defined
13 pursuant to Section 12-25-32 and classified as a Class A
14 felony, ~~and~~ sex offenses⁷ defined pursuant to Section
15 15-20A-5, and aggravated theft by deception offenses pursuant
16 to Section 13A-8-2.1, the court may only revoke probation as
17 provided below:

18 "(1) Unless the underlying offense is a violent
19 offense as defined in Section 12-25-32 and classified as a
20 Class A felony or an offense of aggravated theft by deception
21 as defined in Section 13A-8-2.1, when a defendant under
22 supervision for a felony conviction has violated a condition
23 of probation, other than arrest or conviction of a new offense
24 or absconding, the court may impose a period of confinement of
25 no more than 45 consecutive days to be served in the custody
26 population of the Department of Corrections. By April 29,
27 2016, the Department of Corrections shall develop and

1 implement a streamlined process to transport and receive the
2 probationer into its custody population and shall identify
3 and, if possible, implement policies aimed at reducing the
4 administrative delays, if any, in transferring to the
5 Department of Corrections the physical custody of the
6 probationer and those whose probation has been revoked. Such
7 process shall be developed in cooperation with the Alabama
8 Sheriffs' Association and the Association of County
9 Commissions of Alabama. Such process shall include the most
10 cost-effective method to process sanctioned probation
11 violators for the maximum 45-day confinement period and shall
12 provide that the Department of Corrections shall reimburse the
13 state mileage rate, as determined by the Alabama Comptroller's
14 Office, to the county for any state inmate sanctioned as a
15 probation violator and transferred to or from a Department of
16 Corrections facility by the county. Upon completion of the
17 confinement period, the remaining probation period or
18 suspension of sentence shall automatically continue upon the
19 defendant's release from confinement. The court shall not
20 revoke probation unless the defendant has previously received
21 a total of three periods of confinement under this subsection.
22 For purposes of revocation, the court may take judicial notice
23 of the three total periods of confinement under this
24 subsection. A defendant shall only receive three total periods
25 of confinement under this subsection. The maximum 45-day term
26 of confinement ordered under this subsection for a felony
27 shall not be reduced by credit for time already served in the

1 case. Any such credit shall instead be applied to the
2 suspended sentence. In the event the time remaining on the
3 imposed sentence is 45 days or less, the term of confinement
4 shall be for the remainder of the defendant's sentence.

5 "(2) The total time spent in confinement under this
6 subsection shall not exceed the term of the defendant's
7 original sentence.

8 "(3) Confinement shall be immediate. The court shall
9 be responsible for ensuring that the circuit clerk receives
10 the order revoking probation within five business days. The
11 circuit clerk shall insure that the Department of Corrections
12 receives necessary transcripts for imposing a period of
13 confinement within five business days of its receipt of the
14 court's order.

15 "(4) If a probation violator, as described in
16 subdivision (1), is presented to the county jail for
17 confinement and the probation violator has a serious medical
18 condition, the confinement of the probation violator creates a
19 security risk to the jail facility, or the jail is near, at,
20 or over capacity, the sheriff may refuse to admit the
21 probation violator. If while in custody of the county jail the
22 probation violator develops a serious medical condition, the
23 confinement of the probation violator creates a security risk
24 to the facility, or the county jail reaches near, at, or
25 overcapacity, the sheriff may release the probation violator
26 upon notification to the probation officer and to the court
27 who has jurisdiction over the probation violator. A sheriff

1 and his or her staff shall be immune from liability for
2 exercising discretion pursuant to Section 36-1-12 in refusing
3 to admit a probation violator into the jail or releasing a
4 probation violator from jail under the circumstances described
5 above.

6 "(f) In lieu of the provisions of subsections (c)
7 through (e), when a probationer violates his or her probation
8 terms and conditions imposed by the court, his or her
9 probation officer may, after administrative review and
10 approval by the officer's supervisor, require the probationer
11 to submit to behavioral treatment, substance abuse treatment,
12 GPS monitoring, such other treatment as determined by the
13 board or supervising officer, or a period of confinement in a
14 consenting jail facility as specified in subdivision (10) of
15 Section 15-22-52.

16 "(g) Prior to imposing a sanction provided under
17 subsection (f) and pursuant to subdivision (10) of Section
18 15-22-52, the probationer must first be presented with a
19 violation report, with the alleged probation violations and
20 supporting evidence noted. The probationer may file a motion
21 with the court to conduct a probation violation hearing within
22 10 days. The probationer shall be given notice of the right to
23 such hearing and advised of the right (i) to a hearing before
24 the court on the alleged violation in person, with the right
25 to present relevant witnesses and documentary evidence; (ii)
26 to retain and have counsel at the hearing and that counsel
27 will be appointed if the probationer is indigent; and (iii) to

1 confront and cross examine any adverse witnesses. Upon the
2 signing of a waiver of these rights by the probationer and the
3 supervising probation officer, with approval of a supervisor,
4 the probationer may be treated, monitored, or confined for the
5 period recommended in the violation report and designated in
6 the waiver. However, the probationer shall have no right of
7 review if he or she has signed a written waiver of rights as
8 provided in this subsection.

9 "(h) The board shall adopt guidelines and procedures
10 to implement the requirements of this section, which shall
11 include the requirement of a supervisor's approval prior to a
12 supervising probation officer's exercise of the delegation of
13 authority authorized by subsection (f).

14 "§17-3-30.1.

15 "(a) This section shall be known and may be cited as
16 the Felony Voter Disqualification Act.

17 "(b) (1) The Legislature finds and declares that:

18 "a. Article VIII of the Constitution of Alabama of
19 1901, now appearing as Section 177 of Article VIII of the
20 Official Recompilation of the Constitution of Alabama of 1901,
21 as amended, provides that Alabama citizens shall lose the
22 right to vote when convicted of a crime only if the conviction
23 was for a felony involving moral turpitude.

24 "b. Under general law, there is no comprehensive
25 list of felonies that involve moral turpitude which disqualify
26 a person from exercising his or her right to vote. Neither
27 individuals with felony convictions nor election officials

1 have a comprehensive, authoritative source for determining if
2 a felony conviction involves moral turpitude and is therefore
3 a disqualifying felony.

4 "(2) The purposes of this section are:

5 "a. To give full effect to Article VIII of the
6 Constitution of Alabama of 1901, now appearing as Section 177
7 of Article VIII of the Official Recompilation of the
8 Constitution of Alabama of 1901, as amended.

9 "b. To ensure that no one is wrongly excluded from
10 the electoral franchise.

11 "c. To provide a comprehensive list of acts that
12 constitute moral turpitude for the limited purpose of
13 disqualifying a person from exercising his or her right to
14 vote.

15 "(c) For purposes of Article VIII of the
16 Constitution of Alabama of 1901, now appearing as Section 177
17 of Article VIII of the Official Recompilation of the
18 Constitution of Alabama of 1901, as amended, a person is
19 disqualified to vote by reason of conviction of a felony
20 involving moral turpitude only when convicted of any of the
21 following offenses in a degree constituting a felony:

22 "(1) Murder as defined in the following sections:

23 "a. Subdivision (1) of subsection (a) of Section
24 13A-5-40.

25 "b. Subdivision (2) of subsection (a) of Section
26 13A-5-40.

1 "c. Subdivision (3) of subsection (a) of Section
2 13A-5-40.
3 "d. Subdivision (4) of subsection (a) of Section
4 13A-5-40.
5 "e. Subdivision (5) of subsection (a) of Section
6 13A-5-40.
7 "f. Subdivision (6) of subsection (a) of Section
8 13A-5-40.
9 "g. Subdivision (7) of subsection (a) of Section
10 13A-5-40.
11 "h. Subdivision (8) of subsection (a) of Section
12 13A-5-40.
13 "i. Subdivision (9) of subsection (a) of Section
14 13A-5-40.
15 "j. Subdivision (10) of subsection (a) of Section
16 13A-5-40.
17 "k. Subdivision (11) of subsection (a) of Section
18 13A-5-40.
19 "l. Subdivision (12) of subsection (a) of Section
20 13A-5-40.
21 "m. Subdivision (13) of subsection (a) of Section
22 13A-5-40.
23 "n. Subdivision (14) of subsection (a) of Section
24 13A-5-40.
25 "o. Subdivision (15) of subsection (a) of Section
26 13A-5-40.

1 "p. Subdivision (16) of subsection (a) of Section
2 13A-5-40.

3 "q. Subdivision (17) of subsection (a) of Section
4 13A-5-40.

5 "r. Subdivision (18) of subsection (a) of Section
6 13A-5-40.

7 "s. Subdivision (19) of subsection (a) of Section
8 13A-5-40.

9 "t. Section 13A-6-2.

10 "(2) Manslaughter as defined in Section 13A-6-3.

11 "(3) Assault as defined in Section 13A-6-20, except
12 for subdivision (5) of subsection (a) of Section 13A-6-20, and
13 Section 13A-6-21.

14 "(4) Kidnapping in the first degree as defined in
15 Section 13A-6-43.

16 "(5) Kidnapping in the second degree as defined in
17 Section 13A-6-44.

18 "(6) Rape as defined in Sections 13A-6-61 and
19 13A-6-62.

20 "(7) Sodomy as defined in Sections 13A-6-63 and
21 13A-6-64.

22 "(8) Sexual torture as defined in Section
23 13A-6-65.1.

24 "(9) Sexual abuse as defined in Sections 13A-6-66,
25 13A-6-67, and 13A-6-69.1.

26 "(10) Enticing a child to enter a vehicle for
27 immoral purposes as defined in Section 13A-6-69.

1 "(11) Facilitating solicitation of unlawful sexual
2 conduct with a child as defined in Section 13A-6-121.

3 "(12) Electronic solicitation of a child as defined
4 in Section 13A-6-122.

5 "(13) Facilitating the on-line solicitation of a
6 child as defined in Section 13A-6-123.

7 "(14) Traveling to meet a child for an unlawful sex
8 act as defined in Section 13A-6-124.

9 "(15) Facilitating the travel of a child for an
10 unlawful sex act as defined in Section 13A-6-125.

11 "(16) Human trafficking as defined in Sections
12 13A-6-152 and 13A-6-153.

13 "(17) Terrorism as defined in Section 13A-10-152.

14 "(18) Soliciting or providing support for an act of
15 terrorism as defined in Section 13A-10-153.

16 "(19) Hindering prosecution of terrorism as defined
17 in Section 13A-10-154.

18 "(20) Endangering the water supply as defined in
19 Section 13A-10-171.

20 "(21) Possession, manufacture, transport, or
21 distribution of a destructive device or bacteriological or
22 biological weapon as defined in Section 13A-10-193.

23 "(22) Selling, furnishing, giving away, delivering,
24 or distribution of a destructive device, a bacteriological
25 weapon, or biological weapon to a person who is less than 21
26 years of age as defined in Section 13A-10-194.

1 "(23) Possession, manufacture, transport, or
2 distribution of a detonator, explosive, poison, or hoax device
3 as defined in Section 13A-10-195.

4 "(24) Possession or distribution of a hoax device
5 represented as a destructive device or weapon as defined in
6 subsection (c) of Section 13A-10-196.

7 "(25) Attempt to commit an explosives or destructive
8 device or bacteriological or biological weapons crime as
9 defined in Section 13A-10-197.

10 "(26) Conspiracy to commit an explosives or
11 destructive device or bacteriological or biological weapons
12 crime as defined in Section 13A-10-198.

13 "(27) Hindrance or obstruction during detection,
14 disarming, or destruction of a destructive device or weapon as
15 defined in Section 13A-10-199.

16 "(28) Possession or distribution of a destructive
17 device or weapon intended to cause injury or destruction as
18 defined in Section 13A-10-200.

19 "(29) Treason as defined in Section 13A-11-2.

20 "(30) Dissemination or public display of obscene
21 matter containing visual depiction of persons under 17 years
22 of age involved in obscene acts as defined in Section
23 13A-12-191.

24 "(31) Possession and possession with intent to
25 disseminate obscene matter containing visual depiction of
26 persons under 17 years of age involved in obscene acts as
27 defined in Section 13A-12-192.

1 "(32) Parents or guardians permitting children to
2 engage in production of obscene matter as defined in Section
3 13A-12-196.

4 "(33) Production of obscene matter containing visual
5 depiction of persons under 17 years of age involved in obscene
6 acts as defined in Section 13A-12-197.

7 "(34) Distribution, possession with intent to
8 distribute, production of obscene material, or offer or
9 agreement to distribute or produce, as defined in Section
10 13A-12-200.2.

11 "(35) Trafficking in cannabis, cocaine, or other
12 illegal drugs or trafficking in amphetamine and
13 methamphetamine as defined in Section 13A-12-231.

14 "(36) Bigamy as defined in Section 13A-13-1.

15 "(37) Incest as defined in Section 13A-13-3.

16 "(38) Torture or other willful maltreatment of a
17 child under the age of 18 as defined in Section 26-15-3.

18 "(39) Aggravated child abuse as defined in Section
19 26-15-3.1.

20 "(40) Prohibited acts in the offer, sale, or
21 purchase of securities as defined in Section 8-6-17.

22 "(41) Burglary as defined in Sections 13A-7-5 and
23 13A-7-6.

24 "(42) Aggravated theft by deception as defined in
25 Section 13A-8-2.1.

26 "~~(42)~~ (43) Theft of property as defined in Sections
27 13A-8-3 and 13A-8-4.

1 "~~(43)~~ (44) Theft of lost property as defined in
2 Sections 13A-8-7 and 13A-8-8.

3 "~~(44)~~ (45) Theft of trademarks or trade secrets as
4 defined in Section 13A-8-10.4.

5 "~~(45)~~ (46) Robbery as defined in Sections 13A-8-41,
6 13A-8-42, and 13A-8-43.

7 "~~(46)~~ (47) Forgery as defined in Sections 13A-9-2
8 and 13A-9-3.

9 "~~(47)~~ (48) Any crime as defined by the laws of the
10 United States or by the laws of another state, territory,
11 country, or other jurisdiction, which, if committed in this
12 state, would constitute one of the offenses listed in this
13 subsection.

14 "(d) Nothing in this section shall be interpreted as
15 determining moral turpitude for any purpose other than
16 disqualifying a person from exercising his or her right to
17 vote.

18 "(e) The felonies involving moral turpitude listed
19 in subsection (c) are the only felonies for which a person,
20 upon conviction, may be disqualified from voting. Additional
21 felonies may be added to the list in subsection (c) only by
22 amendment to this section."

23 Section 3. Although this bill would have as its
24 purpose or effect the requirement of a new or increased
25 expenditure of local funds, the bill is excluded from further
26 requirements and application under Amendment 621, now
27 appearing as Section 111.05 of the Official ReCompilation of

1 the Constitution of Alabama of 1901, as amended, because the
2 bill defines a new crime or amends the definition of an
3 existing crime.

4 Section 4. This act shall become effective on the
5 first day of the third month following its passage and
6 approval by the Governor, or its otherwise becoming law.