

1 HB57
2 198793-4
3 By Representative Sells
4 RFD: Judiciary
5 First Read: 05-MAR-19
6 PFD: 03/04/2019

1
2 ENROLLED, An Act,

3 Relating to crimes and offenses; to add Section
4 13A-8-2.1 to the Code of Alabama 1975, to provide for the
5 crime of aggravated theft by deception; to amend Sections
6 15-22-33, 15-22-54, and 17-3-30.1, Code of Alabama 1975, to
7 provide sanctions for parole violations relating to aggravated
8 theft by deception; to provide that aggravated theft by
9 deception is a crime of moral turpitude; and in connection
10 therewith would have as its purpose or effect the requirement
11 of a new or increased expenditure of local funds within the
12 meaning of Amendment 621 of the Constitution of Alabama of
13 1901, now appearing as Section 111.05 of the Official
14 Recompilation of the Constitution of Alabama of 1901, as
15 amended.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Section 13A-8-2.1 is added to the Code of
18 Alabama 1975, to read as follows:

19 §13A-8-2.1.

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

22 (1) He or she commits a theft of foreign or domestic
23 funds, cash, or cash equivalent, that includes, but is not
24 limited to, stocks, bonds, investments, or retirement

1 accounts, that exceeds two hundred thousand dollars (\$200,000)
2 in value, if obtained by deception.

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

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

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

15 (d) Notwithstanding any other law, the maximum
16 probation period shall not exceed 10 years unless otherwise
17 authorized by law.

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

21 (f) A person may be charged with attempt, criminal
22 solicitation, or criminal conspiracy to commit aggravated
23 theft by deception if he or she engages in the conduct defined
24 in Sections 13A-4-1, 13A-4-2, or 13A-4-3. A violation shall be

1 punished the same as if the crime was completed pursuant to
2 this section.

3 Section 2. Sections 15-22-33, 15-22-54, and
4 17-3-30.1, Code of Alabama 1975, are amended to read as
5 follows:

6 "§15-22-33.

7 "No person released on parole shall be discharged
8 from parole prior to the expiration of the full maximum term
9 for which he or she was sentenced unless the Board of Pardons
10 and Paroles chooses to discharge the parolee earlier based on
11 review of the parolee under guidelines established pursuant to
12 subdivision (6) of subsection (b) of Section 15-22-37 and the
13 parolee was not convicted of a violent offense as defined in
14 Section 12-25-32 or a violation of Section 13A-8-2.1. The
15 Board of Pardons and Paroles, however, may relieve a prisoner
16 on parole from making further reports and may permit such
17 prisoner to leave the state or county if satisfied that this
18 is for the best interests of society.

19 "§15-22-54.

20 "(a) The period of probation or suspension of
21 execution of sentence shall be determined by the court and
22 shall not be waived by the defendant, and the period of
23 probation or suspension may be continued, extended, or
24 terminated. However, except as provided in Section 32-5A-191
25 relating to ignition interlock requirements, in no case shall

1 the maximum probation period of a defendant guilty of a
2 misdemeanor exceed two years, nor shall the maximum probation
3 period of a defendant guilty of a felony exceed five years,
4 except as provided in Section 13A-8-2.1. When the conditions
5 of probation or suspension of sentence are fulfilled, the
6 court shall, by order duly entered on its minutes, discharge
7 the defendant.

8 "(b) The court granting probation may, upon the
9 recommendation of the officer supervising the probationer,
10 terminate all authority and supervision over the probationer
11 prior to the declared date of completion of probation upon
12 showing a continued satisfactory compliance with the
13 conditions of probation over a sufficient portion of the
14 period of the probation. At least every two years, and after
15 providing notice to the district attorney, the court shall
16 review the probationer's suitability for discharge from
17 probation supervision if the probationer has satisfied all
18 financial obligations owed to the court, including
19 restitution, and has not had his or her supervision revoked.

20 "(c) At any time during the period of probation or
21 suspension of execution of sentence, the court may issue a
22 warrant and cause the defendant to be arrested for violating
23 any of the conditions of probation or suspension of sentence,
24 upon which the court shall hold a violation hearing. No
25 probationer shall be held in jail awaiting such violation

1 hearing for longer than 20 business days, unless new criminal
2 charges are pending. If the hearing is not held within the
3 specified time, the sheriff shall release the probation
4 violator unless there are other pending criminal charges. A
5 judge shall have authority to issue a bond to a probationer
6 for release from custody.

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

21 "(e) After conducting a violation hearing and
22 finding sufficient evidence to support a probation violation,
23 the court may revoke probation to impose a sentence of
24 imprisonment, and credit shall be given for all time spent in
25 custody prior to revocation. If the probationer was convicted

1 of a Class D felony and his or her probation is revoked, the
2 incarceration portion of any split sentence imposed due to
3 revocation shall be limited to two years or one-third of the
4 original suspended prison sentence, whichever is less.

5 However, in all cases, excluding violent offenses defined
6 pursuant to Section 12-25-32 and classified as a Class A
7 felony, ~~and~~ sex offenses⁷ defined pursuant to Section
8 15-20A-5, and aggravated theft by deception offenses pursuant
9 to Section 13A-8-2.1, the court may only revoke probation as
10 provided below:

11 "(1) Unless the underlying offense is a violent
12 offense as defined in Section 12-25-32 and classified as a
13 Class A felony or an offense of aggravated theft by deception
14 as defined in Section 13A-8-2.1, when a defendant under
15 supervision for a felony conviction has violated a condition
16 of probation, other than arrest or conviction of a new offense
17 or absconding, the court may impose a period of confinement of
18 no more than 45 consecutive days to be served in the custody
19 population of the Department of Corrections. By April 29,
20 2016, the Department of Corrections shall develop and
21 implement a streamlined process to transport and receive the
22 probationer into its custody population and shall identify
23 and, if possible, implement policies aimed at reducing the
24 administrative delays, if any, in transferring to the
25 Department of Corrections the physical custody of the

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

1 imposed sentence is 45 days or less, the term of confinement
2 shall be for the remainder of the defendant's sentence.

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

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

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

1 to retain and have counsel at the hearing and that counsel
2 will be appointed if the probationer is indigent; and (iii) to
3 confront and cross examine any adverse witnesses. Upon the
4 signing of a waiver of these rights by the probationer and the
5 supervising probation officer, with approval of a supervisor,
6 the probationer may be treated, monitored, or confined for the
7 period recommended in the violation report and designated in
8 the waiver. However, the probationer shall have no right of
9 review if he or she has signed a written waiver of rights as
10 provided in this subsection.

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

16 "§17-3-30.1.

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

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

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

1 "b. Under general law, there is no comprehensive
2 list of felonies that involve moral turpitude which disqualify
3 a person from exercising his or her right to vote. Neither
4 individuals with felony convictions nor election officials
5 have a comprehensive, authoritative source for determining if
6 a felony conviction involves moral turpitude and is therefore
7 a disqualifying felony.

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

9 "a. To give full effect to Article VIII of the
10 Constitution of Alabama of 1901, now appearing as Section 177
11 of Article VIII of the Official Recompilation of the
12 Constitution of Alabama of 1901, as amended.

13 "b. To ensure that no one is wrongly excluded from
14 the electoral franchise.

15 "c. To provide a comprehensive list of acts that
16 constitute moral turpitude for the limited purpose of
17 disqualifying a person from exercising his or her right to
18 vote.

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

1 "(1) Murder as defined in the following sections:
2 "a. Subdivision (1) of subsection (a) of Section
3 13A-5-40.
4 "b. Subdivision (2) of subsection (a) of Section
5 13A-5-40.
6 "c. Subdivision (3) of subsection (a) of Section
7 13A-5-40.
8 "d. Subdivision (4) of subsection (a) of Section
9 13A-5-40.
10 "e. Subdivision (5) of subsection (a) of Section
11 13A-5-40.
12 "f. Subdivision (6) of subsection (a) of Section
13 13A-5-40.
14 "g. Subdivision (7) of subsection (a) of Section
15 13A-5-40.
16 "h. Subdivision (8) of subsection (a) of Section
17 13A-5-40.
18 "i. Subdivision (9) of subsection (a) of Section
19 13A-5-40.
20 "j. Subdivision (10) of subsection (a) of Section
21 13A-5-40.
22 "k. Subdivision (11) of subsection (a) of Section
23 13A-5-40.
24 "l. Subdivision (12) of subsection (a) of Section
25 13A-5-40.

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

3 "n. Subdivision (14) of subsection (a) of Section
4 13A-5-40.

5 "o. Subdivision (15) of subsection (a) of Section
6 13A-5-40.

7 "p. Subdivision (16) of subsection (a) of Section
8 13A-5-40.

9 "q. Subdivision (17) of subsection (a) of Section
10 13A-5-40.

11 "r. Subdivision (18) of subsection (a) of Section
12 13A-5-40.

13 "s. Subdivision (19) of subsection (a) of Section
14 13A-5-40.

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

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

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

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

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

24 "(6) Rape as defined in Sections 13A-6-61 and
25 13A-6-62.

1 "(7) Sodomy as defined in Sections 13A-6-63 and
2 13A-6-64.

3 "(8) Sexual torture as defined in Section
4 13A-6-65.1.

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

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

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

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

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

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

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

19 "(16) Human trafficking as defined in Sections
20 13A-6-152 and 13A-6-153.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 "(30) Dissemination or public display of obscene
6 matter containing visual depiction of persons under 17 years
7 of age involved in obscene acts as defined in Section
8 13A-12-191.

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

13 "(32) Parents or guardians permitting children to
14 engage in production of obscene matter as defined in Section
15 13A-12-196.

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

19 "(34) Distribution, possession with intent to
20 distribute, production of obscene material, or offer or
21 agreement to distribute or produce, as defined in Section
22 13A-12-200.2.

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

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

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

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

5 "(39) Aggravated child abuse as defined in Section
6 26-15-3.1.

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

9 "(41) Burglary as defined in Sections 13A-7-5 and
10 13A-7-6.

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

13 "~~(42)~~ (43) Theft of property as defined in Sections
14 13A-8-3 and 13A-8-4.

15 "~~(43)~~ (44) Theft of lost property as defined in
16 Sections 13A-8-7 and 13A-8-8.

17 "~~(44)~~ (45) Theft of trademarks or trade secrets as
18 defined in Section 13A-8-10.4.

19 "~~(45)~~ (46) Robbery as defined in Sections 13A-8-41,
20 13A-8-42, and 13A-8-43.

21 "~~(46)~~ (47) Forgery as defined in Sections 13A-9-2
22 and 13A-9-3.

23 "~~(47)~~ (48) Any crime as defined by the laws of the
24 United States or by the laws of another state, territory,
25 country, or other jurisdiction, which, if committed in this

1 state, would constitute one of the offenses listed in this
2 subsection.

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

7 "(e) The felonies involving moral turpitude listed
8 in subsection (c) are the only felonies for which a person,
9 upon conviction, may be disqualified from voting. Additional
10 felonies may be added to the list in subsection (c) only by
11 amendment to this section."

12 Section 3. Although this bill would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds, the bill is excluded from further
15 requirements and application under Amendment 621, now
16 appearing as Section 111.05 of the Official Recompilation of
17 the Constitution of Alabama of 1901, as amended, because the
18 bill defines a new crime or amends the definition of an
19 existing crime.

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

