

1 SB320
2 197764-3
3 By Senator Figures
4 RFD: Judiciary
5 First Read: 18-APR-19

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to sexual offenses; to amend Sections
12 13A-5-6, 13A-6-60, 13A-6-61, 13A-6-62, 13A-6-63, 13A-6-64,
13 13A-6-65, 13A-6-65.1, 13A-6-66, 13A-6-67, 13A-6-68, 13A-6-70,
14 13A-6-71, 13A-6-81, 13A-6-82, as corrected by Act 2018-406,
15 the Codification Act, 2018 Regular Session, 13A-6-122,
16 13A-6-241, 13A-6-243, 13A-11-9, 13A-11-32.1, 13A-12-120,
17 13A-12-121, 13A-12-190, 13A-12-192, 15-3-5, and 15-20A-44, as
18 last amended by Act 2018-528, 2018 Regular Session, 15-23-101,
19 and 15-23-102, Code of Alabama 1975, to revise certain
20 definitions and sexual offenses; to expand the definition of
21 forcible compulsion; to provide that certain sexual contact
22 can be an offense under sexual misconduct; to provide
23 additional offenses for sexual torture; to make technical
24 corrections; and in connection therewith would have as its
25 purpose or effect the requirement of a new or increased
26 expenditure of local funds within the meaning of Amendment 621
27 of the Constitution of Alabama of 1901, now appearing as

1 Section 111.05 of the Official Recompilation of the
2 Constitution of Alabama of 1901, as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 13A-5-6, 13A-6-60, 13A-6-61,
5 13A-6-62, 13A-6-63, 13A-6-64, 13A-6-65, 13A-6-65.1, 13A-6-66,
6 13A-6-67, 13A-6-68, 13A-6-70, 13A-6-71, 13A-6-81, 13A-6-82, as
7 corrected by Act 2018-406, the Codification Act, 2018 Regular
8 Session, 13A-6-122, 13A-6-241, 13A-6-243, 13A-11-9,
9 13A-11-32.1, 13A-12-120, 13A-12-121, 13A-12-190, 13A-12-192,
10 15-3-5, and 15-20A-44, as last amended by Act 2018-528, 2018
11 Regular Session, 15-23-101, and 15-23-102, Code of Alabama
12 1975, are amended to read as follows:

13 "§13A-5-6.

14 "(a) Sentences for felonies shall be for a definite
15 term of imprisonment, which imprisonment includes hard labor,
16 within the following limitations:

17 "(1) For a Class A felony, for life or not more than
18 99 years or less than 10 years.

19 "(2) For a Class B felony, not more than 20 years or
20 less than 2 years.

21 "(3) For a Class C felony, not more than 10 years or
22 less than 1 year and 1 day and must be in accordance with
23 subsection (b) of Section 15-18-8 unless sentencing is
24 pursuant to Section 13A-5-9 or the offense is a sex offense
25 pursuant to Section 15-20A-5.

1 "(4) For a Class D felony, not more than 5 years or
2 less than 1 year and 1 day and must be in accordance with
3 subsection (b) of Section 15-18-8.

4 "(5) For a Class A felony in which a firearm or
5 deadly weapon was used or attempted to be used in the
6 commission of the felony, or a Class A felony sex offense
7 involving a child as defined in Section 15-20A-4~~(26)~~, not less
8 than 20 years.

9 "(6) For a Class B or C felony in which a firearm or
10 deadly weapon was used or attempted to be used in the
11 commission of the felony, or a Class B felony sex offense
12 involving a child as defined in Section 15-20A-4~~(26)~~, not less
13 than 10 years.

14 "(b) The actual time of release within the
15 limitations established by subsection (a) of this section
16 shall be determined under procedures established elsewhere by
17 law.

18 "(c) In addition to any penalties heretofore or
19 hereafter provided by law, in all cases where an offender is
20 designated as a sexually violent predator pursuant to Section
21 15-20A-19, or where an offender is convicted of a Class A
22 felony sex offense involving a child as defined in Section
23 15-20A-4~~(26)~~, and is sentenced to a county jail or the Alabama
24 Department of Corrections, the sentencing judge shall impose
25 an additional penalty of not less than 10 years of
26 post-release supervision to be served upon the defendant's
27 release from incarceration.

1 "(d) In addition to any penalties heretofore or
2 hereafter provided by law, in all cases where an offender is
3 convicted of a sex offense pursuant to Section 13A-6-61,
4 13A-6-63, or 13A-6-65.1, when the defendant was 21 years of
5 age or older and the victim was six years of age or less at
6 the time the offense was committed, the defendant shall be
7 sentenced to life imprisonment without the possibility of
8 parole.

9 "§13A-6-60.

10 "The following definitions apply in this article:

11 "~~(1)~~ (4) SEXUAL INTERCOURSE. Such term has its
12 ordinary meaning and occurs upon any penetration, however
13 slight; emission is not required.

14 "(3) SEXUAL CONTACT. Any touching of the sexual or
15 other intimate parts of a person ~~not married to the actor,~~
16 done for the purpose of gratifying the sexual desire of either
17 party. The term does not require skin to skin contact.

18 "~~(2)~~ (5) ~~DEVIATE SEXUAL INTERCOURSE. Any act of~~
19 ~~sexual gratification between persons not married to each other~~
20 ~~involving the sex organs of one person and the mouth or anus~~
21 ~~of another~~ SODOMY. Any sexual act involving the genitals of
22 one person and the mouth or anus of another person.

23 "~~(4)~~ (2) ~~FEMALE. Any female person.~~ INCAPACITATED.
24 Such The term includes any of the following:

25 "a. A person who suffers from a mental or
26 developmental disease or disability which renders the person
27 incapable of appraising the nature of his or her conduct.

1 "b. A person is temporarily incapable of appraising
2 or controlling his or her conduct due to the influence of a
3 narcotic, anesthetic, or intoxicating substance and the
4 condition was known or should have been reasonably known to
5 the offender.

6 "c. A person who is unable to give consent or who is
7 unable to communicate an unwillingness to an act because the
8 person is unconscious, asleep, or is otherwise physically
9 limited or unable to communicate.

10 ~~"(5) MENTALLY DEFECTIVE. Such term means that a~~
11 ~~person suffers from a mental disease or defect which renders~~
12 ~~him incapable of appraising the nature of his conduct.~~

13 ~~"(6) MENTALLY INCAPACITATED. Such term means that a~~
14 ~~person is rendered temporarily incapable of appraising or~~
15 ~~controlling his conduct owing to the influence of a narcotic~~
16 ~~or intoxicating substance administered to him without his~~
17 ~~consent, or to any other incapacitating act committed upon him~~
18 ~~without his consent.~~

19 ~~"(7) PHYSICALLY HELPLESS. Such term means that a~~
20 ~~person is unconscious or for any other reason is physically~~
21 ~~unable to communicate unwillingness to an act.~~

22 ~~"(8) (1) FORCIBLE COMPULSION. Physical force that~~
23 ~~overcomes earnest resistance or a threat, express or implied,~~
24 ~~that places a person in fear of immediate death or serious~~
25 ~~physical injury to himself or another person Use or threatened~~
26 ~~use, whether express or implied, of physical force, violence,~~
27 ~~confinement, restraint, physical injury, or death to the~~

1 threatened person or to another person. Factors to be
2 considered in determining an implied threat include, but are
3 not limited to, the respective ages and sizes of the victim
4 and the accused; the respective mental and physical conditions
5 of the victim and the accused; the atmosphere and physical
6 setting in which the incident was alleged to have taken place;
7 the extent to which the accused may have been in a position of
8 authority, domination, or custodial control over the victim;
9 or whether the victim was under duress. Forcible compulsion
10 does not require proof of resistance by the victim.

11 "§13A-6-61.

12 "(a) A person commits the crime of rape in the first
13 degree if he or she does any of the following:

14 "(1) ~~He or she engages~~ Engages in sexual intercourse
15 with ~~a member of the opposite sex~~ another person by forcible
16 compulsion; ~~or.~~

17 "(2) ~~He or she engages~~ Engages in sexual intercourse
18 with ~~a member of the opposite sex~~ another person who is
19 incapable of consent by reason of being ~~physically helpless or~~
20 ~~mentally incapacitated;~~ ~~or.~~

21 "(3) ~~He or she, being~~ Being 16 years old or older,
22 engages in sexual intercourse with ~~a member of the opposite~~
23 ~~sex~~ another person who is less than 12 years old.

24 "(b) Rape in the first degree is a Class A felony.

25 "§13A-6-62.

26 "(a) A person commits the crime of rape in the
27 second degree if: L

1 "~~(1) Being~~ being 16 years old or older, he or she
2 engages in sexual intercourse with ~~a member of the opposite~~
3 ~~sex~~ another person who is 12 years old or older, but less than
4 16 years old ~~and more than 12 years old~~; provided, however,
5 the actor is at least two years older than the ~~member of the~~
6 ~~opposite sex~~ other person.

7 "~~(2) He or she engages in sexual intercourse with a~~
8 ~~member of the opposite sex who is incapable of consent by~~
9 ~~reason of being mentally defective~~.

10 "(b) Rape in the second degree is a Class B felony.

11 "§13A-6-63.

12 "(a) A person commits the crime of sodomy in the
13 first degree if he or she does any of the following:

14 "(1) ~~He engages~~ Engages in ~~deviate sexual~~
15 ~~intercourse~~ sodomy with another person by forcible compulsion,
16 or.

17 "(2) ~~He engages~~ Engages in ~~deviate sexual~~
18 ~~intercourse~~ sodomy with ~~a~~ another person who is incapable of
19 consent by reason of being ~~physically helpless or mentally~~
20 ~~incapacitated~~; or.

21 "(3) ~~He, being~~ Being 16 years old or older, engages
22 in ~~deviate sexual intercourse~~ sodomy with a person who is less
23 than 12 years old.

24 "(b) Sodomy in the first degree is a Class A felony.

25 "§13A-6-64.

26 "(a) A person commits the crime of sodomy in the
27 second degree if ~~;~~ ;

1 "~~(1) He, being 16 years old or older, he or she~~
2 engages in ~~deviate sexual intercourse~~ sodomy with another
3 person 12 years old or older, but less than 16 years old and
4 more than 12 years old.; provided, however, the actor is at
5 least two years older than the other person.

6 "~~(2) He engages in deviate sexual intercourse with a~~
7 ~~person who is incapable of consent by reason of being mentally~~
8 ~~defective.~~

9 "(b) Sodomy in the second degree is a Class B
10 felony.

11 "§13A-6-65.

12 "(a) A person commits the crime of sexual misconduct
13 if he or she does any of the following:

14 "(1) ~~Being a male, he engages~~ Engages in sexual
15 intercourse with ~~a female~~ another person without his or her
16 consent, under circumstances other than those covered by
17 Sections 13A-6-61 and 13A-6-62; or with ~~her~~ consent where
18 consent was obtained by the use of any fraud or artifice; ~~or.~~

19 "~~(2) Being a female, she engages in sexual~~
20 ~~intercourse with a male without his consent; or~~

21 "~~(3) (2) He or she engages~~ Engages in ~~deviate sexual~~
22 ~~intercourse~~ sodomy with another person, without his or her
23 consent, under circumstances other than those covered by
24 Sections 13A-6-63 and 13A-6-64.; ~~Consent is no defense to a~~
25 ~~prosecution under this subdivision~~ or with consent where
26 consent was obtained by the use of fraud or artifice.

1 "(3) Engages in sexual contact with another person
2 without his or her consent under circumstances other than
3 those under Sections 13A-6-66, 13A-6-67, and 13A-6-69.1; or
4 with consent where consent was obtained by the use of fraud or
5 artifice.

6 "(b) Sexual misconduct is a Class A misdemeanor.

7 "§13A-6-65.1.

8 "(a) A person commits the crime of sexual torture if
9 he or she does any of the following:

10 "~~By penetrating~~ Penetrates the vagina ~~or,~~ anus,
11 or mouth of another person with an inanimate object, ~~by~~
12 forcible compulsion, ~~with the intent to sexually torture or~~
13 ~~to,~~ sexually abuse, or to gratify the sexual desire of either
14 party.

15 "~~By penetrating~~ Penetrates the vagina ~~or,~~ anus,
16 or mouth of a person who is incapable of consent by reason of
17 ~~physical helplessness or mental incapacity being~~
18 incapacitated, with an inanimate object, with the intent to
19 sexually torture ~~or to,~~ sexually abuse, or to gratify the
20 sexual desire of either party.

21 "~~By penetrating~~ Penetrates the vagina ~~or,~~ anus,
22 or mouth of a person who is less than 12 years old, ~~with an~~
23 inanimate object, by a person who is 16 years old or older
24 with the intent to sexually torture ~~or to,~~ sexually abuse, or
25 to gratify the sexual desire of either party.

26 "(4) By inflicting physical injury, including, but
27 not limited to, burning, crushing, wounding, mutilating, or

1 assaulting the sex organs or intimate parts of another person,
2 with the intent to sexually torture, sexually abuse, or to
3 gratify the sexual desire of either party.

4 "(b) The crime of sexual torture is a Class A
5 felony.

6 "§13A-6-66.

7 "(a) A person commits the crime of sexual abuse in
8 the first degree if he or she does either of the following:

9 "(1) ~~He subjects~~ Subjects another person to sexual
10 contact by forcible compulsion; ~~or.~~

11 "(2) ~~He subjects~~ Subjects another person to sexual
12 contact who is incapable of consent by reason of being
13 ~~physically helpless or mentally~~ incapacitated.

14 "(b) Sexual abuse in the first degree is a Class C
15 felony.

16 "§13A-6-67.

17 "(a) A person commits the crime of sexual abuse in
18 the second degree if he or she does either of the following:

19 "(1) ~~He subjects~~ Subjects another person to sexual
20 contact who is ~~incapable of~~ unable to consent by reason of
21 some factor other than being less than 16 years old; ~~or.~~

22 "(2) ~~He, being~~ Being 19 years old or older, subjects
23 another person to sexual contact who is 12 years old or older,
24 but less than 16 years old ~~, but more than 12 years old.~~

25 "(b) Sexual abuse in second degree is a Class A
26 misdemeanor, except that if a person commits a second or
27 subsequent offense of sexual abuse in the second degree within

1 one year of another sexual offense, the offense is a Class C
2 felony.

3 "§13A-6-68.

4 (a) A person commits the crime of indecent exposure
5 if, with intent to arouse or gratify sexual desire of himself
6 or herself, or of any person other than his or her spouse, he
7 or she exposes his or her genitals under circumstances in
8 which he or she knows ~~his~~ the conduct is likely to cause
9 affront or alarm ~~in any public place or on the private~~
10 ~~premises of another or so near thereto as to be seen from such~~
11 ~~private premises.~~

12 (b) Indecent exposure is a Class A misdemeanor
13 except a third or subsequent conviction shall be a Class C
14 felony.

15 "§13A-6-70.

16 "(a) ~~Whether or not specifically~~ Unless otherwise
17 stated, ~~it is~~ an element of every offense defined in this
18 article, ~~with the exception of subdivision (a) (3) of Section~~
19 ~~13A-6-65,~~ is that the sexual act was committed without the
20 consent of the victim.

21 "(b) Lack of consent results from either of the
22 following:

23 "(1) Forcible compulsion; ~~or.~~

24 "(2) ~~Incapacity to~~ Being incapable of consent; ~~or.~~

25 "(3) ~~If the offense charged is sexual abuse, any~~
26 ~~circumstances, in addition to forcible compulsion or~~

1 ~~incapacity to consent, in which the victim does not expressly~~
2 ~~or impliedly acquiesce in the actor's conduct.~~

3 "(c) A person is deemed incapable of consent if he
4 or she is either:

5 "(1) Less than 16 years old; ~~or.~~

6 "(2) ~~Mentally defective;~~ or Incapacitated.

7 "~~(3) Mentally incapacitated;~~ or

8 "~~(4) Physically helpless.~~

9 "(d) Consent to engage in sexual intercourse,
10 sodomy, sexual acts, or sexual contact may be communicated by
11 words or actions. The existence of a current or previous
12 marital, dating, social, or sexual relationship with the
13 defendant is not sufficient to constitute consent. Evidence
14 that the victim suggested, requested, or otherwise
15 communicated to the defendant that the defendant use a condom
16 or other birth control device or sexually transmitted disease
17 protection, without additional evidence of consent, is not
18 sufficient to constitute consent.

19 "§13A-6-71.

20 "(a) A person commits the crime of engaging in a sex
21 act with a foster child if he or she is a foster parent and
22 engages in sexual intercourse, ~~as defined by Section~~
23 ~~13A-6-60(1),~~ or deviant sexual intercourse sodomy, as defined
24 by Section 13A-6-60~~(2),~~ with a foster child under the age of
25 19 years who is under his or her care or supervision. Engaging
26 in a sex act with a foster child is a Class B felony.

1 "(b) A person commits the crime of engaging in a
2 sexual contact with a foster child if he or she is a foster
3 parent and engages in a sexual contact, pursuant to Section
4 13A-6-60(3), with a foster child under the age of 19 years who
5 is under his or her care or supervision. Engaging in sexual
6 contact with a foster child is a Class C felony.

7 "(c) A person commits the crime of soliciting a sex
8 act or sexual contact with a foster child if he or she is a
9 foster parent and solicits, persuades, encourages, harasses,
10 or entices a foster child under the age of 19 years to engage
11 in a sex act including, but not limited to, sexual
12 intercourse, ~~as defined by Section 13A-6-30(1), deviate sexual~~
13 ~~intercourse~~ sodomy, ~~as defined by Section 13A-6-30(2),~~ or
14 sexual contact, as defined by Section ~~13A-6-60(3)~~ 13A-6-60.
15 The crime of soliciting a sex act or sexual contact with a
16 foster child is a Class A misdemeanor.

17 "(d) Consent is not a defense to a charge under
18 subsections (a), (b), or (c).

19 "(e) For the purposes of this section a foster
20 parent is an individual approved or licensed by the Department
21 of Human Resources or other child placing agencies who
22 provides care and supervision to a foster child under the
23 temporary or permanent custody of the department.

24 "§13A-6-81.

25 "(a) A person commits the crime of a school employee
26 engaging in a sex act with a student under the age of 19 years
27 if he or she is a school employee and engages in sexual

1 intercourse ~~as defined by Section 13A-6-60(1) or deviant~~
2 ~~sexual intercourse as defined by 13A-6-60(2)~~ or sodomy, as
3 defined in Section 13A-6-60, with a student, regardless of
4 whether the student is male or female. Consent is not a
5 defense to a charge under this section.

6 "(b) The crime of a school employee engaging in a
7 sex act with a student is a Class B felony.

8 "§13A-6-82.

9 "(a) A person commits the crime of a school employee
10 having sexual contact with a student under the age of 19 years
11 if he or she is a school employee and engages in sexual
12 contact, as defined by Section ~~13A-6-60(13)~~ 13A-6-60, with a
13 student, regardless of whether the student is male or female.
14 Consent is not a defense to a charge under this section. The
15 crime of a school employee having sexual contact with a
16 student is a Class C felony.

17 "(b) A person commits the crime of a school employee
18 soliciting a sex act with a student under the age of 19 years
19 if he or she is a school employee and solicits, persuades,
20 encourages, harasses, or entices a student to engage in a sex
21 act including, but not limited to, sexual intercourse, ~~as~~
22 ~~defined by Section 13A-6-60(1), deviate sexual intercourse~~
23 sodomy, as defined by Section 13A-6-60(2), or sexual contact,
24 as defined by Section ~~13A-6-60(3)~~ 13A-6-60. The crime of
25 soliciting a student to perform a sex act is a Class A
26 misdemeanor.

27 "§13A-6-122.

1 ~~"In addition to the provisions of Section 13A-6-69,~~
2 a A person who, knowingly entices, induces, persuades,
3 seduces, prevails, advises, coerces, lures, or orders, or
4 attempts to entice, induce, persuade, seduce, prevail, advise,
5 coerce, lure, or order, by means of a computer, on-line
6 service, Internet service, Internet bulletin board service,
7 weblog, cellular phone, video game system, personal data
8 assistant, telephone, facsimile machine, camera, universal
9 serial bus drive, writable compact disc, magnetic storage
10 device, floppy disk, or any other electronic communication or
11 storage device, a child who is at least three years younger
12 than the defendant, or another person believed by the
13 defendant to be a child at least three years younger than the
14 defendant to meet with the defendant or any other person for
15 the purpose of engaging in sexual intercourse, ~~deviate sexual~~
16 ~~intercourse~~ sodomy, sexual contact, sexual performance,
17 obscene sexual performance, sexual conduct, or genital
18 mutilation, or directs a child to engage in sexual
19 intercourse, ~~deviate sexual intercourse~~ sodomy, sexual
20 contact, sexual performance, obscene sexual performance,
21 sexual conduct, or genital mutilation is guilty of electronic
22 solicitation of a child. Any person who violates this section
23 commits a Class B felony.

24 "§13A-6-241.

25 "(a) A person commits the crime of sexual extortion
26 if he or she knowingly causes or attempts to cause another
27 person to engage in sexual intercourse, ~~deviate sexual~~

1 ~~intercourse~~ sodomy, sexual contact, or in a sexual act or to
2 produce any photograph, digital image, video, film, or other
3 recording of any person, whether recognizable or not, engaged
4 in any act of sadomasochistic abuse, sexual intercourse,
5 ~~deviate sexual intercourse~~ sodomy, sexual excitement,
6 masturbation, breast nudity, genital nudity, or other sexual
7 conduct by ~~transmitting any communication containing~~
8 communicating any threat to injure the body, property, or
9 reputation of any person.

10 "(b) Sexual extortion is a Class B felony.

11 "§13A-6-243.

12 "(a) (1) A person commits the crime of directing a
13 child to engage in sexual intercourse or ~~deviate sexual~~
14 ~~intercourse~~ sodomy if he or she knowingly entices, allures,
15 persuades, induces, or directs any person under the age of 12
16 years to engage in sexual intercourse or ~~deviate sexual~~
17 ~~intercourse~~ sodomy with another person ~~under the age of 12~~.

18 "(2) Directing a child to engage in sexual
19 intercourse or ~~deviate sexual intercourse~~ sodomy is a Class A
20 felony.

21 "(b) (1) A person commits the crime of directing a
22 child to engage in sexual contact if he or she knowingly
23 entices, allures, persuades, induces, or directs any person
24 under the age of 12 years to engage in sexual contact with
25 another person ~~under the age of 12~~.

26 "(2) A violation of this section is a Class ~~C~~ B
27 felony.

1 "§13A-11-9.

2 "(a) A person commits the crime of loitering if he
3 or she does any of the following:

4 "(1) Loiters, remains or wanders about in a public
5 place for the purpose of begging;~~or.~~

6 "(2) Loiters or remains in a public place for the
7 purpose of gambling;~~or.~~

8 "(3) Loiters or remains in a public place for the
9 purpose of engaging or soliciting another person to engage in
10 prostitution or ~~deviate sexual intercourse,~~ or sodomy.

11 "(4) Being masked, loiters, remains, or congregates
12 in a public place;~~or.~~

13 "(5) Loiters or remains in or about a school,
14 college, or university building or grounds after having been
15 told to leave by any authorized official of ~~such~~ the school,
16 college, or university, ~~and~~ not having any reason or
17 relationship involving custody of or responsibility for a
18 pupil or any other specific, legitimate reason for being
19 there, and not having written permission from a school,
20 college or university administrator;~~or.~~

21 "(6) Loiters or remains in any transportation
22 facility, unless specifically authorized to do so, for the
23 purpose of soliciting or engaging in any business, trade, or
24 commercial transactions involving the sale of merchandise or
25 services;~~or.~~

1 "(7) Loiters or remains in any place with one or
2 more persons for the purpose of unlawfully using or possessing
3 a dangerous drug.

4 "(b) A person does not commit a crime under
5 subdivision (a) (4) ~~of this section~~ if he or she is going to or
6 from or staying at a masquerade party, or is participating in
7 a public parade or presentation of an educational, religious,
8 or historical character or in an event as defined in
9 ~~subdivision (1) of~~ Section 13A-11-140.

10 "(c) ~~"Deviate sexual intercourse~~ Sodomy" in
11 subdivision (a) (3) ~~of this section~~ is defined as in
12 ~~subdivision (2) of~~ Section 13A-6-60.

13 "(d) "Dangerous drug" in subdivision (a) (7) ~~of this~~
14 ~~section~~ means any narcotic, drug, or controlled substance as
15 defined in Chapter 2 of Title 20 of this Code and any schedule
16 incorporated therein.

17 "(e) Loitering is a violation.

18 "§13A-11-32.1.

19 "(a) A person commits the crime of aggravated
20 criminal surveillance if he or she intentionally engages in
21 surveillance of an individual in any place where the
22 individual being observed has a reasonable expectation of
23 privacy, without the prior express or implied consent of the
24 individual being observed, for the purpose of sexual
25 gratification.

26 "(b) Aggravated criminal surveillance is a Class ~~A~~
27 ~~misdemeanor, except if a person has a prior conviction or~~

1 ~~adjudication under this section the offense is a Class C~~
2 felony.

3 "(c) ~~For purposes of determining prior conviction or~~
4 ~~adjudication under this section, convictions in municipal~~
5 ~~court shall be included~~ The statute of limitations begins at
6 the time of discovery of the surveillance.

7 "§13A-12-120.

8 "For the purpose of this division, the term
9 "prostitution" shall mean the commission by a person of any
10 natural or unnatural sexual act, ~~deviate sexual intercourse~~
11 sodomy, or sexual contact for monetary consideration or other
12 thing of value.

13 "§13A-12-121.

14 "(a) No person shall commit an act of prostitution
15 as defined in Section 13A-12-120.

16 "(b) No person shall solicit, compel, or coerce any
17 person to have sexual intercourse or participate in any
18 natural or unnatural sexual act, ~~deviate sexual intercourse~~
19 sodomy, or sexual contact for monetary consideration or other
20 thing of marketable value.

21 "(c) No person shall agree to engage in sexual
22 intercourse, ~~deviate sexual intercourse~~ sodomy, or sexual
23 contact with another or participate in the act for monetary
24 consideration or other thing of marketable value and give or
25 accept monetary consideration or other thing of value in
26 furtherance of the agreement.

1 "(d) No person shall knowingly do any of the
2 following:

3 "(1) Cause or aid a person to commit or engage in
4 prostitution.

5 "(2) Procure or solicit patrons for prostitution.

6 "(3) Provide persons or premises for prostitution
7 purposes.

8 "(4) Receive or accept money or other thing of value
9 pursuant to a prior agreement with any person whereby he or
10 she participates or is to participate in the proceeds of any
11 prostitution activity.

12 "(5) Operate or assist in the operation of a house
13 of prostitution or a prostitution enterprise.

14 "§13A-12-190.

15 "For the purposes of this division, the following
16 terms shall have the meanings respectively ascribed to them by
17 this section:

18 "(1) DISSEMINATE. To transmit, distribute, sell,
19 lend, provide, transfer, or show ~~for monetary consideration or~~
20 ~~to offer or agree to do the same,~~ including through electronic
21 means.

22 "(2) DISPLAY PUBLICLY. The exposing, placing,
23 posting, exhibiting, or in any fashion displaying in any
24 location, whether public or private, an item in such a manner
25 that it may be readily seen and its content or character
26 distinguished by normal unaided vision viewing it from a
27 public thoroughfare, depot or vehicle.

1 "(3) PUBLIC THOROUGHFARE, DEPOT, or VEHICLE. Any
2 street, highway, park, depot, or transportation platform or
3 other place, whether indoors or out, or any vehicle for public
4 transportation, owned or operated by government, either
5 directly or through a public corporation or authority, or
6 owned or operated by any agency of public transportation that
7 is designed for the use, enjoyment, or transportation of the
8 general public.

9 "(4) KNOWINGLY. A person knowingly disseminates or
10 publicly displays obscene matter when the person knows the
11 nature of the matter. A person knows the nature of the matter
12 when either of the following circumstances exist:

13 "a. The person is aware of the character and content
14 of the matter, ~~or~~.

15 "b. The person recklessly disregards circumstances
16 suggesting the character and content of the matter.

17 "(5) SADO-MASOCHISTIC ABUSE. Such term means either
18 of the following:

19 "a. Flagellation or torture, for the purpose of
20 sexual stimulation, by or upon a person who is nude or clad in
21 undergarments or in a revealing or bizarre costume, ~~or~~.

22 "b. The condition of a person who is nude or clad in
23 undergarments or in a revealing or bizarre costume being
24 fettered, bound, or otherwise physically restrained for the
25 purpose of sexual stimulation.

26 "(6) SEXUAL EXCITEMENT. The condition of human male
27 or female genitals when in a state of sexual stimulation.

1 "(7) SEXUAL INTERCOURSE. Intercourse, real or
2 simulated, whether genital-genital, oral-genital, anal-genital
3 or oral-anal, whether between persons of the same or opposite
4 sex or between a human and an animal.

5 "(8) MASTURBATION. Manipulation, by hand or
6 instrument, of the human genitals, whether one's own or
7 another's for the purpose of sexual stimulation.

8 "(9) OTHER SEXUAL CONDUCT. Any touching of the
9 genitals, pubic areas, or buttocks of the human male or
10 female, or the breasts of the female, whether alone or between
11 members of the same or opposite sex or between humans and
12 animals in an act of apparent sexual stimulation or
13 gratification.

14 "(10) BREAST NUDITY. The lewd showing of the
15 post-pubertal human female breasts below a point immediately
16 above the top of the areola.

17 "(11) GENITAL NUDITY. The lewd showing of the
18 genitals or pubic area.

19 "(12) MATTER. Any book, magazine, newspaper, or
20 other printed material, or any picture, photograph, motion
21 picture, video cassette, tape, record, digital video disc
22 (DVD), video compilation, or electronic depiction in a
23 comparable format, or an image, file, download, or other
24 content stored, or reproduced by using a computer or
25 electronic device or other digital storage, or any other
26 thing, articles, or materials that either are or contain a

1 photographic or other visual depiction of a live act,
2 performance, or event.

3 "(13) OBSCENE. a. When used to describe any matter
4 that contains a visual reproduction of breast nudity, ~~such~~
5 ~~term means matter that~~ the term shall include all of the
6 following:

7 "1. Applying contemporary local community standards,
8 on the whole, appeals to the prurient interest;~~and.~~

9 "2. Is patently offensive;~~and.~~

10 "3. On the whole, lacks serious literary, artistic,
11 political, or scientific value.

12 "b. When used to describe matter that is a depiction
13 of an act of sado-masochistic abuse, sexual intercourse,
14 sexual excitement, masturbation, genital nudity, or other
15 sexual conduct, ~~such~~ the term means matter containing ~~such~~ a
16 visual reproduction that itself lacks serious literary,
17 artistic, political, or scientific value.

18 "(14) LOCAL COMMUNITY. The judicial circuit in which
19 the indictment is brought.

20 "(15) VISUAL DEPICTION. A portrayal, representation,
21 illustration, image, likeness, or other thing that creates a
22 sensory impression, whether an original, duplicate, or
23 reproduction.

24 "(16) SEPARATE OFFENSE. The depiction of an
25 individual less than 17 years of age that violates this
26 division shall constitute a separate offense for each single
27 visual depiction.

1 "§13A-12-192.

2 "(a) Any person who knowingly possesses with intent
3 to disseminate any obscene matter that contains a visual
4 depiction of a person under the age of 17 years engaged in any
5 act of sado-masochistic abuse, sexual intercourse, sexual
6 excitement, masturbation, breast nudity, genital nudity, or
7 other sexual conduct shall be guilty of a Class B felony.
8 ~~Possession of three or more copies of the same visual~~
9 ~~depiction contained in obscene matter is prima facie evidence~~
10 ~~of possession with intent to disseminate the same~~ Any transfer
11 of the visual depiction from any electronic device to any
12 other device, program, application, or any other place with
13 storage capability which can be made available or is
14 accessible by other users, is prima facie evidence of
15 possession with intent to disseminate.

16 "(b) Any person who knowingly possesses any obscene
17 matter that contains a visual depiction of a person under the
18 age of 17 years engaged in any act of sado-masochistic abuse,
19 sexual intercourse, sexual excitement, masturbation, breast
20 nudity, genital nudity, or other sexual conduct shall be
21 guilty of a Class C felony.

22 "§15-3-5.

23 "(a) There is no limitation of time within which a
24 prosecution must be commenced for any of the following
25 offenses:

26 "(1) Any capital offense~~r~~.

1 "(2) Any felony involving the use, attempted use, or
2 threat of, violence to a person~~7~~.

3 "(3) Any felony involving serious physical injury or
4 death of a person~~7~~.

5 "(4) Any sex offense pursuant to Section 15-20A-5
6 involving a victim under 16 years of age, regardless of
7 whether it involves force ~~or~~ serious physical injury~~7~~ or
8 death~~7~~.

9 "(5) Any felony involving arson of any type~~7~~.

10 "(6) Any felony involving forgery of any type~~7~~.

11 "(7) Any felony involving counterfeiting~~7~~ ~~and~~.

12 "(8) Any felony involving drug trafficking.

13 "(b) The amendments made by this act shall apply to
14 both of the following:

15 "(1) To all crimes committed after January 7, 1985~~7~~
16 ~~and~~.

17 "(2) To all crimes committed before January 7, 1985,
18 for which no statute of limitations provided under
19 pre-existing law has run as of January 7, 1985.

20 "(c) Nothing herein shall be construed to mean that
21 the adoption of this act indicates that any former statute of
22 limitations applying to capital offenses is invalid as the
23 result of any decision of any court invalidating the capital
24 punishment statutes of the State of Alabama.

25 "§.

26 "~~§15-20A-5~~

1 ~~"For the purposes of this chapter, a sex offense~~
2 ~~includes any of the following offenses:~~

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

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

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

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

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

22 ~~"(6) Sexual torture, as provided by Section~~
23 ~~13A-6-65.1.~~

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

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

1 ~~"(9) Indecent exposure, as provided by Section~~
2 ~~13A-6-68, provided that on a first conviction or adjudication~~
3 ~~of a sex offense, the sex offender is only subject to~~
4 ~~registration and verification pursuant to this chapter. On a~~
5 ~~second or subsequent conviction or adjudication of a sex~~
6 ~~offense, if the second or subsequent conviction or~~
7 ~~adjudication does not arise out of the same set of facts and~~
8 ~~circumstances as the first conviction or adjudication, the sex~~
9 ~~offender shall comply with all requirements of this chapter.~~
10 ~~The sentencing court may exempt from this chapter a juvenile~~
11 ~~sex offender adjudicated delinquent of indecent exposure .~~

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

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

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

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

21 ~~"(14) Violation of the Alabama Child Pornography~~
22 ~~Act, as provided by Section 13A-12-191, 13A-12-192,~~
23 ~~13A-12-196, or 13A-12-197. The sentencing court may exempt~~
24 ~~from this chapter a juvenile sex offender adjudicated~~
25 ~~delinquent of a violation of the Alabama Child Pornography Act~~
26 ~~after the juvenile has been counseled on the dangers of the~~
27 ~~conduct for which he or she was adjudicated delinquent.~~

1 ~~"(15) Unlawful imprisonment in the first degree, as~~
2 ~~provided by Section 13A-6-41, if the victim of the offense is~~
3 ~~a minor, and the record of adjudication or conviction reflects~~
4 ~~the intent of the unlawful imprisonment was to abuse the minor~~
5 ~~sexually.~~

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

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

15 ~~"(18) Kidnapping of a minor, except by a parent,~~
16 ~~guardian, or custodian, as provided by Section 13A-6-43 or~~
17 ~~13A-6-44.~~

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

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

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

25 ~~"(22) Foster parent engaging in a sex act, having~~
26 ~~sexual contact, or soliciting a sex act or sexual contact with~~
27 ~~a foster child as provided by Section 13A-6-71.~~

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

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

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

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

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

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

14 ~~"(29) Human trafficking in the second degree, as~~
15 ~~provided by Section 13A-6-153, provided that the offense~~
16 ~~involves sexual servitude.~~

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

19 ~~"(31) Sexual extortion, as provided by Section~~
20 ~~13A-6-241.~~

21 ~~"(32) Directing a child to engage in a sex act, as~~
22 ~~provided in Section 13A-6-243.~~

23 ~~"(33) Any offense which is the same as or equivalent~~
24 ~~to any offense set forth above as the same existed and was~~
25 ~~defined under the laws of this state existing at the time of~~
26 ~~such conviction, specifically including, but not limited to,~~
27 ~~crime against nature, as provided by Section 13-1-110; rape,~~

1 as provided by Sections ~~13-1-130~~ and ~~13-1-131~~; carnal
2 knowledge of a woman or girl, as provided by Sections ~~13-1-132~~
3 through ~~13-1-135~~, or attempting to do so, as provided by
4 Section ~~13-1-136~~; indecent molestation of children, as defined
5 and provided by Section ~~13-1-113~~; indecent exposure, as
6 provided by Section ~~13-1-111~~; incest, as provided by Section
7 ~~13-8-3~~; offenses relative to obscene prints and literature, as
8 provided by Sections ~~13-7-160~~ through ~~13-7-175~~, inclusive;
9 employing, harboring, procuring or using a girl over 10 and
10 under 18 years of age for the purpose of prostitution or
11 sexual intercourse, as provided by Section ~~13-7-1~~; seduction,
12 as defined and provided by Section ~~13-1-112~~; a male person
13 peeping into a room occupied by a female, as provided by
14 Section ~~13-6-6~~; assault with intent to ravish, as provided by
15 Section ~~13-1-46~~; and soliciting a child by computer, as
16 provided by Section ~~13A-6-110~~.

17 ~~"(34) Any solicitation, attempt, or conspiracy to~~
18 ~~commit any of the offenses listed in subdivisions (1) to (33),~~
19 ~~inclusive.~~

20 ~~"(35) Any crime committed in Alabama or any other~~
21 ~~state, the District of Columbia, any United States territory,~~
22 ~~or a federal, military, Indian, or foreign country~~
23 ~~jurisdiction which, if it had been committed in this state~~
24 ~~under the current provisions of law, would constitute an~~
25 ~~offense listed in subdivisions (1) to (34), inclusive.~~

26 ~~"(36) Any offense specified by Title I of the~~
27 ~~federal Adam Walsh Child Protection and Safety Act of 2006~~

1 ~~(Pub. L. 109-248, the Sex Offender Registration and~~
2 ~~Notification Act (SORNA)).~~

3 ~~"(37) Any crime committed in another state, the~~
4 ~~District of Columbia, any United States territory, or a~~
5 ~~federal, military, Indian, or foreign country jurisdiction if~~
6 ~~that jurisdiction also requires that anyone convicted of that~~
7 ~~crime register as a sex offender in that jurisdiction.~~

8 ~~"(38) Any offender determined in any jurisdiction to~~
9 ~~be a sex offender shall be considered a sex offender in this~~
10 ~~state.~~

11 ~~"(39) The foregoing notwithstanding, any crime~~
12 ~~committed in any jurisdiction which, irrespective of the~~
13 ~~specific description or statutory elements thereof, is in any~~
14 ~~way characterized or known as rape, carnal knowledge, sodomy,~~
15 ~~sexual assault, sexual battery, criminal sexual conduct,~~
16 ~~criminal sexual contact, sexual abuse, continuous sexual~~
17 ~~abuse, sexual torture, solicitation of a child, enticing or~~
18 ~~luring a child, child pornography, lewd and lascivious~~
19 ~~conduct, taking indecent liberties with a child, molestation~~
20 ~~of a child, criminal sexual misconduct, video voyeurism, or~~
21 ~~there has been a finding of sexual motivation.~~

22 ~~"(40) Any crime not listed in this section wherein~~
23 ~~the underlying felony is an element of the offense and listed~~
24 ~~in subdivisions (1) to (39), inclusive.~~

25 ~~"(41) Any other offense not provided for in this~~
26 ~~section wherein there is a finding of sexual motivation as~~
27 ~~provided by Section 15-20A-6.~~

1 "§15-20A-44.

2 "(a) The Secretary of the Alabama State Law
3 Enforcement Agency shall ~~promulgate~~ adopt rules establishing
4 an administrative hearing for persons who are only made
5 subject to this chapter pursuant to subdivision ~~(37)~~ (35) of
6 Section 15-20A-5.

7 "(b) The Secretary of the Alabama State Law
8 Enforcement Agency shall ~~promulgate~~ adopt rules setting forth
9 a listing of offenses from other jurisdictions that are to be
10 considered criminal sex offenses under subdivision ~~(37)~~ (35)
11 of Section 15-20A-5. Thereafter, any individual convicted of
12 any offense set forth in the listing shall immediately be
13 subject to this chapter and shall not be entitled to an
14 administrative hearing as provided in subsection (a).

15 "(c) The Secretary of the Alabama State Law
16 Enforcement Agency shall have the authority to promulgate any
17 rules as are necessary to implement and enforce this chapter.

18 "§15-23-101.

19 "When a person has been charged with the crime of
20 rape, sodomy, ~~or,~~ sexual misconduct, sexual torture, sexual
21 abuse, assault by bodily fluids, or any other crime in which
22 the victim was compelled to engage in sexual activity by force
23 or threat of force, and it appears from the nature of the
24 charge that the transmission of body fluids from one person to
25 another may have been involved, upon the request of the
26 ~~alleged~~ victim or the parent or guardian of ~~an alleged~~ a minor
27 victim, the district attorney shall file a motion with the

1 court for an order requiring the person charged to submit to a
2 test for any sexually transmitted disease.

3 "§15-23-102.

4 "(a) (1) If the district attorney files a motion
5 under Section 15-23-101, the court shall order the person
6 charged to submit to testing if the court determines there is
7 probable cause to believe that the person charged committed
8 the crime of rape, sodomy, ~~or,~~ sexual misconduct, sexual
9 torture, sexual abuse, assault by bodily fluids, or any other
10 crime where the victim was compelled to engage in sexual
11 activity by force or threat of force and the transmission of
12 body fluids was involved.

13 "(2) If a warrant, information, or indictment has
14 been issued and the defendant is in custody or has been served
15 with the warrant, information, or indictment, the test shall
16 be performed within 48 hours of service of the court order
17 requiring the defendant to submit to testing.

18 "(b) When a test is ordered under Section 15-23-101,
19 the ~~alleged~~ victim of the crime or a parent or guardian of the
20 ~~alleged~~ minor victim shall designate an attending physician
21 who has agreed in advance to accept the victim as a patient to
22 receive information on behalf of the ~~alleged~~ victim.

23 "(c) If any sexually transmitted disease test
24 results in a negative reaction, the court shall order the
25 person to submit to any follow-up tests at the intervals and
26 in the manner as shall be determined by the State Board of
27 Health.

1 "(d) The result of any test ordered under this
2 section is not a public record and shall be available only to
3 the following:

4 "(1) The ~~alleged~~ victim.

5 "(2) The parent or guardian of the ~~alleged~~ minor
6 victim.

7 "(3) The attending physician of the ~~alleged~~ victim.

8 "(4) The person tested.

9 "(e) If any sexually transmitted disease test
10 ordered under this section results in a positive reaction, the
11 individual subject to the test shall receive post-test
12 counseling. Counseling and referral for appropriate health
13 care, testing, and support services as directed by the State
14 Health Officer shall be provided to the ~~alleged~~ victim at the
15 request of the ~~alleged~~ victim or the parent or guardian of the
16 ~~alleged~~ minor victim."

17 Section 2. Although this bill would have as its
18 purpose or effect the requirement of a new or increased
19 expenditure of local funds, the bill is excluded from further
20 requirements and application under Amendment 621, now
21 appearing as Section 111.05 of the Official Recompilation of
22 the Constitution of Alabama of 1901, as amended, because the
23 bill defines a new crime or amends the definition of an
24 existing crime.

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

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Senate

Read for the first time and referred to
the Senate committee on Judiciary..... 18-APR-19

Read for the second time and placed on
the calendar..... 02-MAY-19

Read for the third time and passed as
amended 16-MAY-19

Yeas 32
Nays 0

Patrick Harris,
Secretary.