

1 HB68
2 215888-3
3 By Representative Simpson
4 RFD: Judiciary
5 First Read: 11-JAN-22
6 PFD: 01/06/2022

1
2 ENROLLED, An Act,

3 Relating to criminal procedure; to amend Sections
4 15-25-1, 15-25-2, as last amended by Act 2021-373, 2021
5 Regular Session, 15-25-3, 15-25-5, and 15-25-6, Code of
6 Alabama 1975, to allow a protected person to be offered
7 protections in criminal prosecutions for physical offenses,
8 sexual offenses, and violent offenses; to define a protected
9 person; to define a physical offense, sexual offense, and
10 violent offense; to allow use of anatomically correct dolls or
11 mannequins during testimony of a child under the age of 12 or
12 a protected person; to amend Sections 15-25-30, 15-25-31,
13 15-25-32, 15-25-34, 15-25-36, 15-25-37, 15-25-38, and
14 15-25-39, Code of Alabama 1975, to allow out-of-court
15 statements to be admissible if the witness is a protected
16 person; to amend Sections 13A-6-81 and 13A-6-82, Code of
17 Alabama 1975, to further provide for school employees engaging
18 in sexual acts with students; to add Section 15-25-7 to the
19 Code of Alabama 1975, to allow leading questions of certain
20 witnesses in a criminal proceeding; to repeal Section
21 15-25-33, Code of Alabama 1975, relating to expert testimony
22 as to unavailability of a child to testify; to make
23 nonsubstantive, technical revisions to update the existing
24 code language to current style.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 15-25-1, 15-25-2, as last
2 amended by Act 2021-373, 2021 Regular Session, 15-25-3,
3 15-25-5, and 15-25-6, Code of Alabama 1975, are amended to
4 read as follows:

5 "§15-25-1.

6 "(a) This article shall apply to ~~In~~ any criminal
7 prosecution for a physical offense or a sexual offense
8 ~~wherein,~~ or a violent offense where the alleged victim or
9 witness is a child under the age of 16 years and in any
10 ~~criminal prosecution involving the sexual exploitation of a~~
11 ~~child under the age of 16, the court may allow leading~~
12 ~~questions at trial by the prosecution or defense of any victim~~
13 ~~or witness in a case who is under the age of 10, if the court~~
14 ~~determines that the allowance of leading questions will~~
15 ~~further the interests of justice. The court may on motion of~~
16 ~~the prosecution or the defense, or on its own motion, limit~~
17 ~~the scope and extent of any leading questions~~ or a protected
18 person.

19 "(b) For the purposes of this article, a "physical
20 offense, a sexual offense, or a violent offense," is defined
21 to include all of the following crimes:

22 "(1) A sex offense as provided in Section 15-20A-5.

23 "(2) A violent offense as provided in Section
24 12-25-32.

1 "(3) Aggravated child abuse as provided in Section
2 26-15-3.1.

3 "(4) Assault in any degree.

4 "(5) Any offense involving domestic violence, elder
5 abuse, or a violation of a protection order.

6 "(6) Any attempt to commit any of the offenses
7 listed in subdivisions (1) to (5), inclusive.

8 "(c) For the purposes of this article, "child" means
9 a person who is under the age of 16 years at the time of
10 trial.

11 "(d) For the purposes of this article, "protected
12 person" means a person who has a developmental disability
13 attributable to an intellectual disability, autism, cerebral
14 palsy, epilepsy, or other disabling neurological condition
15 that requires training or support similar to that required by
16 a person with an intellectual disability, if any of the
17 following apply:

18 "(1) The disability originates before the person
19 attains 22 years of age, the disability can be expected to
20 continue indefinitely, and the disability constitutes a
21 substantial handicap to the ability of the person to function
22 in society.

23 "(2) If the disability is attributable to an
24 intellectual disability, the condition is manifested before
25 the person attains 18 years of age, the disability can be

1 expected to continue indefinitely, and the disability
2 constitutes a substantial handicap to the ability of the
3 person to function in society.

4 "(3) The disability results in significant
5 subaverage intellectual functioning with concurrent deficits
6 in adaptive behavior that are manifested during the
7 developmental period.

8 "§15-25-2.

9 "(a) In any criminal prosecution referred to in
10 Section 15-25-1, the court, upon motion of the district
11 attorney or Attorney General, for good cause shown and after
12 notice to the defendant, may order the taking of a video
13 deposition of an alleged victim of or witness to the crime who
14 is ~~under the age of 16~~ a child or a protected person at the
15 time of the order.

16 "(b) On any motion for a video deposition of the
17 victim or a witness, the court shall consider ~~the age and~~
18 ~~maturity of the child,~~ the nature of the offense, the nature
19 of testimony that may be expected, and the possible effect
20 that the testimony in person at trial may have on the victim
21 or witness, along with any other relevant matters that may be
22 required by Supreme Court rule.

23 "(c) During the recording of a video deposition
24 ~~authorized pursuant to this section,~~ the following persons
25 shall be in the room with the child or the protected person:

1 "(1) The prosecuting attorney,~~the~~.

2 "(2) The attorney for the defendant,~~and a~~.

3 "(3) A person whose presence, in the judgment of the
4 court, contributes to the well-being of the child or protected
5 person and who has dealt with the child or the protected
6 person in a therapeutic setting regarding the abuse.

7 "(4) Additional persons, other than the defendant,
8 may be admitted into the room in the discretion of the court.

9 "(d) Examination and cross-examination of the
10 alleged victim or witness shall proceed at the taking of the
11 video deposition as though the alleged victim or witness were
12 testifying personally in the trial of the case. The state
13 shall provide the attorney for the defendant with ~~reasonable~~
14 ~~access and means to view and hear~~ a copy of the video
15 deposition at a suitable and reasonable time prior to the
16 trial of the case. The court shall enter a protective order
17 prohibiting the attorney for the defendant from copying,
18 reproducing, or distributing the video deposition. Objections
19 to the introduction into the record of the deposition shall be
20 heard by the judge in whose presence the deposition was taken,
21 and unless the court determines that its introduction in lieu
22 of the victim's or witness's actual appearance as a witness at
23 the trial will unfairly prejudice the defendant, the video
24 deposition shall be entered into the record by the state in

1 lieu of the direct testimony of the alleged victim or witness
2 and shall be viewed and heard at the trial of the case.

3 "(e) For the purposes of this section, "video
4 deposition" means the recording of video, with sound, of
5 witness testimony made under oath to be entered in the record
6 in a judicial proceeding.

7 "(f) The Supreme Court may adopt rules of procedure
8 regarding the taking and use of video depositions in criminal
9 proceedings and juvenile cases, as well as transcription of
10 video depositions in appeals of those cases.

11 "(g) All costs associated with the recording of a
12 deposition ordered pursuant to this article shall be paid by
13 the state. The district attorney shall submit all related cost
14 bills to the state Comptroller for approval and payment from
15 the fund entitled Court Costs Not Otherwise Provided For.

16 "(h) All recordings of video depositions ordered
17 pursuant to this article shall be subject to any protective
18 order of the court for the purpose of protecting the privacy
19 of the victim of the offense.

20 "(i) When necessary, the operator of the equipment
21 used to record video depositions may also be in the room
22 during the taking of the deposition and the operator shall
23 make every effort to be unobtrusive.

24 "(j) Only the court, the prosecuting attorney, and
25 the attorney for the defendant may question the ~~child~~ victim

1 or witness. During the testimony of the child or protected
2 person, the defendant shall be provided access to view the
3 testimony out of the presence of the child or protected person
4 and shall be allowed to communicate with his or her attorney
5 by any appropriate election method.

6 "(k) ~~This section shall not apply when the defendant~~
7 ~~is an attorney pro se~~ In circumstances where a defendant in a
8 proceeding has elected to proceed without counsel, the court
9 may appoint counsel for the defendant and may order counsel to
10 question a child or a protected person on behalf of the pro se
11 defendant if the court finds that there is substantial
12 likelihood that the child or protected person would experience
13 emotional harm if the defendant were allowed to question the
14 child or protected person.

15 "§15-25-3.

16 "(a) In those criminal prosecutions set out in
17 Section 15-25-1, the court, on motion of the state or the
18 defendant prior to the trial of the case, may order that the
19 testimony of any alleged victim of the crime or a witness
20 ~~thereto~~ to the crime who is ~~under the age of 16~~ a child or
21 protected person at the time of the order shall be viewed and
22 heard at trial by the court and the finder of fact by closed
23 circuit equipment. In ruling on the motion the court shall
24 take into consideration ~~those matters set out in Section~~
25 ~~15-25-2~~ the nature of the offense, the nature of the testimony

1 that may be expected, and the possible effect that the
2 testimony in person at trial may have on the victim or
3 witness, along with any other relevant matters that may be
4 required by Supreme Court rule.

5 "(b) If the court orders that the victim's or
6 witness's testimony in court shall be by closed circuit
7 equipment, the testimony shall be taken outside the courtroom
8 in the judge's chambers or in another suitable location
9 designated by the judge.

10 "(c) Examination and cross-examination of the
11 ~~alleged child~~ victim or witness shall proceed as though he or
12 she were testifying in the courtroom. Present in the room with
13 the child or the protected person during his or her testimony
14 shall be ~~the~~ any of the following:

15 "(1) The prosecuting attorney,~~the.~~

16 "(2) The attorney of the defendant,~~and a.~~

17 "(3) A person whose presence, in the judgment of the
18 court, contributes to the well-being of the child or protected
19 person and who has dealt with the child or protected person in
20 a therapeutic setting regarding the abuse.

21 "(4) Additional persons,~~such as the parent or~~
22 ~~parents or legal guardian,~~ except the defendant, may be
23 admitted into the room in the discretion of the court.

24 "(d) All costs incurred by the district attorney to
25 make it possible for the court and the trier of the fact to

1 view the testimony of the victim or witness by closed circuit
2 equipment as provided in this article shall be paid by the
3 state. The district attorney shall submit all bills for costs
4 to the state Comptroller for approval and payment from the
5 fund entitled Court Costs Not Otherwise Provided For.

6 "(e) Notwithstanding any other provision of law or
7 rule of evidence, a child or protected person victim of a
8 physical offense, sexual offense, or ~~sexual exploitation~~
9 violent offense, shall be considered a competent witness and
10 shall be allowed to testify without prior qualification in any
11 judicial proceeding. The trier of fact shall be permitted to
12 determine the weight and credibility to be given to the
13 testimony. The court may also allow leading questions of the
14 child ~~witnesses~~ or protected person victim or witness in the
15 interest of justice.

16 "(f) The operators of the closed circuit equipment
17 may also be in the room and shall make every effort to be
18 unobtrusive.

19 "(g) Only the court, the prosecuting attorney, and
20 the attorney for the defendant may question the child or
21 protected person. During the ~~child's~~ testimony by closed
22 circuit equipment, the defendant, the judge, and the jury
23 shall remain in the courtroom. The video feed showing the
24 child or protected person shall remain visible to the
25 defendant, the judge, and the jury at all times during the

1 testimony and cross-examination of the child ~~victim or witness~~
2 or protected person.

3 "(h) The judge and the defendant shall be allowed to
4 communicate with the attorneys in the room where the child or
5 protected person is testifying by any appropriate electronic
6 method. The party making the motion that the testimony shall
7 be by closed circuit equipment shall make all necessary
8 arrangements regarding the equipment and the operation thereof
9 during the course of the proceeding.

10 "(i) This section may not be interpreted to
11 preclude, for purposes of identification of a defendant, the
12 presence of both the victim and the defendant in the courtroom
13 at the same time. The testimony shall be limited to purposes
14 of identification only.

15 ~~"(j) The provisions of this section shall not apply~~
16 ~~if the defendant is not represented by an attorney~~ In
17 circumstances where a defendant in a proceeding has elected to
18 proceed without counsel, the court may appoint counsel for the
19 defendant and may order counsel to question a child or a
20 protected person on behalf of the pro se defendant if the
21 court finds that there is substantial likelihood that the
22 child or protected person would experience emotional harm if
23 the defendant were allowed to question the child or protected
24 person.

25 "§15-25-5.

1 "In any criminal proceeding and juvenile cases
2 ~~wherein~~ where the defendant is alleged to have had unlawful
3 sexual contact ~~or penetration with or on~~ with a child or a
4 protected person, the court shall permit the use of
5 anatomically correct dolls or mannequins to assist an alleged
6 victim or witness who is under the age of ~~10~~ 12 at the time of
7 trial, or who is a protected person, in testifying on direct
8 and cross-examination at trial, or in a ~~videotaped~~ video
9 deposition as provided in this article.

10 "§15-25-6.

11 "In all criminal cases and juvenile proceedings
12 involving offenses set out in Section 15-25-1, ~~wherein~~ where
13 the victim ~~hereof~~ or a witness to the offense is ~~under the age~~
14 ~~of 16 years~~ a child or a protected person, the court and the
15 ~~district~~ prosecuting attorney shall take appropriate action to
16 ensure a speedy trial in order to minimize the length of time
17 the child or the protected person must endure the stress of
18 involvement in the proceedings. In ruling on any motion or
19 other request for a delay or continuance of proceedings, the
20 court shall consider and give weight to any adverse impact the
21 delay or continuance may have on the well-being of a child
22 ~~victim or witness~~ or protected person.

23 Section 2. Sections 15-25-30, 15-25-31, 15-25-32,
24 15-25-34, 15-25-36, 15-25-37, 15-25-38, and 15-25-39, Code of
25 Alabama 1975, are amended to read as follows:

1 "§15-25-30.

2 "This article shall be entitled "The Child and
3 Protected Person Physical and Sexual Abuse, and Violent
4 Offense Victim Protection Act."

5 "§15-25-31.

6 "An out-of-court statement made by a child under 12
7 years of age at the time the statement is made, or by a
8 protected person as defined in Section 15-25-1, concerning an
9 act that is a material element of any crime involving ~~child a~~ a
10 physical offense, a sexual offense, and exploitation or a
11 violent offense, as defined in Section 15-25-39, which
12 statement is not otherwise admissible in evidence, is
13 admissible in evidence in criminal proceedings, if the
14 requirements of Section 15-25-32 are met.

15 "§15-25-32.

16 "An out-of-court statement may be admitted as
17 provided in Section 15-25-31, if either of the following
18 occur:

19 "(1) The ~~child~~ witness testifies at the proceeding,
20 ~~or~~ testifies by means of video ~~tape~~ deposition as provided by
21 Section 15-25-2, or testifies by means of closed circuit
22 television as is provided in Section 15-25-3, and at the time
23 of ~~such~~ the testimony is subject to cross-examination about
24 the out-of-court statements, ~~or.~~

1 ~~"(2)a. The child is found by the court to be~~
2 ~~unavailable to testify on any of these grounds:~~

3 ~~"1. The child's death;~~

4 ~~"(2) 2. The court finds that the witness's~~
5 ~~out-of-court statement is shown to the reasonable satisfaction~~
6 ~~of the court to possess particularized guarantees of~~
7 ~~trustworthiness and there are reasonable grounds to believe~~
8 ~~that the defendant or someone acting on behalf of the~~
9 ~~defendant has intentionally removed the child witness from the~~
10 ~~jurisdiction of the court; or that the defendant engaged in~~
11 ~~wrongdoing that was intended to, and did, procure the~~
12 ~~unavailability of the witness.~~

13 ~~"3. The child's total failure of memory;~~

14 ~~"4. The child's physical or mental disability;~~

15 ~~"5. The child's incompetency, including the child's~~
16 ~~inability to communicate about the offense because of fear or~~
17 ~~a similar reason; or~~

18 ~~"6. Substantial likelihood that the child would~~
19 ~~suffer severe emotional trauma from testifying at the~~
20 ~~proceeding or by means of closed circuit television; and~~

21 ~~"b. The child's out-of-court statement is shown to~~
22 ~~the reasonable satisfaction of the court to possess~~
23 ~~particularized guarantees of trustworthiness.~~

24 ~~"§15-25-34.~~

1 "Before a statement may be admitted pursuant to this
 2 article on the grounds that the ~~child~~ declarant is unavailable
 3 as a witness, ~~such~~ the statement may be admitted only if there
 4 is corroborative evidence of the act.

5 "§15-25-36.

6 "The court shall inform the jury that the
 7 out-of-court statement was taken without the defendant being
 8 afforded cross examination of ~~such~~ the out-of-court statement.

9 "§15-25-37.

10 "In determining whether a statement possesses
 11 particularized guarantees of trustworthiness ~~under~~ pursuant to
 12 Section ~~15-25-32(2)~~ 15-25-32, the court shall consider any
 13 ~~one, but is not limited to,~~ of the following factors:

14 "(1) The ~~child's~~ witness's personal knowledge of the
 15 event~~;~~.

16 "(2) The age and maturity of the ~~child;~~ witness.

17 "(3) Certainty that the statement was made,
 18 including the credibility of the person testifying about the
 19 statement~~;~~.

20 "(4) Any apparent motive the ~~child~~ witness may have
 21 to falsify or distort the event, including bias, corruption,
 22 or coercion~~;~~.

23 "(5) The timing of the ~~child's~~ witness's statement~~;~~.

24 "(6) Whether more than one person heard the
 25 statement~~;~~.

1 "(7) Whether the ~~child~~ witness was suffering from
2 pain or distress when making the statement~~;~~.

3 "(8) The nature and duration of any alleged abuse~~;~~.

4 "(9) Whether the ~~child's~~ witness's young age or
5 status as a protected person pursuant to Section 15-25-1 makes
6 it unlikely that the ~~child~~ witness fabricated a statement that
7 represents a graphic, detailed account beyond the ~~child's~~
8 witness's knowledge and experience~~;~~.

9 "~~(10) Whether the statement has a "ring of verity,"~~
10 ~~has an internal consistency or coherence, and uses terminology~~
11 ~~appropriate to the child's age;~~

12 "(10) ~~(11)~~ Whether the statement is spontaneous or
13 directly responsive to questions~~;~~.

14 "(11) ~~(12)~~ Whether the statement is suggestive due
15 to improperly leading questions~~;~~.

16 "(12) ~~(13)~~ Whether extrinsic evidence exists to show
17 the defendant's opportunity to commit the act complained of in
18 the ~~child's~~ witness's statement.

19 "§15-25-38.

20 "The court shall support with findings and record
21 any rulings pertaining to the ~~child's~~ witness's unavailability
22 and the trustworthiness of the out-of-court statement.

23 "§15-25-39.

24 "For purposes of this article, "a ~~child~~ physical
25 offense, sexual offense, ~~and exploitation~~ or violent offense"

1 is defined to include the following crimes, when one or more
2 of the victims is a child under 12 years of age or is a
3 protected person as provided in Section 15-25-1:

4 "~~(1) Rape in any degree~~ A sex offense pursuant to
5 Section 15-20A-5.

6 "~~(2) Sodomy in any degree~~ A violent offense pursuant
7 to Section 12-25-32.

8 "~~(3) Sexual abuse in any degree~~ Aggravated child
9 abuse as provided in Section 26-15-3.1.

10 "~~(4) Sexual misconduct.~~

11 "~~(5) Enticing a child to enter a vehicle, room,~~
12 ~~house, office, or other place, for immoral purposes.~~

13 "~~(6) Any crime involving the production of child~~
14 ~~pornography.~~

15 "~~(7) Torture and willful abuse of a child under 18~~
16 ~~years of age by responsible person as defined in Section~~
17 ~~26-15-3.~~

18 "~~(8) Sexual torture as defined in Section~~
19 ~~13A-6-65.1.~~

20 "~~(9) Attempted murder.~~

21 "(4) ~~(10)~~ Assault first in any degree.

22 "~~(11) Assault second degree.~~

23 "~~(12) Assault third degree.~~

24 "~~(13) Harassment.~~

1 "(5) Any offense involving domestic violence, elder
2 abuse, or a violation of a protection order.

3 "(6) Any attempt to commit any of the offenses
4 listed in subdivisions (1) to (5), inclusive."

5 Section 3. Sections 13A-6-81 and 13A-6-82, Code of
6 Alabama 1975, are amended to read as follows:

7 "§13A-6-81.

8 "(a) A person commits the crime of a school employee
9 engaging in a sex act with a student under the age of 19 years
10 or engaging in a sex act with a student who is a protected
11 person, as defined in Section 15-25-1, under the age of 22
12 years if he or she is a school employee and engages in sexual
13 intercourse or sodomy, as defined in Section 13A-6-60, with a
14 student, or student protected person, regardless of whether
15 the student or student protected person is male or female.
16 Consent is not a defense to a charge under this section.

17 "(b) The crime of a school employee engaging in a
18 sex act with a student or student protected person is a Class
19 B felony.

20 "§13A-6-82.

21 "(a) A person commits the crime of a school employee
22 having sexual contact with a student under the age of 19 years
23 or having sexual contact with a student who is a protected
24 person, as defined in Section 15-25-1, under the age of 22
25 years if he or she is a school employee and engages in sexual

1 contact, as defined by Section 13A-6-60, with a student or
2 student protected person, regardless of whether the student is
3 male or female. Consent is not a defense to a charge under
4 this section. The crime of a school employee having sexual
5 contact with a student or student protected person is a Class
6 C felony.

7 "(b) A person commits the crime of a school employee
8 soliciting a sex act with a student under the age of 19 years
9 or soliciting a sex act with a student who is a protected
10 person, as defined in Section 15-25-1, under the age of 22
11 years if he or she is a school employee and solicits,
12 persuades, encourages, harasses, or entices a student or
13 student protected person to engage in a sex act including, but
14 not limited to, sexual intercourse, sodomy, or sexual contact,
15 as defined by Section 13A-6-60. The crime of soliciting a
16 student or a student protected person to perform a sex act is
17 a Class A misdemeanor.

18 Section 4. Section 15-25-7 is added to the Code of
19 Alabama 1975, to read as follows:

20 §15-25-7.

21 In any criminal prosecution referred to in Section
22 15-25-1, the court may allow leading questions at trial by the
23 prosecution or defense of any victim or witness in a case who
24 is under the age of 12 or is a protected person, if the court
25 determines that the allowance of leading questions will

1 further the interests of justice. The court, on motion of the
2 prosecution or the defense, or on its own motion, may limit
3 the scope and extent of any leading questions.

4 Section 5. Section 15-25-33 of the Code of Alabama
5 1975, relating to use expert testimony as to unavailability of
6 the child to testify, is repealed.

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 09-FEB-22.

Jeff Woodard
Clerk

Senate	17-MAR-22	Amended and Passed
House	29-MAR-22	Concurred in Senate Amendment