HB37

170682-1

By Representatives Williams (JD), Boyd, Coleman, Hammon, Johnson (K), Sessions, Davis, Ainsworth, South, Harper, Greer, Rich, Ledbetter, Hill (M), Sanderford, Tuggle, Clouse, Martin, Morrow, McCutcheon, Gaston, Wingo, Polizos, Williams (JW), Wilcox, Butler, Holmes (M), Whorton (I), Wadsworth, Carns, Fincher, Mooney, Faust, Hurst, Nordgren, Chesteen, Pringle, Brown, Wood, Sells, Beech, Fridy, Rowe, Farley, Whorton (R), Patterson, Pettus, Moore (B), Ingram, Ball, Hubbard, McMillan and Shedd

RFD: Judiciary

First Read: 03-AUG-15
SYNOPSIS: This bill would provide a safe harbor provision in current law for a child who engages in the act of prostitution by providing that a sexually exploited child may not be adjudicated delinquent or convicted of a crime of prostitution, but that the child may be adjudicated a child in need of supervision or a dependent child.

This bill would prohibit the transfer of a case involving a sexually exploited child who commits an act of prostitution from the jurisdiction of juvenile court to any adult court.

This bill would provide that a juvenile court retains jurisdiction over a sexually exploited child and may issue any requisite order or conduct any hearing necessary to protect the health or safety of a sexually exploited child that is determined to be in the best interests of the child.
This bill would provide that certain social and community services shall be made available to sexually exploited children.

This bill would authorize the assessment of an additional fine of $500 upon conviction of the crimes of promoting prostitution and certain other crimes relating to prostitution and would provide that the fine be paid to a court-certified therapeutic counselor that provides education, treatment, and prevention counseling to persons convicted of prostitution offenses.

This bill would also allow the detention for 72 hours if the person is arrested for the crime of prostitution to ensure that the person has access to certain resources, such as health care, shelter, and counseling.

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates
funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.

A BILL
TO BE ENTITLED
AN ACT

To add Section 13A-12-123 to the Code of Alabama 1975, to provide a definition of "sexually exploited child"; to prohibit a sexually exploited child from being adjudicated delinquent or convicted of a crime of prostitution; to provide that a sexually exploited child engaged in prostitution may be adjudicated a child in need of supervision or a dependent child; to prohibit the transfer of a case involving a sexually exploited child who commits an act of prostitution from the jurisdiction of juvenile court to any adult court; to authorize a juvenile court to retain jurisdiction over a sexually exploited child; to provide for certain court orders in the best interests of the child; to provide that certain social and community services will be made available to
sexually exploited children; to authorize an additional fine for certain crimes relating to prostitution; to require certain persons convicted of certain prostitution related crimes to attend counseling and education programs; to allow the detention of a person for 72 hours if the person is arrested for the crime of prostitution; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the "Alabama Human Trafficking Safe Harbor Act."

Section 2. Section 13A-12-123 is added to Division 2 of Article 3 of Chapter 12 of Title 13A, Code of Alabama 1975, to read as follows:

§13A-12-123.

A sexually exploited child, as defined in Section 3, who is alleged to have committed a violation of Section 13A-12-120 or 13A-12-121, or any municipal ordinance prohibiting such acts, shall be treated pursuant to Section 4.

Section 3. (a) For the purposes of this section, "sexually exploited child" shall mean an individual under the age of 18 years who is under the jurisdiction of the juvenile
court and who has been subjected to sexual exploitation because he or she is any of the following:

(1) A victim of the crime of human trafficking sexual servitude as provided in Section 13A-6-150, et seq., Code of Alabama 1975.

(2) Engaged in prostitution as provided in Section 13A-12-120 or 13A-12-121, Code of Alabama 1975.

(3) A victim of the crime of promoting prostitution as provided in Section 13A-12-111, 13A-12-112, or 13A-12-113, Code of Alabama 1975.

(b) A sexually exploited child may not be adjudicated delinquent or convicted of a crime of prostitution as provided in Section 13A-12-120 or 13A-12-121, Code of Alabama 1975, or any municipal ordinance prohibiting such acts.

(c) In any proceeding based upon a child's arrest for an act of prostitution, there is a presumption that the child satisfies the definition of a sexually exploited child as provided in this section.

(d) If a law enforcement officer or a person seeks to file a complaint against a child for an offense of prostitution as provided in Section 13A-12-120 or 13A-12-121, Code of Alabama 1975, the juvenile court intake officer shall evaluate the complaint to determine if the child is a sexually exploited child and could have another complaint filed stating that the child is alleged to be in need of supervision or alleged to be dependent, and not a child alleged to be
delinquent, pursuant to Rule 12 of the Alabama Rules of Juvenile Procedure. A juvenile probation officer who is designated to be a juvenile court intake officer may determine if a child alleged to be in need of supervision is appropriate for an informal adjustment pursuant to Rule 15 of the Alabama Rules of Juvenile Procedure.

(e) If a petition alleging that a sexually exploited child is in need of supervision or is dependent is filed, a sexually exploited child may be adjudicated a child in need of supervision or a dependent child pursuant to Section 12-15-102(4) and (8), Code of Alabama 1975. Once the sexually exploited child is adjudicated, the juvenile court shall retain jurisdiction over the sexually exploited child and may enforce prior orders requiring payment of court-ordered monies pursuant to Section 12-15-117, Code of Alabama 1975. The juvenile court may issue any requisite order or conduct any hearing necessary to protect the health or safety of a sexually exploited child that is determined to be in the best interests of the child. The juvenile court may also, on an emergency basis, enter an order of protection or restraint to protect the health or safety of a sexually exploited child.

(f) A sexually exploited child who commits an act of prostitution as provided in Section 13A-12-120 or 13A-12-121, Code of Alabama 1975, may not be transferred from the jurisdiction of juvenile court to any adult court pursuant to Section 12-15-203, Code of Alabama 1975, except in those cases where the child has been convicted or adjudicated a youthful
offender divesting the juvenile court of jurisdiction as provided in Sections 12-15-203(i) and 12-15-204(b), Code of Alabama 1975.

(g) A sexually exploited child who commits an act of prostitution as provided in Section 13A-12-120 or 13A-12-121, Code of Alabama 1975, shall be afforded all rights pursuant to Section 12-15-202, Code of Alabama 1975.

(h) All social and community services shall be made available to a sexually exploited child. Services may include, but are not limited to, any of the following:

(1) Forensic evidence collection.
(2) Forensic interviewing.
(3) Counseling.
(4) Advocacy.
(5) Shelter.
(6) Alcohol or substance abuse treatment.
(7) Mental health services.
(8) Medical treatment.
(9) Legal services.
(10) Educational tutoring, counseling, and language interpreter services.
(11) Crisis intervention services.
(12) Safety planning.
(13) Investigation and prosecution of the individuals subjecting the child to sexual exploitation or abuse.
Section 4. (a) Notwithstanding any other fines, restitution, court costs, or docket fees, upon conviction for the offense of promoting prostitution under Division 1, Article 3, Chapter 12, Title 13A, Code of Alabama 1975, or a violation of subsection (b) or (d) of Section 13A-12-121, Code of Alabama 1975, a mandatory fine of five hundred dollars ($500) shall be assessed. The court shall order the five hundred dollar ($500) fine to be paid to the clerk of court to be distributed to a court-certified therapeutic counseling entity that provides education, treatment, and prevention counseling to adult persons convicted of prostitution offenses.

(b) A court may order an adult person convicted of an offense under Division 1, Article 3, Chapter 12, Title 13A, or subsection (b) or (d) of Section 13A-12-121, Code of Alabama 1975, to successfully attend counseling or an educational training program designed to reduce recidivism rates for these violations. Attendance of such programs shall be at the cost and expense of the person convicted of the offense.

(c) An adult person who is charged with an offense under subsection (b) or (d) of Section 13A-12-121, Code of Alabama 1975, and has no prior arrest or convictions for an offense under Sections 13A-12-111, 13A-12-112, 13A-12-113, and 13A-12-121, Code of Alabama 1975, or an offense in any other state that has the same or similar elements as those sections, may be accepted into a pretrial diversion program, provided
the adult person satisfied the requirements of subsections (a) and (b), as well as any other conditions imposed pursuant to the pretrial diversion program.

(d) Under no circumstance may an adult person be admitted into a pretrial diversion program if he or she has been previously convicted of an offense under Sections 13A-12-111, 13A-12-112, 13A-12-113, and 13A-12-121, Code of Alabama 1975, or an offense in any other state which has the same or similar elements as those sections.

(e) A person charged with an offense defined under 13A-12-120, Code of Alabama 1975, in violation of subsection (a) or (c) of Section 13A-12-121, Code of Alabama 1975, may be accepted in a pretrial diversion program, provided that he or she meets the requirements of a pretrial diversion program within the jurisdiction where the offense occurred.

Section 5. For the safety and well-being of a person arrested for the crime of prostitution under Division 2, Article 3, Chapter 12, Title 13A, Code of Alabama 1975, he or she may be held in custody for up to 72 hours. The person shall be brought before a court of competent jurisdiction as soon as possible within a 48-hour period to conduct an inquiry into the person's access to resources, such as, but not limited to, health care, shelter, mental health counseling, or financial aid. The court may issue an order to assist the person in obtaining the services and resources needed pursuant to the court's inquiry.
Section 6. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

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