

1 HB387  
2 108773-1  
3 By Representatives Lewis, Clouse, Vance and Collier  
4 RFD: Judiciary  
5 First Read: 21-JAN-10

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8 SYNOPSIS: This bill would amend the rape, sodomy, and  
9 sexual abuse statutes to prohibit any person in a  
10 position of authority over a child from having  
11 sexual contact with the child regardless of whether  
12 the child is of age to consent to the contact.

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

26 The purpose or effect of this bill would be  
27 to require a new or increased expenditure of local

1 funds within the meaning of the amendment. However,  
2 the bill does not require approval of a local  
3 governmental entity or enactment by a 2/3 vote to  
4 become effective because it comes within one of the  
5 specified exceptions contained in the amendment.

6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To amend Sections 13A-6-60, 13A-6-61, 13A-6-64, and  
12 13A-6-66 of the Code of Alabama 1975, relating to certain  
13 sexual offenses; to prohibit a person in a position of  
14 authority over a child from engaging in sexual contact with  
15 the child regardless of whether the child consents to the  
16 contact; to define a person in a position of authority; and in  
17 connection therewith would have as its purpose or effect the  
18 requirement of a new or increased expenditure of local funds  
19 within the meaning of Amendment 621 of the Constitution of  
20 Alabama of 1901, now appearing as Section 111.05 of the  
21 Official Recompilation of the Constitution of Alabama of 1901,  
22 as amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Sections 13A-6-60, 13A-6-61, 13A-6-64,  
25 and 13A-6-66 of the Code of Alabama 1975, are amended to read  
26 as follows:

27 "§13A-6-60.

1           "The following definitions apply in this article:

2           "~~(1)~~ (9) SEXUAL INTERCOURSE. Such term has its  
3 ordinary meaning and occurs upon any penetration, however  
4 slight; emission is not required.

5           "~~(2)~~ (1) DEVIATE SEXUAL INTERCOURSE. Any act of  
6 sexual gratification between persons not married to each other  
7 involving the sex organs of one person and the mouth or anus  
8 of another.

9           "~~(3)~~ (8) SEXUAL CONTACT. Any touching of the sexual  
10 or other intimate parts of a person not married to the actor,  
11 done for the purpose of gratifying the sexual desire of either  
12 party.

13           "~~(4)~~ (2) FEMALE. Any female person.

14           "~~(5)~~ (4) MENTALLY DEFECTIVE. Such term means that a  
15 person suffers from a mental disease or defect which renders  
16 him incapable of appraising the nature of his conduct.

17           "~~(6)~~ (5) MENTALLY INCAPACITATED. Such term means  
18 that a person is rendered temporarily incapable of appraising  
19 or controlling his conduct owing to the influence of a  
20 narcotic or intoxicating substance administered to him without  
21 his consent, or to any other incapacitating act committed upon  
22 him without his consent.

23           "(6) PERSON IN A POSITION OF AUTHORITY. Any person  
24 who is in the position to exercise supervision or control over  
25 a child including the parent or legal guardian of a child,  
26 employer, youth leader, scout leader, coach, teacher,  
27 counselor, school administrator, religious leader, doctor,

1 nurse, pyschologist, guardian ad litem, babysitter,  
2 grandparent, stepparent, step-grandparent, paramour of a  
3 parent or legal custodian or legal guardian, other adult  
4 member of the child's home, foster parent, child care  
5 provider, residential care provider or employee or person in a  
6 substantially similar position, or a police officer or  
7 probation officer, when the person in the position is  
8 exercising supervision, control, oversight, or custody over a  
9 child under the age of 18.

10 "(7) PHYSICALLY HELPLESS. Such term means that a  
11 person is unconscious or for any other reason is physically  
12 unable to communicate unwillingness to an act.

13 "~~(8)~~ (3) FORCIBLE COMPULSION. Physical force that  
14 overcomes earnest resistance or a threat, express or implied,  
15 that places a person in fear of immediate death or serious  
16 physical injury to himself or another person.

17 "§13A-6-61.

18 "(a) A person commits the crime of rape in the first  
19 degree if:

20 "(1) He or she engages in sexual intercourse with a  
21 member of the opposite sex by forcible compulsion; or

22 "(2) He or she engages in sexual intercourse with a  
23 member of the opposite sex who is incapable of consent by  
24 reason of being physically helpless or mentally incapacitated;  
25 or

1           "(3) He or she, being 16 years or older, engages in  
2 sexual intercourse with a member of the opposite sex who is  
3 less than 12 years old.

4           "(4) He or she, being a person in a position of  
5 authority over a child who is at least 16 years of age, but  
6 under the age of 18, engages in sexual intercourse with the  
7 child. Consent of the child is not a defense under this  
8 subsection.

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

10          "§13A-6-64.

11          "(a) A person commits the crime of sodomy in the  
12 second degree if:

13           "(1) He, being 16 years old or older, engages in  
14 deviate sexual intercourse with another person less than 16  
15 and more than 12 years old.

16           "(2) He engages in deviate sexual intercourse with a  
17 person who is incapable of consent by reason of being mentally  
18 defective.

19           "(3) He or she, being a person in a position of  
20 authority over a child who is at least 16 years of age, but  
21 under the age of 18, engages in deviate sexual intercourse  
22 with the child. Consent of the child is not a defense under  
23 this subsection.

24          (b) Sodomy in the second degree is a Class B felony.

25          "§13A-6-66.

26          "(a) A person commits the crime of sexual abuse in  
27 the first degree if:

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

3           "(2) He subjects another person to sexual contact  
4 who is incapable of consent by reason of being physically  
5 helpless or mentally incapacitated.

6           "(3) He or she, being a person in authority over a  
7 child who is at least 16 years of age, but under the age of  
8 18, subjects the child to sexual contact. Consent of the child  
9 is not a defense under this subsection.

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

12           Section 2. 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 3. 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.