

1 HB433  
2 175848-1  
3 By Representatives Williams (JD), Coleman, Boyd and Ball  
4 RFD: Public Safety and Homeland Security  
5 First Read: 17-MAR-16

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8 SYNOPSIS: This bill would provide a safe harbor  
9 provision in current law for a child who engages in  
10 the act of prostitution by providing that a  
11 sexually exploited child may not be adjudicated  
12 delinquent or convicted of a crime of prostitution,  
13 but that the child may be adjudicated a child in  
14 need of supervision or a dependent child.

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

19 This bill would provide that a juvenile  
20 court retains jurisdiction over a sexually  
21 exploited child and may issue any requisite order  
22 or conduct any hearing necessary to protect the  
23 health or safety of a sexually exploited child that  
24 is determined to be in the best interests of the  
25 child.

1           This bill would provide that certain social  
2 and community services shall be made available to  
3 sexually exploited children.

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

12           This bill would allow the detention for 72  
13 hours of a foreign national who does not speak  
14 English if the person is arrested for the crime of  
15 prostitution to ensure that the person has access  
16 to certain resources, such as health care, shelter,  
17 and counseling.

18           This bill would also require a domestic or  
19 interstate business engaging in an escort business  
20 of companionship in this state to register with the  
21 Secretary of State and would provide criminal  
22 penalties for violations.

23           Amendment 621 of the Constitution of Alabama  
24 of 1901, now appearing as Section 111.05 of the  
25 Official Recompilation of the Constitution of  
26 Alabama of 1901, as amended, prohibits a general  
27 law whose purpose or effect would be to require a

1 new or increased expenditure of local funds from  
2 becoming effective with regard to a local  
3 governmental entity without enactment by a 2/3 vote  
4 unless: it comes within one of a number of  
5 specified exceptions; it is approved by the  
6 affected entity; or the Legislature appropriates  
7 funds, or provides a local source of revenue, to  
8 the entity for the purpose.

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

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
20

21 To add Section 13A-12-123 to the Code of Alabama  
22 1975, to provide a definition of "sexually exploited child";  
23 to prohibit a sexually exploited child from being adjudicated  
24 delinquent or convicted of a crime of prostitution; to provide  
25 that a sexually exploited child engaged in prostitution may be  
26 adjudicated a child in need of supervision or a dependent  
27 child; to prohibit the transfer of a case involving a sexually

1 exploited child who commits an act of prostitution from the  
2 jurisdiction of juvenile court to any adult court; to  
3 authorize a juvenile court to retain jurisdiction over a  
4 sexually exploited child; to provide for certain court orders  
5 in the best interests of the child; to provide that certain  
6 social and community services will be made available to  
7 sexually exploited children; to authorize an additional fine  
8 for certain crimes relating to prostitution; to require  
9 certain persons convicted of certain prostitution related  
10 crimes to attend counseling and education programs; to allow  
11 the detention of a person for 72 hours if the person is  
12 arrested for the crime of prostitution; to require a domestic  
13 or interstate business engaging in an escort business of  
14 companionship in this state to register with the Secretary of  
15 State; to amend Section 15-5-61, Code of Alabama 1975, to  
16 subject certain misdemeanor offenses relating to prostitution  
17 to criminal forfeiture; and in connection therewith would have  
18 as its purpose or effect the requirement of a new or increased  
19 expenditure of local funds within the meaning of Amendment 621  
20 of the Constitution of Alabama of 1901, now appearing as  
21 Section 111.05 of the Official Recompilation of the  
22 Constitution of Alabama of 1901, as amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

4                   §13A-12-123.

5                   A sexually exploited child, as defined in Section 3,  
6 who is alleged to have committed a violation of Section  
7 13A-12-120 or 13A-12-121, or any municipal ordinance  
8 prohibiting such acts, shall be treated pursuant to Section 4.

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

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

17                   (2) Engaged in prostitution as provided in Section  
18 13A-12-120 or 13A-12-121, Code of Alabama 1975.

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

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

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

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

19 (e) If a petition alleging that a sexually exploited  
20 child is in need of supervision or is dependent is filed, a  
21 sexually exploited child may be adjudicated a child in need of  
22 supervision or a dependent child pursuant to Section  
23 12-15-102(4) and (8), Code of Alabama 1975. Once the sexually  
24 exploited child is adjudicated, the juvenile court shall  
25 retain jurisdiction over the sexually exploited child and may  
26 enforce prior orders requiring payment of court-ordered monies  
27 pursuant to Section 12-15-117, Code of Alabama 1975. The

1 juvenile court may issue any requisite order or conduct any  
2 hearing necessary to protect the health or safety of a  
3 sexually exploited child that is determined to be in the best  
4 interests of the child. The juvenile court may also, on an  
5 emergency basis, enter an order of protection or restraint to  
6 protect the health or safety of a sexually exploited child.

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

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

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

- 23 (1) Forensic evidence collection.
- 24 (2) Forensic interviewing.
- 25 (3) Counseling.
- 26 (4) Advocacy.
- 27 (5) Shelter.



- 1 (6) Alcohol or substance abuse treatment.
- 2 (7) Mental health services.
- 3 (8) Medical treatment.
- 4 (9) Legal services.
- 5 (10) Educational tutoring, counseling, and language
- 6 interpreter services.
- 7 (11) Crisis intervention services.
- 8 (12) Safety planning.
- 9 (13) Investigation and prosecution of the
- 10 individuals subjecting the child to sexual exploitation or
- 11 abuse.

12 Section 4. (a) (1) Notwithstanding any other fines,  
13 restitution, court costs, or docket fees, upon conviction for  
14 the offense of promoting prostitution under Division 1,  
15 Article 3, Chapter 12, Title 13A, Code of Alabama 1975, or a  
16 violation of subsection (b) or (d) of Section 13A-12-121, Code  
17 of Alabama 1975, a mandatory fine of five hundred dollars  
18 (\$500) shall be assessed. The court shall order the five  
19 hundred dollar (\$500) fine to be paid to the clerk of court to  
20 be distributed to a court-certified therapeutic counseling  
21 entity that provides education, treatment, and prevention  
22 counseling to adult persons convicted of prostitution  
23 offenses.

24 (2) Any fine imposed by the court for a second or  
25 subsequent conviction under subdivision (1) shall increase by  
26 50 percent for each subsequent conviction through a fourth  
27 conviction.

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

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

19 (d) Under no circumstance may an adult person be  
20 admitted into a pretrial diversion program if he or she has  
21 been previously convicted of an offense under Sections  
22 13A-12-111, 13A-12-112, 13A-12-113, and 13A-12-121, Code of  
23 Alabama 1975, or an offense in any other state which has the  
24 same or similar elements as those sections.

25 (e) A person charged with an offense defined under  
26 13A-12-120, Code of Alabama 1975, in violation of subsection  
27 (a) or (c) of Section 13A-12-121, Code of Alabama 1975, may be

1 accepted in a pretrial diversion program, provided that he or  
2 she meets the requirements of a pretrial diversion program  
3 within the jurisdiction where the offense occurred.

4 Section 5. Notwithstanding Section 12-14-1, Code of  
5 Alabama 1975, a misdemeanor offense under Article 3, Chapter  
6 12, Title 13A, Code of Alabama 1975, relating to prostitution  
7 offenses, including the attempt of any of the misdemeanor  
8 offenses included in Article 13, shall be prosecuted in the  
9 district court in the county where the offense occurred.

10 Section 6. (a) For the safety and well-being of a  
11 person arrested for the crime of prostitution under Division  
12 2, Article 3, Chapter 12, Title 13A, Code of Alabama 1975, he  
13 or she may be held in custody for up to 72 hours. The person  
14 shall be brought before a court of competent jurisdiction as  
15 soon as possible within a 48-hour period to conduct an inquiry  
16 into the person's access to resources, such as, but not  
17 limited to, health care, shelter, mental health counseling, or  
18 financial aid. The court may issue an order to assist the  
19 person in obtaining the services and resources needed pursuant  
20 to the court's inquiry.

21 (b) A photograph of a person taken by a law  
22 enforcement agency upon the arrest of a person for the crime  
23 of prostitution under Division 2, Article 3, Chapter 12, Title  
24 13A, Code of Alabama 1975, is not a public record and may not  
25 be published in any printed or electronic media or provided to  
26 any person without an order of a district court judge with  
27 jurisdiction over the person's criminal case.

1           Section 7. (a) Within 30 days from the effective  
2 date of this act, a domestic or interstate business engaging  
3 in an escort business of companionship in this state must  
4 register with the Secretary of State.

5           (b) (1) A violation of subsection (a) is a Class D  
6 misdemeanor.

7           (2) A second or subsequent violation of subsection  
8 (a) is a Class D felony.

9           Section 8. Section 15-5-61, Code of Alabama 1975, is  
10 amended to read as follows:

11           "§15-5-61.

12           "(a) Any property, proceeds, or instrumentality of  
13 every kind, used or intended for use in the course of, derived  
14 from, or realized through the commission of a felony offense,  
15 as defined in this article, or a misdemeanor offense under  
16 Article 3, Chapter 12, Title 13A, relating to prostitution  
17 offenses, or as inducement or attempt or conspiracy to commit  
18 such offenses, is subject to civil forfeiture.

19           "(b) This article does not apply to or limit  
20 forfeiture under Sections 20-2-93, 13A-11-84, 13A-12-30, or  
21 13A-12-198."

22           Section 9. Although this bill would have as its  
23 purpose or effect the requirement of a new or increased  
24 expenditure of local funds, the bill is excluded from further  
25 requirements and application under Amendment 621, now  
26 appearing as Section 111.05 of the Official Recompilation of  
27 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an  
2 existing crime.

3 Section 10. This act shall become effective on the  
4 first day of the third month following its passage and  
5 approval by the Governor, or its otherwise becoming law.