

1 SB179  
2 173357-1  
3 By Senator Ward  
4 RFD: Judiciary  
5 First Read: 09-FEB-16

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8 SYNOPSIS: Under existing law, it is a crime to  
9 disseminate, publicly display, possess, or possess  
10 with the intent to disseminate obscene materials  
11 containing visual depictions of persons under 17  
12 years of age.

13 This bill would further clarify the  
14 definition of disseminate by removing the  
15 requirement of monetary consideration and would  
16 include in the definition sharing or trading such  
17 visual depictions.

18 This bill would include under the crime of  
19 possession of obscene materials containing visual  
20 depictions of persons under 17 years of age a  
21 visual depiction of breast nudity.

22 This bill would distinguish between adult  
23 and juvenile offenders for the offense of  
24 dissemination of obscene materials containing  
25 visual depictions of persons under 17 years of age  
26 and would provide different penalties for each.

1                   This bill would exempt offenders under 19  
2 years of age convicted of disseminating or publicly  
3 displaying obscene materials containing visual  
4 depictions of persons under 17 years of age from  
5 the requirements of the Alabama Sex Offender  
6 Registration and Community Notification Act on the  
7 first or second offense.

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

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

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT

5  
6 To amend Sections 13A-12-190, 13A-12-191, and  
7 13A-12-192 of the Code of Alabama 1975, relating to  
8 disseminating, publicly displaying, possessing, or possessing  
9 with the intent to disseminate obscene materials containing  
10 visual depictions of persons under 17 years of age; to further  
11 define terms; to include under the crime of possession a  
12 visual depiction of breast nudity; to distinguish between  
13 adult and juvenile offenders for the crime of dissemination  
14 and to provide different penalties; to exempt offenders under  
15 19 years of age convicted of disseminating or publicly  
16 displaying obscene materials from the requirements of the  
17 Alabama Sex Offender Registration and Community Notification  
18 Act on the first or second offense; and in connection  
19 therewith to have as its purpose or effect the requirement of  
20 a new or increased expenditure of local funds within the  
21 meaning of Amendment 621 of the Constitution of Alabama of  
22 1901, now appearing as Section 111.05 of the Official  
23 Recompilation of the Constitution of Alabama of 1901, as  
24 amended.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1                   Section 1. Sections 13A-12-190, 13A-12-191, and  
2                   13A-12-192 of the Code of Alabama 1975, are amended to read as  
3                   follows:

4                   "§13A-12-190.

5                   "For the purposes of this division, the following  
6                   terms shall have the meanings respectively ascribed to them by  
7                   this section:

8                   "(1) DISSEMINATE. To sell, lend ~~or show for monetary~~  
9                   ~~consideration, show, share, or trade~~ or to offer or agree to  
10                  do the same.

11                  "(2) DISPLAY PUBLICLY. The exposing, placing,  
12                  posting, exhibiting or in any fashion displaying in any  
13                  location, whether public or private, an item in such a manner  
14                  that it may be readily seen and its content or character  
15                  distinguished by normal unaided vision viewing it from a  
16                  public thoroughfare, depot or vehicle.

17                  "(3) PUBLIC THOROUGHFARE, DEPOT or VEHICLE. Any  
18                  street, highway, park, depot or transportation platform or  
19                  other place, whether indoors or out, or any vehicle for public  
20                  transportation, owned or operated by government, either  
21                  directly or through a public corporation or authority, or  
22                  owned or operated by any agency of public transportation that  
23                  is designed for the use, enjoyment or transportation of the  
24                  general public.

25                  "(4) KNOWINGLY. A person knowingly disseminates or  
26                  publicly displays obscene matter when the person knows the

1 nature of the matter. A person knows the nature of the matter  
2 when either of the following circumstances exist:

3 "a. The person is aware of the character and content  
4 of the matter; or

5 "b. The person recklessly disregards circumstances  
6 suggesting the character and content of the matter.

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

9 "a. Flagellation or torture, for the purpose of  
10 sexual stimulation, by or upon a person who is nude or clad in  
11 undergarments or in a revealing or bizarre costume; or

12 "b. The condition of a person who is nude or clad in  
13 undergarments or in a revealing or bizarre costume being  
14 fettered, bound or otherwise physically restrained for the  
15 purpose of sexual stimulation.

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

18 "(7) SEXUAL INTERCOURSE. Intercourse, real or  
19 simulated, whether genital-genital, oral-genital, anal-genital  
20 or oral-anal, whether between persons of the same or opposite  
21 sex or between a human and an animal.

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

25 "(9) OTHER SEXUAL CONDUCT. Any touching of the  
26 genitals, pubic areas or buttocks of the human male or female,  
27 or the breasts of the female, whether alone or between members

1 of the same or opposite sex or between humans and animals in  
2 an act of apparent sexual stimulation or gratification.

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

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

8 "(12) MATTER. Any book, magazine, newspaper, or  
9 other printed material, or any picture, photograph, motion  
10 picture, video cassette, tape, record, digital video disc  
11 (DVD), video compilation, or electronic depiction in a  
12 comparable format, or an image, file, download, or other  
13 content stored, or reproduced by using a computer or  
14 electronic device or other digital storage, or any other  
15 thing, articles, or materials that either are or contain a  
16 photographic or other visual depiction of a live act,  
17 performance, or event.

18 "(13) OBSCENE. a. When used to describe any matter  
19 that contains a visual reproduction of breast nudity, such  
20 term means matter that:

21 "1. Applying contemporary local community standards,  
22 on the whole, appeals to the prurient interest; and

23 "2. Is patently offensive; and

24 "3. On the whole, lacks serious literary, artistic,  
25 political or scientific value.

26 "b. When used to describe matter that is a depiction  
27 of an act of sado-masochistic abuse, sexual intercourse,

1 sexual excitement, masturbation, genital nudity, or other  
2 sexual conduct, such term means matter containing such a  
3 visual reproduction that itself lacks serious literary,  
4 artistic, political or scientific value.

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

7 "(15) VISUAL DEPICTION. A portrayal, representation,  
8 illustration, image, likeness, or other thing that creates a  
9 sensory impression, whether an original, duplicate, or  
10 reproduction.

11 "(16) SEPARATE OFFENSE. The depiction of an  
12 individual less than 17 years of age that violates this  
13 division shall constitute a separate offense for each single  
14 visual depiction.

15 "§13A-12-191.

16 "Any person who shall knowingly disseminate or  
17 display publicly any obscene matter containing a visual  
18 depiction of a person under the age of 17 years engaged in any  
19 act of sado-masochistic abuse, sexual intercourse, sexual  
20 excitement, masturbation, breast nudity, genital nudity, or  
21 other sexual conduct shall be ~~guilty of a Class B felony.~~  
22 punished as follows:

23 "(1) Any person 19 years of age or older who  
24 violates this section or who does not meet the criteria under  
25 subdivision (2), shall be guilty of a Class B felony.

26 "(2) Any person under 19 years of age who violates  
27 this section by dissemination or public display of obscene



1 material depicting a person who is older than 12 years of age  
2 but under 17 years of age, shall be guilty of a Class A  
3 misdemeanor for the first offense and a Class D felony for the  
4 second or subsequent offense.

5 "(3) A person convicted under subdivision (2) shall  
6 be exempt from the requirements of the Alabama Sex Offender  
7 Registration and Community Notification Act upon the first and  
8 second offense, but shall be subject to the requirements of  
9 the Alabama Sex Offender Registration and Community  
10 Notification Act upon a third or subsequent offense.

11 "§13A-12-192.

12 "(a) Any person who knowingly possesses with intent  
13 to disseminate any obscene matter that contains a visual  
14 depiction of a person under the age of 17 years engaged in any  
15 act of sado-masochistic abuse, sexual intercourse, sexual  
16 excitement, masturbation, breast nudity, genital nudity, or  
17 other sexual conduct shall be guilty of a Class B felony.  
18 Possession of three or more copies of the same visual  
19 depiction contained in obscene matter is prima facie evidence  
20 of possession with intent to disseminate the same.

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

1                   Section 2. Although this bill would have as its  
2                   purpose or effect the requirement of a new or increased  
3                   expenditure of local funds, the bill is excluded from further  
4                   requirements and application under Amendment 621, now  
5                   appearing as Section 111.05 of the Official Recompilation of  
6                   the Constitution of Alabama of 1901, as amended, because the  
7                   bill defines a new crime or amends the definition of an  
8                   existing crime.

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