

1 SB354
2 192098-1
3 By Senators Figures, Ward, Coleman-Madison, Dunn, Orr,
4 Smitherman and Scofield
5 RFD: Judiciary
6 First Read: 01-MAR-18

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8 SYNOPSIS: Under existing law, deviate sexual
9 intercourse is defined as any act of sexual
10 gratification between persons not married to each
11 other involving the sex organs of one person and
12 the mouth or anus of another.

13 Under existing law, sexual contact is
14 defined as any touching of the sexual or other
15 intimate parts of a person not married to the
16 actor, done for the purpose of gratifying the
17 sexual desire of either party.

18 Under existing law, mental defectiveness,
19 mental incapacitation, and physical helplessness
20 are individually defined and separated into various
21 sexual offenses.

22 This bill would rename deviate sexual
23 intercourse as sexual battery; include mental
24 defectiveness, mental incapacitation, and physical
25 helplessness in a broad definition of
26 incapacitation; and further redefine sexual contact

1 to include touching that occurs through clothing
2 without regard to marital relationship.

3 Under existing law, forcible compulsion
4 requires physical force that overcomes earnest
5 resistance or a threat that places a person in fear
6 of immediate death or serious physical injury.

7 This bill would expand the definition of
8 forcible compulsion.

9 Under existing law, sexual misconduct only
10 involves sexual intercourse and deviate sexual
11 intercourse.

12 This bill would provide that certain sexual
13 contact can be an offense under sexual misconduct.

14 Existing law sometimes provides for offenses
15 to be committed only on a member of the
16 perpetrator's opposite sex.

17 Under existing law, sexual torture only
18 involves penetration with an inanimate object.

19 This bill would remove the requirement that
20 certain offenses may only be committed on a member
21 of the perpetrator's opposite sex and would include
22 certain types of infliction of physical injury to
23 sexual organs as an additional offenses under
24 sexual torture.

25 This bill would also make certain technical
26 corrections, including numbering errors contained
27 within lists, of the Alabama Sex Offender

1 Registration and Notification provisions; and
2 specify that a conviction of a foster parent
3 engaging in a sex act, having sexual contact, or
4 soliciting a sex act or sexual contact with a
5 foster child is considered a sex crime for purposes
6 of registration and notification.

7 Under existing law, a person charged with
8 the crime of rape, sodomy, or sexual misconduct may
9 be ordered by a court to submit to a test for
10 sexually transmitted diseases if requested by an
11 alleged victim or the parent or guardian of an
12 alleged victim.

13 This bill would also authorize testing for
14 other crimes in which the victim was compelled to
15 engage in sexual activity by force and would
16 require that testing be performed within 48 hours
17 of service of an information or indictment, if an
18 information or indictment has been presented and
19 the defendant is in custody.

20 Amendment 621 of the Constitution of Alabama
21 of 1901, now appearing as Section 111.05 of the
22 Official Recompilation of the Constitution of
23 Alabama of 1901, as amended, prohibits a general
24 law whose purpose or effect would be to require a
25 new or increased expenditure of local funds from
26 becoming effective with regard to a local
27 governmental entity without enactment by a 2/3 vote

1 unless: it comes within one of a number of
2 specified exceptions; it is approved by the
3 affected entity; or the Legislature appropriates
4 funds, or provides a local source of revenue, to
5 the entity for the purpose.

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

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 Relating to sexual offenses; to amend Sections
19 13A-6-60, 13A-6-61, 13A-6-62, 13A-6-63, 13A-6-64, 13A-6-65,
20 13A-6-65.1, 13A-6-66, 13A-6-67, 13A-6-70, 13A-6-71, 13A-6-81,
21 13A-6-82, 13A-6-83, 13A-11-9, 13A-12-120, 13A-12-121,
22 15-20A-6, 15-20A-44, 15-23-101, and 15-23-102, Code of Alabama
23 1975, and Sections 13A-6-122, 13A-6-241, 13A-6-243, and
24 15-20A-5, Code of Alabama 1975, as added or amended by Act
25 2017-414, 2017 Regular Session, to revise certain definitions
26 and sexual offenses; to expand the definition of forcible
27 compulsion; to provide that certain sexual contact can be an

1 offense under sexual misconduct; to provide additional
2 offenses for sexual torture; to include foster parent engaging
3 in sex act to sex offender registration and notification and
4 make technical corrections; to authorize a sexually
5 transmitted disease test in other crimes where the victim was
6 forced to engage in sexual activity; and in connection
7 therewith would have as its purpose or effect the requirement
8 of a new or increased expenditure of local funds within the
9 meaning of Amendment 621 of the Constitution of Alabama of
10 1901, now appearing as Section 111.05 of the Official
11 Recompilation of the Constitution of Alabama of 1901, as
12 amended.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 13A-6-60, 13A-6-61, 13A-6-62,
15 13A-6-63, 13A-6-64, 13A-6-65, 13A-6-65.1, 13A-6-66, 13A-6-67,
16 13A-6-70, 13A-6-71, 13A-6-81, 13A-6-82, 13A-6-83, 13A-11-9,
17 13A-12-120, 13A-12-121, 15-20A-6, 15-20A-44, 15-23-101, and
18 15-23-102, Code of Alabama 1975, and Sections 13A-6-122,
19 13A-6-241, 13A-6-243, and 15-20A-5, Code of Alabama 1975, as
20 added or amended by Act 2017-414, 2017 Regular Session, are
21 amended to read as follows:

22 "§13A-6-60.

23 "The following definitions apply in this article:

24 "(1) SEXUAL INTERCOURSE. Such term has its ordinary
25 meaning and occurs upon any penetration, however slight;
26 emission is not required.

1 "~~(2) DEVIATE SEXUAL INTERCOURSE. Any act of sexual~~
2 gratification between persons not married to each other
3 involving the sex organs of one person and the mouth or anus
4 of another. SEXUAL BATTERY. Any sexual act involving the
5 genitals of one person and the mouth or anus of another
6 person. Penetration is not required.

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

11 "~~(4) FEMALE. Any female person. INCAPACITATED. Such~~
12 term includes any of the following:

13 "a. A person who suffers from a mental or
14 developmental disease or disability which renders the person
15 incapable of appraising the nature of his or her conduct.

16 "b. A person who is temporarily incapable of
17 appraising or controlling his or her conduct due to the
18 influence of a narcotic, anesthetic, or intoxicating substance
19 and such condition was known or should have been reasonably
20 known to the offender.

21 "c. A person who is unable to give consent or to
22 communicate an unwillingness to act because the person is
23 unconscious, asleep, or is otherwise physically limited or
24 unable to communicate.

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

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

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

10 "~~(8)~~ (5) FORCIBLE COMPULSION. Physical force that
11 overcomes earnest resistance or a threat, express or implied,
12 that places a person in fear of immediate death or serious
13 physical injury to himself or another person. Use of, or
14 threatened use of, physical force or violence or the use of
15 restraint, duress, menace, coercion, or physical injury,
16 express or implied. Forcible compulsion also includes moral,
17 psychological, or intellectual force. Factors to consider in
18 determining force include, but are not limited to, the
19 respective ages and sizes of the victim and the accused; the
20 respective mental and physical conditions of the victim and
21 the accused; the atmosphere and physical setting in which the
22 incident was alleged to have taken place; the extent to which
23 the accused may have been in a position of authority,
24 domination, or custodial control over the victim; or whether
25 the victim was under duress. Forcible compulsion does not
26 include proof of resistance by the victim.

27 "§13A-6-61.

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

3 "(1) He or she engages in sexual intercourse with a
4 ~~member of the opposite sex~~ another person by forcible
5 compulsion; or

6 "(2) He or she engages in sexual intercourse with a
7 ~~member of the opposite sex~~ another person who is incapable of
8 consent by reason of being ~~physically helpless or mentally~~
9 incapacitated; or

10 "(3) He or she, being 16 years or older, engages in
11 sexual intercourse with a ~~member of the opposite sex~~ another
12 person who is less than 12 years ~~old~~ of age.

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

14 "§13A-6-62.

15 "(a) A person commits the crime of rape in the
16 second degree if:

17 "~~(1)~~ Being 16 years old or older, he or she engages
18 in sexual intercourse with a ~~member of the opposite sex~~
19 another person who is less than 16 and more than 12 years old;
20 provided, however, the actor is at least two years older than
21 the ~~member of the opposite sex~~ other person.

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 mentally defective~~.

25 "(b) Rape in the second degree is a Class B felony.

26 "§13A-6-63.

1 "(a) A person commits the crime of sodomy in the
2 first degree if:

3 "(1) He or she engages in ~~deviate sexual intercourse~~
4 battery with another person by forcible compulsion; or

5 "(2) He or she engages in ~~deviate sexual intercourse~~
6 battery with ~~a~~ another person who is incapable of consent by
7 reason of being ~~physically helpless or mentally~~ incapacitated;
8 or

9 "(3) He or she, being 16 years old or older, engages
10 in ~~deviate sexual intercourse~~ battery with a person who is
11 less than 12 years ~~old~~ of age.

12 "(b) Sodomy in the first degree is a Class A felony.

13 "§13A-6-64.

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

16 "~~(1)~~ He or she, being 16 years old or older, engages
17 in ~~deviate sexual intercourse~~ battery with another person less
18 than 16 and more than 12 years old; provided, however, the
19 actor is at least two years older than the other person.

20 "~~(2) He engages in deviate sexual intercourse with a~~
21 ~~person who is incapable of consent by reason of being mentally~~
22 ~~defective.~~

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

25 "§13A-6-65.

26 "(a) A person commits the crime of sexual misconduct
27 if:

1 "~~(1) Being a male, he~~ He or she engages in sexual
2 intercourse with ~~a female~~ another person without his or her
3 consent, under circumstances other than those covered by
4 Sections 13A-6-61 and 13A-6-62; or with ~~her~~ consent where
5 consent was obtained by the use of any fraud or artifice; or

6 "~~(2) Being a female, she engages in sexual~~
7 ~~intercourse with a male without his consent; or~~

8 "~~(3) (2)~~ He or she engages in ~~deviate~~ sexual
9 ~~intercourse~~ battery with another person under circumstances
10 other than those covered by Sections 13A-6-63 and 13A-6-64; or
11 with consent where consent was obtained by the use of fraud or
12 artifice; or ~~Consent is no defense to a prosecution under~~
13 ~~this subdivision.~~

14 "(3) He or she engages in sexual contact with
15 another person without his or her consent under circumstances
16 other than those under Sections 13A-6-66, 13A-6-67, and
17 13A-6-69.1; or with consent where consent was obtained by the
18 use of fraud or artifice.

19 "(b) Sexual misconduct is a Class A misdemeanor.

20 "§13A-6-65.1.

21 "(a) A person commits the crime of sexual torture:

22 "(1) By penetrating the vagina, ~~or~~ anus, or mouth of
23 another person with an inanimate object by forcible compulsion
24 with the intent to sexually torture or to sexually abuse; or.

25 "(2) By penetrating the vagina ~~or~~ anus, or mouth of
26 a person who is incapable of consent by reason of ~~physical~~
27 ~~helplessness or mental incapacity~~ being incapacitated with an

1 inanimate object, with the intent to sexually torture or to
2 sexually abuse; or.

3 "(3) By penetrating the vagina, ~~or~~ anus, or mouth of
4 a person who is less than 12 years old with an inanimate
5 object, by a person who is 16 years old or older with the
6 intent to sexually torture or to sexually abuse; or.

7 "(4) By inflicting physical injury, including, but
8 not limited to, burning, crushing, wounding, mutilating, or
9 assaulting the sex organs or intimate parts of another person
10 with the intent to sexually torture or sexually abuse.

11 "(b) The crime of sexual torture is a Class A
12 felony.

13 "§13A-6-66.

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

16 "(1) He or she subjects another person to sexual
17 contact by forcible compulsion; or

18 "(2) He or she subjects another person to sexual
19 contact who is incapable of consent by reason of being
20 ~~physically helpless or mentally~~ incapacitated.

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

23 "§13A-6-67.

24 "(a) A person commits the crime of sexual abuse in
25 the second degree if:

1 "(1) He or she subjects another person to sexual
2 contact who is incapable of consent by reason of some factor
3 other than being less than 16 years old; or

4 "(2) He or she, being 19 years old or older,
5 subjects another person to sexual contact who is less than 16
6 years old, but more than 12 years old.

7 "(b) Sexual abuse in second degree is a Class A
8 misdemeanor, except that if a person commits a second or
9 subsequent offense of sexual abuse in the second degree within
10 one year of another sexual offense, the offense is a Class C
11 felony.

12 "§13A-6-70.

13 "(a) ~~Whether or not specifically~~ Unless otherwise
14 stated, ~~it is~~ an element of every offense defined in this
15 article, ~~with the exception of subdivision (a) (3) of Section~~
16 ~~13A-6-65,~~ is that the sexual act was committed without the
17 consent of the victim.

18 "(b) Lack of consent results from:

19 "(1) Forcible compulsion; or

20 "(2) ~~Incapacity to consent~~ Being incapable of
21 consent.; ~~or~~

22 "~~(3) If the offense charged is sexual abuse, any~~
23 ~~circumstances, in addition to forcible compulsion or~~
24 ~~incapacity to consent, in which the victim does not expressly~~
25 ~~or impliedly acquiesce in the actor's conduct.~~

26 "(c) A person is deemed incapable of consent if ~~he~~
27 the person is:

1 "(1) Less than 16 years old; or

2 "(2) ~~Mentally defective;~~ or Incapacitated.

3 "~~(3) Mentally incapacitated;~~ or

4 "~~(4) Physically helpless.~~

5 "(d) Consent to engage in sexual intercourse, sexual
6 battery, sexual acts, or sexual contact may be communicated by
7 words or actions. The existence of a current or previous
8 marital, dating, social, or sexual relationship with the
9 defendant is not sufficient to constitute consent. Evidence
10 that the victim suggested, requested, or otherwise
11 communicated to the defendant that the defendant use a condom
12 or other birth control device, without additional evidence of
13 consent, is not sufficient to constitute consent.

14 "§13A-6-71.

15 "(a) A person commits the crime of engaging in a sex
16 act with a foster child if he or she is a foster parent and
17 engages in sexual intercourse, ~~as defined by Section~~
18 ~~13A-6-60(1),~~ or ~~deviant sexual intercourse~~ battery, as defined
19 by Section ~~13A-6-60(2)~~ 13A-6-60, with a foster child under the
20 age of 19 years who is under his or her care or supervision.
21 Engaging in a sex act with a foster child is a Class B felony.

22 "(b) A person commits the crime of engaging in a
23 sexual contact with a foster child if he or she is a foster
24 parent and engages in a sexual contact, pursuant to Section
25 ~~13A-6-60(3)~~ 13A-6-60, with a foster child under the age of 19
26 years who is under his or her care or supervision. Engaging in
27 sexual contact with a foster child is a Class C felony.

1 "(c) A person commits the crime of soliciting a sex
2 act or sexual contact with a foster child if he or she is a
3 foster parent and solicits, persuades, encourages, harasses,
4 or entices a foster child under the age of 19 to engage in a
5 sex act including, but not limited to, sexual intercourse, ~~as~~
6 ~~defined by Section 13A-6-30 (1), deviate sexual intercourse~~
7 ~~battery, as defined by Section 13A-6-30 (2), or sexual~~
8 contact, as defined by Section ~~13A-6-30 (3)~~ 13A-6-60. The
9 crime of soliciting a sex act or sexual contact with a foster
10 child is a Class A misdemeanor.

11 "(d) Consent is not a defense to a charge under
12 subsections (a), (b), or (c).

13 "(e) For the purposes of this section a foster
14 parent is an individual approved or licensed by the Department
15 of Human Resources or other child placing agencies who
16 provides care and supervision to a foster child under the
17 temporary or permanent custody of the department.

18 "§13A-6-81.

19 "(a) A person commits the crime of a school employee
20 engaging in a sex act with a student under the age of 19 years
21 if he or she is a school employee and engages in sexual
22 intercourse ~~as defined by Section 13A-6-60(1) or deviant~~
23 ~~sexual intercourse battery,~~ as defined by Section 13A-6-60(2)
24 13A-6-60, with a student, regardless of whether the student is
25 male or female. Consent is not a defense to a charge under
26 this section.

1 "(b) The crime of a school employee engaging in a
2 sex act with a student is a Class B felony.

3 "§13A-6-82.

4 "(a) A person commits the crime of a school employee
5 having sexual contact with a student under the age of 19 years
6 if he or she is a school employee and engages in sexual
7 contact, as defined by Section ~~13A-6-60(3)~~ 13A-6-60, with a
8 student, regardless of whether the student is male or female.
9 Consent is not a defense to a charge under this section. The
10 crime of a school employee having sexual contact with a
11 student is a Class C felony.

12 "(b) A person commits the crime of a school employee
13 soliciting a sex act with a student under the age of 19 years
14 if he or she is a school employee and solicits, persuades,
15 encourages, harasses, or entices a student to engage in a sex
16 act including, but not limited to, sexual intercourse, ~~as~~
17 ~~defined by Section 13A-6-30 (1), deviate sexual intercourse~~
18 ~~battery, as defined by Section 13A-6-30 (2), or sexual~~
19 contact, as defined by Section ~~13A-6-30 (3)~~ 13A-6-60. The
20 crime of soliciting a student to perform a sex act is a Class
21 A misdemeanor.

22 "§13A-6-83.

23 "A school employee charged with the crime of
24 engaging in a sex act or ~~deviant sexual intercourse~~ battery
25 with a student or the crime of having sexual contact with a
26 student may be placed on paid administrative leave while the
27 charge is adjudicated. Upon the adjudication of the charge,

1 further disciplinary action may be taken in accordance with
2 the Teacher Tenure Act, Chapter 24 of Title 16, the Teacher
3 Accountability Act, Chapter 24B of Title 16, or the Fair
4 Dismissal Act, Article 4 of Chapter 26 of Title 36, whichever
5 is applicable.

6 "§13A-6-122.

7 ~~"In addition to the provisions of Section 13A-6-69,~~
8 ~~a~~ A person who, knowingly, entices, induces, persuades,
9 seduces, prevails, advises, coerces, lures, or orders, or
10 attempts to entice, induce, persuade, seduce, prevail, advise,
11 coerce, lure, or order, by means of a computer, on-line
12 service, Internet service, Internet bulletin board service,
13 weblog, cellular phone, video game system, personal data
14 assistant, telephone, facsimile machine, camera, universal
15 serial bus drive, writable compact disc, magnetic storage
16 device, floppy disk, or any other electronic communication or
17 storage device, a child who is at least three years younger
18 than the defendant, or another person believed by the
19 defendant to be a child at least three years younger than the
20 defendant to meet with the defendant or any other person for
21 the purpose of engaging in sexual intercourse, ~~deviate~~ sexual
22 ~~intercourse~~ battery, sexual contact, sexual performance,
23 obscene sexual performance, sexual conduct, or genital
24 mutilation or directs a child to engage in sexual intercourse,
25 ~~deviate~~ sexual ~~intercourse~~ battery, sexual contact, sexual
26 performance, obscene sexual performance, sexual conduct, or
27 genital mutilation, is guilty of electronic solicitation of a

1 child. Any person who violates this section commits a Class B
2 felony.

3 "§13A-6-241.

4 "(a) A person commits the crime of sexual extortion
5 if he or she knowingly causes or attempts to cause another
6 person to engage in sexual intercourse, ~~deviate~~ sexual
7 ~~intercourse~~ battery, sexual contact, or in a sexual act or to
8 produce any photograph, digital image, video, film, or other
9 recording of any person, whether recognizable or not, engaged
10 in any act of sadomasochistic abuse, sexual intercourse,
11 ~~deviate~~ sexual battery, sexual excitement, masturbation,
12 breast nudity, genital nudity, or other sexual conduct by
13 ~~transmitting any communication containing~~ communicating any
14 threat to injure the body, property, or reputation of any
15 person.

16 "(b) Sexual extortion is a Class B felony.

17 "§13A-6-243.

18 "(a) (1) A person commits the crime of directing a
19 child to engage in sexual intercourse or ~~deviate~~ sexual
20 ~~intercourse~~ battery if he or she knowingly entices, allures,
21 persuades, induces, or directs any person under the age of 12
22 to engage in sexual intercourse or ~~deviate~~ sexual battery with
23 another person ~~under the age of 12~~.

24 "(2) Directing a child to engage in sexual
25 intercourse or ~~deviate~~ sexual ~~intercourse~~ battery is a Class A
26 felony.

1 "(b) (1) A person commits the crime of directing a
2 child to engage in sexual contact if he or she knowingly
3 entices, allures, persuades, induces, or directs any person
4 under the age of 12 to engage in sexual contact with another
5 person ~~under the age of 12.~~

6 "(2) A violation of this section is a Class C
7 felony.

8 "§13A-11-9.

9 "(a) A person commits the crime of loitering if he:

10 "(1) Loiters, remains or wanders about in a public
11 place for the purpose of begging; or

12 "(2) Loiters or remains in a public place for the
13 purpose of gambling; or

14 "(3) Loiters or remains in a public place for the
15 purpose of engaging or soliciting another person to engage in
16 prostitution or ~~deviate sexual intercourse~~ battery; or

17 "(4) Being masked, loiters, remains or congregates
18 in a public place; or

19 "(5) Loiters or remains in or about a school,
20 college or university building or grounds after having been
21 told to leave by any authorized official of such school,
22 college or university, and not having any reason or
23 relationship involving custody of or responsibility for a
24 pupil or any other specific, legitimate reason for being
25 there, and not having written permission from a school,
26 college or university administrator; or

1 "(6) Loiters or remains in any transportation
2 facility, unless specifically authorized to do so, for the
3 purpose of soliciting or engaging in any business, trade or
4 commercial transactions involving the sale of merchandise or
5 services; or

6 "(7) Loiters or remains in any place with one or
7 more persons for purpose of unlawfully using or possessing a
8 dangerous drug.

9 "(b) A person does not commit a crime under
10 subdivision (a) (4) of this section if he is going to or from
11 or staying at a masquerade party, or is participating in a
12 public parade or presentation of an educational, religious, or
13 historical character or in an event as defined in subdivision
14 (1) of Section 13A-11-140.

15 "(c) ~~"Deviate sexual intercourse~~ Sexual battery" in
16 subdivision (a) (3) of this section is defined as in
17 subdivision (2) of Section 13A-6-60.

18 "(d) "Dangerous drug" in subdivision (a) (7) of this
19 section means any narcotic, drug or controlled substance as
20 defined in Chapter 2 of Title 20 of this Code and any schedule
21 incorporated therein.

22 "(e) Loitering is a violation.

23 "§13A-12-120.

24 "For the purpose of this division, the term
25 "prostitution" shall mean the commission by a person of any
26 natural or unnatural sexual act, ~~deviate sexual intercourse~~

1 battery, or sexual contact for monetary consideration or other
2 thing of value.

3 "§13A-12-121.

4 "(a) No person shall commit an act of prostitution
5 as defined in Section 13A-12-120.

6 "(b) No person shall solicit, compel, or coerce any
7 person to have sexual intercourse or participate in any
8 natural or unnatural sexual act, ~~deviate sexual intercourse~~
9 battery, or sexual contact for monetary consideration or other
10 thing of marketable value.

11 "(c) No person shall agree to engage in sexual
12 intercourse, deviate sexual intercourse, or sexual contact
13 with another or participate in the act for monetary
14 consideration or other thing of marketable value and give or
15 accept monetary consideration or other thing of value in
16 furtherance of the agreement.

17 "(d) No person shall knowingly do any of the
18 following:

19 "(1) Cause or aid a person to commit or engage in
20 prostitution.

21 "(2) Procure or solicit patrons for prostitution.

22 "(3) Provide persons or premises for prostitution
23 purposes.

24 "(4) Receive or accept money or other thing of value
25 pursuant to a prior agreement with any person whereby he or
26 she participates or is to participate in the proceeds of any
27 prostitution activity.

1 "(5) Operate or assist in the operation of a house
2 of prostitution or a prostitution enterprise.

3 "§15-20A-5.

4 "For the purposes of this chapter, a sex offense
5 includes any of the following offenses:

6 "(1) Rape in the first degree, as provided by
7 Section 13A-6-61.

8 "(2) Rape in the second degree, as provided by
9 Section 13A-6-62.

10 "(3) Sodomy in the first degree, as provided by
11 Section 13A-6-63.

12 "(4) Sodomy in the second degree, as provided by
13 Section 13A-6-64.

14 "(5) Sexual misconduct, as provided by Section
15 13A-6-65, provided that on a first conviction or adjudication
16 the sex offender is only subject to registration and
17 verification pursuant to this chapter. On a second or
18 subsequent conviction or adjudication of a sex offense, if the
19 second or subsequent conviction or adjudication does not arise
20 out of the same set of facts and circumstances as the first
21 conviction or adjudication of a sex offense, the sex offender
22 shall comply with all requirements of this chapter. The
23 sentencing court may exempt from this chapter a juvenile sex
24 offender adjudicated delinquent of sexual misconduct.

25 "(6) Sexual torture, as provided by Section
26 13A-6-65.1.

1 "(7) Sexual abuse in the first degree, as provided
2 by Section 13A-6-66.

3 "(8) Sexual abuse in the second degree, as provided
4 by Section 13A-6-67.

5 "(9) Indecent exposure, as provided by Section
6 13A-6-68, provided that on a first conviction or adjudication
7 of a sex offense, the sex offender is only subject to
8 registration and verification pursuant to this chapter. On a
9 second or subsequent conviction or adjudication of a sex
10 offense, if the second or subsequent conviction or
11 adjudication does not arise out of the same set of facts and
12 circumstances as the first conviction or adjudication, the sex
13 offender shall comply with all requirements of this chapter.
14 The sentencing court may exempt from this chapter a juvenile
15 sex offender adjudicated delinquent of indecent exposure.

16 "(10) Enticing a child to enter a vehicle, room,
17 house, office, or other place for immoral purposes, as
18 provided by Section 13A-6-69.

19 "(11) Sexual abuse of a child less than 12 years
20 old, as provided by Section 13A-6-69.1.

21 "(12) Promoting prostitution in the first degree, as
22 provided by Section 13A-12-111.

23 "(13) Promoting prostitution in the second degree,
24 as provided by Section 13A-12-112.

25 "(14) Violation of the Alabama Child Pornography
26 Act, as provided by Section 13A-12-191, 13A-12-192,
27 13A-12-196, or 13A-12-197. The sentencing court may exempt

1 from this chapter a juvenile sex offender adjudicated
2 delinquent of a violation of the Alabama Child Pornography Act
3 after the juvenile has been counseled on the dangers of the
4 conduct for which he or she was adjudicated delinquent.

5 "(15) Unlawful imprisonment in the first degree, as
6 provided by Section 13A-6-41, if the victim of the offense is
7 a minor, and the record of adjudication or conviction reflects
8 the intent of the unlawful imprisonment was to abuse the minor
9 sexually.

10 "(16) Unlawful imprisonment in the second degree, as
11 provided by Section 13A-6-42, if the victim of the offense is
12 a minor, and the record of adjudication or conviction reflects
13 the intent of the unlawful imprisonment was to abuse the minor
14 sexually.

15 "(17) Kidnapping in the first degree, as provided by
16 subdivision (4) of subsection (a) of Section 13A-6-43, if the
17 intent of the abduction is to violate or abuse the victim
18 sexually.

19 "(18) Kidnapping of a minor, except by a parent,
20 guardian, or custodian, as provided by Section 13A-6-43 or
21 13A-6-44.

22 "(19) Incest, as provided by Section 13A-13-3.

23 "(20) Transmitting obscene material to a child by
24 computer, as provided by Section 13A-6-111.

25 "(21) School employee engaging in a sex act, ~~or~~
26 ~~deviate sexual contact~~ having sexual contact, or soliciting a

1 sex act or sexual contact with a student, as provided by
2 ~~Section~~ Sections 13A-6-81 and 13A-6-82.

3 "(22) ~~School employee having sexual contact with a~~
4 ~~student, as provided by Section 13A-6-82~~ Foster parent
5 engaging in a sex act, having sexual contact, or soliciting a
6 sex act or sexual contact with a foster child as provided by
7 Section 13A-6-71.

8 "(23) Facilitating solicitation of unlawful sexual
9 conduct with a child, as provided by Section 13A-6-121.

10 "(24) Electronic solicitation of a child, as
11 provided by Section 13A-6-122.

12 "(25) Facilitating the on-line solicitation of a
13 child, as provided by Section 13A-6-123.

14 "(26) Traveling to meet a child for an unlawful sex
15 act, as provided by Section 13A-6-124.

16 "(27) Facilitating the travel of a child for an
17 unlawful sex act, as provided by Section 13A-6-125.

18 "(28) Human trafficking in the first degree, as
19 provided by Section 13A-6-152, provided that the offense
20 involves sexual servitude.

21 "(29) Human trafficking in the second degree, as
22 provided by Section 13A-6-153, provided that the offense
23 involves sexual servitude.

24 "(30) Custodial sexual misconduct, as provided by
25 Section 14-11-31.

26 "(31) Sexual extortion, as provided by Section
27 13A-6-241.

1 "(32) Directing a child to engage in a sex act, as
2 provided in Section 13A-6-243.

3 "(33) Any offense which is the same as or equivalent
4 to any offense set forth above as the same existed and was
5 defined under the laws of this state existing at the time of
6 such conviction, specifically including, but not limited to,
7 crime against nature, as provided by Section 13-1-110; rape,
8 as provided by Sections 13-1-130 and 13-1-131; carnal
9 knowledge of a woman or girl, as provided by Sections 13-1-132
10 through 13-1-135, or attempting to do so, as provided by
11 Section 13-1-136; indecent molestation of children, as defined
12 and provided by Section 13-1-113; indecent exposure, as
13 provided by Section 13-1-111; incest, as provided by Section
14 13-8-3; offenses relative to obscene prints and literature, as
15 provided by Sections 13-7-160 through 13-7-175, inclusive;
16 employing, harboring, procuring or using a girl over 10 and
17 under 18 years of age for the purpose of prostitution or
18 sexual intercourse, as provided by Section 13-7-1; seduction,
19 as defined and provided by Section 13-1-112; a male person
20 peeping into a room occupied by a female, as provided by
21 Section 13-6-6; assault with intent to ravish, as provided by
22 Section 13-1-46; and soliciting a child by computer, as
23 provided by Section 13A-6-110.

24 "(34) Any solicitation, attempt, or conspiracy to
25 commit any of the offenses listed in subdivisions (1) to
26 ~~(31)~~ (33), inclusive.

1 "(35) Any crime committed in Alabama or any other
2 state, the District of Columbia, any United States territory,
3 or a federal, military, Indian, or foreign country
4 jurisdiction which, if it had been committed in this state
5 under the current provisions of law, would constitute an
6 offense listed in subdivisions (1) to ~~(32)~~(34), inclusive.

7 "(36) Any offense specified by Title I of the
8 federal Adam Walsh Child Protection and Safety Act of 2006
9 (Pub. L. 109-248, the Sex Offender Registration and
10 Notification Act (SORNA)).

11 "(37) Any crime committed in another state, the
12 District of Columbia, any United States territory, or a
13 federal, military, Indian, or foreign country jurisdiction if
14 that jurisdiction also requires that anyone convicted of that
15 crime register as a sex offender in that jurisdiction.

16 "(38) Any offender determined in any jurisdiction to
17 be a sex offender shall be considered a sex offender in this
18 state.

19 "(39) The foregoing notwithstanding, any crime
20 committed in any jurisdiction which, irrespective of the
21 specific description or statutory elements thereof, is in any
22 way characterized or known as rape, carnal knowledge, sodomy,
23 sexual assault, sexual battery, criminal sexual conduct,
24 criminal sexual contact, sexual abuse, continuous sexual
25 abuse, sexual torture, solicitation of a child, enticing or
26 luring a child, child pornography, lewd and lascivious
27 conduct, taking indecent liberties with a child, molestation

1 of a child, criminal sexual misconduct, video voyeurism, or
2 there has been a finding of sexual motivation.

3 "(40) Any crime not listed in this section wherein
4 the underlying felony is an element of the offense and listed
5 in subdivisions (1) to (39), inclusive.

6 "(41) Any other offense not provided for in this
7 section wherein there is a finding of sexual motivation as
8 provided by Section 15-20A-6.

9 "§15-20A-6.

10 "(a) (1) The indictment, count in the indictment,
11 information, complaint or warrant charging the offense may
12 include a specification of sexual motivation or the
13 prosecuting attorney may file an allegation of sexual
14 motivation in any criminal case classified as a felony or
15 Class A misdemeanor if sufficient admissible evidence exists
16 that would justify a finding of sexual motivation by a
17 reasonable and objective finder of fact.

18 "(2) If a specification is included in the
19 indictment, count in the indictment, information, complaint,
20 or warrant charging the offense the specification shall be
21 stated at the end of the body of the indictment, count in the
22 indictment, information, complaint, or warrant and shall be in
23 substantially the following form: "SPECIFICATION or
24 SPECIFICATION TO THE FIRST COUNT. The Grand Jurors (or insert
25 appropriate name) further find and specify that the offender
26 committed the offense with a sexual motivation."

1 "(3) If the prosecuting attorney files an allegation
2 of sexual motivation, it shall be filed within a reasonable
3 time after indictment to give sufficient notice to the
4 defendant.

5 "(b) If the indictment, count of the indictment,
6 information, complaint, or warrant charging the offense
7 includes a specification of sexual motivation or if the
8 prosecuting attorney files an allegation of sexual motivation,
9 the state shall prove beyond a reasonable doubt that the
10 defendant committed the offense with a sexual motivation.

11 "(c) The court shall make a written finding of fact,
12 to be made part of the record upon conviction or adjudication
13 as a youthful offender, of whether or not a sexual motivation
14 was present at the time of the commission of the offense
15 unless the defendant has a trial by jury.

16 "(d) If a defendant has a trial by jury, the jury,
17 if it finds the defendant guilty, shall also find a special
18 verdict as to whether or not the defendant committed the crime
19 with a sexual motivation.

20 "(e) If there is a finding of sexual motivation, the
21 finding shall be made part of the record of conviction or
22 adjudication.

23 "(f) For purposes of this section, sexual motivation
24 means that one of the purposes for which the defendant
25 committed the crime was for the purpose of the sexual
26 gratification of the defendant.

1 "(g) This section shall not apply to sex offenses as
2 defined in subdivisions (1) to ~~(38)~~(40), inclusive, of Section
3 15-20A-5.

4 "§15-20A-44.

5 "(a) The Secretary of the Alabama State Law
6 Enforcement Agency shall promulgate rules establishing an
7 administrative hearing for persons who are only made subject
8 to this chapter pursuant to subdivision ~~(33)~~(37) of Section
9 15-20A-5.

10 "(b) The Secretary of the Alabama State Law
11 Enforcement Agency shall promulgate rules setting forth a
12 listing of offenses from other jurisdictions that are to be
13 considered criminal sex offenses under subdivision ~~(33)~~(37) of
14 Section 15-20A-5. Thereafter, any individual convicted of any
15 offense set forth in the listing shall immediately be subject
16 to this chapter and shall not be entitled to an administrative
17 hearing as provided in subsection (a).

18 "(c) The Secretary of the Alabama State Law
19 Enforcement Agency shall have the authority to promulgate any
20 rules as are necessary to implement and enforce this chapter.

21 "§15-23-101.

22 "When a person has been charged with the crime of
23 rape, sodomy, ~~or~~ sexual misconduct, or any other crime in
24 which the victim was compelled to engage in sexual activity by
25 force or threat of force and it appears from the nature of the
26 charge that the transmission of body fluids from one person to
27 another may have been involved, upon the request of the

1 alleged victim or the parent or guardian of an alleged victim,
2 the district attorney shall file a motion with the court for
3 an order requiring the person charged to submit to a test for
4 any sexually transmitted disease.

5 "§15-23-102.

6 "(a) If the district attorney files a motion under
7 Section 15-23-101, the court shall order the person charged to
8 submit to testing if the court determines there is probable
9 cause to believe that the person charged committed the crime
10 of rape, sodomy, ~~or~~ sexual misconduct, or any other crime in
11 which the victim was compelled to engage in sexual activity by
12 force or threat of force and the transmission of body fluids
13 was involved. If an information or indictment has been
14 presented and the defendant is in custody or has been served
15 with the information or indictment, the test shall be
16 performed within 48 hours of service.

17 "(b) When a test is ordered under Section 15-23-101,
18 the alleged victim of the crime or a parent or guardian of the
19 alleged victim shall designate an attending physician who has
20 agreed in advance to accept the victim as a patient to receive
21 information on behalf of the alleged victim.

22 "(c) If any sexually transmitted disease test
23 results in a negative reaction, the court shall order the
24 person to submit to any follow-up tests at the intervals and
25 in the manner as shall be determined by the State Board of
26 Health.

1 "(d) The result of any test ordered under this
2 section is not a public record and shall be available only to
3 the following:

4 "(1) The alleged victim.

5 "(2) The parent or guardian of the alleged victim.

6 "(3) The attending physician of the alleged victim.

7 "(4) The person tested.

8 "(e) If any sexually transmitted disease test
9 ordered under this section results in a positive reaction, the
10 individual subject to the test shall receive post-test
11 counseling. Counseling and referral for appropriate health
12 care, testing, and support services as directed by the State
13 Health Officer shall be provided to the alleged victim at the
14 request of the alleged victim or the parent or guardian of the
15 alleged victim."

16 Section 2. Although this bill would have as its
17 purpose or effect the requirement of a new or increased
18 expenditure of local funds, the bill is excluded from further
19 requirements and application under Amendment 621, now
20 appearing as Section 111.05 of the Official Recompilation of
21 the Constitution of Alabama of 1901, as amended, because the
22 bill defines a new crime or amends the definition of an
23 existing crime.

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