

ACT #2019-

465

1 SB320
2 197764-5
3 By Senator Figures
4 RFD: Judiciary
5 First Read: 18-APR-19



SB320

ENROLLED, An Act,

Relating to sexual offenses; to amend Sections 13A-5-6, 13A-6-60, 13A-6-61, 13A-6-62, 13A-6-63, 13A-6-64, 13A-6-65, 13A-6-65.1, 13A-6-66, 13A-6-67, 13A-6-68, 13A-6-70, 13A-6-71, 13A-6-81, 13A-6-82, as corrected by Act 2018-406, the Codification Act, 2018 Regular Session, 13A-6-122, 13A-6-241, 13A-6-243, 13A-11-9, 13A-11-32.1, 13A-12-120, 13A-12-121, 13A-12-190, 13A-12-192, 15-3-5, 15-20A-5, and 15-20A-44, as last amended by Act 2018-528, 2018 Regular Session, 15-23-101, and 15-23-102, Code of Alabama 1975, to revise certain definitions and sexual offenses; to expand the definition of forcible compulsion; to provide that certain sexual contact can be an offense under sexual misconduct; to provide additional offenses for sexual torture; to make technical corrections; 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. Sections 13A-5-6, 13A-6-60, 13A-6-61, 13A-6-62, 13A-6-63, 13A-6-64, 13A-6-65, 13A-6-65.1, 13A-6-66, 13A-6-67, 13A-6-68, 13A-6-70, 13A-6-71, 13A-6-81, 13A-6-82, as corrected by Act 2018-406, the Codification Act, 2018 Regular Session, 13A-6-122, 13A-6-241, 13A-6-243, 13A-11-9, 13A-11-32.1, 13A-12-120, 13A-12-121, 13A-12-190, 13A-12-192, 15-3-5, 15-20A-5 and 15-20A-44, as last amended by Act 2018-528, 2018 Regular Session, 15-23-101, and 15-23-102, Code of Alabama 1975, are amended to read as follows:

"§13A-5-6.

"(a) Sentences for felonies shall be for a definite term of imprisonment, which imprisonment includes hard labor, within the following limitations:

"(1) For a Class A felony, for life or not more than 99 years or less than 10 years.

"(2) For a Class B felony, not more than 20 years or less than 2 years.

"(3) For a Class C felony, not more than 10 years or less than 1 year and 1 day and must be in accordance with subsection (b) of Section 15-18-8 unless sentencing is pursuant to Section 13A-5-9 or the offense is a sex offense pursuant to Section 15-20A-5.

"(4) For a Class D felony, not more than 5 years or less than 1 year and 1 day and must be in accordance with subsection (b) of Section 15-18-8.

"(5) For a Class A felony in which a firearm or deadly weapon was used or attempted to be used in the commission of the felony, or a Class A felony sex offense involving a child as defined in Section 15-20A-4~~(26)~~, not less than 20 years.

"(6) For a Class B or C felony in which a firearm or deadly weapon was used or attempted to be used in the commission of the felony, or a Class B felony sex offense involving a child as defined in Section 15-20A-4~~(26)~~, not less than 10 years.

"(b) The actual time of release within the limitations established by subsection (a) of this section shall be determined under procedures established elsewhere by law.

"(c) In addition to any penalties heretofore or hereafter provided by law, in all cases where an offender is designated as a sexually violent predator pursuant to Section 15-20A-19, or where an offender is convicted of a Class A felony sex offense involving a child as defined in Section 15-20A-4~~(26)~~, and is sentenced to a county jail or the Alabama Department of Corrections, the sentencing judge shall impose an additional penalty of not less than 10 years of post-release supervision to be served upon the defendant's release from incarceration.

"(d) In addition to any penalties heretofore or hereafter provided by law, in all cases where an offender is convicted of a sex offense pursuant to Section 13A-6-61, 13A-6-63, or 13A-6-65.1, when the defendant was 21 years of age or older and the victim was six years of age or less at the time the offense was committed, the defendant shall be sentenced to life imprisonment without the possibility of parole.

"§13A-6-60.

"The following definitions apply in this article:

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

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

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

~~"(4) (2) FEMALE. Any female person.~~ INCAPACITATED.
~~Such~~ The term includes any of the following:

1 "a. A person who suffers from a mental or
2 developmental disease or disability which renders the person
3 incapable of appraising the nature of his or her conduct.

4 "b. A person is temporarily incapable of appraising
5 or controlling his or her conduct due to the influence of a
6 narcotic, anesthetic, or intoxicating substance and the
7 condition was known or should have been reasonably known to
8 the offender.

9 "c. A person who is unable to give consent or who is
10 unable to communicate an unwillingness to an act because the
11 person is unconscious, asleep, or is otherwise physically
12 limited or unable to communicate.

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

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

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

1 "~~(8)~~ (1) FORCIBLE COMPULSION. ~~Physical force that~~
2 ~~overcomes earnest resistance or a threat, express or implied,~~
3 ~~that places a person in fear of immediate death or serious~~
4 ~~physical injury to himself or another person~~ Use or threatened
5 use, whether express or implied, of physical force, violence,
6 confinement, restraint, physical injury, or death to the
7 threatened person or to another person. Factors to be
8 considered in determining an implied threat include, but are
9 not limited to, the respective ages and sizes of the victim
10 and the accused; the respective mental and physical conditions
11 of the victim and the accused; the atmosphere and physical
12 setting in which the incident was alleged to have taken place;
13 the extent to which the accused may have been in a position of
14 authority, domination, or custodial control over the victim;
15 or whether the victim was under duress. Forcible compulsion
16 does not require proof of resistance by the victim.

17 "\$13A-6-61.

18 "(a) A person commits the crime of rape in the first
19 degree if he or she does any of the following:

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

23 "(2) ~~He or she engages~~ Engages in sexual intercourse
24 with ~~a member of the opposite sex~~ another person who is

1 incapable of consent by reason of being ~~physically helpless or~~
2 ~~mentally incapacitated; or.~~

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

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

7 "§13A-6-62.

8 "(a) A person commits the crime of rape in the
9 second degree if ~~if~~ if

10 "~~(1) Being~~ being 16 years old or older, he or she
11 engages in sexual intercourse with ~~a member of the opposite~~
12 ~~sex~~ another person who is 12 years old or older, but less than
13 16 years old ~~and more than 12 years old~~; provided, however,
14 the actor is at least two years older than the ~~member of the~~
15 ~~opposite sex~~ other person.

16 "~~(2) He or she engages in sexual intercourse with a~~
17 ~~member of the opposite sex who is incapable of consent by~~
18 ~~reason of being mentally defective.~~

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

20 "§13A-6-63.

21 "(a) A person commits the crime of sodomy in the
22 first degree if he or she does any of the following:

23 "(1) ~~He engages~~ Engages in ~~deviate sexual~~
24 ~~intercourse~~ sodomy with another person by forcible compulsion ~~or~~
25 or.

1 "~~(2) He engages~~ Engages in ~~deviate sexual~~
2 ~~intercourse~~ sodomy with ~~a~~ another person who is incapable of
3 consent by reason of being ~~physically helpless or mentally~~
4 ~~incapacitated, or.~~

5 "~~(3) He, being~~ Being 16 years old or older, engages
6 in ~~deviate sexual intercourse~~ sodomy with a person who is less
7 than 12 years old.

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

9 "§13A-6-64.

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

12 "~~(1) He, being~~ 16 years old or older, he or she
13 engages in ~~deviate sexual intercourse~~ sodomy with another
14 person 12 years old or older, but less than 16 years old and
15 ~~more than 12 years old.; provided, however, the actor is at~~
16 least two years older than the other person.

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

20 "(b) Sodomy in the second degree is a Class B
21 felony.

22 "§13A-6-65.

23 "(a) A person commits the crime of sexual misconduct
24 if he or she does any of the following:

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

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

~~"(3) (2) He or she engages~~ Engages in ~~deviate sexual intercourse~~ sodomy with another person, without his or her consent, under circumstances other than those covered by Sections 13A-6-63 and 13A-6-64; ~~Consent is no defense to a prosecution under this subdivision~~ or with consent where consent was obtained by the use of fraud or artifice.

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

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

"§13A-6-65.1.

"(a) A person commits the crime of sexual torture if he or she does any of the following:

"(1) ~~By penetrating~~ Penetrates the vagina ~~or,~~ anus, or mouth of another person with an inanimate object, by forcible compulsion, with the intent to sexually torture ~~or~~

1 to, sexually abuse, or to gratify the sexual desire of either
2 party.

3 "(2) ~~By penetrating~~ Penetrates the vagina ~~or,~~ anus,
4 or mouth of a person who is incapable of consent by reason of
5 ~~physical helplessness or mental incapacity being~~
6 incapacitated, with an inanimate object, with the intent to
7 sexually torture ~~or to,~~ sexually abuse, or to gratify the
8 sexual desire of either party.

9 "(3) ~~By penetrating~~ Penetrates the vagina ~~or,~~ anus,
10 or mouth of a person who is less than 12 years old, with an
11 inanimate object, by a person who is 16 years old or older
12 with the intent to sexually torture ~~or to,~~ sexually abuse, or
13 to gratify the sexual desire of either party.

14 "(4) By inflicting physical injury, including, but
15 not limited to, burning, crushing, wounding, mutilating, or
16 assaulting the sex organs or intimate parts of another person,
17 with the intent to sexually torture, sexually abuse, or to
18 gratify the sexual desire of either party.

19 "(b) The crime of sexual torture is a Class A
20 felony.

21 "§13A-6-66.

22 "(a) A person commits the crime of sexual abuse in
23 the first degree if he or she does either of the following:

24 "(1) ~~He subjects~~ Subjects another person to sexual
25 contact by forcible compulsion, ~~or.~~

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

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

6 "§13A-6-67.

7 "(a) A person commits the crime of sexual abuse in
8 the second degree if he or she does either of the following:

9 "(1) ~~He subjects~~ Subjects another person to sexual
10 contact who is ~~incapable of~~ unable to consent by reason of
11 some factor other than being less than 16 years old, ~~or.~~

12 "(2) ~~He, being~~ Being 19 years old or older, subjects
13 another person to sexual contact who is 12 years old or older,
14 but less than 16 years old, ~~but more than 12 years old.~~

15 "(b) Sexual abuse in second degree is a Class A
16 misdemeanor, except that if a person commits a second or
17 subsequent offense of sexual abuse in the second degree within
18 one year of another sexual offense, the offense is a Class C
19 felony.

20 "§13A-6-68.

21 (a) A person commits the crime of indecent exposure
22 if, with intent to arouse or gratify sexual desire of himself
23 or herself, or of any person other than his or her spouse, he
24 or she exposes his or her genitals under circumstances in
25 which he or she knows ~~his~~ the conduct is likely to cause

1 ~~affront or alarm in any public place or on the private~~
 2 ~~premises of another or so near thereto as to be seen from such~~
 3 ~~private premises.~~

4 (b) Indecent exposure is a Class A misdemeanor
 5 except a third or subsequent conviction shall be a Class C
 6 felony.

7 "§13A-6-70.

8 "(a) ~~Whether or not specifically~~ Unless otherwise
 9 ~~stated, it is~~ an element of every offense defined in this
 10 ~~article, with the exception of subdivision (a) (3) of Section~~
 11 ~~13A-6-65, is~~ that the sexual act was committed without the
 12 consent of the victim.

13 "(b) Lack of consent results from either of the
 14 following:

15 "(1) Forcible compulsion; ~~or.~~

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

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

21 "(c) A person is deemed incapable of consent if he
 22 or she is either:

23 "(1) Less than 16 years old; ~~or.~~

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

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

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

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

12 "§13A-6-71.

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

20 "(b) A person commits the crime of engaging in a
 21 sexual contact with a foster child if he or she is a foster
 22 parent and engages in a sexual contact, pursuant to Section
 23 13A-6-60(3), with a foster child under the age of 19 years who
 24 is under his or her care or supervision. Engaging in sexual
 25 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 years to engage
5 in a sex act including, but not limited to, sexual
6 intercourse, ~~as defined by Section 13A-6-30(1), deviate sexual~~
7 ~~intercourse~~ sodomy, ~~as defined by Section 13A-6-30(2), or~~
8 sexual contact, as defined by Section ~~13A-6-60(3)~~ 13A-6-60.
9 The crime of soliciting a sex act or sexual contact with a
10 foster 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 as defined by 13A-6-60(2)~~ or sodomy, as
24 defined in Section 13A-6-60, with a student, regardless of

whether the student is male or female. Consent is not a defense to a charge under this section.

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

"§13A-6-82.

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

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

"§13A-6-122.

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

24 "§13A-6-241.

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

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

"§13A-6-243.

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

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

"(b) (1) A person commits the crime of directing a child to engage in sexual contact if he or she knowingly

1 entices, allures, persuades, induces, or directs any person
2 under the age of 12 years to engage in sexual contact with
3 another person ~~under the age of 12~~.

4 "(2) A violation of this section is a Class C B
5 felony.

6 "§13A-11-9.

7 "(a) A person commits the crime of loitering if he
8 or she does any of the following:

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

11 "(2) Loiters or remains in a public place for the
12 purpose of gambling, ~~or~~.

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

16 "(4) Being masked, loiters, remains, or congregates
17 in a public place, ~~or~~.

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

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

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

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

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

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

"(e) Loitering is a violation.

"§13A-11-32.1.

"(a) A person commits the crime of aggravated criminal surveillance if he or she intentionally engages in

surveillance of an individual in any place where the individual being observed has a reasonable expectation of privacy, without the prior express or implied consent of the individual being observed, for the purpose of sexual gratification.

"(b) Aggravated criminal surveillance is a Class A misdemeanor, ~~except if a person has a prior conviction or adjudication under this section the offense is a Class C~~ felony.

"(c) ~~For purposes of determining prior conviction or adjudication under this section, convictions in municipal court shall be included~~ The statute of limitations begins at the time of discovery of the surveillance.

"§13A-12-120.

"For the purpose of this division, the term "prostitution" shall mean the commission by a person of any natural or unnatural sexual act, ~~deviate sexual intercourse~~ sodomy, or sexual contact for monetary consideration or other thing of value.

"§13A-12-121.

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

"(b) No person shall solicit, compel, or coerce any person to have sexual intercourse or participate in any natural or unnatural sexual act, ~~deviate sexual intercourse~~

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

3 "(c) No person shall agree to engage in sexual
4 intercourse, ~~deviate sexual intercourse~~ sodomy, or sexual
5 contact with another or participate in the act for monetary
6 consideration or other thing of marketable value and give or
7 accept monetary consideration or other thing of value in
8 furtherance of the agreement.

9 "(d) No person shall knowingly do any of the
10 following:

11 "(1) Cause or aid a person to commit or engage in
12 prostitution.

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

14 "(3) Provide persons or premises for prostitution
15 purposes.

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

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

22 "§13A-12-190.

23 "For the purposes of this division, the following
24 terms shall have the meanings respectively ascribed to them by
25 this section:

"(1) DISSEMINATE. To transmit, distribute, sell, lend, provide, transfer, or show ~~for monetary consideration or to offer or agree to do the same,~~ including through electronic means.

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

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

"(4) KNOWINGLY. A person knowingly disseminates or publicly displays obscene matter when the person knows the nature of the matter. A person knows the nature of the matter when either of the following circumstances exist:

"a. The person is aware of the character and content of the matter, ~~or.~~

1 "b. The person recklessly disregards circumstances
2 suggesting the character and content of the matter.

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

5 "a. Flagellation or torture, for the purpose of
6 sexual stimulation, by or upon a person who is nude or clad in
7 undergarments or in a revealing or bizarre costume, ~~or~~.

8 "b. The condition of a person who is nude or clad in
9 undergarments or in a revealing or bizarre costume being
10 fettered, bound, or otherwise physically restrained for the
11 purpose of sexual stimulation.

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

14 "(7) SEXUAL INTERCOURSE. Intercourse, real or
15 simulated, whether genital-genital, oral-genital, anal-genital
16 or oral-anal, whether between persons of the same or opposite
17 sex or between a human and an animal.

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

21 "(9) OTHER SEXUAL CONDUCT. Any touching of the
22 genitals, pubic areas, or buttocks of the human male or
23 female, or the breasts of the female, whether alone or between
24 members of the same or opposite sex or between humans and

1 animals in an act of apparent sexual stimulation or
2 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~~ the term shall include all of the
21 following:

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

24 "2. Is patently offensive, ~~and.~~

1 "3. On the whole, lacks serious literary, artistic,
2 political, or scientific value.

3 "b. When used to describe matter that is a depiction
4 of an act of sado-masochistic abuse, sexual intercourse,
5 sexual excitement, masturbation, genital nudity, or other
6 sexual conduct, ~~such~~ the term means matter containing ~~such~~ a
7 visual reproduction that itself lacks serious literary,
8 artistic, political, or scientific value.

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

11 "(15) VISUAL DEPICTION. A portrayal, representation,
12 illustration, image, likeness, or other thing that creates a
13 sensory impression, whether an original, duplicate, or
14 reproduction.

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

19 "§13A-12-192.

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

~~Possession of three or more copies of the same visual depiction contained in obscene matter is prima facie evidence of possession with intent to disseminate the same~~ Any transfer of the visual depiction from any electronic device to any other device, program, application, or any other place with storage capability which can be made available or is accessible by other users, is prima facie evidence of possession with intent to disseminate.

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

"§15-3-5.

"(a) There is no limitation of time within which a prosecution must be commenced for any of the following offenses:

"(1) Any capital offense~~7~~.

"(2) Any felony involving the use, attempted use, or threat of, violence to a person~~7~~.

"(3) Any felony involving serious physical injury or death of a person~~7~~.

"(4) Any sex offense pursuant to Section 15-20A-5 involving a victim under 16 years of age, regardless of

1 whether it involves force ~~or~~, serious physical injury, or
2 death.

3 "(5) Any felony involving arson of any type.

4 "(6) Any felony involving forgery of any type.

5 "(7) Any felony involving counterfeiting, and.

6 "(8) Any felony involving drug trafficking.

7 "(b) The amendments made by this act shall apply to
8 both of the following:

9 "(1) To all crimes committed after January 7, 1985
10 and.

11 "(2) To all crimes committed before January 7, 1985,
12 for which no statute of limitations provided under
13 pre-existing law has run as of January 7, 1985.

14 "(c) Nothing herein shall be construed to mean that
15 the adoption of this act indicates that any former statute of
16 limitations applying to capital offenses is invalid as the
17 result of any decision of any court invalidating the capital
18 punishment statutes of the State of Alabama.

19 "§15-20A-5.

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

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

24 "(2) Rape in the second degree, as provided by
25 Section 13A-6-62. A juvenile sex offender adjudicated

1 delinquent of a violation of rape in the second degree is
2 presumed to be exempt from this chapter after the juvenile has
3 been counseled on the dangers of the conduct for which he or
4 she was adjudicated delinquent unless the sentencing court
5 makes a determination that the juvenile sex offender is to be
6 subject to this chapter.

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

9 "(4) Sodomy in the second degree, as provided by
10 Section 13A-6-64. A juvenile sex offender adjudicated
11 delinquent of a violation of sodomy in the second degree is
12 presumed to be exempt from this chapter after the juvenile has
13 been counseled on the dangers of the conduct for which he or
14 she was adjudicated delinquent unless the sentencing court
15 makes a determination that the juvenile sex offender is to be
16 subject ot this chapter.

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

~~sentencing court may exempt from this chapter a juvenile sex offender adjudicated delinquent of sexual misconduct. A~~
juvenile sex offender adjudicated delinquent of a violation of sexual misconduct is presumed to be exempt from this chapter after the juvenile has been counseled on the dangers of the conduct for which he or she was adjudicated delinquent unless the sentencing court makes a determination that the juvenile sex offender is to be subject to this chapter.

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

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

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

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

1 ~~exposure. A juvenile sex offender adjudicated of a violation~~
2 ~~of indecent exposure is presumed to be exempt from this~~
3 ~~chapter after the juvenile has been counseled on the dangers~~
4 ~~of the conduct for which he or she was adjudicated delinquent~~
5 ~~unless the sentencing court makes a determination that the~~
6 ~~juvenile sex offender is to be subject to this chapter.~~

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

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

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

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

16 "(14) Violation of the Alabama Child Pornography
17 Act, as provided by Section 13A-12-191, 13A-12-192,
18 13A-12-196, or 13A-12-197. ~~The sentencing court may exempt~~
19 ~~from this chapter a juvenile sex offender adjudicated~~
20 ~~delinquent of a violation of the Alabama Child Pornography Act~~
21 ~~after the juvenile has been counseled on the dangers of the~~
22 ~~conduct for which he or she was adjudicated delinquent. A~~
23 juvenile sex offender adjudicated delinquent of a violation of
24 the Alabama Child Pornography Act is presumed to be exempt
25 from this chapter after the juvenile has been counseled on the

dangers of the conduct for which he or she was adjudicated delinquent unless the sentencing court makes a determination that the juvenile sex offender is to be subject to this chapter.

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

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

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

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

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

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

1 "(21) School employee engaging in a sex act or
2 deviant sexual intercourse with a student, or having sexual
3 contact or soliciting a sex act or sexual contact with a
4 student as provided by Sections 13A-6-81 and 13A-6-82.

5 "(22) Foster parent engaging in a sex act, having
6 sexual contact, or soliciting a sex act or sexual contact with
7 a foster child as provided by 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.

1 "(31) Sexual extortion, as provided by Section
2 13A-6-241.

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

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

1 "(34) Any solicitation, attempt, or conspiracy to
2 commit any of the offenses listed in subdivisions (1) to (33),
3 inclusive.

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

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

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

19 "(38) Any offender determined in any jurisdiction to
20 be a sex offender shall be considered a sex offender in this
21 state.

22 "(39) The foregoing notwithstanding, any crime
23 committed in any jurisdiction which, irrespective of the
24 specific description or statutory elements thereof, is in any
25 way characterized or known as rape, carnal knowledge, sodomy,

1 sexual assault, sexual battery, criminal sexual conduct,
2 criminal sexual contact, sexual abuse, continuous sexual
3 abuse, sexual torture, solicitation of a child, enticing or
4 luring a child, child pornography, lewd and lascivious
5 conduct, taking indecent liberties with a child, molestation
6 of a child, criminal sexual misconduct, video voyeurism, or
7 there has been a finding of sexual motivation.

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

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

14 "§15-20A-44.

15 "(a) The Secretary of the Alabama State Law
16 Enforcement Agency shall ~~promulgate~~ adopt rules establishing
17 an administrative hearing for persons who are only made
18 subject to this chapter pursuant to subdivision ~~(37)~~ (35) of
19 Section 15-20A-5.

20 "(b) The Secretary of the Alabama State Law
21 Enforcement Agency shall ~~promulgate~~ adopt rules setting forth
22 a listing of offenses from other jurisdictions that are to be
23 considered criminal sex offenses under subdivision ~~(37)~~ (35)
24 of Section 15-20A-5. Thereafter, any individual convicted of
25 any offense set forth in the listing shall immediately be

1 subject to this chapter and shall not be entitled to an
2 administrative hearing as provided in subsection (a).

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

6 "§15-23-101.

7 "When a person has been charged with the crime of
8 rape, sodomy, ~~or,~~ sexual misconduct, sexual torture, sexual
9 abuse, assault by bodily fluids, or any other crime in which
10 the victim was compelled to engage in sexual activity by force
11 or threat of force, and it appears from the nature of the
12 charge that the transmission of body fluids from one person to
13 another may have been involved, upon the request of the
14 ~~alleged~~ victim or the parent or guardian of ~~an alleged~~ a minor
15 victim, the district attorney shall file a motion with the
16 court for an order requiring the person charged to submit to a
17 test for any sexually transmitted disease.

18 "§15-23-102.

19 "(a) (1) If the district attorney files a motion
20 under Section 15-23-101, the court shall order the person
21 charged to submit to testing if the court determines there is
22 probable cause to believe that the person charged committed
23 the crime of rape, sodomy, ~~or,~~ sexual misconduct, sexual
24 torture, sexual abuse, assault by bodily fluids, or any other
25 crime where the victim was compelled to engage in sexual

1 activity by force or threat of force and the transmission of
2 body fluids was involved.

3 "(2) If a warrant, information, or indictment has
4 been issued and the defendant is in custody or has been served
5 with the warrant, information, or indictment, the test shall
6 be performed within 48 hours of service of the court order
7 requiring the defendant to submit to testing.

8 "(b) When a test is ordered under Section 15-23-101,
9 the ~~alleged~~ victim of the crime or a parent or guardian of the
10 ~~alleged~~ minor victim shall designate an attending physician
11 who has agreed in advance to accept the victim as a patient to
12 receive information on behalf of the ~~alleged~~ victim.

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

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

21 "(1) The ~~alleged~~ victim.

22 "(2) The parent or guardian of the ~~alleged~~ minor
23 victim.

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

25 "(4) The person tested.

1 "(e) If any sexually transmitted disease test
2 ordered under this section results in a positive reaction, the
3 individual subject to the test shall receive post-test
4 counseling. Counseling and referral for appropriate health
5 care, testing, and support services as directed by the State
6 Health Officer shall be provided to the ~~alleged~~ victim at the
7 request of the ~~alleged~~ victim or the parent or guardian of the
8 ~~alleged~~ minor victim."

9 Section 2. Although this bill would have as its
10 purpose or effect the requirement of a new or increased
11 expenditure of local funds, the bill is excluded from further
12 requirements and application under Amendment 621, now
13 appearing as Section 111.05 of the Official Recompilation of
14 the Constitution of Alabama of 1901, as amended, because the
15 bill defines a new crime or amends the definition of an
16 existing crime.

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



President and Presiding Officer of the Senate



Speaker of the House of Representatives

SB320

Senate 16-MAY-19

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed 23-MAY-19

Senate concurred in House amendment 28-MAY-19

APPROVED

6-9-19

TIME

5:19pm

By: Senator Figures


GOVERNOR

Alabama Secretary Of State

Act Num.....: 2019-465
Bill Num....: S-320

Recv'd 06/10/19 10:55amSL

SOR

SPONSORS

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Senate Bill No. 320

SENATE ACTION

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 320

years 3 1/4 nays 0 abstain 0

PATRICK HARRIS,
Secretary

I hereby certify that the notice & proof is attached to the Bill, SB 320 as required in the General Acts of Alabama, 1975 Act No. 919.

PATRICK HARRIS,
Secretary

CONFERENCE COMMITTEE

Senate Conferees

Clerk

HOUSE ACTION

DATE: 5-22-2019

RD 1 RFD

Jody

REPORT OF STANDING COMMITTEE

This bill having been referred by the House to its standing committee on Jody was acted upon by such committee in session, and returned therefrom to the House with the recommendation that it be Passed, w/amend(s) w/sub
This 22 day of May, 2019
[Signature] Chairperson

DATE: 5-22-2019

RF Board RD 2 CAL

DATE 20

RE-REFERRED RE-COMMITTED

Committee

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 320

YEAS 11 NAYS 0