

1 HB611
2 168640-1
3 By Representative Todd
4 RFD: Judiciary
5 First Read: 05-MAY-15

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, sodomy in the second
9 degree requires both lack of consent due to mental
10 defect and that the perpetrator be more than 16 and
11 the victim be under 16 years of age, but older than
12 12 years of age. Under existing law, sodomy in the
13 first degree requires forcible compulsion or that
14 the victim possess a mental defect or be physically
15 helpless, or the perpetrator be more than 16 years
16 of age and the victim less than 12 years of age.
17 Under existing law, a person under age 16 is
18 incapable of consent.

19 This bill would create the crimes of rape in
20 the third degree, sodomy in the third degree, and
21 sexual abuse in the third degree to apply in
22 certain circumstances where the perpetrator of the
23 crime is less than 16 years of age and the victim
24 less than 12.

25 This bill would also add rape in the third
26 degree, sodomy in the third degree, and sexual
27 abuse in the third degree to the list of offenses

1 defined by the Sex Offender Registration and
2 Notification Act as sex offenses.

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

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

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to various sex crimes; to amend Sections
2 15-20A-5, and 15-20A-6, Code of Alabama 1975; to create the
3 crimes of rape in the third degree, sodomy in the third
4 degree, and sexual abuse in the third degree to apply in
5 certain circumstances where the perpetrator is less than 16
6 years of age and the victim less than 12; to provide further
7 for the definition of sex offense; and in connection therewith
8 would have as its purpose or effect the requirement of a new
9 or increased expenditure of local funds within the meaning of
10 Amendment 621 of the Constitution of Alabama of 1901, now
11 appearing as Section 111.05 of the Official Recompilation of
12 the Constitution of Alabama of 1901, as amended.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 15-20A-5, and 15-20A-6, Code of
15 Alabama 1975, are amended to read as follows:

16 "§15-20A-5.

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

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

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

23 "(3) Rape in the third degree, as provided by
24 Section 2 of the act adding this amendatory language. The
25 sentencing court may exempt a juvenile sex offender
26 adjudicated delinquent of rape in the third degree from

1 registration or reduce the registration period pursuant to
2 subsection (c) of Section 15-20A-28.

3 ~~"(3)(4)~~ Sodomy in the first degree, as provided by
4 Section 13A-6-63.

5 ~~"(4)(5)~~ Sodomy in the second degree, as provided by
6 Section 13A-6-64.

7 "(6) Sodomy in the third degree, as provided by
8 Section 3 of the act adding this amendatory language. The
9 sentencing court may exempt a juvenile sex offender
10 adjudicated delinquent of sodomy in the third degree from
11 registration or reduce the registration period pursuant to
12 subsection (c) of Section 15-20A-28.

13 ~~"(5)(7)~~ Sexual misconduct, as provided by Section
14 13A-6-65, provided that on a first conviction or adjudication
15 the sex offender is only subject to registration and
16 verification pursuant to this chapter. On a second or
17 subsequent conviction or adjudication of a sex offense, if the
18 second or subsequent conviction or adjudication does not arise
19 out of the same set of facts and circumstances as the first
20 conviction or adjudication of a sex offense, the sex offender
21 shall comply with all requirements of this chapter. The
22 sentencing court may exempt from this chapter or reduce the
23 registration period pursuant to subsection (c) of Section
24 15-20A-28 of a juvenile sex offender adjudicated delinquent of
25 sexual misconduct.

26 ~~"(6)(8)~~ Sexual torture, as provided by Section
27 13A-6-65.1.

1 "~~(7)~~(9) Sexual abuse in the first degree, as
2 provided by Section 13A-6-66.

3 "~~(8)~~(10) Sexual abuse in the second degree, as
4 provided by Section 13A-6-67.

5 "(11) Sexual abuse in the third degree, as provided
6 by Section 4 of the act adding this amendatory language. The
7 sentencing court may exempt a juvenile sex offender
8 adjudicated delinquent of sexual abuse in the third degree
9 from registration or reduce the registration period pursuant
10 to subsection (c) of Section 15-20A-28.

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

22 "~~(10)~~(13) Enticing a child to enter a vehicle, room,
23 house, office, or other place for immoral purposes, as
24 provided by Section 13A-6-69.

25 "~~(11)~~(14) Sexual abuse of a child less than 12 years
26 old, as provided by Section 13A-6-69.1.

1 "~~(12)~~(15) Promoting prostitution in the first
2 degree, as provided by Section 13A-12-111.

3 "~~(13)~~(16) Promoting prostitution in the second
4 degree, as provided by Section 13A-12-112.

5 "~~(14)~~(17) Violation of the Alabama Child Pornography
6 Act, as provided by Section 13A-12-191, 13A-12-192,
7 13A-12-196, or 13A-12-197.

8 "~~(15)~~(18) Unlawful imprisonment in the first degree,
9 as provided by Section 13A-6-41, if the victim of the offense
10 is a minor, and the record of adjudication or conviction
11 reflects the intent of the unlawful imprisonment was to abuse
12 the minor sexually.

13 "~~(16)~~(19) Unlawful imprisonment in the second
14 degree, as provided by Section 13A-6-42, if the victim of the
15 offense is a minor, and the record of adjudication or
16 conviction reflects the intent of the unlawful imprisonment
17 was to abuse the minor sexually.

18 "~~(17)~~(20) Kidnapping in the first degree, as
19 provided by subdivision (4) of subsection (a) of Section
20 13A-6-43, if the intent of the abduction is to violate or
21 abuse the victim sexually.

22 "~~(18)~~(21) Kidnapping of a minor, except by a parent,
23 guardian, or custodian, as provided by Section 13A-6-43 or
24 13A-6-44.

25 "~~(19)~~(22) Incest, as provided by Section 13A-13-3.

26 "~~(20)~~(23) Transmitting obscene material to a child
27 by computer, as provided by Section 13A-6-111.

1 "~~(21)~~(24) School employee engaging in a sex act or
2 deviant sexual intercourse with a student, as provided by
3 Section 13A-6-81.

4 "~~(22)~~(25) School employee having sexual contact with
5 a student, as provided by Section 13A-6-82.

6 "~~(23)~~(26) Facilitating solicitation of unlawful
7 sexual conduct with a child, as provided by Section 13A-6-121.

8 "~~(24)~~(27) Electronic solicitation of a child, as
9 provided by Section 13A-6-122.

10 "~~(25)~~(28) Facilitating the on-line solicitation of a
11 child, as provided by Section 13A-6-123.

12 "~~(26)~~(29) Traveling to meet a child for an unlawful
13 sex act, as provided by Section 13A-6-124.

14 "~~(27)~~(30) Facilitating the travel of a child for an
15 unlawful sex act, as provided by Section 13A-6-125.

16 "~~(28)~~(31) Human trafficking in the first degree, as
17 provided by Section 13A-6-152, provided that the offense
18 involves sexual servitude.

19 "~~(29)~~(32) Human trafficking in the second degree, as
20 provided by Section 13A-6-153, provided that the offense
21 involves sexual servitude.

22 "~~(30)~~(33) Custodial sexual misconduct, as provided
23 by Section 14-11-31.

24 "~~(31)~~(34) Any offense which is the same as or
25 equivalent to any offense set forth above as the same existed
26 and was defined under the laws of this state existing at the
27 time of such conviction, specifically including, but not

1 limited to, crime against nature, as provided by Section
2 13-1-110; rape, as provided by Sections 13-1-130 and 13-1-131;
3 carnal knowledge of a woman or girl, as provided by Sections
4 13-1-132 through 13-1-135, or attempting to do so, as provided
5 by Section 13-1-136; indecent molestation of children, as
6 defined and provided by Section 13-1-113; indecent exposure,
7 as provided by Section 13-1-111; incest, as provided by
8 Section 13-8-3; offenses relative to obscene prints and
9 literature, as provided by Sections 13-7-160 through 13-7-175,
10 inclusive; employing, harboring, procuring or using a girl
11 over 10 and under 18 years of age for the purpose of
12 prostitution or sexual intercourse, as provided by Section
13 13-7-1; seduction, as defined and provided by Section
14 13-1-112; a male person peeping into a room occupied by a
15 female, as provided by Section 13-6-6; assault with intent to
16 ravish, as provided by Section 13-1-46; and soliciting a child
17 by computer, as provided by Section 13A-6-110.

18 "~~(32)~~(35) Any solicitation, attempt, or conspiracy
19 to commit any of the offenses listed in subdivisions (1) to
20 (31), inclusive.

21 "~~(33)~~(36) Any crime committed in Alabama or any
22 other state, the District of Columbia, any United States
23 territory, or a federal, military, Indian, or foreign country
24 jurisdiction which, if it had been committed in this state
25 under the current provisions of law, would constitute an
26 offense listed in subdivisions (1) to ~~(32)~~ (35), inclusive.

1 "~~(34)~~(37) Any offense specified by Title I of the
2 federal Adam Walsh Child Protection and Safety Act of 2006
3 (Pub. L. 109-248, the Sex Offender Registration and
4 Notification Act (SORNA)).

5 "~~(35)~~(38) Any crime committed in another state, the
6 District of Columbia, any United States territory, or a
7 federal, military, Indian, or foreign country jurisdiction if
8 that jurisdiction also requires that anyone convicted of that
9 crime register as a sex offender in that jurisdiction.

10 "~~(36)~~(39) Any offender determined in any
11 jurisdiction to be a sex offender shall be considered a sex
12 offender in this state.

13 "~~(37)~~(40) The foregoing notwithstanding, any crime
14 committed in any jurisdiction which, irrespective of the
15 specific description or statutory elements thereof, is in any
16 way characterized or known as rape, carnal knowledge, sodomy,
17 sexual assault, sexual battery, criminal sexual conduct,
18 criminal sexual contact, sexual abuse, continuous sexual
19 abuse, sexual torture, solicitation of a child, enticing or
20 luring a child, child pornography, lewd and lascivious
21 conduct, taking indecent liberties with a child, molestation
22 of a child, criminal sexual misconduct, ~~or~~ video voyeurism, or
23 there has been a finding of sexual motivation.

24 "~~(38)~~(41) Any crime not listed in this section
25 wherein the underlying felony is an element of the offense and
26 listed in subdivisions (1) to ~~(37)~~ (40), inclusive.

1 "~~(39)~~(42) Any other offense not provided for in this
2 section wherein there is a finding of sexual motivation as
3 provided by Section 15-20A-6.

4 "§15-20A-6.

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

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

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

26 "(b) If the indictment, count of the indictment,
27 information, complaint, or warrant charging the offense

1 includes a specification of sexual motivation or if the
2 prosecuting attorney files an allegation of sexual motivation,
3 the state shall prove beyond a reasonable doubt that the
4 defendant committed the offense with a sexual motivation.

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

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

14 "(e) If there is a finding of sexual motivation, the
15 finding shall be made part of the record of conviction or
16 adjudication.

17 "(f) For purposes of this section, sexual motivation
18 means that one of the purposes for which the defendant
19 committed the crime was for the purpose of the sexual
20 gratification of the defendant.

21 "(g) This section shall not apply to sex offenses as
22 defined in subdivisions (1) to ~~(38)~~ (41), inclusive, of
23 Section 15-20A-5."

24 Section 2. (a) A person commits the crime of rape in
25 the third degree if, being at least 12 years old, but less
26 than 16 years old, he or she engages in sexual intercourse
27 with another person less than 12 years old and more than two

1 years younger than the person who is at least 12 years old but
2 less than 16 years old.

3 (b) Rape in the third degree is a Class A
4 misdemeanor.

5 Section 3. (a) A person commits the crime of sodomy
6 in the third degree if, being at least 12 years old, but less
7 than 16 years old, he or she engages in deviate sexual
8 intercourse with another person less than 12 years old and
9 more than two years younger than the person who is at least 12
10 years old but less than 16 years old.

11 (b) Sodomy in the third degree is a Class A
12 misdemeanor.

13 Section 4. (a) A person commits the crime of sexual
14 abuse in the third degree if, being at least 12 years old, but
15 less than 16 years old, he or she engages in sexual contact
16 with another person less than 12 years old and more than two
17 years younger than the person who is at least 12 years old but
18 less than 16 years old.

19 (b) Sexual abuse in the third degree is a Class A
20 misdemeanor.

21 Section 5. Although this bill would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds, the bill is excluded from further
24 requirements and application under Amendment 621, now
25 appearing as Section 111.05 of the Official Recompilation of
26 the Constitution of Alabama of 1901, as amended, because the

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

3 Section 6. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.