SB320
197764-5
By Senator Figures
RFD: Judiciary
First Read: 18-APR-19
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:

"§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(f26), 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(f26), 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(f26), 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:

"(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) 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.

"(2) FEMALE. Any female person. INCAPACITATED. Such The term includes any of the following:
SB320

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

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

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

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

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

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

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

"§13A-6-61.

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

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

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

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

"(b) Rape in the first degree is a Class A felony. §13A-6-62.

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

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

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

"(b) Rape in the second degree is a Class B felony. §13A-6-63.

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

"(1) He engages deviate sexual intercourse sodomy with another person by forcible compulsion;
"(2) He engages in deviate sexual intercourse sodomy with another person who is incapable of consent by reason of being physically helpless or mentally incapacitated; or

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

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

§13A-6-64.

"(a) A person commits the crime of sodomy in the second degree if—

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

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

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

§13A-6-65.

"(a) A person commits the crime of sexual misconduct 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
to sexually abuse, or to gratify the sexual desire of either party.

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

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

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

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

§13A-6-66.

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

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

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

"§13A-6-67.

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

"(1) He—subjects Subjects another person to sexual contact who is incapable of unable to consent by reason of some factor other than being less than 16 years old; or_

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

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

"§13A-6-68.

(a) A person commits the crime of indecent exposure if, with intent to arouse or gratify sexual desire of himself or herself, or of any person other than his or her spouse, he or she exposes his or her genitals under circumstances in which he or she knows the conduct is likely to cause
affront or alarm in any public place or on the private
premises of another or so near thereto as to be seen from such
private premises.

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

"§13A-6-70.

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

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

"(1) Forcible compulsion; or
"(2) Incapacity to Being incapable of consent; or
"(3) If the offense charged is sexual abuse, any
circumstances, in addition to forcible compulsion or
incapacity to consent, in which the victim does not expressly
or impliedly acquiesce in the actor's conduct.

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

"(1) Less than 16 years old; or
"(2) Mentally defective; or Incapacitated.
"(3) Mentally incapacitated; or
"(4) Physically helpless.

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

"§13A-6-71.

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

"(b) A person commits the crime of engaging in a sexual contact with a foster child if he or she is a foster parent and engages in a sexual contact, pursuant to Section 13A-6-60(3), with a foster child under the age of 19 years who is under his or her care or supervision. Engaging in sexual contact with a foster child is a Class C felony.
(c) A person commits the crime of soliciting a sex act or sexual contact with a foster child if he or she is a foster parent and solicits, persuades, encourages, harasses, or entices a foster child under the age of 19 years 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-6-30(2), or sexual contact, as defined by Section 13A-6-60(3) of the code. The crime of soliciting a sex act or sexual contact with a foster child is a Class A misdemeanor.

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

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

§13A-6-81.

(a) A person commits the crime of a school employee engaging in a sex act with a student under the age of 19 years if he or she is a school employee and engages in sexual intercourse as defined by Section 13A-6-60(1) or deviant sexual intercourse as defined by 13A-6-60(2) or sodomy, as 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(1) 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.
"In addition to the provisions of Section 13A-6-69, a person who, knowingly entices, induces, persuades, seduces, prevails, advises, coerces, lures, or orders, or attempts to entice, induce, persuade, seduce, prevail, advise, coerce, lure, or order, by means of a computer, on-line service, Internet service, Internet bulletin board service, weblog, cellular phone, video game system, personal data assistant, telephone, facsimile machine, camera, universal serial bus drive, writable compact disc, magnetic storage device, floppy disk, or any other electronic communication or storage device, a child who is at least three years younger than the defendant, or another person believed by the defendant to be a child at least three years younger than the defendant to meet with the defendant or any other person for the purpose of engaging in sexual intercourse, deviate sexual intercourse sodomy, sexual contact, sexual performance, obscene sexual performance, sexual conduct, or genital mutilation, or directs a child to engage in sexual intercourse, deviate sexual intercourse sodomy, sexual contact, sexual performance, obscene sexual performance, sexual conduct, or genital mutilation is guilty of electronic solicitation of a child. Any person who violates this section commits a Class B felony. 

"§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
entices, allures, persuades, induces, or directs any person under the age of 12 years to engage in sexual contact with another person under the age of 12.

"(2) A violation of this section is a Class E felony.


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

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

"(2) Loiters or remains in a public place for the purpose of gambling, or-

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

"(4) Being masked, loiters, remains, or congregates in a public place, or-

"(5) Loiters or remains in or about a school, college, or university building or grounds after having been told to leave by any authorized official of such the school, college, or university, and not having any reason or relationship involving custody of or responsibility for a pupil or any other specific, legitimate reason for being there, and not having written permission from a school, 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 (i) of Section 13A-11-140.

"(c) "Beware 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
sodomy, or sexual contact for monetary consideration or other thing of marketable value.

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

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

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

"(2) Procure or solicit patrons for prostitution.

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

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

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

§13A-12-190.

"For the purposes of this division, the following terms shall have the meanings respectively ascribed to them by 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..."
"b. The person recklessly disregards circumstances suggesting the character and content of the matter.

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

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

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

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

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

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

"(9) OTHER SEXUAL CONDUCT. Any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and
animals in an act of apparent sexual stimulation or
gratification.

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

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

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

"(13) OBSCENE. a. When used to describe any matter
that contains a visual reproduction of breast nudity, such
term means matter that the term shall include all of the
following:

"1. Applying contemporary local community standards,
on the whole, appeals to the prurient interest—and-

"2. Is patently offensive—and-
"3. On the whole, lacks serious literary, artistic, political or scientific value.

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

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

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

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

"§13A-12-192.

"(a) Any person who knowingly possesses with intent to disseminate 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 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

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

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

"(4) Any sex offense pursuant to Section 15-20A-5

involving a victim under 16 years of age, regardless of
whether it involves force or serious physical injury or death;

"(5) Any felony involving arson of any type;

"(6) Any felony involving forgery of any type;

"(7) Any felony involving counterfeiting.

"(8) Any felony involving drug trafficking.

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

"(1) To all crimes committed after January 7, 1985;

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

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

"§15-20A-5.

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

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

"(2) Rape in the second degree, as provided by Section 13A-6-62. A juvenile sex offender adjudicated
delinquent of a violation of rape in the second degree 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.

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

"(4) Sodomy in the second degree, as provided by
Section 13A-6-64. A juvenile sex offender adjudicated
delinquent of a violation of sodomy in the second degree 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.

"(5) Sexual misconduct, as provided by Section
13A-6-65, provided that on a first conviction or adjudication
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 of a sex offense, 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 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
exposure: A juvenile sex offender adjudicated of a violation of indecent exposure 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.

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

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

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

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

"(14) Violation of the Alabama Child Pornography Act, as provided by Section 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197. The sentencing court may exempt from this chapter a juvenile sex offender adjudicated delinquent of a violation of the Alabama Child Pornography Act after the juvenile has been counseled on the dangers of the conduct for which he or she was adjudicated delinquent. A juvenile sex offender adjudicated delinquent of a violation of the Alabama Child Pornography Act 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.

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

(22) Foster parent engaging in a sex act, having sexual contact, or soliciting a sex act or sexual contact with a foster child as provided by Section 13A-6-71.

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

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

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

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

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

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

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

(30) Custodial sexual misconduct, as provided by Section 14-11-31.
(31) Sexual extortion, as provided by Section 13A-6-241.

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

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

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

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

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

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

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

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

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

"§15-20A-44.

"(a) The Secretary of the Alabama State Law
Enforcement Agency shall promulgate adopt rules establishing
an administrative hearing for persons who are only made
subject to this chapter pursuant to subdivision (34) of
Section 15-20A-5.

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

Page 35
subject to this chapter and shall not be entitled to an administrative hearing as provided in subsection (a).

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


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

"§15-23-102.

"(a) If the district attorney files a motion under Section 15-23-101, the court shall order the person charged to submit to testing if the court determines there is probable cause to believe that the person charged committed the crime of rape, sodomy, sexual misconduct, sexual torture, sexual abuse, assault by bodily fluids, or any other crime where the victim was compelled to engage in sexual
activity by force or threat of force and the transmission of
body fluids was involved.

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

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

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

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

"(1) The alleged victim.

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

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

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

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

Section 3. This act shall become effective on the first day of the third month following its passage and 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 5:19 pm
By: Senator Figures

Alabama Secretary Of State
Act Num....: 2019-465
Bill Num....: S-320
Recv'd 06/10/19 10:55amSLT
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.

PATRICK HARRIS,
Secretary

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

PATRICK HARRIS,
Secretary

CONFERENCE COMMITTEE
Senate Conferees

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 __________.

YEAS _______ NAYS _______