

1 HB388
2 116006-1
3 By Representatives Lewis, Clouse, Vance and Collier
4 RFD: Judiciary
5 First Read: 21-JAN-10

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8 SYNOPSIS: This bill would amend the rape, sodomy, and
9 sexual abuse statutes to prohibit a school official
10 or foster parent from having sexual contact with
11 the child regardless of whether the child is of age
12 to consent to the contact.

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

26 The purpose or effect of this bill would be
27 to require a new or increased expenditure of local

1 funds within the meaning of the amendment. However,
2 the bill does not require approval of a local
3 governmental entity or enactment by a 2/3 vote to
4 become effective because it comes within one of the
5 specified exceptions contained in the amendment.

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Sections 13A-6-60, 13A-6-61, 13A-6-64, and
12 13A-6-66 of the Code of Alabama 1975, relating to certain
13 sexual offenses; to prohibit a school official or foster
14 parent from engaging in sexual contact with the child
15 regardless of whether the child consents to the contact; to
16 define school official and foster parent; and in connection
17 therewith would have as its purpose or effect the requirement
18 of a new or increased expenditure of local funds within the
19 meaning of Amendment 621 of the Constitution of Alabama of
20 1901, now appearing as Section 111.05 of the Official
21 Recompilation of the Constitution of Alabama of 1901, as
22 amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Sections 13A-6-60, 13A-6-61, 13A-6-64,
25 and 13A-6-66 of the Code of Alabama 1975, are amended to read
26 as follows:

27 "§13A-6-60.

1 "The following definitions apply in this article:

2 "~~(1)~~ (9) SEXUAL INTERCOURSE. Such term has its
3 ordinary meaning and occurs upon any penetration, however
4 slight; emission is not required.

5 "~~(2)~~ (1) DEVIATE SEXUAL INTERCOURSE. Any act of
6 sexual gratification between persons not married to each other
7 involving the sex organs of one person and the mouth or anus
8 of another.

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

13 "~~(4)~~ (2) FEMALE. Any female person.

14 "(4) FOSTER PARENT. A person who has been assigned
15 by the Department of Human Resources as the legal custodian of
16 a child age 18 or younger and as such may exercise supervision
17 or control over the child.

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

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

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

4 "(8) SCHOOL OFFICIAL. Any employee of a school
5 attended by a child age 18 or younger who is in the position
6 to exercise supervision or control over the child.

7 "~~(8)~~ (3) FORCIBLE COMPULSION. Physical force that
8 overcomes earnest resistance or a threat, express or implied,
9 that places a person in fear of immediate death or serious
10 physical injury to himself or another person.

11 "§13A-6-61.

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

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

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 physically helpless or mentally incapacitated;
19 or

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

23 "(4) He or she, being a school official or foster
24 parent, engages in sexual intercourse with a child who is at
25 least 16 years of age, but under the age of 18. Consent of the
26 child is not a defense under this subsection.

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

1 "§13A-6-64.

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

4 "(1) He, being 16 years old or older, engages in
5 deviate sexual intercourse with another person less than 16
6 and more than 12 years old.

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

10 "(3) He or she, being a school official or foster
11 parent, engages in deviate sexual intercourse with the child
12 who is at least 16 years of age, but under the age of 18.
13 Consent of the child is not a defense under this subsection.

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

15 "§13A-6-66.

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

18 "(1) He subjects another person to sexual contact by
19 forcible compulsion~~;~~ ~~or~~ .

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

23 "(3) He or she, being a school official or foster
24 parent, subjects to sexual contact a child who is at least 16
25 years of age, but under the age of 18. Consent of the child is
26 not a defense under this subsection.

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

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

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