

1 HB68
2 215888-2
3 By Representative Simpson
4 RFD: Judiciary
5 First Read: 11-JAN-22
6 PFD: 01/06/2022

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8 SYNOPSIS: Under existing law, in a criminal
9 prosecution for a physical or sexual offense there
10 are certain protections offered to victims and
11 witnesses who are under the age of 16 at the time
12 of trial.

13 This bill would provide these additional
14 protections to a victim or a witness who is a
15 protected person.

16 This bill would also define child and
17 protected person.

18 Under existing law, additional protections
19 are available in cases involving a physical
20 offense, sexual offense, or sexual exploitation of
21 a child.

22 This bill would also provide for additional
23 protections in violent offenses.

24 This bill would define physical offense,
25 sexual offense, and violent offense.

26 Under existing law, anatomically correct
27 dolls or mannequins may be used to assist a witness

1 during testimony when the witness is under the age
2 of 10 at the time of the trial.

3 This bill would allow the use of
4 anatomically correct dolls or mannequins to be used
5 to assist a witness during testimony when the
6 witness is under the age of 12 or a protected
7 person at the time of the offense.

8 Under existing law, out-of-court statements
9 made by a child under the age of 12 may be admitted
10 into evidence as long as certain criteria are met.

11 This bill would also allow out-of-court
12 statements made by a protected person to be
13 admissible as long as certain criteria are met.

14 This bill would also make nonsubstantive,
15 technical revisions to update the existing code
16 language to current style.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 Relating to criminal procedure; to amend Sections
23 15-25-1, 15-25-2, as last amended by Act 2021-373, 2021
24 Regular Session, 15-25-3, 15-25-5, and 15-25-6, Code of
25 Alabama 1975, to allow a protected person to be offered
26 protections in criminal prosecutions for physical offenses,
27 sexual offenses, and violent offenses; to define a protected

1 person; to define a physical offense, sexual offense, and
2 violent offense; to allow use of anatomically correct dolls or
3 mannequins during testimony of a child under the age of 12 or
4 a protected person; to amend Sections 15-25-30, 15-25-31,
5 15-25-32, 15-25-34, 15-25-36, 15-25-37, 15-25-38, and
6 15-25-39, Code of Alabama 1975, to allow out-of-court
7 statements to be admissible if the witness is a protected
8 person; to add Section 15-25-7 to the Code of Alabama 1975, to
9 allow leading questions of certain witnesses in a criminal
10 proceeding; to repeal Section 15-25-33, Code of Alabama 1975,
11 relating to expert testimony as to unavailability of a child
12 to testify; to make nonsubstantive, technical revisions to
13 update the existing code language to current style.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Sections 15-25-1, 15-25-2, as last
16 amended by Act 2021-373, 2021 Regular Session, 15-25-3,
17 15-25-5, and 15-25-6, Code of Alabama 1975, are amended to
18 read as follows:

19 "§15-25-1.

20 "(a) This article shall apply to ~~In~~ any criminal
21 prosecution for a physical offense or a sexual offense
22 ~~wherein,~~ or a violent offense where the alleged victim or
23 witness is a child under the age of 16 years and in any
24 ~~criminal prosecution involving the sexual exploitation of a~~
25 ~~child under the age of 16, the court may allow leading~~
26 ~~questions at trial by the prosecution or defense of any victim~~
27 ~~or witness in a case who is under the age of 10, if the court~~

1 ~~determines that the allowance of leading questions will~~
2 ~~further the interests of justice. The court may on motion of~~
3 ~~the prosecution or the defense, or on its own motion, limit~~
4 ~~the scope and extent of any leading questions or a protected~~
5 ~~person.~~

6 "(b) For the purposes of this article, a "physical
7 offense, a sexual offense, or a violent offense," is defined
8 to include all of the following crimes:

9 "(1) A sex offense as provided in Section 15-20A-5.

10 "(2) A violent offense as provided in Section
11 12-25-32.

12 "(3) Aggravated child abuse as provided in Section
13 26-15-3.1.

14 "(4) Assault in any degree.

15 "(5) Any offense involving domestic violence, elder
16 abuse, or a violation of a protection order.

17 "(6) Any attempt to commit any of the offenses
18 listed in subdivisions (1) to (5), inclusive.

19 "(c) For the purposes of this article, "child" means
20 a person who is under the age of 16 years at the time of
21 trial.

22 "(d) For the purposes of this article, "protected
23 person" means a person who has a developmental disability
24 attributable to an intellectual disability, autism, cerebral
25 palsy, epilepsy, or other disabling neurological condition
26 that requires training or support similar to that required by

1 a person with an intellectual disability, if any of the
2 following apply:

3 "(1) The disability originates before the person
4 attains 22 years of age, the disability can be expected to
5 continue indefinitely, and the disability constitutes a
6 substantial handicap to the ability of the person to function
7 in society.

8 "(2) If the disability is attributable to an
9 intellectual disability, the condition is manifested before
10 the person attains 18 years of age, the disability can be
11 expected to continue indefinitely, and the disability
12 constitutes a substantial handicap to the ability of the
13 person to function in society.

14 "(3) The disability results in significant
15 subaverage intellectual functioning with concurrent deficits
16 in adaptive behavior that are manifested during the
17 developmental period.

18 "§15-25-2.

19 "(a) In any criminal prosecution referred to in
20 Section 15-25-1, the court, upon motion of the district
21 attorney or Attorney General, for good cause shown and after
22 notice to the defendant, may order the taking of a video
23 deposition of an alleged victim of or witness to the crime who
24 is ~~under the age of 16~~ a child or a protected person at the
25 time of the order.

26 "(b) On any motion for a video deposition of the
27 victim or a witness, the court shall consider ~~the age and~~

1 ~~maturity of the child,~~ the nature of the offense, the nature
2 of testimony that may be expected, and the possible effect
3 that the testimony in person at trial may have on the victim
4 or witness, along with any other relevant matters that may be
5 required by Supreme Court rule.

6 "(c) During the recording of a video deposition
7 ~~authorized pursuant to this section,~~ the following persons
8 shall be in the room with the child or the protected person:

9 "(1) The prosecuting attorney, ~~the~~.

10 "(2) The attorney for the defendant, ~~and a~~.

11 "(3) A person whose presence, in the judgment of the
12 court, contributes to the well-being of the child or protected
13 person and who has dealt with the child or the protected
14 person in a therapeutic setting regarding the abuse.

15 "(4) Additional persons, other than the defendant,
16 may be admitted into the room in the discretion of the court.

17 "(d) Examination and cross-examination of the
18 alleged victim or witness shall proceed at the taking of the
19 video deposition as though the alleged victim or witness were
20 testifying personally in the trial of the case. The state
21 shall provide the attorney for the defendant with ~~reasonable~~
22 ~~access and means to view and hear~~ a copy of the video
23 deposition at a suitable and reasonable time prior to the
24 trial of the case. The court shall enter a protective order
25 prohibiting the attorney for the defendant from copying,
26 reproducing, or distributing the video deposition. Objections
27 to the introduction into the record of the deposition shall be

1 heard by the judge in whose presence the deposition was taken,
2 and unless the court determines that its introduction in lieu
3 of the victim's or witness's actual appearance as a witness at
4 the trial will unfairly prejudice the defendant, the video
5 deposition shall be entered into the record by the state in
6 lieu of the direct testimony of the alleged victim or witness
7 and shall be viewed and heard at the trial of the case.

8 "(e) For the purposes of this section, "video
9 deposition" means the recording of video, with sound, of
10 witness testimony made under oath to be entered in the record
11 in a judicial proceeding.

12 "(f) The Supreme Court may adopt rules of procedure
13 regarding the taking and use of video depositions in criminal
14 proceedings and juvenile cases, as well as transcription of
15 video depositions in appeals of those cases.

16 "(g) All costs associated with the recording of a
17 deposition ordered pursuant to this article shall be paid by
18 the state. The district attorney shall submit all related cost
19 bills to the state Comptroller for approval and payment from
20 the fund entitled Court Costs Not Otherwise Provided For.

21 "(h) All recordings of video depositions ordered
22 pursuant to this article shall be subject to any protective
23 order of the court for the purpose of protecting the privacy
24 of the victim of the offense.

25 "(i) When necessary, the operator of the equipment
26 used to record video depositions may also be in the room

1 during the taking of the deposition and the operator shall
2 make every effort to be unobtrusive.

3 "(j) Only the court, the prosecuting attorney, and
4 the attorney for the defendant may question the ~~child~~ victim
5 or witness. During the testimony of the child or protected
6 person, the defendant shall be provided access to view the
7 testimony out of the presence of the child or protected person
8 and shall be allowed to communicate with his or her attorney
9 by any appropriate election method.

10 "(k) ~~This section shall not apply when the defendant~~
11 ~~is an attorney pro se~~ In circumstances where a defendant in a
12 proceeding has elected to proceed without counsel, the court
13 may appoint counsel for the defendant and may order counsel to
14 question a child or a protected person on behalf of the pro se
15 defendant if the court finds that there is substantial
16 likelihood that the child or protected person would experience
17 emotional harm if the defendant were allowed to question the
18 child or protected person.

19 "§15-25-3.

20 "(a) In those criminal prosecutions set out in
21 Section 15-25-1, the court, on motion of the state or the
22 defendant prior to the trial of the case, may order that the
23 testimony of any alleged victim of the crime or a witness
24 ~~thereto~~ to the crime who is ~~under the age of 16~~ a child or
25 protected person at the time of the order shall be viewed and
26 heard at trial by the court and the finder of fact by closed
27 circuit equipment. In ruling on the motion the court shall

1 take into consideration ~~those matters set out in Section~~
2 ~~15-25-2~~ the nature of the offense, the nature of the testimony
3 that may be expected, and the possible effect that the
4 testimony in person at trial may have on the victim or
5 witness, along with any other relevant matters that may be
6 required by Supreme Court rule.

7 "(b) If the court orders that the victim's or
8 witness's testimony in court shall be by closed circuit
9 equipment, the testimony shall be taken outside the courtroom
10 in the judge's chambers or in another suitable location
11 designated by the judge.

12 "(c) Examination and cross-examination of the
13 ~~alleged child~~ victim or witness shall proceed as though he or
14 she were testifying in the courtroom. Present in the room with
15 the child or the protected person during his or her testimony
16 shall be ~~the~~ any of the following:

17 "(1) The prosecuting attorney,~~the.~~

18 "(2) The attorney of the defendant,~~and a.~~

19 "(3) A person whose presence, in the judgment of the
20 court, contributes to the well-being of the child or protected
21 person and who has dealt with the child or protected person in
22 a therapeutic setting regarding the abuse.

23 "(4) Additional persons,~~such as the parent or~~
24 ~~parents or legal guardian,~~ except the defendant, may be
25 admitted into the room in the discretion of the court.

26 "(d) All costs incurred by the district attorney to
27 make it possible for the court and the trier of the fact to

1 view the testimony of the victim or witness by closed circuit
2 equipment as provided in this article shall be paid by the
3 state. The district attorney shall submit all bills for costs
4 to the state Comptroller for approval and payment from the
5 fund entitled Court Costs Not Otherwise Provided For.

6 "(e) Notwithstanding any other provision of law or
7 rule of evidence, a child or protected person victim of a
8 physical offense, sexual offense, or ~~sexual exploitation~~
9 violent offense, shall be considered a competent witness and
10 shall be allowed to testify without prior qualification in any
11 judicial proceeding. The trier of fact shall be permitted to
12 determine the weight and credibility to be given to the
13 testimony. The court may also allow leading questions of the
14 child ~~witnesses~~ or protected person victim or witness in the
15 interest of justice.

16 "(f) The operators of the closed circuit equipment
17 may also be in the room and shall make every effort to be
18 unobtrusive.

19 "(g) Only the court, the prosecuting attorney, and
20 the attorney for the defendant may question the child or
21 protected person. During the ~~child's~~ testimony by closed
22 circuit equipment, the defendant, the judge, and the jury
23 shall remain in the courtroom. The video feed showing the
24 child or protected person shall remain visible to the
25 defendant, the judge, and the jury at all times during the
26 testimony and cross-examination of the child ~~victim or witness~~
27 or protected person.

1 "(h) The judge and the defendant shall be allowed to
2 communicate with the attorneys in the room where the child or
3 protected person is testifying by any appropriate electronic
4 method. The party making the motion that the testimony shall
5 be by closed circuit equipment shall make all necessary
6 arrangements regarding the equipment and the operation thereof
7 during the course of the proceeding.

8 "(i) This section may not be interpreted to
9 preclude, for purposes of identification of a defendant, the
10 presence of both the victim and the defendant in the courtroom
11 at the same time. The testimony shall be limited to purposes
12 of identification only.

13 "~~(j) The provisions of this section shall not apply~~
14 ~~if the defendant is not represented by an attorney~~ In
15 circumstances where a defendant in a proceeding has elected to
16 proceed without counsel, the court may appoint counsel for the
17 defendant and may order counsel to question a child or a
18 protected person on behalf of the pro se defendant if the
19 court finds that there is substantial likelihood that the
20 child or protected person would experience emotional harm if
21 the defendant were allowed to question the child or protected
22 person.

23 "§15-25-5.

24 "In any criminal proceeding and juvenile cases
25 ~~wherein~~ where the defendant is alleged to have had unlawful
26 sexual contact ~~or penetration with or on~~ with a child or a
27 protected person, the court shall permit the use of

1 anatomically correct dolls or mannequins to assist an alleged
2 victim or witness who is under the age of ~~10~~ 12 at the time of
3 trial, or who is a protected person, in testifying on direct
4 and cross-examination at trial, or in a ~~videotaped~~ video
5 deposition as provided in this article.

6 "§15-25-6.

7 "In all criminal cases and juvenile proceedings
8 involving offenses set out in Section 15-25-1, ~~wherein where~~
9 the victim ~~hereof~~ or a witness to the offense is ~~under the age~~
10 ~~of 16 years~~ a child or a protected person, the court and the
11 ~~district~~ prosecuting attorney shall take appropriate action to
12 ensure a speedy trial in order to minimize the length of time
13 the child or the protected person must endure the stress of
14 involvement in the proceedings. In ruling on any motion or
15 other request for a delay or continuance of proceedings, the
16 court shall consider and give weight to any adverse impact the
17 delay or continuance may have on the well-being of a child
18 ~~victim or witness~~ or protected person.

19 Section 2. Sections 15-25-30, 15-25-31, 15-25-32,
20 15-25-34, 15-25-36, 15-25-37, 15-25-38, and 15-25-39, Code of
21 Alabama 1975, are amended to read as follows:

22 "§15-25-30.

23 "This article shall be entitled "The Child and
24 Protected Person Physical and Sexual Abuse, and Violent
25 Offense Victim Protection Act."

26 "§15-25-31.

1 "An out-of-court statement made by a child under 12
2 years of age at the time the statement is made, or by a
3 protected person as defined in Section 15-25-1, concerning an
4 act that is a material element of any crime involving ~~child a~~
5 physical offense, a sexual offense, and exploitation or a
6 violent offense, as defined in Section 15-25-39, which
7 statement is not otherwise admissible in evidence, is
8 admissible in evidence in criminal proceedings, if the
9 requirements of Section 15-25-32 are met.

10 "§15-25-32.

11 "An out-of-court statement may be admitted as
12 provided in Section 15-25-31, if either of the following
13 occur:

14 "(1) The ~~child~~ witness testifies at the proceeding,
15 ~~or~~ testifies by means of video ~~tape~~ deposition as provided by
16 Section 15-25-2, or testifies by means of closed circuit
17 television as is provided in Section 15-25-3, and at the time
18 of ~~such~~ the testimony is subject to cross-examination about
19 the out-of-court statements; ~~or.~~

20 "~~(2)a. The child is found by the court to be~~
21 ~~unavailable to testify on any of these grounds:~~

22 "~~1. The child's death;~~

23 "(2) 2. The court finds that the witness's
24 out-of-court statement is shown to the reasonable satisfaction
25 of the court to possess particularized guarantees of
26 trustworthiness and there are reasonable grounds to believe
27 that the defendant or someone acting on behalf of the

1 defendant has intentionally removed the ~~child~~ witness from the
2 jurisdiction of the court; or that the defendant engaged in
3 wrongdoing that was intended to, and did, procure the
4 unavailability of the witness.

5 ~~"3. The child's total failure of memory;~~

6 ~~"4. The child's physical or mental disability;~~

7 ~~"5. The child's incompetency, including the child's~~
8 ~~inability to communicate about the offense because of fear or~~
9 ~~a similar reason; or~~

10 ~~"6. Substantial likelihood that the child would~~
11 ~~suffer severe emotional trauma from testifying at the~~
12 ~~proceeding or by means of closed circuit television; and~~

13 ~~"b. The child's out-of-court statement is shown to~~
14 ~~the reasonable satisfaction of the court to possess~~
15 ~~particularized guarantees of trustworthiness.~~

16 "§15-25-34.

17 "Before a statement may be admitted pursuant to this
18 article on the grounds that the ~~child~~ declarant is unavailable
19 as a witness, ~~such~~ the statement may be admitted only if there
20 is corroborative evidence of the act.

21 "§15-25-36.

22 "The court shall inform the jury that the
23 out-of-court statement was taken without the defendant being
24 afforded cross examination of ~~such~~ the out-of-court statement.

25 "§15-25-37.

26 "In determining whether a statement possesses
27 particularized guarantees of trustworthiness ~~under~~ pursuant to

1 Section ~~15-25-32(2)~~ 15-25-32, the court shall consider any
2 ~~one, but is not limited to,~~ of the following factors:

3 "(1) The ~~child's~~ witness's personal knowledge of the
4 event~~;~~ .

5 "(2) The age and maturity of the ~~child;~~ witness.

6 "(3) Certainty that the statement was made,
7 including the credibility of the person testifying about the
8 statement~~;~~ .

9 "(4) Any apparent motive the ~~child~~ witness may have
10 to falsify or distort the event, including bias, corruption,
11 or coercion~~;~~ .

12 "(5) The timing of the ~~child's witness's~~ statement~~;~~ .

13 "(6) Whether more than one person heard the
14 statement~~;~~ .

15 "(7) Whether the ~~child~~ witness was suffering from
16 pain or distress when making the statement~~;~~ .

17 "(8) The nature and duration of any alleged abuse~~;~~ .

18 "(9) Whether the ~~child's~~ witness's young age or
19 status as a protected person pursuant to Section 15-25-1 makes
20 it unlikely that the ~~child~~ witness fabricated a statement that
21 represents a graphic, detailed account beyond the ~~child's~~
22 witness's knowledge and experience~~;~~ .

23 ~~"(10) Whether the statement has a "ring of verity,"~~
24 ~~has an internal consistency or coherence, and uses terminology~~
25 ~~appropriate to the child's age;~~

26 "(10) ~~(11)~~ Whether the statement is spontaneous or
27 directly responsive to questions~~;~~ .

1 "(11) ~~(12)~~ Whether the statement is suggestive due
2 to improperly leading questions~~7~~.

3 "(12) ~~(13)~~ Whether extrinsic evidence exists to show
4 the defendant's opportunity to commit the act complained of in
5 the ~~child's~~ witness's statement.

6 "§15-25-38.

7 "The court shall support with findings and record
8 any rulings pertaining to the ~~child's~~ witness's unavailability
9 and the trustworthiness of the out-of-court statement.

10 "§15-25-39.

11 "For purposes of this article, "a ~~child~~ physical
12 offense, sexual offense, ~~and exploitation~~ or violent offense"
13 is defined to include the following crimes, when one or more
14 of the victims is a child under 12 years of age or is a
15 protected person as provided in Section 15-25-1:

16 "~~(1) Rape in any degree~~ A sex offense pursuant to
17 Section 15-20A-5.

18 "~~(2) Sodomy in any degree~~ A violent offense pursuant
19 to Section 12-25-32.

20 "~~(3) Sexual abuse in any degree~~ Aggravated child
21 abuse as provided in Section 26-15-3.1.

22 "~~(4) Sexual misconduct.~~

23 "~~(5) Enticing a child to enter a vehicle, room,~~
24 ~~house, office, or other place, for immoral purposes.~~

25 "~~(6) Any crime involving the production of child~~
26 ~~pornography.~~

1 ~~"(7) Torture and willful abuse of a child under 18~~
2 ~~years of age by responsible person as defined in Section~~
3 ~~26-15-3.~~

4 ~~"(8) Sexual torture as defined in Section~~
5 ~~13A-6-65.1.~~

6 ~~"(9) Attempted murder.~~

7 ~~"(4) (10) Assault first in any degree.~~

8 ~~"(11) Assault second degree.~~

9 ~~"(12) Assault third degree.~~

10 ~~"(13) Harassment.~~

11 "(5) Any offense involving domestic violence, elder
12 abuse, or a violation of a protection order.

13 "(6) Any attempt to commit any of the offenses
14 listed in subdivisions (1) to (5), inclusive."

15 Section 3. Section 15-25-7 is added to the Code of
16 Alabama 1975, to read as follows:

17 §15-25-7.

18 In any criminal prosecution referred to in Section
19 15-25-1, the court may allow leading questions at trial by the
20 prosecution or defense of any victim or witness in a case who
21 is under the age of 12 or is a protected person, if the court
22 determines that the allowance of leading questions will
23 further the interests of justice. The court, on motion of the
24 prosecution or the defense, or on its own motion, may limit
25 the scope and extent of any leading questions.

1 Section 4. Section 15-25-33 of the Code of Alabama
2 1975, relating to use expert testimony as to unavailability of
3 the child to testify, is repealed.

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