

1 HB375
2 185700-1
3 By Representative Butler
4 RFD: Judiciary
5 First Read: 06-FEB-18

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8 SYNOPSIS: Under existing law, a person commits the
9 crime of custodial sexual misconduct if he or she
10 is employed by certain governmental agencies and
11 engages in sexual conduct with another person in
12 the custody of the Department of Corrections,
13 Department of Youth Services, a sheriff, a county,
14 or a municipality.

15 This bill would further define the term
16 employee.

17 This bill would further define the crime to
18 provide that a person commits the crime of
19 custodial sexual misconduct if he or she is an
20 employee and engages in sexual conduct with a
21 person under the supervisory, disciplinary, or
22 custodial authority of a community corrections and
23 punishment program or an alcohol or drug abuse
24 court referral and treatment program.

25 Amendment 621 of the Constitution of Alabama
26 of 1901, now appearing as Section 111.05 of the
27 Official ReCompilation of the Constitution of

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

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

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To amend Sections 14-11-30 and 14-11-31, Code of
24 Alabama 1975, relating to custodial sexual misconduct; to
25 provide further definitions; to further define the crime to
26 protect persons under the supervisory, disciplinary, or
27 custodial authority of a community corrections and punishment

1 program or an alcohol or drug abuse court referral and
2 treatment program; and in connection therewith would have as
3 its purpose or effect the requirement of a new or increased
4 expenditure of local funds within the meaning of Amendment 621
5 of the Constitution of Alabama of 1901, now appearing as
6 Section 111.05 of the Official ReCompilation of the
7 Constitution of Alabama of 1901, as amended.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 14-11-30 and 14-11-31, Code of
10 Alabama 1975, is amended as follows:

11 "§14-11-30.

12 "When used in this article, the following words
13 shall have the following meanings:

14 "(1) CUSTODY. Any of the following:

15 "a. Pretrial incarceration or detention.

16 "b. Incarceration or detention under a sentence or
17 commitment to a state or local penal institution, any
18 detention facility for children or youthful offenders.

19 "c. Parole or mandatory supervised release.

20 "d. Electronic home detention.

21 "e. Parole or probation.

22 "(2) EMPLOYEE. Either of the following:

23 "a. An employee or contractual employee of any
24 governmental agency of the state, county, or municipality that
25 has by statute, ordinance, or court order the responsibility
26 for the care, control, or supervision of pretrial or sentenced
27 persons in a penal system or detention facility.

1 "b. An employee, agent, or contractor of a facility
2 who provides supervision, treatment, care, custody, control,
3 or authority over a person, pretrial or posttrial, who is not
4 a contractual employee of a governmental agency of the state,
5 courts, or municipality, pursuant to a referral or court order
6 by the state, county, or municipality.

7 "(3) SEXUAL CONDUCT. Any of the following acts:

8 "a. Sexual intercourse. This term shall have its
9 ordinary meaning and occurs upon a penetration, however
10 slight; emission is not required.

11 "b. Sexual contact. Any known touching for the
12 purpose of sexual arousal, gratification, or abuse of the
13 following:

14 "1. The sexual or other intimate parts of the victim
15 by the actor.

16 "2. The sexual or other intimate parts of the actor
17 by the victim.

18 "3. The clothing covering the immediate area of the
19 sexual or other intimate parts of the victim or actor.

20 "c. Sexual intrusion. Any intrusion, however slight,
21 by any object or any part of the body of a person into the
22 genital, anal, or oral opening of the body of another person
23 if that sexual intrusion can reasonably be construed as being
24 for the purposes of sexual arousal, gratification, or abuse.

25 "§14-11-31.

1 "(a) It shall be unlawful for any employee to engage
2 in sexual conduct with a person who is in the custody of any
3 of the following:

4 "(1) the The Department of Corrections,

5 "(2) the The Department of Youth Services,

6 "(3) a A sheriff,

7 "(4) a A county, ~~or.~~

8 "(5) a A municipality.

9 "(b) It shall be unlawful for any probation or
10 parole officer, law enforcement officer, or any other employee
11 of a law enforcement agency to engage in sexual conduct with a
12 person who is under the supervisory, disciplinary, or
13 custodial authority of the officer engaging in the sexual
14 conduct with the person.

15 "(c) It shall be unlawful for an employee to engage
16 in sexual conduct with a person who is under the supervisory,
17 disciplinary, or custodial authority of any of the following:

18 "(1) A community corrections and punishment program
19 created pursuant to the Alabama Community Corrections and
20 Punishment Act, Article 9, commencing with Section 15-18-170,
21 of Chapter 18, Title 15.

22 "(2) An alcohol or drug abuse court referral and
23 treatment program created pursuant to Chapter 23 of Title 12.

24 "~~(c)~~ (d) Any person violating subsection (a) ~~or,~~
25 (b), or (c) shall, upon conviction, be guilty of custodial
26 sexual misconduct.

1 "~~(d)~~ (e) Custodial sexual misconduct is a Class C
2 felony.

3 "~~(e)~~ (f) For purposes of this article, ~~the consent~~
4 ~~of the person in custody of the Department of Corrections, the~~
5 ~~Department of Youth Services, a sheriff, a county, or a~~
6 ~~municipality, or a person who is on probation or on parole,~~
7 shall not be a defense to a prosecution under this article."

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

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