

1 HB338
2 202919-2
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9 and Robertson
10 RFD: Judiciary
11 First Read: 27-FEB-20

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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, 15-25-3, 15-25-5, and 15-25-6, Code of
24 Alabama 1975, to allow a protected person to be offered
25 protections in criminal prosecutions for physical offenses,
26 sexual offenses, and violent offenses; to define a protected
27 person; to define a physical offense, sexual offense, and

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

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 15-25-1, 15-25-2, 15-25-3,
15 15-25-5, and 15-25-6, Code of Alabama 1975, are amended to
16 read as follows:

17 "§15-25-1.

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

1 ~~the prosecution or the defense, or on its own motion, limit~~
2 ~~the scope and extent of any leading questions~~ or a protected
3 person.

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

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

8 "(2) A violent offense as provided in Section
9 12-25-32.

10 "(3) Aggravated child abuse as provided in Section
11 26-15-3.1.

12 "(4) Assault in any degree.

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

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

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

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

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

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

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

16 "§15-25-2.

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

24 "(b) On any motion for a ~~videotaped~~ video deposition
25 of the victim or a witness, the court shall consider ~~the age~~
26 ~~and maturity of the child,~~ the nature of the offense, the
27 nature of testimony that may be expected, and the possible

1 effect that the testimony in person at trial may have on the
2 victim or witness, along with any other relevant matters that
3 may be required by Supreme Court rule.

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

8 "(1) The judge.

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

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

11 "(4) 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 "(5) Additional persons, such as the parent or
16 parents or legal guardian, other than the defendant, may be
17 admitted into the room in the discretion of the court.

18 "(6) A certified facility dog, in the discretion of
19 the court, pursuant to Section 12-21-148.

20 "(d) Examination and cross-examination of the
21 alleged victim or witness shall proceed at the taking of the
22 ~~videotaped~~ video deposition as though the alleged victim or
23 witness were testifying personally in the trial of the case.
24 The state shall provide the attorney for the defendant with
25 reasonable access and means to view and hear the ~~videotaped~~
26 video deposition at a suitable and reasonable time prior to
27 the trial of the case. Objections to the introduction into the

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

9 "(e) For the purposes of this section, "~~videotaped~~
10 video deposition" means the ~~visual recording on a magnetic~~
11 ~~tape, together with the associated sound of a~~ video, with
12 sound, of witness testifying testimony made under oath to be
13 entered in the record in a judicial proceeding.

14 "(f) The Supreme Court may adopt rules of procedure
15 regarding the taking and use of ~~videotaped~~ video depositions
16 in criminal proceedings and juvenile cases, as well as ~~for the~~
17 ~~transcribing of such~~ transcription of video depositions in the
18 ~~event the case is thereafter appealed~~ appeals of those cases.

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

25 "(h) All ~~videotapes~~ recordings of video depositions
26 ordered pursuant to this article shall be subject to any

1 protective order of the court for the purpose of protecting
2 the privacy of the victim of the offense.

3 "(i) When necessary, the operator of the ~~videotaping~~
4 equipment used to record video depositions may also be in the
5 room during the taking of the deposition and the operator
6 shall make every effort to be unobtrusive.

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

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

23 "§15-25-3.

24 "(a) In those criminal prosecutions set out in
25 Section 15-25-1, the court, on motion of the state or the
26 defendant prior to the trial of the case, may order that the
27 testimony of any alleged victim of the crime or a witness

1 ~~thereto~~ to the crime who is ~~under the age of 16~~ a child or
2 protected person at the time of the order shall be viewed and
3 heard at trial by the court and the finder of fact by closed
4 circuit equipment. In ruling on the motion the court shall
5 take into consideration ~~those matters set out in Section~~
6 ~~15-25-2~~ the nature of the offense, the nature of the testimony
7 that may be expected, and the possible effect that the
8 testimony in person at trial may have on the victim or
9 witness, along with any other relevant matters that may be
10 required by Supreme Court rule.

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

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

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

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

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

1 "(4) Additional persons, such as the parent or
2 parents or legal guardian, except the defendant, may be
3 admitted into the room in the discretion of the court.

4 "(5) A certified facility dog, in the discretion of
5 the court, pursuant to Section 12-21-148.

6 "(d) All costs incurred by the district attorney to
7 make it possible for the court and the trier of the fact to
8 view the testimony of the victim or witness by closed circuit
9 equipment as provided in this article shall be paid by the
10 state. The district attorney shall submit all bills for costs
11 to the state Comptroller for approval and payment from the
12 fund entitled Court Costs Not Otherwise Provided For.

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

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

26 "(g) Only the court, the prosecuting attorney, and
27 the attorney for the defendant may question the child or

1 protected person. During the ~~child's~~ testimony by closed
2 circuit equipment, the defendant, the judge, and the jury
3 shall remain in the courtroom. The video feed showing the
4 child or protected person shall remain visible to the
5 defendant, the judge, and the jury at all times during the
6 testimony and cross-examination of the child ~~victim or witness~~
7 or protected person.

8 "(h) The judge and the defendant shall be allowed to
9 communicate with the attorneys in the room where the child or
10 protected person is testifying by any appropriate electronic
11 method. The party making the motion that the testimony shall
12 be by closed circuit equipment shall make all necessary
13 arrangements regarding the equipment and the operation thereof
14 during the course of the proceeding.

15 "(i) This section may not be interpreted to
16 preclude, for purposes of identification of a defendant, the
17 presence of both the victim and the defendant in the courtroom
18 at the same time. The testimony shall be limited to purposes
19 of identification only.

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

1 the defendant were allowed to question the child or protected
2 person.

3 "§15-25-5.

4 "In any criminal proceeding and juvenile cases
5 ~~wherein~~ where the defendant is alleged to have had unlawful
6 sexual contact ~~or penetration with or on~~ with a child or a
7 protected person, the court shall permit the use of
8 anatomically correct dolls or mannequins to assist an alleged
9 victim or witness who is under the age of ~~10~~ 12 at the time of
10 trial or who is a protected person, in testifying on direct
11 and cross-examination at trial, or in a ~~videotaped~~ video
12 deposition as provided in this article.

13 "§15-25-6.

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

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

4 "§15-25-30.

5 "This article shall be entitled "The Child and
6 Protected Persons Physical and Sexual Abuse, and Violent
7 Offense Victim Protection Act."

8 "§15-25-31.

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

18 "§15-25-32.

19 "An out-of-court statement may be admitted as
20 provided in Section 15-25-31, if the witness's out-of-court
21 statement is shown to the reasonable satisfaction of the court
22 to possess particularized guarantees of trustworthiness and
23 either of the following occur:

24 "(1) The ~~child~~ witness testifies at the proceeding,
25 ~~or~~ testifies by means of ~~video-tape~~ video deposition as
26 provided by Section 15-25-2, or testifies by means of closed
27 circuit television as is provided in Section 15-25-3, and at

1 the time of ~~such~~ the testimony is subject to cross-examination
2 about the out-of-court statements; ~~or.~~

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

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

6 ~~"(2) 2. The court finds that there are reasonable~~
7 ~~grounds to believe that the defendant or someone acting on~~
8 ~~behalf of the defendant has intentionally removed the child~~
9 ~~witness from the jurisdiction of the court; or that the~~
10 ~~defendant engaged in wrongdoing that was intended to, and did,~~
11 ~~procure the unavailability of the witness.~~

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

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

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

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

20 ~~"b. The child's out-of-court statement is shown to~~
21 ~~the reasonable satisfaction of the court to possess~~
22 ~~particularized guarantees of trustworthiness.~~

23 ~~"§15-25-34.~~

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

1 "§15-25-36.

2 "The court shall inform the jury that the
3 out-of-court statement was taken without the defendant being
4 afforded cross examination of ~~such~~ the out-of-court statement.

5 "§15-25-37.

6 "In determining whether a statement possesses
7 particularized guarantees of trustworthiness ~~under~~ pursuant to
8 Section 15-25-32(2)b, the court shall consider ~~any one, but is~~
9 ~~not limited to,~~ any of the following factors:

10 "(1) The ~~child's~~ witness's personal knowledge of the
11 event.

12 "(2) The age and maturity of the ~~child,~~ witness.

13 "(3) Certainty that the statement was made,
14 including the credibility of the person testifying about the
15 statement.

16 "(4) Any apparent motive the ~~child~~ witness may have
17 to falsify or distort the event, including bias, corruption,
18 or coercion.

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

20 "(6) Whether more than one person heard the
21 statement.

22 "(7) Whether the ~~child~~ witness was suffering from
23 pain or distress when making the statement.

24 "(8) The nature and duration of any alleged abuse.

25 "(9) Whether the ~~child's~~ witness's young age or
26 status as a protected person pursuant to Section 15-25-1 makes
27 it unlikely that the ~~child~~ witness fabricated a statement that

1 represents a graphic, detailed account beyond the ~~child's~~
2 witness's knowledge and experience~~;~~.

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

6 "(10) ~~(11)~~ Whether the statement is spontaneous or
7 directly responsive to questions~~;~~.

8 "(11) ~~(12)~~ Whether the statement is suggestive due
9 to improperly leading questions~~;~~.

10 "(12) ~~(13)~~ Whether extrinsic evidence exists to show
11 the defendant's opportunity to commit the act complained of in
12 the ~~child's~~ witness's statement.

13 "§15-25-38.

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

17 "§15-25-39.

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

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

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

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

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

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

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

8 "~~(7) Torture and willful abuse of a child under 18~~
9 years of age by responsible person as defined in Section
10 26-15-3.

11 "~~(8) Sexual torture as defined in Section~~
12 13A-6-65.1.

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

14 "(4) ~~(10)~~ Assault first in any degree.

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

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

17 "~~(13) Harassment.~~

18 "(5) Any offense involving domestic violent, elder
19 abuse, or a violation of a protection order.

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

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

24 §15-25-7.

25 In any criminal prosecution referred to in Section
26 15-25-1, the court may allow leading questions at trial by the
27 prosecution or defense of any victim or witness in a case who

1 is under the age of 12 or is a protected person, if the court
2 determines that the allowance of leading questions will
3 further the interests of justice. The court, on motion of the
4 prosecution or the defense, or on its own motion, may limit
5 the scope and extent of any leading questions.

6 Section 4. Section 15-25-33 of the Code of Alabama
7 1975, relating to use expert testimony as to unavailability of
8 the child to testify, is repealed.

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