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HB168

LRVFAWW-2

By Representatives Woods, Stadthagen, Underwood, Shedd,
Crawford, Brinyark, Gidley, Lamb, Bolton, Starnes, Shaver,
DuBose, Shaw, Shirey, Givens, Holk-Jones, Fidler, Stubbs,
Colvin, Ingram, Carns, Bedsole, Treadaway, Estes, Stringer,
Hammett, Faulkner, Hulsey, Wilcox, Wood (R), Simpson, Moore
(P), Kiel, Rigsby, Butler, Harrison, Pettus, Sells, Hill,
Mooney, Fincher, Rehm, Standridge, Whorton, Wood (D)

RFD: Judiciary

First Read: 14-Feb-24



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A BILL
TO BE ENTITLED
AN ACT

Relating to child sexual abuse material; to amend Sections 13A-6-240, as last amended by Act 2023-464, 2023 Regular Session, 13A-12-190, 13A-12-191, 13A-12-192, 13A-12-193, 13A-12-194, 13A-12-196, 13A-12-197, and 13A-12-198, Code of Alabama 1975; to further provide for the age of a child for offenses involving child sexual abuse material; to provide for exceptions; to provide a cause of action for certain offenses involving child sexual abuse material; to provide for exceptions; to authorize a court to award punitive damages against an individual who commits certain offenses involving child sexual abuse material; to direct the State Board of Education to require local school boards to develop policies related to certain crimes; to repeal Section 13A-12-195, Code of Alabama 1975, relating to the commercial exploitation of child sexual abuse material; to make nonsubstantive, technical revisions to update the existing code language to current style; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the



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meaning of Section 111.05 of the Constitution of Alabama of 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Alabama Child Protection Act of 2024.

Section 2. The Legislature finds and declares the following:

(1) Child pornography harms and debases the most defenseless of our residents.

(2) Child pornography is not entitled to protection under the First Amendment.

(3) The State of Alabama has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers, and this interest extends to stamping out the vice of child pornography, also referred to as child sexual abuse material, at all levels in the distribution chain.

(4) The state thus has a compelling interest in ensuring that the criminal prohibitions against child sexual abuse material remain enforceable and effective.

(5) Artificially-generated child sexual abuse material is virtually indistinguishable from actual child sexual abuse material.

(6) With artificial technology, perpetrators can now computer-generate depictions of children that are indistinguishable from depictions of real children; use parts of images of real children to create a composite image that is unidentifiable as a particular child and in a way that

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prevents even an expert from concluding that parts of images of real children were used; and disguise pictures of real children being abused by making the image look computer-generated.

(7) Child sexual abuse material results from the abuse of real children by sex offenders. The production of child sexual abuse material is a byproduct of the sexual abuse of children. There is no evidence that the development of artificially-generated child sexual abuse material would stop or even reduce the sexual abuse of real children or the practice of visually recording that abuse.

(8) Artificially-generated child sexual abuse material re-victimizes actual child victims, as their images are collected from the Internet and studied by artificial intelligence tools to create new images.

(9) Artificially-generated child sexual abuse material whets the appetites of child molesters who may use the images to seduce children.

(10) The danger to children who are seduced and molested with the aid of child sexual abuse material is just as great when the child molester or child pornographer uses child sexual abuse material produced wholly or in part by electronic, mechanical, or other means as when the material consists of images of actual children engaged in sexually explicit conduct.

(11) Artificially-generated child sexual abuse material provides another means by which child pornographers can profit from child sexual abuse.



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85 (12) Because artificially-generated child sexual abuse
86 material can be swiftly generated in bulk, law enforcement
87 will often discover large amounts on seized devices,
88 complicating investigations and interfering with efforts to
89 identify and protect child victims and stop the dissemination
90 of the material.

91 (13) Many criminal defendants argue that the images of
92 child sexual abuse material they possess are not those of
93 actual children, insisting that the state prove beyond a
94 reasonable doubt that the images are not
95 artificially-generated.

96 (14) In the absence of state legislative action, the
97 difficulties the state has experienced in enforcing child
98 pornography laws will continue to intensify and threaten to
99 render unenforceable laws that protect actual children.

100 (15) Imposing an additional requirement that the state
101 prove beyond a reasonable doubt that the defendant knew that
102 the image was in fact an actual child, as some courts have
103 done, threatens to result in the de facto legalization of the
104 possession, receipt, and distribution of child sexual abuse
105 material for all except the original producers of the
106 material.

107 (16) To avoid this grave threat to the state's
108 unquestioned compelling interest in effective enforcement of
109 the sexual abuse laws that protect actual children, a statute
110 must be adopted that prohibits a well-defined subcategory of
111 images.

112 (17) For these reasons, actual and



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artificially-generated child sexual abuse material, which are virtually indistinguishable, must now be considered legally indistinguishable and subject to the criminal penalties provided in current law.

Section 3. Section 13A-6-240, as last amended by Act 2023-464, 2023 Regular Session, Sections 13A-12-190, 13A-12-191, 13A-12-192, 13A-12-193, 13A-12-194, 13A-12-196, 13A-12-197, and 13A-12-198, Code of Alabama 1975, are amended to read as follows:

"§13A-6-240

(a) A person commits the crime of distributing a private image if he or she knowingly posts, emails, texts, transmits, or otherwise distributes a private image when the depicted ~~person~~ individual has not consented to the transmission and the depicted ~~person~~ individual had a reasonable expectation of privacy against transmission of the private image.

(b) (1) For purposes of this section, "private image" means a photograph, digital image, video, film, or other recording of ~~a person~~ an individual who is identifiable from the recording itself or from the circumstances of its transmission and who is engaged in any act of ~~sadomasochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, as defined in Section 13A-12-190, genital nudity, or other sexual conduct~~ sexually explicit conduct, as defined in Section 13A-12-190.

(2) The term includes a recording that has been edited, altered, or otherwise manipulated from its original form.



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141 (c) (1) For purposes of this section, a "reasonable
142 expectation of privacy" includes, but is not limited to,
143 either of the following circumstances:

144 a. The ~~person~~individual depicted in the private image
145 created it or consented to its creation believing that it
146 would remain confidential.

147 b. The sexual conduct depicted in the image was
148 involuntary.

149 (2) There is no reasonable expectation of privacy
150 against the transmission of a private image made voluntarily
151 in a public or commercial setting.

152 (d) It is a defense to distributing a private image if
153 the distribution of the private image was made in the public
154 interest, including, but not limited to, the reporting of
155 unlawful conduct; the lawful and common practices of law
156 enforcement, legal proceedings, or medical treatment; or a
157 bona fide attempt to prevent further distribution of the
158 private image.

159 (e) For the purposes of determining jurisdiction, the
160 crime of distributing a private image shall be considered to
161 be committed in any county in which any part of the crime took
162 place, in the county of residence of the victim or defendant,
163 or any county where the image is received.

164 (f) A violation of this section is a Class A
165 misdemeanor. A subsequent adjudication or conviction under
166 this section is a Class C felony.

167 (g) No Internet service provider, search engine, cloud
168 service provider, or affiliate or subsidiary of any of the



same, shall be held to have violated this section solely for providing access or connection to or from a website, other information or content on the Internet, or a facility, system, or network not under the control of the provider, including, but not limited to, the transmission, download, or intermediate storage of content that is child sexual abuse material."

"§13A-12-190

For the purposes of this division, the following terms ~~shall~~ have the following meanings ~~respectively ascribed to them by this section~~:

~~(1)~~ (4) DISSEMINATE. To transmit, distribute, sell, lend, provide, transfer, or show, including through electronic means.

~~(2)~~ (3) 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)~~ (9) PUBLIC THOROUGHFARE, DEPOT, OR VEHICLE. Any street, highway, park, depot, or transportation platform or other place, whether indoors or ~~out~~ outdoors, 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.

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197 ~~(4)~~ (6) KNOWINGLY. A person knowingly ~~disseminates or~~
198 ~~publicly displays obscene matter~~ acts when the person knows
199 the nature of the ~~matter~~ child sexual abuse material. A person
200 knows the nature of the ~~matter~~ material when either of the
201 following circumstances exist:

202 a. The person is aware of the character and content of
203 the ~~matter~~ material.

204 b. The person recklessly disregards circumstances
205 suggesting the character and content of the ~~matter~~ material.

206 ~~(5)~~ (10) ~~SADO-MASOCHISTIC~~ SADOMASOCHISTIC ABUSE. ~~Such~~
207 ~~term means either~~ Either of the following:

208 a. Flagellation or torture, for the purpose of sexual
209 stimulation, by or upon ~~a person~~ an individual who is nude or
210 clad in undergarments or in a revealing or bizarre costume.

211 b. The condition of ~~a person~~ an individual who is nude
212 or clad in undergarments or in a revealing or bizarre costume
213 being fettered, bound, or otherwise physically restrained for
214 the purpose of sexual stimulation.

215 ~~(6)~~ (12) SEXUAL EXCITEMENT. The condition of human male
216 or female genitals when in a state of sexual stimulation.

217 ~~(7)~~ (13) SEXUAL INTERCOURSE. Intercourse, real or
218 simulated, whether genital-genital, oral-genital,
219 anal-genital, or oral-anal, whether between ~~persons~~
220 individuals of the same or opposite sex or between a human and
221 an animal.

222 ~~(8)~~ (7) MASTURBATION. Manipulation, by hand or
223 instrument, of the human genitals, whether one's own or
224 another's for the purpose of sexual stimulation.



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225 ~~(9)~~ (8) OTHER SEXUAL CONDUCT. Any touching of the
226 genitals, pubic areas, or buttocks of the human male or
227 female, or the breasts of the female, whether alone or between
228 members of the same or opposite sex or between humans and
229 animals in an act of apparent sexual stimulation or
230 gratification.

231 ~~(10)~~ (1) BREAST NUDITY. The lewd showing of the
232 post-pubertal human female breasts below a point immediately
233 above the top of the areola.

234 ~~(11)~~ (5) GENITAL NUDITY. The lewd showing of the
235 genitals or pubic area.

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

245 ~~(13) OBSCENE. a. When used to describe any matter that~~
246 ~~contains a visual reproduction of breast nudity, the term~~
247 ~~shall include all of the following:~~

248 ~~1. Applying contemporary local community standards, on~~
249 ~~the whole, appeals to the prurient interest.~~

250 ~~2. Is patently offensive.~~

251 ~~3. On the whole, lacks serious literary, artistic,~~
252 ~~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, the term means matter containing 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)~~ (11) SEPARATE OFFENSE. The depiction of an individual less than ~~17~~ 18 years of age that violates this division shall constitute a separate offense for each single visual depiction.

(2) CHILD SEXUAL ABUSE MATERIAL. Any visual depiction of an individual under 18 years of age engaged in any act of sexually explicit conduct, including a virtually indistinguishable depiction.

(14) SEXUALLY EXPLICIT CONDUCT. Actual or simulated conduct that includes sadomasochistic abuse, sexual excitement, sexual intercourse, masturbation, breast nudity, genital nudity, or other sexual conduct.

(15) VIRTUALLY INDISTINGUISHABLE DEPICTION. A visual depiction created, altered, or produced by digital, computer generated, or other means that a reasonable person would conclude is of an actual individual under 18 years of age



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engaged in sexually explicit conduct."

"§13A-12-191

(a) Any person who shall knowingly disseminate or display publicly any ~~obscene matter containing 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~~ child sexual abuse material shall be guilty of a Class B felony.

(b) Any person who shall knowingly advertise, promote, present, distribute, or solicit by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is a visual depiction of an actual individual under 18 years of age engaging in sexually explicit conduct shall be guilty of a Class B felony."

"§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~~ child sexual abuse material shall be guilty of a Class B felony. Any transfer of ~~the visual depiction~~ child sexual abuse material from any electronic device to any other device, program, application, or any other place with storage capability ~~which~~ that 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~~ child sexual abuse material shall be guilty of a Class C felony."

"§13A-12-193

(a) In proving that ~~a person~~ an individual in a visual depiction who is engaged in any ~~obscene act set out in Sections 13A-12-191, 13A-12-192, 13A-12-196 and 13A-12-197~~ sexually explicit conduct is under ~~the age of 17~~ 18 years of age, the state is not required to introduce into evidence a birth certificate, produce testimony as to the date of birth of ~~such person~~ the individual, or produce testimony of any person who knows or is acquainted with the ~~person~~ individual alleged to be under ~~the age of 17~~ 18 years of age. If the defendant or the state intends to rely on a birth certificate to prove the date of birth of any ~~person in the visually reproduced matter~~ individual, ~~such the~~ defendant or the state shall file with the clerk of the court in which the action is pending, at least 15 days prior to trial, a notice of an intention to rely on an official, certified copy of a birth certificate together with a copy of the birth certificate.

(b) ~~A jury, or the court if a jury trial is waived,~~ The factfinder may infer from the following factors whether or not the ~~person~~ individual displayed or depicted in any ~~obscene~~



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~~matter~~ visual depiction is under ~~the age of 17-18~~ years of
age:

(1) The general body growth and bone structure of the
~~person~~ individual.

(2) The development of pubic hair or body hair on the
~~person~~ individual.

(3) The development of the ~~person's~~ individual's sexual
organs ~~+~~.

(4) The context in which the ~~person~~ individual is
placed by any accompanying printed or text material ~~+~~.

(5) Any expert testimony as to the degree of maturity
of the ~~person~~ individual.

(c) The existence of any or all of the factors listed
in subsection ~~(b) of this section~~ (a) shall not operate to
change the requirement that before any conviction may be had,
the state must convince the factfinder beyond a reasonable
doubt that the ~~person~~ individual engaged in the ~~act of~~
~~sado-masochistic abuse, sexual intercourse, sexual excitement,~~
~~masturbation, breast nudity, genital nudity, or other sexual~~
~~conduct in the visual depiction~~ sexually explicit conduct is
or is virtually indistinguishable from an individual under ~~the~~
~~age of 17-18~~ years of age.

(d) It is an affirmative defense to prosecution under
this division if the actual individual purported to be under
18 years of age and engaged in sexually explicit conduct was
an actual individual 18 years of age or older at the time of
the offense."

"§13A-12-194



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The state shall not be required to establish the actual existence or identity, either in the indictment or in any subsequent proceeding, of the ~~person~~ individual alleged to be under ~~the age of 17~~ 18 years of age who is engaged in any ~~of the acts described in Sections 13A-12-191, 13A-12-192, 13A-12-196 and 13A-12-197, which are visual depiction~~ act of sexually explicit conduct."

"§13A-12-196

Any ~~parent or guardian~~ responsible person, as defined in Section 26-15-2, who knowingly permits or allows their child, ward, or dependent under ~~the age of 17~~ 18 years of age to engage in the production of any ~~obscene matter~~ child sexual abuse material containing a visual depiction of ~~such the~~ child, ward, or dependent ~~under the age of 17 years engaged in any act of sado-masochistic abuse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct~~ shall be guilty of a Class A felony."

"§13A-12-197

~~(a)~~ Any person who knowingly films, prints, records, photographs, or otherwise produces 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~~ child sexual abuse material shall be guilty of a Class A felony.

~~(b) For any person who violates this section, each depiction of each individual less than 17 years of age constitutes a separate offense."~~



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393 "§13A-12-198

394 Any article, equipment, machine, materials, matter,
395 vehicle, or other thing ~~whatsoever~~ used in the commercial
396 production, transportation, dissemination, display, or storage
397 of any ~~obscene matter displaying or depicting a person under~~
398 ~~the age of 17 years engaged in any of the obscene acts~~
399 ~~described in Sections 13A-12-191, 13A-12-192, 13A-12-196 and~~
400 ~~13A-12-197~~ child sexual abuse material shall be contraband and
401 shall be forfeited to the State of Alabama. The manner,
402 method, and procedure for the forfeiture and condemnation of
403 ~~such~~ the thing shall be the same as that provided by law for
404 the confiscation ~~or~~ and condemnation, or forfeiture of
405 automobiles, conveyances, or vehicles in which alcoholic
406 beverages are illegally transported."

407 Section 4. (a) For the purposes of Division 4 of
408 Article 4 of Chapter 12 of Title 13A, Code of Alabama 1975,
409 each depiction of child sexual abuse material that violates
410 any section constitutes a separate offense.

411 (b) No Internet service provider, search engine, cloud
412 service provider, or affiliate or subsidiary of any of the
413 same, shall be held to have violated this division solely for
414 providing access or connection to or from a website, other
415 information or content on the Internet, or a facility, system,
416 or network not under the control of the provider, including,
417 but not limited to, the transmission, download, or
418 intermediate storage of content that is child sexual abuse
419 material.

420 Section 5. (a) An individual who commits any of the



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following crimes is civilly liable to the individual depicted in the relevant image:

(1) Distributing a private image, pursuant to Section 13A-6-240, Code of Alabama 1975.

(2) Dissemination, distribution, or public display of child sexual abuse material, pursuant to Section 13A-12-191, Code of Alabama 1975.

(3) Possession of child sexual abuse material, pursuant to Section 13A-12-192, Code of Alabama 1975.

(4) Possession with intent to distribute child sexual abuse material, pursuant to Section 13A-12-192, Code of Alabama 1975.

(5) Permitting or allowing a child, ward, or dependent to engage in production of child sexual abuse material as a parent or guardian, pursuant to Section 13A-12-196, Code of Alabama 1975.

(6) Production of child sexual abuse material, pursuant to Section 13A-12-197, Code of Alabama 1975.

(7) Advertising, promoting, presenting, or soliciting child sexual abuse material, pursuant to Section 13A-12-191, Code of Alabama 1975.

(b) No civil action may be brought pursuant to this section for actions taken to prevent, detect, protect against, report, or respond to the production, generation, incorporation, or synthesization through artificial intelligence of child sexual abuse material.

Section 6. Civil liability pursuant to Section 5 shall consist of all of the following:



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(1) The full actual damages incurred.

(2) Court costs and reasonable attorney fees.

(3) Punitive damages, if the plaintiff proves by clear and convincing evidence that the defendant consciously or deliberately engaged in wantonness or malice with regard to the plaintiff, as defined in Section 6-11-20, Code of Alabama 1975.

Section 7. The State Board of Education shall require each local board of education to do all of the following before the start of the 2024-2025 school year:

(1) Develop a written policy on student discipline and education related to the distribution of private images as defined in Section 13A-6-240, Code of Alabama 1975, and the distribution, dissemination, public display, advertising, promoting, presenting, soliciting, possession, possession with intent to distribute, and production of child sexual abuse material as defined in Division 4 of Article 4 of Chapter 12 of Title 13A, Code of Alabama 1975.

(2) Include within the written policy a prohibition of private, explicit, or pornographic images generated with artificial intelligence.

(3) Broadly disseminate the policy following its adoption.

(4) Distribute copies of the policy to all teachers, staff, parents, and students.

Section 8. Section 13A-12-195, Code of Alabama 1975, relating to the commercial exploitation of obscene material, is repealed.



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477 Section 9. Although this bill would have as its purpose
478 or effect the requirement of a new or increased expenditure of
479 local funds, the bill is excluded from further requirements
480 and application under Section 111.05 of the Constitution of
481 Alabama of 2022, because the bill defines a new crime or
482 amends the definition of an existing crime.

483 Section 10. This act shall become effective on October
484 1, 2024.



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House of Representatives

488 Read for the first time and referred14-Feb-24
489 to the House of Representatives
490 committee on Judiciary
491
492 Read for the second time and placed21-Feb-24
493 on the calendar:
494 0 amendments
495
496 Read for the third time and passed22-Feb-24
497 as amended
498 Yeas 101
499 Nays 0
500 Abstains 0
501
502
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John Treadwell
Clerk