

SB29 INTRODUCED



1 SB29
2 I2D96ZZ-1
3 By Senator Weaver
4 RFD: Judiciary
5 First Read: 06-Feb-24
6 PFD: 05-Feb-24



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SYNOPSIS:

Under existing law, the term "private image" includes a recording that has been edited, altered, or otherwise manipulated from its original form.

This bill would amend the definition of "private image" to include a recording that, to a reasonable person, depicts an identifiable individual regardless of whether the recording was generated through digitization or any other electronic process.

Under existing law, the term "visual depiction" includes a portrayal, representation, illustration, image, likeness, or other thing that creates a sensory impression, whether an original, duplicate, or reproduction.

This bill would amend the definition of "visual depiction" to include a thing that was generated through digitization or any other electronic process.

This bill would define the terms "child sexual abuse material," "digitization," and "recognizable physical characteristic."

Under existing law, it is unlawful for any person to knowingly disseminate, display publicly, knowingly possess, knowingly possess with intent to disseminate, or knowingly film, print, record, photograph, or otherwise produce certain obscene matter



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29 depicting an individual under 17 years of age.

30 This bill would provide that it is unlawful for
31 any person to knowingly disseminate, display publicly,
32 knowingly possess, knowingly possess with intent to
33 disseminate, or knowingly film, print, record,
34 photograph, or otherwise produce certain obscene matter
35 depicting an individual under 18 years of age.

36 Under existing law, it is unlawful for any
37 parent or guardian to knowingly permit or allow their
38 child, ward, or dependent under 17 years of age to
39 engage in the production of certain obscene material
40 containing a visual depiction of the child, ward, or
41 dependent.

42 This bill would provide that it is unlawful for
43 any parent or guardian to knowingly permit or allow
44 their child, ward, or dependent under 18 years of age
45 to engage in the production of certain obscene material
46 containing a visual depiction of the child, ward, or
47 dependent.

48 This bill would also make nonsubstantive,
49 technical revisions to update the existing code
50 language to current style.

51 Section 111.05 of the Constitution of Alabama of
52 2022, prohibits a general law whose purpose or effect
53 would be to require a new or increased expenditure of
54 local funds from becoming effective with regard to a
55 local governmental entity without enactment by a 2/3
56 vote unless: it comes within one of a number of



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57 specified exceptions; it is approved by the affected
58 entity; or the Legislature appropriates funds, or
59 provides a local source of revenue, to the entity for
60 the purpose.

61 The purpose or effect of this bill would be to
62 require a new or increased expenditure of local funds
63 within the meaning of the section. However, the bill
64 does not require approval of a local governmental
65 entity or enactment by a 2/3 vote to become effective
66 because it comes within one of the specified exceptions
67 contained in the section.

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A BILL

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TO BE ENTITLED

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AN ACT

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74 Relating to crimes and offenses; to amend Sections
75 13A-6-240, as last amended by Act 2023-464, 2023 Regular
76 Session, 13A-12-190, 13A-12-191, 13A-12-192, 13A-12-193,
77 13A-12-194, 13A-12-196, 13A-12-197, and 13A-12-198, Code of
78 Alabama 1975; to further provide for the definitions of
79 private image and visual depiction; to further provide for the
80 age of a child for offenses involving obscene materials
81 containing visual depictions of children; to make
82 nonsubstantive, technical revisions to update the existing
83 code language to current style; and in connection therewith
84 would have as its purpose or effect the requirement of a new



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85 or increased expenditure of local funds within the meaning of
86 Section 111.05 of the Constitution of Alabama of 2022.

87 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

88 Section 1. Sections 13A-6-240, as last amended by Act
89 2023-464, 2023 Regular Session, 13A-12-190, 13A-12-191,
90 13A-12-192, 13A-12-193, 13A-12-194, 13A-12-196, 13A-12-197,
91 and 13A-12-198, Code of Alabama 1975, are amended to read as
92 follows:

93 "§13A-6-240

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

101 (b) (1) For purposes of this section, "private image"
102 means a photograph, digital image, video, film, or other
103 recording of ~~a person~~ an individual who is identifiable from
104 the recording itself or from the circumstances of its
105 transmission and who is engaged in any act of sadomasochistic
106 abuse, sexual intercourse, sexual excitement, masturbation,
107 breast nudity, ~~as defined in Section 13A-12-190~~, genital
108 nudity, or other sexual conduct, as defined in Section
109 13A-12-190.

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

112 (3) The term includes a recording that, to a reasonable



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113 person, depicts an identifiable individual regardless of
114 whether the recording was generated through digitization, as
115 defined in Section 13A-12-190, or any other electronic
116 process.

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

120 a. The ~~person~~ individual depicted in the private image
121 created it or consented to its creation believing that it
122 would remain confidential.

123 b. The sexual conduct depicted in the image was
124 involuntary.

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

128 (d) It is a defense to distributing a private image if
129 the distribution of the private image was made in the public
130 interest, including, but not limited to, the reporting of
131 unlawful conduct; the lawful and common practices of law
132 enforcement, legal proceedings, or medical treatment; or a
133 bona fide attempt to prevent further distribution of the
134 private image.

135 (e) For the purposes of determining jurisdiction, the
136 crime of distributing a private image shall be considered to
137 be committed in any county in which any part of the crime took
138 place, in the county of residence of the victim or defendant,
139 or any county where the image is received.

140 (f) A violation of this section is a Class A



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141 misdemeanor. A subsequent adjudication or conviction under
142 this section is a Class C felony."

143 "§13A-12-190

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

147 ~~(1)~~ (5) DISSEMINATE. To transmit, distribute, sell,
148 lend, provide, transfer, or show, including through electronic
149 means.

150 ~~(2)~~ (4) DISPLAY PUBLICLY. The exposing, placing,
151 posting, exhibiting, or in any fashion displaying in any
152 location, whether public or private, an item in ~~such~~ a manner
153 that it may be readily seen and its content or character
154 distinguished by normal unaided vision viewing it from a
155 public thoroughfare, depot, or vehicle.

156 ~~(3)~~ (13) PUBLIC THOROUGHFARE, DEPOT, OR VEHICLE. Any
157 street, highway, park, depot, or transportation platform or
158 other place, whether indoors or ~~out~~ outdoors, or any vehicle
159 for public transportation, owned or operated by government,
160 either directly or through a public corporation or authority,
161 or owned or operated by any agency of public transportation
162 that is designed for the use, enjoyment, or transportation of
163 the general public.

164 ~~(4)~~ (7) KNOWINGLY. A person knowingly disseminates or
165 publicly displays obscene matter when the person knows the
166 nature of the matter. A person knows the nature of the matter
167 when either of the following circumstances exist:

168 a. The person is aware of the character and content of



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169 the matter.

170 b. The person recklessly disregards circumstances
171 suggesting the character and content of the matter.

172 ~~(5)~~ (14) ~~SADO-MASOCHISTIC~~ SADOMASOCHISTIC ABUSE. ~~Such~~
173 ~~term means either~~ Either of the following:

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

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

181 ~~(6)~~ (16) SEXUAL EXCITEMENT. The condition of human male
182 or female genitals when in a state of sexual stimulation.

183 ~~(7)~~ (17) SEXUAL INTERCOURSE. Intercourse, real or
184 simulated, whether genital-genital, oral-genital, anal-genital
185 or oral-anal, whether between ~~persons~~ individuals of the same
186 or opposite sex or between a human and an animal.

187 ~~(8)~~ (9) MASTURBATION. Manipulation, by hand or
188 instrument, of the human genitals, whether one's own or
189 another's for the purpose of sexual stimulation.

190 ~~(9)~~ (12) OTHER SEXUAL CONDUCT. Any touching of the
191 genitals, pubic areas, or buttocks of the human male or
192 female, or the breasts of the female, whether alone or between
193 members of the same or opposite sex or between humans and
194 animals in an act of apparent sexual stimulation or
195 gratification.

196 ~~(10)~~ (1) BREAST NUDITY. The lewd showing of the



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197 post-pubertal human female breasts below a point immediately
198 above the top of the areola.

199 ~~(11)~~ (6) GENITAL NUDITY. The lewd showing of the
200 genitals or pubic area.

201 ~~(12)~~ (10) MATTER. Any book, magazine, newspaper, or
202 other printed material, or any picture, photograph, motion
203 picture, video cassette, tape, record, digital video disc
204 (DVD), video compilation, or electronic depiction in a
205 comparable format, or an image, file, download, or other
206 content stored, or reproduced by using a computer or
207 electronic device or other digital storage, or any other
208 thing, articles, or materials that either are or contain a
209 photographic or other visual depiction of a live act,
210 performance, or event.

211 ~~(13)~~ (11) OBSCENE. a. When used to describe any matter
212 that contains a visual reproduction of breast nudity, the term
213 ~~shall include~~ includes all of the following:

214 1. Applying contemporary local community standards, on
215 the whole, appeals to the prurient interest.

216 2. Is patently offensive.

217 3. On the whole, lacks serious literary, artistic,
218 political, or scientific value.

219 b. When used to describe matter that is a depiction of
220 an act of ~~sado-masochistic~~ sadomasochistic abuse, sexual
221 intercourse, sexual excitement, masturbation, genital nudity,
222 or other sexual conduct, the term means matter containing a
223 visual reproduction that itself lacks serious literary,
224 artistic, political, or scientific value.



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225 ~~(14)~~ (8) LOCAL COMMUNITY. The judicial circuit in which
226 the indictment is brought.

227 ~~(15)~~ (18) VISUAL DEPICTION. A portrayal, representation,
228 illustration, image, likeness, or other thing that creates a
229 sensory impression, whether an original, duplicate, or
230 reproduction, including a thing that was generated using
231 digitization or any other electronic process.

232 ~~(16)~~ (15) SEPARATE OFFENSE. The depiction of an
233 individual less than ~~17~~ 18 years of age that violates this
234 division shall constitute a separate offense for each single
235 visual depiction.

236 (2) CHILD SEXUAL ABUSE MATERIAL. Any obscene matter
237 containing a visual depiction of an individual under 18 years
238 of age engaged in any act of sadomasochistic abuse, sexual
239 intercourse, sexual excitement, masturbation, breast nudity,
240 genital nudity, or other sexual conduct.

241 (3) DIGITIZATION. To realistically depict any of the
242 following:

243 a. The nude body parts of an individual as the nude
244 body parts of another individual.

245 b. Computer-generated nude body parts as the nude body
246 parts of an individual.

247 c. An individual engaging in sexual conduct who did not
248 engage in the depicted sexual conduct."

249 "§13A-12-191

250 Any person who ~~shall~~ knowingly ~~disseminate~~ disseminates
251 or ~~display~~ displays publicly any ~~obscene matter containing a~~
252 ~~visual depiction of a person under the age of 17 years engaged~~



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253 ~~in any act of sado-masochistic abuse, sexual intercourse,~~
254 ~~sexual excitement, masturbation, breast nudity, genital~~
255 ~~nudity, or other sexual conduct~~ child sexual abuse material
256 shall be guilty of a Class B felony."

257 "§13A-12-192

258 (a) Any person who knowingly possesses with intent to
259 disseminate any ~~obscene matter that contains a visual~~
260 ~~depiction of a person under the age of 17 years engaged in any~~
261 ~~act of sado-masochistic abuse, sexual intercourse, sexual~~
262 ~~excitement, masturbation, breast nudity, genital nudity, or~~
263 ~~other sexual conduct~~ child sexual abuse material shall be
264 guilty of a Class B felony. Any transfer of ~~the visual~~
265 ~~depiction~~ child sexual abuse material from any electronic
266 device to any other device, program, application, or any other
267 place with storage capability ~~which~~ that can be made available
268 or is accessible by other users, is prima facie evidence of
269 possession with intent to disseminate.

270 (b) Any person who knowingly possesses any ~~obscene~~
271 ~~matter that contains a visual depiction of a person under the~~
272 ~~age of 17 years engaged in any act of sado-masochistic abuse,~~
273 ~~sexual intercourse, sexual excitement, masturbation, breast~~
274 ~~nudity, genital nudity, or other sexual conduct~~ child sexual
275 abuse material shall be guilty of a Class C felony."

276 "§13A-12-193

277 (a) In proving that ~~a person~~ an individual in a visual
278 depiction who is engaged in any obscene act set out in
279 ~~Sections 13A-12-191, 13A-12-192, 13A-12-196 and 13A-12-197~~
280 this division is under ~~the age of 17~~ 18 years of age, the



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281 state is not required to introduce into evidence a birth
282 certificate, produce testimony as to the date of birth of ~~such~~
283 ~~person~~the individual, or produce testimony of any person who
284 knows or is acquainted with the ~~person~~individual alleged to
285 be under ~~the age of 17-18~~ years of age. If the defendant or
286 the state intends to rely on a birth certificate to prove the
287 date of birth of any ~~person~~individual in the visually
288 reproduced matter, ~~such~~the defendant or the state shall file
289 with the clerk of the court in which the action is pending, at
290 least 15 days prior to trial, a notice of an intention to rely
291 on an official, certified copy of a birth certificate together
292 with a copy of the birth certificate.

293 (b) ~~A jury, or the court if a jury trial is waived,~~ The
294 factfinder may infer from the following factors whether or not
295 the ~~person~~individual displayed or depicted in any obscene
296 matter is under ~~the age of 17-18~~ years of age:

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

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

301 (3) The development of the ~~person's~~individual's sexual
302 organs~~;~~.

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

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

307 (c) The existence of any or all of the factors listed
308 in subsection (b) ~~of this section~~ shall not operate to change



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309 the requirement that before any conviction may be had, the
310 state must convince the factfinder beyond a reasonable doubt
311 that the ~~person~~ individual ~~engaged in the act of~~
312 ~~sado-masochistic abuse, sexual intercourse, sexual excitement,~~
313 ~~masturbation, breast nudity, genital nudity, or other sexual~~
314 ~~conduct in the visual depiction~~ depicted in the child sexual
315 abuse material is under ~~the age of 17-18~~ years of age.

316 (d) If the factfinder is convinced beyond a reasonable
317 doubt that the face or likeness of an individual under 18
318 years of age is depicted in any obscene act set out in this
319 division, the factfinder shall treat that material as child
320 sexual abuse material, regardless of whether any of the other
321 physical characteristics depicted do not correspond with the
322 individual's actual physical characteristics."

323 "§13A-12-194

324 The state shall not be required to establish the
325 identity, either in the indictment or in any subsequent
326 proceeding, of the ~~person~~ individual alleged to be under ~~the~~
327 ~~age of 17-18~~ years of age who is engaged in any of the acts
328 described in ~~Sections 13A-12-191, 13A-12-192, 13A-12-196 and~~
329 ~~13A-12-197~~ this division, which are visual depiction."

330 "§13A-12-196

331 Any parent or guardian who knowingly permits or allows
332 their child, ward, or dependent under ~~the age of 17-18~~ years
333 of age to engage in the production of any ~~obscene matter~~ child
334 sexual abuse material containing a visual depiction of ~~such~~
335 the child, ward, or dependent ~~under the age of 17 years~~
336 ~~engaged in any act of sado-masochistic abuse, sexual~~



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337 ~~excitement, masturbation, breast nudity, genital nudity, or~~
338 ~~other sexual conduct~~ shall be guilty of a Class A felony."

339 "§13A-12-197

340 (a) Any person who knowingly films, prints, records,
341 photographs, or otherwise produces any ~~obscene matter that~~
342 ~~contains a visual depiction of a person under the age of 17~~
343 ~~years engaged in any act of sado-masochistic abuse, sexual~~
344 ~~intercourse, sexual excitement, masturbation, breast nudity,~~
345 ~~genital nudity, or other sexual conduct~~ child sexual abuse
346 material shall be guilty of a Class A felony.

347 (b) For any person who violates this section, each
348 ~~depiction of each individual less than 17 years of age~~
349 instance of child sexual abuse material constitutes a separate
350 offense."

351 "§13A-12-198

352 Any article, equipment, machine, materials, matter,
353 vehicle, or other thing ~~whatsoever~~ used in the commercial
354 production, transportation, dissemination, display, or storage
355 of any ~~obscene matter displaying or depicting a person under~~
356 ~~the age of 17 years engaged in any of the obscene acts~~
357 ~~described in Sections 13A-12-191, 13A-12-192, 13A-12-196 and~~
358 ~~13A-12-197~~ child sexual abuse material shall be contraband and
359 shall be forfeited to the State of Alabama. The manner,
360 method, and procedure for the forfeiture and condemnation of
361 such thing shall be the same as that provided by law for the
362 confiscation, ~~or~~ condemnation, or forfeiture of automobiles,
363 conveyances, or vehicles in which alcoholic beverages are
364 illegally transported."



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365 Section 2. Although this bill would have as its purpose
366 or effect the requirement of a new or increased expenditure of
367 local funds, the bill is excluded from further requirements
368 and application under Section 111.05 of the Constitution of
369 Alabama of 2022, because the bill defines a new crime or
370 amends the definition of an existing crime.

371 Section 3. This act shall become effective on October
372 1, 2024.