

**SB321 INTRODUCED**



1 SB321  
2 5SZP66M-1  
3 By Senator Barfoot  
4 RFD: Judiciary  
5 First Read: 11-Apr-24



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SYNOPSIS:

Under existing law, unlawful distribution of a controlled substance is a nonviolent offense and is subject to the presumptive sentencing guidelines.

Under existing law, unlawful distribution of a controlled substance includes the selling, furnishing, giving away, delivering, or otherwise distributing a controlled substance.

This bill would differentiate between the unlawful selling of a controlled substance from the unlawful furnishing, giving away, or delivering of a controlled substance.

This bill would establish that the unlawful sale of a controlled substance is a violent offense and therefore not subject to the presumptive sentencing guidelines.

Under existing law, unlawful distribution of a controlled substance includes the distribution of any controlled substance enumerated in Schedules I through V.

This bill would exclude marijuana from the unlawful distribution of a controlled substance statute.

This bill would create the crime of unlawful distribution of marijuana and would provide for



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29 penalties.

30 Under existing law, if a person is convicted of  
31 unlawful distribution of a controlled substance that  
32 occurred on or near a school campus or within a  
33 three-mile radius of a public housing project, the  
34 sentencing judge shall impose an additional penalty of  
35 five years to be run consecutive with the sentence for  
36 the underlying conviction.

37 This bill would provide that a judge may impose  
38 an additional five-year penalty if the distribution of  
39 the controlled substance occurred on or near a school  
40 campus or within a three-mile radius of a public  
41 housing project.

42 This bill would also make nonsubstantive,  
43 technical revisions to update the existing code  
44 language to current style.

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A BILL

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TO BE ENTITLED

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AN ACT

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51 Relating to crimes and offenses; to amend Sections  
52 12-25-32 and 13A-12-211, Code of Alabama 1975, to further  
53 provide for unlawful distribution of a controlled substance,  
54 to establish that the unlawful sale of a controlled substance  
55 is a violent offense and not subject to the presumptive  
56 sentencing guidelines; to amend Sections 13A-12-250 and



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57 13A-12-270, Code of Alabama 1975, to further provide for  
58 sentencing enhancements relating to the unlawful distribution  
59 of a controlled substance on or near a school campus and  
60 within a three-mile radius of a public housing project; to add  
61 Section 13A-12-211.1 to the Code of Alabama 1975, to create  
62 the crime of unlawful distribution of marijuana and to create  
63 penalties; and to make nonsubstantive, technical revisions to  
64 update the existing code language to current style.

65 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

66 Section 1. Sections 12-25-32 and 13A-12-211, Code of  
67 Alabama 1975, are amended to read as follows:

68 "§12-25-32

69 For the purposes of this article, the following terms  
70 have the following meanings:

71 (1) COMMISSION. The Alabama Sentencing Commission,  
72 established as a state agency under the Supreme Court by this  
73 chapter.

74 (2) CONTINUUM OF PUNISHMENTS. An array of punishment  
75 options, from probation to incarceration, graduated in  
76 restrictiveness according to the degree of supervision of the  
77 offender including, but not limited to, all of the following:

78 a. Active Incarceration. A sentence, other than an  
79 intermediate punishment or unsupervised probation, that  
80 requires an offender to serve a sentence of imprisonment. The  
81 term includes time served in a work release program operated  
82 as a custody option by the Alabama Department of Corrections  
83 or in the Supervised Intensive Restitution program of the  
84 Department of Corrections pursuant to Article 7, ~~commencing~~



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85 ~~with Section 15-18-110,~~ of Chapter 18 of Title 15.

86           b. Intermediate Punishment. A sentence that may include  
87 assignment to any community based punishment program or may  
88 include probation with conditions or probation in conjunction  
89 with a period of confinement. Intermediate punishments  
90 include, but are not limited to, all of the following options:

91           1. A split sentence pursuant to Section 15-18-8.

92           2. Assignment to a community punishment and corrections  
93 program pursuant to the Alabama Community Punishment and  
94 Corrections Act, Article 9 of Chapter 18 of Title 15 or local  
95 acts.

96           3. Assignment to a community based manual labor work  
97 program pursuant to ~~Sections 14-5-30 to 14-5-37,~~  
98 ~~inclusive~~Article 2 of Chapter 5 of Title 14.

99           4. Intensive probation supervision pursuant to Section  
100 15-22-56.

101           5. Cognitive and behavioral training.

102           6. Community service work.

103           7. County probation.

104           8. Day fines or means-based fines.

105           9. Day reporting.

106           10. Drug or alcohol testing.

107           11. Drug court programs.

108           12. Educational programs.

109           13. Electronic monitoring.

110           14. Home confinement or house arrest.

111           15. Ignition interlock.

112           16. Intermittent confinement.



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- 113 17. Jail and prison diversion programs.
- 114 18. Job readiness and work.
- 115 19. Literacy and basic learning.
- 116 20. Pretrial diversion programs.
- 117 21. Residential drug treatment.
- 118 22. Residential community based punishment programs in
- 119 which the offender is required to spend at least eight hours
- 120 per day, or overnight, within a facility and is required to
- 121 participate in activities such as counseling, treatment,
- 122 social skills training, or employment training, conducted at
- 123 the residential facility or at another specified location.
- 124 23. Restorative justice as established in Section
- 125 12-17-226.6.
- 126 ~~(i) Victim impact panels.~~
- 127 ~~(ii) Voluntary victim offender conferencing.~~
- 128 ~~(iii) Voluntary victim offender mediation.~~
- 129 24. Self-help groups.
- 130 25. Sobriety or breath alcohol remote monitoring.
- 131 26. Substance abuse education and treatment.
- 132 27. Treatment alternatives to street crime (TASC).
- 133 28. Voice recognition, curfew restriction, or
- 134 employment monitoring.
- 135 29. Work release, other than those work release
- 136 programs operated by the Alabama Department of Corrections, as
- 137 a custody option.
- 138 c. Unsupervised Probation. A sentence in a criminal
- 139 case that includes a period of probation but does not include
- 140 supervision, active incarceration, or an intermediate



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141 punishment.

142 d. Post-release Supervision. A mandatory period of  
143 supervision following sentences of active incarceration as  
144 defined in paragraph a. that may include one or more  
145 intermediate punishment options.

146 (3) COURT. Unless otherwise stated, a district or  
147 circuit court exercising jurisdiction to sentence felony  
148 offenders.

149 (4) EVIDENCE-BASED PRACTICES. Policies, procedures,  
150 programs, and practices proven by widely accepted and  
151 published research to reliably produce reductions in  
152 recidivism.

153 (5) FELONY OFFENSE. A noncapital felony offense.

154 (6) INITIAL VOLUNTARY STANDARDS. The voluntary  
155 sentencing standards effective on October 1, 2006. These  
156 standards were based on statewide historic sentences imposed  
157 with normative adjustments designed to reflect current  
158 sentencing policies.

159 (7) NONVIOLENT OFFENSE. All offenses which are not  
160 violent offenses.

161 (8) NONVIOLENT OFFENDER. Any offender who does not  
162 qualify as a violent offender pursuant to subdivision (14).

163 (9) OFFENDER. A person convicted of a noncapital felony  
164 offense.

165 (10) RELEASE AUTHORITY. Any public official, agency, or  
166 other entity authorized by law to release a sentenced offender  
167 from incarceration or other conditions of a sentence.

168 (11) VALIDATED RISK AND NEEDS ASSESSMENT. An actuarial



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169 tool that has been validated and established by administrative  
170 rule in ~~Alabama~~ this state to determine the likelihood of an  
171 offender engaging in future criminal behavior. The Board of  
172 Pardons and Paroles and the Department of Corrections shall  
173 adopt compatible tools to conduct a validated risk and needs  
174 assessment upon offenders within the jurisdiction of the  
175 state. A validated risk and needs assessment shall include,  
176 but not be limited to, an offender's prior criminal history,  
177 the nature and severity of the present offense, and potential  
178 for future violence.

179 (12) TRUTH-IN-SENTENCING STANDARDS. Truth in sentencing  
180 is scheduled to become effective October 1, 2020.

181 (13) UNDER SUPERVISION. ~~All offenders~~ Offenders under  
182 the supervision of any criminal justice agency or program  
183 including, but not limited to, any of the following entities:

- 184 a. The Alabama Department of Corrections.
- 185 b. State or county probation offices.
- 186 c. Community corrections programs pursuant to Alabama  
187 Community Corrections Act.
- 188 d. Jails.
- 189 e. State or local law enforcement agencies.
- 190 f. Any court.

191 (14) VIOLENT OFFENDER. ~~A violent offender is an~~ An  
192 offender who has been convicted of a violent offense, or who  
193 is determined by the trial court judge or a release authority  
194 to have demonstrated a propensity for violence, aggression, or  
195 weapons related behavior based on the criminal history or  
196 behavior of the offender while under supervision of any





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197 criminal justice system agency or entity.

198 (15) VIOLENT OFFENSE.

199 a. For the purposes of this article, a violent offense  
200 includes each of the following offenses, or any substantially  
201 similar offense to those listed in this subdivision created  
202 after June 20, 2003:

203 1. Capital murder pursuant to Sections 13A-6-2 and  
204 13A-5-40.

205 2. Murder pursuant to Section 13A-6-2.

206 3. Manslaughter pursuant to Section 13A-6-3.

207 4. Criminally negligent homicide pursuant to Section  
208 13A-6-4.

209 5. Assault ~~in~~ in the first degree pursuant to Section  
210 13A-6-20.

211 6. Assault ~~in~~ in the second degree pursuant to Section  
212 13A-6-21.

213 7. Compelling street gang membership pursuant to  
214 Section 13A-6-26.

215 8. Kidnapping ~~in~~ in the first degree pursuant to Section  
216 13A-6-43.

217 9. Kidnapping ~~in~~ in the second degree pursuant to  
218 Section 13A-6-44.

219 10. Rape ~~in~~ in the first degree pursuant to Section  
220 13A-6-61.

221 11. Rape ~~in~~ in the second degree pursuant to Section  
222 13A-6-62.

223 12. Sodomy ~~in~~ in the first degree pursuant to Section  
224 13A-6-63.



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225 13. Sodomy ~~in~~in the second degree pursuant to Section  
226 13A-6-64.

227 14. Sexual torture pursuant to Section 13A-6-65.1.

228 15. Sexual abuse ~~in~~in the first degree pursuant to  
229 Section 13A-6-66.

230 16. Enticing a child to enter a vehicle for immoral  
231 purposes pursuant to Section 13A-6-69.

232 17. Stalking in the first degree pursuant to Section  
233 13A-6-90.

234 18. Aggravated stalking in the first degree pursuant to  
235 Section 13A-6-91.

236 19. Soliciting a child by computer pursuant to Section  
237 13A-6-110.

238 20. Domestic violence ~~in~~in the first degree pursuant to  
239 Section 13A-6-130.

240 21. Domestic violence ~~in~~in the second degree pursuant  
241 to Section 13A-6-131.

242 ~~22-26.~~ Burglary ~~in~~in the first degree pursuant to  
243 Section 13A-7-5.

244 ~~23-27.~~ Burglary ~~in~~in the second degree pursuant to  
245 Section 13A-7-6.

246 ~~24-28.~~ Burglary ~~in~~in the third degree pursuant to  
247 ~~subdivision (1) or subdivision (2) of subsection (a) of~~  
248 Section 13A-7-7 (a) (1) or (a) (2).

249 ~~25-29.~~ Arson ~~in~~in the first degree pursuant to Section  
250 13A-7-41.

251 ~~26-30.~~ Criminal possession of explosives pursuant to  
252 Section 13A-7-44.



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253           ~~27.~~31. Extortion ~~in~~ in the first degree pursuant to  
254 Section 13A-8-14.

255           ~~28.~~32. Robbery ~~in~~ in the first degree pursuant to Section  
256 13A-8-41.

257           ~~29.~~33. Robbery ~~in~~ in the second degree pursuant to  
258 Section 13A-8-42.

259           ~~30.~~34. Robbery ~~in~~ in the third degree pursuant to  
260 Section 13A-8-43.

261           ~~31.~~35. Pharmacy robbery pursuant to Section 13A-8-51.

262           ~~32.~~36. Terrorist threats pursuant to Section 13A-10-15.

263           ~~33.~~37. Escape ~~in~~ in the first degree pursuant to Section  
264 13A-10-31.

265           ~~34.~~38. Promoting prison contraband ~~in~~ in the first degree  
266 pursuant to Section 13A-10-36, involving a deadly weapon or  
267 dangerous instrument.

268           ~~35.~~40. Intimidating a witness pursuant to Section  
269 13A-10-123.

270           ~~36.~~41. Intimidating a juror pursuant to Section  
271 13A-10-127.

272           ~~37.~~44. Treason pursuant to Section 13A-11-2.

273           ~~38.~~45. Discharging a weapon into an occupied building,  
274 dwelling, automobile, etc., pursuant to Section 13A-11-61.

275           ~~39.~~46. Promoting prostitution ~~in~~ in the first degree  
276 pursuant to Section 13A-12-111.

277           ~~40.~~47. Production of obscene matter involving a minor  
278 pursuant to Section 13A-12-197.

279           48. Sale of a controlled substance pursuant to Section  
280 13A-12-211(a) (1).



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281 ~~41.~~49. Trafficking pursuant to Section 13A-12-231.  
282 ~~42.~~50. Child abuse pursuant to Section 26-15-3.  
283 51. Aggravated child abuse pursuant to Section  
284 26-15-3.1.  
285 ~~43.~~52. Elder abuse pursuant to Section 38-9-7.  
286 ~~44.~~42. Terrorism pursuant to Section 13A-10-152.  
287 ~~45.~~43. Hindering prosecution for terrorism pursuant to  
288 Section 13A-10-154.  
289 ~~46.~~22. Domestic violence ~~III~~in the third degree  
290 pursuant to ~~subsection (d) of~~ Section 13A-6-132 (d).  
291 ~~47.~~23. Domestic violence by strangulation or  
292 suffocation pursuant to Section 13A-6-138.  
293 ~~48.~~24. Human trafficking ~~I~~in the first degree pursuant  
294 to Section 13A-6-152.  
295 ~~49.~~25. Human trafficking ~~II~~in the second degree  
296 pursuant to Section 13A-6-153.  
297 ~~50.~~39. Hindering prosecution in the first degree  
298 pursuant to Section 13A-10-43.  
299 ~~51.~~53. Any substantially similar offense for which an  
300 Alabama offender has been convicted under prior Alabama law or  
301 the law of any other state, the District of Columbia, the  
302 United States, or any of the territories of the United States.  
303 b. The basis for defining these offenses as violent is  
304 that each offense meets at least one of the following  
305 criteria:  
306 1. Has as an element, the use, attempted use, or  
307 threatened use of a deadly weapon or dangerous instrument or  
308 physical force against the person of another.



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309           2. Involves a substantial risk of physical injury  
310 against the person of another.

311           3. Is a nonconsensual sex offense.

312           4. Is particularly reprehensible.

313           c. Any attempt, conspiracy, or solicitation to commit a  
314 violent offense shall be considered a violent offense for the  
315 purposes of this article.

316           d. Any criminal offense ~~which~~ that meets the criteria  
317 provided in paragraph b. enacted after 2003."

318           "§13A-12-211

319           (a) A person commits the crime of unlawful distribution  
320 of controlled substances if, except as otherwise authorized,  
321 he or she ~~sells, furnishes, gives away, delivers, or~~  
322 ~~distributes~~ does either of the following:

323           (1) Sells a controlled substance enumerated in  
324 Schedules I through V, excluding marijuana. For the purpose of  
325 this subdivision, "sells" means to exchange a controlled  
326 substance enumerated in Schedules I through V, excluding  
327 marijuana, for money or its equivalent.

328           (2) Furnishes, gives away, delivers, or otherwise  
329 distributes a controlled substance enumerated in Schedules I  
330 through V, excluding marijuana.

331           (b) Unlawful distribution of controlled substances is a  
332 Class B felony.

333           (c) A person commits the crime of unlawful possession  
334 with intent to distribute a controlled substance if, except as  
335 otherwise authorized by law, he or she knowingly possesses any  
336 of the following quantities of a controlled substance:



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337 (1) More than eight grams, but less than 28 grams, of  
338 cocaine or of any mixture containing cocaine.

339 (2) More than two grams, but less than four grams, of  
340 any mixture of morphine, opium, or any salt, isomer, or salt  
341 of an isomer thereof, including heroin or any mixture  
342 containing Fentanyl or any synthetic controlled substance  
343 Fentanyl or any synthetic controlled substance Fentanyl  
344 analogue, as described in Sections 20-2-23 and 20-2-25.

345 (3) More than eight grams, but less than 28 grams, of  
346 ~~3,4-methylenedioxy amphetamine~~3,4-methylenedioxyamphetamine,  
347 or of any mixture containing ~~3,4-methylenedioxy~~  
348 ~~amphetamine~~3,4-methylenedioxyamphetamine.

349 (4) More than eight grams, but less than 28 grams, of  
350 ~~5-methoxy-3,4-methylenedioxy~~  
351 ~~amphetamine~~5-methoxy-3,4-methylenedioxyamphetamine, or of any  
352 mixture containing ~~5-methoxy-3,4-methylenedioxy~~  
353 ~~amphetamine~~5-methoxy-3,4-methylenedioxyamphetamine.

354 (5) More than eight grams, but less than 28 grams, of  
355 amphetamine or any mixture containing amphetamine, its salt,  
356 optical isomer, or salt of its optical isomer thereof.

357 (6) More than eight grams, but less than 28 grams, of  
358 methamphetamine or any mixture containing methamphetamine, its  
359 salts, optical isomers, or salt of its optical isomers  
360 thereof.

361 (7) More than one-half gram, but less than one gram, of  
362 Fentanyl or any synthetic controlled substance Fentanyl  
363 analogue, as a single component.

364 (d) Unlawful possession with intent to distribute a



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365 controlled substance is a Class B felony."

366 "§13A-12-250

367 In addition to any penalties ~~heretofore or hereafter~~  
368 provided by law for any person convicted of ~~an-unlawful sale~~  
369 distribution of a controlled substance, ~~there is hereby~~  
370 ~~imposed~~ pursuant to Section 13A-12-211(a)(1), the court may  
371 impose a penalty of five years incarceration in a state  
372 corrections facility with no provision for probation if the  
373 situs of ~~such-the~~ unlawful sale was on the campus or within a  
374 three-mile radius of the campus boundaries of any public or  
375 private school, college, university, or other educational  
376 institution in this state."

377 "§13A-12-270

378 In addition to any penalties ~~heretofore or hereafter~~  
379 provided by law for any person convicted of ~~an-unlawful sale~~  
380 distribution of a controlled substance, ~~there is hereby~~  
381 ~~imposed~~ pursuant to Section 13A-12-211(a)(1), the court may  
382 impose a penalty of five years incarceration in a state  
383 corrections facility with no provision for probation if the  
384 situs of ~~such-the~~ unlawful sale was within a three-mile radius  
385 of a public housing project owned by a housing authority."

386 Section 2. Section 13A-12-211.1 is added to the Code of  
387 Alabama 1975, to read as follows:

388 §13A-12-211.1

389 (a) A person commits the crime of unlawful distribution  
390 of marijuana if, except as otherwise authorized, he or she  
391 sells, furnishes, gives away, delivers, or distributes  
392 marijuana.



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393 (b) Unlawful distribution of marijuana is a Class B  
394 felony.

395 Section 3. This act shall become effective on October  
396 1, 2024.