

Act 2022-154

Is it Really Drug Paraphernalia Act

Amends the Drug Paraphernalia statute (13A-12-260) to allow the possession, delivery, or sale of equipment designed to detect the presence of fentanyl or any synthetic fentanyl analogue.

Makes technical amendments to 13A-12-260 to change the spelling of marihuana to marijuana and expands the types of objects which may be considered drug paraphernalia

Act 2022-161

Failure to Report Abuse or Exploitation

Amends Section 38-9-8 by making it a Class C misdemeanor for a physician or medical practitioner to knowingly fail to make a report when he/she has reasonable cause to believe a protected person who has been subjected to physical abuse, neglect, exploitation, sexual abuse or emotional abuse.

Amends the definition of a group home to include other residential facilities and community-based services provided to adults in need of protective services.

Act 2022-201

Video Depositions Of Children and Protected Persons Act

Amends Section 15-25-1 to define a “protected person” as a person who has a developmental disability attributed to an intellectual disability, autism, cerebral palsy, epilepsy, or other disabling neurological conditions, if any of the following apply (1) the disability originates before the person attains 22 years of age, can be expected to continue indefinitely, and the disability constitutes a significant handicap (2) if the disability is attributable to an intellectual disability which manifests itself before age 18, can be expected to continue indefinitely, and the disability constitutes a significant handicap (3) the disability results in sub average intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period.

Defines “physical offenses, sexual offenses, and violent offenses to include a sex offense pursuant to 15-20A-5, a violent offense as provided in Section 12-25-32, aggravated child abuse pursuant to 26-15-3.1, assault in any degree, any offense involving domestic violence, elder abuse, or a violation of a PFA, any attempt to commit one of the above enumerated offenses;

Amends Section 15-25-2 to authorize the taking of a video deposition of child or protected person. Further provides for the issuance of a protective order prohibiting defense counsel from copying, reproducing, or distributing a copy of the video deposition.

Amends Section 15-25-3 to permit, upon motion of the state or defense, may permit of a child, a protected person, or a witness to an offense under this article to testify by closed circuit equipment. Further requires the Court to consider the nature of the offense, the nature of the expected testimony, the possible side effect the testimony will have on the victim or witness, along with any other relevant matters the Alabama Supreme Court may require the Court to consider when ruling on a motion seeking authorization to proceed by closed circuit equipment.

Amends Section 15-25-5 to allow use of anatomically correct dolls or mannequins during testimony of a child under the age of 12 or a protected person in instances where the defendant is alleged to had unlawful sexual contact with that witness

Amends Section 15-25-6 to require the Court and the prosecution to take appropriate action to ensure a speedy trial in order to minimize the length of time a child or protected person ***must endure the stress of involvement in the proceeding.***

Amends Sections 15-25-30 to 15-25-39 to allow an out-of-court statements to be admissible if the witness is a child under the age of 12 or a protected person and the

out-of-court statement concerns a material element of a physical, sexual, or violent offense as defined in 15-25-39

The out-of-court statement is admissible if (1) the witness testified at the proceeding, via video deposition, or by closed circuit and was subject to cross-examination or (2) the out-of-court statement is shown to the reasonable satisfaction of the court to possess particularized guarantees of trustworthiness and the defendant removed the witness from the jurisdiction of the court or engaged in wrongdoing intended to make the witness unavailable.

Before admitting the out-of-court statement on the grounds the witness is unavailable, there must be corroborating evidence of the act being testified to.

Requires the Court to support any findings and rulings pertaining to the unavailability of a witness or the trustworthiness of the out-of-court statement.

Amends Sections 13A-6-81 and 13A-6-82 to make it a Class B felony for any school employees to engage in sexual intercourse or sodomy or a Class C felony for any school employee to engage in sexual contact with a student under the age of 19 or a protected person under the age of 22, regardless of the sex of the student/protected person. Further provides that consent is not a defense to this charge.

Section 15-25-7 is added to allow leading questions by the prosecutor or defense attorney of any victim or witness in a case who is under the age of 12 or a protected person.

Repeals Section 15-25-33 relating to expert testimony as to unavailability of a child to testify

Act 2022-202

Real and Present Threat Act

Amends Section 15-16-41 related to conducting a probable cause hearing to determine whether a defendant poses a real and present threat of substantial harm due to a mental illness following a NGRI verdict, by adding the following language “In determining whether the defendant poses a real and present threat of substantial harm to self or others, the court shall consider all available relevant information, including any known relevant aspects of the defendant's psychosocial, medical, and psychiatric history. in addition to the defendant's current behavior.”

Amends Section 15-16-43 related to conducting a final hearing to determine whether a defendant poses a real and present threat of substantial harm due to a mental illness by adding the following language “In determining whether the defendant poses a real and present threat of substantial harm to self or others, the court shall consider all available relevant information, including any known relevant aspects of the defendant's psychosocial, medical, and psychiatric history. in addition to the defendant's current behavior.”

Amends Section 15-16-67 in circumstances where the Court determines a defendant has a mental illness but no longer poses a real and present threat of substantial harm to self or others and will be released with conditions by adding the following language “In determining whether the defendant poses a real and present threat of substantial harm to self or others, the court shall consider all available relevant information, including any known relevant aspects of the defendant's psychosocial, medical, and psychiatric history. in addition to the defendant's current behavior.”

Amends Section 22-52-1.1 by making technical amendments to definitions (Mental Retardation – Intellectual Disability/Person – Individual) and by adding a definition for Real and Present Threat of Substantial Hard to Self or Others as “A significant risk that an individual who is exhibiting behavior consistent with a mental illness, as a result of the mental illness, will do either of the following: (a) By action or inaction, cause, allow, or inflict serious bodily harm upon himself, herself. or another individual (b) Be unable to satisfy his or her need for nourishment, medical care, shelter, or self-protection so that there is a substantial likelihood of death, serious bodily harm, serious physical debilitation, serious mental debilitation, or life-threatening disease.

Although the balance of the Act deals specifically with the Department of Mental Health and the commitment of mentally ill individuals, it seems relevant because of the addition of language regarding clear and present threat of substantial harm in the NGRI context.

Act 2022-236

Agent Billy Clardy III Act

Claims to add Chapter 2A to Title 20 although there currently exist a Chapter 2A entitled the Darren Wesley “ATO” Hall Compassion Act encompassing Alabama’s Medical Marijuana laws

Adds a new chapter to Title 20 to authorize the Attorney General to submit an application to a circuit court judge to intercept any wire or electronic communication under certain circumstances

Under the new law, local police officers would no longer need to seek federal assistance in obtaining a wiretap could get permission for intercept operations by submitting a written through the State Bureau of Investigations and/or through ALEA. Once received, the secretary of ALEA would sign off on that affidavit prior to submitting it for review by the attorney general’s office. If the AG’s office signs off on the request for a wiretapping, the entire packet would be submitted to a local circuit court judge for approval.

Section 20-2A-3 specifies that Orders authorizing, approving, or extending the interception of wire or electronic communications may be granted when the intercept may provide or has provided evidence an individual is committing, has committed, or is about to commit a felony drug offense.

Section 20-2A-4 provides a detailed list of information required to be included in the written request for an intercept and requires the AG’s office to create a form incorporating the required information

Section 20-2A-5 sets forth the required finding of probable cause necessary before a judge can enter an ex parte order authorizing an intercept and the information that must be included in the ex parte order. An intercept is limited to 30 days unless the intercept is extended by an application for an extension approved by the court and law enforcement is required to provide written reports to the court on the progress of the intercept and its objectives.

Section 20-2A-6 requires the release of the recorded contents of the wire or electronic communications in a way that protects them from editing or alteration. The records must be turned over to the judge authorizing the intercept and stored for a period of at least 10 years.

Section 20-2A-8 requires the court to serve an inventory on the individual named in the application for an intercept or any other parties to the intercepted communications not later than 90 days after the date of an application that is denied or the expiration of an intercept order that is granted.

Section 20-2A-9 requires the disclosure of a copy of the order and application granting the intercept at least 10 days prior to trial, hearing, or other proceeding before the contents of an intercepted wire or evidence derived from that communication may be entered into evidence or otherwise disclosed at that trial, hearing, or other proceedings in State or Federal Court. Authorizes an aggrieved party to file a motion to suppress the contents of the intercepted wire communications or evidence derived from that intercepted wire communications. 1. Unlawfully intercepted 2. Order authorizing the intercept is insufficient on its face. 3. Intercept not made in conformity with the order.

Section 20-2A-10 establishes reporting requirements which must be completed by any judge who issues an order or an extension of an order for a wire intercept.

Act 2022-322

Sergeant Nick Risner Act

Amends the provisions of Section 14-9-41 (Alabama's Correctional Incentive Good Time statute)

Excludes any prisoner from receiving correctional incentive good time credit if he or she (1) has been convicted of a Class A felony (2) or has been convicted of any crime that caused the death of another person by means of a deadly weapon (3) or has been sentenced to life, death, or a term of incarceration exceeding 15 years (4) or has been convicted of a sex offense involving a child as defined in 15-20A-4.

Excludes any prisoner from being placed in Class I if he or she (1) has been convicted of an assault resulting in permanent loss or use or permanent partial loss or use of any bodily organ or appendage (2) or has been convicted of a crime involving the sexual abuse of a child under the age of 17.

Amends the statute to refer to inmates as prisoners.

Act 2022-323

Alabama Second Amendment Protection Act

Prohibits the enforcement of any executive order issued by the President of the United States which limits or restricts the ownership, use, or possession of firearms, firearm accessories, or ammunition by any law-abiding resident of the state.

Act 2022-375

Virtual Hearing in Criminal Cases

Amends Sections 15-26-1 and 2 to authorize the use of virtual appearance before any judge or magistrate for a first or subsequent appearance, bail, arraignment, or other pre-trial, bench trial, or post-trial proceeding, at the discretion of the court.

If any party objects to a virtual pre-trial, bench trial, or post-trial hearing, an in-person hearing shall be held. Any objection to the use of a virtual hearing shall be filed within 10 days of the issuance of the order setting the hearing, or at least three days prior to the hearing if the order setting the hearing is issued within 10 days of the hearing.

Act 2022-381

Judicial Discretion in Probation Revocations

Authorizes the Court, in circumstances where a defendant received a split sentence and his probation is being revoked, to determine the length of the revocation sentence, including the ability to *resplit the sentence within the remainder of the sentence pursuant to Section 15-18-8*, Code of Alabama 1975. If the revocation sentence imposed is less than the length of time remaining on the original sentence, the remainder of the sentence shall be suspended and the defendant may be placed on probation for a period and upon terms as the court deems best.

This would appear to allow the sentencing court to resplit a sentence up to the maximum split authorized by Section 15-18-8

Act 2022-386

Inmate Repayment Plan Act

Provides for a 180 day grace period before an inmate released from DOC custody would be required to begin making payments on fines, court costs, or fees. Further requires the inmate to contact the clerk of court and enter into a repayment agreement.

Act 2022-416

Assault in the Second Degree Isn't Inclusive Enough Act

Amends Section 13A-6-21 to specifically include assaults on a pharmacist, pharmacy technician, pharmacy intern, pharmacy extern, or pharmacy cashier and home health care workers while they are in a private residence. Further specifically provides for assaults on Department of Human Resources employee or any employee performing social work, as defined in Section 34-30-1, during or as a result of the performance of his or her duty.

Act 2022-418

Secret Compartments are Bad Act

Creates the new offense of operating a vehicle that contains a false or secret compartment, if the purpose of the false or secret compartment is to conceal, hide, or prevent the discovery of (1) a person concealed for an unlawful purpose, or (2) a controlled substance in violation of Article 5, Chapter 12, Title 13A, or (3) contraband as defined in 20-2-93.

Makes it unlawful for any person to install, create, build, or fabricate in any vehicle a false or secret compartment, the purpose of which compartment is to conceal, hide, or prevent discovery of (1) a person concealed for an unlawful purpose, or (2) a controlled substance in violation of Article 5, Chapter 12, Title 13A, or (3) contraband as defined in 20-2-93.

Makes is unlawful to sell, trade, or otherwise dispose of a vehicle with knowledge that the vehicle contains a false or secret compartment.

Creates a legal inference of fact the operator of the vehicle had knowledge of the false or secret compartment if (1) the compartment is concealing a person for an unlawful purpose, or (2) the compartment is concealing a controlled substance in violation of Article 5, Chapter 12, Title 13A, or (3) the compartment is concealing contraband as defined in 20-2-93.

Makes a violation of this section a Class B felony.

Act 2022-419
Funding Indigent Defense Act

Limits the amount of money a municipality may retain from fines and penalties resulting from the operation of their municipal court.

Only 10 percent of a municipality's general operating budget may come from fines and penalties retained by a municipality from traffic tickets. Any remaining amount in excess of the 10 percent threshold shall be transferred to the Department of Finance for allocation, in equal amounts, to the Crime Victims' Compensation Fund, created pursuant to Section 15-23-16, Code of Alabama 1975, and the Fair Trial Tax Fund, created pursuant to Section 12-19-251, Code of Alabama 1975.

Class 1 municipalities (300,000+ population) are excluded from the Act

This is language drafted by ACDLA's legislative committee

Act 2022-420

Facial Recognition Technology

A state or local law enforcement agency may not use facial recognition technology match results as the sole basis to establish probable cause in a criminal investigation or to make an arrest.

To establish probable cause in a criminal investigation or to make an arrest, a state or local law enforcement agency may use facial recognition technology match results only in conjunction with other lawfully obtained information and evidence.

Act 2022-425
Municipal Court Transparency Act

The Administrative Office of Courts is required to annually collect data from municipalities with a municipal court.

Municipal Court are required to annually provide to the Administrative Office of Courts the following data:

1. the total number of court cases for the fiscal year; and,
2. the total amount of municipal revenue collected by the municipal court the manner and amount dispersed to each receiving entity within the municipality; and,
3. the total expenditures by the municipal court, including annual salaries for the judge/judges, court clerk, and magistrate/s; and,
4. the total annual operating budget for the municipal court; and,
5. the total annual operating budget for the municipality.

Provides for audits and sanctions for failure of a municipality to report as required, including the forfeiture of any fees and costs collected by the municipality that would otherwise remain with the municipality pursuant to Act 2022-419.

Requires municipalities to use either the state judicial information system (AlaCourt) or a software program that is properly integrated with the state judicial information system (AlaCourt).

Act 2022-439

Rogue Police Act or Brookside if Bad Act

It is now a Class A misdemeanor to knowingly misrepresent, by use of a sign, marker, or other markings, the police jurisdiction of a municipality.

It is also a Class A misdemeanor for a public official to instruct another person to misrepresent the police jurisdiction of a municipality with knowledge of the true boundary of the municipality.