

1 HB478  
2 115802-1  
3 By Representatives McLaughlin, Taylor and Ford  
4 RFD: Judiciary  
5 First Read: 02-FEB-10

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8 SYNOPSIS: Existing law prescribes criminal penalties  
9 for any person who willfully violates a protection,  
10 restraining, or injunctive order, including a  
11 mandatory term of imprisonment of 48 continuous  
12 hours for a second offense and 30 days for a third  
13 offense. The mandatory term of imprisonment cannot  
14 be suspended.

15 This bill would increase the mandatory term  
16 of imprisonment for a person who willfully violates  
17 a domestic violence order to a minimum of 30 days  
18 imprisonment that cannot be suspended for a second  
19 offense and a minimum of 120 days imprisonment that  
20 cannot be suspended for a third offense. This bill  
21 would relocate the criminal penalties to Title 13A  
22 of the Code of Alabama 1975. This bill would extend  
23 these penalties to include violations of domestic  
24 violence orders issued by courts of Indian tribes  
25 and U.S. territories. This bill would specify that  
26 a domestic violence order not issued pursuant to  
27 this act specify that a history of violence or

1 abuse exists in order for this act to apply. This  
2 bill would also provide that a person arrested for  
3 violation of a condition of release could be held  
4 without bail pursuant to the Alabama Rules of  
5 Criminal Procedure. This bill would also repeal  
6 existing law which provides that lack of knowledge  
7 of an order is an affirmative defense at a trial  
8 for a violation of a domestic violence order under  
9 this chapter.

10 Amendment 621 of the Constitution of Alabama  
11 of 1901, now appearing as Section 111.05 of the  
12 Official Recompilation of the Constitution of  
13 Alabama of 1901, as amended, prohibits a general  
14 law whose purpose or effect would be to require a  
15 new or increased expenditure of local funds from  
16 becoming effective with regard to a local  
17 governmental entity without enactment by a 2/3 vote  
18 unless: it comes within one of a number of  
19 specified exceptions; it is approved by the  
20 affected entity; or the Legislature appropriates  
21 funds, or provides a local source of revenue, to  
22 the entity for the purpose.

23 The purpose or effect of this bill would be  
24 to require a new or increased expenditure of local  
25 funds within the meaning of the amendment. However,  
26 the bill does not require approval of a local  
27 governmental entity or enactment by a 2/3 vote to

1           become effective because it comes within one of the  
2           specified exceptions contained in the amendment.

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4                                   A BILL  
5                                   TO BE ENTITLED  
6                                   AN ACT

7  
8           Relating to domestic orders; to amend Sections  
9   30-5A-1, 30-5A-2, and 30-5A-4, Code of Alabama 1975; to amend  
10   and renumber Section 30-5A-3; to provide for legislative  
11   intent; to provide further for criminal penalties for  
12   violations of domestic violence orders; to provide for the  
13   content of orders not issued pursuant to this act; and in  
14   connection therewith would have as its purpose or effect the  
15   requirement of a new or increased expenditure of local funds  
16   within the meaning of Amendment 621 of the Constitution of  
17   Alabama of 1901, now appearing as Section 111.05 of the  
18   Official Recompilation of the Constitution of Alabama of 1901,  
19   as amended.

20   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21           Section 1. Sections 30-5A-1, 30-5A-2, and 30-5A-4,  
22   Code of Alabama 1975, are amended to read as follows:

23           "§30-5A-1.

24           ~~"This chapter may be cited~~ (a) This chapter shall be  
25   known as the "~~Family Violence~~ Domestic Violence Protection  
26   Order Enforcement Act."

1           "(b) The purpose of this chapter is to provide  
2 ~~criminal sanctions for the willful violation of certain~~  
3 ~~protective or restraining orders issued in circuit, district,~~  
4 ~~municipal, or juvenile courts in domestic relations or family~~  
5 ~~violence cases~~ define the crime of violation of a domestic  
6 violence order.

7           "(c) It is the intent of the Legislature to protect  
8 victims of domestic violence by enhancing and clarifying the  
9 authority of municipal and state courts to punish violations  
10 of court orders intended to protect victims from further  
11 abuse. It is the further intention of the Legislature to  
12 declare that the policy of the State of Alabama shall stress  
13 the enforcement of its laws to protect victims of domestic  
14 violence from further abuse and to hold abusers accountable  
15 for their actions. Finally, it is the intent of the  
16 Legislature to presume the validity of protection orders  
17 issued by courts in all states, the District of Columbia,  
18 United States territories, and all federally recognized Indian  
19 tribes within the United States, and to afford full faith and  
20 credit to those orders. The provisions of this chapter are to  
21 be construed to promote these purposes.

22           "§30-5A-2.

23           "As used in this chapter and Section 13A-6-150, the  
24 following terms shall have the following meanings,  
25 respectively, unless the context clearly indicates otherwise:

1           ~~"(1) FAMILY VIOLENCE. The definition provided in~~  
2           ~~Section 15-10-3, in pari materia with the definition provided~~  
3           ~~for "abuse" in Sections 30-5-1 to 30-5-11, inclusive.~~

4           ~~"(2) JUDGE. The judge presiding in a court having~~  
5           ~~jurisdiction over the defendant for violation of this chapter~~  
6           ~~and shall include a duly appointed magistrate conducting~~  
7           ~~initial appearances pursuant to the Alabama Rules of Criminal~~  
8           ~~Procedure or Juvenile Procedure.~~

9           ~~"(3) PROTECTION ORDER or RESTRAINING ORDER. Any~~  
10          ~~order of a court of competent jurisdiction, whether or not~~  
11          ~~located in this state, the purpose of which is to prohibit a~~  
12          ~~person from committing any or all of the following acts:~~  
13          ~~harass, annoy, alarm, intimidate, assault, communicate with,~~  
14          ~~or otherwise bother another person. This definition shall~~  
15          ~~include, but not be limited to, protection orders issued~~  
16          ~~pursuant to the Protection From Abuse Act, Sections 30-5-1 to~~  
17          ~~30-5-11, inclusive, and restraining orders or injunctions~~  
18          ~~issued in domestic relations, family violence or juvenile~~  
19          ~~cases~~

20          "(1) DOMESTIC VIOLENCE ORDER. A domestic violence  
21          order is any protection order issued pursuant to the  
22          Protection from Abuse Act, Sections 30-5-1 to 30-5-11,  
23          inclusive. The term includes the following: a. A restraining  
24          order, injunctive order, or order of release from custody  
25          which has been issued in a circuit, district, municipal, or  
26          juvenile court in a domestic relations or family violence  
27          case. b. An order issued by municipal, district, or circuit

1 court which places conditions on the pre-trial release on  
2 defendants in criminal cases, including provisions of bail  
3 pursuant to Section 15-13-190. c. An order issued by another  
4 state or territory which may be enforced under Sections  
5 30-5B-1 through 30-5B-10. Restraining or protection orders not  
6 issued pursuant to the Protection From Abuse Act, Sections  
7 30-5-1 to 30-5-11, inclusive, must specify that a history of  
8 violence or abuse exists for the provisions of this chapter to  
9 apply.

10 "(2) VIOLATION. The knowing commission of any act  
11 prohibited by a domestic violence order or any willful failure  
12 to abide by its terms.

13 "§30-5A-4.

14 "A ~~peace~~ law enforcement officer may arrest any  
15 person for the violation of this chapter if the officer has  
16 probable cause to believe that the person has violated any  
17 provision of a valid ~~protection~~ domestic violence order,  
18 whether temporary or permanent, ~~which has been served on the~~  
19 ~~person or of which the person has received sufficient notice~~  
20 ~~that the protection order has been issued. The presentation of~~  
21 ~~a domestic violence order constitutes probable cause for an~~  
22 ~~officer to believe that a valid order exists. For purposes of~~  
23 ~~this chapter, the order may be inscribed on a tangible copy or~~  
24 ~~may be stored in an electronic or other medium if it is~~  
25 ~~retrievable in a detectable form. Presentation of a certified~~  
26 ~~copy of the domestic violence order is not required for~~  
27 ~~enforcement or to allow a law enforcement officer to effect a~~

1 warrantless arrest. If a domestic violence order is not  
2 presented to or otherwise confirmed by a law enforcement  
3 officer, the officer may consider other information in  
4 determining whether there is probable cause to believe that a  
5 valid domestic violence order exists. The law enforcement  
6 officer may arrest the person defendant without a warrant  
7 although he or she did not personally see the violation.  
8 Knowledge by the officer of the existence or contents of, or  
9 both, or presentation to the officer by the complainant of, a  
10 protection domestic violence order shall constitute prima  
11 facie evidence of the validity of the order.

12 "If a law enforcement officer of this state  
13 determines that an otherwise valid domestic violence order  
14 cannot be enforced because the defendant has not been notified  
15 or served with the domestic violence order, the law  
16 enforcement officer shall inform the defendant of the order  
17 and allow the person a reasonable opportunity to comply with  
18 the order's provisions before enforcing the order. In the  
19 event the law enforcement officer provides notice of the  
20 domestic violence order to the defendant, the officer shall  
21 document this fact in the written report.

22 Section 2. Section 30-5A-3, Code of Alabama 1975, is  
23 amended and renumbered as Section 13A-6-150, Code of Alabama  
24 1975, to read as follows:

25 ~~"§30-5A-3.~~ §13A-6-150.

26 ~~"(a) Any proceeding under this chapter shall be in~~  
27 ~~accordance with the Rules of Civil Procedure and shall be in~~



1 ~~addition to any other civil or criminal penalties provided by~~  
2 ~~law. It is specifically provided that any defendant shall have~~  
3 ~~the same rights, remedies, and due process where any wrongful~~  
4 ~~action is instituted as any defendant in other civil and~~  
5 ~~criminal actions.~~

6 ~~"(b) Upon violation of a protection order or a court~~  
7 ~~approved consent agreement, the court may hold the defendant~~  
8 ~~or plaintiff as the case may be, in contempt and punish him or~~  
9 ~~her in accordance with the law.~~

10 ~~"(c) (a) (1) A willful violation of a protection~~  
11 ~~domestic violence order, restraining order or injunctive order~~  
12 ~~issued to bring about a cessation of the abuse of a person and~~  
13 ~~which is issued by a court of competent jurisdiction is a~~  
14 ~~Class A misdemeanor which shall be punishable as provided by~~  
15 ~~law.~~

16 ~~"(2) The first and any subsequent conviction for a~~  
17 ~~willful violation of a protection order, restraining order or~~  
18 ~~injunctive order issued to bring about a cessation of the~~  
19 ~~abuse of a person is a Class A misdemeanor. A second~~  
20 ~~conviction for violation of a protection domestic violence~~  
21 ~~order, restraining order or injunctive order issued to bring~~  
22 ~~about a cessation of the abuse of a person shall, in addition~~  
23 ~~to any other penalty or fine, be punishable by a minimum of 48~~  
24 ~~hours continuous 30 days imprisonment which may not be~~  
25 ~~suspended. A third or subsequent conviction shall, in addition~~  
26 ~~to any other penalty or fine, be punishable by a minimum~~

1 sentence of ~~30~~ 120 days imprisonment which may not be  
2 suspended."

3 Section 3. Although this bill would have as its  
4 purpose or effect the requirement of a new or increased  
5 expenditure of local funds, the bill is excluded from further  
6 requirements and application under Amendment 621, now  
7 appearing as Section 111.05 of the Official Recompilation of  
8 the Constitution of Alabama of 1901, as amended, because the  
9 bill defines a new crime or amends the definition of an  
10 existing crime.

11 Section 4. This act shall become effective on the  
12 first day of the third month following its passage and  
13 approval by the Governor, or its otherwise becoming law.