

1 SB433
2 116238-2
3 By Senator Bedford
4 RFD: Judiciary
5 First Read: 16-FEB-10

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8 SYNOPSIS: This bill, entitled the Alabama Street Gang
9 Act, would provide legislative findings and define
10 terms.

11 This bill would provide for the crimes and
12 the punishments for participating in a criminal
13 syndicate, compelling street gang membership, and
14 injury by graffiti.

15 This bill would provide that intentional
16 killing of a victim by an active criminal street
17 gang member is an aggravating circumstance for
18 purposes of imposing the death penalty.

19 Amendment 621 of the Constitution of Alabama
20 of 1901, now appearing as Section 111.05 of the
21 Official Recompilation of the Constitution of
22 Alabama of 1901, as amended, prohibits a general
23 law whose purpose or effect would be to require a
24 new or increased expenditure of local funds from
25 becoming effective with regard to a local
26 governmental entity without enactment by a 2/3 vote
27 unless: it comes within one of a number of

1 specified exceptions; it is approved by the
2 affected entity; or the Legislature appropriates
3 funds, or provides a local source of revenue, to
4 the entity for the purpose.

5 The purpose or effect of this bill would be
6 to require a new or increased expenditure of local
7 funds within the meaning of the amendment. However,
8 the bill does not require approval of a local
9 governmental entity or enactment by a 2/3 vote to
10 become effective because it comes within one of the
11 specified exceptions contained in the amendment.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 Relating to gangs; to make legislative findings; to
18 define terms; to provide for certain crimes and to establish
19 penalties relating to criminal street gangs, criminal
20 syndicates, and graffiti; to amend Section 13A-5-49, Code of
21 Alabama 1975, to make murder by a criminal street gang member
22 an aggravating circumstance in certain circumstances; to
23 repeal Section 13A-6-26, Code of Alabama 1975, relating to
24 compelling street gang membership; and in connection therewith
25 would have as its purpose or effect the requirement of a new
26 or increased expenditure of local funds within the meaning of
27 Amendment 621 of the Constitution of Alabama of 1901, now

1 appearing as Section 111.05 of the Official Recompilation of
2 the Constitution of Alabama of 1901, as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act shall be known and may be cited
5 as the Alabama Street Gang Act.

6 Section 2. (a) The Legislature finds and declares
7 that:

8 (1) It is the right of every person, regardless of
9 race, color, creed, religion, national origin, sex, age, or
10 disability, to be secure and protected from fear,
11 intimidation, and physical harm caused by the activities of
12 violent groups and individuals.

13 (2) Urban, suburban, and rural communities,
14 neighborhoods, and schools throughout the state are being
15 terrorized and plundered by street gangs.

16 (3) There are numerous street gangs operating in
17 Alabama and are spreading into suburban and rural areas of
18 Alabama.

19 (4) Street gangs are often controlled by criminally
20 sophisticated adults who take advantage of our youth by
21 intimidating and coercing them into membership by employing
22 them as drug couriers and runners and by using them to commit
23 brutal crimes against persons and property to further the
24 financial benefit to and dominance of the street gang.

25 (5) Street gang activities present a clear and
26 present danger to public order and safety and citizens are not
27 constitutionally protected.

1 (6) No society is or should be required to endure
2 such activities without redress.

3 (b) It is not the intent of this act to interfere
4 with the exercise of the constitutionally protected rights of
5 freedom of expression and association. The Legislature hereby
6 recognizes the constitutional right of every citizen to harbor
7 and express beliefs on any lawful subject whatsoever, to
8 lawfully associate with others who share similar beliefs, to
9 petition lawfully constituted authority for the redress of
10 perceived grievances, and to participate in the electoral
11 process.

12 Section 3. For purposes of this act, the following
13 terms shall have the following meanings:

14 (1) CRIMINAL STREET GANG. Any combination,
15 confederation, alliance, network, conspiracy, understanding,
16 or other similar arrangement in law or in fact of three or
17 more persons organized formally or informally, so constructed
18 that the organization will continue its operation even if
19 individual members enter or leave the organization, which
20 through its membership or through the agency of any member
21 engages in a course or pattern of criminal activity.

22 (2) CRIMINAL STREET GANG MEMBER. An individual to
23 whom at least two of the following seven criteria indicating
24 criminal street gang membership apply:

- 25 a. Self-proclamation.
- 26 b. Witness testimony or official statement.
- 27 c. Written or electronic correspondence.

1 d. Paraphernalia or photographs.

2 e. Tattoos.

3 f. Clothing or colors.

4 g. Any other indicia of street gang membership.

5 (3) CRIMINAL SYNDICATE. Any combination of persons
6 or enterprises engaging, or having the purpose of engaging, on
7 a continuing basis in conduct that violates any one or more
8 provisions of any felony statute of this state.

9 (4) GRAFFITI. Any form of unauthorized painting,
10 printing, writing, spraying, scratching, affixing, or
11 inscribing on the property of another regardless of the
12 content or nature of the material used which is applied to any
13 public or private property without the consent of the owner of
14 the property.

15 Section 4. (a) For the purposes of this act, it
16 shall not be necessary to show that a particular conspiracy,
17 combination, or enjoining of persons possesses, acknowledges,
18 or is known by any common name, insignia, flag, means of
19 recognition, secret signal or code, creed, belief, structure,
20 leadership or command structure, method of operation or
21 criminal enterprise, concentration or specialty, membership,
22 age, or other qualifications, initiation rites, geographical
23 or territorial sites or boundary or location, or other
24 unifying mark, manner, protocol, or method of expressing or
25 indicating membership when the conspiracy's existence, in law
26 or in fact, can be demonstrated by a preponderance of other
27 competent evidence.

1 (b) Any evidence reasonably tending to show or
2 demonstrate, in law or in fact, the existence of or membership
3 in any conspiracy, confederation, or other association
4 described herein, or probative of the existence of or
5 membership in any such association, shall be admissible in any
6 action or proceeding brought under this act.

7 Section 5. In any proceeding to determine whether
8 street gang membership exists pursuant to this act, expert
9 testimony is admissible to show particular conduct, status,
10 and customs indicative of criminal gangs, including, but not
11 limited to, the following:

12 (1) Characteristics of persons who are members of
13 criminal gangs.

14 (2) Specific rivalries between criminal gangs.

15 (3) Common practices and operations of criminal
16 gangs and the members of those gangs.

17 (4) Social customs and behavior of members of
18 criminal gangs.

19 (5) Terminology used by members of criminal gangs.

20 (6) Code of conduct, including criminal conduct, of
21 particular criminal gangs.

22 (7) The types of crimes that are likely to be
23 committed by a particular criminal gang or by criminal gangs
24 in general.

25 Section 6. (a) A person commits the crime of
26 participating in a criminal syndicate by doing any of the
27 following:

1 (1) Intentionally organizing, managing, directing,
2 supervising, or financing a criminal syndicate with the intent
3 to promote or further the criminal objectives of the
4 syndicate.

5 (2) Knowingly inciting or inducing others to engage
6 in violence or intimidation to promote or further the criminal
7 objectives of a criminal syndicate.

8 (3) Furnishing advice or direction in the conduct,
9 financing, or management of a criminal syndicate's affairs
10 with the intent to promote or further the criminal objectives
11 of a criminal syndicate.

12 (4) Intentionally promoting or furthering the
13 criminal objectives of a criminal syndicate by inducing or
14 committing any act or omission by a public servant in
15 violation of his or her official duty.

16 (5) Hiring, engaging, or using a minor child for any
17 conduct preparatory to or in completion of any offense in this
18 section.

19 (b) A person shall not be convicted pursuant to
20 subsection (a) on the basis of accountability as an accomplice
21 unless he or she participates in violating this section in one
22 of the ways specified.

23 (c) A person commits the crime of assisting a
24 criminal syndicate by committing any felony offense, whether
25 completed or preparatory, with the intent to promote or
26 further the criminal objectives of a criminal syndicate.

1 (d) Except as provided in subsection (e) or (f),
2 participating in a criminal syndicate is a Class B felony.

3 (e) A violation of subdivision (5) of subsection (a)
4 is a Class A felony.

5 (f) A person who violates subdivision (1), (2), (3),
6 or (4) of subsection (a) for the benefit of, at the direction
7 of, or in association with any criminal street gang or as a
8 criminal street gang member, with the intent to promote,
9 further, or assist any criminal conduct by the criminal street
10 gang, is guilty of a Class B felony.

11 (g) Assisting a criminal syndicate is a Class C
12 felony. If committed for the benefit of, at the direction of,
13 or in association with any criminal street gang with the
14 intent to promote, further, or assist any criminal conduct by
15 the gang, assisting a criminal syndicate is a Class B felony.

16 (h) Use of a common name or common identifying sign
17 or symbol shall be admissible and may be considered in proving
18 the combination of persons or enterprises required by this
19 section.

20 Section 7. (a) A person who expressly or by
21 implication threatens to do bodily harm or does bodily harm to
22 a person, a family member or a friend of the person, or any
23 other person, or uses any other unlawful criminal means to
24 solicit or cause any person to join or remain in a criminal
25 street gang is guilty of the crime of compelling criminal
26 street gang membership.

1 (b) The crime of compelling criminal street gang
2 membership is a Class C felony.

3 (c) Notwithstanding subsection (b), the crime of
4 compelling criminal street gang membership is a Class A felony
5 if the defendant is over the age of 18 years and the other
6 person is under the age of 18 years.

7 Section 8. (a) No person may carry any aerosol spray
8 paint can or broad-tipped indelible marker or other implement
9 used to produce graffiti with the intent to violate Section 9.
10 For the purpose of this section, the term "broad-tipped
11 indelible marker" means any felt-tipped marker, or similar
12 implement, which contains a fluid which is not water soluble
13 and which has a flat or angled writing surface one-quarter
14 inch or greater.

15 (b) No person, with the intent to violate Section 9,
16 may sell an aerosol spray paint can, broad-tipped indelible
17 marker, or other implement used to produce graffiti to a
18 minor.

19 (c) No person, for the purpose of violating Section
20 9, may purchase an aerosol spray paint can or broad-tipped
21 indelible marker or other implement used to produce graffiti
22 for a minor.

23 (d) Anyone who intentionally or knowingly violates
24 subsection (a), (b), or (c) commits the crime of
25 Possession/Distribution of Graffiti Implements.
26 Possession/Distribution of Graffiti Implements is a Class A
27 misdemeanor.

1 Section 9. (a) A person commits the crime of injury
2 by graffiti if he or she intentionally or knowingly applies
3 graffiti to any public or private building or other real or
4 personal property owned, operated, or maintained by a
5 governmental entity or any agency or instrumentality thereof.
6 A person convicted of violating this section shall be punished
7 in the following manner:

8 (1) Injury by graffiti which exceeds two thousand
9 five hundred dollars (\$2,500) constitutes injury by graffiti
10 in the first degree. Injury by graffiti in the first degree is
11 a Class B felony.

12 (2) Injury by graffiti which exceeds five hundred
13 dollars (\$500) but does not exceed two thousand five hundred
14 dollars (\$2,500) constitutes injury by graffiti in the second
15 degree. Injury by graffiti in the second degree is a Class C
16 felony.

17 (3) Injury by graffiti which does not exceed five
18 hundred dollars (\$500) constitutes injury by graffiti in the
19 third degree. Injury by graffiti in the third degree is a
20 Class A misdemeanor.

21 (b) In addition to any punishment for violation of
22 this section, the court may order the defendant to make
23 restitution to the victim for damage in the amount of removal,
24 repair, or replacement costs. An additional amount of one
25 thousand dollars (\$1,000) in restitution shall be added to
26 removal costs if the graffiti is positioned on an overpass or
27 an underpass, requires that traffic be interfered with in

1 order to remove it, or the entity responsible for the area in
2 which the clean-up is to take place must provide assistance in
3 order for the removal to take place safely.

4 (c) A person who voluntarily and at his or her own
5 expense removes graffiti for which he or she is responsible
6 may be credited for the removal costs against restitution
7 ordered by a court.

8 (d) Where the defendant is a minor, and is convicted
9 or adjudicated in the juvenile court under this section, the
10 court, as a condition of probation in addition to the monetary
11 restitution award imposed pursuant to this section, may order
12 the offender to clean up graffiti of his or her own and any
13 other at a time and place within the jurisdiction of the
14 court, as follows:

15 (1) For a first conviction or adjudication, the
16 court may require the offender to clean up graffiti for not
17 less than eight hours.

18 (2) For a second conviction or adjudication, the
19 court may require the offender to clean up graffiti for not
20 less than 16 hours.

21 (3) For a third conviction or adjudication, the
22 court may require the offender to clean up graffiti for not
23 less than 24 hours.

24 (e) Any compensatory service of a person under the
25 age of 18 years which is required under this section may be
26 performed in the presence and under the direct supervision of
27 the person's parent or legal guardian. The person's parent or

1 legal guardian shall report completion of the order to the
2 court.

3 (f) The court may order the parent or legal guardian
4 of a minor to who violates this section to make such
5 restitution not to exceed two thousand five hundred dollars
6 (\$2,500) in either of the following circumstances:

7 (1) The minor intentionally damages, defaces,
8 destroys, or takes the property of another.

9 (2) The minor recklessly or willfully shoots or
10 propels a missile or other object at or against a motor
11 vehicle, bus, airplane, boat, locomotive, train, railway car,
12 or caboose, whether moving or standing.

13 (g) The court may waive part or all of the liability
14 for damages by the parent or legal guardian under subsection
15 (f) if the offender is adjudicated in the juvenile court under
16 either of the following circumstances:

17 (1) Upon a consent decree or Child in Need of
18 Supervision (CHINS) petition.

19 (2) Determines the parent or legal guardian did
20 either of the following:

21 a. Made a reasonable effort to restrain the wrongful
22 conduct.

23 b. Reported it to the property owner involved or the
24 law enforcement agency having primary jurisdiction after the
25 parent or legal guardian knew of the minor's unlawful act and
26 prior to the time the minor was arrested or apprehended by a

1 peace officer or by anyone acting on behalf of the property
2 owner involved.

3 (h) In addition to any punishment provided for
4 violation of this section, the court may order the defendant
5 to perform monitored community service or clean up graffiti as
6 outlined for a juvenile conviction or adjudication pursuant to
7 this act.

8 Section 10. Section 13A-5-49 of the Code of Alabama
9 1975, is amended to read as follows:

10 "§13A-5-49.

11 "Aggravating circumstances shall be the following:

12 "(1) The capital offense was committed by a person
13 under sentence of imprisonment;

14 "(2) The defendant was previously convicted of
15 another capital offense or a felony involving the use or
16 threat of violence to the person;

17 "(3) The defendant knowingly created a great risk of
18 death to many persons;

19 "(4) The capital offense was committed while the
20 defendant was engaged or was an accomplice in the commission
21 of, or an attempt to commit, or flight after committing, or
22 attempting to commit, rape, robbery, burglary or kidnapping;

23 "(5) The capital offense was committed for the
24 purpose of avoiding or preventing a lawful arrest or effecting
25 an escape from custody;

26 "(6) The capital offense was committed for pecuniary
27 gain;

1 "(7) The capital offense was committed to disrupt or
2 hinder the lawful exercise of any governmental function or the
3 enforcement of laws;

4 "(8) The capital offense was especially heinous,
5 atrocious, or cruel compared to other capital offenses;

6 "(9) The defendant intentionally caused the death of
7 two or more persons by one act or pursuant to one scheme or
8 course of conduct; or

9 "(10) The capital offense was one of a series of
10 intentional killings committed by the defendant.

11 "(11) The defendant intentionally killed the victim
12 while the defendant was an active criminal street gang member,
13 as defined pursuant to the act adding this subdivision, and
14 the murder was carried out to further the activities of the
15 criminal street gang."

16 Section 11. Section 13A-6-26, Code of Alabama 1975,
17 relating to compelling street gang membership, is repealed.

18 Section 12. Whenever conduct proscribed by this act
19 is also proscribed by any other provision of law, the
20 provision which carries the more serious penalty shall apply.

21 Section 13. Although this bill would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds, the bill is excluded from further
24 requirements and application under Amendment 621, now
25 appearing as Section 111.05 of the Official Recompilation of
26 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

3 Section 14. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.