

1 HB512
2 127488-4
3 By Representatives Givan, Robinson (O), Moore (M), Collins,
4 Beckman, Hall and Treadaway
5 RFD: Judiciary
6 First Read: 14-APR-11

1 ENGROSSED

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4 A BILL

5 TO BE ENTITLED

6 AN ACT

7
8 To amend Sections 13A-6-130, 13A-6-131, 13A-6-132,
9 13A-6-133, and 13A-6-134 of the Code of Alabama 1975; to
10 further provide for crimes of domestic violence in the first,
11 second, and third degrees; to further provide for punishment
12 and imprisonment for crimes of domestic violence in the third
13 degree; to provide for the crimes of interference with a
14 domestic violence emergency call and domestic violence by
15 strangulation or suffocation; to provide that there shall be
16 no cost to any victim of domestic violence, stalking, or
17 sexual assault in connection with the prosecution or warrant
18 recall of a domestic violence, stalking, or sexual assault
19 offense in this state; and in connection therewith would have
20 as its purpose or effect the requirement of a new or increased
21 expenditure of local funds within the meaning of Amendment 621
22 of the Constitution of Alabama of 1901, now appearing as
23 Section 111.05 of the Official ReCompilation of the
24 Constitution of Alabama of 1901, as amended.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 13A-6-130, 13A-6-131, 13A-6-132,
2 13A-6-133, and 13A-6-134 of the Code of Alabama 1975, are
3 amended to read as follows:

4 "§13A-6-130.

5 "(a) A person commits the crime of domestic violence
6 in the first degree if the person commits the crime of assault
7 in the first degree pursuant to Section 13A-6-20 or aggravated
8 stalking pursuant to Section 13A-6-91, and the victim is a
9 current or former spouse, parent, child, any person with whom
10 the defendant has a child in common, a present or former
11 household member, or a person who has or had a dating or
12 engagement relationship with the defendant. Domestic violence
13 in the first degree is a Class A felony, except that the
14 defendant shall serve a minimum term of imprisonment of one
15 year without consideration of probation, parole, good time
16 credits, or any other reduction in time for any second or
17 subsequent conviction under this subsection.

18 "(b) The minimum term of imprisonment imposed under
19 subsection (a) shall be double without consideration of
20 probation, parole, good time credits, or any reduction in time
21 if a defendant willfully violates a protection order issued by
22 a court of competent jurisdiction and in the process of
23 violating the order commits domestic violence in the first
24 degree.

25 "§13A-6-131.

1 "(a) A person commits the crime of domestic violence
2 in the second degree if the person commits the crime of
3 assault in the second degree pursuant to Section 13A-6-21; ~~the~~
4 ~~crime of criminally negligent homicide pursuant to Section~~
5 ~~13A-6-4~~; the crime of intimidating a witness pursuant to
6 Section 13A-10-123; the crime of stalking pursuant to Section
7 13A-6-90; the crime of burglary in the second or third degree
8 pursuant to Sections 13A-7-6 and 13A-7-7; or the crime of
9 criminal mischief in the first degree pursuant to Section
10 13A-7-21 and the victim is a current or former spouse, parent,
11 child, any person with whom the defendant has a child in
12 common, a present or former household member, or a person who
13 has or had a dating or engagement relationship with the
14 defendant. Domestic violence in the second degree is a Class B
15 felony, except the defendant shall serve a minimum term of
16 imprisonment of six months without consideration of probation,
17 parole, good time credits, or any reduction in time for any
18 second or subsequent conviction under this subsection.

19 "(b) The minimum term of imprisonment imposed under
20 subsection (a) shall be double without consideration of
21 probation, parole, good time credits, or any reduction in time
22 if a defendant willfully violates a protection order issued by
23 a court of competent jurisdiction and in the process of
24 violating the order commits domestic violence in the second
25 degree.

26 "§13A-6-132.

1 "(a) A person commits domestic violence in the third
2 degree if the person commits the crime of assault in the third
3 degree pursuant to Section 13A-6-22; the crime of menacing
4 pursuant to Section 13A-6-23; the crime of reckless
5 endangerment pursuant to Section 13A-6-24; the crime of
6 criminal coercion pursuant to Section 13A-6-25; ~~or~~ the crime
7 of harassment pursuant to subsection (a) of Section 13A-11-8;
8 the crime of criminal surveillance pursuant to Section
9 13A-11-32; the crime of harassing communications pursuant to
10 subsection (b) of Section 13A-11-8; the crime of criminal
11 trespass in the third degree pursuant to Section 13A-7-4; the
12 crime of criminal mischief in the second or third degree
13 pursuant to Sections 13A-7-22 and 13A-7-23; or the crime of
14 arson in the third degree pursuant to Section 13A-7-43; and
15 the victim is a current or former spouse, parent, child, any
16 person with whom the defendant has a child in common, a
17 present or former household member, or a person who has or had
18 a dating or engagement relationship with the defendant.

19 Domestic violence in the third degree is a Class A
20 misdemeanor, ~~except the defendant shall serve a minimum term~~
21 ~~of imprisonment of 48 hours in a city or county jail or~~
22 ~~detention facility without consideration of reduction in time~~
23 ~~for any second or subsequent conviction under this subsection.~~

24 "(b) The minimum term of imprisonment imposed under
25 subsection (a) shall be ~~double~~ 30 days without consideration
26 of reduction in time if a defendant willfully violates a

1 protection order issued by a court of competent jurisdiction
2 and in the process of violating the order commits domestic
3 violence in the third degree.

4 "(c) A second conviction under subsection (a) is a
5 Class A misdemeanor, except the defendant shall serve a
6 minimum term of imprisonment of 30 days in a city or county
7 jail or detention facility without consideration for any
8 reduction in time.

9 "(d) A third or subsequent conviction under
10 subsection (a) is a Class C felony.

11 "(e) For purposes of determining second, third, or
12 subsequent number of convictions, convictions in municipal
13 court shall be included.

14 "§13A-6-133.

15 "For the purposes of an arrest without a warrant
16 pursuant to Section 15-10-3, the crimes of domestic violence
17 in the first, second, and third degrees, and domestic violence
18 by strangulation or suffocation shall be an offense involving
19 domestic violence. A warrantless arrest for an offense
20 involving domestic violence made pursuant to subdivision (8)
21 of subsection (a) of Section 15-10-3, shall include a charge
22 of a crime of domestic violence under this article.

23 "§13A-6-134.

24 "(a) If a law enforcement officer receives
25 complaints of domestic violence from two or more opposing
26 persons, or if both parties have injuries the officer shall

1 evaluate each complaint separately to determine who was the
2 ~~primary~~ predominant aggressor. If the officer determines that
3 one person was the ~~primary~~ predominant physical aggressor, the
4 officer ~~need~~ shall not arrest the other person alleged to have
5 committed domestic violence. In determining whether a person
6 is the ~~primary~~ predominant aggressor the officer shall
7 consider all of the following:

8 "(1) Prior complaints of domestic violence.

9 "(2) The relative severity of the injuries inflicted
10 on each person, including whether the injuries are offensive
11 versus defensive in nature.

12 "(3) The likelihood of future injury to each person.

13 "(4) Whether one of the persons acted in
14 self-defense.

15 "(b) A law enforcement officer shall not threaten,
16 suggest, or otherwise indicate the possible arrest of all
17 parties to discourage the request for intervention by law
18 enforcement by any party or base the decision to arrest or not
19 to arrest on either of the following:

20 "(1) The specific consent or request of the victim.

21 "(2) The officer's perception of the willingness of
22 a victim of or witness to the domestic violence to testify or
23 otherwise participate in a judicial proceeding."

24 Section 2. (a) A person commits the crime of
25 interference with a domestic violence emergency call if he or

1 she intentionally hinders, obstructs, disconnects, or in any
2 way prevents the victim from calling for assistance.

3 (b) Interference with a domestic violence emergency
4 call is a Class B misdemeanor.

5 Section 3. (a) For the purposes of this section, the
6 following terms have the following meanings:

7 (1) QUALIFIED RELATIONSHIP. The victim is a spouse,
8 former spouse, parent, stepparent, child, stepchild, or a
9 person with whom the defendant has a child in common, or with
10 whom the defendant has or had a dating or engagement
11 relationship.

12 (2) STRANGULATION. Intentionally causing asphyxia by
13 closure or compression of the blood vessels or air passages of
14 the neck as a result of external pressure on the neck.

15 (3) SUFFOCATION. Intentionally causing asphyxia by
16 depriving a person of air or by preventing a person from
17 breathing through the inhalation of toxic gases or by blocking
18 or obstructing the airway of a person, by any means other than
19 by strangulation as defined in this section.

20 (b) A person commits the crime of domestic violence
21 by strangulation or suffocation if the person commits an
22 assault with intent to cause physical harm or commits the
23 crime of menacing pursuant to Section 13A-6-23, Code of
24 Alabama 1975, by strangulation or suffocation or attempted
25 strangulation or suffocation against a person with whom the
26 defendant has a qualified relationship.

1 (c) Domestic violence by strangulation or
2 suffocation is a Class B felony punishable as provided by law.

3 Section 4. Notwithstanding any other provision of
4 law, no court costs shall be assessed against any victim of
5 domestic violence, stalking, or sexual assault in connection
6 with the prosecution or warrant recall of a domestic violence,
7 stalking, or sexual assault offense.

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

16 Section 6. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 14-APR-11

Read for the second time and placed
on the calendar 2 amendments 27-APR-11

Read for the third time and passed
as amended..... 24-MAY-11

Yeas 84, Nays 0, Abstains 1

Greg Pappas
Clerk