

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

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2 ENROLLED, An Act,

3 To amend Sections 13A-6-130, 13A-6-131, 13A-6-132,
4 13A-6-133, and 13A-6-134 of the Code of Alabama 1975; to
5 further provide for crimes of domestic violence in the first,
6 second, and third degrees; to further provide for punishment
7 and imprisonment for crimes of domestic violence in the third
8 degree; to provide for the crimes of interference with a
9 domestic violence emergency call and domestic violence by
10 strangulation or suffocation; to provide that there shall be
11 no cost to any victim of domestic violence, stalking, or
12 sexual assault in connection with the prosecution or warrant
13 recall of a domestic violence, stalking, or sexual assault
14 offense in this state; and in connection therewith would have
15 as its purpose or effect the requirement of a new or increased
16 expenditure of local funds within the meaning of Amendment 621
17 of the Constitution of Alabama of 1901, now appearing as
18 Section 111.05 of the Official Recompilation of the
19 Constitution of Alabama of 1901, as amended.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 13A-6-130, 13A-6-131, 13A-6-132,
22 13A-6-133, and 13A-6-134 of the Code of Alabama 1975, are
23 amended to read as follows:

24 "§13A-6-130.

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

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

21 "§13A-6-131.

22 "(a) A person commits the crime of domestic violence
23 in the second degree if the person commits the crime of
24 assault in the second degree pursuant to Section 13A-6-21; ~~the~~
25 ~~crime of criminally negligent homicide pursuant to Section~~

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

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

22 "§13A-6-132.

23 "(a) A person commits domestic violence in the third
24 degree if the person commits the crime of assault in the third
25 degree pursuant to Section 13A-6-22; the crime of menacing

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

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

21 " (b) The minimum term of imprisonment imposed under
22 subsection (a) shall be ~~double~~ 30 days without consideration
23 of reduction in time if a defendant willfully violates a
24 protection order issued by a court of competent jurisdiction

1 and in the process of violating the order commits domestic
2 violence in the third degree.

3 "(c) A second conviction under subsection (a) is a
4 Class A misdemeanor, except the defendant shall serve a
5 minimum term of imprisonment of ~~30~~ 10 days in a city or county
6 jail or detention facility without consideration for any
7 reduction in time.

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

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

13 "§13A-6-133.

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

22 "§13A-6-134.

23 "(a) If a law enforcement officer receives
24 complaints of domestic violence from two or more opposing
25 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~~ need not arrest the other person alleged to
5 have committed domestic violence. In determining whether a
6 person 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 within 10 months preceding this event.

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

1 strangulation or suffocation against a person with whom the
2 defendant has a qualified relationship.

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

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

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

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

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

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House of Representatives

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I hereby certify that the within Act originated in
9 and was passed by the House 24-MAY-11, as amended.

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Greg Pappas
Clerk

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Senate

02-JUN-11

Amended and Passed

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House

02-JUN-11

Concurred in Sen-
ate Amendment

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