

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

8 SYNOPSIS: Under existing law, a person commits the  
9 crime of domestic violence in the first degree if  
10 the person commits assault in the first degree  
11 pursuant to Section 13A-6-20, Code of Alabama 1975,  
12 and the victim is a current or former spouse,  
13 parent, child, any person with whom the defendant  
14 has a child in common, a present or former  
15 household member, or a person who has or had a  
16 dating or engagement relationship with the  
17 defendant.

18 Under existing law, a person commits the  
19 crime of domestic violence in the second degree if  
20 the person commits the crime of assault in the  
21 second degree pursuant to Section 13A-6-21, Code of  
22 Alabama 1975, and the victim is a current or former  
23 spouse, parent, child, any person with whom the  
24 defendant has a child in common, a present or  
25 former household member, or a person who has or had  
26 a dating or engagement relationship with the  
27 defendant.

1 Under existing law, a person commits  
2 domestic violence in the third degree if the person  
3 commits the crime of assault in the third degree  
4 pursuant to Section 13A-6-22, Code of Alabama 1975;  
5 the crime of menacing pursuant to Section 13A-6-23,  
6 Code of Alabama 1975; the crime of reckless  
7 endangerment pursuant to Section 13A-6-24, Code of  
8 Alabama 1975; the crime of criminal coercion  
9 pursuant to Section 13A-6-25, Code of Alabama 1975;  
10 or the crime of harassment pursuant to subsection  
11 (a) of Section 13A-11-8, Code of Alabama 1975; and  
12 the victim is a current or former spouse, parent,  
13 child, any person with whom the defendant has a  
14 child in common, a present or former household  
15 member, or a person who has or had a dating or  
16 engagement relationship with the defendant.

17 Under existing law, interference with a  
18 domestic violence emergency call is not a  
19 specifically defined crime.

20 Under existing law, domestic violence by  
21 strangulation or suffocation is not a specifically  
22 defined crime.

23 This bill would add additional crimes to the  
24 definitions of domestic violence in the first,  
25 second, and third degrees and increase the  
26 punishment for violation of Section 13A-6-132, Code  
27 of Alabama 1975, to 30 days in a county jail if a

1 defendant receives a second conviction under  
2 Section 13A-6-132, Code of Alabama 1975, or  
3 willfully violates a protection order issued by a  
4 court of competent jurisdiction and in the process  
5 of violating the order commits domestic violence in  
6 the third degree.

7 This bill would provide that a third or  
8 subsequent conviction under Section 13A-6-132, Code  
9 of Alabama 1975, is a Class C felony.

10 This bill would provide for the crime of  
11 interference with a domestic violence emergency  
12 call and provide penalties for committing the  
13 crime.

14 This bill would provide for the crime of  
15 domestic violence by strangulation or suffocation  
16 and provide penalties for committing the crime.

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

1 funds, or provides a local source of revenue, to  
2 the entity for the purpose.

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

10  
11 A BILL  
12 TO BE ENTITLED  
13 AN ACT  
14

15 To amend Sections 13A-6-130, 13A-6-131, 13A-6-132,  
16 13A-6-133, and 13A-6-134 of the Code of Alabama 1975; to  
17 further provide for crimes of domestic violence in the first,  
18 second, and third degrees; to further provide for punishment  
19 and imprisonment for crimes of domestic violence in the third  
20 degree; to provide for the crimes of interference with a  
21 domestic violence emergency call and domestic violence by  
22 strangulation or suffocation; to provide that there shall be  
23 no cost to any victim of domestic violence, stalking, or  
24 sexual assault in connection with the prosecution or warrant  
25 recall of a domestic violence, stalking, or sexual assault  
26 offense in this state; and in connection therewith would have  
27 as its purpose or effect the requirement of a new or increased

1 expenditure of local funds within the meaning of Amendment 621  
2 of the Constitution of Alabama of 1901, now appearing as  
3 Section 111.05 of the Official ReCompilation of the  
4 Constitution of Alabama of 1901, as amended.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 13A-6-130, 13A-6-131, 13A-6-132,  
7 13A-6-133, and 13A-6-134 of the Code of Alabama 1975, are  
8 amended to read as follows:

9 "§13A-6-130.

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

23 "(b) The minimum term of imprisonment imposed under  
24 subsection (a) shall be double without consideration of  
25 probation, parole, good time credits, or any reduction in time  
26 if a defendant willfully violates a protection order issued by  
27 a court of competent jurisdiction and in the process of

1 violating the order commits domestic violence in the first  
2 degree.

3 "§13A-6-131.

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

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

1 violating the order commits domestic violence in the second  
2 degree.

3 "§13A-6-132.

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

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



1           "(b) The minimum term of imprisonment imposed under  
2 subsection (a) shall be ~~double~~ 30 days without consideration  
3 of reduction in time if a defendant willfully violates a  
4 protection order issued by a court of competent jurisdiction  
5 and in the process of violating the order commits domestic  
6 violence in the third degree.

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

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

14           "(e) For purposes of determining second, third, or  
15 subsequent number of convictions, convictions in municipal  
16 court shall be included.

17           "§13A-6-133.

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

26           "§13A-6-134.

1           "(a) If a law enforcement officer receives  
2 complaints of domestic violence from two or more opposing  
3 persons, or if both parties have injuries the officer shall  
4 evaluate each complaint separately to determine who was the  
5 primary predominant aggressor. If the officer determines that  
6 one person was the primary predominant physical aggressor, the  
7 officer ~~need~~ shall not arrest the other person alleged to have  
8 committed domestic violence. In determining whether a person  
9 is the primary predominant aggressor the officer shall  
10 consider all of the following:

11           "(1) Prior complaints of domestic violence.

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

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

16           "(4) Whether one of the persons acted in  
17 self-defense.

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

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

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

1           Section 2. (a) A person commits the crime of  
2 interference with a domestic violence emergency call if he or  
3 she intentionally hinders, obstructs, disconnects, or in any  
4 way prevents the victim from calling for assistance.

5           (b) Interference with a domestic violence emergency  
6 call is a Class B misdemeanor.

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

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

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

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

22           (b) A person commits the crime of domestic violence  
23 by strangulation or suffocation if the person commits an  
24 assault with intent to cause physical harm or commits the  
25 crime of menacing pursuant to Section 13A-6-23, Code of  
26 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.