

1 SB446
2 126236-1
3 By Senators Scofield, Beasley, Bussman, Ward, Taylor, McGill,
4 Sanford, Brooks and Allen
5 RFD: Judiciary
6 First Read: 26-APR-11

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8 SYNOPSIS: Under existing law, it is not a capital
9 offense if a defendant murders a person who had a
10 protection order issued against the defendant.

11 This bill would make it a capital offense
12 for a defendant to murder a person who had a
13 protection order issued against the defendant.

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

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

9 A BILL
10 TO BE ENTITLED
11 AN ACT
12

13 To amend Section 13A-5-40 of the Code of Alabama
14 1975, relating to capital offenses, to make it a capital
15 offense for a defendant to murder a person in violation of a
16 protection order issued on behalf of the victim against the
17 defendant; and in connection therewith would have as its
18 purpose or effect the requirement of a new or increased
19 expenditure of local funds within the meaning of Amendment 621
20 of the Constitution of Alabama of 1901, now appearing as
21 Section 111.05 of the Official Recompilation of the
22 Constitution of Alabama of 1901, as amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Section 13A-5-40 of the Code of Alabama
25 1975, is amended to read as follows:

26 "§13A-5-40.

27 "(a) The following are capital offenses:

1 "(1) Murder by the defendant during a kidnapping in
2 the first degree or an attempt thereof committed by the
3 defendant.

4 "(2) Murder by the defendant during a robbery in the
5 first degree or an attempt thereof committed by the defendant.

6 "(3) Murder by the defendant during a rape in the
7 first or second degree or an attempt thereof committed by the
8 defendant; or murder by the defendant during sodomy in the
9 first or second degree or an attempt thereof committed by the
10 defendant.

11 "(4) Murder by the defendant during a burglary in
12 the first or second degree or an attempt thereof committed by
13 the defendant.

14 "(5) Murder of any police officer, sheriff, deputy,
15 state trooper, federal law enforcement officer, or any other
16 state or federal peace officer of any kind, or prison or jail
17 guard, while such officer or guard is on duty, regardless of
18 whether the defendant knew or should have known the victim was
19 an officer or guard on duty, or because of some official or
20 job-related act or performance of such officer or guard.

21 "(6) Murder committed while the defendant is under
22 sentence of life imprisonment.

23 "(7) Murder done for a pecuniary or other valuable
24 consideration or pursuant to a contract or for hire.

25 "(8) Murder by the defendant during sexual abuse in
26 the first or second degree or an attempt thereof committed by
27 the defendant.

1 "(9) Murder by the defendant during arson in the
2 first or second degree committed by the defendant; or murder
3 by the defendant by means of explosives or explosion.

4 "(10) Murder wherein two or more persons are
5 murdered by the defendant by one act or pursuant to one scheme
6 or course of conduct.

7 "(11) Murder by the defendant when the victim is a
8 state or federal public official or former public official and
9 the murder stems from or is caused by or is related to his
10 official position, act, or capacity.

11 "(12) Murder by the defendant during the act of
12 unlawfully assuming control of any aircraft by use of threats
13 or force with intent to obtain any valuable consideration for
14 the release of said aircraft or any passenger or crewmen
15 thereon or to direct the route or movement of said aircraft,
16 or otherwise exert control over said aircraft.

17 "(13) Murder by a defendant who has been convicted
18 of any other murder in the 20 years preceding the crime;
19 provided that the murder which constitutes the capital crime
20 shall be murder as defined in subsection (b) of this section;
21 and provided further that the prior murder conviction referred
22 to shall include murder in any degree as defined at the time
23 and place of the prior conviction.

24 "(14) Murder when the victim is subpoenaed, or has
25 been subpoenaed, to testify, or the victim had testified, in
26 any preliminary hearing, grand jury proceeding, criminal trial
27 or criminal proceeding of whatever nature, or civil trial or

1 civil proceeding of whatever nature, in any municipal, state,
2 or federal court, when the murder stems from, is caused by, or
3 is related to the capacity or role of the victim as a witness.

4 "(15) Murder when the victim is less than fourteen
5 years of age.

6 "(16) Murder committed by or through the use of a
7 deadly weapon fired or otherwise used from outside a dwelling
8 while the victim is in a dwelling.

9 "(17) Murder committed by or through the use of a
10 deadly weapon while the victim is in a vehicle.

11 "(18) Murder committed by or through the use of a
12 deadly weapon fired or otherwise used within or from a
13 vehicle.

14 "(19) Murder by the defendant when the victim had a
15 protection order issued against the defendant.

16 "(b) Except as specifically provided to the contrary
17 in the last part of subdivision (a)(13) of this section, the
18 terms "murder" and "murder by the defendant" as used in this
19 section to define capital offenses mean murder as defined in
20 Section 13A-6-2(a)(1), but not as defined in Section
21 13A-6-2(a)(2) and (3). Subject to the provisions of Section
22 13A-5-41, murder as defined in Section 13A-6-2(a)(2) and (3),
23 as well as murder as defined in Section 13A-6-2(a)(1), may be
24 a lesser included offense of the capital offenses defined in
25 subsection (a) of this section.

26 "(c) A defendant who does not personally commit the
27 act of killing which constitutes the murder is not guilty of a

1 capital offense defined in subsection (a) of this section
2 unless that defendant is legally accountable for the murder
3 because of complicity in the murder itself under the
4 provisions of Section 13A-2-23, in addition to being guilty of
5 the other elements of the capital offense as defined in
6 subsection (a) of this section.

7 "(d) To the extent that a crime other than murder is
8 an element of a capital offense defined in subsection (a) of
9 this section, a defendant's guilt of that other crime may also
10 be established under Section 13A-2-23. When the defendant's
11 guilt of that other crime is established under Section
12 13A-2-23, that crime shall be deemed to have been "committed
13 by the defendant" within the meaning of that phrase as it is
14 used in subsection (a) of this section."

15 Section 2. Although this bill would have as its
16 purpose or effect the requirement of a new or increased
17 expenditure of local funds, the bill is excluded from further
18 requirements and application under Amendment 621, now
19 appearing as Section 111.05 of the Official Recompilation of
20 the Constitution of Alabama of 1901, as amended, because the
21 bill defines a new crime or amends the definition of an
22 existing crime.

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