

1 SB193  
2 156417-2  
3 By Senators Holtzclaw, Ward, Taylor, Fielding, Scofield,  
4 Williams, Marsh, Pittman, Orr, Allen, Dial, Holley, Hightower,  
5 Brewbaker, Bussman, Reed, Waggoner, Beason and Glover  
6 RFD: Judiciary  
7 First Read: 15-JAN-14

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7  
8 SYNOPSIS: Under existing rule, there are certain  
9 enumerated capital offenses.

10 This bill would include prosecutors as  
11 members of law enforcement and make the murder of a  
12 prosecutor an enumerated capital offense.

13 This bill would make a murder of a family  
14 member of a law enforcement agency or public  
15 official in order to avenge, intimidate, or  
16 retaliate an enumerated capital offense.

17 This bill would make a murder on the campus  
18 of a school an enumerated capital offense.

19 This bill would make a murder in a day care  
20 or licensed child care facility an enumerated  
21 capital offense.

22 This bill would make a murder of a victim,  
23 juror, or associated family member in order to  
24 avenge, intimidate, or retaliate an enumerated  
25 capital offense.

1           This bill would make the murder of a victim  
2 under a Protection From Abuse Order an enumerated  
3 capital offense.

4           This bill would make the murder of a family  
5 member of a police officer, sheriff, deputy, state  
6 trooper, federal law enforcement officer,  
7 prosecutor, or any other state or federal peace  
8 officer of any kind, or prison or jail guard, or a  
9 judge which is committed to avenge, intimidate, or  
10 retaliate because of an official action of the  
11 police officer, sheriff, deputy, state trooper,  
12 federal law enforcement officer, prosecutor, or any  
13 other state or federal peace officer of any kind,  
14 or prison or jail guard, or judge an enumerated  
15 capital offense.

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

26           The purpose or effect of this bill would be  
27 to require a new or increased expenditure of local

1 funds within the meaning of Amendment 621. However,  
2 the bill does not require approval of a local  
3 governmental entity or enactment by a 2/3 vote to  
4 become effective because it comes within one of the  
5 specified exceptions contained in Amendment 621.

6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to capital offenses; to amend Sections  
12 13A-5-40 and 13A-5-49, Code of Alabama 1975, relating to  
13 enumerated capital offenses; to include prosecutors as members  
14 of law enforcement; to include as capital offenses the murder  
15 of a prosecutor; the murder of a family member of law  
16 enforcement to avenge, intimidate, or retaliate; murder on the  
17 campus of a school; murder in a day care or licensed child  
18 care facility; murder of a victim, juror, or associated family  
19 member in order to avenge, intimidate, or retaliate; murder of  
20 a victim under a Protection From Abuse Order; the murder of a  
21 family member of a police officer, sheriff, deputy, state  
22 trooper, federal law enforcement officer, prosecutor, or any  
23 state or federal peace officer, prison or jail guard, or a  
24 judge which is committed to avenge, intimidate, or retaliate  
25 because of an official action; to create the aggravating  
26 capital factor of murder of a law enforcement officer while in  
27 the line of duty; and in connection therewith would have as

1 its purpose or effect the requirement of a new or increased  
2 expenditure of local funds within the meaning of Amendment 621  
3 of the Constitution of Alabama of 1901.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 13A-5-40 and 13A-5-49 of the  
6 Code of Alabama 1975, are amended to read as follows:

7 "§13A-5-40.

8 "(a) The following are capital offenses:

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

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

14 "(3) Murder by the defendant during a rape in the  
15 first or second degree or an attempt thereof committed by the  
16 defendant; or murder by the defendant during sodomy in the  
17 first or second degree or an attempt thereof committed by the  
18 defendant.

19 "(4) Murder by the defendant during a burglary in  
20 the first or second degree or an attempt thereof committed by  
21 the defendant.

22 "(5) Murder of any police officer, sheriff, deputy,  
23 state trooper, federal law enforcement officer, prosecutor, or  
24 any other state or federal peace officer of any kind, or  
25 prison or jail guard, while such officer or guard is on duty,  
26 regardless of whether the defendant knew or should have known  
27 the victim was an officer or guard on duty, or because of some

1 official or job-related act or performance of such law  
2 enforcement officer or guard.

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

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

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

10 "(9) Murder by the defendant during arson in the  
11 first or second degree committed by the defendant; or murder  
12 by the defendant by means of explosives or explosion.

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

16 "(11) Murder by the defendant when the victim is a  
17 state or federal public official or former public official and  
18 the murder stems from or is caused by or is related to his  
19 official position, act, or capacity.

20 "(12) Murder by the defendant during the act of  
21 unlawfully assuming control of any aircraft by use of threats  
22 or force with intent to obtain any valuable consideration for  
23 the release of said aircraft or any passenger or crewmen  
24 thereon or to direct the route or movement of said aircraft,  
25 or otherwise exert control over said aircraft.

26 "(13) Murder by a defendant who has been convicted  
27 of any other murder in the 20 years preceding the crime;

1 provided that the murder which constitutes the capital crime  
2 shall be murder as defined in subsection (b) of this section;  
3 and provided further that the prior murder conviction referred  
4 to shall include murder in any degree as defined at the time  
5 and place of the prior conviction.

6 "(14) Murder when the victim is subpoenaed, or has  
7 been subpoenaed, to testify, or the victim had testified, in  
8 any preliminary hearing, grand jury proceeding, criminal trial  
9 or criminal proceeding of whatever nature, or civil trial or  
10 civil proceeding of whatever nature, in any municipal, state,  
11 or federal court, when the murder stems from, is caused by, or  
12 is related to the capacity or role of the victim as a witness.

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

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

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

20 "(18) Murder committed by or through the use of a  
21 deadly weapon fired or otherwise used within or from a  
22 vehicle.

23 "(19) Murder committed by the defendant of any  
24 person on the campus of a school. The term school for the  
25 purpose of this subdivision means a public or private  
26 institution of learning, including all pre-kindergarten  
27 through grade 12 schools, institutions, technical or

1 vocational schools, community colleges, two-year postsecondary  
2 institutions, or any institution of higher learning.

3 "(20) Murder committed by the defendant of any  
4 person in a day care or licensed or statutorily exempted child  
5 care facility, as defined by Section 38-7-2.

6 "(21) Murder committed by the defendant of an  
7 associated or relevant victim when the victim is subject to an  
8 order of protection from abuse by the defendant or the  
9 intended purpose of the murder of any victim was to avenge,  
10 intimidate or retaliate against the person subject to the  
11 protection from abuse order.

12 "(22) Murder committed by the defendant of any  
13 family member of any of the persons referenced in subdivision  
14 (5) or (11) if the intended purpose of the murder is to  
15 avenge, intimidate, or retaliate against the person referenced  
16 in subdivision (5) or (11).

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



1           "(c) A defendant who does not personally commit the  
2 act of killing which constitutes the murder is not guilty of a  
3 capital offense defined in subsection (a) of this section  
4 unless that defendant is legally accountable for the murder  
5 because of complicity in the murder itself under the  
6 provisions of Section 13A-2-23, in addition to being guilty of  
7 the other elements of the capital offense as defined in  
8 subsection (a) of this section.

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

17           "§13A-5-49.

18           "Aggravating circumstances shall be the following:

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

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

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

26           "(4) The capital offense was committed while the  
27 defendant was engaged or was an accomplice in the commission

1 of, or an attempt to commit, or flight after committing, or  
2 attempting to commit, rape, robbery, burglary or kidnapping;

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

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

8 "(7) The capital offense was committed to disrupt or  
9 hinder the lawful exercise of any governmental function or the  
10 enforcement of laws;

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

13 "(9) The defendant intentionally caused the death of  
14 two or more persons by one act or pursuant to one scheme or  
15 course of conduct; ~~or~~

16 "(10) The capital offense was one of a series of  
17 intentional killings committed by the defendant; or

18 "(11) The defendant intentionally caused the death  
19 of a law enforcement officer while that law enforcement  
20 officer was in the line of duty."

21 Section 2. 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 because the  
25 bill defines a new crime or amends the definition of an  
26 existing crime.

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