

1 HB323
2 173675-3
3 By Representative Hill (J)
4 RFD: Judiciary
5 First Read: 25-FEB-16

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8 SYNOPSIS: Under existing law, a person convicted of
9 capital murder is sentenced to either the term of
10 life without the possibility of parole or death. A
11 person also must be sentenced to a minimum term of
12 life without the possibility of parole for certain
13 non-homicide offenses.

14 This bill would provide that a person under
15 the age of 18 years at the time of the offense
16 convicted of a capital offense or certain
17 non-capital offenses punishable by a mandatory life
18 sentence without the possibility of parole, may, in
19 the alternative, be sentenced to life imprisonment,
20 in order to comply with recent United States
21 Supreme Court decisions in Miller v. Alabama and
22 Graham v. Florida.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 To amend Sections 13A-5-2, as last amended by Act
2 2015-463, 13A-5-39, 13A-5-43, and 13A-6-2, Code of Alabama
3 1975, relating to capital offenses, to provide that a person
4 convicted of a capital offense committed when under the age of
5 18 years may, in the alternative, be sentenced to life
6 imprisonment; to provide generally that a person convicted of
7 a non-homicide crime committed when under the age of 18 years
8 is subject to a maximum sentence of life imprisonment, rather
9 than life imprisonment without parole; and to provide a burden
10 of proof.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 13A-5-2, as last amended by Act
13 2015-463, 13A-5-39, 13A-5-43, and 13A-6-2, Code of Alabama
14 1975, are amended to read as follows:

15 "§13A-5-2.

16 "(a) Every person convicted of a felony shall be
17 sentenced by the court to imprisonment for a term authorized
18 by Sections 13A-5-6, 13A-5-9, and 13A-5-10.

19 "(b) In addition to imprisonment, every person
20 convicted of a felony may be sentenced by the court to pay a
21 fine authorized by Section 13A-5-11.

22 "(c) Every person convicted of a misdemeanor or
23 violation shall be sentenced by the court to:

24 "(1) Imprisonment for a term authorized by Section
25 13A-5-7; or

26 "(2) Pay a fine authorized by Section 13A-5-12; or

27 "(3) Both such imprisonment and fine.

1 "(d) Every person convicted of a felony,
2 misdemeanor, or violation, except for the commission of a sex
3 offense involving a child as defined in Section 15-20A-4(26),
4 may be placed on probation as authorized by law.

5 "(e) This article does not deprive a court of
6 authority conferred by law to forfeit property, dissolve a
7 corporation, suspend or cancel a license or permit, remove a
8 person from office, cite for contempt, or impose any other
9 lawful civil penalty. Such a judgment, order, or decree may be
10 included as part of the sentence.

11 "(f) Every person convicted of murder shall be
12 sentenced by the court to imprisonment for a term, or to
13 death, ~~or to~~ life imprisonment without parole, or life
14 imprisonment in the case of a defendant who establishes that
15 he or she was under the age of 18 years at the time of the
16 offense, as authorized by subsection (c) of Section 13A-6-2.

17 "§13A-5-39.

18 "As used in this article, these terms shall be
19 defined as follows:

20 "(1) CAPITAL OFFENSE. An offense for which a
21 defendant shall be punished by a sentence of death or life
22 imprisonment without parole, or in the case of a defendant who
23 establishes that he or she was under the age of 18 years at
24 the time of the capital offense, life imprisonment, according
25 to the provisions of this article.

26 "(2) DURING. The term as used in Section 13A-5-40(a)
27 means in the course of or in connection with the commission

1 of, or in immediate flight from the commission of the
2 underlying felony or attempt thereof.

3 "(3) EXPLOSIVES and EXPLOSION. The terms shall have
4 the meanings provided in Section 13A-7-40(2) and (3).

5 "(4) BURDEN OF INTERJECTING THE ISSUE. Shall be
6 defined as provided in Section 13A-1-2(14).

7 "(5) MURDER and MURDER BY THE DEFENDANT. Shall be
8 defined as provided in Section 13A-5-40(b).

9 "(6) PREVIOUSLY CONVICTED and PRIOR CRIMINAL
10 ACTIVITY. As used in Sections 13A-5-49(2) and 13A-5-51(1),
11 these terms refer to events occurring before the date of the
12 sentence hearing.

13 "(7) UNDER SENTENCE OF IMPRISONMENT. As used in
14 Section 13A-5-49(1), the term means while serving a term of
15 imprisonment, while under a suspended sentence, while on
16 probation or parole, or while on work release, furlough,
17 escape, or any other type of release or freedom while or after
18 serving a term of imprisonment, other than unconditional
19 release and freedom after expiration of the term of sentence.

20 "§13A-5-43.

21 "(a) In the trial of a capital offense the jury
22 shall first hear all the admissible evidence offered on the
23 charge or charges against the defendant. It shall then
24 determine whether the defendant is guilty of the capital
25 offense or offenses with which he is charged or of any lesser
26 included offense or offenses considered pursuant to Section
27 13A-5-41.

1 "(b) If the defendant is found not guilty of the
2 capital offense or offenses with which he is charged, and not
3 guilty of any lesser included offense or offenses considered
4 pursuant to Section 13A-5-41, the defendant shall be
5 discharged.

6 "(c) If the defendant is found not guilty of the
7 capital offense or offenses with which he is charged, and is
8 found guilty of a lesser included offense or offenses
9 considered pursuant to Section 13A-5-41, sentence shall be
10 determined and imposed as provided by law.

11 "(d) If the defendant is found guilty of a capital
12 offense or offenses with which he is charged and the defendant
13 does not establish to the court by a preponderance of the
14 evidence that he or she was under the age of 18 years at the
15 time of the capital offense or offenses with which he or she
16 is found guilty, the sentence shall be determined as provided
17 in Sections 13A-5-45 through 13A-5-53.

18 "(e) If the defendant is found guilty of a capital
19 offense or offenses with which he or she is charged and the
20 defendant establishes to the court by a preponderance of the
21 evidence that he or she was under the age of 18 years at the
22 time of the capital offense or offenses, the sentence shall be
23 either life without the possibility of parole or, in the
24 alternative, life, and the sentence shall be determined by the
25 procedures set forth in the Alabama Rules of Criminal
26 Procedure for judicially imposing sentences within the range
27 set by statute without a jury, rather than as provided in

1 Sections 13A-5-45 to 13A-5-53, inclusive. The judge shall
2 consider all relevant mitigating circumstances.

3 "§13A-6-2.

4 "(a) A person commits the crime of murder if he or
5 she does any of the following:

6 "(1) With intent to cause the death of another
7 person, he or she causes the death of that person or of
8 another person.

9 "(2) Under circumstances manifesting extreme
10 indifference to human life, he or she recklessly engages in
11 conduct which creates a grave risk of death to a person other
12 than himself or herself, and thereby causes the death of
13 another person.

14 "(3) He or she commits or attempts to commit arson
15 in the first degree, burglary in the first or second degree,
16 escape in the first degree, kidnapping in the first degree,
17 rape in the first degree, robbery in any degree, sodomy in the
18 first degree, any other felony clearly dangerous to human life
19 and, in the course of and in furtherance of the crime that he
20 or she is committing or attempting to commit, or in immediate
21 flight therefrom, he or she, or another participant if there
22 be any, causes the death of any person.

23 "(4) He or she commits the crime of arson and a
24 qualified governmental or volunteer firefighter or other
25 public safety officer dies while performing his or her duty
26 resulting from the arson.

1 "(b) A person does not commit murder under
2 subdivisions (a)(1) or (a)(2) of this section if he or she was
3 moved to act by a sudden heat of passion caused by provocation
4 recognized by law, and before there had been a reasonable time
5 for the passion to cool and for reason to reassert itself. The
6 burden of injecting the issue of killing under legal
7 provocation is on the defendant, but this does not shift the
8 burden of proof. This subsection does not apply to a
9 prosecution for, or preclude a conviction of, manslaughter or
10 other crime.

11 "(c) Murder is a Class A felony; provided, that the
12 punishment for murder or any offense committed under
13 aggravated circumstances by a person 18 years of age or older,
14 as provided by Article 2 of Chapter 5 of this title, is death
15 or life imprisonment without parole, which punishment shall be
16 determined and fixed as provided by Article 2 of Chapter 5 of
17 this title or any amendments thereto. The punishment for
18 murder or any offense committed under aggravated circumstances
19 by a person under the age of 18 years, as provided by Article
20 2 of Chapter 5, is either life imprisonment without parole, or
21 life, which punishment shall be determined and fixed as
22 provided by Article 2 of Chapter 5 of this title or any
23 amendments thereto and the applicable Alabama Rules of
24 Criminal Procedure."

25 Section 2. Notwithstanding any other provision of
26 law, if a defendant is found guilty of any non-homicide crime
27 for which the only sentence provided by law is life

1 imprisonment without the possibility of parole and that
2 defendant proves by a preponderance of the evidence that he or
3 she was under the age of 18 years at the time of the offense,
4 the sentence shall be life imprisonment.

5 Section 3. The provisions of this act are severable.
6 If any part of this act is declared invalid or
7 unconstitutional, that declaration shall not affect the part
8 which remains.

9 Section 4. This act shall become effective
10 immediately following its passage and approval by the
11 Governor, or its otherwise becoming law.