

1 HB338
2 174592-1
3 By Representatives Pettus, Rowe, Harper, Weaver, Hill (M),
4 Johnson (K), Henry, Collins, Nordgren, Patterson, Greer,
5 Boothe, Lee, Ledbetter, Whorton (R) and McCutcheon
6 RFD: Judiciary
7 First Read: 25-FEB-16

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8 SYNOPSIS: Under existing law, certain periods of
9 incarceration are required for persons convicted of
10 first, second, or third degree domestic violence.

11 This bill would double the incarceration
12 periods for convictions of first or second degree
13 domestic violence if a child under the age of 18
14 years witnessed the domestic violence and would
15 provide increased incarceration periods for a first
16 conviction of third degree domestic violence if a
17 child under the age of 18 years witnessed the
18 domestic violence and enhanced penalties for
19 second, third, or subsequent convictions of third
20 degree domestic violence if a child witnessed the
21 domestic violence.

22 Also under existing law, a person who
23 commits a capital offense may be sentenced to death
24 or life without parole.

25 This bill would include as a capital offense
26 murder by the defendant that is witnessed by a

1 child under the age of 18 years, if the victim was
2 the parent or legal guardian of the child.

3 Amendment 621 of the Constitution of Alabama
4 of 1901, now appearing as Section 111.05 of the
5 Official Recompilation of the Constitution of
6 Alabama of 1901, as amended, prohibits a general
7 law whose purpose or effect would be to require a
8 new or increased expenditure of local funds from
9 becoming effective with regard to a local
10 governmental entity without enactment by a 2/3 vote
11 unless: it comes within one of a number of
12 specified exceptions; it is approved by the
13 affected entity; or the Legislature appropriates
14 funds, or provides a local source of revenue, to
15 the entity for the purpose.

16 The purpose or effect of this bill would be
17 to require a new or increased expenditure of local
18 funds within the meaning of the amendment. However,
19 the bill does not require approval of a local
20 governmental entity or enactment by a 2/3 vote to
21 become effective because it comes within one of the
22 specified exceptions contained in the amendment.

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

1 To amend Sections 13A-6-130, 13A-6-131, and
2 13A-6-132, Code of Alabama 1975, as last amended by Act
3 2015-493, 2015 Regular Session, to provide increased
4 incarceration periods and enhanced penalties for convictions
5 of domestic violence in the first, second, or third degree; to
6 amend Section 13A-5-40, Code of Alabama 1975, to include as a
7 capital offense murder by the defendant that is witnessed by a
8 child under the age of 18 years, if the victim was the parent
9 or legal guardian of the child; and in connection therewith
10 would have as its purpose or effect the requirement of a new
11 or increased expenditure of local funds within the meaning of
12 Amendment 621 of the Constitution of Alabama of 1901, now
13 appearing as Section 111.05 of the Official Recompilation of
14 the Constitution of Alabama of 1901, as amended.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 13A-6-130, 13A-6-131, and
17 13A-6-132, Code of Alabama 1975, as last amended by Act
18 2015-493, 2015 Regular Session, and Section 13A-5-40, Code of
19 Alabama 1975, are amended to read as follows:

20 "§13A-6-130.

21 "(a) A person commits the crime of domestic violence
22 in the first degree if the person commits the crime of assault
23 in the first degree pursuant to Section 13A-6-20 or aggravated
24 stalking pursuant to Section 13A-6-91, and the victim is a
25 current or former spouse, parent, child, any person with whom
26 the defendant has a child in common, a present or former
27 household member, or a person who has or had a dating

1 relationship, as defined in Section 13A-6-139.1, with the
2 defendant. Domestic violence in the first degree is a Class A
3 felony, except that the defendant shall serve a minimum term
4 of imprisonment of one year without consideration of
5 probation, parole, good time credits, or any other reduction
6 in time for any second or subsequent conviction under this
7 subsection.

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

15 "(c) 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 child under the age of 18 years witnesses the defendant
19 committing the domestic violence in the first degree.

20 "§13A-6-131.

21 "(a) A person commits the crime of domestic violence
22 in the second degree if the person commits the crime of
23 assault in the second degree pursuant to Section 13A-6-21; the
24 crime of intimidating a witness pursuant to Section
25 13A-10-123; the crime of stalking pursuant to Section
26 13A-6-90; the crime of burglary in the second or third degree
27 pursuant to Sections 13A-7-6 and 13A-7-7; or the crime of

1 criminal mischief in the first degree pursuant to Section
2 13A-7-21 and the victim is a current or former spouse, parent,
3 child, any person with whom the defendant has a child in
4 common, a present or former household member, or a person who
5 has or had a dating relationship, as defined in Section
6 13A-6-139.1, with the defendant. Domestic violence in the
7 second degree is a Class B felony, except the defendant shall
8 serve a minimum term of imprisonment of six months without
9 consideration of probation, parole, good time credits, or any
10 reduction in time for any second or subsequent conviction
11 under this subsection.

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

19 "(c) The minimum term of imprisonment imposed under
20 subsection (a) shall be double without consideration of
21 probation, parole, good time credits, or any reduction in time
22 if a child under the age of 18 years witnesses the defendant
23 committing the domestic violence in the second degree.

24 "§13A-6-132.

25 "(a) A person commits domestic violence in the third
26 degree if the person commits the crime of assault in the third
27 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; the crime of
4 harassment pursuant to subsection (a) of Section 13A-11-8; the
5 crime of criminal surveillance pursuant to Section 13A-11-32;
6 the crime of harassing communications pursuant to subsection
7 (b) of Section 13A-11-8; the crime of criminal trespass in the
8 third degree pursuant to Section 13A-7-4; the crime of
9 criminal mischief in the second or third degree pursuant to
10 Sections 13A-7-22 and 13A-7-23; or the crime of arson in the
11 third degree pursuant to Section 13A-7-43; and the victim is a
12 current or former spouse, parent, child, any person with whom
13 the defendant has a child in common, a present or former
14 household member, or a person who has or had a dating
15 relationship, as defined in Section 13A-6-139.1, with the
16 defendant. Domestic violence in the third degree is a Class A
17 misdemeanor.

18 "(b) The minimum term of imprisonment imposed under
19 subsection (a) shall be 30 days without consideration of
20 reduction in time if a defendant willfully violates a
21 protection order issued by a court of competent jurisdiction
22 and in the process of violating the order commits domestic
23 violence in the third degree.

24 "(c) (1) The minimum term of imprisonment imposed
25 under subsection (a) shall be 15 days without the
26 consideration of reduction in time if a child under the age of

1 18 years witnesses the defendant commit the domestic violence
2 in the third degree.

3 "(2) A second conviction under subsection (a) with a
4 child under the age of 18 years witnessing the domestic
5 violence is a Class A misdemeanor, and the defendant shall
6 serve a minimum term of imprisonment of 60 days without
7 consideration for any reduction in time.

8 "(3) A third or subsequent conviction of subsection
9 (a) with a child under the age of 18 years witnessing the
10 domestic violence is a Class C felony.

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

16 ~~"(d)~~ (e) A third or subsequent conviction under
17 subsection (a) is a Class C felony.

18 ~~"(e)~~ (f) For purposes of determining second, third,
19 or subsequent number of convictions, convictions in municipal
20 court shall be included.

21 "§13A-5-40.

22 "(a) The following are capital offenses:

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

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

1 "(3) Murder by the defendant during a rape in the
2 first or second degree or an attempt thereof committed by the
3 defendant; or murder by the defendant during sodomy in the
4 first or second degree or an attempt thereof committed by the
5 defendant.

6 "(4) Murder by the defendant during a burglary in
7 the first or second degree or an attempt thereof committed by
8 the defendant.

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

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

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

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

23 "(9) Murder by the defendant during arson in the
24 first or second degree committed by the defendant; or murder
25 by the defendant by means of explosives or explosion.

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

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

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

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

21 "(14) Murder when the victim is subpoenaed, or has
22 been subpoenaed, to testify, or the victim had testified, in
23 any preliminary hearing, grand jury proceeding, criminal trial
24 or criminal proceeding of whatever nature, or civil trial or
25 civil proceeding of whatever nature, in any municipal, state,
26 or federal court, when the murder stems from, is caused by, or
27 is related to the capacity or role of the victim as a witness.

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

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

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

8 "(18) Murder committed by or through the use of a
9 deadly weapon fired or otherwise used within or from a
10 vehicle.

11 "(19) Murder by the defendant where a court had
12 issued a protective order for the victim, against the
13 defendant, pursuant to Section 30-5-1 et seq., or the
14 protective order was issued as a condition of the defendant's
15 pretrial release.

16 "(20) Murder by the defendant that is witnessed by a
17 child under the age of 18 years, if the victim was the parent
18 or legal guardian of the child.

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

1 a lesser included offense of the capital offenses defined in
2 subsection (a) of this section.

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

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

19 Section 2. Although this bill would have as its
20 purpose or effect the requirement of a new or increased
21 expenditure of local funds, the bill is excluded from further
22 requirements and application under Amendment 621, now
23 appearing as Section 111.05 of the Official Recompilation of
24 the Constitution of Alabama of 1901, as amended, 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.