

1 SB368
2 174890-2
3 By Senators Figures, Coleman-Madison, Dunn and Smith
4 RFD: Judiciary
5 First Read: 17-MAR-16

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8 SYNOPSIS: This bill would provide for the issuance of
9 temporary and permanent protection orders against
10 sexual assault, stalking, and human trafficking (a
11 STOP order).

12 This bill would establish procedures for
13 petitioning for the issuance of temporary and
14 permanent STOP orders, would provide for notice and
15 hearings on the petition, would set forth
16 evidentiary standards, and would provide for the
17 modification of STOP orders under certain
18 conditions.

19 This bill would also provide criminal
20 penalties for the violation of STOP orders and
21 would authorize a law enforcement officer to arrest
22 a STOP order violator without a warrant under
23 certain conditions.

24 Amendment 621 of the Constitution of Alabama
25 of 1901, now appearing as Section 111.05 of the
26 Official Recompilation of the Constitution of
27 Alabama of 1901, as amended, prohibits a general

1 law whose purpose or effect would be to require a
2 new or increased expenditure of local funds from
3 becoming effective with regard to a local
4 governmental entity without enactment by a 2/3 vote
5 unless: it comes within one of a number of
6 specified exceptions; it is approved by the
7 affected entity; or the Legislature appropriates
8 funds, or provides a local source of revenue, to
9 the entity for the purpose.

10 The purpose or effect of this bill would be
11 to require a new or increased expenditure of local
12 funds within the meaning of the amendment. However,
13 the bill does not require approval of a local
14 governmental entity or enactment by a 2/3 vote to
15 become effective because it comes within one of the
16 specified exceptions contained in the amendment.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 Relating to protective orders; to provide for the
23 issuance of temporary and permanent protection orders against
24 sexual assault, stalking, and human trafficking; to provide
25 for jurisdiction for the issuance of the protective orders; to
26 establish procedures for petitioning for the issuance of
27 temporary and permanent orders; to provide for the assessment

1 of costs and fees; to provide for notice and hearings on the
2 petition; to set forth evidentiary standards; to prohibit the
3 disclosure of certain information; to provide for the
4 modification of the orders under certain conditions; to
5 provide for criminal penalties for violations; to authorize
6 the warrantless arrest of violators under certain conditions;
7 and in connection therewith would have as its purpose or
8 effect the requirement of a new or increased expenditure of
9 local funds within the meaning of Amendment 621 of the
10 Constitution of Alabama of 1901, now appearing as Section
11 111.05 of the Official Recompilation of the Constitution of
12 Alabama of 1901, as amended.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. For the purposes of this act, the
15 following terms shall have the following meanings:

16 (1) ABUSE. The occurrence of conduct directed at a
17 plaintiff as defined by this act, including any of the
18 following:

19 a. Sexual abuse, including a sex offense included in
20 Article 4 of Chapter 6 of Title 13A, Code of Alabama 1975.

21 b. Stalking as provided in Section 13A-6-90, Code of
22 Alabama 1975.

23 c. Trafficking as provided in Section 13A-6-152,
24 Code of Alabama 1975.

25 d. An attempt to commit any crime listed in
26 paragraphs a. to c., inclusive.

1 (2) ADULT. A person 19 years of age or older or who
2 otherwise is emancipated.

3 (3) CHILD. A person 18 years of age or younger.

4 (4) PLAINTIFF. An adult person in need of protection
5 from abuse by the defendant.

6 (5) SEXUAL ABUSE, STALKING, HUMAN TRAFFICKING ORDER
7 OF PROTECTION or STOP ORDER. An order of protection issued
8 under this act for the purpose of preventing acts of abuse.

9 (6) THREAT. Any word or action, expressed or
10 implied, made to cause the plaintiff to fear for his or her
11 safety or for the safety of another identified person.

12 Section 2. (a) A circuit court shall have
13 jurisdiction to issue a STOP order pursuant to an independent
14 civil action. If a circuit court judge is unavailable to issue
15 the order, a district court judge may issue a STOP order.

16 (b) A petition for a STOP order may be filed where
17 the plaintiff or the defendant resides.

18 (c) A minimum period of residency by the plaintiff
19 is not required to petition the court for the issuance of a
20 STOP order.

21 Section 3. (a) A plaintiff's right to relief under
22 this act is not affected by the plaintiff's action in leaving
23 or attempting to leave a residence or household in order to
24 avoid further abuse.

25 (b) (1) Upon the filing of a petition for a STOP
26 order, each party has a continuing duty to inform the court of
27 each pending proceeding in this state or any other state or

1 jurisdiction for a protection order, any pending civil
2 litigation in this state or any other state or jurisdiction,
3 each pending proceeding in any family or juvenile court of
4 this state or any other state, and each pending criminal case
5 involving the parties.

6 (2) Prior to the issuance of an order under this
7 act, the court shall consider any pending civil orders between
8 the defendant and the plaintiff.

9 (c) A STOP order issued pursuant to this act shall
10 be effective and enforceable in all jurisdictions throughout
11 the state.

12 Section 4. (a) A parent, legal guardian, legal
13 custodian, or the Department of Human Resources may petition
14 for relief on behalf of either of the following:

15 (1) A minor.

16 (2) A person prevented by physical or mental
17 incapacity from seeking a STOP order.

18 (b) The circuit clerk's office shall make available
19 standardized petitions for actions pursuant to this act. A
20 circuit clerk is not required to provide assistance to persons
21 completing the forms or in presenting the plaintiff's case to
22 the court.

23 (c) A petition for a STOP order must include a
24 detailed description of the occurrence or attempt of abuse by
25 the defendant.

1 (d) A plaintiff who files a petition under this act
2 may do so through an attorney or may represent himself or
3 herself in all aspects of the case.

4 (e) The following information may not be included on
5 any court document that is made available to the public or to
6 the defendant by the circuit clerk's office:

7 (1) The plaintiff's home or business address.

8 (2) The plaintiff's home or business telephone
9 number.

10 (3) The home or business address of any member of
11 the plaintiff's family or household.

12 (4) An address that would reveal the confidential
13 location of a shelter for victims of domestic violence as
14 defined in Section 30-6-1, Code of Alabama 1975.

15 (f) In order to facilitate communication from the
16 court, a plaintiff who is not represented by an attorney shall
17 provide the court with a safe alternative address and
18 telephone number at which he or she can reliably receive
19 notices related to the case.

20 (g) (1) Court costs and other fees may not be
21 assessed against a plaintiff for the filing and service of a
22 petition for a STOP order, for the issuance or registration of
23 a STOP order, or for the issuance of witness subpoenas.

24 (2) Court costs and fees under subdivision (1) may
25 be assessed against the defendant, at the discretion of the
26 court.

1 Section 5. (a) Before a hearing on the merits of the
2 petition for a STOP order may be held, the defendant must
3 first receive service of the petition as set out in Rule 4 of
4 the Alabama Rules of Civil Procedure.

5 (b) The court shall hold a final hearing as soon as
6 practicable after service has been perfected upon the
7 defendant, but no later than 14 days from the date of service
8 of the petition.

9 (c) If a final hearing under subsection (b) is
10 continued, the court may extend or amend any temporary ex
11 parte protection order as it deems reasonably necessary. An
12 extended or amended temporary order shall reflect the final
13 hearing date and written notice shall be provided to the
14 plaintiff and the defendant.

15 Section 6. (a) In proceedings under this act
16 involving sexual abuse and prosecutions for the violation of a
17 STOP order involving sexual abuse, the prior sexual activity
18 or the reputation of the plaintiff is inadmissible except
19 under either of the following circumstances:

20 (1) As evidence concerning the past sexual conduct
21 of the plaintiff with the defendant when this evidence is
22 offered by the defendant upon the issue of whether the
23 plaintiff consented to the sexual conduct with respect to
24 which the offense is alleged.

25 (2) When constitutionally required to be admitted.

26 (b) (1) No evidence admissible under this section may
27 be introduced unless ruled admissible by the court after an

1 offer of proof has been made at a hearing held in camera to
2 determine whether the defendant has evidence to impeach the
3 witness in the event that prior sexual activity with the
4 defendant is denied.

5 (2) The offer of proof shall include reasonably
6 specific information as to the date, time, and place of the
7 past sexual conduct between the plaintiff and the defendant.

8 (3) Unless the court finds that reasonably specific
9 information as to date, time, or place, or some combination
10 thereof, has been offered as to prior sexual activity with the
11 defendant, counsel for the defendant shall be ordered to
12 refrain from inquiring into prior sexual activity between the
13 plaintiff and the defendant.

14 (4) The court may not admit evidence under this
15 section unless it determines at the hearing that the evidence
16 is relevant and the probative value of the evidence outweighs
17 the danger of unfair prejudice.

18 (5) The evidence shall be admissible at trial to the
19 extent an order made by the court specifies that the evidence
20 may be admitted and areas with respect to which the plaintiff
21 may be examined or cross-examined.

22 Section 7. (a) Based upon a preponderance of the
23 evidence, if it appears from the petition that emergency
24 relief or modification of a STOP order is warranted, the court
25 may do either of the following:

26 (1) Without notice or hearing, immediately issue an
27 ex parte STOP order or modify an ex parte STOP order pursuant

1 to this section. The court shall notify the plaintiff within
2 three business days of the filing date of the petition whether
3 the ex parte order was issued or denied.

4 (2) After providing notice to the parties and
5 conducting a hearing at which testimony is taken, the court
6 may issue a final order to modify an existing STOP order.

7 (b) A court may grant any of the following relief in
8 an ex parte STOP order without notice and a hearing:

9 (1) Enjoin the defendant from threatening to commit
10 or committing acts of abuse against the plaintiff or a child
11 of the plaintiff or any other person designated by the court.

12 (2) Restrain and enjoin the defendant from
13 harassing, annoying, contacting, or otherwise communicating,
14 directly or indirectly, with the plaintiff, including through
15 third parties or through electronic methods or services.

16 (3) Enjoin the defendant from threatening or
17 engaging in conduct that would place the plaintiff, or any
18 other person designated by the court, in reasonable fear of
19 bodily injury.

20 (4) Order the defendant to stay away from the
21 residence, school, or place of employment of the plaintiff or
22 other protected party designated by the court.

23 (5) Order the defendant to stay away from any place
24 frequented by the plaintiff or any protected person designated
25 by the court where the court determines the defendant has no
26 legitimate reason to frequent.

1 (6) Order the defendant to stay away from the victim
2 within a specified range.

3 (c) The court may grant any of the following relief
4 in a final STOP order or a modification of a STOP order after
5 notice and a hearing, whether or not the defendant appears:

6 (1) Grant any of the relief included in subsection
7 (b).

8 (2) Remove and exclude the defendant from the
9 residence of the plaintiff.

10 (3) Grant an award of attorney's fees to the
11 plaintiff.

12 (d) (1) A temporary ex parte order issued under this
13 act shall remain in effect until the final STOP order is
14 entered or denied.

15 (2) A final STOP order is effective for a one-year
16 period unless otherwise specified or modified by the court or
17 through a subsequent court order. While the final STOP order
18 is in effect, the court may amend its order at any time upon a
19 petition of the plaintiff or defendant and hearing held
20 pursuant to this act.

21 (e) Temporary and ex parte STOP orders shall be
22 entered within one business day into the protection order or
23 other applicable registry accessible by law enforcement
24 agencies.

25 (f) A STOP order issued under this act may not, in
26 any manner, affect title to any real or personal property.

1 Section 8. (a) Except as provided in subsection (b),
2 a person who knowingly commits any act prohibited by a
3 temporary or final STOP order or any willful failure to abide
4 by the terms of the order is guilty of a Class D felony.

5 (b) A second or subsequent violation of a STOP order
6 is a Class C felony.

7 Section 9. (a) A law enforcement officer, without a
8 warrant, may arrest any person for the violation of this act
9 if the officer has probable cause to believe that the person
10 has violated any provision of a valid STOP order, whether
11 temporary or final.

12 (b) (1) The presentation of a STOP order constitutes
13 probable cause for an officer to believe that a valid order
14 exists.

15 (2) For the purposes of this section, the order may
16 be inscribed on a tangible copy or may be stored in an
17 electronic or other medium if it is retrievable in a
18 detectable form. Presentation of a certified copy of a STOP
19 order is not required for enforcement or to allow a law
20 enforcement officer to make a warrantless arrest.

21 (3) If a STOP order is not presented to or otherwise
22 confirmed by a law enforcement officer, the officer may
23 consider other information in determining whether this is
24 probable cause to believe that a STOP order exists.

25 (c) A law enforcement officer may arrest a defendant
26 without a warrant for a violation of a STOP order, although he
27 or she did not personally witness the violation. Knowledge by

1 the officer of the existence or contents of, or both, or
2 presentation to the officer by the plaintiff of, a STOP order
3 shall constitute prima facie evidence of the validity of the
4 order.

5 (d) (1) If a law enforcement officer of this state
6 determines that an otherwise valid STOP order cannot be
7 enforced because the defendant has not been notified or served
8 with the order, the law enforcement officer shall inform the
9 defendant of the order and allow the person a reasonable
10 opportunity to comply with the order before enforcing the
11 order.

12 (2) In the event a law enforcement officer provides
13 notice of the STOP order to a defendant, the officer shall
14 document this notification in the written report and shall
15 inform the court with applicable jurisdiction of the
16 notification to the defendant.

17 Section 10. Although this bill would have as its
18 purpose or effect the requirement of a new or increased
19 expenditure of local funds, the bill is excluded from further
20 requirements and application under Amendment 621, now
21 appearing as Section 111.05 of the Official Recompilation of
22 the Constitution of Alabama of 1901, as amended, because the
23 bill defines a new crime or amends the definition of an
24 existing crime.

25 Section 11. This act shall become effective on the
26 first day of the third month following its passage and
27 approval by the Governor, or its otherwise becoming law.

