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3 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HB161
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8 SYNOPSIS: Under existing law, the murder of a first
9 responder is not a capital offense.

10 This bill would provide that the murder of a
11 first responder would be a capital offense.

12 Under existing law, there are certain
13 aggravating circumstances listed for capital
14 offenses.

15 This bill would include as an aggravating
16 circumstance a victim of a capital offense who was
17 a law enforcement officer, a prison or jail guard,
18 a first responder, or was less than 14 years of
19 age.

20 Amendment 621 of the Constitution of Alabama
21 of 1901, now appearing as Section 111.05 of the
22 Official Recompilation of the Constitution of
23 Alabama of 1901, as amended, prohibits a general
24 law whose purpose or effect would be to require a
25 new or increased expenditure of local funds from
26 becoming effective with regard to a local
27 governmental entity without enactment by a 2/3 vote

1 unless: it comes within one of a number of
2 specified exceptions; it is approved by the
3 affected entity; or the Legislature appropriates
4 funds, or provides a local source of revenue, to
5 the entity for the purpose.

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

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

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18 To amend Sections 13A-5-40 and 13A-5-49, Code of
19 Alabama 1975, relating to capital offenses; to provide that
20 murder of a first responder would be a capital offense; to
21 include within the aggravating circumstances to be considered
22 in sentencing for a capital offense circumstances when the
23 victim was a law enforcement officer, prison guard, or first
24 responder, or was less than 14 years of age; and in connection
25 therewith would have as its purpose or effect the requirement
26 of a new or increased expenditure of local funds within the
27 meaning of Amendment 621 of the Constitution of Alabama of

1 1901, now appearing as Section 111.05 of the Official
2 Recompile of the Constitution of Alabama of 1901, as
3 amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 13A-5-40 and 13A-5-49, Code of
6 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, or any other
24 state or federal peace officer of any kind, or prison or jail
25 guard, while such officer or guard is on duty, regardless of
26 whether the defendant knew or should have known the victim was

1 an officer or guard on duty, or because of some official or
2 job-related act or performance of such 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 by the defendant where a court had
24 issued a protective order for the victim, against the
25 defendant, pursuant to Section 30-5-1 et seq., or the
26 protective order was issued as a condition of the defendant's
27 pretrial release.

1 "(20) Murder when the victim is a first responder
2 who is operating in an official capacity and on behalf of a
3 government entity and at the time of the murder is engaged in
4 the execution of an emergency response or act of assistance
5 where life or limb is threatened. For the purposes of this
6 subdivision, "first responder" includes emergency medical
7 services personnel licensed by the Alabama Department of
8 Public Health and firefighters and volunteer firefighters as
9 defined by Section 36-32-1.

10 "(b) Except as specifically provided to the contrary
11 in the last part of subdivision (a) (13) of this section, the
12 terms "murder" and "murder by the defendant" as used in this
13 section to define capital offenses mean murder as defined in
14 Section 13A-6-2(a) (1), but not as defined in Section
15 13A-6-2(a) (2) and (3). Subject to the provisions of Section
16 13A-5-41, murder as defined in Section 13A-6-2(a) (2) and (3),
17 as well as murder as defined in Section 13A-6-2(a) (1), may be
18 a lesser included offense of the capital offenses defined in
19 subsection (a) of this section.

20 "(c) A defendant who does not personally commit the
21 act of killing which constitutes the murder is not guilty of a
22 capital offense defined in subsection (a) of this section
23 unless that defendant is legally accountable for the murder
24 because of complicity in the murder itself under the
25 provisions of Section 13A-2-23, in addition to being guilty of
26 the other elements of the capital offense as defined in
27 subsection (a) of this section.

1 "(d) To the extent that a crime other than murder is
2 an element of a capital offense defined in subsection (a) of
3 this section, a defendant's guilt of that other crime may also
4 be established under Section 13A-2-23. When the defendant's
5 guilt of that other crime is established under Section
6 13A-2-23, that crime shall be deemed to have been "committed
7 by the defendant" within the meaning of that phrase as it is
8 used in subsection (a) of this section.

9 "§13A-5-49.

10 "Aggravating circumstances shall be the following:

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

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

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

18 "(4) The capital offense was committed while the
19 defendant was engaged or was an accomplice in the commission
20 of, or an attempt to commit, or flight after committing, or
21 attempting to commit, rape, robbery, burglary or kidnapping;

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

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

1 "(7) The capital offense was committed to disrupt or
2 hinder the lawful exercise of any governmental function or the
3 enforcement of laws;

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

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

9 "(10) The capital offense was one of a series of
10 intentional killings committed by the defendant~~;~~;

11 "(11) The victim of the capital offense was any
12 police officer, sheriff, deputy, state trooper, federal law
13 enforcement officer, or any other state or federal law
14 enforcement officer of any kind, or prison or jail guard,
15 while the officer or guard was on duty, regardless of whether
16 the defendant knew or should have known the victim was an
17 officer or guard on duty, or because of some official or
18 job-related act or performance of the officer or guard;

19 "(12) The victim of the capital offense was a first
20 responder who was operating in an official capacity and on
21 behalf of a government entity and at the time engaged in the
22 execution of an emergency response or act of assistance where
23 life or limb is threatened. For the purposes of this
24 subdivision, "first responder" includes emergency medical
25 services personnel licensed by the Alabama Department of
26 Public Health, as well as firefighters and volunteer
27 firefighters as defined by Section 36-32-1; or

1 "(13) The victim of the capital offense was a victim
2 who was less than 14 years of age."

3 Section 2. Although this bill would have as its
4 purpose or effect the requirement of a new or increased
5 expenditure of local funds, the bill is excluded from further
6 requirements and application under Amendment 621, now
7 appearing as Section 111.05 of the Official Recompilation of
8 the Constitution of Alabama of 1901, as amended, because the
9 bill defines a new crime or amends the definition of an
10 existing crime.

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