

1 SB104
2 173449-1
3 By Senator Sanders
4 RFD: Judiciary
5 First Read: 09-JAN-18

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8 SYNOPSIS: Under existing law, a person who commits a
9 capital offense may be sentenced to death or life
10 without parole.

11 This bill would repeal the death penalty.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 To amend Sections 13A-5-39, 13A-5-43, 13A-5-44, and
18 15-18-100, Code of Alabama 1975, relating to the death
19 penalty; to remove death as a potential punishment for
20 commission of a capital offense; to remove provisions relating
21 to sentencing and the sentencing hearing; and to repeal
22 Sections 13A-5-45, 13A-5-46, 13A-5-47, 13A-5-48, 13A-5-49,
23 13A-5-50, 13A-5-51, 13A-5-52, 13A-5-53, 13A-5-55, 13A-5-59,
24 15-18-80, 15-18-81, 15-18-82, 15-18-83, 15-18-84, 15-18-85,
25 and 15-18-86, Code of Alabama 1975.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 13A-5-39, 13A-5-43, 13A-5-44,
2 and 15-18-100, Code of Alabama 1975, are amended to read as
3 follows:

4 "§13A-5-39.

5 "(1) CAPITAL OFFENSE. An offense for which a
6 defendant shall be punished by a sentence of ~~death or~~ life
7 imprisonment without parole according to the provisions of
8 this article.

9 "(2) DURING. The term as used in Section 13A-5-40(a)
10 means in the course of or in connection with the commission
11 of, or in immediate flight from the commission of the
12 underlying felony or attempt thereof.

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

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

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

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

23 "(7) UNDER SENTENCE OF IMPRISONMENT. As used in
24 Section 13A-5-49(1), the term means while serving a term of
25 imprisonment, while under a suspended sentence, while on
26 probation or parole, or while on work release, furlough,
27 escape, or any other type of release or freedom while or after

1 serving a term of imprisonment, other than unconditional
2 release and freedom after expiration of the term of sentence.

3 "§13A-5-43.

4 "(a) In the trial of a capital offense the jury
5 shall first hear all the admissible evidence offered on the
6 charge or charges against the defendant. It shall then
7 determine whether the defendant is guilty of the capital
8 offense or offenses with which he is charged or of any lesser
9 included offense or offenses considered pursuant to Section
10 13A-5-41.

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

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

21 ~~"(d) If the defendant is found guilty of a capital~~
22 ~~offense or offenses with which he is charged, the sentence~~
23 ~~shall be determined as provided in Sections 13A-5-45 through~~
24 ~~13A-5-53.~~

25 "§13A-5-44.

26 "(a) The selection of the jury for the trial of a
27 capital case shall include the selection of at least two

1 alternate jurors chosen according to procedures specified by
2 law or court rule.

3 "(b) The separation of the jury during the pendency
4 of the trial of a capital case shall be governed by applicable
5 law or court rule.

6 ~~(c) Notwithstanding any other provision of law, the~~
7 ~~defendant with the consent of the state and with the approval~~
8 ~~of the court may waive the participation of a jury in the~~
9 ~~sentence hearing provided in Section 13A-5-46. Provided,~~
10 ~~however, before any such waiver is valid, it must~~
11 ~~affirmatively appear in the record that the defendant himself~~
12 ~~has freely waived his right to the participation of a jury in~~
13 ~~the sentence proceeding, after having been expressly informed~~
14 ~~of such right.~~

15 "§15-18-100.

16 "When any defendant is convicted and sentenced to
17 ~~death or~~ to imprisonment in the penitentiary, the presiding
18 judge, if he is of the opinion that such defendant should be
19 pardoned, may postpone the execution of the sentence for such
20 time as may appear necessary to obtain the ~~action of the~~
21 ~~Governor on an application for commutation of the death~~
22 ~~sentence and~~ action of the Board of Pardons and Paroles on an
23 application for pardon."

24 Section 2. This act shall apply to death sentences
25 imposed before and after the effective date of this act. All
26 existing death sentences imposed prior to the effective date

1 of this act shall be commuted to life imprisonment without
2 parole.

3 Section 3. All laws or parts of laws which conflict
4 with this act are repealed. Specifically, Sections 13A-5-45,
5 13A-5-46, 13A-5-47, 13A-5-48, 13A-5-49, 13A-5-50, 13A-5-51,
6 13A-5-52, 13A-5-53, 13A-5-55, and 13A-5-59 of, and Article 5
7 (commencing with Section 15-18-80) of Chapter 18 of Title 15
8 of the Code of Alabama 1975, are repealed.

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