

HB49 INTRODUCED



1 HB49
2 ZUG2KRR-1
3 By Representatives Simpson, Kiel, Yarbrough, Butler, Shirey,
4 Bedsole, Stadthagen, Rigsby, Lomax, Mooney, Givens, Brinyark
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SYNOPSIS:

Under existing law, rape in the first degree and sodomy in the first degree are Class A felonies.

This bill would require that a person 18 years of age or older convicted of rape in the first degree or sodomy in the first degree when the victim is less than six years of age shall be punished to either death or life imprisonment without the possibility of parole and if the offending person is less than 18 years of age sentenced to life imprisonment without parole or life.

A BILL
TO BE ENTITLED
AN ACT

Relating to crimes and offenses; to amend Sections 13A-5-40, 13A-5-49, 13A-6-61, 13A-6-63, and 13A-6-65.1, Code of Alabama 1975, to revise the criminal penalties for violations of rape in the first degree and sodomy in the first degree when the victim is less than six years of age.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 13A-5-40, 13A-5-49, 13A-6-61, 13A-6-63, and 13A-6-65.1, Code of Alabama 1975, are amended to



HB49 INTRODUCED

29 read as follows:

30 "§13A-5-40

31 (a) The following are capital offenses:

32 (1) Murder by the defendant during a kidnapping in the
33 first degree or an attempt thereof committed by the defendant.

34 (2) Murder by the defendant during a robbery in the
35 first degree or an attempt thereof committed by the defendant.

36 (3) Murder by the defendant during a rape in the first
37 or second degree or an attempt thereof committed by the
38 defendant; or murder by the defendant during sodomy in the
39 first or second degree or an attempt thereof committed by the
40 defendant.

41 (4) Murder by the defendant during a burglary in the
42 first or second degree or an attempt thereof committed by the
43 defendant.

44 (5) Murder of any police officer, sheriff, deputy,
45 state trooper, federal law enforcement officer, or any other
46 state or federal peace officer of any kind, or prison or jail
47 guard, while the officer or guard is on duty, regardless of
48 whether the defendant knew or should have known the victim was
49 an officer or guard on duty, or because of some official or
50 job-related act or performance of the officer or guard.

51 (6) Murder committed while the defendant is under
52 sentence of life imprisonment.

53 (7) Murder done for a pecuniary or other valuable
54 consideration or pursuant to a contract or for hire.

55 (8) Murder by the defendant during sexual abuse in the
56 first or second degree or an attempt thereof committed by the



HB49 INTRODUCED

57 defendant.

58 (9) Murder by the defendant during arson in the first
59 or second degree committed by the defendant; or murder by the
60 defendant by means of explosives or explosion.

61 (10) Murder wherein two or more persons are murdered by
62 the defendant by one act or pursuant to one scheme or course
63 of conduct.

64 (11) Murder by the defendant when the victim is a state
65 or federal public official or former public official and the
66 murder stems from or is caused by or is related to his or her
67 official position, act, or capacity.

68 (12) Murder by the defendant during the act of
69 unlawfully assuming control of any aircraft by use of threats
70 or force with intent to obtain any valuable consideration for
71 the release of the aircraft or any passenger or
72 ~~crewmen~~crewmember thereon, to direct the route or movement of
73 the aircraft, or otherwise exert control over the aircraft.

74 (13) Murder by a defendant who has been convicted of
75 any other murder in the 20 years preceding the crime; provided
76 that the murder ~~which~~that constitutes the capital crime shall
77 be murder as defined in subsection (b); and provided further
78 that the prior murder conviction referred to shall include
79 murder in any degree as defined at the time and place of the
80 prior conviction.

81 (14) Murder when the victim is subpoenaed, or has been
82 subpoenaed, to testify, or the victim had testified, in any
83 preliminary hearing, grand jury proceeding, criminal trial or
84 criminal proceeding of whatever nature, or civil trial or



HB49 INTRODUCED

85 civil proceeding of whatever nature, in any municipal, state,
86 or federal court, when the murder stems from, is caused by, or
87 is related to the capacity or role of the victim as a witness.

88 (15) Murder when the victim is less than ~~fourteen~~14
89 years of age.

90 (16) Murder committed by or through the use of a deadly
91 weapon fired or otherwise used from outside a dwelling while
92 the victim is in a dwelling.

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

95 (18) Murder committed by or through the use of a deadly
96 weapon fired or otherwise used within or from a vehicle.

97 (19) Murder by the defendant where a court had issued a
98 protective order for the victim, against the defendant,
99 pursuant to ~~Section 30-5-1 et seq.~~Chapter 5 of Title 30, or
100 the protective order was issued as a condition of the
101 defendant's pretrial release.

102 (20) Murder by the defendant in the presence of a child
103 under ~~the age of~~ 14 years of age at the time of the offense,
104 if the victim was the parent or legal guardian of the child.
105 For purposes of this subsection, "in the presence of a child"
106 means in the physical presence of a child or having knowledge
107 that a child is present and may see or hear the act.

108 (21) Murder when the victim is a first responder who is
109 operating in an official capacity. For the purposes of this
110 subdivision, "first responder" includes emergency medical
111 services personnel licensed by the Alabama Department of
112 Public Health and firefighters and volunteer firefighters as



HB49 INTRODUCED

113 defined by Section 36-32-1.

114 (22) Rape in the first degree when the victim is less
115 than six years of age.

116 (23) Sodomy in the first degree when the victim is less
117 than six years of age.

118 (b) Except as specifically provided to the contrary in
119 the last part of subdivision (a)(13), the terms "murder" and
120 "murder by the defendant" as used in this section to define
121 capital offenses mean murder as defined in Section
122 13A-6-2(a)(1), but not as defined in Section 13A-6-2(a)(2) and
123 (3). Subject to the provisions of Section 13A-5-41, murder as
124 defined in Section 13A-6-2(a)(2) and (3), as well as murder as
125 defined in Section 13A-6-2(a)(1), may be a lesser included
126 offense of the capital offenses defined in subsection (a).

127 (c) A defendant who does not personally commit the act
128 of killing which constitutes the murder is not guilty of a
129 capital offense defined in subsection (a) unless that
130 defendant is legally accountable for the murder because of
131 complicity in the murder itself under the provisions of
132 Section 13A-2-23, in addition to being guilty of the other
133 elements of the capital offense as defined in subsection (a).

134 (d) To the extent that a crime other than murder is an
135 element of a capital offense defined in subsection (a), a
136 defendant's guilt of that other crime may also be established
137 under Section 13A-2-23. When the defendant's guilt of that
138 other crime is established under Section 13A-2-23, that crime
139 shall be deemed to have been "committed by the defendant"
140 within the meaning of that phrase as it is used in subsection



HB49 INTRODUCED

141 (a)."

142 "§13A-5-49

143 Aggravating circumstances shall be any of the
144 following:

145 (1) The capital offense was committed by a person under
146 sentence of imprisonment.

147 (2) The defendant was previously convicted of another
148 capital offense or a felony involving the use or threat of
149 violence to the person.

150 (3) The defendant knowingly created a great risk of
151 death to many persons.

152 (4) ~~The~~ For a violation of Section 13A-5-40(a)(1)
153 through (21), the capital offense was committed while the
154 defendant was engaged or was an accomplice in the commission
155 of, or an attempt to commit, or flight after committing, or
156 attempting to commit, rape, robbery, burglary, or kidnapping.

157 (5) The capital offense was committed for the purpose
158 of avoiding or preventing a lawful arrest or effecting an
159 escape from custody.

160 (6) The capital offense was committed for pecuniary
161 gain.

162 (7) The capital offense was committed to disrupt or
163 hinder the lawful exercise of any governmental function or the
164 enforcement of laws.

165 (8) The capital offense was especially heinous,
166 atrocious, or cruel compared to other capital offenses.

167 (9) The defendant intentionally caused the death of two
168 or more persons by one act or pursuant to one scheme or course



HB49 INTRODUCED

169 of conduct.

170 (10) The capital offense was one of a series of
171 intentional killings committed by the defendant.

172 (11) ~~The~~For a violation of Section 13A-5-40(a)(1)
173 through (21), the capital offense was committed when the
174 victim was less than 14 years of age.

175 (12) The capital offense was committed by the defendant
176 in the presence of a child under ~~the age of~~ 14 years of age at
177 the time of the offense, if the victim was the parent or legal
178 guardian of the child. For the purposes of this subdivision,
179 "in the presence of a child" means in the physical presence of
180 a child or having knowledge that a child is present and may
181 see or hear the act.

182 (13) The victim of the capital offense was any police
183 officer, sheriff, deputy, state trooper, federal law
184 enforcement officer, or any other state or federal peace
185 officer of any kind, or prison or jail guard, while the
186 officer or guard was on duty, regardless of whether the
187 defendant knew or should have known the victim was an officer
188 or guard on duty, or because of some official or job-related
189 act or performance of the officer or guard.

190 (14) The victim of the capital offense was a first
191 responder who was operating in an official capacity. For the
192 purposes of this subdivision, "first responder" includes
193 emergency medical services personnel licensed by the Alabama
194 Department of Public Health, as well as firefighters and
195 volunteer firefighters as defined by Section 36-32-1."

196 "§13A-6-61



HB49 INTRODUCED

197 (a) A person commits the crime of rape in the first
198 degree if he or she does any of the following:

199 (1) Engages in sexual intercourse with another person
200 by forcible compulsion.

201 (2) Engages in sexual intercourse with another person
202 who is incapable of consent by reason of being incapacitated.

203 (3) Being 16 years ~~old~~of age or older, engages in
204 sexual intercourse with another person who is less than 12
205 years ~~old~~of age.

206 (b) Rape in the first degree is a Class A felony;
207 provided, that the punishment for a violation of subdivision
208 (a) (3) shall be as determined and fixed as provided in Article
209 2 of Chapter 5. Any defendant sentenced to life on a capital
210 offense must serve a minimum of 30 years, day for day, prior
211 to his or her first consideration of parole."

212 "§13A-6-63

213 (a) A person commits the crime of sodomy in the first
214 degree if he or she does any of the following:

215 (1) Engages in sodomy with another person by forcible
216 compulsion.

217 (2) Engages in sodomy with another person who is
218 incapable of consent by reason of being incapacitated.

219 (3) Being 16 years ~~old~~of age or older, engages in
220 sodomy with a person who is less than 12 years ~~old~~of age.

221 (b) Sodomy in the first degree is a Class A felony;
222 provided, that the punishment for a violation of subdivision
223 (a) (3) shall be as determined and fixed as provided in Article
224 2 of Chapter 5. Any defendant sentenced to life on a capital



HB49 INTRODUCED

225 offense must serve a minimum of 30 years, day for day, prior
226 to his or her first consideration of parole."

227 "§13A-6-65.1

228 (a) A person commits the crime of sexual torture if he
229 or she does any of the following:

230 (1) Penetrates the vagina, anus, or mouth of another
231 person with an inanimate object, by forcible compulsion, with
232 the intent to sexually torture, sexually abuse, or to gratify
233 the sexual desire of either party.

234 (2) Penetrates the vagina, anus, or mouth of a person
235 who is incapable of consent by reason of being incapacitated,
236 with an inanimate object, with the intent to sexually torture,
237 sexually abuse, or to gratify the sexual desire of either
238 party.

239 (3) Penetrates the vagina, anus, or mouth of a person
240 who is less than 12 years ~~old~~of age, with an inanimate object,
241 by a person who is 16 years ~~old~~of age or older with the intent
242 to sexually torture, sexually abuse, or to gratify the sexual
243 desire of either party.

244 (4) By inflicting physical injury, including, but not
245 limited to, burning, crushing, wounding, mutilating, or
246 assaulting the sex organs or intimate parts of another person,
247 with the intent to sexually torture, sexually abuse, or to
248 gratify the sexual desire of either party.

249 (b) The crime of sexual torture is a Class A felony;
250 provided, that the punishment for a violation of subdivision
251 (a) (3) shall be as determined and fixed as provided in Article
252 2 of Chapter 5. Any defendant sentenced to life on a capital



HB49 INTRODUCED

253 offense must serve a minimum of 30 years, day for day, prior
254 to his or her first consideration of parole."

255 Section 2. This act shall become effective on October
256 1, 2025.