



**House Judiciary Reported Substitute for HB49**

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 read as follows:

"§13A-5-40

(a) The following are capital offenses:

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

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

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

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29 (4) Murder by the defendant during a burglary in the  
30 first or second degree or an attempt thereof committed by the  
31 defendant.

32 (5) Murder of any police officer, sheriff, deputy,  
33 state trooper, federal law enforcement officer, or any other  
34 state or federal peace officer of any kind, or prison or jail  
35 guard, while the officer or guard is on duty, regardless of  
36 whether the defendant knew or should have known the victim was  
37 an officer or guard on duty, or because of some official or  
38 job-related act or performance of the officer or guard.

39 (6) Murder committed while the defendant is under  
40 sentence of life imprisonment.

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

43 (8) Murder by the defendant during sexual abuse in the  
44 first or second degree or an attempt thereof committed by the  
45 defendant.

46 (9) Murder by the defendant during arson in the first  
47 or second degree committed by the defendant; or murder by the  
48 defendant by means of explosives or explosion.

49 (10) Murder wherein two or more persons are murdered by  
50 the defendant by one act or pursuant to one scheme or course  
51 of conduct.

52 (11) Murder by the defendant when the victim is a state  
53 or federal public official or former public official and the  
54 murder stems from or is caused by or is related to his or her  
55 official position, act, or capacity.

56 (12) Murder by the defendant during the act of

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57 unlawfully assuming control of any aircraft by use of threats  
58 or force with intent to obtain any valuable consideration for  
59 the release of the aircraft or any passenger or  
60 ~~crewmembers~~crewmember thereon, to direct the route or movement of  
61 the aircraft, or otherwise exert control over the aircraft.

62 (13) Murder by a defendant who has been convicted of  
63 any other murder in the 20 years preceding the crime; provided  
64 that the murder ~~which~~that constitutes the capital crime shall  
65 be murder as defined in subsection (b); and provided further  
66 that the prior murder conviction referred to shall include  
67 murder in any degree as defined at the time and place of the  
68 prior conviction.

69 (14) Murder when the victim is subpoenaed, or has been  
70 subpoenaed, to testify, or the victim had testified, in any  
71 preliminary hearing, grand jury proceeding, criminal trial or  
72 criminal proceeding of whatever nature, or civil trial or  
73 civil proceeding of whatever nature, in any municipal, state,  
74 or federal court, when the murder stems from, is caused by, or  
75 is related to the capacity or role of the victim as a witness.

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

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

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

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

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

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

(21) Murder when the victim is a first responder who is operating in an official capacity. For the purposes of this subdivision, "first responder" includes emergency medical services personnel licensed by the Alabama Department of Public Health and firefighters and volunteer firefighters as defined by Section 36-32-1.

(22) Rape in the first degree when the victim is less than 12 years of age.

(23) Sodomy in the first degree when the victim is less than 12 years of age.

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

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defined in Section 13A-6-2(a)(1), may be a lesser included offense of the capital offenses defined in subsection (a).

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

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

"§13A-5-49

Aggravating circumstances shall be any of the following:

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

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

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

(4) ~~The~~ For a violation of Section 13A-5-40(a)(1)

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141 through (21), the capital offense was committed while the  
142 defendant was engaged or was an accomplice in the commission  
143 of, or an attempt to commit, or flight after committing, or  
144 attempting to commit, rape, robbery, burglary, or kidnapping.

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

148 (6) The capital offense was committed for pecuniary  
149 gain.

150 (7) The capital offense was committed to disrupt or  
151 hinder the lawful exercise of any governmental function or the  
152 enforcement of laws.

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

155 (9) The defendant intentionally caused the death of two  
156 or more persons by one act or pursuant to one scheme or course  
157 of conduct.

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

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

163 (12) The capital offense was committed by the defendant  
164 in the presence of a child under ~~the age of~~ 14 years of age at  
165 the time of the offense, if the victim was the parent or legal  
166 guardian of the child. For the purposes of this subdivision,  
167 "in the presence of a child" means in the physical presence of  
168 a child or having knowledge that a child is present and may

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see or hear the act.

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

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

"§13A-6-61

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

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

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

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

(b) Rape in the first degree is a Class A felony;  
provided, that the punishment for a violation of subdivision (a) (3) shall be as determined and fixed as provided in Article

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2 of Chapter 5. Any defendant sentenced to life on a capital offense must serve a minimum of 30 years, day for day, prior to his or her first consideration of parole."

"§13A-6-63

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

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

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

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

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

"§13A-6-65.1

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

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

(2) Penetrates the vagina, anus, or mouth of a person who is incapable of consent by reason of being incapacitated, with an inanimate object, with the intent to sexually torture,



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sexually abuse, or to gratify the sexual desire of either party.

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

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

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

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