

1 SB22  
2 126236-1  
3 By Senator Scofield  
4 RFD: Judiciary  
5 First Read: 07-FEB-12  
6 PFD: 06/29/2011

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8 SYNOPSIS: Under existing law, it is not a capital  
9 offense if a defendant murders a person who had a  
10 protection order issued against the defendant.

11 This bill would make it a capital offense  
12 for a defendant to murder a person who had a  
13 protection order issued against the defendant.

14 Amendment 621 of the Constitution of Alabama  
15 of 1901, now appearing as Section 111.05 of the  
16 Official Recompilation of the Constitution of  
17 Alabama of 1901, as amended, prohibits a general  
18 law whose purpose or effect would be to require a  
19 new or increased expenditure of local funds from  
20 becoming effective with regard to a local  
21 governmental entity without enactment by a 2/3 vote  
22 unless: it comes within one of a number of  
23 specified exceptions; it is approved by the  
24 affected entity; or the Legislature appropriates  
25 funds, or provides a local source of revenue, to  
26 the entity for the purpose.

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

9   A BILL  
10    TO BE ENTITLED  
11    AN ACT  
12

13                   To amend Section 13A-5-40 of the Code of Alabama  
14                   1975, relating to capital offenses, to make it a capital  
15                   offense for a defendant to murder a person in violation of a  
16                   protection order issued on behalf of the victim against the  
17                   defendant; and in connection therewith would have as its  
18                   purpose or effect the requirement of a new or increased  
19                   expenditure of local funds within the meaning of Amendment 621  
20                   of the Constitution of Alabama of 1901, now appearing as  
21                   Section 111.05 of the Official Recompilation of the  
22                   Constitution of Alabama of 1901, as amended.

23                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24                   Section 1. Section 13A-5-40 of the Code of Alabama  
25                   1975, is amended to read as follows:

26                   "§13A-5-40.

27                   "(a) The following are capital offenses:

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

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

6           "(3) Murder by the defendant during a rape in the  
7 first or second degree or an attempt thereof committed by the  
8 defendant; or murder by the defendant during sodomy in the  
9 first or second degree or an attempt thereof committed by the  
10 defendant.

11           "(4) Murder by the defendant during a burglary in  
12 the first or second degree or an attempt thereof committed by  
13 the defendant.

14           "(5) Murder of any police officer, sheriff, deputy,  
15 state trooper, federal law enforcement officer, or any other  
16 state or federal peace officer of any kind, or prison or jail  
17 guard, while such officer or guard is on duty, regardless of  
18 whether the defendant knew or should have known the victim was  
19 an officer or guard on duty, or because of some official or  
20 job-related act or performance of such officer or guard.

21           "(6) Murder committed while the defendant is under  
22 sentence of life imprisonment.

23           "(7) Murder done for a pecuniary or other valuable  
24 consideration or pursuant to a contract or for hire.

25           "(8) Murder by the defendant during sexual abuse in  
26 the first or second degree or an attempt thereof committed by  
27 the defendant.

1           "(9) Murder by the defendant during arson in the  
2 first or second degree committed by the defendant; or murder  
3 by the defendant by means of explosives or explosion.

4           "(10) Murder wherein two or more persons are  
5 murdered by the defendant by one act or pursuant to one scheme  
6 or course of conduct.

7           "(11) Murder by the defendant when the victim is a  
8 state or federal public official or former public official and  
9 the murder stems from or is caused by or is related to his  
10 official position, act, or capacity.

11           "(12) Murder by the defendant during the act of  
12 unlawfully assuming control of any aircraft by use of threats  
13 or force with intent to obtain any valuable consideration for  
14 the release of said aircraft or any passenger or crewmen  
15 thereon or to direct the route or movement of said aircraft,  
16 or otherwise exert control over said aircraft.

17           "(13) Murder by a defendant who has been convicted  
18 of any other murder in the 20 years preceding the crime;  
19 provided that the murder which constitutes the capital crime  
20 shall be murder as defined in subsection (b) of this section;  
21 and provided further that the prior murder conviction referred  
22 to shall include murder in any degree as defined at the time  
23 and place of the prior conviction.

24           "(14) Murder when the victim is subpoenaed, or has  
25 been subpoenaed, to testify, or the victim had testified, in  
26 any preliminary hearing, grand jury proceeding, criminal trial  
27 or criminal proceeding of whatever nature, or civil trial or

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

4 "(15) Murder when the victim is less than fourteen  
5 years of age.

6 "(16) Murder committed by or through the use of a  
7 deadly weapon fired or otherwise used from outside a dwelling  
8 while the victim is in a dwelling.

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

11 "(18) Murder committed by or through the use of a  
12 deadly weapon fired or otherwise used within or from a  
13 vehicle.

14 "(19) Murder by the defendant when the victim had a  
15 protection order issued against the defendant.

16 "(b) Except as specifically provided to the contrary  
17 in the last part of subdivision (a)(13) of this section, the  
18 terms "murder" and "murder by the defendant" as used in this  
19 section to define capital offenses mean murder as defined in  
20 Section 13A-6-2(a)(1), but not as defined in Section  
21 13A-6-2(a)(2) and (3). Subject to the provisions of Section  
22 13A-5-41, murder as defined in Section 13A-6-2(a)(2) and (3),  
23 as well as murder as defined in Section 13A-6-2(a)(1), may be  
24 a lesser included offense of the capital offenses defined in  
25 subsection (a) of this section.

26 "(c) A defendant who does not personally commit the  
27 act of killing which constitutes the murder is not guilty of a

1 capital offense defined in subsection (a) of this section  
2 unless that defendant is legally accountable for the murder  
3 because of complicity in the murder itself under the  
4 provisions of Section 13A-2-23, in addition to being guilty of  
5 the other elements of the capital offense as defined in  
6 subsection (a) of this section.

7 "(d) To the extent that a crime other than murder is  
8 an element of a capital offense defined in subsection (a) of  
9 this section, a defendant's guilt of that other crime may also  
10 be established under Section 13A-2-23. When the defendant's  
11 guilt of that other crime is established under Section  
12 13A-2-23, that crime shall be deemed to have been "committed  
13 by the defendant" within the meaning of that phrase as it is  
14 used in subsection (a) of this section."

15 Section 2. Although this bill would have as its  
16 purpose or effect the requirement of a new or increased  
17 expenditure of local funds, the bill is excluded from further  
18 requirements and application under Amendment 621, now  
19 appearing as Section 111.05 of the Official Recompilation of  
20 the Constitution of Alabama of 1901, as amended, because the  
21 bill defines a new crime or amends the definition of an  
22 existing crime.

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