

1 HB155
2 125609-2
3 By Representative Hubbard (J)
4 RFD: Judiciary
5 First Read: 03-MAR-11

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8 SYNOPSIS: This bill would create the crime of
9 threatening harm or violence against a judicial
10 system officer or employee or his or her immediate
11 family.

12 This bill would allow the death penalty to
13 be imposed upon a person who commits murder of a
14 judicial system officer or employee or his or her
15 immediate family under certain conditions.

16 This bill would also include threatening
17 harm or violence against a judicial system officer
18 or employee as an aggravating circumstance relating
19 to a capital offense.

20 This bill would provide penalties.

21 Amendment 621 of the Constitution of Alabama
22 of 1901, now appearing as Section 111.05 of the
23 Official Recompilation of the Constitution of
24 Alabama of 1901, as amended, prohibits a general
25 law whose purpose or effect would be to require a
26 new or increased expenditure of local funds from
27 becoming effective with regard to a local

1 governmental entity without enactment by a 2/3 vote
2 unless: it comes within one of a number of
3 specified exceptions; it is approved by the
4 affected entity; or the Legislature appropriates
5 funds, or provides a local source of revenue, to
6 the entity for the purpose.

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

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 Relating to the crime of threatening a judicial
20 system officer or employee; to make it a specific crime for a
21 person to threaten or cause harm of violence to a judicial
22 system officer or employee or his or her immediate family
23 under certain conditions; to provide penalties; to amend
24 Section 13A-5-40, Code of Alabama 1975, relating to the
25 imposition of the death penalty; to provide that the death
26 penalty may be imposed upon a person who commits murder during
27 the commission of, or attempted commission of, threatening

1 harm or violence against a judicial system officer or
2 employee; to amend Section 13A-5-49, Code of Alabama 1975, to
3 include threatening harm or violence against a judicial system
4 officer or employee as an aggravating circumstance relating to
5 a capital offense; and in connection therewith would have as
6 its purpose or effect the requirement of a new or increased
7 expenditure of local funds within the meaning of Amendment 621
8 of the Constitution of Alabama of 1901, now appearing as
9 Section 111.05 of the Official Recompilation of the
10 Constitution of Alabama of 1901, as amended.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. For purposes of this act, the following
13 words have the following meanings:

14 (1) IMMEDIATE FAMILY MEMBER. A judicial officer's or
15 employee's child, adopted child, spouse, former spouse,
16 parent, spouse's parent, grandparent, grandchild, great
17 grandchild, brother, sister, aunt, uncle, niece, nephew, or
18 any person living in the judicial officer's or employee's
19 household related to him or her by blood, adoption, or
20 marriage.

21 (2) JUDICIAL SYSTEM OFFICER OR EMPLOYEE. Any present
22 or former judge or justice, judicial system staff member or
23 employee, attorney general, assistant attorney general,
24 district attorney, district attorney's office staff member or
25 employee, assistant district attorney, grand juror, petit
26 juror, member of any grand or petit venire or person whose
27 name has been drawn for prospective grand or petit jury

1 service, witness or anticipated witness in a court case,
2 hearing, or official proceeding, juvenile probation officer,
3 adult probation officer, probation office staff member or
4 employee, Pardons and Paroles Board member, Pardons and
5 Paroles Board staff member or employee, circuit clerk,
6 employee of a circuit clerk's office, municipal court judge,
7 municipal clerk, magistrate, or employee of the municipal
8 court.

9 (3) THREAT. Any communication made by any means in
10 which the expectation of or intention to cause, commit, or
11 inflict bodily harm or an act of violence to a judicial system
12 officer or employee or his or her immediate family, which is
13 implicitly or explicitly expressed and which causes, is
14 intended to cause, or may reasonably be expected to cause a
15 judicial system officer or employee or his or her immediate
16 family to fear for his or her own or another judicial system
17 officer's or employee's safety or his or her immediate
18 family's safety; a threat need not be made directly to or in
19 the presence of a judicial system officer or employee or his
20 or her immediate family member, but may be made or
21 communicated to a third person.

22 Section 2. (a) Any person who makes a threat to or
23 against a judicial system officer or employee or his or her
24 immediate family member on account of or in retaliation for
25 any act or decision made in the performance of the official
26 job duties of the judicial system, or with the intent to or
27 with the reasonable expectation that the threat may deter,

1 intimidate, coerce, influence, impede, or interfere with the
2 performance of the official job duties of the judicial system
3 officer or employee commits the crime of threatening a
4 judicial system officer or employee.

5 (b) Threatening a judicial system officer or
6 employee is a Class C felony.

7 (c) If the threat involved or was coincident to
8 physical contact with a judicial system officer or employee or
9 involved the use, display, or brandishing of either a deadly
10 weapon or dangerous instrument as defined in Section 13A-1-2,
11 Code of Alabama 1975, in a threatening manner toward a
12 judicial officer or employee the person shall be guilty of a
13 Class B felony and shall further be subject to the provisions
14 of Section 13A-5-6(a) (5), Code of Alabama 1975, if the
15 additional proof required therein is established.

16 Section 3. Prosecution under this act shall not
17 require any allegation or proof that the judicial system
18 officer or employee sought to be influenced by a threat had
19 actual authority or discretion to act in the way or manner
20 sought, that the matter in which action was sought to be
21 influenced was properly pending before the judicial system
22 officer or employee or might properly be brought before him or
23 her for action, or that the judicial system officer's or
24 employee's action in the matter was necessary to achieve the
25 improper purpose sought, and evidence or proof regarding any
26 of these matters shall not constitute a defense to any
27 prosecution under this act.

1 Section 4. Sections 13A-5-40 and 13A-5-49, Code of
2 Alabama 1975, are amended to read as follows:

3 "§13A-5-40.

4 "(a) The following are capital offenses:

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

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

10 "(3) Murder by the defendant during a rape in the
11 first or second degree or an attempt thereof committed by the
12 defendant; or murder by the defendant during sodomy in the
13 first or second degree or an attempt thereof committed by the
14 defendant.

15 "(4) Murder by the defendant during a burglary in
16 the first or second degree or an attempt thereof committed by
17 the defendant.

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

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

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

3 "(8) Murder by the defendant during sexual abuse in
4 the first or second degree or an attempt thereof committed by
5 the defendant.

6 "(9) Murder by the defendant during arson in the
7 first or second degree committed by the defendant; or murder
8 by the defendant by means of explosives or explosion.

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

12 "(11) Murder by the defendant when the victim is a
13 state or federal public official or former public official and
14 the murder stems from or is caused by or is related to his
15 official position, act, or capacity.

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

22 "(13) Murder by a defendant who has been convicted
23 of any other murder in the 20 years preceding the crime;
24 provided that the murder which constitutes the capital crime
25 shall be murder as defined in subsection (b) of this section;
26 and provided further that the prior murder conviction referred

1 to shall include murder in any degree as defined at the time
2 and place of the prior conviction.

3 "(14) Murder when the victim is subpoenaed, or has
4 been subpoenaed, to testify, or the victim had testified, in
5 any preliminary hearing, grand jury proceeding, criminal trial
6 or criminal proceeding of whatever nature, or civil trial or
7 civil proceeding of whatever nature, in any municipal, state,
8 or federal court, when the murder stems from, is caused by, or
9 is related to the capacity or role of the victim as a witness.

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

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

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

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

20 "(19) Murder of a person who is a judicial system
21 officer or employee or an immediate family member of a
22 judicial officer or employee and the murder stems from or is
23 caused by or is related to the official position, act, or
24 capacity of the judicial officer or employee.

25 "(b) Except as specifically provided to the contrary
26 in the last part of subdivision (a) (13) of this section, the
27 terms "murder" and "murder by the defendant" as used in this

1 section to define capital offenses mean murder as defined in
2 Section 13A-6-2(a)(1), but not as defined in Section
3 13A-6-2(a)(2) and (3). Subject to the provisions of Section
4 13A-5-41, murder as defined in Section 13A-6-2(a)(2) and (3),
5 as well as murder as defined in Section 13A-6-2(a)(1), may be
6 a lesser included offense of the capital offenses defined in
7 subsection (a) of this section.

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

16 "(d) To the extent that a crime other than murder is
17 an element of a capital offense defined in subsection (a) of
18 this section, a defendant's guilt of that other crime may also
19 be established under Section 13A-2-23. When the defendant's
20 guilt of that other crime is established under Section
21 13A-2-23, that crime shall be deemed to have been "committed
22 by the defendant" within the meaning of that phrase as it is
23 used in subsection (a) of this section.

24 "§13A-5-49.

25 "Aggravating circumstances shall be the following:

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

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

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

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

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

13 "(6) The capital offense was committed for pecuniary
14 gain;

15 "(7) The capital offense was committed to disrupt or
16 hinder the lawful exercise of any governmental function or the
17 enforcement of laws;

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

20 "(9) The defendant intentionally caused the death of
21 two or more persons by one act or pursuant to one scheme or
22 course of conduct; or

23 "(10) The capital offense was one of a series of
24 intentional killings committed by the defendant.

25 "(11) The capital offense was committed after the
26 defendant engaged in or was an accomplice in the commission of
27 a threat to a judicial system officer or employee or an

1 immediate family member of a judicial system officer or
2 employee and the threat was related to the official position,
3 act, or capacity of the judicial system officer or employee."

4 Section 5. This act shall become effective on the
5 first day of the third month following its passage and
6 approval by the Governor, or its otherwise becoming law.