

1 HB115  
2 188996-1  
3 By Representatives Greer, Boothe, Butler, Johnson (K), Ball,  
4 Weaver, Mooney and Davis  
5 RFD: Judiciary  
6 First Read: 09-JAN-18

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8 SYNOPSIS: Under existing law, there are certain  
9 enumerated capital offenses.

10 This bill would make a murder on the campus  
11 of a school an enumerated capital offense.

12 This bill would make a murder in a day care  
13 or licensed child care facility an enumerated  
14 capital offense.

15 Amendment 621 of the Constitution of Alabama  
16 of 1901, now appearing as Section 111.05 of the  
17 Official Recompilation of the Constitution of  
18 Alabama of 1901, as amended, prohibits a general  
19 law whose purpose or effect would be to require a  
20 new or increased expenditure of local funds from  
21 becoming effective with regard to a local  
22 governmental entity without enactment by a 2/3 vote  
23 unless: it comes within one of a number of  
24 specified exceptions; it is approved by the  
25 affected entity; or the Legislature appropriates  
26 funds, or provides a local source of revenue, to  
27 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                   Relating to capital offenses; to amend Section  
14                   13A-5-40, Code of Alabama 1975, to provide further for  
15                   enumerated capital offenses; and in connection therewith would  
16                   have as its purpose or effect the requirement of a new or  
17                   increased expenditure of local funds within the meaning of  
18                   Amendment 621 of the Constitution of Alabama of 1901, now  
19                   appearing as Section 111.05 of the Official Recompilation of  
20                   the Constitution of Alabama of 1901, as amended.

21                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

24    "§13A-5-40.

25    "(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 or  
10 her 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~~ the aircraft or any passenger or crewmen  
15 thereon or to direct the route or movement of ~~said~~ the  
16 aircraft, or otherwise exert control over ~~said~~ the 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 where a court had  
15 issued a protective order for the victim, against the  
16 defendant, pursuant to Section 30-5-1 et seq., or the  
17 protective order was issued as a condition of the defendant's  
18 pretrial release.

19 "(20) Murder by the defendant of any person on the  
20 campus of a school. For purposes of this subdivision, the term  
21 school means a public or private institution of learning,  
22 including all pre-kindergarten through grade 12 schools,  
23 institutions, technical or vocational schools, community  
24 colleges, two-year postsecondary institutions, or any  
25 institution of higher learning.

1           "(21) Murder by the defendant of any person in a day  
2           care center or licensed or statutorily exempted child care  
3           facility, as defined by Section 38-7-2.

4           "(b) Except as specifically provided to the contrary  
5           in the last part of subdivision (a)(13) of this section, the  
6           terms "murder" and "murder by the defendant" as used in this  
7           section to define capital offenses mean murder as defined in  
8           Section 13A-6-2(a)(1), but not as defined in Section  
9           13A-6-2(a)(2) and (3). Subject to the provisions of Section  
10          13A-5-41, murder as defined in Section 13A-6-2(a)(2) and (3),  
11          as well as murder as defined in Section 13A-6-2(a)(1), may be  
12          a lesser included offense of the capital offenses defined in  
13          subsection (a) of this section.

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

22          "(d) To the extent that a crime other than murder is  
23          an element of a capital offense defined in subsection (a) of  
24          this section, a defendant's guilt of that other crime may also  
25          be established under Section 13A-2-23. When the defendant's  
26          guilt of that other crime is established under Section  
27          13A-2-23, that crime shall be deemed to have been "committed

1 by the defendant" within the meaning of that phrase as it is  
2 used in subsection (a) of this section."

3 Section 2. Although this bill would have as its  
4 purpose or effect the requirement of a new or increased  
5 expenditure of local funds, the bill is excluded from further  
6 requirements and application under Amendment 621, now  
7 appearing as Section 111.05 of the Official Recompilation of  
8 the Constitution of Alabama of 1901, as amended, because the  
9 bill defines a new crime or amends the definition of an  
10 existing crime.

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