

1 HB59
2 196448-4
3 By Representative Sells
4 RFD: Judiciary
5 First Read: 05-MAR-19
6 PFD: 03/04/2019

1
2 ENROLLED, An Act,

3 To amend Sections 13A-5-40 and 13A-5-49, Code of
4 Alabama 1975, as amended by Act 2018-537, 2018 Regular
5 Session, relating to capital offenses; to provide that murder
6 of a first responder would be a capital offense; to include
7 within the aggravating circumstances to be considered in
8 sentencing for a capital offense circumstances when the victim
9 was a law enforcement officer, a prison or jail guard, or
10 first responder; and in connection therewith would have as its
11 purpose or effect the requirement of a new or increased
12 expenditure of local funds within the meaning of Amendment 621
13 of the Constitution of Alabama of 1901, now appearing as
14 Section 111.05 of the Official Recompilation of the
15 Constitution of Alabama of 1901, as amended.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. This act shall be known and may be cited
18 as the William Buechner Act.

19 Section 2. Sections 13A-5-40 and 13A-5-49, as
20 amended by Act 2018-537, 2018 Regular Session, Code of Alabama
21 1975, are amended to read as follows:

22 "§13A-5-40.

23 "(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 defendant.

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

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

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

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

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

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

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

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

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

20 "(13) Murder by a defendant who has been convicted
21 of any other murder in the 20 years preceding the crime;
22 provided that the murder which constitutes the capital crime
23 shall be murder as defined in subsection (b) of this section;
24 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 by the defendant where a court had
21 issued a protective order for the victim, against the
22 defendant, pursuant to Section 30-5-1 et seq., or the
23 protective order was issued as a condition of the defendant's
24 pretrial release.

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

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

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

23 "(c) A defendant who does not personally commit the
24 act of killing which constitutes the murder is not guilty of a
25 capital offense defined in subsection (a) of this section

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

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

14 "§13A-5-49.

15 "Aggravating circumstances shall be any of the
16 following:

17 "(1) The capital offense was committed by a person
18 under sentence of imprisonment~~7~~.

19 "(2) The defendant was previously convicted of
20 another capital offense or a felony involving the use or
21 threat of violence to the person~~7~~.

22 "(3) The defendant knowingly created a great risk of
23 death to many persons~~7~~.

24 "(4) The capital offense was committed while the
25 defendant was engaged or was an accomplice in the commission

1 of, or an attempt to commit, or flight after committing, or
 2 attempting to commit, rape, robbery, burglary or kidnapping~~7~~.

3 "(5) The capital offense was committed for the
 4 purpose of avoiding or preventing a lawful arrest or effecting
 5 an escape from custody~~7~~ .

6 "(6) The capital offense was committed for pecuniary
 7 gain~~7~~.

8 "(7) The capital offense was committed to disrupt or
 9 hinder the lawful exercise of any governmental function or the
 10 enforcement of laws~~7~~.

11 "(8) The capital offense was especially heinous,
 12 atrocious, or cruel compared to other capital offenses~~7~~.

13 "(9) The defendant intentionally caused the death of
 14 two or more persons by one act or pursuant to one scheme or
 15 course of conduct~~7~~.

16 "(10) The capital offense was one of a series of
 17 intentional killings committed by the defendant~~7~~.

18 "(11) The capital offense was committed when the
 19 victim was less than 14 years of age~~7~~~~or~~.

20 "(12) The capital offense was committed by the
 21 defendant in the presence of a child under the age of 14 years
 22 at the time of the offense, if the victim was the parent or
 23 legal guardian of the child. For the purposes of this
 24 subdivision, "in the presence of a child" means in the

1 physical presence of a child or having knowledge that a child
2 is present and may see or hear the act.

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

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

17 Section 3. Although this bill would have as its
18 purpose or effect the requirement of a new or increased
19 expenditure of local funds, the bill is excluded from further
20 requirements and application under Amendment 621, now
21 appearing as Section 111.05 of the Official Recompilation of
22 the Constitution of Alabama of 1901, as amended, because the
23 bill defines a new crime or amends the definition of an
24 existing crime.

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 18-APR-19.

Jeff Woodard
Clerk

Senate	23-MAY-19	Amended and Passed
House	28-MAY-19	Concurred in Senate Amendment