

1 HB130
2 208003-1
3 By Representatives Brown (C), Stringer, Lovvorn, Wilcox,
4 Oliver, Estes, Simpson, Robertson, Sells, Treadaway, Pringle,
5 Collins, Sullivan, Ellis, Blackshear, Baker, Whitt, Pettus,
6 Ball, Moore (P), Kitchens, Wheeler, Marques, Gaston, Sorrells,
7 Reynolds, Allen and Shedd
8 RFD: Judiciary
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10 PFD: 01/26/2021

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8 SYNOPSIS: Under existing law, a person may only be
9 denied bail if he or she is charged with an offense
10 punishable by death.

11 This bill would provide additional offenses
12 where a judge may deny bail and would provide for a
13 pretrial detention hearing under certain
14 circumstances.

15 This bill would also make nonsubstantive,
16 technical revisions to update the existing code
17 language to current style.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 Relating to bail, to amend Sections 15-13-2,
24 15-13-3, 15-13-7, 15-13-104, 15-13-105, and 15-13-106, Code of
25 Alabama 1975, to create Aniah's Law, to provide for additional
26 offenses that would allow a judge to deny bail; to provide for
27 a pretrial detention hearing under certain conditions; and to

1 make nonsubstantive, technical revisions to update the
2 existing code language to current style.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act shall be known and may be cited
5 as Aniah's Law.

6 Section 2. Sections 15-13-2, 15-13-3, 15-13-7,
7 15-13-104, 15-13-105, and 15-13-106, Code of Alabama 1975, are
8 amended to read as follows:

9 "§15-13-2.

10 "In all cases other than those specified in
11 ~~subsection (a) of~~ Section 15-13-3, a defendant ~~is,~~ before
12 conviction, is entitled to bail as a matter of right.

13 "§15-13-3.

14 "(a) A defendant ~~cannot be admitted to~~ is not
15 eligible for bail when he or she is charged with ~~an offense~~
16 ~~which may be punished by death~~ capital murder pursuant to
17 Section 13A-5-40, if the court is of the opinion, on the
18 evidence adduced, that he or she is guilty of the offense ~~in~~
19 ~~the degree punishable capitally,~~ nor when he ~~is charged with a~~
20 ~~personal injury to another which is likely to produce death~~
21 ~~and which was committed under circumstances such as would, if~~
22 ~~death arises from such injury, constitute an offense which may~~
23 ~~be punished by death.~~

24 "~~(b) In cases punishable capitally, the defendant is~~
25 ~~entitled to bail as a matter of right when the state, after~~
26 ~~the finding of the indictment, has continued the case twice,~~
27 ~~without his consent, for the testimony of absent witnesses.~~

1 ~~"In such case, if the indictment is dismissed, the~~
2 ~~defendant, on application for bail, is entitled to the benefit~~
3 ~~of any continuance had upon such indictment by the state for~~
4 ~~absent witnesses; and, if another indictment is not found at~~
5 ~~the same court at which the former is dismissed, the order of~~
6 ~~dismissal is to be taken as a continuance by the state for~~
7 ~~absent witnesses.~~

8 "(b) (1) The court, after a hearing as provided in
9 this subsection, after the presentment of an indictment or a
10 showing of probable cause in the charged offense, and if the
11 prosecuting attorney proves by clear and convincing evidence
12 that no condition or combination of conditions of release will
13 reasonably ensure the defendant's appearance in court or
14 protect the safety of the community or any person, may deny a
15 defendant's bail, if he or she is charged with any of the
16 following offenses:

17 "a. Murder, as provided in Section 13A-6-2.

18 "b. Assault in the first degree, as provided in
19 Section 13A-6-20.

20 "c. Kidnapping in the first degree, as provided in
21 Section 13A-6-43.

22 "d. Rape in the first degree, as provided in Section
23 13A-6-61.

24 "e. Sodomy in the first degree, as provided in
25 Section 13A-6-63.

26 "f. Sexual torture, as provided in Section
27 13A-6-65.1.

1 "g. Domestic violence in the first degree, as
2 provided in Section 13A-6-130.

3 "h. Human trafficking in the first degree, as
4 provided in Section 13A-6-152.

5 "i. Burglary in the first degree, as provided in
6 Section 13A-7-5.

7 "j. Arson in the first degree, as provided in
8 Section 13A-7-41.

9 "k. Robbery in the first degree, as provided in
10 Section 13A-8-41.

11 "l. Terrorism, as provided in subdivision (b) (2) of
12 Section 13A-10-152.

13 "m. Aggravated child abuse, as provided in
14 subsection (b) of Section 26-15-3.1.

15 "(2) A court shall order that a defendant charged
16 with an offense listed in this subsection be held without bond
17 prior to a pretrial detention hearing.

18 "(3) The court shall hold a pretrial detention
19 hearing immediately upon the defendant's first appearance
20 before the court, unless the prosecuting attorney or the
21 defendant requests a continuance. Except for good cause, a
22 continuance on a motion of the defendant may not exceed five
23 days, excluding Saturdays, Sundays, and state holidays, and a
24 continuance on motion by the prosecuting attorney may not
25 exceed three days, excluding Saturdays, Sundays, and state
26 holidays. The defendant shall be detained during any
27 continuance.

1 "(4)a. A defendant shall have all of the following
2 rights at a pretrial detention hearing:

3 "1. To be represented by counsel. If the defendant
4 is financially unable to obtain counsel, he or she shall have
5 counsel appointed.

6 "2. To testify.

7 "3. To present witnesses.

8 "4. To present evidence.

9 "5. To cross-examine witnesses.

10 "b. The judge shall have discretion as to who the
11 defendant may call as a witness as provided in this
12 subdivision at the pretrial detention hearing.

13 "(5) In considering whether there are any conditions
14 or combination of conditions that would reasonably ensure the
15 defendant's appearance in court or protect the safety of the
16 community and of any person, the court shall consider all of
17 the following factors:

18 "a. The nature and circumstances of the offenses
19 charged.

20 "b. The weight of the evidence against the
21 defendant.

22 "c. The history and characteristics of the
23 defendant, including, but not limited to the defendant's
24 character, physical and mental condition, family ties,
25 employment, financial resources, length of residence in the
26 community, community ties, past conduct, history relating to
27 drug or alcohol abuse, criminal history, and record concerning

1 appearance at court proceedings, and, whether, at the time of
2 the current offense, the defendant was on probation, parole,
3 or on other release pending trial, sentencing, appeal, or
4 completion of sentence for an offense.

5 "d. The nature and seriousness of the danger to any
6 person or the community if the defendant is released.

7 "(6) At any pretrial detention hearing, the rules
8 governing admissibility of evidence in criminal trials shall
9 not apply, and the court shall receive all relevant evidence.
10 All evidence shall be recorded. The testimony of a defendant
11 may not be admissible in any other criminal proceeding against
12 the defendant, except if being used for perjury based on the
13 testimony or for the purpose of impeachment in any subsequent
14 proceeding.

15 "(7)a. A prosecuting attorney may file a motion for
16 a pretrial detention hearing at any time.

17 "b. A pretrial detention hearing may be reopened,
18 before or after a determination by the court, at any time
19 prior to trial if the court finds that information exists that
20 was not known by the movant at the time of the pretrial
21 detention hearing.

22 "(8) In an order denying bail, the judge shall make
23 written findings or state for the record findings of fact and
24 a statement of the reasons for denying bail. The judge shall
25 enter an order denying bail within 48 hours of the hearing.

26 "§15-13-7.

1 "When a writ of arrest is issued upon an indictment,
2 the clerk issuing the writ ~~must~~ shall endorse ~~thereon~~ on the
3 writ an order to the sheriff to take bail of the defendant in
4 the amount fixed by the judge and endorsed by him or her on
5 the indictment, unless the defendant is charged with an
6 offense for which bail may be denied pursuant to Section
7 15-13-3. In that case, the writ of arrest shall indicate "no
8 bail," and the defendant may not be released prior to an
9 initial appearance.

10 "§15-13-104.

11 "Judicial officers shall see that the amount of bail
12 is affixed to any warrants of arrests issued by the judicial
13 officer at the time of their issuance for which the defendant
14 is arrested and taken into custody. If arrested for ~~a capital~~
15 an offense for which the defendant is not entitled to release
16 on bail pursuant to Section 15-13-3, the judicial officer
17 shall ~~take care to see~~ confirm that "no bail" is affixed on
18 the warrant. Judicial officers may delegate the affixation to
19 lawful employees of the court, but the amount shall be set by
20 the judicial officer.

21 "§15-13-105.

22 "In cases where a defendant is arrested without a
23 warrant for an offense that is bailable as a matter of right
24 and taken into custody and there is no standard bail schedule
25 prescribed by the presiding judge of the court of jurisdiction
26 for the amounts of bail for ~~such~~ the arrests without warrants,
27 then the arresting officer ~~shall~~, as soon as possible, shall

1 contact a judicial officer for an order of bail. If the
2 arresting officer is unable to contact the judicial officer
3 having jurisdiction of the case, the arresting officer may
4 contact any judicial officer having the authority to set bail
5 in that judicial circuit to issue the order of bail. If no
6 judicial officer has issued an order of bail within 24 hours
7 of the arrest of defendant, then the bail shall be set by
8 operation of law and the amount of bail shall be that amount
9 prescribed as the minimum amount established by the bail
10 schedule adopted by Supreme Court rule. Provided, however, in
11 violation and misdemeanor cases the minimum amount of bail
12 shall be three hundred dollars (\$300) for each offense
13 charged. The judicial officer may also fix the amount of bail
14 on the indictment.

15 "§15-13-106.

16 "Except in ~~capital~~ cases where there is no right to
17 release on bail pursuant to Section 15-13-3, no person or
18 defendant shall be committed to any jail in the State of
19 Alabama on a warrant unless there is an amount of bail affixed
20 to the warrant. No person or defendant shall remain in jail
21 anywhere in this state for more than 24 hours for any felony
22 or misdemeanor case without an order of bail, unless bail is
23 not authorized by law."

24 Section 3. This act shall become effective
25 immediately upon the ratification of the amendment to the
26 Constitution of Alabama of 1901, to provide that an individual
27 is entitled to reasonable bail prior to conviction, unless

1 charged with certain enumerated crimes as proposed in HB _____
2 of the 2021 Regular Session.