

1 HB544
2 211639-1
3 By Representatives Rafferty, Hollis, Clarke and Hall
4 RFD: Judiciary
5 First Read: 16-MAR-21

SYNOPSIS: Under existing law, a person who commits a capital offense may be sentenced to death or life without parole.

This bill would repeal the death penalty.

A BILL
TO BE ENTITLED
AN ACT

To amend Sections 13A-5-39, 13A-5-43, 13A-5-44, and 15-18-100, Code of Alabama 1975, relating to the death penalty; to remove death as a potential punishment for commission of a capital offense; to remove provisions relating to sentencing and the sentencing hearing; and to repeal Sections 13A-5-45 through 13A-5-53, inclusive, 13A-5-55, 13A-5-59, 15-18-80, 15-18-81, 15-18-82, 15-18-83, 15-18-84, 15-18-85, and 15-18-86, Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 13A-5-39, 13A-5-43, 13A-5-44,
2 and 15-18-100, Code of Alabama 1975, are amended to read as
3 follows:

4 "§13A-5-39.

5 "As used in this article, these terms shall be
6 defined as follows:

7 "(1) CAPITAL OFFENSE. An offense for which a
8 defendant shall be punished by a sentence of ~~death or~~ life
9 imprisonment without parole, or in the case of a defendant who
10 establishes that he or she was under the age of 18 years at
11 the time of the capital offense, life imprisonment, or life
12 imprisonment without parole, according to the provisions of
13 this article.

14 "(2) DURING. The term as used in Section 13A-5-40(a)
15 means in the course of or in connection with the commission
16 of, or in immediate flight from the commission of the
17 underlying felony or attempt thereof.

18 "(3) EXPLOSIVES and EXPLOSION. The terms shall have
19 the meanings provided in Section 13A-7-40(2) and (3).

20 "(4) BURDEN OF INTERJECTING THE ISSUE. Shall be
21 defined as provided in Section 13A-1-2(14).

22 "(5) MURDER and MURDER BY THE DEFENDANT. Shall be
23 defined as provided in Section 13A-5-40(b).

24 "(6) PREVIOUSLY CONVICTED and PRIOR CRIMINAL
25 ACTIVITY. As used in Sections 13A-5-49(2) and 13A-5-51(1),
26 these terms refer to events occurring before the date of the
27 sentence hearing.

1 "(7) UNDER SENTENCE OF IMPRISONMENT. As used in
2 Section 13A-5-49(1), the term means while serving a term of
3 imprisonment, while under a suspended sentence, while on
4 probation or parole, or while on work release, furlough,
5 escape, or any other type of release or freedom while or after
6 serving a term of imprisonment, other than unconditional
7 release and freedom after expiration of the term of sentence.

8 "§13A-5-43.

9 "(a) In the trial of a capital offense the jury
10 shall first hear all the admissible evidence offered on the
11 charge or charges against the defendant. It shall then
12 determine whether the defendant is guilty of the capital
13 offense or offenses with which he is charged or of any lesser
14 included offense or offenses considered pursuant to Section
15 13A-5-41.

16 "(b) If the defendant is found not guilty of the
17 capital offense or offenses with which he is charged, and not
18 guilty of any lesser included offense or offenses considered
19 pursuant to Section 13A-5-41, the defendant shall be
20 discharged.

21 "(c) If the defendant is found not guilty of the
22 capital offense or offenses with which he is charged, and is
23 found guilty of a lesser included offense or offenses
24 considered pursuant to Section 13A-5-41, sentence shall be
25 determined and imposed as provided by law.

26 "~~(d) If the defendant is found guilty of a capital~~
27 ~~offense or offenses with which he is charged and the defendant~~

1 ~~does not establish to the court by a preponderance of the~~
2 ~~evidence that he or she was under the age of 18 years at the~~
3 ~~time of the capital offense or offenses with which he or she~~
4 ~~is found guilty, the sentence shall be determined as provided~~
5 ~~in Sections 13A-5-45 through 13A-5-53.~~

6 "(e) If the defendant is found guilty of a capital
7 offense or offenses with which he or she is charged and the
8 defendant establishes to the court by a preponderance of the
9 evidence that he or she was under the age of 18 years at the
10 time of the capital offense or offenses, the sentence shall be
11 either life without the possibility of parole or, in the
12 alternative, life, and the sentence shall be determined by the
13 procedures set forth in the Alabama Rules of Criminal
14 Procedure for judicially imposing sentences within the range
15 set by statute without a jury, rather than as provided in
16 Sections 13A-5-45 to 13A-5-53, inclusive. The judge shall
17 consider all relevant mitigating circumstances.

18 "If the defendant is sentenced to life on a capital
19 offense, the defendant must serve a minimum of 30 years, day
20 for day, prior to first consideration of parole.

21 "§13A-5-44.

22 "(a) The selection of the jury for the trial of a
23 capital case shall include the selection of at least two
24 alternate jurors chosen according to procedures specified by
25 law or court rule.

1 "(b) The separation of the jury during the pendency
2 of the trial of a capital case shall be governed by applicable
3 law or court rule.

4 "~~(c) Notwithstanding any other provision of law, the~~
5 ~~defendant with the consent of the state and with the approval~~
6 ~~of the court may waive the participation of a jury in the~~
7 ~~sentence hearing provided in Section 13A-5-46. Provided,~~
8 ~~however, before any such waiver is valid, it must~~
9 ~~affirmatively appear in the record that the defendant himself~~
10 ~~has freely waived his right to the participation of a jury in~~
11 ~~the sentence proceeding, after having been expressly informed~~
12 ~~of such right.~~

13 "§15-18-100.

14 "~~When any defendant is convicted and sentenced to~~
15 ~~death or to imprisonment in the penitentiary, the presiding~~
16 ~~judge, if he is of the opinion that such defendant should be~~
17 ~~pardoned, may postpone the execution of the sentence for such~~
18 ~~time as may appear necessary to obtain the action of the~~
19 ~~Governor on an application for commutation of the death~~
20 ~~sentence and action of the Board of Pardons and Paroles on an~~
21 ~~application for pardon.~~"

22 Section 2. Sections 13A-5-45 through 13A-5-53,
23 inclusive, 13A-5-55, and 13A-5-59 of, and Article 5
24 (commencing with Section 15-18-80) of Chapter 18 of Title 15
25 of the Code of Alabama 1975, are repealed.

1 Section 3. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.