

1 HB258
2 181593-1
3 By Representatives Greer, Mooney, Hanes, Butler, Patterson,
4 Wood, Ledbetter, Rowe, South, Faulkner, Hill, Nordgren, Lee,
5 Crawford, Brown and Fincher
6 RFD: Judiciary
7 First Read: 16-FEB-17

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

10 This bill would include prosecutors as
11 members of law enforcement and make the murder of a
12 prosecutor an enumerated capital offense.

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

15 This bill would make a murder in a day care
16 or licensed child care facility an enumerated
17 capital offense.

18 This bill would make the murder of a victim,
19 juror, or associated family member in order to
20 avenge, intimidate, or retaliate an enumerated
21 capital offense.

22 This bill would make the murder of a family
23 member of a police officer, sheriff, deputy, state
24 trooper, federal law enforcement officer,
25 prosecutor, or any other state or federal peace
26 officer of any kind, or prison or jail guard, or a
27 judge which is committed to avenge, intimidate, or

1 retaliate because of an official action of the
2 police officer, sheriff, deputy, state trooper,
3 federal law enforcement officer, prosecutor, or any
4 other state or federal peace officer of any kind,
5 or prison or jail guard, or judge an enumerated
6 capital offense.

7 Amendment 621 of the Constitution of Alabama
8 of 1901 prohibits a general law whose purpose or
9 effect would be to require a new or increased
10 expenditure of local funds from becoming effective
11 with regard to a local governmental entity without
12 enactment by a 2/3 vote unless: it comes within one
13 of a number of specified exceptions; it is approved
14 by the affected entity; or the Legislature
15 appropriates funds, or provides a local source of
16 revenue, to the entity for the purpose.

17 The purpose or effect of this bill would be
18 to require a new or increased expenditure of local
19 funds within the meaning of Amendment 621. However,
20 the bill does not require approval of a local
21 governmental entity or enactment by a 2/3 vote to
22 become effective because it comes within one of the
23 specified exceptions contained in Amendment 621.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 Relating to capital offenses; to amend Sections
3 13A-5-40 and 13A-5-49, Code of Alabama 1975, relating to
4 enumerated capital offenses; to include prosecutors as members
5 of law enforcement; to include as capital offenses the murder
6 of a prosecutor; murder on the campus of a school; murder in a
7 day care or licensed child care facility; murder of a victim,
8 juror, or associated family member in order to avenge,
9 intimidate, or retaliate; the murder of a family member of a
10 police officer, sheriff, deputy, state trooper, federal law
11 enforcement officer, prosecutor, or any state or federal peace
12 officer, prison or jail guard, or a judge, which is committed
13 to avenge, intimidate, or retaliate because of an official
14 action; to create the aggravating capital factor of murder of
15 a law enforcement officer while in the line of duty; and in
16 connection therewith would have as its purpose or effect the
17 requirement of a new or increased expenditure of local funds
18 within the meaning of Amendment 621 of the Constitution of
19 Alabama of 1901.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

23 "§13A-5-40.

24 "(a) The following are capital offenses:

25 "(1) Murder by the defendant during a kidnapping in
26 the first degree or an attempt thereof committed by the
27 defendant.

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

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

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

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

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

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

23 "(8) Murder by the defendant during sexual abuse in
24 the first or second degree or an attempt thereof committed by
25 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. The term school for the purpose of this
21 subdivision 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 or licensed or statutorily exempted child care facility,
3 as defined by Section 38-7-2.

4 "(22) Murder by the defendant of any family member
5 of any of the persons referenced in subdivision (5) or (11) if
6 the intended purpose of the murder is to avenge, intimidate,
7 or retaliate against the person referenced in subdivision (5)
8 or (11).

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

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

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

9 "§13A-5-49.

10 "Aggravating circumstances shall be all of the
11 following:

12 "(1) The capital offense was committed by a person
13 under sentence of imprisonment.

14 "(2) The defendant was previously convicted of
15 another capital offense or a felony involving the use or
16 threat of violence to the person.

17 "(3) The defendant knowingly created a great risk of
18 death to many persons.

19 "(4) The capital offense was committed while the
20 defendant was engaged or was an accomplice in the commission
21 of, or an attempt to commit, or flight after committing, or
22 attempting to commit, rape, robbery, burglary or kidnapping.

23 "(5) The capital offense was committed for the
24 purpose of avoiding or preventing a lawful arrest or effecting
25 an escape from custody.

26 "(6) The capital offense was committed for pecuniary
27 gain.

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

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

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

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

11 "(11) The defendant intentionally caused the death
12 of a law enforcement officer while that law enforcement
13 officer was in the line of duty."

14 Section 2. Although this bill would have as its
15 purpose or effect the requirement of a new or increased
16 expenditure of local funds, the bill is excluded from further
17 requirements and application under Amendment 621 because the
18 bill defines a new crime or amends the definition of an
19 existing crime.

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