

1 HB218
2 156417-2
3 By Representatives Greer, DeMarco, McMillan, Williams (D),
4 Patterson, Sanderford, Roberts, Johnson (K), Wallace,
5 Williams (P), Hill, Harper, McClurkin, Bridges, Laird,
6 Millican, Faust, Drake, Baker, Hammon, Moore (B), Lee,
7 Chesteen, Brown, Clouse, Butler, Henry, Baughn, Tuggle,
8 Collins, Wood, Sessions, Long, McCutcheon, Greeson and Hurst
9 RFD: Judiciary
10 First Read: 14-JAN-14

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SYNOPSIS: Under existing rule, there are certain enumerated capital offenses.

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

This bill would make a murder of a family member of a law enforcement agency or public official in order to avenge, intimidate, or retaliate an enumerated capital offense.

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

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

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

1 This bill would make the murder of a victim
2 under a Protection From Abuse Order an enumerated
3 capital offense.

4 This bill would make the murder of a family
5 member of a police officer, sheriff, deputy, state
6 trooper, federal law enforcement officer,
7 prosecutor, or any other state or federal peace
8 officer of any kind, or prison or jail guard, or a
9 judge which is committed to avenge, intimidate, or
10 retaliate because of an official action of the
11 police officer, sheriff, deputy, state trooper,
12 federal law enforcement officer, prosecutor, or any
13 other state or federal peace officer of any kind,
14 or prison or jail guard, or judge an enumerated
15 capital offense.

16 Amendment 621 of the Constitution of Alabama
17 of 1901 prohibits a general law whose purpose or
18 effect would be to require a new or increased
19 expenditure of local funds from becoming effective
20 with regard to a local governmental entity without
21 enactment by a 2/3 vote unless: it comes within one
22 of a number of specified exceptions; it is approved
23 by the affected entity; or the Legislature
24 appropriates funds, or provides a local source of
25 revenue, to the entity for the purpose.

26 The purpose or effect of this bill would be
27 to require a new or increased expenditure of local

1 funds within the meaning of Amendment 621. However,
2 the bill does not require approval of a local
3 governmental entity or enactment by a 2/3 vote to
4 become effective because it comes within one of the
5 specified exceptions contained in Amendment 621.

6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to capital offenses; to amend Sections
12 13A-5-40 and 13A-5-49, Code of Alabama 1975, relating to
13 enumerated capital offenses; to include prosecutors as members
14 of law enforcement; to include as capital offenses the murder
15 of a prosecutor; the murder of a family member of law
16 enforcement to avenge, intimidate, or retaliate; murder on the
17 campus of a school; murder in a day care or licensed child
18 care facility; murder of a victim, juror, or associated family
19 member in order to avenge, intimidate, or retaliate; murder of
20 a victim under a Protection From Abuse Order; the murder of a
21 family member of a police officer, sheriff, deputy, state
22 trooper, federal law enforcement officer, prosecutor, or any
23 state or federal peace officer, prison or jail guard, or a
24 judge which is committed to avenge, intimidate, or retaliate
25 because of an official action; to create the aggravating
26 capital factor of murder of a law enforcement officer while in
27 the line of duty; and in connection therewith would have as

1 its purpose or effect the requirement of a new or increased
2 expenditure of local funds within the meaning of Amendment 621
3 of the Constitution of Alabama of 1901.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 "§13A-5-40.

8 "(a) The following are capital offenses:

9 "(1) Murder by the defendant during a kidnapping in
10 the first degree or an attempt thereof committed by the
11 defendant.

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

14 "(3) Murder by the defendant during a rape in the
15 first or second degree or an attempt thereof committed by the
16 defendant; or murder by the defendant during sodomy in the
17 first or second degree or an attempt thereof committed by the
18 defendant.

19 "(4) Murder by the defendant during a burglary in
20 the first or second degree or an attempt thereof committed by
21 the defendant.

22 "(5) Murder of any police officer, sheriff, deputy,
23 state trooper, federal law enforcement officer, prosecutor, or
24 any other state or federal peace officer of any kind, or
25 prison or jail guard, while such officer or guard is on duty,
26 regardless of whether the defendant knew or should have known
27 the victim was an officer or guard on duty, or because of some

1 official or job-related act or performance of such law
2 enforcement officer or guard.

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

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

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

10 "(9) Murder by the defendant during arson in the
11 first or second degree committed by the defendant; or murder
12 by the defendant by means of explosives or explosion.

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

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

20 "(12) Murder by the defendant during the act of
21 unlawfully assuming control of any aircraft by use of threats
22 or force with intent to obtain any valuable consideration for
23 the release of said aircraft or any passenger or crewmen
24 thereon or to direct the route or movement of said aircraft,
25 or otherwise exert control over said aircraft.

26 "(13) Murder by a defendant who has been convicted
27 of any other murder in the 20 years preceding the crime;

1 provided that the murder which constitutes the capital crime
2 shall be murder as defined in subsection (b) of this section;
3 and provided further that the prior murder conviction referred
4 to shall include murder in any degree as defined at the time
5 and place of the prior conviction.

6 "(14) Murder when the victim is subpoenaed, or has
7 been subpoenaed, to testify, or the victim had testified, in
8 any preliminary hearing, grand jury proceeding, criminal trial
9 or criminal proceeding of whatever nature, or civil trial or
10 civil proceeding of whatever nature, in any municipal, state,
11 or federal court, when the murder stems from, is caused by, or
12 is related to the capacity or role of the victim as a witness.

13 "(15) Murder when the victim is less than fourteen
14 years of age.

15 "(16) Murder committed by or through the use of a
16 deadly weapon fired or otherwise used from outside a dwelling
17 while the victim is in a dwelling.

18 "(17) Murder committed by or through the use of a
19 deadly weapon while the victim is in a vehicle.

20 "(18) Murder committed by or through the use of a
21 deadly weapon fired or otherwise used within or from a
22 vehicle.

23 "(19) Murder committed by the defendant of any
24 person on the campus of a school. The term school for the
25 purpose of this subdivision means a public or private
26 institution of learning, including all pre-kindergarten
27 through grade 12 schools, institutions, technical or

1 vocational schools, community colleges, two-year postsecondary
2 institutions, or any institution of higher learning.

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

6 "(21) Murder committed by the defendant of an
7 associated or relevant victim when the victim is subject to an
8 order of protection from abuse by the defendant or the
9 intended purpose of the murder of any victim was to avenge,
10 intimidate or retaliate against the person subject to the
11 protection from abuse order.

12 "(22) Murder committed by the defendant of any
13 family member of any of the persons referenced in subdivision
14 (5) or (11) if the intended purpose of the murder is to
15 avenge, intimidate, or retaliate against the person referenced
16 in subdivision (5) or (11).

17 "(b) Except as specifically provided to the contrary
18 in the last part of subdivision (a)(13) of this section, the
19 terms "murder" and "murder by the defendant" as used in this
20 section to define capital offenses mean murder as defined in
21 Section 13A-6-2(a)(1), but not as defined in Section
22 13A-6-2(a)(2) and (3). Subject to the provisions of Section
23 13A-5-41, murder as defined in Section 13A-6-2(a)(2) and (3),
24 as well as murder as defined in Section 13A-6-2(a)(1), may be
25 a lesser included offense of the capital offenses defined in
26 subsection (a) of this section.

1 "(c) A defendant who does not personally commit the
2 act of killing which constitutes the murder is not guilty of a
3 capital offense defined in subsection (a) of this section
4 unless that defendant is legally accountable for the murder
5 because of complicity in the murder itself under the
6 provisions of Section 13A-2-23, in addition to being guilty of
7 the other elements of the capital offense as defined in
8 subsection (a) of this section.

9 "(d) To the extent that a crime other than murder is
10 an element of a capital offense defined in subsection (a) of
11 this section, a defendant's guilt of that other crime may also
12 be established under Section 13A-2-23. When the defendant's
13 guilt of that other crime is established under Section
14 13A-2-23, that crime shall be deemed to have been "committed
15 by the defendant" within the meaning of that phrase as it is
16 used in subsection (a) of this section.

17 "§13A-5-49.

18 "Aggravating circumstances shall be the following:

19 "(1) The capital offense was committed by a person
20 under sentence of imprisonment;

21 "(2) The defendant was previously convicted of
22 another capital offense or a felony involving the use or
23 threat of violence to the person;

24 "(3) The defendant knowingly created a great risk of
25 death to many persons;

26 "(4) The capital offense was committed while the
27 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;

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;

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

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;

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

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; ~~or~~

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

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

21 Section 2. Although this bill would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds, the bill is excluded from further
24 requirements and application under Amendment 621 because the
25 bill defines a new crime or amends the definition of an
26 existing crime.

1 Section 3. 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.