

1 SB141
2 147133-2
3 By Senators Scofield, Fielding, Taylor, Allen, Ward, Reed,
4 Bussman, Smitherman and Beason
5 RFD: Judiciary
6 First Read: 06-FEB-13

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Section 13A-5-40 of the Code of Alabama
12 1975, relating to capital offenses, to make it a capital
13 offense for a defendant to murder a person in violation of a
14 protection order issued on behalf of the victim against the
15 defendant; and in connection therewith would have as its
16 purpose or effect the requirement of a new or increased
17 expenditure of local funds within the meaning of Amendment 621
18 of the Constitution of Alabama of 1901, now appearing as
19 Section 111.05 of the Official Recompilation of the
20 Constitution of Alabama of 1901, as amended.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. This act shall be known and may be cited
23 as "Kelley's Law."

24 Section 2. Section 13A-5-40 of the Code of Alabama
25 1975, is amended to read as follows:

26 "§13A-5-40.

27 "(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
3 defendant.

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

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

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

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

25 "(8) Murder by the defendant during sexual abuse in
26 the first or second degree or an attempt thereof committed by
27 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
10 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 aircraft or any passenger or crewmen
15 thereon or to direct the route or movement of said aircraft,
16 or otherwise exert control over said 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 "(b) Except as specifically provided to the contrary
20 in the last part of subdivision (a)(13) of this section, the
21 terms "murder" and "murder by the defendant" as used in this
22 section to define capital offenses mean murder as defined in
23 Section 13A-6-2(a)(1), but not as defined in Section
24 13A-6-2(a)(2) and (3). Subject to the provisions of Section
25 13A-5-41, murder as defined in Section 13A-6-2(a)(2) and (3),
26 as well as murder as defined in Section 13A-6-2(a)(1), may be

1 a lesser included offense of the capital offenses defined in
2 subsection (a) of this section.

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

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

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

Read for the first time and referred to the Senate committee on Judiciary.....	06-FEB-13
Read for the second time and placed on the calen- dar 1 amendment.....	14-FEB-13
Read for the third time and passed as amended	30-APR-13

Yeas 29
Nays 0
Abstaining 1

Patrick Harris
Secretary