

1 SB218
2 148791-2
3 By Senators Ward, Fielding, Keahey, Bedford, Whatley, Marsh,
4 Waggoner and Sanford
5 RFD: Judiciary
6 First Read: 14-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 Sections 13A-5-2, 13A-5-39, 13A-5-43, and
12 13A-6-2, Code of Alabama 1975, relating to capital offenses,
13 to provide that a person convicted of a capital offense
14 committed when under the age of 18 years may, in the
15 alternative, be sentenced to life imprisonment without the
16 possibility of parole for 40 years; to provide generally that
17 a person convicted of a non-homicide crime committed when
18 under the age of 18 years is subject to a maximum sentence of
19 life imprisonment without the possibility of parole for 40
20 years, rather than life imprisonment without parole; to
21 provide a burden of proof; to further provide for definitions;
22 and to add Section 13A-5-53.1 to the Code of Alabama 1975, to
23 specify that in capital murder cases, the provisions of the
24 act apply to defendants who have not yet been sentenced for
25 capital murder on or after the effective date of the act; and
26 to provide exceptions.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 13A-5-2, 13A-5-39, 13A-5-43, and
2 13A-6-2, Code of Alabama 1975, are amended to read as follows:

3 "§13A-5-2.

4 "(a) Every person convicted of a felony shall be
5 sentenced by the court to imprisonment for a term authorized
6 by Sections 13A-5-6, 13A-5-9, and 13A-5-10.

7 "(b) In addition to imprisonment, every person
8 convicted of a felony may be sentenced by the court to pay a
9 fine authorized by Section 13A-5-11.

10 "(c) Every person convicted of a misdemeanor or
11 violation shall be sentenced by the court to:

12 "(1) Imprisonment for a term authorized by Section
13 13A-5-7; or

14 "(2) Pay a fine authorized by Section 13A-5-12; or

15 "(3) Both such imprisonment and fine.

16 "(d) Every person convicted of a felony,
17 misdemeanor, or violation, except for the commission of a
18 criminal sex offense involving a child as defined in Section
19 15-20-21(5), may be placed on probation as authorized by law.

20 "(e) This article does not deprive a court of
21 authority conferred by law to forfeit property, dissolve a
22 corporation, suspend or cancel a license or permit, remove a
23 person from office, cite for contempt, or impose any other
24 lawful civil penalty. Such a judgment, order, or decree may be
25 included as part of the sentence.

26 "(f) Every person convicted of murder shall be
27 sentenced by the court to imprisonment for a term, or to

1 death, ~~or to~~ life imprisonment without parole, or life
2 imprisonment without the possibility of parole for 40 years,
3 as authorized by subsection (c) of Section 13A-6-2.

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 without the
12 possibility of parole for 40 years, according to the
13 provisions of 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 "(8) LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
9 PAROLE FOR 40 YEARS. A life sentence under which the defendant
10 is eligible to apply for parole consideration only once, 40
11 years after the date the defendant began serving the sentence.
12 If parole is denied at that time, the defendant will not be
13 eligible for parole again. Defendants on whom this sentence is
14 imposed are not eligible for any incentive time deductions
15 under Section 14-9-40 or any other law.

16 "§13A-5-43.

17 "(a) In the trial of a capital offense the jury
18 shall first hear all the admissible evidence offered on the
19 charge or charges against the defendant. It shall then
20 determine whether the defendant is guilty of the capital
21 offense or offenses with which he is charged or of any lesser
22 included offense or offenses considered pursuant to Section
23 13A-5-41.

24 "(b) If the defendant is found not guilty of the
25 capital offense or offenses with which he is charged, and not
26 guilty of any lesser included offense or offenses considered

1 pursuant to Section 13A-5-41, the defendant shall be
2 discharged.

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

8 "(d) If the defendant is found guilty of a capital
9 offense or offenses with which he is charged and the defendant
10 does not establish to the court by a preponderance of the
11 evidence that he or she was under the age of 18 years at the
12 time of the capital offense or offenses with which he or she
13 is found guilty, the sentence shall be determined as provided
14 in Sections 13A-5-45 through 13A-5-53.

15 "(e) If the defendant is found guilty of a capital
16 offense or offenses with which he or she is charged and the
17 defendant establishes to the court by a preponderance of the
18 evidence that he or she was under the age of 18 years at the
19 time of the capital offense or offenses, the sentence shall be
20 either life without the possibility of parole or, in the
21 alternative, life without the possibility of parole for 40
22 years, and the sentence shall be determined by the procedures
23 set forth in the Alabama Rules of Criminal Procedure for
24 judicially imposing sentences within the range set by statute
25 without a jury, rather than as provided in Sections 13A-5-45
26 to 13A-5-53, inclusive. The judge shall consider all relevant
27 mitigating circumstances.

1 "§13A-6-2.

2 "(a) A person commits the crime of murder if he or
3 she does any of the following:

4 "(1) With intent to cause the death of another
5 person, he or she causes the death of that person or of
6 another person.

7 "(2) Under circumstances manifesting extreme
8 indifference to human life, he or she recklessly engages in
9 conduct which creates a grave risk of death to a person other
10 than himself or herself, and thereby causes the death of
11 another person.

12 "(3) He or she commits or attempts to commit arson
13 in the first degree, burglary in the first or second degree,
14 escape in the first degree, kidnapping in the first degree,
15 rape in the first degree, robbery in any degree, sodomy in the
16 first degree, any other felony clearly dangerous to human life
17 and, in the course of and in furtherance of the crime that he
18 or she is committing or attempting to commit, or in immediate
19 flight therefrom, he or she, or another participant if there
20 be any, causes the death of any person.

21 "(4) He or she commits the crime of arson and a
22 qualified governmental or volunteer firefighter or other
23 public safety officer dies while performing his or her duty
24 resulting from the arson.

25 "(b) A person does not commit murder under
26 subdivisions (a) (1) or (a) (2) of this section if he or she was
27 moved to act by a sudden heat of passion caused by provocation

1 recognized by law, and before there had been a reasonable time
2 for the passion to cool and for reason to reassert itself. The
3 burden of injecting the issue of killing under legal
4 provocation is on the defendant, but this does not shift the
5 burden of proof. This subsection does not apply to a
6 prosecution for, or preclude a conviction of, manslaughter or
7 other crime.

8 "(c) Murder is a Class A felony; provided, that the
9 punishment for murder or any offense committed under
10 aggravated circumstances by a person 18 years of age or older,
11 as provided by Article 2 of Chapter 5 of this title, is death
12 or life imprisonment without parole, which punishment shall be
13 determined and fixed as provided by Article 2 of Chapter 5 of
14 this title or any amendments thereto. The punishment for
15 murder or any offense committed under aggravated circumstances
16 by a person under the age of 18 years, as provided by Article
17 2 of Chapter 5, is either life imprisonment without parole, or
18 life imprisonment without the possibility of parole for 40
19 years, which punishment shall be determined and fixed as
20 provided by Article 2 of Chapter 5 of this title or any
21 amendments thereto and the applicable Alabama Rules of
22 Criminal Procedure.

23 Section 2. Section 13A-5-53.1 is added to the Code
24 of Alabama 1975, to read as follows:

25 §13A-5-53.1.

26 (a) The procedures set forth in this title providing
27 that life without the possibility of parole for 40 years is a

1 possible sentence for a person convicted of a capital murder
2 committed before reaching the age of 18 years are intended to
3 apply only to defendants who have not yet been sentenced for
4 capital murder on or after the effective date of this act.

5 (b) Notwithstanding subsection (a), if a court of
6 competent jurisdiction orders that such a defendant is
7 entitled to retroactively seek a lesser sentence than life
8 without parole under the Constitution of Alabama 1901, or the
9 United States Constitution, the provisions set forth in this
10 title, making life without the possibility of parole for at
11 least 40 years an option for a person convicted of a capital
12 murder committed before reaching the age of 18 years, are to
13 be applied to such a defendant.

14 Section 3. Notwithstanding any other provision of
15 law, if a defendant is found guilty of any non-homicide crime
16 for which the only sentence provided by law is life
17 imprisonment without the possibility of parole and that
18 defendant proves by a preponderance of the evidence that he or
19 she was under the age of 18 years at the time of the offense,
20 the sentence shall be life without the possibility of parole
21 for 40 years.

22 Section 4. The provisions of this act are severable.
23 If any part of this act is declared invalid or
24 unconstitutional, that declaration shall not affect the part
25 which remains.

1 Section 5. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 14-FEB-13

Read for the second time and placed on the calen-
dar 1 amendment..... 05-MAR-13

Read for the third time and passed as amended 20-MAR-13

Yeas 26
Nays 3
Abstaining 1

Patrick Harris
Secretary