

1 SB211
2 126811-1
3 By Senators Dunn, Figures, Irons, Beasley, Coleman, Fielding,
4 Ross, Keahey, Smitherman and Singleton
5 RFD: Judiciary
6 First Read: 10-MAR-11

8 SYNOPSIS: Existing law prescribes criminal penalties
9 for any person who willfully violates a protection,
10 restraining, or injunctive order, including a
11 mandatory term of imprisonment of 48 continuous
12 hours for a second offense and 30 days for a third
13 offense. The mandatory term of imprisonment cannot
14 be suspended.

15 This bill would designate the code sections
16 regarding enforcement of a domestic violence
17 protection order as Article 7A of Chapter 6 of
18 Title 13A, Code of Alabama 1975.

19 This bill would increase the mandatory term
20 of imprisonment for a person who willfully violates
21 a domestic violence order to a minimum of 30 days
22 imprisonment that cannot be suspended for a second
23 offense and a minimum of 120 days imprisonment that
24 cannot be suspended for a third offense. This bill
25 would relocate the criminal penalties to Title 13A
26 of the Code of Alabama 1975. This bill would extend
27 these penalties to include violations of domestic

1 violence orders issued by courts of Indian tribes
2 and U.S. territories. This bill would specify that
3 a domestic violence order not issued pursuant to
4 this act specify that a history of violence or
5 abuse exists in order for this act to apply. This
6 bill would also provide that a person arrested for
7 violation of a condition of release could be held
8 without bail pursuant to the Alabama Rules of
9 Criminal Procedure. This bill would also repeal
10 existing law which provides that lack of knowledge
11 of an order is an affirmative defense at a trial
12 for a violation of a domestic violence order under
13 this chapter.

14 Amendment 621 of the Constitution of Alabama
15 of 1901, now appearing as Section 111.05 of the
16 Official Recompilation of the Constitution of
17 Alabama of 1901, as amended, prohibits a general
18 law whose purpose or effect would be to require a
19 new or increased expenditure of local funds from
20 becoming effective with regard to a local
21 governmental entity without enactment by a 2/3 vote
22 unless: it comes within one of a number of
23 specified exceptions; it is approved by the
24 affected entity; or the Legislature appropriates
25 funds, or provides a local source of revenue, to
26 the entity for the purpose.

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

A BILL

TO BE ENTITLED

AN ACT

Relating to domestic orders; to add Article 7A to Chapter 6 of Title 13A, Code of Alabama 1975; to amend and renumber Sections 30-5A-1, 30-5A-2, 30-5A-3, and 30-5A-4, Code of Alabama 1975; to provide for legislative intent; to provide further for criminal penalties for violations of domestic violence orders; to provide for the content of orders not issued pursuant to this act; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 30-5A-1, 30-5A-2, 30-5A-3, and 30-5A-4, Code of Alabama 1975, are amended and renumbered as Article 7A of Chapter 6 of Title 13A, to read as follows:

"Article 7A

~~"§30-5A-1~~ §13A-6-140

"(a) This chapter may be cited article shall be known as the "Family Domestic Violence Protection Order Enforcement Act.""

"(b) The purpose of this ~~chapter~~ article is to provide criminal sanctions for the willful violation of certain protective or restraining orders issued in circuit, district, municipal, or juvenile courts in domestic relations or family violence cases define the crime of violation of a domestic violence order.

"~~S30-5A-2~~ §13A-6-141

"As used in this ~~chapter article~~, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

~~"(1) FAMILY VIOLENCE. The definition provided in Section 15-10-3, in pari materia with the definition provided for "abuse" in Sections 30-5-1 to 30-5-11, inclusive.~~

"(2) JUDGE. The judge presiding in a court having jurisdiction over the defendant for violation of this chapter and shall include a duly appointed magistrate conducting initial appearances pursuant to the Alabama Rules of Criminal Procedure or Juvenile Procedure.

1 "(3) PROTECTION ORDER or RESTRAINING ORDER. Any
2 order of a court of competent jurisdiction, whether or not
3 located in this state, the purpose of which is to prohibit a
4 person from committing any or all of the following acts:
5 harass, annoy, alarm, intimidate, assault, communicate with,
6 or otherwise bother another person. This definition shall
7 include, but not be limited to, protection orders issued
8 pursuant to the Protection From Abuse Act, Sections 30-5-1 to
9 30-5-11, inclusive, and restraining orders or injunctions
10 issued in domestic relations, family violence or juvenile
11 cases in accordance with the Alabama Rules of Civil Procedure
12 or the Alabama Rules of Juvenile Procedure, or both, and other
13 applicable statutes and court rules.

14 "(1) DOMESTIC VIOLENCE ORDER. A domestic violence
15 order is any protection order issued pursuant to the
16 Protection from Abuse Act, Sections 30-5-1 to 30-5-11,
17 inclusive. The term includes the following: a. A restraining
18 order, injunctive order, or order of release from custody
19 which has been issued in a circuit, district, municipal, or
20 juvenile court in a domestic relations or family violence
21 case; b. an order issued by municipal, district, or circuit
22 court which places conditions on the pre-trial release on
23 defendants in criminal cases, including provisions of bail
24 pursuant to Section 15-13-190; c. an order issued by another
25 state or territory which may be enforced under Sections
26 30-5B-1 through 30-5B-10. Restraining or protection orders not
27 issued pursuant to the Protection From Abuse Act, Sections

1 30-5-1 to 30-5-11, inclusive, must specify that a history of
2 violence or abuse exists for the provisions of this chapter to
3 apply.

4 "(2) VIOLATION. The knowing commission of any act
5 prohibited by a domestic violence order or any willful failure
6 to abide by its terms.

7 "S30-5A-3 §13A-16-142

8 "(a) Any proceeding under this chapter shall be in
9 accordance with the Rules of Civil Procedure and shall be in
10 addition to any other civil or criminal penalties provided by
11 law. It is specifically provided that any defendant shall have
12 the same rights, remedies, and due process where any wrongful
13 action is instituted as any defendant in other civil and
14 criminal actions.

15 "(b) Upon violation of a protection order or a court
16 approved consent agreement, the court may hold the defendant
17 or plaintiff as the case may be, in contempt and punish him or
18 her in accordance with the law.

19 "(c)(a)(1) A willful violation of a protection
20 domestic violence order, restraining order or injunctive order
21 issued to bring about a cessation of the abuse of a person and
22 which is issued by a court of competent jurisdiction is a
23 Class A misdemeanor which shall be punishable as provided by
24 law.

25 "(2) The first and any subsequent conviction for a
26 willful violation of a protection order, restraining order or
27 injunctive order issued to bring about a cessation of the

1 abuse of a person is a Class A misdemeanor. A second
2 conviction for violation of a ~~protection~~ domestic violence
3 order, ~~restraining order or injunctive order issued to bring~~
4 ~~about a cessation of the abuse of a person shall, in addition~~
5 to any other penalty or fine, shall be punishable by a minimum
6 of ~~48 hours continuous~~ 30 days imprisonment which may not be
7 suspended. A third or subsequent conviction shall, in addition
8 to any other penalty or fine, be punishable by a minimum
9 sentence of ~~30~~ 120 days imprisonment which may not be
10 suspended.

11 "§30-5A-4 §13A-6-143

12 "A ~~peace~~ law enforcement officer may arrest any
13 person for the violation of this ~~chapter~~ article if the
14 officer has probable cause to believe that the person has
15 violated any provision of a valid ~~protection~~ domestic violence
16 order, whether temporary or permanent, ~~which has been served~~
17 ~~on the person or of which the person has received sufficient~~
18 ~~notice that the protection order has been issued. The~~
19 ~~presentation of a domestic violence order constitutes probable~~
20 ~~cause for an officer to believe that a valid order exists. For~~
21 ~~purposes of this article, the order may be inscribed on a~~
22 ~~tangible copy or may be stored in an electronic or other~~
23 ~~medium if it is retrievable in a detectable form. Presentation~~
24 ~~of a certified copy of the domestic violence order is not~~
25 ~~required for enforcement or to allow a law enforcement officer~~
26 ~~to effect a warrantless arrest. If a domestic violence order~~
27 ~~is not presented to or otherwise confirmed by a law~~

1 enforcement officer, the officer may consider other
2 information in determining whether there is probable cause to
3 believe that a valid domestic violence order exists. The law
4 enforcement officer may arrest the person defendant without a
5 warrant although he or she did not personally see the
6 violation. Knowledge by the officer of the existence or
7 contents of, or both, or presentation to the officer by the
8 complainant of, a protection domestic violence order shall
9 constitute prima facie evidence of the validity of the order.

10 "If a law enforcement officer of this state
11 determines that an otherwise valid domestic violence order
12 cannot be enforced because the defendant has not been notified
13 or served with the domestic violence order, the law
14 enforcement officer shall inform the defendant of the order
15 and allow the person a reasonable opportunity to comply with
16 the order's provisions before enforcing the order. In the
17 event the law enforcement officer provides notice of the
18 domestic violence order to the defendant, the officer shall
19 document this fact in the written report."

20 Section 2. Although this bill would have as its
21 purpose or effect the requirement of a new or increased
22 expenditure of local funds, the bill is excluded from further
23 requirements and application under Amendment 621, now
24 appearing as Section 111.05 of the Official Recompilation of
25 the Constitution of Alabama of 1901, as amended, because the
26 bill defines a new crime or amends the definition of an
27 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.