

1 HB261
2 116092-1
3 By Representatives Hurst and Johnson (R)
4 RFD: Judiciary
5 First Read: 22-MAR-11

8 SYNOPSIS: Under existing law, only certain murders are
9 considered capital offenses for which the defendant
10 may receive the death penalty or life imprisonment
11 without the possibility of parole.

12 This bill would include as a capital offense
13 rape in the first degree, sodomy in the first
14 degree, and sexual torture in the first degree
15 where the defendant is over the age 21 and the
16 victim is less than 6 years of age.

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

1 funds, or provides a local source of revenue, to
2 the entity for the purpose.

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

10
11 A BILL

12 TO BE ENTITLED

13 AN ACT

14
15 To amend Section 13A-5-40, Code of Alabama 1975, to
16 include certain sex crimes as a capital offense where the
17 defendant is over age 21 and the victim is less than 6 years
18 of age; and in connection therewith would have as its purpose
19 or effect the requirement of a new or increased expenditure of
20 local funds within the meaning of Amendment 621 of the
21 Constitution of Alabama of 1901, now appearing as Section
22 111.05 of the Official Recompilation of the Constitution of
23 Alabama of 1901, as amended.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Section 13A-5-40, Code of Alabama 1975,
26 is amended to read as follows:

27 "§13A-5-40.

1 "(a) The following are capital offenses:

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

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

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

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

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

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

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

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

4 "(9) Murder by the defendant during arson in the
5 first or second degree committed by the defendant; or murder
6 by the defendant by means of explosives or explosion.

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

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

14 "(12) Murder by the defendant during the act of
15 unlawfully assuming control of any aircraft by use of threats
16 or force with intent to obtain any valuable consideration for
17 the release of said aircraft or any passenger or crewmen
18 thereon or to direct the route or movement of said aircraft,
19 or otherwise exert control over said aircraft.

20 "(13) Murder by a defendant who has been convicted
21 of any other murder in the 20 years preceding the crime;
22 provided that the murder which constitutes the capital crime
23 shall be murder as defined in subsection (b) of this section;
24 and provided further that the prior murder conviction referred
25 to shall include murder in any degree as defined at the time
26 and place of the prior conviction.

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

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

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

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

15 "(18) Murder committed by or through the use of a
16 deadly weapon fired or otherwise used within or from a
17 vehicle.

18 "(19) A sex offense pursuant to Sections 13A-6-61,
19 13A-6-63, or 13A-6-65.1, when the defendant was 21 years of
20 age or older and the victim was 6 years of age or less at the
21 time the offense was committed.

22 "(b) Except as specifically provided to the contrary
23 in the last part of subdivision (a)(13) of this section, the
24 terms "murder" and "murder by the defendant" as used in this
25 section to define capital offenses mean murder as defined in
26 Section 13A-6-2(a)(1), but not as defined in Section
27 13A-6-2(a)(2) and (3). Subject to the provisions of Section

1 13A-5-41, murder as defined in Section 13A-6-2(a)(2) and (3),
2 as well as murder as defined in Section 13A-6-2(a)(1), may be
3 a lesser included offense of the capital offenses defined in
4 subsection (a) of this section.

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

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

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, now
25 appearing as Section 111.05 of the Official Recompilation of
26 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

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