

1 SB141
2 147133-1
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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8 SYNOPSIS: Under existing law, it is not a capital
9 offense if a defendant murders a person who had a
10 protection order issued against the defendant.

11 This bill would make it a capital offense
12 for a defendant to murder a person who had a
13 protection order issued against the defendant.

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.

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

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9 A BILL
10 TO BE ENTITLED
11 AN ACT

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

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

26 Section 2. Section 13A-5-40 of the Code of Alabama
27 1975, is amended to read as follows:

1 "§13A-5-40.

2 "(a) The following are capital offenses:

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

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

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

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

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

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

25 "(7) Murder done for a pecuniary or other valuable
26 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) Murder by the defendant when the victim had a
19 protection order issued against the defendant.

20 "(b) Except as specifically provided to the contrary
21 in the last part of subdivision (a)(13) of this section, the
22 terms "murder" and "murder by the defendant" as used in this
23 section to define capital offenses mean murder as defined in
24 Section 13A-6-2(a)(1), but not as defined in Section
25 13A-6-2(a)(2) and (3). Subject to the provisions of Section
26 13A-5-41, murder as defined in Section 13A-6-2(a)(2) and (3),
27 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.