

1 SB218
2 148791-1
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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8 SYNOPSIS: Under existing law, a person convicted of
9 capital murder is sentenced to either the term of
10 life without the possibility of parole or death. A
11 person also must be sentenced to a minimum term of
12 life without the possibility of parole for certain
13 non-homicide offenses.

14 This bill would provide that a person under
15 the age of 18 years at the time of the offense
16 convicted of a capital offense or certain
17 non-capital offenses punishable by a mandatory life
18 sentence without the possibility of parole, may, in
19 the alternative, be sentenced to life imprisonment
20 without the possibility of parole for 40 years, in
21 order to comply with recent United States Supreme
22 Court decisions in Miller v. Alabama and Graham v.
23 Florida.

24 This bill also would provide that the
25 juvenile defendant subject to this alternative
26 sentence is eligible to apply for parole
27 consideration only once, 40 years after the date

1 the defendant began serving the sentence. If parole
2 is denied at that time, the defendant will not be
3 eligible for parole again, and the defendant is not
4 eligible for any incentive time deductions under
5 current law. The bill would provide that in capital
6 murder cases, the procedures of this act would
7 apply to defendants who have not yet been sentenced
8 for capital murder on or after the effective date
9 of the act, with certain exceptions.

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11 A BILL
12 TO BE ENTITLED
13 AN ACT

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15 To amend Sections 13A-5-2, 13A-5-39, 13A-5-43, and
16 13A-6-2, Code of Alabama 1975, relating to capital offenses,
17 to provide that a person convicted of a capital offense
18 committed when under the age of 18 years may, in the
19 alternative, be sentenced to life imprisonment without the
20 possibility of parole for 40 years; to provide generally that
21 a person convicted of a non-homicide crime committed when
22 under the age of 18 years is subject to a maximum sentence of
23 life imprisonment without the possibility of parole for 40
24 years, rather than life imprisonment without parole; to
25 provide a burden of proof; to further provide for definitions;
26 and to add Section 13A-5-53.1 to the Code of Alabama 1975, to
27 specify that in capital murder cases, the provisions of the

1 act apply to defendants who have not yet been sentenced for
2 capital murder on or after the effective date of the act; and
3 to provide exceptions.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 "§13A-5-2.

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

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

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

16 "(1) Imprisonment for a term authorized by Section
17 13A-5-7; or

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

19 "(3) Both such imprisonment and fine.

20 "(d) Every person convicted of a felony,
21 misdemeanor, or violation, except for the commission of a
22 criminal sex offense involving a child as defined in Section
23 15-20-21(5), may be placed on probation as authorized by law.

24 "(e) This article does not deprive a court of
25 authority conferred by law to forfeit property, dissolve a
26 corporation, suspend or cancel a license or permit, remove a
27 person from office, cite for contempt, or impose any other

1 lawful civil penalty. Such a judgment, order, or decree may be
2 included as part of the sentence.

3 "(f) Every person convicted of murder shall be
4 sentenced by the court to imprisonment for a term, or to
5 death, ~~or to~~ life imprisonment without parole, or life
6 imprisonment without the possibility of parole for 40 years,
7 as authorized by subsection (c) of Section 13A-6-2.

8 "§13A-5-39.

9 "As used in this article, these terms shall be
10 defined as follows:

11 "(1) CAPITAL OFFENSE. An offense for which a
12 defendant shall be punished by a sentence of death or life
13 imprisonment without parole, or in the case of a defendant who
14 establishes that he or she was under the age of 18 years at
15 the time of the capital offense, life imprisonment without the
16 possibility of parole for 40 years, according to the
17 provisions of this article.

18 "(2) DURING. The term as used in Section 13A-5-40(a)
19 means in the course of or in connection with the commission
20 of, or in immediate flight from the commission of the
21 underlying felony or attempt thereof.

22 "(3) EXPLOSIVES and EXPLOSION. The terms shall have
23 the meanings provided in Section 13A-7-40(2) and (3).

24 "(4) BURDEN OF INTERJECTING THE ISSUE. Shall be
25 defined as provided in Section 13A-1-2(14).

26 "(5) MURDER and MURDER BY THE DEFENDANT. Shall be
27 defined as provided in Section 13A-5-40(b).

1 "(6) PREVIOUSLY CONVICTED and PRIOR CRIMINAL
2 ACTIVITY. As used in Sections 13A-5-49(2) and 13A-5-51(1),
3 these terms refer to events occurring before the date of the
4 sentence hearing.

5 "(7) UNDER SENTENCE OF IMPRISONMENT. As used in
6 Section 13A-5-49(1), the term means while serving a term of
7 imprisonment, while under a suspended sentence, while on
8 probation or parole, or while on work release, furlough,
9 escape, or any other type of release or freedom while or after
10 serving a term of imprisonment, other than unconditional
11 release and freedom after expiration of the term of sentence.

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

20 "§13A-5-43.

21 "(a) In the trial of a capital offense the jury
22 shall first hear all the admissible evidence offered on the
23 charge or charges against the defendant. It shall then
24 determine whether the defendant is guilty of the capital
25 offense or offenses with which he is charged or of any lesser
26 included offense or offenses considered pursuant to Section
27 13A-5-41.

1 "(b) If the defendant is found not guilty of the
2 capital offense or offenses with which he is charged, and not
3 guilty of any lesser included offense or offenses considered
4 pursuant to Section 13A-5-41, the defendant shall be
5 discharged.

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

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

18 "(e) If the defendant is found guilty of a capital
19 offense or offenses with which he or she is charged and the
20 defendant establishes to the court by a preponderance of the
21 evidence that he or she was under the age of 18 years at the
22 time of the capital offense or offenses, the sentence shall be
23 either life without the possibility of parole or, in the
24 alternative, life without the possibility of parole for 40
25 years, and the sentence shall be determined by the procedures
26 set forth in the Alabama Rules of Criminal Procedure for
27 judicially imposing sentences within the range set by statute

1 without a jury, rather than as provided in Sections 13A-5-45
2 to 13A-5-53, inclusive.

3 "§13A-6-2.

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

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

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

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

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

1 "(b) A person does not commit murder under
2 subdivisions (a)(1) or (a)(2) of this section if he or she was
3 moved to act by a sudden heat of passion caused by provocation
4 recognized by law, and before there had been a reasonable time
5 for the passion to cool and for reason to reassert itself. The
6 burden of injecting the issue of killing under legal
7 provocation is on the defendant, but this does not shift the
8 burden of proof. This subsection does not apply to a
9 prosecution for, or preclude a conviction of, manslaughter or
10 other crime.

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

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

1 §13A-5-53.1.

2 (a) The procedures set forth in this title providing
3 that life without the possibility of parole for 40 years is a
4 possible sentence for a person convicted of a capital murder
5 committed before reaching the age of 18 years are intended to
6 apply only to defendants who have not yet been sentenced for
7 capital murder on or after the effective date of this act.

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

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

25 Section 4. The provisions of this act are severable.
26 If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part
2 which remains.

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