

1 HB59
2 196448-3
3 By Representative Sells
4 RFD: Judiciary
5 First Read: 05-MAR-19
6 PFD: 03/04/2019

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8 SYNOPSIS: Under existing law, the murder of a first
9 responder is not a capital offense.

10 This bill would provide that the murder of a
11 first responder would be a capital offense.

12 Under existing law, there are certain
13 aggravating circumstances listed for capital
14 offenses.

15 This bill would include as an aggravating
16 circumstance a victim of a capital offense who was
17 a law enforcement officer, a prison or jail guard,
18 or a first responder.

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

1 specified exceptions; it is approved by the
2 affected entity; or the Legislature appropriates
3 funds, or provides a local source of revenue, to
4 the entity for the purpose.

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

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 To amend Sections 13A-5-40 and 13A-5-49, Code of
18 Alabama 1975, as amended by Act 2018-537, 2018 Regular
19 Session, relating to capital offenses; to provide that murder
20 of a first responder would be a capital offense; to include
21 within the aggravating circumstances to be considered in
22 sentencing for a capital offense circumstances when the victim
23 was a law enforcement officer, a prison or jail guard, or
24 first responder; and in connection therewith would have as its
25 purpose or effect the requirement of a new or increased
26 expenditure of local funds within the meaning of Amendment 621
27 of the Constitution of Alabama of 1901, now appearing as

1 Section 111.05 of the Official ReCompilation of the
2 Constitution of Alabama of 1901, as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 13A-5-40 and 13A-5-49, as
5 amended by Act 2018-537, 2018 Regular Session, Code of Alabama
6 1975, are amended to read as follows:

7 "§13A-5-40.

8 "(a) The following are capital offenses:

9 "(1) Murder by the defendant during a kidnapping in
10 the first degree or an attempt thereof committed by the
11 defendant.

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

14 "(3) Murder by the defendant during a rape in the
15 first or second degree or an attempt thereof committed by the
16 defendant; or murder by the defendant during sodomy in the
17 first or second degree or an attempt thereof committed by the
18 defendant.

19 "(4) Murder by the defendant during a burglary in
20 the first or second degree or an attempt thereof committed by
21 the defendant.

22 "(5) Murder of any police officer, sheriff, deputy,
23 state trooper, federal law enforcement officer, or any other
24 state or federal peace officer of any kind, or prison or jail
25 guard, while ~~such~~ the officer or guard is on duty, regardless
26 of whether the defendant knew or should have known the victim
27 was an officer or guard on duty, or because of some official

1 or job-related act or performance of ~~such~~ the officer or
2 guard.

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

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

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

10 "(9) Murder by the defendant during arson in the
11 first or second degree committed by the defendant; or murder
12 by the defendant by means of explosives or explosion.

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

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

20 "(12) Murder by the defendant during the act of
21 unlawfully assuming control of any aircraft by use of threats
22 or force with intent to obtain any valuable consideration for
23 the release of ~~said~~ the aircraft or any passenger or crewmen
24 thereon, or to direct the route or movement of ~~said~~ the
25 aircraft, or otherwise exert control over ~~said~~ the aircraft.

26 "(13) Murder by a defendant who has been convicted
27 of any other murder in the 20 years preceding the crime;

1 provided that the murder which constitutes the capital crime
2 shall be murder as defined in subsection (b) of this section;
3 and provided further that the prior murder conviction referred
4 to shall include murder in any degree as defined at the time
5 and place of the prior conviction.

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

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

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

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

20 "(18) Murder committed by or through the use of a
21 deadly weapon fired or otherwise used within or from a
22 vehicle.

23 "(19) Murder by the defendant where a court had
24 issued a protective order for the victim, against the
25 defendant, pursuant to Section 30-5-1 et seq., or the
26 protective order was issued as a condition of the defendant's
27 pretrial release.

1 "(20) Murder by the defendant in the presence of a
2 child under the age of 14 years at the time of the offense, if
3 the victim was the parent or legal guardian of the child. For
4 purposes of this subsection, "in the presence of a child"
5 means in the physical presence of a child or having knowledge
6 that a child is present and may see or hear the act.

7 "(21) Murder when the victim is a first responder
8 who is operating in an official capacity. For the purposes of
9 this subdivision, "first responder" includes emergency medical
10 services personnel licensed by the Alabama Department of
11 Public Health and firefighters and volunteer firefighters as
12 defined by Section 36-32-1.

13 "(b) Except as specifically provided to the contrary
14 in the last part of subdivision (a)(13) of this section, the
15 terms "murder" and "murder by the defendant" as used in this
16 section to define capital offenses mean murder as defined in
17 Section 13A-6-2(a)(1), but not as defined in Section
18 13A-6-2(a)(2) and (3). Subject to the provisions of Section
19 13A-5-41, murder as defined in Section 13A-6-2(a)(2) and (3),
20 as well as murder as defined in Section 13A-6-2(a)(1), may be
21 a lesser included offense of the capital offenses defined in
22 subsection (a) of this section.

23 "(c) A defendant who does not personally commit the
24 act of killing which constitutes the murder is not guilty of a
25 capital offense defined in subsection (a) of this section
26 unless that defendant is legally accountable for the murder
27 because of complicity in the murder itself under the

1 provisions of Section 13A-2-23, in addition to being guilty of
2 the other elements of the capital offense as defined in
3 subsection (a) of this section.

4 "(d) To the extent that a crime other than murder is
5 an element of a capital offense defined in subsection (a) of
6 this section, a defendant's guilt of that other crime may also
7 be established under Section 13A-2-23. When the defendant's
8 guilt of that other crime is established under Section
9 13A-2-23, that crime shall be deemed to have been "committed
10 by the defendant" within the meaning of that phrase as it is
11 used in subsection (a) of this section.

12 "§13A-5-49.

13 "Aggravating circumstances shall be any of the
14 following:

15 "(1) The capital offense was committed by a person
16 under sentence of imprisonment7.

17 "(2) The defendant was previously convicted of
18 another capital offense or a felony involving the use or
19 threat of violence to the person7.

20 "(3) The defendant knowingly created a great risk of
21 death to many persons7.

22 "(4) The capital offense was committed while the
23 defendant was engaged or was an accomplice in the commission
24 of, or an attempt to commit, or flight after committing, or
25 attempting to commit, rape, robbery, burglary or kidnapping7.

1 "(5) The capital offense was committed for the
2 purpose of avoiding or preventing a lawful arrest or effecting
3 an escape from custody~~7~~ .

4 "(6) The capital offense was committed for pecuniary
5 gain~~7~~ .

6 "(7) The capital offense was committed to disrupt or
7 hinder the lawful exercise of any governmental function or the
8 enforcement of laws~~7~~ .

9 "(8) The capital offense was especially heinous,
10 atrocious, or cruel compared to other capital offenses~~7~~ .

11 "(9) The defendant intentionally caused the death of
12 two or more persons by one act or pursuant to one scheme or
13 course of conduct~~7~~ .

14 "(10) The capital offense was one of a series of
15 intentional killings committed by the defendant~~7~~ .

16 "(11) The capital offense was committed when the
17 victim was less than 14 years of age~~7~~ ~~or~~ .

18 "(12) The capital offense was committed by the
19 defendant in the presence of a child under the age of 14 years
20 at the time of the offense, if the victim was the parent or
21 legal guardian of the child. For the purposes of this
22 subdivision, "in the presence of a child" means in the
23 physical presence of a child or having knowledge that a child
24 is present and may see or hear the act.

25 "(13) The victim of the capital offense was any
26 police officer, sheriff, deputy, state trooper, federal law
27 enforcement officer, or any other state or federal peace

1 officer of any kind, or prison or jail guard, while the
2 officer or guard was on duty, regardless of whether the
3 defendant knew or should have known the victim was an officer
4 or guard on duty, or because of some official or job-related
5 act or performance of the officer or guard.

6 "(14) The victim of the capital offense was a first
7 responder who was operating in an official capacity. For the
8 purposes of this subdivision, "first responder" includes
9 emergency medical services personnel licensed by the Alabama
10 Department of Public Health, as well as firefighters and
11 volunteer firefighters as defined by Section 36-32-1."

12 Section 2. Although this bill would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds, the bill is excluded from further
15 requirements and application under Amendment 621, now
16 appearing as Section 111.05 of the Official Recompilation of
17 the Constitution of Alabama of 1901, as amended, because the
18 bill defines a new crime or amends the definition of an
19 existing crime.

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