HB2

214109-1

By Representative Treadaway

RFD: Judiciary

First Read: 11-JAN-22

PFD: 06/28/2021
SYNOPSIS: Under existing law, the crime of assault in the second degree is committed when a person, with an intent to prevent a peace officer, detention or correctional officer, emergency medical personnel, or firefighter from performing a lawful duty, intends to cause physical injury and causes physical injury to any person.

This bill would establish the crimes of assault against a first responder in the first and second degrees and would also further provide for the crime of assault in the second degree to reflect the creation of the crimes of assault against a first responder in the first and second degrees.

This bill would amend the crimes of riot and inciting to riot and would establish the crimes of aggravated riot and unlawful traffic interference. This bill would include a mandatory period of incarceration to serve that is not subject to probation or parole.
Under existing law, a person arrested for a crime of domestic violence or elder abuse is required to be held in custody until brought before the court within 48 hours for the purpose of consideration of bail.

This bill would also provide that if a person is arrested for committing a crime of assault against a first responder, riot, inciting to riot, aggravated riot, or unlawful traffic interference, the person would be required to be held in custody until brought before the court within 24 hours for the purpose of consideration of bail, or if not brought before the court within 24 hours, would be subject to bail according to the Alabama Rules of Criminal Procedure.

Under existing law, local law enforcement agencies are primarily funded by the political subdivisions of the state that the agencies serve.

This bill would also provide that if a political subdivision of the state dissolves or defunds a local law enforcement agency, the political subdivision may not receive any state grant or aid money and may not receive any allocation of any state revenues directly shared with local governments that is not otherwise required by the Constitution of Alabama of 1901,
until the local law enforcement agency is fully restored and funded, with exceptions.

Amendment 621 of the Constitution of Alabama of 1901, as amended by Amendment 890, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to 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 crimes and offenses; to create the Anti-Aggravated Riot Act; to amend Sections 13A-6-21, 13A-11-1, 13A-11-3, 13A-11-4, and 15-10-3, Code of Alabama 1975, and to add Sections 13A-11-3.1 and 13A-11-5.1 to the Code of Alabama 1975, to create the crimes of assault against a first responder in the first and second degrees; to further provide for the crimes of riot and inciting to riot; to create the crime of aggravated riot; to provide further for the crime of assault in the second degree; to create the crime of unlawful traffic interference; to further provide for penalties for certain violations; to further provide for the arrest, release, and bail of certain offenders; to provide restrictions on the issuance of certain state funds to a political subdivision that abolishes or reduces funding to a local law enforcement agency under certain conditions; 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, as amended by Amendment 890, 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. This act shall be known and may be cited as the Anti-Aggravated Riot Act.

Section 2. (a) As used in this section, the term first responder includes state, local, and tribal law enforcement officers; dogs or horses employed by a law
enforcement agency for the principal purpose of aiding in the
detection of criminal activity, enforcement of laws, or
apprehension of criminal offenders; detention and correctional
officers at any municipal or county jail or state
penitentiary; fire department and voluntary fire department
personnel; and emergency medical personnel who are actively
employed or on active volunteer status.

(b) A person commits the crime of assault against a
first responder in the first degree when the person
intentionally does any of the following to a first responder
who is engaged in the performance of his or her official
duties:

(1) Causes serious physical injury to the first
responder.

(2) Causes physical injury by deadly weapon or
dangerous instrument to the first responder.

(3) Causes physical injury to the first responder by
strangulation or suffocation, or an attempt thereof.

(4) Causes physical injury to the first responder
during a riot, aggravated riot, or unlawful assembly.

(5) Causes or attempts to cause a first responder to
come into contact with bodily fluids, unless the first
responder consented to the contact or the contact was
necessary to provide medical care. For purposes of this
subdivision, "bodily fluids" has the same meaning as defined
(c) Assault against a first responder in the first degree is a Class B felony. The defendant shall serve a minimum term of imprisonment of six months without consideration of probation, parole, good time credits, or any other reduction in time.

(d) In addition to any fine, the defendant shall pay restitution, including, but not limited to, all of the following:

(1) The costs of any and all medical treatment by any victim of the violation, including physical and occupational therapy and rehabilitation.

(2) The cost of any damage to property, or full value of property if destroyed or damaged beyond repair.

(3) The cost of any and all other losses suffered by any victim as a result of a violation of this section.

Section 3. (a) As used in this section, the term first responder includes state, local, and tribal law enforcement officers; dogs or horses employed by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of criminal offenders; detention and correctional officers at any municipal or county jail or state penitentiary; fire department and voluntary fire department personnel; and emergency medical personnel who are actively employed or on active volunteer status.

(b) A person commits the crime of assault against a first responder in the second degree when the person
intentionally causes physical injury to a first responder who is engaged in the performance of his or her official duties.

(c) Assault against a first responder in the second degree is a Class C felony. The defendant shall serve a minimum term of imprisonment of three months without consideration of probation, parole, good time credits, or any other reduction in time.

(d) In addition to any fine, the defendant shall pay restitution, including, but not limited to, all of the following:

(1) The costs of any and all medical treatment of or for any victim of the violation, including physical and occupational therapy and rehabilitation.

(2) The cost of any damage to property, or full value of property if destroyed or damaged beyond repair.

(3) The cost of any and all other losses suffered by any victim as a result of a violation of this section.

Section 4. Section 13A-6-21, Code of Alabama 1975, is amended to read as follows:

"§13A-6-21.

"(a) A person commits the crime of assault in the second degree if the person does any of the following:

"(1) With intent to cause serious physical injury to another person, he or she causes serious physical injury to any person."
"(2) With intent to cause physical injury to another person, he or she causes physical injury to any person by means of a deadly weapon or a dangerous instrument.

"(3) He or she recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument.

"(4) With intent to prevent a peace officer, as defined in Section 36-21-60, a detention or correctional officer at any municipal or county jail or state penitentiary, emergency medical personnel, cause physical injury to a utility worker, or a firefighter from performing a lawful duty, he or she intends to cause physical injury and he or she causes physical injury to any person. For the purpose of this subdivision, a person who is a peace officer who is employed or under contract while off duty by a private or public entity is a peace officer performing a lawful duty when the person is working in his or her approved uniform while off duty with the approval of his or her employing law enforcement agency. Provided, however, that nothing contained herein shall be deemed or construed as amending, modifying, or extending the classification of a peace officer as off duty for workers compensation purposes or any other benefits to which a peace officer may otherwise be entitled to under law when considered on duty. Additionally, nothing contained herein shall be deemed or construed as amending, modifying, or extending the tort liability of any municipality as a result of any action or inaction on the part of an off duty police officer. For the
purposes of this subdivision, utility worker means any person
who is employed by an entity that owns, operates, leases, or
controls any plant, property, or facility for the generation,
transmission, manufacture, production, supply, distribution,
sale, storage, conveyance, delivery, or furnishing to or for
the public of electricity, natural or manufactured gas, water,
steam, sewage, or telephone service, including two or more
utilities rendering joint service.

"(5) With intent to cause physical injury to a
teacher or to an employee of a public educational institution
during or as a result of the performance of his or her duty,
he or she causes physical injury to any person.

"(6) With intent to cause physical injury to a
health care worker, including a nurse, physician, technician,
or any other person employed by or practicing at a hospital as
defined in Section 22-21-20; a county or district health
department; a long-term care facility; or a physician's
office, clinic, or outpatient treatment facility during the
course of or as a result of the performance of the duties of
the health care worker or other person employed by or
practicing at the hospital; the county or district health
department; any health care facility owned or operated by the
State of Alabama; the long-term care facility; or the
physician's office, clinic, or outpatient treatment facility;
he or she causes physical injury to any person. This
subdivision shall not apply to assaults by patients who are
impaired by medication or to assaults on home health care workers while they are in private residences.

"(7) For a purpose other than lawful medical or therapeutic treatment, he or she intentionally causes stupor, unconsciousness, or other physical or mental impairment, or injury to another person by administering to him or her, without his or her consent, a drug, substance, or preparation capable of producing the intended harm.

"(b) Assault in the second degree is a Class C felony.

"(c) For the purposes of this section, utility worker means any person who is employed by an entity that owns, operates, leases, or controls any plant, property, or facility for the generation, transmission, manufacture, production, supply, distribution, sale, storage, conveyance, delivery, or furnishing to or for the public of electricity, natural or manufactured gas, water, steam, sewage, or telephone service, including two or more utilities rendering joint service.

Section 5. Sections 13A-11-1, 13A-11-3, and 13A-11-4, Code of Alabama 1975, are amended to read as follows:

"§13A-11-1.

"The following definitions apply in this article:

"(1) OBSTRUCT. To "obstruct" means to render impassable without unreasonable inconvenience or hazard. A
gathering of persons to hear a person speak or otherwise communicate does not constitute an obstruction.

"(2) PUBLIC PLACE. A place to which the public or a substantial group of persons has access, and includes highways, transportation facilities, schools, places of amusement, parks, playgrounds and hallways, lobbies and other portions of apartment houses not constituting rooms or apartments designed for actual residence; provided, that no private dwelling and no place engaged for a private gathering is included within the meaning of public place with respect to any person specifically invited therein.

"(3) RIOT. The assemblage of five or more persons resulting in conduct which creates an immediate danger of damage to property or injury to persons.

"(3) (4) TRANSPORTATION FACILITY. Any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, railroad, motor vehicle, or any other method. It includes aircraft, water craft, railroad cars, buses and air, boat, railroad and bus terminals and stations, and all appurtenances thereto.

§13A-11-3.

"(a) A person commits the crime of riot if, with five or more other persons, he wrongfully engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of public terror or alarm after receiving an order to disperse by a law enforcement officer.
enforcement officer or when in violation of a curfew, the person intentionally participates in a riot.

"(b) Riot is a Class A misdemeanor. On conviction, the defendant shall serve a minimum term of imprisonment of 30 days without consideration of probation, parole, good time credits, or any other reduction in time.

"(c) In addition to any fine, the defendant shall pay restitution, including, but not limited to, all of the following:

"(1) The costs of any and all medical treatment by any victim of the violation, including physical and occupational therapy and rehabilitation.

"(2) The cost of any damage to property, or full value of property if destroyed or damaged beyond repair.

"(3) The cost of any and all other losses suffered by any victim as a result of a violation of this section.

"§13A-11-4.

"(a) A person commits the crime of inciting to riot if he or she commands, solicits, incites, funds, or urges, or otherwise aids or abets another person to engage in tumultuous and violent conduct of a kind likely to cause or create a grave risk of public terror or alarm a riot or aggravated riot.

"(b) Inciting to riot is a Class A misdemeanor. On conviction, the defendant shall serve a minimum term of imprisonment of 30 days without consideration of probation, parole, good time credits, or any other reduction in time.
"(c) In addition to any fine, the defendant shall pay restitution, including, but not limited to, all of the following:

"(1) The costs of any and all medical treatment of or for any victim of the violation, including physical and occupational therapy and rehabilitation.

"(2) The cost of any damage to property, or full value of property if destroyed or damaged beyond repair.

"(3) The cost of any and all other losses suffered by any victim as a result of a violation of this section."

Section 6. Sections 13A-11-3.1 and 13A-11-5.1 are added to Article 1 of Chapter 11 of Title 13A of the Code of Alabama 1975, to read as follows:

§13A-11-3.1.

(a) A person commits the crime of aggravated riot if, after receiving an order to disperse by a law enforcement officer or when in violation of a curfew, the person intentionally participates in a riot, the participants of which collectively cause damage to property in an amount which exceeds two thousand five hundred dollars ($2,500) or cause physical injury to any one or more persons.

(b) Aggravated riot is a Class C felony. On conviction, the defendant shall serve a minimum term of imprisonment of three months without consideration of probation, parole, good time credits, or any other reduction in time.
(c) In addition to any fine, the defendant shall pay restitution, including, but not limited to, all of the following:

(1) The costs of any and all medical treatment by any victim of the violation, including physical and occupational therapy and rehabilitation.

(2) The cost of any damage to property, or full value of property if destroyed or damaged beyond repair.

(3) The cost of any and all other losses suffered by any victim as a result of a violation of this section.

§13A-11-5.1.

(a)(1) A person commits the crime of unlawful traffic interference if the person intentionally or recklessly impedes vehicular traffic by walking, standing, sitting, kneeling, lying, or placing an object in such a manner as to block passage of a vehicle on a public highway or interstate highway.

(2) This section does not apply to any of the following:

a. A person who, by permit or otherwise, has permission to operate in the public roadway from an appropriate government authority, including a law enforcement officer.

b. A person who operates in the roadway to direct traffic away from a hazardous road condition, an obstacle, or the scene of an accident.
(b)(1) Except as provided in subdivision (2), unlawful traffic interference is a Class A misdemeanor.

(2) On a second or subsequent violation under subdivision (1), or if a violation of this section resulted in physical injury or damage to property, the person is guilty of a Class C felony.

(c) A defendant convicted of violating this section shall serve a minimum term of imprisonment of 30 days without consideration of probation, parole, good time credits, or any other reduction in time.

(d) In addition to any fine, the defendant shall pay restitution, including, but not limited to, all of the following:

(1) The costs of any and all medical treatment of or for any victim of the violation, including physical and occupational therapy and rehabilitation.

(2) The cost of any damage to property, or full value of property if destroyed or damaged beyond repair.

(3) The cost of any and all other losses suffered by any victim as a result of a violation of this section.

Section 7. Section 15-10-3, Code of Alabama 1975, is amended to read as follows:

"§15-10-3.

"(a) An officer may arrest a person without a warrant, on any day and at any time in any of the following instances:
"(1) If a public offense has been committed or a breach of the peace threatened in the presence of the officer.

"(2) When a felony has been committed, though not in the presence of the officer, by the person arrested.

"(3) When a felony has been committed and the officer has probable cause to believe that the person arrested committed the felony.

"(4) When the officer has probable cause to believe that the person arrested has committed a felony, although it may afterwards appear that a felony had not in fact been committed.

"(5) When a charge has been made, upon probable cause, that the person arrested has committed a felony.

"(6) When the officer has actual knowledge that a warrant for the person's arrest for the commission of a felony or misdemeanor has been issued, provided the warrant was issued in accordance with this chapter. However, upon request the officer shall show the warrant to the arrested person as soon as possible. If the officer does not have the warrant in his or her possession at the time of arrest the officer shall inform the defendant of the offense charged and of the fact that a warrant has been issued.

"(7) When the officer has probable cause to believe that a felony or misdemeanor has been committed by the person arrested in violation of a protection order, including a domestic violence protection order or an elder abuse protection order, issued by a court of competent jurisdiction.
“(8) When an offense involves a crime of domestic violence, including domestic violence in the first degree, pursuant to Section 13A-6-130, domestic violence in the second degree, pursuant to Section 13A-6-131, domestic violence in the third degree, pursuant to Section 13A-6-132, interference with a domestic violence emergency call, in violation of Section 13A-6-137, or domestic violence by strangulation or suffocation, pursuant to Section 13A-6-138, in violation of a domestic violence protection order, pursuant to Section 13A-6-142, or the offense involves the crime of elder abuse defined in Section 38-9F-3, including elder abuse in the first degree pursuant to Section 13A-6-192, elder abuse in the second degree pursuant to Section 13A-6-193, or elder abuse in the third degree pursuant to Section 13A-6-194, in violation of an elder abuse protection order pursuant to Section 38-9F-3, and the arrest is based on probable cause.

“(9) When an offense involves assault against a first responder in the first degree, as provided under Section 2 of the act adding this amendatory language; assault against a first responder in the second degree, as provided under Section 3 of the act adding this amendatory language; riot, as provided under Section 13A-11-3; inciting to riot, as provided under Section 13A-11-4; aggravated riot, as provided under Section 13A-11-3.1; or unlawful traffic interference, as provided under Section 13A-11-5.1.

“(b) When a law enforcement officer investigates an allegation of domestic violence or elder abuse, whether or not
an arrest is made, the officer shall make a written report of
the alleged incident, including a statement of the complaint,
and the disposition of the case.

"(c) If the defendant is arrested under this section
for committing an act of domestic violence, including domestic
violence in the first degree, pursuant to Section 13A-6-130,
domestic violence in the second degree, pursuant to Section
13A-6-131, domestic violence in the third degree, pursuant to
Section 13A-6-132, interference with a domestic violence
emergency call, in violation of Section 13A-6-137, or domestic
violence by strangulation or suffocation, pursuant to Section
13A-6-138, in violation of a domestic violence protection
order, pursuant to Section 13A-6-142, or an act of elder
abuse, including elder abuse in the first degree pursuant to
Section 13A-6-192, elder abuse in the second degree pursuant
to Section 13A-6-193, or elder abuse in the third degree
pursuant to Section 13A-6-194, in violation of an elder abuse
protection order pursuant to Section 38-9F-3, the defendant
shall be held in custody until brought before the court within
48 hours for the purpose of enforcing the protection order and
for consideration of bail in accordance with Section 15-13-190
and the applicable rules of criminal procedure, pending a
hearing. If the defendant is not brought before the court
within 48 hours, the defendant shall be subject to bail
according to the Alabama Rules of Criminal Procedure.

"(d) If the defendant is arrested for committing an
act of assault against a first responder in the first degree
as provided under Section 2 of the act adding this amendatory language; assault against a first responder in the second
degree, as provided under Section 3 of the act adding this amendatory language; riot, as provided under Section 13A-11-3;
inciting to riot, as provided under Section 13A-11-4; aggravated riot, as provided under Section 13A-11-3.1; or unlawful traffic interference, as provided under Section 13A-11-5.1; the defendant shall be held in custody until
brought before the court within 24 hours for consideration of bail in accordance with Section 15-13-190 and the applicable rules of criminal procedure, pending a hearing. If the defendant is not brought before the court within 24 hours, the defendant shall be subject to bail according to the Alabama Rules of Criminal Procedure."

Section 8. (a)(1) As used in this section, the term defunded jurisdiction means a political subdivision of the state that is certified by the Attorney General as having abolished or disbanded, or substantially abolished or disbanded, the law enforcement agency of the political subdivision without an intention to immediately reconstitute the agency.

(2) A rebuttable presumption arises that a political subdivision has substantially abolished or disbanded the law enforcement agency of the political subdivision if the political subdivision reduces by 50 percent or more the budget of the law enforcement agency of the political subdivision.
without reallocating a substantial majority of that money to another community policing program.

(3) A political subdivision may rebut the presumption by proving by clear and convincing evidence that the budget reduction was a fiscally appropriate decision as a result of a decrease in revenues in the previous fiscal year, or by proving that, the budget reduction notwithstanding, the law enforcement agency of the political subdivision is sufficiently funded to provide law enforcement services to the political subdivision.

(b) A defunded jurisdiction is not eligible for and may not receive any of the following:

(1) A state grant, gift, endowment, or any other sum of money or aid from the State of Alabama or a department, board, or agency thereof.

(2) Any allocation of state revenues directly shared with local governing bodies not otherwise guaranteed by the Constitution of Alabama of 1901, including, but not limited to, revenue from the Rebuild Alabama Act, Act 2019-2, 2019 1st Special Session; and the net profits derived from the proceeds of the Alabama liquor stores as provided under Section 28-3-74, Code of Alabama 1975.

(c) Upon certification by the Attorney General that a political subdivision of the state is a defunded jurisdiction, the state Comptroller shall withhold the distribution of the revenue described under subsection (b) to which the defunded jurisdiction would otherwise be entitled.
into a special fund within the State Treasury until the
Attorney General certifies that the political subdivision has
restored funding to the political subdivision's law
enforcement agency.

(d) This section does not apply to a political
subdivision of the state which, as of the effective date of
this act, employs less than 20 full-time law enforcement
officers.

Section 9. Although this bill would have as its
purpose or effect the requirement of a new or increased
expenditure of local funds, the bill is excluded from further
requirements and application under Amendment 621, as amended
by Amendment 890, now appearing as Section 111.05 of the
Official Recompilation of the Constitution of Alabama of 1901,
as amended, because the bill defines a new crime or amends the
definition of an existing crime.

Section 10. This act shall become effective on the
first day of the third month following its passage and
approval by the Governor, or its otherwise becoming law.