

1 HB208
2 215935-1
3 By Representative Wilcox
4 RFD: Judiciary
5 First Read: 02-FEB-22

8 SYNOPSIS: Under existing law, menacing is a Class B
9 misdemeanor.

10 This bill would create the crime of
11 aggravated menacing and establish penalties for
12 violations.

13 This bill would provide that menacing is a
14 Class A misdemeanor and that aggravated menacing is
15 a Class C felony.

16 This bill would add the crime of aggravated
17 menacing to domestic violence in the second degree.

18 This bill would also add the crime of
19 aggravated menacing to the list of violent offenses
20 in Section 12-25-32.

21 Amendment 621 of the Constitution of Alabama
22 of 1901, as amended by Amendment 890, now appearing
23 as Section 111.05 of the Official ReCompilation of
24 the Constitution of Alabama of 1901, prohibits a
25 general law whose purpose or effect would be to
26 require a new or increased expenditure of local
27 funds from becoming effective with regard to a

1 local governmental entity without enactment by a
2 2/3 vote unless: it comes within one of a number of
3 specified exceptions; it is approved by the
4 affected entity; or the Legislature appropriates
5 funds, or provides a local source of revenue, to
6 the entity for the purpose.

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

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 Relating to crimes and offenses; to amend Sections
20 13A-6-23, 13A-6-131, and 12-25-32, Code of Alabama 1975, to
21 further provide for menacing; to further provide for the crime
22 of domestic violence in the second degree; and to further
23 provide that aggravated menacing is a violent offense; to add
24 Section 13A-6-23.1 to the Code of Alabama 1975, to create the
25 crime of aggravated menacing and to establish penalties for
26 violations; and in connection therewith would have as its
27 purpose or effect the requirement of a new or increased

1 expenditure of local funds within the meaning of Amendment 621
2 of the Constitution of Alabama of 1901, as amended by
3 Amendment 890, now appearing as Section 111.05 of the Official
4 Recompilation of the Constitution of Alabama of 1901.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 13A-6-23 and 13A-6-131, Code of
7 Alabama 1975, are amended to read as follows:

8 "§13A-6-23.

9 "(a) A person commits the crime of menacing if, by
10 physical action, he or she intentionally places or attempts to
11 place another person in fear of imminent serious physical
12 injury.

13 "(b) Menacing is a Class ~~B~~ A misdemeanor.

14 "§13A-6-131.

15 "(a) (1) A person commits the crime of domestic
16 violence in the second degree if the person commits ~~the crime~~
17 ~~of~~ assault in the second degree pursuant to Section 13A-6-21;
18 ~~the crime of~~ intimidating a witness pursuant to Section
19 13A-10-123; ~~the crime of~~ stalking pursuant to Section
20 13A-6-90; ~~the crime of~~ burglary in the second or third degree
21 pursuant to Sections 13A-7-6 and 13A-7-7; ~~or the crime of~~
22 criminal mischief in the first degree pursuant to Section
23 13A-7-21; or aggravated menacing pursuant to Section
24 13A-6-23.1, and the victim is a current or former spouse,
25 parent, step-parent, child, step-child, any person with whom
26 the defendant has a child in common, a present household

1 member, or a person who has or had a dating relationship with
2 the defendant.

3 "(2) For the purposes of this section, a household
4 member excludes non-romantic or non-intimate co-residents, and
5 a dating relationship means a current or former relationship
6 of a romantic or intimate nature characterized by the
7 expectation of affectionate or sexual involvement by either
8 party.

9 "(b) Domestic violence in the second degree is a
10 Class B felony, except the defendant shall serve a minimum
11 term of imprisonment of six months without consideration of
12 probation, parole, good time credits, or any reduction in time
13 for any second or subsequent conviction under this subsection.

14 "(c) The minimum term of imprisonment imposed under
15 subsection (b) shall be double without consideration of
16 probation, parole, good time credits, or any reduction in time
17 if either of the following applies:

18 "(1) A defendant willfully violates a protection
19 order issued by a court of competent jurisdiction and in the
20 process of violating the order commits domestic violence in
21 the second degree.

22 "(2) The offense was committed in the presence of a
23 child under the age of 14 years at the time of the offense,
24 who is the victim's child or step-child, the defendant's child
25 or step-child, or who is a child residing in or visiting the
26 household of the victim or defendant. For purposes of this

1 subsection, "in the presence of a child" means that the child
2 was in a position to see or hear the act.

3 "(d) The court shall make a written finding of fact,
4 to be made part of the record upon conviction or adjudication,
5 of whether or not the act was committed in the presence of a
6 child. If a defendant has a trial by jury and the jury finds
7 the defendant guilty, the jury shall also render a special
8 verdict as to whether or not the defendant committed the act
9 in the presence of a child."

10 Section 2. Section 12-25-32, Code of Alabama 1975,
11 is amended to read as follows:

12 "§12-25-32.

13 "For the purposes of this article, the following
14 terms have the following meanings:

15 "(1) COMMISSION. The Alabama Sentencing Commission,
16 established as a state agency under the Supreme Court by this
17 chapter.

18 "(2) CONTINUUM OF PUNISHMENTS. An array of
19 punishment options, from probation to incarceration, graduated
20 in restrictiveness according to the degree of supervision of
21 the offender including, but not limited to, all of the
22 following:

23 "a. Active Incarceration. A sentence, other than an
24 intermediate punishment or unsupervised probation, that
25 requires an offender to serve a sentence of imprisonment. The
26 term includes time served in a work release program operated
27 as a custody option by the Alabama Department of Corrections

1 or in the Supervised Intensive Restitution program of the
2 Department of Corrections pursuant to Article 7, commencing
3 with Section 15-18-110, of Chapter 18 of Title 15.

4 "b. Intermediate Punishment. A sentence that may
5 include assignment to any community based punishment program
6 or may include probation with conditions or probation in
7 conjunction with a period of confinement. Intermediate
8 punishments include, but are not limited to, all of the
9 following options:

10 "1. A split sentence pursuant to Section 15-18-8.

11 "2. Assignment to a community punishment and
12 corrections program pursuant to the Alabama Community
13 Punishment and Corrections Act or local acts.

14 "3. Assignment to a community based manual labor
15 work program pursuant to Sections 14-5-30 to 14-5-37,
16 inclusive.

17 "4. Intensive probation supervision pursuant to
18 Section 15-22-56.

19 "5. Cognitive and behavioral training.

20 "6. Community service work.

21 "7. County probation.

22 "8. Day fines or means-based fines.

23 "9. Day reporting.

24 "10. Drug or alcohol testing.

25 "11. Drug court programs.

26 "12. Educational programs.

27 "13. Electronic monitoring.

- 1 "14. Home confinement or house arrest.
- 2 "15. Ignition interlock.
- 3 "16. Intermittent confinement.
- 4 "17. Jail and prison diversion programs.
- 5 "18. Job readiness and work.
- 6 "19. Literacy and basic learning.
- 7 "20. Pretrial diversion programs.
- 8 "21. Residential drug treatment.
- 9 "22. Residential community based punishment programs
10 in which the offender is required to spend at least eight
11 hours per day, or overnight, within a facility and is required
12 to participate in activities such as counseling, treatment,
13 social skills training, or employment training, conducted at
14 the residential facility or at another specified location.
- 15 "23. Restorative justice as established in Section
16 12-17-226.6.
- 17 "(i) Victim impact panels.
- 18 "(ii) Voluntary victim offender conferencing.
- 19 "(iii) Voluntary victim offender mediation.
- 20 "24. Self-help groups.
- 21 "25. Sobrieter or breath alcohol remote monitoring.
- 22 "26. Substance abuse education and treatment.
- 23 "27. Treatment alternatives to street crime (TASC).
- 24 "28. Voice recognition, curfew restriction, or
25 employment monitoring.

1 "29. Work release, other than those work release
2 programs operated by the Alabama Department of Corrections, as
3 a custody option.

4 "c. Unsupervised Probation. A sentence in a criminal
5 case that includes a period of probation but does not include
6 supervision, active incarceration, or an intermediate
7 punishment.

8 "d. Post-release Supervision. A mandatory period of
9 supervision following sentences of active incarceration as
10 defined in paragraph a. that may include one or more
11 intermediate punishment options.

12 "(3) COURT. Unless otherwise stated, a district or
13 circuit court exercising jurisdiction to sentence felony
14 offenders.

15 "(4) EVIDENCE-BASED PRACTICES. Policies, procedures,
16 programs, and practices proven by widely accepted and
17 published research to reliably produce reductions in
18 recidivism.

19 "(5) FELONY OFFENSE. A noncapital felony offense.

20 "(6) INITIAL VOLUNTARY STANDARDS. The voluntary
21 sentencing standards effective on October 1, 2006. These
22 standards were based on statewide historic sentences imposed
23 with normative adjustments designed to reflect current
24 sentencing policies.

25 "(7) NONVIOLENT OFFENSE. All offenses which are not
26 violent offenses.

1 "(8) NONVIOLENT OFFENDER. Any offender who does not
2 qualify as a violent offender pursuant to subdivision (14).

3 "(9) OFFENDER. A person convicted of a noncapital
4 felony offense.

5 "(10) RELEASE AUTHORITY. Any public official,
6 agency, or other entity authorized by law to release a
7 sentenced offender from incarceration or other conditions of a
8 sentence.

9 "(11) VALIDATED RISK AND NEEDS ASSESSMENT. An
10 actuarial tool that has been validated and established by
11 administrative rule in Alabama to determine the likelihood of
12 an offender engaging in future criminal behavior. The Board of
13 Pardons and Paroles and the Department of Corrections shall
14 adopt compatible tools to conduct a validated risk and needs
15 assessment upon offenders within the jurisdiction of the
16 state. A validated risk and needs assessment shall include,
17 but not be limited to, an offender's prior criminal history,
18 the nature and severity of the present offense, and potential
19 for future violence.

20 "(12) TRUTH-IN-SENTENCING STANDARDS. Truth in
21 sentencing is scheduled to become effective October 1, 2020.

22 "(13) UNDER SUPERVISION. All offenders under the
23 supervision of any criminal justice agency or program
24 including, but not limited to, any of the following entities:

25 "a. The Alabama Department of Corrections.

26 "b. State or county probation offices.

1 "c. Community corrections programs pursuant to
2 Alabama Community Corrections Act.

3 "d. Jails.

4 "e. State or local law enforcement agencies.

5 "f. Any court.

6 "(14) VIOLENT OFFENDER. A violent offender is an
7 offender who has been convicted of a violent offense, or who
8 is determined by the trial court judge or a release authority
9 to have demonstrated a propensity for violence, aggression, or
10 weapons related behavior based on the criminal history or
11 behavior of the offender while under supervision of any
12 criminal justice system agency or entity.

13 "(15) VIOLENT OFFENSE.

14 "a. For the purposes of this article, a violent
15 offense includes each of the following offenses, or any
16 substantially similar offense to those listed in this
17 subdivision created after June 20, 2003:

18 "1. Capital murder pursuant to Sections 13A-6-2 and
19 13A-5-40.

20 "2. Murder pursuant to Section 13A-6-2.

21 "3. Manslaughter pursuant to Section 13A-6-3.

22 "4. Criminally negligent homicide pursuant to
23 Section 13A-6-4.

24 "5. Assault I pursuant to Section 13A-6-20.

25 "6. Assault II pursuant to Section 13A-6-21.

26 "7. Aggravated menacing pursuant to Section
27 13A-6-23.1.

1 ~~"7.~~ 8. Compelling street gang membership pursuant to
2 Section 13A-6-26.

3 ~~"8.~~ 9. Kidnapping I pursuant to Section 13A-6-43.

4 ~~"9.~~ 10. Kidnapping II pursuant to Section 13A-6-44.

5 ~~"10.~~ 11. Rape I pursuant to Section 13A-6-61.

6 ~~"11.~~ 12. Rape II pursuant to Section 13A-6-62.

7 ~~"12.~~ 13. Sodomy I pursuant to Section 13A-6-63.

8 ~~"13.~~ 14. Sodomy II pursuant to Section 13A-6-64.

9 ~~"14.~~ 15. Sexual torture pursuant to Section
10 13A-6-65.1.

11 ~~"15.~~ 16. Sexual abuse I pursuant to Section
12 13A-6-66.

13 ~~"16.~~ 17. Enticing a child to enter a vehicle for
14 immoral purposes pursuant to Section 13A-6-69.

15 ~~"17.~~ 18. Stalking pursuant to Section 13A-6-90.

16 ~~"18.~~ 19. Aggravated stalking pursuant to Section
17 13A-6-91.

18 ~~"19.~~ 20. Soliciting a child by computer pursuant to
19 Section 13A-6-110.

20 ~~"20.~~ 21. Domestic violence I pursuant to Section
21 13A-6-130.

22 ~~"21.~~ 22. Domestic violence II pursuant to Section
23 13A-6-131.

24 ~~"22.~~ 23. Burglary I pursuant to Section 13A-7-5.

25 ~~"23.~~ 24. Burglary II pursuant to Section 13A-7-6.

26 ~~"24.~~ 25. Burglary III pursuant to subdivision (1) or
27 subdivision (2) of subsection (a) of Section 13A-7-7.

1 ~~"25.~~ 26. Arson I pursuant to Section 13A-7-41.
2 ~~"26.~~ 27. Criminal possession of explosives pursuant
3 to Section 13A-7-44.
4 ~~"27.~~ 28. Extortion I pursuant to Section 13A-8-14.
5 ~~"28.~~ 29. Robbery I pursuant to Section 13A-8-41.
6 ~~"29.~~ 30. Robbery II pursuant to Section 13A-8-42.
7 ~~"30.~~ 31. Robbery III pursuant to Section 13A-8-43.
8 ~~"31.~~ 32. Pharmacy robbery pursuant to Section
9 13A-8-51.
10 ~~"32.~~ 33. Terrorist threats pursuant to Section
11 13A-10-15.
12 ~~"33.~~ 34. Escape I pursuant to Section 13A-10-31.
13 ~~"34.~~ 35. Promoting prison contraband I pursuant to
14 Section 13A-10-36, involving a deadly weapon or dangerous
15 instrument.
16 ~~"35.~~ 36. Intimidating a witness pursuant to Section
17 13A-10-123.
18 ~~"36.~~ 37. Intimidating a juror pursuant to Section
19 13A-10-127.
20 ~~"37.~~ 38. Treason pursuant to Section 13A-11-2.
21 ~~"38.~~ 39. Discharging a weapon into an occupied
22 building, dwelling, automobile, etc., pursuant to Section
23 13A-11-61.
24 ~~"39.~~ 40. Promoting prostitution I pursuant to
25 Section 13A-12-111.
26 ~~"40.~~ 41. Production of obscene matter involving a
27 minor pursuant to Section 13A-12-197.

1 ~~"41.~~ 42. Trafficking pursuant to Section 13A-12-231.
2 ~~"42.~~ 43. Child abuse pursuant to Section 26-15-3.
3 ~~"43.~~ 44. Elder abuse pursuant to Section 38-9-7.
4 ~~"44.~~ 45. Terrorism pursuant to Section 13A-10-152.
5 ~~"45.~~ 46. Hindering prosecution for terrorism
6 pursuant to Section 13A-10-154.

7 ~~"46.~~ 47. Domestic violence III pursuant to
8 subsection (d) of Section 13A-6-132.

9 ~~"47.~~ 48. Domestic violence by strangulation or
10 suffocation pursuant to Section 13A-6-138.

11 ~~"48.~~ 49. Human trafficking I pursuant to Section
12 13A-6-152.

13 ~~"49.~~ 50. Human trafficking II pursuant to Section
14 13A-6-153.

15 ~~"50.~~ 51. Hindering prosecution in the first degree
16 pursuant to Section 13A-10-43.

17 ~~"51.~~ 52. Any substantially similar offense for which
18 an Alabama offender has been convicted under prior Alabama law
19 or the law of any other state, the District of Columbia, the
20 United States, or any of the territories of the United States.

21 **"b.** The basis for defining these offenses as violent
22 is that each offense meets at least one of the following
23 criteria:

24 "1. Has as an element, the use, attempted use, or
25 threatened use of a deadly weapon or dangerous instrument or
26 physical force against the person of another.

1 "2. Involves a substantial risk of physical injury
2 against the person of another.

3 "3. Is a nonconsensual sex offense.

4 "4. Is particularly reprehensible.

5 "c. Any attempt, conspiracy, or solicitation to
6 commit a violent offense shall be considered a violent offense
7 for the purposes of this article.

8 "d. Any criminal offense which meets the criteria
9 provided in paragraph b. enacted after 2003."

10 Section 3. Section 13A-6-23.1 is added to the Code
11 of Alabama 1975 to read as follows:

12 §13A-6-23.1.

13 (a) A person commits the crime of aggravated
14 menacing if, by use of a firearm as defined in Section 13A-8-1
15 or an object that a reasonable person could perceive to be a
16 firearm, he or she intentionally places or attempts to place
17 another person in fear of imminent serious physical injury.

18 (b) Aggravated menacing is a Class C felony.

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