

1 HB177
2 115832-1
3 By Representatives Wood, McCutcheon, Laird and Bridges
4 RFD: Judiciary
5 First Read: 12-JAN-10

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8 SYNOPSIS: Under existing law, a person who assaults a
9 peace officer with an intent to prevent the peace
10 officer from performing a lawful duty and who
11 causes physical injury to the peace officer or
12 another person is guilty of assault in the second
13 degree. Assault in the second degree is a Class C
14 felony. The courts have held that an off-duty peace
15 officer employed by a private entity is not a peace
16 officer unless the off-duty peace officer has
17 witnessed a crime.

18 This bill would provide that an off-duty
19 peace officer employed by a private entity would be
20 considered a peace officer and to be performing a
21 lawful duty in his or her approved uniform while
22 off duty with the approval of his or her employing
23 agency.

24 Amendment 621 of the Constitution of Alabama
25 of 1901, now appearing as Section 111.05 of the
26 Official Recompilation of the Constitution of
27 Alabama of 1901, as amended, prohibits a general

1 law whose purpose or effect would be to require a
2 new or increased expenditure of local funds from
3 becoming effective with regard to a local
4 governmental entity without enactment by a 2/3 vote
5 unless: it comes within one of a number of
6 specified exceptions; it is approved by the
7 affected entity; or the Legislature appropriates
8 funds, or provides a local source of revenue, to
9 the entity for the purpose.

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

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18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 To amend Section 13A-6-21 of the Code of Alabama
23 1975, providing the crime of assault in the second degree, to
24 further provide when a peace officer employed by a private
25 entity is a peace officer performing a lawful duty for the
26 purpose of certain assaults; and in connection therewith would
27 have as its purpose or effect the requirement of a new or

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

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Section 13A-6-21 of the Code of Alabama
7 1975, is amended to read as follows:

8 "§13A-6-21.

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

11 "(1) With intent to cause serious physical injury to
12 another person, he or she causes serious physical injury to
13 any person.

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

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

20 "(4) With intent to prevent a peace officer, as
21 defined in Section 36-21-60, a detention or correctional
22 officer at any municipal or county jail or state penitentiary,
23 emergency medical personnel, or a firefighter from performing
24 a lawful duty, he or she intends to cause physical injury and
25 he or she causes physical injury to any person. For the
26 purpose of this subdivision, a person who is a peace officer
27 who is employed off duty by a private entity is a peace

1 officer performing a lawful duty when the person is working in
2 his or her approved uniform while off duty with the approval
3 of his or her employing agency.

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

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

24 "(7) For a purpose other than lawful medical or
25 therapeutic treatment, he or she intentionally causes stupor,
26 unconsciousness, or other physical or mental impairment or
27 injury to another person by administering to him or her,

1 without his or her consent, a drug, substance or preparation
2 capable of producing the intended harm.

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

5 Section 2. Although this bill would have as its
6 purpose or effect the requirement of a new or increased
7 expenditure of local funds, the bill is excluded from further
8 requirements and application under Amendment 621, now
9 appearing as Section 111.05 of the Official Recompilation of
10 the Constitution of Alabama of 1901, as amended, because the
11 bill defines a new crime or amends the definition of an
12 existing crime.

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