

HB49 ENGROSSED



1 HB49

2 N2H58T8-2

3 By Representatives Simpson, Kiel, Yarbrough, Butler, Shirey,

4 Bedsole, Stadthagen, Rigsby, Lomax, Mooney, Givens, Brinyark

5 RFD: Judiciary

6 First Read: 04-Feb-25

7 PFD: 01-Oct-24



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A BILL
TO BE ENTITLED
AN ACT

Relating to crimes and offenses; to amend Sections 13A-5-40, 13A-5-49, 13A-6-61, 13A-6-63, and 13A-6-65.1, Code of Alabama 1975, to revise the criminal penalties for violations of rape in the first degree and sodomy in the first degree when the victim is less than six years of age.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 13A-5-40, 13A-5-49, 13A-6-61, 13A-6-63, and 13A-6-65.1, Code of Alabama 1975, are amended to read as follows:

"§13A-5-40

(a) The following are capital offenses:

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

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

(3) Murder by the defendant during a rape in the first or second degree or an attempt thereof committed by the defendant; or murder by the defendant during sodomy in the first or second degree or an attempt thereof committed by the defendant.



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29 (4) Murder by the defendant during a burglary in the
30 first or second degree or an attempt thereof committed by the
31 defendant.

32 (5) Murder of any police officer, sheriff, deputy,
33 state trooper, federal law enforcement officer, or any other
34 state or federal peace officer of any kind, or prison or jail
35 guard, while the officer or guard is on duty, regardless of
36 whether the defendant knew or should have known the victim was
37 an officer or guard on duty, or because of some official or
38 job-related act or performance of the officer or guard.

39 (6) Murder committed while the defendant is under
40 sentence of life imprisonment.

41 (7) Murder done for a pecuniary or other valuable
42 consideration or pursuant to a contract or for hire.

43 (8) Murder by the defendant during sexual abuse in the
44 first or second degree or an attempt thereof committed by the
45 defendant.

46 (9) Murder by the defendant during arson in the first
47 or second degree committed by the defendant; or murder by the
48 defendant by means of explosives or explosion.

49 (10) Murder wherein two or more persons are murdered by
50 the defendant by one act or pursuant to one scheme or course
51 of conduct.

52 (11) Murder by the defendant when the victim is a state
53 or federal public official or former public official and the
54 murder stems from or is caused by or is related to his or her
55 official position, act, or capacity.

56 (12) Murder by the defendant during the act of



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57 unlawfully assuming control of any aircraft by use of threats
58 or force with intent to obtain any valuable consideration for
59 the release of the aircraft or any passenger or
60 ~~ere~~~~men~~crewmember thereon, to direct the route or movement of
61 the aircraft, or otherwise exert control over the aircraft.

62 (13) Murder by a defendant who has been convicted of
63 any other murder in the 20 years preceding the crime; provided
64 that the murder ~~which~~that constitutes the capital crime shall
65 be murder as defined in subsection (b); and provided further
66 that the prior murder conviction referred to shall include
67 murder in any degree as defined at the time and place of the
68 prior conviction.

69 (14) Murder when the victim is subpoenaed, or has been
70 subpoenaed, to testify, or the victim had testified, in any
71 preliminary hearing, grand jury proceeding, criminal trial or
72 criminal proceeding of whatever nature, or civil trial or
73 civil proceeding of whatever nature, in any municipal, state,
74 or federal court, when the murder stems from, is caused by, or
75 is related to the capacity or role of the victim as a witness.

76 (15) Murder when the victim is less than ~~fourteen~~14
77 years of age.

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

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

83 (18) Murder committed by or through the use of a deadly
84 weapon fired or otherwise used within or from a vehicle.



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85 (19) Murder by the defendant where a court had issued a
86 protective order for the victim, against the defendant,
87 pursuant to ~~Section 30-5-1 et seq.~~ Chapter 5 of Title 30, or
88 the protective order was issued as a condition of the
89 defendant's pretrial release.

90 (20) Murder by the defendant in the presence of a child
91 under ~~the age of 14 years~~ of age at the time of the offense,
92 if the victim was the parent or legal guardian of the child.
93 For purposes of this subsection, "in the presence of a child"
94 means in the physical presence of a child or having knowledge
95 that a child is present and may see or hear the act.

96 (21) Murder when the victim is a first responder who is
97 operating in an official capacity. For the purposes of this
98 subdivision, "first responder" includes emergency medical
99 services personnel licensed by the Alabama Department of
100 Public Health and firefighters and volunteer firefighters as
101 defined by Section 36-32-1.

102 (22) Rape in the first degree when the victim is less
103 than 12 years of age.

104 (23) Sodomy in the first degree when the victim is less
105 than 12 years of age.

106 (b) Except as specifically provided to the contrary in
107 the last part of subdivision (a)(13), the terms "murder" and
108 "murder by the defendant" as used in this section to define
109 capital offenses mean murder as defined in Section
110 13A-6-2(a)(1), but not as defined in Section 13A-6-2(a)(2) and
111 (3). Subject to the provisions of Section 13A-5-41, murder as
112 defined in Section 13A-6-2(a)(2) and (3), as well as murder as



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113 defined in Section 13A-6-2(a)(1), may be a lesser included
114 offense of the capital offenses defined in subsection (a).

115 (c) A defendant who does not personally commit the act
116 of killing which constitutes the murder is not guilty of a
117 capital offense defined in subsection (a) unless that
118 defendant is legally accountable for the murder because of
119 complicity in the murder itself under the provisions of
120 Section 13A-2-23, in addition to being guilty of the other
121 elements of the capital offense as defined in subsection (a).

122 (d) To the extent that a crime other than murder is an
123 element of a capital offense defined in subsection (a), a
124 defendant's guilt of that other crime may also be established
125 under Section 13A-2-23. When the defendant's guilt of that
126 other crime is established under Section 13A-2-23, that crime
127 shall be deemed to have been "committed by the defendant"
128 within the meaning of that phrase as it is used in subsection
129 (a)."

130 "§13A-5-49

131 Aggravating circumstances shall be any of the
132 following:

133 (1) The capital offense was committed by a person under
134 sentence of imprisonment.

135 (2) The defendant was previously convicted of another
136 capital offense or a felony involving the use or threat of
137 violence to the person.

138 (3) The defendant knowingly created a great risk of
139 death to many persons.

140 (4) ~~The~~ For a violation of Section 13A-5-40(a)(1)



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141 through (21), the capital offense was committed while the
142 defendant was engaged or was an accomplice in the commission
143 of, or an attempt to commit, or flight after committing, or
144 attempting to commit, rape, robbery, burglary, or kidnapping.

145 (5) The capital offense was committed for the purpose
146 of avoiding or preventing a lawful arrest or effecting an
147 escape from custody.

148 (6) The capital offense was committed for pecuniary
149 gain.

150 (7) The capital offense was committed to disrupt or
151 hinder the lawful exercise of any governmental function or the
152 enforcement of laws.

153 (8) The capital offense was especially heinous,
154 atrocious, or cruel compared to other capital offenses.

155 (9) The defendant intentionally caused the death of two
156 or more persons by one act or pursuant to one scheme or course
157 of conduct.

158 (10) The capital offense was one of a series of
159 intentional killings committed by the defendant.

160 (11) ~~The~~ For a violation of Section 13A-5-40(a)(1)
161 through (21), the capital offense was committed when the
162 victim was less than 14 years of age.

163 (12) The capital offense was committed by the defendant
164 in the presence of a child under ~~the age of 14 years~~ of age at
165 the time of the offense, if the victim was the parent or legal
166 guardian of the child. For the purposes of this subdivision,
167 "in the presence of a child" means in the physical presence of
168 a child or having knowledge that a child is present and may



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169 see or hear the act.

170 (13) The victim of the capital offense was any police
171 officer, sheriff, deputy, state trooper, federal law
172 enforcement officer, or any other state or federal peace
173 officer of any kind, or prison or jail guard, while the
174 officer or guard was on duty, regardless of whether the
175 defendant knew or should have known the victim was an officer
176 or guard on duty, or because of some official or job-related
177 act or performance of the officer or guard.

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

184 "§13A-6-61

185 (a) A person commits the crime of rape in the first
186 degree if he or she does any of the following:

187 (1) Engages in sexual intercourse with another person
188 by forcible compulsion.

189 (2) Engages in sexual intercourse with another person
190 who is incapable of consent by reason of being incapacitated.

191 (3) Being 16 years ~~old~~ of age or older, engages in
192 sexual intercourse with another person who is less than 12
193 years ~~old~~ of age.

194 (b) Rape in the first degree is a Class A felony;
195 provided, that the punishment for a violation of subdivision
196 (a) (3) shall be as determined and fixed as provided in Article



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197 2 of Chapter 5. Any defendant sentenced to life on a capital
198 offense must serve a minimum of 30 years, day for day, prior
199 to his or her first consideration of parole."

200 "§13A-6-63

201 (a) A person commits the crime of sodomy in the first
202 degree if he or she does any of the following:

203 (1) Engages in sodomy with another person by forcible
204 compulsion.

205 (2) Engages in sodomy with another person who is
206 incapable of consent by reason of being incapacitated.

207 (3) Being 16 years ~~old~~of age or older, engages in
208 sodomy with a person who is less than 12 years ~~old~~of age.

209 (b) Sodomy in the first degree is a Class A felony;
210 provided, that the punishment for a violation of subdivision

211 (a) (3) shall be as determined and fixed as provided in Article
212 2 of Chapter 5. Any defendant sentenced to life on a capital
213 offense must serve a minimum of 30 years, day for day, prior
214 to his or her first consideration of parole."

215 "§13A-6-65.1

216 (a) A person commits the crime of sexual torture if he
217 or she does any of the following:

218 (1) Penetrates the vagina, anus, or mouth of another
219 person with an inanimate object, by forcible compulsion, with
220 the intent to sexually torture, sexually abuse, or to gratify
221 the sexual desire of either party.

222 (2) Penetrates the vagina, anus, or mouth of a person
223 who is incapable of consent by reason of being incapacitated,
224 with an inanimate object, with the intent to sexually torture,



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225 sexually abuse, or to gratify the sexual desire of either
226 party.

227 (3) Penetrates the vagina, anus, or mouth of a person
228 who is less than 12 years ~~old~~of age, with an inanimate object,
229 by a person who is 16 years ~~old~~of age or older with the intent
230 to sexually torture, sexually abuse, or to gratify the sexual
231 desire of either party.

232 (4) By inflicting physical injury, including, but not
233 limited to, burning, crushing, wounding, mutilating, or
234 assaulting the sex organs or intimate parts of another person,
235 with the intent to sexually torture, sexually abuse, or to
236 gratify the sexual desire of either party.

237 (b) The crime of sexual torture is a Class A felony;
238 provided, that the punishment for a violation of subdivision
239 (a) (3) shall be as determined and fixed as provided in Article
240 2 of Chapter 5. Any defendant sentenced to life on a capital
241 offense must serve a minimum of 30 years, day for day, prior
242 to his or her first consideration of parole."

243 Section 2. This act shall become effective on October
244 1, 2025.



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House of Representatives

248 Read for the first time and referred04-Feb-25
249 to the House of Representatives
250 committee on Judiciary
251
252 Read for the second time and placed05-Feb-25
253 on the calendar:
254 1 amendment
255
256 Read for the third time and passed11-Feb-25
257 as amended
258 Yeas 86
259 Nays 5
260 Abstains 9

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John Treadwell
Clerk