

1 SB168  
2 115802-2  
3 By Senators Dunn, Mitchell, Little (T), and Mitchem  
4 RFD: Judiciary  
5 First Read: 12-JAN-10

1 SB168

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to domestic orders; to amend Sections  
12 30-5A-1, 30-5A-2, and 30-5A-4, Code of Alabama 1975; to amend  
13 and renumber Section 30-5A-3; to provide for legislative  
14 intent; to provide further for criminal penalties for  
15 violations of domestic violence orders; to provide for the  
16 content of orders not issued pursuant to this act; and in  
17 connection therewith would have as its purpose or effect the  
18 requirement of a new or increased expenditure of local funds  
19 within the meaning of Amendment 621 of the Constitution of  
20 Alabama of 1901, now appearing as Section 111.05 of the  
21 Official Recompilation of the Constitution of Alabama of 1901,  
22 as amended.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Sections 30-5A-1, 30-5A-2, and 30-5A-4,  
25 Code of Alabama 1975, are amended to read as follows:

26 "§30-5A-1.

1           ~~"This chapter may be cited~~ (a) This chapter shall be  
2           known as the "Family Violence Domestic Violence Protection  
3           Order Enforcement Act."

4           "(b) The purpose of this chapter is to provide  
5           criminal sanctions for the willful violation of certain  
6           protective or restraining orders issued in circuit, district,  
7           municipal, or juvenile courts in domestic relations or family  
8           violence cases define the crime of violation of a domestic  
9           violence order.

10           "(c) It is the intent of the Legislature to protect  
11           victims of domestic violence by enhancing and clarifying the  
12           authority of municipal and state courts to punish violations  
13           of court orders intended to protect victims from further  
14           abuse. It is the further intention of the Legislature to  
15           declare that the policy of the State of Alabama shall stress  
16           the enforcement of its laws to protect victims of domestic  
17           violence from further abuse and to hold abusers accountable  
18           for their actions. Finally, it is the intent of the  
19           Legislature to presume the validity of protection orders  
20           issued by courts in all states, the District of Columbia,  
21           United States territories, and all federally recognized Indian  
22           tribes within the United States, and to afford full faith and  
23           credit to those orders. The provisions of this chapter are to  
24           be construed to promote these purposes.

25           "\$30-5A-2.

1           "As used in this chapter and Section 13A-6-150, the  
2 following terms shall have the following meanings,  
3 respectively, unless the context clearly indicates otherwise:

4           "~~(1) FAMILY VIOLENCE. The definition provided in~~  
5 ~~Section 15-10-3, in pari materia with the definition provided~~  
6 ~~for "abuse" in Sections 30-5-1 to 30-5-11, inclusive.~~

7           "~~(2) JUDGE. The judge presiding in a court having~~  
8 ~~jurisdiction over the defendant for violation of this chapter~~  
9 ~~and shall include a duly appointed magistrate conducting~~  
10 ~~initial appearances pursuant to the Alabama Rules of Criminal~~  
11 ~~Procedure or Juvenile Procedure.~~

12           "~~(3) PROTECTION ORDER or RESTRAINING ORDER. Any~~  
13 ~~order of a court of competent jurisdiction, whether or not~~  
14 ~~located in this state, the purpose of which is to prohibit a~~  
15 ~~person from committing any or all of the following acts:~~  
16 ~~harass, annoy, alarm, intimidate, assault, communicate with,~~  
17 ~~or otherwise bother another person. This definition shall~~  
18 ~~include, but not be limited to, protection orders issued~~  
19 ~~pursuant to the Protection From Abuse Act, Sections 30-5-1 to~~  
20 ~~30-5-11, inclusive, and restraining orders or injunctions~~  
21 ~~issued in domestic relations, family violence or juvenile~~  
22 ~~cases~~

23           "(1) DOMESTIC VIOLENCE ORDER. A domestic violence  
24 order is any protection order issued pursuant to the  
25 Protection from Abuse Act, Sections 30-5-1 to 30-5-11,  
26 inclusive. The term includes the following: a. A restraining  
27 order, injunctive order, or order of release from custody

1 which has been issued in a circuit, district, municipal, or  
2 juvenile court in a domestic relations or family violence  
3 case. b. An order issued by municipal, district, or circuit  
4 court which places conditions on the pre-trial release on  
5 defendants in criminal cases, including provisions of bail  
6 pursuant to Section 15-13-190. c. An order issued by another  
7 state or territory which may be enforced under Sections  
8 30-5B-1 through 30-5B-10. Restraining or protection orders not  
9 issued pursuant to the Protection From Abuse Act, Sections  
10 30-5-1 to 30-5-11, inclusive, must specify that a history of  
11 violence or abuse exists for the provisions of this chapter to  
12 apply.

13 "(2) VIOLATION. The knowing commission of any act  
14 prohibited by a domestic violence order or any willful failure  
15 to abide by its terms.

16 "§30-5A-4.

17 "A ~~peace~~ law enforcement officer may arrest any  
18 person for the violation of this chapter or Section 13A-6-150  
19 if the officer has probable cause to believe that the person  
20 has violated any provision of a valid ~~protection~~ domestic  
21 violence order, whether temporary or permanent, ~~which has been~~  
22 ~~served on the person or of which the person has received~~  
23 ~~sufficient notice that the protection order has been issued.~~  
24 The presentation of a domestic violence order constitutes  
25 probable cause for an officer to believe that a valid order  
26 exists. For purposes of this chapter, the order may be  
27 inscribed on a tangible copy or may be stored in an electronic

1 or other medium if it is retrievable in a detectable form.  
2 Presentation of a certified copy of the domestic violence  
3 order is not required for enforcement or to allow a law  
4 enforcement officer to effect a warrantless arrest. If a  
5 domestic violence order is not presented to or otherwise  
6 confirmed by a law enforcement officer, the officer may  
7 consider other information in determining whether there is  
8 probable cause to believe that a valid domestic violence order  
9 exists. The law enforcement officer may arrest the person  
10 defendant without a warrant although he or she did not  
11 personally see the violation. Knowledge by the officer of the  
12 existence or contents of, or both, or presentation to the  
13 officer by the complainant of, a protection domestic violence  
14 order shall constitute prima facie evidence of the validity of  
15 the order.

16 "If a law enforcement officer of this state  
17 determines that an otherwise valid domestic violence order  
18 cannot be enforced because the defendant has not been notified  
19 or served with the domestic violence order, the law  
20 enforcement officer shall inform the defendant of the order  
21 and allow the person a reasonable opportunity to comply with  
22 the order's provisions before enforcing the order. In the  
23 event the law enforcement officer provides notice of the  
24 domestic violence order to the defendant, the officer shall  
25 document this fact in the written report.

1           Section 2. Section 30-5A-3, Code of Alabama 1975, is  
2 amended and renumbered as Section 13A-6-150, Code of Alabama  
3 1975, to read as follows:

4           "~~§30-5A-3.~~ §13A-6-150.

5           "~~(a) Any proceeding under this chapter shall be in~~  
6 ~~accordance with the Rules of Civil Procedure and shall be in~~  
7 ~~addition to any other civil or criminal penalties provided by~~  
8 ~~law. It is specifically provided that any defendant shall have~~  
9 ~~the same rights, remedies, and due process where any wrongful~~  
10 ~~action is instituted as any defendant in other civil and~~  
11 ~~criminal actions.~~

12           "~~(b) Upon violation of a protection order or a court~~  
13 ~~approved consent agreement, the court may hold the defendant~~  
14 ~~or plaintiff as the case may be, in contempt and punish him or~~  
15 ~~her in accordance with the law.~~

16           "~~(c) (a) (1) A willful violation of a protection~~  
17 ~~domestic violence order, restraining order or injunctive order~~  
18 ~~issued to bring about a cessation of the abuse of a person and~~  
19 ~~which is issued by a court of competent jurisdiction is a~~  
20 ~~Class A misdemeanor which shall be punishable as provided by~~  
21 ~~law.~~

22           "~~(2) The first and any subsequent conviction for a~~  
23 ~~willful violation of a protection order, restraining order or~~  
24 ~~injunctive order issued to bring about a cessation of the~~  
25 ~~abuse of a person is a Class A misdemeanor. A second~~  
26 ~~conviction for violation of a protection domestic violence~~  
27 ~~order, restraining order or injunctive order issued to bring~~

1 ~~about a cessation of the abuse of a person~~ shall, in addition  
2 to any other penalty or fine, be punishable by a minimum of ~~48~~  
3 ~~hours continuous~~ 30 days imprisonment which may not be  
4 suspended. A third or subsequent conviction shall, in addition  
5 to any other penalty or fine, be punishable by a minimum  
6 sentence of ~~30~~ 120 days imprisonment which may not be  
7 suspended."

8           Section 3. Although this bill would have as its  
9 purpose or effect the requirement of a new or increased  
10 expenditure of local funds, the bill is excluded from further  
11 requirements and application under Amendment 621, now  
12 appearing as Section 111.05 of the Official Recompilation of  
13 the Constitution of Alabama of 1901, as amended, because the  
14 bill defines a new crime or amends the definition of an  
15 existing crime.

16           Section 4. This act shall become effective on the  
17 first day of the third month following its passage and  
18 approval by the Governor, or its otherwise becoming law.



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Senate

Read for the first time and referred to the Senate committee on Judiciary .....	12-JAN-10
Read for the second time and placed on the calen- dar .....	11-MAR-10
Read for the third time and passed as amended ...	06-APR-10

Yeas 25  
Nays 0

McDowell Lee  
Secretary