

HB49 INTRODUCED



1 HB49
2 ZUG2KRR-1
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



SYNOPSIS:

Under existing law, rape in the first degree and sodomy in the first degree are Class A felonies.

This bill would require that a person 18 years of age or older convicted of rape in the first degree or sodomy in the first degree when the victim is less than six years of age shall be punished to either death or life imprisonment without the possibility of parole and if the offending person is less than 18 years of age sentenced to life imprisonment without parole or life.

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



HB49 INTRODUCED

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.

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

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

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

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

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



HB49 INTRODUCED

defendant.

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

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

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

(12) Murder by the defendant during the act of unlawfully assuming control of any aircraft by use of threats or force with intent to obtain any valuable consideration for the release of the aircraft or any passenger or ~~crewmembers~~ crewmember thereon, to direct the route or movement of the aircraft, or otherwise exert control over the aircraft.

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

(14) Murder when the victim is subpoenaed, or has been subpoenaed, to testify, or the victim had testified, in any preliminary hearing, grand jury proceeding, criminal trial or criminal proceeding of whatever nature, or civil trial or



HB49 INTRODUCED

civil proceeding of whatever nature, in any municipal, state, or federal court, when the murder stems from, is caused by, or is related to the capacity or role of the victim as a witness.

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

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

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

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

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

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

(21) Murder when the victim is a first responder who is operating in an official capacity. For the purposes of this subdivision, "first responder" includes emergency medical services personnel licensed by the Alabama Department of Public Health and firefighters and volunteer firefighters as



HB49 INTRODUCED

defined by Section 36-32-1.

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

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

(b) Except as specifically provided to the contrary in the last part of subdivision (a)(13), the terms "murder" and "murder by the defendant" as used in this section to define capital offenses mean murder as defined in Section 13A-6-2(a)(1), but not as defined in Section 13A-6-2(a)(2) and (3). Subject to the provisions of Section 13A-5-41, murder as defined in Section 13A-6-2(a)(2) and (3), as well as murder as defined in Section 13A-6-2(a)(1), may be a lesser included offense of the capital offenses defined in subsection (a).

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

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



HB49 INTRODUCED

141 (a) ."

142 "§13A-5-49

143 Aggravating circumstances shall be any of the
144 following:

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

147 (2) The defendant was previously convicted of another
148 capital offense or a felony involving the use or threat of
149 violence to the person.

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

152 (4) ~~The~~For a violation of Section 13A-5-40(a)(1)
153 through (21), the capital offense was committed while the
154 defendant was engaged or was an accomplice in the commission
155 of, or an attempt to commit, or flight after committing, or
156 attempting to commit, rape, robbery, burglary, or kidnapping.

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

160 (6) The capital offense was committed for pecuniary
161 gain.

162 (7) The capital offense was committed to disrupt or
163 hinder the lawful exercise of any governmental function or the
164 enforcement of laws.

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

167 (9) The defendant intentionally caused the death of two
168 or more persons by one act or pursuant to one scheme or course



HB49 INTRODUCED

169 of conduct.

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

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

175 (12) The capital offense was committed by the defendant
176 in the presence of a child under ~~the age of~~ 14 years of age at
177 the time of the offense, if the victim was the parent or legal
178 guardian of the child. For the purposes of this subdivision,
179 "in the presence of a child" means in the physical presence of
180 a child or having knowledge that a child is present and may
181 see or hear the act.

182 (13) The victim of the capital offense was any police
183 officer, sheriff, deputy, state trooper, federal law
184 enforcement officer, or any other state or federal peace
185 officer of any kind, or prison or jail guard, while the
186 officer or guard was on duty, regardless of whether the
187 defendant knew or should have known the victim was an officer
188 or guard on duty, or because of some official or job-related
189 act or performance of the officer or guard.

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

196 "§13A-6-61



HB49 INTRODUCED

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

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

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

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

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

"§13A-6-63

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

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

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

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

(b) Sodomy in the first degree is a Class A felony; provided, that the punishment for a violation of subdivision (a) (3) shall be as determined and fixed as provided in Article 2 of Chapter 5. Any defendant sentenced to life on a capital



HB49 INTRODUCED

offense must serve a minimum of 30 years, day for day, prior to his or her first consideration of parole."

"§13A-6-65.1

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

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

(2) Penetrates the vagina, anus, or mouth of a person who is incapable of consent by reason of being incapacitated, with an inanimate object, with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.

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

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

(b) The crime of sexual torture is a Class A felony;
provided, that the punishment for a violation of subdivision (a) (3) shall be as determined and fixed as provided in Article 2 of Chapter 5. Any defendant sentenced to life on a capital



HB49 INTRODUCED

253 offense must serve a minimum of 30 years, day for day, prior
254 to his or her first consideration of parole."

255 Section 2. This act shall become effective on October
256 1, 2025.