

1 HB113  
2 205466-5  
3 By Representative Brown (C)  
4 RFD: Judiciary  
5 First Read: 04-FEB-20



1 ~~punished by death~~ capital murder pursuant to Section 13A-5-40,  
2 if the court is of the opinion, on the evidence adduced, that  
3 he or she is guilty of the offense ~~in the degree punishable~~  
4 ~~capitally,~~ nor when he is charged with a personal injury to  
5 another which is likely to produce death and which was  
6 committed under circumstances such as would, if death arises  
7 from such injury, constitute an offense which may be punished  
8 by death.

9 ~~"(b) In cases punishable capitally, the defendant is~~  
10 ~~entitled to bail as a matter of right when the state, after~~  
11 ~~the finding of the indictment, has continued the case twice,~~  
12 ~~without his consent, for the testimony of absent witnesses.~~

13 ~~"In such case, if the indictment is dismissed, the~~  
14 ~~defendant, on application for bail, is entitled to the benefit~~  
15 ~~of any continuance had upon such indictment by the state for~~  
16 ~~absent witnesses; and, if another indictment is not found at~~  
17 ~~the same court at which the former is dismissed, the order of~~  
18 ~~dismissal is to be taken as a continuance by the state for~~  
19 ~~absent witnesses.~~

20 "(b) (1) The court, after a hearing as provided in  
21 this subsection, and the presentment of an indictment or a  
22 showing of probable cause in the charged offense, if the  
23 prosecuting attorney proves by clear and convincing evidence  
24 that no condition or combination of conditions of release will  
25 reasonably ensure the defendant's appearance in court or  
26 protect the safety of the community or any person, may deny a

1 defendant's bail, if he or she is charged with any of the  
2 following offenses:

3 "a. Murder, as provided in Section 13A-6-2.

4 "b. Assault in the first degree, as provided in  
5 Section 13A-6-20.

6 "c. Kidnapping in the first degree, as provided in  
7 Section 13A-6-43.

8 "d. Rape in the first degree, as provided in Section  
9 13A-6-61.

10 "e. Sodomy in the first degree, as provided in  
11 Section 13A-6-63.

12 "f. Sexual torture, as provided in Section  
13 13A-6-65.1.

14 "g. Domestic violence in the first degree, as  
15 provided in Section 13A-6-130.

16 "h. Human trafficking in the first degree, as  
17 provided in Section 13A-6-152.

18 "i. Burglary in the first degree, as provided in  
19 Section 13A-7-5.

20 "j. Arson in the first degree, as provided in  
21 Section 13A-7-41.

22 "k. Robbery in the first degree, as provided in  
23 Section 13A-8-41.

24 "l. Terrorism, as provided in subdivision (b) (2) of  
25 Section 13A-10-152.

26 "m. Aggravated child abuse, as provided in  
27 subsection (b) of Section 26-15-3.1.

1           "(2) A court shall order that a defendant charged  
2 with an offense listed in this subsection be held without bond  
3 prior to a pretrial detention hearing, ~~for a period of not~~  
4 ~~more than 10 days, excluding Saturdays, Sundays, and state~~  
5 ~~holidays.~~

6           "(3) The court shall hold a pretrial detention  
7 hearing immediately upon the defendant's first appearance  
8 before the court, unless the prosecuting attorney or the  
9 defendant requests a continuance. Except for good cause, a  
10 continuance on a motion of the defendant may not exceed five  
11 days, excluding Saturdays, Sundays, and state holidays, and a  
12 continuance on motion by the prosecuting attorney may not  
13 exceed three days, excluding Saturdays, Sundays, and state  
14 holidays. During the continuance, the defendant shall be  
15 detained.

16           "(4)a. A defendant shall have all of the following  
17 rights at a pretrial detention hearing:

18           "1. To be represented by counsel. If the defendant  
19 is financially unable to obtain counsel, he or she shall have  
20 counsel appointed.

21           "2. To testify.

22           "3. To present witnesses.

23           "4. To present evidence.

24           "5. To cross-examine witnesses.

25           "b. The judge shall have discretion as to who the  
26 defendant may call as a witness as provided in this  
27 subdivision at the pretrial detention hearing.

1           "(5) In considering whether there are any conditions  
2 or combination of conditions that would reasonably ensure the  
3 defendant's appearance in court or protect the safety of the  
4 community and of any person, the court shall consider all of  
5 the following factors:

6           "a. The nature and circumstances of the offenses  
7 charged.

8           "b. The weight of the evidence against the  
9 defendant.

10           "c. The history and characteristics of the  
11 defendant, including, but not limited to the defendant's  
12 character, physical and mental condition, family ties,  
13 employment, financial resources, length of residence in the  
14 community, community ties, past conduct, history relating to  
15 drug or alcohol abuse, criminal history, and record concerning  
16 appearance at court proceedings, and, whether, at the time of  
17 the current offense, the defendant was on probation, parole,  
18 or on other release pending trial, sentencing, appeal, or  
19 completion of sentence for an offense.

20           "d. The nature and seriousness of the danger to any  
21 person or the community if the defendant is released.

22           "(6) At any pretrial detention hearing, the rules  
23 governing admissibility of evidence in criminal trials shall  
24 not apply, and the court shall receive all relevant evidence.  
25 All evidence shall be recorded. The testimony of a defendant  
26 may not be admissible in any other criminal proceeding against  
27 the defendant, except if being used for perjury based on the

1 testimony or for the purpose of impeachment in any subsequent  
2 proceeding.

3 "(7)a. A prosecuting attorney may file a motion for  
4 a pretrial detention hearing at any time.

5 "b. A pretrial detention hearing may be reopened,  
6 before or after a determination by the court, at any time  
7 prior to trial if the court finds that information exists that  
8 was not known by the movant at the time of the pretrial  
9 detention hearing.

10 "(8) In an order denying bail, the judge shall make  
11 written findings or state for the record findings of fact and  
12 a statement of the reasons for denying bail. The judge shall  
13 enter an order denying bail within 48 hours of the hearing.

14 "§15-13-7.

15 "When a writ of arrest is issued upon an indictment,  
16 the clerk issuing the writ ~~must~~ shall endorse ~~thereon~~ on the  
17 writ an order to the sheriff to take bail of the defendant in  
18 the amount fixed by the judge and endorsed by him or her on  
19 the indictment, unless the defendant is charged with an  
20 offense for which bail may be denied pursuant to Section  
21 15-13-3. In that case, the writ of arrest shall indicate "no  
22 bail," and the defendant may not be released prior to an  
23 initial appearance.

24 "§15-13-104.

25 "Judicial officers shall see that the amount of bail  
26 is affixed to any warrants of arrests issued by the judicial  
27 officer at the time of their issuance for which the defendant

1 is arrested and taken into custody. If arrested for ~~a capital~~  
2 an offense for which the defendant is not entitled to release  
3 on bail pursuant to Section 15-13-3, the judicial officer  
4 shall ~~take care to see~~ confirm that "no bail" is affixed on  
5 the warrant. Judicial officers may delegate the affixation to  
6 lawful employees of the court, but the amount shall be set by  
7 the judicial officer.

8 "§15-13-105.

9 "In cases where a defendant is arrested without a  
10 warrant for an offense that is bailable as a matter of right  
11 and taken into custody and there is no standard bail schedule  
12 prescribed by the presiding judge of the court of jurisdiction  
13 for the amounts of bail for ~~such~~ the arrests without warrants,  
14 then the arresting officer shall, as soon as possible, contact  
15 a judicial officer for an order of bail. If the arresting  
16 officer is unable to contact the judicial officer having  
17 jurisdiction of the case, the arresting officer may contact  
18 any judicial officer having the authority to set bail in that  
19 judicial circuit to issue the order of bail. If no judicial  
20 officer has issued an order of bail within 24 hours of the  
21 arrest of defendant, then the bail shall be set by operation  
22 of law and the amount of bail shall be that amount prescribed  
23 as the minimum amount established by the bail schedule adopted  
24 by Supreme Court rule. Provided, however, in violation and  
25 misdemeanor cases the minimum amount of bail shall be three  
26 hundred dollars (\$300) for each offense charged. The judicial  
27 officer may also fix the amount of bail on the indictment.



1                   "§15-13-106.

2                   "Except in ~~capital~~ cases where there is no right to  
3 release on bail pursuant to Section 15-13-3, no person or  
4 defendant shall be committed to any jail in the State of  
5 Alabama on a warrant unless there is an amount of bail affixed  
6 to the warrant. No person or defendant shall remain in jail  
7 anywhere in this state for more than 24 hours for any felony  
8 or misdemeanor case without an order of bail, unless bail is  
9 not authorized by law."

10                   Section 3. This act shall become effective  
11 immediately upon the ratification of the amendment to the  
12 Constitution of Alabama of 1901, to provide that an individual  
13 is entitled to reasonable bail prior to conviction, unless  
14 charged with certain enumerated crimes as proposed in HB81 of  
15 the 2020 Regular Session.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Judiciary ..... 04-FEB-20

Read for the second time and placed  
on the calendar 1 amendment ..... 20-FEB-20

Read for the third time and passed  
as amended..... 27-FEB-20

Yeas 105, Nays 0, Abstains 0

Jeff Woodard  
Clerk