

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

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8 SYNOPSIS: Existing law prescribes criminal penalties
9 for any person who willfully violates a protection,
10 restraining, or injunctive order, including a
11 mandatory term of imprisonment of 48 continuous
12 hours for a second offense and 30 days for a third
13 offense. The mandatory term of imprisonment cannot
14 be suspended.

15 This bill would increase the mandatory term
16 of imprisonment for a person who willfully violates
17 a domestic violence order to a minimum of 30 days
18 imprisonment that cannot be suspended for a second
19 offense and a minimum of 120 days imprisonment that
20 cannot be suspended for a third offense. This bill
21 would relocate the criminal penalties to Title 13A
22 of the Code of Alabama 1975. This bill would extend
23 these penalties to include violations of domestic
24 violence orders issued by courts of Indian tribes
25 and U.S. territories. This bill would specify that
26 a domestic violence order not issued pursuant to
27 this act specify that a history of violence or

1 abuse exists in order for this act to apply. This
2 bill would also provide that a person arrested for
3 violation of a condition of release could be held
4 without bail pursuant to the Alabama Rules of
5 Criminal Procedure. This bill would also repeal
6 existing law which provides that lack of knowledge
7 of an order is an affirmative defense at a trial
8 for a violation of a domestic violence order under
9 this chapter.

10 Amendment 621 of the Constitution of Alabama
11 of 1901, now appearing as Section 111.05 of the
12 Official Recompilation of the Constitution of
13 Alabama of 1901, as amended, prohibits a general
14 law whose purpose or effect would be to require a
15 new or increased expenditure of local funds from
16 becoming effective with regard to a local
17 governmental entity without enactment by a 2/3 vote
18 unless: it comes within one of a number of
19 specified exceptions; it is approved by the
20 affected entity; or the Legislature appropriates
21 funds, or provides a local source of revenue, to
22 the entity for the purpose.

23 The purpose or effect of this bill would be
24 to require a new or increased expenditure of local
25 funds within the meaning of the amendment. However,
26 the bill does not require approval of a local
27 governmental entity or enactment by a 2/3 vote to

1 become effective because it comes within one of the
2 specified exceptions contained in the amendment.

3
4 A BILL
5 TO BE ENTITLED
6 AN ACT

7
8 Relating to domestic orders; to amend Sections
9 30-5A-1, 30-5A-2, and 30-5A-4, Code of Alabama 1975; to amend
10 and renumber Section 30-5A-3; to provide for legislative
11 intent; to provide further for criminal penalties for
12 violations of domestic violence orders; to provide for the
13 content of orders not issued pursuant to this act; and in
14 connection therewith would have as its purpose or effect the
15 requirement of a new or increased expenditure of local funds
16 within the meaning of Amendment 621 of the Constitution of
17 Alabama of 1901, now appearing as Section 111.05 of the
18 Official Recompilation of the Constitution of Alabama of 1901,
19 as amended.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

23 "§30-5A-1.

24 ~~"This chapter may be cited~~ (a) This chapter shall be
25 known as the "~~Family Violence~~ Domestic Violence Protection
26 Order Enforcement Act."

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

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

22 "§30-5A-2.

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

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

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

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

20 "(1) DOMESTIC VIOLENCE ORDER. A domestic violence
21 order is any protection order issued pursuant to the
22 Protection from Abuse Act, Sections 30-5-1 to 30-5-11,
23 inclusive. The term includes the following: a. A restraining
24 order, injunctive order, or order of release from custody
25 which has been issued in a circuit, district, municipal, or
26 juvenile court in a domestic relations or family violence
27 case. b. An order issued by municipal, district, or circuit

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

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

13 "§30-5A-4.

14 "A ~~peace~~ law enforcement officer may arrest any
15 person for the violation of this chapter if the officer has
16 probable cause to believe that the person has violated any
17 provision of a valid ~~protection~~ domestic violence order,
18 whether temporary or permanent, ~~which has been served on the~~
19 ~~person or of which the person has received sufficient notice~~
20 ~~that the protection order has been issued. The presentation of~~
21 ~~a domestic violence order constitutes probable cause for an~~
22 ~~officer to believe that a valid order exists. For purposes of~~
23 ~~this chapter, the order may be inscribed on a tangible copy or~~
24 ~~may be stored in an electronic or other medium if it is~~
25 ~~retrievable in a detectable form. Presentation of a certified~~
26 ~~copy of the domestic violence order is not required for~~
27 ~~enforcement or to allow a law enforcement officer to effect a~~

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

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

22 Section 2. Section 30-5A-3, Code of Alabama 1975, is
23 amended and renumbered as Section 13A-6-150, Code of Alabama
24 1975, to read as follows:

25 ~~"§30-5A-3.~~ §13A-6-150.

26 ~~"(a) Any proceeding under this chapter shall be in~~
27 ~~accordance with the Rules of Civil Procedure and shall be in~~

1 ~~addition to any other civil or criminal penalties provided by~~
2 ~~law. It is specifically provided that any defendant shall have~~
3 ~~the same rights, remedies, and due process where any wrongful~~
4 ~~action is instituted as any defendant in other civil and~~
5 ~~criminal actions.~~

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

10 ~~"(c) (a) (1) A willful violation of a protection~~
11 ~~domestic violence order, restraining order or injunctive order~~
12 ~~issued to bring about a cessation of the abuse of a person and~~
13 ~~which is issued by a court of competent jurisdiction is a~~
14 ~~Class A misdemeanor which shall be punishable as provided by~~
15 ~~law.~~

16 ~~"(2) The first and any subsequent conviction for a~~
17 ~~willful violation of a protection order, restraining order or~~
18 ~~injunctive order issued to bring about a cessation of the~~
19 ~~abuse of a person is a Class A misdemeanor. A second~~
20 ~~conviction for violation of a protection domestic violence~~
21 ~~order, restraining order or injunctive order issued to bring~~
22 ~~about a cessation of the abuse of a person shall, in addition~~
23 ~~to any other penalty or fine, be punishable by a minimum of 48~~
24 ~~hours continuous 30 days imprisonment which may not be~~
25 ~~suspended. A third or subsequent conviction shall, in addition~~
26 ~~to any other penalty or fine, be punishable by a minimum~~

1 sentence of ~~30~~ 120 days imprisonment which may not be
2 suspended."

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

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