

1 SB477
2 160011-1
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 18-MAR-14

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8 SYNOPSIS: Under existing law, if a criminal defendant
9 is convicted of a Class A felony, and the defendant
10 was previously convicted of three prior felonies at
11 least one of which was a Class A felony, the
12 defendant is required to be sentenced to life
13 without parole.

14 This bill would delete the mandatory
15 sentence to life without parole under the
16 circumstances provided above and authorize the
17 sentencing judge to sentence the defendant to
18 either life or life without parole.

19 Under existing law, the penalty for the
20 trafficking of specified quantities of certain
21 illegal drugs is a mandatory term of life without
22 parole.

23 This bill would revise the penalty to a
24 mandatory term of life with the possibility of
25 parole.

26 Amendment 621 of the Constitution of Alabama
27 of 1901, now appearing as Section 111.05 of the

1 Official ReCompilation of the Constitution of
2 Alabama of 1901, as amended, prohibits a general
3 law whose purpose or effect would be to require a
4 new or increased expenditure of local funds from
5 becoming effective with regard to a local
6 governmental entity without enactment by a 2/3 vote
7 unless: it comes within one of a number of
8 specified exceptions; it is approved by the
9 affected entity; or the Legislature appropriates
10 funds, or provides a local source of revenue, to
11 the entity for the purpose.

12 The purpose or effect of this bill would be
13 to require a new or increased expenditure of local
14 funds within the meaning of the amendment. However,
15 the bill does not require approval of a local
16 governmental entity or enactment by a 2/3 vote to
17 become effective because it comes within one of the
18 specified exceptions contained in the amendment.

19
20 A BILL

21 TO BE ENTITLED

22 AN ACT

23
24 To amend Sections 13A-5-9 and 13A-12-231, Code of
25 Alabama 1975, to further provide for the criminal penalties
26 for certain habitual felony offenders convicted of a Class A
27 felony after three prior felony convictions and the criminal

1 penalties for the trafficking of specified quantities of
2 certain drugs; to delete the mandatory sentence requirements
3 of life without parole; and in connection therewith would have
4 as its purpose or effect the requirement of a new or increased
5 expenditure of local funds within the meaning of Amendment 621
6 of the Constitution of Alabama of 1901, now appearing as
7 Section 111.05 of the Official Recompilation of the
8 Constitution of Alabama of 1901, as amended.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 13A-5-9 and 13A-12-231, Code of
11 Alabama 1975, are amended to read as follows:

12 "§13A-5-9.

13 "(a) In all cases when it is shown that a criminal
14 defendant has been previously convicted of a felony and after
15 the conviction has committed another felony, he or she must be
16 punished as follows:

17 "(1) On conviction of a Class C felony, he or she
18 must be punished for a Class B felony.

19 "(2) On conviction of a Class B felony, he or she
20 must be punished for a Class A felony.

21 "(3) On conviction of a Class A felony, he or she
22 must be punished by imprisonment for life or for any term of
23 not more than 99 years but not less than 15 years.

24 "(b) In all cases when it is shown that a criminal
25 defendant has been previously convicted of any two felonies
26 and after such convictions has committed another felony, he or
27 she must be punished as follows:

1 "(1) On conviction of a Class C felony, he or she
2 must be punished for a Class A felony.

3 "(2) On conviction of a Class B felony, he or she
4 must be punished by imprisonment for life or for any term of
5 not more than 99 years but not less than 15 years.

6 "(3) On conviction of a Class A felony, he or she
7 must be punished by imprisonment for life or for any term of
8 not less than 99 years.

9 "(c) In all cases when it is shown that a criminal
10 defendant has been previously convicted of any three felonies
11 and after such convictions has committed another felony, he or
12 she must be punished as follows:

13 "(1) On conviction of a Class C felony, he or she
14 must be punished by imprisonment for life or for any term of
15 not more than 99 years but not less than 15 years.

16 "(2) On conviction of a Class B felony, he or she
17 must be punished by imprisonment for life or any term of not
18 less than 20 years.

19 "(3) On conviction of a Class A felony, ~~where the~~
20 ~~defendant has no prior convictions for any Class A felony,~~ he
21 or she must be punished by imprisonment for life or life
22 without the possibility of parole, in the discretion of the
23 trial court.

24 ~~"(4) On conviction of a Class A felony, where the~~
25 ~~defendant has one or more prior convictions for any Class A~~
26 ~~felony, he or she must be punished by imprisonment for life~~
27 ~~without the possibility of parole.~~

1 "§13A-12-231.

2 "Except as authorized in Chapter 2, Title 20:

3 "(1) Any person who knowingly sells, manufactures,
4 delivers, or brings into this state, or who is knowingly in
5 actual or constructive possession of, in excess of one kilo or
6 2.2 pounds of any part of the plant of the genus Cannabis,
7 whether growing or not, the seeds thereof, the resin extracted
8 from any part of the plant, and every compound, manufacture,
9 salt, derivative, mixture, or preparation of the plant, its
10 seeds, or resin including the completely defoliated mature
11 stalks of the plant, fiber produced from the stalks, oil, or
12 cake, or the completely sterilized samples of seeds of the
13 plant which are incapable of germination is guilty of a
14 felony, which felony shall be known as "trafficking in
15 cannabis." Nothing in this subdivision shall apply to samples
16 of tetrahydrocannabinols including, but not limited to, all
17 synthetic or naturally produced samples of
18 tetrahydrocannabinols which contain more than 15 percent by
19 weight of tetrahydrocannabinols and which do not contain plant
20 material exhibiting the external morphological features of the
21 plant cannabis. If the quantity of cannabis involved:

22 "a. Is in excess of one kilo or 2.2 pounds, but less
23 than 100 pounds, the person shall be sentenced to a mandatory
24 minimum term of imprisonment of three calendar years and to
25 pay a fine of twenty-five thousand dollars (\$25,000).

26 "b. Is 100 pounds or more, but less than 500 pounds,
27 the person shall be sentenced to a mandatory minimum term of

1 imprisonment of five calendar years and to pay a fine of fifty
2 thousand dollars (\$50,000).

3 "c. Is 500 pounds or more, but less than 1,000
4 pounds, the person shall be sentenced to a mandatory minimum
5 term of imprisonment of 15 calendar years and to pay a fine of
6 two hundred thousand dollars (\$200,000).

7 "d. Is 1,000 pounds or more, the person shall be
8 sentenced to a mandatory term of imprisonment of life ~~without~~
9 ~~parole~~.

10 "(2) Any person who knowingly sells, manufactures,
11 delivers, or brings into this state, or who is knowingly in
12 actual or constructive possession of, 28 grams or more of
13 cocaine or of any mixture containing cocaine, described in
14 Section 20-2-25(1), is guilty of a felony, which felony shall
15 be known as "trafficking in cocaine." If the quantity
16 involved:

17 "a. Is 28 grams or more, but less than 500 grams,
18 the person shall be sentenced to a mandatory minimum term of
19 imprisonment of three calendar years and to pay a fine of
20 fifty thousand dollars (\$50,000).

21 "b. Is 500 grams or more, but less than one kilo,
22 the person shall be sentenced to a mandatory minimum term of
23 imprisonment of five calendar years and to pay a fine of one
24 hundred thousand dollars (\$100,000).

25 "c. Is one kilo, but less than 10 kilos, then the
26 person shall be sentenced to a mandatory minimum term of

1 imprisonment of 15 calendar years and to pay a fine of two
2 hundred fifty thousand dollars (\$250,000).

3 "d. Is 10 kilos or more, the person shall be
4 sentenced to a mandatory term of imprisonment of life ~~without~~
5 ~~parole~~.

6 "(3) Any person who knowingly sells, manufactures,
7 delivers, or brings into this state, or who is knowingly in
8 actual or constructive possession of, four grams or more of
9 any morphine, opium, or any salt, isomer, or salt of an isomer
10 thereof, including heroin, as described in Section 20-2-23(2)
11 or Section 20-2-25(1)a., or four grams or more of any mixture
12 containing any such substance, is guilty of a felony, which
13 felony shall be known as "trafficking in illegal drugs." If
14 the quantity involved:

15 "a. Is four grams or more, but less than 14 grams,
16 the person shall be sentenced to a mandatory minimum term of
17 imprisonment of three calendar years and to pay a fine of
18 fifty thousand dollars (\$50,000).

19 "b. Is 14 grams or more, but less than 28 grams, the
20 person shall be sentenced to a mandatory minimum term of
21 imprisonment of 10 calendar years and to pay a fine of one
22 hundred thousand dollars (\$100,000).

23 "c. Is 28 grams or more, but less than 56 grams, the
24 person shall be sentenced to a mandatory minimum term of
25 imprisonment of 25 calendar years and to pay a fine of five
26 hundred thousand dollars (\$500,000).

1 "d. Is 56 grams or more, the person shall be
2 sentenced to a mandatory term of imprisonment of life ~~without~~
3 ~~parole~~.

4 "(4) Any person who knowingly sells, manufactures,
5 delivers, or brings into this state, or who is knowingly in
6 actual or constructive possession of 1,000 or more pills or
7 capsules of methaqualone, as described in Section 20-2-1, et
8 seq., is guilty of a felony, which felony shall be known as
9 "trafficking in illegal drugs." If the quantity involved:

10 "a. Is 1,000 pills or capsules, but less than 5,000
11 pills or capsules, the person shall be sentenced to a
12 mandatory minimum term of imprisonment of three calendar years
13 and pay a fine of fifty thousand dollars (\$50,000).

14 "b. Is 5,000 capsules or more, but less than 25,000
15 capsules, that person shall be imprisoned to a mandatory
16 minimum term of imprisonment of 10 calendar years and pay a
17 fine of one hundred thousand dollars (\$100,000).

18 "c. Is 25,000 pills or more, but less than 100,000
19 pills or capsules, the person shall be sentenced to a
20 mandatory minimum term of imprisonment of 25 calendar years
21 and pay a fine of five hundred thousand dollars (\$500,000).

22 "d. Is 100,000 capsules or more, the person shall be
23 sentenced to a mandatory term of imprisonment of life ~~without~~
24 ~~parole~~.

25 "(5) Any person who knowingly sells, manufactures,
26 delivers or brings into this state, or who is knowingly in
27 actual or constructive possession of 500 or more pills or

1 capsules of hydromorphone as is described in Section 20-2-1,
2 et seq., is guilty of a felony which shall be known as
3 "trafficking in illegal drugs." If the quantity involved:

4 "a. Is 500 pills or capsules or more but less than
5 1,000 pills or capsules, the person shall be sentenced to a
6 mandatory term of imprisonment of three calendar years and to
7 pay a fine of fifty thousand dollars (\$50,000).

8 "b. Is 1,000 pills or capsules or more, but less
9 than 4,000 pills or capsules, the person shall be sentenced to
10 a mandatory term of imprisonment of 10 calendar years and to
11 pay a fine of one hundred thousand dollars (\$100,000).

12 "c. Is 4,000 pills or capsules or more but less than
13 10,000 pills or capsules, the person shall be sentenced to a
14 mandatory term of imprisonment of 25 calendar years and to pay
15 a fine of one hundred thousand dollars (\$100,000).

16 "d. Is more than 10,000 pills or capsules, the
17 person shall be sentenced to a mandatory term of imprisonment
18 of life in prison ~~without parole~~.

19 "(6) Any person who knowingly sells, manufactures,
20 delivers, or brings into this state, or who is knowingly in
21 actual or constructive possession of, 28 grams or more of
22 3,4-methylenedioxy amphetamine, or of any mixture containing
23 3,4-methylenedioxy amphetamine, is guilty of a felony, which
24 felony shall be known as "trafficking in illegal drugs." If
25 the quantity involved:

26 "a. Is 28 grams or more, but less than 500 grams,
27 the person shall be sentenced to a mandatory minimum term of

1 imprisonment of three calendar years and to pay a fine of
2 fifty thousand dollars (\$50,000).

3 "b. Is 500 grams or more, but less than one kilo,
4 the person shall be sentenced to a mandatory minimum term of
5 imprisonment of five calendar years and to pay a fine of one
6 hundred thousand dollars (\$100,000).

7 "c. Is one kilo, but less than 10 kilos, then the
8 person shall be sentenced to a mandatory minimum term of
9 imprisonment of 15 calendar years and to pay a fine of two
10 hundred fifty thousand dollars (\$250,000).

11 "d. Is 10 kilos or more, the person shall be
12 sentenced to a mandatory term of imprisonment of life ~~without~~
13 ~~parole~~.

14 "(7) Any person who knowingly sells, manufactures,
15 delivers, or brings into this state, or who is knowingly in
16 actual or constructive possession of, 28 grams or more of
17 5-methoxy-3, 4-methylenedioxy amphetamine, or of any mixture
18 containing 5-methoxy-3, 4-methylenedioxy amphetamine is guilty
19 of a felony, which felony shall be known as "trafficking in
20 illegal drugs" if the quantity involved:

21 "a. Is 28 grams or more, but less than 500 grams,
22 the person shall be sentenced to a mandatory minimum term of
23 imprisonment of three calendar years and to pay a fine of
24 fifty thousand dollars (\$50,000).

25 "b. Is 500 grams or more, but less than one kilo,
26 the person shall be sentenced to a mandatory minimum term of

1 imprisonment of five calendar years and to pay a fine of one
2 hundred thousand dollars (\$100,000).

3 "c. Is one kilo, but less than 10 kilos, then the
4 person shall be sentenced to a mandatory minimum term of
5 imprisonment of 15 calendar years and to pay a fine of two
6 hundred fifty thousand dollars (\$250,000).

7 "d. Is 10 kilos or more, the person shall be
8 sentenced to a mandatory term of imprisonment of life ~~without~~
9 ~~parole~~.

10 "(8) Any person who knowingly sells, manufactures,
11 delivers, or brings into this state, or who is knowingly in
12 actual or constructive possession of, four grams or more of
13 phencyclidine, or any mixture containing phencyclidine, is
14 guilty of a felony, which felony shall be known as
15 "trafficking in illegal drugs." If the quantity involved:

16 "a. Is four grams or more, but less than 14 grams,
17 the person shall be sentenced to a mandatory minimum term of
18 imprisonment of three calendar years and to pay a fine of
19 fifty thousand dollars (\$50,000).

20 "b. Is 14 grams or more, but less than 28 grams, the
21 person shall be sentenced to a mandatory minimum term of
22 imprisonment of five calendar years and to pay a fine of one
23 hundred thousand dollars (\$100,000).

24 "c. Is 28 grams or more, but less than 56 grams,
25 then the person shall be sentenced to a mandatory minimum term
26 of imprisonment of 15 calendar years and to pay a fine of two
27 hundred fifty thousand dollars (\$250,000).

1 "d. Is 56 grams or more, the person shall be
2 sentenced to a mandatory term of imprisonment of life ~~without~~
3 ~~parole~~.

4 "(9) Any person who knowingly sells, manufactures,
5 delivers, or brings into this state, or who is knowingly in
6 actual or constructive possession of, four grams or more of
7 lysergic acid diethylamide, of four grams or more of any
8 mixture containing lysergic acid diethylamide, is guilty of a
9 felony, which felony shall be known as "trafficking in illegal
10 drugs." If the quantity involved:

11 "a. Is four grams or more, but less than 14 grams,
12 the person shall be sentenced to a mandatory minimum term of
13 imprisonment of three calendar years and to pay a fine of
14 fifty thousand dollars (\$50,000).

15 "b. Is 14 grams or more, but less than 28 grams, the
16 person shall be sentenced to a mandatory minimum term of
17 imprisonment of 10 calendar years and to pay a fine of one
18 hundred thousand dollars (\$100,000).

19 "c. Is 28 grams or more, but less than 56 grams, the
20 person shall be sentenced to a mandatory minimum term of
21 imprisonment of 25 calendar years and to pay a fine of five
22 hundred thousand dollars (\$500,000).

23 "d. Is 56 grams or more, the person shall be
24 sentenced to a mandatory term of imprisonment of life ~~without~~
25 ~~parole~~.

26 "(10) Any person who knowingly sells, manufactures,
27 delivers or brings into this state, or who is knowingly in

1 actual or constructive possession of, 28 grams or more of
2 amphetamine or any mixture containing amphetamine, its salt,
3 optical isomer, or salt of its optical isomer thereof, is
4 guilty of a felony, which felony shall be known as
5 "trafficking in amphetamine." If the quantity involved:

6 "a. Is 28 grams or more but less than 500 grams, the
7 person shall be sentenced to a mandatory minimum term of
8 imprisonment of three calendar years and to pay a fine of
9 fifty thousand dollars (\$50,000).

10 "b. Is 500 grams or more, but less than one kilo,
11 the person shall be sentenced to a mandatory minimum term of
12 imprisonment of five calendar years and to pay a fine of one
13 hundred thousand dollars (\$100,000).

14 "c. Is one kilo but less than 10 kilos, then the
15 person shall be sentenced to a mandatory minimum term of
16 imprisonment of 15 calendar years and to pay a fine of two
17 hundred fifty thousand dollars (\$250,000).

18 "d. Is 10 kilos or more, the person shall be
19 sentenced to a mandatory term of imprisonment of life ~~without~~
20 ~~parole~~.

21 "(11) Any person who knowingly sells, manufactures,
22 delivers, or brings into this state, or who is knowingly in
23 actual or constructive possession of, 28 grams or more of
24 methamphetamine or any mixture containing methamphetamine, its
25 salts, optical isomers, or salt of its optical isomers
26 thereof, is guilty of a felony, which felony shall be known as
27 "trafficking in methamphetamine." If the quantity involved:

1 "a. Is 28 grams or more but less than 500 grams, the
2 person shall be sentenced to a mandatory minimum term of
3 imprisonment of three calendar years and to pay a fine of
4 fifty thousand dollars (\$50,000).

5 "b. Is 500 grams or more, but less than one kilo,
6 the person shall be sentenced to a mandatory minimum term of
7 imprisonment of five calendar years and to pay a fine of one
8 hundred thousand dollars (\$100,000).

9 "c. Is one kilo but less than 10 kilos, then the
10 person shall be sentenced to a mandatory minimum term of
11 imprisonment of 15 calendar years and to pay a fine of two
12 hundred fifty thousand dollars (\$250,000).

13 "d. Is 10 kilos or more, the person shall be
14 sentenced to a mandatory term of imprisonment of life ~~without~~
15 ~~parole~~.

16 "(12) Any person who knowingly sells, manufactures,
17 delivers, or brings into this state, or who is knowingly in
18 actual or constructive possession of 28 or more grams of a
19 controlled substance analog, as described in Section 20-2-23,
20 is guilty of a felony, which felony shall be known as
21 "trafficking in controlled substance analogs." If the quantity
22 involved:

23 "a. Is 28 grams or more, but less than 500 grams,
24 the person shall be sentenced to a mandatory minimum term of
25 imprisonment of three calendar years and to pay a fine of
26 fifty thousand dollars (\$50,000).

1 "b. Is 500 grams or more, but less than 1 kilo, the
2 person shall be sentenced to a mandatory minimum term of
3 imprisonment of 10 calendar years and to pay a fine of one
4 hundred thousand dollars (\$100,000).

5 "c. Is one kilo, but less than 10 kilos, then the
6 person shall be sentenced to a mandatory minimum term of
7 imprisonment of 15 calendar years and to pay a fine of two
8 hundred fifty thousand dollars (\$250,000).

9 "d. Is 10 kilos or more, the person shall be
10 sentenced to a mandatory term of imprisonment of life ~~without~~
11 ~~parole~~.

12 "(13) The felonies of "trafficking in cannabis,"
13 "trafficking in cocaine," "trafficking in illegal drugs,"
14 "trafficking in amphetamine," "trafficking in
15 methamphetamine," and "trafficking in controlled substance
16 analogs" as defined in subdivisions (1) through (12), above,
17 shall be treated as Class A felonies for purposes of Title
18 13A, including sentencing under Section 13A-5-9. Provided,
19 however, that the sentence of imprisonment for a defendant
20 with one or more prior felony convictions who violates
21 subdivisions (1) through (12) of this section shall be the
22 sentence provided therein, or the sentence provided under
23 Section 13A-5-9, whichever is greater. Provided further, that
24 the fine for a defendant with one or more prior felony
25 convictions who violates subdivisions (1) through (12) of this
26 section shall be the fine provided therein, or the fine
27 provided under Section 13A-5-9, whichever is greater.

1 "(14) Notwithstanding any provision of law to the
2 contrary, any person who has possession of a firearm during
3 the commission of any act proscribed by this section shall be
4 punished by a term of imprisonment of five calendar years
5 which shall be in addition to, and not in lieu of, the
6 punishment otherwise provided, and a fine of twenty-five
7 thousand dollars (\$25,000); the court shall not suspend the
8 five-year additional sentence of the person or give the person
9 a probationary sentence."

10 Section 2. Although this bill would have as its
11 purpose or effect the requirement of a new or increased
12 expenditure of local funds, the bill is excluded from further
13 requirements and application under Amendment 621, now
14 appearing as Section 111.05 of the Official Recompilation of
15 the Constitution of Alabama of 1901, as amended, because the
16 bill defines a new crime or amends the definition of an
17 existing crime.

18 Section 3. This act shall become effective
19 immediately following its passage and approval by the
20 Governor, or its otherwise becoming law.