

Domestic Violence as a Crime Law
(HB 16)

Enrolled, An Act,

Creating the crimes of domestic violence in the first, second, and third degree and providing penalties; to further provide the procedures relating to the arrest of persons based on complaints of domestic violence; to amend Section 15-10-3, Code of Alabama 1975, to further provide for the persons subject to arrest without a warrant; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama 1901.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) A person commits the crime of domestic violence in the first degree if the person commits the crime of assault in the first degree pursuant to Section 13A-6-20, Code of Alabama 1975, and the victim is a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant. Domestic violence in the first degree is a Class A felony, except that the defendant shall serve a minimum term of imprisonment of one year without consideration of probation, parole, good time credits, or any other reduction in time for any second or subsequent conviction under this subsection. (b) The minimum term of imprisonment imposed under subsection (a) shall be double without consideration of probation, parole, good time credits, or any reduction in time if a defendant willfully violates a protection order issued by a court of competent jurisdiction and in the process of violating the order commits domestic violence in the first degree.

Section 2. (a) A person commits the crime of domestic violence in the second degree if the person commits the crime of assault in the second degree pursuant to Section 13A-6-21, Code of Alabama 1975, and the victim is a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant. Domestic violence in the second degree is a Class B felony, except the defendant shall serve a minimum term of imprisonment of six months without consideration of probation, parole, good time credits, or any reduction in time for any second or subsequent conviction under this subsection. (b) The minimum term of imprisonment imposed under subsection (a) shall be double without consideration of probation, parole, good time credits, or any reduction in time if a defendant willfully violates a protection order issued by a court of competent jurisdiction and in the process of violating the order commits domestic violence in the second degree.

Section 3. (a) A person commits domestic violence in the third degree if the person commits the crime of assault in the third degree pursuant to Section 13A-6-22, Code of Alabama 1975; the crime of menacing pursuant to Code of Alabama 1975, Section 13A-6-23; the crime of reckless endangerment pursuant to Code of Alabama 1975, Section 13A-6-24; the crime of criminal coercion pursuant to Code of Alabama 1975, Section 13A-6-25; or the crime of harassment pursuant to subsection (a) of Section 13A-11-8, Code of Alabama 1975; and the victim is a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant. Domestic violence in the third degree is a Class A misdemeanor, except the defendant shall serve a minimum term of imprisonment of 48 hours in a city or county jail or detention facility without consideration of reduction in time for any second or subsequent conviction under this subsection. (b) The minimum term of imprisonment imposed under subsection (a) shall be double without consideration of reduction in time if a defendant willfully violates a protection order issued by a court of competent jurisdiction and in the process of violating the order commits domestic violence in the third degree.

Section 4. For the purposes of an arrest without a warrant pursuant to Section 15-10-3, Code of Alabama 1975, the crimes of domestic violence in the first, second, and third degrees shall be an offense involving domestic violence. A warrantless arrest for an offense involving domestic violence made pursuant to subdivision (8) of subsection (a) of Section 15-10-3, Code of Alabama 1975, shall include a charge of a crime of domestic violence under this act.

Section 5. If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person alleged to have committed domestic violence. In determining whether a person is the primary aggressor the officer

shall consider all of the following: (1) Prior complaints of domestic violence. (2) The relative severity of the injuries inflicted on each person. (3) The likelihood of future injury to each person. (4) Whether one of the persons acted in self-defense.

A law enforcement officer shall not threaten, suggest or otherwise indicate the possible arrest of all parties to discourage the request for intervention by law enforcement by any party or base the decision to arrest or not to arrest on either of the following: (1) The specific consent or request of the victim. (2) The Officer's perception of the willingness of a victim or witness to the domestic violence to testify or otherwise participate in a judicial proceeding.

Section 6. For the purposes of Chapter 5 of Title 30, Code of Alabama 1975, the crimes of domestic violence in the first, second, and third degrees shall be included as acts, attempts, or threats of abuse as defined pursuant to Section 30-5-2.

Section 7. For the purposes of Article 6, Chapter 3 of Title 30, Code of Alabama 1975, the definition of "domestic or family abuse" includes an incident of domestic violence in the first, second, or third degrees pursuant to this act.

Section 8. Section 15-10-3 of the Code of Alabama 1975, is amended to read as follows: "§15-10-3. "(a) An officer may arrest a person without a warrant, on any day and at any time in any of the following instances: "(1) If a public offense has been committed or a breach of the peace threatened in the presence of the officer. "(2) When a felony has been committed, though not in the presence of the officer, by the person arrested. "(3) When a felony has been committed and the officer has reasonable cause to believe that the person arrested committed the felony. "(4) When the officer has reasonable cause to believe that the person arrested has committed a felony, although it may afterwards appear that a felony had not in fact been committed. "(5) When a charge has been made, upon reasonable cause, that the person arrested has committed a felony. "(6) When the officer has actual knowledge that a warrant for the person's arrest for the commission of a felony or misdemeanor has been issued, provided that the warrant was issued in accordance with this chapter. However, upon request the officer shall show the warrant to the arrested person as soon as possible. If the officer does not have the warrant in his or her possession at the time of arrest the officer shall inform the defendant of the offense charged and of the fact that a warrant has been issued. "(7) When the officer has reasonable cause to believe that a felony or misdemeanor has been committed by the person arrested in violation of a protection order issued by a court of competent jurisdiction. "(8) When an offense involves domestic violence as defined by this section, and the arrest is based on probable cause, regardless of whether the offense is a felony or misdemeanor. "(b) For the purpose of this section, the following terms have the following meanings: "(1) ABUSE. Any offense under Sections 13A-6-60 to 13A-6-70, inclusive, or under Sections 26-15-1 to 26-15-4, inclusive. "(2) ASSAULT. Any offense under Sections 13A-6-20 to 13A-6-25, inclusive. "(3) FAMILY, HOUSEHOLD, OR DATING OR ENGAGEMENT RELATIONSHIP MEMBERS. Includes a spouse, former spouse, parent, child, or any other person related by blood, marriage, or common law marriage, a person with whom the victim has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship. "(4) DOMESTIC VIOLENCE. Any incident resulting in the abuse, assault, harassment, or the attempt or threats thereof, between family, household, or dating or engagement relationship members. "(5) HARASSMENT. Any offense under Section 13A-11-8. "(c) When a law enforcement officer investigates an allegation of domestic violence, whether or not an arrest is made, the officer shall make a written report of the alleged incident, including a statement of the complaint, and the disposition of the case."

Section 9. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, of the Constitution of Alabama of 1901, because the bill defines a new crime or amends the definition of an existing crime.

Section 10. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

Greg Gappas

Speaker of the House of Representatives

Steve Hironaka

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 09-MA3-2000.

Greg Gappas
Clerk

Senate

16-AB-2000

Passed

APPROVED *4:25.00*

TIME *2:15 PM*

Robert DeLoach
GOVERNOR

Alaska Secretary of State
Dist. No.: 2000-200
Bill No.: HB16
16-AB-2000 03/10/2000