

1 SB301  
2 218587-1  
3 By Senator Barfoot  
4 RFD: Judiciary  
5 First Read: 08-MAR-22

8 SYNOPSIS: Under existing law, a person convicted of  
9 certain offenses is prohibited from owning a  
10 firearm.

11 This bill would provide for additional  
12 offenses that would prohibit a convicted person  
13 from owning or possessing a firearm or ammunition.

14 This bill would provide various penalties  
15 for unlawful ownership of certain firearms.

16 This bill would also establish certain  
17 sentencing requirements for firearm-related  
18 offenders and would exclude any convicted  
19 firearm-related offender from eligibility for  
20 certain correctional programs under certain  
21 conditions.

22 Amendment 621 of the Constitution of Alabama  
23 of 1901, as amended by Amendment 890, now appearing  
24 as Section 111.05 of the Official ReCompilation of  
25 the Constitution of Alabama of 1901, as amended,  
26 prohibits a general law whose purpose or effect  
27 would be to require a new or increased expenditure

1 of local funds from becoming effective with regard  
2 to a local governmental entity without enactment by  
3 a 2/3 vote unless: it comes within one of a number  
4 of specified exceptions; it is approved by the  
5 affected entity; or the Legislature appropriates  
6 funds, or provides a local source of revenue, to  
7 the entity for the purpose.

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

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT  
19

20 Relating to firearms; to amend Sections 13A-11-70,  
21 13A-11-72 and 13A-11-84 of the Code of Alabama 1975; to add  
22 13A-11-72.1 to the Code of Alabama 1975; to prohibit certain  
23 persons from owning a firearm; to exclude certain individuals  
24 from correctional programs under certain conditions; to  
25 establish certain sentencing requirements for certain  
26 offenders and exclude those offenders from certain  
27 correctional programs under certain conditions; to further

1 provide for penalties; and in connection therewith would have  
2 as its purpose or effect the requirement of a new or increased  
3 expenditure of local funds within the meaning of Amendment 621  
4 of the Constitution of Alabama of 1901, as amended by  
5 Amendment 890, now appearing as Section 111.05 of the Official  
6 Recompilation of the Constitution of Alabama of 1901, as  
7 amended.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 13A-11-70, 13A-11-72, and  
10 13A-11-84 of the Code of Alabama 1975, are amended to read as  
11 follows:

12 "§13A-11-70.

13 "For the purposes of this division, the following  
14 terms shall have ~~the respective meanings ascribed by this~~  
15 ~~section~~ the following meanings:

16 "(1) BRANDISH. To wave, flourish, display, or hold  
17 an item in a manner that is threatening or would appear  
18 threatening to a reasonable person, with or without explicit  
19 verbal threat, or in a wanton or reckless manner.

20 "~~(1)~~ (2) COMMISSION. The Alabama Justice Information  
21 Commission.

22 "~~(2)~~ (3) CONCEALED CARRY PERMIT or PISTOL PERMIT. A  
23 permit to carry a pistol in a vehicle or concealed on or about  
24 his or her person within the state.

25 "~~(3)~~ (4) CRIME OF VIOLENCE. Any ~~of the following~~  
26 ~~crimes~~ offense defined as a "violent offense" pursuant to  
27 Section 12-25-32, a "sex offense" pursuant to Section

1 15-20A-5, or an attempt to commit any of ~~them~~ the offenses,  
2 ~~namely, murder, manslaughter, ( except manslaughter arising~~  
3 ~~out of the operation of a vehicle), rape, mayhem, assault with~~  
4 ~~intent to rob, assault with intent to ravish, assault with~~  
5 ~~intent to murder, robbery, burglary, and kidnapping. "Crime of~~  
6 ~~violence"~~. The term shall also mean any Class A felony or any  
7 Class B felony that has as an element serious physical injury,  
8 the distribution or manufacture of a controlled substance, or  
9 is of a sexual nature involving a child under the age of 12  
10 years.

11 ~~"(4)(5)~~ HONORABLY DISCHARGED VETERAN. An individual  
12 honorably discharged from active duty in the Army, the Navy,  
13 the Marine Corps, the Air Force, the Space Force, or the Coast  
14 Guard of the United States, or any reserve or National Guard  
15 component of the United States Armed Forces, as evidenced by  
16 his or her DD Form 214, Record and Report of Separation  
17 Honorable Discharge Record, or other applicable documentation.

18 ~~"(5)(6)~~ LIFETIME CONCEALED CARRY PERMIT or LIFETIME  
19 CARRY PERMIT. A concealed carry permit that is valid for the  
20 lifetime of the permit holder.

21 ~~"(6)(7)~~ PERSON. ~~Such term includes any~~ Any firm,  
22 partnership, association, or corporation.

23 ~~"(7)(8)~~ PISTOL. Any firearm with a barrel less than  
24 12 inches in length.

25 ~~"(8)(9)~~ RETIRED MILITARY VETERAN. An individual who  
26 is a retiree from active duty in the Army, the Navy, the  
27 Marine Corps, the Air Force, the Space Force, or the Coast

1 Guard of the United States, or any reserve or National Guard  
2 component of the United States Armed Forces.

3 ~~"(9)~~ (10) SERVICE MEMBER. An individual who is in  
4 military service and is a member of the armed services or  
5 reserve forces of the United States or a member of the Alabama  
6 National Guard.

7 "(11) SHORT-BARRELED RIFLE. The same meaning as  
8 defined in Section 13A-11-62.

9 "(12) SHORT-BARRELED SHOTGUN. The same meaning as  
10 defined in Section 13A-11-62.

11 "§13A-11-72.

12 ~~"(a) No person who has been convicted in this state  
13 or elsewhere of committing or attempting to commit a crime of  
14 violence, misdemeanor offense of domestic violence, violent  
15 offense as listed in Section 12-25-32(15), anyone who is  
16 subject to a valid protection order for domestic abuse, or  
17 anyone of unsound mind shall own a firearm or have one in his  
18 or her possession or under his or her control.~~

19 "(a) A person may not own a firearm, or have a  
20 firearm in his or her possession or under his or her control,  
21 if any of the following apply:

22 "(1) The person has been convicted in this state or  
23 elsewhere of committing or attempting to commit a crime of  
24 violence or a violent offense as defined in Section 12-25-32.

25 "(2) The person has been convicted of a misdemeanor  
26 offense of domestic violence pursuant to subsection (m).

1           "(3) The person is subject to a valid protection  
2 order for domestic abuse pursuant to subsection (n).

3           "(4) The person is of unsound mind pursuant to  
4 subsection (p).

5           "(5) The person is released on bail or his or her  
6 own recognizance for the commission or attempted commission of  
7 a violent Class A or Class B felony offense as defined in  
8 Section 12-25-32, or any offense involving the use of a  
9 firearm. Unless waived by the defendant, no conviction under  
10 this subdivision shall be imposed unless the person is first  
11 convicted for the offense, or a lesser included offense, for  
12 which he or she was released on bail or his or her own  
13 recognizance that gave rise to the charge.

14           "(b) Any person who knowingly violates subsection  
15 (a) shall be guilty of a Class B felony and imprisoned for not  
16 less than 10 years. Upon a second or subsequent violation of  
17 subsection (a), the person shall be guilty of a Class A felony  
18 and sentenced to a term of imprisonment of not less than 20  
19 years. Notwithstanding any other provision of law, the term of  
20 imprisonment shall run consecutive with any other term of  
21 imprisonment for any other offense and the person shall not be  
22 eligible for any of the following:

23           "(1) Probation.

24           "(2) Community corrections.

25           "(3) Split sentence provisions of Section 15-18-8.

1           "(4) Any type of early release program, work release  
2 program, good time, or any other program that changes the  
3 overall time or location of incarceration.

4           "(5) Any sentencing schedule or worksheet that is  
5 adopted, created, or otherwise released by the Alabama  
6 Sentencing Commission.

7           "~~(b)~~ (c) No person who is a minor, except under the  
8 circumstances provided in this section, a drug addict, or an  
9 habitual drunkard shall own a pistol or have ~~one~~ a pistol in  
10 his or her possession or under his or her control. A violation  
11 of this subsection shall be a Class A misdemeanor.

12           "~~(c)~~ (d) Subject to the exceptions provided by  
13 Section 13A-11-74, no person shall knowingly, with intent to  
14 do bodily harm, carry or possess a deadly weapon on the  
15 premises of a public school.

16           "~~(d)~~ (e) Possession of a deadly weapon with the  
17 intent to do bodily harm on the premises of a public school in  
18 violation of subsection ~~(c)~~ (d) is a Class C  
19 felony.

20           "~~(e)~~ (f) School security personnel and school  
21 resource officers qualified under subsection (a) of Section  
22 16-1-44.1, employed by a local board of education, and  
23 authorized by the employing local board of education to carry  
24 a deadly weapon while on duty are exempt from subsection ~~(c)~~  
25 ~~of this section~~ (d). Law enforcement officers are exempt from  
26 this section, and persons with pistol permits issued pursuant



1 to Section 13A-11-75, are exempt from subsection ~~(c)~~ of this  
2 section (d).

3 "~~(f)~~ (g) A person shall not be in violation of  
4 Section 13A-11-57 or 13A-11-76 and a minor shall not be in  
5 violation of this section if the minor has permission to  
6 possess a pistol from a parent or legal guardian who is not  
7 prohibited from possessing a firearm under state or federal  
8 law, and any of the following are satisfied:

9 "(1) The minor is attending a hunter education  
10 course or a firearms safety course under the supervision of an  
11 adult who is not prohibited from possessing a firearm under  
12 state or federal law.

13 "(2) The minor is engaging in practice in the use of  
14 a firearm or target shooting at an established range under the  
15 supervision of an adult who is not prohibited from possessing  
16 a firearm under state or federal law.

17 "(3) The minor is engaging in an organized  
18 competition involving the use of a firearm or participating in  
19 or practicing for a performance by an organized group under 26  
20 U.S.C. § 501(c) (3) which uses firearms as part of the  
21 performance.

22 "(4) The minor is hunting or fishing pursuant to a  
23 valid license, if required, and the person has the license in  
24 his or her possession; has written permission of the owner or  
25 legal possessor of the land on which the activities are being  
26 conducted; and the pistol, when loaded, is carried only in a  
27 manner discernible by ordinary observation.

1           "(5) The minor is on real property under the control  
2 of the minor's parent, legal guardian, or grandparent.

3           "(6) The minor is a member of the armed services or  
4 National Guard and the minor is acting in the line of duty.

5           "(7) The minor is traveling by motor vehicle to any  
6 of the locations or activities listed in subdivisions (1)  
7 through (6), has written permission to possess the pistol by  
8 his or her parent or legal guardian, and the pistol is  
9 unloaded, locked in a compartment or container that is in or  
10 affixed securely to the motor vehicle, and is out of reach of  
11 the driver and any passenger in the motor vehicle.

12           "~~(g)~~ (h) This section does not apply to a minor who  
13 uses a pistol while acting in self-defense of himself or  
14 herself or other persons against an intruder into the  
15 residence of the minor or a residence in which the minor is an  
16 invited guest.

17           "~~(h)~~ (i) The term "school resource officer" as used  
18 in this section means an Alabama Peace Officers' Standards and  
19 Training Commissioner-certified law enforcement officer  
20 employed by a law enforcement agency who is specifically  
21 selected and specially trained for the school setting.

22           "~~(i)~~ (j) The term "public school" as used in this  
23 section applies only to a school composed of grades K-12 and  
24 shall include a school bus used for grades K-12.

25           "~~(j)~~ (k) The term "deadly weapon" as used in this  
26 section means a firearm or anything manifestly designed, made,  
27 or adapted for the purposes of inflicting death or serious

1 physical injury, and such term includes, but is not limited  
2 to, a bazooka, hand grenade, missile, or explosive or  
3 incendiary device; a pistol, rifle, or shotgun; or a  
4 switch-blade knife, gravity knife, stiletto, sword, or dagger;  
5 or any club, baton, billy, black-jack, bludgeon, or metal  
6 knuckles.

7 ~~"(k)~~ (l) (1) The term "convicted" as used in this  
8 section requires that the person was represented by counsel in  
9 the case, or knowingly and intelligently waived the right to  
10 counsel in the case if required by law, and either the case  
11 was tried before a judge, tried by a jury, or the person  
12 knowingly and intelligently waived the right to have the case  
13 tried, by guilty plea or otherwise.

14 "(2) A person may not be considered to have been  
15 convicted for the purposes of this section if the person is  
16 not considered to have been convicted in the jurisdiction in  
17 which the proceedings were held or the conviction has been  
18 expunged, set aside, or is of an offense for which the person  
19 has been pardoned or has had civil rights restored, unless the  
20 pardon, expungement, or restoration of civil rights expressly  
21 provides that the person may not ship, transport, possess, or  
22 receive firearms.

23 ~~"(l)~~ (m) The term "misdemeanor offense of domestic  
24 violence" as used in this section means a misdemeanor offense  
25 that has, as its elements, the use or attempted use of  
26 physical force or the threatened use of a dangerous instrument  
27 or deadly weapon, ~~and the~~ against a victim as defined in

1 ~~Section 30-5-2 is a current or former spouse, parent, child,~~  
2 ~~person with whom the defendant has a child in common, or a~~  
3 ~~present or former household member.~~

4 ~~"(m)(n) The term "valid protection order" as used in~~  
5 ~~this section means an order issued after a hearing of which~~  
6 ~~the person received actual notice, and at which the person had~~  
7 ~~an opportunity to participate, that does any of the following:~~  
8 ~~any protection order issued by a state, tribal, or territorial~~  
9 ~~court in which the court has jurisdiction over the parties and~~  
10 ~~matter under the law of the state, Native American tribe, or~~  
11 ~~territory, and reasonable notice and opportunity to be heard~~  
12 ~~is given to the person against whom the order is sought,~~  
13 ~~sufficient to protect that person's right to due process. For~~  
14 ~~ex parte orders, notice and opportunity to be heard must be~~  
15 ~~provided within the time required by state, tribal, or~~  
16 ~~territorial law, and in any event within a reasonable time~~  
17 ~~after the order is issued, sufficient to protect the~~  
18 ~~respondent's due process rights. A valid protection order does~~  
19 ~~not include conditions of bail or release on his or her own~~  
20 ~~recognizance.~~

21 ~~"(1) Restrains the person from harassing, stalking,~~  
22 ~~or threatening a qualified individual or child of the~~  
23 ~~qualified individual or person or engaging in other conduct~~  
24 ~~that would place a qualified individual in reasonable fear of~~  
25 ~~bodily injury to the individual or child and that includes a~~  
26 ~~finding that the person represents a credible threat to the~~  
27 ~~physical safety of the qualified individual or child.~~

1           ~~"(2) By its terms, explicitly prohibits the use,~~  
2 ~~attempted use, or threatened use of physical force against the~~  
3 ~~qualified individual or child that would reasonably be~~  
4 ~~expected to cause bodily injury.~~

5           ~~"(n)(o)~~ The term "qualified individual" as used in  
6 ~~subsection (m)~~ this section has the same meaning as the term  
7 "victim" as defined in Section 30-5-2, ~~means a spouse or~~  
8 ~~former spouse of the person, an individual who is a parent of~~  
9 ~~a child of the person, or an individual who cohabitates or has~~  
10 ~~cohabited with the person.~~

11           ~~"(o)(p)~~ The term "unsound mind" as used in this  
12 section includes any person who is subject to any of the  
13 findings listed below, and who has not had his or her rights  
14 to possess a firearm reinstated by operation of law or legal  
15 process:

16           "(1) Found by a court, board, commission, or other  
17 lawful authority that, as a result of marked subnormal  
18 intelligence, mental illness, incompetency, condition, or  
19 disease, is a danger to himself or herself or others or lacks  
20 the mental capacity to contract or manage his or her own  
21 affairs.

22           "(2) Found to be insane, not guilty by reason of  
23 mental disease or defect, found mentally incompetent to stand  
24 trial, or found not guilty by a reason of lack of mental  
25 responsibility by a court in a criminal case, to include  
26 state, federal, and military courts.

1           "(3) Involuntarily committed for a final commitment  
2 for inpatient treatment to the Department of Mental Health or  
3 a Veterans' Administration hospital by a court after a  
4 hearing.

5           "§13A-11-84.

6           "(a) ~~Every~~ A violation of ~~subsection (a) of Section~~  
7 ~~13A-11-72 or~~ Section 13A-11-81 shall be a Class C felony.  
8 Every violation of ~~subsection (b) of Section 13A-11-72 or~~  
9 Sections 13A-11-73, 13A-11-74, 13A-11-76, and 13A-11-77  
10 through 13A-11-80 shall be a Class A misdemeanor. The  
11 punishment for violating Section 13A-11-78 or 13A-11-79 may  
12 include revocation of license.

13           "(b) (1) It shall be the duty of any ~~sheriff,~~  
14 ~~policeman, or other peace officer of the State of Alabama,~~ law  
15 enforcement officer in this state arresting any person charged  
16 with violating Sections 13A-11-71 through 13A-11-73, or any  
17 one or more of those sections, to seize the pistol or pistols  
18 in the possession or under the control of the person or  
19 persons charged with violating the section or sections, and to  
20 deliver the pistol or pistols to one of the following named  
21 persons:

22           "a. ~~if~~ If a municipal officer makes the arrest, to  
23 the city clerk or custodian of stolen property of the  
24 municipality employing the arresting officer.

25           "b. ~~if~~ If a county, state, or other peace officer  
26 makes the arrest, to the sheriff of the county in which the  
27 arrest is made.

1           "(2) The person receiving the pistol or pistols from  
2 the arresting officer shall keep it in a safe place in as good  
3 condition as received until disposed of as ~~hereinafter~~  
4 provided in this subsection.

5           "(3) Within five days after the final conviction of  
6 any person arrested for violating any of the ~~above-numbered~~  
7 sections enumerated in subsection (a), the person receiving  
8 possession of the pistol or pistols, seized as provided in  
9 this section, shall report the seizure and detention of the  
10 pistol or pistols to the district attorney within the county  
11 where the pistol or pistols are seized, giving a full  
12 description thereof, the number, make and model thereof, the  
13 name of the person in whose possession it was found when  
14 seized, the person making claim to same or any interest  
15 therein, if the name can be ascertained or is known, and the  
16 date of the seizure.

17           "(4) Upon receipt of the report from the person  
18 receiving possession of the pistol or pistols, it shall be the  
19 duty of the district attorney within the county ~~wherein in~~  
20 which the pistol or pistols were seized to ~~forthwith~~ file a  
21 complaint in the circuit court of the proper county, ~~praying~~  
22 requesting that the seized pistol or pistols be declared  
23 contraband, be forfeited to the state, and be destroyed.

24           "(5) Any person, firm, and or corporation or association  
25 of persons in whose possession the pistol or pistols may be  
26 seized or who claim to own the same or any interest therein  
27 shall be made a party defendant to the complaint, and

1 ~~thereupon~~ the matter shall proceed and be determined in the  
2 circuit court of the proper county in the same form and  
3 manner, ~~as near as may be,~~ as in the forfeiture and  
4 destruction of gaming devices, except as otherwise provided.

5 "(6) When any judgment of condemnation and  
6 forfeiture is made in any case filed under this section, the  
7 judge making the judgment shall direct the destruction of the  
8 pistol or pistols by the person receiving possession of the  
9 pistol or pistols from the arresting officer in the presence  
10 of the clerk or register of the court~~7~~.

11 "(7) ~~unless~~ Notwithstanding subdivision (6), if the  
12 judge is of the opinion that the nondestruction ~~thereof~~ of the  
13 pistol is necessary or proper in the ends of justice, ~~in which~~  
14 ~~event and upon~~ the judge, upon recommendation of the district  
15 attorney, ~~the judge~~ shall award the pistol or pistols to the  
16 sheriff of the county or to the chief of police of the  
17 municipality to be used exclusively by the sheriff or the  
18 chief of police ~~in the enforcement of law~~ for law enforcement  
19 purposes, and the. The sheriff of the county and the chiefs of  
20 police of the municipalities shall keep a permanent record of  
21 all pistols awarded to them as provided for in this section,  
22 to be accounted for as other public property~~7~~.

23 "(8) ~~and the~~ The order, in the event that no appeal  
24 is taken within 15 days ~~from the rendition thereof,~~ shall be  
25 carried out and executed before the expiration of 20 days from  
26 the date of the judgment. The court may direct in the judgment  
27 that the costs of the proceedings be paid by the person in



1 whose possession the pistol or pistols were found when seized,  
2 or by any party or parties who claim to own the pistol or  
3 pistols, or any interest therein, and who contested the  
4 condemnation and forfeiture ~~thereof.~~"

5 Section 2. Section 13A-11-72.1 is added to the Code  
6 of Alabama 1975, to read as follows:

7 §13A-11-72.1

8 (a) Any person who possesses a firearm during the  
9 commission of a crime of violence as defined in Section  
10 13A-11-70, a violent offense as defined in Section 12-25-32,  
11 or a sex offense pursuant to Section 15-20A-5, in addition to  
12 any sentence provided by law for such crime, shall be  
13 sentenced as follows:

14 (1) A term of imprisonment not less than five years.

15 (2) If the firearm is brandished, a term of  
16 imprisonment of not less than seven years.

17 (3) If the firearm is discharged, a term of  
18 imprisonment of not less than 10 years.

19 (4) If a person convicted of a violation of this  
20 subsection is in possession of a short-barreled rifle,  
21 short-barreled shotgun, or semiautomatic assault weapon, a  
22 term of imprisonment of not less than 10 years.

23 (5) If a person convicted of a violation of this  
24 subsection is in possession of a fully-automatic weapon, or  
25 any firearm that is equipped with a firearm suppressor or  
26 firearm muffler, a ~~sentence~~ term of imprisonment of not less  
27 than 30 years.

1           (6) Upon a second or subsequent violation of this  
2 subsection, a term of imprisonment of not less than 25 years,  
3 unless the firearm is a fully-automatic weapon, or any firearm  
4 that is equipped with a firearm suppressor or firearm muffler,  
5 a term of imprisonment for life.

6           (b) Notwithstanding any other provision of law, the  
7 term of imprisonment shall run consecutive with any other term  
8 imprisonments for any other offense and shall not be eligible  
9 for any of the following:

10           (1) Probation.

11           (2) Community corrections.

12           (3) Split sentence provisions of Section 15-18-8.

13           (4) Any type of early release program, work release  
14 program, good time, or any other program that changes the  
15 overall time or location of incarceration.

16           (5) Any sentencing schedule or worksheet adopted,  
17 created, or otherwise released by the Alabama Sentencing  
18 Commission.

19           Section 3. Although this bill would have as its  
20 purpose or effect the requirement of a new or increased  
21 expenditure of local funds, the bill is excluded from further  
22 requirements and application under Amendment 621, as amended  
23 by Amendment 890, now appearing as Section 111.05 of the  
24 Official Recompilation of the Constitution of Alabama of 1901,  
25 as amended, because the bill defines a new crime or amends the  
26 definition of an existing crime.

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