



1998 Attorney General Legislative Agenda

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1. Death Penalty Direct Appeal

Under current law, every death penalty case in Alabama, unlike any other criminal case, receives automatic and complete review, and the entire record is searched for any error, whether or not that error is called to the attention of the court by the defendant, in both the Court of Criminal Appeals and the Alabama Supreme Court. Alabama is now the only state with the death penalty that has this mandatory two-stage appellate review. This ineffective appellate process is duplicative, constitutionally unnecessary, and results in delay and added costs.

This bill will eliminate this unnecessary delay by providing an automatic and direct appeal to the highest court in the state, the Alabama Supreme Court. This bill has been suggested by the previous four Attorneys General and is the most direct step that can be taken to deal with the public's frustration with delays in death penalty cases. It will cut costs by reducing the caseload of the Court of Criminal Appeals and by reducing the number of briefs filed and hearings to be attended by State and state-appointed defense attorneys.

2. No Bail on Appeal

Under current law, a convicted felon is usually released on bail pending appeal if the conviction was not for a crime of violence. This almost automatic release results in a delay of punishment for up to a year or more after conviction. Our criminal justice system becomes more ineffective by assuring the criminal that punishment will not be swift. Many appeals are filed for the sole purpose of delaying imprisonment.

This bill provides that a person who has been convicted of a crime that carries a term of imprisonment shall be detained and not released on bail during his appeal unless the trial court determines that the defendant's appeal raises an issue likely to result in reversal of the conviction. In cases where the conviction is for a crime of violence, an offense where life imprisonment or death is the possible penalty, or a controlled substance offense which constitutes a Class B felony, bail on appeal is never an option. This provision follows the Federal Bail Reform Act (1984) which has been upheld against all constitutional challenges.

3. Juvenile Information Act

Very little information about juvenile records is reported or shared among law enforcement agencies. Alabama's criminal justice system needs thorough juvenile information, including arrest data, to assure the safety of our peace officers and allow for complete investigations of unsolved

crimes. Under current law, only adjudications of juveniles for A & B felonies are reported to our state law enforcement reporting center.

Additionally, our schools have no "official" way of determining what students are delinquent. Principals are not informed about students who have been adjudicated for criminal activity. Our schools need to know when a potentially a dangerous student is enrolled to take proper precautions.

This bill will require the reporting of juveniles taken into custody for any felony or a select number of misdemeanors just as is done for adults so the information will be available on NCIC. Included in the report will be fingerprints, photographs and, if necessary, any DNA sample. This information will be available for law enforcement purposes only.

Additionally, this bill will require the court to send a short written notice of the crime committed and the status of the juvenile to a principal where the adjudicated juvenile attends school. The principal can then petition the court for more information about the crime if necessary for the safety and welfare of the school. All requirements of confidentiality are maintained.

4. Firearm Instant Check

Currently, the Brady bill (federal legislation) requires a 5-day waiting period before a person may purchase a gun. In November 1998, the federally-imposed waiting period will end; however, if the State does not establish its own guidelines and mechanism for purchasing guns, a 48-hour period will be reestablished and the FBI will oversee gun purchases in Alabama.

This bill will create a statewide computer network to check instantly gun purchasers for criminal record; thus, no waiting period. Backed by the NRA, this legislation will keep control of gun purchases in the State of Alabama and away from the federal government. A small purchase fee will cover the cost of the program. The Department of Justice pays start-up costs for qualified programs.

5. Sexually Violent Predator Act

Under current law, a sexually violent criminal will automatically be released at the end of his sentence even if he is likely to commit a sexual crime again.

Based upon the Kansas statute that the Supreme Court recently upheld, this bill gives the state the right to confine a sexually violent predator (SVP) through civil commitment after his term of criminal confinement is complete if the state determines this person is still likely to be a danger to society.

6. Unsworn Statements Expansion

Under current Alabama law, only one statute protects the government from individuals who intentionally submit unsworn false written statements to mislead a public official. Often such crimes are not discovered until well after the statute of limitations has run. This statute is rarely used and carries a weak penalty.

This bill will amend the current law to include the submission of any false written documents, increase the penalty to a Class C felony and change the statute of limitations so that someone who has violated this law may be prosecuted up to six months after discovery of the crime.

7. Criminal Fraud

Under current law, Alabama has no specific crime of fraud. In some cases, certain fraudulent activity may be classified under the crime of theft by deception; however, many instances of fraudulent schemes are not prosecutable because they do not fit under that statute.

For example, a scam artist moving from town to town soliciting the elderly can not be prosecuted for the instances where the potential victim was wise enough to not fall for the scam. Further, a scheme where an insurance company intentionally submits false information to the State in order to get a license does not fall under theft by deception.

This bill provides that a person who devises a scheme to defraud another and communicates the scheme is guilty of fraud, a Class C felony. This fraud bill will strengthen the State's ability to

protect the public by making the actions and intent of the defendant the grounds for prosecution rather than looking to the consequences to the victim.

8. Insurance Fraud

Currently, certain fraudulent actions are prohibited for insurance agents with penalties for the agent. This bill specifically defines fraud by an insurer, sets up an insurance fraud unit in the Attorney General's Office for investigating and prosecuting, requires reporting to the Insurance Department, and provide penalties, both civil and criminal, for violation.

9. Teen Court Enabling Act

In response to a successful trend from around the country, this bill will allow Alabama to create a "Teen Court" to allow first-time juvenile offenders to be judged by their peers. This program is educational, preventive, and punitive all in one. It is one of the most cost-effective measures in the juvenile justice system.

10. Voter ID

Under existing law, a person is not required to present identification to polling officials before being authorized to vote.

This bill will provide for positive identification of prospective voters and would provide a penalty for violations by elections officials. Additionally, this bill will prevent a person from fraudulently voting in a polling place which is not his or her own, from giving false identification in order to vote, or from voting more than once in the same election on election day by requiring the person to present identification before voting.

11. Obscenity Crime Reform

Under current law, the State's obscenity statute gives the same punishment (misdemeanor with fine up to \$10,000) for distribution no matter how many times the statute is violated.

This bill will increase the penalty on the second conviction to a Class C felony and minimum mandatory fine of \$10,000. Upon the third or more conviction, the punishment is a Class B felony and a minimum mandatory fine of \$15,000.

This bill also increases the penalty for an obscenity wholesaler for a first offense to a Class C felony and minimum mandatory \$15,000 fine.

Finally, this bill will increase the punishment for the person who actually produces this obscene material from a Class C to a Class B felony and a minimum mandatory of \$20,000 fine.

In addition to fines and a potential prison term, any property may be forfeited to the state that is used to further the distribution, wholesale or production of obscenity upon a second offense.

12. Alabama Tobacco Fair Share Assessment Act

Pending before Congress is legislation setting forth the settlement terms of the national tobacco lawsuit. Congressional action may take years before the final terms are decided and there is no guarantee a decision will even be made. States have the opportunity to take their own legislative action and not depend on the Federal Government.

Additionally, the price of cigarettes in Alabama has risen because of legal actions from our neighboring states. In essence, our citizens are paying the price for benefits to other states. We must take the necessary steps to receive our fair share of the benefits.

Attorney General Pryor has taken a leadership role in proposing state legislation to ensure that Alabama receives our share and benefits from the Tobacco Industry's decision to sale this dangerous product.

This bill will assess the tobacco industry for doing business (selling its dangerous product) in the State of Alabama. The assessment will equal the terms of the national settlement with the State receiving \$200 million dollars immediately and \$3.9 billion over the next 25 years. The money

received will be added to the State General Fund and allocated as the Legislature deems appropriate.

13. Crime of Assisted Suicide

This bill creates the crime of assisted suicide and prevents any person from assisting in the suicide of another person. Currently, there is no such law.

Provisions are included for physicians or other medical personnel for making medical decisions in-line with Title 22 regarding the removal of life-sustaining procedures. Alabama is one of the few states without such legislation. Recently, the US Supreme Court upheld this type of law as constitutional.

14. Moment of Silence

The federal courts have recognized a moment of silence in public schools to be constitutional.

This bill simply requires all students in public school to observe a short moment of silence before beginning their school day.

15. Prostitution Crime Bill

There is no present Alabama statute forbidding Prostitution. In 1974 when the new criminal code was proposed, the language in this bill was proposed, but these sections were removed from the final version of the prostitution law in our adopted criminal code.

This bill completes Alabama's criminal law in the area of prostitution. It creates the crimes of prostitution, patronizing a prostitute, and permitting prostitution. Additionally, language is added to prevent same sex sexual conduct from being a defense.

16. Marriage Protection Act

Recently, there have been attempts in other parts of the nation to legally recognize homosexual relationships for the purpose of receiving benefits given to married couples, particularly in Hawaii. Once recognized by another state, a homosexual couple could travel to that state, receive a marriage license and return expecting that "contract in marriage" to be recognized in Alabama. Realizing that most states are opposed to this action, Congress passed a law allowing states not to recognize the marriage contract from another state if they so choose.

This bill specifically defines marriage as being between a man and a woman and voids recognition of marriage licenses from other states that would not be legal in Alabama.

17. Community Notification Law Modifications

The original Community Notification Act was passed in the 1996 Regular Session (Act 96-793). That law provided the first mandatory notice to the community of sex offenders who would be living near them. After a year of implementation, law enforcement has determined several ways to improve the notification law. Additionally, Congress passed new recommendations for the states concerning Sex Offender Notification this past summer. Only a few of these suggestions were included in our act. This bill improves upon the original bill and adds the suggestions from the congressional law.

18. Protected Persons Act Revision

This bill will simply create the assumption that a person living in a nursing home is a protected person subject to the Protected Persons Act. This act provides special protections to persons who may not be in the best circumstances to protect themselves. The bill will additionally streamline the investigation process when a protected person is the victim of abuse.

19. Victim's Civil Protection Act

This bill will prohibit the recovery for loss, injuries, or death sustained by a perpetrator or accomplice who engages in criminal activity and to provide immunity for a victim from civil damages.

20. Religious Freedom Act

Recognizing the founding fathers' principle that citizens have an inalienable right to their freedom of religion, this bill, based on the former federal act, ensures that the Government will not burden a person's exercise of religion without a compelling reason.

21. Capital Crime Aggravating Circumstances

Under existing law, the murder of two or more persons during one course of conduct by a defendant is not a statutory aggravating circumstance that, by itself, would warrant the imposition of the death penalty.

This bill would extend the list of statutory aggravating circumstances for the purpose of imposing the death penalty to include intentionally killing two or more persons by one act or pursuant to one scheme or course of conduct, or where the capital offense was one of a series of intentional killings committed by the defendant. Also known as the Ponder Bill.

22. Marihuana Possession Revision

Under current law, a person charged with possession of marihuana for personal use can only be convicted of a felony if that person also has a prior misdemeanor conviction for possession of marihuana. This is true even if that same person has a prior felony marihuana conviction for possession or distribution or even trafficking.

This bill makes any prior controlled substance crime offense, misdemeanor or felony, preclude a subsequent misdemeanor conviction for possession for personal use. This closes an undeserved loophole.

23. Fists as Dangerous Instruments

Amend §§13A-1-2(11) and/or (12) to allow fists and other body parts to be included in one or the other definitional sections. This would be in response to Ex parte Cobb (August 2, 1996) wherein the Alabama Supreme Court held that fists could never be deadly weapons or dangerous instruments.

24. Assault Crime Revision

Under current law, the crime of Assault in the 2nd degree is modified to take into account the potentially dangerous circumstances which peace officers, emergency medical personnel or firefighters face in their jobs as public servants.

This bill specifically adds jailers and Department of Correction employees who also face potential dangerous situation on their jobs.