

1 SB58
2 126293-1
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 01-MAR-11

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8 SYNOPSIS: Under existing law, the Alabama Sentencing
9 Commission is charged with developing and
10 presenting voluntary truth-in-sentencing standards
11 to the Legislature for introduction and
12 consideration by the Legislature during the 2011
13 Regular Session with an effective date of October
14 1, 2011.

15 This bill would delete this deadline.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 To amend Sections 12-25-32 and 12-25-34, Code of
22 Alabama 1975, to delete the statutory deadline for submission,
23 legislative approval, and implementation of voluntary
24 truth-in-sentencing standards.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Sections 12-25-32 and 12-25-34, Code of
27 Alabama 1975, are amended to read as follows:

1 "§12-25-32.

2 "For the purposes of this article, the following
3 terms have the following meanings:

4 "(1) COMMISSION. The Alabama Sentencing Commission,
5 established as a state agency under the Supreme Court by this
6 chapter.

7 "(2) CONTINUUM OF PUNISHMENTS. An array of
8 punishment options, from probation to incarceration, graduated
9 in restrictiveness according to the degree of supervision of
10 the offender including, but not limited to, all of the
11 following:

12 "a. Active incarceration. A sentence, other than an
13 intermediate punishment or unsupervised probation, that
14 requires an offender to serve a sentence of imprisonment. The
15 term includes time served in a work release program operated
16 as a custody option by the Alabama Department of Corrections
17 or in the Supervised Intensive Restitution program of the
18 Department of Corrections pursuant to Article 7, commencing
19 with Section 15-18-110, of Chapter 18 of Title 15.

20 "b. Intermediate punishment. A sentence that may
21 include assignment to any community based punishment program
22 or may include probation with conditions or probation in
23 conjunction with a period of confinement. Intermediate
24 punishments include, but are not limited to, all of the
25 following options:

26 "1. A split sentence pursuant to Section 15-18-8.

1 "2. Assignment to a community punishment and
2 corrections program pursuant to the Alabama Community
3 Punishment and Corrections Act or local acts.

4 "3. Assignment to a community based manual labor
5 work program pursuant to Sections 14-5-30 to 14-5-37,
6 inclusive.

7 "4. Intensive probation supervision pursuant to
8 Section 15-22-56.

9 "5. Cognitive and behavioral training.

10 "6. Community service work.

11 "7. County probation.

12 "8. Day fines or means-based fines.

13 "9. Day reporting.

14 "10. Drug or alcohol testing.

15 "11. Drug court programs.

16 "12. Educational programs.

17 "13. Electronic monitoring.

18 "14. Home confinement or house arrest.

19 "15. Ignition interlock.

20 "16. Intermittent confinement.

21 "17. Jail and prison diversion programs.

22 "18. Job readiness and work.

23 "19. Literacy and basic learning.

24 "20. Pretrial diversion programs.

25 "21. Residential drug treatment.

26 "22. Residential community based punishment programs
27 in which the offender is required to spend at least eight

1 hours per day, or overnight, within a facility and is required
2 to participate in activities such as counseling, treatment,
3 social skills training, or employment training, conducted at
4 the residential facility or at another specified location.

5 "23. Restorative justice.

6 "(i) Victim impact panels.

7 "(ii) Voluntary victim offender conferencing.

8 "(iii) Voluntary victim offender mediation.

9 "24. Self-help groups.

10 "25. Sobriety or breath alcohol remote monitoring.

11 "26. Substance abuse education and treatment.

12 "27. Treatment alternatives to street crime (TASC).

13 "28. Voice recognition, curfew restriction, or
14 employment monitoring.

15 "29. Work release, other than those work release
16 programs operated by the Alabama Department of Corrections, as
17 a custody option.

18 "c. Unsupervised probation. A sentence in a criminal
19 case that includes a period of probation but does not include
20 supervision, active incarceration, or an intermediate
21 punishment.

22 "d. Post-release supervision. A mandatory period of
23 supervision following sentences of active incarceration as
24 defined in paragraph a. that may include one or more
25 intermediate punishment options.

1 "(3) COURT. Unless otherwise stated, a district or
2 circuit court exercising jurisdiction to sentence felony
3 offenders.

4 "(4) FELONY OFFENSE. A noncapital felony offense.

5 "(5) INITIAL VOLUNTARY STANDARDS. The voluntary
6 sentencing standards effective on October 1, 2006. These
7 standards were based on statewide historic sentences imposed
8 with normative adjustments designed to reflect current
9 sentencing policies.

10 "(6) NONVIOLENT OFFENDER. Any offender who does not
11 qualify as a violent offender pursuant to subdivision (12).

12 "(7) OFFENDER. A person convicted of a noncapital
13 felony offense.

14 "(8) RELEASE AUTHORITY. Any public official, agency,
15 or other entity authorized by law to release a sentenced
16 offender from incarceration or other conditions of a sentence.

17 "(9) RISK ASSESSMENT. An instrument designed to
18 assess an offender's relative risk for reoffending.

19 "(10) TRUTH-IN-SENTENCING STANDARDS. The voluntary
20 ~~sentencing truth-in-sentencing standards that are scheduled to~~
21 ~~become effective October 1, 2011~~ developed by the Alabama
22 Sentencing Commission and effective upon approval by the
23 Legislature pursuant to subdivision (4) of subsection (a) of
24 Section 12-25-34. These standards shall be based on statewide
25 historic time served for offenses with adjustments designed by
26 the commission to reflect current sentencing policies.

1 "(11) UNDER SUPERVISION. All offenders under the
2 supervision of any criminal justice agency or program
3 including, but not limited to, any of the following entities:

4 "a. The Alabama Department of Corrections.

5 "b. State or county probation offices.

6 "c. Community corrections programs pursuant to
7 Alabama Community Corrections Act.

8 "d. Jails.

9 "e. State or local law enforcement agencies.

10 "f. Any court.

11 "(12) VIOLENT OFFENDER. A violent offender is an
12 offender who has been convicted of a violent offense, or who
13 is determined by the trial court judge or a release authority
14 to have demonstrated a propensity for violence, aggression, or
15 weapons related behavior based on the criminal history or
16 behavior of the offender while under supervision of any
17 criminal justice system agency or entity.

18 "(13) VIOLENT OFFENSE.

19 "a. For the purposes of this article, a violent
20 offense includes each of the following offenses, or any
21 substantially similar offense to those listed in this
22 subdivision created after June 20, 2003:

23 "1. Capital murder pursuant to Section 13A-6-2 and
24 13A-5-40.

25 "2. Murder pursuant to Section 13A-6-2.

26 "3. Manslaughter pursuant to Section 13A-6-3.

- 1 "4. Criminally negligent homicide pursuant to
2 Section 13A-6-4.
- 3 "5. Assault I pursuant to Section 13A-6-20.
- 4 "6. Assault II pursuant to Section 13A-6-21.
- 5 "7. Compelling street gang membership pursuant to
6 Section 13A-6-26.
- 7 "8. Kidnapping I pursuant to Section 13A-6-43.
- 8 "9. Kidnapping II pursuant to Section 13A-6-44.
- 9 "10. Rape I pursuant to Section 13A-6-61.
- 10 "11. Rape II pursuant to Section 13A-6-62.
- 11 "12. Sodomy I pursuant to Section 13A-6-63.
- 12 "13. Sodomy II pursuant to Section 13A-6-64.
- 13 "14. Sexual torture pursuant to Section 13A-6-65.1.
- 14 "15. Sexual abuse I pursuant to Section 13A-6-66.
- 15 "16. Enticing a child to enter a vehicle for immoral
16 purposes pursuant to Section 13A-6-69.
- 17 "17. Stalking pursuant to Section 13A-6-90.
- 18 "18. Aggravated stalking pursuant to Section
19 13A-6-91.
- 20 "19. Soliciting a child by computer pursuant to
21 Section 13A-6-110.
- 22 "20. Domestic violence I pursuant to Section
23 13A-6-130.
- 24 "21. Domestic violence II pursuant to Section
25 13A-6-131.
- 26 "22. Burglary I pursuant to Section 13A-7-5, unless
27 the offender enters the dwelling without a weapon or other

1 dangerous instrument and does not use or threaten to use a
2 weapon or dangerous instrument against another person during
3 the commission of the offense.

4 "23. Burglary II pursuant to subsection (a) of
5 Section 13A-7-6.

6 "24. Burglary III pursuant to Section 13A-7-7, if
7 the intent is to commit a violent offense.

8 "25. Arson I pursuant to Section 13A-7-41.

9 "26. Criminal possession of explosives pursuant to
10 Section 13A-7-44.

11 "27. Extortion I pursuant to Section 13A-8-14.

12 "28. Robbery I pursuant to Section 13A-8-41.

13 "29. Robbery II pursuant to Section 13A-8-42.

14 "30. Robbery III pursuant to Section 13A-8-43.

15 "31. Pharmacy robbery pursuant to Section 13A-8-51.

16 "32. Terrorist threats pursuant to Section
17 13A-10-15.

18 "33. Escape I pursuant to Section 13A-10-31.

19 "34. Promoting prison contraband I pursuant to
20 Section 13A-10-36, involving a deadly weapon or dangerous
21 instrument.

22 "35. Intimidating a witness pursuant to Section
23 13A-10-123.

24 "36. Intimidating a juror pursuant to Section
25 13A-10-127.

26 "37. Treason pursuant to Section 13A-11-2.

1 "38. Discharging a weapon into an occupied building,
2 dwelling, automobile, etc., pursuant to Section 13A-11-61.

3 "39. Promoting prostitution I pursuant to Section
4 13A-12-111.

5 "40. Production of obscene matter involving a minor
6 pursuant to Section 13A-12-197.

7 "41. Trafficking pursuant to Section 13A-12-231.

8 "42. Child abuse pursuant to Section 26-15-3.

9 "43. Elder abuse pursuant to Section 38-9-7.

10 "44. Terrorism pursuant to Section 13A-10-152.

11 "45. Hindering prosecution for terrorism pursuant to
12 Section 13A-10-154.

13 "46. Any substantially similar offense for which an
14 Alabama offender has been convicted under prior Alabama law or
15 the law of any other state, the District of Columbia, the
16 United States, or any of the territories of the United States.

17 "b. The basis for defining these offenses as violent
18 is that each offense meets at least one of the following
19 criteria:

20 "1. Has as an element, the use, attempted use, or
21 threatened use of a deadly weapon or dangerous instrument or
22 physical force against the person of another.

23 "2. Involves a substantial risk of physical injury
24 against the person of another.

25 "3. Is a nonconsensual sex offense.

26 "4. Is particularly reprehensible.

1 "c. Any attempt, conspiracy, or solicitation to
2 commit a violent offense shall be considered a violent offense
3 for the purposes of this article.

4 "§12-25-34.

5 "(a) Statewide voluntary sentencing standards shall
6 be developed and presented to the Legislature in stages over a
7 three-year period as follows:

8 "(1) By July 31, 2003, the commission shall develop
9 and distribute to all sentencing judges a reference manual
10 analyzing historical sentencing practices by duration of
11 sentence and disposition of felony offenders in Alabama. The
12 reference manual shall indicate those types of offenders
13 historically most likely to be sentenced to punishments other
14 than active incarceration where alternatives to active
15 incarceration are available.

16 "(2) Concurrently with the development and
17 distribution of the reference manual, the commission shall
18 develop and begin testing worksheets and voluntary sentencing
19 standards in selected circuits for selected felony offenses.

20 "(3) The commission shall develop and present the
21 initial voluntary sentencing standards to the Legislature
22 before or during the 2006 Regular Session. These standards
23 shall be introduced in the 2006 Regular Session and shall
24 become effective on October 1 following the 2006 Regular
25 Session, if approved by an act of the Legislature passed
26 during that session. The initial voluntary sentencing
27 standards based on sentences imposed shall apply to

1 convictions for felony offenses sentenced on or after October
2 1, 2006, and committed before the effective date of the
3 voluntary truth-in-sentencing standards.

4 "(4) The commission shall develop and present
5 voluntary truth-in-sentencing standards to the Legislature
6 ~~before or during the 2011 Regular Session.~~ These standards
7 ~~shall be introduced in the 2011 Regular Session and shall~~
8 become effective on October 1 following ~~the 2011 Regular~~
9 ~~Session, if approved~~ their adoption and approval by an act of
10 the Legislature ~~passed during that session.~~ The voluntary
11 truth-in-sentencing standards shall apply only to felony
12 offenses committed on or after the effective date of these
13 standards. Until truth-in-sentencing is adopted, the annual
14 report of the commission to the Governor, the Legislature, the
15 Chief Justice, and the Attorney General shall include a
16 progress report on the development of truth-in-sentencing
17 standards.

18 "(b) Recommended sentence ranges shall be
19 established by standards that are based on historical
20 sentencing practices, adjusted to achieve sentencing goals as
21 established in Rule 26 of the Alabama Rules of Criminal
22 Procedure, this chapter, and Section 12-25-31.

23 "(c) Voluntary sentencing standards shall take into
24 account and include statewide historically based sentence
25 ranges, including all applicable statutory minimums and
26 sentence enhancement provisions, including the Habitual Felony
27 Offender Act, with adjustments made to reflect current

1 sentencing policies. No additional penalties pursuant to any
2 sentence enhancement statute shall apply to sentences imposed
3 based on the voluntary sentencing standards.

4 "(d) After adoption of the initial voluntary
5 standards and the voluntary truth-in-sentencing standards, any
6 modifications made by the commission shall be contained in the
7 annual report presented to the Governor, the Legislature, the
8 Chief Justice, and the Attorney General. An annual report
9 containing proposed modifications shall be presented to the
10 Governor, the Legislature, the Chief Justice, and the Attorney
11 General before or during each regular session of the
12 Legislature. The modifications shall be introduced during that
13 regular session and shall become effective on October 1
14 following the legislative session in which the modifications
15 were introduced, if approved by an act of the Legislature
16 passed during the legislative session in which the
17 modifications were introduced."

18 Section 2. This act shall become effective
19 immediately following its passage and approval by the
20 Governor, or its otherwise becoming law.