

**SB198 INTRODUCED**



1 P14PEE-1  
2 By Senator Orr  
3 RFD: Judiciary  
4 First Read: 11-Apr-23  
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SYNOPSIS:

Under existing law, the Alabama Sentencing Commission has established presumptive sentencing guidelines to be used for certain nonviolent felonies.

This bill would add additional offenses that would be subject to the presumptive sentencing guidelines.

Under existing law, criminal penalties are established for a Class A, Class B, and Class C felony criminal solicitation, attempt, and criminal conspiracy offenses.

This bill would modify the criminal penalties for criminal solicitation, attempt, and criminal conspiracy to include Class D felonies for consistency.

Under existing law, Class C and Class D felony offenses must be sentenced to a split sentence.

This bill would remove this requirement, giving a judge discretion when sentencing a person convicted of a Class C or Class D felony offense.

Under the existing habitual felony offender law, enhanced penalties are established for certain criminal offenses.

This bill would modify the habitual felony offender law to include Class D felonies for consistency.



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29                   This bill would also make nonsubstantive,  
30                   technical revisions to update the existing code  
31                   language to current style.

32                   Section 111.05 of the Constitution of Alabama of  
33                   2022, prohibits a general law whose purpose or effect  
34                   would be to require a new or increased expenditure of  
35                   local funds from becoming effective with regard to a  
36                   local governmental entity without enactment by a 2/3  
37                   vote unless: it comes within one of a number of  
38                   specified exceptions; it is approved by the affected  
39                   entity; or the Legislature appropriates funds, or  
40                   provides a local source of revenue, to the entity for  
41                   the purpose.

42                   The purpose or effect of this bill would be to  
43                   require a new or increased expenditure of local funds  
44                   within the meaning of the amendment. However, the bill  
45                   does not require approval of a local governmental  
46                   entity or enactment by a 2/3 vote to become effective  
47                   because it comes within one of the specified exceptions  
48                   contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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Relating to sentencing; to amend Sections

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12-25-34.2, 13A-4-1, 13A-4-2, 13A-4-3, 13A-5-6,



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57 13A-5-9, 15-18-8, and 15-22-54, Code of Alabama 1975,  
58 to add additional offenses that would be subject to the  
59 presumptive sentencing guidelines; to modify the  
60 criminal penalties for criminal solicitation, attempt,  
61 and criminal conspiracy; to give a judge discretion  
62 when sentencing a person convicted of a Class C or  
63 Class D felony offense; to modify the habitual felony  
64 offender law to include Class D felonies for  
65 consistency; to make nonsubstantive, technical  
66 revisions to update the existing code language to  
67 current style; and in connection therewith would have  
68 as its purpose or effect the requirement of a new or  
69 increased expenditure of local funds within the meaning  
70 of Section 111.05 of the Constitution of Alabama of  
71 2022.

72 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

73 Section 1. Sections 12-25-34.2, 13A-4-1, 13A-4-2,  
74 13A-4-3, 13A-5-6, 13A-5-9, 15-18-8, and 15-22-54, Code of  
75 Alabama 1975, are amended to read as follows:

76 "§12-25-34.2

77 (a) For the purposes of this section, the following  
78 words ~~shall~~ have the following meanings:

79 (1) AGGRAVATING FACTORS. Substantial and compelling  
80 reasons justifying an exceptional sentence whereby the  
81 sentencing court may impose a departure sentence above the  
82 presumptive sentence recommendation for an offense.  
83 Aggravating factors may result in dispositional or sentence  
84 range departures, or both, and shall be stated on the record



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85 by the court.

86 (2) DEPARTURE. A sentence ~~which~~that departs from the  
87 presumptive sentence recommendation for an offender.

88 (3) DISPOSITION. The part of the sentencing courts  
89 presumptive sentence recommendation other than sentence  
90 length.

91 (4) DISPOSITIONAL DEPARTURE. A sentence ~~which~~that  
92 departs from the presumptive sentence recommendation for  
93 disposition of sentence.

94 (5) MITIGATING FACTORS. Substantial and compelling  
95 reasons justifying an exceptional sentence whereby the  
96 sentencing court may impose a departure sentence below the  
97 presumptive sentence recommendation for an offense. Mitigating  
98 factors may result in disposition or sentence range  
99 departures, or both, and shall be stated on the record by the  
100 court.

101 (6) NONVIOLENT OFFENSES. As defined in Section  
102 12-25-32.

103 (7) PRESUMPTIVE SENTENCE RECOMMENDATION. The  
104 recommended sentence range and disposition provided in the  
105 sentencing standards.

106 (8) SENTENCE RANGE. The sentencing court's  
107 discretionary range of length of sentence as provided and  
108 recommended in the presumptive sentencing recommendation.

109 (9) SENTENCE RANGE DEPARTURE. A sentence ~~which~~that  
110 departs from the presumptive sentence recommendation as to the  
111 sentence range.

112 (10) VIOLENT OFFENSES. As defined in Section 12-25-32.



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113 (b) (1) The voluntary sentencing standards as provided  
114 for in Section 12-25-34, as applied to nonviolent offenses  
115 shall become presumptive sentencing standards effective  
116 October 1, 2013, to the extent the modification adopted by the  
117 Alabama Sentencing Commission become effective October 1,  
118 2013. The standards shall be applied by the courts in  
119 sentencing subject to departures as provided herein. To  
120 accomplish this purpose as to the existing initial voluntary  
121 sentencing standards, the Alabama Sentencing Commission shall  
122 adopt modifications to the standards, worksheets, and  
123 instructions to the extent necessary to implement this  
124 provision including, but not limited to, defining aggravating  
125 and mitigating factors that allow for departure from the  
126 presumptive sentencing recommendations. The commission's  
127 modifications shall be presented to the Legislature in the  
128 commission's annual report within the first five legislative  
129 days of the 2013 Regular Session.

130 (2) The Alabama Sentencing Commission shall immediately  
131 adopt modifications to the standards, worksheets, and  
132 instructions to the extent necessary to implement this act.  
133 The amendatory provisions of this act shall supersede any  
134 standards, worksheets, and instructions of the commission that  
135 are in conflict with these amendatory provisions.

136 (c) Durational and dispositional departures from the  
137 presumptive sentencing standards shall be subject to appellate  
138 review. Along with the modifications provided for in  
139 subsection (b), the Alabama Sentencing Commission shall  
140 recommend a narrowly defined scope of appellate review



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141 applicable to departures from presumptive sentencing  
142 recommendations. The scope of appellate review shall become  
143 effective upon approval by an act of the Legislature enacted  
144 by bill."

145 "§13A-4-1

146 (a) (1) A person is guilty of criminal solicitation if,  
147 with the intent that another person engage in conduct  
148 constituting a crime, he or she solicits, requests, commands  
149 or importunes ~~such other~~ another person to engage in such  
150 conduct.

151 (2) A person may not be convicted of criminal  
152 solicitation upon the uncorroborated testimony of the person  
153 allegedly solicited, and there must be proof of circumstances  
154 corroborating both the solicitation and the defendant's  
155 intent.

156 (b) A person is not liable under this section if, under  
157 circumstances manifesting a voluntary and complete  
158 renunciation of his or her criminal intent, he or she (1)  
159 notified the person solicited of his or her renunciation and  
160 (2) gave timely and adequate warning to the law enforcement  
161 authorities or otherwise made a substantial effort to prevent  
162 the commission of the criminal conduct solicited. The burden  
163 of injecting this issue is on the defendant, but this does not  
164 shift the burden of proof.

165 (c) A person is not liable under this section when his  
166 or her solicitation constitutes conduct of a kind that is  
167 necessarily incidental to the commission of the offense  
168 solicited. When the solicitation constitutes an offense other



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169 than criminal solicitation ~~which~~that is related to but  
170 separate from the offense solicited, the defendant is guilty  
171 of ~~such~~the related offense only and not of criminal  
172 solicitation.

173 (d) It is no defense to a prosecution for criminal  
174 solicitation that the person solicited could not be guilty of  
175 the offense solicited because of any of the following:

176 (1) Criminal irresponsibility or other legal incapacity  
177 or exemption;~~or~~.

178 (2) Unawareness of the criminal nature of the conduct  
179 solicited or of the defendant's criminal purpose;~~or~~.

180 (3) Any other factor precluding the mental state  
181 required for the commission of the offense in question.

182 (e) It is no defense to a prosecution for criminal  
183 solicitation that the defendant belongs to a class of persons  
184 who by definition are legally incapable in an individual  
185 capacity of committing the offense that he or she solicited  
186 another to commit.

187 (f) Criminal solicitation is a:

188 (1) Class A felony if the offense solicited is murder.

189 (2) Class B felony if the offense solicited is a Class  
190 A felony.

191 (3) Class C felony if the offense solicited is a Class  
192 B felony.

193 (4) Class D felony if the offense solicited is a Class  
194 C felony.

195 ~~(4)~~ (5) Class A misdemeanor if the offense solicited is  
196 a Class ~~D~~ felony.





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197           ~~(5)~~ (6) Class B misdemeanor if the offense solicited is  
198 a Class A misdemeanor.

199           ~~(6)~~ (7) Class C misdemeanor if the offense solicited is  
200 a Class B misdemeanor.

201           ~~(7)~~ (8) Violation if the offense solicited is a Class C  
202 misdemeanor."

203           "§13A-4-2

204           (a) A person is guilty of an attempt to commit a crime  
205 if, with the intent to commit a specific offense, he or she  
206 does any overt act towards the commission of ~~such~~the offense.

207           (b) It is no defense under this section that the  
208 offense charged to have been attempted was, under the  
209 attendant circumstances, factually or legally impossible of  
210 commission, if ~~such~~the offense could have been committed had  
211 the attendant circumstances been as the defendant believed  
212 them to be.

213           (c) A person is not liable under this section if, under  
214 circumstances manifesting a voluntary and complete  
215 renunciation of this criminal intent, he or she avoided the  
216 commission of the offense attempted by abandoning his or her  
217 criminal effort and, if mere abandonment is insufficient to  
218 accomplish such avoidance, by taking further and affirmative  
219 steps ~~which~~that prevented the commission thereof. The burden  
220 of injecting this issue is on the defendant, but this does not  
221 shift the burden of proof.

222           (d) An attempt is a:

223           (1) Class A felony if the offense attempted is murder.

224           (2) Class B felony if the offense attempted is a Class



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225 A felony.

226 (3) Class C felony if the offense attempted is a Class  
227 B felony.

228 (4) Class D felony if the offense attempted is a Class  
229 C felony.

230 ~~(4)~~ (5) Class A misdemeanor if the offense attempted is  
231 a Class ~~D~~ felony.

232 ~~(5)~~ (6) Class B misdemeanor if the offense attempted is  
233 a Class A misdemeanor.

234 ~~(6)~~ (7) Class C misdemeanor if the offense attempted is  
235 a Class B misdemeanor.

236 ~~(7)~~ (8) Violation if the offense attempted is a Class C  
237 misdemeanor."

238 "§13A-4-3

239 (a) A person is guilty of criminal conspiracy if, with  
240 the intent that conduct constituting an offense be performed,  
241 he or she agrees with one or more persons to engage in or  
242 cause the performance of ~~such~~the conduct, and any one or more  
243 of ~~such~~the persons does an overt act to effect an objective of  
244 the agreement.

245 (b) If a person knows or should know that one with whom  
246 he or she agrees has in turn agreed or will agree with another  
247 to effect the same criminal objective, he or she shall be  
248 deemed to have agreed with ~~such~~the other person, whether or  
249 not he or she knows the other's identity.

250 (c) A person is not liable under this section if, under  
251 circumstances manifesting a voluntary and complete  
252 renunciation of his criminal purpose, he or she gave a timely



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253 and adequate warning to law enforcement authorities or made a  
254 substantial effort to prevent the enforcement of the criminal  
255 conduct contemplated by the conspiracy. Renunciation by one  
256 conspirator, however, does not affect the liability of another  
257 conspirator who does not join in the abandonment of the  
258 conspiratorial objective. The burden of injecting the issue of  
259 renunciation is on the defendant, but this does not shift the  
260 burden of proof.

261 (d) ~~It is no~~ None of the following is a defense to a  
262 prosecution for criminal conspiracy ~~that~~:

263 (1) The person, or persons, with whom defendant is  
264 alleged to have conspired has been acquitted, has not been  
265 prosecuted or convicted, has been convicted of a different  
266 offense, or is immune from prosecution, ~~or~~.

267 (2) The person, or persons, with whom defendant  
268 conspired could not be guilty of the conspiracy or the object  
269 crime because of lack of mental responsibility or culpability,  
270 or other legal incapacity or defense, ~~or~~.

271 (3) The defendant belongs to a class of persons who by  
272 definition are legally incapable in an individual capacity of  
273 committing the offense that is the object of the conspiracy.

274 (e) A conspirator is not liable under this section if,  
275 had the criminal conduct contemplated by the conspiracy  
276 actually been performed, he or she would be immune from  
277 liability under the law defining the offense or as an  
278 accomplice under Section 13A-2-24.

279 (f) Liability as accomplice. Accomplice liability for  
280 offenses committed in furtherance of a conspiracy is to be



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281 determined as provided in Section 13A-2-23.

282 (g) Criminal conspiracy is a:

283 (1) Class A felony if an object of the conspiracy is  
284 murder.

285 (2) Class B felony if an object of the conspiracy is a  
286 Class A felony.

287 (3) Class C felony if an object of the conspiracy is a  
288 Class B felony.

289 (4) Class D felony if an object of the conspiracy is a  
290 Class C felony.

291 ~~(4)~~ (5) Class A misdemeanor if an object of the  
292 conspiracy is a Class ~~C~~D felony.

293 ~~(5)~~ (6) Class B misdemeanor if an object of the  
294 conspiracy is a Class A misdemeanor.

295 ~~(6)~~ (7) Class C misdemeanor if an object of the  
296 conspiracy is a Class B misdemeanor.

297 ~~(7)~~ (8) Violation if an object of the conspiracy is a  
298 Class C misdemeanor."

299 "§13A-5-6

300 (a) Sentences for felonies shall be for a definite term  
301 of imprisonment, which imprisonment includes hard labor,  
302 within the following limitations:

303 (1) For a Class A felony, for life or not more than 99  
304 years or less than 10 years.

305 (2) For a Class B felony, not more than 20 years or  
306 less than ~~2~~two years.

307 (3) For a Class C felony, not more than 10 years or  
308 less than ~~1~~one year and ~~1~~one day ~~and must be in accordance~~



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309 ~~with subsection (b) of Section 15-18-8 unless sentencing is~~  
310 ~~pursuant to Section 13A-5-9 or the offense is a sex offense~~  
311 ~~pursuant to Section 15-20A-5.~~

312 (4) For a Class D felony, not more than 5five years or  
313 less than 1one year and 1one day ~~and must be in accordance~~  
314 ~~with subsection (b) of Section 15-18-8.~~

315 (5) For a Class A felony in which a firearm or deadly  
316 weapon was used or attempted to be used in the commission of  
317 the felony, or a Class A felony sex offense involving a child  
318 as defined in Section 15-20A-4, not less than 20 years.

319 (6) For a Class B or C felony in which a firearm or  
320 deadly weapon was used or attempted to be used in the  
321 commission of the felony, or a Class B felony sex offense  
322 involving a child as defined in Section 15-20A-4, not less  
323 than 10 years.

324 (b) The actual time of release within the limitations  
325 established by subsection (a) shall be determined under  
326 procedures established elsewhere by law.

327 (c) In addition to any penalties ~~heretofore or~~  
328 ~~hereafter~~otherwise provided by law, in all cases where an  
329 offender is designated as a sexually violent predator pursuant  
330 to Section 15-20A-19, or where an offender is convicted of a  
331 Class A felony sex offense involving a child as defined in  
332 Section 15-20A-4, and is sentenced to a county jail or the  
333 Alabama Department of Corrections, the sentencing judge shall  
334 impose an additional penalty of not less than 10 years of  
335 post-release supervision to be served upon the defendant's  
336 release from incarceration.



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337 (d) In addition to any penalties ~~heretofore or~~  
338 ~~hereafter~~otherwise provided by law, in all cases where an  
339 offender is convicted of a sex offense pursuant to Section  
340 13A-6-61, 13A-6-63, or 13A-6-65.1, when the defendant was 21  
341 years of age or older and the victim was six years of age or  
342 less at the time the offense was committed, the defendant  
343 shall be sentenced to life imprisonment without the  
344 possibility of parole."

345 "§13A-5-9

346 (a) In all cases when it is shown that a criminal  
347 defendant has been previously convicted of a ~~Class A, Class B,~~  
348 ~~or Class C~~ felony and after the conviction has committed  
349 another ~~Class A, Class B, or Class C~~ felony, he or she ~~must~~  
350 shall be punished as follows:

351 (1) On conviction of a Class D felony, he or she shall  
352 be punished for a Class C felony.

353 ~~(1)~~ (2) On conviction of a Class C felony, he or she  
354 ~~must~~ shall be punished for a Class B felony.

355 ~~(2)~~ (3) On conviction of a Class B felony, he or she  
356 ~~must~~ shall be punished for a Class A felony.

357 ~~(3)~~ (4) On conviction of a Class A felony, he or she  
358 ~~must~~ shall be punished by imprisonment for life or for any  
359 term of not more than 99 years but not less than 15 years.

360 (b) In all cases when it is shown that a criminal  
361 defendant has been previously convicted of any two felonies  
362 ~~that are Class A, Class B, or Class C felonies~~ and after such  
363 convictions has committed another ~~Class A, Class B, or Class C~~  
364 felony, he or she ~~must~~ shall be punished as follows:



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365 (1) On conviction of a Class D felony, he or she shall  
366 be punished for a Class B felony.

367 ~~(1)~~ (2) On conviction of a Class C felony, he or she  
368 ~~must~~shall be punished for a Class A felony.

369 ~~(2)~~ (3) On conviction of a Class B felony, he or she  
370 ~~must~~shall be punished by imprisonment for life or for any term  
371 of not more than 99 years but not less than 15 years.

372 ~~(3)~~ (4) On conviction of a Class A felony, he or she  
373 ~~must~~shall be punished by imprisonment for life or for any term  
374 of not less than 99 years.

375 (c) In all cases when it is shown that a criminal  
376 defendant has been previously convicted of any three felonies  
377 ~~that are Class A, Class B, or Class C felonies~~ and after such  
378 convictions has committed another ~~Class A, Class B, or Class C~~  
379 felony, he or she ~~must~~shall be punished as follows:

380 (1) On conviction of a Class D felony, he or she shall  
381 be punished for a Class A felony.

382 ~~(1)~~ (2) On conviction of a Class C felony, he or she  
383 must be punished by imprisonment for life or for any term of  
384 not more than 99 years but not less than 15 years.

385 ~~(2)~~ (3) On conviction of a Class B felony, he or she  
386 ~~must~~shall be punished by imprisonment for life or any term of  
387 not less than 20 years.

388 ~~(3)~~ (4) On conviction of a Class A felony, where the  
389 defendant has no prior convictions for any Class A felony, he  
390 or she ~~must~~shall be punished by imprisonment for life or life  
391 without the possibility of parole, in the discretion of the  
392 trial court.



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393 ~~(4)~~ (5) On conviction of a Class A felony, where the  
394 defendant has one or more prior convictions for any Class A  
395 felony, he or she ~~must~~shall be punished by imprisonment for  
396 life without the possibility of parole.

397 ~~(d) In all cases when it is shown that a criminal~~  
398 ~~defendant has been previously convicted of any two or more~~  
399 ~~felonies that are Class A or Class B felonies and after such~~  
400 ~~convictions has committed a Class D felony, upon conviction,~~  
401 ~~he or she must be punished for a Class C felony.~~

402 ~~(e) In all cases when it is shown that a criminal~~  
403 ~~defendant has been previously convicted of any three or more~~  
404 ~~felonies and after such convictions has committed a Class D~~  
405 ~~felony, upon conviction, he or she must be punished for a~~  
406 ~~Class C felony."~~

407 "§15-18-8

408 (a) When a defendant is convicted of an offense, other  
409 than a sex offense involving a child as defined in Section  
410 15-20A-4, that constitutes a Class A or Class B felony  
411 offense, and receives a sentence of 20 years or less, ~~in any~~  
412 ~~court having jurisdiction to try offenses against the State of~~  
413 ~~Alabama and~~ the judge presiding over the case ~~is satisfied~~  
414 ~~that the ends of justice and the best interests of the public~~  
415 ~~as well as the defendant will be served thereby, he or she~~ may  
416 order:

417 (1) ~~That a~~In cases where the defendant is convicted of  
418 a Class A, Class B, Class C or Class BD felony ~~be and the~~  
419 imposed sentence is not more than 15 years, that the convicted  
420 defendant be confined in a prison, jail-type institution, or





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421 treatment institution for a period not exceeding three years  
422 ~~in cases where the imposed sentence is not more than 15 years,~~  
423 ~~and,~~ that the execution of the remainder of the sentence be  
424 suspended notwithstanding any provision of the law to the  
425 contrary, and that the defendant be placed on probation for  
426 ~~such a~~ period ~~and upon such terms~~ as determined by the court  
427 ~~deems best.~~

428 (2) ~~That a~~In cases where the defendant is convicted of  
429 a Class A, Class B, Class C, or Class ~~C~~D felony ~~with an~~and the  
430 imposed sentence ~~of~~is greater than 15 years but not more than  
431 20 years, that the convicted defendant be confined in a  
432 prison, jail-type institution, or treatment institution for a  
433 period of three to five years, ~~for Class A or Class B felony~~  
434 ~~convictions and for a period of three years for Class C felony~~  
435 ~~convictions, during which the offender shall not be eligible~~  
436 ~~for parole or release because of deduction from sentence for~~  
437 ~~good behavior under the Alabama Correctional Incentive Time~~  
438 ~~Act, and~~ that the execution of the remainder of the sentence  
439 be suspended notwithstanding any provision of the law to the  
440 contrary, and that the defendant be placed on probation for  
441 ~~the a~~ period ~~upon the terms~~ as determined by the court ~~deems~~  
442 ~~best.~~

443 ~~This subsection shall not be construed to impose the~~  
444 ~~responsibility for offenders sentenced to a Department of~~  
445 ~~Corrections facility upon a local confinement facility not~~  
446 ~~operated by the Department of Corrections.~~

447 ~~(b) Unless a defendant is sentenced to probation, drug~~  
448 ~~court, or a pretrial diversion program, when a defendant is~~



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449 ~~convicted of an offense that constitutes a Class C or D felony~~  
450 ~~offense and receives a sentence of not more than 15 years, the~~  
451 ~~judge presiding over the case shall order that the convicted~~  
452 ~~defendant be confined in a prison, jail-type institution,~~  
453 ~~treatment institution, or community corrections program for a~~  
454 ~~Class C felony offense or in a consenting community~~  
455 ~~corrections program for a Class D felony offense, except as~~  
456 ~~provided in subsection (c), for a period not exceeding two~~  
457 ~~years in cases where the imposed sentence is not more than 15~~  
458 ~~years, and that the execution of the remainder of the sentence~~  
459 ~~be suspended notwithstanding any provision of the law to the~~  
460 ~~contrary and that the defendant be placed on probation for a~~  
461 ~~period not exceeding three years and upon such terms as the~~  
462 ~~court deems best. In all cases when it is shown that a~~  
463 ~~defendant has been previously convicted of any three or more~~  
464 ~~felonies or has been previously convicted of any two or more~~  
465 ~~felonies that are Class A or Class B felonies, and after such~~  
466 ~~convictions has committed a Class D felony, upon conviction,~~  
467 ~~he or she must be punished for a Class C felony. This~~  
468 ~~subsection shall not be construed to impose the responsibility~~  
469 ~~for offenders sentenced to a Department of Corrections~~  
470 ~~facility upon a local confinement facility not operated by the~~  
471 ~~Department of Corrections.~~

472 ~~(c) Nothing in this section shall be construed as~~  
473 ~~superseding the sentencing requirements set forth and adopted~~  
474 ~~by the Legislature as prescribed by the Alabama Sentencing~~  
475 ~~Commission's Sentencing Standards.~~

476 ~~(d) In counties or jurisdictions where no community~~



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477 ~~corrections program exists or resources from a community~~  
478 ~~investment are not complete, a county or jurisdiction may~~  
479 ~~enter into a compact or contract with another county or other~~  
480 ~~counties to create a multi-jurisdiction community corrections~~  
481 ~~facility that meets the needs and resources of each county or~~  
482 ~~jurisdiction or enter into a compact or contract with a county~~  
483 ~~or jurisdiction that has a community corrections program to~~  
484 ~~provide services, as provided in and pursuant to Article 9 of~~  
485 ~~this chapter.~~

486 ~~(e) If no community corrections program exists within a~~  
487 ~~county or jurisdiction and no alternative program options are~~  
488 ~~available under subsection (e) of Section 15-18-172, a~~  
489 ~~defendant convicted of an offense that constitutes a Class D~~  
490 ~~felony may be sentenced to high-intensity probation under the~~  
491 ~~supervision of the Board of Pardons and Paroles in lieu of~~  
492 ~~community corrections.~~

493 ~~(f)~~ (b) Probation may not be granted for a sex offense  
494 involving a child as defined in Section 15-20A-4, ~~which~~ that  
495 constitutes a Class A or B felony. Otherwise, probation may be  
496 granted whether the offense is punishable by fine or  
497 imprisonment or both. If an offense is punishable by both fine  
498 and imprisonment, the court may impose a fine and place the  
499 defendant on probation as to imprisonment. Probation may be  
500 limited to one or more counts or indictments, but, in the  
501 absence of express limitation, shall extend to the entire  
502 sentence and judgment.

503 ~~(g)~~ (c) Regardless of whether the defendant has begun  
504 serving the minimum period of confinement ordered under ~~the~~



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505 ~~provisions of subsections~~ subsection (a) ~~or (b)~~, if the imposed  
506 ~~sentence is not more than 20 years~~, the court shall retain  
507 jurisdiction and authority ~~throughout that period~~ to suspend  
508 that portion of the minimum sentence that remains and place  
509 the defendant on probation, notwithstanding any provision of  
510 the law to the contrary, and the court may revoke or modify  
511 any condition of probation or may change the period of  
512 probation.

513 ~~(h)~~ (d) While incarcerated or on probation and among the  
514 conditions thereof, the defendant may be required to do any of  
515 the following:

516 (1) To pay a fine in one or several sums ~~;~~ .

517 (2) To make restitution or reparation to aggrieved  
518 parties for actual damages or loss caused by the offense for  
519 which conviction was had ~~;~~ and.

520 (3) To provide for the support of any persons for whose  
521 support he or she is legally responsible.

522 ~~(i)~~ (e) Except as otherwise provided pursuant to Section  
523 15-18-64, the defendant's liability for any fine or other  
524 punishment imposed as to which probation is granted shall be  
525 fully discharged by the fulfillment of the terms and  
526 conditions of probation.

527 ~~(j)~~ (f) During any term of probation, the defendant  
528 shall report to the probation authorities at ~~such~~ a time and  
529 place as directed by the judge imposing sentence.

530 ~~(k)~~ (g) No defendant serving a minimum period of  
531 confinement ordered under subsection (a) ~~or (b)~~ shall be  
532 entitled to parole or to deductions from his or her sentence



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533 under the Alabama Correctional Incentive Time Act, during the  
534 minimum period of confinement so ordered; provided, however,  
535 that this subsection shall not be construed to prohibit  
536 application of the Alabama Correctional Incentive Time Act to  
537 any period of confinement which may be required after the  
538 defendant has served ~~such~~the minimum period.

539 ~~(1)~~ (h) When a defendant is convicted of a misdemeanor  
540 or convicted of a municipal ordinance, the judge presiding  
541 over the case may impose a sentence in accordance with Section  
542 13A-5-7. The court may order a portion of the sentence to be  
543 suspended and the defendant be placed on probation for ~~such~~ a  
544 period not exceeding two years ~~and upon such terms as the~~  
545 ~~court deems best.~~

546 (i) Nothing in this section shall be construed to  
547 impose the responsibility for offenders sentenced to a  
548 Department of Corrections facility upon a local confinement  
549 facility not operated by the Department of Corrections."

550 "§15-22-54

551 (a) The period of probation or suspension of execution  
552 of sentence shall be determined by the court and may not be  
553 waived by the defendant. The period of probation or suspension  
554 may be continued, extended, or terminated as determined by the  
555 court. Except as provided in Section 32-5A-191, relating to  
556 ignition interlock requirements, the maximum probation period  
557 of a defendant guilty of a misdemeanor may not exceed two  
558 years, nor shall the maximum probation period of a defendant  
559 guilty of a felony exceed five years, except as provided in  
560 Section 13A-8-2.1. When the conditions of probation or



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561 suspension of sentence are fulfilled, the court, by an order  
562 duly entered on its minutes, shall discharge the defendant.

563 (b) The court granting probation, upon the  
564 recommendation of the officer supervising the probationer, may  
565 terminate all authority and supervision over the probationer  
566 prior to the declared date of completion of probation upon  
567 showing a continued satisfactory compliance with the  
568 conditions of probation over a sufficient portion of the  
569 period of the probation. At least every two years, and after  
570 providing notice to the district attorney, the court shall  
571 review the probationer's suitability for discharge from  
572 probation supervision if the probationer has satisfied all  
573 financial obligations owed to the court, including  
574 restitution, and has not had his or her supervision revoked.

575 (c) At any time during the period of probation or  
576 suspension of execution of sentence, the court may issue a  
577 warrant and have the defendant arrested for violating any of  
578 the conditions of probation or suspension of sentence, and the  
579 court shall hold a violation hearing. No probationer shall be  
580 held in jail awaiting the violation hearing for longer than 20  
581 business days, unless new criminal charges are pending. If the  
582 hearing is not held within the specified time, the sheriff  
583 shall release the probation violator unless there are other  
584 pending criminal charges. A judge may issue a bond to a  
585 probationer for release from custody.

586 (d) Except as provided in Chapter 15 of Title 12, any  
587 probation officer, police officer, or other officer with power  
588 of arrest, when requested by the probation officer, may arrest



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589 a probationer without a warrant. When an arrest is made  
590 without a warrant, the arresting officer shall have a written  
591 statement by the probation officer setting forth that the  
592 probationer has, in his or her judgment, violated the  
593 conditions of probation, and the statement shall be sufficient  
594 warrant for the detention of the probationer in the county  
595 jail or other appropriate place of detention until the  
596 probationer is brought before the court. The probation officer  
597 shall report the arrest and detention to the court and submit  
598 in writing a report showing in what manner the probationer has  
599 violated probation.

600 (e) After conducting a violation hearing and finding  
601 sufficient evidence to support a probation violation, the  
602 court may take any of the following actions:

603 ~~(1)a. If the underlying offense was a Class D felony~~  
604 ~~and his or her probation is revoked, the incarceration portion~~  
605 ~~of any split sentence imposed due to revocation shall be~~  
606 ~~limited to two years or one-third of the original suspended~~  
607 ~~prison sentence, whichever is less.~~

608 b.(1)a. If the underlying offense was a violent  
609 offense as defined in Section 12-25-32 and ~~classified as a~~  
610 Class A felony, a sex offense pursuant to Section 15-20A-5, or  
611 aggravated theft by deception pursuant to Section 13A-8-2.1,  
612 the court shall revoke probation and require the probationer  
613 to serve the balance of the term for which he or she was  
614 originally sentenced, or any portion thereof, in a state  
615 prison facility, calculated from the date of his or her  
616 rearrest as a delinquent probationer.



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617            ~~e.b.~~ If the probation violation was for being arrested  
618 or convicted of a new offense, ~~or~~ absconding, or failing to  
619 successfully complete a court supervised, evidence-based  
620 treatment program, as defined in Section 12-25-32, a court  
621 ordered faith-based program, or any other court ordered  
622 rehabilitative program, the court may revoke probation and  
623 require the probationer to serve the balance of the term for  
624 which he or she was originally sentenced, or any portion  
625 thereof, in a state prison facility, calculated from the date  
626 of his or her rearrest as a delinquent probationer.

627            ~~d.c.~~ For all other probationers, the court may impose  
628 a period of confinement of no more than 45 consecutive days to  
629 be served in a residential transition center established  
630 pursuant to Section 15-22-30.1 or a consenting county jail  
631 designated for this purpose as provided in Section 14-1-23.  
632 The probationer shall be held in the county jail of the county  
633 in which the violation occurred while awaiting the revocation  
634 hearing. The Department of Corrections shall reimburse the  
635 state mileage rate to the county, as determined by the Alabama  
636 Comptroller's Office, for any probationer charged with, or  
637 sanctioned or revoked for, a probation violation and who is  
638 transferred to or from a Department of Corrections facility or  
639 to or from a consenting county jail by the county.

640            (2) Upon completion of the confinement period, the  
641 remaining probation period or suspension of sentence shall  
642 automatically continue upon the defendant's release from  
643 confinement. The court may not revoke probation unless the  
644 defendant has previously received a total of three periods of





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645 confinement pursuant to this subsection. For purposes of  
646 revocation, the court may take judicial notice of the three  
647 total periods of confinement under this subsection. A  
648 defendant shall only receive three total periods of  
649 confinement pursuant to this subsection. The maximum ~~45-day~~  
650 45-day term of confinement ordered pursuant to this subsection  
651 for a felony shall be reduced by any time served in custody  
652 prior to the imposition of the period of confinement and shall  
653 be credited to the suspended sentence. If the time remaining  
654 on the imposed sentence is 45 days or less, the term of  
655 confinement may not exceed the remainder of the defendant's  
656 sentence.

657 (3) The total time spent in confinement under this  
658 subsection may not exceed the term of the defendant's original  
659 sentence.

660 (4) Confinement shall be immediate. The court shall  
661 ensure that the circuit clerk receives the order revoking  
662 probation within five business days. The circuit clerk shall  
663 ensure that the Department of Corrections, a county jail, a  
664 residential transition center, or a consenting county jail  
665 receives necessary transcripts for imposing a period of  
666 confinement within five business days of its receipt of the  
667 court's order.

668 (5) If a probation violator is presented to a county  
669 jail, excluding a consenting county jail designated for this  
670 purpose, as provided in Section 14-1-23, for any period of  
671 confinement with a serious health condition, if the  
672 confinement of the probation violator would create a security



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673 risk to the county jail, or if the county jail is near, at, or  
674 over capacity, the sheriff may refuse to admit the probation  
675 violator. If, while in custody of the county jail, the  
676 probation violator develops a serious health condition, if the  
677 confinement of the probation violator creates a security risk  
678 to the county jail, or if the county jail reaches near, at, or  
679 over capacity, the sheriff may release the probation violator  
680 upon notification to the probation officer and to the court  
681 who has jurisdiction over the probation violator. A sheriff  
682 and employees in the county jail shall be immune from  
683 liability for exercising discretion pursuant to Section  
684 36-1-12 in refusing to admit a probation violator into the  
685 jail or releasing a probation violator from jail pursuant to  
686 this subdivision.

687 (f) In lieu of subsections (c) through (e), when a  
688 probationer violates his or her probation terms and conditions  
689 imposed by the court, his or her probation officer, after an  
690 administrative review and approval by the probation officer's  
691 supervisor, may impose any of the following sanctions:

692 (1) Mandatory behavioral treatment.

693 (2) Mandatory substance abuse treatment.

694 (3) GPS monitoring.

695 (4) Any other treatment as determined by the court or  
696 supervising officer.

697 (5) A short period of confinement in the county jail  
698 of the county in which the violation occurred. Periods of  
699 confinement under this subdivision may not exceed six days per  
700 month during any three separate months during the period of



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701 probation. The six days per month confinement period may only  
702 be imposed as two-day or three-day consecutive periods at any  
703 single time. The total periods of confinement may not exceed  
704 nine total days.

705 (g) (1) Prior to imposing a sanction pursuant to  
706 subsection (f), the probationer must first be presented with a  
707 violation report, ~~with~~ containing the alleged probation  
708 violations and supporting evidence. The probationer shall be  
709 advised that he or she has all of the following:

710 a. The right to have a hearing before the court on the  
711 alleged violation or violations in person or by electronic  
712 means. If a hearing is requested, no probationer shall be held  
713 beyond 20 business days of the request. Only requesting  
714 probationers posing a threat to public safety or a flight risk  
715 shall be arrested while awaiting a hearing.

716 b. The right to present relevant witnesses and  
717 documentary evidence.

718 c. The right to retain and have counsel at the hearing  
719 and that counsel will be appointed if the probationer is  
720 indigent.

721 d. The right to confront and cross examine any adverse  
722 witnesses.

723 (2) Upon the signing of a waiver of these rights by  
724 the probationer and the supervising probation officer, with  
725 approval of a supervisor, the probationer may be treated,  
726 monitored, or confined for the period recommended in the  
727 violation report and designated in the waiver. The probationer  
728 may not request a review if he or she has signed a written



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729 waiver of rights as provided in this subsection.

730 (h) The board shall adopt guidelines and procedures to  
731 implement the requirements of this section, which shall  
732 include the requirement of a supervisor's approval prior to a  
733 supervising probation officer's exercise of the delegation of  
734 authority authorized by subsection (f)."

735 Section 2. Although this bill would have as its purpose  
736 or effect the requirement of a new or increased expenditure of  
737 local funds, the bill is excluded from further requirements  
738 and application under Section 111.05 of the Constitution of  
739 Alabama of 2022, because the bill defines a new crime or  
740 amends the definition of an existing crime.

741 Section 3. This act shall become effective on July 1,  
742 2023, following its passage and approval by the Governor, or  
743 its otherwise becoming law.