

1 HB227
2 204856-1
3 By Representative Hill
4 RFD: Judiciary
5 First Read: 13-FEB-20

SYNOPSIS: Under existing law, a judge may sentence a defendant convicted for a criminal offense to a split sentence under certain circumstances.

Under existing law, a defendant sentenced to a split sentence is required to serve the remainder of the original sentence if his or her probation is revoked.

This bill would provide that a judge may use his or her discretion in determining the length of sentence a defendant must serve if his or her probation is revoked.

This bill would also revise the implementation date for truth-in-sentencing.

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

A BILL
TO BE ENTITLED
AN ACT

1
2 Relating to crimes and offenses; to amend Section
3 15-18-8, as last amended by Act 2019-344, 2019 Regular
4 Session, Code of Alabama 1975, to provide that a judge may use
5 discretion in the length of sentence a defendant must serve if
6 his or her probation is revoked; to amend Sections 12-25-34,
7 12-25-34.2, and 12-25-36, Code of Alabama 1975, to revise the
8 implementation date for truth-in-sentencing; and to make
9 nonsubstantive, technical revisions to update the exiting code
10 language to current style.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 15-18-8, as last amended by Act
13 2019-344, 2019 Regular Session, Code of Alabama 1975, is
14 amended to read as follows:

15 "§15-18-8.

16 "(a) When a defendant is convicted of an offense,
17 other than a sex offense involving a child as defined in
18 Section 15-20A-4, that constitutes a Class A or Class B felony
19 offense, and receives a sentence of 20 years or less in any
20 court having jurisdiction to try offenses against the State of
21 Alabama and the judge presiding over the case is satisfied
22 that the ends of justice and the best interests of the public
23 as well as the defendant will be served ~~thereby~~, he or she may
24 order either of the following:

25 "(1) That a defendant convicted of a Class A or
26 Class B felony be confined in a prison, jail-type institution,
27 or treatment institution for a period not exceeding three

1 years in cases where the imposed sentence is not more than 15
2 years, and that the execution of the remainder of the sentence
3 be suspended notwithstanding any provision of the law to the
4 contrary and that the defendant be placed on probation for
5 ~~such~~ a period and upon ~~such~~ terms as the court deems best.

6 "(2) That a defendant convicted of a Class A, Class
7 B, or Class C felony with an imposed sentence of greater than
8 15 years but not more than 20 years be confined in a prison,
9 jail-type institution, or treatment institution for a period
10 of three to five years for Class A or Class B felony
11 convictions and for a period of three years for Class C felony
12 convictions, ~~during which the offender shall not be eligible~~
13 ~~for parole or release because of deduction from sentence for~~
14 ~~good behavior under the Alabama Correctional Incentive Time~~
15 ~~Act,~~ and that the remainder of the sentence be suspended
16 notwithstanding any provision of the law to the contrary and
17 that the defendant be placed on probation for the period upon
18 the terms as the court deems best.

19 ~~"This subsection shall not be construed to impose~~
20 ~~the responsibility for offenders sentenced to a Department of~~
21 ~~Corrections facility upon a local confinement facility not~~
22 ~~operated by the Department of Corrections.~~

23 "(b) Unless a defendant is sentenced to probation,
24 drug court, or a pretrial diversion program, when a defendant
25 is convicted of ~~an offense that constitutes~~ a Class C or Class
26 D felony offense and receives a sentence of not more than 15
27 years, the judge presiding over the case shall order that the

1 convicted defendant be confined in a prison, jail-type
2 institution, treatment institution, or community corrections
3 program for a Class C felony offense or in a consenting
4 community corrections program for a Class D felony offense,
5 except as provided in subsection (e), for a period not
6 exceeding two years ~~in cases where the imposed sentence is not~~
7 ~~more than 15 years~~, and that the execution of the remainder of
8 the sentence be suspended notwithstanding any provision of the
9 law to the contrary and that the defendant be placed on
10 probation for a period not exceeding three years and upon ~~such~~
11 terms as the court deems best. In all cases when it is shown
12 that a defendant has been previously convicted of any three or
13 more felonies or has been previously convicted of any two or
14 more felonies that are Class A or Class B felonies, and after
15 ~~such~~ the convictions has committed a Class D felony, upon
16 conviction, he or she ~~must~~ shall be punished for a Class C
17 felony. ~~This subsection shall not be construed to impose the~~
18 ~~responsibility for offenders sentenced to a Department of~~
19 ~~Corrections facility upon a local confinement facility not~~
20 ~~operated by the Department of Corrections.~~

21 "(c) Nothing in this section shall be construed as
22 superseding the sentencing requirements set forth and adopted
23 by the Legislature as prescribed by the Alabama Sentencing
24 Commission's Sentencing Standards.

25 "(d) In counties or jurisdictions where no community
26 corrections program exists or resources from a community
27 investment are not complete, a county or jurisdiction may

1 enter into a compact or contract with another county or other
2 counties to create a multi-jurisdiction community corrections
3 facility that meets the needs and resources of each county or
4 jurisdiction or enter into a compact or contract with a county
5 or jurisdiction that has a community corrections program to
6 provide services, ~~as provided in~~ and pursuant to Article 9 of
7 this chapter.

8 "(e) If no community corrections program exists
9 within a county or jurisdiction and no alternative program
10 options are available under subsection (e) of Section
11 15-18-172, a defendant convicted of an offense that
12 constitutes a Class D felony may be sentenced to
13 high-intensity probation under the supervision of the Board of
14 Pardons and Paroles in lieu of community corrections.

15 "(f) Probation may not be granted for a sex offense
16 involving a child as defined in Section 15-20A-4, which
17 constitutes a Class A or B felony. Otherwise, probation may be
18 granted whether the offense is punishable by fine or
19 imprisonment or both. If an offense is punishable by both fine
20 and imprisonment, the court may impose a fine and place the
21 defendant on probation as to imprisonment. Probation may be
22 limited to one or more counts or indictments, but, in the
23 absence of express limitation, shall extend to the entire
24 sentence and judgment.

25 "(g) (1) Regardless of whether the defendant has
26 begun serving the minimum period of confinement ordered under
27 the provisions of ~~subsections~~ subsection (a) ~~or~~, (b), or (1),

1 if the imposed sentence is not more than 20 years, the court
2 shall retain jurisdiction and authority throughout that period
3 to suspend that portion of the minimum sentence that remains
4 and place the defendant on probation, notwithstanding any
5 provision of the law to the contrary and the court may revoke
6 or modify any condition of probation or may change the period
7 of probation.

8 "(2) If a defendant's probation is revoked, and the
9 defendant was sentenced pursuant to subsection (a), (b), or
10 (1), the sentencing judge shall have the discretion to
11 determine the length of the revocation sentence.

12 "(h) While incarcerated or on probation and among
13 the conditions ~~thereof~~ of probation, the defendant may be
14 required to do any of the following:

15 "(1) To pay a fine in one or several sums~~7~~.

16 "(2) To make restitution or reparation to aggrieved
17 parties for actual damages or loss caused by the offense for
18 which conviction was had~~7~~and.

19 "(3) To provide for the support of any persons for
20 whose support he or she is legally responsible.

21 "(i) Except as otherwise provided pursuant to
22 Section 15-18-64, the defendant's liability for any fine or
23 other punishment imposed as to which probation is granted
24 shall be fully discharged by the fulfillment of the terms and
25 conditions of probation.

1 "(j) During any term of probation, the defendant
2 shall report to the probation authorities at ~~such~~ the time and
3 place as directed by the judge imposing sentence.

4 "(k) No defendant serving a minimum period of
5 confinement ordered under subsection (a) or (b) shall be
6 entitled to parole or to deductions from his or her sentence
7 under the Alabama Correctional Incentive Time Act, during the
8 minimum period of confinement so ordered; provided, however,
9 that this subsection ~~shall~~ may not be construed to prohibit
10 application of the Alabama Correctional Incentive Time Act to
11 any period of confinement which may be required after the
12 defendant has served ~~such~~ the minimum period.

13 "(l) When a defendant is convicted of a misdemeanor
14 or convicted of a municipal ordinance, the judge presiding
15 over the case may impose a sentence in accordance with Section
16 13A-5-7. The court may order a portion of the sentence to be
17 suspended and the defendant be placed on probation for ~~such~~ a
18 period not exceeding two years and upon ~~such~~ terms as the
19 court deems best.

20 "Nothing in this section shall be construed to
21 impose the responsibility for offenders sentenced to a
22 Department of Corrections facility upon a local confinement
23 facility not operated by the Department of Corrections."

24 Section 2. Sections 12-25-34, 12-25-34.2, and
25 12-25-36, Code of Alabama 1975, are amended to read as
26 follows:

27 "§12-25-34.

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

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

12 "(2) Concurrently with the development and
13 distribution of the reference manual, the commission shall
14 develop and begin testing worksheets and voluntary sentencing
15 standards in selected circuits for selected felony offenses.

16 "(3) The commission shall develop and present the
17 initial voluntary sentencing standards to the Legislature
18 before or during the 2006 Regular Session. These standards
19 shall be introduced in the 2006 Regular Session and shall
20 become effective on October 1 following the 2006 Regular
21 Session, if approved by an act of the Legislature passed
22 during that session. The initial voluntary sentencing
23 standards based on sentences imposed shall apply to
24 convictions for felony offenses sentenced on or after October
25 1, 2006, and committed before the effective date of the
26 voluntary truth-in-sentencing standards.

1 "(4) The commission shall develop and present
2 truth-in-sentencing standards to the Legislature before or
3 during the ~~2020~~ 2026 Regular Session. These standards shall be
4 introduced in the ~~2020~~ 2026 Regular Session and shall become
5 effective on October 1 following the ~~2020~~ 2026 Regular
6 Session, if approved by an act of the Legislature. The
7 voluntary truth-in-sentencing standards shall apply only to
8 felony offenses committed on or after the effective date of
9 these standards.

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

15 "(c) Voluntary sentencing standards shall take into
16 account and include statewide historically based sentence
17 ranges, including all applicable statutory minimums and
18 sentence enhancement provisions, including the Habitual Felony
19 Offender Act, with adjustments made to reflect current
20 sentencing policies. No additional penalties pursuant to any
21 sentence enhancement statute shall apply to sentences imposed
22 based on the voluntary sentencing standards.

23 "(d) Commencing with the 2013 Regular Session, any
24 modifications to the initial voluntary sentencing standards
25 made by the commission shall be contained in the annual report
26 presented to the Governor, the Legislature, the Chief Justice,
27 and the Attorney General. An annual report containing proposed

1 modifications shall be presented to the Governor, the
2 Legislature, the Chief Justice, and the Attorney General at
3 least forty-five days prior to each regular session of the
4 Legislature. The modifications presented for nonviolent
5 offenses shall become effective on October 1 following the
6 legislative session in which the modifications were presented
7 unless rejected by an act of the Legislature enacted by bill
8 during the legislative session. The modifications presented
9 for violent offenses shall become effective on October 1
10 following the legislative session in which the modifications
11 were presented, if approved by an act of the Legislature
12 enacted by bill during the legislative session in which the
13 modifications were presented.

14 "§12-25-34.2.

15 "(a) For the purposes of this section, the following
16 words shall have the following meanings:

17 "(1) AGGRAVATING FACTORS. Substantial and compelling
18 reasons justifying an exceptional sentence whereby the
19 sentencing court may impose a departure sentence above the
20 presumptive sentence recommendation for an offense.

21 Aggravating factors may result in dispositional or sentence
22 range departures, or both, and shall be stated on the record
23 by the court.

24 "(2) DEPARTURE. A sentence which departs from the
25 presumptive sentence recommendation for an offender.

1 "(3) DISPOSITION. The part of the sentencing courts
2 presumptive sentence recommendation other than sentence
3 length.

4 "(4) DISPOSITIONAL DEPARTURE. A sentence which
5 departs from the presumptive sentence recommendation for
6 disposition of sentence.

7 "(5) MITIGATING FACTORS. Substantial and compelling
8 reasons justifying an exceptional sentence whereby the
9 sentencing court may impose a departure sentence below the
10 presumptive sentence recommendation for an offense. Mitigating
11 factors may result in disposition or sentence range
12 departures, or both, and shall be stated on the record by the
13 court.

14 "(6) NONVIOLENT OFFENSES. As defined in Section
15 12-25-32.

16 "(7) PRESUMPTIVE SENTENCE RECOMMENDATION. The
17 recommended sentence range and disposition provided in the
18 sentencing standards.

19 "(8) SENTENCE RANGE. The sentencing court's
20 discretionary range of length of sentence as provided and
21 recommended in the presumptive sentencing recommendation.

22 "(9) SENTENCE RANGE DEPARTURE. A sentence which
23 departs from the presumptive sentence recommendation as to the
24 sentence range.

25 "(10) VIOLENT OFFENSES. As defined in Section
26 12-25-32.

1 "(b) The voluntary sentencing standards as provided
2 for in Section 12-25-34, as applied to nonviolent offenses
3 shall become presumptive sentencing standards effective
4 October 1, 2013, to the extent the modification adopted by the
5 Alabama Sentencing Commission become effective October 1,
6 2013. The standards shall be applied by the courts in
7 sentencing subject to departures as provided herein. To
8 accomplish this purpose as to the existing initial voluntary
9 sentencing standards, the Alabama Sentencing Commission shall
10 adopt modifications to the standards, worksheets, and
11 instructions to the extent necessary to implement this
12 provision including, but not limited to, defining aggravating
13 and mitigating factors that allow for departure from the
14 presumptive sentencing recommendations. The commission's
15 modifications shall be presented to the Legislature in the
16 commission's annual report within the first five legislative
17 days of the 2013 Regular Session.

18 "(c) The voluntary sentencing standards as provided
19 for in Section 12-25-34, as applied to the offenses of robbery
20 in the third degree pursuant to Section 13A-8-43 and assault
21 in the second degree pursuant to Section 13A-6-21, shall
22 become presumptive sentencing standards offenses effective
23 October 1, 2021, to the extent the modifications adopted by
24 the Alabama Sentencing Commission become effective October 1,
25 2021. The standards shall be applied by the courts in
26 sentencing subject to the departures as provided in this
27 section. To accomplish this purpose as to the existing initial

1 voluntary sentencing standards, the Alabama Sentencing
2 Commission shall adopt modifications to the standards,
3 worksheets, and instructions to the extent necessary to
4 implement this provision including, but not limited to,
5 defining aggravating and mitigating factors that allow for
6 departure from the presumptive sentencing recommendations. The
7 commissions's modifications shall be presented to the
8 Legislature in the commission's annual report at least 45 days
9 prior to the 2021 Regular Session.

10 "~~(c)~~ (d) Durational and dispositional departures
11 from the presumptive sentencing standards shall be subject to
12 appellate review. Along with the modifications provided for in
13 subsection (b), the Alabama Sentencing Commission shall
14 recommend a narrowly defined scope of appellate review
15 applicable to departures from presumptive sentencing
16 recommendations. The scope of appellate review shall become
17 effective upon approval by an act of the Legislature enacted
18 by bill.

19 "§12-25-36.

20 "This section and Sections 12-25-37 and 12-25-38
21 shall apply only after development and legislative approval of
22 the proposed truth-in-sentencing standards submitted in ~~2020~~
23 2026. When a judge sentences based on the voluntary
24 truth-in-sentencing standards, all of the following rules
25 shall apply:

26 "(1) Sentences imposed based on voluntary
27 truth-in-sentencing standards pursuant to this article shall

1 not be subject to any other provision of law concerning the
2 duration of sentence.

3 "(2) Sentences imposed based on the voluntary
4 truth-in-sentencing standards shall include both a minimum and
5 an extended term of sentence including a period of
6 post-release supervision. The minimum sentence and the
7 extended sentence shall be specified in the judgment of the
8 court for those sentences that are imposed in compliance with
9 the voluntary truth-in-sentencing standards. Sentence
10 dispositions may include active incarceration, intermediate
11 punishment, unsupervised probation, or a minimum punishment as
12 specified in the voluntary truth-in-sentencing standards.

13 "(3) The minimum term of sentence shall be
14 consistent with the sentence range recommended in the
15 voluntary truth-in-sentencing standards for the worksheet
16 score of an offender. No offender sentenced to incarceration
17 may be released from incarceration before the expiration date
18 of the minimum term of sentence.

19 "(4) The extended term of sentence shall be a period
20 of time equal to 120 percent of the minimum term, rounded to
21 the next highest month, plus a one-year period of post-release
22 supervision.

23 "(5) The amount of time an offender shall be
24 incarcerated on the extended term of sentence shall be
25 determined by the Department of Corrections pursuant to rules
26 and regulations established by the Department of Corrections
27 governing an offender's conduct after conviction and sentence.

1 "(6) No sentence of active incarceration may be
2 suspended.

3 "(7) For any disposition of sentence less than
4 active incarceration as defined in paragraph a. of subdivision
5 (2) of Section 12-25-32, the court shall retain jurisdiction
6 to modify sentence disposition of sentence."

7 Section 3. This act shall become effective
8 immediately following its passage and approval by the
9 Governor, or its otherwise becoming law.