

1 HB23  
2 207605-1  
3 By Representative Hill  
4 RFD: Judiciary  
5 First Read: 02-FEB-21  
6 PFD: 10/29/2020

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 make nonsubstantive, technical revisions to update the existing code language to current style.

A BILL  
TO BE ENTITLED  
AN ACT

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

8   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9                   Section 1. Section 15-18-8, as last amended by Act  
10   2019-344, 2019 Regular Session, Code of Alabama 1975, is  
11   amended to read as follows:

12                   "§15-18-8.

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

22                   "(1) That a defendant convicted of a Class A or  
23   Class B felony be confined in a prison, jail-type institution,  
24   or treatment institution for a period not exceeding three  
25   years in cases where the imposed sentence is not more than 15  
26   years, and that the execution of the remainder of the sentence  
27   be suspended notwithstanding any provision of the law to the

1 contrary and that the defendant be placed on probation for  
2 ~~such~~ a period and upon ~~such~~ terms as the court deems best.

3 "(2) That a defendant convicted of a Class A, Class  
4 B, or Class C felony with an imposed sentence of greater than  
5 15 years but not more than 20 years be confined in a prison,  
6 jail-type institution, or treatment institution for a period  
7 of three to five years for Class A or Class B felony  
8 convictions and for a period of three years for Class C felony  
9 convictions, ~~during which the offender shall not be eligible~~  
10 ~~for parole or release because of deduction from sentence for~~  
11 ~~good behavior under the Alabama Correctional Incentive Time~~  
12 ~~Act,~~ and that the remainder of the sentence be suspended  
13 notwithstanding any provision of the law to the contrary and  
14 that the defendant be placed on probation for the period upon  
15 the terms as the court deems best.

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

20 "(b) Unless a defendant is sentenced to probation,  
21 drug court, or a pretrial diversion program, when a defendant  
22 is convicted of ~~an offense that constitutes~~ a Class C or Class  
23 D felony offense and receives a sentence of not more than 15  
24 years, the judge presiding over the case shall order that the  
25 convicted defendant be confined in a prison, jail-type  
26 institution, treatment institution, or community corrections  
27 program for a Class C felony offense or in a consenting

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

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

22 "(d) In counties or jurisdictions where no community  
23 corrections program exists or resources from a community  
24 investment are not complete, a county or jurisdiction may  
25 enter into a compact or contract with another county or other  
26 counties to create a multi-jurisdiction community corrections  
27 facility that meets the needs and resources of each county or

1 jurisdiction or enter into a compact or contract with a county  
2 or jurisdiction that has a community corrections program to  
3 provide services, ~~as provided in and~~ pursuant to Article 9 of  
4 this chapter.

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

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

22 "(g) (1) Regardless of whether the defendant has  
23 begun serving the minimum period of confinement ordered under  
24 the provisions of ~~subsections~~ subsection (a) ~~or~~, (b), or (1),  
25 if the imposed sentence is not more than 20 years, the court  
26 shall retain jurisdiction and authority throughout that period  
27 to suspend that portion of the minimum sentence that remains

1 and place the defendant on probation, notwithstanding any  
2 provision of the law to the contrary, and the court may revoke  
3 or modify any condition of probation or may change the period  
4 of probation.

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

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

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

13 "(2) To make restitution or reparation to aggrieved  
14 parties for actual damages or loss caused by the offense for  
15 which conviction was had~~;~~and.

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

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

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

26 "(k) No defendant serving a minimum period of  
27 confinement ordered under subsection (a) or (b) shall be

1 entitled to parole or to deductions from his or her sentence  
2 under the Alabama Correctional Incentive Time Act, during the  
3 minimum period of confinement so ordered; provided, however,  
4 that this subsection ~~shall~~ may not be construed to prohibit  
5 application of the Alabama Correctional Incentive Time Act to  
6 any period of confinement which may be required after the  
7 defendant has served ~~such~~ the minimum period.

8 "(l) When a defendant is convicted of a misdemeanor  
9 or convicted of a municipal ordinance, the judge presiding  
10 over the case may impose a sentence in accordance with Section  
11 13A-5-7. The court may order a portion of the sentence to be  
12 suspended and the defendant be placed on probation for ~~such~~ a  
13 period not exceeding two years and upon ~~such~~ terms as the  
14 court deems best.

15 "(m) Nothing in this section shall be construed to  
16 impose the responsibility for offenders sentenced to a  
17 Department of Corrections facility upon a local confinement  
18 facility not operated by the Department of Corrections."

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