

1 SB267
2 126272-1
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 24-MAR-11

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8 SYNOPSIS: This bill would clarify that a sentencing
9 court has jurisdiction to sentence a defendant to
10 probation for the lesser of five years or the
11 remainder of the defendant's sentence subsequent to
12 revoking the probation for a violation of the
13 conditions of probation.

14 This bill would define an administrative
15 violation and reclassify a technical violation of
16 probation as an administrative violation of
17 probation.

18 This bill would redefine an eligible
19 offender to include an eligible offender who on two
20 or more previous occasions has not been found by a
21 court to be in violation of any conditions of the
22 current probation and to delete the requirement
23 that an eligible offender must have performed the
24 conditions of probation for a consecutive six-month
25 period.

26 This bill would define a nonviolent
27 offender.

1 This bill would provide that the trial court
2 does not have to consider a successive petition for
3 resentencing unless the petition raises new grounds
4 for consideration and that a successive petition is
5 deemed denied by operation of law 30 days after it
6 is filed.

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8 A BILL
9 TO BE ENTITLED
10 AN ACT

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12 To amend Sections 15-22-54 and 15-22-54.1, Code of
13 Alabama 1975, as amended and added to the Code of Alabama
14 1975, by Act 2010-753 (Acts 2010, p. 1905), to further provide
15 for the revocation and suspension of probation; to define an
16 administrative violation, eligible offender, nonviolent
17 offender, and new offense; and to further provide when a
18 successive petition for resentencing may be considered.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Sections 15-22-54 and 15-22-54.1, Code of
21 Alabama 1975, as amended and added to the Code of Alabama
22 1975, by Act 2010-753 (Acts 2010, p. 1905), are amended to
23 read as follows:

24 "§15-22-54.

25 "(a) The period of probation or suspension of
26 execution of sentence shall be determined by the court, and
27 the period of probation or suspension may be continued,

1 extended, or terminated. However, in no case shall the maximum
2 probation period of a defendant guilty of a misdemeanor exceed
3 two years, nor shall the maximum probation period of a
4 defendant guilty of a felony exceed five years. When the
5 conditions of probation or suspension of sentence are
6 fulfilled, the court shall, by order duly entered on its
7 minutes, discharge the defendant.

8 "(b) The court granting probation may, upon the
9 recommendation of the officer supervising the probationer,
10 terminate all authority and supervision over the probationer
11 prior to the declared date of completion of probation upon
12 showing a continued satisfactory compliance with the
13 conditions of probation over a sufficient portion of the
14 period of the probation.

15 "(c) At any time during the period of probation or
16 suspension of execution of sentence, the court may issue a
17 warrant and cause the defendant to be arrested for violating
18 any of the conditions of probation or suspension of sentence.

19 "(d) Except as provided in Chapter 15 of Title 12,
20 any probation officer, police officer, or other officer with
21 power of arrest, when requested by the probation officer, may
22 arrest a probationer without a warrant. In case of an arrest
23 without a warrant, the arresting officer shall have a written
24 statement by the probation officer setting forth that the
25 probationer has, in his or her judgment, violated the
26 conditions of probation, and the statement shall be sufficient
27 warrant for the detention of the probationer in the county

1 jail or other appropriate place of detention until the
2 probationer is brought before the court. The probation officer
3 shall forthwith report the arrest and detention to the court
4 and submit in writing a report showing in what manner the
5 probationer has violated probation.

6 "(1) If the defendant violates ~~a~~ any condition of
7 probation or suspension of execution of sentence, the court,
8 after a hearing, may implement one or more of the following
9 options:

10 "a. Continue the existing probation and suspension
11 of execution of sentence.

12 "b. Issue a formal or informal warning to the
13 probationer that further violations may, subject to paragraph
14 f., result in revocation of probation or suspension of
15 execution of sentence.

16 "c. Conduct a formal or informal conference with the
17 probationer to reemphasize the necessity of compliance with
18 the conditions of probation.

19 "d. Modify the conditions of probation or suspension
20 of execution of sentence, which conditions may include the
21 addition of short periods of confinement, not to exceed 90
22 days incarceration in a county jail or a facility of the
23 Department of Corrections.

24 ~~"e. If the violation of probation is the commission~~
25 ~~of a new offense, revoke~~ Revoke the probation or suspension of
26 execution of sentence for a defendant who is not an eligible
27 offender as defined herein. If the court revokes probation, it

1 may, after a hearing, impose the sentence that was suspended
2 at the original hearing or any lesser sentence.

3 ~~"f. If the probation violation is a technical~~
4 ~~violation, defined as a violation of a condition of probation~~
5 ~~other than the commission of a new offense, In addition to the~~
6 ~~provisions of paragraphs a. to d., inclusive, of subdivision~~
7 ~~(1), the probation of~~ an eligible offender may be revoked and
8 the defendant required to serve a term of not more than 90
9 days imprisonment in a Department of Corrections facility,
10 which may include participation in the restart program,
11 LIFETech program, or a technical violator program or, if no
12 space is available in a Department of Corrections facility,
13 not more than 90 days in the county jail.

14 "g. Notwithstanding any law to the contrary,
15 following release of an eligible offender from incarceration,
16 the sentencing court shall have jurisdiction to sentence the
17 defendant to a period of probation, not to exceed five years
18 or the remainder of his or her suspended sentence, whichever
19 is less.

20 ~~"(2) a. An eligible offender subject to paragraph f.~~
21 ~~of subdivision (1) is a nonviolent felon serving a~~
22 ~~probationary sentence who has violated a condition or~~
23 ~~conditions of probation other than by the commission of a new~~
24 ~~offense and who has performed the conditions of probation,~~
25 ~~including remaining current on payment of court ordered money,~~
26 ~~for a consecutive six-month period.~~

1 "(2) ~~b. Technical violations of conditions of~~
2 ~~probation shall be subject to the options provided in~~
3 ~~paragraphs a., b., c., d., and f. of subdivision (1);~~
4 ~~provided, however, the~~ The court may also continue the
5 existing probation and suspension of execution of sentence of
6 any defendant with the additional condition that the
7 probationer does any of the following:

8 "1. Participates in a community corrections program.

9 "2. Participates in a county work release program.

10 "3. Performs community service.

11 "4. Undergoes intensive probation supervision.

12 "5. Participates in a residential or outpatient drug
13 or alcohol treatment program.

14 "6. Participates and completes a Life Skills
15 Influenced by Freedom and Education Tech (LIFETech)
16 residential program.

17 "(3) If revocation results in a sentence of
18 confinement, credit shall be given for all time spent in
19 custody prior to revocation. Full credit shall be awarded for
20 full-time confinement in facilities such as county jail, state
21 prison, state technical violator programs, and boot camp.
22 Credit for other penalties, such as work release programs,
23 intermittent confinement, and home detention, shall be left to
24 the discretion of the court, with the presumption that time
25 spent subject to these penalties will receive half credit. The
26 court shall also give significant weight to the time spent on
27 probation in substantial compliance with the conditions

1 thereof. The total time spent in confinement may not exceed
2 the term of confinement of the original sentence.

3 "(4) The court shall not revoke probation and order
4 the confinement of the probationer for violations of the
5 conditions of probation unless the court finds on the basis of
6 the original offense and the probationer's intervening
7 conduct, either of the following:

8 "a. No measure short of confinement will adequately
9 protect the community from further criminal activity by the
10 probationer.

11 "b. No measure short of confinement will avoid
12 depreciating the seriousness of the violation.

13 "(5) A defendant determined by the court to be
14 indigent shall not be excluded from a determination as an
15 eligible offender solely because of nonpayment of
16 court-ordered monies. Only the willful nonpayment of
17 court-ordered monies shall exclude an otherwise eligible
18 defendant from being considered an eligible offender.

19 "(e) For purposes of this section and Section
20 15-22-54.1, the following words have the following meanings:

21 "(1) ADMINISTRATIVE VIOLATION. Any violation of the
22 rules and conditions of probation other than one of the
23 following:

24 "a. A violation of law.

25 "b. Possession, receipt, or transportation of any
26 firearm.

1 "c. Any violation of any condition prohibiting
2 contact with any victim.

3 "d. A violation of any condition which presented a
4 danger to the health, safety, or welfare of any person.

5 "(2) ELIGIBLE OFFENDER. A nonviolent offender
6 meeting all of the following criteria:

7 "a. Serving a probationary sentence who has
8 committed an administrative violation only.

9 "b. Who has no pending criminal charges.

10 "c. Has no convictions for a new offense since the
11 time the offender was placed on probation.

12 "d. Has not on two or more previous occasions been
13 found by a court to be in violation of any condition of the
14 current probation.

15 "(3) NEW OFFENSE. Any misdemeanor or felony, whether
16 in violation of state or federal law except for minor
17 misdemeanor traffic offenses.

18 "(4) NONVIOLENT OFFENDER. A person who has not been
19 convicted at any time of any crime defined in subdivision (13)
20 of Section 12-25-32 and who is not currently on probation for
21 a crime the court finds involved actual or attempted physical
22 harm or injury to any person.

23 "§15-22-54.1.

24 "(a) Any person ~~convicted of a nonviolent offense~~
25 now serving a prison sentence based on revocation of probation
26 ~~as a result of only technical violations~~ who would have been
27 an eligible offender as defined in Section 15-22-54 at the

1 time of revocation shall be entitled to be resentenced upon
2 petition to the sentencing court. Such petition shall be on a
3 form and filed in the manner prescribed by the Administrative
4 Office of Courts. Petitions shall be considered authorized
5 motions for modification of sentence, assigned a unique
6 identifier by the Administrative Office of Courts, and shall
7 not require payment of a filing fee.

8 "(b) The court shall have jurisdiction to resentence
9 the offender in accordance with the terms of this section,
10 upon a showing of the following:

11 "~~(1) The offender successfully completed the terms~~
12 ~~of probation for six months~~ petitioner met all requirements of
13 an eligible offender as defined in Section 15-22-54 at the
14 time of revocation.

15 "(2) Probation was thereafter revoked and the
16 ~~offender~~ petitioner was sentenced to the penitentiary only as
17 a result of ~~technical~~ administrative violations of probation.

18 "(3) The ~~offender~~ petitioner has no disciplinary
19 infractions while serving the sentence in the penitentiary.

20 "(4) The ~~offender~~ petitioner has no pending criminal
21 charges or convictions for a new offense since the time the
22 petitioner was placed on probation.

23 "(c) A successive petition shall not be considered
24 by the trial court unless new grounds are raised in the
25 petition. Any successive petition which is not set for a
26 hearing by the court within 30 days after filing is deemed
27 denied by operation of law."

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