

1 HB441
2 115691-2
3 By Representative Black
4 RFD: Judiciary
5 First Read: 26-JAN-10

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8 SYNOPSIS: Under existing law, there is no prohibition
9 on the imposition of consecutive split sentences or
10 the stacking of split sentences to require a
11 defendant to serve more than one mandatory
12 imprisonment portion of a split sentence for more
13 than one offense.

14 This bill would expressly prohibit
15 sentencing a defendant to serve multiple
16 consecutive incarceration portions of split
17 sentences upon conviction for more than one offense
18 at the same sentencing event.

19 This bill would clarify that for a split
20 sentence of 15 years or less, during the maximum
21 term of imprisonment imposed, which is up to three
22 years, a defendant would not be eligible for good
23 time or parole.

24 This bill would apply the maximum probation
25 limitations of 2 years for misdemeanor convictions
26 and 5 years for felony offenses to sentences
27 imposed under a split sentence.

1 This bill would specify that the period of
2 probation or suspension of a sentence may be
3 amended or modified by the court and that the court
4 may revoke probation or modify any condition of
5 probation while the defendant is serving either the
6 incarceration portion or probation portion of a
7 split sentence. The bill would also provide that if
8 the court revokes probation, the court may order
9 the defendant to participate in a substance abuse
10 or community corrections program or order
11 imprisonment for all or part of the remaining
12 suspended sentence.

13 This bill would also authorize full credit
14 to be awarded for time served on probation upon
15 successful completion of a residential drug or
16 alcohol treatment program to which the offender has
17 been referred as a condition of probation.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To amend Sections 15-18-8 and 15-22-54 of the Code
24 of Alabama 1975, to prohibit the imposition of consecutive
25 incarceration portions of split sentences for separate
26 offenses sentenced at the same sentencing event; to apply the
27 maximum terms of probation for all types of sentences; to

1 further provide for probation and the revocation of probation;
2 and to authorize full credit for time served on probation upon
3 successfully completing a court-ordered residential drug or
4 alcohol treatment program.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 15-18-8 and 15-22-54 of the Code
7 of Alabama 1975, are amended to read as follows:

8 "§15-18-8.

9 "(a) ~~When~~ Except for Class A or B felony sex
10 offenses involving a child as defined in Section 15-20-21(5),
11 when a defendant is convicted of an offense, ~~other than a~~
12 ~~criminal sex offense involving a child as defined in Section~~
13 ~~15-20-21(5), which constitutes a Class A or B felony and~~
14 receives a sentence of 20 years or less in any court having
15 jurisdiction to try offenses against the State of Alabama and
16 the judge presiding over the case is satisfied that the ends
17 of justice and the best interests of the public as well as the
18 defendant will be served thereby, he or she may order the
19 defendant to serve a sentence as follows:

20 "(1) ~~That~~ When the imposed sentence is not more than
21 15 years, the convicted defendant sentencing judge may order
22 the convicted defendant to be confined in a prison, jail-type
23 institution, or treatment institution for a period not
24 exceeding three years in cases where the imposed sentence is
25 not more than 15 years, during which time the defendant shall
26 not be eligible for parole or release because of deduction
27 from sentence for good behavior under the Alabama Correctional

1 Incentive Time Act, and that the execution of the remainder of
2 the sentence be suspended ~~notwithstanding any provision of the~~
3 ~~law to the contrary~~ and that the defendant be placed on
4 probation for ~~such~~ a period not to exceed the time specified
5 in subsection (b) and upon such ~~terms~~ conditions as the court
6 deems best.

7 "~~In cases involving an~~ (2) ~~When the~~ imposed sentence
8 ~~of is~~ greater than 15 years, but not more than 20 years, the
9 sentencing judge may order ~~that~~ the convicted defendant to be
10 confined in a prison, jail-type institution, or treatment
11 institution for a period not exceeding five years, but not
12 less than three years, during which the offender shall not be
13 eligible for parole or release because of deduction from
14 sentence for good behavior under the Alabama Correctional
15 Incentive Time Act, and that the execution of the remainder of
16 the sentence be suspended ~~notwithstanding any provision of the~~
17 ~~law to the contrary~~ and that the defendant be placed on
18 probation for ~~the period~~ a period not to exceed the time
19 specified in subsection (b) upon the ~~terms~~ conditions as the
20 court deems best.

21 "~~(2)~~ (3) That the convicted defendant may be
22 confined, upon consultation with the Commissioner of the
23 Alabama Department of Corrections (hereinafter called
24 department) in a disciplinary, rehabilitation, conservation
25 camp program (hereinafter called program) of the department.
26 The convicted defendant shall be received into the department
27 in accordance with applicable department rules and regulations

1 and may be placed in the program after completion of this
2 initial reception. The program shall be not less than 90 days
3 nor more than 180 days in duration and shall be operated in
4 accordance with department rules and regulations and as
5 otherwise provided for by law. The commissioner of the
6 department or his or her designee shall report to the
7 sentencing court of each convicted defendant whether or not
8 the convicted defendant completes or does not complete the
9 program with any additional information that the commissioner
10 or his or her designee shall wish to provide the court. Upon
11 receipt of this report, the sentencing court may, upon its own
12 order, suspend the remainder of the sentence and place the
13 convicted defendant on probation as provided herein or order
14 the convicted defendant to be confined to a prison, jail-type
15 institution, or treatment institution for a period not to
16 exceed three years and that the execution of the remainder of
17 the sentence be suspended and the defendant be placed on
18 probation for such period and upon such terms as the court
19 deems best. If the sentencing court imposes additional
20 confinement, as outlined above, credit shall be given for the
21 actual time spent by the convicted defendant in the program.
22 Conviction of an offense or prior offense of murder, rape
23 first degree, kidnapping first degree, sodomy first degree,
24 enticing a child to enter vehicle, house, etc., for immoral
25 purposes, arson first degree, robbery first degree, and
26 sentencing of life without parole will not be eligible for
27 this program. It shall be the duty of the Joint Prison

1 Committee as established by Sections 29-2-20 to 29-2-22,
2 inclusive, to annually review the operation of the program and
3 report their findings to the Alabama Legislature.

4 "(4) Notwithstanding any law to the contrary, a
5 defendant may not be sentenced to serve consecutive
6 incarceration portions of split sentences for multiple
7 convictions at the same sentencing event.

8 "(b) Probation may not be granted for a criminal sex
9 offense involving a child as defined in Section 15-20-21(5),
10 which constitutes a Class A or B felony. Otherwise, probation
11 may be granted whether the offense is punishable by fine or
12 imprisonment or both. If an offense is punishable by both fine
13 and imprisonment, the court may impose a fine and place the
14 defendant on probation as to imprisonment. ~~Probation may be~~
15 ~~limited to one or more counts or indictments, but, in the~~
16 ~~absence of express limitation, shall extend to the entire~~
17 ~~sentence and judgment. The probation portion of a split~~
18 sentence shall not exceed the terms provided in Section
19 15-22-54 and shall be in addition to the incarceration portion
20 of the split sentence.

21 "(c) Regardless of whether the defendant has begun
22 serving the minimum period of confinement ordered under the
23 provisions of subsection (a), the court shall retain
24 jurisdiction and authority throughout ~~that~~ the period to
25 suspend that portion of the minimum sentence that remains and
26 place the defendant on probation or in a community corrections
27 program, notwithstanding any provision of the law to the

1 contrary. While the defendant is serving either the
2 incarceration or probation portion of his or her split
3 sentence, and the court may revoke probation or modify any
4 condition of probation or may change the period of probation.
5 Upon determination of a violation of a condition of probation,
6 either prior to or after serving a term of incarceration, the
7 court may impose any of the sanctions authorized in Section
8 15-22-54.

9 "~~While incarcerated or on probation and among~~
10 ~~the conditions thereof~~ During the incarceration or probation
11 portion of a split sentence, the defendant may be required to to
12 do all of the following:

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

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

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

19 "(4) Participate in and complete a substance abuse
20 or community punishment and corrections program.

21 "(e) The defendant's liability for any fine or other
22 punishment imposed as to which probation is granted shall be
23 fully discharged by the fulfillment of the terms and
24 conditions of probation.

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

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

11 "§15-22-54.

12 "(a) The period of probation or suspension of
13 execution of sentence shall be determined by the court, and
14 the period of probation or suspension may be continued,
15 extended, or terminated. However, in no case, including a
16 sentence imposed pursuant to Section 15-18-8, shall the
17 maximum probation period of a defendant guilty of a
18 misdemeanor exceed two years, nor shall the maximum probation
19 period of a defendant guilty of a felony exceed five years.
20 When the conditions of probation or suspension of sentence are
21 fulfilled, the court shall, by order duly entered on its
22 minutes, discharge the defendant.

23 "(b) The court granting probation may, upon the
24 recommendation of the officer supervising the probationer,
25 terminate all authority and supervision over the probationer
26 prior to the declared date of completion of probation upon
27 showing a continued satisfactory compliance with the

1 conditions of probation over a sufficient portion of the
2 period of the probation.

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

7 "(d) Except as provided in Chapter 15 of Title 12,
8 any probation officer, police officer, or other officer with
9 power of arrest, when requested by the probation officer, may
10 arrest a probationer without a warrant. In case of an arrest
11 without a warrant, the arresting officer shall have a written
12 statement by the probation officer setting forth that the
13 probationer has, in his or her judgment, violated the
14 conditions of probation, and the statement shall be sufficient
15 warrant for the detention of the probationer in the county
16 jail or other appropriate place of detention until the
17 probationer is brought before the court. The probation officer
18 shall forthwith report the arrest and detention to the court
19 and submit in writing a report showing in what manner the
20 probationer has violated probation.

21 "(1) If the defendant violates a condition of
22 probation or suspension of execution of sentence, the court,
23 after a hearing, may implement one or more of the following
24 options:

25 "a. Continue the existing probation or suspension of
26 execution of sentence.

1 "b. Issue a formal or informal warning to the
2 probationer that further violations may result in revocation
3 of probation or suspension of execution of sentence.

4 "c. Conduct a formal or informal conference with the
5 probationer to reemphasize the necessity of compliance with
6 the conditions of probation.

7 "d. Modify the conditions of probation or suspension
8 of execution of sentence, which conditions may include the
9 addition of short periods of confinement.

10 "e. Revoke the probation or suspension of execution
11 of sentence.

12 "(2) If the court revokes probation, it may, after a
13 hearing, ~~impose the sentence that was suspended at the~~
14 ~~original hearing or any lesser sentence, including any option~~
15 ~~listed in subdivision (1).~~ depending on the seriousness of the
16 violation, do any of the following:

17 "a. Impose a sentence that was suspended at the
18 original hearing.

19 "b. Impose a lesser sentence or any option listed in
20 subdivision (1).

21 "c. Order the defendant to participate in and
22 complete a substance abuse or community corrections program.

23 "(3) If revocation results in a sentence of
24 confinement, credit shall be given for all time spent in
25 custody prior to revocation. Full credit shall be awarded for
26 full-time confinement in facilities such as county jail, state
27 prison, and boot camp. Upon successful completion of the

1 program, the trial court, in its discretion, may award credit
2 for the time served in a state certified residential treatment
3 program to which the defendant has been ordered. Credit for
4 other penalties, such as work release programs, intermittent
5 confinement, and home detention, shall be left to the
6 discretion of the court, with the presumption that time spent
7 subject to these penalties will receive half credit. The court
8 shall also give significant weight to the time spent on
9 probation in substantial compliance with the conditions
10 thereof. The total time spent in confinement may not exceed
11 the term of confinement of the original sentence.

12 "(4) The court shall not revoke probation and order
13 the confinement of the probationer unless the court finds on
14 the basis of the original offense and the probationer's
15 intervening conduct, either of the following:

16 "a. No measure short of confinement will adequately
17 protect the community from further criminal activity by the
18 probationer.

19 "b. No measure short of confinement will avoid
20 depreciating the seriousness of the violation."

21 Section 2. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.