

1 SB325
2 116062-2
3 By Senator Marsh
4 RFD: Judiciary
5 First Read: 02-FEB-10

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, an offender sentenced
9 to probation may be incarcerated in the
10 penitentiary for the remainder of his or her
11 sentence if probation is revoked for one or more
12 technical violations.

13 This bill would prohibit incarceration in
14 the penitentiary if a probationer has successfully
15 completed six months probation and has committed
16 only technical violations.

17 Existing law limits the period of probation
18 to five years for a felony offense and two years
19 for a misdemeanor offense for all probation
20 periods.

21 This bill would specify the limits applying
22 to probation periods imposed as part of a split
23 sentence and would provide intermediate options a
24 court may utilize in revoking probation. This bill
25 would provide retroactive application of the limits
26 on incarceration to certain prisoners that are
27 currently incarcerated in the penitentiary on

1 probation revocation for technical violations upon
2 meeting certain conditions and would invest
3 jurisdiction in the sentencing court to modify a
4 qualified offender's sentence. This bill would also
5 provide yearly appropriations for counties.

6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To amend Section 15-22-54, Code of Alabama 1975, to
12 limit the terms of probation; to prohibit incarceration in the
13 penitentiary for technical violations of probation with
14 retroactive application for certain offenders; to provide
15 intermediate sanctions for violations; and to add Sections
16 15-22-54.1 and 15-22-54.2 to the Code of Alabama 1975, to
17 provide for resentencing and yearly appropriations to
18 counties.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Section 15-22-54, Code of Alabama 1975,
21 is amended to read as follows:

22 "§15-22-54.

23 "(a) The period of probation or suspension of
24 execution of sentence shall be determined by the court, and
25 the period of probation or suspension may be continued,
26 extended, or terminated. However, in no case shall the maximum
27 probation period of a defendant guilty of a misdemeanor exceed

1 two years, nor shall the maximum probation period of a
2 defendant guilty of a felony exceed five years. These
3 limitations shall also apply to the probation portion of a
4 split sentence imposed pursuant to Section 15-18-8. 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 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 ~~or~~ and
11 suspension of execution of sentence.

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

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

18 "d. Modify the conditions of probation or suspension
19 of execution of sentence, which conditions may include the
20 addition of short periods of confinement in the county jail.

21 "e. Revoke the probation or suspension of execution
22 of sentence.

23 "(2) If the court revokes probation, it may, after a
24 hearing, impose the sentence that was suspended at the
25 original hearing or any lesser sentence, including any option
26 listed in subdivision (1).

1 "(3) If revocation results in a sentence of
2 confinement, credit shall be given for all time spent in
3 custody prior to revocation. Full credit shall be awarded for
4 full-time confinement in facilities such as county jail, state
5 prison, and boot camp. Credit for other penalties, such as
6 work release programs, intermittent confinement, and home
7 detention, shall be left to the discretion of the court, with
8 the presumption that time spent subject to these penalties
9 will receive half credit. The court shall also give
10 significant weight to the time spent on probation in
11 substantial compliance with the conditions thereof. The total
12 time spent in confinement may not exceed the term of
13 confinement of the original sentence.

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

19 "a. No measure short of confinement will adequately
20 protect the community from further criminal activity by the
21 probationer.

22 "b. No measure short of confinement will avoid
23 depreciating the seriousness of the violation.

24 "(5) An offender who is sentenced to serve a period
25 of probation for a felony who has not been arrested or charged
26 with commission of a new criminal offense and has successfully
27 fulfilled the conditions of probation, including remaining

1 current on payment of court ordered monies, for six months,
2 shall not be incarcerated in the state penitentiary if
3 probation is revoked only for technical violations. Technical
4 violations of conditions of probation shall be subject to the
5 options provided in subdivision (1), provided, however, the
6 court may also continue the existing probation and suspension
7 of execution of sentence with the additional condition that
8 the probationer does the following:

9 "a. Participates in a community corrections program.

10 "b. Participates in a county work release program.

11 "c. Performs community service.

12 "d. Undergoes intensive probation supervision.

13 "e. Participates in a residential or outpatient drug
14 or alcohol treatment program.

15 "f. Participates in and completes a Life Skills
16 Influenced by Freedom and Education Tech (LIFETech)
17 residential program administered through the Board of Pardons
18 and Paroles."

19 Section 2. Sections 15-22-54.1 and 15-22-54.2 are
20 added to the Code of Alabama 1975, to read as follows:

21 §15-22-54.1.

22 (a) Any person now serving a prison sentence based
23 on revocation of probation as a result of only technical
24 violations shall be entitled to be resentenced upon petition
25 to the sentencing court. Such petition shall be on a form and
26 filed in the manner prescribed by the Administrative Office of
27 Courts. Petitions shall be considered authorized motions for

1 modification of sentence, assigned a unique identifier by the
2 Administrative Office Courts, and shall not require payment of
3 a filing fee.

4 (b) The court shall have jurisdiction to resentence
5 the offender in accordance with the terms of this section,
6 upon a showing of the following:

7 (1) The offender successfully completed the terms of
8 probation for six months.

9 (2) Probation was thereafter revoked and the
10 offender was sentenced to the penitentiary only as a result of
11 technical violations of probation.

12 (3) The offender has no disciplinary infractions
13 while serving the sentence in the penitentiary.

14 (4) The offender has no pending charges or
15 convictions for a new offense.

16 §15-22-54.2.

17 In addition to all other appropriations, there is
18 hereby appropriated three million dollars (\$3,000,000) from
19 the State General Fund for the fiscal year ending September
20 30, 2011, and each fiscal year thereafter, earmarked for use
21 by counties for the purpose of establishing and enhancing
22 community correction programs, drug courts, county work
23 release programs, residential and outpatient drug and alcohol
24 treatment programs, and other appropriate sentencing
25 alternatives, and to remunerate counties for the confinement
26 of probationers in the county jail. Such appropriation shall
27 be distributed on a quarterly basis to the counties by the

1 state Comptroller in accordance with a formula established by
2 the Department of Corrections and upon verification of the
3 number of felony offenders diverted from the Department of
4 Corrections and the estimated cost savings achieved pursuant
5 to the provisions of this act.

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