

1 HB128  
2 126259-2  
3 By Representative England  
4 RFD: Judiciary  
5 First Read: 03-MAR-11

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8 SYNOPSIS: This bill would allow judges upon a verdict  
9 or plea of guilty by a first time felony defendant  
10 to defer further proceedings and place the  
11 defendant on probation as otherwise provided by law  
12 or sentence the defendant to a period of  
13 confinement not to exceed three years in a prison,  
14 jail-type, or treatment institution.

15 This bill would provide that if the  
16 defendant successfully completes the terms of  
17 probation, including any term of confinement  
18 ordered by the court, the defendant's case would be  
19 discharged and his or her criminal record would be  
20 sealed.

21  
22 A BILL  
23 TO BE ENTITLED  
24 AN ACT

25  
26 To establish the "First Time Felony Offender Act";  
27 to allow defendants without a prior felony conviction or

1 youthful offender adjudication to apply for special status as  
2 a first offender; and to provide that if a first offender  
3 status is granted to a defendant by the sentencing judge, and  
4 he or she successfully completes the terms of probation,  
5 including any term of confinement ordered by the court, the  
6 defendant's case would be discharged and his or her criminal  
7 record would be sealed.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. (a) A person charged with a crime, other  
10 than capital murder or a Class A felony, committed after he or  
11 she reaches the age of majority which involves moral turpitude  
12 or is subject to a sentence of commitment for one year or more  
13 who has no previous felony conviction or youthful offender  
14 adjudication may be investigated and examined by the court to  
15 determine whether he or she should be tried as a first  
16 offender, provided he or she consents to such examination and  
17 to trial without a jury where trial by jury would otherwise be  
18 available to him or her. If the defendant consents and the  
19 court so decides, no further action shall be taken on the  
20 complaint, indictment, or information unless otherwise ordered  
21 by the court as provided in subsection (b).

22 (b) After an investigation and examination conducted  
23 under subsection (a), the court, upon taking into  
24 consideration the nature of the offense, may do either of the  
25 following:

1           (1) Direct that the defendant be arraigned as a  
2 first offender and that no further action be taken on the  
3 complaint, indictment, or information.

4           (2) Decide that the defendant shall not be arraigned  
5 as a first offender, whereupon the complaint, indictment, or  
6 information shall be deemed filed.

7           (c) Any offender who has been previously adjudicated  
8 as a youthful offender may not be considered as a first  
9 offender under this act.

10           Section 2. It shall be the duty of all probation  
11 officers of the State of Alabama to make such investigations  
12 for the court as requested by the court for the purpose of  
13 determining whether or not the person shall be charged as a  
14 first offender.

15           Section 3. The trial of first offenders and  
16 proceedings involving them shall be conducted at court  
17 sessions separate from those for other defendants charged with  
18 a crime.

19           Section 4. If a defendant does not plead guilty, the  
20 trial of the charge as a first offender shall be before the  
21 judge without a jury.

22           Section 5. No statement, admission, or confession  
23 made by a defendant to the court or to any officer thereof  
24 during the examination and investigation referred to in  
25 Section 1 shall be admissible as evidence against him or her  
26 or his or her interest. Notwithstanding the foregoing, the  
27 court may take such statement, admission, or confession into

1 consideration at the time of sentencing after the defendant  
2 has been found guilty of a crime or adjudged a first offender.

3 Section 6. (a) If a person is adjudged a first  
4 offender and the underlying charge is a felony, the court  
5 shall do any of the following:

6 (1) Suspend the imposition or execution of a  
7 sentence with or without probation.

8 (2) Place the defendant on probation for a period  
9 not to exceed three years.

10 (3) Impose a fine as provided by law for the offense  
11 with or without probation or commitment.

12 (4) Commit the defendant to the custody of the  
13 county jail or Department of Corrections for a term of three  
14 years or less.

15 (b) Where a sentence of fine is not otherwise  
16 authorized by law, then, in lieu of or in addition to any of  
17 the dispositions authorized in this section, the court may  
18 impose a fine of not more than seven thousand five hundred  
19 dollars (\$7,500). In imposing a fine, the court may authorize  
20 its payment in installments.

21 (c) In placing a defendant on probation, the court  
22 shall direct that he or she be placed under the supervision of  
23 the appropriate probation or community corrections agency.

24 (d) If the underlying charge is a misdemeanor, a  
25 person adjudged a first offender may be sentenced as otherwise  
26 provided by law for such misdemeanor. Where a sentence of fine  
27 is not otherwise authorized by law, then, in lieu of or in

1 addition to any of the dispositions authorized by law, the  
2 court may impose a fine of not more than three thousand  
3 dollars (\$3,000). In imposing a fine, the court may authorize  
4 its payment in installments.

5 Section 7. (a) No determination made under this act  
6 shall disqualify any first offender for public office or  
7 public employment, operate as a forfeiture of any right or  
8 privilege, or make him or her ineligible to receive any  
9 license granted by public authority.

10 (b) The fingerprints and photographs and other  
11 records of a person adjudged a first offender shall not be  
12 open to public inspection unless the court permits the  
13 inspection of the papers or records.

14 (c) The Alabama Sentencing Commission shall have  
15 access to all case information pertaining to first offender  
16 adjudications for data analysis purposes.

17 Section 8. This act shall become effective on the  
18 first day of the third month following its passage and  
19 approval by the Governor, or its otherwise becoming law.