

1 HB129
2 126256-1
3 By Representative England
4 RFD: Judiciary
5 First Read: 03-MAR-11

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8 SYNOPSIS: This bill would require probation and parole
9 officers to provide probationers with periodic
10 compliance incentive status updates to afford
11 probationers with the opportunity to understand
12 their compliance status.

13 This bill would also allow a probationer
14 serving a probationary sentence of greater than one
15 year to receive an automatic compliance incentive
16 review upon completing two-thirds of the probation
17 period or suspension of sentence.

18 This bill would allow probationers to be
19 transferred to unsupervised probation if in
20 satisfactory compliance with the terms and
21 conditions of probation, including the payment of
22 court-ordered fines and costs, as well as
23 restitution.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

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To amend Section 15-22-54, as amended by Act 2010-753 of the 2010 Regular Session (Acts 2010, p. 1905), Code of Alabama 1975; to provide for periodic compliance incentive status updates to encourage certain probationers to comply with the terms and conditions of probation; to provide that, after completing two-thirds of the probation term or suspended sentence, a probationer in compliance with the terms and conditions of probation will be recommended for unsupervised status.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 15-22-54, as amended by Act 2010-753 of the 2010 Regular Session (Acts 2010, p. 1905), Code of Alabama 1975, is amended to read as follows:

"§15-22-54.

"(a) The period of probation or suspension of execution of sentence shall be determined by the court, and the period of probation or suspension may be continued, extended, or terminated. However, in no case shall the maximum probation period of a defendant guilty of a misdemeanor exceed two years, nor shall the maximum probation period of a defendant guilty of a felony exceed five years. When the conditions of probation or suspension of sentence are fulfilled, the court shall, by order duly entered on its minutes, discharge the defendant.

"(b) The court granting probation may, at anytime, upon the recommendation of the officer supervising the

1 probationer, terminate all authority and supervision over the
2 probationer under the jurisdiction of the Alabama Board of
3 Pardons and Paroles, prior to the declared date of completion
4 of probation upon showing a continued satisfactory compliance
5 with the conditions of probation over a sufficient portion of
6 the period of the probation.

7 "(1) Probation and parole officers shall provide all
8 probationers under their supervision with periodic compliance
9 incentive status updates for the duration of each
10 probationer's period of probation or suspension of sentence.
11 Periodic updates shall afford the probationer the opportunity
12 to understand his or her compliance status at the time of the
13 update, identify specific goals for the probationer to
14 accomplish within a specified period of time in order to
15 obtain compliance, and serve as a reminder to the probationer
16 of the potential benefits of compliance.

17 "(2) A probationer serving a probationary sentence
18 of greater than one year shall be entitled to an automatic
19 compliance incentive review upon completing two-thirds of his
20 or her period of probation or suspension of sentence by the
21 officer supervising the probationer.

22 "a. In conducting the automatic compliance incentive
23 review, the supervising officer shall determine whether the
24 probationer has satisfactorily complied with those terms and
25 conditions of probation provided in Section 15-22-52 in a
26 manner that demonstrates the goals of supervision have been
27 achieved. Satisfactory compliance includes being current on

1 the payment of court-ordered fines and costs, as well as
2 restitution.

3 "b. After conducting an automatic compliance
4 incentive review, if the supervising officer determines an
5 eligible probationer has satisfactorily complied, the officer
6 shall submit a formal compliance incentive report to the court
7 granting probation. After conducting the automatic compliance
8 incentive review, if the supervising officer finds that the
9 probationer has not satisfactorily complied, the probationer
10 shall continue serving his or her period of probation or
11 suspension of sentence until completed or until the
12 probationer has otherwise fulfilled the terms and conditions
13 of his or her probation as determined by the court granting
14 probation.

15 "c. Anytime after conducting an automatic compliance
16 incentive review, if the supervising officer determines an
17 eligible probationer has not achieved substantial compliance
18 upon completing two-thirds of his or her period of probation
19 or suspension of sentence, and that probationer becomes
20 compliant at a later time, the probationer shall be entitled
21 to have his or her supervising officer automatically submit a
22 formal compliance incentive report to the court granting
23 probation.

24 "(3) Upon receipt of a formal compliance report from
25 an eligible probationer's supervising officer, the court shall
26 automatically issue an order transferring the probationer from
27 supervised probation under the jurisdiction of the Alabama

1 Board of Pardons and Paroles to unsupervised probation with
2 the court. If a probationer is transferred to unsupervised
3 probation status, the court granting probation shall retain
4 and exercise its original jurisdiction over the probationer,
5 including jurisdiction to revoke probation, transfer a
6 probationer back to supervised probation status, or terminate
7 the probation term or suspension of sentence early. A
8 probationer on unsupervised probation status shall work toward
9 completing payment of all court fines and costs, as well as
10 restitution owed, if any, while remaining compliant with the
11 other terms and conditions of probation.

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

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

1 and submit in writing a report showing in what manner the
2 probationer has violated probation.

3 "(1) If the defendant violates a condition of
4 probation or suspension of execution of sentence, the court,
5 after a hearing, may implement one or more of the following
6 options:

7 "a. Continue the existing probation and suspension
8 of execution of sentence.

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

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

16 "d. Modify the conditions of probation or suspension
17 of execution of sentence, which conditions may include the
18 addition of short periods of confinement.

19 "e. If the violation of probation is the commission
20 of a new offense, revoke the probation or suspension of
21 execution of sentence. If the court revokes probation, it may,
22 after a hearing, impose the sentence that was suspended at the
23 original hearing or any lesser sentence.

24 "f. If the probation violation is a technical
25 violation, defined as a violation of a condition of probation
26 other than the commission of a new offense, an eligible
27 offender may be required to serve a term of not more than 90

1 days imprisonment in a Department of Corrections facility,
2 which may include participation in the restart program,
3 LIFETech program, or a technical violator program or, if no
4 space is available in a Department of Corrections facility,
5 not more than 90 days in the county jail.

6 "(2) a. An eligible offender subject to paragraph f.
7 of subdivision (1) is a nonviolent felon serving a
8 probationary sentence who has violated a condition or
9 conditions of probation other than by the commission of a new
10 offense and who has performed the conditions of probation,
11 including remaining current on payment of court ordered money,
12 for a consecutive six-month period.

13 "b. Technical violations of conditions of probation
14 shall be subject to the options provided in paragraphs a., b.,
15 c., d., and f. of subdivision (1); provided, however, the
16 court may also continue the existing probation and suspension
17 of execution of sentence with the additional condition that
18 the probationer does any of the following:

19 "1. Participates in a community corrections program.

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

21 "3. Performs community service.

22 "4. Undergoes intensive probation supervision.

23 "5. Participates in a residential or outpatient drug
24 or alcohol treatment program.

25 "6. Participates and completes a Life Skills
26 Influenced by Freedom and Education Tech (LIFETech)
27 residential program.

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, state technical violator programs, and boot camp.
6 Credit for other penalties, such as work release programs,
7 intermittent confinement, and home detention, shall be left to
8 the discretion of the court, with the presumption that time
9 spent subject to these penalties will receive half credit. The
10 court shall also give significant weight to the time spent on
11 probation in substantial compliance with the conditions
12 thereof. The total time spent in confinement may not exceed
13 the term of 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 Section 2. This act shall become effective
25 immediately following its passage and approval by the
26 Governor, or its otherwise becoming law.