

1 HB391
2 126293-2
3 By Representatives Givan, Scott, Boyd, Bridges, Laird,
4 Robinson (O), Moore (M), Boman and Grimsley
5 RFD: Judiciary
6 First Read: 31-MAR-11

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 To amend Sections 12-25-32 and 12-25-34, Code of
9 Alabama 1975, to delete the statutory deadline for submission,
10 legislative approval, and implementation of voluntary
11 truth-in-sentencing standards.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections 12-25-32 and 12-25-34, Code of
14 Alabama 1975, are amended to read as follows:

15 "§12-25-32.

16 "For the purposes of this article, the following
17 terms have the following meanings:

18 "(1) COMMISSION. The Alabama Sentencing Commission,
19 established as a state agency under the Supreme Court by this
20 chapter.

21 "(2) CONTINUUM OF PUNISHMENTS. An array of
22 punishment options, from probation to incarceration, graduated
23 in restrictiveness according to the degree of supervision of
24 the offender including, but not limited to, all of the
25 following:

1 "a. Active incarceration. A sentence, other than an
2 intermediate punishment or unsupervised probation, that
3 requires an offender to serve a sentence of imprisonment. The
4 term includes time served in a work release program operated
5 as a custody option by the Alabama Department of Corrections
6 or in the Supervised Intensive Restitution program of the
7 Department of Corrections pursuant to Article 7, commencing
8 with Section 15-18-110, of Chapter 18 of Title 15.

9 "b. Intermediate punishment. A sentence that may
10 include assignment to any community based punishment program
11 or may include probation with conditions or probation in
12 conjunction with a period of confinement. Intermediate
13 punishments include, but are not limited to, all of the
14 following options:

15 "1. A split sentence pursuant to Section 15-18-8.

16 "2. Assignment to a community punishment and
17 corrections program pursuant to the Alabama Community
18 Punishment and Corrections Act or local acts.

19 "3. Assignment to a community based manual labor
20 work program pursuant to Sections 14-5-30 to 14-5-37,
21 inclusive.

22 "4. Intensive probation supervision pursuant to
23 Section 15-22-56.

24 "5. Cognitive and behavioral training.

25 "6. Community service work.

26 "7. County probation.

- 1 "8. Day fines or means-based fines.
- 2 "9. Day reporting.
- 3 "10. Drug or alcohol testing.
- 4 "11. Drug court programs.
- 5 "12. Educational programs.
- 6 "13. Electronic monitoring.
- 7 "14. Home confinement or house arrest.
- 8 "15. Ignition interlock.
- 9 "16. Intermittent confinement.
- 10 "17. Jail and prison diversion programs.
- 11 "18. Job readiness and work.
- 12 "19. Literacy and basic learning.
- 13 "20. Pretrial diversion programs.
- 14 "21. Residential drug treatment.
- 15 "22. Residential community based punishment programs
- 16 in which the offender is required to spend at least eight
- 17 hours per day, or overnight, within a facility and is required
- 18 to participate in activities such as counseling, treatment,
- 19 social skills training, or employment training, conducted at
- 20 the residential facility or at another specified location.
- 21 "23. Restorative justice.
- 22 "(i) Victim impact panels.
- 23 "(ii) Voluntary victim offender conferencing.
- 24 "(iii) Voluntary victim offender mediation.
- 25 "24. Self-help groups.
- 26 "25. Sobriator or breath alcohol remote monitoring.

1 "26. Substance abuse education and treatment.

2 "27. Treatment alternatives to street crime (TASC).

3 "28. Voice recognition, curfew restriction, or
4 employment monitoring.

5 "29. Work release, other than those work release
6 programs operated by the Alabama Department of Corrections, as
7 a custody option.

8 "c. Unsupervised probation. A sentence in a criminal
9 case that includes a period of probation but does not include
10 supervision, active incarceration, or an intermediate
11 punishment.

12 "d. Post-release supervision. A mandatory period of
13 supervision following sentences of active incarceration as
14 defined in paragraph a. that may include one or more
15 intermediate punishment options.

16 "(3) COURT. Unless otherwise stated, a district or
17 circuit court exercising jurisdiction to sentence felony
18 offenders.

19 "(4) FELONY OFFENSE. A noncapital felony offense.

20 "(5) INITIAL VOLUNTARY STANDARDS. The voluntary
21 sentencing standards effective on October 1, 2006. These
22 standards were based on statewide historic sentences imposed
23 with normative adjustments designed to reflect current
24 sentencing policies.

25 "(6) NONVIOLENT OFFENDER. Any offender who does not
26 qualify as a violent offender pursuant to subdivision (12).

1 "(7) OFFENDER. A person convicted of a noncapital
2 felony offense.

3 "(8) RELEASE AUTHORITY. Any public official, agency,
4 or other entity authorized by law to release a sentenced
5 offender from incarceration or other conditions of a sentence.

6 "(9) RISK ASSESSMENT. An instrument designed to
7 assess an offender's relative risk for reoffending.

8 "(10) TRUTH-IN-SENTENCING STANDARDS. The voluntary
9 ~~sentencing truth-in-sentencing standards that are scheduled to~~
10 ~~become effective October 1, 2011~~ developed by the Alabama
11 Sentencing Commission and effective upon approval by the
12 Legislature pursuant to subdivision (4) of subsection (a) of
13 Section 12-25-34. These standards shall be based on statewide
14 historic time served for offenses with adjustments designed by
15 the commission to reflect current sentencing policies.

16 "(11) UNDER SUPERVISION. All offenders under the
17 supervision of any criminal justice agency or program
18 including, but not limited to, any of the following entities:

19 "a. The Alabama Department of Corrections.

20 "b. State or county probation offices.

21 "c. Community corrections programs pursuant to
22 Alabama Community Corrections Act.

23 "d. Jails.

24 "e. State or local law enforcement agencies.

25 "f. Any court.

1 "(12) VIOLENT OFFENDER. A violent offender is an
2 offender who has been convicted of a violent offense, or who
3 is determined by the trial court judge or a release authority
4 to have demonstrated a propensity for violence, aggression, or
5 weapons related behavior based on the criminal history or
6 behavior of the offender while under supervision of any
7 criminal justice system agency or entity.

8 "(13) VIOLENT OFFENSE.

9 "a. For the purposes of this article, a violent
10 offense includes each of the following offenses, or any
11 substantially similar offense to those listed in this
12 subdivision created after June 20, 2003:

13 "1. Capital murder pursuant to Section 13A-6-2 and
14 13A-5-40.

15 "2. Murder pursuant to Section 13A-6-2.

16 "3. Manslaughter pursuant to Section 13A-6-3.

17 "4. Criminally negligent homicide pursuant to
18 Section 13A-6-4.

19 "5. Assault I pursuant to Section 13A-6-20.

20 "6. Assault II pursuant to Section 13A-6-21.

21 "7. Compelling street gang membership pursuant to
22 Section 13A-6-26.

23 "8. Kidnapping I pursuant to Section 13A-6-43.

24 "9. Kidnapping II pursuant to Section 13A-6-44.

25 "10. Rape I pursuant to Section 13A-6-61.

26 "11. Rape II pursuant to Section 13A-6-62.

1 "12. Sodomy I pursuant to Section 13A-6-63.
2 "13. Sodomy II pursuant to Section 13A-6-64.
3 "14. Sexual torture pursuant to Section 13A-6-65.1.
4 "15. Sexual abuse I pursuant to Section 13A-6-66.
5 "16. Enticing a child to enter a vehicle for immoral
6 purposes pursuant to Section 13A-6-69.
7 "17. Stalking pursuant to Section 13A-6-90.
8 "18. Aggravated stalking pursuant to Section
9 13A-6-91.
10 "19. Soliciting a child by computer pursuant to
11 Section 13A-6-110.
12 "20. Domestic violence I pursuant to Section
13 13A-6-130.
14 "21. Domestic violence II pursuant to Section
15 13A-6-131.
16 "22. Burglary I pursuant to Section 13A-7-5, unless
17 the offender enters the dwelling without a weapon or other
18 dangerous instrument and does not use or threaten to use a
19 weapon or dangerous instrument against another person during
20 the commission of the offense.
21 "23. Burglary II pursuant to subsection (a) of
22 Section 13A-7-6.
23 "24. Burglary III pursuant to Section 13A-7-7, if
24 the intent is to commit a violent offense.
25 "25. Arson I pursuant to Section 13A-7-41.

1 "26. Criminal possession of explosives pursuant to
2 Section 13A-7-44.

3 "27. Extortion I pursuant to Section 13A-8-14.

4 "28. Robbery I pursuant to Section 13A-8-41.

5 "29. Robbery II pursuant to Section 13A-8-42.

6 "30. Robbery III pursuant to Section 13A-8-43.

7 "31. Pharmacy robbery pursuant to Section 13A-8-51.

8 "32. Terrorist threats pursuant to Section
9 13A-10-15.

10 "33. Escape I pursuant to Section 13A-10-31.

11 "34. Promoting prison contraband I pursuant to
12 Section 13A-10-36, involving a deadly weapon or dangerous
13 instrument.

14 "35. Intimidating a witness pursuant to Section
15 13A-10-123.

16 "36. Intimidating a juror pursuant to Section
17 13A-10-127.

18 "37. Treason pursuant to Section 13A-11-2.

19 "38. Discharging a weapon into an occupied building,
20 dwelling, automobile, etc., pursuant to Section 13A-11-61.

21 "39. Promoting prostitution I pursuant to Section
22 13A-12-111.

23 "40. Production of obscene matter involving a minor
24 pursuant to Section 13A-12-197.

25 "41. Trafficking pursuant to Section 13A-12-231.

26 "42. Child abuse pursuant to Section 26-15-3.

1 "43. Elder abuse pursuant to Section 38-9-7.

2 "44. Terrorism pursuant to Section 13A-10-152.

3 "45. Hindering prosecution for terrorism pursuant to
4 Section 13A-10-154.

5 "46. Any substantially similar offense for which an
6 Alabama offender has been convicted under prior Alabama law or
7 the law of any other state, the District of Columbia, the
8 United States, or any of the territories of the United States.

9 "b. The basis for defining these offenses as violent
10 is that each offense meets at least one of the following
11 criteria:

12 "1. Has as an element, the use, attempted use, or
13 threatened use of a deadly weapon or dangerous instrument or
14 physical force against the person of another.

15 "2. Involves a substantial risk of physical injury
16 against the person of another.

17 "3. Is a nonconsensual sex offense.

18 "4. Is particularly reprehensible.

19 "c. Any attempt, conspiracy, or solicitation to
20 commit a violent offense shall be considered a violent offense
21 for the purposes of this article.

22 "§12-25-34.

23 "(a) Statewide voluntary sentencing standards shall
24 be developed and presented to the Legislature in stages over a
25 three-year period as follows:

1 "(1) By July 31, 2003, the commission shall develop
2 and distribute to all sentencing judges a reference manual
3 analyzing historical sentencing practices by duration of
4 sentence and disposition of felony offenders in Alabama. The
5 reference manual shall indicate those types of offenders
6 historically most likely to be sentenced to punishments other
7 than active incarceration where alternatives to active
8 incarceration are available.

9 "(2) Concurrently with the development and
10 distribution of the reference manual, the commission shall
11 develop and begin testing worksheets and voluntary sentencing
12 standards in selected circuits for selected felony offenses.

13 "(3) The commission shall develop and present the
14 initial voluntary sentencing standards to the Legislature
15 before or during the 2006 Regular Session. These standards
16 shall be introduced in the 2006 Regular Session and shall
17 become effective on October 1 following the 2006 Regular
18 Session, if approved by an act of the Legislature passed
19 during that session. The initial voluntary sentencing
20 standards based on sentences imposed shall apply to
21 convictions for felony offenses sentenced on or after October
22 1, 2006, and committed before the effective date of the
23 voluntary truth-in-sentencing standards.

24 "(4) The commission shall develop and present
25 voluntary truth-in-sentencing standards to the Legislature
26 before or during the 2014 Regular Session ~~before or during the~~

1 ~~2011 Regular Session. These standards shall be introduced in~~
2 ~~the 2011 Regular Session and shall become effective on October~~
3 ~~1 following the 2011 Regular Session, if approved their~~
4 ~~adoption and approval by an act of the Legislature ~~passed~~~~
5 ~~during that session.~~ The voluntary truth-in-sentencing
6 standards shall apply only to felony offenses committed on or
7 after the effective date of these standards. Until
8 truth-in-sentencing is adopted, the annual report of the
9 commission to the Governor, the Legislature, the Chief
10 Justice, and the Attorney General shall include a progress
11 report on the development of truth-in-sentencing standards.

12 " (b) Recommended sentence ranges shall be
13 established by standards that are based on historical
14 sentencing practices, adjusted to achieve sentencing goals as
15 established in Rule 26 of the Alabama Rules of Criminal
16 Procedure, this chapter, and Section 12-25-31.

17 " (c) Voluntary sentencing standards shall take into
18 account and include statewide historically based sentence
19 ranges, including all applicable statutory minimums and
20 sentence enhancement provisions, including the Habitual Felony
21 Offender Act, with adjustments made to reflect current
22 sentencing policies. No additional penalties pursuant to any
23 sentence enhancement statute shall apply to sentences imposed
24 based on the voluntary sentencing standards.

25 " (d) After adoption of the initial voluntary
26 standards and the voluntary truth-in-sentencing standards, any

1 modifications made by the commission shall be contained in the
2 annual report presented to the Governor, the Legislature, the
3 Chief Justice, and the Attorney General. An annual report
4 containing proposed modifications shall be presented to the
5 Governor, the Legislature, the Chief Justice, and the Attorney
6 General before or during each regular session of the
7 Legislature. The modifications shall be introduced during that
8 regular session and shall become effective on October 1
9 following the legislative session in which the modifications
10 were introduced, if approved by an act of the Legislature
11 passed during the legislative session in which the
12 modifications were introduced."

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

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House of Representatives

Read for the first time and re-ferred to the House of Representatives committee on Judiciary 31-MAR-11

Read for the second time and placed on the calendar 1 amendment 21-APR-11

Read for the third time and passed as amended..... 24-MAY-11

Yeas 100, Nays 0, Abstains 1

Greg Pappas
Clerk