

1 HB391  
2 126293-1  
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

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8 SYNOPSIS: Under existing law, the Alabama Sentencing  
9 Commission is charged with developing and  
10 presenting voluntary truth-in-sentencing standards  
11 to the Legislature for introduction and  
12 consideration by the Legislature during the 2011  
13 Regular Session with an effective date of October  
14 1, 2011.

15 This bill would delete this deadline.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
20

21 To amend Sections 12-25-32 and 12-25-34, Code of  
22 Alabama 1975, to delete the statutory deadline for submission,  
23 legislative approval, and implementation of voluntary  
24 truth-in-sentencing standards.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

1           "§12-25-32.

2           "For the purposes of this article, the following  
3 terms have the following meanings:

4           "(1) COMMISSION. The Alabama Sentencing Commission,  
5 established as a state agency under the Supreme Court by this  
6 chapter.

7           "(2) CONTINUUM OF PUNISHMENTS. An array of  
8 punishment options, from probation to incarceration, graduated  
9 in restrictiveness according to the degree of supervision of  
10 the offender including, but not limited to, all of the  
11 following:

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

20           "b. Intermediate punishment. A sentence that may  
21 include assignment to any community based punishment program  
22 or may include probation with conditions or probation in  
23 conjunction with a period of confinement. Intermediate  
24 punishments include, but are not limited to, all of the  
25 following options:

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

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

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

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

9                   "5. Cognitive and behavioral training.

10                  "6. Community service work.

11                  "7. County probation.

12                  "8. Day fines or means-based fines.

13                  "9. Day reporting.

14                  "10. Drug or alcohol testing.

15                  "11. Drug court programs.

16                  "12. Educational programs.

17                  "13. Electronic monitoring.

18                  "14. Home confinement or house arrest.

19                  "15. Ignition interlock.

20                  "16. Intermittent confinement.

21                  "17. Jail and prison diversion programs.

22                  "18. Job readiness and work.

23                  "19. Literacy and basic learning.

24                  "20. Pretrial diversion programs.

25                  "21. Residential drug treatment.

26                  "22. Residential community based punishment programs  
27                  in which the offender is required to spend at least eight

1 hours per day, or overnight, within a facility and is required  
2 to participate in activities such as counseling, treatment,  
3 social skills training, or employment training, conducted at  
4 the residential facility or at another specified location.

5 "23. Restorative justice.

6 "(i) Victim impact panels.

7 "(ii) Voluntary victim offender conferencing.

8 "(iii) Voluntary victim offender mediation.

9 "24. Self-help groups.

10 "25. Sobriety or breath alcohol remote monitoring.

11 "26. Substance abuse education and treatment.

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

13 "28. Voice recognition, curfew restriction, or  
14 employment monitoring.

15 "29. Work release, other than those work release  
16 programs operated by the Alabama Department of Corrections, as  
17 a custody option.

18 "c. Unsupervised probation. A sentence in a criminal  
19 case that includes a period of probation but does not include  
20 supervision, active incarceration, or an intermediate  
21 punishment.

22 "d. Post-release supervision. A mandatory period of  
23 supervision following sentences of active incarceration as  
24 defined in paragraph a. that may include one or more  
25 intermediate punishment options.

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

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

5           "(5) INITIAL VOLUNTARY STANDARDS. The voluntary  
6 sentencing standards effective on October 1, 2006. These  
7 standards were based on statewide historic sentences imposed  
8 with normative adjustments designed to reflect current  
9 sentencing policies.

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

12          "(7) OFFENDER. A person convicted of a noncapital  
13 felony offense.

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

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

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

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

4           "a. The Alabama Department of Corrections.

5           "b. State or county probation offices.

6           "c. Community corrections programs pursuant to  
7 Alabama Community Corrections Act.

8           "d. Jails.

9           "e. State or local law enforcement agencies.

10          "f. Any court.

11          "(12) VIOLENT OFFENDER. A violent offender is an  
12 offender who has been convicted of a violent offense, or who  
13 is determined by the trial court judge or a release authority  
14 to have demonstrated a propensity for violence, aggression, or  
15 weapons related behavior based on the criminal history or  
16 behavior of the offender while under supervision of any  
17 criminal justice system agency or entity.

18          "(13) VIOLENT OFFENSE.

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

23                 "1. Capital murder pursuant to Section 13A-6-2 and  
24 13A-5-40.

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

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

- 1           "4. Criminally negligent homicide pursuant to  
2 Section 13A-6-4.
- 3           "5. Assault I pursuant to Section 13A-6-20.
- 4           "6. Assault II pursuant to Section 13A-6-21.
- 5           "7. Compelling street gang membership pursuant to  
6 Section 13A-6-26.
- 7           "8. Kidnapping I pursuant to Section 13A-6-43.
- 8           "9. Kidnapping II pursuant to Section 13A-6-44.
- 9           "10. Rape I pursuant to Section 13A-6-61.
- 10          "11. Rape II pursuant to Section 13A-6-62.
- 11          "12. Sodomy I pursuant to Section 13A-6-63.
- 12          "13. Sodomy II pursuant to Section 13A-6-64.
- 13          "14. Sexual torture pursuant to Section 13A-6-65.1.
- 14          "15. Sexual abuse I pursuant to Section 13A-6-66.
- 15          "16. Enticing a child to enter a vehicle for immoral  
16 purposes pursuant to Section 13A-6-69.
- 17          "17. Stalking pursuant to Section 13A-6-90.
- 18          "18. Aggravated stalking pursuant to Section  
19 13A-6-91.
- 20          "19. Soliciting a child by computer pursuant to  
21 Section 13A-6-110.
- 22          "20. Domestic violence I pursuant to Section  
23 13A-6-130.
- 24          "21. Domestic violence II pursuant to Section  
25 13A-6-131.
- 26          "22. Burglary I pursuant to Section 13A-7-5, unless  
27 the offender enters the dwelling without a weapon or other



1 dangerous instrument and does not use or threaten to use a  
2 weapon or dangerous instrument against another person during  
3 the commission of the offense.

4 "23. Burglary II pursuant to subsection (a) of  
5 Section 13A-7-6.

6 "24. Burglary III pursuant to Section 13A-7-7, if  
7 the intent is to commit a violent offense.

8 "25. Arson I pursuant to Section 13A-7-41.

9 "26. Criminal possession of explosives pursuant to  
10 Section 13A-7-44.

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

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

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

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

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

16 "32. Terrorist threats pursuant to Section  
17 13A-10-15.

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

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

22 "35. Intimidating a witness pursuant to Section  
23 13A-10-123.

24 "36. Intimidating a juror pursuant to Section  
25 13A-10-127.

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

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

3           "39. Promoting prostitution I pursuant to Section  
4 13A-12-111.

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

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

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

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

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

11          "45. Hindering prosecution for terrorism pursuant to  
12 Section 13A-10-154.

13          "46. Any substantially similar offense for which an  
14 Alabama offender has been convicted under prior Alabama law or  
15 the law of any other state, the District of Columbia, the  
16 United States, or any of the territories of the United States.

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

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

23                 "2. Involves a substantial risk of physical injury  
24 against the person of another.

25                 "3. Is a nonconsensual sex offense.

26                 "4. Is particularly reprehensible.

1            "c. Any attempt, conspiracy, or solicitation to  
2        commit a violent offense shall be considered a violent offense  
3        for the purposes of this article.

4            "§12-25-34.

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

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

16            "(2) Concurrently with the development and  
17        distribution of the reference manual, the commission shall  
18        develop and begin testing worksheets and voluntary sentencing  
19        standards in selected circuits for selected felony offenses.

20            "(3) The commission shall develop and present the  
21        initial voluntary sentencing standards to the Legislature  
22        before or during the 2006 Regular Session. These standards  
23        shall be introduced in the 2006 Regular Session and shall  
24        become effective on October 1 following the 2006 Regular  
25        Session, if approved by an act of the Legislature passed  
26        during that session. The initial voluntary sentencing  
27        standards based on sentences imposed shall apply to

1 convictions for felony offenses sentenced on or after October  
2 1, 2006, and committed before the effective date of the  
3 voluntary truth-in-sentencing standards.

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

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

23 "(c) Voluntary sentencing standards shall take into  
24 account and include statewide historically based sentence  
25 ranges, including all applicable statutory minimums and  
26 sentence enhancement provisions, including the Habitual Felony  
27 Offender Act, with adjustments made to reflect current

1 sentencing policies. No additional penalties pursuant to any  
2 sentence enhancement statute shall apply to sentences imposed  
3 based on the voluntary sentencing standards.

4 "(d) After adoption of the initial voluntary  
5 standards and the voluntary truth-in-sentencing standards, any  
6 modifications made by the commission shall be contained in the  
7 annual report presented to the Governor, the Legislature, the  
8 Chief Justice, and the Attorney General. An annual report  
9 containing proposed modifications shall be presented to the  
10 Governor, the Legislature, the Chief Justice, and the Attorney  
11 General before or during each regular session of the  
12 Legislature. The modifications shall be introduced during that  
13 regular session and shall become effective on October 1  
14 following the legislative session in which the modifications  
15 were introduced, if approved by an act of the Legislature  
16 passed during the legislative session in which the  
17 modifications were introduced."

18 Section 2. This act shall become effective  
19 immediately following its passage and approval by the  
20 Governor, or its otherwise becoming law.