

1 SB386
2 137980-2
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 01-MAR-12

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, voluntary sentencing
9 standards for certain criminal offenders were
10 submitted to the Legislature by the Sentencing
11 Commission and approved by act of the Legislature.
12 Any modifications to the sentencing standards are
13 required to be submitted by the Sentencing
14 Commission to the Legislature and approved by act
15 of the Legislature.

16 Also under existing law, the Sentencing
17 Commission was charged with developing and
18 presenting voluntary truth-in-sentencing standards
19 to the Legislature for introduction and
20 consideration by the Legislature during the 2011
21 Regular Session. Truth-in-sentencing standards have
22 not been enacted.

23 This bill would provide for an additional
24 district attorney and an additional victim of a
25 violent felony to be added as voting members of the
26 commission.

1 This bill would provide that the annual
2 report of the Sentencing Commission would be
3 required to be submitted to the Legislature within
4 the first five legislative days of each regular
5 session. Any recommendations for modifications to
6 the voluntary sentencing standards in the annual
7 report would become effective unless the
8 Legislature by act rejects the modifications.

9 This bill would provide that the voluntary
10 truth-in-sentencing standards would be required to
11 be submitted to the Legislature in the 2020 Regular
12 Session.

13 This bill would provide that the sentencing
14 standards for specified offenses shall become
15 presumptive effective October 1, 2013, subject to
16 departures from the standards based on aggravating
17 and mitigating circumstances and would direct the
18 Sentencing Commission to adopt modifications and to
19 recommend a standard of appellate review necessary
20 to implement this provision.

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 To amend Sections 12-25-3, 12-25-34, and 12-25-36,
27 Code of Alabama 1975, relating to the Sentencing Commission;

1 to provide for membership of the commission; to delay the
2 presentation of truth-in-sentencing standards for legislative
3 consideration; to require the annual report of the commission
4 to be submitted to the Legislature within the first five
5 legislative days of each regular session; to provide that the
6 recommendations for modifications of the voluntary sentencing
7 standards for nonviolent offenders be presented in the
8 commission's annual report would become effective unless the
9 Legislature by act rejects the recommended modifications; and
10 to further provide for presumptive sentencing standards for
11 specified offenses with certain exceptions.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections 12-25-3, 12-25-34, and 12-25-36,
14 Code of Alabama 1975, are amended to read as follows:

15 "§12-25-3.

16 "(a) The commission shall consist of the following
17 voting members:

18 "(1) The Chief Justice of the Supreme Court, or at
19 his or her designation, a sitting or retired judge, who shall
20 serve as chair, or at his or her designation another member of
21 the commission shall serve as chair.

22 "(2) The Governor, or his or her designee.

23 "(3) The Attorney General, or his or her designee.

24 "(4) ~~A~~ Two district ~~attorney~~ attorneys appointed by
25 the President of the Alabama District Attorneys' Association.

1 "(5) Two circuit judges, active or retired,
2 appointed by the President of the Alabama Association of
3 Circuit Court Judges.

4 "(6) A district judge, active or retired, appointed
5 by the President of the Alabama Association of District Court
6 Judges.

7 "(7) ~~A victim~~ Two victims of a violent felony or ~~a~~
8 ~~person~~ persons whose immediate family member was a victim of a
9 violent felony, appointed by the Governor.

10 "(8) The Chair of the House Judiciary Committee, or
11 his or her designee who is a member of the House Judiciary
12 Committee.

13 "(9) The Chair of the Senate Judiciary Committee, or
14 his or her designee who is a member of the Senate Judiciary
15 Committee.

16 "(10) A private attorney specializing in criminal
17 defense appointed by the President of the Alabama Criminal
18 Defense Lawyers' Association.

19 "(11) A private attorney specializing in criminal
20 law appointed by the President of the Alabama Lawyer's
21 Association.

22 "(12) A county commissioner appointed by the
23 Governor.

24 "(13) The Commissioner of the Department of
25 Corrections, or his or her designee.

26 "(14) The Chair of the Alabama Board of Pardons and
27 Parole, or his or her designee.

1 "(15) A member of the academic community with a
2 background in criminal justice or corrections policy appointed
3 by the Chief Justice.

4 "(b) (1) Appointed members of the commission shall
5 serve terms of four years and may be reappointed for a second
6 term. Members of the commission who serve because of their
7 public office or position shall serve only as long as they
8 hold such office or position.

9 "(2) A member appointed to fill a vacancy on the
10 commission which occurs before the expiration of the term for
11 which his or her predecessor was appointed shall serve only
12 for the remainder of such term.

13 "(3) The membership of the commission shall be
14 inclusive and reflect the racial, gender, geographic,
15 urban/rural, and economic diversity of this state.

16 "§12-25-34.

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

20 "(1) By July 31, 2003, the commission shall develop
21 and distribute to all sentencing judges a reference manual
22 analyzing historical sentencing practices by duration of
23 sentence and disposition of felony offenders in Alabama. The
24 reference manual shall indicate those types of offenders
25 historically most likely to be sentenced to punishments other
26 than active incarceration where alternatives to active
27 incarceration are available.

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

5 "(3) The commission shall develop and present the
6 initial voluntary sentencing standards to the Legislature
7 before or during the 2006 Regular Session. These standards
8 shall be introduced in the 2006 Regular Session and shall
9 become effective on October 1 following the 2006 Regular
10 Session, if approved by an act of the Legislature passed
11 during that session. The initial voluntary sentencing
12 standards based on sentences imposed shall apply to
13 convictions for felony offenses sentenced on or after October
14 1, 2006, and committed before the effective date of the
15 voluntary truth-in-sentencing standards.

16 "(4) The commission shall develop and present
17 ~~voluntary~~ truth-in-sentencing standards to the Legislature
18 before or during the ~~2011~~ 2020 Regular Session. These
19 standards shall be introduced in the ~~2011~~ 2020 Regular Session
20 and shall become effective on October 1 following the ~~2011~~
21 2020 Regular Session, if approved by an act of the Legislature
22 ~~passed during that session~~. The voluntary truth-in-sentencing
23 standards shall apply only to felony offenses committed on or
24 after the effective date of these standards.

25 "(b) Recommended sentence ranges shall be
26 established by standards that are based on historical
27 sentencing practices, adjusted to achieve sentencing goals as

1 established in Rule 26 of the Alabama Rules of Criminal
2 Procedure, this chapter, and Section 12-25-31.

3 "(c) Voluntary sentencing standards shall take into
4 account and include statewide historically based sentence
5 ranges, including all applicable statutory minimums and
6 sentence enhancement provisions, including the Habitual Felony
7 Offender Act, with adjustments made to reflect current
8 sentencing policies. No additional penalties pursuant to any
9 sentence enhancement statute shall apply to sentences imposed
10 based on the voluntary sentencing standards.

11 "~~(d) After adoption of the initial voluntary~~
12 ~~standards and the voluntary truth-in-sentencing standards~~
13 Commencing with the 2013 Regular Session, any modifications to
14 the initial voluntary standards made by the commission shall
15 be contained in the annual report presented to the Governor,
16 the Legislature, the Chief Justice, and the Attorney General.
17 An annual report containing proposed modifications shall be
18 presented to the Governor, the Legislature, the Chief Justice,
19 and the Attorney General ~~before or during~~ within the first
20 five legislative days of each regular session of the
21 Legislature. The modifications presented for offenses other
22 than violent offenses shall become effective on October 1
23 following the legislative session in which the modifications
24 were presented unless rejected by an act of the Legislature
25 enacted by bill during the legislative session. The
26 modifications ~~shall be introduced during that regular session~~
27 ~~and~~ presented for violent offenses shall become effective on

1 October 1 following the legislative session in which the
2 modifications were ~~introduced~~ presented, if approved by an act
3 of the Legislature ~~passed~~ enacted by bill during the
4 legislative session in which the modifications were ~~introduced~~
5 presented.

6 "§12-25-36.

7 "This section and Sections 12-25-37 and 12-25-38
8 shall apply only after development and legislative approval of
9 the proposed truth-in-sentencing standards submitted in ~~2011~~
10 2020. When a judge sentences based on the voluntary
11 truth-in-sentencing standards, all of the following rules
12 shall apply:

13 "(1) Sentences imposed based on voluntary
14 truth-in-sentencing standards pursuant to this article shall
15 not be subject to any other provision of law concerning the
16 duration of sentence.

17 "(2) Sentences imposed based on the voluntary
18 truth-in-sentencing standards shall include both a minimum and
19 an extended term of sentence including a period of
20 post-release supervision. The minimum sentence and the
21 extended sentence shall be specified in the judgment of the
22 court for those sentences that are imposed in compliance with
23 the voluntary truth-in-sentencing standards. Sentence
24 dispositions may include active incarceration, intermediate
25 punishment, unsupervised probation, or a minimum punishment as
26 specified in the voluntary truth-in-sentencing standards.

1 "(3) The minimum term of sentence shall be
2 consistent with the sentence range recommended in the
3 voluntary truth-in-sentencing standards for the worksheet
4 score of an offender. No offender sentenced to incarceration
5 may be released from incarceration before the expiration date
6 of the minimum term of sentence.

7 "(4) The extended term of sentence shall be a period
8 of time equal to 120 percent of the minimum term, rounded to
9 the next highest month, plus a one-year period of post-release
10 supervision.

11 "(5) The amount of time an offender shall be
12 incarcerated on the extended term of sentence shall be
13 determined by the Department of Corrections pursuant to rules
14 and regulations established by the Department of Corrections
15 governing an offender's conduct after conviction and sentence.

16 "(6) No sentence of active incarceration may be
17 suspended.

18 "(7) For any disposition of sentence less than
19 active incarceration as defined in paragraph a. of subdivision
20 (2) of Section 12-25-32, the court shall retain jurisdiction
21 to modify sentence disposition of sentence."

22 Section 2. For the purposes of Article 2, Chapter
23 25, Code of Alabama 1975, the term "truth-in-sentencing
24 standards" shall mean the truth-in-sentencing standards
25 required to be submitted pursuant to Section 12-25-34, Code of
26 Alabama 1975.

1 Section 3. (a) For the purposes of this section, the
2 following words shall have the following meanings:

3 (1) AGGRAVATING FACTORS. Substantial and compelling
4 reasons justifying an exceptional sentence whereby the
5 sentencing court may impose a departure sentence above the
6 presumptive sentence recommendation for an offense.

7 Aggravating factors may result in dispositional or sentence
8 range departures, or both, and shall be stated on the record
9 by the court.

10 (2) DEPARTURE. A sentence which departs from the
11 presumptive sentence recommendation for an offender.

12 (3) DISPOSITION. The part of the sentencing courts
13 presumptive sentence recommendation other than sentence
14 length.

15 (4) DISPOSITIONAL DEPARTURE. A sentence which
16 departs from the presumptive sentence recommendation for
17 disposition of sentence.

18 (5) MITIGATING FACTORS. Substantial and compelling
19 reasons justifying an exceptional sentence whereby the
20 sentencing court may impose a departure sentence below the
21 presumptive sentence recommendation for an offense. Mitigating
22 factors may result in disposition or sentence range
23 departures, or both, and shall be stated on the record by the
24 court.

25 (6) PRESUMPTIVE SENTENCE RECOMMENDATION. The
26 recommended sentence range and disposition provided in the
27 sentencing standards.

1 (7) SENTENCE RANGE. The sentencing court's
2 discretionary range of length of sentence as provided and
3 recommended in the presumptive sentencing recommendation.

4 (8) SENTENCE RANGE DEPARTURE. A sentence which
5 departs from the presumptive sentence recommendation as to the
6 sentence range.

7 (b) The voluntary sentencing standards as provided
8 for in Section 12-25-34, Code of Alabama 1975, shall become
9 presumptive sentencing standards effective October 1, 2013,
10 and shall be applied by the courts in sentencing subject to
11 departures as provided herein. To accomplish this purpose as
12 to the existing initial voluntary sentencing standards, the
13 Alabama Sentencing Commission shall adopt modifications to the
14 standards, worksheets, and instructions to the extent
15 necessary to implement this provision including, but not
16 limited to, defining aggravating and mitigating factors that
17 allow for departure from the presumptive sentencing
18 recommendations. The commission's modifications shall be
19 presented to the Legislature in the commission's annual report
20 within the first five legislative days of the 2013 Regular
21 Session.

22 (c) Durational and dispositional departures from the
23 presumptive sentencing standards shall be subject to appellate
24 review. Along with the modifications provided for in
25 subsection (b), the Alabama Sentencing Commission shall
26 recommend a narrowly defined scope of appellate review
27 applicable to departures from presumptive sentencing

1 recommendations. The scope of appellate review shall become
2 effective upon approval by an act of the Legislature enacted
3 by bill.

4 Section 4. All laws or parts of laws which conflict
5 with this act are repealed.

6 Section 5. This act shall become effective
7 immediately following its passage and approval by the
8 Governor, or its otherwise becoming law.