

HB229 INTRODUCED



1 HGKS86-1
2 By Representative England
3 RFD: Judiciary
4 First Read: 04-Apr-23
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SYNOPSIS:

Under existing law, a person who has certain prior felony convictions may be given an enhanced sentence based on his or her prior felony convictions.

This bill would except certain offenses from being used to enhance a sentence pursuant to the habitual felony offender law and would provide that an individual may be eligible to be resentenced in certain circumstances.

A BILL
TO BE ENTITLED
AN ACT

Relating to sentencing; to amend Section 13A-5-9, Code of Alabama 1975; to further provide for sentencing under the habitual felony offender law; to add Section 13A-5-14 to the Code of Alabama 1975, to provide that an individual sentenced pursuant to the habitual felony offender law may be resentenced in certain circumstances.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 13A-5-9, Code of Alabama 1975, is amended to read as follows:

"§13A-5-9



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29 (a) ~~In~~ Except as provided in subsection (f), in all
30 cases when it is shown that a criminal defendant has been
31 previously convicted of a Class A, Class B, or Class C felony
32 and after the conviction has committed another Class A, Class
33 B, or Class C felony, he or she ~~must~~ shall be punished as
34 follows:

35 (1) On conviction of a Class C felony, he or she ~~must~~
36 shall be punished for a Class B felony.

37 (2) On conviction of a Class B felony, he or she ~~must~~
38 shall be punished for a Class A felony.

39 (3) On conviction of a Class A felony, he or she ~~must~~
40 shall be punished by imprisonment for life or for any term of
41 not more than 99 years but not less than 15 years.

42 (b) ~~In~~ Except as provided in subsection (f), in all
43 cases when it is shown that a criminal defendant has been
44 previously convicted of any two felonies that are Class A,
45 Class B, or Class C felonies and after ~~such~~ the convictions
46 has committed another Class A, Class B, or Class C felony, he
47 or she ~~must~~ shall be punished as follows:

48 (1) On conviction of a Class C felony, he or she ~~must~~
49 shall be punished for a Class A felony.

50 (2) On conviction of a Class B felony, he or she ~~must~~
51 shall be punished by imprisonment for life or for any term of
52 not more than 99 years but not less than 15 years.

53 (3) On conviction of a Class A felony, he or she ~~must~~
54 shall be punished by imprisonment for life or for any term of
55 not less than 99 years.

56 (c) ~~In~~ Except as provided in subsection (f), in all



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57 cases when it is shown that a criminal defendant has been
58 previously convicted of any three felonies that are Class A,
59 Class B, or Class C felonies and after ~~such~~ the convictions
60 has committed another Class A, Class B, or Class C felony, he
61 or she ~~must~~ shall be punished as follows:

62 (1) On conviction of a Class C felony, he or she ~~must~~
63 shall be punished by imprisonment for life or for any term of
64 not more than 99 years but not less than 15 years.

65 (2) On conviction of a Class B felony, he or she ~~must~~
66 shall be punished by imprisonment for life or any term of not
67 less than 20 years.

68 (3) On conviction of a Class A felony, where the
69 defendant has no prior convictions for any Class A felony, he
70 or she ~~must~~ shall be punished by imprisonment for life or life
71 without the possibility of parole, in the discretion of the
72 trial court.

73 (4) On conviction of a Class A felony, where the
74 defendant has one or more prior convictions for any Class A
75 felony, he or she ~~must~~ shall be punished by imprisonment for
76 life without the possibility of parole.

77 (d) In all cases when it is shown that a criminal
78 defendant has been previously convicted of any two or more
79 felonies that are Class A or Class B felonies and after ~~such~~
80 the convictions has committed a Class D felony, upon
81 conviction, he or she ~~must~~ shall be punished for a Class C
82 felony.

83 (e) In all cases when it is shown that a criminal
84 defendant has been previously convicted of any three or more



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85 felonies and after ~~such~~the convictions has committed a Class
86 D felony, upon conviction, he or she ~~must~~shall be punished
87 for a Class C felony.

88 (f) A conviction for a nonviolent offense, as defined
89 in Section 12-25-32, may not be used to enhance a sentence
90 pursuant to subsection (a), (b), or (c)."

91 Section 2. Section 13A-5-14 is added to the Code of
92 Alabama 1975, to read as follows:

93 §13A-5-14

94 (a) On or after the effective date of this act, an
95 individual serving a sentence in the Department of Corrections
96 may file a motion for a reduction in sentence if he or she
97 satisfies all of the following:

98 (1) The individual was sentenced pursuant to Section
99 13A-5-9, for any offense other than: (i) homicide, as defined
100 in Article 1 of Chapter 13A; (ii) a sex offense, as defined in
101 Section 15-20A-5; or (iii) an offense that caused serious
102 physical injury to another person, as defined in Section
103 13A-1-2.

104 (2) The individual was sentenced to life without the
105 possibility of parole.

106 (3) The individual has served a minimum of 15 years of
107 his or her sentence.

108 (4) The individual has reached 50 years of age.

109 (b) The venue for a motion for a reduction in sentence
110 shall be the criminal division of the circuit court in the
111 county in which the individual was convicted. The motion shall
112 be heard by the original sentencing judge or his or her



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113 successor, the presiding judge of the circuit, or a retired
114 judge as assigned by the Chief Justice of the Alabama Supreme
115 Court.

116 (c) (1) The motion for a reduction in sentence shall be
117 served upon the district attorney in the county of conviction.
118 The district attorney shall have a right to be heard on any
119 motion filed pursuant to this section.

120 (2) The victim shall have a right to be heard on any
121 motion filed pursuant to this section. The victim may file a
122 statement with the court, or may testify at the hearing, if
123 the court determines a hearing is necessary.

124 (d) The court may impose a reduced sentence pursuant to
125 the laws in effect at the time of the motion or a sentence of
126 time served. When considering a motion made pursuant to this
127 section, the court shall consider all of the following:

128 (1) The underlying offense.

129 (2) The individual's conduct while in the custody of
130 the Department of Corrections.

131 (3) The age of the individual at the time the motion is
132 filed, including relevant research regarding the decline in
133 criminal behavior as individuals grow older.

134 (4) The individual's likelihood of success after
135 release based on the availability of a structured, supportive
136 re-entry program.

137 (e) A court may not entertain a motion made pursuant to
138 this section if either of the following apply:

139 (1) Less than five years has elapsed since the
140 individual has been returned to incarceration after a



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141 violation of parole or probation.

142 (2) A previous motion for a reduction of sentence under
143 this section was denied. Where a judge has denied a motion for
144 a reduction of sentence based on evidence of behavior during
145 incarceration that is inconsistent with fitness for
146 resentencing, the court may hear a subsequent motion for a
147 reduction of sentence if the individual shows the existence of
148 evidence of behavior consistent with fitness for resentencing
149 during a period of two years.

150 (f) Nothing in this section shall be construed to
151 require a court to reduce any sentence pursuant to this
152 section.

153 (g) Any motion for a reduction in sentence filed shall
154 be granted a hearing within 30 days of the court receiving the
155 motion.

156 Section 3. This act shall become effective on the first
157 day of the third month following its passage and approval by
158 the Governor, or its otherwise becoming law.