

HB72 INTRODUCED



1 YMYD6N-1
2 By Representative Starnes
3 RFD: Public Safety and Homeland Security
4 First Read: 07-Mar-23
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SYNOPSIS:

Under existing law, a parolee who is suspected of violating his or her parole is given the opportunity to have a hearing prior to his or her parole being revoked. If the hearing is not held within 20 business days, and the parolee is in custody pending the hearing, the parolee shall be released back to parole supervision after the 20 business days have passed.

This bill would provide if a hearing is not held within 20 business days, the parolee shall be released back to parole supervision unless exigent circumstances exist that preclude holding the hearing within 20 business days.

Under existing law, when directed by the court, a probation officer is required to conduct an investigation and provide a written report to the court regarding a defendant in certain circumstances.

This bill would provide that a specialist, in addition to a probation officer, may conduct the investigation and provide a written report to the court.

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.



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29 A BILL
30 TO BE ENTITLED
31 AN ACT

32
33 Relating to pardons and paroles; to amend Section
34 15-22-32, as last corrected by Act 2022-371, the Codification
35 Act, 2022 Regular Session, and Sections 15-22-51 and 15-22-53,
36 Code of Alabama 1975, to prevent a parolee in custody from
37 being released to parole supervision in certain circumstances;
38 to provide that a specialist, in addition to a parole officer,
39 may conduct an investigation and provide a report to the court
40 regarding a defendant; and to make nonsubstantive, technical
41 revisions to update the existing code language to current
42 style.

43 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

44 Section 1. Section 15-22-32, as last corrected by Act
45 2022-371, the Codification Act, 2022 Regular Session, and
46 Sections 15-22-51 and 15-22-53, Code of Alabama 1975, are
47 amended to read as follows:

48 "§15-22-32

49 (a) Whenever there is reasonable cause to believe that
50 a prisoner who has been paroled has violated his or her
51 parole, the Board of Pardons and Paroles, at its next meeting,
52 may declare the parolee to be delinquent, and time owed shall
53 date from the delinquency. The Department of Corrections,
54 after receiving notice from the sheriff of the county jail
55 where the parolee is being held, shall promptly notify the
56 board of the return of a parolee charged with violation of his



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57 or her parole. The board, a single member of the board, a
58 parole revocation hearing officer, or a designated parole
59 officer shall hold a parole court at the prison or at another
60 place as it may determine within 20 business days and consider
61 the case of the parole violator. The parolee shall be given an
62 opportunity to appear personally or by counsel before the
63 parole court and to produce witnesses, and explain the charges
64 made against him or her. The parole court shall determine
65 whether sufficient evidence supports the violation charges. If
66 a hearing is not held within 20 business days, the parolee
67 shall be released back to parole supervision unless the parole
68 court determines exigent circumstances exist that preclude
69 holding the hearing within 20 business days.

70 (b) Upon finding sufficient evidence to support a
71 parole violation, the parole court may recommend to the board
72 revocation or reinstatement of parole, and the board may take
73 any of the following actions:

74 (1)a. If the underlying offense was a violent offense
75 as defined in Section 12-25-32 and classified as a Class A
76 felony, a sex offense pursuant to Section 15-20A-5, or
77 aggravated theft by deception pursuant to Section 13A-8-2.1,
78 the board shall revoke parole and require the parolee to serve
79 the balance of the term for which he or she was originally
80 sentenced, or any portion thereof, in a state prison facility,
81 calculated from the date of his or her rearrest as a
82 delinquent parolee.

83 b. If the parole violation was for being arrested or
84 convicted of a new offense or absconding, the board may revoke



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85 parole and require the parolee to serve the balance of the
86 term for which he or she was originally sentenced, or any
87 portion thereof, in a state prison facility, calculated from
88 the date of his or her rearrest as a delinquent parolee.

89 c. For all other parolees, the board may impose a
90 period of confinement of no more than 45 consecutive days to
91 be served in a residential transition center established
92 pursuant to Section 15-22-30.1 or a consenting county jail
93 designated for this purpose as provided in Section 14-1-23.
94 The parolee shall be held in the county jail of the county in
95 which the violation occurred while awaiting the revocation
96 hearing. The Department of Corrections shall reimburse the
97 state mileage rate to the county, as determined by the Alabama
98 Comptroller's Office, for any state inmate charged with, or
99 sanctioned or revoked for, a parole violation and who is
100 transferred to or from a Department of Corrections facility or
101 to or from a consenting county jail by the county.

102 (2) Upon completion of the confinement period and
103 release from confinement, the parolee shall automatically
104 continue on parole for the remaining term of the sentence
105 without further action from the board. The parole court may
106 not recommend and the board may not revoke parole unless the
107 parolee has previously received a total of three periods of
108 confinement under this subsection. A parolee shall receive
109 only three total periods of confinement pursuant to this
110 subsection. The maximum 45-day term of confinement ordered
111 pursuant to this subsection shall be reduced by any time
112 served in custody prior to the imposition of the period of



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113 confinement and shall be credited to the balance of the
114 incarceration term for which the parolee was originally
115 sentenced. In the event the time remaining on parole
116 supervision is 45 days or less, the term of confinement may
117 not exceed the remainder of the parolee's sentence.

118 (3) The total time spent in confinement under this
119 subsection may not exceed the term of the parolee's original
120 sentence.

121 (4) Confinement shall be immediate. The board shall
122 ensure that the Department of Corrections, a county jail, a
123 residential transition center, or a consenting county jail
124 receives necessary documentation for imposing a period of
125 confinement within five business days of the board's action.

126 (5) If the parolee is presented to a county jail,
127 excluding a consenting county jail designated for this
128 purpose, as provided in Section 14-1-23, for any period of
129 confinement with a serious health condition, if the admittance
130 of the parolee would create a security risk to the county
131 jail, or if the county jail is near, at, or over capacity, the
132 sheriff may refuse to admit the parolee. If, while in custody
133 of the county jail, the parolee develops a serious health
134 condition, if the presence of the parolee creates a security
135 risk to the county jail, or if the county jail reaches near,
136 at, or over capacity, the sheriff may release the parolee upon
137 notification to the parole officer. A sheriff and employees in
138 the county jail shall be immune from liability for exercising
139 discretion pursuant to Section 36-1-12 in refusing to admit a
140 parolee into the jail or releasing a parolee from jail



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141 pursuant to this subdivision.

142 (c) The position of Parole Revocation Hearing Officer
143 is created and established, subject to the state Merit System.

144 (d) The board may appoint or employ hearing officers
145 who shall conduct a parole court. The hearing officers shall
146 determine the sufficiency of evidence to support parole
147 violation charges and recommend to the board revocation of
148 parole pursuant to subsection (b) or reinstatement of parole.

149 (e) In lieu of subsections (a) and (b), when a parolee
150 violates his or her parole terms and conditions, his or her
151 parole officer, after an administrative review and approval by
152 the parole officer's supervisor, may impose any of the
153 following sanctions:

154 (1) Mandatory behavior treatment.

155 (2) Mandatory substance abuse treatment.

156 (3) GPS monitoring.

157 (4) Any other treatment as determined by the board or
158 supervising officer.

159 (5)a. A short period of confinement in the county jail
160 of the county in which the violation occurred. Periods of
161 confinement under this subdivision may not exceed six days per
162 month during any three separate months during the period of
163 parole. The six days per month confinement periods may only be
164 imposed as two-day or three-day consecutive periods at any
165 single time. The total periods of confinement may not exceed
166 nine total days.

167 b. Confinement pursuant to this subdivision does not
168 limit the board's ability to directly impose sanctions,



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169 periods of confinement, or revoke parole.

170 (f) (1) Prior to imposing a sanction pursuant to
171 subsection (e), the parolee must first be presented with a
172 violation report setting forth the alleged parole violations
173 and supporting evidence. The parolee shall be advised that he
174 or she has all of the following rights:

175 a. The right to have a parole court, in person or by
176 electronic means, on the alleged violation or violations. If a
177 parole court is requested, no parolee shall be held beyond 20
178 business days of the request unless the parole court
179 determines exigent circumstances exist that preclude holding
180 the hearing within 20 business days. Only requesting parolees
181 posing a threat to public safety or a flight risk shall be
182 arrested while awaiting parole court.

183 b. The right to present relevant witnesses and
184 documentary evidence.

185 c. The right to retain and have counsel at the hearing
186 if he or she so desires.

187 d. The right to confront and cross examine any adverse
188 witnesses.

189 (2) Upon the signing of a waiver of these rights by the
190 parolee and the supervising parole officer, with approval of a
191 supervisor, the parolee may be treated, monitored, or confined
192 for the period recommended in the violation report and
193 designated on the waiver. The parolee may not request a review
194 if he or she has signed a written waiver of rights as provided
195 in this subsection.

196 (g) The board shall adopt guidelines and procedures to



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197 implement the requirements of this section, which shall
198 include the requirement of a supervisor's approval prior to
199 exercise of the delegation of authority authorized by
200 subsection (e)."

201 "§15-22-51

202 (a) (1) When directed by the court, a probation officer
203 or specialist shall ~~fully investigate and~~ conduct an
204 investigation, using a validated risk and needs assessment as
205 defined in Section 12-25-32, and provide a written report to
206 the court ~~in writing the~~ containing all of the following
207 information:

208 a. The circumstances of the offense~~;~~.

209 b. The defendant's criminal record~~;~~.

210 c. The defendant's social history ~~and~~.

211 d. The defendant's present condition ~~of a defendant~~
212 ~~through use of a validated risk and needs assessment, as~~
213 ~~defined in Section 12-25-32.~~

214 e. If practicable, a physical and mental examination of
215 the defendant.

216 (2) No defendant, unless ~~the court shall~~ otherwise
217 ~~direct~~ directed by the court, shall be placed on probation or
218 released under suspension of sentence until the report of ~~such~~
219 investigation ~~shall have been~~, as required in subdivision (1),
220 is presented to and considered by the court; ~~provided,~~
221 ~~however, that after~~.

222 (3)a. After conviction~~,~~, the court may continue the case
223 for ~~such any amount of time as may be~~ reasonably necessary to
224 enable the probation officer or specialist to ~~make his~~ conduct



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225 the investigation and generate the written report of
226 investigation.

227 ~~b. (b) Whenever practicable, such investigation shall~~
228 ~~include physical and mental examinations of the defendant;~~
229 ~~and, if such defendant is committed to an institution, a copy~~
230 ~~of the report of such investigation shall be sent to the~~
231 ~~Department of Corrections at the time of commitment; provided,~~
232 ~~that in all cases where the~~ If a defendant was on bond prior
233 ~~to the time of~~ the trial and an application for probation ~~is~~
234 was made to the court, ~~then the judge of such court, in his~~
235 ~~discretion,~~ may suspend the execution of the sentence pending
236 the disposition of the application for probation and ~~continue~~
237 may allow the defendant to remain under the same bond ~~that he~~
238 ~~was under or, in his discretion, or the judge~~ may raise ~~the~~
239 ~~bond or lower the same pending the disposition of the~~
240 ~~application for probation, and such bond shall remain in full~~
241 ~~force and effect until the application for probation is~~
242 ~~finally disposed of~~ bond.

243 (b) If the defendant is sentenced to the custody of the
244 Department of Corrections, a copy of the report of
245 investigation shall be provided to the department when the
246 department takes custody of the defendant."

247 "§15-22-53

248 (a) A probation officer, or a specialist, shall
249 investigate all cases referred to him or her for investigation
250 by any court or by the Board of Pardons and Paroles and shall
251 report in writing thereon. ~~He or she~~ The probation officer
252 shall furnish to persons released on probation under his or



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253 her supervision a written statement of the conditions of
254 probation and shall instruct them regarding the same. ~~Such~~ The
255 probation officer shall ~~keep informed concerning the~~ monitor
256 the conduct and condition of each person on probation under
257 his or her supervision by visiting, requiring reports, and in
258 ~~other~~ ways necessary, based on the offender's measured risk of
259 offending, ~~and he or she shall report thereon in writing.~~
260 Additionally, the probation officer shall provide written
261 reports as often as the court or the board may require. The
262 probation officer shall use all practicable and suitable
263 evidence-based practices as defined in Section 12-25-32, not
264 inconsistent with the provisions imposed by the court, to aid
265 and encourage persons on probation and to bring about
266 improvements in their conduct and condition. The probation
267 officer shall keep detailed records of his or her work and
268 shall ~~make such~~ provide written reports ~~in writing~~ to the
269 court and the board as often as they may require. A probation
270 officer shall have, in the execution of his or her duties, the
271 powers of arrest and the same right to execute process as is
272 now given or may hereafter be given by law to the sheriffs of
273 this state. Supervision and treatment of probationers shall be
274 conducted pursuant to and consistent with the provisions of
275 subsections (k) and (l) of Section 15-22-24 and Section
276 15-22-57.

277 (b) All reports, records, and data assembled by any
278 probation officer or specialist and referred to the court
279 shall be privileged and shall not be available for public
280 inspection except upon order of the court to which the same



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281 was referred.

282 (c) In no case shall the right to inspect the report be
283 denied the defendant or his or her counsel after the report
284 has been completed or filed."

285 Section 2. This act shall become effective on the first
286 day of the third month following its passage and approval by
287 the Governor, or its otherwise becoming law.