

SB198 ENGROSSED



1 P14PEE-2
2 By Senator Orr
3 RFD: Judiciary
4 First Read: 11-Apr-23
5
6 2023 Regular Session



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A BILL
TO BE ENTITLED
AN ACT

Relating to sentencing; to amend Sections 12-25-34.2, 13A-4-1, 13A-4-2, 13A-4-3, 13A-5-6, 15-18-8, and 15-22-54, Code of Alabama 1975, to add additional offenses that would be subject to the presumptive sentencing guidelines; to modify the criminal penalties for criminal solicitation, attempt, and criminal conspiracy; to give a judge discretion when sentencing a person convicted of a Class C or Class D felony offense; to make nonsubstantive, technical revisions to update the existing code language to current style; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Section 111.05 of the Constitution of Alabama of 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 12-25-34.2, 13A-4-1, 13A-4-2, 13A-4-3, 13A-5-6, 15-18-8, and 15-22-54, Code of Alabama 1975, are amended to read as follows:



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29 "§12-25-34.2

30 (a) For the purposes of this section, the following
31 words ~~shall~~ have the following meanings:

32 (1) AGGRAVATING FACTORS. Substantial and compelling
33 reasons justifying an exceptional sentence whereby the
34 sentencing court may impose a departure sentence above the
35 presumptive sentence recommendation for an offense.
36 Aggravating factors may result in dispositional or sentence
37 range departures, or both, and shall be stated on the record
38 by the court.

39 (2) DEPARTURE. A sentence ~~which~~ that departs from the
40 presumptive sentence recommendation for an offender.

41 (3) DISPOSITION. The part of the sentencing courts
42 presumptive sentence recommendation other than sentence
43 length.

44 (4) DISPOSITIONAL DEPARTURE. A sentence ~~which~~ that
45 departs from the presumptive sentence recommendation for
46 disposition of sentence.

47 (5) MITIGATING FACTORS. Substantial and compelling
48 reasons justifying an exceptional sentence whereby the
49 sentencing court may impose a departure sentence below the
50 presumptive sentence recommendation for an offense. Mitigating
51 factors may result in disposition or sentence range
52 departures, or both, and shall be stated on the record by the
53 court.

54 (6) NONVIOLENT OFFENSES. As defined in Section
55 12-25-32.

56 (7) PRESUMPTIVE SENTENCE RECOMMENDATION. The



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57 recommended sentence range and disposition provided in the
58 sentencing standards.

59 (8) SENTENCE RANGE. The sentencing court's
60 discretionary range of length of sentence as provided and
61 recommended in the presumptive sentencing recommendation.

62 (9) SENTENCE RANGE DEPARTURE. A sentence ~~which~~that
63 departs from the presumptive sentence recommendation as to the
64 sentence range.

65 (10) VIOLENT OFFENSES. As defined in Section 12-25-32.

66 (b) (1) The voluntary sentencing standards as provided
67 for in Section 12-25-34, as applied to nonviolent offenses
68 shall become presumptive sentencing standards effective
69 October 1, 2013, to the extent the modification adopted by the
70 Alabama Sentencing Commission become effective October 1,
71 2013. The standards shall be applied by the courts in
72 sentencing subject to departures as provided herein. To
73 accomplish this purpose as to the existing initial voluntary
74 sentencing standards, the Alabama Sentencing Commission shall
75 adopt modifications to the standards, worksheets, and
76 instructions to the extent necessary to implement this
77 provision including, but not limited to, defining aggravating
78 and mitigating factors that allow for departure from the
79 presumptive sentencing recommendations. The commission's
80 modifications shall be presented to the Legislature in the
81 commission's annual report within the first five legislative
82 days of the 2013 Regular Session.

83 (2) The Alabama Sentencing Commission shall immediately
84 adopt modifications to the standards, worksheets, and



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85 instructions to the extent necessary to implement this act.
86 The amendatory provisions of this act shall supersede any
87 standards, worksheets, and instructions of the commission that
88 are in conflict with these amendatory provisions.

89 (c) Durational and dispositional departures from the
90 presumptive sentencing standards shall be subject to appellate
91 review. Along with the modifications provided for in
92 subsection (b), the Alabama Sentencing Commission shall
93 recommend a narrowly defined scope of appellate review
94 applicable to departures from presumptive sentencing
95 recommendations. The scope of appellate review shall become
96 effective upon approval by an act of the Legislature enacted
97 by bill."

98 "§13A-4-1

99 (a) (1) A person is guilty of criminal solicitation if,
100 with the intent that another person engage in conduct
101 constituting a crime, he or she solicits, requests, commands
102 or importunes ~~such other~~another person to engage in such
103 conduct.

104 (2) A person may not be convicted of criminal
105 solicitation upon the uncorroborated testimony of the person
106 allegedly solicited, and there must be proof of circumstances
107 corroborating both the solicitation and the defendant's
108 intent.

109 (b) A person is not liable under this section if, under
110 circumstances manifesting a voluntary and complete
111 renunciation of his or her criminal intent, he or she (1)
112 notified the person solicited of his or her renunciation and

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113 (2) gave timely and adequate warning to the law enforcement
114 authorities or otherwise made a substantial effort to prevent
115 the commission of the criminal conduct solicited. The burden
116 of injecting this issue is on the defendant, but this does not
117 shift the burden of proof.

118 (c) A person is not liable under this section when his
119 or her solicitation constitutes conduct of a kind that is
120 necessarily incidental to the commission of the offense
121 solicited. When the solicitation constitutes an offense other
122 than criminal solicitation ~~which~~that is related to but
123 separate from the offense solicited, the defendant is guilty
124 of ~~such~~the related offense only and not of criminal
125 solicitation.

126 (d) It is no defense to a prosecution for criminal
127 solicitation that the person solicited could not be guilty of
128 the offense solicited because of any of the following:

129 (1) Criminal irresponsibility or other legal incapacity
130 or exemption; ~~or~~.

131 (2) Unawareness of the criminal nature of the conduct
132 solicited or of the defendant's criminal purpose; ~~or~~.

133 (3) Any other factor precluding the mental state
134 required for the commission of the offense in question.

135 (e) It is no defense to a prosecution for criminal
136 solicitation that the defendant belongs to a class of persons
137 who by definition are legally incapable in an individual
138 capacity of committing the offense that he or she solicited
139 another to commit.

140 (f) Criminal solicitation is a:



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141 (1) Class A felony if the offense solicited is murder.

142 (2) Class B felony if the offense solicited is a Class
143 A felony.

144 (3) Class C felony if the offense solicited is a Class
145 B felony.

146 (4) Class D felony if the offense solicited is a Class
147 C felony.

148 ~~(4)~~ (5) Class A misdemeanor if the offense solicited is
149 a Class ~~D~~ felony.

150 ~~(5)~~ (6) Class B misdemeanor if the offense solicited is
151 a Class A misdemeanor.

152 ~~(6)~~ (7) Class C misdemeanor if the offense solicited is
153 a Class B misdemeanor.

154 ~~(7)~~ (8) Violation if the offense solicited is a Class C
155 misdemeanor."

156 "§13A-4-2

157 (a) A person is guilty of an attempt to commit a crime
158 if, with the intent to commit a specific offense, he or she
159 does any overt act towards the commission of ~~such~~the offense.

160 (b) It is no defense under this section that the
161 offense charged to have been attempted was, under the
162 attendant circumstances, factually or legally impossible of
163 commission, if ~~such~~the offense could have been committed had
164 the attendant circumstances been as the defendant believed
165 them to be.

166 (c) A person is not liable under this section if, under
167 circumstances manifesting a voluntary and complete
168 renunciation of this criminal intent, he or she avoided the



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169 commission of the offense attempted by abandoning his or her
170 criminal effort and, if mere abandonment is insufficient to
171 accomplish such avoidance, by taking further and affirmative
172 steps ~~which~~that prevented the commission thereof. The burden
173 of injecting this issue is on the defendant, but this does not
174 shift the burden of proof.

175 (d) An attempt is a:

176 (1) Class A felony if the offense attempted is murder.

177 (2) Class B felony if the offense attempted is a Class
178 A felony.

179 (3) Class C felony if the offense attempted is a Class
180 B felony.

181 (4) Class D felony if the offense attempted is a Class
182 C felony.

183 ~~(4)~~ (5) Class A misdemeanor if the offense attempted is
184 a Class ~~D~~ felony.

185 ~~(5)~~ (6) Class B misdemeanor if the offense attempted is
186 a Class A misdemeanor.

187 ~~(6)~~ (7) Class C misdemeanor if the offense attempted is
188 a Class B misdemeanor.

189 ~~(7)~~ (8) Violation if the offense attempted is a Class C
190 misdemeanor."

191 "§13A-4-3

192 (a) A person is guilty of criminal conspiracy if, with
193 the intent that conduct constituting an offense be performed,
194 he or she agrees with one or more persons to engage in or
195 cause the performance of ~~such~~the conduct, and any one or more
196 of ~~such~~the persons does an overt act to effect an objective of



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197 the agreement.

198 (b) If a person knows or should know that one with whom
199 he or she agrees has in turn agreed or will agree with another
200 to effect the same criminal objective, he or she shall be
201 deemed to have agreed with ~~such~~the other person, whether or
202 not he or she knows the other's identity.

203 (c) A person is not liable under this section if, under
204 circumstances manifesting a voluntary and complete
205 renunciation of his criminal purpose, he or she gave a timely
206 and adequate warning to law enforcement authorities or made a
207 substantial effort to prevent the enforcement of the criminal
208 conduct contemplated by the conspiracy. Renunciation by one
209 conspirator, however, does not affect the liability of another
210 conspirator who does not join in the abandonment of the
211 conspiratorial objective. The burden of injecting the issue of
212 renunciation is on the defendant, but this does not shift the
213 burden of proof.

214 (d) ~~It is no~~None of the following is a defense to a
215 prosecution for criminal conspiracy~~that~~:

216 (1) The person, or persons, with whom defendant is
217 alleged to have conspired has been acquitted, has not been
218 prosecuted or convicted, has been convicted of a different
219 offense, or is immune from prosecution, ~~or~~.

220 (2) The person, or persons, with whom defendant
221 conspired could not be guilty of the conspiracy or the object
222 crime because of lack of mental responsibility or culpability,
223 or other legal incapacity or defense, ~~or~~.

224 (3) The defendant belongs to a class of persons who by



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225 definition are legally incapable in an individual capacity of
226 committing the offense that is the object of the conspiracy.

227 (e) A conspirator is not liable under this section if,
228 had the criminal conduct contemplated by the conspiracy
229 actually been performed, he or she would be immune from
230 liability under the law defining the offense or as an
231 accomplice under Section 13A-2-24.

232 (f) Liability as accomplice. Accomplice liability for
233 offenses committed in furtherance of a conspiracy is to be
234 determined as provided in Section 13A-2-23.

235 (g) Criminal conspiracy is a:

236 (1) Class A felony if an object of the conspiracy is
237 murder.

238 (2) Class B felony if an object of the conspiracy is a
239 Class A felony.

240 (3) Class C felony if an object of the conspiracy is a
241 Class B felony.

242 (4) Class D felony if an object of the conspiracy is a
243 Class C felony.

244 ~~(4)~~ (5) Class A misdemeanor if an object of the
245 conspiracy is a Class ~~D~~ D felony.

246 ~~(5)~~ (6) Class B misdemeanor if an object of the
247 conspiracy is a Class A misdemeanor.

248 ~~(6)~~ (7) Class C misdemeanor if an object of the
249 conspiracy is a Class B misdemeanor.

250 ~~(7)~~ (8) Violation if an object of the conspiracy is a
251 Class C misdemeanor."

252 "§13A-5-6



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253 (a) Sentences for felonies shall be for a definite term
254 of imprisonment, which imprisonment includes hard labor,
255 within the following limitations:

256 (1) For a Class A felony, for life or not more than 99
257 years or less than 10 years.

258 (2) For a Class B felony, not more than 20 years or
259 less than ~~2~~two years.

260 (3) For a Class C felony, not more than 10 years or
261 less than 1~~one~~ year and 1~~one~~ day ~~and must be in accordance~~
262 ~~with subsection (b) of Section 15-18-8 unless sentencing is~~
263 ~~pursuant to Section 13A-5-9 or the offense is a sex offense~~
264 ~~pursuant to Section 15-20A-5.~~

265 (4) For a Class D felony, not more than 5~~five~~ years or
266 less than 1~~one~~ year and 1~~one~~ day ~~and must be in accordance~~
267 ~~with subsection (b) of Section 15-18-8.~~

268 (5) For a Class A felony in which a firearm or deadly
269 weapon was used or attempted to be used in the commission of
270 the felony, or a Class A felony sex offense involving a child
271 as defined in Section 15-20A-4, not less than 20 years.

272 (6) For a Class B or C felony in which a firearm or
273 deadly weapon was used or attempted to be used in the
274 commission of the felony, or a Class B felony sex offense
275 involving a child as defined in Section 15-20A-4, not less
276 than 10 years.

277 (b) The actual time of release within the limitations
278 established by subsection (a) shall be determined under
279 procedures established elsewhere by law.

280 (c) In addition to any penalties ~~heretofore or~~



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281 ~~hereafter~~otherwise provided by law, in all cases where an
282 offender is designated as a sexually violent predator pursuant
283 to Section 15-20A-19, or where an offender is convicted of a
284 Class A felony sex offense involving a child as defined in
285 Section 15-20A-4, and is sentenced to a county jail or the
286 Alabama Department of Corrections, the sentencing judge shall
287 impose an additional penalty of not less than 10 years of
288 post-release supervision to be served upon the defendant's
289 release from incarceration.

290 (d) In addition to any penalties ~~heretofore or~~
291 ~~hereafter~~otherwise provided by law, in all cases where an
292 offender is convicted of a sex offense pursuant to Section
293 13A-6-61, 13A-6-63, or 13A-6-65.1, when the defendant was 21
294 years of age or older and the victim was six years of age or
295 less at the time the offense was committed, the defendant
296 shall be sentenced to life imprisonment without the
297 possibility of parole."

298 ~~"§13A-5-9~~

299 ~~(a) In all cases when it is shown that a criminal~~
300 ~~defendant has been previously convicted of a Class A, Class B,~~
301 ~~or Class C felony and after the conviction has committed~~
302 ~~another Class A, Class B, or Class C felony, he or she must~~
303 ~~shall be punished as follows:~~

304 ~~(1) On conviction of a Class D felony, he or she shall~~
305 ~~be punished for a Class C felony.~~

306 ~~(1) (2) On conviction of a Class C felony, he or she~~
307 ~~must shall be punished for a Class B felony.~~

308 ~~(2) (3) On conviction of a Class B felony, he or she~~

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309 ~~must shall be punished for a Class A felony.~~

310 ~~(3) (4) On conviction of a Class A felony, he or she~~
311 ~~must shall be punished by imprisonment for life or for any~~
312 ~~term of not more than 99 years but not less than 15 years.~~

313 ~~(b) In all cases when it is shown that a criminal~~
314 ~~defendant has been previously convicted of any two felonies~~
315 ~~that are Class A, Class B, or Class C felonies and after such~~
316 ~~convictions has committed another Class A, Class B, or Class C~~
317 ~~felony, he or she must shall be punished as follows:~~

318 ~~(1) On conviction of a Class D felony, he or she shall~~
319 ~~be punished for a Class B felony.~~

320 ~~(1) (2) On conviction of a Class C felony, he or she~~
321 ~~must shall be punished for a Class A felony.~~

322 ~~(2) (3) On conviction of a Class B felony, he or she~~
323 ~~must shall be punished by imprisonment for life or for any term~~
324 ~~of not more than 99 years but not less than 15 years.~~

325 ~~(3) (4) On conviction of a Class A felony, he or she~~
326 ~~must shall be punished by imprisonment for life or for any term~~
327 ~~of not less than 99 years.~~

328 ~~(c) In all cases when it is shown that a criminal~~
329 ~~defendant has been previously convicted of any three felonies~~
330 ~~that are Class A, Class B, or Class C felonies and after such~~
331 ~~convictions has committed another Class A, Class B, or Class C~~
332 ~~felony, he or she must shall be punished as follows:~~

333 ~~(1) On conviction of a Class D felony, he or she shall~~
334 ~~be punished for a Class A felony.~~

335 ~~(1) (2) On conviction of a Class C felony, he or she~~
336 ~~must be punished by imprisonment for life or for any term of~~



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337 ~~not more than 99 years but not less than 15 years.~~

338 ~~(2) (3) On conviction of a Class B felony, he or she~~
339 ~~mustshall be punished by imprisonment for life or any term of~~
340 ~~not less than 20 years.~~

341 ~~(3) (4) On conviction of a Class A felony, where the~~
342 ~~defendant has no prior convictions for any Class A felony, he~~
343 ~~or she mustshall be punished by imprisonment for life or life~~
344 ~~without the possibility of parole, in the discretion of the~~
345 ~~trial court.~~

346 ~~(4) (5) On conviction of a Class A felony, where the~~
347 ~~defendant has one or more prior convictions for any Class A~~
348 ~~felony, he or she mustshall be punished by imprisonment for~~
349 ~~life without the possibility of parole.~~

350 ~~(d) In all cases when it is shown that a criminal~~
351 ~~defendant has been previously convicted of any two or more~~
352 ~~felonies that are Class A or Class B felonies and after such~~
353 ~~convictions has committed a Class D felony, upon conviction,~~
354 ~~he or she must be punished for a Class C felony.~~

355 ~~(e) In all cases when it is shown that a criminal~~
356 ~~defendant has been previously convicted of any three or more~~
357 ~~felonies and after such convictions has committed a Class D~~
358 ~~felony, upon conviction, he or she must be punished for a~~
359 ~~Class C felony."~~

360 "§15-18-8

361 (a) When a defendant is convicted of an offense, other
362 than a sex offense involving a child as defined in Section
363 15-20A-4, that constitutes a Class A or Class B felony
364 offense, and receives a sentence of 20 years or less, in any

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365 ~~court having jurisdiction to try offenses against the State of~~
366 ~~Alabama and~~ the judge presiding over the case ~~is satisfied~~
367 ~~that the ends of justice and the best interests of the public~~
368 ~~as well as the defendant will be served thereby, he or she~~ may
369 order:

370 (1) ~~That a~~In cases where the defendant is convicted of
371 a Class A, Class B, Class C or Class ~~B~~D felony ~~be~~and the
372 imposed sentence is not more than 15 years, that the convicted
373 defendant be confined in a prison, jail-type institution, or
374 treatment institution for a period not exceeding three years
375 ~~in cases where the imposed sentence is not more than 15 years,~~
376 ~~and,~~ that the execution of the remainder of the sentence be
377 suspended notwithstanding any provision of the law to the
378 contrary, and that the defendant be placed on probation for
379 ~~such~~a period ~~and upon such terms~~ as determined by the court
380 ~~deems best.~~

381 (2) ~~That a~~In cases where the defendant is convicted of
382 a Class A, Class B, or Class C felony ~~with an~~and the imposed
383 sentence ~~of~~is greater than 15 years but not more than 20
384 years, that the convicted defendant be confined in a prison,
385 jail-type institution, or treatment institution for a period
386 of three to five years, for Class A or Class B felony
387 ~~convictions and for a period of three years for Class C felony~~
388 ~~convictions, during which the offender shall not be eligible~~
389 ~~for parole or release because of deduction from sentence for~~
390 ~~good behavior under the Alabama Correctional Incentive Time~~
391 ~~Act, and~~ that the execution of the remainder of the sentence
392 be suspended notwithstanding any provision of the law to the



393 contrary, and that the defendant be placed on probation for
394 ~~the a period upon the terms~~ as determined by the court ~~deems~~
395 ~~best.~~

396 ~~This subsection shall not be construed to impose the~~
397 ~~responsibility for offenders sentenced to a Department of~~
398 ~~Corrections facility upon a local confinement facility not~~
399 ~~operated by the Department of Corrections.~~

400 ~~(b) Unless a defendant is sentenced to probation, drug~~
401 ~~court, or a pretrial diversion program, when a defendant is~~
402 ~~convicted of an offense that constitutes a Class C or D felony~~
403 ~~offense and receives a sentence of not more than 15 years, the~~
404 ~~judge presiding over the case shall order that the convicted~~
405 ~~defendant be confined in a prison, jail-type institution,~~
406 ~~treatment institution, or community corrections program for a~~
407 ~~Class C felony offense or in a consenting community~~
408 ~~corrections program for a Class D felony offense, except as~~
409 ~~provided in subsection (c), for a period not exceeding two~~
410 ~~years in cases where the imposed sentence is not more than 15~~
411 ~~years, and that the execution of the remainder of the sentence~~
412 ~~be suspended notwithstanding any provision of the law to the~~
413 ~~contrary and that the defendant be placed on probation for a~~
414 ~~period not exceeding three years and upon such terms as the~~
415 ~~court deems best. In all cases when it is shown that a~~
416 ~~defendant has been previously convicted of any three or more~~
417 ~~felonies or has been previously convicted of any two or more~~
418 ~~felonies that are Class A or Class B felonies, and after such~~
419 ~~convictions has committed a Class D felony, upon conviction,~~
420 ~~he or she must be punished for a Class C felony. This~~



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421 ~~subsection shall not be construed to impose the responsibility~~
422 ~~for offenders sentenced to a Department of Corrections~~
423 ~~facility upon a local confinement facility not operated by the~~
424 ~~Department of Corrections.~~

425 ~~(c) Nothing in this section shall be construed as~~
426 ~~superseding the sentencing requirements set forth and adopted~~
427 ~~by the Legislature as prescribed by the Alabama Sentencing~~
428 ~~Commission's Sentencing Standards.~~

429 ~~(d) In counties or jurisdictions where no community~~
430 ~~corrections program exists or resources from a community~~
431 ~~investment are not complete, a county or jurisdiction may~~
432 ~~enter into a compact or contract with another county or other~~
433 ~~counties to create a multi-jurisdiction community corrections~~
434 ~~facility that meets the needs and resources of each county or~~
435 ~~jurisdiction or enter into a compact or contract with a county~~
436 ~~or jurisdiction that has a community corrections program to~~
437 ~~provide services, as provided in and pursuant to Article 9 of~~
438 ~~this chapter.~~

439 ~~(e) If no community corrections program exists within a~~
440 ~~county or jurisdiction and no alternative program options are~~
441 ~~available under subsection (e) of Section 15-18-172, a~~
442 ~~defendant convicted of an offense that constitutes a Class D~~
443 ~~felony may be sentenced to high-intensity probation under the~~
444 ~~supervision of the Board of Pardons and Paroles in lieu of~~
445 ~~community corrections.~~

446 ~~(f)~~ (b) Probation may not be granted for a sex offense
447 involving a child as defined in Section 15-20A-4, ~~which~~ that
448 constitutes a Class A or B felony. Otherwise, probation may be



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449 granted whether the offense is punishable by fine or
450 imprisonment or both. If an offense is punishable by both fine
451 and imprisonment, the court may impose a fine and place the
452 defendant on probation as to imprisonment. Probation may be
453 limited to one or more counts or indictments, but, in the
454 absence of express limitation, shall extend to the entire
455 sentence and judgment.

456 ~~(g)~~ (c) Regardless of whether the defendant has begun
457 serving the minimum period of confinement ordered under ~~the~~
458 ~~provisions of subsections~~ subsection (a) ~~or (b), if the imposed~~
459 ~~sentence is not more than 20 years~~, the court shall retain
460 jurisdiction and authority ~~throughout that period~~ to suspend
461 that portion of the minimum sentence that remains and place
462 the defendant on probation, notwithstanding any provision of
463 the law to the contrary, and the court may revoke or modify
464 any condition of probation or may change the period of
465 probation.

466 ~~(h)~~ (d) While incarcerated or on probation and among the
467 conditions thereof, the defendant may be required to do any of
468 the following:

469 (1) To pay a fine in one or several sums ~~;~~ .

470 (2) To make restitution or reparation to aggrieved
471 parties for actual damages or loss caused by the offense for
472 which conviction was had; ~~and~~ .

473 (3) To provide for the support of any persons for whose
474 support he or she is legally responsible.

475 ~~(i)~~ (e) Except as otherwise provided pursuant to Section
476 15-18-64, the defendant's liability for any fine or other



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477 punishment imposed as to which probation is granted shall be
478 fully discharged by the fulfillment of the terms and
479 conditions of probation.

480 ~~(j)~~ (f) During any term of probation, the defendant
481 shall report to the probation authorities at ~~such~~a time and
482 place as directed by the judge imposing sentence.

483 ~~(k)~~ (g) No defendant serving a minimum period of
484 confinement ordered under subsection (a) ~~or (b)~~ shall be
485 entitled to parole or to deductions from his or her sentence
486 under the Alabama Correctional Incentive Time Act, during the
487 minimum period of confinement so ordered; provided, however,
488 that this subsection shall not be construed to prohibit
489 application of the Alabama Correctional Incentive Time Act to
490 any period of confinement which may be required after the
491 defendant has served ~~such~~the minimum period.

492 ~~(l)~~ (h) When a defendant is convicted of a misdemeanor
493 or convicted of a municipal ordinance, the judge presiding
494 over the case may impose a sentence in accordance with Section
495 13A-5-7. The court may order a portion of the sentence to be
496 suspended and the defendant be placed on probation for ~~such~~a
497 period not exceeding two years ~~and upon such terms as the~~
498 ~~court deems best.~~

499 (i) Nothing in this section shall be construed to
500 impose the responsibility for offenders sentenced to a
501 Department of Corrections facility upon a local confinement
502 facility not operated by the Department of Corrections."

503 "§15-22-54

504 (a) The period of probation or suspension of execution



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505 of sentence shall be determined by the court and may not be
506 waived by the defendant. The period of probation or suspension
507 may be continued, extended, or terminated as determined by the
508 court. Except as provided in Section 32-5A-191, relating to
509 ignition interlock requirements, the maximum probation period
510 of a defendant guilty of a misdemeanor may not exceed two
511 years, nor shall the maximum probation period of a defendant
512 guilty of a felony exceed five years, except as provided in
513 Section 13A-8-2.1. When the conditions of probation or
514 suspension of sentence are fulfilled, the court, by an order
515 duly entered on its minutes, shall discharge the defendant.

516 (b) The court granting probation, upon the
517 recommendation of the officer supervising the probationer, may
518 terminate all authority and supervision over the probationer
519 prior to the declared date of completion of probation upon
520 showing a continued satisfactory compliance with the
521 conditions of probation over a sufficient portion of the
522 period of the probation. At least every two years, and after
523 providing notice to the district attorney, the court shall
524 review the probationer's suitability for discharge from
525 probation supervision if the probationer has satisfied all
526 financial obligations owed to the court, including
527 restitution, and has not had his or her supervision revoked.

528 (c) At any time during the period of probation or
529 suspension of execution of sentence, the court may issue a
530 warrant and have the defendant arrested for violating any of
531 the conditions of probation or suspension of sentence, and the
532 court shall hold a violation hearing. No probationer shall be



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533 held in jail awaiting the violation hearing for longer than 20
534 business days, unless new criminal charges are pending. If the
535 hearing is not held within the specified time, the sheriff
536 shall release the probation violator unless there are other
537 pending criminal charges. A judge may issue a bond to a
538 probationer for release from custody.

539 (d) Except as provided in Chapter 15 of Title 12, any
540 probation officer, police officer, or other officer with power
541 of arrest, when requested by the probation officer, may arrest
542 a probationer without a warrant. When an arrest is made
543 without a warrant, the arresting officer shall have a written
544 statement by the probation officer setting forth that the
545 probationer has, in his or her judgment, violated the
546 conditions of probation, and the statement shall be sufficient
547 warrant for the detention of the probationer in the county
548 jail or other appropriate place of detention until the
549 probationer is brought before the court. The probation officer
550 shall report the arrest and detention to the court and submit
551 in writing a report showing in what manner the probationer has
552 violated probation.

553 (e) After conducting a violation hearing and finding
554 sufficient evidence to support a probation violation, the
555 court may take any of the following actions:

556 ~~(1)a. If the underlying offense was a Class D felony~~
557 ~~and his or her probation is revoked, the incarceration portion~~
558 ~~of any split sentence imposed due to revocation shall be~~
559 ~~limited to two years or one-third of the original suspended~~
560 ~~prison sentence, whichever is less.~~



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561 ~~b.~~(1)a. If the underlying offense was a violent
562 offense as defined in Section 12-25-32 and ~~classified as a~~
563 Class A felony, a sex offense pursuant to Section 15-20A-5, or
564 aggravated theft by deception pursuant to Section 13A-8-2.1,
565 the court shall revoke probation and require the probationer
566 to serve the balance of the term for which he or she was
567 originally sentenced, or any portion thereof, in a state
568 prison facility, calculated from the date of his or her
569 rearrest as a delinquent probationer.

570 ~~e.~~b. If the probation violation was for being arrested
571 or convicted of a new offense, ~~or~~ absconding, or failing to
572 successfully complete a court supervised, evidence-based
573 treatment program, as defined in Section 12-25-32, a court
574 ordered faith-based program, or any other court ordered
575 rehabilitative program, the court may revoke probation and
576 require the probationer to serve the balance of the term for
577 which he or she was originally sentenced, or any portion
578 thereof, in a state prison facility, calculated from the date
579 of his or her rearrest as a delinquent probationer.

580 ~~d.~~c. For all other probationers, the court may impose
581 a period of confinement of no more than 45 consecutive days to
582 be served in a residential transition center established
583 pursuant to Section 15-22-30.1 or a consenting county jail
584 designated for this purpose as provided in Section 14-1-23.
585 The probationer shall be held in the county jail of the county
586 in which the violation occurred while awaiting the revocation
587 hearing. The Department of Corrections shall reimburse the
588 state mileage rate to the county, as determined by the Alabama



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589 Comptroller's Office, for any probationer charged with, or
590 sanctioned or revoked for, a probation violation and who is
591 transferred to or from a Department of Corrections facility or
592 to or from a consenting county jail by the county.

593 (2) Upon completion of the confinement period, the
594 remaining probation period or suspension of sentence shall
595 automatically continue upon the defendant's release from
596 confinement. The court may not revoke probation unless the
597 defendant has previously received a total of three periods of
598 confinement pursuant to this subsection. For purposes of
599 revocation, the court may take judicial notice of the three
600 total periods of confinement under this subsection. A
601 defendant shall only receive three total periods of
602 confinement pursuant to this subsection. The maximum ~~45-day~~
603 45-day term of confinement ordered pursuant to this subsection
604 for a felony shall be reduced by any time served in custody
605 prior to the imposition of the period of confinement and shall
606 be credited to the suspended sentence. If the time remaining
607 on the imposed sentence is 45 days or less, the term of
608 confinement may not exceed the remainder of the defendant's
609 sentence.

610 (3) The total time spent in confinement under this
611 subsection may not exceed the term of the defendant's original
612 sentence.

613 (4) Confinement shall be immediate. The court shall
614 ensure that the circuit clerk receives the order revoking
615 probation within five business days. The circuit clerk shall
616 ensure that the Department of Corrections, a county jail, a



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617 residential transition center, or a consenting county jail
618 receives necessary transcripts for imposing a period of
619 confinement within five business days of its receipt of the
620 court's order.

621 (5) If a probation violator is presented to a county
622 jail, excluding a consenting county jail designated for this
623 purpose, as provided in Section 14-1-23, for any period of
624 confinement with a serious health condition, if the
625 confinement of the probation violator would create a security
626 risk to the county jail, or if the county jail is near, at, or
627 over capacity, the sheriff may refuse to admit the probation
628 violator. If, while in custody of the county jail, the
629 probation violator develops a serious health condition, if the
630 confinement of the probation violator creates a security risk
631 to the county jail, or if the county jail reaches near, at, or
632 over capacity, the sheriff may release the probation violator
633 upon notification to the probation officer and to the court
634 who has jurisdiction over the probation violator. A sheriff
635 and employees in the county jail shall be immune from
636 liability for exercising discretion pursuant to Section
637 36-1-12 in refusing to admit a probation violator into the
638 jail or releasing a probation violator from jail pursuant to
639 this subdivision.

640 (f) In lieu of subsections (c) through (e), when a
641 probationer violates his or her probation terms and conditions
642 imposed by the court, his or her probation officer, after an
643 administrative review and approval by the probation officer's
644 supervisor, may impose any of the following sanctions:



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- 645 (1) Mandatory behavioral treatment.
- 646 (2) Mandatory substance abuse treatment.
- 647 (3) GPS monitoring.
- 648 (4) Any other treatment as determined by the court or
649 supervising officer.
- 650 (5) A short period of confinement in the county jail
651 of the county in which the violation occurred. Periods of
652 confinement under this subdivision may not exceed six days per
653 month during any three separate months during the period of
654 probation. The six days per month confinement period may only
655 be imposed as two-day or three-day consecutive periods at any
656 single time. The total periods of confinement may not exceed
657 nine total days.
- 658 (g)(1) Prior to imposing a sanction pursuant to
659 subsection (f), the probationer must first be presented with a
660 violation report, ~~with~~ containing the alleged probation
661 violations and supporting evidence. The probationer shall be
662 advised that he or she has all of the following:
- 663 a. The right to have a hearing before the court on the
664 alleged violation or violations in person or by electronic
665 means. If a hearing is requested, no probationer shall be held
666 beyond 20 business days of the request. Only requesting
667 probationers posing a threat to public safety or a flight risk
668 shall be arrested while awaiting a hearing.
- 669 b. The right to present relevant witnesses and
670 documentary evidence.
- 671 c. The right to retain and have counsel at the hearing
672 and that counsel will be appointed if the probationer is



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673 indigent.

674 d. The right to confront and cross examine any adverse
675 witnesses.

676 (2) Upon the signing of a waiver of these rights by
677 the probationer and the supervising probation officer, with
678 approval of a supervisor, the probationer may be treated,
679 monitored, or confined for the period recommended in the
680 violation report and designated in the waiver. The probationer
681 may not request a review if he or she has signed a written
682 waiver of rights as provided in this subsection.

683 (h) The board shall adopt guidelines and procedures to
684 implement the requirements of this section, which shall
685 include the requirement of a supervisor's approval prior to a
686 supervising probation officer's exercise of the delegation of
687 authority authorized by subsection (f)."

688 Section 2. Although this bill would have as its purpose
689 or effect the requirement of a new or increased expenditure of
690 local funds, the bill is excluded from further requirements
691 and application under Section 111.05 of the Constitution of
692 Alabama of 2022, because the bill defines a new crime or
693 amends the definition of an existing crime.

694 Section 3. This act shall become effective on July 1,
695 2023, following its passage and approval by the Governor, or
696 its otherwise becoming law.

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697
698
699 Senate

700 Read for the first time and referred11-Apr-23
701 to the Senate committee on Judiciary
702
703 Read for the second time and placed27-Apr-23
704 on the calendar:
705 1 amendment
706
707 Read for the third time and passed11-May-23
708 as amended
709 Yeas 33
710 Nays 0
711 Abstains 0
712
713

714 Patrick Harris,
715 Secretary.
716