

SB198 ENROLLED



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



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1 Enrolled, An Act,

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6 Relating to sentencing; to amend Sections
7 12-25-34.2, 13A-4-1, 13A-4-2, 13A-4-3, 13A-5-6,
8 15-18-8, and 15-22-54, Code of Alabama 1975, to add
9 additional offenses that would be subject to the
10 presumptive sentencing guidelines; to modify the
11 criminal penalties for criminal solicitation, attempt,
12 and criminal conspiracy; to give a judge discretion
13 when sentencing a person convicted of a Class C or
14 Class D felony offense; to make nonsubstantive,
15 technical revisions to update the existing code
16 language to current style; and in connection therewith
17 would have as its purpose or effect the requirement of
18 a new or increased expenditure of local funds within
19 the meaning of Section 111.05 of the Constitution of
20 Alabama of 2022.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

24 "§12-25-34.2

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

27 (1) AGGRAVATING FACTORS. Substantial and compelling
28 reasons justifying an exceptional sentence whereby the



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29 sentencing court may impose a departure sentence above the
30 presumptive sentence recommendation for an offense.
31 Aggravating factors may result in dispositional or sentence
32 range departures, or both, and shall be stated on the record
33 by the court.

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

36 (3) DISPOSITION. The part of the sentencing courts
37 presumptive sentence recommendation other than sentence
38 length.

39 (4) DISPOSITIONAL DEPARTURE. A sentence ~~which~~that
40 departs from the presumptive sentence recommendation for
41 disposition of sentence.

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

49 (6) NONVIOLENT OFFENSES. As defined in Section
50 12-25-32.

51 (7) PRESUMPTIVE SENTENCE RECOMMENDATION. The
52 recommended sentence range and disposition provided in the
53 sentencing standards.

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



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57 (9) SENTENCE RANGE DEPARTURE. A sentence ~~which~~that
58 departs from the presumptive sentence recommendation as to the
59 sentence range.

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

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

78 (2) The Alabama Sentencing Commission shall immediately
79 adopt modifications to the standards, worksheets, and
80 instructions to the extent necessary to implement this act.
81 The amendatory provisions of this act shall supersede any
82 standards, worksheets, and instructions of the commission that
83 are in conflict with these amendatory provisions.

84 (c) Durational and dispositional departures from the



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85 presumptive sentencing standards shall be subject to appellate
86 review. Along with the modifications provided for in
87 subsection (b), the Alabama Sentencing Commission shall
88 recommend a narrowly defined scope of appellate review
89 applicable to departures from presumptive sentencing
90 recommendations. The scope of appellate review shall become
91 effective upon approval by an act of the Legislature enacted
92 by bill."

93 "§13A-4-1

94 (a) (1) A person is guilty of criminal solicitation if,
95 with the intent that another person engage in conduct
96 constituting a crime, he or she solicits, requests, commands
97 or importunes ~~such other~~ another person to engage in such
98 conduct.

99 (2) A person may not be convicted of criminal
100 solicitation upon the uncorroborated testimony of the person
101 allegedly solicited, and there must be proof of circumstances
102 corroborating both the solicitation and the defendant's
103 intent.

104 (b) A person is not liable under this section if, under
105 circumstances manifesting a voluntary and complete
106 renunciation of his or her criminal intent, he or she (1)
107 notified the person solicited of his or her renunciation and
108 (2) gave timely and adequate warning to the law enforcement
109 authorities or otherwise made a substantial effort to prevent
110 the commission of the criminal conduct solicited. The burden
111 of injecting this issue is on the defendant, but this does not
112 shift the burden of proof.



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

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

124 (1) Criminal irresponsibility or other legal incapacity
125 or exemption;~~or~~.

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

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

130 (e) It is no defense to a prosecution for criminal
131 solicitation that the defendant belongs to a class of persons
132 who by definition are legally incapable in an individual
133 capacity of committing the offense that he or she solicited
134 another to commit.

135 (f) Criminal solicitation is a:

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

137 (2) Class B felony if the offense solicited is a Class
138 A felony.

139 (3) Class C felony if the offense solicited is a Class
140 B felony.



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141 (4) Class D felony if the offense solicited is a Class
142 C felony.

143 ~~(4)~~ (5) Class A misdemeanor if the offense solicited is
144 a Class ~~D~~ felony.

145 ~~(5)~~ (6) Class B misdemeanor if the offense solicited is
146 a Class A misdemeanor.

147 ~~(6)~~ (7) Class C misdemeanor if the offense solicited is
148 a Class B misdemeanor.

149 ~~(7)~~ (8) Violation if the offense solicited is a Class C
150 misdemeanor."

151 "§13A-4-2

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

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

161 (c) A person is not liable under this section if, under
162 circumstances manifesting a voluntary and complete
163 renunciation of this criminal intent, he or she avoided the
164 commission of the offense attempted by abandoning his or her
165 criminal effort and, if mere abandonment is insufficient to
166 accomplish such avoidance, by taking further and affirmative
167 steps ~~which~~that prevented the commission thereof. The burden
168 of injecting this issue is on the defendant, but this does not



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169 shift the burden of proof.

170 (d) An attempt is a:

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

172 (2) Class B felony if the offense attempted is a Class
173 A felony.

174 (3) Class C felony if the offense attempted is a Class
175 B felony.

176 (4) Class D felony if the offense attempted is a Class
177 C felony.

178 ~~(4)~~ (5) Class A misdemeanor if the offense attempted is
179 a Class ~~D~~ felony.

180 ~~(5)~~ (6) Class B misdemeanor if the offense attempted is
181 a Class A misdemeanor.

182 ~~(6)~~ (7) Class C misdemeanor if the offense attempted is
183 a Class B misdemeanor.

184 ~~(7)~~ (8) Violation if the offense attempted is a Class C
185 misdemeanor."

186 "§13A-4-3

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

193 (b) If a person knows or should know that one with whom
194 he or she agrees has in turn agreed or will agree with another
195 to effect the same criminal objective, he or she shall be
196 deemed to have agreed with ~~such~~the other person, whether or



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197 not he or she knows the other's identity.

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

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

211 (1) The person, or persons, with whom defendant is
212 alleged to have conspired has been acquitted, has not been
213 prosecuted or convicted, has been convicted of a different
214 offense, or is immune from prosecution, ~~or~~.

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

219 (3) The defendant belongs to a class of persons who by
220 definition are legally incapable in an individual capacity of
221 committing the offense that is the object of the conspiracy.

222 (e) A conspirator is not liable under this section if,
223 had the criminal conduct contemplated by the conspiracy
224 actually been performed, he or she would be immune from



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225 liability under the law defining the offense or as an
226 accomplice under Section 13A-2-24.

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

230 (g) Criminal conspiracy is a:

231 (1) Class A felony if an object of the conspiracy is
232 murder.

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

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

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

239 ~~(4)~~ (5) Class A misdemeanor if an object of the
240 conspiracy is a Class ~~C~~ D felony.

241 ~~(5)~~ (6) Class B misdemeanor if an object of the
242 conspiracy is a Class A misdemeanor.

243 ~~(6)~~ (7) Class C misdemeanor if an object of the
244 conspiracy is a Class B misdemeanor.

245 ~~(7)~~ (8) Violation if an object of the conspiracy is a
246 Class C misdemeanor."

247 "§13A-5-6

248 (a) Sentences for felonies shall be for a definite term
249 of imprisonment, which imprisonment includes hard labor,
250 within the following limitations:

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



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253 (2) For a Class B felony, not more than 20 years or
254 less than 2two years.

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

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

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

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

272 (b) The actual time of release within the limitations
273 established by subsection (a) shall be determined under
274 procedures established elsewhere by law.

275 (c) In addition to any penalties ~~heretofore or~~
276 ~~hereafter~~otherwise provided by law, in all cases where an
277 offender is designated as a sexually violent predator pursuant
278 to Section 15-20A-19, or where an offender is convicted of a
279 Class A felony sex offense involving a child as defined in
280 Section 15-20A-4, and is sentenced to a county jail or the



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281 Alabama Department of Corrections, the sentencing judge shall
282 impose an additional penalty of not less than 10 years of
283 post-release supervision to be served upon the defendant's
284 release from incarceration.

285 (d) In addition to any penalties ~~heretofore or~~
286 ~~hereafter~~otherwise provided by law, in all cases where an
287 offender is convicted of a sex offense pursuant to Section
288 13A-6-61, 13A-6-63, or 13A-6-65.1, when the defendant was 21
289 years of age or older and the victim was six years of age or
290 less at the time the offense was committed, the defendant
291 shall be sentenced to life imprisonment without the
292 possibility of parole."

293 ~~"§13A-5-9~~

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

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

301 ~~(1) (2) On conviction of a Class C felony, he or she~~
302 ~~must shall be punished for a Class B felony.~~

303 ~~(2) (3) On conviction of a Class B felony, he or she~~
304 ~~must shall be punished for a Class A felony.~~

305 ~~(3) (4) On conviction of a Class A felony, he or she~~
306 ~~must shall be punished by imprisonment for life or for any~~
307 ~~term of not more than 99 years but not less than 15 years.~~

308 ~~(b) In all cases when it is shown that a criminal~~



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309 ~~defendant has been previously convicted of any two felonies~~
310 ~~that are Class A, Class B, or Class C felonies and after such~~
311 ~~convictions has committed another Class A, Class B, or Class C~~
312 ~~felony, he or she mustshall be punished as follows:~~

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

315 ~~(1) (2) On conviction of a Class C felony, he or she~~
316 ~~mustshall be punished for a Class A felony.~~

317 ~~(2) (3) On conviction of a Class B felony, he or she~~
318 ~~mustshall be punished by imprisonment for life or for any term~~
319 ~~of not more than 99 years but not less than 15 years.~~

320 ~~(3) (4) On conviction of a Class A felony, he or she~~
321 ~~mustshall be punished by imprisonment for life or for any term~~
322 ~~of not less than 99 years.~~

323 ~~(c) In all cases when it is shown that a criminal~~
324 ~~defendant has been previously convicted of any three felonies~~
325 ~~that are Class A, Class B, or Class C felonies and after such~~
326 ~~convictions has committed another Class A, Class B, or Class C~~
327 ~~felony, he or she mustshall be punished as follows:~~

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

330 ~~(1) (2) On conviction of a Class C felony, he or she~~
331 ~~must be punished by imprisonment for life or for any term of~~
332 ~~not more than 99 years but not less than 15 years.~~

333 ~~(2) (3) On conviction of a Class B felony, he or she~~
334 ~~mustshall be punished by imprisonment for life or any term of~~
335 ~~not less than 20 years.~~

336 ~~(3) (4) On conviction of a Class A felony, where the~~



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337 ~~defendant has no prior convictions for any Class A felony, he~~
338 ~~or she mustshall be punished by imprisonment for life or life~~
339 ~~without the possibility of parole, in the discretion of the~~
340 ~~trial court.~~

341 ~~(4) (5) On conviction of a Class A felony, where the~~
342 ~~defendant has one or more prior convictions for any Class A~~
343 ~~felony, he or she mustshall be punished by imprisonment for~~
344 ~~life without the possibility of parole.~~

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

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

355 "§15-18-8

356 (a) When a defendant is convicted of an offense, other
357 than a sex offense involving a child as defined in Section
358 15-20A-4, that constitutes a Class A or Class B felony
359 offense, and receives a sentence of 20 years or less, ~~in any~~
360 ~~court having jurisdiction to try offenses against the State of~~
361 ~~Alabama and~~ the judge presiding over the case ~~is satisfied~~
362 ~~that the ends of justice and the best interests of the public~~
363 ~~as well as the defendant will be served thereby, he or she may~~
364 order:



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

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

391 ~~This subsection shall not be construed to impose the~~
392 ~~responsibility for offenders sentenced to a Department of~~



393 ~~Corrections facility upon a local confinement facility not~~
394 ~~operated by the Department of Corrections.~~

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

420 ~~(c) Nothing in this section shall be construed as~~



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421 ~~superseding the sentencing requirements set forth and adopted~~
422 ~~by the Legislature as prescribed by the Alabama Sentencing~~
423 ~~Commission's Sentencing Standards.~~

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

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

441 ~~(f)~~ (b) Probation may not be granted for a sex offense
442 involving a child as defined in Section 15-20A-4, ~~which~~ that
443 constitutes a Class A or B felony. Otherwise, probation may be
444 granted whether the offense is punishable by fine or
445 imprisonment or both. If an offense is punishable by both fine
446 and imprisonment, the court may impose a fine and place the
447 defendant on probation as to imprisonment. Probation may be
448 limited to one or more counts or indictments, but, in the



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449 absence of express limitation, shall extend to the entire
450 sentence and judgment.

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

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

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

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

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

470 ~~(i)~~ (e) Except as otherwise provided pursuant to Section
471 15-18-64, the defendant's liability for any fine or other
472 punishment imposed as to which probation is granted shall be
473 fully discharged by the fulfillment of the terms and
474 conditions of probation.

475 ~~(j)~~ (f) During any term of probation, the defendant
476 shall report to the probation authorities at ~~such~~ a time and



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477 place as directed by the judge imposing sentence.

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

487 ~~(l)~~ (h) When a defendant is convicted of a misdemeanor
488 or convicted of a municipal ordinance, the judge presiding
489 over the case may impose a sentence in accordance with Section
490 13A-5-7. The court may order a portion of the sentence to be
491 suspended and the defendant be placed on probation for ~~such~~ a
492 period not exceeding two years ~~and upon such terms as the~~
493 ~~court deems best.~~

494 (i) Nothing in this section shall be construed to
495 impose the responsibility for offenders sentenced to a
496 Department of Corrections facility upon a local confinement
497 facility not operated by the Department of Corrections."

498 "§15-22-54

499 (a) The period of probation or suspension of execution
500 of sentence shall be determined by the court and may not be
501 waived by the defendant. The period of probation or suspension
502 may be continued, extended, or terminated as determined by the
503 court. Except as provided in Section 32-5A-191, relating to
504 ignition interlock requirements, the maximum probation period



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505 of a defendant guilty of a misdemeanor may not exceed two
506 years, nor shall the maximum probation period of a defendant
507 guilty of a felony exceed five years, except as provided in
508 Section 13A-8-2.1. When the conditions of probation or
509 suspension of sentence are fulfilled, the court, by an order
510 duly entered on its minutes, shall discharge the defendant.

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

523 (c) At any time during the period of probation or
524 suspension of execution of sentence, the court may issue a
525 warrant and have the defendant arrested for violating any of
526 the conditions of probation or suspension of sentence, and the
527 court shall hold a violation hearing. No probationer shall be
528 held in jail awaiting the violation hearing for longer than 20
529 business days, unless new criminal charges are pending. If the
530 hearing is not held within the specified time, the sheriff
531 shall release the probation violator unless there are other
532 pending criminal charges. A judge may issue a bond to a



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533 probationer for release from custody.

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

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

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

556 b.(1)a. If the underlying offense was a violent
557 offense as defined in Section 12-25-32 and ~~classified as a~~
558 Class A felony, a sex offense pursuant to Section 15-20A-5, or
559 aggravated theft by deception pursuant to Section 13A-8-2.1,
560 the court shall revoke probation and require the probationer



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561 to serve the balance of the term for which he or she was
562 originally sentenced, or any portion thereof, in a state
563 prison facility, calculated from the date of his or her
564 rearrest as a delinquent probationer.

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

575 ~~d.~~c. For all other probationers, the court may impose
576 a period of confinement of no more than 45 consecutive days to
577 be served in a residential transition center established
578 pursuant to Section 15-22-30.1 or a consenting county jail
579 designated for this purpose as provided in Section 14-1-23.
580 The probationer shall be held in the county jail of the county
581 in which the violation occurred while awaiting the revocation
582 hearing. The Department of Corrections shall reimburse the
583 state mileage rate to the county, as determined by the Alabama
584 Comptroller's Office, for any probationer charged with, or
585 sanctioned or revoked for, a probation violation and who is
586 transferred to or from a Department of Corrections facility or
587 to or from a consenting county jail by the county.

588 (2) Upon completion of the confinement period, the



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

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

608 (4) Confinement shall be immediate. The court shall
609 ensure that the circuit clerk receives the order revoking
610 probation within five business days. The circuit clerk shall
611 ensure that the Department of Corrections, a county jail, a
612 residential transition center, or a consenting county jail
613 receives necessary transcripts for imposing a period of
614 confinement within five business days of its receipt of the
615 court's order.

616 (5) If a probation violator is presented to a county



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

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

640 (1) Mandatory behavioral treatment.

641 (2) Mandatory substance abuse treatment.

642 (3) GPS monitoring.

643 (4) Any other treatment as determined by the court or
644 supervising officer.



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645 (5) A short period of confinement in the county jail
646 of the county in which the violation occurred. Periods of
647 confinement under this subdivision may not exceed six days per
648 month during any three separate months during the period of
649 probation. The six days per month confinement period may only
650 be imposed as two-day or three-day consecutive periods at any
651 single time. The total periods of confinement may not exceed
652 nine total days.

653 (g) (1) Prior to imposing a sanction pursuant to
654 subsection (f), the probationer must first be presented with a
655 violation report, ~~with~~ containing the alleged probation
656 violations and supporting evidence. The probationer shall be
657 advised that he or she has all of the following:

658 a. The right to have a hearing before the court on the
659 alleged violation or violations in person or by electronic
660 means. If a hearing is requested, no probationer shall be held
661 beyond 20 business days of the request. Only requesting
662 probationers posing a threat to public safety or a flight risk
663 shall be arrested while awaiting a hearing.

664 b. The right to present relevant witnesses and
665 documentary evidence.

666 c. The right to retain and have counsel at the hearing
667 and that counsel will be appointed if the probationer is
668 indigent.

669 d. The right to confront and cross examine any adverse
670 witnesses.

671 (2) Upon the signing of a waiver of these rights by
672 the probationer and the supervising probation officer, with



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673 approval of a supervisor, the probationer may be treated,
674 monitored, or confined for the period recommended in the
675 violation report and designated in the waiver. The probationer
676 may not request a review if he or she has signed a written
677 waiver of rights as provided in this subsection.

678 (h) The board shall adopt guidelines and procedures to
679 implement the requirements of this section, which shall
680 include the requirement of a supervisor's approval prior to a
681 supervising probation officer's exercise of the delegation of
682 authority authorized by subsection (f)."

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

689 Section 3. This act shall become effective on July 1,
690 2023, following its passage and approval by the Governor, or
691 its otherwise becoming law.



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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB198
Senate 11-May-23
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 31-May-23

By: Senator Orr