

HB25 INTRODUCED



1 3PRBZZ-1
2 By Representative Moore (P)
3 RFD: Judiciary
4 First Read: 07-Mar-23
5 PFD: 23-Feb-23



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SYNOPSIS:

Under existing law, when an offender has previously been convicted of any three or more felonies, or has been previously convicted of two or more Class A or Class B felonies, and subsequently commits a Class D felony, he or she is sentenced as if he or she had been convicted of a Class C felony.

This bill would provide that on a third or subsequent conviction for a Class D felony, an offender may be sentenced as if he or she had been convicted of a Class C felony.

A BILL
TO BE ENTITLED
AN ACT

Relating to criminal procedure; to amend Sections 13A-5-9 and 15-18-8, Code of Alabama 1975, to further provide for the sentencing of individuals convicted of violating a Class D felony.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 13A-5-9 and 15-18-8, Code of Alabama 1975, are amended to read as follows:

"§13A-5-9



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

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

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

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

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

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

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

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

54 (c) In all cases when it is shown that a criminal
55 defendant has been previously convicted of any three felonies
56 that are Class A, Class B, or Class C felonies and after ~~such~~



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57 the convictions has committed another Class A, Class B, or
58 Class C felony, he or she ~~must~~ shall be punished as follows:

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

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

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

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

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

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



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85 "§15-18-8

86 (a) When a defendant is convicted of ~~an~~ a Class A or
87 Class B felony offense, other than a sex offense involving a
88 child as defined in Section 15-20A-4, ~~that constitutes a Class~~
89 ~~A or Class B felony offense,~~ and receives a sentence of 20
90 years or less, ~~in any court having jurisdiction to try~~
91 ~~offenses against the State of Alabama and~~ the judge presiding
92 over the case ~~is satisfied that the ends of justice and the~~
93 ~~best interests of the public as well as the defendant will be~~
94 ~~served thereby,~~ he or she may order:

95 (1) ~~That a~~ In cases where the defendant is convicted of
96 a Class A or Class B felony ~~be~~ and the imposed sentence is not
97 more than 15 years, that the convicted defendant be confined
98 in a prison, jail-type institution, or treatment institution
99 for a period not exceeding three years ~~in cases where the~~
100 ~~imposed sentence is not more than 15 years, and,~~ that the
101 execution of the remainder of the sentence be suspended
102 notwithstanding any provision of the law to the contrary, and
103 that the defendant be placed on probation for ~~such a~~ period
104 ~~and upon such terms~~ as determined by the court ~~deems best.~~

105 (2) ~~That a~~ In cases where the defendant is convicted of
106 a Class A, Class B, or Class C felony ~~with an~~ and the imposed
107 sentence ~~of is~~ greater than 15 years but not more than 20
108 years, that the convicted defendant be confined in a prison,
109 jail-type institution, or treatment institution for a period
110 of three to five years for Class A or Class B felony
111 convictions and for a period of three years for Class C felony
112 convictions, ~~during which the offender shall not be eligible~~



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113 ~~for parole or release because of deduction from sentence for~~
114 ~~good behavior under the Alabama Correctional Incentive Time~~
115 ~~Act, and~~ that the execution of the remainder of the sentence
116 be suspended notwithstanding any provision of the law to the
117 contrary, and that the defendant be placed on probation for
118 ~~the a~~ period ~~upon the terms~~ as determined by the court ~~deems~~
119 ~~best.~~

120 ~~This subsection shall not be construed to impose the~~
121 ~~responsibility for offenders sentenced to a Department of~~
122 ~~Corrections facility upon a local confinement facility not~~
123 ~~operated by the Department of Corrections.~~

124 (b) ~~Unless~~ Other than a defendant who is sentenced to
125 probation, drug court, or a pretrial diversion program, when a
126 defendant is convicted of ~~an offense that constitutes~~ a Class
127 C or Class D felony ~~offense~~ and receives a sentence of not
128 more than 15 years, the judge presiding over the case shall
129 order ~~that:~~

130 (1) In cases where the defendant is convicted of a
131 Class C felony, that the convicted defendant be confined in a
132 prison, jail-type institution, treatment institution, or
133 community corrections program for a ~~Class C felony offense or~~
134 period not exceeding two years, that the execution of the
135 remainder of the sentence be suspended notwithstanding any
136 provision of the law to the contrary, and that the defendant
137 be placed on probation for a period not exceeding three years.

138 (2) In cases where a defendant is convicted of a Class
139 D felony, that the convicted defendant be confined in a
140 consenting community corrections program ~~for a Class D felony~~



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141 ~~offense~~, except as provided in subsection (e), for a period
142 not exceeding two years, ~~in cases where the imposed sentence~~
143 ~~is not more than 15 years, and~~ that the execution of the
144 remainder of the sentence be suspended notwithstanding any
145 provision of the law to the contrary, and that the defendant
146 be placed on probation for a period not exceeding three years
147 ~~and upon such terms as the court deems best. In all cases when~~
148 ~~it is shown that a defendant has been previously convicted of~~
149 ~~any three or more felonies or has been previously convicted of~~
150 ~~any two or more felonies that are Class A or Class B felonies,~~
151 ~~and after such convictions has committed a Class D felony,~~
152 ~~upon conviction, he or she must be punished for a Class C~~
153 ~~felony. This subsection shall not be construed to impose the~~
154 ~~responsibility for offenders sentenced to a Department of~~
155 ~~Corrections facility upon a local confinement facility not~~
156 ~~operated by the Department of Corrections.~~

157 (c) Nothing in this section shall be construed as
158 superseding the sentencing requirements set forth and adopted
159 by the Legislature as prescribed by the Alabama Sentencing
160 Commission's Sentencing Standards.

161 (d) In counties or jurisdictions where no community
162 corrections program exists or resources from a community
163 investment are not complete, a county or jurisdiction may
164 enter into a compact or contract with another county or other
165 counties to create a multi-jurisdiction community corrections
166 facility that meets the needs and resources of each county or
167 jurisdiction or enter into a compact or contract with a county
168 or jurisdiction that has a community corrections program to



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169 provide services, ~~as provided in and~~ pursuant to Article 9 of
170 this chapter.

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

178 (f) Probation may not be granted for a Class A or Class
179 B felony sex offense involving a child as defined in Section
180 15-20A-4, ~~which constitutes a Class A or B felony~~. Otherwise,
181 probation may be granted whether the offense is punishable by
182 fine or imprisonment or both. If an offense is punishable by
183 both fine and imprisonment, the court may impose a fine and
184 place the defendant on probation as to imprisonment. Probation
185 may be limited to one or more counts or indictments, but, in
186 the absence of express limitation, shall extend to the entire
187 sentence and judgment.

188 (g) Regardless of whether the defendant has begun
189 serving the minimum period of confinement ordered under the
190 provisions of ~~subsections~~ subsection (a) ~~or~~, (b), or (1), if
191 the imposed sentence is not more than 20 years, the court
192 shall retain jurisdiction and authority throughout that period
193 to suspend that portion of the minimum sentence that remains
194 and place the defendant on probation, notwithstanding any
195 provision of the law to the contrary, and the court may revoke
196 or modify any condition of probation or may change the period



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197 of probation.

198 (h) While incarcerated or on probation and among the
199 conditions thereof, the defendant may be required to do any of
200 the following:

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

202 (2) ~~To make~~Make restitution or reparation to aggrieved
203 parties for actual damages or loss caused by the offense for
204 which conviction was had~~;~~and.

205 (3) ~~To provide~~Provide for the support of any persons
206 for whose support he or she is legally responsible.

207 (i) Except as otherwise provided pursuant to Section
208 15-18-64, the defendant's liability for any fine or other
209 punishment imposed as to which probation is granted shall be
210 fully discharged by the fulfillment of the terms and
211 conditions of probation.

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

215 (k) No defendant serving a minimum period of
216 confinement ordered under subsection (a) ~~or,~~ (b), or (1) shall
217 be entitled to parole or to deductions from his or her
218 sentence under the Alabama Correctional Incentive Time Act,
219 during the minimum period of confinement so ordered; provided,
220 however, that this subsection shall not be construed to
221 prohibit application of the Alabama Correctional Incentive
222 Time Act to any period of confinement which may be required
223 after the defendant has served ~~such~~the minimum period.

224 (l) When a defendant is convicted of a misdemeanor or



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225 convicted of a municipal ordinance, the judge presiding over
226 the case may impose a sentence in accordance with Section
227 13A-5-7. The court may order a portion of the sentence to be
228 suspended and the defendant be placed on probation for such a
229 period not exceeding two years ~~and upon such terms as the~~
230 ~~court deems best.~~

231 (m) Nothing in this section shall be construed to
232 impose the responsibility for offenders sentenced to a
233 Department of Corrections facility upon a local confinement
234 facility not operated by the Department of Corrections."

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