

1 HB88  
2 204068-1  
3 By Representative Hill  
4 RFD: Judiciary  
5 First Read: 04-FEB-20  
6 PFD: 02/03/2020

SYNOPSIS: Under existing law, a judge may sentence a defendant convicted for a criminal offense to a split sentence under certain circumstances.

Under existing law, a defendant sentenced to a split sentence is required to serve the remainder of the original sentence if his or her probation is revoked.

This bill would provide that a judge may use his or her discretion in determining the length of sentence a defendant must serve if his or her probation is revoked.

This bill would also revise the implementation date for truth-in-sentencing.

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

A BILL  
TO BE ENTITLED  
AN ACT

1  
2           Relating to crimes and offenses; to amend Section  
3 15-18-8, as last amended by Act 2019-344, 2019 Regular  
4 Session, Code of Alabama 1975, to provide that a judge may use  
5 discretion in the length of sentence a defendant must serve if  
6 his or her probation is revoked; to amend Sections 12-25-34,  
7 12-25-34.2, and 12-25-36, Code of Alabama 1975, to revise the  
8 implementation date for truth-in-sentencing; and to make  
9 nonsubstantive, technical revisions to update the existing  
10 code language to current style.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12           Section 1. Section 15-18-8, as last amended by Act  
13 2019-344, 2019 Regular Session, Code of Alabama 1975, is  
14 amended to read as follows:

15           "§15-18-8.

16           "(a) When a defendant is convicted of an offense,  
17 other than a sex offense involving a child as defined in  
18 Section 15-20A-4(26), that constitutes a Class A or Class B  
19 felony offense, and receives a sentence of 20 years or less in  
20 any court having jurisdiction to try offenses against the  
21 State of Alabama and the judge presiding over the case is  
22 satisfied that the ends of justice and the best interests of  
23 the public as well as the defendant will be served thereby, he  
24 or she may order any of the following:

25           "(1) That a defendant convicted of a Class A or  
26 Class B felony ~~be confined in a prison, jail-type institution,~~  
27 ~~or treatment institution for a period not exceeding three~~

1 ~~years in cases~~ where the imposed sentence is not more than 15  
2 years be confined in a prison, jail-type institution, or  
3 treatment institution for a period not exceeding three years,  
4 ~~and~~ that the execution of the remainder of the sentence be  
5 suspended notwithstanding any provision of the law to the  
6 contrary, and that the defendant be placed on probation for  
7 ~~such~~ a period and upon ~~such~~ terms ~~as the~~ determined by the  
8 court ~~deems best~~.

9           "(2) That a defendant convicted of a Class A, or  
10 Class B, ~~or Class C~~ felony with an imposed sentence of greater  
11 than 15 years but not more than 20 years be confined in a  
12 prison, jail-type institution, or treatment institution for a  
13 period of three to five years ~~for Class A or Class B felony~~  
14 ~~convictions and for a period of three years for Class C felony~~  
15 ~~convictions, during which the offender shall not be eligible~~  
16 ~~for parole or release because of deduction from sentence for~~  
17 ~~good behavior under the Alabama Correctional Incentive Time~~  
18 ~~Act, and,~~ that the execution of the remainder of the sentence  
19 be suspended notwithstanding any provision of the law to the  
20 contrary, and that the defendant be placed on probation for  
21 ~~the~~ a period and upon ~~the~~ terms ~~as~~ determined by the court  
22 ~~deems best~~.

23           ~~"This subsection shall not be construed to impose~~  
24 ~~the responsibility for offenders sentenced to a Department of~~  
25 ~~Corrections facility upon a local confinement facility not~~  
26 ~~operated by the Department of Corrections.~~

1           "(3) That a defendant convicted of a Class C felony  
2 with an imposed sentence of greater than 15 years but not more  
3 than 20 years be confined in a prison, jail-type institution,  
4 or treatment institution for a period of three years, that the  
5 execution of the remainder of the sentence be suspended  
6 notwithstanding any provision of the law to the contrary, and  
7 that the defendant be placed on probation for the period and  
8 upon terms determined by the court.

9           "(4) Unless a defendant is sentenced to probation,  
10 drug court, or a pretrial diversion program, that a defendant  
11 convicted of a Class C felony where the imposed sentence is  
12 not greater than 15 years be confined in a prison, jail-type  
13 institution, treatment institution, or community corrections  
14 program for a period not exceeding two years, that the  
15 execution of the remainder of the sentence be suspended  
16 notwithstanding any provision of the law to the contrary, and  
17 that the defendant be placed on probation for a period not  
18 exceeding three years and upon terms determined by the court.

19           ~~"(b) (5) (1) Unless a defendant is sentenced to~~  
20 ~~probation, drug court, or a pretrial diversion program, when~~  
21 ~~that a defendant is convicted of an offense that constitutes a~~  
22 ~~Class C or D felony offense and receives a~~ where the imposed  
23 ~~sentence of~~ is ~~not more than 15 years, the judge presiding~~  
24 ~~over the case shall order that the convicted defendant be~~  
25 ~~confined in a prison, jail-type institution, treatment~~  
26 ~~institution, or community corrections program for a Class C~~  
27 ~~felony offense or in a consenting community corrections~~

1 ~~program for a Class D felony offense~~, except as provided in  
2 subsection (e), for a period not exceeding two years ~~in cases~~  
3 ~~where the imposed sentence is not more than 15 years, and,~~  
4 that the execution of the remainder of the sentence be  
5 suspended notwithstanding any provision of the law to the  
6 contrary, and that the defendant be placed on probation for a  
7 period not exceeding three years and upon ~~such terms as~~  
8 determined by the court deems best.

9           "(2) In all cases when it is shown that a defendant  
10 has been previously convicted of any three or more felonies or  
11 has been previously convicted of any two or more felonies that  
12 are Class A or Class B felonies, and after such convictions  
13 has committed a Class D felony, upon conviction, he or she  
14 must be punished for a Class C felony. ~~This subsection shall~~  
15 ~~not be construed to impose the responsibility for offenders~~  
16 ~~sentenced to a Department of Corrections facility upon a local~~  
17 ~~confinement facility not operated by the Department of~~  
18 ~~Corrections.~~

19           "(6) That a defendant convicted of a misdemeanor,  
20 the execution of the sentence may be suspended notwithstanding  
21 any provision of the law to the contrary and the defendant be  
22 placed on probation for the period not exceeding two years and  
23 upon terms determined by the court.

24           "(b) Subsection (a) shall not be construed to  
25 require a local confinement facility, not operated by the  
26 Department of Corrections, to be responsible for housing  
27 offenders sentenced to the Department of Corrections.

1           "(c) Nothing in this section shall be construed as  
2 superseding the sentencing requirements set forth and adopted  
3 by the Legislature as prescribed by the Alabama Sentencing  
4 Commission's Sentencing Standards.

5           "(d) In counties or jurisdictions where no community  
6 corrections program exists or resources from a community  
7 investment are not complete, a county or jurisdiction may  
8 enter into a compact or contract with another county or other  
9 counties to create a multi-jurisdiction community corrections  
10 facility that meets the needs and resources of each county or  
11 jurisdiction or enter into a compact or contract with a county  
12 or jurisdiction that has a community corrections program to  
13 provide services, as provided in and pursuant to Article 9 of  
14 this chapter.

15           "(e) If no community corrections program exists  
16 within a county or jurisdiction or an existing program has  
17 reached the maximum participation level established by its  
18 community punishment and corrections plan as provided in  
19 Section 15-18-172, and no alternative program options are  
20 available under subsection (e) of Section 15-18-172, a  
21 defendant convicted of an offense that constitutes a Class D  
22 felony may be sentenced to high-intensity probation under the  
23 supervision of the Board of Pardons and Paroles in lieu of  
24 community corrections.

25           "~~(f) Probation may not be granted for a sex offense~~  
26 ~~involving a child as defined in Section 15-20A-4(26), which~~  
27 ~~constitutes a Class A or B felony. Otherwise, probation may be~~

1 granted whether the offense is punishable by fine or  
2 imprisonment or both. If an offense is punishable by both fine  
3 and imprisonment, the court may impose a fine and place the  
4 defendant on probation ~~as to~~ in lieu of imprisonment.  
5 Probation may be limited to one or more counts or indictments,  
6 but, in the absence of express limitation, shall extend to the  
7 entire sentence and judgment.

8 ~~"(g) (1)~~ (g) (1) Regardless of whether the defendant has  
9 begun serving the minimum period of confinement ordered under  
10 ~~the provisions of subsection (a) or (b), if the imposed~~  
11 ~~sentence is not more than 20 years,~~ the court shall retain  
12 jurisdiction and authority throughout that period to suspend  
13 that portion of the minimum sentence that remains and place  
14 the defendant on probation, notwithstanding any provision of  
15 the law to the contrary, and the court may revoke or modify  
16 any condition of probation or may change the period of  
17 probation.

18 "(2) If a defendant's probation is revoked, and the  
19 defendant was sentenced pursuant to subsection (a), the  
20 sentencing judge shall have the discretion to determine the  
21 length of the revocation sentence.

22 "(h) While incarcerated or on probation and among  
23 the conditions ~~thereof~~ of probation, the defendant may be  
24 required to do any of the following:

25 "(1) To pay a fine in one or several sums7.



1           "(2) To ~~make~~ pay restitution or reparation to  
2 aggrieved parties for actual damages or loss caused by the  
3 offense for which conviction was had; ~~and.~~

4           "(3) To provide for the support of any persons for  
5 whose support he or she is legally responsible.

6           "(i) Except as otherwise provided pursuant to  
7 Section 15-18-64, the defendant's liability for any fine or  
8 other punishment imposed as to which probation is granted  
9 shall be fully discharged by the fulfillment of the terms and  
10 conditions of probation.

11           "(j) During any term of probation, the defendant  
12 shall report to the probation authorities at ~~such~~ the time and  
13 place as directed by the judge imposing the sentence.

14           "(k) No defendant serving a minimum period of  
15 confinement ordered under ~~the provisions of subsection (a) or~~  
16 ~~(b)~~ shall be entitled to parole or to deductions from his or  
17 her sentence under the Alabama Correctional Incentive Time  
18 Act, during the minimum period of confinement so ordered;  
19 provided, however, that this subsection shall not be construed  
20 to prohibit application of the Alabama Correctional Incentive  
21 Time Act to any period of confinement which may be required  
22 after the defendant has served ~~such~~ the minimum period.

23           "~~(l) When a defendant is convicted of a misdemeanor~~  
24 ~~of convicted of a municipal ordinance, the judge presiding~~  
25 ~~over the case may impose a sentence in accordance with Section~~  
26 ~~13A-5-7. The court may order a portion of the sentence to be~~  
27 ~~suspended and the defendant be placed on probation for such a~~

1 ~~period not exceeding two years and upon such terms as the~~  
2 ~~court deems best."~~

3 Section 2. Sections 12-25-34, 12-25-34.2, and  
4 12-25-36, Code of Alabama 1975, are amended as follows:

5 "§12-25-34.

6 "(a) Statewide voluntary sentencing standards shall  
7 be developed and presented to the Legislature in stages over a  
8 three-year period as follows:

9 "(1) By July 31, 2003, the commission shall develop  
10 and distribute to all sentencing judges a reference manual  
11 analyzing historical sentencing practices by duration of  
12 sentence and disposition of felony offenders in Alabama. The  
13 reference manual shall indicate those types of offenders  
14 historically most likely to be sentenced to punishments other  
15 than active incarceration where alternatives to active  
16 incarceration are available.

17 "(2) Concurrently with the development and  
18 distribution of the reference manual, the commission shall  
19 develop and begin testing worksheets and voluntary sentencing  
20 standards in selected circuits for selected felony offenses.

21 "(3) The commission shall develop and present the  
22 initial voluntary sentencing standards to the Legislature  
23 before or during the 2006 Regular Session. These standards  
24 shall be introduced in the 2006 Regular Session and shall  
25 become effective on October 1 following the 2006 Regular  
26 Session, if approved by an act of the Legislature passed  
27 during that session. The initial voluntary sentencing

1 standards based on sentences imposed shall apply to  
2 convictions for felony offenses sentenced on or after October  
3 1, 2006, and committed before the effective date of the  
4 voluntary truth-in-sentencing standards.

5 "(4) The commission shall develop and present  
6 truth-in-sentencing standards to the Legislature before or  
7 during the ~~2020~~ 2026 Regular Session. These standards shall be  
8 introduced in the ~~2020~~ 2026 Regular Session and shall become  
9 effective on October 1 following the ~~2020~~ 2026 Regular  
10 Session, if approved by an act of the Legislature. The  
11 voluntary truth-in-sentencing standards shall apply only to  
12 felony offenses committed on or after the effective date of  
13 these standards.

14 "(b) Recommended sentence ranges shall be  
15 established by standards that are based on historical  
16 sentencing practices, adjusted to achieve sentencing goals as  
17 established in Rule 26 of the Alabama Rules of Criminal  
18 Procedure, this chapter, and Section 12-25-31.

19 "(c) Voluntary sentencing standards shall take into  
20 account and include statewide historically based sentence  
21 ranges, including all applicable statutory minimums and  
22 sentence enhancement provisions, including the Habitual Felony  
23 Offender Act, with adjustments made to reflect current  
24 sentencing policies. No additional penalties pursuant to any  
25 sentence enhancement statute shall apply to sentences imposed  
26 based on the voluntary sentencing standards.

1           "(d) Commencing with the 2013 Regular Session, any  
2 modifications to the initial voluntary sentencing standards  
3 made by the commission shall be contained in the annual report  
4 presented to the Governor, the Legislature, the Chief Justice,  
5 and the Attorney General. An annual report containing proposed  
6 modifications shall be presented to the Governor, the  
7 Legislature, the Chief Justice, and the Attorney General at  
8 least forty-five days prior to each regular session of the  
9 Legislature. The modifications presented for nonviolent  
10 offenses shall become effective on October 1 following the  
11 legislative session in which the modifications were presented  
12 unless rejected by an act of the Legislature enacted by bill  
13 during the legislative session. The modifications presented  
14 for violent offenses shall become effective on October 1  
15 following the legislative session in which the modifications  
16 were presented, if approved by an act of the Legislature  
17 enacted by bill during the legislative session in which the  
18 modifications were presented.

19           "§12-25-34.2.

20           "(a) For the purposes of this section, the following  
21 words shall have the following meanings:

22           "(1) AGGRAVATING FACTORS. Substantial and compelling  
23 reasons justifying an exceptional sentence whereby the  
24 sentencing court may impose a departure sentence above the  
25 presumptive sentence recommendation for an offense.  
26 Aggravating factors may result in dispositional or sentence

1 range departures, or both, and shall be stated on the record  
2 by the court.

3 "(2) DEPARTURE. A sentence which departs from the  
4 presumptive sentence recommendation for an offender.

5 "(3) DISPOSITION. The part of the sentencing courts  
6 presumptive sentence recommendation other than sentence  
7 length.

8 "(4) DISPOSITIONAL DEPARTURE. A sentence which  
9 departs from the presumptive sentence recommendation for  
10 disposition of sentence.

11 "(5) MITIGATING FACTORS. Substantial and compelling  
12 reasons justifying an exceptional sentence whereby the  
13 sentencing court may impose a departure sentence below the  
14 presumptive sentence recommendation for an offense. Mitigating  
15 factors may result in disposition or sentence range  
16 departures, or both, and shall be stated on the record by the  
17 court.

18 "(6) NONVIOLENT OFFENSES. As defined in Section  
19 12-25-32.

20 "(7) PRESUMPTIVE SENTENCE RECOMMENDATION. The  
21 recommended sentence range and disposition provided in the  
22 sentencing standards.

23 "(8) SENTENCE RANGE. The sentencing court's  
24 discretionary range of length of sentence as provided and  
25 recommended in the presumptive sentencing recommendation.

1           "(9) SENTENCE RANGE DEPARTURE. A sentence which  
2           departs from the presumptive sentence recommendation as to the  
3           sentence range.

4           "(10) VIOLENT OFFENSES. As defined in Section  
5           12-25-32.

6           "(b) The voluntary sentencing standards as provided  
7           for in Section 12-25-34, as applied to nonviolent offenses  
8           shall become presumptive sentencing standards effective  
9           October 1, 2013, to the extent the modification adopted by the  
10          Alabama Sentencing Commission become effective October 1,  
11          2013. The standards shall be applied by the courts in  
12          sentencing subject to departures as provided herein. To  
13          accomplish this purpose as to the existing initial voluntary  
14          sentencing standards, the Alabama Sentencing Commission shall  
15          adopt modifications to the standards, worksheets, and  
16          instructions to the extent necessary to implement this  
17          provision including, but not limited to, defining aggravating  
18          and mitigating factors that allow for departure from the  
19          presumptive sentencing recommendations. The commission's  
20          modifications shall be presented to the Legislature in the  
21          commission's annual report within the first five legislative  
22          days of the 2013 Regular Session.

23          "(c) The voluntary sentencing standards as provided  
24          for in Section 12-25-34, as applied to the offenses of Robbery  
25          III pursuant to Section 13A-8-43 and Assault II pursuant to  
26          Section 13A-6-21, shall become presumptive sentencing  
27          standards offenses effective October 1, 2021, to the extent

1 the modifications adopted by the Alabama Sentencing Commission  
2 become effective October 1, 2021. The standards shall be  
3 applied by the courts in sentencing subject to departures as  
4 provided in this section. To accomplish this purpose as to the  
5 existing initial voluntary sentencing standards, the Alabama  
6 Sentencing Commission shall adopt modifications to the  
7 standards, worksheets, and instructions to the extent  
8 necessary to implement this provision including, but not  
9 limited to, defining aggravating and mitigating factors that  
10 allow for departure from the presumptive sentencing  
11 recommendations. The commission's modifications shall be  
12 presented to the Legislature in the commission's annual report  
13 at least 45 days prior to the 2021 Regular Session.

14 ~~"(c)~~ (d) Durational and dispositional departures  
15 from the presumptive sentencing standards shall be subject to  
16 appellate review. Along with the modifications provided for in  
17 subsection (b), the Alabama Sentencing Commission shall  
18 recommend a narrowly defined scope of appellate review  
19 applicable to departures from presumptive sentencing  
20 recommendations. The scope of appellate review shall become  
21 effective upon approval by an act of the Legislature enacted  
22 by bill.

23 "§12-25-36.

24 "This section and Sections 12-25-37 and 12-25-38  
25 shall apply only after development and legislative approval of  
26 the proposed truth-in-sentencing standards submitted in ~~2020~~  
27 2026. When a judge sentences based on the voluntary

1 truth-in-sentencing standards, all of the following rules  
2 shall apply:

3 "(1) Sentences imposed based on voluntary  
4 truth-in-sentencing standards pursuant to this article shall  
5 not be subject to any other provision of law concerning the  
6 duration of sentence.

7 "(2) Sentences imposed based on the voluntary  
8 truth-in-sentencing standards shall include both a minimum and  
9 an extended term of sentence including a period of  
10 post-release supervision. The minimum sentence and the  
11 extended sentence shall be specified in the judgment of the  
12 court for those sentences that are imposed in compliance with  
13 the voluntary truth-in-sentencing standards. Sentence  
14 dispositions may include active incarceration, intermediate  
15 punishment, unsupervised probation, or a minimum punishment as  
16 specified in the voluntary truth-in-sentencing standards.

17 "(3) The minimum term of sentence shall be  
18 consistent with the sentence range recommended in the  
19 voluntary truth-in-sentencing standards for the worksheet  
20 score of an offender. No offender sentenced to incarceration  
21 may be released from incarceration before the expiration date  
22 of the minimum term of sentence.

23 "(4) The extended term of sentence shall be a period  
24 of time equal to 120 percent of the minimum term, rounded to  
25 the next highest month, plus a one-year period of post-release  
26 supervision.



1           "(5) The amount of time an offender shall be  
2 incarcerated on the extended term of sentence shall be  
3 determined by the Department of Corrections pursuant to rules  
4 and regulations established by the Department of Corrections  
5 governing an offender's conduct after conviction and sentence.

6           "(6) No sentence of active incarceration may be  
7 suspended.

8           "(7) For any disposition of sentence less than  
9 active incarceration as defined in paragraph a. of subdivision  
10 (2) of Section 12-25-32, the court shall retain jurisdiction  
11 to modify sentence disposition of sentence."

12           Section 3. This act shall become effective  
13 immediately following its passage and approval by the  
14 Governor, or its otherwise becoming law.