

1 SB386
2 138667-8
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 01-MAR-12

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To amend Sections 12-25-3, 12-25-32, 12-25-34, and
12 12-25-36, Code of Alabama 1975, relating to the Sentencing
13 Commission; to provide for definitions to provide for
14 membership of the commission; to delay the presentation of
15 truth-in-sentencing standards for legislative consideration;
16 to require the annual report of the commission to be submitted
17 to the Legislature within the first five legislative days of
18 each regular session; to provide that the recommendations for
19 modifications of the sentencing standards for nonviolent
20 offenders be presented in the commission's annual report would
21 become effective unless the Legislature by act rejects the
22 recommended modifications; and to further provide for
23 presumptive sentencing standards for specified offenses with
24 certain exceptions.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 12-25-3, 12-25-32, 12-25-34, and
2 12-25-36, Code of Alabama 1975, are amended to read as
3 follows:

4 "§12-25-3.

5 "(a) The commission shall consist of the following
6 voting members:

7 "(1) The Chief Justice of the Supreme Court, or at
8 his or her designation, a sitting or retired judge, who shall
9 serve as chair, or at his or her designation another member of
10 the commission shall serve as chair.

11 "(2) The Governor, or his or her designee.

12 "(3) The Attorney General, or his or her designee.

13 "(4) ~~A Three district ~~attorney~~ attorneys~~ appointed
14 by the President of the Alabama District Attorneys'
15 Association.

16 "(5) Two circuit judges, active or retired,
17 appointed by the President of the Alabama Association of
18 Circuit Court Judges.

19 "(6) A district judge, active or retired, appointed
20 by the President of the Alabama Association of District Court
21 Judges.

22 "(7) ~~A victim~~ Two victims of a violent felony or ~~a~~
23 ~~person~~ persons whose immediate family member was a victim of a
24 violent felony, appointed by the Governor.

25 "(8) The Chair of the House Judiciary Committee, or
26 his or her designee who is a member of the House Judiciary
27 Committee.

1 "(9) The Chair of the Senate Judiciary Committee, or
2 his or her designee who is a member of the Senate Judiciary
3 Committee.

4 "(10) A private attorney specializing in criminal
5 defense appointed by the President of the Alabama Criminal
6 Defense Lawyers' Association.

7 "(11) A private attorney specializing in criminal
8 law appointed by the President of the Alabama Lawyer's
9 Association.

10 "(12) A county commissioner appointed by the
11 Governor.

12 "(13) The Commissioner of the Department of
13 Corrections, or his or her designee.

14 "(14) The Chair of the Alabama Board of Pardons and
15 Parole, or his or her designee.

16 "(15) A member of the academic community with a
17 background in criminal justice or corrections policy appointed
18 by the Chief Justice.

19 "(16) A sheriff appointed by the Sheriff's
20 Association.

21 "(17) An active police officer appointed by the
22 Association of Chiefs of Police.

23 "(b) (1) Appointed members of the commission shall
24 serve terms of four years and may be reappointed for a second
25 term. Members of the commission who serve because of their
26 public office or position shall serve only as long as they
27 hold such office or position.

1 "(2) A member appointed to fill a vacancy on the
2 commission which occurs before the expiration of the term for
3 which his or her predecessor was appointed shall serve only
4 for the remainder of such term.

5 "(3) The membership of the commission shall be
6 inclusive and reflect the racial, gender, geographic,
7 urban/rural, and economic diversity of this state.

8 "§12-25-32.

9 "For the purposes of this article, the following
10 terms have the following meanings:

11 "(1) COMMISSION. The Alabama Sentencing Commission,
12 established as a state agency under the Supreme Court by this
13 chapter.

14 "(2) CONTINUUM OF PUNISHMENTS. An array of
15 punishment options, from probation to incarceration, graduated
16 in restrictiveness according to the degree of supervision of
17 the offender including, but not limited to, all of the
18 following:

19 "a. Active incarceration. A sentence, other than an
20 intermediate punishment or unsupervised probation, that
21 requires an offender to serve a sentence of imprisonment. The
22 term includes time served in a work release program operated
23 as a custody option by the Alabama Department of Corrections
24 or in the Supervised Intensive Restitution program of the
25 Department of Corrections pursuant to Article 7, commencing
26 with Section 15-18-110, of Chapter 18 of Title 15.

1 "b. Intermediate punishment. A sentence that may
2 include assignment to any community based punishment program
3 or may include probation with conditions or probation in
4 conjunction with a period of confinement. Intermediate
5 punishments include, but are not limited to, all of the
6 following options:

7 "1. A split sentence pursuant to Section 15-18-8.

8 "2. Assignment to a community punishment and
9 corrections program pursuant to the Alabama Community
10 Punishment and Corrections Act or local acts.

11 "3. Assignment to a community based manual labor
12 work program pursuant to Sections 14-5-30 to 14-5-37,
13 inclusive.

14 "4. Intensive probation supervision pursuant to
15 Section 15-22-56.

16 "5. Cognitive and behavioral training.

17 "6. Community service work.

18 "7. County probation.

19 "8. Day fines or means-based fines.

20 "9. Day reporting.

21 "10. Drug or alcohol testing.

22 "11. Drug court programs.

23 "12. Educational programs.

24 "13. Electronic monitoring.

25 "14. Home confinement or house arrest.

26 "15. Ignition interlock.

27 "16. Intermittent confinement.

- 1 "17. Jail and prison diversion programs.
- 2 "18. Job readiness and work.
- 3 "19. Literacy and basic learning.
- 4 "20. Pretrial diversion programs.
- 5 "21. Residential drug treatment.
- 6 "22. Residential community based punishment programs
- 7 in which the offender is required to spend at least eight
- 8 hours per day, or overnight, within a facility and is required
- 9 to participate in activities such as counseling, treatment,
- 10 social skills training, or employment training, conducted at
- 11 the residential facility or at another specified location.
- 12 "23. Restorative justice.
- 13 "(i) Victim impact panels.
- 14 "(ii) Voluntary victim offender conferencing.
- 15 "(iii) Voluntary victim offender mediation.
- 16 "24. Self-help groups.
- 17 "25. Sobriety or breath alcohol remote monitoring.
- 18 "26. Substance abuse education and treatment.
- 19 "27. Treatment alternatives to street crime (TASC).
- 20 "28. Voice recognition, curfew restriction, or
- 21 employment monitoring.
- 22 "29. Work release, other than those work release
- 23 programs operated by the Alabama Department of Corrections, as
- 24 a custody option.
- 25 "c. Unsupervised probation. A sentence in a criminal
- 26 case that includes a period of probation but does not include

1 supervision, active incarceration, or an intermediate
2 punishment.

3 "d. Post-release supervision. A mandatory period of
4 supervision following sentences of active incarceration as
5 defined in paragraph a. that may include one or more
6 intermediate punishment options.

7 "(3) COURT. Unless otherwise stated, a district or
8 circuit court exercising jurisdiction to sentence felony
9 offenders.

10 "(4) FELONY OFFENSE. A noncapital felony offense.

11 "(5) INITIAL VOLUNTARY STANDARDS. The voluntary
12 sentencing standards effective on October 1, 2006. These
13 standards were based on statewide historic sentences imposed
14 with normative adjustments designed to reflect current
15 sentencing policies.

16 "(6) NONVIOLENT OFFENSE. All offenses which are not
17 violent offenses.

18 "~~(6)~~ (7) NONVIOLENT OFFENDER. Any offender who does
19 not qualify as a violent offender pursuant to subdivision
20 (12).

21 "~~(7)~~ (8) OFFENDER. A person convicted of a noncapital
22 felony offense.

23 "~~(8)~~ (9) RELEASE AUTHORITY. Any public official,
24 agency, or other entity authorized by law to release a
25 sentenced offender from incarceration or other conditions of a
26 sentence.

1 "~~(9)~~(10) RISK ASSESSMENT. An instrument designed to
2 assess an offender's relative risk for reoffending.

3 "~~(10)~~(11) TRUTH-IN-SENTENCING STANDARDS. The
4 ~~voluntary~~ sentencing standards that are scheduled to become
5 effective October 1, ~~2011~~ 2020. These standards shall be based
6 on statewide historic time served for offenses with
7 adjustments designed by the commission to reflect current
8 sentencing policies.

9 "~~(11)~~(12) UNDER SUPERVISION. All offenders under the
10 supervision of any criminal justice agency or program
11 including, but not limited to, any of the following entities:

12 "a. The Alabama Department of Corrections.

13 "b. State or county probation offices.

14 "c. Community corrections programs pursuant to
15 Alabama Community Corrections Act.

16 "d. Jails.

17 "e. State or local law enforcement agencies.

18 "f. Any court.

19 "~~(12)~~(13) VIOLENT OFFENDER. A violent offender is an
20 offender who has been convicted of a violent offense, or who
21 is determined by the trial court judge or a release authority
22 to have demonstrated a propensity for violence, aggression, or
23 weapons related behavior based on the criminal history or
24 behavior of the offender while under supervision of any
25 criminal justice system agency or entity.

26 "~~(13)~~(14) VIOLENT OFFENSE.

1 "a. For the purposes of this article, a violent
2 offense includes each of the following offenses, or any
3 substantially similar offense to those listed in this
4 subdivision created after June 20, 2003:

5 "1. Capital murder pursuant to Section 13A-6-2 and
6 13A-5-40.

7 "2. Murder pursuant to Section 13A-6-2.

8 "3. Manslaughter pursuant to Section 13A-6-3.

9 "4. Criminally negligent homicide pursuant to
10 Section 13A-6-4.

11 "5. Assault I pursuant to Section 13A-6-20.

12 "6. Assault II pursuant to Section 13A-6-21.

13 "7. Compelling street gang membership pursuant to
14 Section 13A-6-26.

15 "8. Kidnapping I pursuant to Section 13A-6-43.

16 "9. Kidnapping II pursuant to Section 13A-6-44.

17 "10. Rape I pursuant to Section 13A-6-61.

18 "11. Rape II pursuant to Section 13A-6-62.

19 "12. Sodomy I pursuant to Section 13A-6-63.

20 "13. Sodomy II pursuant to Section 13A-6-64.

21 "14. Sexual torture pursuant to Section 13A-6-65.1.

22 "15. Sexual abuse I pursuant to Section 13A-6-66.

23 "16. Enticing a child to enter a vehicle for immoral
24 purposes pursuant to Section 13A-6-69.

25 "17. Stalking pursuant to Section 13A-6-90.

26 "18. Aggravated stalking pursuant to Section
27 13A-6-91.

1 "19. Soliciting a child by computer pursuant to
2 Section 13A-6-110.

3 "20. Domestic violence I pursuant to Section
4 13A-6-130.

5 "21. Domestic violence II pursuant to Section
6 13A-6-131.

7 "22. Burglary I pursuant to Section 13A-7-5, unless
8 the offender enters the dwelling without a weapon or other
9 dangerous instrument and does not use or threaten to use a
10 weapon or dangerous instrument against another person during
11 the commission of the offense.

12 "23. Burglary II pursuant to subsection (a) of
13 Section 13A-7-6.

14 "24. Burglary III pursuant to Section 13A-7-7, if
15 the intent is to commit a violent offense.

16 "25. Arson I pursuant to Section 13A-7-41.

17 "26. Criminal possession of explosives pursuant to
18 Section 13A-7-44.

19 "27. Extortion I pursuant to Section 13A-8-14.

20 "28. Robbery I pursuant to Section 13A-8-41.

21 "29. Robbery II pursuant to Section 13A-8-42.

22 "30. Robbery III pursuant to Section 13A-8-43.

23 "31. Pharmacy robbery pursuant to Section 13A-8-51.

24 "32. Terrorist threats pursuant to Section
25 13A-10-15.

26 "33. Escape I pursuant to Section 13A-10-31.

1 "34. Promoting prison contraband I pursuant to
2 Section 13A-10-36, involving a deadly weapon or dangerous
3 instrument.

4 "35. Intimidating a witness pursuant to Section
5 13A-10-123.

6 "36. Intimidating a juror pursuant to Section
7 13A-10-127.

8 "37. Treason pursuant to Section 13A-11-2.

9 "38. Discharging a weapon into an occupied building,
10 dwelling, automobile, etc., pursuant to Section 13A-11-61.

11 "39. Promoting prostitution I pursuant to Section
12 13A-12-111.

13 "40. Production of obscene matter involving a minor
14 pursuant to Section 13A-12-197.

15 "41. Trafficking pursuant to Section 13A-12-231.

16 "42. Child abuse pursuant to Section 26-15-3.

17 "43. Elder abuse pursuant to Section 38-9-7.

18 "44. Terrorism pursuant to Section 13A-10-152.

19 "45. Hindering prosecution for terrorism pursuant to
20 Section 13A-10-154.

21 "46. Any substantially similar offense for which an
22 Alabama offender has been convicted under prior Alabama law or
23 the law of any other state, the District of Columbia, the
24 United States, or any of the territories of the United States.

25 "b. The basis for defining these offenses as violent
26 is that each offense meets at least one of the following
27 criteria:

1 "1. Has as an element, the use, attempted use, or
2 threatened use of a deadly weapon or dangerous instrument or
3 physical force against the person of another.

4 "2. Involves a substantial risk of physical injury
5 against the person of another.

6 "3. Is a nonconsensual sex offense.

7 "4. Is particularly reprehensible.

8 "c. Any attempt, conspiracy, or solicitation to
9 commit a violent offense shall be considered a violent offense
10 for the purposes of this article.

11 "d. Any criminal offense which meets the criteria
12 provided in paragraph b. enacted after 2003.

13 "§12-25-34.

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

17 "(1) By July 31, 2003, the commission shall develop
18 and distribute to all sentencing judges a reference manual
19 analyzing historical sentencing practices by duration of
20 sentence and disposition of felony offenders in Alabama. The
21 reference manual shall indicate those types of offenders
22 historically most likely to be sentenced to punishments other
23 than active incarceration where alternatives to active
24 incarceration are available.

25 "(2) Concurrently with the development and
26 distribution of the reference manual, the commission shall

1 develop and begin testing worksheets and voluntary sentencing
2 standards in selected circuits for selected felony offenses.

3 "(3) The commission shall develop and present the
4 initial voluntary sentencing standards to the Legislature
5 before or during the 2006 Regular Session. These standards
6 shall be introduced in the 2006 Regular Session and shall
7 become effective on October 1 following the 2006 Regular
8 Session, if approved by an act of the Legislature passed
9 during that session. The initial voluntary sentencing
10 standards based on sentences imposed shall apply to
11 convictions for felony offenses sentenced on or after October
12 1, 2006, and committed before the effective date of the
13 voluntary truth-in-sentencing standards.

14 "(4) The commission shall develop and present
15 ~~voluntary~~ truth-in-sentencing standards to the Legislature
16 before or during the ~~2011~~ 2020 Regular Session. These
17 standards shall be introduced in the ~~2011~~ 2020 Regular Session
18 and shall become effective on October 1 following the ~~2011~~
19 2020 Regular Session, if approved by an act of the Legislature
20 ~~passed during that session~~. The voluntary truth-in-sentencing
21 standards shall apply only to felony offenses committed on or
22 after the effective date of these standards.

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

1 "(c) Voluntary sentencing standards shall take into
2 account and include statewide historically based sentence
3 ranges, including all applicable statutory minimums and
4 sentence enhancement provisions, including the Habitual Felony
5 Offender Act, with adjustments made to reflect current
6 sentencing policies. No additional penalties pursuant to any
7 sentence enhancement statute shall apply to sentences imposed
8 based on the voluntary sentencing standards.

9 "~~After adoption of the initial voluntary~~
10 ~~standards and the voluntary truth-in-sentencing standards~~
11 Commencing with the 2013 Regular Session, any modifications to
12 the initial voluntary sentencing standards made by the
13 commission shall be contained in the annual report presented
14 to the Governor, the Legislature, the Chief Justice, and the
15 Attorney General. An annual report containing proposed
16 modifications shall be presented to the Governor, the
17 Legislature, the Chief Justice, and the Attorney General
18 ~~before or during~~ within the first five legislative days of
19 each regular session of the Legislature. The modifications
20 presented for nonviolent offenses shall become effective on
21 October 1 following the legislative session in which the
22 modifications were presented unless rejected by an act of the
23 Legislature enacted by bill during the legislative session.
24 The modifications ~~shall be introduced during that regular~~
25 ~~session and~~ presented for violent offenses shall become
26 effective on October 1 following the legislative session in
27 which the modifications were ~~introduced~~ presented, if approved

1 by an act of the Legislature ~~passed~~ enacted by bill during the
2 legislative session in which the modifications were ~~introduced~~
3 presented.

4 "§12-25-36.

5 "This section and Sections 12-25-37 and 12-25-38
6 shall apply only after development and legislative approval of
7 the proposed truth-in-sentencing standards submitted in ~~2011~~
8 2020. When a judge sentences based on the voluntary
9 truth-in-sentencing standards, all of the following rules
10 shall apply:

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

15 "(2) Sentences imposed based on the voluntary
16 truth-in-sentencing standards shall include both a minimum and
17 an extended term of sentence including a period of
18 post-release supervision. The minimum sentence and the
19 extended sentence shall be specified in the judgment of the
20 court for those sentences that are imposed in compliance with
21 the voluntary truth-in-sentencing standards. Sentence
22 dispositions may include active incarceration, intermediate
23 punishment, unsupervised probation, or a minimum punishment as
24 specified in the voluntary truth-in-sentencing standards.

25 "(3) The minimum term of sentence shall be
26 consistent with the sentence range recommended in the
27 voluntary truth-in-sentencing standards for the worksheet

1 score of an offender. No offender sentenced to incarceration
2 may be released from incarceration before the expiration date
3 of the minimum term of sentence.

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

8 "(5) The amount of time an offender shall be
9 incarcerated on the extended term of sentence shall be
10 determined by the Department of Corrections pursuant to rules
11 and regulations established by the Department of Corrections
12 governing an offender's conduct after conviction and sentence.

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

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

19 Section 2. (a) For the purposes of this section, the
20 following words shall have the following meanings:

21 (1) AGGRAVATING FACTORS. Substantial and compelling
22 reasons justifying an exceptional sentence whereby the
23 sentencing court may impose a departure sentence above the
24 presumptive sentence recommendation for an offense.
25 Aggravating factors may result in dispositional or sentence
26 range departures, or both, and shall be stated on the record
27 by the court.

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

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

6 (4) DISPOSITIONAL DEPARTURE. A sentence which
7 departs from the presumptive sentence recommendation for
8 disposition of sentence.

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

16 (6) NONVIOLENT OFFENSES. As defined in Section
17 12-25-32, Code of Alabama 1975.

18 (7) PRESUMPTIVE SENTENCE RECOMMENDATION. The
19 recommended sentence range and disposition provided in the
20 sentencing standards.

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

24 (9) SENTENCE RANGE DEPARTURE. A sentence which
25 departs from the presumptive sentence recommendation as to the
26 sentence range.

1 (10) VIOLENT OFFENSES. As defined in Section
2 12-25-32, Code of Alabama 1975.

3 (b) The voluntary sentencing standards as provided
4 for in Section 12-25-34, Code of Alabama 1975, as applied to
5 nonviolent offense shall become presumptive sentencing
6 standards effective October 1, 2013, to the extent the
7 modification adopted by the Alabama Sentencing Commission
8 become effective October 1, 2013. The standards shall be
9 applied by the courts in sentencing subject to departures as
10 provided herein. To accomplish this purpose as to the existing
11 initial voluntary sentencing standards, the Alabama Sentencing
12 Commission shall adopt modifications to the standards,
13 worksheets, and instructions to the extent necessary to
14 implement this provision including, but not limited to,
15 defining aggravating and mitigating factors that allow for
16 departure from the presumptive sentencing recommendations. The
17 commission's modifications shall be presented to the
18 Legislature in the commission's annual report within the first
19 five legislative days of the 2013 Regular Session.

20 (c) Durational and dispositional departures from the
21 presumptive sentencing standards shall be subject to appellate
22 review. Along with the modifications provided for in
23 subsection (b), the Alabama Sentencing Commission shall
24 recommend a narrowly defined scope of appellate review
25 applicable to departures from presumptive sentencing
26 recommendations. The scope of appellate review shall become

1 effective upon approval by an act of the Legislature enacted
2 by bill.

3 Section 3. All laws or parts of laws which conflict
4 with this act are repealed.

5 Section 4. This act shall become effective
6 immediately following its passage and approval by the
7 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 01-MAR-12

Read for the second time and placed on the calen-
dar with 1 substitute and..... 08-MAR-12

Read for the third time and passed as amended 22-MAR-12

Yeas 28
Nays 1

Patrick Harris
Secretary