

1 SB386
2 138667-9
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 01-MAR-12

1 SB386

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4 ENROLLED, An Act,

5 To amend Sections 12-25-3, 12-25-32, 12-25-34, and
6 12-25-36, Code of Alabama 1975, relating to the Sentencing
7 Commission; to provide for definitions to provide for
8 membership of the commission; to delay the presentation of
9 truth-in-sentencing standards for legislative consideration;
10 to require the annual report of the commission to be submitted
11 to the Legislature within the first five legislative days of
12 each regular session; to provide that the recommendations for
13 modifications of the sentencing standards for nonviolent
14 offenders be presented in the commission's annual report would
15 become effective unless the Legislature by act rejects the
16 recommended modifications; and to further provide for
17 presumptive sentencing standards for specified offenses with
18 certain exceptions.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Sections 12-25-3, 12-25-32, 12-25-34, and
21 12-25-36, Code of Alabama 1975, are amended to read as
22 follows:

23 "§12-25-3.

24 "(a) The commission shall consist of the following
25 voting members:

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

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

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

7 "(4) Three district attorneys appointed by the
8 President of the Alabama District Attorneys' Association.

9 "(5) Two circuit judges, active or retired,
10 appointed by the President of the Alabama Association of
11 Circuit Court Judges.

12 "(6) A district judge, active or retired, appointed
13 by the President of the Alabama Association of District Court
14 Judges.

15 "(7) Two victims of a violent felony or persons
16 whose immediate family member was a victim of a violent
17 felony, appointed by the Governor.

18 "(8) The Chair of the House Judiciary Committee, or
19 his or her designee who is a member of the House Judiciary
20 Committee.

21 "(9) The Chair of the Senate Judiciary Committee, or
22 his or her designee who is a member of the Senate Judiciary
23 Committee.

1 "(10) A private attorney specializing in criminal
2 defense appointed by the President of the Alabama Criminal
3 Defense Lawyers' Association.

4 "(11) A private attorney specializing in criminal
5 law appointed by the President of the Alabama Lawyer's
6 Association.

7 "(12) A county commissioner appointed by the
8 Governor.

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

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

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

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

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

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

1 Department of Corrections pursuant to Article 7, commencing
2 with Section 15-18-110, of Chapter 18 of Title 15.

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

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

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

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

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

18 "5. Cognitive and behavioral training.

19 "6. Community service work.

20 "7. County probation.

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

22 "9. Day reporting.

23 "10. Drug or alcohol testing.

24 "11. Drug court programs.

25 "12. Educational programs.

- 1 "13. Electronic monitoring.
- 2 "14. Home confinement or house arrest.
- 3 "15. Ignition interlock.
- 4 "16. Intermittent confinement.
- 5 "17. Jail and prison diversion programs.
- 6 "18. Job readiness and work.
- 7 "19. Literacy and basic learning.
- 8 "20. Pretrial diversion programs.
- 9 "21. Residential drug treatment.
- 10 "22. Residential community based punishment programs
- 11 in which the offender is required to spend at least eight
- 12 hours per day, or overnight, within a facility and is required
- 13 to participate in activities such as counseling, treatment,
- 14 social skills training, or employment training, conducted at
- 15 the residential facility or at another specified location.
- 16 "23. Restorative justice.
- 17 "(i) Victim impact panels.
- 18 "(ii) Voluntary victim offender conferencing.
- 19 "(iii) Voluntary victim offender mediation.
- 20 "24. Self-help groups.
- 21 "25. Sobriety or breath alcohol remote monitoring.
- 22 "26. Substance abuse education and treatment.
- 23 "27. Treatment alternatives to street crime (TASC).
- 24 "28. Voice recognition, curfew restriction, or
- 25 employment monitoring.

1 "29. Work release, other than those work release
2 programs operated by the Alabama Department of Corrections, as
3 a custody option.

4 "c. Unsupervised probation. A sentence in a criminal
5 case that includes a period of probation but does not include
6 supervision, active incarceration, or an intermediate
7 punishment.

8 "d. Post-release supervision. A mandatory period of
9 supervision following sentences of active incarceration as
10 defined in paragraph a. that may include one or more
11 intermediate punishment options.

12 "(3) COURT. Unless otherwise stated, a district or
13 circuit court exercising jurisdiction to sentence felony
14 offenders.

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

16 "(5) INITIAL VOLUNTARY STANDARDS. The voluntary
17 sentencing standards effective on October 1, 2006. These
18 standards were based on statewide historic sentences imposed
19 with normative adjustments designed to reflect current
20 sentencing policies.

21 "(6) NONVIOLENT OFFENSE. All offenses which are not
22 violent offenses.

23 "(7) NONVIOLENT OFFENDER. Any offender who does not
24 qualify as a violent offender pursuant to subdivision (12).

1 "(8) OFFENDER. A person convicted of a noncapital
2 felony offense.

3 "(9) RELEASE AUTHORITY. Any public official, agency,
4 or other entity authorized by law to release a sentenced
5 offender from incarceration or other conditions of a sentence.

6 "(10) RISK ASSESSMENT. An instrument designed to
7 assess an offender's relative risk for reoffending.

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

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

16 "a. The Alabama Department of Corrections.

17 "b. State or county probation offices.

18 "c. Community corrections programs pursuant to
19 Alabama Community Corrections Act.

20 "d. Jails.

21 "e. State or local law enforcement agencies.

22 "f. Any court.

23 "(13) VIOLENT OFFENDER. A violent offender is an
24 offender who has been convicted of a violent offense, or who
25 is determined by the trial court judge or a release authority

1 to have demonstrated a propensity for violence, aggression, or
2 weapons related behavior based on the criminal history or
3 behavior of the offender while under supervision of any
4 criminal justice system agency or entity.

5 "(14) VIOLENT OFFENSE.

6 "a. For the purposes of this article, a violent
7 offense includes each of the following offenses, or any
8 substantially similar offense to those listed in this
9 subdivision created after June 20, 2003:

10 "1. Capital murder pursuant to Section 13A-6-2 and
11 13A-5-40.

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

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

14 "4. Criminally negligent homicide pursuant to
15 Section 13A-6-4.

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

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

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

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

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

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

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

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

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

- 1 "14. Sexual torture pursuant to Section 13A-6-65.1.
- 2 "15. Sexual abuse I pursuant to Section 13A-6-66.
- 3 "16. Enticing a child to enter a vehicle for immoral
- 4 purposes pursuant to Section 13A-6-69.
- 5 "17. Stalking pursuant to Section 13A-6-90.
- 6 "18. Aggravated stalking pursuant to Section
- 7 13A-6-91.
- 8 "19. Soliciting a child by computer pursuant to
- 9 Section 13A-6-110.
- 10 "20. Domestic violence I pursuant to Section
- 11 13A-6-130.
- 12 "21. Domestic violence II pursuant to Section
- 13 13A-6-131.
- 14 "22. Burglary I pursuant to Section 13A-7-5.
- 15 "23. Burglary II pursuant to Section 13A-7-6.
- 16 "24. Burglary III pursuant to Section 13A-7-7.
- 17 "25. Arson I pursuant to Section 13A-7-41.
- 18 "26. Criminal possession of explosives pursuant to
- 19 Section 13A-7-44.
- 20 "27. Extortion I pursuant to Section 13A-8-14.
- 21 "28. Robbery I pursuant to Section 13A-8-41.
- 22 "29. Robbery II pursuant to Section 13A-8-42.
- 23 "30. Robbery III pursuant to Section 13A-8-43.
- 24 "31. Pharmacy robbery pursuant to Section 13A-8-51.

1 "32. Terrorist threats pursuant to Section
2 13A-10-15.

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

4 "34. Promoting prison contraband I pursuant to
5 Section 13A-10-36, involving a deadly weapon or dangerous
6 instrument.

7 "35. Intimidating a witness pursuant to Section
8 13A-10-123.

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

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

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

14 "39. Promoting prostitution I pursuant to Section
15 13A-12-111.

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

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

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

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

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

22 "45. Hindering prosecution for terrorism pursuant to
23 Section 13A-10-154.

24 "46. Any substantially similar offense for which an
25 Alabama offender has been convicted under prior Alabama law or

1 the law of any other state, the District of Columbia, the
2 United States, or any of the territories of the United States.

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

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

9 "2. Involves a substantial risk of physical injury
10 against the person of another.

11 "3. Is a nonconsensual sex offense.

12 "4. Is particularly reprehensible.

13 "c. Any attempt, conspiracy, or solicitation to
14 commit a violent offense shall be considered a violent offense
15 for the purposes of this article.

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

18 "§12-25-34.

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

22 "(1) By July 31, 2003, the commission shall develop
23 and distribute to all sentencing judges a reference manual
24 analyzing historical sentencing practices by duration of
25 sentence and disposition of felony offenders in Alabama. The

1 reference manual shall indicate those types of offenders
2 historically most likely to be sentenced to punishments other
3 than active incarceration where alternatives to active
4 incarceration are available.

5 "(2) Concurrently with the development and
6 distribution of the reference manual, the commission shall
7 develop and begin testing worksheets and voluntary sentencing
8 standards in selected circuits for selected felony offenses.

9 "(3) The commission shall develop and present the
10 initial voluntary sentencing standards to the Legislature
11 before or during the 2006 Regular Session. These standards
12 shall be introduced in the 2006 Regular Session and shall
13 become effective on October 1 following the 2006 Regular
14 Session, if approved by an act of the Legislature passed
15 during that session. The initial voluntary sentencing
16 standards based on sentences imposed shall apply to
17 convictions for felony offenses sentenced on or after October
18 1, 2006, and committed before the effective date of the
19 voluntary truth-in-sentencing standards.

20 "(4) The commission shall develop and present
21 truth-in-sentencing standards to the Legislature before or
22 during the 2020 Regular Session. These standards shall be
23 introduced in the 2020 Regular Session and shall become
24 effective on October 1 following the 2020 Regular Session, if
25 approved by an act of the Legislature. The voluntary

1 truth-in-sentencing standards shall apply only to felony
2 offenses committed on or after the effective date of these
3 standards.

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

9 "(c) Voluntary sentencing standards shall take into
10 account and include statewide historically based sentence
11 ranges, including all applicable statutory minimums and
12 sentence enhancement provisions, including the Habitual Felony
13 Offender Act, with adjustments made to reflect current
14 sentencing policies. No additional penalties pursuant to any
15 sentence enhancement statute shall apply to sentences imposed
16 based on the voluntary sentencing standards.

17 "(d) Commencing with the 2013 Regular Session, any
18 modifications to the initial voluntary sentencing standards
19 made by the commission shall be contained in the annual report
20 presented to the Governor, the Legislature, the Chief Justice,
21 and the Attorney General. An annual report containing proposed
22 modifications shall be presented to the Governor, the
23 Legislature, the Chief Justice, and the Attorney General at
24 least forty-five days prior to each regular session of the
25 Legislature. The modifications presented for nonviolent

1 offenses shall become effective on October 1 following the
2 legislative session in which the modifications were presented
3 unless rejected by an act of the Legislature enacted by bill
4 during the legislative session. The modifications presented
5 for violent offenses shall become effective on October 1
6 following the legislative session in which the modifications
7 were presented, if approved by an act of the Legislature
8 enacted by bill during the legislative session in which the
9 modifications were presented.

10 "§12-25-36.

11 "This section and Sections 12-25-37 and 12-25-38
12 shall apply only after development and legislative approval of
13 the proposed truth-in-sentencing standards submitted in 2020.
14 When a judge sentences based on the voluntary
15 truth-in-sentencing standards, all of the following rules
16 shall apply:

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

21 "(2) Sentences imposed based on the voluntary
22 truth-in-sentencing standards shall include both a minimum and
23 an extended term of sentence including a period of
24 post-release supervision. The minimum sentence and the
25 extended sentence shall be specified in the judgment of the

1 court for those sentences that are imposed in compliance with
2 the voluntary truth-in-sentencing standards. Sentence
3 dispositions may include active incarceration, intermediate
4 punishment, unsupervised probation, or a minimum punishment as
5 specified in the voluntary truth-in-sentencing standards.

6 "(3) The minimum term of sentence shall be
7 consistent with the sentence range recommended in the
8 voluntary truth-in-sentencing standards for the worksheet
9 score of an offender. No offender sentenced to incarceration
10 may be released from incarceration before the expiration date
11 of the minimum term of sentence.

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

16 "(5) The amount of time an offender shall be
17 incarcerated on the extended term of sentence shall be
18 determined by the Department of Corrections pursuant to rules
19 and regulations established by the Department of Corrections
20 governing an offender's conduct after conviction and sentence.

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

23 "(7) For any disposition of sentence less than
24 active incarceration as defined in paragraph a. of subdivision

1 (2) of Section 12-25-32, the court shall retain jurisdiction
2 to modify sentence disposition of sentence."

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

5 (1) AGGRAVATING FACTORS. Substantial and compelling
6 reasons justifying an exceptional sentence whereby the
7 sentencing court may impose a departure sentence above the
8 presumptive sentence recommendation for an offense.

9 Aggravating factors may result in dispositional or sentence
10 range departures, or both, and shall be stated on the record
11 by the court.

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

14 (3) DISPOSITION. The part of the sentencing courts
15 presumptive sentence recommendation other than sentence
16 length.

17 (4) DISPOSITIONAL DEPARTURE. A sentence which
18 departs from the presumptive sentence recommendation for
19 disposition of sentence.

20 (5) MITIGATING FACTORS. Substantial and compelling
21 reasons justifying an exceptional sentence whereby the
22 sentencing court may impose a departure sentence below the
23 presumptive sentence recommendation for an offense. Mitigating
24 factors may result in disposition or sentence range

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

3 (6) NONVIOLENT OFFENSES. As defined in Section
4 12-25-32, Code of Alabama 1975.

5 (7) PRESUMPTIVE SENTENCE RECOMMENDATION. The
6 recommended sentence range and disposition provided in the
7 sentencing standards.

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

11 (9) SENTENCE RANGE DEPARTURE. A sentence which
12 departs from the presumptive sentence recommendation as to the
13 sentence range.

14 (10) VIOLENT OFFENSES. As defined in Section
15 12-25-32, Code of Alabama 1975.

16 (b) The voluntary sentencing standards as provided
17 for in Section 12-25-34, Code of Alabama 1975, as applied to
18 nonviolent offenses shall become presumptive sentencing
19 standards effective October 1, 2013, to the extent the
20 modification adopted by the Alabama Sentencing Commission
21 become effective October 1, 2013. The standards shall be
22 applied by the courts in sentencing subject to departures as
23 provided herein. To accomplish this purpose as to the existing
24 initial voluntary sentencing standards, the Alabama Sentencing
25 Commission shall adopt modifications to the standards,

1 worksheets, and instructions to the extent necessary to
2 implement this provision including, but not limited to,
3 defining aggravating and mitigating factors that allow for
4 departure from the presumptive sentencing recommendations. The
5 commission's modifications shall be presented to the
6 Legislature in the commission's annual report within the first
7 five legislative days of the 2013 Regular Session.

8 (c) Durational and dispositional departures from the
9 presumptive sentencing standards shall be subject to appellate
10 review. Along with the modifications provided for in
11 subsection (b), the Alabama Sentencing Commission shall
12 recommend a narrowly defined scope of appellate review
13 applicable to departures from presumptive sentencing
14 recommendations. The scope of appellate review shall become
15 effective upon approval by an act of the Legislature enacted
16 by bill.

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

19 Section 4. This act shall become effective
20 immediately following its passage and approval by the
21 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB386

Senate 22-MAR-12

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Amended and passed 09-MAY-12

Senate concurred in House amendment 09-MAY-12

By: Senator Ward