

1 HB416  
2 96169-1  
3 By Representative Black  
4 RFD: Judiciary  
5 First Read: 14-FEB-08

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8 SYNOPSIS: Under existing law, there is no prohibition  
9 on the imposition of consecutive split sentences or  
10 the stacking of split sentences to require a  
11 defendant to serve more than one mandatory  
12 imprisonment portion of a split sentence for more  
13 than one offense.

14 This bill would expressly prohibit  
15 sentencing a defendant to serve multiple  
16 consecutive incarceration portions of split  
17 sentences upon conviction for more than one  
18 offense.

19 This bill would clarify that for a split  
20 sentence of 15 years or less, during the maximum  
21 term of imprisonment imposed, which is up to three  
22 years, a defendant would not be eligible for good  
23 time or parole.

24 This bill also eliminates the provisions  
25 relating to boot camp in the split sentencing  
26 statute since they are no longer in operation.



1 served on probation upon successfully completing a  
2 court-ordered residential drug or alcohol treatment program.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 15-18-8 and 15-22-54 of the Code  
5 of Alabama 1975, are amended to read as follows:

6 "§15-18-8.

7 "(a) When a defendant is convicted of an offense,  
8 other than a criminal sex offense involving a child as defined  
9 in Section 15-20-21(5), which constitutes a Class A or B  
10 felony and receives a sentence of 20 years or less in any  
11 court having jurisdiction to try offenses against the State of  
12 Alabama and the judge presiding over the case is satisfied  
13 that the ends of justice and the best interests of the public  
14 as well as the defendant will be served thereby,  
15 notwithstanding any law to the contrary, he or she may order  
16 the defendant to serve a sentence as follows:

17 "(1) ~~That~~ When the imposed sentence is not more than  
18 15 years, ~~the convicted defendant sentencing judge may order~~  
19 the convicted defendant to be confined in a prison, jail-type  
20 institution, or treatment institution for a period not  
21 exceeding three years in cases where the imposed sentence is  
22 not more than 15 years, during which the defendant shall not  
23 be eligible for parole or release because of deduction from  
24 sentence for good behavior under the Alabama Correctional  
25 Incentive Time Act, and ~~that~~ the execution of the remainder of  
26 the sentence may be suspended ~~notwithstanding any provision of~~  
27 ~~the law to the contrary~~ and ~~that~~ the defendant may be placed

1 on probation for ~~such~~ the period and upon ~~such~~ the terms as  
2 the court deems best.

3 "(2) When the ~~In cases involving an~~ imposed sentence  
4 ~~of~~ is greater than 15 years, but not more than 20 years, the  
5 sentencing judge may order ~~that~~ the convicted defendant to be  
6 confined in a prison, jail-type institution, or treatment  
7 institution for a period not exceeding five years, but not  
8 less than three years, during which the offender shall not be  
9 eligible for parole or release because of deduction from  
10 sentence for good behavior under the Alabama Correctional  
11 Incentive Time Act, and that the remainder of the sentence be  
12 suspended notwithstanding any provision of the law to the  
13 contrary and that the defendant be placed on probation for the  
14 period upon the terms as the court deems best.

15 "~~(2) That the convicted defendant may be confined,~~  
16 ~~upon consultation with the Commissioner of the Alabama~~  
17 ~~Department of Corrections (hereinafter called department) in a~~  
18 ~~disciplinary, rehabilitation, conservation camp program~~  
19 ~~(hereinafter called program) of the department. The convicted~~  
20 ~~defendant shall be received into the department in accordance~~  
21 ~~with applicable department rules and regulations and may be~~  
22 ~~placed in the program after completion of this initial~~  
23 ~~reception. The program shall be not less than 90 days nor more~~  
24 ~~than 180 days in duration and shall be operated in accordance~~  
25 ~~with department rules and regulations and as otherwise~~  
26 ~~provided for by law. The commissioner of the department or his~~  
27 ~~or her designee shall report to the sentencing court of each~~

1 convicted defendant whether or not the convicted defendant  
2 completes or does not complete the program with any additional  
3 information that the commissioner or his or her designee shall  
4 wish to provide the court. Upon receipt of this report, the  
5 sentencing court may, upon its own order, suspend the  
6 remainder of the sentence and place the convicted defendant on  
7 probation as provided herein or order the convicted defendant  
8 to be confined to a prison, jail-type institution, or  
9 treatment institution for a period not to exceed three years  
10 and that the execution of the remainder of the sentence be  
11 suspended and the defendant be placed on probation for such  
12 period and upon such terms as the court deems best. If the  
13 sentencing court imposes additional confinement, as outlined  
14 above, credit shall be given for the actual time spent by the  
15 convicted defendant in the program. Conviction of an offense  
16 or prior offense of murder, rape first degree, kidnapping  
17 first degree, sodomy first degree, enticing a child to enter  
18 vehicle, house, etc., for immoral purposes, arson first  
19 degree, robbery first degree, and sentencing of life without  
20 parole will not be eligible for this program. It shall be the  
21 duty of the joint prison committee as established by Sections  
22 29-2-20 to 29-2-22, inclusive, to annually review the  
23 operation of the program and report their findings to the  
24 Alabama Legislature.

25 "(3) Notwithstanding any law to the contrary, a  
26 defendant may not be sentenced to serve consecutive

1 incarceration portions of split sentences for multiple  
2 convictions.

3 "(b) Probation may not be granted for a criminal sex  
4 offense involving a child as defined in Section 15-20-21(5),  
5 which constitutes a Class A or B felony. Otherwise, probation  
6 may be granted whether the offense is punishable by fine or  
7 imprisonment or both. If an offense is punishable by both fine  
8 and imprisonment, the court may impose a fine and place the  
9 defendant on probation as to imprisonment. ~~Probation may be~~  
10 ~~limited to one or more counts or indictments, but, in the~~  
11 ~~absence of express limitation, shall extend to the entire~~  
12 ~~sentence and judgment. The probation portion of a split~~  
13 sentence shall not exceed five years.

14 "(c) Regardless of whether the defendant has begun  
15 serving the minimum period of confinement ordered under the  
16 provisions of subsection (a), the court shall retain  
17 jurisdiction and authority throughout the period to suspend  
18 that portion of the minimum sentence that remains and place  
19 the defendant on probation, notwithstanding any provision of  
20 the law to the contrary. While the defendant is serving either  
21 the incarceration or probation portion of his or her split  
22 sentence, and the court may revoke probation or modify any  
23 condition of probation or may change the period of probation.  
24 Upon determination of a violation of a condition of probation,  
25 either prior to or after serving a term of incarceration, the  
26 court may impose any of the sanctions authorized in Section  
27 15-22-54, which may include revoking the defendant's probation

1 and incarcerating the defendant for any portion of his or her  
2 suspended sentence.

3 "(d) While incarcerated or on probation and among  
4 the conditions thereof, the defendant may be required to do  
5 all of the following:

6 "(1) To pay a fine in one or several sums~~7.~~

7 "(2) To make restitution or reparation to aggrieved  
8 parties for actual damages or loss caused by the offense for  
9 which conviction was had~~7~~~~and.~~

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

12 "(4) To participate in and complete a substance  
13 abuse or community punishment and corrections program, which  
14 may include residential facilities operated by the Board of  
15 Pardons and Paroles.

16 "(e) The defendant's liability for any fine or other  
17 punishment imposed as to which probation is granted shall be  
18 fully discharged by the fulfillment of the terms and  
19 conditions of probation.

20 "(f) During any term of probation, the defendant  
21 shall report to the probation authorities at such time and  
22 place as directed by the judge imposing sentence.

23 "(g) No defendant serving a minimum period of  
24 confinement ordered under the provisions of subsection (a)  
25 shall be entitled to parole or to deductions from his or her  
26 sentence under the Alabama Correctional Incentive Time Act,  
27 during the minimum period of confinement so ordered; provided,

1       however, that this subsection shall not be construed to  
2       prohibit application of the Alabama Correctional Incentive  
3       Time Act to any period of confinement which may be required  
4       after the defendant has served such minimum period.

5               "§15-22-54.

6               "(a) The period of probation or suspension of  
7       execution of sentence shall be determined by the court, ~~and,~~  
8       notwithstanding any law to the contrary, the period of  
9       probation or suspension may be amended, modified, continued,  
10      extended, or terminated while the defendant is serving any  
11      portion of his or her sentence and prior to his or her  
12      discharge. However, in no case, including a sentence imposed  
13      pursuant to Section 15-18-8, shall the maximum probation  
14      period of a defendant guilty of a misdemeanor exceed two  
15      years, nor shall the maximum probation period of a defendant  
16      guilty of a felony exceed five years. When the conditions of  
17      probation or suspension of sentence are fulfilled, the court  
18      shall, by order duly entered on its minutes, discharge the  
19      defendant.

20              "(b) The court granting probation may, upon the  
21      recommendation of the officer supervising the probationer,  
22      terminate all authority and supervision over the probationer  
23      prior to the declared date of completion of probation upon  
24      showing a continued satisfactory compliance with the  
25      conditions of probation over a sufficient portion of the  
26      period of the probation.

1           "(c) At any time during the period of probation or  
2 suspension of execution of sentence, the court may issue a  
3 warrant and cause the defendant to be arrested for violating  
4 any of the conditions of probation or suspension of sentence.

5           "(d) Except as provided in Chapter 15 of Title 12,  
6 any probation officer, police officer, or other officer with  
7 power of arrest, when requested by the probation officer, may  
8 arrest a probationer without a warrant. In case of an arrest  
9 without a warrant, the arresting officer shall have a written  
10 statement by the probation officer setting forth that the  
11 probationer has, in his or her judgment, violated the  
12 conditions of probation, and the statement shall be sufficient  
13 warrant for the detention of the probationer in the county  
14 jail or other appropriate place of detention until the  
15 probationer is brought before the court. The probation officer  
16 shall forthwith report the arrest and detention to the court  
17 and submit in writing a report showing in what manner the  
18 probationer has violated probation.

19           "(1) If the defendant violates a condition of  
20 probation or suspension of execution of sentence, the court,  
21 after a hearing, may implement one or more of the following  
22 options:

23           "a. Continue the existing probation or suspension of  
24 execution of sentence.

25           "b. Issue a formal or informal warning to the  
26 probationer that further violations may result in revocation  
27 of probation or suspension of execution of sentence.

1 "c. Conduct a formal or informal conference with the  
2 probationer to reemphasize the necessity of compliance with  
3 the conditions of probation.

4 "d. Modify the conditions of probation or suspension  
5 of execution of sentence, which conditions may include the  
6 addition of short periods of confinement.

7 "e. Revoke the probation or suspension of execution  
8 of sentence.

9 "(2) If the court revokes probation, it may, after a  
10 hearing, ~~impose the sentence that was suspended at the~~  
11 ~~original hearing or any lesser sentence, including any option~~  
12 ~~listed in subdivision (1).~~ depending on the seriousness of the  
13 violation, do any of the following:

14 "a. Impose the sentence that was suspended at the  
15 original hearing.

16 "b. Impose a lesser sentence or any option listed in  
17 subdivision (1).

18 "c. Order the defendant to participate in a  
19 substance abuse or community corrections program.

20 "(3) If revocation results in a sentence of  
21 confinement, credit shall be given for all time spent in  
22 custody prior to revocation. Full credit shall be awarded for  
23 full-time confinement in facilities such as county jail, state  
24 prison, and boot camp. Full credit shall be awarded upon  
25 successful completion of a residential drug or alcohol  
26 treatment program to which the defendant has been referred as  
27 a condition of probation. Credit for other penalties, such as

1 work release programs, intermittent confinement, and home  
2 detention, shall be left to the discretion of the court, with  
3 the presumption that time spent subject to these penalties  
4 will receive half credit. The court shall also give  
5 significant weight to the time spent on probation in  
6 substantial compliance with the conditions thereof. The total  
7 time spent in confinement may not exceed the term of  
8 confinement of the original sentence.

9 "(4) The court shall not revoke probation and order  
10 the confinement of the probationer unless the court finds on  
11 the basis of the original offense and the probationer's  
12 intervening conduct, either of the following:

13 "a. No measure short of confinement will adequately  
14 protect the community from further criminal activity by the  
15 probationer.

16 "b. No measure short of confinement will avoid  
17 depreciating the seriousness of the violation."

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