

1 SB326
2 96361-1
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 12-FEB-08

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8 SYNOPSIS: Under existing law, the Alabama Sentencing
9 Commission is charged with developing and
10 presenting voluntary truth-in-sentencing standards
11 to the Legislature for introduction and
12 consideration by the Legislature during the 2009
13 Regular Session with an effective date of October
14 1, 2009.

15 This bill would postpone the implementation
16 of voluntary truth-in-sentencing standards until
17 2011.

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19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To amend Sections 12-25-32 and 12-25-34, Code of
24 Alabama 1975, to postpone further implementation of voluntary
25 truth-in-sentencing standards.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3 "§12-25-32.

4 "For the purposes of this article, the following
5 terms have the following meanings:

6 "(1) COMMISSION. The Alabama Sentencing Commission,
7 established as a state agency under the Supreme Court by this
8 chapter.

9 "(2) CONTINUUM OF PUNISHMENTS. An array of
10 punishment options, from probation to incarceration, graduated
11 in restrictiveness according to the degree of supervision of
12 the offender including, but not limited to, all of the
13 following:

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

22 "b. Intermediate punishment. A sentence that may
23 include assignment to any community based punishment program
24 or may include probation with conditions or probation in
25 conjunction with a period of confinement. Intermediate
26 punishments include, but are not limited to, all of the
27 following options:

- 1 "1. A split sentence pursuant to Section 15-18-8.
- 2 "2. Assignment to a community punishment and
- 3 corrections program pursuant to the Alabama Community
- 4 Punishment and Corrections Act or local acts.
- 5 "3. Assignment to a community based manual labor
- 6 work program pursuant to Sections 14-5-30 to 14-5-37,
- 7 inclusive.
- 8 "4. Intensive probation supervision pursuant to
- 9 Section 15-22-56.
- 10 "5. Cognitive and behavioral training.
- 11 "6. Community service work.
- 12 "7. County probation.
- 13 "8. Day fines or means-based fines.
- 14 "9. Day reporting.
- 15 "10. Drug or alcohol testing.
- 16 "11. Drug court programs.
- 17 "12. Educational programs.
- 18 "13. Electronic monitoring.
- 19 "14. Home confinement or house arrest.
- 20 "15. Ignition interlock.
- 21 "16. Intermittent confinement.
- 22 "17. Jail and prison diversion programs.
- 23 "18. Job readiness and work.
- 24 "19. Literacy and basic learning.
- 25 "20. Pretrial diversion programs.
- 26 "21. Residential drug treatment.

1 "22. Residential community based punishment programs
2 in which the offender is required to spend at least eight
3 hours per day, or overnight, within a facility and is required
4 to participate in activities such as counseling, treatment,
5 social skills training, or employment training, conducted at
6 the residential facility or at another specified location.

7 "23. Restorative justice.

8 "(i) Victim impact panels.

9 "(ii) Voluntary victim offender conferencing.

10 "(iii) Voluntary victim offender mediation.

11 "24. Self-help groups.

12 "25. Sobriety or breath alcohol remote monitoring.

13 "26. Substance abuse education and treatment.

14 "27. Treatment alternatives to street crime (TASC).

15 "28. Voice recognition, curfew restriction, or
16 employment monitoring.

17 "29. Work release, other than those work release
18 programs operated by the Alabama Department of Corrections, as
19 a custody option.

20 "c. Unsupervised probation. A sentence in a criminal
21 case that includes a period of probation but does not include
22 supervision, active incarceration, or an intermediate
23 punishment.

24 "d. Post-release supervision. A mandatory period of
25 supervision following sentences of active incarceration as
26 defined in paragraph a. that may include one or more
27 intermediate punishment options.

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

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

5 "(5) INITIAL VOLUNTARY STANDARDS. The voluntary
6 sentencing standards that become effective on October 1, 2004.
7 These standards shall be based on statewide historic sentences
8 imposed with normative adjustments designed to reflect current
9 sentencing policies.

10 "(6) NONVIOLENT OFFENDER. Any offender who does not
11 qualify as a violent offender pursuant to subdivision (12).

12 "(7) OFFENDER. A person convicted of a noncapital
13 felony offense.

14 "(8) RELEASE AUTHORITY. Any public official, agency,
15 or other entity authorized by law to release a sentenced
16 offender from incarceration or other conditions of a sentence.

17 "(9) RISK ASSESSMENT. An instrument designed to
18 assess an offender's relative risk for reoffending.

19 "(10) TRUTH-IN-SENTENCING STANDARDS. The voluntary
20 sentencing standards that become effective October 1, ~~2006~~
21 2011. These standards shall be based on statewide historic
22 time served for offenses with adjustments designed by the
23 commission to reflect current sentencing policies.

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

27 "a. The Alabama Department of Corrections.

1 "b. State or county probation offices.

2 "c. Community corrections programs pursuant to
3 Alabama Community Corrections Act.

4 "d. Jails.

5 "e. State or local law enforcement agencies.

6 "f. Any court.

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

14 "(13) VIOLENT OFFENSE.

15 "a. For the purposes of this article, a violent
16 offense includes each of the following offenses, or any
17 substantially similar offense to those listed in this
18 subdivision created after June 20, 2003:

19 "1. Capital murder pursuant to Section 13A-6-2 and
20 13A-5-40.

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

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

23 "4. Criminally negligent homicide pursuant to
24 Section 13A-6-4.

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

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

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

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

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

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

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

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

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

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

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

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

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

14 "18. Aggravated stalking pursuant to Section
15 13A-6-91.

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

18 "20. Domestic violence I pursuant to Section
19 13A-6-130.

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

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

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

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

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

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

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

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

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

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

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

13 "32. Terrorist threats pursuant to Section
14 13A-10-15.

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

16 "34. Promoting prison contraband I pursuant to
17 Section 13A-10-36, involving a deadly weapon or dangerous
18 instrument.

19 "35. Intimidating a witness pursuant to Section
20 13A-10-123.

21 "36. Intimidating a juror pursuant to Section
22 13A-10-127.

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

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

26 "39. Promoting prostitution I pursuant to Section
27 13A-12-111.

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

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

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

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

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

7 "45. Hindering prosecution for terrorism pursuant to
8 Section 13A-10-154.

9 "46. Any substantially similar offense for which an
10 Alabama offender has been convicted under prior Alabama law or
11 the law of any other state, the District of Columbia, the
12 United States, or any of the territories of the United States.

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

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

19 "2. Involves a substantial risk of physical injury
20 against the person of another.

21 "3. Is a nonconsensual sex offense.

22 "4. Is particularly reprehensible.

23 "c. Any attempt, conspiracy, or solicitation to
24 commit a violent offense shall be considered a violent offense
25 for the purposes of this article.

26 "§12-25-34.

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

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

12 "(2) Concurrently with the development and
13 distribution of the reference manual, the commission shall
14 develop and begin testing worksheets and voluntary sentencing
15 standards in selected circuits for selected felony offenses.

16 "(3) The commission shall develop and present the
17 initial voluntary sentencing standards to the Legislature
18 before or during the 2006 Regular Session. These standards
19 shall be introduced in the 2006 Regular Session and shall
20 become effective on October 1 following the 2006 Regular
21 Session, if approved by an act of the Legislature passed
22 during that session. The initial voluntary sentencing
23 standards based on sentences imposed shall apply to
24 convictions for felony offenses sentenced on or after October
25 1, 2006, and committed before the effective date of the
26 voluntary truth-in-sentencing standards.

1 "(4) The commission shall develop and present
2 voluntary truth-in-sentencing standards to the Legislature
3 before or during the ~~2009~~ 2011 Regular Session. These
4 standards shall be introduced in the ~~2009~~ 2011 Regular Session
5 and shall become effective on October 1 following the ~~2009~~
6 2011 Regular Session, if approved by an act of the Legislature
7 passed during that session. The voluntary truth-in-sentencing
8 standards shall apply only to felony offenses committed on or
9 after the effective date of these standards.

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

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

23 "(d) After adoption of the initial voluntary
24 standards and the voluntary truth-in-sentencing standards, any
25 modifications made by the commission shall be contained in the
26 annual report presented to the Governor, the Legislature, the
27 Chief Justice, and the Attorney General. An annual report

1 containing proposed modifications shall be presented to the
2 Governor, the Legislature, the Chief Justice, and the Attorney
3 General before or during each regular session of the
4 Legislature. The modifications shall be introduced during that
5 regular session and shall become effective on October 1
6 following the legislative session in which the modifications
7 were introduced, if approved by an act of the Legislature
8 passed during the legislative session in which the
9 modifications were introduced."

10 Section 2. This act shall become effective
11 immediately following its passage and approval by the
12 Governor, or its otherwise becoming law.