SB326

96361-1

By Senator Smitherman

RFD: Judiciary

First Read: 12-FEB-08

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

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

A BILL

TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§12-25-32.

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

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

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

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

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

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

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

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

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

"5. Cognitive and behavioral training.

"6. Community service work.

"7. County probation.

"8. Day fines or means-based fines.

"9. Day reporting.

"10. Drug or alcohol testing.

"11. Drug court programs.

"12. Educational programs.

"13. Electronic monitoring.

"14. Home confinement or house arrest.

"15. Ignition interlock.

"16. Intermittent confinement.

"17. Jail and prison diversion programs.

"18. Job readiness and work.

"19. Literacy and basic learning.

"20. Pretrial diversion programs.

"21. Residential drug treatment.

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

"23. Restorative justice.

"(i) Victim impact panels.

"(ii) Voluntary victim offender conferencing.

"(iii) Voluntary victim offender mediation.

"24. Self-help groups.

"25. Sobrietor or breath alcohol remote monitoring.

"26. Substance abuse education and treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"a. The Alabama Department of Corrections.

"b. State or county probation offices.

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

"d. Jails.

"e. State or local law enforcement agencies.

"f. Any court.

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

"(13) VIOLENT OFFENSE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"3. Is a nonconsensual sex offense.

"4. Is particularly reprehensible.

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

"§12-25-34.

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

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

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

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

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

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

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

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

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

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