

1 SB421
2 96169-1
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 21-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 This bill would apply the maximum probation
2 limitations of 2 years for misdemeanor convictions
3 and 5 years for felony offenses to sentences
4 imposed under a split sentence.

5 This bill would specify that the period of
6 probation or suspension of a sentence may be
7 amended or modified by the court. The bill would
8 also provide that if the court revokes probation,
9 the court may order the defendant to participate in
10 a substance abuse or community corrections program.

11 This bill would also authorize full credit
12 to be awarded for time served on probation upon
13 successful completion of a residential drug or
14 alcohol treatment program to which the offender has
15 been referred as a condition of probation.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 To amend Sections 15-18-8 and 15-22-54 of the Code
22 of Alabama 1975, to prohibit the imposition of consecutive
23 incarceration portions of split sentences for separate
24 offenses; to eliminate the provisions relating to boot camp;
25 to uniformly apply the maximum terms of probation for all
26 types of sentences; to further provide for probation and the
27 revocation of probation; and to authorize full credit for time

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.