

1 SB268  
2 96169-4  
3 By Senator Smitherman  
4 RFD: Judiciary  
5 First Read: 05-FEB-09

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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 would apply the maximum probation  
25 limitations of 2 years for misdemeanor convictions  
26 and 5 years for felony offenses to sentences  
27 imposed under a split sentence.

1                   This bill would specify that the period of  
2                   probation or suspension of a sentence may be  
3                   amended or modified by the court. The bill would  
4                   also provide that if the court revokes probation,  
5                   the court may order the defendant to participate in  
6                   a substance abuse or community corrections program  
7                   or order imprisonment for all or part of the  
8                   remaining suspended sentence.

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

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15                                   A BILL  
16                                   TO BE ENTITLED  
17                                   AN ACT  
18

19                  To amend Sections 15-18-8 and 15-22-54 of the Code  
20                  of Alabama 1975, to prohibit the imposition of consecutive  
21                  incarceration portions of split sentences for separate  
22                  offenses; to uniformly apply the maximum terms of probation  
23                  for all types of sentences; to further provide for probation  
24                  and the revocation of probation; and to authorize full credit  
25                  for time served on probation upon successfully completing a  
26                  court-ordered residential drug or alcohol treatment program.  
27                  BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3           "§15-18-8.

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

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

1 in subsection (b) and upon such ~~terms~~ conditions as the court  
2 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~~ conditions as the court deems best.

15 "~~(2)~~ (3) That the convicted defendant may be  
16 confined, upon consultation with the Commissioner of the  
17 Alabama Department of Corrections (hereinafter called  
18 department) in a disciplinary, rehabilitation, conservation  
19 camp program (hereinafter called program) of the department.  
20 The convicted defendant shall be received into the department  
21 in accordance with applicable department rules and regulations  
22 and may be placed in the program after completion of this  
23 initial reception. The program shall be not less than 90 days  
24 nor more than 180 days in duration and shall be operated in  
25 accordance with department rules and regulations and as  
26 otherwise provided for by law. The commissioner of the  
27 department or his or her designee shall report to the

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

25 "(4) 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 for a felony offense and~~  
14 ~~two years for a misdemeanor offense and shall be in addition~~  
15 ~~to the incarceration portion of the split sentence.~~

16 "(c) Regardless of whether the defendant has begun  
17 serving the minimum period of confinement ordered under the  
18 provisions of subsection (a), the court shall retain  
19 jurisdiction and authority throughout ~~that~~ the period to  
20 suspend that portion of the minimum sentence that remains and  
21 place the defendant on probation or in a community corrections  
22 program, notwithstanding any provision of the law to the  
23 contrary. While the defendant is serving either the  
24 incarceration or probation portion of his or her split  
25 sentence, and the court may revoke probation or modify any  
26 condition of probation or may change the period of probation.  
27 Upon determination of a violation of a condition of probation,

1 either prior to or after serving a term of incarceration, the  
2 court may impose any of the sanctions authorized in Section  
3 15-22-54, which may include revoking the defendant's probation  
4 and incarcerating the defendant for any portion or all of his  
5 or her suspended sentence.

6 "(d) ~~While incarcerated or on probation and among~~  
7 ~~the conditions thereof~~ During the incarceration or probation  
8 portion of a split sentence, the defendant may be required to  
9 do all of the following:

10 "(1) ~~To pay~~ Pay a fine in one or several sums~~;~~.

11 "(2) ~~To make~~ Make restitution or reparation to  
12 aggrieved parties for actual damages or loss caused by the  
13 offense for which conviction was had~~;~~ ~~and.~~

14 "(3) ~~To provide~~ Provide for the support of any  
15 persons for whose support he or she is legally responsible.

16 "(4) Participate in and complete a substance abuse  
17 or community punishment and corrections program, which may  
18 include residential facilities operated by the Board of  
19 Pardons and Paroles.

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

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



1           "(g) No defendant serving a minimum period of  
2 confinement ordered under the provisions of subsection (a)  
3 shall be entitled to parole or to deductions from his or her  
4 sentence under the Alabama Correctional Incentive Time Act,  
5 during the minimum period of confinement so ordered; provided,  
6 however, that this subsection shall not be construed to  
7 prohibit application of the Alabama Correctional Incentive  
8 Time Act or consideration for parole eligibility to any period  
9 of confinement which may be required after the defendant has  
10 served ~~such minimum period~~ the entire authorized minimum  
11 incarceration portion of the split sentence as authorized in  
12 subsection (a), whether this imprisonment is imposed as part  
13 of the original sentence or as a result of revocation of  
14 probation.

15           "§15-22-54.

16           "(a) The period of probation or suspension of  
17 execution of sentence shall be determined by the court, ~~and,~~  
18 notwithstanding any law to the contrary, the period of  
19 probation or suspension may be amended, modified, continued,  
20 extended, or terminated while the defendant is serving any  
21 portion of his or her sentence and prior to his or her  
22 discharge. However, in no case, including a sentence imposed  
23 pursuant to Section 15-18-8, shall the maximum probation  
24 period of a defendant guilty of a misdemeanor exceed two  
25 years, nor shall the maximum probation period of a defendant  
26 guilty of a felony exceed five years. When the conditions of  
27 probation or suspension of sentence are fulfilled, the court

1 shall, by order duly entered on its minutes, discharge the  
2 defendant.

3 "(b) The court granting probation may, upon the  
4 recommendation of the officer supervising the probationer,  
5 terminate all authority and supervision over the probationer  
6 prior to the declared date of completion of probation upon  
7 showing a continued satisfactory compliance with the  
8 conditions of probation over a sufficient portion of the  
9 period of the probation.

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

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

1           "(1) If the defendant violates a condition of  
2 probation or suspension of execution of sentence, the court,  
3 after a hearing, may implement one or more of the following  
4 options:

5           "a. Continue the existing probation or suspension of  
6 execution of sentence.

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

10          "c. Conduct a formal or informal conference with the  
11 probationer to reemphasize the necessity of compliance with  
12 the conditions of probation.

13          "d. Modify the conditions of probation or suspension  
14 of execution of sentence, which conditions may include the  
15 addition of short periods of confinement.

16          "e. Revoke the probation or suspension of execution  
17 of sentence.

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

23          "a. Impose the sentence that was suspended at the  
24 original hearing.

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

1           "c. Order the defendant to participate in and  
2           complete a substance abuse or community corrections program,  
3           which may include residential facilities operated by the Board  
4           of Pardons and Paroles.

5           "(3) If revocation results in a sentence of  
6           confinement, credit shall be given for all time spent in  
7           custody prior to revocation. Full credit shall be awarded for  
8           full-time confinement in facilities such as county jail, state  
9           prison, and boot camp. Upon successful completion of the  
10          program, full credit toward incarceration shall be awarded for  
11          the time served in a state certified residential treatment  
12          program to which the defendant has been ordered. Credit for  
13          other penalties, such as work release programs, intermittent  
14          confinement, and home detention, shall be left to the  
15          discretion of the court, with the presumption that time spent  
16          subject to these penalties will receive half credit. The court  
17          shall also give significant weight to the time spent on  
18          probation in substantial compliance with the conditions  
19          thereof. The total time spent in confinement may not exceed  
20          the term of confinement of the original sentence.

21          "(4) The court shall not revoke probation and order  
22          the confinement of the probationer unless the court finds on  
23          the basis of the original offense and the probationer's  
24          intervening conduct, either of the following:

25                 "a. No measure short of confinement will adequately  
26                 protect the community from further criminal activity by the  
27                 probationer.

1                    "b. No measure short of confinement will avoid  
2 depreciating the seriousness of the violation."

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