

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.

14
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.