

1 SB97
2 105321-2
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 03-FEB-09

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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 to be effective on October 1, 2009.

14 This bill would postpone the implementation
15 of voluntary truth-in-sentencing standards until
16 2011 and would further clarify that work release
17 and certain other programs of the Department of
18 Corrections would be classified as intermediate
19 punishment.
20

21 A BILL
22 TO BE ENTITLED
23 AN ACT
24

25 To amend Sections 12-25-32, 12-25-34, and 12-25-36,
26 Code of Alabama 1975, relating to criminal sentencing; to
27 postpone further implementation of voluntary

1 truth-in-sentencing standards and to further classify certain
2 sentencing programs of the Department of Corrections as
3 intermediate punishment.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 12-25-32, 12-25-34, and
6 12-25-36, Code of Alabama 1975, are amended to read as
7 follows:

8 "§12-25-32.

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

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

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

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

1 "b. Intermediate punishment. A sentence that may
2 include assignment to any community based punishment program
3 or may include probation with conditions or probation in
4 conjunction with a period of confinement. The term includes
5 time served in a work release program operated as a custody
6 option by the Alabama Department of Corrections or in the
7 Supervised Reentry program or the Supervised Intensive
8 Restitution program of the Department of Corrections pursuant
9 to Article 7 of Chapter 18 of Title 15, commencing with
10 Section 15-18-110. Intermediate punishments include, but are
11 not limited to, all of the following options:

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

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

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

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

21 "5. Cognitive and behavioral training.

22 "6. Community service work.

23 "7. County probation.

24 "8. Day fines or means-based fines.

25 "9. Day reporting.

26 "10. Drug or alcohol testing.

27 "11. Drug court programs.

- 1 "12. Educational programs.
- 2 "13. Electronic monitoring.
- 3 "14. Home confinement or house arrest.
- 4 "15. Ignition interlock.
- 5 "16. Intermittent confinement.
- 6 "17. Jail and prison diversion programs.
- 7 "18. Job readiness and work.
- 8 "19. Literacy and basic learning.
- 9 "20. Pretrial diversion programs.
- 10 "21. Residential drug treatment.
- 11 "22. Residential community based punishment programs
- 12 in which the offender is required to spend at least eight
- 13 hours per day, or overnight, within a facility and is required
- 14 to participate in activities such as counseling, treatment,
- 15 social skills training, or employment training, conducted at
- 16 the residential facility or at another specified location.
- 17 "23. Restorative justice.
- 18 "(i) Victim impact panels.
- 19 "(ii) Voluntary victim offender conferencing.
- 20 "(iii) Voluntary victim offender mediation.
- 21 "24. Self-help groups.
- 22 "25. Sobriety or breath alcohol remote monitoring.
- 23 "26. Substance abuse education and treatment.
- 24 "27. Treatment alternatives to street crime (TASC).
- 25 "28. Voice recognition, curfew restriction, or
- 26 employment monitoring.

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

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

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

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

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

16 "(5) INITIAL VOLUNTARY STANDARDS. The voluntary
17 sentencing standards ~~that become~~ effective on October 1, ~~2004~~
18 2006. These standards ~~shall be~~ were based on statewide
19 historic sentences imposed with normative adjustments designed
20 to reflect current sentencing policies.

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

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

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

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

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

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

12 "a. The Alabama Department of Corrections.

13 "b. State or county probation offices.

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

16 "d. Jails.

17 "e. State or local law enforcement agencies.

18 "f. Any court.

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

26 "(13) VIOLENT OFFENSE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 "18. Aggravated stalking pursuant to Section
27 13A-6-91.

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

3 "20. Domestic violence I pursuant to Section
4 13A-6-130.

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

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

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

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

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

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

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

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

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

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

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

24 "32. Terrorist threats pursuant to Section
25 13A-10-15.

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

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

4 "35. Intimidating a witness pursuant to Section
5 13A-10-123.

6 "36. Intimidating a juror pursuant to Section
7 13A-10-127.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 "3. Is a nonconsensual sex offense.

7 "4. Is particularly reprehensible.

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

11 "§12-25-34.

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

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

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

1 "(3) The commission shall develop and present the
2 initial voluntary sentencing standards to the Legislature
3 before or during the 2006 Regular Session. These standards
4 shall be introduced in the 2006 Regular Session and shall
5 become effective on October 1 following the 2006 Regular
6 Session, if approved by an act of the Legislature passed
7 during that session. The initial voluntary sentencing
8 standards based on sentences imposed shall apply to
9 convictions for felony offenses sentenced on or after October
10 1, 2006, and committed before the effective date of the
11 voluntary truth-in-sentencing standards.

12 "(4) The commission shall develop and present
13 voluntary truth-in-sentencing standards to the Legislature
14 before or during the ~~2009~~ 2011 Regular Session. These
15 standards shall be introduced in the ~~2009~~ 2011 Regular Session
16 and shall become effective on October 1 following the ~~2009~~
17 2011 Regular Session, if approved by an act of the Legislature
18 passed during that session. The voluntary truth-in-sentencing
19 standards shall apply only to felony offenses committed on or
20 after the effective date of these standards.

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

26 "(c) Voluntary sentencing standards shall take into
27 account and include statewide historically based sentence

1 ranges, including all applicable statutory minimums and
2 sentence enhancement provisions, including the Habitual Felony
3 Offender Act, with adjustments made to reflect current
4 sentencing policies. No additional penalties pursuant to any
5 sentence enhancement statute shall apply to sentences imposed
6 based on the voluntary sentencing standards.

7 "(d) After adoption of the initial voluntary
8 standards and the voluntary truth-in-sentencing standards, any
9 modifications made by the commission shall be contained in the
10 annual report presented to the Governor, the Legislature, the
11 Chief Justice, and the Attorney General. An annual report
12 containing proposed modifications shall be presented to the
13 Governor, the Legislature, the Chief Justice, and the Attorney
14 General before or during each regular session of the
15 Legislature. The modifications shall be introduced during that
16 regular session and shall become effective on October 1
17 following the legislative session in which the modifications
18 were introduced, if approved by an act of the Legislature
19 passed during the legislative session in which the
20 modifications were introduced.

21 "§12-25-36.

22 "This section and Sections 12-25-37 and 12-25-38
23 shall apply only after development and legislative approval of
24 the proposed truth-in-sentencing standards in 2011. When a
25 judge sentences based on the voluntary truth-in-sentencing
26 standards, all of the following rules shall apply:

1 "(1) Sentences imposed based on voluntary
2 truth-in-sentencing standards pursuant to this article shall
3 not be subject to any other provision of law concerning the
4 duration of sentence.

5 "(2) Sentences imposed based on the voluntary
6 truth-in-sentencing standards shall include both a minimum and
7 an extended term of sentence including a period of
8 post-release supervision. The minimum sentence and the
9 extended sentence shall be specified in the judgment of the
10 court for those sentences that are imposed in compliance with
11 the voluntary truth-in-sentencing standards. Sentence
12 dispositions may include active incarceration, intermediate
13 punishment, unsupervised probation, or a minimum punishment as
14 specified in the voluntary truth-in-sentencing standards.

15 "(3) The minimum term of sentence shall be
16 consistent with the sentence range recommended in the
17 voluntary truth-in-sentencing standards for the worksheet
18 score of an offender. No offender sentenced to incarceration
19 may be released from incarceration before the expiration date
20 of the minimum term of sentence.

21 "(4) The extended term of sentence shall be a period
22 of time equal to 120 percent of the minimum term, rounded to
23 the next highest month, plus a one-year period of post-release
24 supervision.

25 "(5) The amount of time an offender shall be
26 incarcerated on the extended term of sentence shall be
27 determined by the Department of Corrections pursuant to rules

1 and regulations established by the Department of Corrections
2 governing an offender's conduct after conviction and sentence.

3 "(6) No sentence of active incarceration may be
4 suspended.

5 "(7) For any disposition of sentence less than
6 active incarceration as defined in paragraph a. of subdivision
7 (2) of Section 12-25-32, the court shall retain jurisdiction
8 to modify sentence disposition of sentence."

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