ACT No. 2010 - 753

1 SB325

2 120850-5

3 By Senator Marsh

4 RFD: Judiciary

5 First Read: 02-FEB-10

RECEIVED
APR 21 2010
GOVERNOR'S OFFICE

1 SB325

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4 ENROLLED, An Act,

5 To amend Section 15-22-54, Code of Alabama 1975, to
6 limit the terms of probation; to limit incarceration in the
7 penitentiary for technical violations of probation with
8 retroactive application for certain offenders; to provide
9 intermediate sanctions for violations; and to add Section
10 15-22-54.1 to the Code of Alabama 1975, to provide for
11 resentencing.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Section 15-22-54, Code of Alabama 1975,
14 is amended to read as follows:

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 the period of probation or suspension may be continued,
19 extended, or terminated. However, in no case shall the maximum
20 probation period of a defendant guilty of a misdemeanor exceed
21 two years, nor shall the maximum probation period of a
22 defendant guilty of a felony exceed five years. When the
23 conditions of probation or suspension of sentence are
24 fulfilled, the court shall, by order duly entered on its
25 minutes, discharge the defendant.

1 "(b) The court granting probation may, upon the
2 recommendation of the officer supervising the probationer,
3 terminate all authority and supervision over the probationer
4 prior to the declared date of completion of probation upon
5 showing a continued satisfactory compliance with the
6 conditions of probation over a sufficient portion of the
7 period of the probation.
8 "(c) At any time during the period of probation or
9 suspension of execution of sentence, the court may issue a
10 warrant and cause the defendant to be arrested for violating
11 any of the conditions of probation or suspension of sentence.
12 "(d) Except as provided in Chapter 15 of Title 12,
13 any probation officer, police officer, or other officer with
14 power of arrest, when requested by the probation officer, may
15 arrest a probationer without a warrant. In case of an arrest
16 without a warrant, the arresting officer shall have a written
17 statement by the probation officer setting forth that the
18 probationer has, in his or her judgment, violated the
19 conditions of probation, and the statement shall be sufficient
20 warrant for the detention of the probationer in the county
21 jail or other appropriate place of detention until the
22 probationer is brought before the court. The probation officer
23 shall forthwith report the arrest and detention to the court
24 and submit in writing a report showing in what manner the
25 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 and suspension
6 of execution of sentence.
7 "b. Issue a formal or informal warning to the
8 probationer that further violations may, subject to the
9 provisions of subsection (f), result in revocation of
10 probation or suspension of execution of sentence.
11 "c. Conduct a formal or informal conference with the
12 probationer to reemphasize the necessity of compliance with
13 the conditions of probation.
14 "d. Modify the conditions of probation or suspension
15 of execution of sentence, which conditions may include the
16 addition of short periods of confinement.
17 "e. If the violation of probation is the commission
18 of a new offense, revoke the probation or suspension of
19 execution of sentence. If the court revokes probation, it may,
20 after a hearing, impose the sentence that was suspended at the
21 original hearing or any lesser sentence.
22 "f. If the probation violation is a technical
23 violation, defined as a violation of a condition of probation
24 other than the commission of a new offense, an eligible
25 offender may be required to serve a term of not more than 90

1 days imprisonment in a Department of Corrections facility,
2 which may include participation in the restart program,
3 LIFETech program, or a technical violator program or, if no
4 space is available in a Department of Corrections facility,
5 not more than 90 days in the county jail.
6 "(2) a. An eligible offender subject to the
7 provisions of paragraph f. of subdivision (1) is a nonviolent
8 felon serving a probationary sentence who has violated a
9 condition or conditions of probation other than by the
10 commission of a new offense and who has performed the
11 conditions of probation, including remaining current on
12 payment of court ordered money, for a consecutive six-month
13 period.
14 "b. Technical violations of conditions of probation
15 shall be subject to the options provided in paragraphs a., b.,
16 c., d., and f. of subdivision (1); provided, however, the
17 court may also continue the existing probation and suspension
18 of execution of sentence with the additional condition that
19 the probationer does any of the following:
20 "1. Participates in a community corrections program.
21 "2. Participates in a county work release program.
22 "3. Performs community service.
23 "4. Undergoes intensive probation supervision.
24 "5. Participates in a residential or out-patient
25 drug or alcohol treatment program.

1 "6. Participates and completes a Life Skills
2 Influenced by Freedom and Education Tech (LIFETech)
3 residential program.
4 "(3) If revocation results in a sentence of
5 confinement, credit shall be given for all time spent in
6 custody prior to revocation. Full credit shall be awarded for
7 full-time confinement in facilities such as county jail, state
8 prison, state technical violator programs, and boot camp.
9 Credit for other penalties, such as work release programs,
10 intermittent confinement, and home detention, shall be left to
11 the discretion of the court, with the presumption that time
12 spent subject to these penalties will receive half credit. The
13 court shall also give significant weight to the time spent on
14 probation in substantial compliance with the conditions
15 thereof. The total time spent in confinement may not exceed
16 the term of confinement of the original sentence.
17 "(4) The court shall not revoke probation and order
18 the confinement of the probationer for violations of the
19 conditions of probation unless the court finds on the basis of
20 the original offense and the probationer's intervening
21 conduct, either of the following:
22 "a. No measure short of confinement will adequately
23 protect the community from further criminal activity by the
24 probationer.

1 "b. No measure short of confinement will avoid
2 depreciating the seriousness of the violation."
3 Section 2. Section 15-22-54.1 is added to the Code
4 of Alabama 1975, to read as follows:
5 §15-22-54.1.
6 (a) Any person convicted of a nonviolent offense now
7 serving a prison sentence based on revocation of probation as
8 a result of only technical violations shall be entitled to be
9 resentenced upon petition to the sentencing court. Such
10 petition shall be on a form and filed in the manner prescribed
11 by the Administrative Office of Courts. Petitions shall be
12 considered authorized motions for modification of sentence,
13 assigned a unique identifier by the Administrative Office
14 Courts, and shall not require payment of a filing fee.
15 (b) The court shall have jurisdiction to resentence
16 the offender in accordance with the terms of this section,
17 upon a showing of the following:
18 (1) The offender successfully completed the terms of
19 probation for six months.
20 (2) Probation was thereafter revoked and the
21 offender was sentenced to the penitentiary only as a result of
22 technical violations of probation.
23 (3) The offender has no disciplinary infractions
24 while serving the sentence in the penitentiary.

1 (4) The offender has no pending charges or
2 convictions for a new offense.
3 Section 3. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.

President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB325
Senate 06-APR-10
I hereby certify that the within Act originated in and passed the Senate, as amended.

McDowell Lee
Secretary

House of Representatives
Passed: 21-APR-10

By: Senator Marsh

APPROVED April 30, 2010
TIME 2:45 P.M.
Bob Riley
GOVERNOR

Alabama Secretary Of State
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