

Rep(s). By Representative Black (M)

HB479

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

To amend Section 15-18-8 of the Code of Alabama 1975, to provide the courts with alternative punishment options upon revocation of probation; and to amend Section 15-22-54 of the Code of Alabama 1975, to further provide for the revocation of probation and to eliminate references to half credit for time served on home detention or work release.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

§15-18-8.

"(a) When a defendant is convicted of an offense and receives a sentence of 20 years or less in any court having jurisdiction to try offenses against the State of Alabama and the judge presiding over the case is satisfied that the ends of justice and the best interests of the public as well as the defendant will be served thereby, he or she may order:

"(1) That the convicted defendant be confined in a prison, jail-type institution, or treatment institution for a period not exceeding three years in cases where the imposed sentence is not more than 15 years, and that the execution of the remainder of the sentence be suspended notwithstanding any provision of the law to the contrary and that the defendant be placed on probation for such period and upon such terms as the court deems best. In cases involving an imposed sentence of greater than 15 years, but not more than 20 years, the sentencing judge may order that the convicted defendant be confined in a prison, jail-type institution, or treatment institution for a period not exceeding five years, but not less than three years, during which the offender shall not be eligible for parole or release because of deduction from sentence for good behavior under the Alabama Correctional Incentive Time Act, and that the remainder of the sentence be suspended notwithstanding any provision of the law to the contrary and that the defendant be placed on probation for the period upon the terms as the court deems best.

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

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

"(b) Probation may be granted whether the offense is punishable by fine or imprisonment or both. If an offense is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment.

"(c) Regardless of whether the defendant has begun serving the minimum period of confinement ordered under the provisions of subsection (a), the court shall retain jurisdiction and authority throughout ~~said~~ the period to suspend that portion of the minimum sentence that remains and place the defendant on probation, notwithstanding any provision of the law to the contrary, ~~and~~ While the defendant is serving any portion of his or her sentence, the court may revoke or modify any condition of probation or may change the period of probation. Upon revocation of determination of a violation of a condition of probation, either prior to or after serving a term of incarceration, the court may impose any of the sanctions authorized in Section 15-22-54, which may include incarcerating defendant for any portion of his or her suspended sentence.

"(d) While incarcerated or on probation and among the conditions thereof, the defendant may be required:

"(1) To pay a fine in one or several sums;

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

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

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

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

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

"(g) No defendant serving a minimum period of confinement ordered under the provisions of subsection (a) shall be entitled to parole or to deductions from his or her sentence under the

Alabama Correctional Incentive Time Act, during the minimum period of confinement so ordered; provided, however, that this subsection shall not be construed to prohibit application of the Alabama Correctional Incentive Time Act to any period of confinement which may be required after the defendant has served such minimum period.

§15-22-54.

"(a) The period of probation or suspension of execution of sentence shall be determined by the court; and, notwithstanding any law to the contrary, the period of probation or suspension may be modified, continued, extended, or terminated while the defendant is serving any portion of his or her sentence and prior to his or her discharge. Except when a defendant is sentenced under Section 15-18-8, ~~However, in no case shall~~ the maximum probation period of a defendant guilty of a misdemeanor shall not exceed two years, nor shall the maximum probation period of a defendant guilty of a felony exceed five years. When the conditions of probation or suspension of sentence are fulfilled, the court shall, by order duly entered on its minutes, discharge the defendant.

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

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

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

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

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

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

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

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

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

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

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

"b. Impose a lesser sentence, including any option listed in subdivision (1).

"c. Order the defendant to participate in a substance abuse or community corrections program.

"(3) If revocation results in a sentence of confinement, credit shall be given for all time spent in custody prior to revocation. Full credit shall be awarded for full-time confinement in facilities such as county jail, state prison, and boot camp. ~~Credit for other penalties, such as work release programs, intermittent confinement, and home detention, shall be left to the discretion of the court, with the presumption that time spent subject to these penalties will receive half credit. The court shall also give significant weight to the time spent on probation in substantial compliance with the conditions thereof. The total time spent in confinement may not exceed the term of confinement of the original sentence.~~

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

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

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

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

Crimes and Offenses

Criminal Law and Procedure

Probation

Code Amended