

9. Medical and Geriatric Release
HB 486 SB 10

This bill provides for discretionary medical and geriatric release by the Board of Pardons and Paroles of “terminally ill,” “permanently incapacitated,” and “geriatric inmates,”* who do not constitute a danger to themselves or society, and establishes procedures for submitting applications for consideration of eligibility and time frames for the Board and the Department of Corrections. The authority to grant medical or geriatric release is within the Board’s discretion and not subject to judicial review in either the exercise of authority or the manner in which it is exercised. In determining an inmate’s eligibility for release the Board is to consider the inmate’s 1) risk for violence; 2) criminal history; 3) institutional behavior, 4) age (currently and at the time of the offense); 5) the severity of the illness, disease or infirmities; 6) all available medical and mental health records; and release plans, which include alternatives to caring for terminally ill, permanently ill, or geriatric inmates in traditional prison settings.

Inmates convicted of capital murder sentenced to life without parole or convicted of a crime involving sexual misconduct with a minor are not eligible for release under the provisions of this bill. To be eligible for release consideration the inmate must have served his or her minimum sentence.

**A geriatric inmate is defined as an inmate convicted of a non-capital felony offense sentenced to the penitentiary (for less than life without parole), is 70 years of age or older, and “who suffers from a chronic infirmity, illness, or disease related to aging and poses a low risk to the community (does not constitute a danger to himself or society).”*



10. Maximum Fine Increase
HB 482 SB 266

Increase of authorized (not mandated) fine
This bill amends § 13A-5-11 and § 13A.5-12, *Code of Alabama* 1975, to increase (based on the inflation index), the maximum amount of fines authorized to be assessed upon conviction for a felony, misdemeanor or state violation. The judge retains discretion to impose any fine amount; the amendment simply authorizes a larger fine in appropriate cases.

The fine amounts in the Criminal Code have not been revised since they were originally set in 1977. The Commission included this bill in its Legislative package last year. The increase is justified based on the inflation index, the fact that the fine amounts in the Criminal Code have not been revised since they were originally set in 1977, and because the increased amounts are similar to those authorized to be imposed in surrounding states. The proposed fines are comparable to those authorized in Tennessee, Georgia and Virginia and to the fines imposed for new offenses in Florida, Mississippi and South Carolina (states that do not have a general fine statute or that have not revised their statutes in many years).

11. Trafficking Statute
HB 483 SB 268

Alabama’s current trafficking statute fails to provide a fine for the most serious trafficking offense. This bill, introduced in last year’s legislative session, amends Alabama’s trafficking statute, § 13A-12-231, *Code of Alabama* 1975, to provide a fine for the most serious trafficking offenses and to correct the fine for trafficking in hydromorphone involving 4,000-9,999 pills to impose a graduated increase consistent with the other provisions of the statute. As now written, the fine for this offense is the same as trafficking in hydromorphone involving 1,000-3,999 pills.

ALABAMA SENTENCING COMMISSION

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February 2005

**Alabama
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**2005 Legislative
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ALABAMA SENTENCING COMMISSION'S 2005 LEGISLATION

1. 2004 Historically-Based Sentencing Standards HB 476 SB 13 SB 258

In compliance with the directives included in the Sentencing Reform Act of 2003, this bill proposes adoption of voluntary sentencing standards for 26 felony offenses. These sentencing recommendations are historically based voluntary, non-appealable sentence recommendations developed for personal, property and drug crimes, representing 87% of all felony convictions and sentences imposed in Alabama over a five year period. The recommended sentence ranges and dispositions for the covered offenses are in lieu of the wider ranges under existing statutory law and provide uniform sentencing recommendations for trial court judges in sentencing convicted felons. These standards, which are voluntary, address both the length of sentences and the disposition of the offender (probation, intermediate alternative or prison). If approved by the Legislature, these standards will be implemented October 1, 2005.

In other states, structured sentencing, like that proposed for Alabama has provided a useful mechanism for making informed decisions relating to management of prison populations, where retaining meaningful judicial discretion.

This legislation is the same as the sentencing standards bill that was introduced during the 2004 Regular Session, with the exception that dates were changed for implementation effective October 1, 2005. Minor changes were made following recommendations received during the 12 regional workshops and pilot tests conducted last summer. In addition, a provision was added to require filing of the standards with the Clerks of the Senate and House, as well as the Clerk of the Alabama Supreme Court.

This bill has been approved by the Unified Judicial System Legislative Coordinating Council.

2. Access to Juvenile and Youthful Offender Records HB 477 SB 264

This bill amends sections 12-15-100 and 15-19-7 of the *Code of Alabama* 1975, to provide statewide access to juvenile and youthful offender records for judges, prosecutors, victim service officers, probation and parole officers and court personnel. Open access to these records and an offender's criminal history is essential for the completion of worksheets required for the implementation of the sentencing standards.



3. Supplemental Appropriations for Community Corrections HB 478 SB 269

The Commission voted to pursue supplemental funding to the Department of Corrections for Community Corrections programs again this year because funding has been a major part of our reform efforts. \$5.5 million is the minimum amount that must be appropriated (and deposited in the State-County Community Punishment Partnership Fund) before DOC establishes a Community Corrections Division and appoints a full-time Director. This bill continues to be a priority of the Commission. Adequate funding is essential for the state-wide expansion of community corrections and the development of adequate alternatives to incarceration for non-violent offenders. The bill expressly provides that this money is supplemental to, and will not supplant General Fund appropriations to DOC for FY 2005, and that these monies shall be deposited in the State County Community Partnership Fund.

4. Split Sentence Statute: Probation Revocation Options HB 479 SB 261

This bill amends Alabama's split sentencing statute to grant trial judges authority to impose various sanctions upon revocation of probation, including modifying any condition of probation, ordering the offender to participate in a substance abuse or community corrections program or incarcerating the offender for any portion of his suspended sentence or for the entire term. It also amends § 15-22-54, the general statute governing probation and the termination of probation, to eliminate the provision authorizing the granting of half-credit for time spent by an offender while serving intermittent terms of incarceration or while on home detention or work release. This change is consistent with Alabama's Community Punishment and Corrections Act.

In *Hollis v. State*, 845 So.2d 5 (Ala.Crim.App.2002)*, the Court of Criminal Appeals held that under the provisions of the existing statute, if a defendant has completed his term of incarceration and has begun serving his probationary sentence, upon revocation of probation, the judge's only option is to impose the remainder of the sentence that was suspended. This amendment will specifically provide that a judge has other options upon revocation of probation, allowing him to revoke a sentence and impose all or a part of the suspended sentence.

5. Amendment of Burglary 1st and Burglary 2nd Statutes to Apply the Loot Rule for Deadly Weapons HB 480 SB 270

This bill amends sections 13-7-5 and 13-7-6 of the Code of Alabama 1975, relating to burglary in the 1st and 2nd degrees to require the offender to either be armed with a deadly weapon upon entry into a dwelling or building or use or threaten the immediate use of a deadly weapon in order to commit these crimes. It is specifically provided that the fact that a deadly weapon or dangerous instrument is one of the items stolen in the burglary does not constitute "use" or "threaten the use" of the deadly weapon or dangerous instrument.

**Dixon v. State*, _So.2d_, 2005WL182827 (Alabama Criminal Appeals 2/28/05) overruled *Hollis*. A certificate of judgment has not been issued.

6. Correction of Theft of Property 2nd Degree Statute HB 484 SB 271

This bill is needed to change the theft of property 2nd degree statute to reflect the value changes recommended by the Alabama Sentencing Commission and made by the Legislature in 2003. The statute was inadvertently amended in 2004, using the prior values of \$250 -\$1000, rather than \$500 - \$2500, and grammatically changed to spell out the amounts, thereby amending that part of the statute.

7. DUI Statute: Out-of-State Convictions HB 485 SB 267

This bill amends Alabama's DUI statute to specifically authorize the use of out-of-state DUI convictions for enhanced punishment under the provisions of our state's DUI law, as well as in-state or out-of-state DUI convictions pursuant to municipal ordinance violations. In *Ex parte Bertram*, 884 So.2d 8898 (Ala. 2003), the Alabama Supreme Court held that, as currently written, prior out-of-state convictions for DUI could not be considered for enhancement purposes, only conviction of DUI in Alabama can be considered as prior convictions.

8. Pardon and Parole Facility Fee HB 481 SB 272

This bill amends § 15-22-30 of the *Code of Alabama* to increase the amount that can be deducted from the wages of residents of residential facilities operated by the Board, from 25% to 45%, designated for the payment of court costs, fines, fees, assessments and victim restitution. This comports with the amounts now authorized to be deducted for defendants assigned to a work release or other residential program operated by a community corrections provider. Of the person's earnings, 25% of the gross wages are to be applied to costs incidental to the person's supervision and upkeep, 10% to court costs, fines, court ordered fees and assessments and 10% to victim restitution. After the full 45% is deducted for these expenses, the remainder of the wages is to be credited to an account established for the person by the Board and may be paid out for dependent care, savings or spending money.