Alabama Sentencing Commission

Sentencing Reference Manual for Circuit and District Judges

Summer 2012

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IN THE _____ **COURT OF** _____ **COUNTY, ALABAMA**

STATE OF ALABAMA v. _____

The Defendant appears in court for sentencing with counsel, _____, and having pled or been found guilty, is **adjudicated** guilty of _____, under Section _____, *Code of Alabama* 1975, as charged/embraced/amended in Count____ of the Information/Indictment.
A **Presentence Report** ☐ is considered by the Court ☐ is waived ☐ will be considered at probation hearing.
Having been given an opportunity to say why sentence should not now be imposed, the Defendant is hereby **sentenced** to a term of _____ months (includes enhancements where applicable) in the custody of :
☐ Department of Corrections ☐ Community Corrections ☐ County Jail.
The Defendant shall be given ☐_____**days jail credit** ☐ **jail credit** in an amount certified by the Court Clerk.
The sentence shall run ☐consecutively ☐concurrently, with _____.

I. SENTENCE LENGTH DETERMINATION

A. This is a sentencing event covered by the sentencing standards. ☐Yes ☐No
1. If no, go to paragraph B.
2. If yes, the Court has considered the worksheet recommendations. ☐Yes ☐No
3. The recommended sentence disposition is ☐ Prison ☐ Non-Prison.
4. The recommended sentence length is _____ to _____ months (total); _____ to _____ months (incarceration portion, if split).

B. Because this sentence is not imposed under the sentencing standards, the following enhancements apply and were incorporated in the sentence imposed above:
1. ☐Habitual Offender Act; the Court finds the Defendant has been duly convicted of _____ prior adult felony offense(s) and had reasonable notice of the State's intention to seek enhancement under this Act
2. ☐5 years for the Sale of Drugs within 3 miles of a school
3. ☐5 years for the Sale of Drugs within 3 miles of a housing project
4. ☐Firearm or Deadly Weapon enhancement
5. ☐ _____.

II. COURT COSTS, FINES, ASSESSMENTS, FEES & RESTITUTION

A. The Defendant shall pay to the Court Clerk:
☐Court Costs.
☐Fine of $_____.
☐Alabama Crime Victims Compensation Assessment of $_____.
☐Appointed Attorney Fees of ☐$_____ ☐ in an amount to be determined.
☐Restitution (jointly & severally with any co-defendant) to _____
of ☐ $_____ ☐ in an amount to be determined by further hearing on _____.
☐ _____.

B. The following are remitted: _____.

III. ☐ **DRUG OFFENSE** – The Defendant shall surrender all Driver's Licenses to the Department of Public Safety for suspension, pay CRO Fees, successfully complete a Substance Abuse Program, pay the Forensic Science Trust Fund fee of $100, and pay the Drug Demand Reduction Assessment of $___ ,000 which may be suspended pursuant to Section 13A-12-284, *Code of Alabama 1975*.

IV. PAYMENT

A. The full amount shall be paid: ☐ in full by _____ ☐ in installments in the amount of $_____ each month with the first payment on _____ and on or before the same day each month thereafter.
B. Payment shall be a condition of probation, parole, community corrections, work release, SIR, SRP or any other release program.
C. ADOC or the Sheriff, if the inmate is incarcerated in the county jail, shall collect monthly _____% of the inmate's institutional account and forward payments to the Court Clerk at least once every three months.
D. ☐ Court Clerk shall apply payments to restitution first.

V. ☐**APPLICATION FOR PROBATION** is set for a hearing on _____. Imposition of this sentence is hereby suspended and the Defendant is continued on the ☐same ☐$_____ bond until the hearing. A pre-sentence investigation report ☐ shall ☐ shall not be prepared.

DONE and **ORDERED** _____(date) _____ **JUDGE**

VI. DISPOSITION

☐ This is a **straight** sentence to be served.

☐ This sentence is **suspended**. The Defendant is placed on straight probation for a term of _____ months.

The Defendant shall abide by all conditions, rules and regulations of the supervising agency and those specifically noted in this Order.

This probation shall be supervised by:

☐ State Probation ☐ Community Corrections ☐ _____ ☐ Unsupervised.

☐ This is a **split** sentence. The Defendant shall **serve** a term of _____ months, in the:

☐ Department of Corrections ☐ Community Corrections ☐ County Jail ☐ _____,

beginning on _____.

☐ The Court may reconsider the split portion of this sentence after the defendant completes

☐ ADOC Substance Abuse Program ☐ _____ _____

Following incarceration, the unserved portion of the sentence shall be suspended and the defendant shall be placed on probation for a term of _____ months.

The Defendant shall abide by all conditions, rules and regulations of the supervising agency and those noted in this Order.

This probation shall be supervised by:

☐ State Probation ☐ Community Corrections ☐ _____ ☐ Unsupervised.

VII. SPECIAL CONDITIONS

The Defendant shall fulfill every item marked as a special condition of probation, community corrections or other such program.

☐ Enroll in, cooperate fully with, and successfully complete all of the following marked programs as directed by any supervising agency, and file proof of completion with the supervising agency:

☐ Anger Management Training
☐ Domestic Violence Education/Treatment
☐ Life Skills Training
☐ Mental Health Evaluation/Treatment
☐ Parenting Skills Training
☐ Sex Offender Evaluation /Treatment
☐ Substance Abuse Evaluation/Treatment
☐ _____

☐ Avoid initiating any contact with _____

☐ Complete _____ hours of community service at _____

☐ _____.

VIII. APPEAL

The Defendant pled guilty and for appeal ☐ did not reserve any issues ☐ reserved these issues:

_____.

IX. DISTRIBUTION OF COPIES

If the conviction is a sentencing standards worksheet offense (see I.A.), the Court Clerk shall forward to the Alabama Sentencing Commission within 45 days of this Order a copy of this Sentencing Order and a copy of the Sentencing Standards worksheet in this case.

The Court Clerk shall provide a copy of this Sentencing Order to counsel for all parties.

DONE and **ORDERED** _____ (date) _____, **JUDGE**

I. The Sentencing Process[1]

A. Principles of Sentencing - ARCrP 26.8

The Alabama Rules of Criminal Procedure defines the criteria judges should use when determining a defendant's sentence:

> The sentence imposed in each case should call for the least restrictive sanction that is consistent with the protection of the public and the gravity of the crime. In determining the sentence, the court should evaluate the crime and its consequences, as well as the background and record of the defendant and give serious consideration to the goal of sentencing equality and the need to avoid unwarranted disparities.
>
> Judges should be sensitive to the impact their sentences have on all components of the criminal justice system and should consider alternatives to long-term institutional confinement or incarceration in cases involving offenders whom the court deems to pose no serious danger to society.

ARCrP 26.8.

In addition, in its comments to rule 26.8, the Advisory Committee notes the essential role judges play in reducing the impact of prison overcrowding:

> Prison overcrowding has significantly frustrated the criminal justice system in Alabama as well as most other states. Sentencing judges generally can only speculate as to what their sentences mean. This uncertainty operates to undermine the credibility of the sentencing process.
>
> For appropriate defendants, judges are encouraged to fashion sentences utilizing alternatives other than basic probation and long-term institutional confinement. Although the alternatives presently available will vary to some degree, depending on the sentencing court's location, some alternatives include the following: a split sentence pursuant to Ala. Code 1975, § 15-18-8 (through judicial innovation § 15-18-8 has also been used to impose what is referred to as a "reverse" split sentence, wherein the defendant is sentenced to serve the probationary portion of the sentence first, followed by a period of incarceration; since the judge retains jurisdiction, the period of incarceration can be suspended to reward the defendant for successfully completing probation); fines, court costs, and restitution; drug and alcohol rehabilitation programs; . . . community service; work release; responsibility to community restitution centers; house arrest; and electronic monitoring.

[1] Procedures for sentencing are governed by Rule 26 of the Alabama Rules of Criminal Procedure. Citations from ARCrP are from Westlaw and are current through amendments of June 1, 2010.

Effective utilization of well planned alternatives to incarceration will:

1. Preserve scarce prison bed-space for habitual offenders and others from whom society needs protection.
2. Save the state the cost of incarceration, estimated to be approximately $14,000 per year, and the cost of new prison construction.
3. Frequently permit the offender to remain employed and thereby enable him to earn funds to pay fines, restitution, and court costs, as well as to support his family.
4. Frequently permit the offender who is a drug or alcohol abuser to obtain treatment for such abuse and thereby remove the reason for his criminal behavior.
5. More likely result in the defendant's rehabilitation than incarceration. Prisons serve as training camps for crime, especially for young offenders.
6. Tend to diminish disparity in sentencing. Judges who have alternatives available to them are likely to move to the middle ground provided by the alternatives, whereas judges who must choose between the extremes of incarceration or probation, when they choose differently, create the perception of disparity.

ARCrP 26.8 cmts.

B. Plea Agreements - ARCrP 14.3, 14.4

While a defendant may enter a guilty plea with no agreement with the prosecutor as to sentence (a "blind" plea), a plea agreement may include provisions that the prosecutor will "recommend (or will not oppose) the imposition or suspension of a particular sentence." ARCrP 14.3(a).

- The agreement must be disclosed in open court at the time the plea is offered. ARCrP 14.3(b). The defendant must be informed of the minimum and maximum sentences available, including enhancements, and whether the agreed sentence will run consecutively or concurrently with sentences in prior or concurrent convictions. *Hatfield v. State*, 29 So. 3d 241 (Ala. Crim. App. 2009); *Dooley v. State*, 26 So. 3d 499 (Ala. Crim. App. 2009); *Taylor v. State*, 846 So. 2d 1111, (Ala. Crim. App. 2002).

- The court, after the full guilty plea colloquy as required by ARCrP 14.4, may accept the agreement and sentence the defendant accordingly. ARCrP (3)(c)(1).

- The court may reject the agreement and
    - Inform the parties the agreement is not accepted.
    - Advise the parties in open court, the court is not bound by the agreement as to sentence.
    - Advise the defendant the sentence may be more or less than the agreement.
    - Allow the defendant to withdraw the plea.
    - Afford the prosecutor an opportunity to renegotiate and, with the defendant's consent, amend the agreement.

  ARCrP 14.3(c) (i-vi)

A defendant must be allowed to withdraw a guilty plea when the sentence imposed is not in accordance with the agreement or amended agreement. *Andrews v. State*, 12 So. 3d 728 (Ala. Crim. App. 2009); *Nelson v. State*, 866 So. 2d 594 (Ala. Crim. App. 2002).

C. Presentence Investigation Reports (PSI) - ARCrP 26.3

- For **all offenses**, a court may require a presentence report if the court has discretion over the sentence or if the court has authority to suspend the sentence. ARCrP 26.3(a)(1).
- In **felony** cases, either a presentence or postsentence investigation report must be prepared, and this report must be in an electronic format. In addition, either party may move to require a presentence investigation report, and the defendant shall not be sentenced before the court considers the report. § 13A-5-5 (as amended by Act 2006-218).
- The PSI may include the following:
    1. the offense and the circumstances surrounding it;
    2. the defendant's prior criminal and juvenile record, if any;
    3. the defendant's educational background;
    4. the defendant's employment background, financial condition, and military record, if any;
    5. the defendant's social history, including family relationships;
    6. marital status, interests, and activities, residence history, and religious affiliations;
    7. the defendant's medical and psychological history, if available;
    8. Victim Impact Statements; and
    9. any other information required by the court. ARCrP 26.3(b).

- A PSI should be prepared only after a determination of guilt, except in cases where a defendant intends to plead guilty and requests a PSI prior to the plea hearing. ARCrP 26.3 cmts.
- PSI reports are not public. ARCrP 26.5(c).
- A Perfunctory PSI report that does not attempt to subjectively evaluate the defendant is grounds for appealing a sentence. *Guthrie v. State*, 689 So. 2d 935, 947 (Ala. Crim. App. 1996); *Ex parte Washington*, __So. 3d__, 2011 WL 1449032, *6 (Ala. 2011) (dictum).

D. Sentence Hearing - ARCrP 26.6

- For felony offenses, the court must conduct a sentence hearing unless, (1) the court has no discretion as to the penalty to be imposed and no power to suspend execution of the sentence or (2) a hearing is waived by the parties with the consent of the court. ARCrP 26.6(b)(1).
- If a PSI is required, the sentence hearing cannot be held until copies have been made available or furnished to the court and parties. ARCrP 26.6(b)(1).
- Any evidence the court deems to have probative value in sentencing may be presented at the hearing. Disputed evidence must be proved by a preponderance of the evidence. Rules of evidence do not apply. ARCrP 26.6(b)(2).
- If a hearing is necessary to establish prior convictions in a case involving the **Habitual Felony Offender Act**, the state is required to give reasonable notice to the defendant and assumes the burden of proof to show prior convictions. Disputed facts must be proved beyond a reasonable doubt. Convictions from other jurisdiction can be used for enhancement if they would have been a felony under Alabama law on or after January 1, 1980. Federal crimes are considered a felony conviction if punishable by imprisonment in excess of one year under federal law, even if not punishable under Alabama law. ARCrP 26.3. *For more on the Habitual Felony Offender Act, see infra Section II.B.3.*
- Prior to sentencing, in covered cases, the trial judge must review the Initial Voluntary Sentencing Standards worksheet and recommended sentence and in "imposing sentence, indicate on the record that the worksheet and applicable sentencing standards have been reviewed and considered." § 12-25-35(b).

E. Pronouncement of Judgment and Sentence - ARCrP 26.9

- The pronouncement of judgment must be announced in open court and must reflect the plea, verdict, findings, if any, and the adjudication. ARCrP 26.9(a).
- The judgment of guilt and the sentence should be pronounced at the same time. ARCrP 26.2.
- When pronouncing the sentence the court must do the following, per ARCrP 26.9(b):
    - Allow the defendant to make a statement on his own behalf. This right to allocution exists regardless of the gravity of the offense. *Davis v. State*, 747 So. 2d 921, 925 (Ala. Crim. App. 1999).
    - Indicate on the record that the Initial Voluntary Sentencing Standards worksheet and sentencing recommendation have been reviewed and considered. § 12-25-35(b).
    - State that the defendant will receive credit on the sentence for time incarcerated on the charge. The circuit or district clerk must certify the actual time spent incarcerated using forms prescribed by the Alabama Department of Corrections.
    - Explain the terms of the sentence, which must include the terms of probation, the length and order of sentences, and whether the sentences will be served consecutively or concurrently. ARCrP 26.9 cmts.
    - Inform the defendant of the right to appeal[2] and that, for an indigent defendant, the court will appoint an attorney and provide a copy of the record and recorder's transcript at no cost.
- Although Rule 26.2 of ARCrP expresses a preference that the judgment of guilt and the sentence be pronounced at the same time, the Court of Criminal Appeals held that simultaneous in-court pronouncement of judgment and sentence are not required. *Edwards v. State*, 505 So. 2d 1297 (Ala. Crim. App. 1987).
- The trial court loses its jurisdiction to modify a defendant's sentence 30 days after pronouncing the sentence, except a court can change a consecutive sentence to a concurrent sentence at any time. *Ex parte Hitt*, 778 So. 2d 159, 162 (Ala. 2000) (inferring from APCrP 24.2); *Moore v. State*, 814 So. 2d 308, 310 (Ala. Crim. App. 2001).

[2] Except when a defendant enters a guilty plea. In that case, the court is required to advise the defendant that he has a right to appeal, "only in cases in which the defendant (i) has entered a plea of guilty, but before entering the plea of guilty has expressly reserved his or her right to appeal with respect to a particular issue or issues, or (ii) has timely filed a motion to withdraw the plea of guilty and the motion has been denied, either by order of the court or by operation of law." ARCrP 26.9(b)(4). This exception does not apply to *de novo* appeals. *Ex parte Sorsby*, 12 So. 3rd 139 (Ala. 2007).

F. Youthful Offender Adjudications - Ala. Code § 15-19-1

Grant of Youthful Offender (YO) Status

- Available, after a hearing, for defendants who committed a crime when under the age of 21. Ala. Code § 15-19-1.
- The defendant must consent to the hearing and to a trial before the judge without a jury.
- If Youthful Offender is granted, no further action is taken on the original indictment or information and all records are closed unless access is approved by the court.
- Act 2012-465 adds additional requirements for notice to the victim for participation in the determination hearing if the offense involves as an element or allegations that the defendant intentionally caused serious physical injury or intentionally killed the victim. See Ala. Code § 15-19-1(c).
- "[T]he seriousness of a charge alone is not a sufficient basis on which to deny YO status but that the nature of the facts on which the charge rests may alone be sufficient to deny YO status."
- "In determining whether to treat a defendant as a youthful offender, the trial court has nearly absolute discretion. There is no set method for considering a motion requesting such treatment. However, the Youthful Offender Act requires that the court conduct a factual investigation into the defendant's background. Generally, the trial court considers the nature of the crime charged, any prior convictions, the defendant's age, and any other matters deemed relevant by the court. Moreover, the trial court need not articulate on the record its reasons for denying the defendant youthful offender status." *Flowers v. State*, 922 So. 2d 938 (Ala. Crim. App. 2005).

Sentence

"(a) If a person is adjudged a youthful offender and the underlying charge is a felony, the court shall: (1) Suspend the imposition or execution of sentence with or without probation; (2) Place the defendant on probation for a period not to exceed three years; (3) Impose a fine as provided by law for the offense with or without probation or commitment; (4) Commit the defendant to the custody of the Alabama Department of Corrections for a term of three years or a lesser term.

(b) Where a sentence of fine is not otherwise authorized by law, then, in lieu of or in addition to any of the dispositions authorized in this section, the court may impose a fine of not more than $1,000.00. In imposing a fine the court may authorize its payment in installments." Ala. Code § 15-19-6.

G. Post Conviction Review - Rule 32 Petitions

For information on Rule 32 Petitions, go to the Alabama Sentencing Commission's website at http://sentencingcommission.alacourt.gov/Publications/Rule 32_2008.pdf

H. Collateral Consequences of a Felony Sentence

In addition to the punishment imposed by courts at sentencing, state and federal laws prescribe numerous consequential prohibitions for those convicted of felonies.

State Prohibitions for Felons:

- Voting (Ala. Const. art VIII, § 177; Ala. Code § 15-22-36.1)
    - Felons convicted of crimes involving moral turpitude are not qualified to vote until restoration of civil and political rights.
    - § 15-22-36.1 provides a special procedure for restoration of voting rights under certain circumstances for felons who have not been convicted of treason, impeachment, murder, rape, sodomy, sexual abuse, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, or possession with intent to distribute child pornography.
    - Otherwise voting rights are restored only by a full pardon either for actual innocence or fully restoring civil and political rights.

- Restrictions on Employment:
    - Felons **may not work** as one of the following: law enforcement officer (§ 36-21-46), bank director (§ 5-6A-1), dentist or dental hygienist (§ 34-9-10, § 34-8-18), land surveyor (§ 34-11-12), optometrist (§ 34-22-33), chiropractor (§ 34-24-166), physical therapist (§ 34-24-217), polygraph examiner (§ 34-25-21), school principal (§ 16-24B-3), or veterinarian (§ 34-29-76).
    - A felony conviction is **grounds for revocation** of the professional license of an accountant (§ 34-1-12), architect (§ 34-2-34), assisted living administrator (§ 34-2A-13), attorney (§ 34-3-86), auctioneer (§ 34-4-29), cosmetologist (§ 34-7A-15), professional counselor (§ 34-8A-16), hearing instrument dealer or fitter (§ 34-14-9), interior designer (§ 34-15C-11), nurse (§ 34-21-25), physician's assistant (§ 34-24-302), physician (§ 34-24-360), psychologist (§ 34-26-46), real estate broker (§ 34-27-66), speech pathologist (§ 34-28A-26), social worker (§ 34-30-4), geologist (§ 34-41-19), massage therapist (§ 34-43-15), and insurance dealer (§ 27-7-19).

- A person convicted of a Class A felony or sex crime may not hold a teaching certificate. § 16-23-5.
- A felon may not be appointed to a job in a Class 4 municipality. § 11-44B-43.

- Other Various State Prohibitions for Felonies:
  - A felony conviction gives automotive insurers cause for cancelling a liability insurance policy. § 27-23-21.
  - If convicted of more than two felonies, the offender must register as a felon. § 13A-11-182.
  - A felon may not have direct or indirect interest in a professional bail company. § 15-13-160.
  - A felon cannot drive a commercial vehicle for one year if a motor vehicle was used to commit a felony. A felon cannot drive a commercial vehicle for life if a motor vehicle was used to commit a drug crime involving manufacturing or distribution. § 32-6-49.11.
  - A felon may have boating license revoked if a boat was used in the commission of a felony. § 33-5-75.
  - A felon may be denied foster parent status. § 26-1-24.
  - A felon may lose drivers license for conviction of any felony in which a motor vehicle is used. § 32-5A-195.

Federal Prohibitions for Felons:

- If convicted of a drug offense, may not receive federal grants, licenses, contracts, or other federal benefits (21 U.S.C. § 862):
  - INCLUDING, but not limited to, all federal assistance for higher education, food stamps, or temporary assistance to needy families.
  - EXCLUDING retirement, welfare, Social Security, health, disability, public housing, military benefits, and benefits for which a payment is required.
- May not serve on a federal jury until restoration of civil rights. 28 U.S.C § 1865.
- May not enlist in the armed services. 10 U.S.C. § 504.
- May not receive military pensions while in prison (though the pension may be sent to spouse or children). 38 U.S.C. § 1505.
- May not receive federal workers compensation while in prison (though payments may be made to spouse or children). 5 U.S.C. § 8148.
- May lose any federal license upon conviction of a drug offense. 21 U.S.C. § 862.

- May not be a person controlling the affairs of a federally insured depository institution. 12 U.S.C. § 1818.
- May not serve in a leadership capacity for a labor organization or employee benefit plan, if convicted of certain offenses. 29 U.S.C. §§ 504, 1111.
- Registered sex offenders may not live in federally assisted housing or receive federal low-income housing assistance. 42 U.S.C. § 1437.
- For certain offenses, the government may revoke a passport. 22 U.S.C. § 2714.
- An illegal alien who was illegal at the time of entry may be deported for the following offenses (8 U.S.C. § 1227):
    - A crime involving moral turpitude committed within 5 years of entry to the U.S. AND for which carries a possible penalty of one year or longer.
    - Two or more crimes involving moral turpitude not arising out of a single scheme.
    - An aggravated felony. *See* 8 U.S.C. § 1101(a)(43).
    - A drug offense, other than a single offense involving possession of 30 grams or less of marihuana for personal use.
    - Certain firearms or immigration offenses.
    - Certain national security offenses.
    - A domestic violence offense.
- An alien is disqualified from naturalization if confined for 180 days or more as a result of a conviction. 8 U.S.C. §§ 1101(f)(7); 1427(a).

II. Determining a Sentence

A. Introduction

In Alabama, a defendant is sentenced at the discretion of the judge. Sentences must fall within the minimum and maximum ranges for the particular class of offense as prescribed in Ala. Code Title 13A, Chapter 3. In addition, the Code provides mandatory sentence enhancements for numerous situations. Among these enhancements are increased sentences for prior felony convictions, use of a firearm/deadly weapon, and child sex offenses. Part B of this section details these statutory provisions.

In 2006, the Alabama Legislature approved the Initial Voluntary Sentencing Standards proposed by the Alabama Sentencing Commission. The Standards provide sentence recommendations for 26 felonies, which represent the vast majority of state convictions. The Standards currently exist in the form of sentencing worksheets. A sentencing judge *must* consider the Standards' recommendation when sentencing for a covered felony, though the judge is not required to follow the recommendation. Part D of this section gives more information about the Sentencing Standards.

The Sentencing Standards incorporate all the sentencing increases of the Habitual Felony Offender Act and other penalty enhancement statutes. Thus, if a judge follows the Sentencing Standards' recommendation, the judge **should not** add any statutory enhancements.

B. Alabama Statutory Penalty Provisions and Enhancements

1. Penalties by Class of Felony, with Firearm and Sex Offender Enhancements Ala. Code § 13A-5-6 and § 13A-5-11

Current Offense	Penalty	Minimum Penalty if Firearm/Deadly Weapon Used/Attempted*	Minimum Mandatory Child Sex Offenders**
Class A Felony	10-99 years or life in State penitentiary Fine up to $60,000	20 years	20 years plus 10 years post-incarceration supervision (part of sentence) Not eligible for probation, good time, parole, or split sentence
Class B Felony	2-20 years*** Fine up to $30,000	10 years	10 years Not eligible for probation, good time, parole, or split sentence
Class C Felony	1 (+1 day) - 10 years*** Fine up to $15,000	10 years	No sentence enhancement Not eligible for good time or probation****

* Applies where any coconspirator possesses a firearm. *Browder v. State*, 728 So. 2d 1108 (Ala. 1997).

** Applicable offenses are sex offenses involving a child victim under 12 years of age, child pornography offenses involving children under the age of 17, and traveling to meet a child for an unlawful sex act. (§ 13A-6-124).

*** Imprisonment of 3 years or less can be ordered to be served in the county jail or penitentiary. Ala. Code § 15-18-1(b) (1975).

**** § 13-5-2(d) prohibits probation for all criminal sex offenses, but § 15-8-8 prohibits split sentencing for only Class A and B sex offenses.

2. Penalties for Misdemeanors & Violations
Ala. Code § 13A-5-7, § 13A-5-12, and § 11-45-9

Offense	Imprisonment	Fine
Class A Misdemeanor	Not to exceed 1 year	Not more than $6,000*
Class B Misdemeanor	Not to exceed 6 months	Not more than $3,000*
Class C Misdemeanor	Not to exceed 3 months	Not more than $500*
State Violation	Not to exceed 30 days	Not more than $200*
Municipal Ordinance Violation § 11-45-9	Not to exceed 6 months (Except for DUI offenses where maximum is one year imprisonment or hard labor)	Not to exceed $500 (Except for DUI where maximum fine is $5,000)

*or any amount not exceeding double the pecuniary gain to the offender or loss to the victim caused by the commission of the offense.

3. Enhancements Pursuant to § 13A-5-9, the Habitual Felony Offender Act.

Current Offense	No Prior Felony Convictions	One Prior Felony Conviction	Two Prior Felony Convictions	Three+ Prior Felony Convictions
Class A Felony	10-99 years or life in state penitentiary Fine up to $60,000	15-99 years or life in state penitentiary Fine up to $60,000	Life imprisonment or any term of years not less than 99 years Fine up to $60,000	***No prior Class A Felony convictions:*** Mandatory imprisonment for life or life imprisonment without possibility of parole Fine up to $60,000 ***One or more prior Class A Felony convictions:*** Mandatory imprisonment for life without possibility of parole** Fine up to $60,000
Class B Felony	2-20 years* Fine up to $30,000	10-99 years or life in state penitentiary Fine up to $60,000	15-99 years or life in state penitentiary Fine up to $60,000	Minimum of not less than 20 years or life imprisonment Fine up to $60,000
Class C Felony	1 (+1 day) - 10 years* Fine up to $15,000	2-20 years Fine up to $30,000	10-99 years or life in state penitentiary Fine up to $60,000	15-99 years or life in state penitentiary Fine up to $60,000

*** *Imprisonment of 3 years or less*** can be ordered to be served in the county jail or penitentiary. Ala Code § 15-18-1(b).

****** Due to the effect of § 15.22.27.2; *see also State v. Thomas*, 611 So. 2d 472, 474 (Ala. Crim. App. 1992).

Notes on the Habitual Felony Offender Act:

- HFOA allows sentences that **exceed** the maximum sentences prescribed by § 13A-5-6. *Ex parte State* (*In re Lane v. State*), 66 So. 3d 824, (Ala. 2010) (holding valid a 120-year sentence for a defendant who was convicted of a Class A felony after two prior felony convictions).
- Convictions for offenses outside the criminal code (Title 13A) **CANNOT** be used to enhance a sentence with the HFOA. *Kennedy v. State*, 929 So. 2d 515 (Ala. Crim. App. 2005); see also *Mosley v. State*, 986 So. 2d 476 (Ala. Crim. App. 2007). This includes adjudications under the Youthful Offender Act. *Ex Parte Thomas*, 435 So. 2d 1324 (Ala. 1982).
- § 13A-5-9.1 allows modification of sentences of certain inmates sentenced under the HFOA prior to May 25, 2000 (*Kirby* motions). For more on *Kirby* motions, see the *2010 Reference Manual*.
- Pardoned convictions cannot be used for enhancement of sentence. *Ex Parte Casey*, 852 So. 2d 175 (Ala. 2002).
- HFOA enhancements are not added to the recommended sentence if the Initial Voluntary Sentencing Standards are followed in a covered case. § 12-35-34(c); *State v. Crittenden*, 17 So. 3d 253 (Ala. Crim. App. 2009).

4. Drug Trafficking Enhancements (§ 13A-12-231)

Note: Defendants sentenced under the Drug Trafficking Act (§ 13A-12-231) must serve the minimum sentence or 15 years, whichever is greater, before becoming eligible for parole and cannot receive good time credit. § 13A-12-232.

Offense	Enhancement/Minimums	Statute
Running a Drug Enterprise (organizing and receiving monetary benefit from the work of five or more people)	1st conviction: 25 years minimum up to and includes life without parole and fine of no less than $50,000 nor more than $500,000. 2nd conviction: mandatory term of life without parole and fine not less than $150,000 nor more than $1 million.	§13A-12-233
Exception to mandatory minimum sentences for drug trafficking	Reduction is authorized for a defendant sentenced to any term except life imprisonment without parole if (s)he provides substantial assistance in the arrest or conviction of any accomplices, accessories, co-conspirators, or principals. Motion must be made by district attorney; a judge may not reduce or suspend a sentence *ex mero moto*.	§13A-12-232
Habitual offenders convicted of drug trafficking	Sentence provided in drug statute or HFOA, whichever is greater	§13A-12-231(12)
Drug trafficking while in possession of firearm Act 90-389, effective 4/17/90	Additional 5 years not subject to suspension or probation & mandatory $25,000 fine. Imposition of $25,000 fine in connection with firearm enhancement is mandatory and the defendant must be informed thereof prior to accepting guilty plea. *Carter v. State*, 812 So. 2d 391 (Ala.Cr.App. 2001).	§13A-12-231(13)
Trafficking Cannabis: 500 pounds or more but less than 1,000 pounds	Minimum 15 years and $200,000 fine.	§13A-12-231(1)(c)
Trafficking Cannabis: 1,000 pounds or more	Life imprisonment without parole.	§13A-12-231(1)(d)

Offense	Enhancement/Minimums	Statute
Trafficking Morphine, Opium, Heroin & Lysergic Acid Diethylamide: 4 grams or more but less than 14 grams	Minimum 3 years and $50,000 fine.	§13A-12-231 (3) & (9)
Trafficking Morphine, Opium, Heroin & Lysergic Acid Diethylamide: 14 grams or more but less than 28 grams	Minimum 10 years and $100,000 fine.	§13A-12-231 (3) & (9)
Trafficking Morphine, Opium, Heroin & Lysergic Acid Diethylamide: 28 grams or more but less than 56 grams	Minimum 25 years and $500,000 fine.	§13A-12-231 (3) & (9)
Trafficking Morphine, Opium, Heroin & Lysergic Acid Diethylamide: 56 grams or more	Life imprisonment without parole.	§13A-12-231 (3) & (9)
Trafficking Phencyclidine or mixture: 4 grams or more, but less than 14 grams	Minimum 3 years and $50,000 fine.	§13A-12-231 (8)
Trafficking Phencyclidine or mixture: 14 grams or more, but less than 28 grams	Minimum 5 years and $100,000 fine.	§13A-12-231 (8)
Trafficking Phencyclidine or mixture: 28 grams or more, but less than 56 grams	Minimum 15 years and $250,000 fine.	§13A-12-231 (8)
Trafficking Phencyclidine or mixture: 56 grams or more	Life imprisonment without parole.	§13A-12-231 (8)
Trafficking Methaqualone: 1,000 but less than 5,000 pills	Minimum 3 years and $50,000 fine.	§13A-12-231 (4)
Trafficking Methaqualone: 5,000 but less than 25,000 pills	Minimum 10 years and $100,000 fine.	§13A-12-231 (4)
Trafficking Methaqualone: 25,000 but less than 100,000 pills	Minimum 25 years and $500,000 fine.	§13A-12-231 (4)

Offense	Enhancement/Minimums	Statute
Trafficking Methaqualone: 100,000 or more pills	Life imprisonment without parole.	§13A-12-231 (4)
Trafficking Hydromorphone: 500 but less than 1,000 pills	Minimum 3 years and $50,000 fine.	§13A-12-231 (5)
Trafficking Hydromorphone: 1,000 but less than 4,000 pills	Minimum 10 years and $100,000 fine.	§13A-12-231 (5)
Trafficking Hydromorphone: 4,000 but less than 10,000 pills	Minimum 25 years and $100,000 fine.	§13A-12-231 (5)
Trafficking Hydromorphone: 10,000 or more pills	Life imprisonment without parole.	§13A-12-231 (5)
Trafficking cocaine or mixture, methylenedioxy amphetamine or mixture, methoxy ethylenedioxy amphetamine or mixture, amphetamine or mixture, methamphetamine or mixture: 28 grams but less than 500 grams	Minimum 3 years and $50,000 fine.	§13A-12-231 (2), (6), (7), (10), (11)
Trafficking cocaine or mixture, methylenedioxy amphetamine or mixture, methoxy ethylenedioxy amphetamine or mixture, amphetamine or mixture, methamphetamine or mixture: 500 grams or more but less than one kilo	Minimum 5 years and $100,000 fine.	§13A-12-231 (2), (6), (7), (10), (11)

Offense	Enhancement/Minimums	Statute
Trafficking cocaine or mixture, methylenedioxy amphetamine or mixture, methoxy ethylenedioxy amphetamine or mixture, amphetamine or mixture, methamphetamine or mixture: one kilo but less than 10 kilos	Minimum 15 years and $500,000 fine.	§13A-12-231 (2), (6), (7), (10), (11)
Trafficking cocaine or mixture, methylenedioxy amphetamine or mixture, methoxy ethylenedioxy amphetamine or mixture, amphetamine or mixture, methamphetamine or mixture: 10 kilos or more	Life imprisonment without parole.	§13A-12-231 (2), (6), (7), (10), (11)

5. Other Drug Enhancements

Offense	Enhancement/Minimums	Statute
Selling, furnishing controlled substance to child (under 18)	Class A Felony (10 - 99 years/life). Cannot be suspended or probated.	§13A-12-215
Drug sale within 3 mile radius of school	Additional 5 years imprisonment. If split, can suspend – *see Soles v. State*, 820 So. 2d 163 (Ala. Crim. App. 2001)	§13A-12-250
Drug sale within 3 mile radius of housing project	Additional 5 years imprisonment. If split, can suspend – *see Soles v. State*, 820 So. 2d 163 (Ala. Crim. pp. 2001)	§13A-12-270
<u>Demand Reduction Assessment</u> Applicable to convictions for: • Drug Trafficking (§13A-12-231); • Sale, furnishing, etc. controlled substance by person over age 18 to person under 18 (13A-12-215); • Possession of Marihuana 1st (§ 13A-12-213); • Distribution of controlled substance (§ 13A-12-211); • Poss./Receipt of controlled substance (§ 13A-12-212); • Attempts, conspiracies or criminal solicitations to commit a controlled substance crime (§13A-12-202, 203, 204).	In addition other penalties for the crime: $1,000 *mandatory* fine for first offenders and $2,000 *mandatory* fine for second and subsequent offenders.	§13A-12-281

6. DUI Enhancements

Offense	Enhancements/Minimums	Statute
Misdemeanor DUI	1st conviction: Not more than 1 year imprisonment. Fine $600 but not more than $2,100. 90 days driver's license suspension. *May be required to have interlock device installed for 1 year following reinstatement of license. Interlock device required for 2 years if blood alcohol 0.15 or more or someone under 14 in car.* 2nd conviction (within five years): Not more than 1 year imprisonment. Mandatory imprisonment for 5 days or not less than 30 days community service. Fine $1,100 and not more than $5,100. 1 year revocation of driver's license. *Interlock device required for 2 years following reinstatement of license.* 3rd conviction: Not less than 60 days but not more than 1 year imprisonment. Fine $2,100 and not more than $10,100. 3 year revocation of driver's license. *Interlock device required for 3 years following reinstatement of license.* Must also refer to CRO program	§ 32-5A-191 As amended by Act 2011-613, Eff. 9/1/2011
Felony DUI - Class C Felony 4th or subsequent DUI conviction within 5 years.	One year and one day nor more than 10 years, or 10 days mandatory imprisonment in county jail if as a condition of probation the defendant is enrolled and completes an approved chemical dependency program. Fine of $4,100 but not more than $10,100. 5 year revocation of driver's license. *Interlock device required for 5 years following reinstatement of license.* Felony DUI convictions do not count toward HFOA.	§ 32-5A-191 As amended by Act 2011-613, Eff. 9/1/2011
DUI in which the defendant is over the age of 21 with passenger under 14 years of age.	Double minimum punishment.	§ 32A-5A-191
DUI in which blood alcohol level is not less than 0.15.	Double minimum punishment.	§ 32A-5A-191 As amended by Act 2011-621, Eff. 9/1/2011

7. Miscellaneous Enhancements*

Offense	Enhancement/ Minimums	Statute
Rape 1st, Sodomy 1st, Sexual Torture where defendant is 21 years or older and victim is 6 years or younger	Life imprisonment without parole	§ 13A-5-6 As amended by Act 2011-555, Eff. 9/1/2011
Hate Crimes	Class A: 15 years Class B: 10 years Class C: 2 years	§ 13A-5-13
Child Sex Offenders Committing Class A Felony or Class B Felony	No possibility of parole	§15-22-27.3
Transmitting Obscene Material to Child By Computer	No Youthful Offender - Must be tried as adult and records not sealed or expunged.	§ 13A-6-111
Repeat Felony Offense Resulting in Serious Physical Injury (subsequent conviction within 5 years of murder, rape, robbery, or assault with a deadly weapon (or attempts) which results in serious physical injury)	*No possibility of parole for sentences of a term of years.* *For life sentences, follow the parole guidelines of the Habitual Felony Offender Act.*	§15-22-27.1 *As interpreted by Moore v. State*, 739 So. 2d 536 (Ala. Crim. App. 1998).
Domestic Violence 1st - 2nd and subsequent offenses	1 year without possibility of probation, parole, or good time. If committed in violation of a protection order: Minimum doubled without possibility of probation, parole, or good time.	§ 13A-6-130
Domestic Violence 2nd - 2nd and subsequent offenses	6 months without possibility of probation, parole, or good time. If committed in violation of a protection order: Minimum doubled without possibility of probation, parole, or good time.	§ 13A-6-131

*Note: § 13A-6-110, which provided penalty enhancements for solicitation of a child by computer, was **repealed** by Act 2009-745. The bill redefined the crime (*see* § 13A-6-120, *et seq*.), and the enhancements no longer apply. *This is a correction from the 2010 Reference Manual.*

Offense	Enhancement/ Minimums	Statute
Domestic Violence 3rd	2nd conviction: *10 days* in city or county jail without consideration of reduction in time. 3rd and subsequent convictions: *Becomes a Class C felony* If committed in violation of a protection order: *30 days* without consideration of reduction in time	§ 13A-6-132 As amended by Act 2011-581, Eff. 9/1/2011
Pharmacy Robbery	Hard labor for not less than 10 years nor more than 99 years and not eligible for parole, probation, or suspension of sentence. 2nd or subsequent convictions: defendant must be imprisoned for life without parole.	§ 13A-8-52
Terrorism	Murder: Death Class A (other than Murder): Life without parole Class B: Becomes a Class A Class C: Becomes a Class B	§ 13A-10-152
Falsely Reporting Incident Re: Release or Impending Release of Hazardous or Dangerous Substance where object is to interfere with attendance, operation etc. of school	No part of sentence can be suspended, deferred, or withheld and offender not eligible for good time, early release, or work release.	§ 13A-11-11 As amended by Act 2009-718, Eff. 8/1/2009
Possession & sale of brass or steel Teflon-coated handgun ammunition	Additional consecutive punishment of 3 years in the penitentiary.	§ 13A-11-60
Willful Violation of Protection Order	Class A misdemeanor 2nd conviction: minimum of 48 hours continuous imprisonment which cannot be suspended 3rd and subsequent convictions: 30 days imprisonment which may not be suspended	§ 30-5A-3 (c)

Apprendi and Due Process Limits on Sentencing Enhancements

The 2000 Supreme Court decision in *Apprendi v. New Jersey* held that *"[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."* 530 U.S. 466, 490 S.Ct. 2348 (2000) (emphasis added).

Summary:

1. *Apprendi* demands that to enhance a sentence for a crime **beyond** the maximum prescribed by statute (e.g., § 13A-5-6), the facts underlying the enhancement must be submitted to the jury and proved beyond a reasonable doubt.

2. *Apprendi* **does not** impact enhancements under the Habitual Felony Offender Act, but it does affect other enhancements (most notably drug enhancements). *Almendarez-Torres v. United States*, 523 U.S. 224 (1998); *United States v. Moore*, 241 Fed. App'x 599 (11th Cir. 2007).

3. The state must give **notice** that it wishes to seek an enhancement above the maximum, but it **does not** have to allege the facts leading to the enhancement in its indictment. *Poole v. State*, 846 So. 2d 370, 387 (Ala. Crim. App 2001).

The *Apprendi* Decision:

Charles Apprendi pled guilty to a charge of unlawful possession of a firearm after shooting his gun into a neighbor's house. Under New Jersey statute, the maximum penalty for this crime was 10 years. During a sentencing hearing, the judge found by a preponderance of the evidence that Apprendi's crime was motivated by racial animus. The judge enhanced Apprendi's sentence to 12 years using a statute intended to increase penalties for hate crimes.

The Supreme Court held Apprendi's sentence unconstitutional under the Fourteenth Amendment Due Process Clause. *Id.* at 474. New Jersey argued that the racial animus was merely a sentencing factor for the underlying crime, not an element of the crime itself. The Court disagreed and held that when a sentencing factor (or sentencing enhancement), produces a sentence *greater* than that prescribed by statute for the underlying offense, the enhancement in effect creates a separate offense. *See id.* at 495-96. Thus, any fact other than a prior conviction that increases a sentence above the statutory maximum for the underlying offense is an element that must be submitted to a jury and proved beyond a reasonable doubt (or admitted by the defendant). *Id* at 490. The fact of a past conviction has already been subjected to the reasonable doubt test in a prior proceeding and, therefore, may be used by a judge to enhance a sentence. *See id*. at 496.

***Poole* - *Apprendi* in Alabama:**

The Alabama Court of Criminal Appeals addressed the impact of *Apprendi* in *Poole v. State*, 846 So. 2d 370 (Ala. Crim. App. 2001). Poole was convicted of distributing a controlled substance, which carries a maximum 20 year sentence as a Class B felony. He received a 30 year sentence for the crime after the court added two 5 year enhancements for distributing near a school (Ala. Code. § 13A-12-250) and near a housing project (Ala. Code § 13A-12-270). The Court of Criminal Appeals held the application of the enhancements was unconstitutional under *Apprendi* because the facts underlying them were found by a judge and were not submitted to a jury and proved beyond a reasonable doubt. *Id*. at 379.

Poole held that *Apprendi* does not require the state to allege in its indictment facts that would increase a defendant's sentence beyond the statutory maximum. *Id*. at 387. However, the state must give notice that it intends to seek the enhanced penalties. *Id. When the state wishes to enhance a penalty, the jury must return a separate verdict form finding the facts underlying the enhancements proved beyond a reasonable doubt. Id*. at 388.

Application of the *Apprendi* Principle to Death Penalty Sentences:

- In exercising its authority to override a jury's recommendation of life without parole instead of death, a circuit court must treat the jury's recommendation as a mitigating circumstance and state in its sentencing order specific reasons for the weight it gave the jury's recommendation.[3] *Ferguson v. State*, 13 So. 3d 418 (Ala. Crim. App. 2008).

- Applying *Apprendi*, a jury must find beyond a reasonable doubt aggravating circumstances that enhance a murder conviction to a death sentence. *Ring v. Arizona*, 536 U.S. 584 (2002). However, the jury is not required to weigh the mitigating and aggravating circumstances that factor in a decision to impose the death penalty. *Ex Parte Waldrop*, 859 So. 2d 1181, 1190 (Ala. 2002).

[3] "*Carroll* [852 So. 2d 833 (Ala. 2002)] and *Tomlin* [909 So. 2d 283 (Ala. 2003)] do not state that a court must give 'considerable' or 'great' weight to the jury's recommendation of life imprisonment without parole whenever the vote in favor of life without parole is 10 years or greater." *Ferguson v. State*, 13 So. 3d 418 (Ala. Crim. App. 2008).

C. Limitations on Sentencing

Credits for Time Served

- Regardless of whether time served is used as a factor in determining an appropriate sentence, the sentencing court must credit the convicted person with all actual time the person spent incarcerated pending trial. § 15-18-5; ARCrP 26.9(b)(2); see *Fuqua v. State*, 910 So. 2d 141 (Ala. Crim. App. 2005).

- A convicted person is entitled to credit for time served out of state pending return to Alabama to face trial. However, no credit is authorized if the convict escaped from custody following conviction. See *Culbreth v. State*, 966 So. 2d 912 (Ala. Crim. App. 2007).

Eighth Amendment and the Proportionality Requirement

- The Eighth Amendment does not require a sentencing court to consider mitigating factors for noncapital offenses. *Harmelin v. Michigan*, 501 U.S. 957 (1991).

- The U.S. Supreme Court has held that the Eighth Amendment requires some level of proportionality between the sentence and the crime committed. *Harmelin*, 501 U.S. 957; *Solem v. Helm*, 463 U.S. 277 (1983). To determine whether or not a sentence is proportional, first determine if the sentence is grossly disproportionate to the offense. If the sentence is grossly disproportionate, examine the sentences imposed on other defendants both inside and outside the jurisdiction. *Ewing v. California*, 538 U.S. 11 (2003); *Harmelin*, 501 U.S. 957; *United States v. Reynolds*, 215 F.3d 1210, 1214 (11th Cir. 2000); *Wilson v. State*, 830 So. 2d 765 (Ala. Crim. App. 2001).

- In determining if a sentence is grossly disproportionate, the U.S. Supreme Court has created a non-exhaustive list of factors: consideration of the circumstances of the crime, the harm caused to the victim or to society, the culpability of the offender, and the offender's motive in committing the crime. *Solem,* 463 U.S. 277; *Wilson,* 830 So. 2d 765.

- Generally, sentences imposed within statutorily prescribed limits will not run afoul of the Eighth Amendment.

Juveniles Sentenced as Adults (Roper, Graham, Miller)

- A juvenile, who under the age of 18 at the time of the offense, may not be sentenced to death. *Roper v. Simmons*, 543 U.S. 551, 560, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)

- A juvenile, who was under the age of 18 at the time of the offense, may not be sentenced to life without the possibility of parole upon conviction of a

non-homicide offense. *Graham v. Florida*, 560 U.S. ___, 130 S.Ct. 2011, 176 L.Ed. 825 (2010)

- A juvenile, who was under the age of 18 at the time of the offense, may not receive a mandatory sentence of life without parole for capital murder. *Miller v. Alabama*, ___S.Ct.___, 2012 WL 2368659 (June 25, 2012)

Double Jeopardy

The Fifth Amendment to the U.S. Constitution prohibits prosecuting a defendant more than once for the same crime. Consequently, a defendant may not be prosecuted for more than one offense resulting from the exact same acts. However, it is possible for a defendant to be charged with multiple crimes for a single criminal transaction if the facts proving each offense differ:

> The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.

Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180 (1932).

The following applications of double jeopardy principles come from Alabama case law:

- A defendant **may not** be convicted of both felony murder and the underlying felony, since the latter is a necessary element of the former. *Jones v. State*, 992 So. 2d 76 (Ala. Crim. App. 2007); *Witherspoon v. State*, 33 So. 3d 625 (Ala. Crim. App. 2009).

- If a statute prescribes more than one way to prove an offense, a defendant **may not** be punished for multiple counts of the same offense because the prosecution proved the crime more than one way. *Billups v. State*, 2010 WL 3377690 (Ala. Crim. App. Aug. 27, 2010) (discussing capital murder); *Egbonou v. State*, 993 So. 2d 35 (Ala. Crim. App. 2007) (discussing identity theft).

- A defendant convicted of burglary (breaking an entering with the intent to commit a felony) **may** also be convicted of the subsequent felony and may be sentenced to consecutive sentences for both crimes. *Dawson v. State*, 675 So. 2d 897 (Ala. Crim. App. 1995). HOWEVER, a defendant convicted of burglary and a resulting theft may only be punished with **concurrent** sentences for both crimes. *Ex Parte McKelvey*, 630 So. 2d 56 (Ala. 1992).

- Possession of two separate controlled substances at the same time constitutes only one act of possession. *Hollaway v. State*, 979 So. 2d 839 (Ala. Crim. App. 2007).

D. The Sentencing Standards

When determining a sentence for one of the 26 felony offenses listed below, the court must complete and submit a worksheet under the Initial Voluntary Sentencing Standards, pursuant to the Alabama Sentencing Reform Act of 2006 (§ 12-25-30, *et seq*.).

See the *Initial Voluntary Sentencing Standards & Worksheets* manual for complete information on completing the sentencing worksheets.

Personal Crimes	Property Crimes	Drug Crimes
Assault I § 13A-6-20	Burglary I § 13A-7-5	Felony DUI § 32-5A-191
Assault II §13A-6-21	Burglary II §13A-7-6	Possession of Marihuana I §13A-12-213
Manslaughter §13A-6-3	Burglary III §13A-9-3	Unlawful Possession of a Controlled Substance § 13A-12-212
Murder §13A-6-2	Forgery II §13A-9-3	Sale/Distribution of Marihuana (other than to a minor) §13A-12-211
Rape I §13A-6-61	Possession Forged Instrument II §13A-9-6	Sale/Distribution of Schedule I-V (other than to a minor) §13A-12-211
Rape II §13A-62	Theft of Property I §13A-8-3	
Robbery I §13A-8-41	Theft of Property II §13A-8-4	
Robbery II §13A-8-42	Receiving Stolen Property I §13A-8-17	
Robbery III §13A-8-43	Receiving Stolen Property II §13A-8-18	
Sodomy I §13A-6-13	Unauthorized Use/B&E Vehicle §13A-8-11	
Sodomy II §13A-6-64	Unlawful Possession/Use of Credit/Debit Card §13A-9-14	

Questions about the Voluntary Sentencing Standards

1. What are the Sentencing Standards?

In compliance with the directives included in the Sentencing Reform Act of 2003, the Alabama Sentencing Commission developed Voluntary Sentencing Standards, or recommended sentences, for the most frequent felony convictions. These recommended sentences provide judges with additional information and direction in light of the wide sentencing ranges available under other criminal sentencing statutes.

The Standards are voluntary, non-appealable, historically based, time imposed, sentencing recommendations developed for 26 felony offenses, representing 87% of all felony convictions in Alabama over a five-year period from October 1, 1998 through May 31, 2003. The Standards take into account the key factors considered by judges when determining a sentence.

The Voluntary Standards are not meant to trump, but rather to aid, judicial discretion. There will be cases in which the judge will find it appropriate to impose a lesser of greater sentence than the Standards recommend. However, it is expected that use of the Standards will result in more informed sentencing, greater uniformity in sentencing, and a dramatic reduction in sentencing disparity among like-situated defendants.

The Sentencing Standards are voluntary and non-appealable, and do not work like the mandatory guidelines of some states and the federal courts.

The Sentencing Standards were approved by the Legislature during the 2006 Legislative Session and became effective October 1, 2006.

2. Why does Alabama have Sentencing Standards?

The Alabama Legislature recognized a need for sentencing reform in this State.

A study conducted by the Vera Institute of Justice, found that there was a 326% increase in the rate of incarceration in Alabama between 1979 and 2000.

As of 2008, Alabama prisons had the fifth highest rate of incarceration in the nation, (634 per 100,000), 125% of the national average.[4] Currently, Alabama's prisons sit at 190% of capacity, at approximately the same level of overcrowding that recently prompted the United States Supreme Court to order California to reduce its prison population by a third.[5]

Recognizing the overcrowding of our prisons in Alabama, and the demands on our public resources, the Alabama Legislature created the Alabama Sentencing Commission to

[4] UNITED STATES DEPARTMENT OF JUSTICE, PRISONERS IN 2008 (2009), http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf.
[5] *Brown v. Plata*, __ U.S. __, 131 S.Ct. 1910, 1924 (2011).

recommend changes in Alabama's criminal justice system. Such recommendations must, among other things, secure public safety, provide certainty and fairness in sentencing, avoid unwarranted sentencing disparities, and prevent prison overcrowding and premature release of prisoners.

To read more about the purposes of the Alabama Sentencing Commission and the Sentencing Standards, see The Alabama Sentencing Reform Act of 2006 (Ala Code. § 12-25-30, *et seq*.), which is reprinted in the *Initial Voluntary Sentencing Standards & Worksheets* manual.

3. Are sentencing judges required to use the Sentencing Standards?

The Sentencing Standards are voluntary and non-appealable. However, when sentencing for an applicable felony, judges must *consider* the Sentencing Standards. If the judge chooses not to follow the recommendation, he/she may indicate a reason for doing so. § 12-25-35.

4. How do the Sentencing Standards relate to the Habitual Felony Offender Act and other statutory sentencing enhancements?

When following the Voluntary Sentencing Standards, additional enhancements **should not be imposed**. The Standards take into account the statutory mandates of the Habitual Felony Offender Act (HFOA) and other sentencing laws. *"No additional penalties pursuant to any sentence enhancement statute shall apply to sentences imposed based on the Voluntary Sentencing Standards."* § 12-25-34(c).

The Court of Criminal Appeals, relying upon the Supreme Court's decision in *State v. Jones*, 13 So. 3d 915 (Ala. 2008), held that the Alabama Sentencing Reform Act of 2003 gives the trial judge discretion to either sentence a defendant pursuant to the Voluntary Sentencing Standards, in which case the HFOA would **not** apply, or to sentence outside the Standards. If the judge does not follow the recommended sentence of the Sentencing Standards, the HFOA enhancements apply. *Ex parte State (In re State v. Crittenden)*, 17 So.3d 253 (Ala. Crim. App. 2009).

5. Do the current Sentencing Standards represent "truth-in-sentencing"?

No. The Legislature has extended the time for implementing truth-in-sentencing in Alabama until 2020. Act 2012-473.

The Alabama Sentencing Commission is currently developing standards that comply with truth-in-sentencing mandates.

6. Do the sentencing worksheets cover inchoate offenses (attempt, conspiracy, solicitation)?

No. The worksheets **do not** cover any inchoate offenses, including inchoate offenses for which the penalty is the same as the actual offense. They **do** cover aiding and abetting, since accessory liability is equivalent to liability for the underlying crime.

7. Is there an electronic version of the sentencing worksheets?

Yes. The E-Worksheets application, supported by the Administrative Office of Courts, provide users access to electronically complete sentencing worksheets or to print PDF copies of the worksheets that users can complete manually.

In compliance with § 12-25-35(e), the Commission requires that the actual sentencing order (not a copy of the SJIS sentencing screen and the sentence imposed *after probation is granted or denied*) and the final worksheet considered by the Court (reflecting the accurate offense of conviction and any other corrections) be provided to the Alabama Sentencing Commission office.

The E-Worksheets system found at http://worksheets.alacourt.gov may be used to complete the worksheets, but does not produce the official form to be provided to the Alabama Sentencing Commission.

Statewide Youthful Offender and Juvenile delinquency adjudication information is available for designated worksheet preparers from this website for purposes of completing the worksheets only. This information is confidential and may not be disclosed to the general public. Unauthorized disclosure is a criminal offense.

The Instructional Manual and PDF worksheet forms are available on the Alabama Sentencing Commission's website at http://sentencingcommission.alacourt.gov.

III. Types of Punishment

"[T]he only legal punishments, besides removal from office and disqualification to hold office, are fines, hard labor for the county, imprisonment in the county jail, imprisonment in the penitentiary, which includes hard labor for the state, and death." Ala. Code § 15-18-1(a).

A. Imprisonment

1. Places of Imprisonment

Proper Place of Imprisonment by Time of Sentence, § 15-18-1.

Type and Length of Sentence	**Permissible Place of Incarceration**
Felony, sentence greater than 3 years	State penitentiary
Felony, sentence greater than 1 year but less than or equal to 3 years	State penitentiary **OR** county jail **OR** hard labor for the county.
Misdemeanor	**NOT** in the state penitentiary

2. Multiple Sentences

Alabama utilizes three types of multiple sentencing: **consecutive, concurrent, and coterminous**.

Consecutive: Two or more sentences that are served at separate times, in sequence. One begins when the other ends. For example, if a defendant receives consecutive sentences of 10 years and 5 years, the total amount of incarceration is 15 years. If the sentencing order does not state how multiple sentences should be served, they are served consecutively. § 14-4-9, ARCrP 26.12.

Concurrent: Two or more sentences that are served simultaneously. For example, if a defendant is sentenced to serve concurrent sentences of 20 years and 5 years, the total imprisonment is 20 years.

Note: The court **may** modify a previously imposed consecutive sentence to run concurrently. ARCrP 26.12(c). However, a court **may not** change a concurrent sentence into a consecutive one. *Smith v. State*, 814 So. 2d 308, 310 (Ala. Crim. App. 2001).

Coterminous[6]: A subsequent sentence, set to end at the same time as the original sentence, given to an already incarcerated individual. Coterminous punishment gives retroactive credit for the second sentence with time already served for the first sentence. For example, if a defendant has served 6 years of a 10-year sentence and then is sentenced to a second, coterminous 5-year sentence, the defendant would serve a total of 10 years. One year of retroactive credit would be applied to the second sentence.

3. Split Sentences

Section 15-18-8 of the Alabama Code, known as the Split Sentence Act[7], gives judges discretion to suspend a significant portion of a defendant's sentence. Under the Act, a judge may impose a limited period of incarceration followed by a period of probation. The Act imposes the following conditions:

- For sentences of **up to 15 years imprisonment**, the judge may order **no more than 3 years actual confinement**, with the remainder of the sentence suspended.

- For sentences **greater than 15 years but not more than 20 years imprisonment**, the judge may order **not less than 3 but no more than 5 years confinement**, with the remainder of the sentence suspended.

- The Alabama Supreme Court has held that even the incarceration portion of a split sentence may be suspended. *See Ex parte McCormick*, 932 So.2d 124 (Ala. 2005)

- Using a split sentence is always discretionary, never required.

- Split sentences are **unavailable** for sentences of imprisonment exceeding 20 years.

- Split sentences are **unavailable** for Class A and Class B felony child sex offenses. § 15-8-8(a).

- During the suspended portion of the sentence, the defendant must be placed on probation for a period of time up to the remainder of the suspended portion for the sentence. See also *Hemrick v. State*, 922 So. 2d 967, 970 (Ala. Crim. App. 2005).

- The court retains jurisdiction over the defendant during his or her incarceration.

- Inmates serving the incarceration portion of a split sentence are **not eligible for Correctional Incentive Time credits** ("good time").

[6] Although "coterminous" sentences are not mentioned in the Code or Criminal Rules of Procedure, this type of sentence has been negotiated in plea agreements and imposed by some trial courts.

[7] Paragraph (a)(2) of the Act allows for confinement in a "conservation camp program," known as boot camp. As of 2007, the Commissioner of the Department of Corrections, in consultation with trial judges, discontinued this program.

- If a defendant's sentence must be increased by a statutory enhancement (HFOA, 3-mile radius of a school enhancement, etc.), the judge may suspend the enhanced portion of the sentence. *Soles v. State*, 820 So. 2d 163, 165 (Ala. Crim. App. 2003). However, the judge is not required to do so. *Moore v. State*, 871 So. 2d 106, 108 (Ala. Crim. App. 2003).

- A judge may impose a **reverse split sentence**, allowing the defendant to serve the suspended probation portion of the sentence before the incarceration portion. *Ex parte McCormick*, 932 So. 2d 124, 139 n.18 (Ala. 2005). The judge retains jurisdiction to suspend the incarceration at any time.

- The trial court cannot aggregate separate misdemeanor sentences and treat them as one sentence in the aggregate under the Split Sentence Act. *Glass v. State*, 14 So. 3d 188 (Ala. Crim. App. 2008).

B. Correctional Incentive Time ("Good Time" Credits)

The Correctional Incentive Time Act (§ 14-9-41), often referred to as the Good Time Law, automatically reduces the proportion of a sentence a defendant will serve in prison. All defendants who are not excluded (see below) will receive good time credit. The judge has no discretion over the application of good time credit to a particular defendant.

Good time credit is not earned, but is provided by statute to every defendant who qualifies. Full good time credit is denied or forfeited only by bad conduct or rule violations. A defendant released due to good time credit has completed his or her sentence and is, therefore, not on parole.

The charts on the following pages show how long a defendant serving a particular sentence and receiving good time credit will actually remain incarcerated. Chart 1 shows expected time to serve after good time has been calculated generally. Chart 2 shows the expected time to serve if the offender is convicted of a crime involving the sexual abuse against a child 12 to 17 years of age or an assault where the victim suffered the loss or permanent use or partial permanent use of any body organ or appendage.

The following inmates are <u>NOT ELIGIBLE</u> for Correctional Incentive Time:

- Inmates serving a sentence of **more than 15 years**.
- Inmates convicted of a **Class A felony**.
- Inmates convicted of a **criminal sex offense involving a child** (all offenses involving a child under 12, child pornography involving children under 17, and traveling to meet a child for an unlawful sex act).
- Inmates serving the confinement portion of a **split sentence**. § 15-8-8
- Inmates serving a mandatory enhancement that prohibits good time (see Section II(B), Table 4, *supra*).
- County jail inmates NOT sentenced to hard labor.
- Defendants on probation.

Other notes:

- Defendants on parole **DO** continue to accrue good time credit. However, deductions due to good time credit do not count toward parole eligibility. § 14-9-42.
- Community corrections accrues good time, except as a condition of probation.

- Full good time credit is not available to defendants who committed an offense involving sexual abuse of a child age 12 to 17 years or caused the permanent loss of a body part during an assault. § 14-9-41(e). See Chart 2.

- If mandatory enhancements increase a defendant's sentence beyond 15 years, that defendant is **not eligible** for good time credit. *Alabama Department of Corrections v. Hamilton*, 828 So. 2d 374, 375 (Ala. Crim. App 2002).

- Consecutive sentences are treated separately when determining good time eligibility. Therefore, an inmate who is serving consecutive sentences that *together* exceed 15 years may still be eligible for good time. § 14-9-41(g)(1)

Chart 1

Actual Time Served After Applying Correctional Incentive Time (Generally)

Sentence	**Time Served:**		
	Year	**Month**	**Day**
1 Year	—	6	18
2 Years	—	11	5
3 Years	1	2	18
4 Years	1	6	—
5 Years	1	9	13
6 Years	2	—	26
7 Years	2	4	9
8 Years	2	7	22
9 Years	2	11	5
10 Years § 14-9-41(e)	3	2	18
11 Years	3	6	—
12 Years	3	9	13
13 Years	3	11	28
14 Years	4	4	9
15 Years	4	7	22
16 Years (Consecutive)	4	11	5
17 Years (Consecutive)	5	2	18
18 Years (Consecutive)	5	6	—
19 Years (Consecutive)	5	9	13
20 Years (Consecutive)	6	—	26
25 Years (Consecutive)	7	6	—
30 Years (Consecutive)	8	11	5
40 Years (Consecutive)	11	9	13
50 Years (Consecutive)	14	7	22

This chart assumes full good time eligibility and no deductions for bad behavior or other violations (Class I prisoner throughout). Calculations for terms greater than 15 years assume that all individual consecutive sentences are eligible for good time.

Chart 2

Time to Serve – Correctional Incentive Time – Automatic Elevation – No Jail Credit
CLASS II

Sentence		Year	Month	Day
1 Year			6	18
2 Years			11	23
3 Years		1	4	25
4 Years		1	10	1
5 Years		2	3	8
6 Years		2	8	9
7 Years		3	1	15
8 Years		3	6	17
9 Years		3	11	23
10 Years	§ 14-9-41(e)	4	4	25
11 Years		4	10	1
12 Years		5	3	8
13 Years		5	8	9
14 Years		6	1	16
15 Years		6	6	17
16 Years	(Consecutive Sentence)	6	11	23
17 Years	(Consecutive Sentence)	7	4	25
18 Years	(Consecutive Sentence)	7	10	1
19 Years	(Consecutive Sentence)	8	3	8
20 Years	(Consecutive Sentence)	8	9	8
25 Years	(Consecutive Sentence)	10	10	2
30 Years	(Consecutive Sentence)	12	11	24
40 Years	(Consecutive Sentence)	17	3	8
50 Years	(Consecutive Sentence)	21	5	18

The Correctional Incentive Time Act is reprinted here for your reference.

Ala. Code § 14-9-41: Computation of Incentive Time Deductions

(a) Each prisoner who shall hereafter be convicted of any offense against the laws of the State of Alabama and is confined, in execution of the judgment or sentence upon any conviction, in the penitentiary or at hard labor for the county or in any municipal jail for a definite or indeterminate term, other than for life, whose record of conduct shows that he has faithfully observed the rules for a period of time to be specified by this article may be entitled to earn a deduction from the term of his sentence as follows:

> (1) Seventy-five days for each 30 days actually served while the prisoner is classified as a Class I prisoner.
>
> (2) Forty days for each 30 days actually served while the prisoner is a Class II prisoner.
>
> (3) Twenty days for each 30 days actually served while the prisoner is a Class III prisoner.
>
> (4) No good time shall accrue during the period the prisoner is classified as a Class IV prisoner.

(b) Within 90 days after May 19, 1980, the Commissioner of the Department of Corrections shall establish and publish in appropriate directives certain criteria not in conflict with this article for Class I, II, III, and IV prisoner classifications. Such classifications shall encompass consideration of the prisoner's behavior, discipline, and work practices and job responsibilities.

(c)(1) Class I is set aside for those prisoners who are considered to be trustworthy in every respect and who, by virtue of their work habits, conduct, and attitude of cooperation have proven their trustworthiness. An example of a Class I inmate would be one who could work without constant supervision by a security officer.

(2) Class II is that category of prisoners whose jobs will be under the supervision of a correctional employee at all times. Any inmate shall remain in this classification for a minimum period of six months before being eligible for Class I.

(3) Class III is for prisoners with special assignments. They may not receive any of the privileges of Class I and Class II inmates. Any inmate shall remain in this classification for a minimum period of three months before being eligible for Class II.

(4) Class IV is for prisoners not yet classified and for those who are able to work and refuse, or who commit disciplinary infractions of such a nature which do not warrant a higher classification, or inmates who do not abide by the rules of the institution. Inmates who are classified in this earning class receive no correctional incentive time. This class

is generally referred to as “flat time” or “day-for-day.” Any inmate shall remain in this classification for a minimum period of 30 days before being eligible for Class III.

(5) No inmate may reach any class without first having gone through and meeting the requirements of all lower classifications.

(d) As a prisoner gains a higher classification status he shall not be granted retroactive incentive credit based on the higher classification he has reached, but shall be granted incentive credit based solely on the classification in which he was serving at the time the incentive credit was earned. Nothing in this article shall be interpreted as authorizing an inmate incentive credits based on the highest classification he attains for any period of time in which he was serving in a lower classification or from the date of his sentence.

(e) Provided, however, no person may receive the benefits of correctional incentive time if he or she has been convicted of a Class A felony or has been sentenced to life, or death, or who has received a sentence for more than 15 years in the state penitentiary or in the county jail at hard labor or in any municipal jail. No person may receive the benefits of correctional incentive time if he or she has been convicted of a criminal sex offense involving a child as defined in Section 15-20-21(5). No person may be placed in Class I if he or she has been convicted of an assault where the victims of such assault suffered the permanent loss or use or permanent partial loss or use of any bodily organ or appendage. No person may be placed in Class I if he or she has been convicted of a crime involving the perpetration of sexual abuse upon the person of a child under the age of 17 years.

The court sentencing a person shall note upon the transcript to accompany such prisoner the fact that he or she has been sentenced as a result of a crime that forbids his or her being classified as a Class I prisoner.

(f)(1) If during the term of imprisonment a prisoner commits an offense or violates a rule of the Department of Corrections, all or any part of his correctional incentive time accrued pursuant to this section shall be forfeited.

(2) The Commissioner of the Department of Corrections shall have the power to restore to any prisoner who has heretofore, or who may hereafter, forfeit the deductions allowed him or her for good behavior, work habits and cooperation, or good conduct, by violating any existing law or prison rule or regulation such portion of his deduction for good conduct or good behavior as may be proper in his judgment, upon recommendation and evidence submitted to him by the warden in charge.

(g)(1) When a prisoner is serving two or more terms of imprisonment and the sentences run consecutively, then all such sentences shall be combined for the purpose of computing deductions for correctional incentive time and release date; however, the actual deduction from sentence for correctional incentive time provided by this section shall apply only to sentences to be served.

(2) When a prisoner is serving two or more sentences which run concurrently, the sentence which results in the longer period of incarceration yet remaining shall be considered the term to which such prisoner is sentenced for the purpose of computing his release date and correctional incentive time under the provisions of this article. When computing the deductions allowed in this section on indeterminate sentences the maximum sentence shall be the basis for the computation. The provisions of this section shall be administered by the chief administrative officer of the penal institution as it applies to prisoners in any state penal institution, by the sheriff of the county as it applies to prisoners in any county jail and by the chief of police as it applies to prisoners in any municipal jail.

(h) Deductions for good behavior, work habits and cooperation, or good conduct shall be interpreted to give authorized good time retroactively, to those offenders convicted of crimes committed after May 19, 1980, except those convicted of crimes of the unlawful sale or distribution of controlled substances as enumerated in Title 13A and in former Chapter 2 of Title 20, ~~and for any sexual offenses as enumerated in Chapter 6, Title 13A~~[8], provided however that the Commissioner of the Department of Corrections shall have the prison records of all inmates, who become eligible under this article, reviewed and shall disqualify any such inmate from being awarded good time under this article at his discretion.

(Acts 1980, No. 80-446, p. 690, § 2; Acts 1991, No. 91-637, p. 1201, § 1; Act 2005-301, 1st Sp. Sess., p. 571, § 1.)

[8] Held unconstitutional by *Bell v. State*, 622 So. 2d 447 (Ala. Crim. App. 1993).

C. Parole

In addition to Correctional Incentive Time (good time) credit, parole can shorten the amount of time an inmate stays incarcerated.

Parole differs from good time in two important ways. First, an inmate on parole is deemed to remain in the custody of the Department of Corrections and may be sent back to prison for a violation. Second, granting parole is not a statutory right, but falls to the ultimate discretion of the Board of Pardons and Paroles.

The statutes and regulations governing parole can be found in:

- Ala. Code, Title 15, Chapter 22, Article 2

- Regulations of the Board of Pardons and Paroles, available at http://www.pardons.state.al.us

Highlights of Parole Regulations[9]:

- If receiving good time credit:

    - For a total term of imprisonment of *5 years or less*, the inmate is placed on the current docket for parole consideration.

    - For a total term of imprisonment *greater than 5 and up to 10 years*, the inmate will receive parole consideration approximately 12 months prior to the minimum release date.

    - For a total term of imprisonment *greater than 10 and up to 15 years*, the inmate will receive parole consideration approximately 24 months prior to the minimum release date.

    - For a total term of imprisonment *greater 15 years*, the inmate will receive parole consideration approximately 36 months prior to the minimum release date.

- If not receiving good time credit, the inmate must serve the lesser of 1/3 of the total term of imprisonment or 10 years before being eligible for parole release.

- Inmates convicted of *murder, attempted murder, rape 1st, sodomy 1st, sexual torture, kidnapping 1st, robbery 1st with serious physical injury, burglary 1st with serious physical injury, or arson 1st with serious physical injury* must serve the

[9] Unless otherwise noted, taken from ALABAMA BOARD OF PARDONS AND PAROLES RULES, REGULATIONS, AND PROCEDURES, Article 1 (2004), http://www.pardons.state.al.us.

lesser of 85% of the total sentence or 15 years before being eligible for parole release.

- With a unanimous vote, however, the Board of Pardons and Paroles may consider an inmate for parole at an earlier time.

- Inmates serving the confinement portion of a split sentence are not eligible for parole.

- Inmates serving a sentence for a Class A or B criminal sex offense involving a child under the age of 12 are not eligible for parole. § 15-22-27.3.

D. Probation

Act 2011-696, approved June 14, 2011, and now in effect, modified Ala. Code § 15-22-54 and § 15-22-54.1, which had been previously amended in 2010. The changes made by the 2011 law are reflected below.

Complete rules of probation can be found in Ala. Code § 15-22-50, *et seq*. and Rule 27 of the Alabama Rules of Criminal Procedure.

Probation in Alabama comes in two forms: (1) probation resulting from a split sentence and (2) straight probation given in lieu of imprisonment. For information on split sentences, see Section III(A)(3).[10]

Circuit and District Courts are empowered to suspend the execution of sentence and place an offender on probation within certain limitations set out in §15-22-50, et seq.

- The trial court may entertain an application for probation filed at any time after conviction and before the court loses jurisdiction to modify the sentence (30 days after sentence is imposed) or before the execution of sentence. See *Ex parte State of Alabama (In re: Brandon Wayne Utley)* CR-11-244 (Ala. Crim. App. April 27, 2012).

- An application for probation stays the execution of sentence until the application is denied. *Canada v. State*, 429 So. 2d 1127, 1129 (Ala. Crim. App. 1982).

- The court may set conditions of probation, some of which are set out in § 15-22-52 in a non-exclusive list and the probationer must be given written notice of these conditions. ARCrP, 27.1.

[10] The 5 year probationary-term limitation for felony sentences, in § 15-22-54, does not apply to split sentences per Code § 15-18-8. *Burge v. State*, 623 So. 2d 450 (Ala. Crim. App. 1993).

- The party placed on probation must accept the conditions of probation for the order of probation to become effective. *Markley v. State*, 507 So. 2d 1043 (Ala.Crim.1987).

- At his or her discretion, a judge may suspend the execution of a sentence and place the defendant on probation, or suspend the execution of a sentence, impose a fine, and place the defendant on probation. § 15-22-50.

- Straight probation is **not available for sentences greater than 15 years**. § 15-22-50.

- The period of straight probation may not exceed **5 years for a felon** and **2 years for a misdemeanant**. §15-22-54(a).

- The period of straight probation may not exceed **3 years for a youthful offender**. § 15-19-6(a)(2).

- Consecutive sentences of probation for multiple counts **are not allowed**. *Ex parte Jackson*, 415 So. 2d 1169, 1170. (Ala. 1982) (interpreting the youthful offender statute, § 15-19-6); *Minshew v. State*, 975 So. 2d 395, 397 (Ala. Crim. App. 2007) (in dictum applying *Jackson* to adults).

- During the period of probation, the conditions of probation may be modified upon notice to the probationer and the opportunity to be heard.

- When the conditions or probation or suspension of sentence are completed, the trial court "shall, by order duly entered on its minutes, discharge the defendant." § 15-22-54(a).

- Upon the recommendation of the supervising probation officer, the court may terminate all authority and supervision over the probation prior to the original end date of the probation period where the probationer has met all of the conditions of probation over a sufficient portion of the probation period. §15-22-54(b).

Procedures for Probation Violations (§ 15-22-54)

The trial court retains jurisdiction of the matter and the defendant during the period of probation and the period of probation may be continued, extended, or terminated by the court.

- No extension of probation may extend the probation beyond the period allowed by law as a maximum probationary period. § 15-22-54(a).

- During the period of probation, the court may issue a warrant for the arrest of the probationer for violation of the conditions of probation or may entertain a petition from the supervising officer to revoke the probation. § 15-22-54(c) and (d).

- If the probationer violates the conditions of probation, the court after notice and a hearing, may

    - Continue the probation and suspension of sentence.

    - Issue a warning to the probationer that further violations could result in revocation.

    - Conduct a formal or informal conference with the probationer.

    - Modify the conditions of probation, including short periods of incarceration, not to exceed 90 days.

    - Revoke the probation and impose the original suspended sentence or any legal lesser sentence (unless the offender is eligible for limited revocation only as described below). § 15-22-54(d)(1)e.

    - Continue the probation and order participation in community corrections, county work release, community service, intensive probation supervision, participate in a residential or out-patient substance abuse treatment program, and/or participate and complete a Life Skills Influenced by Freedom and Education Tech (LIFETech) residential program.

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

    - Modify the conditions of probation or suspension of execution of sentence, which conditions may include the addition of short periods of confinement, **not to exceed 90 days** incarceration in a county jail, a facility of the Department of Corrections, or work release type facility, if available.

    - Revoke probation and require the defendant to serve a term of **not more than 90 days** imprisonment in a Department of Corrections facility, which may include participation in the Restart program, LIFETech program, or a technical violator program or, if no space is available in a Department of Corrections facility, **not more than 90 days** in the county jail.

- In addition to the above, there are special rules that apply to some eligible offenders as defined in § 15-22-54(e)(2) for administrative violations as defined in § 15-22-54(e)(1).

    - "Eligible offenders" are nonviolent offenders serving a probationary term who have an administrative violation only, no pending criminal charges, no new convictions while on probation and have not been found by a court

on at least 2 previous occasions to have violated conditions of probation. § 15-22-54(e)(2).

- "Administrative violations" are those violations which do not constitute a violation of law, possession, receipt, or transportation of any firearm, prohibited contact with any victim, and do not present a danger to the health, safety or welfare of any person. § 15-22-54(e)(1).

- Nonviolent offenders are those offenders who have not been convicted of a violent offense as defined in § 12-25-32 and who are not on probation for a crime the court finds involved actual or attempted physical harm or injury to any person. § 15-22-54(e)(4).

- Time imposed upon revocation of probation of an "eligible offender" cannot exceed 90 days imprisonment in the Department of Corrections and may include participation in the Department of Corrections Restart or LIFETech programs, or technical violator programs, or, if space is unavailable in the Department of Corrections, in the county jail.[11] § 15-22-54(d)(1)f.

When revoking probation and ordering confinement, the court must consider the following:

- The total time spent in confinement may not exceed the term of confinement of the original sentence.
- The court must give **full credit** to the probationer for time spent in full-time confinement in state prisons, county jails, and state technical violator programs.
- Credit for other penalties is at the discretion of the court, with the presumption that other penalties would receive **half credit**.
- The court should give significant weight to the time spent on probation in substantial compliance.

"[T]he trial court [has a duty] to take some affirmative action, either by a statement recorded in the transcript or by written order, to *state its reasons for revoking probation, with appropriate reference to the evidence* supporting those reasons." *McCoo v. State*, 921 So. 2d 450 (Ala. 2005) (emphasis added); ARCrP 27.6(f).

[11] NOTE: Provision is made for resentencing "eligible offenders" whose probation was revoked prior to the limitations set out in § 15-22-54(d)(1)f and who meets the additional requirements set out therein. See § 15-22-54.1 and forms set out in Appendix E of this Manual.

Standards for Revoking Probation

- Facts that the judge considers when deciding to revoke probation do not have to be proved beyond a reasonable doubt. At a probation hearing, hearsay is admissible. However, a decision to revoke probation is not permitted on the basis of hearsay alone. *Sams v. State*, 48 So. 3d 665 (Ala. 2010); *Brazery v. State*, 6 So. 3d 559 (Ala. Crim. App. 2008).

- "[A] 'mere arrest' or the filing of charges is an insufficient basis for revoking one's probation. Before revoking probation because the probationer has been arrested, the trial court must be reasonably satisfied that the underlying charge against the probationer is true." *Gerstenschlager v. State*, 999 So. 2d 590 (Ala. Crim. App. 2008) (quoting *Hunter v. State*, 782 So. 2d 845, 846 (Ala. Crim. App. 2000)).

- "Although a probationer does not have an unqualified right to counsel at a probation-revocation hearing, it is incumbent upon the sentencing court to determine whether the probationer has such a right before revoking probation.… [T]he sentencing court shall '[a]dvise the probationer of his or her right to request counsel and appoint counsel to represent an indigent probationer if the requirements of Rule 27.6(b) are met.'" *Turner v. State*, 981 So. 2d 444 (Ala. Crim. App. 2007) (quoting ARCrP 27.6(b)).

- An indigent probationer at a probation revocation hearing is entitled to counsel if either 1) probationer makes a colorable claim that the terms of probation were not violated or 2) "if there are substantial reasons that justify or mitigate the violation and that may make revocation inappropriate, and the reasons are complex or otherwise difficult to develop or present." ARCrP 27.6(b).

Other notes about probation:

- The court can revoke the probation of a defendant on a split sentence. If *a non-eligible offender*, the court can order a new split sentence. During the new split sentence, the defendant will not be eligible for good time or parole. However, the defendant's **total** time of incarceration may not exceed the statutory maximums under the split sentence law (3 years for a sentence of 15 years or less and 5 years for a sentence of 20 years or less). *Phillips v. State*, 932 So. 2d 165 (Ala. Crim. App. 2005); *Dixon v. State*, 912 So. 2d 292 (Ala. Crim. App. 2005).

- Probation ends when the probationer successfully fulfills the conditions of probation or receives a formal discharge from the trial court. ARCrP 27.3.

- If the probationer has not received a formal discharge from the court, the court may instigate revocation hearings up until the maximum statutory period of probation has expired. *Gore v. State*, 895 So. 2d 1061 (Ala. Crim. App. 2004).

- If a probation sentence is the result of a plea agreement, an implied condition of the probation is that the defendant will comply with the conditions of the plea agreement (e.g., testify at trial). *Adams v. State*, 957 So. 2d 1157 (Ala. Crim. App. 2006).

- ARCrP 27.6 requires that the sentencing court - not necessarily the sentencing judge - conduct a probation revocation hearing. *Phillips v. State*, 936 So. 2d 1101 (Ala. Crim. App. 2006).
- Probation cannot be revoked based on conduct that the defendant committed before being sentenced to probation. *Benson v. State*, 17 So. 3d 693 (Ala. Crim. App. 2009).

E. Restitution

Victim Restitution

In any case in which a defendant is convicted of criminal activity resulting in pecuniary damages or loss to a victim, the court **is required to conduct a restitution hearing** and order the defendant to "make restitution or otherwise compensate such victim for any pecuniary damages." § 15-18-67

In determining the manner, method or amount of restitution to be ordered, the court is encouraged to take into consideration (§ 15-18-68):

- The financial resources of the defendant and the victim and the burden that the manner or method of restitution will impose upon the victim or the defendant;
- The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;
- The anticipated rehabilitative effect on the defendant regarding the manner of restitution or the method of payment;
- Any burden or hardship upon the victim as a direct or indirect result of the defendant's criminal acts;
- The mental, physical, and financial well being of the victim.

Mandatory Restitution for Capital Offenses and Rape

Act 2009-632 amended § 15-18-68 to require mandatory restitution to victims of certain crimes. This Act only applies to crimes committed after February 1, 2009.[12]

- For convictions on a capital offense, the court must order restitution to the victim of no less than $50,000.

[12] Though the act demands restitution for *convictions* occurring after February 1, 2009, to avoid *ex post facto* penalties the act must apply only to *crimes committed* after that date. *See Cox v. State*, 394 So. 2d 103, 106 (Ala. Crim. App 1981).

- For a second or subsequent conviction of rape 1st, the court must order restitution to the victim of no less than $10,000.

Court has Continuing Jurisdiction to Enforce Restitution (*Ex parte Stewart*)

Ex parte Stewart, 2011 WL 2573128 (Ala. 2011), decided on June 30, 2011, held that, because restitution is part of a criminal sentence, a sentencing court has jurisdiction over a proceeding to enforce payment of restitution after the defendant's parole term has expired. *Id*. at *6. The trial court in *Stewart* modified a defendant's restitution payment plan eight years after he completed his prison and parole sentences. The trial court did not increase the defendant's total amount owed or find him in contempt of court, so the holding in *Stewart* does not address the legality of those remedies. *See id.* at *7.

Crime Victim Compensation Assessment

Ala. Code § 15-23-17 established the Alabama Crimes Victims Compensation Commission, which distributes restitution to crime victims from a fund set up for that purpose. Pursuant to that section:

- A person convicted or pleading guilty to a felony must pay no less than $50 and no more than $10,000 to the fund.

- A person convicted or pleading guilty to a misdemeanor must pay no less than $25 and no more than $1,000 to the fund.

- In imposing this penalty, the court shall consider factors such as the severity of the crime, the prior criminal record, and the ability of the defendant to pay, as well as the economic impact of the victim compensation assessment on the dependents of the defendant.

- If the court fails to specifically impose this assessment, the court clerk is statutorily required to automatically assess the minimum amount.

See Rule 26.11 of the Alabama Rules of Criminal Procedure for information on the collection of restitution and the court's remedies for non-payment.

F. Community Corrections

Community corrections offer a sentencing alternative to prison. Among the purposes of community corrections are (1) to promote accountability of offenders to their local communities through restitution to victims and community service and (2) to reduce the number of offenders committed to correctional institutions. § 15-18-173.

Thirty-four community corrections programs exist in 45 counties. Community corrections service 2,832 inmates, representing 8.9% of the Department of Corrections jurisdictional population[13]. In addition, numerous defendants participate in community corrections as a condition of probation.

Conditions for using community corrections (§ 15-18-175)

A judge may sentence a defendant to a community corrections program as an alternative to prison, as part of or in conjunction with a split sentence, or as a condition of probation.

No community corrections program may take participants in excess of its capacity. A defendant's participation in the program may not exceed the statutory maximum sentence for his or her conviction.

To revoke a sentence to community corrections and order confinement, the court must hold a hearing pursuant to § 15-18-175(c)(3).

Participants in community corrections must meet the following criteria:

- Must NOT be convicted of murder, kidnapping 1st, rape 1st, sodomy 1st, arson 1st, trafficking in controlled substances, robbery 1st, sexual abuse 1st, forcible sex crimes, lewd and lascivious acts upon a child, or assault 1st if the assault leaves the victim permanently disfigured or disabled.

- Must NOT demonstrate a pattern of violent behavior as determined by the court from prior convictions, past acts not resulting in convictions, and behavior while in custody.

For the *contact information* of local community corrections offices, visit http://www.doc.state.al.us/commcorr.asp.

[13] ALABAMA DEPARTMENT OF CORRECTIONS, MONTHLY STATISTICAL REPORT FOR MARCH 2011: FISCAL YEAR 2011 (2011), available at http://www.doc.state.al.us/docs/MonthlyRpts/2011-03.pdf.

G. Drug Courts

During fiscal year 2009, 43% of felony convictions were for drug crimes.[14] During that same period, 37% of prison admissions were for drug crimes.[15] The Department of Corrections is the largest provider of substance abuse treatment in the state.

In response to the impact of substance abuse on the criminal justice system, Alabama has implemented the widespread use of drug courts throughout the state. As of January 2011, there were 62 drug courts operating in 58 counties, with 5 more counties set to open drug courts later in the year.[16]

Drug courts are alternatives to prison designed to address the substance abuse problems that lead to the commission of crimes. Drug courts coordinate the efforts of judges, prosecutors, defense attorneys, law enforcement, and treatment services toward drug treatment in a non-adversarial setting. The following excerpts from the state Drug Court Guidelines give insight into how drug courts may be used during sentencing:

B. Mission Statement

> The mission of Drug Court is to enhance public safety and reduce recidivism of nonviolent, drug affected offenders through a non-adversarial approach that involves intensive supervision, substance abuse treatment/education services, employment, and personal accountability, resulting in positive changes in criminal and addictive behaviors for the purpose of reintegrating offenders into society as positive, law-abiding and taxpaying citizens. . . .[17]

E. Entry

1. If permitted by the local Drug Court, an offender may enter Drug Court as a condition of the following:
    a. Pretrial release
    b. Pretrial diversion or deferred prosecution
    c. Probation revocation
    d. Jail
    e. Prison
    f. Parole
    g. Community Corrections
    h. Release or diversion from a correctional facility

[14] *See* ALABAMA SENTENCING COMMISSION, 2011 REPORT 29, 31 (2011).
[15] *See id*. at 32.
[16] For a map of drug courts in the state and a directory of contacts for individual drug courts, visit http://aadcp.alacourt.gov.
[17] ALABAMA ADMINISTRATIVE OFFICE OF COURTS, DRUG COURT GUIDELINES 2010 8 (2010), available at http://aadcp.alacourt.gov/pdfs/AOC Adult Drug Court Guidelines.pdf.

i. Plea/written agreement
j. Conviction

2. Entry into Drug Court shall be pursuant to a written Plea Agreement between the drug offender and the Drug Court.

3. All offenders shall be made aware that entry into Drug Court is voluntary. Offenders have a right to remain on the regular criminal court docket if they wish and shall not be forced or coerced to enter into Drug Court against their own will.

4. Possible referral sources for Drug Courts may include, but are not limited to, jail staff, defense counsel, law enforcement, other judges and/or self-referral. . . .[18]

F. Disqualifying Factors

1. An offender is not eligible for admission into Drug Court if the offender meets any of the following criteria:

a. Is non-drug/alcohol user

b. Is required to register as a sex offender or currently charged with a sexual offense

c. Is charged with any degree of Trafficking, Distribution or Manufacturing of a controlled substance

d. Has a pending violent criminal charge against him or her or any felony charge in which a firearm, deadly weapon or dangerous instrument was used

e. Has been convicted of a violent felony offense or any felony charge in which a firearm, deadly weapon or dangerous instrument was used

f. Has been adjudicated as a youthful offender or delinquent as a juvenile for a violent felony offense or any felony in which a firearm, deadly weapon or dangerous instrument was used

g. Holds a commercial driver's license (CDL) or permit, and any other operator of a commercial motor vehicle that is subject to Part 383 of the Federal Motor Carrier Safety Regulations.

[18] *Id.* at 11.

2. If an offender would like to be eligible for Drug Court but holds a CDL or permit, the offender must surrender his/her CDL/permit before being eligible for Drug Court. . . .[19]

H. Department of Corrections

1. The Alabama Drug Offender Accountability Act authorizes Drug Courts to accept inmates through a Re-entry program if the local Drug Court chooses to adopt a Re-entry program.

2. The DOC shall develop and provide a Re-entry form for each DOC facility. The Reentry form should be kept in the individual facility's law library to allow easy access for a potential Drug Court participant. The individual DOC facility should inform all inmates of their ability to apply for Drug Court.

3. It is the inmate's responsibility to complete the Re-entry form and mail the form to the Drug Court in the same county in which the inmate was sentenced.[20]

[19] *Id.* at 12.
[20] *Id.* at 16.

Appendix A

Alabama Sex Offender Registration and Community Notification Act Act 2011-640

On July 1, 2011, the Alabama Sex Offender Registration and Community Notification Act (Act 2011-640) went into effect. The Act repeals Ala. Code § 13A-11-200 and § 13A-11-201, which cover sex offender registration, as well as the entirety of Title 15, Chapter 20, the criminal procedure portion of the Code relating to sex offenses. The bill is over 19,000 words long and is summarized in the following pages.

Important changes implemented by Act 2011-640:

- Offenders must now register four times a year.
- Homeless sex offenders must check in once a week.
- An offender must receive a travel permit to be away from a residence for more than three days.
- Juveniles adjudicated of serious sex crimes or multiple sex crimes are subject to registration for life.
- Offenders must now provide email addresses and other internet identifiers when registering.
- Offenders must pay $10 for each registration.
- It is now a Class C felony to hire a sex offender to work near children or to aid a sex offender to avoid registration.
- Sexual predators are required to wear a GPS tracking device for 10 years, at their own expense.

Section-by-Section Highlights of Act 2011-640

*All violations of the Act are **Class C felonies**, unless otherwise noted.*

> **Section 3**: Adult sex offenders and juvenile sex offenders adjudicated of more than one sex offense are subject to the Act **for life**.

Section 4: Defines terms. Most notably broadens the definition of "residence" to include "any mobile or transitory living quarters or locations that have no specific mailing address," so as to include the whereabouts of homeless persons.

Section 5: The Act applies to those convicted of:

a. Rape, sodomy, sexual misconduct (court can exempt juveniles), sexual torture, sexual abuse, indecent exposure (court can exempt juveniles), enticing a child, promoting prostitution, child pornography, unlawful imprisonment, kidnapping with the intent of sexual abuse, incest, transmitting obscene material to a child by computer, engaging in a sex act with a student, sexual conduct with a student, electronic solicitation of a child, traveling to meet a child for an unlawful sex act, human trafficking, custodial sexual misconduct

b. Solicitation, attempt, or conspiracy of the above

c. An equivalent offense as defined by an earlier state law

d. A crime committed in any U.S. jurisdiction that would have been one of the above offenses if committed in Alabama

e. A crime that made someone a sex offender in another jurisdiction

f. Any crime in which an element of the crime is one of the above offenses

g. Any crime found to be committed with a sexual motivation

Section 6: Creates a procedure by which the prosecuting attorney may allege that any crime is committed with a sexual motivation, which must be proved beyond a reasonable doubt, or the judge in a juvenile proceeding may adjudicate any crime to have been committed with a sexual motivation.

Section 7:

a. Demands that the offender provide the following information when registering: all names and nicknames, date of birth, social security number, address of all residences, name and address of any school the offender will attend, description of all vehicles used by the sex offender, all telephone numbers used by the sex offender, all email addresses, all instant message identifiers, all other monikers used for identification on the Internet, a current photograph, a physical description, fingerprints and palm prints, a DNA sample, a photocopy of driver license or ID card, photocopy of passport and immigration documents, professional licensing information, a full criminal conviction.

b. The offender must sign a form outlining his responsibilities.

Section 8: The following information about each offender **will** be provided to the public: names, addresses, addresses of schools the offender attends, description of vehicles, a current photograph, a physical description, criminal history, text of the statute the offender violated, status of the offender. Other identifying information **will not** be provided to the public.

Section 9:

a. Thirty days prior to release from prison or jail, the offender must declare where he intends to live and provide registration information. Local law enforcement in the place the offender intends to live must notify the public of the offender's presence.

b. If the offender cannot provide an address, the offender will be transferred to the custody of sheriff of county that convicted the offender. The offender must register before release.

c. If the offender refuses to provide registration information before release, the offender will be charged with violating this Act and re-arrested immediately upon release. The offender loses all good time credit.

Section 10:

a. The offender must register in person with law enforcement in each county where he intends to reside, work, or go to school, within **three business days** of any of the following events:

    i. Release from incarceration
    ii. Establishing or terminating a residence
    iii. Accepting, transferring, or terminating employment
    iv. Beginning, transferring, or terminating school attendance
    v. A change in any of the required registration information

b. The offender must register during his birth month and every **three months** thereafter.

Section 11:

a. Offenders may not do the following:

    i. Establish or maintain a residence or any living accommodation within 2,000 feet (0.38 mile) of a school, childcare facility, or residence of a victim or immediate family member of a victim.

ii. Establish or maintain a residence or any living accommodation (including overnight visits) with a minor. This prohibition does not apply if the offender is the parent, grandparent, stepparent, sibling, or stepsibling or the minor - unless:

1. parental rights have been or are being terminated,

2. a minor family member was the victim of the offender's crime,

3. the offender lived with the victim of the crime at the time of its commission,

4. the offender has been convicted of a sex offense involving a child under 12, or

5. the offender has been convicted of a sex crime involving forcible compulsion of a minor.

b. An offender establishes a residence wherever he or she:

i. Resides for three or more consecutive days.

ii. Resides following release.

iii. Spends 10 or more aggregate days during a calendar month.

iv. Vacates or fails to spend three or more consecutive days at his or her residence without notifying law enforcement.

Section 12: A homeless sex offender:

a. Is a sex offender who does not have a fixed residence.

b. Must report where he or she resides to law enforcement once every seven days.

c. Must abide by the restrictions in Section 11.

d. Must provide the following when reporting: name, date of birth, social security number, a detailed description of the location or location where he or she resided during the week, and a list of the locations he or she plans to reside for the upcoming week.

Section 13:

a. An adult sex offender

    i. May not work or volunteer at any facility or business services primarily to children.

    ii. May not work or volunteer within 2,000 feet (0.38 mile) of a school or childcare facility.

    iii. convicted of a sex offense involving a child under 12, may not work or volunteer, within 500 feet of a playground, park, athletic field or facility, or any other facility whose primary purpose is caring for, educating, or entertaining minors.

b. The owner or operator of any facility or organization that provides services primarily to children may not knowing employ or accept volunteer work from an adult sex offender.

Section 14: Sex offenders from other states must register upon establishing a residence, working, or starting school in Alabama. Within 30 days of registration, the offender must provide a certified copy of his conviction.

Section 15: The following restrictions apply when a sex offender wishes to leave his or her residence:

a. To leave his or her county of residence for three or more consecutive days, the offender must report such plans in person to local law enforcement and complete a travel permit form prior to leaving. Local law enforcement must transmit the offender's travel plans to the counties the offender will be visiting.

b. To leave the country, the offender must report such plans in person to local law enforcement at least 21 days prior to leaving and complete a travel permit. Local law enforcement must transmit the offender's travel plans to the U.S. Marshals.

c. Upon return to his or her county of residence, the offender must report to local law enforcement.

Section 16: No offender may contact, directly or indirectly by any means, a victim. No offender may harass a victim or any family member.

Section 17: An offender convicted of a sex offense involving a minor may not loiter within 500 feet of a college or university, a bus stop, or any business or facility that primarily entertains, educates or entertains minors. To loiter is to

remain on the property without a legitimate purpose or for longer than is necessary to achieve a legitimate purpose. Loitering is not actionable until after the offender has been asked to leave by an authorized person.

Section 18: All sex offenders must possess at all times a valid state-issued ID that bears a designation that the holder is a sex offender. Indigent sex offenders may be provided such an ID at no cost. Defacing the ID is a crime.

Section 19: Sexually violent predators are those who have committed more than one sexually violent offense or have committed one sexually violent offense and are likely to commit another (as determined by the court using factors listed in this section). A sexually violent offense is:

a. A sex offense involving a child under 12.

b. A predatory sex offense.

c. A sex offense committed by force, violence, fear of bodily harm, duress, menace, or threats of retaliation.

d. Any offense so deemed by the sentencing court.

e. Inchoate forms of the above offenses.

Section 20: The Alabama Criminal Justice Information Center will implement a system of active and passive electronic monitoring of sex offenders. Sexually violent predators and those convicted of a Class A felony involving a child under 12 must wear a monitoring device under the system for no less than 10 years after release from incarceration. The Board of Pardons and Paroles or a court may require a monitoring device for other sex offenders as a condition of release. Costs of monitoring will be charged to the offender.

Section 21: When a sex offender plans to establish a residence, the chief of police or the sheriff must notify by mail or hand delivery all residents living within 1,000-2,000 feet (depending on jurisdiction) of the new residence and all schools and child care facilities within three miles of the new residence.

Section 22: For each registration event, the offender must pay a fee of $10 to defray the cost of registration. The fee is waived for offenders deemed indigent by a court. However, the court must periodically review an offender's indigent status. Failure to pay the fee is either a *Class B misdemeanor* (1^{st} offense) or a *Class A misdemeanor* (2^{nd} and subsequent offenses).

Section 23: Provides a procedure to petition the court for relief from the residency restrictions of Section 11 for terminally ill or permanently immobile sex offenders.

Section 24: Provides a procedure to petition the court for relief from registration and notification for sex offenders meeting all of the following criteria:

a. Convicted of rape 2nd, sodomy 2nd, sexual abuse 2nd, sexual misconduct, or an inchoate form of these crimes.

b. Not previously convicted of a sex offense.

c. The crime did not involve force and was only a crime because of the victim's age.

d. At the time of the offense, the victim was 13 years of age or older.

e. At the time of the offense, the offender was not more than 4 years older than the victim.

Section 25: Provides a procedure to petition the court for relief from employment restrictions for all sex offenders EXCEPT those convicted of rape 1st, sodomy 1st, sexual abuse 1st, a sex offense involving a child under 12, sexual torture, or an inchoate version of these crimes.

Section 26: Juvenile sex offenders must undergo a sex offender treatment program.

Section 27: The sentencing court, using factors listed in this section, will determine if a juvenile sex offender is subject to the notification provisions of Section 21. Three types of notification are available for juveniles:

a. Low risk of re-offense: notification only to the offender's school principal.

b. Moderate risk of re-offense: notification to schools and child care facilities within three miles of the offender's residence.

c. High risk of re-offense: full notification as provided in Section 21.

Section 28:

a. Juveniles adjudicated delinquent of rape 1st, sodomy 1st, sexual abuse 1st, sexual torture, or an inchoate version of these crimes are subject to notification and registration **for life**.

b. A juvenile subject to lifetime registration and notification may petition the court for relief 25 years after release from the offense leading to registration.

c. All other juveniles are subject to the Act for 10 years following release from the offense leading to registration.

Section 29: The parents or guardians of a juvenile sex offender must register the offender until the offender reaches majority.

Sections 30 & 32: The procedures and conditions for registration of a juvenile sex offender are the same as those for adult offenders EXCEPT that a juvenile offender required to register for 10 years must register only once a year.

Section 31: During the period of registration, a juvenile sex offender may not work at any facility that provides services primarily to children. It is a felony for the owner or operator of such a place to knowingly hire a juvenile sex offender.

Section 33: The records of juvenile sex offenders may not be destroyed for 75 years.

Section 34: Establishes the procedure for a juvenile sex offender subject to lifetime registration to petition the court for release from registration.

Section 35: A juvenile sex offender is a sex offender who has not attained the age of 18 at the time of the offense and has not been previously adjudicated delinquent of a sex offense.

Section 36: A sex offender may not change his or her name except for religious purposes and due to marriage. A name change requires registration.

Section 37: Establishes notification procedures in the event that a sex offender fails to register.

Section 38: If a sex offender escapes from custody, the responsible agency must notify within 24 hours the Department of Public Safety, local law enforcement who had jurisdiction at conviction, the sheriff of the county where the offender escaped, and the chief of police of every municipality in that county.

Section 39: Harboring, assisting, concealing, or withholding information about a sex offender is a crime IF the person doing so has reason to believe that the sex offender is required to register and has not done so and assists the offender to avoid law enforcement.

Section 40: The clerk of the court must forward a certified copy of a sex offender's adjudication or conviction within 30 days of sentencing to the Department of Public Safety. Failure to do so is a *Class A misdemeanor*.

Section 41: Requires the clerk of the court to forward victim information to the Attorney General's Office of Victim Assistance upon request of the Attorney

General or the prosecuting attorney. Requires the Board of Pardons and Paroles to do the same when providing notice of a parole hearing for a sex offender.

Section 42: Establishes the procedures for sharing and disseminating the information collected under this Act.

Section 43: No court may waive the requirements of this Act, except as specified in the Act.

Section 44: Gives the Department of Public Safety authority to propagate rules to enforce the Act.

Section 45: In addition to any other punishment, a sex offender must pay a fine of $250.

Appendix B

Additional Criminal Law Acts Enacted during the 2011-2012 Legislative Sessions

Act 2011-535, amended by Act 2012-491 Immigration (new offenses only)

Class C Felonies:

- Harboring 5 or more unlawfully present aliens (Section 13).
- Dealing in false identification documents or committing vital records identity fraud, with some exceptions for underage fake ID's (Section 14).
- Attempting to enter into a business transaction with the state as an unlawful alien (Section 30).

Class A Misdemeanors:

- A state employee failing to report a violation of the act (Sections 5 and 6).
- Making fraudulent statements regarding immigration status (Section 7).
- Harboring an unlawful alien (one count per alien) (Section 13).
- Failing to carry alien registration (Section 10).
- Working as an unlawful alien (Section 11).
- Soliciting the work of an unlawful alien while stopping traffic (Section 11).

Act 2011-621 (SB 67) Person Convicted of DUI - Double Minimum Sentence

Amends section 32-5A-191, providing a mandatory sentence of at least double the minimum punishment for a person convicted of DUI with a BAC of 0.15. This act also provides a one year minimum sentence for a misdemeanor offense and a minimum one year revocation of driving privileges. In addition, if a person over 21 years old has a child under 14 in the vehicle during the offense, the offender must be sentenced to at least double the applicable minimum punishment.

Act 2011-613 (HB 361) Ignition Interlock Device - Driving After Conviction

This Act adds section § 32-5A-191.4. A person convicted of a DUI must install an ignition interlock system and cannot remove the device for at least two years following reinstatement of a driver's license.

Act 2011-294 (SB 170) Boats and Vessels - Made and Sold After 1985

This Act prohibits the unauthorized alteration of identification numbers or registration identification relating to vessels, outboard motors, vessel trailers, or identifiable component parts.

A person who willfully removes or falsifies the identification number with the intent to conceal the vessel's identity is guilty of a Class A misdemeanor. A person who buys, sells, receives, possesses, or disposes of a vessel, outboard motor, vessel trailer, or other component of a vessel with knowledge that the identification has been removed or falsified is also guilty of a Class A misdemeanor, and the vessel or component can lawfully be recovered by the owner or insurance company.

Act 2011-295 (SB 54) Notaries Public – To eliminate the Distinction Between County and State at Large Notaries

A person who performs a notarial act without a commission, including an expired commission, is guilty of a Class C misdemeanor.

Act 2011-646 (SB 433) Honeybees – Shipped or Moved Into Alabama

This Act amends Section 2-14-4 relating to honeybees shipped or moved into Alabama. It provides for the destruction of hives that were brought into this state and do not follow the Department of Agriculture and Industry's requirements.

Act 2011-534 (HB 51) Indecent Exposure – Increased Penalty

This Act amends Section 13A-6-68, increasing the penalty to a Class C felony for a third or subsequent conviction.

Act 2011-542 (HB 115) Seizing a dog act

This Act provides procedures for seizing a dog involved in illegal fighting, expedites the disposition process, requires a bond posting to care for the seized dog under certain conditions, and requires forfeiture of the dog if the violator fails to post bond within 72 hours or if a circuit court grants a civil petition seeking forfeiture.

Act 2011-550 (HB 219) Assault 2nd

This Act adds to the definition of peace officer for the crime of Assault 2nd (intending to cause physical harm, causing physical harm, and intending to interfere with the lawful duties of a peace officer). Definition of "peace officer doing his lawful duty" now includes a uniformed, off-duty peace officer who is acting with the employing law enforcement agency's approval. This act does not extend this classification for worker's compensation purposes or other benefits and does not extend any tort liability.

Act 2011-555 (HB 261) Punishment for sex offenders

A person over age 21 who commits first-degree rape, sodomy, or sexual torture against a victim who is age six or under shall receive life imprisonment without the possibility of parole.

Act 2011-570 (HB 450) Firearms

A person who solicits, persuades, encourages, or entices a licensed dealer or private seller to transfer firearms or ammunition, which the person knows is illegal, is guilty of a Class C felony. A person is also guilty of a Class C felony if the person provides false information with the intent to deceive a dealer or seller regarding the transaction's legality. The Act does not apply to a peace officer acting in official capacity or a person acting at the direction of a peace officer.

Act 2011-581 (HB 512) Domestic Violence

Aggravated stalking or first-degree assault provides a basis for first-degree domestic violence if the condition of the victim's status as spouse, parent, etc. is met.

Criminally negligent homicide is no longer a basis for second-degree domestic violence. However, intimidating a witness, stalking, burglary second or third, or first-degree criminal mischief now provide a basis for second-degree domestic violence.

Criminal surveillance, harassing communications, third-degree criminal trespass, criminal mischief second or third, or third-degree arson, now provide a basis for third-degree domestic violence.

For third-degree domestic violence, the Act removes the requirement that a defendant be imprisoned 40 hours. However, the minimum term of imprisonment is now 30 days (removes the double minimum term) if a defendant willfully violates a protection order when committing third-degree domestic violence. Second conviction of third-degree domestic violence is a Class A misdemeanor with a minimum term of imprisonment of 10 days (no consideration of reduction). Third conviction for third-degree domestic violence is a Class C felony. Convictions in municipal courts are included.

The Act adds domestic violence by strangulation or suffocation to the definition of "domestic violence" for the purposes of an arrest without a warrant.

Law enforcement must now determine who was the predominant aggressor (not primary) when both parties are complaining or have injuries. The Act adds whether injuries are offensive or defensive in nature as a factor to be considered.

Act 2011-574 (HB 463) Criminal penalties for obstructing an AG investigation.

Provides that a person is guilty of a Class C felony if the person falsifies or conceals information to a prosecutor or investigator in the AG's staff (rather than any member of the AG's staff).

Act 2011-688 (SB 137) Liability insurance act

Class C felony: A person, with fraudulent intent, (1) altering or forging an insurance card to make it valid or (2) making or selling invalid/counterfeit insurance card (or other evidence of insurance).

Class C misdemeanor: (1) operating vehicle without liability policy, commercial policy, bond or deposit in accord with this chapter; or (2) registering or attempting to register a motor vehicle with notice of a cancellation or termination of insurance.

Class B misdemeanor for a subsequent violation of failure to maintain vehicle liability insurance.

Act 2011-633 (SB 224) Secondary metals recyclers

Creates several Class A misdemeanors for improper use of junk cars.

Creates a Class C felony for knowingly and willfully crushing a car without proper title.

Creates a Class C felony for operating car crushing equipment without a license.

Act 2012-426 (HB 278) Secondary metals recyclers

Creates a Class B misdemeanor, first offense; Class A misdemeanor second offense; and a Class C felony for a third offense within ten years for failing to maintain for one year the required records concerning the purchase of covered metals.

Creates a Class C felony for giving false information for money or other consideration from a secondary metals recycler in return for metal property.

Creates a Class B misdemeanor, first offense; Class A misdemeanor second offense; and a Class C felony for a third offense within ten years for violating a "hold" order concerning covered metals.

Creates a Class C for intentionally damaging certain communications cables or power transporters or other equipment associated with communications or power transportation or other enumerated objects containing metal. This may be raised to a Class B felony if the damage or destruction creates an "imminent danger".

Creates a Class C felony, first offense; Class B felony, second offense; and a Class A felony for a third offense within ten years for possession of stolen utility access covers, manhole covers, storm drain covers, grave markers, vases, memorials, statues, plaques, or other bronze objects used at a cemetery, with the knowledge the property was stolen.

Creates a Class B misdemeanor, first offense; Class A misdemeanor second offense; and a Class C felony for a third offense within ten years for possessing numerous enumerated stolen items with knowledge the property was stolen.

Act 2012-432 (HB 400) Digital Crime Act

Creates as a Class A misdemeanor the crime of computer tampering.

Creates as a Class C felony the crime of computer tampering if the intent of the tampering is to commit an unlawful act or obtain a benefit, or defraud or harm another.

Creates as a Class B felony the crime of computer tampering if the violation results in a loss greater than $2,500 or if the intent is to obtain a benefit, commit an unlawful act, or defraud or harm another and there is an interruption or impairment of governmental operation or public communication, transportation, or utility service.

Creates as a Class A felony the crime of computer tampering if the violation results in a loss greater than $100,000 or if the offense causes physical injury.

Creates as a class B felony the crime of computer tampering if the tampering relates to access to the Alabama Criminal Justice Information Center information system or regulated data for each record accessed.

Creates as a Class C felony the crime of encoded data fraud.

Creates as a Class C felony the crime of phishing and provides for civil suits by affected parties or the district attorney or attorney general to enjoin this activity and provide compensation for damages.

Repeals §§ 13A-8-100 through 13A-8-103, the Alabama Computer Crime Act of 1985.

Act 2012-380 (HB 75) Stalking

Re-designates stalking and aggravated stalking as defined in §§13A-6-90 and 13A-6-91 as stalking in the first degree and aggravated stalking in the first degree and adds the crimes of stalking in the second degree and aggravated stalking in the second degree.

Stalking in the second degree, harassment that causes material harm to the mental or emotional health or fear for employment, business or career, is a Class B misdemeanor.

Aggravated stalking in the second degree (stalking in the second degree in violation of a court order) is a Class C felony.

Act 2012-209 (HB 17) False Records

Broadens the definition of the crime of offering a false instrument for recording to include recordings offered against a public servant with the intent to defraud, intimidate, or harass the public servant or impede the public servant in the performance of his or her duties, and to make such additional offense a Class C felony.

Establishes a procedure for removing false recordings.

Act 2012-382 (HB 99) Impersonation

Created as a Class A misdemeanor the crime of impersonating certain public officials or employees in connection with a sham legal process or proceeding.

Act 2012-303 (HB 238) Funeral Disruption

Increases from 500 feet to 1,000 feet the "protest free zone" from the entrance of a facility being used for funerals or memorial services.

Act 2012-393 (HB 376) Possession with Intent to Distribute a Controlled Substance

Creates as a new Class B felony the crime of Possession with Intent to Distribute based on various amounts of specific substances (not including marihuana).

Act 2012-267 (SB 208) Expanding the Definition of Controlled Substances

Expands the definition of controlled substance to add cathinone compounds, certain named chemical compounds of synthetic cannabinoids, and controlled substance analogs (compounds having a "structure which is chemically similar to the chemical structure of any other controlled substance in Schedule I or II").

Expands "trafficking" to include the additional controlled substances.

Act 2012-237 (HB 363) Further Expansion of Controlled Substances Offenses

Adds possession of precursor chemicals enumerated in § 20-12-260 to Class C felony possession definition.

Creates additional felonies for use, etc. with intent to deliver or sell, or manufacture with intent to deliver or sell, or possession with intent to use to manufacture a controlled substance as a Class C felony, and as a Class B felony if the person is in possession of a firearm.

Adds attempts to solicit or conspire and adds ephedrine and pseudoephedrine to violations under § 20-2-190; adds additional record keeping requirements for pharmacies; and raises the penalty for violations to a Class A misdemeanor for the first offense and a Class C felony for a second or subsequent offense.

Mandates that the Alabama Criminal Justice Information Center implement a drug offender tracking system pursuant to § 20-2-190.2 and creates additional offenses involving the sale of controlled substances involving drug offenders.

Authorizes restitution from offenders for costs of prosecution.

Act 2012-291 (HB 2) Texting while Driving

Makes it unlawful to write, send or read a text-based communication while driving.

The penalty provided is a fine; $25 for the first offense, $50 for the second offense, and $75 for the third offense. The offender's driver record is also credited with 2 points.

Act 2012-220 Bicycle signals

Authorizes the use of the right arm and hand to signal a right hand turn while riding a bicycle.

Act 2012-465 Youthful Offender Amendment

Requires notice to the victim and an opportunity to be heard before the acceptance of a Youthful Offender Application in a matter involving the intentional infliction of serious injury or death of a victim.

Act 2012-428 (HB 318) Timber Theft

Adds removal of timber by deception to existing penalties.

Act 2012-369 (HB369) Disarming a Law Enforcement Officer

Creates as a Class C felony the crime of disarming a law enforcement officer or corrections officer in the performance of his or her duties.

Act 2012-368 (HB 16) Increase in penalty for Identity Theft

Raises the penalty for Identity Theft from a Class C to a Class B felony and provides a seven year statute of limitations.

Adds using a false identity to gain employment in the offense.

Act 2012-316 (HB 340) Looting

Creates as a class C felony, a new crime of Looting during a declared state of disaster or the existence of extreme peril.

Act 2012-473 (SB 386) Concerning the Alabama Sentencing Commission and Presumptive Sentencing Standards

Mandates that, beginning October 1, 2013 the sentencing standards recommendations for non-violent offenses will become presumptive rather than voluntary.

The recommendations for violent offenses will remain voluntary (§ 12-25-32(14)).

Redefines violent offense to include all degrees of burglary.

Requires the Sentencing Commission to modify the existing instructions and to adopt aggravating and mitigating circumstances for departures from the presumptive recommendations

Requires the Sentencing Commission to recommend a standard of appellate review to the Legislature applicable to departures from presumptive sentencing recommendations.

Adds additional membership to the Sentencing Commission.

Appendix C

Notable U.S. Supreme Court Cases from the October 2010-2011 Terms

The following U.S. Supreme Court cases concerning the application of federal law to state criminal law and procedure.

Brown v. Plata, __U.S.__, 131 S.Ct. 1910 (May 23, 2011)

SEVERE PRISON OVERCROWDING IS UNCONSTITUTIONAL

At the time of the *Plata* decision, California's prisons held 156,000 prisoners, roughly double their intended capacity. In 1990, a federal district court held that California did not provide constitutionally sufficient mental care to its prison population. By 2005, the state had not remedied the situation, and the court ordered a receiver to oversee remedial efforts. The receiver found that the state could not provide adequate mental health care without reducing its prison population. A three-judge district court panel ordered California to reduce its prison population to 137.5% of capacity. California appealed the order.

The Supreme Court upheld the order. Writing for a five-justice majority, Justice Kennedy agreed with the district court panel that "until the problem of crowding is overcome, it will be impossible to provide constitutionally compliant care to California's prison population." 131 S.Ct. at 1932. No other remedy could fix the prison system's mental and physical healthcare deficiencies. Overcrowding make it too difficult for prisoners to see a doctor, creates "unsafe and unsanitary living conditions," increases prison violence, and forces the prison staff to spend almost all its time keeping order, leaving no time to remedy constitutional violations. *Id.* at 1933-34.

Plata did not directly order California to release prisoners, but the decision does require the state to comply with the 137.5% order of the district court panel. In addition to prisoner release, the state was given the option to build more prisons or transfer prisoners to local jails or other states. The Court also found that the district court panel did not err in finding that California could reduce its prison population without affecting public safety.

Note: Alabama is the only other state with prison overcrowding near the level of California's. To reduce its prison population to 137.5% of capacity, Alabama would have to house roughly 7,360 fewer prisoners.

Bullcoming v. New Mexico, __U.S.__, 131 S.Ct. 2705 (June 23, 2011)

THE PERSON PREPARING A FORENSICS REPORT MUST TESTIFY AT TRIAL

Bullcoming was arrested for driving while intoxicated. The technician who prepared the laboratory report demonstrating Bullcoming's excessive blood alcohol level was put on unpaid leave before trial. In his stead, the state presented another technician who was familiar with the testing procedure to validate the report. Writing for the majority, Justice Ginsburg held that, because the forensic report was testimonial, the Confrontation Clause of the Sixth Amendment required the original preparer of the report, or someone who observed the test, to appear during trial for cross examination.

Davis v. United States, __U.S.__, 131 S.Ct. 2419 (June 16, 2011)

SEARCHES CONDUCTED IN RELIANCE ON BINDING JUDICIAL PRECEDENT WILL NOT BE EXCLUDED

Police in Greenville, Alabama, arrested Davis after a routine traffic stop at which he gave officers a false name. The officers searched his car and found an illegal handgun. Under the Eleventh Circuit's reading of *New York v. Belton*, 453 U.S. 454 (1981), the controlling case at the time, the search of Davis' car was legal. While his case was on appeal, the U.S. Supreme Court decided *Arizona v. Gant*, 556 U.S. 332 (2009), under which the search would have been illegal. Writing for the Court, Justice Alito held that searches conducted in reliance on binding judicial precedent are not subject to the Fourth Amendment exclusionary rule.

J.D.B v. North Carolina, __U.S.__, 131 S.Ct. 2394 (June 16, 2011)

A CHILD'S AGE PROPERLY INFORMS A MIRANDA CUSTODY ANALYSIS

Police questioned a 13-year old boy at school about a stolen digital camera after seeing the student near the location of two home break-ins. They did not give him his *Miranda* warning, allow him to call his legal guardian, or tell him he was free to leave the room. The boy confessed to stealing the camera, and was judged delinquent by a juvenile court. The North Carolina Supreme Court upheld the adjudication. The U.S. Supreme Court reversed, with Justice Sotomayor writing for the majority. So long as a child's age is known or reasonably perceived by the interviewing officer, the child's age should be included as a factor in the *Miranda* custody analysis.

Kentucky v. King, __U.S.__, 131 S.Ct. 1849 (May 16, 2011)

THE EXIGENT CIRCUMSTANCES RULE APPLIES WHERE LAW ENFORCEMENT DOES NOT CREATE THE EXIGENCY

After a controlled buy of crack cocaine, officers pursued the suspect purchaser into an apartment complex hallway with two doors. The officers did not know which apartment the suspect entered. Smelling marihuana smoke from one of the apartments, the officers knocked on the door of the apartment and announced their presence. Hearing what sounded like destruction of evidence, the officers broke down the apartment door, found marihuana and cocaine, and arrested King, who was in the apartment, on drug charges. King appealed his subsequent conviction, arguing that the officers conducted an unreasonable search in violation of the Fourth Amendment because the officers themselves created the exigent circumstances when they pounded on the door. The Supreme Court of Kentucky agreed and overturned the convicted.

The U.S. Supreme Court reversed, in an opinion written by Justice Alito. Those who possess drugs are likely to destroy them when confronted with the possibility that the drugs will be discovered by the police. This fact does not put an extra burden on police when announcing their presence at the doorstep to a residence. It is the destruction of evidence, and not the police presence that created the exigent circumstances in the defendant's case.

Michigan v. Bryant, __U.S.__, 131 S.Ct. 1143 (Feb. 28, 2011)

A GUNSHOT VICTIM'S DYING WORDS WERE NOT TESTIMONIAL, BUT RATHER ASSISTED IN AN ONGOING EMERGENCY

Police found Anthony Covington dying in a gas station parking lot from a gunshot wound to the abdomen. He told the police that Bryant had shot him, but then Covington died hours later at a hospital. Prosecutors used Covington's dying words, through testimony of the police at the scene, to convict Bryant. Bryant argued that Covington's words were hearsay in violation of the Sixth Amendment Confrontation Clause. The U.S. Supreme Court disagreed, in an opinion written by Justice Sotomayor. Because Covington had been shot and his assailant was on the loose, Covington's testimony had the primary purpose of aiding police in an ongoing investigation. The testimony was, therefore, not testimonial and did not violate the Confrontation Clause.

Skinner v. Switzer, __U.S.__, 131 S.Ct. 1289 (Mar. 7, 2011)

FAILURE TO PROVIDE EVIDENCE TO A DEFENDANT FOR DNA TESTING IS ACTIONABLE AS A § 1983 CIVIL RIGHTS VIOLATION

Skinner was convicted of murdering two people. The police conducted DNA testing on some, but not all, of the evidence collected at the scene. Skinner filed a habeas petition to have the other evidence released for testing. The petition was denied. Skinner then filed a § 1983 civil rights action to have the evidence released. The Fifth Circuit upheld a dismissal of the action. The Supreme Court reversed and held that a § 1983 action in this case is permissible.

Turner v. Rogers, __U.S.__, 131 S.Ct. 2507 (June 20, 2011)

DEFENDANTS IN CIVIL CONTEMPT HEARINGS MUST BE REPRESENTED BY COUNSEL OR BE PROTECTED BY PROCEDURAL SAFEGUARDS

At a contempt hearing, Turner was sentenced to 12 months in prison for failing to pay his child support on numerous occasions. He was not represented by counsel and appealed his contempt order. The Supreme Court, in a opinion written by Justice Breyer, held that defendants in civil contempt hearings do not necessarily need to be represented by counsel. However, when they are not, the proceeding must have adequate procedural safeguards in place to reduce the possibility of an erroneous loss of liberty.

Miller v. Alabama. **___ U.S. ___, 132 S.Ct. 2455 (June 25, 2012)**

THE EIGHTH AMENDMENT FORBIDS A SENTENCING SCHEME THAT MANDATES LIFE IN PRISON WITHOUT POSSIBILITY OF PAROLE FOR JUVENILE HOMICIDE OFFENDERS UNDER THE AGE OF 18 AT THE TIME OF THE OFFENSE.

Miller, along with a friend, beat Miller's neighbor and set fire to his trailer after an evening of drinking and drug use. The neighbor died. Miller was initially charged as a juvenile, but his case was removed to adult court, where he was charged with murder in the course of arson. A jury found Miller guilty, and the trial court imposed a statutorily mandated punishment of life without parole. The Alabama Court of Criminal Appeals affirmed, holding that Miller's sentence was not overly harsh when compared to his crime, and that its mandatory nature was permissible under the Eighth Amendment.

***Arizona v. United States*, ___ U.S. ___, 132 S.Ct. 2492 (June 25, 2012)**

THE SUPREMACY CLAUSE GIVES CONGRESS THE POWER TO PREEMPT STATE ACTION WHEN CONGRESS HAS EXERCISED ITS POWER, PREEMPTING STATE ACTION IN CERTAIN AREAS INVOLVING IMMIGRATION.

***Williams v. Illinois*, ___ U.S. ___, 132 S.Ct. 2221 (June 25, 2012)**

THE CONFRONTATION CLAUSE DOES NOT BAR THE EXPERT OPINION TESTIMONY OF AN EXPERT RELYING ON THE LAB REPORT PREPARED BY ANOTHER ANALYST.

An expert witness, relying on the DNA testing performed - and lab report prepared - by another DNA analyst, gave her expert opinion that the DNA obtained from the victim matched the defendant's DNA. A four-Justice plurality (the Chief Justice and Justices Alito, Kennedy, and Breyer) reasoned that the out-of-court statements (the lab report) referenced by the expert to explain her assumptions "are not offered for their truth and thus fall outside the scope of the Confrontation Clause."

***Southern Union Co. v. United States*, ___ U.S. ___, 132 S.Ct. 2221 (June 18, 2012)**

THE RULE OF *APPRENDI V. NEW JERSEY*, 530 U.S. 466 (2000), THAT THE SIXTH AMENDMENT REQUIRES A JURY TO FIND ANY FACT (OTHER THAN A PRIOR CONVICTION) THAT INCREASES A CRIMINAL DEFENDANT'S MAXIMUM POTENTIAL SENTENCE APPLIES TO SENTENCES OF CRIMINAL FINES.

The Court reiterated that under *Apprendi* and its progeny, "while judges may exercise discretion in sentencing, they may not inflict punishment that the jury's verdict alone does not allow" (internal quotation marks omitted). While those earlier cases involved sentences of imprisonment or death, the Court saw "no principled basis under *Apprendi* for treating criminal fines differently." *Apprendi's* "core concern" is to reserve to the jury "the determination of facts that warrant punishment" - and "[t]hat concern applies whether the sentence is a criminal fine or imprisonment or death." Simply put, criminal fines "are penalties inflicted by the sovereign for the commission of offenses"; indeed, they "were by far the most common form of noncapital punishment in colonial America." The Court thus found that if the amount of a fine is calculated in reference to a fact such as duration of time, the jury, not the judge, must find that fact beyond a reasonable doubt.

Blueford v. Arkansas, ___ U.S. ___, 132 S.Ct. 2044 (May 24, 2012)

THE DOUBLE JEOPARDY CLAUSE DOES NOT BAR RETRYING A DEFENDANT ON THE GREATER OFFENSES OF CAPITAL MURDER AND FIRST-DEGREE MURDER WHERE THE JURY FOREPERSON ANNOUNCED IN COURT THAT THE JURY WAS "UNANIMOUS AGAINST" GUILT ON THOSE TWO OFFENSES AND DEADLOCKED ON A LESSER-INCLUDED OFFENSE, THE JURY RESUMED DELIBERATIONS, AND THE JUDGE DECLARED A MISTRIAL WHEN THE JURY STILL COULD NOT REACH A VERDICT AFTER FURTHER DELIBERATIONS AND FILED TO RETURN ANY VERDICT FORMS.

A one-year-old boy died from a severe head injury caused by defendant Alex Blueford, the mother's boyfriend. The State of Arkansas charged Blueford with capital murder, which included three lesser offenses: first-degree murder, manslaughter, and negligent homicide. At trial, the judge instructed the jury that it could consider the next lesser offense only if it had a reasonable doubt as to defendant's guilt on the preceding greater offense; and that it could acquit the defendant only after it unanimously found him not guilty of all charges. (This is known as an "acquittal-first" instruction.) A few hours into deliberations, the jury foreperson informed the judge that it was "unanimous against" capital murder and first-degree murder, it was deadlocked on manslaughter, and that it had not reached negligent homicide. The judge instructed the jury to continue deliberating. Blueford asked for new verdict forms to be submitted to the jury for capital murder and first-degree murder, but the judge denied this request for a partial verdict. About a half-hour later, the jury foreperson returned and stated they could not reach a verdict. The judge declared a mistrial and discharged the jury. The state later sought to retry Blueford on all counts. Relying on the Double Jeopardy Clause, Blueford moved to dismiss the capital murder and first-degree murder counts. The trial court denied the motion to dismiss and the Arkansas Supreme Court affirmed. The court ruled that the foreperson had not acquitted Blueford of the greater offenses simply by disclosing the jury's mid-deliberation votes, and that the trial court did not err in denying Blueford's request to have new verdict forms given to the jury. In an opinion by Chief Justice Roberts, the Court affirmed.

***Lafler v. Cooper*, ___ U.S. ___, 132 S.Ct. 1376 (March 21, 2012)**

A DEFENDANT'S SIXTH AMENDMENT RIGHT TO EFFECTIVE COUNSEL IS VIOLATED WHEN HIS COUNSEL PROVIDES DEFICIENT ADVICE NOT TO ACCEPT A PLEA OFFER AND HE IS THEN CONVICTED AFTER A FAIR TRIAL AND SENTENCED TO A LONGER TERM THAN HE WOULD HAVE RECEIVED UNDER THE PLEA OFFER.

THE REMEDY IS TO RETURN THE CASE TO THE TRIAL COURT TO RE-OFFER THE PLEA AGREEMENT AND IF THE DEFENDANT ACCEPTS THE OFFER, THE TRIAL COURT CAN THEN EXERCISE ITS DISCRETION TO DETERMINE WHETHER IT WILL ACCEPT THE PLEA AND (1) VACATE THE SENTENCE AND RESENTENCE IN ACCORDANCE WITH THE PLEA; OR (2) TO LEAVE THE CONVICTIONS AND SENTENCES RESULTING FROM THE TRIAL UNCHANGED; OR (3) TO EXERCISE ITS DISCRETION IN SOME OTHER MANNER CONSISTENT WITH ITS CONSIDERATION OF THE PLEA AGREEMENT.

Cooper was charged with assault with intent to murder and three other offenses. The prosecution offered to dismiss two of the charges and recommend a 51-to-85-month sentence in exchange for Cooper's guilty plea. Cooper had informed the court that he wanted to admit his guilt and accept the offer. But Cooper changed his mind on the advice of counsel, who convinced Cooper that the prosecution would be unable to prove his intent to murder because the victim was shot below the waist. He therefore rejected the offer and went to trial, was convicted on all counts, and was issued a mandatory sentence of 185 to 360 months. The U.S. Supreme Court reviewed this matter after the conviction was set aside in a federal habeas proceeding.

***Missouri v. Frye*, ___ U.S. ___, 132 S.Ct. 1399 (March 21, 2012)**

THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL EXTENDS TO PLEA OFFERS THAT LAPSE OR ARE REJECTED AND COUNSEL FAILED TO INFORM THE DEFENDANT OF THE OFFER.

In August 2007, respondent Frye was charged with driving with a revoked license; he had also been convicted of the same offense on three prior occasions. Frye was thus charged with a felony carrying a maximum term of four years in prison. The prosecutor sent a letter to Frye's attorney offering a choice of two plea bargains, one of which would have reduced the charge to a misdemeanor. The letter stated that both offers would expire on December 28, 2007. Frye's attorney did not advise him of the offers. On December 30, 2007, Frye was again arrested for the same offense. Frye later pleaded guilty to the August 2007 offense without the benefit of a plea bargain and was sentenced to three years in prison, which was the higher of the two plea offers originally made. Frye petitioned for post-conviction relief in state court, alleging that he would have accepted the plea offer to the misdemeanor had he known about it. The state court denied the

petition but the appeals court reversed and remanded to allow Frye either to insist on a trial or plead guilty to any offense the prosecutor deemed appropriate. The State petitioned the U.S. Supreme Court. That Court vacated the lower court opinion, because the lower court did not articulate and apply the correct standard for prejudice.

The Court observed "the reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance that the Sixth Amendment requires . . . at critical stages." The Court held that to show prejudice from ineffective counsel that results in a rejected plea offer, defendants must show a reasonable probability they would have accepted the earlier offer had they been given effective assistance and a reasonable probability the plea would have been entered without the prosecution canceling it or the court refusing to exercise its discretion to accept it.

***Howes v. Fields*, ___ U.S. ___, 132 S.Ct. 1181 (February 21, 2012)**

THERE IS NO PER SE RULE REQUIRING A *MIRANDA* WAIVER TO ADMIT A STATEMENT TAKEN FROM A PRISONER INCARCERATED ON AN UNRELATED MATTER

Fields, a Michigan state prisoner, was escorted from his prison cell by a corrections officer to a conference room where he was questioned by two sheriff's deputies about criminal activity unrelated to his current conviction. The subject of the questioning concerned conduct Fields had allegedly engaged in before coming to prison. At no time was Fields given Miranda warnings or advised that he did not have to speak with the deputies. Fields was questioned for between five and seven hours; Fields was told more than once that he was free to leave and return to his cell; the deputies were armed, but Fields remained free of restraints; the conference room door was sometimes open and sometimes shut; several times during the interview Fields stated that he no longer wanted to talk to the deputies, but he did not ask to go back to his cell; after Fields confessed and the interview concluded, he had to wait an additional 20 minutes for an escort and returned to his cell long after the hour when he generally retired.

Fields Motion to Suppress was denied and Fields was convicted of Criminal Sexual Conduct and that conviction was affirmed on appeal. On federal habeas review the district court sided with Fields and set aside his conviction and the Sixth Circuit affirmed. The U.S. Supreme Court reversed giving deference to the state court's finding based on the totality of the circumstances.

***Maples v. Thomas,* ___ U.S.___, 132 S.Ct. 912 (January 18, 2012)**

ABANDONMENT BY COUNSEL WHILE A CONVICTED PERSON'S STATE POST-CONVICTION APPLICATION WAS PENDING, WILL SERVE AS "CAUSE" TO EXCUSE THE PROCEDURAL DEFAULT THAT OCCURRED WHEN HE FAILED TO APPEAL THE DENIAL OF THAT APPLICATION.

Petitioner Cory Maples had been sentenced to death in 1997 in Alabama for murdering two people. Two young associates from the large New York firm Sullivan & Cromwell agreed to work with Maples on his post-conviction petition on a pro bono basis. They associated with local counsel, who conditioned his participation on the agreement that he would not handle substantive issues. The New York attorneys filed Maples' petition with the trial court, claiming ineffective assistance of trial counsel. While the motion was pending, the two New York attorneys left their firm and, in their new positions, could no longer represent Maples. They did not, however, notify Maples or the court. When the Alabama trial court denied Maples' post-conviction petition, the notices sent to his New York counsel were returned by the firm's mail room, unopened. Maples learned his petition had been denied from an Alabama Assistant Attorney General, who sent him a letter also informing Maples that he had four weeks to file a federal habeas claim. The Alabama Court of Criminal Appeals declined Maples' petition for a writ of mandamus, finding no fault with the court's clerk, who had sent the notice denying Maples' appeal to all three attorneys of record. Maples filed a federal habeas petition, which the district court denied because he had procedurally defaulted his claims in state court. The Eleventh Circuit affirmed. Both courts cited *Coleman v. Thompson*, 501 U.S. 722 (1991), which held that "when a petitioner's post conviction attorney misses a filing deadline, the petitioner is bound by the oversight and cannot rely on it to establish cause." In an opinion by Justice Ginsburg, the Court reversed.

***Perry v. New Hampshire,* ___ U.S.___, 132 S.Ct. 2221 (January 11, 2012**)

THE DUE PROCESS CLAUSE DOES NOT REQUIRE A TRIAL JUDGE TO SCREEN EYEWITNESS EVIDENCE FOR RELIABILITY PRETRIAL WHEN SUGGESTIVE CIRCUMSTANCES SURROUNDING THE IDENTIFICATION WERE NOT ARRANGED BY LAW ENFORCEMENT OFFICERS.

Police responded to a report that someone was breaking into cars in the parking lot of an apartment building. The first responding officer, Officer Clay, encountered Perry in the parking lot holding two car stereo amplifiers, which Perry stated he found on the ground. Officer Clay asked Perry to remain in the parking lot with a second officer, while she went to interview the reporting person's wife, Nubia Blandon. Blandon stated that through her kitchen window she saw an African-American man take "a big box" from the trunk of her neighbor's car. When Clay asked her for a more detailed description of the man, she "pointed to her kitchen window and said the person she saw breaking into [her neighbor's] car was standing in the parking lot, next to the police officer." Police arrested Perry. Prior to trial, Perry moved to suppress the identification, arguing it

violated his due process rights. The trial court denied his motion on the ground that the identification "did not result from an unnecessarily suggestive procedure 'manufacture[d] . . . by the police.'" The New Hampshire Supreme Court affirmed for the same reason, rejecting Perry's argument that the suggestive circumstances alone triggered the court's duty to assess the reliability of the identification before it could be presented to the jury. The U.S. Supreme Court affirmed.

***Smith v. Cain*, ___ U.S.___, 132 S.Ct. 627 (January 10, 2012)**

BRADY V. MARYLAND, 373 U.S. 83 (1963), REQUIRES PROSECUTORS TO TURN OVER TO THE DEFENSE STATEMENTS BY THE SINGLE EYEWITNESS WHO LINKED PETITIONER TO THE CRIME THAT CALLED INTO QUESTION THE RELIABILITY OF THAT IDENTIFICATION.

Smith had been convicted of five counts of first degree murder for taking part in a robbery in which he and two other gunmen entered a home intending to steal money and drugs, began shooting, and killed five people. Three victims survived, including one who escaped, one who hid, and one eyewitness (Larry Boatner) who identified Smith and testified he was face-to-face with Smith during the first few moments of the robbery. In pursuing his post-conviction appeals, Smith obtained police files related to the investigation. Those files contained notes written by the detective from the night of the crime stating that the Boatner "could not . . . supply a description of the perpetrators other then [sic] they were black males," and notes from five nights after the crime stating that Boatner "'could not ID anyone because [he] couldn't see faces' and 'would not know them if [he] saw them.'" A report by the same detective stated that Boatner "could not identify any of the perpetrators of the murder." The witness's "testimony was the only evidence linking Smith to the crime" and the "undisclosed statements directly contradict his testimony."

The state post-conviction court denied Smith's Brady claim, and the Louisiana Court of Appeals and Louisiana Supreme Court denied review. The Supreme Court reversed.

Appendix D

Notable Alabama Appellate Cases Concerning Sentencing 2011-2012

***Reese v. State*, CR-10-1220, 2012 WL 415464 (Ala. Crim. App. February 10, 2012)**

A PRISONER REVOKED FROM SERVING A SENTENCE TO COMMUNITY CORRECTIONS DOES NOT QUALIFY AS A TECHNICAL VIOLATOR FOR PURPOSES OF LIMITING THE RESULTING INCARCERATION.

Reese was sentenced to serve 15 years in community corrections. Community Corrections was not made a condition of probation. While under community corrections supervision, Reese violated the ban on electronic media devices and was charged with Promoting Prison Contraband and was revoked to serve the remainder of his term in prison. Reese appealed claiming he was entitled to be treated as a technical violator and that he was entitled to a revocation hearing. The Court of Criminal Appeals affirmed as to the technical violator issue because Reese's sentence did not include probation but reversed as to the requirement of a revocation hearing.

***Johnson v. State*, CR-10-11590, 2011 WL 6278309 (Ala. Crim. App. Dec. 16, 2011)**

UPON CONVICTION AND SENTENCE A DEFENDANT IS ENTITLED TO CREDIT FOR TIME SERVED ON DISMISSED CHARGES ARISING OUT OF THE SAME INCIDENT FOR WHICH HE WAS CONVICTED.

Johnson was involved in a vehicle crash in July 2007. He was indicted for one count of Assault 1st and two counts of Assault 2nd. That indictment was nolle prossed in March 2010. The same day of that dismissal, Johnson was arrested on a new indictment for three counts of Assault 2nd. Johnson was in and out of jail on bonds and an FTA warrant under both indictments. He pled guilty to two counts of Assault 2nd and one count of Assault 3rd. The circuit court ordered credit for time served but denied him credit for the time he was incarcerated on the first indictment. Johnson appealed. The Court of Criminal Appeals reversed holding Johnson was entitled to credit for all time served arising out of the incident.

***Gomillion v. State*, CR-08-1062, 2011 WL 6279027 (Ala. Crim. App. Dec. 16, 2011)**

A GUILTY PLEA DOES NOT SERVE AS EITHER AN IMPLIED OR EXPLICIT AJUDICATION OF GUILT

Gomillion pled guilty in County #1 to three charges of Robbery in the first degree. The record contains neither a formal adjudication nor a sentence. Six months later, he was arrested in County #2 on charges of Burglary in the first degree and Burglary in the third degree committed after the entry of the guilty. A year later, he again pled guilty in county #1 to the same Robbery first degree charges and was sentenced. Two months after this plea and sentence, Gomillion was convicted of Burglary in the first degree and burglary in the third degree in County #2. At sentencing, the circuit court in County #2 found that Robbery in the first degree convictions in County #1 were prior convictions for purposes of the Habitual Felony Offender Act and sentenced Gomillion as a habitual felony offender to Life Without Parole. The Court of Criminal Appeals reversed holding there was no implied or explicit adjudication of guilt or conviction in County #1 prior to the charges in County #2.

***McCary v. State*, CR-10-0863, 2011 WL 6278307 (Ala. Crim. App. Dec. 16, 2011)**

ELIGIBILITY FOR PAROLE IS A FACTOR THAT MUST BE INCLUDED IN THE SENTENCING INFORMATION THE DEFENDANT MUST UNDERSTAND IN ORDER TO ENTER AN INFORMED AND VOLUNTARY PLEA OF GUILT WHERE THE DEFENDANT IS SENTENCED TO LIFE.

McCary was charged with Sodomy in the first degree involving a victim under 12 years of age, an offense for which the defendant is by statute not eligible for parole or probation. McCary agreed to plead guilty to Sodomy in the first degree and to accept a life sentence. McCary later filed a Rule 32 Petition challenging his guilty plea as involuntary, claiming that he did not know § 15-22-27.3 made him ineligible for parole and he was not informed of that direct consequence of his plea and agreement, a life without parole rather than a life sentence. The trial court denied the petition and McCary appealed. The Court of Criminal Appeals reversed.

***Goodson v. State,* CR-11-0209, 2012 WL 1450538 (Ala. Crim. App. April 27, 2012)**

A DEFENDANT HAS THE RIGHT TO ACCEPT OR REJECT PROBATION AND A SPLIT SENTENCE

Goodson pled guilty to Burglary 3rd. The circuit court sentenced him to 10 years split to serve 3 years with 5 years probation upon release. Goodson filed a motion rejecting the probation and split sentence. The circuit court denied the motion. Goodson appealed. The Court of Criminal Appeals reversed and remanded for resentencing.

***Ex parte State* (*In re: State v. Utley*), CR-11-0244, 2012 WL 1450535 (Ala. Crim. App. April 27, 2012)**

A TRIAL COURT MAY ENTERTAIN AN APPLICATION FOR PROBATION FILED AT ANY TIME AFTER CONVICTION AND BEFORE THE COURT LOSES JURISDICTION TO MODIFY THE SENTENCE (30 DAYS AFTER SENTENCE IS IMPOSED) OR BEFORE THE EXECUTION OF SENTENCE.

Utley pled guilty to one count Enticing a Child for Immoral Purposes and two counts of Transmitting Obscene Material. The circuit court denied his request for probation on July 5, 2011, and sentenced him to concurrent 3-year terms in prison. On July 22, 2011, Utley filed a notice of appeal. On August 4, 2011, Utley filed a motion for an appeal bond and a motion to reconsider probation. The circuit court denied Utley's second probation request on August 19, 2011. At Utley's request, the Court of Criminal Appeals dismissed his appeal on September 29, 2011. Utley then filed another motion for reconsideration. The circuit court granted Utley's third request for probation filed more than 30 days after the original sentence was pronounced and after the execution of sentence had begun. The State filed a petition for mandamus in the Court of Criminal Appeals. The Court of Criminal Appeals granted the petition for mandamus and noted that, while the State had not filed a petition to stay the probation order, a stay was not necessary because the court's order granting probation was void, having been entered after the trial court had lost jurisdiction.

***State v. Brand,* CR-10-0376, 2012 WL 6278302 (Ala. Crim. App. Dec. 16, 2011)**

TWENTY YEAR SENTENCES, SPLIT TO SERVE 5 YEARS FOR EACH CONVICTION WITH THE REMAINDER OF EACH ON PROBATION UPON RELEASE MAY BE MADE CONSECUTIVE EVEN THOUGH THE TOTAL SPLIT EXCEEDS THE 5 YEAR MAXIMUM SPECIFIED IN § 15-18-8(A)(1).

Brand pled guilty to two counts of Sexual Abuse 1st. He received sentences of 20 years split to serve 5 years in prison and 10 years probation upon release. The circuit court did not specify that the sentences were to be served concurrent, so by default, the sentences were treated as consecutive. He filed a Rule 32 petition claiming his sentences were illegal because they exceeded what was allowed under Alabama law. The circuit court summarily dismissed the petition. The Court of Criminal Appeals affirmed.

Appendix E

Section 15-22-54.1 Petition Form, Order for Production Form and Order of Resentencing

State of Alabama Unified Judicial System Form CR-63 Rev.5/2010	**Petition for Resentencing Pursuant to §15-22-54.1 (Technical Violation of Probation)*** File With the Circuit Clerk of County Where Sentencing Occurred	Case Number __C 20____-_____.1

In the _____ Court of _____, Alabama
(Circuit or District) (Name of County)

State of Alabama v. _____, Defendant.

Full Name of Defendant/Petitioner _____ Case Number_____

Inmate AIS# _____ Sentence _____

County of Conviction _____ Sentencing Judge_____

Offense(s) at Conviction _____

Date of Original Sentence _____ Date Probation Revoked _____

Date Admitted to ADOC for Probation Violation _____

Name of Attorney at Trial _____ Name of Current Attorney _____

Comes now the defendant in the above styled case and petitions this Court pursuant to §15-22-54.1, Code of Alabama (1975), to reconsider the sentence previously imposed by the Court as a result of revocation of probation. The petitioner swears that the revocation of probation was the result of only a technical violation(s) of probation (a violation that was not a new offense). The petitioner further submits that this Court has jurisdiction to resentence the petitioner, and swears and affirms as follows:

1. At the time of the technical violation, that the petitioner had successfully completed the terms of probation, including remaining current on payment of court ordered money, for a consecutive six (6) month period;

2. That the probation was thereafter revoked and the petitioner was sentenced to the penitentiary only as a result of technical violation(s) of probation;

3. That the petitioner has had no disciplinary infractions while serving the sentence in the penitentiary; and

4. That the petitioner has no pending charges or convictions for a new offense.

I do hereby solemnly swear and affirm that the information provided in this petition is true and correct to the best of my knowledge. I understand that any intentional falsification of the information presented in this Petition may subject me to the penalties of perjury, which could include further imprisonment and further fines.

_____
Signature of Petitioner

Sworn and subscribed before me this

_____ day of _____, 20____

_____
Date

_____
Notary Public

* Pursuant to §15-22-54.1(a), no filing fee is required for the filing of this petition

State of Alabama Unified Judicial System Form CR-63A Rev.5/2010	Order of Production for Resentencing Pursuant to §15-22-54.1 (Technical Violation of Probation)	Case Number __C 20____-_____.1

In the _____ Court of _____, Alabama
(Circuit or District) (Name of County)

State of Alabama v. _____, Defendant.

Defendant's AIS #_____

This cause being before this Court upon petition of the defendant seeking resentencing pursuant to Act 2010-753 codified at Section 15-22-54.1, Code of Alabama (1975), which allows certain offenders revoked from probation only on technical violations and , as a result thereof, currently serving a prison sentence, to have their sentence resulting from the revocation modified. Pursuant to this Act, the sentencing court is vested with the authority to make the determination of whether an inmate is eligible for consideration for resentencing. Eligibility specifically depends on the fact that the inmate have no disciplinary infractions while serving the sentence in the penitentiary, have no pending charges or convictions for a new offense, and have successfully completed the terms of probation for six months prior to revocation of probation.

THEREFORE, the Court orders as follows:

1. The Board of Pardons and Paroles is hereby ordered to submit to this Court a current pre-sentence investigation report within 30 days of the date from this order. The report shall show any new and pending charges or convictions for a new offense, and shall specify whether probation in the underlying case was revoked due to a technical violation. The Board shall also provide the court with information pertaining to the defendant's payment history showing whether the petitioner has or has not remained current on payment of court ordered monies;

2. The Alabama Department of Corrections ("ADOC") is hereby ordered to submit to the Court a verified ADOC inmate summary or an affidavit showing the following information pertaining to the above petitioner:

   A. Admission date to ADOC;

   B. Time served on probation revocation;

   C. Number of any escapes or attempted escapes;

   D. Disciplinary infractions committed by the petitioner while serving the current sentence and the specific rule violations which resulted in the discipline; and

   E. Any new offenses committed while in DOC custody.

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The Clerk shall serve a copy of this order upon the defendant, ADOC, the Board of Pardons and Paroles, and the District Attorney for this Circuit.

DONE AND ORDERED on this the _____ day of _____, 20_____.

_____
Circuit/District Judge

State of Alabama Unified Judicial System Form CR-63B Rev.5/2010	**Order on Defendant's Petition for Resentencing Pursuant to §15-22-54.1/Act 2010-753 (Technical Violation of Probation)**	Case Number ___C 20___-_____.1

In the _____ Court of _____, Alabama
(Circuit or District) (Name of County)

State of Alabama v. _____, Defendant.

WHEREAS, the above-named defendant has petitioned this Court for resentencing under Act 2010-753 codified at §15-22-54.1, Code of Alabama (1975), and said law entitles eligible offenders to be resentenced upon filing of a petition for modification of sentence to the sentencing court; and whereas the Court has received and reviewed the petition of the defendant, the Court finds that (check one):

☐ This Court has jurisdiction pursuant to §15-22-54.1, Code of Alabama (1975). The petitioner meets all of the following criteria required by the statute:

1. The petitioner is nonviolent offender;
2. The petitioner was sentenced by this Court;
3. The petitioner had successfully completed the terms of probation, including remaining current on payment of court ordered money, for a consecutive six (6) month period;
4. Probation was thereafter revoked, and the petitioner is currently serving a prison sentence based on revocation of probation;
5. The revocation of probation was based on only technical violations;
6. The petitioner has had no disciplinary infractions while serving the sentence in the penitentiary; and
7. The petitioner has no pending charges or convictions for a new offense.

Thus, the petition is granted and the petitioner is entitled to be resentenced.

_____

_____

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_____

☐ This Court does not have jurisdiction pursuant to §15-22-54.1, Code of Alabama (1975). The petitioner does not meet one or any of the following eligibility requirements required by the statute (check all that apply):

[ ] The petitioner has been convicted of a violent offense;
[ ] The petitioner was not sentenced by this Court;
[ ] The petitioner had not successfully completed the terms of probation for a consecutive six (6) month period under the current sentence;
[ ] The petitioner has not remained current on payment of court ordered money;
[ ] The petitioner is currently serving a prison sentence based on a reason other than revocation of probation;
[ ] The revocation of probation was based on violations other than technical violations;
[ ] The petitioner has had disciplinary infractions while serving the sentence in the penitentiary; or
[ ] The petitioner has pending charges or convictions for a new offense.

Thus, the petition is denied.

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_____

DONE AND ORDERED on this the _____ day of _____, 20____.

_____
Circuit/District Judge