

SB157 INTRODUCED



1 5R1B36-1
2 By Senator Elliott
3 RFD: Judiciary
4 First Read: 04-Apr-23
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SYNOPSIS:

Under existing law, a police officer, sheriff, or other officer with the power of arrest may only arrest a parolee without a warrant if the arresting officer has a written statement from the parole officer stating the parolee has violated his or her parole.

Also, under existing law, a police officer or other officer with the power of arrest may only arrest a probationer without a warrant if the arresting officer has a written statement from the probation officer stating the probationer has violated terms of probation.

This bill would provide that a law enforcement officer with the power of arrest may arrest a parolee or probationer without a warrant if the arresting officer has personal knowledge that the parolee or probationer has violated the conditions of parole or probation.

This bill would require the Board of Pardons and Paroles to provide to the Alabama State Law Enforcement Agency the conditions of parole for any individual granted parole.

This bill would require a court to provide to the Alabama State Law Enforcement Agency the conditions of probation for any individual released on probation.



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29 This bill would also require the Alabama State
30 Law Enforcement Agency to ensure that the conditions of
31 parole received from the Board of Pardons and Paroles,
32 and the conditions of probation received from a court,
33 may be viewed by law enforcement officers and other
34 authorized persons through the Law Enforcement Tactical
35 System.

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A BILL

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TO BE ENTITLED

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AN ACT

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42 Relating to parolees and probationers; to amend
43 Sections 15-22-31 and 15-22-54, Code of Alabama 1975, to allow
44 a law enforcement officer to arrest a parolee or probationer
45 without a warrant in certain circumstances; to require the
46 Board of Pardons and Paroles to send the Alabama State Law
47 Enforcement Agency the conditions of parole for an individual
48 released on parole; to require a court to provide to the
49 Alabama State Law Enforcement Agency the conditions of
50 probation for an individual released on probation; and to
51 require the Alabama State Law Enforcement Agency to make the
52 conditions of parole or probation available to law enforcement
53 officers and other authorized persons through the Law
54 Enforcement Tactical System.

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BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

56

Section 1. Sections 15-22-31 and 15-22-54, Code of



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57 Alabama 1975, are amended to read as follows:

58 "§15-22-31

59 (a) ~~If~~ When the parole officer ~~having charge of a~~
60 ~~paroled prisoner~~ supervising a parolee or any member of the
61 Board of Pardons and Paroles ~~shall have~~ has reasonable cause
62 to believe that ~~such prisoner~~ the parolee has ~~lapsed, or is~~
63 ~~probably about to lapse, into criminal ways or company or has~~
64 violated the conditions of his or her parole ~~in an important~~
65 ~~respect, such,~~ the parole officer or board member may report
66 ~~such fact~~ the violation to the Department of Corrections,
67 ~~which shall thereupon issue a warrant for the retaking of such~~
68 ~~prisoner and his return to the prison designated~~ and request
69 the department to issue a warrant to arrest the parolee. Upon
70 request, the department shall issue an arrest warrant, and the
71 parolee shall be returned to the prison designated on the
72 warrant.

73 (b) Any parole officer, ~~police officer, sheriff, or~~
74 ~~other~~ a law enforcement officer with power of arrest, ~~upon the~~
75 ~~request of the parole officer,~~ may arrest a parolee without a
76 warrant; ~~but, in case of an arrest without a warrant,~~ if the
77 arresting officer ~~shall have a written statement by the parole~~
78 ~~officer setting forth that the parolee has, in his or her~~
79 ~~judgment,~~ has personal knowledge that the parolee has violated
80 the conditions of parole, ~~in which case such statement shall~~
81 ~~be sufficient warrant for the detention of the.~~ The parolee
82 may be detained in the county jail or other appropriate place
83 of detention until the warrant issued by the Department of
84 Corrections has been received at the place of his or her



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85 detention; ~~provided, however, that in no case shall a~~ . A
86 parolee shall not be held longer than 20 days ~~on the order of~~
87 ~~the parole officer~~ awaiting the arrival of the warrant ~~as~~
88 ~~provided for in this section~~ issued by the department. If a
89 warrant is not issued within ~~the period prescribed herein~~ 20
90 days, the parolee shall be released from custody.

91 (c) If the parolee is presented to the county jail with
92 a serious medical condition, if the admittance of the parolee
93 would create a security risk to the county jail, or if the
94 jail is near, at, or over capacity, the sheriff may refuse to
95 admit the parolee. If while in custody of the county jail the
96 parolee develops a serious medical condition, if the presence
97 of the parolee creates a security risk to the county jail, or
98 if the county jail reaches near, at, or over capacity, the
99 sheriff may release the parolee upon notification to his or
100 her the parole officer unless the Department of Corrections
101 has issued an arrest warrant directing the return of the
102 parolee to the ~~prison so designated~~ department's custody. A
103 sheriff and his or her staff shall be immune from liability
104 for exercising discretion pursuant to Section 36-1-12 in
105 refusing to admit a parolee into the jail or releasing a
106 parolee from jail ~~under the circumstances described above~~
107 pursuant to this subsection.

108 ~~(c)~~ (d) Any parole officer, ~~any officer authorized to~~
109 ~~serve criminal process or any peace officer to whom such~~ or
110 law enforcement officer with power of arrest to whom the
111 warrant, issued by the Department of Corrections pursuant to
112 subsection (a), is delivered shall ~~be delivered is authorized~~



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113 ~~and required to~~ execute ~~such~~ the warrant by ~~taking such~~
114 ~~prisoner~~ arresting the parolee and returning him or her to the
115 prison designated by the Department of Corrections, ~~there to~~
116 ~~be held to await~~. The parolee shall be held by the department
117 awaiting the action of the Board of Pardons and Paroles.

118 ~~(d) Such~~ (e) An officer, other than an officer of the
119 prison or parole officer, shall ~~be entitled to~~ receive ~~the~~
120 ~~same~~ fees ~~therefor as upon~~ for the execution of ~~a~~ an arrest
121 ~~warrant of arrest at the place where the prisoner shall be~~
122 ~~retaken and as for transporting a convict~~. An officer who
123 transports the parolee from the place of arrest to the
124 designated prison, ~~in case such officer also transports the~~
125 ~~prisoner~~ shall receive fees for transporting the parolee to
126 the prison. ~~Such~~ The fees shall be paid out of the funds
127 standing to the credit of the Department of Corrections."

128 "§15-22-54

129 (a) The period of probation or suspension of execution
130 of sentence shall be determined by the court and may not be
131 waived by the defendant. The period of probation or suspension
132 may be continued, extended, or terminated as determined by the
133 court. Except as provided in Section 32-5A-191, relating to
134 ignition interlock requirements, the maximum probation period
135 of a defendant guilty of a misdemeanor may not exceed two
136 years, nor shall the maximum probation period of a defendant
137 guilty of a felony exceed five years, except as provided in
138 Section 13A-8-2.1. When the conditions of probation or
139 suspension of sentence are fulfilled, the court, by an order
140 duly entered on its minutes, shall discharge the defendant.



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141 (b) The court granting probation, upon the
142 recommendation of the officer supervising the probationer, may
143 terminate all authority and supervision over the probationer
144 prior to the declared date of completion of probation upon
145 showing a continued satisfactory compliance with the
146 conditions of probation over a sufficient portion of the
147 period of the probation. At least every two years, and after
148 providing notice to the district attorney, the court shall
149 review the probationer's suitability for discharge from
150 probation supervision if the probationer has satisfied all
151 financial obligations owed to the court, including
152 restitution, and has not had his or her supervision revoked.

153 (c) At any time during the period of probation or
154 suspension of execution of sentence, the court may issue a
155 warrant and have the ~~defendant~~probationer arrested for
156 violating any of the conditions of probation or suspension of
157 sentence, and the court shall hold a violation hearing. No
158 probationer shall be held in jail awaiting the violation
159 hearing for longer than 20 business days, unless new criminal
160 charges are pending. If the hearing is not held within the
161 specified time, the sheriff shall release the probation
162 violator unless there are other pending criminal charges. A
163 judge may issue a bond to a probationer for release from
164 custody.

165 (d) Except as provided in Chapter 15 of Title 12, any
166 probation officer, ~~police officer,~~ or ~~other~~law enforcement
167 officer with power of arrest, when requested by the probation
168 officer, may arrest a probationer without a warrant if the



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169 arresting officer has personal knowledge that the probationer
170 has violated conditions of probation. ~~When an arrest is made~~
171 ~~without a warrant, the arresting officer shall have a written~~
172 ~~statement by the probation officer setting forth that the~~
173 ~~probationer has, in his or her judgment, violated the~~
174 ~~conditions of probation, and the statement shall be sufficient~~
175 ~~warrant for the detention of the~~ The probationer may be
176 detained in the county jail or other appropriate place of
177 detention until the probationer is brought before the court.
178 The probation officer shall report the arrest and detention to
179 the court and submit in writing a report showing in what
180 manner the probationer has violated probation.

181 (e) After conducting a violation hearing and finding
182 sufficient evidence to support a probation violation, the
183 court may take any of the following actions:

184 (1)a. If the underlying offense was a Class D felony
185 and his or her probation is revoked, the incarceration portion
186 of any split sentence imposed due to revocation shall be
187 limited to two years or one-third of the original suspended
188 prison sentence, whichever is less.

189 b. If the underlying offense was a violent offense as
190 defined in Section 12-25-32 and classified as a Class A
191 felony, a sex offense pursuant to Section 15-20A-5, or
192 aggravated theft by deception pursuant to Section 13A-8-2.1,
193 the court shall revoke probation and require the probationer
194 to serve the balance of the term for which he or she was
195 originally sentenced, or any portion thereof, in a state
196 prison facility, calculated from the date of his or her



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197 rearrest as a delinquent probationer.

198 c. If the probation violation was for being arrested or
199 convicted of a new offense or absconding, the court may revoke
200 probation and require the probationer to serve the balance of
201 the term for which he or she was originally sentenced, or any
202 portion thereof, in a state prison facility, calculated from
203 the date of his or her rearrest as a delinquent probationer.

204 d. For all other probationers, the court may impose a
205 period of confinement of no more than 45 consecutive days to
206 be served in a residential transition center established
207 pursuant to Section 15-22-30.1 or a consenting county jail
208 designated for this purpose as provided in Section 14-1-23.
209 The probationer shall be held in the county jail of the county
210 in which the violation occurred while awaiting the revocation
211 hearing. The Department of Corrections shall reimburse the
212 state mileage rate to the county, as determined by the Alabama
213 Comptroller's Office, for any probationer charged with, or
214 sanctioned or revoked for, a probation violation and who is
215 transferred to or from a Department of Corrections facility or
216 to or from a consenting county jail by the county.

217 (2) Upon completion of the confinement period, the
218 remaining probation period or suspension of sentence shall
219 automatically continue upon the defendant's release from
220 confinement. The court may not revoke probation unless the
221 defendant has previously received a total of three periods of
222 confinement pursuant to this subsection. For purposes of
223 revocation, the court may take judicial notice of the three
224 total periods of confinement under this subsection. A



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225 defendant shall only receive three total periods of
226 confinement pursuant to this subsection. The maximum 45 day
227 term of confinement ordered pursuant to this subsection for a
228 felony shall be reduced by any time served in custody prior to
229 the imposition of the period of confinement and shall be
230 credited to the suspended sentence. If the time remaining on
231 the imposed sentence is 45 days or less, the term of
232 confinement may not exceed the remainder of the defendant's
233 sentence.

234 (3) The total time spent in confinement under this
235 subsection may not exceed the term of the defendant's original
236 sentence.

237 (4) Confinement shall be immediate. The court shall
238 ensure that the circuit clerk receives the order revoking
239 probation within five business days. The circuit clerk shall
240 ensure that the Department of Corrections, a county jail, a
241 residential transition center, or a consenting county jail
242 receives necessary transcripts for imposing a period of
243 confinement within five business days of its receipt of the
244 court's order.

245 (5) If a probation violator with a serious health
246 condition is presented to a county jail, excluding a
247 consenting county jail designated for this purpose, as
248 provided in Section 14-1-23, for any period of confinement
249 ~~with a serious health condition~~, if the confinement of the
250 probation violator would create a security risk to the county
251 jail, or if the county jail is near, at, or over capacity, the
252 sheriff may refuse to admit the probation violator. If, while



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253 in custody of the county jail, ~~the a~~ probation violator
254 develops a serious health condition, if ~~the a~~ confinement of
255 the probation violator creates a security risk to the county
256 jail, or if the county jail reaches near, at, or over
257 capacity, the sheriff may release the probation violator upon
258 notification to the probation officer and to the court who has
259 jurisdiction over the probation violator. A sheriff and his or
260 her employees ~~in the county jail~~ shall be immune from
261 liability for exercising discretion pursuant to Section
262 36-1-12 in refusing to admit a probation violator into the
263 jail or releasing a probation violator from jail pursuant to
264 this subdivision.

265 (f) In lieu of subsections (c) through (e), when a
266 probationer violates his or her probation terms and conditions
267 imposed by the court, his or her probation officer, after an
268 administrative review and approval by the probation officer's
269 supervisor, may impose any of the following sanctions:

270 (1) Mandatory behavioral treatment.

271 (2) Mandatory substance abuse treatment.

272 (3) GPS monitoring.

273 (4) Any other treatment as determined by the court or
274 supervising officer.

275 (5) A short period of confinement in the county jail of
276 the county in which the violation occurred. Periods of
277 confinement under this subdivision may not exceed six days per
278 month during any three separate months during the period of
279 probation. The six days per month confinement period may only
280 be imposed as two-day or three-day consecutive periods at any



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281 single time. The total periods of confinement may not exceed
282 nine total days.

283 (g) (1) Prior to imposing a sanction pursuant to
284 subsection (f), the probationer must first be presented with a
285 written violation report, ~~with~~ setting forth the alleged
286 probation violations and supporting evidence. The probationer
287 shall be ~~advised~~ provided a written notice that he or she has
288 the right to all of the following:

289 a. ~~The right to have~~ Have a hearing before the court on
290 the alleged violation or violations in person or by electronic
291 means. If a hearing is requested, no probationer shall be held
292 beyond 20 business days of the request. Only requesting
293 probationers posing a threat to public safety or a flight risk
294 shall be arrested while awaiting a hearing.

295 b. ~~The right to present~~ Present relevant witnesses and
296 documentary evidence.

297 c. ~~The right to retain~~ Retain and have counsel at the
298 hearing and that counsel ~~will~~ shall be appointed if the
299 probationer is indigent.

300 d. ~~The right to confront~~ Confront and cross examine any
301 adverse witnesses.

302 (2) The probationer may waive the right to have a
303 hearing. Upon the signing of a waiver of these rights by the
304 probationer and the supervising probation officer, with
305 approval of ~~a~~ the probation officer's supervisor, the
306 probationer may be treated, monitored, or confined for the
307 period recommended in the violation report and designated ~~in~~
308 on the waiver. The probationer may not request a review if he



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309 or she has signed a written waiver of rights as provided in
310 this subsection.

311 (h) The board shall adopt guidelines and procedures to
312 implement the requirements of this section, which shall
313 include the requirement of a supervisor's approval prior to a
314 supervising probation officer's exercise of the delegation of
315 authority authorized by subsection (f)."

316 Section 2. (a) The Board of Pardons and Paroles shall
317 report to the Alabama State Law Enforcement Agency, in a
318 manner prescribed by the Alabama State Law Enforcement Agency,
319 a parolee's conditions of parole ordered pursuant to Section
320 15-22-31, Code of Alabama 1975.

321 (b) The Alabama State Law Enforcement Agency shall
322 ensure that the conditions of parole received from the Board
323 of Pardons and Paroles may be viewed by law enforcement
324 officers and other authorized persons through the Law
325 Enforcement Tactical System.

326 Section 3. (a) A sentencing court who places an
327 individual on probation, pursuant to Section 15-22-50, Code of
328 Alabama 1975, shall report to the Alabama State Law
329 Enforcement Agency, in a manner prescribed by the Alabama
330 State Law Enforcement Agency, a probationer's conditions of
331 probation ordered pursuant to Section 15-22-52, Code of
332 Alabama 1975.

333 (b) The Alabama State Law Enforcement Agency shall
334 ensure that the conditions of probation received by a court
335 may be viewed by law enforcement officers and other authorized
336 persons through the Law Enforcement Tactical System.



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337 Section 4. This act shall become effective on the first
338 day of the third month following its passage and approval by
339 the Governor, or its otherwise becoming law.