

1 SB172  
2 180752-1  
3 By Senator Albritton  
4 RFD: Judiciary  
5 First Read: 14-FEB-17

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8 SYNOPSIS: Under existing law, the maximum period of  
9 probation is limited to two years for misdemeanor  
10 convictions and five years for felony convictions.  
11 Also under existing law, longer periods are  
12 provided for certain repeat offenders convicted of  
13 driving under the influence to be subject to  
14 ignition interlock requirements.

15 This bill would further clarify the  
16 probation limitations in Act 2015-185 and would  
17 further specify that the period of probation for a  
18 person convicted of driving under the influence for  
19 the purposes of ignition interlock requirements  
20 would be as provided specifically under the driving  
21 under the influence law.

22  
23 A BILL  
24 TO BE ENTITLED  
25 AN ACT  
26

1           To amend Section 15-22-54, Code of Alabama 1975, as  
2 amended by Act 2015-185, 2015 Regular Session, relating to  
3 probation and providing the maximum periods of probation; to  
4 specify that the maximum periods of probation for persons  
5 convicted of driving under the influence for the purposes of  
6 ignition interlock requirements would be as provided  
7 specifically under the driving under the influence law.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9           Section 1. Section 15-22-54, Code of Alabama 1975,  
10 as amended by Act 2015-185, 2015 Regular Session, is amended  
11 to read as follows:

12           "§15-22-54.

13           "(a) The period of probation or suspension of  
14 execution of sentence shall be determined by the court and  
15 shall not be waived by the defendant, and the period of  
16 probation or suspension may be continued, extended, or  
17 terminated. However, except as provided in Section 32-5A-191  
18 relating to ignition interlock requirements and as further  
19 specified in subsection (i), in no case shall the maximum  
20 probation period of a defendant guilty of a misdemeanor exceed  
21 two years, nor shall the maximum probation period of a  
22 defendant guilty of a felony exceed five years. When the  
23 conditions of probation or suspension of sentence are  
24 fulfilled, the court shall, by order duly entered on its  
25 minutes, discharge the defendant.

26           "(b) The court granting probation may, upon the  
27 recommendation of the officer supervising the probationer,

1 terminate all authority and supervision over the probationer  
2 prior to the declared date of completion of probation upon  
3 showing a continued satisfactory compliance with the  
4 conditions of probation over a sufficient portion of the  
5 period of the probation. At least every two years, and after  
6 providing notice to the district attorney, the court shall  
7 review the probationer's suitability for discharge from  
8 probation supervision if the probationer has satisfied all  
9 financial obligations owed to the court, including  
10 restitution, and has not had his or her supervision revoked.

11 "(c) At any time during the period of probation or  
12 suspension of execution of sentence, the court may issue a  
13 warrant and cause the defendant to be arrested for violating  
14 any of the conditions of probation or suspension of sentence,  
15 upon which the court shall hold a violation hearing. No  
16 probationer shall be held in jail awaiting such violation  
17 hearing for longer than 20 business days, unless new criminal  
18 charges are pending. If the hearing is not held within the  
19 specified time, the sheriff shall release the probation  
20 violator unless there are other pending criminal charges. A  
21 judge shall have authority to issue a bond to a probationer  
22 for release from custody.

23 "(d) Except as provided in Chapter 15 of Title 12,  
24 any probation officer, police officer, or other officer with  
25 power of arrest, when requested by the probation officer, may  
26 arrest a probationer without a warrant. In case of an arrest  
27 without a warrant, the arresting officer shall have a written

1 statement by the probation officer setting forth that the  
2 probationer has, in his or her judgment, violated the  
3 conditions of probation, and the statement shall be sufficient  
4 warrant for the detention of the probationer in the county  
5 jail or other appropriate place of detention until the  
6 probationer is brought before the court. The probation officer  
7 shall forthwith report the arrest and detention to the court  
8 and submit in writing a report showing in what manner the  
9 probationer has violated probation.

10 "(e) After conducting a violation hearing and  
11 finding sufficient evidence to support a probation violation,  
12 the court may revoke probation to impose a sentence of  
13 imprisonment, and credit shall be given for all time spent in  
14 custody prior to revocation. If the probationer was convicted  
15 of a Class D felony and his or her probation is revoked, the  
16 incarceration portion of any split sentence imposed due to  
17 revocation shall be limited to two years or one-third of the  
18 original suspended prison sentence, whichever is less.  
19 However, in all cases, excluding violent offenses defined  
20 pursuant to Section 12-25-32 and classified as a Class A  
21 felony, and sex offenses, defined pursuant to Section  
22 15-20A-5, the court may only revoke probation as provided  
23 below:

24 "(1) Unless the underlying offense is a violent  
25 offense as defined in Section 12-25-32 and classified as a  
26 Class A felony, when a defendant under supervision for a  
27 felony conviction has violated a condition of probation, other

1 than arrest or conviction of a new offense or absconding, the  
2 court may impose a period of confinement of no more than 45  
3 consecutive days to be served in the custody population of the  
4 Department of Corrections. By April 29, 2016, the Department  
5 of Corrections shall develop and implement a streamlined  
6 process to transport and receive the probationer into its  
7 custody population and shall identify and, if possible,  
8 implement policies aimed at reducing the administrative  
9 delays, if any, in transferring to the Department of  
10 Corrections the physical custody of the probationer and those  
11 whose probation has been revoked. Such process shall be  
12 developed in cooperation with the Alabama Sheriffs'  
13 Association and the Association of County Commissions of  
14 Alabama. Such process shall include the most cost-effective  
15 method to process sanctioned probation violators for the  
16 maximum 45-day confinement period and shall provide that the  
17 Department of Corrections shall reimburse the state mileage  
18 rate, as determined by the Alabama Comptroller's Office, to  
19 the county for any state inmate sanctioned as a probation  
20 violator and transferred to or from a Department of  
21 Corrections facility by the county. Upon completion of the  
22 confinement period, the remaining probation period or  
23 suspension of sentence shall automatically continue upon the  
24 defendant's release from confinement. The court shall not  
25 revoke probation unless the defendant has previously received  
26 a total of three periods of confinement under this subsection.  
27 For purposes of revocation, the court may take judicial notice

1 of the three total periods of confinement under this  
2 subsection. A defendant shall only receive three total periods  
3 of confinement under this subsection. The maximum 45-day term  
4 of confinement ordered under this subsection for a felony  
5 shall not be reduced by credit for time already served in the  
6 case. Any such credit shall instead be applied to the  
7 suspended sentence. In the event the time remaining on the  
8 imposed sentence is 45 days or less, the term of confinement  
9 shall be for the remainder of the defendant's sentence.

10 "(2) The total time spent in confinement under this  
11 subsection shall not exceed the term of the defendant's  
12 original sentence.

13 "(3) Confinement shall be immediate. The court shall  
14 be responsible for ensuring that the circuit clerk receives  
15 the order revoking probation within five business days. The  
16 circuit clerk shall insure that the Department of Corrections  
17 receives necessary transcripts for imposing a period of  
18 confinement within five business days of its receipt of the  
19 court's order.

20 "(4) If a probation violator, as described in  
21 subdivision (1), is presented to the county jail for  
22 confinement and the probation violator has a serious medical  
23 condition, the confinement of the probation violator creates a  
24 security risk to the jail facility, or the jail is near, at,  
25 or over capacity, the sheriff may refuse to admit the  
26 probation violator. If while in custody of the county jail the  
27 probation violator develops a serious medical condition, the

1 confinement of the probation violator creates a security risk  
2 to the facility, or the county jail reaches near, at, or  
3 overcapacity, the sheriff may release the probation violator  
4 upon notification to the probation officer and to the court  
5 who has jurisdiction over the probation violator. A sheriff  
6 and his or her staff shall be immune from liability for  
7 exercising discretion pursuant to Section 36-1-12 in refusing  
8 to admit a probation violator into the jail or releasing a  
9 probation violator from jail under the circumstances described  
10 above.

11 "(f) In lieu of the provisions of subsections (c)  
12 through (e), when a probationer violates his or her probation  
13 terms and conditions imposed by the court, his or her  
14 probation officer may, after administrative review and  
15 approval by the officer's supervisor, require the probationer  
16 to submit to behavioral treatment, substance abuse treatment,  
17 GPS monitoring, such other treatment as determined by the  
18 board or supervising officer, or a period of confinement in a  
19 consenting jail facility as specified in subdivision (10) of  
20 Section 15-22-52.

21 "(g) Prior to imposing a sanction provided under  
22 subsection (f) and pursuant to subdivision (10) of Section  
23 15-22-52, the probationer must first be presented with a  
24 violation report, with the alleged probation violations and  
25 supporting evidence noted. The probationer may file a motion  
26 with the court to conduct a probation violation hearing within  
27 10 days. The probationer shall be given notice of the right to



1 such hearing and advised of the right (i) to a hearing before  
2 the court on the alleged violation in person, with the right  
3 to present relevant witnesses and documentary evidence; (ii)  
4 to retain and have counsel at the hearing and that counsel  
5 will be appointed if the probationer is indigent; and (iii) to  
6 confront and cross examine any adverse witnesses. Upon the  
7 signing of a waiver of these rights by the probationer and the  
8 supervising probation officer, with approval of a supervisor,  
9 the probationer may be treated, monitored, or confined for the  
10 period recommended in the violation report and designated in  
11 the waiver. However, the probationer shall have no right of  
12 review if he or she has signed a written waiver of rights as  
13 provided in this subsection.

14 "(h) The board shall adopt guidelines and procedures  
15 to implement the requirements of this section, which shall  
16 include the requirement of a supervisor's approval prior to a  
17 supervising probation officer's exercise of the delegation of  
18 authority authorized by subsection (f).

19 "(i) Notwithstanding any maximum period of probation  
20 provided in this section or in any other law except Section  
21 32-5A-191, the period of probation for persons convicted of  
22 driving under the influence and subject to ignition interlock  
23 requirements shall include any time period required to meet  
24 ignition interlock requirements as required pursuant to  
25 Section 32-5A-191."

26 Section 2. All laws or parts of laws which conflict  
27 with this act are repealed.

1                   Section 3. This act shall become effective  
2 immediately following its passage and approval by the  
3 Governor, or its otherwise becoming law.