

1 SB267
2 126272-3
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 24-MAR-11

1 SB267

2
3
4 ENROLLED, An Act,

5 To amend Sections 15-22-54 and 15-22-54.1, Code of
6 Alabama 1975, as amended and added to the Code of Alabama
7 1975, by Act 2010-753 (Acts 2010, p. 1905), to further provide
8 for the revocation and suspension of probation; to define an
9 administrative violation, eligible offender, nonviolent
10 offender, and new offense; and to further provide when a
11 successive petition for resentencing may be considered.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections 15-22-54 and 15-22-54.1, Code of
14 Alabama 1975, as amended and added to the Code of Alabama
15 1975, by Act 2010-753 (Acts 2010, p. 1905), are amended to
16 read as follows:

17 "§15-22-54.

18 "(a) The period of probation or suspension of
19 execution of sentence shall be determined by the court, and
20 the period of probation or suspension may be continued,
21 extended, or terminated. However, in no case shall the maximum
22 probation period of a defendant guilty of a misdemeanor exceed
23 two years, nor shall the maximum probation period of a
24 defendant guilty of a felony exceed five years. When the
25 conditions of probation or suspension of sentence are

1 fulfilled, the court shall, by order duly entered on its
2 minutes, discharge the defendant.

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

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

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

1 and submit in writing a report showing in what manner the
2 probationer has violated probation.

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

7 "a. Continue the existing probation and suspension
8 of execution of sentence.

9 "b. Issue a formal or informal warning to the
10 probationer that further violations may, subject to paragraph
11 f., result in revocation of probation or suspension of
12 execution of sentence.

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

16 "d. Modify the conditions of probation or suspension
17 of execution of sentence, which conditions may include the
18 addition of short periods of confinement, not to exceed 90
19 days incarceration in a county jail, a facility of the
20 Department of Corrections, or work release type facility, if
21 available.

22 "e. Revoke the probation or suspension of execution
23 of sentence for a defendant who is not an eligible offender as
24 defined herein. If the court revokes probation, it may, after

1 a hearing, impose the sentence that was suspended at the
2 original hearing or any lesser sentence.

3 "f. In addition to the provisions of paragraphs a.
4 to d., inclusive, of subdivision (1), the probation of an
5 eligible offender may be revoked and the defendant required to
6 serve a term of not more than 90 days imprisonment in a
7 Department of Corrections facility, which may include
8 participation in the restart program, LIFEtech program, or a
9 technical violator program or, if no space is available in a
10 Department of Corrections facility, not more than 90 days in
11 the county jail.

12 "g. Notwithstanding any law to the contrary,
13 following release of an eligible offender from incarceration,
14 the sentencing court shall have jurisdiction to sentence the
15 defendant to a period of probation, not to exceed five years
16 or the remainder of his or her suspended sentence, whichever
17 is less.

18 "(2) The court may also continue the existing
19 probation and suspension of execution of sentence of any
20 defendant with the additional condition that the probationer
21 does any of the following:

22 "1. Participates in a community corrections program.

23 "2. Participates in a county work release program.

24 "3. Performs community service.

25 "4. Undergoes intensive probation supervision.

1 "5. Participates in a residential or outpatient drug
2 or alcohol treatment program.

3 "6. Participates and completes a Life Skills
4 Influenced by Freedom and Education Tech (LIFETech)
5 residential program.

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

19 "(4) The court shall not revoke probation and order
20 the confinement of the probationer for violations of the
21 conditions of probation unless the court finds on the basis of
22 the original offense and the probationer's intervening
23 conduct, either of the following:

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

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

6 "(5) A defendant determined by the court to be
7 indigent shall not be excluded from a determination as an
8 eligible offender solely because of nonpayment of
9 court-ordered monies. Only the willful nonpayment of
10 court-ordered monies shall exclude an otherwise eligible
11 defendant from being considered an eligible offender.

12 "(e) For purposes of this section and Section
13 15-22-54.1, the following words have the following meanings:

14 "(1) ADMINISTRATIVE VIOLATION. Any violation of the
15 rules and conditions of probation other than one of the
16 following:

17 "a. A violation of law.

18 "b. Possession, receipt, or transportation of any
19 firearm.

20 "c. Any violation of any condition prohibiting
21 contact with any victim.

22 "d. A violation of any condition which presented a
23 danger to the health, safety, or welfare of any person.

24 "(2) ELIGIBLE OFFENDER. A nonviolent offender
25 meeting all of the following criteria:

1 "a. Serving a probationary sentence who has
2 committed an administrative violation only.

3 "b. Who has no pending criminal charges.

4 "c. Has no convictions for a new offense since the
5 time the offender was placed on probation.

6 "d. Has not on two or more previous occasions been
7 found by a court to be in violation of any condition of the
8 current probation.

9 "(3) NEW OFFENSE. Any misdemeanor or felony, whether
10 in violation of state or federal law except for minor
11 misdemeanor traffic offenses.

12 "(4) NONVIOLENT OFFENDER. A person who has not been
13 convicted at any time of any crime defined in subdivision (13)
14 of Section 12-25-32 and who is not currently on probation for
15 a crime the court finds involved actual or attempted physical
16 harm or injury to any person.

17 "§15-22-54.1.

18 "(a) Any person now serving a prison sentence based
19 on revocation of probation who would have been an eligible
20 offender as defined in Section 15-22-54 at the time of
21 revocation shall be entitled to be resentenced upon petition
22 to the sentencing court. Such petition shall be on a form and
23 filed in the manner prescribed by the Administrative Office of
24 Courts. Petitions shall be considered authorized motions for
25 modification of sentence, assigned a unique identifier by the

1 Administrative Office of Courts, and shall not require payment
2 of a filing fee.

3 "(b) The court shall have jurisdiction to resentence
4 the offender in accordance with the terms of this section,
5 upon a showing of the following:

6 "(1) The petitioner met all requirements of an
7 eligible offender as defined in Section 15-22-54 at the time
8 of revocation.

9 "(2) Probation was thereafter revoked and the
10 petitioner was sentenced to the penitentiary only as a result
11 of administrative violations of probation.

12 "(3) The petitioner has no disciplinary infractions
13 while serving the sentence in the penitentiary.

14 "(4) The petitioner has no pending criminal charges
15 or convictions for a new offense since the time the petitioner
16 was placed on probation.

17 "(c) A successive petition shall not be considered
18 by the trial court unless new grounds are raised in the
19 petition. Any successive petition which is not set for a
20 hearing by the court within 30 days after filing is deemed
21 denied by operation of law."

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB267

Senate 31-MAY-11

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 09-JUN-11

By: Senator Ward