

1 SB325  
2 120850-4  
3 By Senator Marsh  
4 RFD: Judiciary  
5 First Read: 02-FEB-10

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

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11 To amend Section 15-22-54, Code of Alabama 1975, to  
12 limit the terms of probation; to limit incarceration in the  
13 penitentiary for technical violations of probation with  
14 retroactive application for certain offenders; to provide  
15 intermediate sanctions for violations; and to add Section  
16 15-22-54.1 to the Code of Alabama 1975, to provide for  
17 resentencing.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Section 15-22-54, Code of Alabama 1975,  
20 is amended to read as follows:

21 "§15-22-54.

22 "(a) The period of probation or suspension of  
23 execution of sentence shall be determined by the court, and  
24 the period of probation or suspension may be continued,  
25 extended, or terminated. However, in no case shall the maximum  
26 probation period of a defendant guilty of a misdemeanor exceed  
27 two years, nor shall the maximum probation period of a

1 defendant guilty of a felony exceed five years. When the  
2 conditions of probation or suspension of sentence are  
3 fulfilled, the court shall, by order duly entered on its  
4 minutes, discharge the defendant.

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

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

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

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

19 "e. ~~Revoke~~ If the violation of probation is the  
20 commission of a new offense, revoke the probation or  
21 suspension of execution of sentence. If the court revokes  
22 probation, it may, after a hearing, impose the sentence that  
23 was suspended at the original hearing or any lesser sentence.

24 "f. If the probation violation is a technical  
25 violation, defined as a violation of a condition of probation  
26 other than the commission of a new offense, an eligible  
27 offender may be required to serve a term of not more than 90

1 days imprisonment in a Department of Corrections facility,  
2 which may include participation in the restart program,  
3 LIFETech program, or a technical violator program or, if no  
4 space is available in a Department of Corrections facility,  
5 not more than 90 days in the county jail.

6 ~~"(2) If the court revokes probation, it may, after a~~  
7 ~~hearing, impose the sentence that was suspended at the~~  
8 ~~original hearing or any lesser sentence, including any option~~  
9 ~~listed in subdivision (1). a. An eligible offender subject to~~  
10 ~~the provisions of paragraph f. of subdivision (1) is a~~  
11 ~~nonviolent felon serving a probationary sentence who has~~  
12 ~~violated a condition or conditions of probation other than by~~  
13 ~~the commission of a new offense and who has performed the~~  
14 ~~conditions of probation, including remaining current on~~  
15 ~~payment of court ordered money, for a consecutive six-month~~  
16 ~~period.~~

17 ~~"b. Technical violations of conditions of probation~~  
18 ~~shall be subject to the options provided in paragraphs a., b.,~~  
19 ~~c., d., and f. of subdivision (1); provided, however, the~~  
20 ~~court may also continue the existing probation and suspension~~  
21 ~~of execution of sentence with the additional condition that~~  
22 ~~the probationer does any of the following:~~

23 ~~"1. Participates in a community corrections program.~~

24 ~~"2. Participates in a county work release program.~~

25 ~~"3. Performs community service.~~

26 ~~"4. Undergoes intensive probation supervision.~~

1                   "5. Participates in a residential or out-patient  
2 drug 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:

24                   "a. No measure short of confinement will adequately  
25 protect the community from further criminal activity by the  
26 probationer.

1            "b. No measure short of confinement will avoid  
2 depreciating the seriousness of the violation."

3            Section 2. Section 15-22-54.1 is added to the Code  
4 of Alabama 1975, to read as follows:

5            §15-22-54.1.

6            (a) Any person convicted of a nonviolent offense now  
7 serving a prison sentence based on revocation of probation as  
8 a result of only technical violations shall be entitled to be  
9 resentenced upon petition to the sentencing court. Such  
10 petition shall be on a form and filed in the manner prescribed  
11 by the Administrative Office of Courts. Petitions shall be  
12 considered authorized motions for modification of sentence,  
13 assigned a unique identifier by the Administrative Office  
14 Courts, and shall not require payment of a filing fee.

15            (b) The court shall have jurisdiction to resentence  
16 the offender in accordance with the terms of this section,  
17 upon a showing of the following:

18            (1) The offender successfully completed the terms of  
19 probation for six months.

20            (2) Probation was thereafter revoked and the  
21 offender was sentenced to the penitentiary only as a result of  
22 technical violations of probation.

23            (3) The offender has no disciplinary infractions  
24 while serving the sentence in the penitentiary.

25            (4) The offender has no pending charges or  
26 convictions for a new offense.

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



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Senate

Read for the first time and referred to the Senate committee on Judiciary .....	02-FEB-10
Read for the second time and placed on the calen- dar with 1 substitute and 1 amendment .....	01-APR-10
Read for the third time and passed as amended ...	06-APR-10

Yeas 20  
Nays 5

McDowell Lee  
Secretary