

1 SB571  
2 115691-2  
3 By Senator Smitherman  
4 RFD: Judiciary  
5 First Read: 25-MAR-10

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8 SYNOPSIS: Under existing law, there is no prohibition  
9 on the imposition of consecutive split sentences or  
10 the stacking of split sentences to require a  
11 defendant to serve more than one mandatory  
12 imprisonment portion of a split sentence for more  
13 than one offense.

14 This bill would expressly prohibit  
15 sentencing a defendant to serve multiple  
16 consecutive incarceration portions of split  
17 sentences upon conviction for more than one offense  
18 at the same sentencing event.

19 This bill would clarify that for a split  
20 sentence of 15 years or less, during the maximum  
21 term of imprisonment imposed, which is up to three  
22 years, a defendant would not be eligible for good  
23 time or parole.

24 This bill would apply the maximum probation  
25 limitations of 2 years for misdemeanor convictions  
26 and 5 years for felony offenses to sentences  
27 imposed under a split sentence.

1                   This bill would specify that the period of  
2                   probation or suspension of a sentence may be  
3                   amended or modified by the court and that the court  
4                   may revoke probation or modify any condition of  
5                   probation while the defendant is serving either the  
6                   incarceration portion or probation portion of a  
7                   split sentence. The bill would also provide that if  
8                   the court revokes probation, the court may order  
9                   the defendant to participate in a substance abuse  
10                  or community corrections program or order  
11                  imprisonment for all or part of the remaining  
12                  suspended sentence.

13                  This bill would also authorize full credit  
14                  to be awarded for time served on probation upon  
15                  successful completion of a residential drug or  
16                  alcohol treatment program to which the offender has  
17                  been referred as a condition of probation.

18  
19                                   A BILL  
20                                   TO BE ENTITLED  
21                                   AN ACT  
22

23                  To amend Sections 15-18-8 and 15-22-54 of the Code  
24                  of Alabama 1975, to prohibit the imposition of consecutive  
25                  incarceration portions of split sentences for separate  
26                  offenses sentenced at the same sentencing event; to apply the  
27                  maximum terms of probation for all types of sentences; to

1 further provide for probation and the revocation of probation;  
2 and to authorize full credit for time served on probation upon  
3 successfully completing a court-ordered residential drug or  
4 alcohol treatment program.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 15-18-8 and 15-22-54 of the Code  
7 of Alabama 1975, are amended to read as follows:

8 "§15-18-8.

9 "(a) ~~When~~ Except for Class A or B felony sex  
10 offenses involving a child as defined in Section 15-20-21(5),  
11 when a defendant is convicted of an offense, ~~other than a~~  
12 ~~criminal sex offense involving a child as defined in Section~~  
13 ~~15-20-21(5), which constitutes a Class A or B felony and~~  
14 receives a sentence of 20 years or less in any court having  
15 jurisdiction to try offenses against the State of Alabama and  
16 the judge presiding over the case is satisfied that the ends  
17 of justice and the best interests of the public as well as the  
18 defendant will be served thereby, he or she may order the  
19 defendant to serve a sentence as follows:

20 "(1) ~~That~~ When the imposed sentence is not more than  
21 15 years, the convicted defendant sentencing judge may order  
22 the convicted defendant to be confined in a prison, jail-type  
23 institution, or treatment institution for a period not  
24 exceeding three years in cases where the imposed sentence is  
25 not more than 15 years, during which time the defendant shall  
26 not be eligible for parole or release because of deduction  
27 from sentence for good behavior under the Alabama Correctional

1 Incentive Time Act, and that the execution of the remainder of  
2 the sentence be suspended ~~notwithstanding any provision of the~~  
3 ~~law to the contrary~~ and that the defendant be placed on  
4 probation for ~~such~~ a period not to exceed the time specified  
5 in subsection (b) and upon such ~~terms~~ conditions as the court  
6 deems best.

7 "~~In cases involving an~~ (2) ~~When the~~ imposed sentence  
8 ~~of is~~ greater than 15 years, but not more than 20 years, the  
9 sentencing judge may order ~~that~~ the convicted defendant to be  
10 confined in a prison, jail-type institution, or treatment  
11 institution for a period not exceeding five years, but not  
12 less than three years, during which the offender shall not be  
13 eligible for parole or release because of deduction from  
14 sentence for good behavior under the Alabama Correctional  
15 Incentive Time Act, and that the execution of the remainder of  
16 the sentence be suspended ~~notwithstanding any provision of the~~  
17 ~~law to the contrary~~ and that the defendant be placed on  
18 probation for ~~the period~~ a period not to exceed the time  
19 specified in subsection (b) upon the ~~terms~~ conditions as the  
20 court deems best.

21 "~~(2)~~ (3) That the convicted defendant may be  
22 confined, upon consultation with the Commissioner of the  
23 Alabama Department of Corrections (hereinafter called  
24 department) in a disciplinary, rehabilitation, conservation  
25 camp program (hereinafter called program) of the department.  
26 The convicted defendant shall be received into the department  
27 in accordance with applicable department rules and regulations

1 and may be placed in the program after completion of this  
2 initial reception. The program shall be not less than 90 days  
3 nor more than 180 days in duration and shall be operated in  
4 accordance with department rules and regulations and as  
5 otherwise provided for by law. The commissioner of the  
6 department or his or her designee shall report to the  
7 sentencing court of each convicted defendant whether or not  
8 the convicted defendant completes or does not complete the  
9 program with any additional information that the commissioner  
10 or his or her designee shall wish to provide the court. Upon  
11 receipt of this report, the sentencing court may, upon its own  
12 order, suspend the remainder of the sentence and place the  
13 convicted defendant on probation as provided herein or order  
14 the convicted defendant to be confined to a prison, jail-type  
15 institution, or treatment institution for a period not to  
16 exceed three years and that the execution of the remainder of  
17 the sentence be suspended and the defendant be placed on  
18 probation for such period and upon such terms as the court  
19 deems best. If the sentencing court imposes additional  
20 confinement, as outlined above, credit shall be given for the  
21 actual time spent by the convicted defendant in the program.  
22 Conviction of an offense or prior offense of murder, rape  
23 first degree, kidnapping first degree, sodomy first degree,  
24 enticing a child to enter vehicle, house, etc., for immoral  
25 purposes, arson first degree, robbery first degree, and  
26 sentencing of life without parole will not be eligible for  
27 this program. It shall be the duty of the Joint Prison

1 Committee as established by Sections 29-2-20 to 29-2-22,  
2 inclusive, to annually review the operation of the program and  
3 report their findings to the Alabama Legislature.

4 "(4) Notwithstanding any law to the contrary, a  
5 defendant may not be sentenced to serve consecutive  
6 incarceration portions of split sentences for multiple  
7 convictions at the same sentencing event.

8 "(b) Probation may not be granted for a criminal sex  
9 offense involving a child as defined in Section 15-20-21(5),  
10 which constitutes a Class A or B felony. Otherwise, probation  
11 may be granted whether the offense is punishable by fine or  
12 imprisonment or both. If an offense is punishable by both fine  
13 and imprisonment, the court may impose a fine and place the  
14 defendant on probation as to imprisonment. ~~Probation may be~~  
15 ~~limited to one or more counts or indictments, but, in the~~  
16 ~~absence of express limitation, shall extend to the entire~~  
17 ~~sentence and judgment. The probation portion of a split~~  
18 sentence shall not exceed the terms provided in Section  
19 15-22-54 and shall be in addition to the incarceration portion  
20 of the split sentence.

21 "(c) Regardless of whether the defendant has begun  
22 serving the minimum period of confinement ordered under the  
23 provisions of subsection (a), the court shall retain  
24 jurisdiction and authority throughout ~~that~~ the period to  
25 suspend that portion of the minimum sentence that remains and  
26 place the defendant on probation or in a community corrections  
27 program, notwithstanding any provision of the law to the

1        contrary. While the defendant is serving either the  
2        incarceration or probation portion of his or her split  
3        sentence, and the court may revoke probation or modify any  
4        condition of probation or may change the period of probation.  
5        Upon determination of a violation of a condition of probation,  
6        either prior to or after serving a term of incarceration, the  
7        court may impose any of the sanctions authorized in Section  
8        15-22-54.

9                "~~While incarcerated or on probation and among~~  
10        ~~the conditions thereof~~ During the incarceration or probation  
11        portion of a split sentence, the defendant may be required to to  
12        do all of the following:

13                "(1) ~~To pay~~ Pay a fine in one or several sums~~;~~.

14                "(2) ~~To make~~ Make restitution or reparation to  
15        aggrieved parties for actual damages or loss caused by the  
16        offense for which conviction was had~~;~~and.

17                "(3) ~~To provide~~ Provide for the support of any  
18        persons for whose support he or she is legally responsible.

19                "(4) Participate in and complete a substance abuse  
20        or community punishment and corrections program.

21                "(e) The defendant's liability for any fine or other  
22        punishment imposed as to which probation is granted shall be  
23        fully discharged by the fulfillment of the terms and  
24        conditions of probation.

25                "(f) During any term of probation, the defendant  
26        shall report to the probation authorities at such time and  
27        place as directed by the judge imposing sentence.



1           "(g) No defendant serving a minimum period of  
2 confinement ordered under the provisions of subsection (a)  
3 shall be entitled to parole or to deductions from his or her  
4 sentence under the Alabama Correctional Incentive Time Act,  
5 during the minimum period of confinement so ordered; provided,  
6 however, that this subsection shall not be construed to  
7 prohibit application of the Alabama Correctional Incentive  
8 Time Act or consideration for parole eligibility to any period  
9 of confinement which may be required after the defendant has  
10 served such minimum period.

11           "§15-22-54.

12           "(a) The period of probation or suspension of  
13 execution of sentence shall be determined by the court, and  
14 the period of probation or suspension may be continued,  
15 extended, or terminated. However, in no case, including a  
16 sentence imposed pursuant to Section 15-18-8, shall the  
17 maximum probation period of a defendant guilty of a  
18 misdemeanor exceed two years, nor shall the maximum probation  
19 period of a defendant guilty of a felony exceed five years.  
20 When the conditions of probation or suspension of sentence are  
21 fulfilled, the court shall, by order duly entered on its  
22 minutes, discharge the defendant.

23           "(b) The court granting probation may, upon the  
24 recommendation of the officer supervising the probationer,  
25 terminate all authority and supervision over the probationer  
26 prior to the declared date of completion of probation upon  
27 showing a continued satisfactory compliance with the

1 conditions of probation over a sufficient portion of the  
2 period of the probation.

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

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

21 "(1) If the defendant violates a condition of  
22 probation or suspension of execution of sentence, the court,  
23 after a hearing, may implement one or more of the following  
24 options:

25 "a. Continue the existing probation or suspension of  
26 execution of sentence.

1            "b. Issue a formal or informal warning to the  
2 probationer that further violations may result in revocation  
3 of probation or suspension of execution of sentence.

4            "c. Conduct a formal or informal conference with the  
5 probationer to reemphasize the necessity of compliance with  
6 the conditions of probation.

7            "d. Modify the conditions of probation or suspension  
8 of execution of sentence, which conditions may include the  
9 addition of short periods of confinement.

10           "e. Revoke the probation or suspension of execution  
11 of sentence.

12           "(2) If the court revokes probation, it may, after a  
13 hearing, ~~impose the sentence that was suspended at the~~  
14 ~~original hearing or any lesser sentence, including any option~~  
15 ~~listed in subdivision (1).~~ depending on the seriousness of the  
16 violation, do any of the following:

17           "a. Impose a sentence that was suspended at the  
18 original hearing.

19           "b. Impose a lesser sentence or any option listed in  
20 subdivision (1).

21           "c. Order the defendant to participate in and  
22 complete a substance abuse or community corrections program.

23           "(3) If revocation results in a sentence of  
24 confinement, credit shall be given for all time spent in  
25 custody prior to revocation. Full credit shall be awarded for  
26 full-time confinement in facilities such as county jail, state  
27 prison, and boot camp. Upon successful completion of the

1 program, the trial court, in its discretion, may award credit  
2 for the time served in a state certified residential treatment  
3 program to which the defendant has been ordered. Credit for  
4 other penalties, such as work release programs, intermittent  
5 confinement, and home detention, shall be left to the  
6 discretion of the court, with the presumption that time spent  
7 subject to these penalties will receive half credit. The court  
8 shall also give significant weight to the time spent on  
9 probation in substantial compliance with the conditions  
10 thereof. The total time spent in confinement may not exceed  
11 the term of confinement of the original sentence.

12 "(4) The court shall not revoke probation and order  
13 the confinement of the probationer unless the court finds on  
14 the basis of the original offense and the probationer's  
15 intervening conduct, either of the following:

16 "a. No measure short of confinement will adequately  
17 protect the community from further criminal activity by the  
18 probationer.

19 "b. No measure short of confinement will avoid  
20 depreciating the seriousness of the violation."

21 Section 2. This act shall become effective on the  
22 first day of the third month following its passage and  
23 approval by the Governor, or its otherwise becoming law.