

HB38 INTRODUCED



1 9J3QPB-1
2 By Representative Hill
3 RFD: Judiciary
4 First Read: 07-Mar-23
5 PFD: 23-Feb-23



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SYNOPSIS:

Under existing law, a judge must sentence an offender convicted of a nonviolent offense pursuant to the presumptive sentencing standards.

This bill would allow a judge to deviate from the presumptive sentencing guidelines if a defendant is convicted after requesting a trial.

A BILL
TO BE ENTITLED
AN ACT

Relating to sentencing; to amend Section 12-25-34.2, Code of Alabama 1975, to allow a judge to deviate from the presumptive sentencing standards if a defendant is convicted after requesting a trial.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 12-25-34.2, Code of Alabama 1975, is amended to read as follows:

"§12-25-34.2

(a) For the purposes of this section, the following words ~~shall~~ have the following meanings:

(1) AGGRAVATING FACTORS. Substantial and compelling reasons justifying an exceptional sentence whereby the sentencing court may impose a departure sentence above the



HB38 INTRODUCED

29 presumptive sentence recommendation for an offense.
30 Aggravating factors may result in dispositional or sentence
31 range departures, or both, and shall be stated on the record
32 by the court.

33 (2) DEPARTURE. A sentence ~~which~~that departs from the
34 presumptive sentence recommendation for an offender.

35 (3) DISPOSITION. The part of the sentencing
36 ~~courts~~court's presumptive sentence recommendation other than
37 sentence length.

38 (4) DISPOSITIONAL DEPARTURE. A sentence ~~which~~that
39 departs from the presumptive sentence recommendation for
40 disposition of sentence.

41 (5) MITIGATING FACTORS. Substantial and compelling
42 reasons justifying an exceptional sentence ~~whereby~~where the
43 sentencing court may impose a departure sentence below the
44 presumptive sentence recommendation for an offense. Mitigating
45 factors may result in disposition or sentence range
46 departures, or both, and shall be stated on the record by the
47 court.

48 (6) NONVIOLENT ~~OFFENSES~~OFFENSE. As defined in Section
49 12-25-32.

50 (7) PRESUMPTIVE SENTENCE RECOMMENDATION. The
51 recommended sentence range and disposition provided in the
52 sentencing standards.

53 (8) SENTENCE RANGE. The sentencing court's
54 discretionary range of length of sentence as provided and
55 recommended in the presumptive sentencing recommendation.

56 (9) SENTENCE RANGE DEPARTURE. A sentence ~~which~~that



HB38 INTRODUCED

57 departs from the presumptive sentence recommendation as to the
58 sentence range.

59 (10) VIOLENT ~~OFFENSES~~OFFENSE. As defined in Section
60 12-25-32.

61 (b) The voluntary sentencing standards as provided for
62 in Section 12-25-34, as applied to a nonviolent ~~offenses~~
63 offense shall become presumptive sentencing standards
64 effective October 1, 2013, to the extent the modification
65 adopted by the Alabama Sentencing Commission become effective
66 October 1, 2013. The standards shall be applied by the courts
67 in sentencing subject to departures as provided ~~herein~~in this
68 section. To accomplish this purpose as to the existing initial
69 voluntary sentencing standards, the Alabama Sentencing
70 Commission shall adopt modifications to the standards,
71 worksheets, and instructions to the extent necessary to
72 implement this provision including, but not limited to,
73 defining aggravating and mitigating factors that allow for
74 departure from the presumptive sentencing recommendations. The
75 commission's modifications shall be presented to the
76 Legislature in the commission's annual report within the first
77 five legislative days of the 2013 Regular Session.

78 (c) ~~Durational~~Except as provided in subsection (d),
79 durational and dispositional departures from the presumptive
80 sentencing standards shall be subject to appellate review.
81 Along with the modifications provided for in subsection (b),
82 the Alabama Sentencing Commission shall recommend a narrowly
83 defined scope of appellate review applicable to departures
84 from presumptive sentencing recommendations. The scope of



HB38 INTRODUCED

85 appellate review shall become effective upon approval by an
86 act of the Legislature enacted by bill.

87 (d) A judge may deviate from the presumptive sentencing
88 standards if a defendant is convicted of an offense after
89 requesting a jury trial."

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