SB157 ENGROSSED



- 1 5R1B36-2
- 2 By Senator Elliott
- 3 RFD: Judiciary
- 4 First Read: 04-Apr-23
- 5 2023 Regular Session



1	
2	
3	
4	
5	A BILL
6	TO BE ENTITLED
7	AN ACT
8	
9	Relating to parolees and probationers; to amend
10	Sections 15-22-31 and 15-22-54, Code of Alabama 1975, to allow
11	a law enforcement officer to arrest a parolee or probationer
12	without a warrant in certain circumstances; to require the
13	Board of Pardons and Paroles to send the Alabama State Law
14	Enforcement Agency the conditions of parole for an individual
15	released on parole; to require a court to provide to the
16	Alabama State Law Enforcement Agency the conditions of
17	probation for an individual released on probation; and to
18	require the Alabama State Law Enforcement Agency to make the
19	conditions of parole or probation available to law enforcement
20	officers and other authorized persons through the Law
21	Enforcement Tactical System.
22	BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
23	Section 1. Sections 15-22-31 and 15-22-54, Code of
24	Alabama 1975, are amended to read as follows:
25	" §15-22-31
26	(a) <u>If When</u> the parole officer having charge of a
27	paroled prisoner supervising a parolee or any member of the
28	Board of Pardons and Paroles shall have has reasonable cause

ABANY Alica Al

SB157 Engrossed

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

51

52

53

54

55

56

to believe that such prisoner the parolee has lapsed, or is probably about to lapse, into criminal ways or company or has violated the conditions of his or her parole in an important respect, such, the parole officer or board member may report such fact the violation to the Department of Corrections, which shall thereupon issue a warrant for the retaking of such prisoner and his return to the prison designated and request the department to issue a warrant to arrest the parolee. Upon request, the department shall issue an arrest warrant, and the parolee shall be returned to the prison designated on the warrant.

(b) Any parole officer, police officer, sheriff, or other a law enforcement officer with power of arrest, upon the request of the parole officer, may arrest a parolee without a warrant; but, in case of an arrest without a warrant, if the arresting officer shall have a written statement by the parole officer setting forth that the parolee has, in his or her judgment, violated parolee violates the conditions of parole in the presence of the arresting officer, in which case such statement shall be sufficient warrant for the detention of the. The arresting officer, or his or her agency, as soon as practicable, but no later than 24 hours following the arrest, shall notify the Board of Pardons and Paroles of the parolee's arrest. The parolee may be detained in the county jail or other appropriate place of detention until the warrant issued by the Department of Corrections has been received at the place of his or her detention; provided, however, that in no case shall a . A parolee shall not be held longer than 20 days





on the order of the parole officer awaiting the arrival of the
warrant as provided for in this section issued by the
department. If a warrant is not issued within the period
prescribed herein 20 days, the parolee shall be released from custody.

62

63

64

65

66

67

68

69

70

71

72

73

74

75

76

77

78

79

80

81

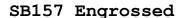
82

83

84

(c) If the parolee is presented to the county jail with a serious medical condition, if the admittance of the parolee would create a security risk to the county jail, or if the jail is near, at, or over capacity, the sheriff may refuse to admit the parolee. If while in custody of the county jail the parolee develops a serious medical condition, if the presence of the parolee creates a security risk to the county jail, or if the county jail reaches near, at, or over capacity, the sheriff may release the parolee upon notification to his or her the parole officer unless the Department of Corrections has issued an arrest warrant directing the return of the parolee to the prison so designated department's custody. A sheriff and his or her staff shall be immune from liability for exercising discretion pursuant to Section 36-1-12 in refusing to admit a parolee into the jail or releasing a parolee from jail under the circumstances described above pursuant to this subsection.

(c) (d) Any parole officer, any officer authorized to serve criminal process or any peace officer to whom such or law enforcement officer with power of arrest to whom the warrant, issued by the Department of Corrections pursuant to subsection (a), is delivered shall be delivered is authorized and required to execute such the warrant by taking such





prisoner arresting the parolee and returning him or her to the prison designated by the Department of Corrections, there to be held to await. The parolee shall be held by the department awaiting the action of the Board of Pardons and Paroles.

(d) Such (e) An officer, other than an officer of the prison or parole officer, shall be entitled to receive the same fees therefor as upon for the execution of a an arrest warrant of arrest at the place where the prisoner shall be retaken and as for transporting a convict. An officer who transports the parolee from the place of arrest to the designated prison, in case such officer also transports the prisoner shall receive fees for transporting the parolee to the prison. Such The fees shall be paid out of the funds standing to the credit of the Department of Corrections."

"§15-22-54

- (a) The period of probation or suspension of execution of sentence shall be determined by the court and may not be waived by the defendant. The period of probation or suspension may be continued, extended, or terminated as determined by the court. Except as provided in Section 32-5A-191, relating to ignition interlock requirements, the maximum probation period of a defendant guilty of a misdemeanor may not exceed two years, nor shall the maximum probation period of a defendant guilty of a felony exceed five years, except as provided in Section 13A-8-2.1. When the conditions of probation or suspension of sentence are fulfilled, the court, by an order duly entered on its minutes, shall discharge the defendant.
 - (b) The court granting probation, upon the



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

- (c) At any time during the period of probation or suspension of execution of sentence, the court may issue a warrant and have the <u>defendant probationer</u> arrested for violating any of the conditions of probation or suspension of sentence, and the court shall hold a violation hearing. No probationer shall be held in jail awaiting the violation hearing for longer than 20 business days, unless new criminal charges are pending. If the hearing is not held within the specified time, the sheriff shall release the probation violator unless there are other pending criminal charges. A judge may issue a bond to a probationer for release from custody.
- (d) Except as provided in Chapter 15 of Title 12, any probation officer, police officer, or other law enforcement officer with power of arrest, when requested by the probation officer, may arrest a probationer without a warrant if the probationer violates the conditions of probation in the

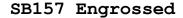


141	presence of the arresting officer. When an arrest is made
142	without a warrant, the arresting officer shall have a written
143	statement by the probation officer setting forth that the
144	probationer has, in his or her judgment, violated the
145	conditions of probation, and the statement shall be sufficient
146	warrant for the detention of the The arresting officer, or his
147	or her agency, as soon as practicable, but no later than 24
148	hours following the arrest, shall notify the Board of Pardons
149	and Paroles of the probationer's arrest. The probationer may
150	be detained in the county jail or other appropriate place of
151	detention until the probationer is brought before the court.
152	The probation officer shall report the arrest and detention to
153	the court and submit in writing a report showing in what
154	manner the probationer has violated probation.

(e) After conducting a violation hearing and finding sufficient evidence to support a probation violation, the court may take any of the following actions:

- (1) a. If the underlying offense was a Class D felony and his or her probation is revoked, the incarceration portion of any split sentence imposed due to revocation shall be limited to two years or one-third of the original suspended prison sentence, whichever is less.
- b. If the underlying offense was a violent offense as defined in Section 12-25-32 and classified as a Class A felony, a sex offense pursuant to Section 15-20A-5, or aggravated theft by deception pursuant to Section 13A-8-2.1, the court shall revoke probation and require the probationer to serve the balance of the term for which he or she was







originally sentenced, or any portion thereof, in a state prison facility, calculated from the date of his or her rearrest as a delinquent probationer.

- c. If the probation violation was for being arrested or convicted of a new offense or absconding, the court may revoke probation and require the probationer to serve the balance of the term for which he or she was originally sentenced, or any portion thereof, in a state prison facility, calculated from the date of his or her rearrest as a delinquent probationer.
- d. For all other probationers, the court may impose a period of confinement of no more than 45 consecutive days to be served in a residential transition center established pursuant to Section 15-22-30.1 or a consenting county jail designated for this purpose as provided in Section 14-1-23. The probationer shall be held in the county jail of the county in which the violation occurred while awaiting the revocation hearing. The Department of Corrections shall reimburse the state mileage rate to the county, as determined by the Alabama Comptroller's Office, for any probationer charged with, or sanctioned or revoked for, a probation violation and who is transferred to or from a Department of Corrections facility or to or from a consenting county jail by the county.
 - (2) Upon completion of the confinement period, the remaining probation period or suspension of sentence shall automatically continue upon the defendant's release from confinement. The court may not revoke probation unless the defendant has previously received a total of three periods of confinement pursuant to this subsection. For purposes of



revocation, the court may take judicial notice of the three total periods of confinement under this subsection. A defendant shall only receive three total periods of confinement pursuant to this subsection. The maximum 45 day term of confinement ordered pursuant to this subsection for a felony shall be reduced by any time served in custody prior to the imposition of the period of confinement and shall be credited to the suspended sentence. If the time remaining on the imposed sentence is 45 days or less, the term of confinement may not exceed the remainder of the defendant's sentence.

(3) The total time spent in confinement under this subsection may not exceed the term of the defendant's original sentence.

- (4) Confinement shall be immediate. The court shall ensure that the circuit clerk receives the order revoking probation within five business days. The circuit clerk shall ensure that the Department of Corrections, a county jail, a residential transition center, or a consenting county jail receives necessary transcripts for imposing a period of confinement within five business days of its receipt of the court's order.
- (5) If a probation violator with a serious health condition is presented to a county jail, excluding a consenting county jail designated for this purpose, as provided in Section 14-1-23, for any period of confinement with a serious health condition, if the confinement of the probation violator would create a security risk to the county



225 jail, or if the county jail is near, at, or over capacity, the 226 sheriff may refuse to admit the probation violator. If, while 227 in custody of the county jail, the a probation violator 228 develops a serious health condition, if the a confinement of 229 the probation violator creates a security risk to the county 230 jail, or if the county jail reaches near, at, or over 231 capacity, the sheriff may release the probation violator upon 232 notification to the probation officer and to the court who has 233 jurisdiction over the probation violator. A sheriff and his or her employees in the county jail shall be immune from 234 235 liability for exercising discretion pursuant to Section 36-1-12 in refusing to admit a probation violator into the 236 237 jail or releasing a probation violator from jail pursuant to 238 this subdivision.

- (f) In lieu of subsections (c) through (e), when a probationer violates his or her probation terms and conditions imposed by the court, his or her probation officer, after an administrative review and approval by the probation officer's supervisor, may impose any of the following sanctions:
 - (1) Mandatory behavioral treatment.
- 245 (2) Mandatory substance abuse treatment.
- 246 (3) GPS monitoring.

239

240

241

242

243

- 247 (4) Any other treatment as determined by the court or supervising officer.
- (5) A short period of confinement in the county jail of the county in which the violation occurred. Periods of confinement under this subdivision may not exceed six days per month during any three separate months during the period of



probation. The six days per month confinement period may only be imposed as two-day or three-day consecutive periods at any single time. The total periods of confinement may not exceed nine total days.

- (g) (1) Prior to imposing a sanction pursuant to subsection (f), the probationer must first be presented with a written violation report, with setting forth the alleged probation violations and supporting evidence. The probationer shall be advised provided a written notice that he or she has the right to all of the following:
- a. The right to have Have a hearing before the court on the alleged violation or violations in person or by electronic means. If a hearing is requested, no probationer shall be held beyond 20 business days of the request. Only requesting probationers posing a threat to public safety or a flight risk shall be arrested while awaiting a hearing.
- b. The right to present relevant witnesses and documentary evidence.
- 271 c. The right to retain Retain and have counsel at the
 272 hearing and that counsel will shall be appointed if the
 273 probationer is indigent.
- d. The right to confront Confront and cross examine any adverse witnesses.
- 276 (2) The probationer may waive the right to have a

 277 hearing. Upon the signing of a waiver of these rights by the

 278 probationer and the supervising probation officer, with

 279 approval of a the probation officer's supervisor, the

 280 probationer may be treated, monitored, or confined for the



period recommended in the violation report and designated in the violation report and designated

285

286

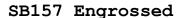
287

288

- (h) The board shall adopt guidelines and procedures to implement the requirements of this section, which shall include the requirement of a supervisor's approval prior to a supervising probation officer's exercise of the delegation of authority authorized by subsection (f)."
- Section 2. (a) The Board of Pardons and Paroles shall report to the Alabama State Law Enforcement Agency, in a manner prescribed by the Alabama State Law Enforcement Agency, a parolee's conditions of parole ordered pursuant to Section 15-22-31, Code of Alabama 1975.
- 295 (b) The Alabama State Law Enforcement Agency shall
 296 ensure that the conditions of parole received from the Board
 297 of Pardons and Paroles may be viewed by law enforcement
 298 officers and other authorized persons through the Law
 299 Enforcement Tactical System.
- 300 Section 3. (a) A sentencing court who places an
 301 individual on probation, pursuant to Section 15-22-50, Code of
 302 Alabama 1975, shall report to the Alabama State Law
 303 Enforcement Agency, in a manner prescribed by the Alabama
 304 State Law Enforcement Agency, a probationer's conditions of
 305 probation ordered pursuant to Section 15-22-52, Code of
 306 Alabama 1975.
- 307 (b) The Alabama State Law Enforcement Agency shall
 308 ensure that the conditions of probation received by a court



309	may be viewed by law enforcement officers and other authorized
310	persons through the Law Enforcement Tactical System.
311	Section 4. If a parolee is arrested for a new offense,
312	before he or she may bond out on the new offense, the Board of
313	Pardons and Paroles shall be notified of the parolee's arrest.
314	The parolee may be held as long as necessary, but no longer
315	than four hours after arrest, to give the board the
316	opportunity to subject the parolee to the electronic
317	monitoring required pursuant to Section 15-22-29, Code of
318	Alabama 1975.
319	Section 5. This act shall become effective on the first
320	day of the third month following its passage and approval by
321	the Governor, or its otherwise becoming law.





322 323 324 Senate 325 Read for the first time and referred04-Apr-23 326 to the Senate committee on Judiciary 327 328 Read for the second time and placed27-Apr-23 on the calendar: 329 0 amendments 330 331 332 Read for the third time and passed18-May-23 333 as amended 334 Yeas 33 Nays 0 335 336 Abstains 0 337 338 339 Patrick Harris, 340 Secretary. 341