SB198 ENGROSSED



- 1 P14PEE-2
- 2 By Senator Orr
- 3 RFD: Judiciary
- 4 First Read: 11-Apr-23

5

6 2023 Regular Session



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6	A BILL
7	TO BE ENTITLED
8	AN ACT
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10	Relating to sentencing; to amend Sections
11	12-25-34.2, 13A-4-1, 13A-4-2, 13A-4-3, 13A-5-6,
12	15-18-8, and 15-22-54, Code of Alabama 1975, to add
13	additional offenses that would be subject to the
14	presumptive sentencing guidelines; to modify the
15	criminal penalties for criminal solicitation, attempt,
16	and criminal conspiracy; to give a judge discretion
17	when sentencing a person convicted of a Class C or
18	Class D felony offense; to make nonsubstantive,
19	technical revisions to update the existing code
20	language to current style; and in connection therewith
21	would have as its purpose or effect the requirement of
22	a new or increased expenditure of local funds within
23	the meaning of Section 111.05 of the Constitution of
24	Alabama of 2022.
25	BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
26	Section 1. Sections 12-25-34.2, 13A-4-1, 13A-4-2,
27	13A-4-3, 13A-5-6, 15-18-8, and 15-22-54, Code of Alabama 1975
28	are amended to read as follows:



29 "\$12-25-34.2

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- 30 (a) For the purposes of this section, the following 31 words shall have the following meanings:
- 32 (1) AGGRAVATING FACTORS. Substantial and compelling 33 reasons justifying an exceptional sentence whereby the 34 sentencing court may impose a departure sentence above the 35 presumptive sentence recommendation for an offense.
- Aggravating factors may result in dispositional or sentence range departures, or both, and shall be stated on the record by the court.
- 39 (2) DEPARTURE. A sentence which that departs from the 40 presumptive sentence recommendation for an offender.
- 41 (3) DISPOSITION. The part of the sentencing courts
 42 presumptive sentence recommendation other than sentence
 43 length.
- 44 (4) DISPOSITIONAL DEPARTURE. A sentence which that
 45 departs from the presumptive sentence recommendation for
 46 disposition of sentence.
 - (5) MITIGATING FACTORS. Substantial and compelling reasons justifying an exceptional sentence whereby the sentencing court may impose a departure sentence below the presumptive sentence recommendation for an offense. Mitigating factors may result in disposition or sentence range departures, or both, and shall be stated on the record by the court.
- 54 (6) NONVIOLENT OFFENSES. As defined in Section 12-25-32.
- 56 (7) PRESUMPTIVE SENTENCE RECOMMENDATION. The



recommended sentence range and disposition provided in the sentencing standards.

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- (8) SENTENCE RANGE. The sentencing court's discretionary range of length of sentence as provided and recommended in the presumptive sentencing recommendation.
- (9) SENTENCE RANGE DEPARTURE. A sentence which that departs from the presumptive sentence recommendation as to the sentence range.
- 65 (10) VIOLENT OFFENSES. As defined in Section 12-25-32.
- (b) (1) The voluntary sentencing standards as provided 66 67 for in Section 12-25-34, as applied to nonviolent offenses shall become presumptive sentencing standards effective 68 69 October 1, 2013, to the extent the modification adopted by the 70 Alabama Sentencing Commission become effective October 1, 71 2013. The standards shall be applied by the courts in sentencing subject to departures as provided herein. To 72 73 accomplish this purpose as to the existing initial voluntary 74 sentencing standards, the Alabama Sentencing Commission shall 75 adopt modifications to the standards, worksheets, and 76 instructions to the extent necessary to implement this 77 provision including, but not limited to, defining aggravating 78 and mitigating factors that allow for departure from the 79 presumptive sentencing recommendations. The commission's 80 modifications shall be presented to the Legislature in the 81 commission's annual report within the first five legislative days of the 2013 Regular Session. 82
 - (2) The Alabama Sentencing Commission shall immediately adopt modifications to the standards, worksheets, and



- 85 <u>instructions to the extent necessary to implement this act.</u>
- The amendatory provisions of this act shall supersede any
- 87 standards, worksheets, and instructions of the commission that
- are in conflict with these amendatory provisions.
- 89 (c) Durational and dispositional departures from the
- 90 presumptive sentencing standards shall be subject to appellate
- 91 review. Along with the modifications provided for in
- 92 subsection (b), the Alabama Sentencing Commission shall
- 93 recommend a narrowly defined scope of appellate review
- 94 applicable to departures from presumptive sentencing
- 95 recommendations. The scope of appellate review shall become
- 96 effective upon approval by an act of the Legislature enacted
- 97 by bill."
- 98 "\$13A-4-1
- 99 (a) (1) A person is quilty of criminal solicitation if,
- 100 with the intent that another person engage in conduct
- 101 constituting a crime, he or she solicits, requests, commands
- 102 or importunes such other another person to engage in such
- 103 conduct.
- 104 (2) A person may not be convicted of criminal
- solicitation upon the uncorroborated testimony of the person
- 106 allegedly solicited, and there must be proof of circumstances
- 107 corroborating both the solicitation and the defendant's
- 108 intent.
- 109 (b) A person is not liable under this section if, under
- 110 circumstances manifesting a voluntary and complete
- 111 renunciation of his or her criminal intent, he or she (1)
- 112 notified the person solicited of his or her renunciation and



113 (2) gave timely and adequate warning to the law enforcement
114 authorities or otherwise made a substantial effort to prevent
115 the commission of the criminal conduct solicited. The burden
116 of injecting this issue is on the defendant, but this does not
117 shift the burden of proof.

- or her solicitation constitutes conduct of a kind that is necessarily incidental to the commission of the offense solicited. When the solicitation constitutes an offense other than criminal solicitation which that is related to but separate from the offense solicited, the defendant is guilty of such the related offense only and not of criminal solicitation.
- (d) It is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the offense solicited because of any of the following:
- 129 (1) Criminal irresponsibility or other legal incapacity
 130 or exemption; or.
 - (2) Unawareness of the criminal nature of the conduct solicited or of the defendant's criminal purpose; or.
 - (3) Any other factor precluding the mental state required for the commission of the offense in question.
 - (e) It is no defense to a prosecution for criminal solicitation that the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the offense that he or she solicited another to commit.
 - (f) Criminal solicitation is a:



- 141 (1) Class A felony if the offense solicited is murder.
- 142 (2) Class B felony if the offense solicited is a Class
- 143 A felony.
- 144 (3) Class C felony if the offense solicited is a Class
- 145 B felony.
- 146 (4) Class D felony if the offense solicited is a Class
- 147 C felony.
- 148 $\frac{(4)}{(5)}$ Class A misdemeanor if the offense solicited is
- 149 a Class CD felony.
- 150 $\frac{(5)}{(6)}$ (6) Class B misdemeanor if the offense solicited is
- 151 a Class A misdemeanor.
- 152 $\frac{(6)}{(7)}$ Class C misdemeanor if the offense solicited is
- 153 a Class B misdemeanor.
- 154 $\frac{(7)}{(8)}$ Violation if the offense solicited is a Class C
- 155 misdemeanor."
- 156 "\$13A-4-2
- 157 (a) A person is guilty of an attempt to commit a crime
- 158 if, with the intent to commit a specific offense, he or she
- does any overt act towards the commission of such the offense.
- 160 (b) It is no defense under this section that the
- 161 offense charged to have been attempted was, under the
- 162 attendant circumstances, factually or legally impossible of
- 163 commission, if such the offense could have been committed had
- 164 the attendant circumstances been as the defendant believed
- 165 them to be.
- 166 (c) A person is not liable under this section if, under
- 167 circumstances manifesting a voluntary and complete
- 168 renunciation of this criminal intent, he or she avoided the



- commission of the offense attempted by abandoning his <u>or her</u>
 criminal effort and, if mere abandonment is insufficient to
 accomplish such avoidance, by taking further and affirmative
 steps <u>whichthat</u> prevented the commission thereof. The burden
 of injecting this issue is on the defendant, but this does not
- 175 (d) An attempt is a:

shift the burden of proof.

- 176 (1) Class A felony if the offense attempted is murder.
- 177 (2) Class B felony if the offense attempted is a Class
- 178 A felony.

- 179 (3) Class C felony if the offense attempted is a Class
- 180 B felony.
- 181 (4) Class D felony if the offense attempted is a Class
- 182 C felony.
- 183 (4) (5) Class A misdemeanor if the offense attempted is
- 184 a Class CD felony.
- 185 (5) (6) Class B misdemeanor if the offense attempted is
- 186 a Class A misdemeanor.
- 187 $\frac{(6)}{(7)}$ Class C misdemeanor if the offense attempted is
- 188 a Class B misdemeanor.
- 189 $\frac{(7)}{(8)}$ (8) Violation if the offense attempted is a Class C
- 190 misdemeanor."
- 191 "\$13A-4-3
- 192 (a) A person is guilty of criminal conspiracy if, with
- 193 the intent that conduct constituting an offense be performed,
- 194 he or she agrees with one or more persons to engage in or
- 195 cause the performance of such the conduct, and any one or more
- of such the persons does an overt act to effect an objective of



197 the agreement.

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- 198 (b) If a person knows or should know that one with whom
 199 he or she agrees has in turn agreed or will agree with another
 200 to effect the same criminal objective, he or she shall be
 201 deemed to have agreed with such the other person, whether or
 202 not he or she knows the other's identity.
- (c) A person is not liable under this section if, under 203 204 circumstances manifesting a voluntary and complete 205 renunciation of his criminal purpose, he or she gave a timely 206 and adequate warning to law enforcement authorities or made a 207 substantial effort to prevent the enforcement of the criminal 208 conduct contemplated by the conspiracy. Renunciation by one conspirator, however, does not affect the liability of another 209 210 conspirator who does not join in the abandonment of the 211 conspiratorial objective. The burden of injecting the issue of 212 renunciation is on the defendant, but this does not shift the 213 burden of proof.
- 214 (d) It is no None of the following is a defense to a 215 prosecution for criminal conspiracy that:
 - (1) The person, or persons, with whom defendant is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, or is immune from prosecution, or.
 - (2) The person, or persons, with whom defendant conspired could not be guilty of the conspiracy or the object crime because of lack of mental responsibility or culpability, or other legal incapacity or defense, or.
 - (3) The defendant belongs to a class of persons who by



- definition are legally incapable in an individual capacity of committing the offense that is the object of the conspiracy.
- (e) A conspirator is not liable under this section if,
- 228 had the criminal conduct contemplated by the conspiracy
- 229 actually been performed, he or she would be immune from
- 230 liability under the law defining the offense or as an
- 231 accomplice under Section 13A-2-24.
- 232 (f) Liability as accomplice. Accomplice liability for
- 233 offenses committed in furtherance of a conspiracy is to be
- determined as provided in Section 13A-2-23.
- 235 (g) Criminal conspiracy is a:
- 236 (1) Class A felony if an object of the conspiracy is
- 237 murder.
- 238 (2) Class B felony if an object of the conspiracy is a
- 239 Class A felony.
- 240 (3) Class C felony if an object of the conspiracy is a
- 241 Class B felony.
- 242 (4) Class D felony if an object of the conspiracy is a
- 243 Class C felony.
- (4) (5) Class A misdemeanor if an object of the
- 245 conspiracy is a Class CD felony.
- (5) (6) Class B misdemeanor if an object of the
- 247 conspiracy is a Class A misdemeanor.
- (6) (7) Class C misdemeanor if an object of the
- 249 conspiracy is a Class B misdemeanor.
- (7) (8) Violation if an object of the conspiracy is a
- 251 Class C misdemeanor."
- 252 "\$13A-5-6



- 253 (a) Sentences for felonies shall be for a definite term 254 of imprisonment, which imprisonment includes hard labor, 255 within the following limitations:
- 256 (1) For a Class A felony, for life or not more than 99 257 years or less than 10 years.
- 258 (2) For a Class B felony, not more than 20 years or less than $\frac{2}{2}$ two years.
- 260 (3) For a Class C felony, not more than 10 years or

 261 less than <u>lone</u> year and <u>lone</u> day and must be in accordance

 262 with subsection (b) of Section 15-18-8 unless sentencing is

 263 pursuant to Section 13A-5-9 or the offense is a sex offense

 264 pursuant to Section 15-20A-5.
- 265 (4) For a Class D felony, not more than <u>5five</u> years or 266 less than <u>1one</u> year and <u>1one</u> day <u>and must be in accordance</u> 267 <u>with subsection (b) of Section 15-18-8</u>.

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- (5) For a Class A felony in which a firearm or deadly weapon was used or attempted to be used in the commission of the felony, or a Class A felony sex offense involving a child as defined in Section 15-20A-4, not less than 20 years.
- 272 (6) For a Class B or C felony in which a firearm or
 273 deadly weapon was used or attempted to be used in the
 274 commission of the felony, or a Class B felony sex offense
 275 involving a child as defined in Section 15-20A-4, not less
 276 than 10 years.
- 277 (b) The actual time of release within the limitations
 278 established by subsection (a) shall be determined under
 279 procedures established elsewhere by law.
- 280 (c) In addition to any penalties heretofore or



hereafter otherwise provided by law, in all cases where an offender is designated as a sexually violent predator pursuant to Section 15-20A-19, or where an offender is convicted of a Class A felony sex offense involving a child as defined in Section 15-20A-4, and is sentenced to a county jail or the Alabama Department of Corrections, the sentencing judge shall impose an additional penalty of not less than 10 years of post-release supervision to be served upon the defendant's release from incarceration.

hereafter otherwise provided by law, in all cases where an offender is convicted of a sex offense pursuant to Section 13A-6-61, 13A-6-63, or 13A-6-65.1, when the defendant was 21 years of age or older and the victim was six years of age or less at the time the offense was committed, the defendant shall be sentenced to life imprisonment without the possibility of parole."

"\$13A-5-9

(a) In all cases when it is shown that a criminal defendant has been previously convicted of a Class A, Class B, or Class C felony and after the conviction has committed another Class A, Class B, or Class C felony, he or she must shall be punished as follows:

(1) On conviction of a Class D felony, he or she shall be punished for a Class C felony.

 $\frac{(1)}{(2)}$ On conviction of a Class C felony, he or she must shall be punished for a Class B felony.

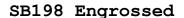
308 (2) (3) On conviction of a Class B felony, he or she



309	must shall be punished for a Class A felony.
310	(3) (4) On conviction of a Class A felony, he or she
311	must shall be punished by imprisonment for life or for any
312	term of not more than 99 years but not less than 15 years.
313	(b) In all cases when it is shown that a criminal
314	defendant has been previously convicted of any two felonies
315	that are Class A, Class B, or Class C felonies and after such
316	convictions has committed another Class A, Class B, or Class C
317	felony, he or she mustshall be punished as follows:
318	(1) On conviction of a Class D felony, he or she shall
319	be punished for a Class B felony.
320	(1) (2) On conviction of a Class C felony, he or she
321	mustshall be punished for a Class A felony.
322	(2) (3) On conviction of a Class B felony, he or she
323	mustshall be punished by imprisonment for life or for any term
324	of not more than 99 years but not less than 15 years.
325	(3) (4) On conviction of a Class A felony, he or she
326	mustshall be punished by imprisonment for life or for any term
327	of not less than 99 years.
328	(c) In all cases when it is shown that a criminal
329	defendant has been previously convicted of any three felonies
330	that are Class A, Class B, or Class C felonies and after such
331	convictions has committed another Class A, Class B, or Class C
332	felony, he or she mustshall be punished as follows:
333	(1) On conviction of a Class D felony, he or she shall
334	be punished for a Class A felony.
335	(1) (2) On conviction of a Class C felony, he or she
336	must be punished by imprisonment for life or for any term of



337	not more than 99 years but not less than 15 years.
338	(2) (3) On conviction of a Class B felony, he or she
339	mustshall be punished by imprisonment for life or any term of
340	not less than 20 years.
341	(3) (4) On conviction of a Class A felony, where the
342	defendant has no prior convictions for any Class A felony, he
343	or she mustshall be punished by imprisonment for life or life
344	without the possibility of parole, in the discretion of the
345	trial court.
346	(4) (5) On conviction of a Class A felony, where the
347	defendant has one or more prior convictions for any Class A
348	felony, he or she mustshall be punished by imprisonment for
349	life without the possibility of parole.
350	(d) In all cases when it is shown that a criminal
351	defendant has been previously convicted of any two or more
352	felonies that are Class A or Class B felonies and after such
353	convictions has committed a Class D felony, upon conviction,
354	he or she must be punished for a Class C felony.
355	(e) In all cases when it is shown that a criminal
356	defendant has been previously convicted of any three or more
357	felonies and after such convictions has committed a Class D
358	felony, upon conviction, he or she must be punished for a
359	Class C felony."
360	" \$15-18-8
361	(a) When a defendant is convicted of an offense, other
362	than a sex offense involving a child as defined in Section
363	15-20A-4, that constitutes a Class A or Class B felony
364	offense, and receives a sentence of 20 years or less <u>, in any</u>





court having jurisdiction to try offenses against the State of

Alabama and the judge presiding over the case is satisfied

that the ends of justice and the best interests of the public

as well as the defendant will be served thereby, he or she may

order:

- (1) That aIn cases where the defendant is convicted of a Class A, Class B, Class C or Class BD felony beand the imposed sentence is not more than 15 years, that the convicted defendant be confined in a prison, jail-type institution, or treatment institution for a period not exceeding three years in cases where the imposed sentence is not more than 15 years, and, that the execution of the remainder of the sentence be suspended notwithstanding any provision of the law to the contrary, and that the defendant be placed on probation for such a period and upon such terms as determined by the court deems best.
- (2) That aIn cases where the defendant is convicted of a Class A, Class B, or Class C felony with an and the imposed sentence of is greater than 15 years but not more than 20 years, that the convicted defendant be confined in a prison, jail-type institution, or treatment institution for a period of three to five years, for Class A or Class B felony convictions and for a period of three years for Class C felony convictions, during which the offender shall not be eligible for parole or release because of deduction from sentence for good behavior under the Alabama Correctional Incentive Time Act, and that the execution of the remainder of the sentence be suspended notwithstanding any provision of the law to the



contrary, and that the defendant be placed on probation for the a period upon the terms as determined by the court deems best.

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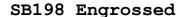
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This subsection shall not be construed to impose the responsibility for offenders sentenced to a Department of Corrections facility upon a local confinement facility not operated by the Department of Corrections.

(h) Unless a defendant is sentenced to probation, court, or a pretrial diversion program, when a defendant is convicted of an offense that constitutes a Class C or D felony offense and receives a sentence of not more than 15 years, the judge presiding over the case shall order that the convicted defendant be confined in a prison, jail-type institution, treatment institution, or community corrections program for a Class C felony offense or in a consenting community corrections program for a Class D felony offense, except as provided in subsection (e), for a period not exceeding two years in cases where the imposed sentence is not more than 15 years, and that the execution of the remainder of the sentence be suspended notwithstanding any provision of the law to the contrary and that the defendant be placed on probation period not exceeding three years and upon such terms court deems best. In all cases when it is shown that a defendant has been previously convicted of any three felonies or has been previously convicted of any two or more felonies that are Class A or Class B felonies, and after such convictions has committed a Class D felony, upon conviction, or she must be punished for a Class C felony. This





421 subsection shall not be construed to impose the responsibility 422 for offenders sentenced to a Department of Corrections 423 facility upon a local confinement facility not operated by the 424 Department of Corrections. (c) Nothing in this section shall be construed as 425 426 superseding the sentencing requirements set forth and adopted 427 by the Legislature as prescribed by the Alabama Sentencing 428 Commission's Sentencing Standards. (d) In counties or jurisdictions where no 429 corrections program exists or resources from a community 430 431 investment are not complete, a county or jurisdiction may 432 enter into a compact or contract with another county or other 433 counties to create a multi-jurisdiction community corrections 434 facility that meets the needs and resources of each county or 435 jurisdiction or enter into a compact or contract with a county jurisdiction that has a community corrections program to 436 437 provide services, as provided in and pursuant to Article 9 of 438 this chapter. 439 (e) If no community corrections program exists within 440 county or jurisdiction and no alternative program options are 441 available under subsection (c) of Section 15-18-172, a 442 defendant convicted of an offense that 443 felony may be sentenced to high-intensity probation under the supervision of the Board of Pardons and Paroles in lieu 444 445 community corrections. 446 (f) (b) Probation may not be granted for a sex offense involving a child as defined in Section 15-20A-4, which that 447 448 constitutes a Class A or B felony. Otherwise, probation may be



granted whether the offense is punishable by fine or
imprisonment or both. If an offense is punishable by both fine
and imprisonment, the court may impose a fine and place the
defendant on probation as to imprisonment. Probation may be
limited to one or more counts or indictments, but, in the
absence of express limitation, shall extend to the entire
sentence and judgment.

serving the minimum period of confinement ordered under the provisions of subsections subsection (a) or (b), if the imposed sentence is not more than 20 years, the court shall retain jurisdiction and authority throughout that period to suspend that portion of the minimum sentence that remains and place the defendant on probation, notwithstanding any provision of the law to the contrary, and the court may revoke or modify any condition of probation or may change the period of probation.

(h) (d) While incarcerated or on probation and among the conditions thereof, the defendant may be required to do any of the following:

- (1) To pay a fine in one or several sums;.
- (2) To make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which conviction was had; and.
- 473 (3) To provide for the support of any persons for whose 474 support he or she is legally responsible.
- 475 (i) (e) Except as otherwise provided pursuant to Section
 476 15-18-64, the defendant's liability for any fine or other



punishment imposed as to which probation is granted shall be fully discharged by the fulfillment of the terms and conditions of probation.

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

(k) (g) No defendant serving a minimum period of confinement ordered under subsection (a) or (b) shall be entitled to parole or to deductions from his or her sentence under the Alabama Correctional Incentive Time Act, during the minimum period of confinement so ordered; provided, however, that this subsection shall not be construed to prohibit application of the Alabama Correctional Incentive Time Act to any period of confinement which may be required after the defendant has served such the minimum period.

(1) (h) When a defendant is convicted of a misdemeanor or convicted of a municipal ordinance, the judge presiding over the case may impose a sentence in accordance with Section 13A-5-7. The court may order a portion of the sentence to be suspended and the defendant be placed on probation for such a period not exceeding two years and upon such terms as the court deems best.

(i) Nothing in this section shall be construed to impose the responsibility for offenders sentenced to a

Department of Corrections facility upon a local confinement facility not operated by the Department of Corrections."

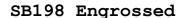
503 "\$15-22-54

(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.

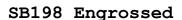
- (b) The court granting probation, upon the recommendation of the officer supervising the probationer, may terminate all authority and supervision over the probationer prior to the declared date of completion of probation upon showing a continued satisfactory compliance with the conditions of probation 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 defendant 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





533 held in jail awaiting the violation hearing for longer than 20 534 business days, unless new criminal charges are pending. If the 535 hearing is not held within the specified time, the sheriff 536 shall release the probation violator unless there are other 537 pending criminal charges. A judge may issue a bond to a 538 probationer for release from custody.

- (d) Except as provided in Chapter 15 of Title 12, any probation officer, police officer, or other officer with power of arrest, when requested by the probation officer, may arrest a probationer without a warrant. When an arrest is made without a warrant, the arresting officer shall have a written statement by the probation officer setting forth that the probationer has, in his or her judgment, violated the conditions of probation, and the statement shall be sufficient warrant for the detention of the probationer in the county jail or other appropriate place of detention until the probationer is brought before the court. The probation officer shall report the arrest and detention to the court and submit in writing a report showing in what 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.(1) a. 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.

e.b. If the probation violation was for being arrested or convicted of a new offense, or absconding, or failing to successfully complete a court supervised, evidence-based treatment program, as defined in Section 12-25-32, a court ordered faith-based program, or any other court ordered rehabilitative program, 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.c. 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



589 Comptroller's Office, for any probationer charged with, or 590 sanctioned or revoked for, a probation violation and who is 591 transferred to or from a Department of Corrections facility or 592 to or from a consenting county jail by the county.

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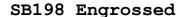
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- (2) Upon completion of the confinement period, the remaining probation period or suspension of sentence shall automatically continue upon the defendant's release from confinement. The court may not revoke probation unless the defendant has previously 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 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.

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- (5) If a probation violator 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 jail, or if the county jail is near, at, or over capacity, the sheriff may refuse to admit the probation violator. If, while in custody of the county jail, the probation violator develops a serious health condition, if the confinement of the probation violator creates a security risk to the county jail, or if the county jail reaches near, at, or over capacity, the sheriff may release the probation violator upon notification to the probation officer and to the court who has jurisdiction over the probation violator. A sheriff and employees in the county jail shall be immune from liability for exercising discretion pursuant to Section 36-1-12 in refusing to admit a probation violator into the jail or releasing a probation violator from jail pursuant to 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.
- (2) Mandatory substance abuse treatment.
- 647 (3) GPS monitoring.

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- 648 (4) Any other treatment as determined by the court or 649 supervising officer.
- 650 (5) A short period of confinement in the county jail 651 of the county in which the violation occurred. Periods of 652 confinement under this subdivision may not exceed six days per 653 month during any three separate months during the period of probation. The six days per month confinement period may only 654 655 be imposed as two-day or three-day consecutive periods at any 656 single time. The total periods of confinement may not exceed 657 nine total days.
 - (g) (1) Prior to imposing a sanction pursuant to subsection (f), the probationer must first be presented with a violation report, with containing the alleged probation violations and supporting evidence. The probationer shall be advised that he or she has all of the following:
 - a. The right to 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.
- c. The right to retain and have counsel at the hearing and that counsel will be appointed if the probationer is



673 indigent.

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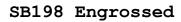
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- d. The right to confront and cross examine any adverse witnesses.
- (2) Upon the signing of a waiver of these rights by
 the probationer and the supervising probation officer, with
 approval of a supervisor, the probationer may be treated,
 monitored, or confined for the period recommended in the
 violation report and designated in the waiver. The probationer
 may not request a review if he or she has signed a written
 waiver of rights as provided in this subsection.
 - (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. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Section 111.05 of the Constitution of Alabama of 2022, because the bill defines a new crime or amends the definition of an existing crime.

Section 3. This act shall become effective on July 1, 2023, following its passage and approval by the Governor, or its otherwise becoming law.





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699	Senate
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700 701	Read for the first time and referred
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703	Read for the second time and placed27-Apr-23
704	on the calendar:
705	1 amendment
706	
707	Read for the third time and passed11-May-23
708 709	as amended Yeas 33
709	Nays 0
711	Abstains 0
712	1100 Cd 1110 0
713	
714	Patrick Harris,
715	Secretary.
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