

House Judiciary Reported Substitute for HB229



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A BILL
TO BE ENTITLED
AN ACT

Relating to sentencing; to add Section 13A-5-14, to the Code of Alabama 1975; to further provide for sentencing under the habitual felony offender law; to add Section 13A-5-14 to the Code of Alabama 1975, to provide that an individual sentenced pursuant to the habitual felony offender law may be resentenced in certain circumstances; and to provide for the repeal of this section in five years.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 13A-5-9, Code of Alabama 1975, is amended to read as follows:

~~"§13A-5-9~~

~~(a) In Except as provided in subsection (f), 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 C felony, he or she must shall be punished for a Class B felony.~~



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29 ~~(2) On conviction of a Class B felony, he or she must~~
30 ~~shall be punished for a Class A felony.~~

31 ~~(3) On conviction of a Class A felony, he or she must~~
32 ~~shall be punished by imprisonment for life or for any term of~~
33 ~~not more than 99 years but not less than 15 years.~~

34 ~~(b) In Except as provided in subsection (f), in all~~
35 ~~cases when it is shown that a criminal defendant has been~~
36 ~~previously convicted of any two felonies that are Class A,~~
37 ~~Class B, or Class C felonies and after such the convictions~~
38 ~~has committed another Class A, Class B, or Class C felony, he~~
39 ~~or she must shall be punished as follows:~~

40 ~~(1) On conviction of a Class C felony, he or she must~~
41 ~~shall be punished for a Class A felony.~~

42 ~~(2) On conviction of a Class B felony, he or she must~~
43 ~~shall be punished by imprisonment for life or for any term of~~
44 ~~not more than 99 years but not less than 15 years.~~

45 ~~(3) On conviction of a Class A felony, he or she must~~
46 ~~shall be punished by imprisonment for life or for any term of~~
47 ~~not less than 99 years.~~

48 ~~(c) In Except as provided in subsection (f), in all~~
49 ~~cases when it is shown that a criminal defendant has been~~
50 ~~previously convicted of any three felonies that are Class A,~~
51 ~~Class B, or Class C felonies and after such the convictions~~
52 ~~has committed another Class A, Class B, or Class C felony, he~~
53 ~~or she must shall be punished as follows:~~

54 ~~(1) On conviction of a Class C felony, he or she must~~
55 ~~shall be punished by imprisonment for life or for any term of~~
56 ~~not more than 99 years but not less than 15 years.~~



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57 ~~(2) On conviction of a Class B felony, he or she **must**~~
58 ~~**shall** be punished by imprisonment for life or any term of not~~
59 ~~less than 20 years.~~

60 ~~(3) On conviction of a Class A felony, where the~~
61 ~~defendant has no prior convictions for any Class A felony, he~~
62 ~~or she **must shall** be punished by imprisonment for life or life~~
63 ~~without the possibility of parole, in the discretion of the~~
64 ~~trial court.~~

65 ~~(4) On conviction of a Class A felony, where the~~
66 ~~defendant has one or more prior convictions for any Class A~~
67 ~~felony, he or she **must shall** be punished by imprisonment for~~
68 ~~life without the possibility of parole.~~

69 ~~(d) In all cases when it is shown that a criminal~~
70 ~~defendant has been previously convicted of any two or more~~
71 ~~felonies that are Class A or Class B felonies and after **such**~~
72 ~~**the** convictions has committed a Class D felony, upon~~
73 ~~conviction, he or she **must shall** be punished for a Class C~~
74 ~~felony.~~

75 ~~(e) In all cases when it is shown that a criminal~~
76 ~~defendant has been previously convicted of any three or more~~
77 ~~felonies and after **such the** convictions has committed a Class~~
78 ~~D felony, upon conviction, he or she **must shall** be punished~~
79 ~~for a Class C felony.~~

80 ~~(f) A conviction for a nonviolent offense, as defined~~
81 ~~in Section 12-25-32, may not be used to enhance a sentence~~
82 ~~pursuant to subsection (a), (b), or (c)."~~

83 Section 2. Section 13A-5-14 is added to the Code of
84 Alabama 1975, to read as follows:



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85 §13A-5-14

86 (a) On or after the effective date of this act, an
87 individual serving a sentence in the Department of Corrections
88 may file a motion for a reduction in sentence if he or she
89 satisfies all of the following:

90 (1) The individual was sentenced pursuant to Section
91 13A-5-9, for any offense other than: (i) homicide, as defined
92 in Article 1 of Chapter 13A; (ii) a sex offense, as defined in
93 Section 15-20A-5; or (iii) an offense that caused serious
94 physical injury to another person, as defined in Section
95 13A-1-2.

96 (2) The individual was sentenced to life without the
97 possibility of parole.

98 (3) The individual received a final sentence at the
99 tiral court prior to May 26, 2000.

100 ~~(4) The individual has reached 50 years of age.~~

101 (b) The venue for a motion for a reduction in sentence
102 shall be the criminal division of the circuit court in the
103 county in which the individual was convicted. The motion shall
104 be heard by the original sentencing judge or his or her
105 successor, the presiding judge of the circuit, or a retired
106 judge as assigned by the Chief Justice of the Alabama Supreme
107 Court.

108 (c) (1) The motion for a reduction in sentence shall be
109 served upon the district attorney in the county of conviction.
110 The district attorney shall have a right to be heard on any
111 motion filed pursuant to this section.

112 (2) The victim shall have a right to be heard on any



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113 motion filed pursuant to this section. The victim may file a
114 statement with the court, or may testify at the hearing, if
115 the court determines a hearing is necessary. The judge shall
116 give considerable weight to any objection made by the victim.

117 (3) The clerk of the court shall notify the law
118 enforcement agency that investigated the crime for which he or
119 she was convicted.

120 (d) The court may impose a reduced sentence pursuant to
121 the laws in effect at the time of the motion or a sentence of
122 time served. When considering a motion made pursuant to this
123 section, the court shall consider all of the following:

124 (1) The underlying offense.

125 (2) The individual's conduct while in the custody of
126 the Department of Corrections.

127 (3) The age of the individual at the time the motion is
128 filed, including relevant research regarding the decline in
129 criminal behavior as individuals grow older.

130 (4) The individual's likelihood of success after
131 release based on the availability of a structured, supportive
132 re-entry program.

133 (5) Whether the individual used a firearm in
134 furtherance of the offense. If so, the judge shall give
135 considerable weight to this fact.

136 (e) A court may not entertain a motion made pursuant to
137 this section if a previous motion for a reduction of sentence
138 under this section was denied.

139 ~~(1) Less than five years has elapsed since the~~
140 ~~individual has been returned to incarceration after a~~



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141 ~~violation of parole or probation.~~

142 ~~(2) A previous motion for a reduction of sentence under~~
143 ~~this section was denied. Where a judge has denied a motion for~~
144 ~~a reduction of sentence based on evidence of behavior during~~
145 ~~incarceration that is inconsistent with fitness for~~
146 ~~resentencing, the court may hear a subsequent motion for a~~
147 ~~reduction of sentence if the individual shows the existence of~~
148 ~~evidence of behavior consistent with fitness for resentencing~~
149 ~~during a period of two years.~~

150 (f) Nothing in this section shall be construed to
151 require a court to reduce any sentence pursuant to this
152 section.

153 (g) Any motion for a reduction in sentence filed shall
154 be granted a hearing within 90 days of the court receiving the
155 motion.

156 (h) This section shall be repealed five years after the
157 effective date of the act adding this section.

158 Section 3. This act shall become effective on the first
159 day of the third month following its passage and approval by
160 the Governor, or its otherwise becoming law.