

UPDATES TO THE 2023 CODE

# PAROLE (YEAH RIGHT)/D.O.C.

- ANY PAROLE OFFICER OR LEO MAY PERFORM A WARRANTLESS ARREST OF PAROLEE IF THEY WITNESS A VIOLATION OF CONDITIONS
- INELIGIBLE FOR PAROLE UNTIL ALL PENDING FELONIES ARE “DISPOSED, WHETHER BY TRIAL OR OTHER MEANS” 15-22-28(g)(1)
- SB 1 (good time not as good anymore)—
  - Class IV (no G.T.)--90 days min. until eligible for G.T. (was 30);
  - Class III—180 days min. until eligible for class II (was 90); 5 days GT/30 (was 20)
  - Class II—12 months min. until elig. for class I (was 6 mos); 15 days GT/30 (was 40)
  - Class I—30 days GT per 30 (was 75); violent Class B felonies no longer eligible
- No more GT on any homicide by means of deadly weapon

# ANIAH'S LAW

- Bail may be denied in certain offenses (murder, kidnap 1, DV 1, burg 1, rape 1, sodomy 1, sexual torture, hum traff 1, rob 1, arson 1, terrorism under 13a-10-152(b)(2), agg child abuse
- State has burden of proof (CLEAR & CONVINCING)
- State may request up to 3 business-day continuance; Def up to 5 business-day cont.
- Ct shall consider nature & circumstances of offense, weight of evid., CL's background, nature & seriousness of danger to community or any person if CL is released
- ALL relevant evidence is admissible; CL's testimony (don't put your CL on the stand, please) is not admissible in future hearings except for impeachment/perjury
- State may request this hearing at any time
- Ct shall enter written order w/in 48 hrs of hearing and make explicit findings

# SPLIT SENTENCE ACT

- IF SENTENCE  $\leq$  15 YRS, THE CT MAY SPLIT UP TO 3 YRS (USED TO BE JUST A AND B FELONIES)
- IN ALL ELIGIBLE A/B/C FELONIES WHERE SENTENCE IS  $>$  15 YRS &  $\leq$  20 THE CT MAY SPLIT 3-5 YRS (USED TO BE JUST A/B FELONIES)
- NO MORE MANDATORY SPLITS ON C/D FELONIES (used to be that a 1<sup>st</sup> time felon couldn't do more than a 10/2 on a C; now it could be a straight)
- STILL NO SPLIT OR PROBATION FOR A/B CHILD SEX CASES
- COURT STILL RETAINS JURISDICTION THROUGHOUT SPLIT AND MAY SUSPEND

# D FELONIES (NOT GONE—YET)

- Attempts/solicitations/conspiracies to commit C felonies = D felonies
- Attempts/solicitations/conspiracies to commit D felonies = A misds
- Straight sentences now possible; no longer mandatory splits
- Ds still do NOT qualify under HFOA as priors
- Ds still have range of 1yr 1day—5 yrs unless at least 3 prior felonies or 2 prior A/B felonies; then range is 1 yr day—10 yrs (non-HFOA C felony)
- Gray area—the entire section requiring D felonies to be placed on probation or comm corr. is gone
- Presumptive guidelines still control

# PROBATION REVOCATIONS

- Notwithstanding any other law to the contrary, if a defendant's probation is revoked, and the defendant was sentenced pursuant to Section 15-18-8, Code of Alabama 1975, the sentencing judge may determine the length of revocation sentence, including the ability to resplit the sentence within the remainder of the sentence pursuant to Section 15-18-8, Code of Alabama 1975. If the revocation sentence imposed is less than the length of time remaining on the original sentence, the remainder of the sentence shall be suspended and the defendant may be placed on probation for a period and upon terms as the court deems best.

## 15-18-8.2

- CT CAN NOW REVOKE TO THE BALANCE FOR FAILURE TO COMPLETE 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 1/3 D felony rule was repealed (Ds can now be revoked to full balance)

# BAIL REFORM ACT

- DEF/SURETY NOW HAS 30 DAYS TO REPLY TO FORFEITURE NOTICE (WAS 28)
- FORFEITURE HEARING SHALL BE NOT LESS THAN 120 DAYS AFTER SERVICE (WAS 90)
- NOW A CLASS A MISD TO PROVIDE FALSE INFO TO THE CT OR THE SURETY ON ANY BAIL BOND FORMS/CONTRACTS
- NOW A CLASS C FELONY FOR ANY SURETY TO EXCHANGE SEX FOR BAIL
- ABSOLUTELY NOTHING SUBSTANTIVE TO ADDRESS THE DISPARITY OF INDIGENT ACCESS TO PRETRIAL RELEASE

# NEW LAWS

- CLASS C MISD TO HOLD A WIRELESS DEVICE WHILE DRIVING (UNLESS IT'S TO CALL 911 OR VIEW GPS)
- ATT TO ELUDE NOW A C FELONY IF CAR/PEDESTRIAN GET STRUCK OR IF ANYONE IS INJURED OR CROSSES STATE LINES; NOW A B FELONY IF SERIOUS PHYS INJ/DEATH OR IF FLEEING PERSON EXCEEDS SPEED LIMIT BY 20 MPH
- CHEM ENDANGERMENT OF 1<sup>ST</sup> RESPONDER/CORONER (13A-6-30)
- --C FELONY FOR PHYS INJ; B FELONY FOR SERIOUS PI (TO INCLUDE INGESTION, INHALATION OR CONTACT W/ ANYTHING FENTANYL-RELATED); A FOR DEATH
- GRANDPARENTS/GRANDKIDS/STEPGRANDS NOW PART OF DV CODE
- “WILLFULLY MISTREAT” ADDED TO CHILD ABUSE (26-15-3; DEFINED 26-15-2)
- “CHILD” = ANYONE < 17 YO FOR TRANSMISSION OF OBSCENE MATERIAL
- DISTRIBUTION OF PRIVATE IMAGE NO LONGER REQUIRES INTENT TO HARASS/THREATEN/COERCE THE DEPICTED PERSON (13A-6-240)

# INCEST

- NO LONGER JUST A MALE CRIME (WOMEN NOW CAN BE CHARGED)
- NOW A CLASS A FELONY IF VIC IS < 17 YO AT TIME OF OFFENSE
  - **DISCHARGE FIREARM ON SCHOOL PROP**
- CLASS B FELONY IF DURING SCHOOL HOURS/SCHOOL EVENT
- CLASS C FELONY OTHERWISE
- DOES NOT APPLY TO < 19 YO (WTF?!?!)

# ELECTRONIC STALKING (13A-6-95, 96)

A person who, without the consent of the owner or except as otherwise authorized by law, places any electronic tracking device on the property of another person with the intent to surveil, stalk, or harass, or for any other unlawful purpose, is guilty of the crime of electronic stalking in the first degree.

- C FELONY UNLESS IT OCCURS WHILE UNDER PROTECTIVE ORDER (B FELONY)
- A person who, without the consent of the owner or except as otherwise authorized by law, places any electronic tracking device on the property of another person is guilty of the crime of electronic stalking in the second degree. –CLASS A MISDEMEANOR

# GANG PREVENTION ACT 13A-12-260

- Crim enterprise—Any combination, confederation, alliance, network, conspiracy, understanding, or other similar arrangement in law or in fact, including a streetgang as defined in [Section 13A-6-26](#), of three or more persons, through its membership or through the agency of any member, that engages in a course or pattern of criminal activity.
- How does State prove membership—clothing; tattoo; ID'd by admission, parent/guardian and/or reliable informant; hand signs; known associate; observed in company of known associates 4 or more times; has “authored” any communication claiming responsibility for the commission of any crime by a crim enterprise
- Enhancements (State must prove both membership and intent to benefit/promote/further interest of enterprise beyond reas doubt)
- A felony—man. Min . 25 yrs; B punish like an A; C punish like a B
- All firearm enhancement penalties are CONSECUTIVE TO ALL SENTENCES
- Use ≥5 yrs, brandishing ≥ 7 yrs; discharge ≥ 10 yrs; sawed-off ≥ 10; machine gun ≥ 30

# DRUGS

- DISTRIBUTION THAT IS THE PROXIMATE CAUSE OF DEATH NOW = MANSLAUGHTER
- TRAFFICKING FENTANYL MAN MINS 13A-12-231 (13)
- 1-2 Gs (AT LEAST 3 YRS)
- 2-4 Gs (AT LEAST 10 YRS)
- 4-8 Gs (AT LEAST 25 YRS)
- 8+ (MANDATORY LIFE)
- FOR 2<sup>ND</sup> FENTANYL TRAFF. CONVICTION ADD MAND. 5 YRS; FOR 3RD ADD 10 YRS
- REMEMBER—NOT STRICT LIABILITY; STATE MUST SHOW INTENT TO POSS FENTANYL
- ALSO UNLIKE OTHER SUBSTANCES, “MIXTURE” IS NOT IN THE FENTANYL SECTION; IT’S ACTUAL FENTANYL OR or any synthetic controlled substance **Fentanyl** analogue, as a single component as described in [Sections 20-2-23](#) and [20-2-25](#)

Simpson said that his bill targets traffickers, not street dealers.

“This is not the guy on the street,” Simpson said. “This is the main traffickers.”

# TERRORIST THREAT (13A-10-241)

- based on an objective evaluation, credibly threatens to commit a crime of violence against a person or to damage any property by use of a bomb, explosive, weapon of mass destruction, firearm, deadly weapon, or other mechanism (CLASS A MISD; TERR THREAT 2<sup>ND</sup>)
- TERR THREAT 1<sup>ST</sup> (CLASS C FELONY) IF any of the following ALSO occurs:
  - (1) The threat causes the evacuation of any real property. OR
  - (2) The threat causes disruption of a school, church, or government activity. OR
  - (3) The threat is with intent to retaliate against the victim because of his or her involvement or participation as any of the following:
    - a. A witness or party in any judicial or administrative proceeding.
    - b. A person who produced records, documents, or other objects in a judicial or administrative proceeding.
    - c. A person who provided to a law enforcement officer, adult or juvenile probation officer, prosecuting attorney, or judge any information relating to the commission or possible commission of an offense under the laws of this state, of the United States, or a violation of conditions of bail, pretrial release, probation, or parole.

# RIPE FOR CHALLENGE?

- 13A-11-95 (EFF 1/1/23) Any person who knowingly possesses a pistol or firearm concealed on or about his or her person or in a vehicle occupied by the person, and who is asked by a law enforcement officer operating in the line or scope of his or her official duties whether he or she is armed with a concealed pistol or firearm, shall immediately inform the law enforcement officer that the person is in possession of a pistol or firearm.
- 13A-11-9—LOITERING STATUTE IS NOW EVEN BROADER
- No speedy trial language under Aniah's law