

PROBATION IN ALABAMA

An Overview:

The stated purpose of probation in Alabama is “to assist the probationer to become a law-abiding citizen.” Alabama currently does not have enough probation officers to carry out this mission.

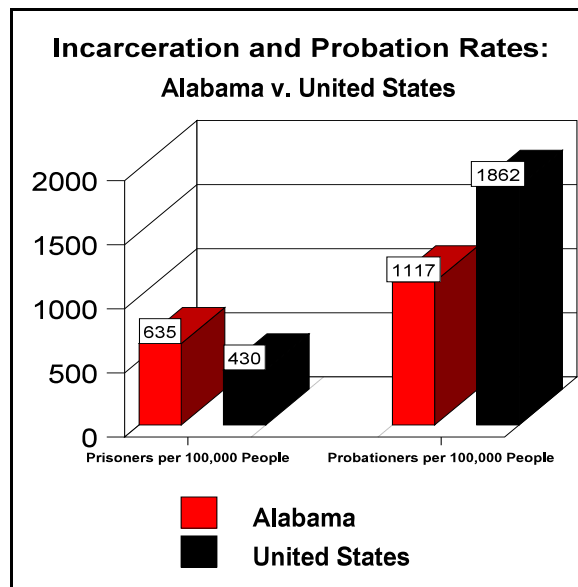
In Alabama, probation officers supervise an average of 143 people compared to about sixty in Arizona and other comparably sized states. There are

The State uses probation significantly less than do courts in other states despite the fact that Alabama maintains one of the highest incarceration rates in the country

nearly 44,000 people on probation in Alabama. While Alabama has 48% more individuals in prison per 100,000 people than the rest of the United States, it has less individuals per capita on probation.

Not only are fewer people granted probation in Alabama, but more probationers have their probation revoked, often for technical reasons and for non-violent offenses. Between October 2003 and October 2004, probation revocations accounted for 21% of admissions to the Department of Corrections. Of those revocations, 39% were for property offenses and 25% for other non-violent offenses.

Although the United States Supreme Court and the Alabama Supreme Court have imposed requirements to protect due process rights of those on probation, the



absence of counsel, infrequency of appeals and general lack of review, scrutiny and oversight has resulted in widespread violations of individual rights. Most notable is the persistent practice of incarcerating people who are unable to pay fines and failing to provide counsel to those facing long-term incarceration or confinement. Revocations that are the result of proceedings that do not comport with due process requirements are rarely challenged on appeal due to the lack of counsel and, in some cases, because probationers are not informed of their right to appeal. For example, in 2003 there were only 143 appeals from probation revocations.

Almost **21%** of those sent to **Prison** each year come from the ranks of **Probationers**

How It Works:

Eligibility. Generally, courts have the power to suspend an individual's sentence and order probation if the sentence to be suspended is less than fifteen years. However, there are exceptions for which probation is unavailable and this list is rapidly growing as a result of legislative activity. Since 2000, more than twenty bills have been introduced to create new offenses carrying mandatory terms of imprisonment with no possibility of probation.

Granting Probation. When an individual is eligible for probation, it is within the judge's discretion to consider probation as a disposition. When a court chooses probation, it refers the case to a probation officer who must provide a presentence investigation report before sentencing. If the court grants probation it determines the term of probation within certain proscribed limits. Once released, the probation officer is required to provide the offender with written instructions regarding the conditions of probation and consequences of violations.

Completing Probation. Probation automatically terminates upon the successful completion of the term of probation set by the court but can be terminated prior to this date on the recommendation of a probation officer.

Revoking Probation. Alabama law requires the court to conduct a revocation hearing when an individual has allegedly violated the conditions of probation. Due process requires that the judge issue a written order detailing the probation violation and reasons for revoking the probation. A probationer has a right to present evidence and call witnesses and is entitled to bring counsel to a hearing. Where a probationer is indigent, counsel is to be appointed if there are substantial

reasons that make revocation inappropriate.

Case Study: Birmingham City Jail

There is evidence that Alabama courts are not complying with these minimal requirements. One individual in the Birmingham City Jail was sentenced to 480 days in jail for a violation of probation.

Due
Process

Seventy-four of those days were imposed because she is indigent and does not have the financial resources to pay a fine in the amount of \$1106. Her jail sentence exceeds the statutory limit by thirty-six days. At her probation revocation "hearing," the accused asked for a lawyer and was told by the judge to "sit down." Her probation was subsequently revoked without her being informed of her right to present evidence or call witnesses on her behalf. The court never issued a written order stating the basis for the revocation. When the accused attempted to appeal her conviction and unlawful sentence, she was told by jail staff that she was not permitted to appeal a revocation of probation.

Access to
Counsel

Illegal
Sentences

In another case a 25-year old mentally ill woman was sentenced to 1325 days for failing to pay fines, one hundred and one of those days in excess of the statutory limit.

These cases illustrate the need for improved oversight and management of probation revocation in Alabama.