



THE ALABAMA ALLIANCE  
TO RESTORE THE VOTE



# **Who is Not Voting in November?**

## **An Analysis of Felony Disenfranchisement in Alabama**

October 2006

This report was written and produced by staff at the Alabama Alliance to Restore the Vote and The Sentencing Project.

The Alabama Alliance to Restore the Right to Vote is a coalition of community groups, faith-based organizations, and advocates dedicated to restoring the right to vote to Alabama citizens with criminal records.

The Sentencing Project is a Washington, DC-based national non-profit organization engaged in research and advocacy on criminal justice reform and serves as a source of information and analysis on the impact of felony disenfranchisement.

Both organizations are members of the Right to Vote Campaign, a national effort to remove barriers to voting for people with felony convictions.

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## FELONY DISENFRANCHISEMENT IN ALABAMA

### Overview

- One of every 14 Alabama residents is disenfranchised -- a rate three times the national average.
- Alabama has the third highest disenfranchisement rate in the nation.
- 87% of Alabama's disenfranchised population has been released from prison and is living and working in the community. 71% of disenfranchised people have completed their full sentence.
- One of every seven African American adults in Alabama is barred from voting, giving Alabama one of the highest African American disenfranchisement rates in the country.
- 82% of the applications for restoration of voting rights have been processed months or years late, resulting in the denial of voting rights for many eligible applicants.
- A recent court decision will allow some citizens with felony convictions to vote this fall by correcting the State's illegal practice of barring eligible individuals from registering and voting.

### Alabama Disenfranchisement Policy

A felony conviction in Alabama generally results in the permanent loss of voting rights. Alabama is one of only 11 states that permanently bar some citizens from voting even after the completion of their full sentence. The law disenfranchises people for felony convictions involving "moral turpitude,"<sup>1</sup> but until recently, all felony convictions generally resulted in the loss of voting rights. To regain the right to vote, individuals convicted of crimes of "moral turpitude" who have completed a felony sentence must apply to the Board of Pardons and Paroles for a Certificate of Eligibility to Register to Vote.

Persons with felony convictions that do not involve "moral turpitude" retain their right to vote in Alabama. However, hundreds of eligible voters had been required by election officials to provide a Certificate upon registering. Since those persons never lost the right vote in the first place, they were ineligible for restoration and thus could not receive a Certificate.

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<sup>1</sup>The state of Alabama does not have an accounting of all offense types that can be classified under the category of "moral turpitude." However, the Alabama Attorney General has compiled a list of offenses defined as crimes of "moral turpitude." They include: murder, rape, burglary, robbery, income tax evasion, conspiracy to commit fraud, possession of marijuana for resale, theft, transporting stolen vehicles, unauthorized sale of a controlled substance, and bigamy, among others. See Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.).

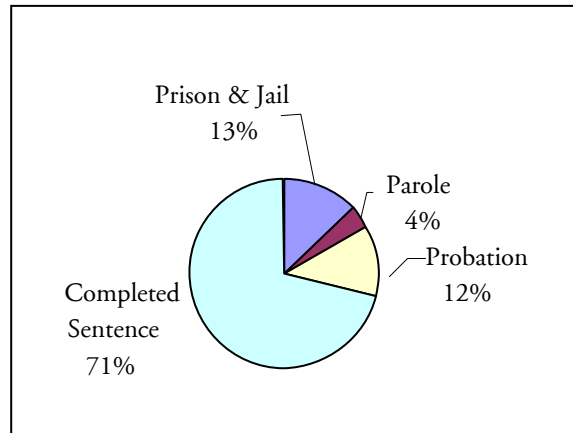
## Alabama in the National Context

An estimated 250,046 people are barred from voting in Alabama. The state's 7.37% rate of disenfranchisement is the third highest in the country, behind only Florida and Delaware.<sup>2</sup> Alabama disenfranchises one of every 14 adults from voting, a rate that is three times the national average.<sup>3</sup>

## Who is Disenfranchised in Alabama?

Eighty-seven percent of Alabama's disenfranchised population has been released from prison and is living and working in the community. An estimated 71% of disenfranchised citizens have fully completed their sentences, 12% are on probation, and 4% are on parole.<sup>4</sup>

**Disenfranchised Population in Alabama (%)**



**Disenfranchised Population in Alabama (#)**

Prison & Jail	32,046
Parole	9,098
Probation	30,387
Completed Sentence	178,516
<b>Total Number Disenfranchised</b>	<b>250,047</b>

<sup>2</sup> J. Manza and C. Uggen (2006). *Locked Out: Felon Disenfranchisement and American Democracy*. New York: Oxford University Press. Table A3.3.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

## Racial Impact

While they comprise 26% of the state's population,<sup>5</sup> more than half (52%) of the total Alabama prison population is African American.<sup>6</sup> Alabama imprisons African Americans at a rate nearly four times its incarceration rate of whites. Whites are incarcerated at a rate of 542 per 100,000 residents. African Americans in Alabama are incarcerated at a rate of 1,916 per 100,000 residents.<sup>7</sup>

Racial influences impact Alabama's criminal justice system, which may contribute to African Americans' significant overrepresentation in Alabama prisons and jails. For example, defendants convicted of simple possession of a controlled substance are predominantly black males at 57%<sup>8</sup>, despite the fact that blacks do not use drugs at a significantly greater rate than other racial or ethnic groups.<sup>9</sup> Moreover, the composition of officials who oversee Alabama's criminal justice system may also impact disproportionate rates of prosecution and incarceration. According to the Equal Justice Initiative of Alabama, no appellate court judge or elected district attorney in Alabama is black.<sup>10</sup>

Consequently, Alabama's disproportionately high rate of African American incarceration results in a high rate of disenfranchisement among African Americans. One of every seven (15.3%) African American adults in Alabama is disenfranchised, a rate nearly twice the national rate of 8.25%.<sup>11</sup>

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<sup>5</sup> U.S. Census 2000 Demographic Profile Highlights of Alabama (2004). Available: <http://factfinder.census.gov>; accessed on July 15, 2006.

<sup>6</sup> Alabama Department of Corrections, *August 2006 Monthly Statistical Report*. Available: [www.doc.state.al.us/docs/MonthlyRpts/2006-08.pdf](http://www.doc.state.al.us/docs/MonthlyRpts/2006-08.pdf); accessed on September 19, 2006.

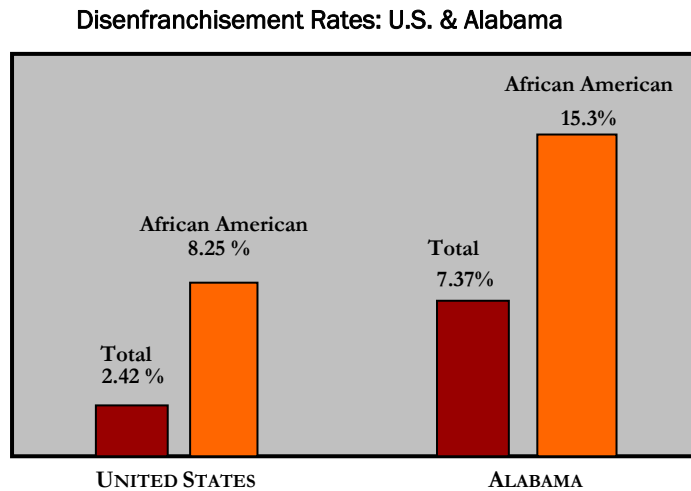
<sup>7</sup> Bureau of Justice Statistics, *Prison and Jail Inmates at Mid Year 2005* (May 2006). Available: <http://www.ojp.usdoj.gov/bjs/abstract/pjim05.htm>, accessed July 15, 2006.

<sup>8</sup> Equal Justice Initiative of Alabama, *Criminal Justice Reform in Alabama: A Report and Analysis of Criminal Justice Issues in Alabama* (March 2005).

<sup>9</sup> Substance Abuse and Mental Health Services Administration, Results from the 2005 National Survey on Drug Use and Health: Detailed Tables (September 2006). Table 1.28B. Available: <http://oas.samhsa.gov/nsduh/2k5nsduh/tabs/2k5T5TabsLOTpe.pdf>, accessed on October 19, 2006.

<sup>10</sup> Equal Justice Initiative of Alabama, webpage on Race and the Criminal Justice system. Available at <http://www.eji.org/race.html>, accessed October 5, 2006.

<sup>11</sup> *Supra* note 3.



### Restoration Policy

In September 2003, Governor Bob Riley signed into law a bill aimed at accelerating the restoration process by permitting most persons with felony convictions who have completed their sentences to apply for a Certificate of Eligibility to Register to Vote from the Board of Pardons and Paroles.<sup>12</sup> To be eligible to apply for a Certificate, an applicant must meet several conditions:

- 1) no felony charges pending;
- 2) paid all applicable fines, court costs, fees, and victim restitution;
- 3) not been convicted of certain disqualifying crimes identified by the Legislature; and
- 4) either been pardoned or completed his or her sentence, including probation or parole.

If the Board of Pardons and Paroles determines that an application meets the criteria outlined above, it has up to 50 days from the date of the application to either issue a Certificate or to refer the application for a hearing. If the Board of Pardons and Paroles determines that the applicant is ineligible, it has 45 days from the date of the application to notify the applicant and explain the denial. An applicant may reapply once the conditions listed above are met.

Certificate requests, however, are not available to persons convicted of certain offenses.<sup>13</sup>

Individuals convicted of these crimes must apply for a pardon. As a mandatory condition of the pardon, individuals who were convicted after May 6, 1994 must also submit to a DNA test.

<sup>12</sup> ALA. CODE § 15-22-36.1

<sup>13</sup> People convicted of the following crimes are ineligible to have their voting rights restored: impeachment, murder, rape in any degree, sodomy in any degree, sexual abuse in any degree, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or

### Inefficiency of Restoration Policy

In the first 17 months after the 2003 law was implemented, 2,608 people had their voting rights restored by the Board of Pardons and Paroles.<sup>14</sup> Although the 2003 law was meant to streamline the restoration process, there have been significant problems with its efficiency and timeliness. Because of the high volume of restoration applications, the Board of Pardons and Paroles has been unable to meet its 50-day deadline, resulting in a backlog of hundreds of applications.

A study by the Alabama Alliance to Restore the Vote and the Brennan Center for Justice at NYU School of Law found that of the 4,226 applications filed from December 2003 to October 2005, 82% were not processed within the legal time frame and had been delayed by months or years. Furthermore, in dozens of cases, applicants received no response at all from the Board.<sup>15</sup> The study concluded that with 192 applications filed on average each month, the “existing process cannot absorb the load.”<sup>16</sup>

**Alabama Board of Pardons and Paroles: Illegal Delays and Failures to Respond<sup>17</sup>**

Status of Application*	Timing of Response	Failure to Respond
Eligible Applications 1,889	Certificates issued within 50 days: 163 (8.6%)	Closed with no indication of Certificate issued: 39 (2.1%)
	Certificates issued after 50 days: 1,594 (84.4%)	
Ineligible applications 1,378	Notified of ineligibility within 45 days: 115 (8.3%)	Closed with no notice of ineligibility: 59 (4.3%)
	Notified of ineligibility after 45 days: 1,159 (84.1%)	
Pending applications; undetermined eligibility 959	Time limits already expired as of 10-21-05, when data were provided: 730 (76.1%)	

\*Data is based on the 4,226 applications filed between December 2003 and October 2005

guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or treason. Ala. Code § 15-22-36.1(g).

<sup>14</sup> Source: Alabama Parole Board, 2005 Report.

<sup>15</sup> Voting Rights Denied in Alabama: A Report by the Brennan Center and the Alabama Alliance to Restore the Vote, (New York, NY: Brennan Center for Justice, 2006). Available at:

<http://www.brennancenter.org/programs/downloads/AL%20BPP%20Report%202.2.06%20FINAL%20-%20not%20embargoed.pdf>.

<sup>16</sup> Ibid.

<sup>17</sup> Table adapted from Voting Rights Denied in Alabama. Supra note 13.

The administrative demands of the Certificate application process are estimated to have cost the state upwards of \$2 million annually.<sup>18</sup>

### Recent Legislative and Legal Developments

In January 2006, the Alabama Restoration of Voting Rights Act was introduced in both houses of the Alabama Legislature. The bill allows for the automatic restoration of voting rights upon completion of a prison sentence, thus eliminating the burdensome Certificate application process enacted by Gov. Riley in 2003. The Senate Judiciary Committee favorably reported out the bill for a vote on the floor, but the legislative calendar ran out in April before the Senate could hold a floor vote.

On August 23, 2006 a Jefferson County Circuit Judge ruled that Alabama's policy of disenfranchising all individuals with felony convictions, including those not convicted of crimes of "moral turpitude," violated the State's Constitution. The judge called on the Legislature to define the term "moral turpitude" to provide clear guidance on which convictions do and do not result in the loss of voting rights. During the interim, anyone convicted of a crime not involving "moral turpitude" may vote.<sup>19</sup>

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<sup>18</sup> See Val Walton, "Bill Proposes Automatically Restoring Voting Rights," *Birmingham News*, January 19, 2006.

<sup>19</sup> Persons convicted of the following offenses do not lose their right to vote: driving while intoxicated, doing business without a license, assault, permitting or facilitating a prisoner's escape, violation of the liquor laws, and possession of marijuana.



## Recommendations

When the Alabama Legislature convenes in 2007, the issue of felony disenfranchisement is expected to be on the agenda of policymakers. With that in mind, the Alabama Alliance to Restore the Vote and The Sentencing Project are concerned about fairness in Alabama's voting laws and believe the following recommendations should be implemented.

- **Automatic restoration of voting rights upon completion of prison sentence.** People living in the community who are working and supporting their families should not be deprived of their right to vote. Furthermore, a streamlined restoration process, such as automatic restoration after incarceration, would relieve the administrative burdens and substantial costs associated with the Alabama's current restoration process.
- **Notification process regarding the restoration of voting rights.** Alabama does not notify people with felony convictions about how they may restore their voting eligibility. People who are unaware of their eligibility are unlikely to apply for rights restoration. Corrections and parole officers should incorporate information about the restoration process as people exit from corrections supervision.
- **Mandated information-sharing among state agencies so that names can be correctly removed from and restored to voter registration databases.** An up-to-date and accurate registration database would ensure accuracy in Alabama's voter system and preserve the integrity of Alabama's elections.
- **Distribution of absentee ballots in Alabama jails to enable voting by those who are eligible.** Eligible voters held in jail while awaiting trial or serving a misdemeanor sentence are illegally barred from voting because absentee ballots are not made available to them during elections. The establishment of institutional protocols for registering eligible voters and distributing absentee ballots is essential to protect the constitutional rights of those incarcerated in Alabama's jails.