

## **Alabama Rules of Criminal Procedure**

### **Rule 26. Judgment; presentence report; sentence hearing; sentence.**

#### *Rule 26.8. Principles of sentencing.*

The sentence imposed in each case should call for the least restrictive sanction that is consistent with the protection of the public and the gravity of the crime. In determining the sentence, the court should evaluate the crime and its consequences, as well as the background and record of the defendant and give serious consideration to the goal of sentencing equality and the need to avoid unwarranted disparities.

Judges should be sensitive to the impact their sentences have on all components of the criminal justice system and should consider alternatives to long-term institutional confinement or incarceration in cases involving offenders whom the court deems to pose no serious danger to society.

### **Committee Comments**

Growing attention has been given to sentencing practices and procedures at both the state and federal levels. In addition to perceived sentencing disparity in our criminal justice system, skyrocketing costs associated with institutional confinement have helped to focus attention on the judiciary's role in sentencing.

Prison overcrowding has significantly frustrated the criminal justice system in Alabama as well as most other states. Sentencing judges generally can only speculate as to what their sentences mean. This uncertainty operates to undermine the credibility of the sentencing process.

For appropriate defendants, judges are encouraged to fashion sentences utilizing alternatives other than basic probation and long-term institutional confinement. Although the alternatives presently available will vary to some degree, depending on the sentencing court's location, some alternatives include the following: a split sentence pursuant to Ala.Code 1975, § 15-18-8 (through judicial innovation § 15-18-8 has also been used to impose what is referred to as a "reverse" split sentence, wherein the defendant is sentenced to serve the probationary portion of the sentence first, followed by a period of incarceration; since the judge retains jurisdiction, the period of incarceration can be suspended to reward the defendant for successfully completing probation); fines, court costs, and restitution; drug and alcohol rehabilitation programs; boot camp pursuant to § 15-18-8; community service; work release; responsibility to community restitution centers; house arrest; and electronic monitoring.

Effective utilization of well planned alternatives to incarceration will:

1) Preserve scarce prison bed-space for habitual offenders and others from whom society needs protection.

2) Save the state the cost of incarceration, estimated to be approximately \$14,000 per year, and the cost of new prison construction.

3) Frequently permit the offender to remain employed and thereby enable him to earn funds to pay fines, restitution, and court costs, as well as to support his family.

4) Frequently permit the offender who is a drug or alcohol abuser to obtain treatment for such abuse and thereby remove the reason for his criminal behavior.

5) More likely result in the defendant's rehabilitation than incarceration. Prisons serve as training camps for crime, especially for young offenders.

6) Tend to diminish disparity in sentencing. Judges who have alternatives available to them are likely to move to the middle ground provided by the alternatives, whereas judges who must choose between the extremes of incarceration or probation, when they choose differently, create the perception of disparity.