

# WHEN YOU ARE A HAMMER, EVERY PROBLEM LOOKS LIKE A NAIL

Why Building New Prisons Will Do Nothing To Solve Old Problems in Alabama



## Overview

The Alabama prison system is in crisis and has been for years. In April 2019, the United States Department of Justice found reason to believe the Alabama Department of Corrections (ADOC) violates the constitutional rights of incarcerated people by failing to protect them from widespread violence, sexual abuse, and by failing to provide safe conditions of confinement. Deaths by homicide, suicide, and overdose have only increased since then, reaching a record high of 29 in 2019.

In response, Gov. Kay Ivey and ADOC leadership have put forth The Alabama Prison Transformation Initiative, a prison construction plan for building three, large new regional prisons. The plan relies on a public-private partnership in which private corporations would finance, design, and build the prisons. The State of Alabama would then lease the buildings at an estimated cost of \$78 million annually for 30 years. Gov. Ivey has described the plan as an Alabama solution and a way to avoid further federal intervention. "Alabama is revitalizing its corrections system by replacing prison facilities that pose the greatest risk to public safety, place the largest financial burdens on taxpayers, and inhibit development of programs for inmate rehabilitation," Ivey has said.

**Alabama has the worst prisons in the country. Building more of them won't fix that.**

As a human rights organization that works to achieve fairness and equity for all Alabamians, Alabama Appleseed is dedicated to making sure that ending the unconscionable conditions in our prisons remains a priority in Alabama. We oppose the status quo because the state cannot continue to warehouse more than 20,000 people in dangerous prisons with insufficient rehabilitative programs, inadequate health care, and a lack of basic safety. But we also have serious concerns about the massive construction plan underway.

Below we set forth those concerns in the context of Alabama's prison history, ADOC budgets and populations, correctional officer staffing issues, and experiences of other states. Before billions of tax dollars are committed to this project, much more information is needed, at a minimum, along with assurances that past failures will not be repeated. We have a long way to go to get there.

## History

The federal government has been forced to intervene to protect Alabama prisoners from unconstitutional conditions repeatedly since the 1970s. In fact, a 1976 federal court order documented conditions strikingly similar to those described in the 2019 DOJ report. In that case, *Pugh v. Locke*, U.S District Judge Frank Johnson found:

*"Prison officials are under a duty to provide inmates reasonable protection from constant threat of violence. The defendants in these cases have failed to carry out that duty. ... inmates are housed in virtually unguarded, overcrowded dormitories, with no realistic attempt by officials to separate violent, aggressive inmates from those who are passive or weak. The tension generated by idleness and deplorable living conditions contributes to the ever-present threat of violence from which inmates have no refuge."*

For the next 13 years, Alabama's prison system was under federal oversight. The state added work release centers and embarked on a massive prison construction project building five prisons in seven years, including Staton (1978), Elmore (1981), Donaldson (1982), St. Clair (1983), and Limestone (1984).

By 2002, prison officials were back in federal court over unconstitutional conditions at Tutwiler, Alabama's only women's prison. Following the *Laube v. Haley* litigation, years of federal oversight was required to ease overcrowding and improve treatment of Alabama's incarcerated women. Yet by



2014 the U.S. Department of Justice again documented unconstitutional abuse by officers at Tutwiler, finding: "the State of Alabama violates the Eighth Amendment of the United States Constitution by failing to protect women prisoners at Tutwiler from harm due to sexual abuse and harassment from correctional staff. Tutwiler has a history of unabated staff-on-prisoner sexual abuse and harassment. The women at Tutwiler universally fear for their safety."

Within 20 years of the new construction of the three largest prisons for men, Donaldson, Limestone, and St. Clair, Alabama again proved unable to provide conditions of confinement that did not violate the Eighth Amendment's ban on cruel and unusual punishment *in all three*. In 2004, another class-action lawsuit documented unconstitutional treatment of HIV-positive inmates, who were housed in a drafty, vermin-infested warehouse at Limestone and denied medical care. The *Leatherwood v. Campbell* case resulted in a two-year settlement agreement. In 2009, corrections officers joined with incarcerated people, supporting claims that conditions at Donaldson Correctional Facility where men were triple-bunked in decrepit dorms, were inhumane, in *Hicks v. Hetzel*. A two-year federal settlement agreed followed. Five years later, St. Clair emerged as the deadliest prison in the country in *Duke v. Dunn*, yet another class action lawsuit documenting: "mismanagement, poor leadership, overcrowding, inadequate security, and unsafe conditions, including broken and nonfunctioning locks on the majority of cell doors, [that] have led to an extraordinarily high homicide rate, weekly stabbings and assaults, and a culture where violence is tolerated."

Undoubtedly, expensive new construction in the 1970s and 1980s did not end the unsafe, overcrowded conditions within Alabama prisons. Instead, the population rose from about 5,000 in the 1970s to more than 32,000 at its peak in 2012, with six times as many Alabamians exposed to the violence and harm of the prison system. In other words, building new prisons did not meaningfully improve prison conditions or resolve constitutional violations. It simply led to more people being in prison.

Between the current DOJ investigation and the Tutwiler intervention, Alabama has the distinction of being the only state in the country to violate CRIPA, the Civil Rights of Institutionalized Persons Act, throughout its entire prison system.

U.S. Attorney Richard Moore of the Southern District of Alabama described Alabama's recent law-breaking unsparingly: "The United States Constitution bans 'cruel and unusual punishments' but the conditions found in our investigation of Alabama prisons provide reasonable cause to believe there is flagrant disregard of that injunction. The failure to respect the rule of law by providing humane treatment for inmates in Alabama prisons is a poor reflection on those of us who live and work in Alabama."

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## Cost and Return on Investment

Alabama taxpayers have funded an increase in ADOC spending of almost 200% over the last 20 years. The prison system's budget has jumped from \$222 million (FY 2000) to \$624 million (FY 2020). Just in the last five years, General Fund dollars to ADOC have increased by \$130 million. In 2020, ADOC Commissioner Jeff Dunn has requested \$42 million more.

Inmate annual costs rose from \$9,298/year in FY2000 to \$22,024/year in FY2018. Medical costs have grown from about \$90 million to \$145 million in 10 years. Mental health care in prisons is the subject of the *Braggs v. Dunn* federal litigation and again, the courts have found it "horrendously inadequate." Despite enormous increases in tax dollars going to prisons, by most every measure our prison system has gotten worse, not better. The Department of Justice's 2019 56-page findings letter disturbingly documents ADOC corruption, mismanagement, and brutality, as assessed by law enforcement officials:



*"The combination of ADOC's overcrowding and understaffing results in prisons that are inadequately supervised with inappropriate and unsafe housing designations, creating an environment rife with violence, drugs, and weapons. Prisoner-on-prisoner homicide and sexual abuse are common. Prisoners who are seriously injured or stabbed must find their way to security staff elsewhere in the facility or bang on the door of the dormitory to gain the attention of correctional officers. Prisoners have been tied up for days by other prisoners while unnoticed by security staff."*

Given this reality, Gov. Ivey's plan to devote an additional \$80 million per year to build and operate more prisons raises questions about government accountability. A key component of addressing the DOJ report appears to be investing billions into a state agency whose budget has swelled to historically high amounts while simultaneously producing the most dysfunctional corrections system in the nation. This does not make sense from a fiscal responsibility perspective nor from a human rights perspective.

Forty years of prison building and harsh sentencing has gotten us here. Operating a massive prison system is challenging, but numerous states are finding ways to reduce prison populations, close prisons, and protect public safety. There must be a better way.

# Prison Staffing

Additionally, Alabama's prisons have been significantly understaffed for more than a decade, and recent efforts to address the crisis have been meager. A [2006 Annual Report](#) documents this issue:

*"The goal of ADOC's current recruiting effort is to produce at least 450 new Correctional Officers each year, while at the same time reducing the attrition rate by making employment with the Department of Corrections more attractive to young employees. The Department graduated and brought on-board 108 new Correctional Officers in FY 2006. During that same time, the Department lost 328 Correctional Officers resulting in a shortage of 360 Correctional Officer positions."*

Back then, ADOC employed 2,579 correctional officers, and agency annual reports regularly lamented the shortage and described innovative recruiting techniques to attempt to address it. The shortage only got worse, and currently ADOC employs fewer than half that many. According to the [DOJ Report](#):

*"Staffing levels of line correctional officers in Alabama's prisons are at dangerous levels. According to ADOC's staffing report from June 2018, Alabama's prisons employ only 1,072 out of 3,326 authorized correctional officers. Three prisons have fewer than 20% of the authorized correctional officers: Easterling—17%; Bibb—19%; and Holman—19%. Four prisons have 30% or less of the authorized correctional officers: Bullock—24%; Fountain—26%; St. Clair— 9 28%; and Ventress—30%."*

**The situation has gotten so dire that even an increase larger than the number of officers hired in the entire last decade would not end the shortage.**

During the 2019 legislative session, lawmakers passed HB 468, which increased pay for correctional officers. During the bill signing, Gov. Ivey said: "While there is no single solution to the multi-faceted, complex problems of Alabama's prison system, this legislation is an important step in fully staffing our correctional facilities. ... This bill will go a long way in improving our recruitment and retention efforts, while addressing our understaffed prisons."

Not so far. Since 2017, ADOC has been under a federal court order to add 2,200 correctional officers by 2022 as a result of the *Braggs v. Dunn* mental health lawsuit. Prison officials have barely scratched the surface in fulfilling that order, despite the salary increase. At a January 23, 2020 budget hearing ADOC Commissioner Jeff Dunn said the department had a net gain of 255 officers between September 2018 and December 2019.

Severe understaffing, forced overtime, and high turnover have been a constant in ADOC since the early 2000s. While it's possible that cleaner, newer buildings with air conditioning and tighter security could help with recruitment and retention, the situation has gotten so dire that even an increase larger than the number of officers hired in the entire last decade would not end the shortage.

## Public/Private Prison Partnerships in Other States

Alabama is not alone in pursuing public-private partnerships to build new prisons. Other states' experiences should provide a lesson for Alabama.

In Kansas, Gov. Laura Kelly inherited an already-underway project from her predecessor. Her corrections leadership determined the savings in staff costs that was purported to cover the lease payments for a 2,400-bed prison would likely not materialize. She said Kansas had been "hoodwinked."

With site selection and construction already underway last winter, the builders still could not project accurate staffing and savings numbers in the Kansas project. "It probably is more efficient than the existing one, but I think our question is, is it as efficient as has been promised, since it's going to be paid for by staff savings?" Corrections Secretary Roger Werholtz told the Associated Press. "I think they may have been a little aggressive in the savings that were projected."

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While Kansas awaits completion of that prison, it will spend more than \$10 million to house 360 prisoners at a private prison in Arizona operated by CoreCivic, the same company building the new prison.

Though not a build-lease contract, Pennsylvania's new SCI Phoenix is a massive \$400 million prison that replaced an old deteriorated facility. However, construction ran more than two years behind schedule. A partnership of contractors on the project racked up \$30 million in penalties as a result of delays. But the state was so desperate for new prison space, it rushed clearing out an old prison and moving prisoners into SCI Phoenix, which created even more problems.



Alabama needs to look no further than these examples to realize more transparency and detailed information is needed before the state moves forward with such an enormous construction project. Among the questions that have not yet been addressed despite more than a year of planning and discussion about the new construction are:

- What is the expected date the first new prison will be built and opened? What about the other two?
- Where will the new prisons be built?
- Which of the current facilities will remain open and how will those be selected?
- Will the cost to lease this new space remain the same every year for 30 years, or will the private owners of the buildings be able to raise the rent?
- Do we have assurances that the lease will not require a minimum occupancy rate or “quotas,” as similar contracts in other states have required?
- If new buildings are required primarily to provide space for treatment and education, why can’t building additions on current ADOC campuses serve that purpose?

Given that contracts in Alabama are not expected to be signed until later this year at the earliest, under the best-case scenario, new prisons will not open for several years. Prisons are unconstitutionally unsafe now. The ADOC population is rising again for the first time in 5 years because paroles have slowed under new leadership. New construction cannot fix the immediate crisis.

## Too Many Prisoners, Too Much Punishment

Throughout most of this era, Alabama has had the nation’s fifth highest incarceration rate, with occasional fluctuation up or down a notch. In 2015, lawmakers passed SB67: significant reform legislation that helped standardize sentences, increase paroles, and provide alternatives to prison for low-level offenders. Remarkably, by 2018, Alabama was not even in the top 10 states with the highest incarceration rates, the federal [Bureau of Justice Statistics reported in April 2020](#). Early results of SB67 show we can make progress. But the promise of that legislation will remain unfulfilled until state leaders fully commit to evidence-based criminal justice policies and increased investment in treatment and services outside of prison walls.

The prison population is quickly rising again because of leadership changes at the Bureau of Pardons and Paroles and a nosedive in the number of people released on parole. Alabama’s incarceration rate is still far above the national average. And our state’s approach to criminal justice relies too heavily on harsh, outdated, and ineffective approaches that consume tax dollars with no public safety payoff. A few examples include:

- **Three Strikes Law:** Close to 500 people are serving Life Without Parole for non-homicide crimes under the Habitual Felony Offender Law, including 250 people who will die in prison for robbery convictions. Hundreds more are serving Life sentences for drug and property offenses. In total, more than 6,000 people are serving enhanced sentences under this law.

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- **Draconian Drug Laws:** Drug offenses account for more new prison admissions than any other type of crime. In five years from FY 2013 to FY 2018, there were 25,216 felony convictions for drug possession alone, including 4,502 for possession of marijuana. While not all ended with a prison sentence, collateral consequences of a felony conviction including court debt, loss of employment, and loss of housing and educational opportunities can be devastating.
- **Longer sentences, aging inmates:** The number of incarcerated people age 50 and over has increased 3,188% in 40 years, according to a special report on aging inmates in the ADOC 2012 Annual Report. Longer sentences have resulted in more than 5,700 prisoners over the age of 50, well past the age when lawbreaking typically occurs.



*All photos in this brief taken at St. Clair Correctional Facility, Springville, AL*

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Alabama is a poor state with a stretched General Fund. Every million dollars that goes into prison buildings does not go toward drug treatment, mental health care, or education. The vast majority of prisoners return to our communities, but they are exposed to life-threatening punishments while in prison that diminish their ability to return successfully. Under current conditions, people who enter prison for nonviolent offenses wind up violently assaulted behind bars. People who enter prison for drug offenses wind up surrounded by even more drugs in ADOC custody. Incarcerated people return home traumatized, worse off than when they entered prison. Until we recognize this reality and invest in the community supports needed to divert people from prison when possible, and provide intense support for returning citizens, new buildings will trap our state in the failures of the past. Instead, we need:

- **Re-entry supports:** Incarcerated people leave ADOC custody with \$10 and a change of clothes. Inadequate education and job training in the prison system leave most people unprepared for the workforce. Yet, they often face thousands of dollars in court fines, fees, and restitution as soon as they exit prison, but with little assistance with necessary identification, transportation, or housing. There is no continuum of care for people with mental illness or serious medical needs to receive care upon release. Robust investment in re-entry, while removing the burdens placed on people returning to their communities is critical.



- **State investments in community-based treatment:** Alabama incarcerates thousands of people who are eligible for Community Corrections programs, drug courts, or other alternatives to incarceration. But because most treatment-based alternatives are funded through user fees, they are not as effective and robust as they could be, and these overlapping, expensive, and unaccountable programs are not available to the people who need them most. Alabama needs well-funded, standardized, diversion programs.
- **Smart parole policies:** Parole provides a layer of oversight and accountability for people transitioning out of prison. But steep declines in parole grants mean prisons become more crowded and chaotic and people leave with no supervision. The current parole board has scheduled a third as many hearings as were held in 2018 and denied parole in 85% of cases. Now they face a backlog of close to 4,000 eligible people. The Bureau of Pardons and Parole needs to do its job – spend money allocated through SB67 for more parole officers, then release people who have earned a second chance.

The risk in sinking a billion or more dollars into new buildings is that none of these sensible alternatives will get off the ground.

## Conclusion

Forty years of harsh sentencing, swelling prison populations, prison construction, and a prison budget that consumes the state general fund has led us to exactly where we were in 1976: federal action to stop inhumane treatment of incarcerated people; national headlines documenting the human rights crisis in Alabama prisons; and another massive prison building plan. It's hard to imagine a scenario where any other government agency with such an abysmal track record would be given billions more to do more of what it's done so poorly. But our addiction to prison and punishment has done just that.

Alabamians deserve assurances that The Alabama Prison Transformation Initiative will not take us down this familiar path, that state resources will also be spent on getting this right, not just the black hole of prison expansion. We do not have those assurances yet.



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May 2020

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