

THE HABITUAL FELONY OFFENDER ACT

**HUNDREDS OF MEN
ARE SENTENCED
TO DIE IN PRISON
FOR CRIMES WITH
NO PHYSICAL INJURY.
THEY HAVEN'T
GIVEN UP ON LIFE.**

WHY HAS ALABAMA GIVEN UP ON THEM?



THE HABITUAL

FELONY OFFENDER ACT





ALABAMA'S "THREE STRIKES" LAW is the most draconian repeat offender statute in the south.

The law means hundreds are sentenced to die in prison for crimes involving no physical injury.

But they did not give up on life.

These are the stories of the old men in prison honor dorms reading their Bibles, writing poems, mopping floors, avoiding others' knives, and seeking one more class, one more program, one more chance to prove they are more than who they were 30 years ago.

About Alabama Appleseed Center for Law & Justice

Alabama Appleseed Center for Law and Justice is a non-profit, non-partisan 501(c)(3) organization founded in 1999 whose mission is to work to achieve justice and equity for all Alabamians. Alabama Appleseed is a member of the national Appleseed Network, which includes 18 Appleseed Centers across the U.S. and in Mexico City. Alabama Appleseed is also a member of the Sargent Shriver National Center on Poverty Law's Legal Impact Network, a collaborative of 36 advocacy organizations from across the country working with communities to end poverty and achieve racial justice at the federal, state, and local levels.

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ALABAMA APPLESEED CENTER FOR LAW & JUSTICE

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CONDEMNED

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“Truly, I’m remorseful for the crimes I committed and the victims who were involved. I’d like to ask their forgiveness. If I had just another chance to prove that I have changed, I would not let anyone down.”

JOE BENNETT | AGE 52

A CHAPEL WORKER AT DONALDSON CORRECTIONAL FACILITY WHO IS SERVING LIFE WITHOUT THE POSSIBILITY OF PAROLE FOR ROBBERY WHERE NO ONE WAS PHYSICALLY INJURED // HIS ONLY CLASS A OFFENSE

INTRODUCTION

JOE BENNETT LOOKS BACK at the first 30 years of his life and easily identifies all the wrong turns.

Smoking marijuana at age 12. Getting into fights at school. Becoming addicted to crack cocaine before he finished high school. Relying on drugs to deal with his mother's death when he was 21.

By age 30, he was sentenced to life imprisonment without parole for a robbery at a barbecue restaurant in Birmingham's East Lake neighborhood when he was high on crack cocaine. He had a few prior convictions: receiving stolen property, possession of a controlled substance, and theft. This was his first — and only — robbery, and only Class A offense.

"I got to the rock bottom end of my life. I know in my heart when they said this time I was sentenced to life without I said 'This is it, God. I need some help.' He heard me and He changed my life."

But by the time Joe overcame his addiction and became accountable for these wrongs, it was too late. Short of a change in Alabama law, he will die in prison, despite an extraordinary record of rehabilitation and a new purpose to his life.

Joe has spent 22 years incarcerated without a single disciplinary report — no contraband, no drugs, no fighting, not even an angry

word toward an officer — but none of that matters to the system.

Joe has completed drug treatment and amassed a stack of program certificates for every faith and Bible class offered. He was chosen to work in the chapel and to supervise the honor dorm. He is working on a CD of praise and gospel music. He has impressed prison volunteers with his transformation. "He would make a good Marine, a good member of my church, and a good neighbor," said Richard Condrey, a retired Marine Corps colonel who has spent countless hours with Joe Bennett as a prison ministry volunteer.

Joe Bennett is far from alone in demonstrating an extraordinary commitment to turning his life around despite no reasonable hope for release.

EXECUTIVE SUMMARY

The honor dorms of Alabama prisons have become another Death Row, filled with older men who have long turned away from violence, drugs, and crime. The Department of Corrections houses them in honor dorms because they are role models within the prison system, men who have earned the trust of chaplains, wardens, counselors. To flip through their thick stacks of diplomas and certificates is a history lesson in the rehabilitative and educational opportunities offered in the prisons over the last 40 years. Drug treatment, anger management, barbering, Bible studies — to name a few.

They will die in prison anyway.

This report shares their stories. None of the men profiled here have convictions for crimes involving homicide or sexual offenses. For the vast majority, their most serious offense was first-degree robbery involving **no physical injury**. Often, their convictions stemmed from untreated alcohol and drug use, from growing up in dangerous homes in dangerous neighborhoods. We spoke with men who started drinking at age 10, using drugs at 14. No one offered them substance abuse treatment or drug court, programs that are commonplace today but were not in the 1980s. By age 21, or 25, maybe early 30s, the system passed final judgment, determining they were irredeemable. After as few as three

felonies, even non-violent felonies like forgeries committed on the same day or stealing tools from a shed, they were gone for good on the next strike, usually a convenience store robbery or two while intoxicated.

Life imprisonment without parole assumes rehabilitation is impossible, but these lives have shown that to be a lie. The human capacity for growth and change — when people have purpose — is irrepressible.¹ That people with no hope for release have transformed while confined in prisons known for violence and despair is additional evidence that the system was wrong. And still is.

The old men in honor dorms did not give up on themselves. They earned community college degrees, became tutors, mentors, ministers, or artists. Their past selves are unrecognizable.

At **age 68**, Lee Earnest Davis works in Donaldson prison laundry from 6 a.m. to 3 p.m. four days a week. He spends his free time “working on his calisthenics” and completing Bible studies. He has been incarcerated since 1984 and has never received a disciplinary infraction.

At **69**, Alonzo Hurth has been locked up 27 years for robbery, his only Class A felony. His prior offenses are non-violent property crimes resulting from alcohol and drug use. He has earned a GED, worked as a tutor and hospital attendant, and become an ordained minis-

ter during his incarceration, despite have a sentence that virtually guarantees he will die in prison. Had he been sentenced today he would have been eligible for parole in 2009.

At 86, John Coleman has undergone kidney dialysis, survived pneumonia, and kept himself occupied with jobs reserved for trusted prisoners such as office runner and hospital runner. “I’m proud to say that at 86 years old, I can still bathe myself, still put my underwear and clothes on right, my socks and shoes all by myself.”

We spoke with a 60-year-old honor dorm resident who has been locked up 35 years for a \$147 robbery. He completed the Therapeutic Community drug treatment program at St. Clair prison then spent 9 years working to help others recover from addictions. “Because of my drug and alcohol abuse, I got a slow start in maturing both mentally and emotionally. But I eventually learned how to live happy and free. Today, it’s important to me to lead a way of life to do the right thing even when no one is looking,” he told us.

He completed courses in anger management, recovery dynamics, positive mental attitude, and relapse prevention, a total of 2,238 hours of programming. He wrote papers and passed tests.

The old men in honor dorms demonstrate accountability within a prison system often accountable to no one.

The federal government has given the state an incalculable number of chances to get its wretched prisons into shape, dating back to 1976 and extending to December of 2020, when the United States Department of Justice (DOJ) filed a lawsuit against the State of Alabama and the Alabama Department of Corrections.² The lawsuit followed two DOJ reports documenting record homicides, official

corruption, excessive force against incarcerated people, rampant extortion, and numerous other Eighth Amendment violations within the last four years. “In the 20 months following the United States’ original notification to the State of Alabama of unconstitutional conditions of confinement, Alabama prisoners have continued daily to endure a high risk of death, physical violence, and sexual abuse at



the hands of other prisoners,” according to the Justice Department.

As state prisons have descended into unconstitutional violence and decay, staffed by one-third of the officers needed for any semblance of order, the classes and programs that gave these old-timers purpose and insight are largely gone, with idleness and violence filling the void.³ Newer, younger prisoners fend for themselves in desolate dorms, while limited correctional dollars pour into the health care needs of the geriatric prison population.

The Habitual Felony Offender Law has been a huge contributor to this crisis.

When the federal government sued the state over prison conditions in the 1970s, the entire prison population was roughly 5,000 people. Currently there are more than 5,400 serving enhanced sentences under the Habitual Felony Offender Act alone, and more than

A crowded dorm at St. Clair Correctional facility

26,000 people incarcerated systemwide, a 381% increase with exorbitant costs to the state. Among those serving life without parole whose most serious offense was robbery, the racial disparities are striking: 75 percent are Black.

The drafters of this law surely intended to improve public safety. But they neglected to consider one of the oldest truisms in criminal justice research: crime is a young person's game.⁴ The Habitual Felony Offender Act ensures that people swept up in the failed Drug War policies of the 1980s and 1990s never get out of prison, despite robust evidence that they are precisely the population that ages out of criminal behavior⁵ and could safely be released. Life sentences provide diminishing returns for public safety while soaking up resources that could be better spent on crime prevention or drug treatment.⁶

There is a way to fix this.

Current sentencing statutes, including the legislatively approved Sentencing Guidelines, permit significantly shorter sentences for people convicted today of the same offenses that once required life sentences. Under current law, some of these men would be eligible for 15-to-20 year sentences, with 3-5 years to serve in prison and the remainder on probation. Others would have been parole-eligible 20 years ago under current law. But until the Sentencing Guidelines are fully retroactive, the people who have served the longest sentences and who are the least risk to reoffend remain incarcerated in Alabama's other Death Row – the honor dorms. Making the Sentencing Guidelines fully retroactive and ending Life Without Parole sentences for crimes involving no serious physical injury would go far. Amending the statute to provide resentencing options to men who have served lengthy terms and demonstrated a clear path of rehabilitation would also make sense.

The Habitual Felony Offender Act does not make us safer. It fills prisons with senior citizens reading their Bibles, writing poems, mopping floors, avoiding everyone else's knives, and seeking one more class, one more program, one more chance to finally prove they are more than who they were 30 years ago. ■

THE LAW

How a Robbery Conviction Leads to a Death-In-Prison Sentence

Alabama Criminal Code § 13A-5-9(c)

(c) In all cases when it is shown that a criminal defendant has been previously convicted of any three felonies that are Class A, Class B, or Class C felonies and after such convictions has committed another Class A, Class B, or Class C felony, he or she must be punished as follows:

- (1) On conviction of a Class C felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.
- (2) On conviction of a Class B felony, he or she must be punished by imprisonment for life or any term of not less than 20 years.
- (3) On conviction of a Class A* felony, where the defendant has no prior convictions for any Class A felony, he or she must be punished by imprisonment for life or life without the possibility of parole, in the discretion of the trial court.
- (4) On conviction of a Class A felony, where the defendant has one or more prior convictions for any Class A felony, he or she must be punished by imprisonment for life without the possibility of parole.

*Class A felonies include Murder, Rape I, Sexual Torture, Kidnaping I, Domestic Violence I, Burglary I, Arson I and Robbery I. By definition, no physical injury is required for a conviction for Robbery I or Burglary I. Ala Code 13A-1-5, 13A-8-43(1). Robbery is defined in state law as when a person commits theft and in the process (1) uses force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance; or (2) threatens the imminent use of force against the person of the owner or any person present with intent to compel acquiescence to the taking of or escaping with the property. It becomes Robbery I when the defendant is (1) Is armed with a deadly weapon or dangerous instrument; or (2) Causes serious physical injury to another. Alabama Code Sections 13A-8-41, 43.

IN THEIR

OWN WORDS

THE MEN CONDEMNED TO DIE IN PRISON

EDWARD DAUGHTRY | AGE 64

HAS SERVED 22 YEARS FOR ROBBERY, HIS ONLY CLASS A OFFENSE. IF SENTENCED TODAY, HE WOULD HAVE BEEN ELIGIBLE FOR PAROLE 7 YEARS AGO. HE IS A VETERAN OF THE UNITED STATES NAVY.

“I haven’t always been a criminal, but in ’86 I got addicted to crack cocaine and in ’87 I got caught up in the street life that came with it. And I became a functional addict. I kept a job but started committing petty crimes. Yes, I am guilty of the crime that I was convicted of — I own up to that, but I’m not that guy anymore.

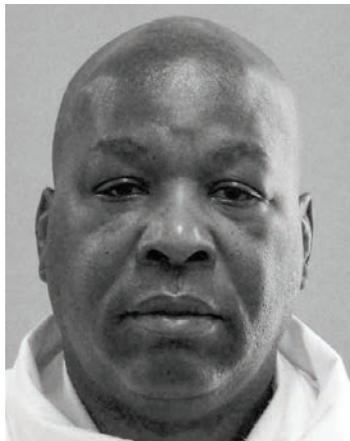
“As I awaited trial, I saw what drugs and crime had caused me to destroy: a wife and family, jobs, and other relationships and even opportunities. I took a very serious and honest personal inventory and decided that I had to change and become a better human

being, a better man. I finally made the decision to get clean in prison: I looked back on my life and I played the whole tape, looked at the good and the bad — the addiction, the alcohol, the heartbreak I brought my family, the fact I wasn’t there to raise my children. I also took an empathy class that was transformative to me and wrote letters to the victims of my crimes.

“When I got to prison, I joined the Crime Bill Drug Program, and I took recovery seriously. You see, rehabilitation is a personal thing so I took my change very personally and began working on every facet of myself

and enrolled in classes that were conducive to my goals. I wanted to do whatever necessary to not be the monster I used to be — it took a lot of prayer, getting with God, checking and rechecking myself, a lot of hard work. After completing drug treatment in prison, I went on to teach a portion of the treatment program. I ended up moving into the honor dorm and got

involved in church while working at the tag plant. Now, I sing and minister.” ///



“I try to be a light in a dark place. I try to be a kind word where there is pain.”

JAMES OLIVER JONES | AGE 73

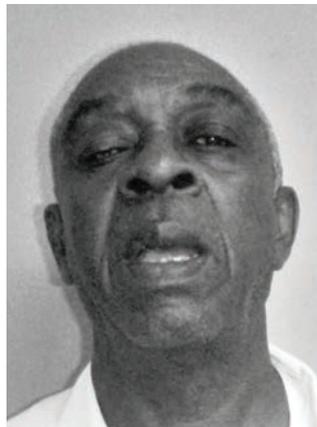
HAS SERVED 38 YEARS WITH TWO DISCIPLINARY INFRACTIONS, INCLUDING ONE FOR HAVING AN UNAUTHORIZED COOKIE.

Mr. Jones persevered seven years in order to earn an associates degree while incarcerated, then went on to tutor others in Adult Basic Education classes. The ADOC no longer permits people serving life imprisonment without parole to enroll in college classes. Mr. Jones has tried to continue his education with religious classes taught by volunteers.

“I have scores of certificates from Bible courses, dating back 20 years. Yes, I am one of the oldest members of the faith-based honor dorm. I’ve been in the [honor dorm] approximately 20 years.”

My most recent experiences here in prison are quite different from when I first came to prison. The respect factor is now nearly non-existent. Maybe we have too many young guys here now. The cell-phones and dope have changed prison forever. And to be honest, the current administration just don’t know how to deal with this obvious problem.”///

“To give a person life without when he took no life is draconian. ... We have just too many bodies in prison.”



RICHARD COTTINGHAM | AGE 61

HAS SERVED 31 YEARS FOR A ROBBERY; WEAPON WAS A BUTTER KNIFE. HE HAS NEVER HAD A DISCIPLINARY INFRACTION AND HAS LIVED IN THE HONOR DORM SINCE 2001. HE HAS EARNED MORE THAN 100 CERTIFICATES FOR CLASSES AND PROGRAMS.

“I was born in 1959 in Decatur, Alabama. When I was two, my mother married. My stepfather moved my mother and me to Huntsville. My first memory of him was him whipping me for crying for my mother. From that point the whippings seemed to grow more frequent and steadily worse. He would beat me until blood came out of my body. My dislike for him was compounded by the fact that he also regularly beat my mother.

“By the age of eight, I began to rebel against him because of the abuse. I started stealing and shoplifting but in a way that he would catch me, so that he would know I was rebelling against him. This began my life of criminal activity. At eight years old, I was arrested for burglary, which I had done in order to join a gang. I was almost ten years old when I began smoking cigarettes, drinking, and stealing.

“When my stepfather would beat my mother, I would try to stop him but was too small. He would then beat me. Eventually

social services got involved and took me and my siblings from my mother to place us in foster homes. I had become so rebellious, they took me from the foster home and placed me in juvenile detention. After a short while, my mom got us kids back. I remember being thirteen and getting into an argument with my stepfather over my mother shortly after moving back home. He stabbed me with a knife.

“Everything seemed to be getting worse. My drug abuse worsened along with everything else. I was very athletic and the schools wanted me to play baseball and football, but my drug abuse got in the way.

“At seventeen, I married my first wife, and when she got pregnant, I was scared that I would be the same kind of husband and father my stepfather had been. I did not want to be an abusive man, but I did not know how to stop it because I was such an angry young man. When I was drinking or high, I would take my anger out on those around me. I was two different people. Like Dr. Jekyll and Mr. Hyde, I was peaceful when sober but angry when under the influence of drugs or alcohol.

“In 1978, while high and making a delivery for work in Tennessee, I decided to rob a place. I went into a store and asked the clerk for money, and I left. I did not hurt anyone, but I did get caught and sent to prison. I had been arrested several times previously for burglary, buying and receiv-

ing stolen property, and possession of marijuana. When I got out of prison for this robbery, I did not stay out long. In '86, I got addicted to cocaine and in '87 I got caught up in the street life that went along with it, and I became a functional addict. I began spiraling, my drug use and alcohol abuse worsening as my ex-wife continually refused to let me see my son.

“I ended up robbing a convenience store in Decatur during December of 1989. I was quickly caught. I believe that I really wanted to get caught. I could not be a successful father, husband, or employee because of this pressure. Because of the stresses of life, I ran. But the only place I knew to run to was prison. In prison, the only worry I had was keeping my life. It was a controlled environment.

The stress of the world was not in there. I was sentenced to life without parole this time in Alabama.

“This incarceration was different than the others because I did not understand life without parole. There was no hope this time. I turned into a junkie and a dope dealer in prison. I also got married to my third wife while in prison. I tried to straighten up, going through drug treatment, taking classes like anger management. I still wasn't clean and sober, and I was still selling drugs.

“I ended up moving to the Faith Dorm at St. Clair Correctional Facility in early 2002.



“I pray someday to be able to be with my family again on the outside and to show the world what God had done in my life.”

Something started changing inside of me. After a while, I began to realize that I had to do something. I did not know who I was. I had lost reality. The only thing I knew was that something had to change. So I started to pray and read my Bible. I started signing up for religious classes. I had made a decision that I was not going to continue living the way I had been living. I realized that I did not have to be what the prison system said I was. I wanted something better. I got rid of a lot of the anger and frustration that I felt towards my stepfather about how I was raised. I started funneling my energy towards the Word of God, seeking His assistance to get me through this. No more drugs. No more alcohol.

“I kept taking classes and joined the church at St. Clair. I’ve done everything I could do with the assistance of other people to change and live under a different set of standards: the standards of God. I do my best to live that way. Although it is not easy at times, I do the best I can possibly do.”///

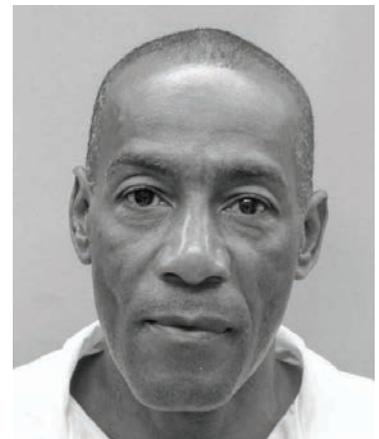
“After 30 years in prison, I have been rehabilitated. Any more time would be too long for snatching money from a cash register, which although wrong, is not deserving of my entire life. I am truly sorry. All I want is to go home to my family that I left so many years ago.”

MYRON MONROE | AGE 59

HAS SERVED 30 YEARS FOR \$50 ROBBERY WHILE ARMED WITH A KNIFE.

“During my childhood, my mother was left to care for nine children on her own because my father did not care about us and was never in our lives. So, I never really had a male figure to look up to or someone to teach me things I needed to know in order to be a productive citizen. My older brother was a junkie and he was in and out of jail and prison most of his life. I started doing things like hanging out with the wrong group of people that did not set a good example for me at all. Being in this environment, I learned to adapt to what I was exposed to, which didn’t give me much hope of having the kinds of morals and values I needed to embrace the world in a positive way.

“I began using drugs and this is when my life of crime began. I would steal money



from my mother's purse to buy drugs. The conviction that led to my life without parole sentence was the night I pulled out a knife, not to hurt anyone but as a scare tactic, to try and get more money to supply my worsening addiction. I took \$50 that night. However, it wouldn't make a difference if it had been 50 cents; it was wrong to invade and take things I had not earned regardless of the value. And I truly realize that now.

"I have been here at Holman prison throughout all of my 30s, 40s, and 50s. Being incarcerated has given me a whole new outlook on life as an individual. I have changed my entire life, and I have given it over to God because I know there is hope through Christ Jesus. ... I am not the same person I was back then. I no longer have an addiction nor am I a user of drugs, alcohol, or any controlled substance.

"Since my time at Holman, I have taken many classes and completed Alcoholics Anonymous (AA) and Narcotics Anonymous (NA). I have passed some of my GED, and I plan to finish and receive my diploma. God has blessed me to work for the warden here at Holman, and I am around people in the free world all the time. They would tell you that I am very trustworthy in handling things for them. I also clean the hospital to make sure everything stays sanitized. These are just some of the duties I perform that exemplify that I can be trusted to be released back into society."///

LEE EARNEST DAVIS | AGE 68

HAS SERVED 36 YEARS FOR ROBBERY.



He works in the prison laundry 10 hours a day and has never had a disciplinary infraction. Throughout his incarceration, his wife remained married to him. She died 7 years ago.

"I committed a crime, but I did not get away with any money and no one was hurt or killed doing these crimes. I was about 28 years old and had a drug habit. I'm now 68 years old [and] has left my childhood behind. I'm following Christ and love the Lord. I regret

doing what I did, but close to 40 years in confinement has taught me a lesson I'd never forget."///

"I was about 28 years old and had a drug habit. I'm now 68 years old [and] has left my childhood behind."

BILLY RIVERS | AGE 60

HAS SERVED 21 YEARS FOR ROBBERY WITH NO DISCIPLINARY INFRACTIONS.

“My priors are three unlawful distribution of a control substance in which I caught all in one night in 1988. And one theft of property 2nd degree in 1995 in Dothan. In April of 1999, I was arrested and charged with 1st degree Robbery (no physical injuries occurred). January 25, 2000 I was found guilty and sentenced to life without parole after they used my nonviolent priors to enhance my sentence.

“As of this day (June 2020) I have served 21 years by the Grace and Love of God. I have 0 disciplinaries and 0 citations. A clean and respectful record towards officers and all other ALDOC personnel: honor dorm, restorative justice participant, computer classes, positive work reports from Alabama industries supervisors. And teacher of two classes: (1) coping skills and (2) orientation.

“I just got released from the hospital.... I have cirrhosis of the liver and that means my liver no longer does its job. I swell and am easily infected through cuts or scratches. I have confusion and memory loss. I can't phrase my sentences in a communicable order. I cramp up terribly, fingers, hands, wrists, ribs and thighs ... My attending doctor told me I'm in need of a liver transplant. Days like this I feel wasted while I'm writing this letter. It's great effort walking back and forth to pill call.”///

JOHN COLEMAN | AGE 86

IS LOCKED IN ST. CLAIR CORRECTIONAL FACILITY, ONE OF AMERICA'S MOST VIOLENT PRISONS. HIS PRIORS OCCURRED IN THE 1970S.

“I grew up in the Southside of Birmingham. I didn't have a father, only mom and sisters. I did what I could to help my momma until she died. Me and my mom put my sisters through school, but I never finished school myself.

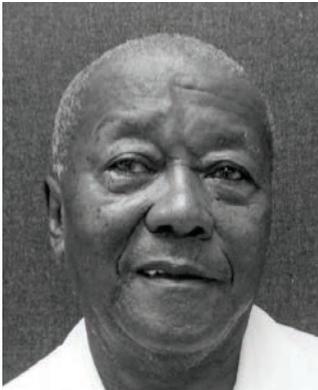
“In my 50 years of prison I've worked many jobs. Most were as one of the most trusted prisoners. I've worked in the administrative office as a runner for wardens, inside prison infirmaries as a hospital runner and in 1985 in the state investigator's office (I&I) making their coffee, cleaning up, taking care of them. Only the most trusted are chosen for these jobs.

“I am housed in dorm G-5, under a medical hold due to my kidney disease. I'm proud to say that at 86 years old, I can still bathe myself, still put my under-

wear and clothes on right, my socks and shoes all by myself. ... My desire is to have another chance in society and build relationships with my children, grandchildren and great grandchildren.”///



“Many of us are doing too much time for the crime we committed. I've did 21 years for a robbery that was enhanced by non-violent past offenses.”



“I’m 86 years old and all alone. Please don’t let me die in prison. I’m not ready to die yet. I pray for what years I have left to be on the other side of this fence ... but that seems hopeless in Alabama.”

HOW ALABAMA COMPARES WITH OTHER SOUTHERN STATES

In Alabama, the **Habitual Felony Offender Act** permits life imprisonment without parole upon conviction of one robbery with no physical injury, if the defendant has three prior felony convictions of any kind, even low-level property or drug offenses.

Across the South, only one other state permits a death in prison sentence under these circumstances: Mississippi.

Alabama’s “three strikes” law is harsher than repeat offender statutes other southern states for a variety of additional reasons. A few examples:

■ **Arkansas, Georgia, Florida, Kentucky, North Carolina, South Carolina, Tennessee, and Virginia** require that prior convictions used for enhancement arise from *separate* incidents. Alabama does not. Multiple prior offenses — such as possession of a stolen credit card and credit card

fraud — that occurred in a single incident can count as separate offenses for enhancement purposes and often do.

■ **North Carolina, South Carolina, Tennessee, Texas, and Virginia** only use certain prior offenses to enhance, specifically violent and sex-related offenses. Alabama does not take into account the nature of prior offenses. Non-violent priors are treated the same as violent priors throughout Alabama’s law.

■ In **Arkansas**, all life sentences are parole-eligible once the individual reaches age 55. Arkansas also reserves life imprisonment without parole for repeat sex offenders. Alabama does neither.

■ **Oklahoma** provides parole eligibility for all life sentences, including habitual offender sentences.

■ **South Carolina** provides parole eligibility for all life sentences, except those for murder. Alabama does not. As a result, approximately 300 individuals are serving life imprisonment without parole for robbery or burglary involving no physical injury to the victim.

■ In **Virginia**, individuals with life sentences for repeat violent offenses can receive conditional release in their 60s. Alabama does not offer a similar provision.

■ **Kentucky, North Carolina, and Tennessee** repeat offender laws include provisions limiting the use of prior offenses committed by youth (typically individuals younger than 20) from being used to enhance sentences. In Alabama, people can be sentenced to life without parole based on nonviolent prior offenses committed as juveniles.

ALONZO HURTH | AGE 69

**HAS SERVED 26 YEARS FOR ROBBERY. HE
HAS BECOME AN ORDAINED PASTOR AND A
POET DURING HIS INCARCERATION.**

I AM A PRISON

I am a prison; I am damp and I am cold.
I hold men who are young, men who are old.
I am surrounded by fences and gates that have locks.
My walls are all made of concrete blocks.

I am a prison, and I am feared by all.
I will give you a chill when you hear me call.
Your name becomes a number; your face just another.
I will show you no pity; I am not your mother.

I am a prison, designed to be rough,
I am where society houses its tough.
Nobody has beat me, though many have tried.
But mostly they all still remain inside.
I have no answers, so don't ask me why
I put these tears in your children's eyes.

I am a prison, where nobody wants to be.
I confine men who was once free.
I control their pace; I slow down their stride.
I strip them of dignity; I take their pride.

Like animals that you might put in a cage.
I contain these men and watch them age.

I am a prison; I am full of despair.
I can be a man's worst nightmare.
I have been here many years and will be for many more.
You will recognize me, by my loud slamming doors.

I am a prison, a place you don't want to live.
I have so much to take but nothing to give.
But there is one who does, and He hears all your pleas.
So pray to the Lord Jesus, for He has the keys.

MARCH 12, 2008 | 3:29AM

IN THEIR

OWN WORDS

GROWING WISE

I scanned God's teachings thoughtlessly,
In haste I did not hear Him;
Then prayerfully I read once more,
This time my heart drew near Him.

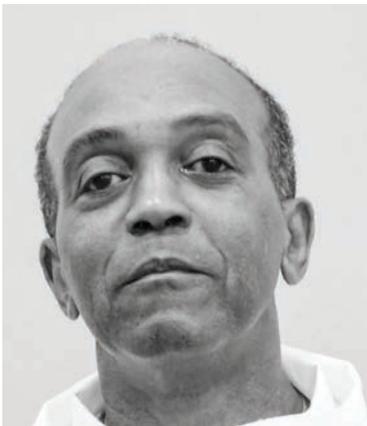
With patience in His love I will rest,
And whisper that He knoweth best,
Then clinging to that guiding hand,
A weakling, in His strength I'll stand.

Sin's pleasures have such great appeal,
They always look like bargains rare,
But seldom do we clearly see,
The hidden cost that we must bear.

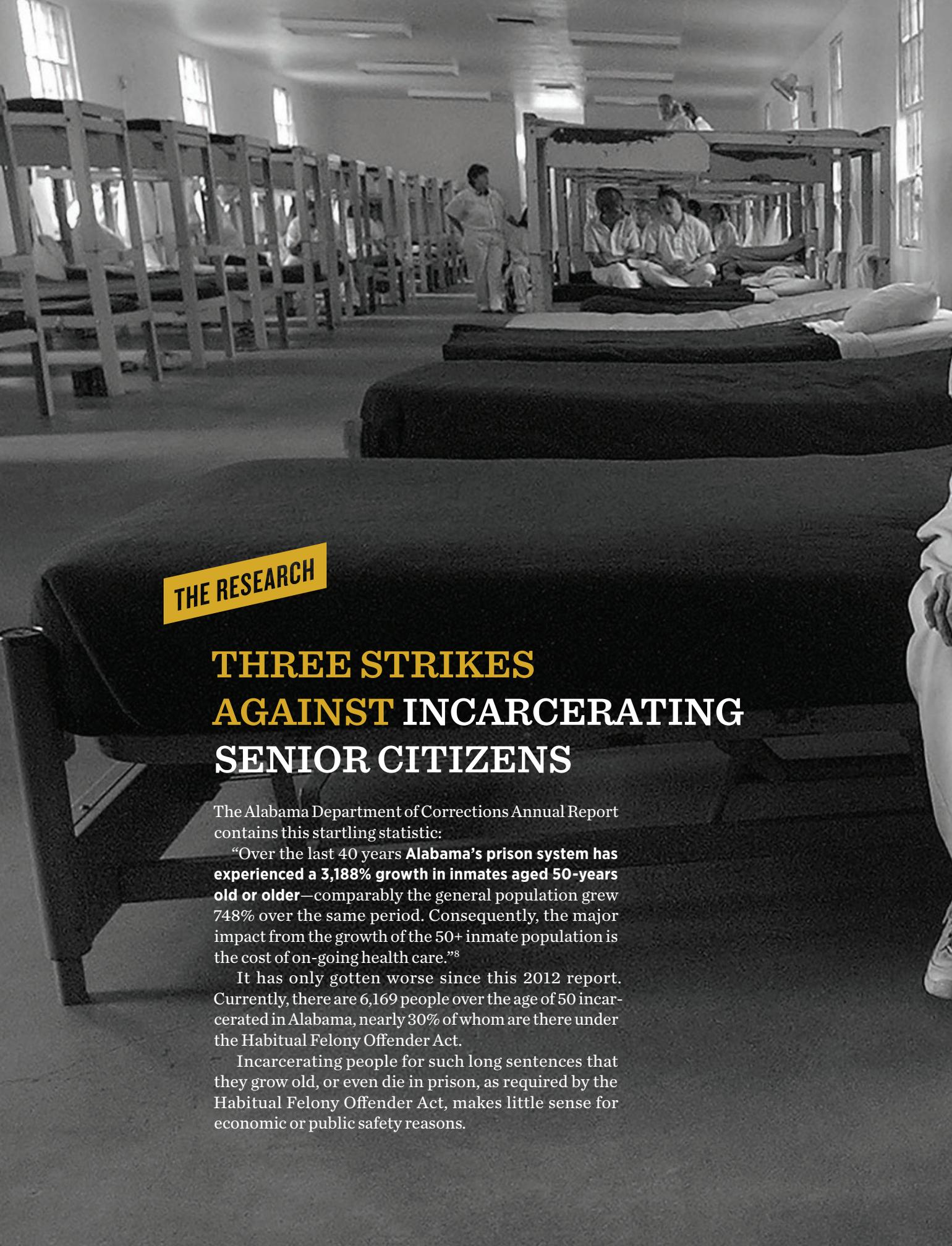
Oh Lord, I'll see the wisdom of Your Word
And value it above the price of gold;
I shall store it in my mind and in my heart,
And draw upon its treasures when I am old.

*Teach us to number our days, that we may
gain a heart of wisdom. Psalm 90:12*

MARCH 12, 2002 | 3:56AM - 5:02AM ///



“I believe that everything that happened to me has brought me closer to God. After more than 25 years, I see God working in my life. When we strive to sincerely follow Christ, great things happen!”



THE RESEARCH

THREE STRIKES AGAINST INCARCERATING SENIOR CITIZENS

The Alabama Department of Corrections Annual Report contains this startling statistic:

“Over the last 40 years **Alabama’s prison system has experienced a 3,188% growth in inmates aged 50-years old or older**—comparably the general population grew 748% over the same period. Consequently, the major impact from the growth of the 50+ inmate population is the cost of on-going health care.”⁸

It has only gotten worse since this 2012 report. Currently, there are 6,169 people over the age of 50 incarcerated in Alabama, nearly 30% of whom are there under the Habitual Felony Offender Act.

Incarcerating people for such long sentences that they grow old, or even die in prison, as required by the Habitual Felony Offender Act, makes little sense for economic or public safety reasons.



An elderly woman incarcerated for years at Alabama's Tutwiler Prison for Women, which has been repeatedly found in violation of the United States Constitution by federal authorities.

PHOTO BY *Bernard Troncale*

STRIKE ONE | PEOPLE AGE OUT OF CRIMINAL BEHAVIOR

The peak age for robbery is nineteen, according to the U.S. Bureau of Justice Statistics, with the rate dropping to almost zero by age 60. Across the country, there are 160 robbery arrests per 100,000 people at age 19; by age 60 that number plummets to less than five arrests per 100,000 people.⁹

Nevertheless, in Alabama the Habitual Felony Offender Act has ensnared roughly 550 people whose most serious offense was robbery, who are serving sentences of life or life without parole. Like the men who shared their stories above, 250 of these individuals

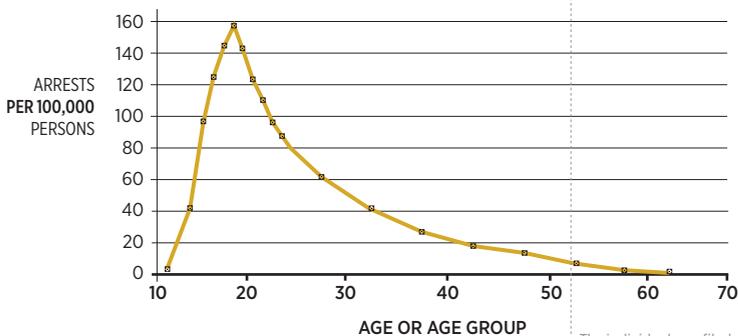
are growing old in prison with no chance for release because they were sentenced to life without the possibility of parole. More are serving parole-eligible life sentences but are denied parole because robbery is classified as a violent crime. With irrefutable data showing re-offense drops enormously as people reach their 40s and to almost zero by age 60, there is no public safety justification for these sentences.

Given the well-established fact that crime tends to peak in adolescence or early adulthood and then decline with age, sentences of life and life without parole mean we incarcerate people long after their risk for violence has diminished. The technical term for the relationship between age and crime is known as the “age-crime curve.” The “age-crime curve” can be explained in part by the fact that brain development continues well into people’s twenties, particularly in the prefrontal cortex, which regulates impulse control and reasoning. “Young adults are more likely to engage in risk-seeking behavior, have difficulty moderating their responses in emotionally charged situations, or have not fully developed a future-oriented method of decision-making.”¹⁰

The age-crime curve is relevant in evaluating reforms needed in Alabama because numerous individuals serving life without parole, including Richard Cottingham and Myron Monroe profiled above, were incarcerated in their mid-twenties. By issuing such lengthy sentences for young people convicted of violent crime, we are also ignoring their potential for personal transformation and rehabilitation. Such excessive sentences have diminishing returns and, ultimately, opportunity costs to individuals, communities, and taxpayers.¹¹

Finally, research from the Bureau of Justice Statistics shows that formerly incarcerated people over the age of 40 have the lowest recidivism rates of any age group.¹²

Arrest Rates By Age for Robbery | 2014



Mark Mauer and Ashley Nellis, *The Meaning of Life*, 134

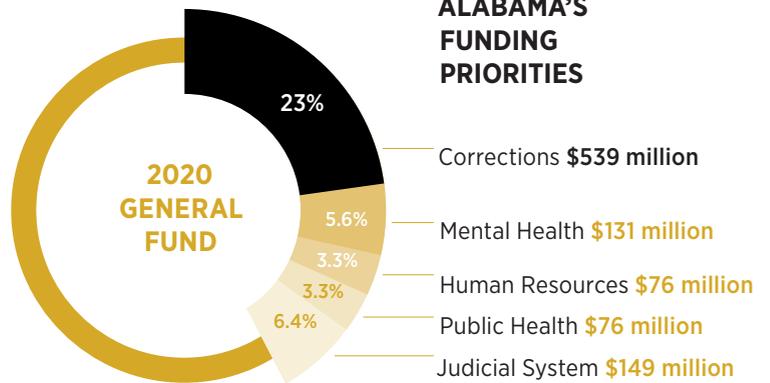
The individuals profiled in this report are all over 50 years old.

With irrefutable data showing re-offense drops enormously as people reach their 40s and to almost zero by age 60, there is no public safety justification for these sentences.

STRIKE TWO | OLDER PRISONERS ARE EXPENSIVE TO HOUSE

Since 2000, the average age of a person incarcerated in Alabama has risen from 35 years old to 40, in part because of lengthy sentences mandated by the Habitual Felony Offender Act.¹³ Health care costs for aging prisoners has exploded the prison system’s budget. In 2006, the first year that ADOC reported out “Medical and other Professional Services” in its annual reports, that figure was \$97.3 million. In 2019, those services cost Alabama taxpayers \$172.6 million, an increase of 77 percent.¹⁴

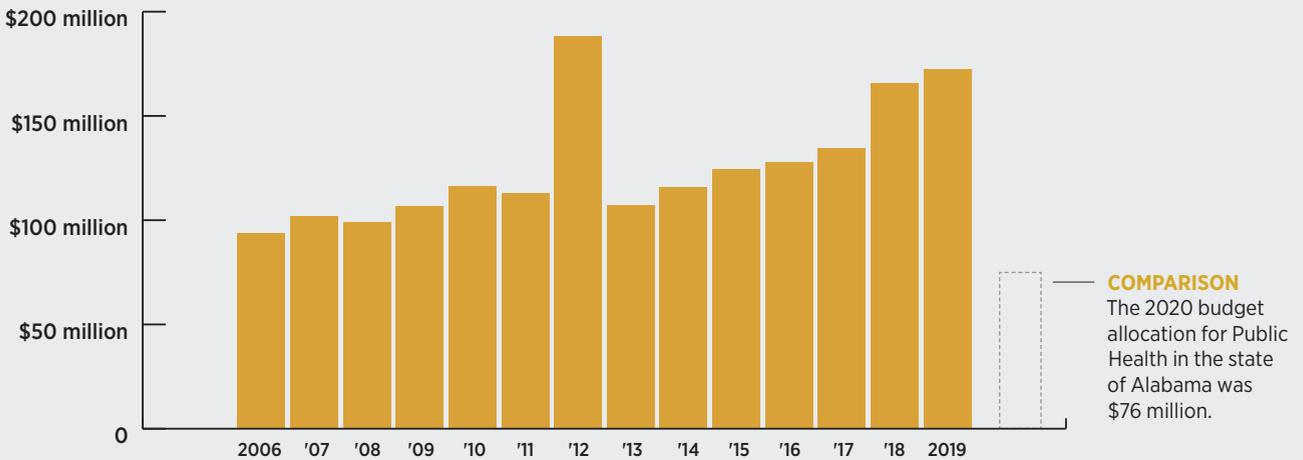
Robust research has repeatedly found that aging prisoners are more expensive to house because of increased health care needs and other services, although the findings as to how much more expensive vary. The National Institute of Corrections reported that **the annual cost of providing care to elderly prisoners with chronic medical needs is about double the cost of housing a younger prisoner.**¹⁵



Alabama is a poor state with chronic challenges in funding basic government services. The ever-growing prison budget has meant fewer resources invested in other services, including investments in mental health, public health, and crime prevention – investments that could make Alabama safer.

COST OF PRISON MEDICAL CARE

This budget category also includes legal fees for attorneys hired to defend ADOC against lawsuits over prisons conditions, mental health care, and excessive force against incarcerated people by ADOC staff.



ADOC'S OVERALL BUDGET HAS SWELLED BY \$100 MILLION in the last decade with no end in sight, in part because of these rising healthcare costs. Now the state is poised to spend \$3 billion over the next 30 years to lease new prison buildings.

STRIKE THREE | PEOPLE WHO COMMIT VIOLENT OFFENSES ARE OFTEN LEAST LIKELY TO REOFFEND

The men profiled above have been convicted of robbery, and therefore are classified as violent offenders by the state, which makes them ineligible for the myriad, recent criminal justice reforms enacted in Alabama, such as shorter sentences or increased access to diversion programs, targeting people convicted of nonviolent offenses. However, **the Bureau of Justice Statistics has found — in a special report conducted over nine years — that recidivism is lowest among people convicted of a violent offense.**¹⁶ Researchers looked at people convicted of four categories of crime: property, drug, violent, and public order. “Prisoners released for a violent offense were less likely to have been arrested

Research has consistently shown that people convicted of violent offenses are not inherently violent. Violence is influenced by a range of factors, such as youth and life circumstances. It is not a static characteristic. No one has proven this more persuasively than the older men who populate the honor dorms of Alabama’s prisons.

for any type of crime” than prisoners released for a property or drug offense[.]¹⁷

Like the men in this report, most people incarcerated long enough to grow old in prison were given long sentences for violent offenses. Therefore, reforms that recognize the diminishing returns of incarcerating older people and that address the enormous costs of medical care for an aging prison population should not exclude people convicted of violent offenses.

Research has consistently shown that people convicted of violent offenses are not inherently violent. Violence is influenced by a range of factors, such as youth and life circumstances. It is not a static characteristic. No one has proven this more persuasively than the older men who populate the honor dorms of Alabama’s prisons. They have avoided violence in the most violent prisons in the country.

THE NUMBERS⁴⁵

239

People Serving Life Imprisonment Without Parole for Robbery |

297

People Serving Life Sentences for Robbery |

5,584

Total Number of Alabamians Serving Enhanced Sentences Under the Habitual Felony Offender Act

1,628

Total Number of Life and Life Without Parole Sentences Under the Habitual Felony Offender Act

THE WORST HABITUAL OFFENDER | THE ALABAMA DEPARTMENT OF CORRECTIONS

As the lives of these older men attest, they have changed. They have demonstrated irrefutable evidence of rehabilitation despite being condemned to die in prison with no reasonable hope for release.

Yet the prison system that houses them has gotten worse as the years wear on. Alabama has repeatedly been condemned by federal courts and the United States Department of Justice for violating the United States Constitution — the highest law of the land — in how it treats incarcerated Alabamians. Most recently, despite being put on notice four years ago that the U.S. Department of Justice was investigating the entire prison system for men, conditions only deteriorated, abysmally low staffing levels stagnated, violence escalated, decrepit prisons closed, and overcrowding persisted. The DOJ was forced to sue the state, making Alabama the only state in the nation that has faced two systemwide lawsuits from the federal government over unconstitutional prison conditions.

Examples of federal court findings from the last 45 years:

PUGH V. LOCKE¹⁸ | 1976 federal court order addressing system-wide living conditions

“There can be no question that the present conditions of confinement in the Alabama penal system violate any current judicial definition of cruel and unusual punishment, a situation evidenced by the defendants’ admission that serious Eighth Amendment violations exist.”¹⁹

“The living conditions in Alabama prisons constitute cruel and unusual punishment. Specifically, lack of sanitation throughout the institutions in living areas, infirmaries, and food service presents an imminent danger to the health of each and every inmate. Prisoners suffer from further physical deterioration because there are no opportunities for exercise and recreation. Treatment for prisoners with physical or emotional problems is totally inadequate.”²⁰

“The response of the defendants to the matters set forth in this opinion consistently has been that they cannot alleviate the conditions because of inadequate funding by the state legislature. However, a state is not at liberty to afford its citizens only those constitutional rights which fit comfortably within

its budget. The Alabama Legislature has had ample opportunity to make provision for the state to meet its constitutional responsibilities in this area, and it has failed to do so.”²¹

AUSTIN V. HOPPER²² | 1998 federal case concerning unconstitutional conditions of confinement, such as chain gangs, whipping posts, and denial of visitation

“The deprivation of these basic human necessities plainly violates the Eighth Amendment. ... Further, the corrections officers’ refusal to provide inmates who had urinated or defecated upon themselves with means to clean their bodies constituted a further violation of the inmates’ Eighth Amendment rights ... The adverse conditions of the hitching post, including its placement in the direct sunlight, causing inmates to suffer symptoms of heat exhaustion and sunburn, also violated the minimum standards required by the Eighth Amendment.”²³

“This court is not an expert on penological matters and accords the Commissioner great deference in conceiving and implementing policies to control inmate behavior in his institutions. However, it is also the duty of this court to protect prisoners within such institutions from practices that violate their constitutional rights. The manner in which the DOC has used the hitching post does just this.”²⁴

BRADLEY V. HALEY, ET AL²⁵ | 2000 federal case concerning mental health treatment in men’s prisons

“Whereas on January 15, 1992, Plaintiffs filed suit challenging the constitutional adequacy of the mental health treatment provided to persons with serious mental illness by the Alabama Department of Corrections (ADOC) ... The Defendant agrees to comply with the requirements for an adequate mental health system for Alabama inmates with serious mental illness as contained in the document entitled ‘Agreement of Experts’ (August 8, 2000).”²⁶

“In our judgment, the ADOC fails to provide even minimally adequate mental health care for its inmates with serious mental illness, and the record provides evidence that ADOC administration either knew or ignored the serious shortcomings of the system.”²⁷

“The ADOC’s system for providing care to the seriously mentally ill requires substantial change if it is to become even minimally adequate. We have observed many inmates with mental illness greatly suffering needless pain and offer this report in the hopes that it can assist the court to fashion a solution that will ameliorate this suffering.”²⁸

HOPE V. PELZER²⁹ | 2002 Supreme Court hitching-post case raising Eight and Fourteenth Amendment constitutional violations

“The use of the hitching post under these circumstances violated the ‘basic concept underlying the Eighth Amendment[, which] is nothing less than the dignity of man.’ This punitive treatment amounts to gratuitous infliction of ‘wanton and unnecessary’ pain that our precedent clearly prohibits.”³⁰

“Respondents violated clearly established law. Our conclusion that ‘a reasonable person would have known,’ ... of the violation is buttressed by the fact that the DOJ specifically advised the ADOC of the unconstitutionality of its practices before the incidents in this case took place. The DOJ had conducted a study in 1994 of Alabama’s use of the hitching post. Among other findings, the DOJ report noted that ADOC’s officers consistently failed to comply with the policy of immediately releasing any inmate from the hitching post who agrees to return to work. The DOJ concluded that the systematic use of the restraining bar in Alabama constituted improper corporal punishment. Ibid. Accordingly, the DOJ advised the ADOC to cease use of the hitching post in order to meet constitutional standards.”³¹

LAUBE V. HALEY³² | 2002 case concerning unconstitutional conditions of confinement and overcrowding in Alabama’s women’s prison

“In sum, the court holds that the plaintiffs are entitled to preliminary-injunctive relief on their claim that they are subject to a substantial risk of serious harm caused by Tutwiler’s greatly overcrowded and significantly understaffed open dorms. Indeed, the court is not only convinced that these unsafe conditions have resulted in harm, and the threat of harm, to individual inmates in the immediate past, it is also convinced that they are so severe and widespread today that they are essentially a time bomb ready to explode facility-wide at any unexpected moment in the near future.”³³

LEATHERWOOD V. HALEY³⁴ | 2002 Limestone case concerning HIV Unit conditions and medical care

“It is evident that lives were lost due to preventable lapses in the medical treatment. HIV prisoners died without necessary intervention by the Limestone medical staff or ADOC.” U.S. District Magistrate Judge John Ott (“U.S.D.C., N.D. Ala. (Western Div.)”)

“[T]he most egregious failure at Limestone is the number of preventable deaths. ... In almost all instances, the death was preceded by a failure to provide proper medical care or treatment. Consistently, patients died of preventable illness. ... At least one patient had such severe pneumonia that he suffocated in front of the medical staff despite the patient’s request for treatment and hospitalization. Another, critically ill Terrell Grey, was taken in a van for two hours to a Birmingham hospital, instead of to a local facility; he died en route, “tended” to by only two guards. The plaintiffs had testified that many HIV -positive prisoners “housed in dormitory 16, [the] warehouse HIV infirmary, died

a horrible death, literally standing on their feet,” Court-appointed mortality expert Dr. Stephen Tabet, who found the number of deaths from AIDS at Limestone “remarkably high” compared to other prison systems.³⁵

TUTWILER PRISON FOR WOMEN | 2014 federal investigation of Tutwiler’s rampant sexual abuse³⁶

“We conclude that 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.”³⁷

“Officials at the Alabama Department of Corrections (“ADOC”) and Tutwiler have failed to remedy the myriad systemic causes of harm to the women prisoners at Tutwiler despite repeated notification of the problems. ADOC and Tutwiler have demonstrated a clear deliberate indifference to the harm and substantial risk of harm to women prisoners. They have failed to take reasonable steps to protect people in their custody from the known and readily apparent threat of sexual abuse and sexual harassment. Officials have been on notice for over eighteen years of the risks to women prisoners and, for over eighteen years, have chosen to ignore them.”³⁸

“This is not the first time we have notified Tutwiler and ADOC of unconstitutional conditions of confinement at Tutwiler. In 1995, we issued a findings letter detailing unconstitutional medical and mental health care treatment at Tutwiler. Although not a subject of the investigation, the 1995 letter also noted inappropriate sexual contact between prisoners and staff. ... Eighteen years since notifying ADOC and Tutwiler officials of inappropriate sexual activity between staff and prisoners, problems in the area of sexual abuse and harassment have only worsened.”³⁹

BRAGGS V. DUNN⁴⁰ | 2014 ongoing federal lawsuit concerning unconstitutional treatment of severe mentally ill incarcerated individuals

“Mentally ill ADOC prisoners, defined here as prisoners with serious mental-health needs, have suffered harm and are subject to a substantial risk of serious harm due to ADOC’s inadequate mental-health care. Based on the trial testimony, the court finds seven interrelated areas of inadequacy: (1) identification and classification of prisoners with mental illness; (2) treatment planning; (3) psychotherapy; (4) inpatient mental-health care units; (5) crisis care and suicide prevention; (6) use of disciplinary actions for symptoms of mental illness; and (7) use of segregation for mentally ill prisoners.”⁴¹

“As discussed below, despite being repeatedly informed that significant deficiencies existed, ADOC has disregarded and failed to respond reasonably to the actual harm and substantial risks of serious harm posed by its deficient mental-health care system”⁴²

“Despite its knowledge of actual harm and substantial risks of serious harm to mentally ill prisoners, ADOC has failed to respond reasonably to identified issues in the delivery of mental-health care. On a global level, the state of the mental-health care system is itself evidence of ADOC’s disregard of harm and risk of harm: in spite of countless reports, emails,

and internal documents putting ADOC on notice of the actual harm and substantial risks of serious harm posed by the identified inadequacies in mental-health care, those inadequacies have persisted for years and years.”⁴³

“For the reasons above, the court holds that the Commissioner of the Alabama Department of Corrections and the Associate Commissioner of Health Services, in their official capacities, are violating the Eighth Amendment rights of the plaintiff class and of plaintiff Alabama Disabilities Advocacy Program’s constituents with serious mental-health needs who are in ADOC custody. Simply put, ADOC’s mental-health care is horrendously inadequate.”⁴⁴

Recommendations

■ At a minimum, Alabama should provide a mechanism for judges to review the sentences of people serving life without parole under the Habitual Federal Offender Act. **Judges should maintain jurisdiction or otherwise have the discretion to "look back" and resent these older individuals** with a demonstrated record of rehabilitation and participation in prison programming.

■ Lawmakers should **remove the possibility of life imprisonment without parole for robbery convictions**, joining Arkansas, Oklahoma, South Carolina, and Virginia. All exclude robbery from death-in-prison sentences or provide a release mechanism for older individuals.

■ Alabama should join a host of other southern states and **limit the types of prior offenses that can be used to enhance a sentence**. Currently minor offenses including drug possession, forgery, and burglary III (breaking into an empty building) can be used to enhance a sentence to life or life without parole.

■ The **reforms passed in 2015 should be applied retroactively**. Currently, people are serving sentences of life without parole for offenses committed in the 1980s and 1990s. The same offenses today would never permit a death-in-prison sentence.

■ Alabama should **require that offenses used for enhancement purposes arise out of separate incidents**, as do Arkansas, Georgia, Florida, Kentucky, North Carolina, South Carolina, Tennessee, and Virginia. Current charging laws and practices prosecutors to charge multiple felonies arising from a single incident.

Endnotes

- 1 Marc Mauer and Ashley Nellis, *The Meaning of Life: The Case for Abolishing Life Sentences*, (The New Press, 2018), 1-2. Discussing the case of Robert Stroud, who was convicted of multiple murders and imprisoned at Alcatraz, where he studied canaries, became a renowned ornithologist and authored two books. His story was captured in the Burt Lancaster film *Birdman of Alcatraz*.
 - 2 United States of America v. State of Alabama and the Alabama Department of Corrections, Case 2:20-cv-01971-JHE, at www.justice.gov/opa/press-release/file/1344011/download
 - 3 *Id.* at 12. (“Defendants, through their acts and omissions, fail to provide adequate programming, education, or work opportunities. Most ADOC prisoners receive no programming or employment, and the vast degree of idle time combined with lack of adequate supervision of prisoners results in increased opportunities to perpetuate misconduct and correspondingly increasing violence.”)
 - 4 Mauer and Nellis, *The Meaning of Life*, 134-35, citing Bureau of Justice Statistics data that shows the peak age for robbery is 19 and rates decline by more than half in the late twenties.
 - 5 Dana Goldstein, “Too Old to Commit Crime,” *The Marshall Project*, March 20, 2015, www.themarshallproject.org/2015/03/20/too-old-to-commit-crime. (“Research by the criminologist Alfred Blumstein of Carnegie Mellon and colleagues has found that for the eight serious crimes closely tracked by the F.B.I. — murder, rape, robbery, aggravated assault, burglary, larceny-theft, arson and car theft — five to 10 years is the typical duration that adults commit these crimes, as measured by arrests. Property criminals, like burglars and car thieves, tend to stop in their 20s, while violent criminals are more likely to continue into their early 30s.”)
 - 6 Mauer and Nellis, *The Meaning of Life*, 141-42.
 - 7 Shortly before publication, Appleseed learned Billy Rivers has been granted a medical furlough, a rare circumstance permitted only for prisoners with terminal illnesses.
 - 8 Alabama Department of Corrections, Fiscal Year 2012 Annual Report, Special Report on Aging, 43, at www.doc.state.al.us/docs/AnnualRpts/2012AnnualReport.pdf.
 - 9 Mauer and Nellis, 133-34, citing Howard N. Snyder, Alexia Cooper, and Joseph Mulako-Wangota, “Arrest Rates by Age for Robbery 2014” (Washington, D.C.: Bureau of Justice Statistics, 2017), generated using the Arrest Data Analysis Tool, October 26, 2017.
 - 10 Vincent Schiraldi, Bruce Western and Kendra Bradner, *Community-Based Responses to Justice-Involved Young Adults*, *New Thinking in Community Corrections*, Harvard Kennedy School; National Institute of Justice, Sept. 2015, at www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/ESCC-CommunityBasedResponsesJusticeInvolvedYA.pdf
 - 11 A Matter of Time, the Causes and Consequences of Rising Time Served in America’s Prisons, Leigh Courtney, Sarah Eppler-Epstein, Elizabeth Pelletier, Ryan King, and Serena Lei, The Urban Institute, July 2017.
 - 12 Mariel Alper, Ph.D., and Matthew R. Durose, Joshua Markman, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2018 Update on Prisoner Recidivism, A Nine-Year Followup Period (2005-2014) May 2018, 6, www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf
 - 13 Alabama Department of Corrections, Annual Reports 2000-2018, www.doc.state.al.us/StatReports.
 - 14 Alabama Department of Corrections, Annual Report Fiscal Year 2019, 16, www.doc.state.al.us/docs/AnnualRpts/2019%20Annual%20Report.pdf
 - 15 B. Jaye Anno, Ph.D., A. Camelia Graham, James E. Lawrence, Ronald Shansky, M.D., Correctional Health Care, Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates, National Institute of Corrections, Feb. 2004, 11, at <https://s3.amazonaws.com/static.nicic.gov/Library/018735.pdf>. See also, Matt McKillop & Alex Boucher, Aging Prison Populations Drive Up Costs, Pew Research Center, Feb. 20, 2018, at www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs.
 - 16 Mariel Alper, Ph.D., and Matthew R. Durose, Joshua Markman, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2018 Update on Prisoner Recidivism, A Nine-Year Followup Period (2005-2014) May 2018, 10, at www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf.
 - 17 Alper, Durose, and Markman, p. 11.
 - 18 406 F. Supp. 318 (1976).
 - 19 *Id.* at 329.
 - 20 *Id.*
 - 21 406 F. Supp. 318, 330 (1976).
 - 22 15 F. Supp. 2d 1210 (M.D. Ala. 1998)
 - 23 *Id.* at 1259.
 - 24 *Id.* at 1266.
 - 25 No. 2:92-CV-70 (M.D. Ala. Jun. 27, 2001) (case settled).
 - 26 Settlement Agreement 1, No. 2:92-CV-70 (M.D. Ala. Sep. 28, 2000), ECF No. PC-AL-0013-0004.
 - 27 Export Report of Kathryn Burns and Jane Haddad at 3, No. 2:92-CV-70 (M.D. Ala. 1995), ECF No. PC-AL-0013.0002, www.clearinghouse.net/chDocs/public/PC-AL-0013-0002.pdf
 - 28 *Id.* at 83.
 - 29 536 U.S. 730 (2002).
 - 30 *Id.* at 238 (internal citations omitted).
 - 31 536 U.S. 730, 744 (2002).
 - 32 234 F. Supp. 2d 1227 (M.D. Ala. 2002).
- Antonio Leatherwood and four other Limestone prisoners sued Donald Campbell, Commissioner of ADOC; Ronald Cavanaugh, Director of Treatment of ADOC; Billy Mitchem, Limestone’s

Warden; and David Wise, Deputy Warden in a 42 U.S.C. § 1983 class action suit for injunctive relief for all AIDS-afflicted Limestone prisoners. The impetus of the suit was to end the years of pain and suffering and ensure that medical care would improve.”

33 234 F. Supp. 2d 1227, 1252 (M.D. Ala. 2002).

34 Case no: 7:02-cv-02812-KOB.

35 *Id.*

36 Notice of *Findings from Investigation of Julia Tutwiler Prison for Women*, U.S. Dep't of Justice, Civil Rights Division, Special Litigation Section, Jan. 17, 2014.

37 *Id.* at 1.

38 *Id.*

39 *Id.* at 6.

40 257 F. Supp. 3d 1171 (M.D. Ala. 2017).

41 *Id.* at 1192.

42 *Id.* at 1249.

43 *Id.* at 1255-56.

44 *Id.* at 1267.

45 Alabama Sentencing Commission, 2020 Annual Report, 11-12; at <https://sentencingcommission.alacourt.gov/media/1105/2020-annual-report.pdf>.

ADDITIONAL READING

Carla Crowder

36 Years in Prison for a \$50 Robbery, When Will Alabama Stop Throwing People Away in Its Shameful Prisons
The New York Times, (Sept. 5, 2019)
www.nytimes.com/2019/09/05/opinion/alabama-sentencing.html

Marc Mauer and Ashley Nellis

The Meaning of Life: The Case for Abolishing Life Sentences
(The New Press, 2018)

Beth Shelburne

Alabama's Vending Machine Justice Victims Are Living Like Livestock
The Daily Beast, (Sept. 7, 2020)
www.thedailybeast.com/alabamas-merciless-habitual-offender-law-threw-away-the-least-among-us

Acknowledgements

THIS REPORT WOULD NOT BE POSSIBLE without incarcerated men in Alabama who were willing to share their stories with us in letters and phone calls. They revealed some of the most painful aspects of their lives to near strangers in hopes their struggles could help change our broken system. We are grateful to Joe Bennett, John Coleman, Richard Cottingham, Lee Earnest Davis, Edward Daughtry, Alonzo Hurth, James Oliver Jones, Myron Monroe, Billy Rivers, and many other older men in Alabama's prisons whose experiences and insights inform our work.

This report was written by Appleseed Legal Fellow Alex LaGanke and Executive Director Carla Crowder. Ms. LaGanke also provided legal research. Additional research was provided by Appleseed interns Eva Dorrrough and Isabel Coleman. Val Downes designed the report. Mark Leslie assisted with copyediting. This report benefited greatly from the breakthrough research of investigative journalist Beth Shelburne, whose collection of data and stories about the Alabama Habitual Felony Offender Act has been critical to changing the conversation about this draconian law, and who generously shared her data with us.

We are grateful to the National Football League Foundation that has generously funded Appleseed's work through its Inspire Change program. We could not have embarked on this project without the NFL's support.

This report is dedicated to the irrepressible Alvin Kennard, whose case first sparked Alabama Appleseed's involvement in HFOA reform. Mr. Kennard served 36 years for a \$50 robbery at a Bessemer bakery before being resentenced from life without parole to time served in August 2019. He emerged to fill the lives of his friends and family with joy and light and continues at age 60 to report to work daily at Town and Country Ford in Bessemer so that customers can enjoy freshly painted cars. He is an inspiration.

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CALL TO ACTION

FROM THE HONORABLE MICHAEL YOUNGPETER, MOBILE COUNTY'S PRESIDING JUDGE IN
THE CASE OF MICHAEL BLAIR, SENTENCED TO DIE IN PRISON FOR ROBBERY AT AGE 22

“[I]t was apparent ten years ago that Blair was not the same 22-year-old who committed a few non-violent felonies and then the robbery which led to the sentence in this case A simple review of this case shows that 30+ years in prison is enough. If the opportunity for a “do over” arises, the Court intends to resentence Blair so that he has the chance to be paroled.”

BLAIR V. STATE | MOBILE COUNTY CIRCUIT COURT | CASE NO. CC-1990-1352



ALABAMA APPLESEED
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