Governor's Study Group on Criminal Justice Policy

Compilation of Submissions

January 14, 2020

The Governor's Study Group on Criminal Justice Policy

Date: July 22, 2019

Time: 10:00 A.M.

Location: Alabama Statehouse Room 807

Chairman

Justice Champ Lyons

Members

Attorney General Steve Marshall	Senator Cam Ward	Representative Jim Hill
Finance Director Kelly Butler	Senator Bobby Singleton	Representative Connie Rowe
Corrections Commissioner Jeff Dunn	Senator Clyde Chambliss	Representative Chris England

Agenda

Call to Order & Welcome ..... Justice Lyons

Group Member Introductions ..... Individual Members

Overview of DOC Legal Challenges ..... Bill Lunsford

Questions & Answers ..... Bill Lunsford

Next Steps & Adjournment ..... Justice Lyons

The Governor's Study Group on Criminal Justice Policy
Suggested Meeting Timeline

Time	Description
Late July 2019	Organizational Meeting Overview of DOC Legal Challenges
August 2019	Prison Tour
Late August 2019	Improving DOC Operations to Enhance Staff and Inmate Security
Late September 2019	Data-Based Evaluation of Sentencing Policy
Late October 2019	Strategies for Reducing Recidivism
January 2020	Final meeting to discuss findings

BRIEFING ON ALABAMA PRISON LITIGATION

WILLIAM (BILL) R. LUNSFORD
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JULY 22, 2019

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A Historical Perspective

ALABAMA
Department of Corrections

FISCAL YEAR 2009
ANNUAL REPORT

2009 ADOC Fiscal Report

"The Alabama Department of Corrections continues to confront four major problems . . .

- Prison crowding at medium and higher security facilities;
- Personnel shortages, including Correctional Officer level;
- An aging and poorly maintained physical plant; and
- Rising health care cost for inmates."

2009: ADOC STAFFING

"...the continued loss of ***200 to 300 officers each year*** – some due to retirement but many due to transfers to other law enforcement jobs – will make it extremely difficult to overcome our staffing shortages in the short term." (p. 21)

2009: ADOC Facilities

"All facilities are in need of some repair; some need major renovations and some may not be economically repairable at all. Almost none of our facilities meet the federal Americans with Disabilities Act requirements. The deferred maintenance cost to address facility renovation requirements is approximately ***$100 million.***" (p. 21)

2009: Prison Health Care

"The cost of inmate health care spiraled by 295% during the time from 2000 to FY 2005…" (p. 21)

2009 v. 2019

	2009	2019	% Change
In-Custody Population	25,593	20,723	(23.5%)
Total Security Staff	3,043	2,074	(31.8%)
Health Care Costs (in millions)	$93.9	$141.3	150.5%
Deferred Maintenance Costs (in millions)	$100	$750	750.0%

Braggs v. Dunn, Case No. 2:14-cv-062-MHT

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"I COMMAND YOU TO GO NOW AND MAKE ALL PRISONS PERFECT... AND TAKE THIS WITH YOU!"

Braggs: Major Issues

1. ADA compliance;
2. Correctional staffing;
3. Mental health care; and
4. Medical and dental care.

BRAGGS: TIMELINE

June 2014 - Suit filed

May 2016 - ADA claims resolved

Dec. 2017 - Mental health trial

June 2017 - Court finds liability

Braggs: The Compliance Phase

- Correctional staffing
- Mental health staffing
- In-patient (hospital) care
- Mental health coding
- Mental health identification and classification (intake)

Braggs: The Compliance Phase

- Restrictive housing
- Disciplinary process
- Mental health referrals
- Mental health treatment planning
- Alternative housing for SMI inmates
- Psychotherapy and confidentiality

Braggs: Remaining Issues

- Suicide prevention;
- Specialized mental health units;
- Miscellaneous mental health matters; and
- Monitoring.

BRAGGS: STAFFING INITIATIVES

- Targeted marketing campaign
- Increase CO starting compensation
- Sign-on/retention bonus
- Increase internal referral bonus
- Outsource recruiting or bolster ADOC recruiting team
- Increase use of digital/social media marketing
- On-line/mobile application process
- Applicant Tracking System
- Improve applicant communicate with recruiters/personnel

BRAGGS: STAFFING INITIATIVES

- Create a new classification of officer (BCO)
- Security position trained for specific posts/duties
- Extend provisional time
- Recruit non-traditional candidates
- More on-site testing events
- Improve on-site hospitality
- Use data-driven recruiting strategies
- Develop long-term talent management model
- Evaluate fitness standards

U.S. DEPARTMENT OF JUSTICE INVESTIGATION

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Civil Rights of Institutionalized Persons Act

(Eighth Amendment)

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CRIPA: 42 U.S.C. § 1997

- Permits DOJ to investigate/sue
- Findings letter at least 49 days before suit
- "Reasonable good faith effort to consult"
- Equitable relief (*not money damages*)

DOJ Investigation of ADOC's Male Facilities

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DOJ Investigation

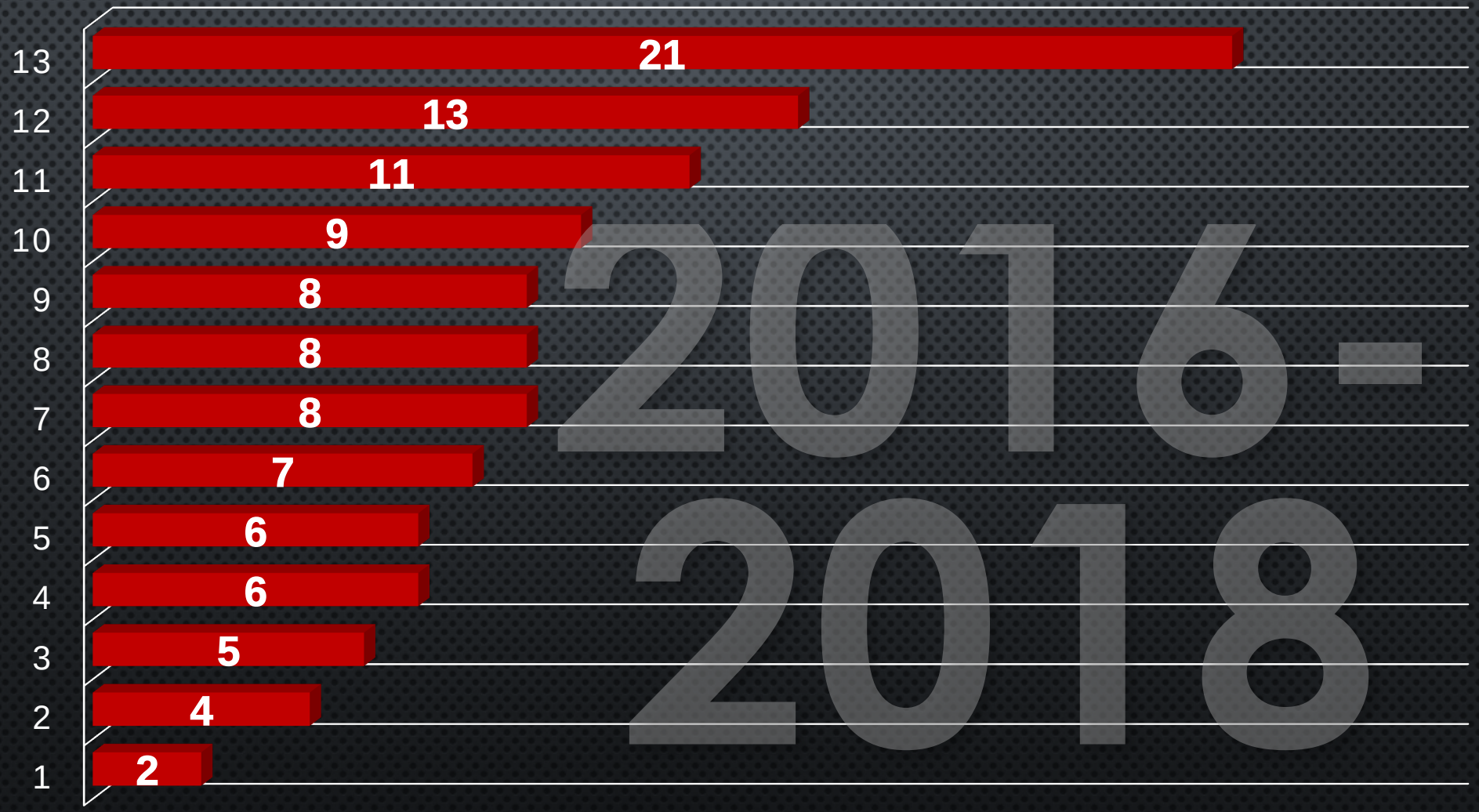
- Began investigation in October, 2016;
- Investigated broad spectrum of issues;
- Requested troves of documents; and
- Visited 3 of 13 current male prisons.

DOJ Allegations

- Issued findings letter: April 2, 2019.
- Alleged violations for:
  - Inmate-on-inmate violence; and
  - Unsafe, unsanitary living conditions.
- Still investigating possible excessive force by staff.

TOTAL INCIDENTS BY FACILITY

US DOJ REPORT (APR. 2019)



DOJ: Issues for Resolution

- Correctional staffing;
- Facility security improvements, including cameras;
- Prisoner classification;
- Detection and prevention of contraband;
- Inmate programming;
- Violence reporting and investigations; and
- PREA reporting and investigations.

Prison Litigation Reform Act

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PLRA: Inmate Release

(3) Prisoner release order.—

(A) In any civil action with respect to prison conditions, no court shall enter a prisoner release order unless—

(i) a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order; and

(ii) the defendant has had a reasonable amount of time to comply with the previous court orders.

PLRA: Release Panel

(E) The three-judge court shall enter a prisoner release order only if the court finds by clear and convincing evidence that—

(i) crowding is the primary cause of the violation of a Federal right; and

(ii) no other relief will remedy the violation of the Federal right.

Brown v. Plata,
563 U.S. 493 (2011)

- Mental health (1990) and medical (2001);
- 200% of design capacity for 11 years;
- Underlying order required California to attain 137% of design capacity; and
- Special master / receiver blamed overcrowding for non-compliance.

Plata: Holding

"A long history of failed remedial orders, together with substantial evidence of overcrowding's deleterious effects on the provision of care, compels [the Court's] conclusion today."

Plata: Key Points

- ✓ 10+ years of failed efforts
- ✓ Lacked support for other remedial measures

QUESTIONS

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE

MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

EDWARD BRAGGS, et al.,	)	
	)	
Plaintiffs,	)	
	)	**CIVIL ACTION NO.**
v.	)	**2:14cv601-MHT**
	)	**(WO)**
JEFFERSON S. DUNN, in his official capacity as Commissioner of the Alabama Department of Corrections, et al.,	)	
	)	
Defendants.	)	

LIABILITY OPINION AND ORDER
AS TO PHASE 2A EIGHTH AMENDMENT CLAIM

I. INTRODUCTION

The plaintiffs in this phase of this class-action lawsuit are a group of seriously mentally ill state prisoners and the Alabama Disabilities Advocacy Program (ADAP), which represents mentally ill prisoners in

Alabama. The defendants are the Commissioner of the Alabama Department of Corrections (ADOC), Jefferson Dunn, and the Associate Commissioner of Health Services, Ruth Naglich, who are sued only in their official capacities. The plaintiffs assert that the State of Alabama provides constitutionally inadequate mental-health care in prison facilities and seek injunctive and declaratory relief. They rely on the Eighth Amendment, made applicable to the States by the Fourteenth Amendment and as enforced through 42 U.S.C. § 1983. Jurisdiction is proper under 28 U.S.C. § 1331 (federal question) and § 1343(a)(3) (civil rights).

After a lengthy trial, this claim is now before the court for resolution on the merits. Upon consideration of the evidence and arguments, the court finds for the plaintiffs in substantial part. Surprisingly, the evidence from both sides (including testimony from Commissioner Dunn and Associate Commissioner Naglich as well as that of all experts) extensively and materially supported the plaintiffs' claim.

II. PROCEDURAL BACKGROUND

This extremely complex case has been split into three phases: Phase 1 involved claims under Title II of the Americans with Disabilities Act (ADA), codified at 42 U.S.C. § 12131 et seq., and § 504 of the Rehabilitation Act, codified at 29 U.S.C. § 794, claiming discrimination on the basis of physical disabilities and failure to accommodate those disabilities. The parties settled Phase 1. See Dunn v. Dunn, 318 F.R.D. 652 (M.D. Ala. 2016) (Thompson, J.). Phase 2A involves Eighth Amendment, ADA, Rehabilitation Act, and due-process claims regarding mental-health care. The parties settled the Phase 2A ADA and Rehabilitation Act claim. The due-process claims are pending before the court for settlement approval.[1] Phase 2B will focus on medical-care and dental-care claims under the Eighth Amendment.

1. Earlier in the litigation, the parties also reached a settlement regarding the distribution of razor blades to mentally ill prisoners.

This opinion resolves only the Phase 2A Eighth Amendment claim of inadequate mental-health care.[2] The court has certified a Phase 2A plaintiff class consisting of all persons with a serious mental illness who are, or will be, confined within ADOC's facilities, excluding Tutwiler Prison for Women and the work-release centers. See Braggs v. Dunn, 317 F.R.D. 634 (M.D. Ala. 2016) (Thompson, J.). While mentally ill prisoners at Tutwiler are not part of the class, ADAP, as Alabama's designated protection and advocacy organization for the mentally ill, brought claims on their behalf. A seven-week trial followed.

III. FACTUAL BACKGROUND

Mental-health care in this opinion refers to screening, treatment, and monitoring of mental illnesses,

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2. The defendants did not raise or re-argue exhaustion of administrative remedies during or after the trial, and did not argue exhaustion in their post-trial filings as a reason they should prevail. See Defendants' Post-Trial Brief (doc. no. 1282); see also Dunn v. Dunn, 219 F. Supp. 3d 1100 (M.D. Ala. 2016).

as well as ADOC's policies and practices regarding mentally ill prisoners, including decisions on disciplinary sanctions and housing placements.[3] Before diving in to the details of weeks' worth of testimony and thousands of pages of documentary evidence regarding mental-health care within ADOC, the court pauses to provide some background information on ADOC and its mental-health contractor, as well as a summary of the factual findings.

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3. The provision of mental-health care to Alabama's prisoners has been litigated at least three times before. See Laube v. Campbell, 333 F. Supp. 2d 1234 (M.D. Ala. 2004) (Thompson, J.) (approving settlement agreement that provides for inpatient care, suicide prevention and treatment, crisis intervention, and counseling services in a class-action lawsuit brought on behalf of women incarcerated in Alabama); Bradley v. Harrelson, 151 F.R.D. 422 (M.D. Ala. 1993) (Albritton, J.) (certifying a class of severely mentally ill male prisoners); Pugh v. Locke, 406 F. Supp. 318 (M.D. Ala. 1976) (Johnson, J.) (ordering the State to provide minimally adequate mental-health care, including identification of mentally ill prisoners and provision of care by qualified mental-health professionals), aff'd and remanded sub nom. Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977), cert. granted in part, judgment rev'd in part on other grounds, and remanded sub nom. Alabama v. Pugh, 438 U.S. 781 (1978).

A. ADOC Facilities and Organizational Structure

ADOC runs 15 major facilities (14 for men and the Tutwiler Prison for Women) and houses around 19,500 prisoners in its major facilities.[4] Approximately 3,400 prisoners are on the mental-health caseload, meaning that they receive some type of mental-health treatment, such as counseling or psychotropic medications.

MAJOR ADOC FACILITIES[5]

Facility	Location	Population
Bibb	Brent	1847
Bullock	Union Springs	1522
Donaldson	Bessemer	1474
Draper	Elmore	1144
Easterling	Clio	1457
Elmore	Elmore	1186
Fountain	Atmore	1242

4. ADOC also houses an additional 4,500 prisoners in work centers and work-release centers, bringing the total population in custody to around 24,000.

5. See Pl. Ex. 1260, September 2016 Monthly Statistical Report (doc. no. 1097-19).

Hamilton	**Hamilton**	**275**
Holman	**Atmore**	**941**
Kilby	**Mt. Meigs**	**1126**
Limestone	**Harvest**	**2214**
St. Clair	**Springville**	**975**
Staton	**Elmore**	**1382**
Ventress	**Clayton**	**1254**
Tutwiler	**Wetumpka**	**880**

Three of the major facilities, Bullock, Donaldson, and Tutwiler, serve as 'treatment hubs' for mental-health services, containing a residential treatment unit (RTU) and/or a stabilization unit (SU). These two types of units, together referred to as 'mental-health units' or 'inpatient-care units,' house and treat the most severely mentally ill prisoners. The rest of those on the mental-health caseload receive their care through outpatient services: they live in a unit that is not focused on treatment and ordinarily must go to a

different part of the prison to see a mental-health provider.

Under the administrative regulations governing ADOC's mental-health care, RTUs are for mental-health patients who suffer from "moderate impairment in mental health functioning" that puts them at risk in a general-population setting. Joint Ex. 107, Admin. Reg. § 613-2 (doc. no. 1038-130). RTUs are intended to provide a therapeutic environment to mentally ill patients and to help them develop coping skills necessary for placement in general population. RTUs can be 'closed,' meaning that each patient lives in an individual cell with little time spent outside the cell; 'semi-closed,' meaning that the patient still stays in an individual cell but is let out of the cell more often; or 'open,' meaning that the patient lives in an open dormitory with other RTU patients.

SUs are for patients who are suffering from acute mental-health problems--such as acute psychosis or other conditions causing an acute risk of self-harm--and have

not been stabilized through other interventions. SUs are intended to stabilize the patient as quickly as possible so that the patient can return to a less restrictive environment. All SU patients are housed in individual cells.

Altogether, the two male treatment hubs have 346 RTU beds and 30 SU beds: Bullock has 250 RTU beds and a 30-bed SU for male prisoners, and Donaldson has an additional 96-bed RTU. Tutwiler has 30 RTU beds and eight SU beds for women. These units provide services to about 2 % of ADOC's overall population.

ADOC is headed by Commissioner Dunn. Associate Commissioner for Health Services Naglich heads the Office of Health Services (OHS), which is responsible for overseeing the provision of medical and mental-health care to prisoners. ADOC uses private contractors to deliver medical and mental-health care services to prisoners. Under the mental-health contract with a third-party vendor, OHS has access to the contractor's internal documents and records, and the contractor is

required to send certain reports, such as monthly operating reports and annual contract-compliance reports, to OHS. The only OHS staff member with mental-health expertise is Dr. David Tytell, the chief clinical psychologist. Dr. Tytell serves as the main liaison between the mental-health contractor and ADOC, and communicates with the contractor's program director at least weekly. ADOC also directly employs 'psychological associates,' who are counselors responsible for conducting certain psychological tests at intake and for providing group sessions and classes for non-mentally ill prisoners. They report to their respective facilities' wardens, rather than OHS or the mental-health contractor.

B. MHM Organizational Structure

MHM Correctional Services, Inc. is ADOC's contractor for mental-health care. MHM is a for-profit corporation that provides medical and mental-health services to correctional facilities across the country.

MHM's regional office in Alabama is headed by its program director Teresa Houser. She serves as the main liaison between ADOC and MHM. Dr. Robert Hunter, a psychiatrist who serves as the medical director for the Alabama regional office, is charged with supervising psychiatrists and certified registered nurse practitioners (CRNP) stationed at various ADOC facilities. Both Houser and Hunter communicate frequently with ADOC officials, including Associate Commissioner Naglich and Dr. Tytell.

MHM employs a variety of administrative and clinical personnel to fulfill its contract with ADOC. In its regional office, Houser supervises various administrators and managers, such as the continuous quality improvement (CQI) manager, who conducts informal audits of MHM's performance, and the chief psychologist, who supervises psychologists and conducts training for MHM employees. At the facility level, MHM employs site administrators to provide administrative oversight; these administrators are counselors by training. MHM

also employs approximately 45 full-time 'mental-health professionals' (MHPs), who are masters-level mental-health counselors, at prisons across the State. As of December 2016, MHM employed four psychiatrists and eight CRNPs in Alabama; these providers are qualified to diagnose mental illnesses, prescribe psychotropic medication, and provide psychotherapy across multiple facilities. MHM also employs three psychologists and three registered nurses (RNs) for the entire State. The RNs are stationed at the three treatment hubs, Bullock, Donaldson, and Tutwiler; they administer medication, provide crisis intervention, and supervise the licensed practical nurses (LPNs) at their facilities. MHM employs approximately 40 LPNs, individuals with 12 to 15 months of health-care training. The LPNs are responsible for conducting mental-health intake at Kilby and Tutwiler, monitoring medication compliance, maintaining medication records, and conducting side-effects monitoring tests for psychotropic medications. While the LPNs stationed in the mental-health treatment units are supervised by the

on-site RN, at all other places, including at intake screening, LPNs have no on-site supervision. Lastly, MHM employs six to eight activity technicians, who organize or assist in therapeutic, social, and recreational activities for patients in mental-health units.

C. Summary of Factual Findings

1. Fact Witnesses

Over the course of seven weeks, the court heard testimony as to whether ADOC's mental-health care violates mentally ill prisoners' constitutional rights. The trial opened with the testimony of prisoner Jamie Wallace, who suffered from severe mental illnesses, intellectual disability, and substantial physical disabilities. Wallace stated that he had tried to kill himself many times, showed the court the scars on arms where he made repeated attempts, and complained that he had not received sufficient treatment for his illness. Because of his mental illness, he became so agitated during his testimony that the court had to recess and

reconvene to hear his testimony in the quiet of the chambers library and then coax him into completing his testimony as if he were a fearful child. The court was extremely concerned, by what it had seen and heard from this plaintiff, about the fragility of his mental health. At the end of Wallace's testimony and out of his presence, the court informed the attorneys for both sides that it wanted a full report on his mental condition and the steps that were being taken to address that condition. Unfortunately, and most tragically, ten days after Wallace testified, he killed himself by hanging. Because it appeared that adequate measures may not have been put in place to prevent Wallace's suicide, the court put the parties into mediation to attempt to come up with immediate, interim procedures to prevent future prisoner suicides. The parties eventually came up with such procedures. Without question, Wallace's testimony and the tragic event that followed darkly draped all the subsequent testimony like a pall.

The plaintiffs' case then proceeded with testimony from Commissioner Dunn, who aptly described the prison system as wrestling with a "two-headed monster": overcrowding and understaffing. Dunn Testimony at 26. The court also heard from Associate Commissioner Naglich and MHM's program director Houser, for whom overcrowding and understaffing (both as to correctional staff, as noted by Dunn, and mental-health staff) were a mantra. They, with admirable candor, as with many other fact witnesses and the experts from both sides, essentially agreed that the staffing shortages, combined with persistent and significant overcrowding, contribute to serious systemic deficiencies in the delivery of mental-health care.

The inadequacies in the mental-health care system start at the door, with intake screening for prisoners who need mental-health care. ADOC boasts one of the lowest mental-illness prevalence rates among correctional systems in the country. But this is not because Alabama has fewer mentally ill prisoners than the

rest of the country or the best mental-health care system for its prisoners; rather, according to experts from both sides, this is because a substantial number--likely thousands--of prisoners with mental illness are missed at intake and referrals for evaluation and treatment are neglected. As a result, many ADOC prisoners who need mental-health care go untreated.

Even when identified, mentally ill prisoners receive significantly inadequate care. Mental-health and correctional staffing shortages drive inadequate treatment. Individual and group counseling sessions are delayed or canceled due to shortages of counselors and correctional officers to escort prisoners to the sessions and to provide security. As a result, mental-health staff often have to resort to cell-side contacts, which cannot be considered substitutes for meaningful, confidential, out-of-cell appointments. Treatment planning is often pro forma and not individualized and fails to provide a meaningful and consistent course of treatment. Mental-health units intended as a therapeutic

environment for the most severely ill prisoners operate like segregation units, with little counseling, therapeutic programming, or out-of-cell time. ADOC does not provide hospital-level care for those who need it.

ADOC also fails to provide adequate care to prisoners expressing suicidality and undergoing mental-health crises. Mental-health staff fail to use appropriate risk-assessment tools to determine suicide risk. ADOC has an insufficient number of crisis, or 'suicide-watch,' cells--special cells for the protection of suicidal prisoners. Because they have a limited number of cells to work with, they gamble on which prisoners to put in them and frequently discount prisoners' threats of self-harm and suicide. The insufficient number of crisis cells also results in the use of unsafe rooms such as shift offices to house suicidal prisoners. The suicide-watch cells that do exist are dangerous: visibility into many of the cells is poor, making it difficult to monitor; many cells have tie-off points for ligatures that can be used for suicide attempts;

dangerous items used for inflicting self-injury are often found. Prisoners in these cells receive less contact with and less monitoring by providers than the acuity of their condition demands. When they are released to general population or segregation, prisoners receive inadequate follow-up.

ADOC's segregation practices inflict further harm on prisoners suffering from inadequate mental-health care. Due to the effects of isolation, placement in segregation endangers mentally ill prisoners, and the risk of harm increases with the length of isolation and the severity of their mental illness. This danger is compounded by the limited access to mental-health care and monitoring available within ADOC's segregation units and dangerous conditions inside the cells. Despite these dangers, ADOC does not have a meaningful mechanism that prevents mentally ill prisoners from being placed in segregation for lengthy periods of time. Moreover, many mentally ill prisoners land in segregation due to symptoms of

mental illness. This combination of conditions is often deadly: most suicides in ADOC occur in segregation.

For years, ADOC has failed to respond reasonably to these problems. Despite knowledge of serious and widespread deficiencies, it has failed to remedy known problems and exercised very little oversight of its mental-health care contractor. Associate Commissioner Naglich, who is in charge of contract monitoring, admitted that she has been aware of the contractor's deficient performance and inadequate quality-control process; however, she does not monitor the contractor to ensure that it provides minimally adequate care. Moreover, ADOC officials admitted on the stand that they have done little to nothing to fix problems on the ground, despite their knowledge that those problems may be putting lives at risk.

The psychological and sometimes physical harm arising from these systemic deficiencies is palpable. Unidentified and under-treated mental illness causes needless pain and suffering in the form of persistent or

worsening symptoms, decompensation,[6] self-injurious behavior, and suicide. The skyrocketing suicide rate within ADOC in the last two years is a testament to the concrete harm that inadequate mental-health care has already inflicted on mentally ill prisoners.

In fact, as explained earlier, the court had a close encounter with one of the tragic consequences of inadequate mental-health care during the trial. Over the course of the trial, two prisoners committed suicide, one of whom was named plaintiff Jamie Wallace. Prior to his suicide, defendants' expert, Dr. Patterson, concluded based on a review of Wallace's medical records that the care he had received was inadequate. Dr. Haney, a correctional mental-health care expert, met Wallace months before his death, while he was housed in a residential treatment unit, and in his report expressed

6. Decompensation refers to exacerbation of symptoms of mental illness and impaired mental functioning; it calls for a "more structured or sheltered setting for more intensive treatment interventions." Burns Testimony at vol. 1, 173.

serious concerns about the care he was receiving.[7] Wallace's case was emblematic of multiple systemic deficiencies. Wallace testified, and his records reflected, that mental-health staff did not provide much in the way of consistent psychotherapeutic treatment, which is distinct from medications administered by nurses and cursory 'check-ins' with staff. MHM clinicians recommended that he be transferred to a mental-health hospital, but ADOC failed to do so. His psychiatrist at the time of his death testified that the medically appropriate combination of supervised out-of-cell time and close monitoring when he was in his cell was unavailable due to a shortage of correctional officers. As a result, Wallace was left alone for days in an isolated cell in a treatment unit, where he had enough time to tie a sheet unnoticed; because his cell was not suicide-proof, he was able to find a tie-off point from which to hang himself.

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7. During their meeting, Wallace began to cry, leaned over the interview table, and told Dr. Haney, with tragic prescience, "[T]his place is killing me." Joint Ex. 459, Haney Expert Report (doc. no. 1038-1043) at 40.

The case of Jamie Wallace is powerful evidence of the real, concrete, and terribly permanent harms that woefully inadequate mental-health care inflicts on mentally ill prisoners in Alabama. Without systemic changes that address these pervasive and grave deficiencies, mentally ill prisoners in ADOC, whose symptoms are no less real than Wallace's, will continue to suffer.

2. Expert Witnesses

Plaintiffs and defendants presented five experts in the correctional mental health and correctional administration fields.[8] By and large, experts from both sides agreed that ADOC facilities are suffering from severe systemic deficiencies that are affecting the delivery of mental-health care. For example, experts from both sides agreed that ADOC suffers from severe

8. In a separate order with an opinion to follow, the court finds that four of the experts' methodologies survive Daubert challenges. No objection was raised against plaintiffs' expert Dr. Craig Haney.

overcrowding; correctional understaffing; mental-health staff shortages; deficient treatment planning; inadequate psychotherapy; inadequate use of mental-health units; inappropriate placement of segregation inmates; and inappropriate use of segregation for mentally ill prisoners.

Defendants' correctional mental-health care expert, Dr. Raymond Patterson, is a forensic psychiatrist who has worked for various state and federal correctional institutions as a provider and as a consultant. In preparation for his testimony, he reviewed the individual plaintiffs' medical records and deposition transcripts, visited and conducted audits of six facilities, and reviewed ADOC regulations, MHM policies and procedures, MHM monthly reports, and other expert reports. His conclusions regarding systemic deficiencies in ADOC's mental-health care system largely tracked those of Dr. Kathryn Burns, one of the plaintiffs' experts: he credibly concluded that ADOC needs more mental-health staff; ADOC's identification and classification of mental

illness are inadequate; MHM's unlicensed practitioners should be supervised; treatment planning is deficient; too few patients are getting inpatient care; ADOC should provide hospitalization as an option for the most severely ill patients; and suicide prevention measures are inadequate.[9]

Defense expert Robert Ayers is a correctional administration expert who has been involved in the California prison system for over 40 years. In preparation for giving his opinion, Ayers reviewed plaintiffs' expert reports, visited six facilities, and talked with ADOC and MHM staff during those visits. He agreed with plaintiffs' experts that ADOC facilities are

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9. Based on his review of medical records and deposition testimony, Dr. Patterson also offered his opinions about whether individual plaintiffs' care was adequate. However, because this is a case alleging systemic inadequacies in the delivery of mental-health care, the court need not determine the adequacy of care for any particular individual. Furthermore, because Dr. Patterson did not meet with any of the plaintiffs, and deposition transcripts, by Dr. Patterson's own admission, are not a reliable source for determining credibility or making clinical diagnoses of an individual, the court gives little weight to his opinions as to whether the care provided to the individual plaintiffs was adequate.

understaffed and overcrowded. He opined that ADOC's written policies related to mental-health care seemed to be adequate. However, he credibly explained that, mainly due to the severe understaffing and the lack of documentation, he had reasons to doubt that correctional officers and mental-health staff were actually complying with ADOC policies and procedures. He also concluded that ADOC was not providing an adequate level of care to all prisoners with mental-health needs.

Dr. Kathryn Burns, the chief psychiatrist for the Ohio Department of Rehabilitation and Correction, is a correctional mental-health expert for the plaintiffs. To prepare for her testimony, Dr. Burns visited nine major ADOC facilities, touring housing units, mental-health treatment areas, and crisis cells; she held formal interviews with 77 prisoners and spoke to an additional 25 prisoners at cell-front; she also reviewed documents such as medical records, ADOC regulations, MHM's quality-improvement (or 'continuous quality improvement' or 'CQI') and multidisciplinary-team meeting minutes,

suicide tracking sheets, and audit results. Based on her review of this evidence, she identified a wide range of problems in the delivery of mental-health care, including: insufficient mental-health staffing and correctional staffing; inadequate identification and classification of mental illness; inadequate treatment, including cursory counseling appointments, inadequate treatment plans, dearth of group counseling, and inadequate use of mental-health units; and inadequate response to self-injurious behavior and mental-health crises. Dr. Burns credibly opined that these inadequacies, separately and taken together, subject mentally ill prisoners to a substantial risk of harm from untreated symptoms, continued pain and suffering, decompensation, self-injurious behavior, and suicide.

Dr. Craig Haney, a professor of psychology at the University of California Santa Cruz, is an expert for the plaintiffs in the psychological effects on prisoners of incarceration and particularly of segregation. His testimony focused on the state of segregation units and

their impact on prisoners' mental health, based on his visits to seven facilities, interviews with numerous prisoners, and review of documents such as deposition transcripts of ADOC and MHM personnel, medical records, monthly statistical reports, and quality-assurance documents, among others. He testified that segregation units he saw were "degraded, dilapidated, deplorable," and that these units and conditions have a significant negative psychological impact on prisoners. Haney Testimony at vol. 1, 79. Furthermore, he explained how ADOC's segregation practices harm mental health of all prisoners, and especially that of prisoners who are already mentally ill.

Lastly, plaintiffs' expert Eldon Vail is a correctional administration expert who has worked in corrections for over 30 years. Vail toured seven prisons, spending a day at each, and conducted confidential interviews with 42 prisoners. He also reviewed ADOC policies and procedures, meeting minutes, reports and logs generated by ADOC, deposition testimony of ADOC and

MHM personnel, and other documentary evidence. His testimony focused on matters of prison administration, including security, staffing, and behavior management, and the impact of these factors on the provision of mental-health care and on prisoners' mental health. He credibly testified that the level of correctional understaffing at ADOC was so low as to be "shocking," and that it has cascading effects on mental-health care: inadequate staff to transport prisoners to appointments and supervise treatment activities; inadequate staff to monitor segregation inmates, who have higher suicide risks; and overcrowded crisis cells filled with prisoners who feel unsafe due to violence in general-population dorms. Vail Testimony at vol. 1, 34.

IV. EIGHTH AMENDMENT LEGAL STANDARD

The Eighth Amendment's prohibition on "cruel and unusual punishments" extends to a State's failure to provide minimally adequate medical care that "may result in pain and suffering which no one suggests would serve

any penological purpose." Estelle v. Gamble, 429 U.S. 97, 103 (1976); Harris v. Thigpen, 941 F.2d 1495, 1504 (11th Cir. 1991) ("Federal and state governments ... have a constitutional obligation to provide minimally adequate medical care to those whom they are punishing by incarceration."). The State's obligation to provide medical care to prisoners includes psychiatric and mental-health care. Rogers v. Evans, 792 F.2d 1052, 1058 (11th Cir. 1986) ("Failure to provide basic psychiatric and mental-health care states a claim of deliberate indifference to the serious medical needs of prisoners."). The 'basic' mental-health care that States must provide if needed by a prisoner includes not only medication but also psychotherapeutic treatment. See Greason v. Kemp, 891 F.2d 829, 834 (11th Cir. 1990) ("Even if this case involved failure to provide psychotherapy or psychological counselling alone, the court would still conclude that the psychiatric care was sufficiently similar to medical treatment to bring it within the embrace of Estelle."). The State's obligation remains

even if it has contracted with private parties to provide medical care. West v. Atkins, 487 U.S. 42, 56 (1988). That is, the State is liable for the contractor's unconstitutional policies and practices if the contractor is allowed to determine policy either "expressly or by default." Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 706 n.11 (11th Cir. 1985).

To prevail on an Eighth Amendment challenge, plaintiffs must prove that prison officials acted with deliberate indifference to serious medical needs. Estelle, 429 U.S. at 105-06. This inquiry consists of both objective and subjective tests. The objective test requires showing that the prisoner has "serious medical needs," Estelle, 429 U.S. at 104, and either has already been harmed or been "incarcerated under conditions posing a substantial risk of serious harm." Farmer v. Brennan, 511 U.S. 825, 834 (1994). Subjectively, a prisoner must show that a prison official acted with deliberate indifference to that harm or risk of harm: that is, the official must have "known[] of and disregarded[] an

excessive risk to inmate health or safety." Id. at 837; see also Farrow v. West, 320 F.3d 1235, 1245 (11th Cir. 2003).

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this section, the court first discusses the basis for its finding that the plaintiffs have serious mental-health needs that require mental-health treatment. The court then lays out the common factors contributing to the substantial risks of harm in ADOC: shortages of mental-health staff, understaffing of correctional officers, and overcrowding. After that, the court proceeds through seven different ways in which ADOC's mental-health care system has caused actual harm and a substantial risk of serious harm; the treatment of mentally ill prisoners at Tutwiler; issues on which the court does not, at this time, find for the plaintiffs; and the defendants' knowledge of such harm and risks, and their failure to act in a reasonable manner to mitigate those risks. The section concludes with a discussion of

the defendants' legal defenses based on Ex parte Young, 209 U.S. 123 (1908).

A. Serious Mental-Health Needs

To prove an Eighth Amendment claim based on inadequate mental-health care, plaintiffs must show that they have serious mental-health care needs. A serious need is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." Farrow v. West, 320 F.3d 1235, 1243 (11th Cir. 2003). Thus, courts may find the existence of serious needs even when prison staff have failed to recognize an inmate's need for treatment. Danley v. Allen, 540 F.3d 1298, 1310-11 (11th Cir. 2008) (finding that plaintiff, whose requests to see a nurse had been rebuffed, demonstrated a serious medical need in that he had difficulty breathing and swollen, burning eyes, and a fellow inmate brought his condition to the attention of correctional officers), overruled on other grounds,

Randall v. Scott, 610 F.3d 701, 709 (11th Cir. 2010). A serious mental-health care need was found where a doctor, nurse, and correctional officials recognized that a prisoner "engaged in self harm" and "showed outward signs of mania and depression." Jacoby v. Baldwin Cty., 596 F. App'x 757, 763 (11th Cir. 2014).

One of the factors that courts consider in finding a serious medical need is "whether a delay in treating the need worsens it." Danley, 540 F.3d at 1310. "The tolerable length of delay in providing medical attention depends on the nature of the medical need and the reason for the delay." Hill v. Dekalb Reg'l Youth Det. Ctr., 40 F.3d 1176, 1188 (11th Cir. 1994) (citation omitted). Factors relevant to determining the tolerable length of delay include the "seriousness of the medical need," "whether the delay worsened the medical condition," and "the reason for delay." Id. at 1189.

Because this is a Rule 23(b)(2) class action lawsuit challenging defendants' actions "on [a] ground[] that appl[ies] generally to the class"--that is, defendants'

provision of inadequate mental-health care--the plaintiffs must show that serious mental-health needs exist on a system-wide basis, rather than on an individual basis.[10] Fed. R. Civ. P. 23(b)(2). As explained in the class-certification opinion, the plaintiffs' claim and the remedies they seek are systemic. Braggs v. Dunn, 318 F.R.D. 652, 667 (M.D. Ala. 2016). In other words, "plaintiffs are not seeking adjudication of demands for particular individualized treatment," and any relief the court grants "would be appropriate for everyone subjected to the substantial risk of serious harm plaintiffs claim [ADOC's inadequate mental-health care system] creates--that is, prisoners with serious mental illness." Id. at 668.

It is clear that a number of prisoners in ADOC's custody have serious mental-health needs, and the issue

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10. Earlier in the litigation, this court certified a class consisting of "persons with a serious mental-health disorder or illness who are now, or will in the future be, subject to defendants' mental-health care policies and practices in ADOC facilities, excluding work-release centers and Tutwiler Prison for Women." Braggs v. Dunn, 317 F.R.D. 634, 640 (M.D. Ala. 2016) (Thompson, J.).

is undisputed. As a preliminary matter, MHM places prisoners on the caseload only if they have been diagnosed with a condition that requires treatment. Therefore, all prisoners on the caseload meet the legal requirement for having a serious mental-health need. Prisoners on the mental-health caseload have wide-ranging illnesses, such as bipolar disorder, schizophrenia, schizoaffective disorder, major depressive disorder, mood disorders, borderline personality disorder, anxiety, and PTSD.[11]

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11. The concept of 'serious mental-health need' in the Eighth Amendment context should not be confused with 'serious mental illness,' a term of art in the mental-health care field. As plaintiffs' psychiatric expert Dr. Burns testified, 'serious mental illness' can be defined by three components: the diagnosis, the degree of disability, and the duration of the diagnosis or disability. Certain diagnoses are by definition serious mental illnesses, because they last a lifetime and are accompanied by debilitating symptoms; these diagnoses include bipolar disorder, schizophrenia, schizoaffective disorder, major depressive disorder with psychotic features, and any other diagnoses with psychosis. Dr. Hunter, MHM's medical director, agreed with this assessment, testifying that a person with well-controlled schizophrenia still has a serious mental illness, because it requires continued treatment, even if he or she is only mildly impaired at the moment. Other diagnoses, like anxiety and PTSD, may reflect a serious mental

Furthermore, the court heard testimony from multiple prisoners, both named plaintiffs and class members, who clearly exhibited serious mental-health needs. For example, plaintiff R.M. has been diagnosed with paranoid schizophrenia and admitted that he is out of touch with reality; he testified to what were obviously his delusions regarding his blood relationships to three different well-known terrorist figures and his owing billions of dollars to the United States treasury. Similarly, medical records made clear that plaintiff Q.B.

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illness depending on the degree and duration of the impairment. Dr. Burns testified that ADOC's administrative definition of serious mental illness tracks this understanding of serious mental illness. See Joint Ex. 88, Admin. Reg. § 602 (doc. no. 1038-1039) at 11 (defining "serious mental illness" as "[a] substantial disorder of thought, mood, perception, orientation, or memory such as those that meet the DSM IV criteria for Axis I disorders ... [and] persistent and disabling Axis II personality disorders."). According to experts on both sides, treatment of serious mental illnesses requires, at a minimum, multidisciplinary efforts to coordinate and implement interventions, including psychotherapy or counseling, psychotropic medications, and monitoring for signs of decompensation or progress. It also requires careful treatment planning and maintaining medical records in order to ensure continuity of care.

has suffered from years of delusion and hallucination; he was on involuntary psychiatric medication orders for years while in ADOC custody. Lastly, as explained earlier, plaintiff Jamie Wallace[12] had been diagnosed with bipolar disorder and schizophrenia, among other mental-health conditions, and he testified that he heard voices of his deceased mother telling him to cut himself. In sum, plaintiffs presented more than sufficient evidence establishing their serious mental-health needs.

Because only prisoners with serious mental-health needs have a cognizable Eighth Amendment claim, when the court refers to 'mentally ill prisoners' in this opinion, it is referring to only those with serious mental-health needs.

B. Serious Harm and Substantial Risks of Serious Harm Posed by Inadequate Care

In addition to showing a serious medical need, plaintiffs must establish that they have been subjected

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12. When the trial began, the court used full names of prisoner-witnesses, but the parties agreed to use initials after Jamie Wallace's testimony.

to serious harm, or a substantial risk of serious harm--the second part of the 'objective' test under the Eighth Amendment jurisprudence--as a result of inadequate mental-health care. Put another way, plaintiffs must show that their serious medical need, "if left unattended, 'poses a substantial risk of serious harm.'" Farrow v. West, 320 F.3d 1235, 1243 n.13 (11th Cir. 2003)(quoting Farmer v. Brennan, 511 U.S. 825, 834 (1994)). Defendants may be held liable for "incarcerating prisoners under conditions posing a substantial risk of serious harm." Farmer, 511 U.S. at 834.[13]

13. While courts have sometimes used the "serious need" and "substantial risk of serious harm" tests interchangeably, they appear to be somewhat distinct: the "serious need" requirement examines whether a prisoner has a medical problem requiring attention; the "substantial risk of serious harm" test examines whether the defendant's inattention to or mistreatment of the medical need threatens serious harm to the prisoner. Of course, a plaintiff may face a serious medical need because defendants' inattention has caused or exacerbated a medical condition, see, e.g., Helling v. McKinney, 509 U.S. 25 (1993) (concluding that prisoner's claim based on potential future effects of exposure to tobacco smoke could be a viable Eighth Amendment claim), but this does not change the fact that the focus of the "serious need" inquiry is the prisoner's condition, while the

The "serious harm" requirement "is concerned with both the 'severity' and the 'duration' of the prisoner's exposure" to the harm, such that an exposure to harm "which might not ordinarily violate the Eighth Amendment may nonetheless do so if it persists over an extended period of time." Chandler v. Crosby, 379 F.3d 1278, 1295 (11th Cir. 2004) (citation omitted). While mere discomfort is insufficient to support liability, id., "unnecessary pain or suffering" qualifies as serious harm. LaMarca v. Turner, 995 F.2d 1526, 1535 (11th Cir. 1993).

Plaintiffs may bring an Eighth Amendment challenge to a condition that is already inflicting serious harm on them at the time of the complaint or to prevent serious harm which is substantially likely to occur in the future--a substantial risk of serious harm. As the Supreme Court explained in Helling v. McKinney, 509 U.S. 25 (1993), a case in which a prisoner challenged his prolonged exposure to second-hand smoke, "a remedy for

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"substantial risk of serious harm" inquiry focuses on the effects of inadequate health care.

unsafe conditions need not await a tragic event," because "the Eighth Amendment protects against future harms to inmates," even when the harm "might not affect all of those exposed" to the risk and even when the harm would not manifest itself immediately. Id. at 33-34. In other words, plaintiffs must show "that they have been subjected to the harmful policies and practices at issue, not (necessarily) that they have already been harmed by these policies and practices." Dunn v. Dunn, 219 F. Supp. 3d 1100, 1123 (M.D. Ala. 2016)(Thompson, J.). In the class-action context, the plaintiff class must show that it, as a whole, has been subjected to policies and practices that create a substantial risk of serious harm. Braggs v. Dunn, 317 F.R.D. 634, 654 (M.D. Ala. 2016)(Thompson, J.).

Moreover, multiple policies or practices that combine to deprive a prisoner of a "single, identifiable human need," such as mental-health care, can support a finding of Eighth Amendment liability. Gates v. Cook, 376 F.3d 323, 333 (5th Cir. 2004) ("Conditions of

confinement may establish an Eighth Amendment violation 'in combination' when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise--for example, a low cell temperature at night combined with a failure to issue blankets.")(citing Wilson v. Seiter, 501 U.S. 294, 304 (1991)). The Eleventh Circuit Court of Appeals has recognized this 'totality of conditions' approach in prison-conditions cases. See, e.g., Hamm v. DeKalb Cty., 774 F.2d 1567, 1575–76 (11th Cir. 1985).

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. In all seven areas, experts from both sides by and large agreed about significant flaws affecting mentally ill prisoners.[14] MHM and ADOC staff also recognized and corroborated the existence and severity of these issues. Even Associate Commissioner Naglich essentially agreed that some of these were

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14. The 'stacked Swiss cheese' analogy, well known in the healthcare and risk-management contexts, may be useful here. In this analogy, a layer of Swiss cheese represents a mechanism to prevent harm, and an error is a hole in that layer. Ideally, each layer is sufficiently redundant to catch or ameliorate errors and to prevent holes from lining up. However, if each hole is too big, errors from each layer compound and result in an inadequate system. See James Reason, Human Error: Models and Management, 320 Brit. Med. J. 768 (2000). Applied to this context, each layer of mental-health care within ADOC--identification of symptoms at intake and referral; treatment planning; provision of psychotherapy; inpatient care; crisis care; and consideration of mental health in prisoner placement decisions--is riddled with too many holes to prevent mentally ill prisoners from falling through the cracks. Moreover, each layer's error is compounded by latent errors in inter-related layers of care: for example, delinquent counseling appointments fail to address a sudden deterioration in a prisoner's condition, which is worsened by the lack of a properly functioning referral system and a suicide-watch protocol.

problems so significant that they must be fixed as soon as possible, because lives are at risk.[15] These inadequacies, alone and in combination, subject mentally

15. As discussed later, some of the policies and practices affecting mentally ill prisoners are determined by ADOC, others by MHM: for example, ADOC is responsible for staffing decisions and placement of prisoners in mental-health units and segregation; MHM is responsible for policies and practices in intake screening, the referral system, treatment planning, and psychotherapy. However, ADOC is still liable for policies and practices determined by MHM, for three reasons. First, ADOC's decisions regarding mental-health staffing, correctional staffing, and overcrowding have directly impacted MHM's policies and practices, such as frequently delayed and cancelled counseling sessions and the use of LPNs to conduct intake screening. Second, for some of the practices, ADOC has expressly authorized MHM to determine them on its behalf by contracting out its constitutional obligation to provide mental-health care. Third, even when ADOC has not expressly authorized MHM to make these policies--that is, when MHM's policies and practices contravene ADOC's administrative regulations or contractual requirements--ADOC through its lack of oversight has de facto delegated its decision-making authority to MHM. See Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 706 n.11 (11th Cir. 1985) (holding that "whe[n] a governmental entity delegates the final authority to make decisions," either expressly or by default, then "those decisions necessarily represent official policy" in the context of contracting out medical care for prisoners). Therefore, the court finds that ADOC is liable for the policies and practices described here, despite the fact that MHM is the entity providing mental-health care and determining some of the policies and practices related to mental-health care.

ill prisoners to actual harm and a substantial risk of serious harm--including worsening of symptoms, increased isolation, continued pain and suffering, self-harm and suicide.

1. Contributing Conditions

Three conditions contribute to all of the deficiencies in ADOC's treatment of mentally ill prisoners: understaffing of mental-health care providers, understaffing of correctional officers, and overcrowding.[16] Associate Commissioner Naglich and

16. Defendants advanced a few versions of the argument that variability across different facilities negates ADOC's liability: defendants argued that experts visiting seven, eight, or nine facilities instead of visiting all 15 facilities renders their opinions irrelevant or not reliable; that certain facilities are not as overcrowded as others; and that plaintiffs did not prove that every single facility suffers from a shortage of crisis cells. As explained in the commonality and typicality analyses in the class certification opinion, Braggs v. Dunn, 317 F.R.D. 634, 655-66 (M.D. Ala. 2016), evidence of systemic practices that may have differing levels of impact at different facilities may establish liability against ADOC: mentally ill prisoners are subject to a substantial risk of serious harm from practices that are common in ADOC facilities no matter

defendants' expert witnesses largely agreed with plaintiffs that these conditions present significant challenges to the system today. Correctional and mental-health understaffing, both alone and in combination, impose substantial risks of serious harm to mentally ill prisoners, and overcrowding compounds these risks.

a. Overcrowding

ADOC facilities are significantly and chronically overcrowded. Publically available information on ADOC's inmate population and capacity plainly lays out the magnitude of overcrowding: ADOC's September 2016 monthly statistical report states that ADOC held 23,328 prisoners in facilities that are designed to hold only 13,318; this brings the occupancy rate to over 175 %. Pl. Ex. 1260, September 2016 Monthly Statistical Report (doc. no.

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where they are housed currently, because they may be housed in any of these facilities in the future due to ADOC's frequent and unpredictable transfers of prisoners across facilities.

1097-19) at 2, 4.[17] Plaintiffs' expert Vail testified that the magnitude of overcrowding in ADOC is the worst he has seen in his career in corrections and consulting for other correctional systems across the country. According to Vail, California, whose overcrowded correctional system was found to be unconstitutional, approached an occupancy rate of 170 %; a three-judge court subsequently ordered the State to lower the occupancy rate to 137.5 %, a target rate that was affirmed by the Supreme Court. Brown v. Plata, 563 U.S. 493, 539-42 (2011). The sheer magnitude of overcrowding within ADOC has meant that some ADOC facilities, including Kilby, Bibb, Staton, and Easterling, house more than double the number of prisoners they are designed to hold. Pl. Ex. 1260, September 2016 Monthly Statistical

17. Parties have put forth evidence regarding the Alabama Prison Transformation Initiative, a proposal by the now-former Governor to build new prisons. At this point, the court does not see any need to determine the effects of the proposal, because the case at hand asks the court to evaluate whether the current state of mental-health care in existing ADOC facilities is constitutionally inadequate, rather than whether a hypothetical system of mental-health care in new prisons would be adequate.

Report (doc. no. 1097-19) at 4. Even maximum-security facilities use open-bay dormitories filled with wall-to-wall rows of double bunk beds, holding up to 240 prisoners in a single room, where officers do not have a line of sight on most of the prisoners they are assigned to supervise.

b. Mental-Health Understaffing

ADOC has maintained mental-health staffing levels that are chronically insufficient across disciplines and facilities. Witness after witness identified significant mental-health staffing shortages as one of the major reasons for ADOC's inability to meet the rising mental-health care needs of prisoners. Most significantly, Associate Commissioner for Health Services Naglich admitted that MHM has been understaffed since 2013 and remains understaffed today. MHM's program director Houser stated bluntly that MHM staffing shortages make it difficult to "do the work required under the contract," and that the current caseload for

MHM staff does not meet an "acceptable standard." Houser Testimony at vol. 2, 24-25.

Over the course of the trial, evidence showed that the mental-health caseload per MHM provider has been increasing since 2008, largely due to three reasons: (1) an increasing number of prisoners with mental-health needs across ADOC; (2) multiple budget cuts over the years; and (3) ADOC's long-time refusal to increase the authorized number of mental-health staff positions despite repeated requests from MHM, even when an initiative to transfer some of the caseload to ADOC staff--so-called 'blending of services'--was not implemented as planned.[18]

ADOC's prisoner population has had increasing needs for mental-health services over the last decade. As multiple MHM providers and expert witnesses from both

18. After years of refusing to increase staffing, ADOC approved a small staffing increase in September 2016, shortly before the trial in this case, when it extended the contract with MHM for another year. However, both Associate Commissioner Naglich and MHM's program director Houser testified that understaffing has persisted despite the recent increase.

sides testified, ADOC's prisoner population has become more mentally ill over the last decade, both in terms of the number of individuals who need mental-health care and in terms of the acuity of mental-health care needs. MHM's medical director, Dr. Hunter, testified that the number of prisoners receiving regular mental-health services within ADOC (also known as being 'on the caseload') has been increasing since 2003, which has been "concerning" and "tax[ing his] ability to adequately do" what he is required to do under the contract. Hunter Testimony at __. (For transcripts that are not yet finalized, the court leaves the page numbers blank.) He also explained that, since 2003, the number of prisoners coming into the system with severe mental illness has been increasing. MHM's own documents showed that between 2008 and 2016, the mental-health caseload increased by 25 % across all facilities. Pl. Dem. Ex. 25, Pricing, Caseload and Staffing Comparison Over Time (doc. no. 1071-5).

As the need for mental-health services has been increasing substantially, MHM and ADOC have been hiring

fewer and fewer providers over the years, exacerbating the staffing shortage. In 2009, ADOC reduced MHM's compensation under the contract and the number of authorized positions to be hired by MHM. In 2013, the state legislature further reduced ADOC's mental-health care budget by 10 %. ADOC and MHM then re-negotiated their 2013 contract to reduce the previously agreed-upon "minimum required staffing," cutting close to 20 full-time equivalent positions. Naglich Testimony 2-211; Pl. Dem. Ex. 140, MHM Staffing Increase Chart (doc. no. 1148-59); see also Pl. Dem. Ex. 25, Pricing, Caseload, and Staffing Comparison Over Time (doc. no. 1071-5). During that same contract renewal period, ADOC and MHM also reduced the number of positions that are covered by the contractual 'staffing rebate' provision, under which MHM must pay back ADOC if it does not fill all authorized positions. In other words, the revision allowed MHM to leave clinical staff positions unfilled without being penalized, even though the overall number of authorized positions had already been reduced. Houser described

this latter modification as a way to make the reduction in payment and staffing under the contract "more palatable for MHM." Houser Testimony at vol. 1, 49.

Another driving force behind MHM's mental-health understaffing is ADOC's failure to implement the 'blending of services' initiative successfully. Houser explained that this initiative was established in 2009 in response to ADOC's reduction in both the amount it would pay to MHM under the contract and in the staffing provided for in the contract: MHM's caseload would be reduced by transferring treatment of prisoners with lower-acuity mental-health issues to ADOC's psychological associates; the initiative was an "attempt to make sure that the inmates received mental health services" despite the staffing reduction and increasing caseloads. Houser Testimony at vol. 1, 14. However, ADOC failed to implement the initiative across its facilities: MHM's staffing was reduced, but at many facilities, psychological associates did not take over any caseload from MHM. Naglich explained that, because

some wardens were resistant to letting psychological associates carry significant caseloads, MHM staff remained responsible for most of the patients, even though there were now fewer MHM providers than before. Houser testified that blending of services is not currently happening anywhere in ADOC in the way it was designed to happen, despite MHM's reduced staffing levels. ADOC's chief clinical psychologist Dr. David Tytell admitted that the initiative has failed to work. However, ADOC has not restored MHM's staffing to the pre-2009 level.[19]

The result of ADOC's refusal to increase MHM's staffing level or even to restore staffing to the pre-2009 level has been chronic shortages of mental-health care providers. Dr. Hunter testified that the staffing shortage has had a significant impact on scheduling of psychiatric visits and medication management. Several mental-health counselors testified

19. Chronic mental-health understaffing is also compounded by vacancies that are left unfilled for many months.

that their caseloads have soared; Houser testified that MHP caseloads at some facilities have been twice what they should be, which is "never an acceptable standard." Houser Testimony at vol. 2, 25. Increasing caseloads due to understaffing have also led to a high turnover rate among staff: according to Houser, staff resign because of their frustration with increasing caseloads, leaving the rest of the staff with even higher caseloads; recruiting also suffers because of the overwhelming caseloads that mental-health staff are expected to manage. MHM's monthly operating report submitted to ADOC for May 2016 described the problem in stark terms: "Mental health caseloads are running high at many of the facilities. Staff has attempted to accommodate the increased numbers, however quality cannot be maintained at current staffing levels." Joint Ex. 343 (doc. no. 1038-702) at 19. As explained in more detail in the following sections, this understaffing also has prevented MHM from providing care that complies with ADOC's administrative regulations, the

contract, and professional standards for minimally adequate care in a prison system.[20]

Not surprisingly, experts from both sides opined that ADOC does not have a sufficient number of mental-health staff for a system of its size. Dr. Patterson, the defense expert, concluded based on his review of medical records and site visits that ADOC's mental-health care system is significantly understaffed. Plaintiffs' expert Dr. Burns agreed with this assessment based on her review of medical records and MHM internal records, which revealed that caseloads for psychiatric providers and counselors were too large to allow for sufficient counselling or therapeutic group activities. Dr. Burns concluded that ADOC needs more psychiatric staff,

20. Examples of inadequate care caused by mental-health shortages include: lack of timely provision of counseling services; inadequate treatment planning; and inadequate monitoring of suicidal patients as well as those housed in mental-health units and segregation units.

psychologists, registered nurses, and activity technicians.[21]

MHM's corporate office--which exercises contract-compliance oversight but does not directly provide care in Alabama--has repeatedly raised mental-health understaffing in the annual clinical contract-compliance review reports (hereafter 'contract-compliance reports') sent to Associate Commissioner Naglich's Office of Health Services.

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21. Dr. Burns also testified that the mental-health staffing requirements in a 2001 settlement agreement between ADOC and a class of male prisoners provide a helpful benchmark for adequate staffing levels. See Order Approving Settlement Agreement, Bradley v. Harrelson, No. 2:92-cv-70 (M.D. Ala. June 27, 2001) (Albritton, J.), ECF No. 412. Dr. Burns explained that while the number of ADOC prisoners in need of mental-health services has increased since the Bradley settlement, ADOC has entered into mental-health contracts that provide significantly fewer high-level practitioners, as well as more practitioners with lower levels of qualification, compared to the Bradley requirements. For example, under Bradley, ADOC was required to provide eight psychiatrists for approximately 20,600 prisoners; today, it employs five psychiatrists for close to 24,000 prisoners. While the staffing requirements derived from an out-of-court settlement do not set a constitutional floor for adequate mental-health care, the comparison with the Bradley settlement is relevant, though not dispositive, for determining whether the current staffing levels are adequate.

Starting in 2011, each annual contract-compliance report included information on multiple facilities that were suffering from staffing shortages, "compromising [MHM's] ability to provide monthly follow-up for all caseload inmates." Pl. Ex. 1190, 2011 Contract-Compliance Report (doc. no. 1070-8) at 15. The 2013 report also noted the impact of the staffing reduction that year, stating that "[d]espite the increase in the size of the caseload across ADOC, MHM's contract has been compressed to include significant staffing cuts at all sites." Pl. Ex. 114, 2013 Contract-Compliance Report (doc. no. 1070-4) at 1. The report also warned that, at Donaldson, where one of the two male residential treatment units is located, "[c]urrent staffing pattern does not support the delivery of adequate services to inmates and that they have been reduced to providing minimal and 'triage-based' services rather than effective and thoughtfully planned treatment." Id. at 5. In 2016, MHM reported significant backlogs in treatment and staffing shortages at Donaldson and Bullock, the two male facilities that house ADOC's

most seriously ill mental-health patients. Pl. Ex. 115, 2016 Contract-Compliance Report (doc. no. 1070-5). Even after the partial staffing increase in September 2016, Houser stated that MHM remains understaffed and pointed to mental-health understaffing as a cause for a plethora of issues, including insufficient identification of mental illness at intake and referrals; missed counseling appointments and group sessions; and inadequate monitoring of prisoners in mental-health crises.

Based on Associate Commissioner Naglich's testimony and other evidence, the court finds that MHM has been consistently and significantly understaffed at least since 2013, and that it is still understaffed even after ADOC approved a small staffing increase in September 2016 as part of its one-year contract extension.

c. Correctional Understaffing

In addition to mental-health understaffing and overcrowding, a significant shortage of correctional officers also hinders the delivery of mental-health care

and poses a substantial risk of harm to prisoners who need mental-health care. As with mental-health staffing shortages, witness after witness, including both defendants, testified that a significant shortage of correctional officers has been one of the biggest obstacles to providing mental-health care in ADOC. In Associate Commissioner Naglich's words, the problem of insufficient mental-health staffing is "compounded by" the lack of sufficient correctional staffing at ADOC. Naglich Testimony at vol. 2, 208.

ADOC has reported an ever-increasing shortage of correctional officers in its annual reports and monthly operating reports since 2006. In 2010, ADOC summarized that "[c]orrectional staffing continues to fall short of required levels--impacting the inmate to officer ratio and overtime necessary to cover essential posts," and reported that the shortage rate was 12.2 % at close-custody (highest security) facilities and 21.2 % at medium-security facilities. Joint Ex. 463, Vail Expert Report (doc. no. 1038-1048) at 39 (quoting ADOC

Annual Report FY 2010). Essentially the same statement regarding the officer shortage appeared in every annual report until 2013, when the shortage rate across facilities shot up to 43.3 %. The report in 2015 showed officer shortage rates of over 25 % at 13 of the 15 major prisons and over 50 % at six of those; the highest was 68 % at Bibb. Donaldson was barely under 25 %; only one prison, Hamilton, the facility for the elderly and the infirmed, was below 25 %. Id. at 39-40 (citing ADOC Annual Report FY 2013, 2015). As of September 2016, ADOC reported having filled only about half of the authorized positions for correctional officers. Pl. Ex. 1260, September 2016 Monthly Statistical Report (doc. no. 1097-19) at 16 (showing 51.1 % overall staffing level).[22]

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22. Throughout the trial, there was confusion as to how ADOC defined 'authorized positions' for the purpose of deriving shortage rates published in their annual reports. During the defendants' case, ADOC's chief of staff Steve Brown finally clarified that the number of authorized positions was determined based on a staffing ratio of 1:6 or 1:7, which were ratios that ADOC considered close enough to the "ideal" ratio of one correctional officer for every five inmates. However, as plaintiffs' expert Eldon Vail and ADOC officials explained, adequate staffing numbers cannot be calculated

by simply dividing the inmate population by the staffing ratio that is deemed to be ideal; rather, it requires a facility-by-facility determination that considers numerous variables, such as the layout and design of the facilities, level of security, level of programs and activities, and state and local standards and statutes. Vail also explained that 1:5 is not an "ideal" ratio but likely the average of staffing ratios from state correctional systems that responded to a survey conducted by the Association of State Correctional Administrators. The ratios also do not take multiple shifts and leave time into account. Therefore, while ADOC relied on the authorized position numbers derived from such calculations in its annual reports, the shortage rates in those reports are not reliable indicators of understaffing, except as a metric to measure change in staffing over time. However, as shown later, there is ample evidence, both from expert testimony and ADOC staff's testimony, that ADOC suffers from a serious correctional staffing shortage.

It is alarming that ADOC has not conducted any staffing analysis in the last decade to determine exactly how many officers are needed to keep officers and prisoners safe within its facilities. It is also alarming that ADOC's own reports have been relying on authorized-position numbers based on rudimentary ratios that do not take into consideration the actual layouts of facilities. This failure to conduct any staffing analysis is all the more troubling because at least one ADOC official, Associate Commissioner Grantt Culliver, has the expertise to conduct staffing analyses and has been training other state correctional officials on how to conduct staffing analyses. Vail also testified that it is not resource-intensive to obtain a staffing analysis from the National Institute of Corrections, since the Institute provides grants and other resources to state prison systems that host training for correctional officials in their own facilities, as ADOC has done.

The staffing level continued to drop throughout 2016, according to Associate Commissioner of Operations Grantt Culliver.

Understaffing has been a persistent, systemic problem that leaves many ADOC facilities incredibly dangerous and out of control. Defendants' correctional administration expert Robert Ayers observed multiple high-security units not being monitored at all and an entire unit at Bibb overseen by a single control booth officer and a single officer on the floor; he opined that such understaffing was "not acceptable." Ayers Testimony at __. Plaintiffs' correctional administration expert Vail agreed with this conclusion and elaborated that many facilities are struggling to have sufficient numbers of correctional officers to station at least one officer per dorm--including the highest-security facilities, such as Holman and Kilby. Not surprisingly, a severe shortage of officers leads to dangerous and violent conditions, especially in high-security facilities with overcrowded

dormitories.[23] In these conditions, prisoners and correctional officers alike are justifiably afraid for their safety--a jarring image that many prisoner-witnesses and experts painted in their testimony. For example, class member M.P., who is now housed in Ventress, stated repeatedly how dangerous it was to be in a general-population dorm at St. Clair; he was enormously relieved to be transferred to another prison.[24] Multiple experts also testified that during their site visits, prison officials did not allow them to enter certain parts of the prison, such as the second and third tiers of the Holman segregation unit and a whole half of

23. Vail explained that ADOC's use of open dormitories in maximum-security facilities is almost unheard of in corrections.

24. The witness's fear is well-warranted: St. Clair is the most violent facility in ADOC, accounting for a quarter of assaults with serious injuries within the system, while housing only 4 % of ADOC prisoners. Pl. Ex. 1260, September 2016 Monthly Statistical Report (doc. no.1108-37) at 4, 12.

Bibb, because the officials could not guarantee their safety.[25]

As a result of the officer shortage, ADOC has an exceedingly high overtime rate. Overtime rate refers to the proportion of the number of hours worked by correctional officers as overtime compared to the total number of hours worked. A high overtime rate undermines security and officer morale, which in turn has negative implications for mental-health care. ADOC's chief of staff Steve Brown admitted that the current overtime rate of over 20 % is not sustainable in the long run, because it decreases retention of officers and increases the number of disciplinary actions against officers. Multiple vulnerability analyses--ADOC's internal critical assessments of each facility's security risks--also found that mandatory overtime and overuse of overtime have affected staff morale and contributed to

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25. In fact, although the court has visited a number of prisons over the years, the United States Marshals Service, in consultation with defense counsel, advised against the court's visit to Holman Correctional Facility in this case due to safety concerns.

high turnover rates. Pl. Ex. 146, Bullock Vulnerability Analysis (doc. no. 1087-3); Pl. Ex. 185, Donaldson Vulnerability Analysis (doc. no. 1087-6); Pl. Ex. 204 Elmore Vulnerability Analysis (doc. no. 1087-8).[26]

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26. A related issue is the new set of staffing ratios that ADOC Chief of Staff Brown presented during the trial, which counted overtime hours performed by existing correctional officers as additional officers. These ratios are also misleading. First, according to plaintiffs' expert Vail, counting overtime hours as additional full-time correctional officers is not the standard practice to determine whether correctional staffing is adequate. Second, these ratios do not take into consideration that officers working overtime are less effective than officers working standalone shifts, or that the overtime rate in ADOC is extremely high compared to other correctional systems, especially in facilities such as Donaldson, Kilby, St. Clair, Tutwiler, Draper, Holman, Bullock, and Easterling. Def. Dem. Ex. 19 (doc. no. 1148-60) (showing the eight facilities with 15 % or higher overtime rate). Furthermore, as with the authorized-position calculations discussed above, these ratios do not account for the fact that many ADOC facilities are designed with little direct line of sight from officer stations into prisoner living areas, and have dorms with rows and rows of bunk beds obstructing officers' views; both factors require higher officer-to-inmate ratios than facilities with better line of sight or fewer bunked dorms.

Lastly, even if the court were to accept the current staffing ratios calculated by Brown's staff as accurate, only two of the 14 facilities meet the 7:1 (for medium custody) or 6:1 (for close custody) thresholds. In other words, even using this overly inclusive metric to measure staffing sufficiency, ADOC is significantly understaffed.

This chronic and severe correctional understaffing has compromised mental-health care in many ways. Most significantly, as discussed in more detail in Part V.B.4, correctional officers are needed to provide security for mental-health programming and escort prisoners from their cells to appointments if they are not in general population. Due to insufficient correctional staffing, appointments and group activities are frequently canceled and delayed, significantly impairing MHM staff's ability to provide treatment. See, e.g., Pl. Ex. 115, 2016 Contract-Compliance Report (doc. no. 1070-5) at 3 (MHM staff not being able to access patients at Bullock, Donaldson, Holman, St. Clair, and Staton due to correctional staffing shortages, and expressing concern about their own safety at five facilities); Pl. Ex. 105, 2014 MHM Implementation Review Report (doc. no. 1070-3) at 3 (20 to 70 % of mental-health appointments were canceled due to correctional officer shortages at the Donaldson residential treatment unit in 2014). Based on the testimony of Ayers, one of the defense experts, and

almost all MHM providers and managers who testified, the court is convinced that the correctional staffing level falls intolerably short of providing adequate care to prisoners who need to be escorted to their mental-health appointments.

Second, understaffing impacts correctional officers' ability to supervise mentally ill prisoners effectively. According to plaintiffs' expert Vail, understaffing compromises overworked correctional officers' alertness and ability to respond to incidents, crises, and emergencies, and to exercise the patience and restraint necessary to supervise mentally ill prisoners. This effect is even more pronounced in segregation and crisis cells. Without sufficient correctional staff, officers are unable to check on prisoners isolated from the rest of the population as frequently as they must in order to guarantee their safety. As a result, decompensating prisoners go unnoticed, leading to extended suffering without access to treatment, and more frequent crisis situations.

Correctional understaffing, combined with overcrowding, also has a more direct impact on prisoners' mental health. The combination of overcrowding and understaffing leads to an increased level of violence, both because of the difficulty of diffusing tension and violence in an overcrowded open-dormitory setting, and because of the lack of supervision by correctional officers. See Pl. Ex. 1260, ADOC September 2016 Monthly Statistical Report (doc. no. 1108-37) at 12 (reporting nearly 200 assaults with serious injuries and seven homicides in the fiscal year ending in September 2016). According to Dr. Haney, plaintiffs' expert on correctional mental health and solitary confinement, prisoners' legitimate fear of violence is a common source of anxiety and mental instability: for prisoners who already suffer from mental illnesses, this environment increases their likelihood of decompensation. The level of danger and lack of control arising from overcrowding and insufficient staffing also contributes to a punitive culture, in which officers prioritize security concerns

over mental-health treatment and are quick to treat mental-health symptoms as behavioral problems; dealing with violence and emergencies also diverts correctional resources away from regular mental-health programming and treatment. Untreated or undertreated mental illness in turn creates a greater need for mental-health services, provision of which is limited by the very shortage of officers that created the increased need in the first instance. Furthermore, mental-health problems are much more likely to go unnoticed in overcrowded and understaffed prisons, because correctional officers who are spread too thin are less likely to notice any unusual behavior by a particular prisoner. These observations made by Dr. Haney all rang true in the evidence before the court. Lastly, as Dr. John Wilson, a psychologist who serves as one of the directors of MHM's national Clinical Operations Department, explained to MHM's program director Houser, "experience and research" confirm that suicides tend to increase with overcrowding, and "basic unrest at a systems level" can cause a spike

in suicides. Pl. Ex. 1224, October 1, 2015 Email from Wilson to Houser (doc. no. 1117-24) at 2. In fact, the suicide rate within ADOC has more than doubled in the last two years, as 'unrest at a systems level' continues to plague ADOC facilities. Taken together, ADOC's low correctional-staffing level, in the context of its severely overcrowded prisons, creates a substantial risk of serious harm to mentally ill prisoners, including continued pain and suffering, decompensation, self-injury, and suicide.

2. Identification and Classification of Prisoners' Mental-Health Needs

As one expert put it, ADOC's mental-health care system "falls apart at the door": the system fails to identify and classify appropriately those with mental illnesses, and the effect of this under-identification cascades through the system. Haney Testimony at vol. 1, 30. Because of inadequate identification and classification, seriously mentally ill prisoners languish and decompensate in ADOC without treatment,

ending up in crisis care and engaging in destructive--sometimes fatal--self-harm.

Timely identification and appropriate classification of prisoners with mental illness are essential to a functioning mental-health care system. As experts explained, and as common sense would dictate, mental-health treatment cannot begin unless providers are aware of who needs treatment and for what. Failure to identify those who need mental-health services denies them access to necessary treatment, creating a substantial risk of harm to those who remain unidentified. See LaMarca v. Turner, 995 F.2d 1526, 1544 (11th Cir. 1993) (affirming conclusion that systematic denial of access to treatment constitutes deliberate indifference to a serious medical need).

a. Inadequate Intake Process

ADOC's system for identifying prisoners with mental illness is significantly inadequate. According to three experts--defense expert Patterson and plaintiffs'

experts Burns and Haney--the percentage of prisoners within ADOC with mental illness (referred to as the 'prevalence rate') is substantially lower than the national average: the average rate of mental illness for men in correctional systems ranges between 20 % and 30 %; ADOC's prevalence rate is between 14 % and 15 %. See Joint Ex. 346, June 2016 MHM Monthly Statistical Report (doc. no. 1038-708) at 1.

As experts from both sides testified, ADOC's prevalence rate is abnormally low and reflects that the system is under-identifying prisoners with mental illness. Defense expert Dr. Patterson explained that experts do not expect to see much variation in actual prevalence rates across correctional systems, and that he has not seen anything that suggests that ADOC would have a lower prevalence rate than other correctional systems for any reason other than under-identification. Dr. Burns agreed and explained that it is highly likely that the abnormally low prevalence rate is due to under-identification, rather than because Alabama

prisoners have fewer mental-health issues compared to those in other States. She added that she does not know of any States that have lower prevalence rates than Alabama. Assuming that ADOC's actual prevalence rate for mental illness actually tracks the national figure of between 20 % and 30 %, somewhere between 1,200 and 3,600 prisoners should be receiving mental-health care but are not, because between 5 % and 15 % of ADOC's 24,000 prisoners have not been identified as having a mental illness.

A closer examination of the two main processes of identifying prisoners with mental-health care needs--intake and referral--sheds light on why ADOC's prevalence rate is so low. First, ADOC's mental-health screening process at intake fails to identify a substantial number of prisoners with mental-health issues. Licensed practical nurses, who have very limited training, are responsible for conducting mental-health screening for prisoners at intake at Kilby (for all male prisoners) and Tutwiler (for all female prisoners). No higher-level

provider supervises the LPNs during the intake process. The intake LPN fills out forms and questionnaires and decides whether to refer a prisoner for further examination by a psychiatrist or a nurse practitioner. If the LPN determines that a prisoner does not need to be referred to a psychiatrist or nurse practitioner, a mental-health code of MH-0, denoting no need for mental-health care, is entered into the system. Prisoners who are designated as MH-0 by an LPN do not receive any further evaluation or any mental-health treatment unless referred to mental-health services later by a staff member or the prisoners themselves. On the other hand, if the LPN refers the prisoner for evaluation, a psychiatric provider completes an evaluation, gives a diagnosis if appropriate, and assigns a mental-health code, which determines the level of care the prisoner subsequently receives and ranges from MH-0 (no

mental-health need) to MH-6 (in need of hospitalization).[27]

Experts from both sides agreed, and the court finds, that the intake screening process conducted by an LPN without any on-site supervision by a higher-level provider contributes to under-identification of prisoners with mental illness. This is because LPNs, who only have 12 to 15 months of general medical

27. Associate Commissioner Naglich testified that psychological associates, who have master's degrees in counseling and are employed by ADOC, also have the ability to refer prisoners to psychiatric providers at intake. However, other evidence suggested that this rarely, if ever, happens. Dr. Hunter explained that ADOC's intake process, which involves psychological tests, is a parallel track to MHM's screening process, and that they do not overlap; the court interpreted this to mean that ADOC's psychological associates do not interact with psychiatric providers on the MHM side for further evaluation of prisoners. In addition to Dr. Hunter's testimony, no documentary evidence could be found to support Naglich's assertion that psychological associates do refer prisoners for further examinations during the intake process. See also Joint Ex. 100, Admin. Reg. § 610 (doc. no. 1038-122) (detailing the mental-health screening process to be conducted by the contractor staff). Given Dr. Hunter's familiarity with the intake process and the lack of any documentation of psychological associates' referrals, the court finds that the initial intake process is primarily or entirely done by an LPN.

training--very little of which may be related to mental health--are not qualified to assess the presence or acuity of mental illness symptoms based on information obtained during the intake process. Intake forms that LPNs fill out include questions that require clinical assessments, rather than simple yes-or-no questions based on physical observations. See Joint Ex. 85, Admin. Reg. § 601 Mental Health Forms and Disposition (doc. no. 1038-106); Burns Testimony at vol. 1, 44-45. According to the experts, LPNs are not qualified to make such clinical assessments. Moreover, although LPNs may make referrals based on self-reported symptoms of mental illness, a proper intake system cannot solely rely on self-reporting to identify mental-health needs. As Dr. Burns testified, the use of unsupervised LPNs for intake mental-health screening presents an "obvious" risk of under-identification. Burns Testimony at vol.1, 61-62.[28]

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28. Experts from both sides also observed that the intake process does not include an assessment for suicide risk, a serious systemic issue that may have contributed to the recent dramatic increase in the suicide rate. See Joint Ex. 461, Patterson Expert Report (doc. no.

The use of inadequately supervised LPNs for intake is compounded by insufficient mental-health staffing. Houser testified that MHM does not have sufficient staffing or space to conduct mental-health screenings at Kilby (where all male prisoners are screened), and her staff have had to send prisoners to other facilities without conducting the initial intake screening. This in turn has increased the workload for mental-health staff at the receiving facilities and has created delays in the provision of mental-health care to those who need treatment. Dr. Patterson, the defense expert, agreed that insufficient staff at intake has led to insufficient identification of prisoners with mental illness, and that this failure to identify increases the risk of continued

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1038-1046) at 69 (concluding that ADOC's lack of suicide risk evaluation and management is an area of substantial concern); Burns Testimony at vol. 1, 63; Pl. Ex. 1267, 2015-2016 Chart of ADOC Suicides (doc. no. 1108-38) (showing 12 suicides between September 2015 and December 2016). ADOC has now implemented suicide risk assessments as part of their regular intake procedure based upon Dr. Patterson's recommendation. However, as discussed in more detail later, ADOC has not incorporated suicide risk-assessment tools into other parts of the mental-health care system, despite Dr. Patterson's recommendation to do so.

pain and suffering and potential suicides among those who are not receiving the mental-health care they need.

b. Inadequate Referral Process

The other mechanism for identifying and classifying prisoners with mental illness, the referral process, is riddled with delays and inadequacies. The purpose of the referral process is to identify prisoners whose mental illnesses develop during their incarceration and prisoners whose mental-health needs were not identified during the intake process. Furthermore, the referral process enables the system to respond to the changing mental-health needs of prisoners as they arise, regardless of their initial mental-health assessment results. In a functioning system, referrals from prisoners or staff would be triaged based on the urgency of the articulated needs: some may warrant immediate action, such as placement in a suicide-watch cell or an immediate evaluation by a psychiatrist, while others may be addressed over a longer period of time. According to

Dr. Patterson, the defense expert, triaging is important because the assessment process enables clinicians to determine appropriate next steps, and delays in doing so pose a risk of untreated symptoms, including a risk of death from critical yet unmet treatment needs.

As with the intake screening procedure, experts from both sides concluded that ADOC's referral process suffers from serious deficiencies. First, ADOC does not have a system to triage and identify the urgency of each request, and to make referrals according to the level of urgency. MHM's contract-compliance reports have identified this issue year after year, starting in 2011: the reports stated that processed referral slips did not reflect acuity levels, and the logs of referrals did not record the relevant date and time information, making it impossible to ensure timely processing and referrals. Despite perennial indications that referral requests were being processed in a haphazard manner, ADOC still does not have any system of tracking and processing referrals to ensure that urgent requests are actually referred to

providers, or that providers are able to handle requests in a timely fashion: an audit performed by defense experts in May 2016 revealed that referral forms still do not note urgency levels that would enable triaging.[29]

Second, the referral process is inadequate because correctional officers are ill-positioned to notice behavioral changes. As plaintiffs' expert Vail testified, severe overcrowding and understaffing make it difficult for correctional officers to notice behavioral changes. It is simply unrealistic to rely on ADOC's overburdened correctional officers to identify and refer prisoners who may need mental-health treatment, except perhaps for those prisoners with the most obvious symptoms of mental illness.

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29. Plaintiffs have objected to the use of the audit results on Daubert grounds, contending that the methodology used to conduct the audit was not reliable and has not been accepted in the field of correctional mental-health care as a way of evaluating adequacy of care. Based on Dr. Patterson's testimony on the methodology, the audit results are admitted. However, as will be explained more extensively in a separate Daubert opinion, limitations in the methodology and implementation of the audit have been taken into consideration in evaluating their weight.

In addition to delaying treatment or leaving mental-health symptoms untreated, ADOC's broken referral process has contributed to the phenomenon of prisoners engaging in self-harm or other destructive behavior in order to get attention of mental-health staff. Experts described examples of "increasingly desperate acts" to get the attention of MHM and necessary services, such as self-injury, fire setting, and suicide attempts. Joint Ex. 460, Burns Expert Report (doc. no. 1038-1044) at 29; Haney Testimony at vol. 1, 72 (describing frequent fires in segregation units as desperate attempts to get attention for their needs, including mental-health needs). The court also heard from class member J.A., who has repeatedly engaged in self-harm and expressed suicidal ideation. After summarizing his various attempts to obtain mental-health services while in segregation, including starting fires, J.A. observed, "[G]etting help in prison is harder than getting out of prison." J.A. Testimony at __. These are snapshots of unnecessary pain and suffering that could be avoided or at least minimized

if prisoner requests for mental-health services were being addressed on a timely basis.

c. Inadequate Classification of Mental-Health Needs

ADOC also fails to classify the severity of mental illnesses accurately. The mental-health coding system is intended to reflect the level of functioning a mental-health patient has and correspond to his or her treatment needs and housing requirements. Through multiple revisions, the coding system now includes 13 different codes, ranging from MH-0 to MH-9, with sub-codes for some levels, such as MH-2d. In broad strokes, a higher numbered MH code reflects more intensive care needs: MH-0 refers to no mental-health care need; MH-1 and MH-2 refer to mild impairment or stable enough to receive only outpatient care; MH-3 through MH-5 refer to those who need inpatient care, in either the residential treatment unit (RTU) or intensive stabilization unit (SU); MH-6 refers to those who need

to be hospitalized. See Joint Ex. 105, Admin. Reg. § 613 (doc. no. 1038-127).[30]

Testimony from multiple witnesses and experts made clear that ADOC's mental-health coding system often fails to accurately reflect prisoners' mental-health needs.[31] For example, plaintiff R.M. has been coded MH-2 and housed in general population for most of his incarceration since 1994, despite his severe paranoid schizophrenia and resulting delusions. He was eventually

30. ADOC's mental health coding system was amended twice in 2016. According to the latest version, a new level (MH-9) refers to those who cannot be transferred to any facility and must be held at the current housing facility. However, the description of the code does not give any specifics about the patient's symptoms and only specifies who may revise such a code. Joint Ex. 107, Admin. Reg. § 613-2 (doc. no. 1038-130). There is no MH-7 or MH-8 in the system.

31. Dr. Burns explained that inappropriate classification of mentally ill patients partially stems from a lack of proper documentation in treatment plans and progress notes. Combined with a high turnover rate of staff and frequent transfers between facilities, inadequate documentation means that information about a patient's symptoms and treatment is not well preserved. As a result, symptoms are evaluated without the context and history of each patient, leading to a higher risk of under-classifying and underestimating the acuity of mental illnesses.

given a higher code and transferred to the Bullock RTU, but Dr. Burns testified that he may need an even higher level of care, and that he suffered from inadequate care while housed for years in an outpatient facility. Likewise, a prisoner identified as #12 in Dr. Burns's report was clearly delusional and believed that televisions and radios were speaking to him; he was in an outpatient facility at the time of his interview with Dr. Burns, but needed to be in a long-term, inpatient facility due to the severity of his schizophrenic symptoms. An email from Associate Commissioner Naglich to Dr. Hunter in December 2015 discussed a schizophrenic prisoner who was clearly delusional and eventually killed another prisoner and threatened to kill a correctional officer; he had been coded as MH-1, which is intended to denote someone who is stabilized with a 'mild' impairment. Lastly, Dr. Haney gave examples of patients who have been repeatedly placed on suicide watch for engaging in self-harm and suicide attempts but were designated as MH-0--that is, not having any mental-health treatment

needs--including plaintiffs L.P and R.M.W., and former plaintiff J.D. Haney Testimony at vol. 2, 113-20; see Pl. Dem. Ex. 131, Movement History of Exemplar Plaintiffs (doc. no. 1126-10).

d. Inadequate Utilization of Mental-Health Units

As experts from both sides concluded, ADOC does not adequately utilize residential treatment unit beds and fails to provide residential-level care to those who need it, leading to persistent or worsening symptoms. Defendants' expert Dr. Patterson opined that roughly 15 % of prisoners on the mental-health caseload should be housed in RTU or intensive stabilization unit settings; in other words, approximately 515 ADOC prisoners should be housed in the RTU or the SU.[32] However, only 310 of

32. These numbers are based on the number of patients currently on the mental-health caseload. Because ADOC misses a significant portion--at least 5 % of the inmate population, or a third of those who are already on the caseload--of those who need mental-health care during its intake screening and referral processes, it is likely that even more prisoners need residential mental-health care than calculated here.

the 376 RTU and SU beds were being used to house prisoners with mental-health needs as of September 2016. Joint Ex. 344, September 2016 Monthly Operating Report (doc. no. 1038-703). This practice of not filling even existing mental-health unit beds has persisted for years, as reflected in MHM's monthly operating reports. See, e.g., Joint Ex. 321, December 2015 Monthly Operating Report (doc. no. 1038-666) at ADOC0319118-19; Joint Ex. 320, December 2014 Monthly Operating Report (doc. no. 1038-665) at ADOC0319016-17 (showing 299 beds occupied in December 2015 and 177 beds occupied in December 2014).[33] Dr. Patterson credibly opined that this significant shortfall suggests ADOC has been under-identifying those who need residential treatment--a problem that starts with the inadequate intake screening process. He also observed another flaw in RTU admission management: he explained that those who are repeatedly sent to the SU should be admitted to the

33. As explained in more detail later, many of the cells in the mental-health unit are being used to house segregation prisoners without any mental-health needs.

RTU to receive more long-term, intensive treatment, rather than being released back to general population after a stay in the SU. He also noted that prisoners who are admitted to RTUs often stay only for a short period, despite their pronounced needs for long-term treatment. Because there is little programming available in the RTU, the utility of an RTU placement is quickly exhausted, according to Patterson.

Dr. Burns agreed with Dr. Patterson's assessment that ADOC needs to house more patients in the RTU, especially when RTUs have available beds. She also observed during her facility visits multiple prisoners who needed residential treatment but were in general population.

In sum, ADOC's significantly inadequate identification and classification practices create a substantial risk of serious harm to prisoners with mental illness. These practices result in a failure to treat or under-treatment of prisoners' serious mental-health needs. As will be discussed later, these practices also have a downward-spiral effect on the rest of the system:

those who do not get needed treatment often end up in crisis cells, frequently receive disciplinary sanctions, and may be placed in segregation, where they have even less access to treatment and monitoring.

3. Inadequate Treatment Planning

Correctional systems have a duty to provide minimally adequate mental-health care to prisoners with serious mental-health needs. Estelle v. Gamble, 429 U.S. 97, 104 (1976) (deliberate indifference to serious medical needs of prisoners constitutes "unnecessary and wanton infliction of pain proscribed by the Eighth Amendment") (internal quotation and citation omitted); Greason v. Kemp, 891 F.2d 829, 834 (11th Cir. 1990) (holding that prisoners have a constitutional right to psychiatric care under Estelle v. Gamble). Expert testimony from both sides established that such minimally adequate care requires treatment planning. Treatment planning is the foundation of all forms of health care; through the process, providers involved in the treatment identify the

patient's target symptoms, treatment goals, and next steps, and coordinate long-term care as necessary. When staff from multiple disciplines--for example, psychiatric, psychological, nursing, and even correctional--are involved in a patient's treatment, treatment planning should involve key people from each discipline in order to ensure consistent and informed treatment. Treatment planning is particularly important in the prison context, where prisoners have almost no ability to ensure the consistency of their own treatment; it is even more crucial in the context of ADOC, where prisoners are frequently transferred across correctional facilities and the staff turnover rate is high. As experts described, without coordinated long-term planning, treatment is often ineffective and runs a substantial risk of prolonging pain and suffering of those who have treatable mental illnesses. Failure to provide meaningful treatment planning constitutes a substantial deviation from acceptable standards of prison health care; such deviations can pose a substantial risk

of serious harm to those who have serious psychiatric needs. Steele v. Shah, 87 F.3d 1266, 1269 (11th Cir. 1996) (noting that providing care where the quality is "so substantial a deviation from accepted standards" can constitute an Eighth Amendment violation).[34]

ADOC fails to provide adequate treatment planning. First, experts for both sides found that ADOC's treatment plans are not individualized to each prisoner's symptoms and needs, resulting in 'cookie-cutter' plans that remain the same even though there may have been changes in that prisoner's mental-health state. As defense expert Dr.

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34. As an aside, the court notes that treatment planning can be viewed as serving similar purposes as medical recordkeeping, which also ensures continuity of care and coordination between different providers. Courts have held that maintaining accurate and complete records of mental-health treatment is an essential component of a minimally adequate mental-health care system. See, e.g., Ruiz v. Estelle, 503 F. Supp. 1265, 1339 (S.D. Tex. 1980) (Justice, J.), aff'd in part, rev'd in part on other grounds, 679 F.2d 1115 (5th Cir. 1982), opinion amended in part and vacated in part, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983); Balla v. Idaho State Bd. of Corrections, 595 F. Supp. 1558, 1577 (D. Idaho 1984) (Ryan, J.) (adopting the Ruiz standard of six essential components of a minimally adequate mental health treatment program, including complete and accurate records); Coleman v. Wilson, 912 F. Supp. 1282, 1298 (E.D. Cal. 1995) (Karlton, J.) (same).

Patterson explained, a patient's lack of progress in treatment does not justify the use of a cookie-cutter treatment plan: providers should try different interventions that could be effective, rather than sticking to the same intervention when the patient is not responding to it. Likewise, treatment plans should reflect the changes in the treatment environment, such as an admission to the SU or placement on suicide watch. However, ADOC treatment plans often have general patient goal statements such as "identify triggers" or "identify coping mechanism" repeated in subsequent plans, without showing any progress or change in the mental state of the patient; they also often fail to reflect the fact that the patient has been placed in a different environment that would impact his or her mental health and treatment mode. Whether the rote repetition results from a lack of follow-through on the plans or mere sloppiness in filling out the plans, both present hazards to prisoners with mental illness.

ADOC's treatment-team meetings are also inadequate. Treatment-team meetings are an essential part of the treatment planning process, where providers from various disciplines involved in the patient's treatment discuss developments and next steps to ensure coordinated care. However, the meetings at ADOC happen haphazardly, with members of the treatment team missing from the meetings and signing new treatment plans on different days. This haphazard attendance creates a risk of different providers having an inconsistent approach or course of treatment for the same patient because some of the treatment team are unaware that a new treatment plan has been put into effect. Furthermore, the meetings frequently occur without any participant with prescription privileges, especially at some outpatient facilities where the only provider with prescription privileges is a nurse practitioner who visits the facility as infrequently as once per month. As a result, treatment plans are often developed without the input of a provider with expertise in psychotropic medication.

Experts from both sides agreed that ADOC's treatment planning without all necessary participants is problematic and falls below the standard of care because it deprives patients of a coherent treatment plan and continuity of care.

Inadequate treatment planning subjects mentally ill prisoners to the risk of exacerbating symptoms, prolonged pain and suffering, serious injury from self-harm, and even death. As Dr. Burns explained, treatment plans serve an essential function of making sure that all providers' treatment is consistent. Dr. Burns credibly opined that not having a consistent approach to a prisoner's treatment poses a risk of exacerbating or neglecting problems that may arise from mental illness, such as self-injury. Specifically, according to Dr. Burns, failing to address the issue of repeated self-injury due to a lack of coordinated treatment and inconsistent approaches by different providers creates a substantial risk that patients will continue to engage in self-harm; these patients can eventually end up

disabled or dead as a result of continued self-harm. Defense expert Patterson agreed with Burns's emphasis on the critical importance of coordinated treatment and identified inadequate treatment planning as one of the most significant deficiencies in ADOC's mental-health care system.

In the context of ADOC, where transfers of prisoners and changes in providers are frequent, the impact of inadequate treatment planning is exacerbated. Because written treatment plans are generic, counselors and patients often have to start from scratch when patients are moved from counselor to counselor. A former mental-health professional testified that prisoners who are transferred to a new counselor are often adversely affected, not only because the counselor has to start anew the process of building rapport with the prisoner, but also because treatment plans and progress notes often contain insufficient information to enable a different provider to learn about the patient or continue a consistent course of treatment. Plaintiff C.J. also

testified to the difficulties in having to start over with a new counselor after each transfer. In sum, without the continuity of care and consistent treatment approaches provided through proper treatment planning, providers are substantially hindered from addressing symptoms of mental illness, exposing patients to continued pain and suffering, worsening self-injurious behavior, serious bodily injury, or even death.

4. Inadequate Psychotherapy

Constitutionally adequate mental-health care in prisons requires more than simply providing psychotropic medications to mentally ill prisoners. Prison systems must provide not only psychotropic medication but also psychotherapy or counseling to prisoners who need it to treat their serious mental-health needs. See Greason v. Kemp, 891 F.2d 829, 834 (11th Cir. 1990) (adopting district court's conclusion that "[e]ven if this case involved failure to provide psychotherapy or psychological counselling alone, the court would still

conclude that the psychiatric care was sufficiently similar to medical treatment to bring it within the embrace of Estelle."). **As Dr. Burns explained, from a clinical perspective, having both modalities of treatment--medication and counseling--is important because one particular modality does not work for everyone.** **According to Dr. Burns, research indicates that seriously mentally ill patients need counseling and medication, along with non-structured or recreational activities, and that psychotherapy is an effective and essential mode of treatment for mental illness.** **She credibly opined, and the court finds, that not providing individual or group therapy poses a substantial risk of serious harm, including continued symptoms, pain, and suffering, as well as self-harm and suicide attempts.**

Insufficient mental-health and correctional staffing at ADOC undermines the availability and quality of individual and group counseling sessions. **First, as explained earlier, inadequate mental-health staffing combined with the increasing number of prisoners on the**

mental-health caseload has driven up the number of prisoners on each counselor's caseload. As a result, both the frequency and quality of counseling sessions have suffered over time, according to both experts and MHM providers. MHM's medical director Dr. Hunter testified that the caseload has increased in recent years to the point of taxing his staff's ability to carry out MHM's contractual obligation: MHM counselors' caseloads have increased from 60 patients to between 80 and 90; some facilities have only one counselor, who treats more than 100 patients; nurse practitioners' caseloads have increased from 10-15 patients per day to 20-25 patients per day.

MHM's program director Houser also testified that caseloads for counselors were sometimes twice as much as they should be; as a result, she said, counselors are "continually getting behind." Houser Testimony at vol. 2, 25. In addition to seeing patients, counselors also have to attend meetings, document their treatment actions, design treatment plans, go on rounds in segregation units,

and respond to crises as they arise.[35] Due to counselors' increasing caseloads and mounting job responsibilities, individual counseling appointments are frequently canceled or delayed. For example, during a spot audit of the caseload at Bibb, 212 out of 213 cases had overdue counseling appointments. Pl. Ex. 576, December 2, 2015 Email from Davis-Walker to Houser (doc. no. 1112-26). Defense expert Patterson also observed that counseling appointments are frequently delayed due to staffing

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35. Much testimony centered around how long a typical counseling session lasts. The court heard conflicting testimony: some counselors testified that most sessions do not last longer than 30 minutes; some refused to give a more concrete estimate altogether, other than saying their sessions might range from ten minutes to two hours. Moreover, there is no documentary or otherwise reliable evidence establishing such numbers. Given the lack of documentation, the number of patients on each clinician's caseload at any given moment is a more reliable proxy for the quality and frequency of therapy: even if some patients receive sufficiently long counseling sessions, the context of overwhelming caseloads means that the clinicians are not able to give such counseling sessions to most patients, by virtue of not having enough time in the day and having other duties. Therefore, the court finds that the overwhelming caseloads of psychiatric providers and counselors as relayed by Dr. Hunter and Houser are more indicative of the quality and frequency of counseling sessions for the vast majority of prisoners on the mental-health caseload.

shortages and opined that "these delays contribute to a failure to provide necessary mental health services"; the potential harm in such delayed appointments includes "continued pain and suffering of mental health symptoms including suicide and disciplinary actions due to inadequate treatment." See Joint Ex. 461, Patterson Expert Report (doc. no. 1038-1046) at 64.

Caseloads that are--as MHM's Houser put it--much higher than an "acceptable standard" may explain why so many prisoners testified that 'counseling sessions' do not amount to much. Dr. Patterson's review of the medical records within ADOC revealed that most progress notes from counseling sessions only contained short descriptions of symptoms, instead of reflecting clinical judgments and overall assessments of the patient's progress. Similarly, Dr. Burns noted that the overwhelming majority of progress notes she reviewed indicated that the patient was 'fine,' had 'no complaints,' or had nothing to talk about. She explained that a short, vague statement like "I'm alright" is not

a sufficient indicator of a stable mental-health state: instead of moving on to the next patient simply because the patient's initial self-reporting does not expressly indicate distress, the clinician should probe deeper; notes on asking follow-up questions about medications, mood, job assignments, or disciplinary sanctions would reflect a proper counseling session. Based on the prisoners' descriptions and the experts' observations, the court finds that counseling sessions are often inadequate.

The chronic lack of sufficient correctional staffing has also contributed to frequent disruptions in the provision of psychotherapy. Dr. Burns credibly opined that insufficient correctional staff has interfered with access to treatment, as evinced by frequently canceled or delayed individual counseling sessions and group sessions. In particular, as she noted, the frequency of counseling sessions for those in segregation is especially low due to officer shortages: since segregation inmates must be escorted from their cells by

correctional officers, mental-health appointments are frequently canceled or delayed when there are not enough officers to cover both the essential security posts and mental-health appointments. Ayers, defendants' correctional expert, also credibly opined that ADOC was failing to respond to the needs of mentally ill prisoners due to the correctional staffing shortage. Likewise, a nurse practitioner at Donaldson credibly testified that she has experienced a persistent problem of not being able to see patients due to a lack of correctional staffing, and that the problem has been getting worse over the years. She and other providers testified that when insufficient correctional staffing does not allow prisoners to be escorted to the mental-health offices, the mental-health providers may go to the cells themselves and attempt to talk to their patients at the cell-front. However, as agreed by MHM's medical director Hunter and experts Burns and Haney, these cell-front check-ins are insufficient as counseling and do not constitute actual mental-health treatment; Haney

explained that these contacts serve solely a monitoring purpose--that is, to ensure that the patient is responsive and not decompensating, rather than to treat the underlying mental illness. Indeed, while visiting five different facilities and their segregation units, the court observed the difficulty of standing outside a closed cell door to speak to a prisoner about mental-health needs: most cell doors are solid with small, perhaps 12-by-6-inch windows, some of which were completely fogged over and others shielded by wire mesh or obfuscated by paper pasted on the window, either by the prisoner or from outside; and most of these segregation or high-security cells are in large, auditorium-like spaces, where sounds echo throughout the units, resulting in a panoply of unintelligible yet very loud noises. Conducting a counseling session across the door in these loud spaces seemed nearly impossible: the court had a hard time imagining having a meaningful conversation in such an environment, let alone a conversation for the purposes of mental-health treatment.

As with these cell-front sessions, ADOC's provision of psychotherapy often lacks confidentiality. Experts and other clinician witnesses explained that confidentiality between providers and patients is a hallmark of and a necessary condition for mental-health treatment, yet some ADOC facilities lack a confidential setting for counseling sessions. Obviously, cell-front interactions between mental-health staff and prisoners are not confidential, as many staff witnesses testified, and as the court observed firsthand. Moreover, many facilities lack mental-health offices with windows and doors that would ensure the visibility of the counseling session to the correctional officer who is providing security without sacrificing sound confidentiality. For example, as the court saw on its tour of St. Clair Correctional Facility, the walls in the mental-health offices do not extend from floor to ceiling, and they lack doors; in other words, the offices resemble tall cubicles. Anyone nearby, including other prisoners and the correctional officer who escorted the prisoner there,

could hear the content of a counseling session. Moreover, correctional officers often stand by the door of counseling offices with the door ajar for safety purposes, and counseling sessions are sometimes held in lieutenant's offices where other correctional officers are present and holding disciplinary hearings. As Dr. Haney explained, prisoners often do not feel safe sharing their mental-health issues in the presence of correctional officers or other prisoners because what they share with the mental-health staff may make it easier for others to exploit them; as a result, the lack of confidentiality undermines the effectiveness and quality of counseling sessions.[36]

The quality of psychotherapy also suffers due to use of unsupervised, unlicensed counselors, referred to as 'mental health professionals' in ADOC. The court finds, based on expert testimony from both sides, that the lack

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36. By the same token, Dr. Haney found it problematic that at some facilities 'inmate newsletters' identify exactly who is on the mental-health caseload, thereby increasing the stigma of mental-health care and discouraging prisoners from seeking mental-health treatment due to fear of exploitation by others.

of supervision for unlicensed MHPs is a significant, system-wide problem affecting the delivery of mental-health care within ADOC. ADOC's own contract for mental-health care specifies that all MHPs must be licensed. However, only four out of 47 MHPs employed at ADOC were licensed as of February 2016, and this problem has persisted for years.[37] The standard of care and state regulations mandate that an unlicensed counselor be supervised by a licensed psychologist, who is required to co-sign the counselor's notes and review the treatment provided. Because MHM employs only three psychologists, most MHPs work at prisons without a psychologist, and the chief psychologist of MHM, Dr. Woodley, provides no actual supervision to unlicensed MHPs. In fact, most MHPs' clinical work is supervised by their respective

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37. Associate Commissioner Naglich testified that unlicensed counselors can work in ADOC facilities only if they obtain a license within six months of starting employment. However, this testimony was contradicted by the employment data, as well as Houser's testimony that MHM cannot hire licensed counselors within the contract budget. Indeed, of the four current and former MHM counselors who testified at trial, none had become licensed despite having worked in ADOC for multiple years.

site administrators, who are also mostly unlicensed counselors with their own caseloads--in other words, the supervisors generally have the same level of credentialing and education as the MHPs they are supervising. If the site administrators have any problems, they consult with Dr. Woodley. Dr. Patterson, a defense expert, credibly opined that it is unacceptable for an unlicensed counselor, rather than a licensed psychologist, to supervise another unlicensed counselor. He identified the lack of supervision of unlicensed providers as a systemic deficiency.

ADOC's provision of group therapy is also inadequate. Dr. Burns testified that infrequent and inadequate individual counseling can pose a substantial risk of serious harm to prisoners with mental illness, if the same patients do not have access to group therapy. Burns further explained that group therapy is especially important in a correctional system, which often does not have enough resources to provide individual counseling to all of the prisoners who need psychotherapy. Group

sessions, like individual therapy, help prisoners with mental illness manage their symptoms, so that they do not deteriorate to the point of needing residential treatment; outpatient group therapy also enables mental-health staff to identify those who need more intensive treatment. Burns opined that therapy groups on depression, post-traumatic stress disorder, and medication management issues should always be offered to those on the mental-health caseload, and that not offering such group treatment in the context of an under-resourced correctional mental-health system creates a substantial risk of harm to prisoners suffering from those illnesses. Despite the importance of group therapy for those who receive inadequate individual therapy, many seriously mentally ill ADOC prisoners with little access to individual therapy also have little access to group therapy. MHM's program director Houser admitted that groups have been not happening at many facilities, including RTUs and SUs, due to the correctional staffing shortage.

In sum, mental-health understaffing, correctional understaffing, the use of unsupervised, unlicensed counselors, and lack of confidentiality all undermine the efficacy and frequency of psychotherapy for mentally ill prisoners within ADOC. These conditions have created a substantial risk of serious harm for those who need counseling services, leaving them at a greater risk for continued pain and suffering, self-injurious behavior, suicidal ideation, and, as discussed later, disciplinary actions in response to symptoms of mental illness.

5. Inadequate Inpatient Care

Problems of inadequate psychotherapy and treatment planning become even more pronounced for prisoners in mental-health units, where ADOC houses the most severely mentally ill prisoners in its custody. Mental-health units (also referred to as inpatient units) include residential treatment units and intensive stabilization units. These units, which are located at Donaldson, Bullock, and Tutwiler, house about 2 % of prisoners

within ADOC's custody.[38] Given that prisoners housed in mental-health units have already been identified as having the most severe mental-health needs within ADOC, these patients are at higher risk of decompensation than other mentally ill prisoners if treatment is insufficient or if their housing environment is not therapeutic. And yet, despite ADOC and MHM's awareness of these prisoners' acute needs, the most severely mentally ill have been receiving grossly inadequate care; in fact, one of the experts described ADOC's mental-health units as operating "almost exactly the same way" as segregation, as illustrated by the placement of segregation inmates without mental-health needs in the same unit and the inadequate out-of-cell time and treatment. Haney Testimony at vol. 2, 104.

a. Improper Use of Mental-Health Units

ADOC has had a persistent and long-standing practice of placing segregation inmates without mental-health

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38. Practices within Tutwiler's mental-health units are discussed separately in Section V.B.9.

needs in mental-health units. This practice allows prisoners without mental-health needs to occupy beds that should be reserved for prisoners who have heightened mental-health care needs and seriously undermines the therapeutic purpose of the mental-health units. Starting in 2012 and continuing through 2016, in its yearly contract-compliance reports, quarterly continuous quality improvement (CQI) meetings, and monthly operating reports, MHM repeatedly discussed ADOC's problematic placement of segregation inmates in the RTU and SU. ADOC's own audit of the Donaldson RTU in 2013 also identified the presence of segregation inmates without mental-health needs as a problem. While Associate Commissioner Naglich testified that segregation inmates were moved out of the Bullock SU by the end of 2013, evidence showed that the problem continued through 2016. For example, Brenda Fields, a clinical operations associate from MHM's corporate office, testified that the presence of segregation inmates in the RTUs and SUs was noted as a problem in early 2016. Most recently, in

December 2016, the list of prisoners in the Donaldson RTU included 13 segregation prisoners who did not have a mental-health code appropriate for mental-health units. Pl. Ex. 1264, December 2016 Donaldson Segregation List (doc. no. 1099-8) at 14; Culliver Testimony at __.

Dr. Tytell, ADOC's chief clinical psychologist, explained that wardens place segregation inmates in the RTU or the SU when they do not have space for them elsewhere. He explained that MHM currently is expected to contact him or Naglich whenever this happens, but did not confirm whether this was always the case. Nevertheless, according to Tytell, the problem has been recurring. He conceded that it is ultimately the wardens, rather than the mental-health staff, who decide how cells in the mental-health units are used.

As all experts, MHM providers, and Dr. Tytell agreed, placing segregation inmates in a mental-health treatment unit is highly problematic. The reasons are multifold. First, having segregation inmates in the same unit as mental-health patients creates a security risk for

mental-health patients: the segregation inmates' presence prevents programming from taking place and diverts correctional officers' attention away from mental-health patients and their needs. MHM's medical director Dr. Hunter testified that housing segregation prisoners in mental-health units compromises mental-health treatment, and that he has made this clear to ADOC. Dr. Woodley, MHM's chief psychologist, informed ADOC that the presence of segregation inmates in the Bullock SU "undermine[s] the utility of this unit making it nearly impossible to operate it for its intended purposes." Joint Ex. 323, February 2016 MHM Monthly Operating Report (doc. no. 1038-668) at 23.

Second, as Dr. Tytell and other experts explained, because mental-health inmates are particularly vulnerable, and those placed in segregation generally have behavioral problems, the presence of segregation inmates increases mental-health patients' risk of being victimized through manipulation or violence. MHM and Dr. Tytell were aware of this risk, as one of the MHM staff

members explained during a CQI meeting that using the Bullock RTU as a "disciplinary dorm" is "putting our vulnerable [inmates] at risk." Pl. Ex. 717, July 2015 Quarterly CQI Meeting Minutes (doc. no. 1044-11) at MHM029600. Associate Commissioner Naglich also agreed that segregation inmates in mental-health units can cause tension within the unit and anxiety to mental-health patients.

The housing of segregation inmates in mental-health units also contributes to the shortage of SU cells for those who actually need urgent mental-health treatment. Associate Commissioner Naglich acknowledged that patients awaiting SU admission could be in an "emergency" situation, as these patients require the highest level of care available within ADOC. Naglich Testimony at vol. 1, 208. However, since 2011, the Bullock SU has had a backlog of patients awaiting admission. While Naglich maintained that after the 2013 audit, ADOC actually moved all segregation inmates out of the Bullock SU in order to alleviate the backlog, she was unable to produce any

documentation supporting her testimony. (During her testimony Naglich reassured the court that she could produce documents showing that she did move segregation inmates out of the Bullock SU in 2013. However, when she did bring in documents purportedly showing such transfers, none of them actually showed that any segregation inmates were moved out of the SU.) Moreover, in 2016, MHM continued to report that segregation inmates were still present in the SU, and that SU cell shortages were causing delays for patients who need SU-level care. Clearly, the placement of segregation inmates in SU beds continues to affect the most severely ill.

b. Inadequate Out-of-Cell Time and Programming

ADOC's mental-health units often fail to serve their therapeutic purpose due to insufficient out-of-cell time and scarce programming for their patients. One of the plaintiffs' experts, Dr. Haney, who for multiple decades has studied isolation and segregation in correctional facilities, noted that ADOC's 'celled' mental-health

units[39] resemble and operate like segregation units.[40] Experts on both sides pointed to specific traits of ADOC's mental-health units that contribute to this segregation-like atmosphere and the lack of a therapeutic milieu: the presence of segregation inmates within the mental-health units, as explained above; a severe lack of out-of-cell time; and a lack of meaningful treatment activities.

Out-of-cell time is crucial for patients housed in mental-health units. Without bringing patients out of their cells for counselling sessions, treatment team meetings, group sessions, and activities, placement in a

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39. A part of each RTU is an 'open RTU,' consisting of dormitories with rows of beds, rather than individual cells.

40. Dr. Haney was not the only one who thought ADOC's celled mental-health units were indistinguishable from segregation units. In the corrective-action plan provided to ADOC in 2013, MHM stated that "conceptualiz[ing] the [Bullock] SU as a treatment unit, not as segregation" was necessary to further the goal of stabilizing patients. Ironically, or perhaps not surprisingly, Associate Commissioner Naglich also had a hard time distinguishing between segregation units and stabilization units during her testimony, frequently referring to stabilization units as segregation units.

'mental-health unit' does no good for patients who need the highest level of care; careful observation and treatment cannot happen when confined in a small cell all day. In fact, without out-of-cell time and effective treatment, housing severely mentally ill prisoners in a mental-health unit is tantamount to "warehousing" the mentally ill. See Wyatt v. Aderholt, 503 F.2d 1305, 1309 n.4 (5th Cir. 1974) (affirming the district court's finding that a state mental hospital was functioning as a "'warehousing institution ... wholly incapable of furnishing treatment to the mentally [ill] and ... conducive only to the deterioration and debilitation of the residents'")(quoting Wyatt v. Stickney, 344 F. Supp. 387, 391 (M.D. Ala. 1972) (Johnson, C.J.)). Furthermore, as Dr. Haney explained, out-of-cell time is especially important for mentally ill prisoners for two reasons. First, mentally ill prisoners experience more pressure and stress from a confined environment, and they have a more acute need to relieve that type of stress due to their vulnerable mental state; in other words, isolation

makes it more likely that their conditions will deteriorate. In that sense, out-of-cell time is in and of itself therapeutic. Second, out-of-cell time ensures that mental-health patients' socialization skills do not atrophy to the point that they become uncomfortable with human interaction altogether.

Patients housed in ADOC's mental-health units receive very little out-of-cell time. This puts them at a substantial risk of continued pain and suffering, decompensation, and self-harm. As Dr. Haney observed, at the Donaldson RTU, patients with serious mental illnesses are left inside their cells virtually all day, with no daily activities; this is similar to ADOC's treatment of segregation inmates, whose out-of-cell time at ADOC does not exceed five hours per week. Dr. Burns concluded, and the court agrees, that the RTUs and SUs offer "little treatment except for psychotropic medication due to staffing level shortages of both treatment and custody staff." Burns Testimony at vol. 1, 26. Dr. Haney also noted that an unduly harsh and

punitive practice limiting property makes mental-health units far from therapeutic and exacerbates prisoners' idleness. He observed that mental-health unit inmates are allowed very little property, which means that they do not have books to read or other things to keep them engaged while spending the vast majority of their time in their cells. The court also observed firsthand the idleness of seriously mentally ill prisoners during its visits to Bullock and Donaldson's mental-health units: the majority of prisoners in those units were lying in their cells, often in a fetal position and facing the wall; there appeared to be no way to engage in any remotely meaningful activity in the cell.

Dr. Patterson, the defense mental-health expert, testified that, in prisons around the country, the standard out-of-cell time for those in mental-health units is ten hours of structured therapeutic activity and ten hours of unstructured activity per week. While a standard practice within the industry does not necessarily set the constitutional floor, a substantial

deviation from the acceptable professional standard could support a finding of an Eighth Amendment violation. Steele, 87 F.3d at 1269.

Patients in ADOC's RTUs and SUs get a vanishingly small amount of time outside their cells compared to the standard practice. In 2013, MHM acknowledged that the lack of programming was problematic for the Bullock SU, telling ADOC that "[i]ncreased programming will assist in staff's ability to stabilize inmates sooner and address the waiting list problem thus easing the bottleneck." Pl. Ex. 689, MHM Corrective Action - Donaldson May 2013 (doc. no. 1069-5) at 13-14. As of June 2016, three years after the 2013 audit, patients in the SU at Bullock were still getting about 30 minutes of individual therapeutic contact per week and about 2.5 hours of non-therapeutic group contacts per week. Joint Ex. 346, June 2016 Monthly Operating Report (doc. no. 1038-708) at 4.[41]

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41. The presence of segregation inmates in the mental-health units contributes to the dearth of out-of-cell time afforded to mentally ill prisoners in

Prisoners in RTUs do not fare much better than in the SUs: Dr. Patterson found that RTU programming--which provides prisoners' main opportunity to leave their cells--is inadequate.[42] MHM and ADOC's internal documents also recognized this lack of out-of-cell time for RTU inmates in the 2013 Donaldson audit: the audit results revealed that no groups were being held for Donaldson RTU patients, and that providers were having difficulties keeping appointments due to correctional staffing shortages. MHM's corrective-action plan following the audit stated that "ADOC not enforcing the

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those units. Dr. Haney testified that it is very difficult to operate a unit that has mixed populations, and that it is not surprising that a unit that contains both segregation inmates and mental-health patients would be treated like a segregation unit. This is partially because correctional officers get confused as to how to operate a unit with two conflicting purposes--discipline and treatment. Relatedly, having segregation inmates in the unit means that mental-health patients cannot be let out of their cells as easily, especially when correctional staffing is minimal or inadequate.

42. Tellingly, Dr. Patterson stated that while Tutwiler's RTU programming is much better than RTUs at male facilities--Bullock and Donaldson--it is still only "close to adequate," but not adequate. Patterson Testimony at vol. 1, 92.

out of cell time and not supporting MHM with the process" is a challenge in ensuring that RTU patients are let out of their cells daily. Pl. Ex. 689, MHM Corrective Action - Donaldson May 2013 (doc. no. 1069-5) at 12. The problem of inadequate out-of-cell time at the Donaldson RTU has continued in spite of the corrective-action plan: in early 2016, MHM's corporate office recommended "continued advocacy for RTU patients to receive outdoor recreation." Pl. Ex. 115, 2016 Contract-Compliance Report (doc. no. 1070-5) at 15. As of September 2016, Donaldson RTU patients were getting fewer than two group contacts per week on average. Joint Ex. 344, September 2016 Monthly Operating Report (doc. no. 1038-703) at 3.

In addition to the lack of general out-of-cell time, mental-health units also fail to provide an adequate amount of treatment to these severely mentally ill prisoners because of shortages of mental-health staff. MHM's program director Houser testified that groups have not been taking place at many facilities, including RTUs and SUs; indeed, an alarmed site administrator at

Donaldson informed Houser in August 2015 that staffing losses at the facility have made it all but impossible to meet the needs of patients at the RTU. In December 2015, Houser asked Dr. Hunter to have one of the psychiatric providers at Bullock, Dr. Edward Kern, provide more services in the RTU in addition to his work in the SU. Dr. Hunter responded that, because the SU was so short-staffed and needed to be prioritized, shifting resources to the RTU would be difficult; he also noted that Dr. Kern had returned after a week of vacation to "what was essentially a zoo on [the SU]." Pl. Ex. 382, Email from Houser to Hunter (doc. no. 1112-6). The 2013 Donaldson audit also found that the psychiatric coverage was insufficient and the logs for RTU rounds by providers were not being kept, making it impossible to tell whether RTU patients were getting any check-ins or treatment or whether their progress was being monitored. Pl. Ex. 689, MHM Corrective Action - Donaldson May 2013 (doc. no. 1069-5) at 1-2.

The correctional staffing shortage also affects the amount of therapeutic care that patients at Donaldson and Bullock receive. Houser admitted that a lack of officers for the RTUs and SUs often cause the cancellation of group activities. The impact of the officer shortage was also consistently documented by ADOC and in reports that were sent to Associate Commissioner Naglich and OHS for their review. For example, during OHS's 2013 audit of Donaldson, the auditors noted numerous deficiencies caused by the correctional staffing shortage. First, mental-health staff were manning laundry and showers instead of providing mental-health care, because there were not enough correctional officers to perform those basic duties. Scheduled activities and out-of-cell time were not being provided due to the correctional officer shortage, and MHM's corrective-action plan stated that the "[RTU] has to be conceptualized as an RTU and not as segregation." Pl. Ex. 689, MHM Corrective Action - Donaldson May 2013 (doc. no. 1069-5) at 9. The same was true at the Bullock SU: the problem of 'access

to patients'--meaning that mental-health staff were unable to provide treatment to patients due to correctional officer shortage--was first identified in 2013, and then again in 2014 and 2016 contract-compliance reports. See Pl. Ex. 114, 2013 Contract-Compliance Report (doc. no. 1070-4); Pl. Ex. 105, 2014 Contract-Compliance Report (doc. no. 1070-3); Pl. Ex. 115, 2016 Contract-Compliance Report (doc. no. 1070-5). As Naglich testified, because there are simply not enough correctional officers, the problem of accessing patients in RTUs and SUs recurs on a regular basis, even when it has been temporarily alleviated through reassigning officers to particularly problematic areas. As a result, patients in the SU often receive their individual psychiatric contact via cell-front check-ins. As explained earlier, this utter lack of confidentiality negates the therapeutic utility of these contacts. Such cursory contacts with the most severely ill patients are gravely inadequate.

The severe effects of warehousing, rather than treating, seriously mentally ill prisoners was crystalized in two incidents at the Donaldson RTU, where two different patients set their cells on fire out of frustration about not getting let out of their cells. The internal email reporting one of the incidents explained that the problem of not letting patients out of their cells was due to correctional staffing shortages. Pl. Ex. 518, January 22, 2016 Email from Wynn-Scott to Houser (doc. no. 1112-18).

Jamie Wallace's last 10 days in the Bullock stabilization unit further exemplify the inadequate treatment provided to the most severely ill patients: his medical records for his final 10 days reflected no group activities, one cell-side treatment plan note, and two psychiatric progress notes.

The lack of out-of-cell treatment in mental-health units adds the risk of harm posed by the harsh effects of isolation to that posed by inadequate treatment in general. As Associate Commissioner Naglich admitted,

inadequate treatment of patients in inpatient units can lead to "additional exacerbation of their mental health symptoms," including further hallucinations and delusions, and suicide. Naglich Testimony at vol. 3, 144-45. In addition, as experts testified, mentally ill prisoners are at a substantial risk of decompensating and being subject to prolonged pain and suffering when placed in an isolated environment. In other words, ADOC's failure to provide adequate treatment and out-of-cell time in mental-health units forces the most severely mentally ill patients to face yet another risk factor for decompensation, even though their placement was for the specific purpose of alleviating the symptoms of their mental illness. Inadequate out-of-cell time and treatment in this context therefore compounds the risk of harm that is already inherent in a nonfunctioning mental-health care system.

c. Lack of Hospital-Level Care

ADOC also creates a substantial risk of serious harm to prisoners at the most severe end of the mental-health spectrum, because it does not provide hospital-level care or a hospitalization option for prisoners housed there. According to experts from both sides, hospital-level care or hospitalization should be available when patients pose a danger to self or others and interventions in the SU do not improve their condition: due to the harmful effect of isolation in an SU cell, staying in the SUs cannot be a long-term solution for patients who experience repeated episodes of deterioration.

Although many ADOC prisoners require hospital-level care, very few actually receive it. Virtually all psychiatric providers who testified agreed that they knew or noticed ADOC prisoners who needed to be transferred to a hospital. ADOC's administrative regulations dictate that those who are kept in the SU for over 30 days without stabilizing should be considered for hospitalization; the same provision also mandates that the treating psychiatrist recommend a transfer to a state psychiatric

hospital if the treatment team determines that all mental-health interventions possible within ADOC have been exhausted, and that the inmate has not responded to those interventions. Joint Ex. 138, Admin. Reg. § 634, Transfer to State Psychiatric Hospital (doc no. 1038-168). However, ADOC virtually never transfers patients to hospitals, except in the case of prisoners nearing the end of their sentence. Dr. Hunter and Associate Commissioner Naglich corroborated this point, and Dr. Kern could recall only four prisoners in the last six years who were transferred to a hospital before the end of their sentences. Dr. Kern explained that MHM tries to deal with acutely ill patients' symptoms within ADOC even though ADOC cannot provide hospital-level care, instead of pursuing hospitalization as required by the administrative regulation, because the waiting list for a bed in a hospital can be six months long or longer.

Several factors differentiate hospital-level care from what is provided in ADOC, as defense expert Dr. Patterson explained. Hospitals are able to offer a high

level of monitoring for suicidal and decompensating patients while not isolating them in a cell: hospitals or hospital-like environments are better at treating severely mentally ill patients because patients can leave their rooms to request help from staff, instead of having to wait until correctional officers or mental-health staff check on them; most of the patients' interactions in a hospital are based on doctor-patient or nurse-patient relationships, rather than guard-prisoner relationships; and the goal of the staff is to treat the patients, rather than to incarcerate them. Dr. Kern also admitted that dealing with patients who need hospital-level care within an SU or RTU is challenging because in those units, providers have a very limited ability to give patients out-of-cell time. He also added that, if he could, he would like to have SU patients "four to six, possibly eight hours out of their cell every day," but that this is impossible because "there are not enough security staff." Kern Testimony at 21. In other words, without a hospitalization option or

another method of providing hospital-level care, the providers are forced to choose between the benefits of close monitoring and restriction of activity and the harmful effects of isolation and losing socialization opportunities.

Both Dr. Patterson and Dr. Burns expressed strong disapproval of ADOC's failure to provide hospital-level care. As Dr. Burns put it, waiting for an unstable patient's end of sentence to transfer him or her to a hospital is akin to "someone with chest pain who has to wait until they're released from prison to get taken to a hospital to have the chest pain treated. We wouldn't do that in the case of chest pain. I'm not sure why we do it in the case of inmates with serious mental illness." Burns Testimony at vol. 1, 168-69. Dr. Patterson opined that there should be a hospital-like setting or actual hospitalization of patients with the most severe cases of mental illness; he did not see any hospital-like environment within the ten facilities he toured. He also explained that placement in the stabilization unit, the

highest level of care available within ADOC, should be a time-limited treatment intervention, because the SU is a highly isolated setting and likely to exacerbate conditions of those prisoners experiencing acute symptoms; and that if a patient is not stabilized in the SU, the patient should be moved to a hospital. Patterson emphatically stated, without any qualification, that refusing to transfer patients to mental health hospitals until the end of their sentences is simply "wrong," and that it puts the most severely ill patients at a substantial risk of harm. Patterson Testimony at vol. 1, 174. In other words, for the most severe cases of acute mental illness, there is no alternative to a hospital setting, due to these stark differences in treatment options and milieu.

The grave risk of serious harm in failing to provide hospital-level care to severely ill prisoners was quite obvious in the case of Jamie Wallace. Less than two months before he testified in court, clinicians recommended that Wallace be transferred to a hospital.

Despite the clinical recommendation, ADOC chose not to pursue hospital admission. In court, Wallace testified that voices in his head told him to kill himself; and indeed, he had attempted suicide multiple times. After testifying in court, highly agitated and destabilized, Wallace languished in a crisis cell and an SU cell before ending his life. Less than two weeks had passed since his testimony regarding inadequate mental-health care in ADOC.

6. Inadequate Suicide Prevention and Crisis Care

Like its inpatient care, ADOC's suicide-prevention procedures and crisis care suffer from serious deficiencies. Identification, treatment, and monitoring of those who have heightened suicide risks are important because they provide the last safety net before the worst possible outcome in mental-health care: suicide. Reflecting its importance, courts have held that a minimally adequate mental-health care system must have a functioning suicide-prevention program. See, e.g., Ruiz

v. Estelle, 503 F. Supp. 1265, 1339 (S.D. Tex. 1980) (Justice, J.) ("[I]dentification, treatment, and supervision of inmates with suicidal tendencies is a necessary component of any mental health treatment program."), aff'd in part, rev'd in part on other grounds, 679 F.2d 1115 (5th Cir. 1982), opinion amended in part and vacated in part, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983); Madrid v. Gomez, 889 F. Supp. 1146, 1258 (N.D. Cal. 1995) (Henderson, C.J.) (adopting the suicide-prevention program standard from Ruiz as part of "constitutional minima"); see also Greason v. Kemp, 891 F.2d 829, 835-36 (11th Cir. 1990) ("Where prison personnel directly responsible for inmate care have knowledge that an inmate has attempted, or even threatened, suicide, their failure to take steps to prevent that inmate from committing suicide can amount to deliberate indifference."); Waldrop v. Evans, 871 F.2d 1030, 1036 (11th Cir. 1989) (finding that failure of a prison staff member to notify competent authorities

regarding the inmate's dangerous psychiatric state and self-harm may constitute deliberate indifference).

Prisoners are at an elevated risk of suicide due to the conditions prevalent in ADOC facilities. As Dr. John Wilson, the psychologist from MHM's national Clinical Operations Department, explained to MHM's program director Houser, "[e]xperience and research confirm" the following: "Suicides increase with crowding, drugs, assaults, low staffing rates, lack of meaningful programming, and significant changes in facility mission/population such that inmates are moving between facilities more frequently or are uncertain about whether they will be housed or ... when there is basic unrest at a systems level, it can cause a spike." Pl. Ex. 1224, October 1, 2015 Email from Wilson to Houser (doc. no. 1117-24) at 2. Given the widespread presence of these factors in ADOC, the need for effective suicide prevention and crisis care cannot be overstated.

Suicide prevention consists of assessing and managing suicide risk: assessing the risk entails using

a suicide risk-assessment tool to identify those who are at heightened risk and the level of that risk; managing the risk involves both short- and long-term care that provides meaningful therapeutic contact to alleviate suicide risk. Suicide prevention also involves physically restricting suicidal prisoners' ability to harm themselves. The short-term care provided to prisoners who are undergoing acute mental-health crises is called 'crisis care.'

The standard of care in correctional mental-health care and ADOC regulations require that a suicidal prisoner be placed in a special cell that minimizes risks of self-harm and suicide. These 'crisis cells' or 'suicide-watch cells' must be free of structural designs that would facilitate self-harm or suicide attempts, such as tie-off points where prisoners can tie a ligature to hang themselves; they also must be free of items that prisoners can use to harm themselves, such as sharp items and ropes. Patients on suicide watch are stripped of

personal belongings and regular clothes and given a suicide-proof blanket and a suicide smock.

Both correctional officers and mental-health staff have the ability to place any prisoner on suicide watch, after which a mid- or high-level provider is required to conduct a thorough mental-health assessment that includes the use of a suicide risk-assessment tool.[43] While on suicide watch, patients are to receive a high level of care in order to resolve the crisis and return to a less isolated and restrictive setting as soon as possible; such care includes close monitoring, daily re-evaluation of treatment plans, and frequent contacts with mid- or high-level providers such as psychiatrists and psychologists. If a patient on suicide watch is not stabilized within 72 hours, mental-health staff is required to evaluate the patient for admission to the

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43. Suicide risk-assessment tools include a checklist of risk factors and protective factors, such as age, gender, length of sentence, contact with family, and engagement in treatment, just to name a few. These tools also require the clinician to make a holistic assessment based on the answers and the appropriate weight of each factor to estimate the overall risk of suicide.

stabilization unit. Discontinuing suicide-watch procedures requires an order from a psychiatrist, psychologist, or a nurse practitioner after an in-person evaluation.

ADOC prisoners in crisis may alternatively be placed in a crisis cell on mental health observation (MHO). MHO refers to a similar, short-term monitoring status for patients whose conditions are not as acute as those on suicide watch but still merit an observational status, or who have been recently released from suicide watch. Patients on MHO may be released only by a psychiatrist, psychologist, or nurse practitioner, but--unlike in suicide watch--the patients are allowed regular clothes and limited property.

ADOC's suicide-prevention efforts and crisis care suffer from multiple inadequacies. First, ADOC and MHM's use of a suicide risk-assessment tool is too limited to adequately identify those at high risk. Moreover, many prisoners at heightened risk of suicide or self-harm do not receive crisis care because of a severe shortage of

crisis cells and staffing, and due to a culture of skepticism towards threats of suicide. Second, suicidal prisoners are often placed in unsafe environments both because of the shortage of crisis cells and because many crisis cells contain unsafe physical structures, such as tie-off points, and dangerous items that can be used for self-harm. Third, prisoners who are identified as suicidal receive inadequate monitoring and treatment. Lastly, inappropriate releases from suicide watch and a lack of follow-up care often push suicidal prisoners back into crises again and again, driving up the demand for crisis cells and diverting resources away from day-to-day, long-term treatment.

ADOC's inadequate crisis care and long-term suicide-prevention measures have created a substantial risk of serious harm, including self-harm, suicide, and continued pain and suffering. ADOC has experienced a dramatic increase in suicide rates in the last two years. Alabama's reported suicide rate was five per 100,000 between 2000 and 2013; by fiscal year 2015-2016, the rate

had shot up to over 37 per 100,000. This is more than double the national average of 16 suicides per 100,000 prisoners in state and federal correctional systems. Patterson Testimony at vol. 2, 27; see also U.S. Department of Justice, Bureau of Justice Statistics, Mortality in Local Jails and State Prisons, 2000-2013 - Statistical Tables (2015) at Table 28. In the fiscal year starting in October 2016, the rate is projected to be over 60 per 100,000, based on the first three months of the year. See Pl. Ex. 1267, 2015-2016 Chart of ADOC Suicides (doc. no. 1108-38). Defense expert Dr. Patterson testified that he does not know of any prison system that has a suicide rate over 25 or 30 per 100,000. It is in the context of the magnitude of the suicide rate at ADOC that the court now considers ADOC's failure to provide a functioning suicide-prevention system.

a. Failure to Provide Crisis Care to Those Who Need It

ADOC fails to provide suicide-prevention services and crisis care to many prisoners who need it. This failure stems from inadequate identification of those who are at heightened risk of suicide, combined with a culture of cynicism toward prisoners' threats of suicide and self-harm and a severe shortage of crisis cells. The majority of suicides in ADOC are committed by prisoners who are not on the mental-health caseload, which means that many of the prisoners' needs were never identified through the intake or referral process, and no intervention happened before their deaths. See Pl. Ex. 1267, 2015-2016 chart of ADOC suicides (doc. no. 1108-38) (showing eight out of 11 suicides between September 2015 and December 2016 committed by those who were not on the mental-health caseload).

According to correctional mental-health experts on both sides, the administration of a suicide risk-assessment and management tool by a qualified provider is widely recognized to be an essential part of

mental-health care: it should be used as a part of the intake screening process and whenever a prisoner threatens or attempts to harm himself or actually does so. The purpose of a suicide risk-assessment tool is to assess whether a prisoner presents an increased risk of suicidal behavior in order to manage that risk through early intervention. As defense expert Dr. Patterson explained, the suicide risk-assessment tool must be completed in a face-to-face encounter by a high-level provider or a mid-level provider with high-level supervision, because the tool comes with clinical guidelines and requires clinical judgment.

ADOC and MHM did not use a suicide risk-assessment tool for many years and only recently began using one only at intake. While examining ADOC's mental-health care in connection with this case, defense expert Patterson noticed that no suicide risk-assessment tool was being used, even though MHM had such a tool. Dr. Patterson recommended that a risk-assessment tool be used throughout the system, including at intake, upon

placement in a crisis cell, and any other time a prisoner is deemed to have a heightened suicide risk. He also specifically indicated that a casual assessment without using a form is not acceptable--a form with appropriate clinical guidelines should be used in each instance.

As a result of this exchange, which took place in the summer of 2016--more than two years after this lawsuit was filed--MHM began using a suicide risk-assessment tool at intake for new prisoners entering ADOC.[44] However, contrary to Patterson's recommendations, MHM is not using the assessment tool when prisoners threaten or engage in self-harm or are placed in crisis cells. For example, Dr. Patterson found no suicide risk assessment had been completed for plaintiff Jamie Wallace in December 2016 despite his repeated threats of self-harm and suicide and his stay in a crisis cell shortly before he killed himself. Prisoners who threaten suicide frequently do not receive any kind of

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44. No efforts have been made to administer the risk-assessment tool to the vast majority of prisoners in the system, who went through intake before that date.

face-to-face assessment by high-level providers, let alone one involving a risk-assessment tool. The failure to perform proper suicide risk assessments to identify prisoners with a heightened risk of suicidal behavior places seriously mentally ill prisoners at an "obvious," substantial risk of serious harm. Burns Testimony at vol. 1, 63.

A chronic shortage of crisis cells also contributes to ADOC's failure to provide crisis care to those who need it. While the exact number of crisis cells sufficient for any given prison system depends on the needs of the population and the treatment options available, it is clear that the number of crisis cells in ADOC is grossly inadequate. Witness after witness--including Associate Commissioner Naglich and MHM managers--agreed that having two crisis cells for 3,800 prisoners at the Staton-Draper-Elmore complex, two crisis cells for 1,900 prisoners at Bibb, and two crisis

cells for 2,700 prisoners at Fountain, is insufficient.[45] MHM's medical director Hunter testified that the number of crisis cells in each of the 15 major facilities within ADOC is insufficient. In addition to the low number of crisis cells across the system, the backlog of placements at the Bullock stabilization unit has contributed to the shortage: when the SU does not have a bed for the most acutely ill prisoners, often due to the presence of segregation inmates, mentally ill prisoners end up staying in crisis cells for much longer than 72 hours, though the explicit purpose of crisis cells is to serve as a short-term placement while the prisoner stabilizes.[46]

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45. Plaintiffs' expert Vail testified that inadequate outpatient and routine care would increase the need for crisis care, and inadequate crisis care would also increase the number of those who are placed on suicide watch over and over again, reinforcing the need for more crisis cells. Documentary evidence of prisoners being repeatedly placed on suicide watch supports this conclusion.

46. The O dorm at Kilby, a small cell block with 13 cells, has been used as overflow crisis cells for the rest of the system. Transferring suicidal prisoners from their home institution to crisis cells at a different institution, while preferable to housing them in a place that is not suicide-proof, poses a host of problems.

Because ADOC has a limited number of cells to work with, ADOC and MHM staff gamble on which prisoners to put in them and frequently discount prisoners' threats of self-harm and suicide, instead of properly evaluating suicide threats by having a qualified provider administer

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First, it takes multiple correctional officers to transport a prisoner, which exacerbates the problem of correctional-officer shortages and may not even be possible depending on the staffing level at the time the crisis is happening. Second, it jeopardizes the prisoner's mental state even further, since changing the environment of someone who is already in crisis can add to the distress the prisoner is experiencing. Dr. Tytell referred to the transfer experience as potentially "traumatic." Tytell Testimony at __. Third, it interferes with continuity of care, where the team that was familiar with the patient's symptoms and treatment is no longer in charge of treatment, and a new team of providers must get up to speed to treat a new patient, all in the context of time-sensitive care.

A related issue that arose during the trial is how to characterize the O dorm at Kilby. Trial testimony showed that the O dorm is sometimes also used as a segregation overflow for Kilby. Pl. Ex. 1257, Duty Post Log for O Dorm (doc. no. 1097-20) (showing "seg walk" and "seg shower" as part of tasks completed by correctional officers in O dorm). This practice makes it more likely that Kilby will run out of crisis cells. It also raises the same concerns that experts and MHM providers expressed regarding housing suicidal prisoners in a segregation unit or housing mental-health patients with heightened treatment needs and increased vulnerability near segregation inmates in general, as explained in more detail in the section on segregation practices.

a suicide risk-assessment tool. For example, in CQI meetings and multidisciplinary staff meetings, MHM staff discussed "call[ing] their bluff" and "tak[ing] the gamble" on prisoners who threatened to commit suicide or severely injure themselves. Pl. Ex. 720, February 2014 Quarterly CQI Meeting Minutes (doc. no. 1044-14) at MHM029579; see also Pl. Ex. 718, April 2015 Quarterly CQI meeting minutes (doc. no. 1044-12) at MHM029570 (discussing concerns about feigning suicidality to avoid being sent to segregation and that it is ADOC's responsibility to find a safe place for "genuinely suicidal inmates" (emphasis in original)). Discussions during these meetings included statements such as "99 % often do not act on their threats." Pl. Ex. 721, January 2015 Quarterly CQI meeting minutes (doc. no. 1044-15) at MHM029614. Staff meeting minutes and medical records of patients also included conclusory statements suggesting that prisoners who are claiming suicidality and self-harm tendencies are in fact malingering or seeking 'secondary gains'--such as getting out of a segregation cell, or

getting away from an enemy, or debt problems. In response to MHM staff's use of this type of language in medical records, MHM's Chief Psychologist, Dr. Woodley, instructed staff to not use "malingering" and "secondary gain" in written documentation because one "cannot know [a prisoner's] motivations for certain." Pl. Ex. 721, January 2015 Quarterly CQI meeting minutes (doc. no. 1044-15) at MHM029614. Contrary to this instruction, MHM staff continued to write off prisoners' threats of self-harm as motivated by inmate-to-inmate debt or secondary gains, rather than conducting a proper assessment. In the March 2015 monthly operations report, MHM reported to ADOC that there have been "occasions where the inmate would not be placed on watch despite claiming to be suicidal, especially if the inmate is well known to the treatment staff as having a history of bluffing and/or no actual attempts." Joint Ex. 328, March 2015 Monthly Operations Report (doc. no. 1038-673) at 14. A progress note from Jamie Wallace's medical records dated five days before he committed suicide was

representative of this culture: it noted that Wallace was "using crisis cell/threats to get what he wants." Joint Ex. 496, Jamie Wallace Medical Records (doc. no. 1037-1062) at ADOC0399861. In sum, MHM staff frequently treat threats of self-harm as behavioral rather than mental-health issues, writing off threats instead of delving deeper to address underlying mental-health needs through a mental-health evaluation and suicide risk assessment.[47]

This skeptical approach towards threats of self-harm poses substantial and obvious risks. First, those who should be on suicide watch may not receive the crisis care that they need and may kill or harm themselves. Gambling with threats of self-harm is dangerous: obviously, as experts and MHM staff agreed, not all

47. Some correctional officers also fail to take threats of self-harm seriously, and even worse, respond in dangerous ways. As Dr. Hunter testified, ADOC officers have responded to prisoners' threats of self-harm with sarcasm or cracked jokes about suicidality, and even challenged inmates to follow through with suicide threats; on several occasions, ADOC officers essentially called a prisoner's bluff and then that person attempted suicide.

prisoners who express suicidality are feigning it, and a number of prisoners do in fact become suicidal and engage in self-harm. Furthermore, the risk of misinterpreting a prisoner's motivation is heightened by MHM's failure to use a suicide risk-assessment tool after an instance or threat of self-harm. Second, hostile attitudes towards prisoners in mental health crises can "cause inmates to become more aggravated and agitated," making it more difficult to treat the inmate. Houser Testimony at vol. 2, 160. Third, prisoners who make threats or engage in self-harm but are not actively suicidal may nevertheless suffer from underlying mental-health issues that need to be addressed.

As experts from both sides agreed, no bright line distinguishes 'behavioral problems' from 'mental-health problems': even if someone is engaging in self-harm for 'secondary gains,' a high-level clinician should evaluate the underlying mental-health issues, for four reasons. First, the presence of suicidality is not a yes-or-no question; according to the experts, it is well

established that suicide risk is on a continuum, and a meaningful suicide-prevention program requires monitoring for an increased risk of suicide. Second, even in the absence of genuine suicidal ideation, engaging in self-harm is a mental-health issue because it indicates suffering from psychological distress and a lack of proper coping mechanisms to resolve problems. Therefore, instead of ignoring those who resort to self-harm to seek attention, staff should provide assistance.[48] Third, as Dr. Burns cautioned, chalking up

48. Interestingly, on the topic of 'secondary gains,' plaintiffs' expert Vail posited that with a functioning protective-custody system, in which prisoners who feel unsafe can be moved away from their enemies, the problem of trying to determine who is genuinely suicidal would be alleviated. While all prison systems have conflicts among prisoners and a risk of inmate-on-inmate violence, he explained, prisoners in other correctional systems who feel unsafe generally pursue other avenues to protect themselves, such as requesting protective custody or transfer, rather than requesting to be placed on suicide watch. According to Vail, prisoners generally do not request suicide watch solely for protection because suicide cells are not, generally speaking, a desirable environment. This testimony suggests that to the extent non-suicidal ADOC prisoners actually are electing such an undesirable cell environment for protection, either the protective custody system is inadequate, or general population dorms are ridden with so much violence that

instances of self-harm to behavioral problems not deserving of treatment may actually encourage such behavior: research in behavioral management shows that negative reinforcement of self-harm is more likely to prompt the prisoner to engage in more dramatic and even lethal self-harm. Finally, people who engage in self-harm can also accidentally kill or severely injure themselves without having a specific intent to do so; therefore, monitoring and assessment are necessary even if a prisoner's suicidality is deemed not genuine.

To emphasize, the court does not mean to suggest that a prisoner must always be kept on suicide watch upon a threat of suicide; as experts noted, some threats of suicide or self-harm are not genuine. However, as the experts explained, these threats should not be written

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it is rational for prisoners to choose suicide-watch cells over the dangerous environment of general population. Vail's observations also indicate that improving the protective-custody system and addressing the underlying problem of prisoner safety could be a safe and effective way of ensuring that only those who need crisis cells are placed there; it would also be a solution that does not involve placing suicidal prisoners at a substantial risk of serious harm by taking a gamble on whether prisoners are actually suicidal.

off without the use of an appropriate suicide risk-assessment tool by a qualified provider in a face-to-face evaluation. Based on the overall assessment of the evidence, the court finds that ADOC's current practice was devoid of any system to ensure that suicidal prisoners are appropriately evaluated.

b. Placement of Prisoners in Crisis in Dangerous and Harmful Settings

Due to the chronic shortage of crisis cells, ADOC frequently places those on suicide watch in inappropriate environments, such as offices for correctional staff (also called 'shift offices'), libraries, and segregation cells. These inappropriate placements put suicidal prisoners at a grave risk of self-harm and suicide.

ADOC and MHM have repeatedly placed suicidal prisoners in dangerous environments due to a lack of available crisis cells. MHM's Dr. Hunter complained to ADOC in his March 2015 monthly operating report that ADOC officers at some facilities were placing prisoners on suicide watch in cells that are not crisis cells to avoid

having to travel. He was also aware of at least a dozen times when prisoners in crisis at Bibb Correctional Facility were placed in shift offices over the weekend while waiting for transportation to another facility. ADOC's Dr. Tytell recalled multiple instances in 2015 in which prisoners in crisis were being housed in shift offices for multiple days; he admitted that this practice was inappropriate but commented, "[Y]ou have to work with what you got." Tytell Testimony at __. During a 2016 ADOC tour, Dr. Haney found a prisoner who was housed in a mental-health office;[49] the prisoner had been there for over a day without receiving any treatment, even though he was deemed to be suicidal. Lastly, at least one documented case of suicide in the last three years occurred while a prisoner awaiting crisis-cell placement was housed in a room behind a shift office.[50] Houser Testimony at vol. 3, 55.

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49. Dr. Haney also noted that this prisoner was locked in the office with no access to a bathroom.

50. A related problem is the inadequate mental-health staffing at prisons that provide only

This practice of placing suicidal prisoners in unsafe environments increases the risk that prisoners will engage in self-harm, including suicide attempts. The consensus among the experts from both sides, as well as MHM and ADOC staff, was that housing a suicidal inmate in a space like a shift office is quite dangerous: not only are these places full of items that can be used for self-harm, but, depending on where the prisoner is placed, such placements can also cut off suicidal prisoners from the treatment that they desperately need.

Placing suicidal prisoners in cells that are either in or adjacent to death row or segregation also poses a number of problems. Holman Correctional Facility's suicide-watch cells are located on death row. As plaintiffs' expert Dr. Haney explained, the

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outpatient mental-health care: those who are confined in crisis cells, or even more inappropriate settings, such as shift offices or libraries, do not have access to mental-health care over the weekend, because most outpatient-only prisons do not have mental-health staff on weekends. In other words, despite their 'crisis' condition, suicidal prisoners in these facilities are often left in a crisis cell or a non-suicide-proof environment for multiple days waiting to see a mental-health staff member.

"juxtaposition of prisoners who are potentially suicidal with prisoners who are under a sentence of death" is "extremely problematic" for those in the throes of a mental health crisis. Haney Testimony at vol. 1, 101-02; Joint Ex. 459, Haney Expert Report (doc. no. 1038-1043) at 35. Defense expert Dr. Patterson agreed: bringing prisoners in crisis from general population into a death-row unit would make them more likely to decompensate, because death-row units are not designed to be therapeutic; moreover, death-row units are largely self-contained and are subject to their own regulations that are likely harsher and more punitive than the regulations in an ordinary unit. Dr. Patterson also expressed concern that death-row inmates would retaliate against inmates in crisis cells, creating even more stress for these vulnerable prisoners.[51]

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51. ADOC also sometimes places crisis-care inmates in stabilization units. This is problematic not so much for the suicidal inmates but for the others: according to Dr. Hunter of MHM, housing suicidal prisoners in crisis cells within an SU negatively impacts MHM's ability to care for the severely mentally ill already in the unit.

c. Inadequate Treatment in Crisis Care

The care provided to prisoners on suicide watch is also grossly inadequate. ADOC and MHM fail to provide adequate treatment to patients in crisis cells and, to make matters worse, frequently keep them in crisis cells for much longer than appropriate or necessary.

As Dr. Burns credibly opined, out-of-cell counseling sessions for prisoners on suicide watch are important both because they can help eliminate suicidal thoughts and because they assist providers in meaningfully modifying treatment plans to address the causes of a crisis. However, prisoners on suicide watch and mental-health observation are not consistently receiving out-of-cell appointments with counselors.

Prisoners are frequently kept for extended periods of time in crisis cells, instead of being transferred to an RTU or SU for intensive, longer-term treatment. According to ADOC's administrative regulations, anyone who is on suicide watch for more than 72 hours should be considered for placement in a mental-health unit. As

experts on both sides agreed, crisis-cell placement is meant to be temporary and should not last longer than 72 hours, because the harsh effects of prolonged isolation in a crisis cell can harm patients' mental health. However, since as far back as 2011, MHM has, by its own report, considered transferring prisoners in crisis to treatment units only in a small fraction of the crisis placements that last longer than 72 hours. See Pl. Ex. 1190, 2011 Contract-Compliance Report (doc. no. 1070-8) at 22 (in 2011, only 20 % of those housed in crisis cells for over 72 hours were considered for transfer); Pl. Ex. 105, 2014 Contract-Compliance Report (doc. no. 1070-105) at 11 (in 2014, 29 %); Pl. Ex. 115, 2016 Contract-Compliance Report (doc. no. 1070-3) at 11 (in 2016, 13 %). MHM's CQI manager testified that extended stays in crisis cells are "sometimes" necessary because there is a "full house" in the appropriate treatment unit. Davis-Walker Testimony at vol. 2, 102. See also Pl. Ex. 1219, September 2014 Emails between MHM and ADOC (doc. no. 1047-10)(discussing a prisoner who was on suicide

watch for 25 days at Bibb, waiting for a transfer to Bullock SU).

Contrary to the CQI manager's characterization, documentary evidence showed that prisoners are in fact frequently kept in crisis cells for much longer than 72 hours. See Pl. Ex. 721, January 2015 Quarterly CQI Meeting Minutes (doc. no. 1044-15) at 4 (showing examples of long crisis-cell stays, such as 240 hours at Limestone, 429 hours at Staton, and 620 hours at Ventress, and suggesting that weekend hours were not being counted); Pl. Dem. Ex. 141, 2016 Crisis Cell Placements (doc. no. 1156-2) (showing that a majority of facilities have multiple prisoners being housed in crisis cells for longer than 144 hours, some of them exceeding 200 hours, in 2016). At St. Clair, Dr. Haney confirmed that one of the prisoners he interviewed had been housed in a barren suicide-watch cell in the infirmary for five months--well beyond the intended duration of crisis-cell stays. These extremely lengthy stays in crisis cells contribute, in turn, to a shortage of crisis cells

throughout the system. They also illustrate that prisoners are not getting the treatment they need to stabilize and be moved out of crisis cells, or that ADOC and MHM are leaving these mentally ill prisoners in extremely isolated environments for longer than appropriate.

d. Unsafe Crisis Cells

Despite their purpose of preventing self-harm and suicide, crisis cells in ADOC facilities are unsafe. First, crisis cells are ridden with physical structures that provide easy opportunities to commit suicide. Experts from both sides agreed that having crisis cells free of tie-off points is a critically important feature of suicide prevention in prisons. The National Commission on Correctional Health Care (NCCHC), a professional organization that promulgates standards for correctional health care and provides accreditation to facilities that follow those standards, requires that crisis cells be free from tie-off points that can be used

for self-injurious behavior.[52] ADOC's history makes clear the critical importance of this issue: all but one suicide within ADOC in the last two years happened by hanging. However, many of ADOC's crisis cells have easily accessible tie-off points, such as sprinkler heads, hinges, fixtures, and vents, making them incredibly dangerous for suicidal prisoners. In fact, defense expert Dr. Patterson stated that making crisis cells suicide-proof is the "number-one issue" to be addressed. Patterson Testimony at vol. 1, 296.

Examples of unsafe crisis cells abound. As Dr. Haney noted and the court saw firsthand during prison visits in February 2017, in the Bullock SU, where some prisoners on suicide watch are kept, sprinkler heads are located

52. While professional standards like those promulgated by NCCHC do not necessarily set the constitutional floor for minimally adequate mental-health care under the Eighth Amendment, substantial deviations from accepted standards can indicate an Eighth Amendment violation. See Steele v. Shah, 87 F.3d 1266, 1269 (11th Cir. 1996) (holding that providing care where the quality is "so substantial a deviation from accepted standards" can constitute deliberate indifference). Moreover, ADOC's contract with MHM requires MHM to comply with those standards.

directly above the sink and the toilet, making it easy for suicidal prisoners to climb up to tie a ligature on the sprinkler head. In fact, that is how Jamie Wallace committed suicide while housed in an SU cell at Bullock. As plaintiffs' experts observed, crisis cells in St. Clair, Kilby, and Holman all have tie-off points; MHM's Houser also admitted that many crisis cells across ADOC facilities are out of compliance with NCCHC standards for suicide cells because they have tie-off points.

Unsurprisingly, MHM staff have repeatedly expressed concerns about the safety of crisis cells in multiple facilities, as reflected in contract-compliance reports and CQI meeting minutes: in 2011, staff expressed concern about the unsafe features of crisis cells at Fountain; in 2012, staff reported concerns about the safety of Ventress crisis cells; in 2016, MHM's contract-compliance report stated that crisis cells in Holman are unsafe because of the open bars on the doors.

Another dangerous aspect of many ADOC crisis cells is the difficulty of monitoring the prisoner inside. The

design of the cell doors and windows and the layout of the facilities often prevent a direct line of sight into the cell. For example, Dr. Haney testified that suicide-watch cells at Donaldson, located in the infirmary and known as Z-Cells, had grates over the windows that made it very difficult to see into a cell even when standing directly in front of a door and peering in. At St. Clair, Dr. Haney noted that suicide-watch cells were located in a hallway in the infirmary; they, too, were hard to see into and easy to ignore. Pl. Dem. Ex. 107, St. Clair Suicide Watch Cell (doc. no. 1125-62). Associate Commissioner of Operations Culliver noted that even though Holman crisis cells have barred fronts, it is nonetheless impossible to see into these cells from the officers' cube located closest to them. Culliver also acknowledged that the solid crisis-cells doors at many facilities, including Bullock, Donaldson, Fountain, Kilby, and St. Clair, make it impossible for an officer or mental-health provider on the unit to see into the cells and check on the prisoners housed within them

without walking up to the door and looking through the small glass window.

ADOC's practice of allowing prisoners in cells to cover the windows with paper or other material exacerbates the visibility problem. Dr. Haney noticed this practice in Donaldson, Holman, St. Clair, and Bibb, describing it as incredibly problematic because it blocks any type of monitoring entirely. Dr. Haney witnessed a particularly disturbing incident while touring Bibb. He entered the infirmary and went to speak with the prisoners housed in the crisis cells. As he was speaking to one, a lawyer touring the facility with him discovered that a prisoner in another crisis cell was, at that very moment, attempting to hang himself--the prisoner had somehow procured a cord to wrap around his neck and had attempted to cover the window with a blanket. Allowing prisoners to cover the windows of their cells is dangerous in any context, but it is particularly unacceptable for prisoners known to be suicidal. Due to the visibility problems with many ADOC suicide-watch

cells, defense expert Patterson opined that suicidal prisoners should be under direct, constant observation while in those cells. He also explained that camera observation by an officer at the control station may not be sufficient, because by the time that officer notices a suicide attempt, it might be too late; moreover, the officer likely has other responsibilities that would preclude careful monitoring of any single cell.

The dangerousness of crisis cells and the significant risk of harm caused by such conditions are compounded by ADOC's rampant failure to prevent introduction of dangerous items into crisis cells. Admittedly, the parties in 2014 reached a settlement that prohibits ADOC officers from providing disposable razor blades to prisoners on suicide watch and in segregation. See January 16, 2015 Order Denying Motion for Preliminary Injunction (doc. no. 84).[53] However, the problem of

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53. Defendants argued that inappropriate items found in crisis cells can no longer be part of the case because of this settlement. However, the problem is broader in scope: the settlement agreement to discontinue providing razor blades by no means discharges ADOC's responsibility

dangerous items in crisis cells has continued, according to a number of ADOC officials and MHM staff. Suicidal prisoners have access to inappropriate items--such as sharp implements--either because they bring the items with them when placed on suicide watch and correctional officers do not search them, or because correctional officers or inmate 'runners' who perform various housekeeping tasks around the unit bring the items to the crisis cells. MHM's Houser stated that prisoners have access to improper items in safe cells at a number of facilities, including specifically Donaldson, St. Clair, Staton, and Holman; she was not sure whether this problem had been addressed at any of these facilities. Dr. Hunter of MHM and Associate Commissioner Culliver both testified that finding sharp objects in a suicide-watch cell has been a problem at Bibb, despite the installation of flaps on cell doors that were intended to stem the flow of contraband. Lastly, Holman's crisis cells are particularly problematic, as Associate Commissioners

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to ensure that objects with which suicidal prisoners can engage in self-harm are not found in crisis cells.

Naglich and Culliver admitted: although passing prisoners are able to slip items to those housed in crisis cells at a number of facilities, this sort of exchange is particularly easy at Holman, where the crisis cell doors have open bars. Yet, when asked what MHM had done to address this issue, Houser responded that after each incident, MHM staff would "ask [ADOC] to please do a better job." Houser Testimony at vol. 3, 16. She could not identify any other efforts either by MHM or ADOC to address this issue.[54]

e. Inadequate Monitoring of Suicidal Prisoners

The unsafe features of crisis cells heighten the importance of monitoring prisoners for signs of decompensation or suicide attempts. However, ADOC's monitoring practices are woefully inadequate.

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54. The risk of allowing suicidal prisoners access to sharp implements is obvious. However, as Dr. Burns explained, sharp items pose a serious risk even to prisoners who do not have any intention of killing themselves but engage in cutting; it is easy to cut too deep by accident and cause potentially fatal bleeding.

According to ADOC's administrative regulations and the standard of care for mental-health care in prisons, suicide-watch checks should take place at staggered, or random, intervals of approximately every 15 minutes, rather than exactly every 15 minutes. For prisoners on mental-health observation, these staggered checks should occur approximately every 30 minutes. Staggered intervals prevent prisoners from timing their suicide attempts, because otherwise they can predict exactly when checks will occur. Such monitoring procedures are all the more crucial when suicidal inmates are housed in cells that have little visibility: as plaintiffs' expert Vail bluntly stated, without regular checks, "[Y]ou have no idea if they're alive or dead." Vail Testimony at vol. 1, 96.

Dr. Burns and Dr. Haney both testified that many of the monitoring logs they had seen during their site visits and document review had pre-printed times or had handwritten pre-filled times at exact intervals. This practice reflects prison staff's lack of understanding

that checks should be performed at staggered intervals, and makes it impossible to ensure that staggered checks are actually happening. Associate Commissioner Naglich admitted that staff are not permitted to use monitoring logs with pre-printed times, but that some continue to use them. She also testified that officers and staff are not permitted to handwrite times and signatures in advance of, or in lieu of, their actual checks. However, during the post-trial prison tours, the court came across multiple logs where times at 15- or 30-minute intervals had been pre-filled, even though the parties had agreed during the trial to correct this practice, and the court had ordered compliance with the agreement several weeks before the tours. This evidence of non-compliance greatly troubled the court, as it showed that policy changes are not being implemented on the ground even when a court order is involved.

For the most acutely suicidal, constant--rather than staggered-interval--watch is necessary. As Dr. Burns opined, correctional systems must have a constant-watch

procedure for individuals whose risk of suicide is the highest, due to their engagement in self-injurious behavior or threat of suicide with specific plans: if a prisoner is waiting for an opportunity to kill himself, it is too dangerous to walk away, and he must be constantly observed. For this reason, the NCCHC standards classify constant-watch procedures as an "essential" standard, and MHM is contractually obligated to follow all NCCHC standards.[55]

ADOC and MHM had not provided constant watch for acutely suicidal inmates prior to Jamie Wallace's death. During the trial, in the wake of Jamie Wallace's suicide, the court urged the parties to propose interim measures to prevent more suicides. Plaintiffs then filed a motion for temporary restraining order seeking to institute constant watch and other suicide-prevention measures. Plaintiffs' Emergency Motion for Temporary Restraining

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55. NCCHC promulgates two types of standards: essential and important. As the terms would indicate, the distinction between the two denotes the relative importance of each standard. The essential standards are mandatory conditions for accreditation by NCCHC; only 85 % compliance with important standards is required.

Order (doc. no. 1075). The parties reached an interim agreement in early January. Phase 2A Interim Relief Order Regarding Suicide Prevention Measures (doc. no. 1102). The agreement mandated a constant-watch procedure for those deemed acutely suicidal and forbade using pre-printed or pre-filled forms for other types of suicide watch. While defense counsel represented to the court that it was Commissioner Dunn's intent to keep the constant-watch procedure until told otherwise by the court or experts, the court also heard testimony that the current implementation of suicide-prevention measures and constant watch is not sustainable.[56] The parties defined 'constant watch' as a "procedure that ensures one-on-one visual contact at all times, except to the

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56. In addition, there were allegations of non-compliance with the constant watch procedures at Kilby. See Plaintiffs' Motion to Renew the Temporary Restraining Order Regarding Suicide Prevention Procedures (doc. no. 1171). This allegation of non-compliance will be discussed in infra Part V.D.

A separate issue is whether Commissioner Dunn's representation that he will enforce the interim agreement indefinitely is binding on ADOC or his successors. This issue is taken up in Part V.D.

extent that the physical design allows an observer to maintain an unobstructed line of sight with no more than two people on suicide watch at once." Interim Agreement Regarding Suicide Prevention Measures (doc. no. 1102-1). MHM's Houser testified that the implementation has been difficult because some facilities do not have a layout conducive to constant watch, due to the location of the windows on cell doors and structures that obstruct a direct line of sight into crisis cells. As a result, MHM has had to transfer some prisoners to other facilities. Another obstacle in the implementation stems from a lack of sufficient correctional staffing: for example, the Holman crisis cells, located on death row, are unsafe for mental-health staff, because without sufficient correctional staffing on duty, prisoners often throw objects from second and third tiers at the mental-health staff conducting constant watch on the first tier. Finally, according to Houser, the annual budget for a permanent constant-watch procedure is projected to be over $4 million, but MHM was initially provided only

$200,000 to meet the immediate needs of the interim agreement mandating constant watch.[57]

f. Inappropriate Release from Suicide Watch and Inadequate Follow-up

Prisoners are routinely released from suicide watch improperly and receive inadequate follow-up care after their release from suicide watch. These practices create a substantial risk of recurring self-injurious behavior and suicide.

As experts from both sides explained, suicidal prisoners should be released only with the approval of a psychiatric provider (psychiatrist or nurse practitioner) who has made a face-to-face assessment that their condition was sufficiently stabilized to warrant it. In 2016, MHM reported to ADOC that it was discharging patients from suicide watch without a face-to-face assessment; the decisions were based instead on whatever

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57. Houser explained that prior to the interim agreement, MHM could not staff constant watch under the current contract amount and was not expected to do so, even though NCCHC standards mandate constant watch.

information lower-level mental-health staff communicated over the phone to on-call doctors and nurse practitioners. A nurse practitioner at Donaldson and St. Clair testified that generally she will not authorize the release of a prisoner from suicide watch at St. Clair without seeing him in person; however, when she is not at St. Clair (a significant majority of the hours in the week), staff call Dr. Hunter to authorize the release remotely. Associate Commissioner Naglich admitted that this practice of authorizing suicide-watch release without a face-to-face evaluation was not specific to any particular facilities, but that it reflected a general shortage of psychiatrists; she further agreed that it put the prisoners at risk of premature release. Evidence also showed that prisoners have, on occasion, been released from suicide watch by correctional staff without any mental health assessment at all; this is even more unacceptable. See, e.g., Pl. Ex. 436, September 19, 2014 Email between Houser and ADOC (doc. no. 1074-26) (notifying Naglich about a death-row inmate who was

released from a crisis cell by ADOC officer, without notice or approval by mental-health staff).

According to experts on both sides, follow-up care is necessary upon release from suicide watch both for prisoners on the mental-health caseload and for those who are not. For those who are already on the mental-health caseload, follow-up care entails incorporating what providers learned from the most recent crisis into the prisoner's treatment plans and modifying interventions in order to address the factors that contributed to the self-injurious behavior or suicidal ideation. For those who were not on the caseload, follow-up care allows providers to assess whether the prisoner's risk of self-injury remains low, and to determine whether the prisoner should be added to the mental-health caseload to address underlying mental-health issues. As Dr. Burns credibly opined, the failure to provide follow-up care that addresses the root of self-injurious behavior creates a substantial risk that the self-injurious

behavior will continue and result in serious injury or death.

The follow-up care provided to many prisoners upon their release from suicide watch at ADOC is woefully inadequate. Both Dr. Haney and Dr. Burns observed multiple instances of prisoners who were released directly from crisis cells back into segregation, with little or no follow-up treatment in subsequent weeks. For example, experts observed that plaintiffs L.P., R.M.W., and C.J. and prisoner J.D. all had a pattern of cycling between crisis cells and segregation with little follow-up treatment after crisis-cell release. As explained further later, prisoners in segregation--even those on the mental-health caseload--have little access to meaningful treatment, due to severe staffing shortages that prevent prisoners from being brought out of their cells and a lack of group activities.

Once again, Jamie Wallace provides a concrete example of the lack of follow-up care and the resulting harm. During his testimony, he repeatedly insisted that he

rarely received therapeutic care when not on suicide watch. Dr. Burns corroborated his testimony, noting that despite his very acute mental illness, Wallace had only one individual counseling session in the two-month period following a suicide watch placement in 2015, and that his treatment plan did not change or reflect the fact that he came off of suicide watch in late August 2016. The same lack of follow-up care was repeated in 2016: he was discharged from suicide watch two days before he committed suicide; in those two days, he received no follow-up care.

In sum, the combination of inadequate identification of needs for crisis care, unsafe cells, inadequate monitoring, and inadequate treatment has created a substantial and grave risk of serious harm for ADOC's prisoners who have a high risk of engaging in self-injurious behavior and suicide attempts.

7. Inappropriate Use of Disciplinary Actions

ADOC has an unacceptable practice of disciplining mentally ill prisoners for behavior that stems from their mental illnesses and doing so without adequate regard for the disciplinary sanctions' impact on mental health. Mentally ill prisoners are routinely disciplined for harming themselves or attempting to do so. These punitive practices in turn subject mentally ill prisoners to a substantial risk of decompensation and increased suffering. Cf. Coleman v. Wilson, 912 F. Supp. 1282, 1320 (E.D. Cal. 1995) (Karlton, J.) ("[B]eing treated with punitive measures by the custody staff to control the inmates' behavior without regard to the cause of the behavior, the efficacy of such measures, or the impact of those measures on the inmates' mental illnesses" violated seriously mentally ill prisoners' Eighth Amendment rights); Casey v. Lewis, 834 F. Supp. 1477, 1548-49 (D. Ariz. 1993) (Muecke, J.) (finding that using lockdowns to punish seriously mentally ill prisoners'

behavior stemming from their illness constitutes an Eighth Amendment violation).

Imposing disciplinary sanctions on prisoners for engaging in self-injury creates an additional risk of harm beyond that stemming from inadequate treatment. As plaintiffs' expert Burns explained, because ADOC's practice treats self-injury solely as a behavioral problem rather than a mental-health problem, it fails to address the underlying mental-health issues through treatment; responding to self-harm in this manner is likely to escalate the self-injurious behavior, potentially resulting in serious physical injury or even death. Furthermore, if a disciplinary action results in segregation, mentally ill prisoners are at an even higher risk of harm--as will be discussed in detail later--because of the detrimental effects of isolation and of the limited access to treatment, both of which can in turn worsen underlying mental illness.

The practice of punishing prisoners for engaging in self-harm is common and system-wide at ADOC, despite a

written policy purporting to prohibit it. ADOC's administrative regulation states that, although they are not exempt from compliance with rules and regulations, inmates "will not be punished for symptoms of a mental illness."[58] Joint Ex. 128, Admin. Reg. § 626 (doc. no. 1038-151). ADOC has engaged in a practice of automatically disciplining prisoners who engage in self-injurious behaviors. In fact, Naglich's Office of Health Services deemed this practice problematic as early as 2013, when it conducted an audit of services provided in Donaldson. As a result, MHM's post-audit

58. Defendants elicited testimony from various practitioners and prisoners that it is sometimes appropriate to discipline a prisoner for a violation of administrative rules despite the fact that he suffers from a mental illness. But plaintiffs have not disputed this point. Instead, they have offered evidence to show that many mentally ill prisoners are punished as a direct result of their mental illness, which the experts credibly testified is harmful. For example, defense counsel asked multiple prisoners, including plaintiff Jamie Wallace and class member M.P., whether it was 'appropriate' to be disciplined for having a contraband--a razor blade, for example--in the cell; however, these prisoners actually had received disciplinary sanctions for engaging in self-injurious behavior, not for having contraband.

corrective-action plan stated that ADOC is to stop "automatically apply[ing] disciplinary sanctions to male inmates who engage in self-injurious behavior." Pl. Ex. 689, MHM Corrective Action - Donaldson May 2013 (doc. no. 1069-5) at ADOC045459.[59] The person responsible for implementing this change was Dr. Ron Cavanaugh of OHS, who was to review files of prisoners who may have been sanctioned for symptoms of mental illness and send instructions on how to deal with self-injurious behavior to ADOC officials in charge of supervising the disciplinary process.

Although the 2013 corrective-action plan required follow-up action to address this issue, ADOC did not take meaningful action to change this practice, and prisoners continue to face sanctions for self-injurious behavior. Associate Commissioner Naglich's staff could find no documentation of any file reviews conducted by Dr.

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59. While the corrective-action plan for Donaldson specifies "male inmates," Associate Commissioner Naglich testified that she understood the policy change--to cease automatic disciplinary sanctions for engaging in self-harm--applied to both male and female prisoners. Naglich Testimony at vol. 2, 135.

Cavanaugh or instructions sent to Associate Commissioner Culliver or the regional coordinators, who according to Naglich were the officials responsible for enforcing this policy change. Associate Commissioner Culliver was likewise not aware of any policy change or new instructions regarding self-harm and disciplinary sanctions. Dr. Tytell, who replaced Dr. Cavanaugh after his death and was aware of this issue at Donaldson, testified that he and Associate Commissioner Naglich have discussed that imposing disciplinary sanctions for self-injury continued to be a problem, including in the RTU and SU. However, Dr. Tytell has done nothing to monitor, let alone address, this issue. When asked what, if anything, she personally has done to implement this policy change, Associate Commissioner Naglich admitted that she had reviewed only one single prisoner's disciplinary record; in that case, she intervened to recommend that convictions be removed based on the indications in his medical records that he was decompensating at the time of the infraction.

Not surprisingly, in 2016, plaintiffs' expert Dr. Burns credibly concluded that "desperate acts to get the attention of MHM staff and necessary services," including self-injury and suicide attempts, "often result in disciplinary action and placement in segregation where mental health treatment is even more difficult to access." Joint Ex. 460, Burns Expert Report (doc. no. 1038-1044) at 29. She also saw evidence of prisoners with untreated serious mental illness being "essentially punished for symptoms of their psychiatric illness," such as prisoners with bipolar disorder being placed in disciplinary segregation for untreated manic behaviors. Burns Testimony at vol. 1, 27-28.

A related problem is ADOC's inadequate mental-health evaluation process for prisoners facing disciplinary charges. Not taking mental health into consideration when determining appropriate sanctions is dangerous because certain sanctions, such as placement in segregation, expose mentally ill prisoners to a

substantial risk of worsening symptoms and significantly reduced access to monitoring and treatment.

Under ADOC's administrative regulations, disciplinary actions against prisoners whose mental-health code is MH-1 or above require consultation with mental-health staff: once a prisoner on the caseload is charged with a disciplinary infraction, MHM's mental-health counselors are required to conduct a mental-health evaluation and complete a computerized module. Ostensibly, this system allows the counselor to have input into the disciplinary process and to communicate in writing to the disciplinary hearing officer: (1) whether "mental health issues affected the inmate's behavior at the time of the charge"; (2) whether there are "mental health issues to be considered in disposition if found guilty"; and (3) whether mental-health staff would be present at the hearing. Joint Ex. 467, Mental Health Consultation to the Disciplinary Process, Inmate File of Jamie Wallace (doc. no. 1038-1052) at ADOC031346.

However, the system falls far short in practice: these mental-health evaluations are often brief and perfunctory, and the counselors conducting them understand their role to be limited to an assessment of capacity or knowledge of their infraction, rather than providing input on the mental-health implications of any punishment. For example, Sharon Trimble, an MHM counselor at Kilby, testified that her evaluation process entails informing the prisoner of the charge against him, describing the incident at issue, letting him explain what happened, and making sure that he understands the reasons for a disciplinary hearing. This, in her view, amounts to an assessment of the prisoner's competency; her evaluation concludes when the prisoner "say[s] that [he] did it." Trimble Testimony at __. She does not otherwise assess whether the prisoner's behavior is related to his mental illness, and she has never made recommendations as to the appropriateness of possible sanctions, including whether placement in segregation was contraindicated by the prisoner's mental illness.

Strikingly, Associate Commissioner Naglich herself did not have a clear understanding of the purpose of the consultation process. While she understood that the consultation process should address whether "the mental health issues contribute[d] to the conduct," she was unsure about whether it involved anything else. Naglich Testimony at vol. 2, 15. She understood the second question in the module--whether mental illness should be considered in determining the punishment--to relate not to the appropriateness of various sanctions in light of the prisoner's mental illness but rather to be largely duplicative of the first question, regarding culpability. She believed it to be asking "how cognizant or responsible was the inmate at the time of the charge and should that be considered in the disposition if he's found guilty." Id.

As explained in the next section, and as agreed by experts on both sides, it is critical that mental illness be considered in determining punishment for infractions because placing mentally ill prisoners in segregation

significantly increases the risk of decompensation. ADOC's failure to ensure that mental-health staff can and in fact do express their views as to whether particular prisoners will be harmed by placement in segregation (or some other disciplinary sanction) creates a substantial risk of serious harm.

Moreover, the disciplinary consultation process consistently fails to perform even the limited functions Trimble and Naglich ascribed to it. ADOC's 2013 audit of Donaldson and a quality-improvement study conducted by MHM around the same time recognized that mental-health consultations were often acting as little more than a rubber stamp. The Donaldson audit found that "answers provided by [mental health] appeared to conflict with patients' clinically documented mental health status"--in other words, the consultation documentation from mental-health staff did not reflect the diagnoses in the medical record of the prisoner who was being disciplined. Pl. Ex. 689, MHM Corrective Action - Donaldson May 2013 (doc. no. 1069-5) at

ADOC045459. MHM found that "95 % were declared competent to stand hearing with no qualifiers for MH factors," and, relatedly, "that [MHM's] staff did not understand how to fill out form." Pl. Ex. 715, July 2013 Quarterly CQI Meeting Minutes (doc. no. 1044-9) at 4. Not surprisingly, MHM counselor Trimble was aware of only one instance in the course of five years in which a prisoner was not sanctioned because his behavior was considered a result of his mental illness.

The consequences of ADOC's policy of disciplining prisoners for engaging in self-harm combined with the dysfunctional consultation process are frequently egregious: when they attempt to hurt or kill themselves, mentally ill prisoners are routinely found guilty of and punished for "intentionally creating a security, safety, or health hazard," and often are placed in segregation. For example, Jamie Wallace was given disciplinary sanctions and sent to segregation for self-injury and suicide attempts multiple times between 2013 and his suicide in 2016. See Joint Ex. 467, Inmate File of Jamie

Wallace (doc. no. 1038-1052) at ADOC031352 (Jan. 8, 2013, for cutting his neck with a metal top of a smokeless tobacco can); ADOC031661 (Feb. 3, 2013, attempting to hang himself); ADOC031341 (Nov. 12, 2013, penetrating his ears and bottom lip with a metal object); ADOC031528 (May 25, 2014, intentionally cutting his left wrist); see also Pl. Dem. Ex. 2, Summary of J.W. Suicide Attempts (doc. no. 1058-16) (showing six occasions of being sent to segregation for inflicting self-harm, and 12 disciplinary actions for self-harm in total). Records of plaintiff L.P. also reflect that he has received disciplinary segregation for self-harm incidents; plaintiff R.M.W. and class member M.P. testified that they have received multiple disciplinary actions for intentionally creating a security, safety, or health hazard when they had cut themselves. These instances of punitive response can also lead to even graver harm: Dr. Hunter, the medical director of MHM, acknowledged that the combination of a recent disciplinary action and the prospect of a segregation placement was a common factor among prisoners

who committed suicide. The trend in suicides since October 2015 corroborated this testimony. In sum, ADOC's disciplinary process has inflicted actual harm and created a substantial risk of serious harm for mentally ill prisoners.

8. Inappropriate Placement and Inadequate Treatment in Segregation

Segregation--also known as restrictive housing or solitary confinement--generally refers to the correctional practice of keeping a prisoner in a cell for 22.5 hours or more a day, usually in a single-person cell, only letting the prisoner out for brief 'yard' time and showers.[60] In ADOC, segregation takes two different forms:

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60. As Dr. Haney explained in his testimony before Congress, exercise time for segregation prisoners hardly involves a 'yard.' Pl. Ex. 1272, 2012 Congressional Testimony of Dr. Craig Haney (doc. no. 1126-3) at 5-6. Rather than an open space with greenery, the exercise yards that the court observed at ADOC facilities for segregation prisoners were often small and fenced in with concrete surfaces. Some of the facilities allow only one inmate at a time in a 'cage,' a subdivided section of the yard that is fenced in and hardly bigger than the segregation cell itself. Some of the yards, such as the one in Kilby, also had fences totally enclosing the yard,

disciplinary and administrative. Disciplinary segregation is a type of punishment whereby prisoners are allowed to have extremely limited personal property in their cells and lose privileges such as telephone use and family visits. Administrative segregation is used to separate prisoners from the general population, generally for safety reasons; prisoners in administrative segregation do not formally lose privileges, but are still subject to some property restrictions and receive little out-of-cell time.

Trial testimony revealed that segregation has a profound impact on prisoners' mental health due to the harmful effects of isolation; this impact is worse for those who are already mentally ill. According to the experts, the risk of decompensation increases with the duration of isolation and the severity of the prisoner's mental illness.

Plaintiffs ask the court to declare that, due to the risk of harm, mentally ill prisoners as a general matter

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including a fenced ceiling, truly evoking the feeling of a cage.

should never be placed in segregation. However, the court sees no need to reach that broad conclusion, for here, the evidence is overwhelming that the ADOC's current segregation practices pose an unacceptably high risk of serious harm to prisoners with serious mental-health needs. As the testimony of experts and defense witnesses made abundantly clear, ADOC lacks a functioning process for screening out prisoners who should not be placed in segregation due to mental illness or ensuring that they are not sent there for dangerously long periods, and mentally ill prisoners in segregation receive inadequate treatment and monitoring. It is simply undeniable that these practices pose a grave danger to many mentally ill prisoners placed in segregation.

This section discusses the ways in which ADOC's segregation practices place these prisoners at a substantial risk of serious harm. After explaining the consensus developed in recent years regarding the harmful psychological effects of segregation in general and on

mentally ill prisoners in particular, the discussion turns to the specific risks of harm posed by ADOC's segregation practices. Finally, the court discusses the heightened level of danger segregation poses to those prisoners with the most serious mental-health needs--that is, those who have conditions classified as serious mental illnesses.

a. Background on Segregation

i. Consensus among Correctional and Mental-Health Professionals on Segregation

Mental-health and correctional professionals have recognized that long-term isolation resulting from segregation, or solitary confinement, has crippling consequences for mental health. Dr. Craig Haney, who has studied the psychological effects of solitary confinement for more than 30 years, explained that isolation of the type experienced by prisoners in segregation has harmful psychological effects even on those who are not mentally ill, and even mentally healthy prisoners can develop mental illness such as depression, psychosis, and anxiety

disorder during a prolonged period of isolation. Summarizing years of research in his field, Dr. Haney explained: "[T]he nature and magnitude of the negative psychological reactions ... underscore the stressfulness and painfulness of this kind of confinement, the lengths to which prisoners must go to adapt and adjust to it, and the risk of harm that it creates. The potentially devastating effects of these conditions are reflected in the characteristically high numbers of suicide deaths, and incidents of self-harm and self-mutilation that occur in many of these units. ... These effects are not only painful but can do real harm and inflict real damage that is sometimes severe and can be irreversible. ... They can persist beyond the time that prisoners are housed in isolation and lead to long-term disability and dysfunction." Joint Ex. 459, Haney Expert Report (doc. no. 1038-1043) at 130-31; see also Davis v. Ayala, 135 S. Ct. 2187, 2210 (2015) (Kennedy, J., concurring) (summarizing case law and historical texts that "understood[] and questioned" the "human toll wrought by

extended terms of isolation" and observing that "research still confirms what this Court suggested over a century ago: Years on end of near-total isolation exact a terrible price.") The psychological harm from segregation can also lead to symptoms like hallucinations, chest pain, palpitations, anxiety attacks, and self-harm, even among previously healthy people. Burns Testimony at vol. 1, 209; see also Palakovic v. Wetzel, 854 F.3d 209, 225-26 (3d. Cir. 2017) (summarizing the "robust body of legal and scientific authority recognizing the devastating mental health consequences caused by long-term isolation in solitary confinement," including "anxiety, panic, paranoia, depression, post-traumatic stress disorder, psychosis, and even a disintegration of the basic sense of self-identity," as well as physical harm). The depth of the psychological impact of such isolated confinement conditions on human beings was also reflected in Senator John McCain's observation about his prisoner-of-war experience in Vietnam: "[Solitary confinement] crushes your spirit and weakens your

resistance more effectively than any other form of mistreatment. Having no one else to rely on, to share confidences with, to seek counsel from, you begin to doubt your judgment and your courage." Pl. Ex. 1272, 2012 Congressional Testimony of Dr. Craig Haney (doc. no. 1126-3) at 9 (quoting from Richard Kozar, John McCain: Overcoming Adversity (2001) at 53).

The serious psychological harm stemming from segregation is even more devastating for those with mental illness. As Dr. Haney explained, mentally ill prisoners are highly likely to decompensate in such an isolated environment, and it is more difficult to deliver treatment to those in segregation units. In other words, mentally ill prisoners in segregation are hit with a double-whammy: they are exposed to a heightened risk of worsening symptoms, while having less access to treatment they need. As a result of the growing body of evidence on the destructive effects of segregation, a general consensus among correctional and psychiatric professionals, while not necessarily establishing a

constitutional floor, has developed in the last ten years: placement and duration of segregation should be strictly limited for mentally ill prisoners. For example, as the experts explained, the National Commission on Correctional Health Care has issued a position statement declaring that mentally ill prisoners should not be placed in segregation absent extenuating circumstances, and even in those circumstances, the stay should be shorter than 30 days.[61]

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61. See National Commission on Correctional Health Care, Solitary Confinement Position Statement on Solitary Confinement, 2016; Burns Testimony at vol. 1, 204.

As Dr. Haney explained, prison systems around the country are also moving away from using solitary confinement in general--even for healthy people--unless it is absolutely necessary. See, e.g., Joint Ex. 459, Haney Expert Report (doc. no. 1038-1043) at 133 (referencing Rick Raemisch, My Night in Solitary, N.Y. Times (Feb. 20, 2014), available at http://www.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html (describing the experience of the head of the Colorado Department of Corrections spending 20 hours in a segregation cell and the efforts to bring down the number of mentally ill prisoners in administrative segregation to single digits among 500 prisoners in segregation); Terry Kupers, et al., Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs, 36 Crim. Just. &

Defense witnesses agreed that mentally ill prisoners should rarely be placed in segregation for prolonged periods of time. Dr. Hunter, MHM's medical director, testified that it is "generally recognized" in the profession, including within ADOC, that prolonged segregation is deleterious to mental health, because of the combination of sensory deprivation and sensory overload: a severe lack of stimulation arises when confined to one space for over 23 hours a day without any meaningful social interactions; sensory overload comes from the chaotic environment of segregation units, filled with loud noises and malodors. Hunter Testimony at __. ADOC's chief psychologist Dr. Tytell and MHM psychiatrist Dr. Kern also agreed that overwhelming research shows that prolonged isolation has gravely detrimental effects on mental health, especially for those with pre-existing mental illness. Lastly, Ayers, a defense expert, opined that based on his experience as a correctional

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Behav. 1037 (2009) (describing the reforms in the Mississippi Department of Corrections significantly reducing the population in administrative segregation and its effect on misconduct, violence, and use of force)).

administrator, mentally ill prisoners should generally not be placed in segregation; if they are, it should only occur with the explicit approval and hands-on involvement of mental-health staff, and such prisoners should be placed on a fast-track to be moved into more therapeutic settings.

ii. ADOC's Segregation Units

The court heard overwhelming evidence, including from experts on both sides, that the conditions in ADOC's segregation units pose serious risks for mentally ill prisoners--beyond the inherent psychological risks of segregation. ADOC prisoners receive very little out-of-cell time; they are left idle for almost all hours of the day with very little property allowed in the cell; the physical conditions of the segregation cells are often deplorable; and the design of the cells often makes it difficult to monitor the well-being of the prisoners. Associate Commissioner Culliver testified that they "try to give them five hours a week" of out-of-cell time,

which means that even when ADOC officers are able to meet their goal, prisoners spend on average over 23 hours per day inside of a cell. Culliver Testimony at __. As for idleness, not only do segregation prisoners lack access to programming, but they are allowed very few items in their cells to occupy themselves: only a Bible and their current legal paperwork. As Dr. Haney credibly testified based on his extensive experience, it is quite unusual for segregation inmates to be denied access to any other books or a radio. Furthermore, segregation units within ADOC are in significant disrepair, exacerbating the inherent stress of being confined to a small cell and worsening its impact on mental health. As reflected by photographs admitted into the record and as the court witnessed firsthand during facility visits, segregation cells are often poorly lit, with little natural light and only small grated windows, if any. The court observed that they are often filled with the smell of burning paper and urine; some are extremely dirty with what appears to be dried excrement smeared on the walls and

floors; and loud noises travel through the segregation units, some of which house from anywhere between 20 to 50 people on multiple levels.[62] The court witnessed an overpowering sense of abandonment and despair, with a prolonged stay crushing all hope.[63]

The combination of the lack of any meaningful activity or social contact and the stressors of living in a dilapidated, filthy, and loud housing unit for almost 24 hours per day results in a heightened risk of decompensation for mentally ill prisoners and a

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62. Dr. Haney also observed that Bullock's segregation unit has a practice of removing mattresses from cells so that prisoners cannot rest on them during the day, which he described as "extraordinarily draconian." Haney Testimony at vol. 1, 117. Pl. Dem. Ex. 60, Bullock Main Camp, B Dorm (doc. no. 1125-20). The court also observed that Kilby's large segregation unit (also known as 'big seg') has extremely small cells that are only a foot or two longer than the length of a single-sized mattress and only a narrow strip of space that barely fits a toilet, in a stifling unit of fifty cells stacked on top of each other without any ventilation or transparent windows facing outside. Pl. Dem. Ex. 80 & 81, Kilby C Dorm (docs. no. 1125-38, 1125-39).

63. The court notes that the worst thing that could happen in this context is for the correctional officers and ADOC officials to get accustomed to such conditions.

heightened risk of developing serious mental-health needs for those who were initially healthy. In addition, as Dr. Haney credibly testified, it is much more difficult for staff to detect decompensation of prisoners while they are housed in segregation: when prisoners remain in their cells around the clock, mental-health staff have a harder time observing the patient and diagnosing illnesses effectively, and correctional officers and fellow prisoners also lack sufficient regular contact with the prisoner to notice the onset of symptoms of mental illness. This difficulty adds to the danger.[64]

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64. Admittedly, ADOC uses double-celling in some segregation units, which means putting two prisoners into a single segregation cell. At first blush, this practice might seem to mitigate the harmful effects of solitary confinement. However, double-celled segregation has an even more severe impact on the mental health of prisoners. Dr. Haney credibly explained that double-celled prisoners "in some ways ... have the worst of both worlds: they are 'crowded' in and confined with another person inside a small cell but—and this is the crux of their 'isolation'—simultaneously isolated from the rest of the mainstream prisoner population, deprived of even minimal freedom of movement, prohibited from access to meaningful prison programs, and denied opportunities for any semblance of 'normal' social interaction." Joint Ex. 459, Haney Expert Report (doc. no. 1038-1043) at 109.

The design of ADOC's cells and units in which they exist poses additional obstacles for effective monitoring in segregation units. ADOC segregation units often lack visibility into cells, both because of small windows on the doors, which are often grated or difficult to see through, and because of the layout of the cells and the units. Unfortunately, as experts from both sides testified, because of understaffing, officers cannot constantly walk near the cells and are generally unable to monitor what is going on inside. This means that mentally ill prisoners in segregation--including those identified as mentally ill, those with undiagnosed mental illnesses, and those who develop mental illness while in segregation--are at a heightened risk for decompensation without anyone noticing.

These problems exist throughout ADOC facilities. For example, Easterling's unit has tiny windows on doors that do not allow correctional officers to observe inside without being directly in front of the door; as Dr. Haney credibly testified, correctional officers often do not

feel safe standing very close to the door because they risk having bodily fluids or food thrown at them through the food-tray slot or the cracks between the door and the wall. (Indeed, the court was repeatedly warned not to walk too close to the doors for that reason during facility tours.) As the court saw firsthand, Donaldson and St. Clair facilities have the same problem of very little visibility into the cells from the officers' station, due to small windows and dim lighting. Lastly, Bibb's segregation units might be the most egregious in terms of visibility: each housing unit has its own segregation unit of a few cells shut off from the rest of the unit, down a long hallway and through a door, with no line of sight from the central officer station and officers entering the space to check on the prisoners only periodically. Dr. Haney was surprised that such units were maintained, because prisoners in these cells have no way of alerting officers if anything was going wrong; they are completely dependent for their safety upon periodic trips that officers make from the central

officer station. In fact, Dr. Haney recommended that Bibb's segregation units be closed immediately: he explained that he has never recommended any unit to be closed immediately in his four decades of doing this work, but he thought the risk of harm was too great at Bibb because so little monitoring is available. Defense correctional expert Ayers's testimony also raised concerns: he credibly testified to his suspicion that, because of understaffing and safety concerns, correctional officers were not walking down the hallway away from the central cube at Bibb as frequently as they claimed.

b. ADOC's Segregation of Mentally Ill Prisoners

The evidence clearly establishes that placements of mentally ill prisoners in segregation endangers those prisoners, and that the risk of serious harm to those prisoners increases based on the seriousness of the prisoner's illness, the length of the stay in segregation, and the dangerous conditions discussed above. Against

this backdrop, the court explains the ways in which ADOC's placement practices and treatment of mentally ill prisoners in segregation create a substantial risk of serious harm.

i. ADOC's Segregation-Placement Practices

Due to the risks of decompensation created by segregation in general and by ADOC's segregation units in particular, it is critically important that ADOC consider a prisoner's mental health condition when deciding whether to place the prisoner in segregation, and if so, for how long. But here, overwhelming evidence makes clear that ADOC does not ensure that those with a heightened risk of serious harm from mental illness are not placed in segregation or that they are not sent there for dangerously long periods.[65] In particular, as

65. Experts from both sides explained that alternatives to placing mentally ill prisoners in segregation exist. Prison systems across the country, ranging from Maine to Mississippi, have reduced the number of prisoners in segregation generally, and significantly reduced the mentally ill population in

discussed earlier, ADOC does not have a functioning system for evaluating mental-health risks when deciding whether to place prisoners in segregation; it also fails to evaluate these risks when determining the length of any segregation placement. The result is that prisoners whose mental illness makes them likely to be harmed by segregation are placed there anyway.

ADOC's current process for placing prisoners in segregation does not adequately consider the impact of segregation on mental health. As explained in the section on disciplinary sanctions, ADOC's administrative regulations mandate that during disciplinary proceedings, mental-health staff provide input to ADOC regarding the impact of mental illness on the prisoner's competency at the time of the offense and at the time of the hearing

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segregation. Joint Ex. 459, Haney Expert Report (doc. no. 1038-1043) at 133. For example, California operates a separate housing unit that is devoted to mentally ill prisoners who have committed disciplinary infractions. These units provide 20 hours of out-of-cell time per week, as well as structured and unstructured therapeutic activities. Arizona has begun similar reforms, providing more programming and out-of-cell time to mentally ill prisoners who committed disciplinary infractions. Haney Testimony at vol. 2, 154-55; Ayers Testimony at __.

and give recommendations for the disposition of the offense and the type of sanctions that should be imposed. However, as discussed earlier, MHM staff and ADOC officials expressed confusion as to what role, if any, mental-health staff should play in the disciplinary process, and mental-health staff largely have rubber-stamped ADOC's decisions to send mentally ill prisoners to segregation.

Even when MHM has recommended against placing a particular prisoner or a group of mentally ill prisoners in segregation, there is evidence that ADOC has ignored such input. As MHM's program director Houser testified, ADOC has overridden MHM's recommendations that prisoners whose mental-health code is above MH-3 (which requires residential treatment in a mental-health unit) should not be placed in segregation; she also gave an example of a prisoner who was put in segregation despite MHM's recommendation. She further explained that because MHM is not authorized to move any prisoners, ADOC can override MHM's clinical judgment and house RTU patients

in segregation. Indeed, ADOC correctional staff are not required to follow the recommendations of the mental-health staff in disciplinary proceedings. Likewise, while regulations require that prisoners in segregation undergo periodic mental-health evaluations, ADOC is not required to move the prisoner if the mental-health evaluation reveals that continued placement in segregation would be detrimental to the prisoner's mental health. Joint Ex. 127, Admin. Reg. § 625 (doc. no. 1038-150) ("The ADOC psychologist or psychological associate will consult with the Warden or designee when their [segregation] mental health assessment indicates that continued placement in [segregation] is contraindicated by changes in the inmate's mental status and functioning. Alternative strategies to facilitate the inmate's mental stabilization will be offered.").[66]

66. There is sufficient evidence that these mental-health evaluations in segregation are inadequate, which will be discussed later in section V.B.10.

For their part, MHM staff have been hesitant to oppose ADOC on the placement of mentally ill prisoners in segregation. MHM staff discussed ADOC's use of segregation on mentally ill prisoners during a staff meeting in 2013, expressing frustration that ADOC was over-using segregation on mentally ill prisoners: the meeting summary read, "DOC is over using segregation on MH inmates. They want to punish them. We must be diligent in calling it from a treatment perspective in disciplinary consult. Put MH as factor in the bad behavior. Long term segregation can be detrimental mental well-being. ... Do not recommend a disciplinary action. Say MH is a major factor. We are reluctant to do it because of influence of DOC." Pl. Ex. 715, July 2013 Quarterly CQI Meeting Minutes (doc. no. 1044-9) at 4.

ADOC also fails to ensure that prisoners with serious mental-health needs are not subjected to extremely lengthy periods of segregation. Dr. Haney described examples of several plaintiffs and one former class member who have bounced between segregation units and

suicide-watch cells over lengthy periods of time; three were never put on the mental-health caseload despite repeated instances of self-harm. See Pl. Dem. Ex. 131, Movement History of Exemplar Plaintiffs (doc. no. 1126-10). In particular, plaintiff C.J.'s eight-year-long movement history shows that he has been in segregation or suicide-watch cells for all of those eight years; his mental-health code was eventually elevated to MH-2, but his treatment plan did not change despite his clear deterioration over the years.[67] See

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67. Plaintiff C.J. is also an example of prisoners who experience what was referred to during the trial as 'segregation rotation,' whereby a prisoner is sent from one segregation unit at a facility to another segregation unit at another facility every few months. C.J.'s movement history indicated that he has been rotating among three different segregation units in the last eight years, averaging eight months at each facility at a time. Pl. Dem. Ex. 131, Movement History of Exemplar Plaintiffs (doc. no. 1126-10). This practice, according to Associate Commissioner Culliver, is used to "give staff a break" and "give the inmate an opportunity to restart." Culliver testimony at __. Culliver did not know how many people were on segregation rotation currently, or how many mentally ill prisoners are on segregation rotation.

This practice adds an additional set of risk factors to the already debilitating and harmful practice of housing mentally ill patients in segregation for

Joint Ex. 459, Haney Expert Report (doc. no. 1038-1043) at A39.[68]

Not surprisingly given ADOC's disregard for segregation's impact on mental health, mentally ill prisoners are overrepresented in ADOC segregation. While only 14 % of the ADOC population is on the mental-health caseload, mentally ill prisoners make up 21 % of those in segregation. Looking at individual facilities year by year, most facilities' segregation units have a far

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prolonged periods of time. Dr. Haney testified that moving mentally ill prisoners from one environment to another disrupts treatment, because of lack of continuity of care and providers: a new set of staff must get to know the patient, and the usefulness of the information that staff have already gathered on the person gets lost when the prisoner is transferred. C.J. testified that he often has to start anew with new counselors at each facility, and when he goes back to the old facility after a year or two of absence, the former counselor is often no longer working there because of the high turnover rate. Furthermore, as Dr. Haney testified, frequent transfers of mentally ill prisoners have an adverse impact on their mental health because they have a more difficult time adjusting to new environments than those who are not mentally ill.

68. Dr. Haney also stated that cycling between segregation and general population may also indicate that those prisoners are likely suffering from the after-effects of prolonged stays in segregation, which are leading to more disciplinary infractions.

higher rate of mentally ill prisoners compared to the general population: throughout 2014, 2015, and 2016, Bibb, Easterling, Kilby, St. Clair, Staton, and Ventress each had a disproportionately high number of mental-health patients in segregation; Holman and Limestone's segregation population also had a disproportionately high number of mental-health patients more than half of the time period. Only four of the 12 major male facilities--Bullock, Donaldson, Fountain, and Hamilton--did not have disproportionate numbers of mental-health patients in segregation for most of the three years.[69] See Pl. Dem. Ex. 127, Overrepresentation of the Mentally Ill in Segregation, 2014-2016 (doc. no. 1126-8).

Experts on both sides were alarmed by ADOC's systematic overuse of segregation for mentally ill prisoners, who are most vulnerable to the risk of deterioration in such an isolated environment. Ayers, a

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69. The plaintiffs' summary chart and MHM's monthly operations reports count Draper and Elmore as part of Staton, because the three facilities are in the same complex.

defense expert for correctional administration who reviewed ADOC records, was troubled by forms he saw for administrative segregation in which the reason for segregation placement was 'psychiatric.' Dr. Haney and Dr. Burns were also troubled by the number of prisoners with unaddressed mental illnesses they encountered in segregation units. In sum, ADOC lacks a functioning process for screening out prisoners who should not be placed in segregation due to mental illness or ensuring that they are not sent there for dangerously long periods.

ii. Treatment and Monitoring in Segregation Units

ADOC prisoners with serious mental-health needs must contend not only with dangerous and unhealthy conditions in segregation units but also with significantly less access to mental-health treatment. Mental-health patients' needs are considerably greater in segregation due to the harsh effects of isolation, yet instead of receiving more treatment to mitigate these effects, prisoners in segregation have less access to care than

in general population and are not adequately monitored for signs of decompensation. The court heard extensive evidence that, due to staffing shortages, mental-health treatment and monitoring in segregation are gravely more limited than in general population, and nonexistent at some facilities. This denial of minimal medical care contributes to the substantial risk that prisoners in segregation with serious mental-health needs will decompensate, experience increased pain and suffering, or worse, harm or kill themselves.

As Houser, MHM's program director, credibly testified, even though mental-health patients' needs are considerably greater in segregation due to the harsh effects of isolation, prisoners in segregation are not allowed to leave their cells for mental-health groups or therapeutic activities. As a result, mental-health patients in segregation receive less treatment than they

otherwise would outside segregation, despite their heightened need.[70]

On top of the lack of access to group therapy or other programming, ADOC's segregation prisoners have very little access to individual treatment. For example, in the month of June 2016, the number of 'seg interventions'--that is, out-of-cell treatment encounters with mental-health staff--at seven facilities with mentally ill prisoners in segregation was zero, despite having many, sometimes dozens of, mental-health patients in those units; three facilities had more than zero but fewer than five seg interventions. See Joint Ex. 346, June 2016 MHM Monthly Operations Report (doc. no. 1038-708) at 2.

The dearth of individual treatment in segregation is mainly due to correctional understaffing. Houser observed that mental-health patients in segregation were not getting the services they required, "not by [MHM's]

70. According to Houser, MHM and ADOC discussed a pilot project for long-term treatment programming in the segregation unit at St. Clair, but the project never got off the ground because of the lack of support from ADOC.

choice," but because of ADOC's failure to bring inmates out of their segregation cells for treatment. Houser Testimony at vol. 2, 100. MHM staff have consistently complained of the difficulties of reaching patients in segregation due to the chronic correctional staffing shortage. See, e.g., Pl. Ex. 950, July 2014 Holman Multidisciplinary Meeting Minutes (doc. no. 1097-4) (reporting issues with psychiatric providers seeing patients in segregation due to "walks, feeding, and DOC shortage, etc."); Pl. Ex. 1191, 2012 Contract-Compliance Report (doc. no. 1070-9) (noting the lack of documentation or notes for treatment of mentally ill prisoners in segregation).

In the absence of correctional officers to provide security and escort for segregation prisoners who need mental-health treatment, mental-health staff have to conduct cell-front check-ins, instead of actual treatment sessions. But because segregation units are not hospitable environments for a personal conversation--let alone confidential conversations--these interactions are

brief and cannot replace individual counseling sessions.[71]

'Segregation rounds,' whereby mental-health counselors go around the segregation unit to check on the well-being of prisoners, also are of limited utility due to understaffing and visibility issues. ADOC regulations require that these rounds happen at least twice per week. As with other cell-front encounters, segregation rounds are not meant to replace individual psychotherapy.[72]

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71. As discussed in the section regarding sound confidentiality and psychotherapy, most ADOC segregation units are not conducive to having a cell-front conversation, due to heavy solid doors and very loud units with dozens of cells in a single unit. As the court saw during its tours of five prisons, none of the units--even the ones at Bibb, where only three cells are in a unit--were conducive to confidential conversations, because of the proximity to other cells and prisoners.

72. Furthermore, as Dr. Haney testified, while segregation rounds by mental-health staff are crucial for checking for signs of decompensation or crisis, they cannot replace periodic out-of-cell clinical assessments of prisoners' mental-health status, because it is difficult to observe someone's behavior and accurately assess the prisoner's mental health through cell-front encounters.

One vivid example of ADOC's failure to monitor segregation prisoners' mental-health status concerned

However, within ADOC, segregation rounds do not adequately serve even the limited purpose they are intended to serve. Dr. Hunter described them as 'drive-bys,' sometimes even without verbal exchanges. The cursory nature of the monitoring was further crystalized by the testimony of staff who conduct these rounds. Dr. Tytell, who served as an ADOC psychologist at Donaldson before taking his current position, testified that segregation rounds for over 120 prisoners at Donaldson took between 1.5 hours and 2 hours, including the time to walk between cell blocks--meaning no more than one minute per prisoner on average. A former counselor at Bibb testified that it would take her 35 minutes to an hour to complete the rounds at all six

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plaintiff R.M.W. After a month of segregation placement during which she was twice sent to a crisis cell and had multiple episodes of self-injury, the segregation mental-health evaluation form indicated that the inmate was "appropriate for placement" and the recommendation was "segregation placement not impacting inmate's mental health." Joint Ex. 404, March 28, 2014 Review of Segregation Inmates - R.M.W. (doc. no. 1038-859) at MR017081. Nothing in her medical records suggests that a suicide-risk assessment was done after any of the episodes or before this review to ascertain the impact of segregation and likelihood of recurring self-harm.

housing units with 18 double-celled cells, meaning one to two minutes per prisoner, including the time to walk between six housing units. A lack of visibility into many of these cells--due to small, sometimes covered windows, blocked views, and safety concerns associated with standing too close to the door--makes it even more difficult to provide effective monitoring.

Even these cursory rounds by MHM staff do not actually happen as often as they should, or at all at some facilities. The lack of documentation of segregation rounds combined with the acute staffing shortages led defense expert Ayers to doubt that ADOC was able to conduct segregation rounds as often as required. The site administrator for Holman confirmed Ayers's belief, by credibly testifying that insufficient segregation rounds have been a problem at Holman since 2008 due to staffing shortages, and that the problem has only worsened since then. According to her, at Holman, instead of a separate mental-health segregation round, a counselor accompanies the warden and other security

officers during a weekly segregation review board, where the warden and other officials walk from cell to cell to review each segregation prisoner's status and potentially change the prisoner's segregation sentence based on their conduct. Sometimes, she is able to visit only one prisoner in segregation per week due to the correctional staffing shortage.

Monitoring by ADOC staff in segregation is also ineffective. Correctional expert Vail credibly opined that ADOC lacked enough correctional staff to conduct monitoring rounds in segregation every 30 minutes--the level of monitoring in segregation units necessary to keep prisoners safe from self-harm and suicide. Indeed, he saw logs at ADOC that suggested that no segregation checks were done for multiple hours. Even defense expert Ayers, while not explicitly concluding that monitoring was inadequate, implied so by saying that better monitoring of segregation inmates would address the high suicide rates within ADOC.

This lack of monitoring is even more troubling given that ADOC segregation cells are not suicide-proof. Many segregation cells have grates, sprinkler heads, and other structures that could be used as tie-off points. Furthermore, during the facility tour, the court saw many segregation prisoners with ropes hanging across their cells as clothes lines, which can be easily used to commit suicide. Allowing prisoners to cover their cell door windows with papers further heightens the risk of suicide.

The dearth of individual encounters outside the cell, haphazard cell-front encounters, and inadequate monitoring in ADOC all show that ADOC fails to provide adequate treatment and monitoring.

In sum, the evidence is clear that ADOC's segregation practices--inadequate screening for the impact of segregation on mental health, and inadequate treatment and monitoring--pose a substantial risk of serious harm to prisoners with serious mental-health needs. This serious inadequacy also has effects on other areas of mental-health care. According to Dr. Haney, this is

because "[i]t's very difficult to deliver adequate mental-health care in isolation units, and mentally ill prisoners deteriorate in isolated units. So the inadequacies of the mental health system actually are exacerbated by the use of isolation for mentally ill prisoners." Haney Testimony at vol. 1, 29. In other words, ADOC's segregation practices perpetuate a vicious cycle of isolation, inadequate treatment, and decompensation.

The skyrocketing number of suicides within ADOC, the majority of which occurred in segregation, reflects the combined effect of the lack of screening, monitoring, and treatment in segregation units and the dangerous conditions in segregation cells. Because prisoners often remain in segregation for weeks, months, or even years at a time, their decompensation may not become evident until it is too late--after an actual or attempted suicide.[73] Since September 2015, seven of eleven suicides

73. While no aggregate data on the average or typical lengths of segregation stays were presented, the court, during its visits to six facilities, was able to view

within ADOC facilities happened in segregation units; of the four that have occurred since October 2016 (the current fiscal year), all but one involved a prisoner in segregation.[74] As explained above, these suicide numbers are astounding compared to the national average across state prison systems. By subjecting mentally ill prisoners to its segregation practices, ADOC has placed prisoners with serious mental-health needs at a substantial risk of continued pain and suffering, decompensation, self-injurious behavior, and even death, and the court cannot close its eyes to this overwhelming evidence.

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forms on the front of segregation cells showing how long the prisoner had been there: most were there for at least several weeks, some for months or even over a year. As discussed earlier, some inmates, like plaintiff C.J., are placed on 'segregation rotation,' which can keep prisoners in segregation units for years on end. Experts on both sides unequivocally denounced ADOC's practice of prolonged segregation stays.

74. The only one that did not take place in segregation was plaintiff Wallace, who was in the Bullock stabilization unit. See Pl. Ex. 1267, 2015-2016 Chart of ADOC Suicides (doc. no. 1108-38).

c. Segregation of Prisoners with Serious Mental Illness

The court heard significant evidence that extended segregation--even absent consideration of the conditions at ADOC--poses a substantial risk of harm to all mentally ill prisoners, and plaintiffs asked the court to so conclude. However, as mentioned before, because ADOC's segregation practices fall so far short of protecting prisoners with serious mental-health needs from a grave risk of decompensation and other harms, the court need not, at this time, decide whether segregation poses an unacceptably high risk of harm to all mentally ill prisoners as a general matter. That said, the testimony of the experts, clinicians who work for ADOC, and even Associate Commissioner Naglich herself overwhelmingly established that one particular subset of prisoners with serious mental-health needs should never be placed in segregation in the absence of extenuating circumstances: those who suffer from a 'serious mental illness.'

As discussed earlier, 'serious mental illness' is a term of art in the field of psychiatry that refers to a

certain subset of particularly disabling conditions. Serious mental illness is defined by the diagnosis, duration, and severity of the symptoms. Certain diagnoses, such as schizophrenia and disorders accompanied by psychosis, are by definition serious mental illnesses, because they last a lifetime and are accompanied by debilitating symptoms; others, such as major depression and anxiety disorder, may be considered serious mental illnesses depending on the severity of the individual's symptoms.

As Dr. Burns credibly opined based on the literature in the field, those who suffer from serious mental illness should not be put in segregation as a general matter because prisoners with serious mental illness experience worsening symptoms in such an isolated environment, and because they are likely to have reduced access to treatment in segregation units. Burns added that, even when extenuating circumstances exist, segregation placements for such prisoners should still be short term, and access to necessary treatment must be

provided. Indeed, as Dr. Burns pointed out, the American Correctional Association and the American Psychiatric Association take the position that seriously mentally ill people should not be placed in segregation unless absolutely necessary, and if so, they should only remain for the shortest duration possible--no longer than three to four weeks. American Correctional Association, Restrictive Housing Performance Based Standards, August 2016; American Psychiatric Association, Position Statement on Segregation of Prisoners with Mental Illness (2012).

Associate Commissioner Naglich candidly agreed with Dr. Burns that placing seriously mentally ill prisoners in segregation is "categorically inappropriate," and that such placement is tantamount to "denial of minimal medical care." Naglich Testimony at vol. 5, 73. She described a new mental-health coding system in development at ADOC that would prevent all prisoners with serious mental illness from being placed in segregation. While she could not tell the court when the "rollout" of

the new system would be complete, she assured the court that once completed, "no seriously mentally ill inmate would be housed in a segregation setting." Naglich Testimony at vol. 5, 67. MHM's program director Houser agreed with the bright-line rule against placing prisoners with serious mental illness in segregation: she explained that prisoners classified as MH-3 or above, which are designated for RTU or SU placements and considered to have a serious mental illness, should never be in segregation because "their mental health capacity would not allow them to be able to be maintained in such an environment." Houser Testimony at vol. 2, 109.

While there was no dispute between the parties that placing seriously mentally ill prisoners in segregation amounts to denial of minimal care, a question was raised as to whether the new system that Associate Commissioner Naglich described has been implemented. Associate Commissioner Culliver, who has the primary responsibility for inmate placements, transfers, and correctional staffing levels, testified after Naglich that there had

not been any recent official policy change on the placement of mentally ill prisoners in segregation, and that he did not know about any changes that would prohibit officers from placing certain prisoners in segregation or would limit the duration of segregation placements. Naglich's subordinate, Dr. Tytell, later testified that an effort to change the coding system began only after Naglich testified that the policy change was already being rolled out, and that no new official coding system existed. He further explained that she instructed him to email the wardens at Donaldson to move ten individuals whose mental-health code was MH-2 or higher out of segregation and into the RTU, only after her testimony in court. She did not instruct him to do so with any other facility, and Tytell was not aware of any other facilities moving mentally ill prisoners out of segregation units at the time of his testimony in January 2017. Based on the evidence presented--especially given Associate Commissioner Culliver's lack of knowledge or involvement in a major change to segregation policy--the

court cannot conclude that ADOC has implemented this policy change of not placing prisoners with serious mental illness in segregation.[75] Given the consensus on the substantial risk of harm of decompensation for these mostly severely mentally ill prisoners, the court concludes that it is categorically inappropriate to place prisoners with serious mental illness in segregation absent extenuating circumstances; even in extenuating circumstances, decisions regarding the placement should be with the involvement and approval of appropriate mental-health staff, and the prisoners should be moved out of segregation as soon as possible and have access to treatment and monitoring in the meantime.

9. Tutwiler

As ADOC's only major facility for women, Tutwiler Prison for Women serves as the treatment hub for all

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75. The court further notes that the system that Associate Commissioner Naglich described would prevent the placement of seriously mentally ill prisoners in segregation only if the mental-health coding system were accurately classifying prisoners' mental-health needs.

female prisoners in Alabama. While the same factors contributing to inadequate mental-health care--mental-health understaffing, correctional understaffing, and overcrowding--apply to Tutwiler, the provision of mental-health care at Tutwiler differs in some ways. This is because Tutwiler administrators, as a result of other litigation, have revised policies to make them more 'gender-responsive' and 'trauma-informed'--that is, responsive to female prisoners' experience of past traumatic events.[76] Some

76. Defense counsel suggested that the approval of certain policies at Tutwiler by monitors hired by the U.S. Department of Justice signifies that those policies are constitutionally adequate. However, there are two flaws with this argument. First, the DOJ monitor was not necessarily evaluating policies to ensure that mental-health care was adequate under the Eighth Amendment: the lawsuit that resulted in the monitoring was not about mental-health care, nor was the monitor's job to set the constitutional floor of mental-health care. Second, the monitors' approval of certain policies, such as segregation placement, does not mean that ADOC's actual practices are constitutionally adequate.

of these revisions involve regulations governing mental-health care.[77]

Yet, despite these policy changes, the care provided to mentally ill prisoners at Tutwiler suffers from some of the same inadequacies that affect mental-health care for men. Tutwiler lacks adequate mental-health and correctional staffing. As in the facilities for men, a significant portion of mentally ill patients are not being identified or appropriately classified; no suicide risk-assessment tool is used outside of intake; and the provision of counseling sessions is seriously inadequate. The court has sufficient evidence before it to conclude that these problems pose a substantial risk of serious harm to Tutwiler prisoners with serious mental-health needs.

Tutwiler suffers from the same serious deficiencies in identification and classification of prisoners'

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77. For example, newly implemented practices include limiting pre-disciplinary hearing segregation to 72 hours, submitting monitoring logs for segregation cells to an independent reviewer, and having a compliance visit to the stabilization unit every six months to ensure 15-minute interval checks.

serious mental-health needs. The mental-health identification and classification processes at Tutwiler function the same way as at male correctional facilities: an LPN conducts the initial intake screening, without any on-site supervision by an RN or any other higher-level provider. Tutwiler also lacks a triage system for referral requests, and therefore requests to see a mental-health provider do not get classified or tracked to ensure that they are processed. The resulting under-identification is apparent in the number of prisoners on the mental-health caseload. Experts from both sides testified that women in prison have a significantly higher incidence rate of mental illness compared to their male counterparts: the estimated rate ranges between 75 to 80 %, according to Dr. Burns. At Tutwiler, only 54 % of prisoners are on the mental-health caseload. Joint Ex. 346, June 2016 Monthly Operating Report (doc. no. 1038-708). As with the rest of the system, experts from both sides testified that the low rate stems from ADOC's inadequate intake and referral

processes. Experts from both sides also testified that an insufficient number of prisoners are getting care in mental-health units at Tutwiler despite the severity of their illnesses. As explained above, such inadequate identification and classification of serious mental-health needs create a substantial risk of serious harm by failing to treat mental illness.

Expert testimony also showed that no suicide risk-assessment tool is being used at Tutwiler, except at intake, as is the case in male facilities. As explained earlier, failing to assess suicide risks of prisoners who threaten or attempt self-harm or suicide places those prisoners at a substantial risk of harm.

As at the male prisons, individual counseling sessions at Tutwiler are frequently delayed and canceled due to shortages of mental-health staff and correctional officers. An ADOC psychologist at Tutwiler testified that the correctional staffing shortage that causes such delays and cancellations of counseling sessions is a topic of discussion at almost every multidisciplinary

meeting. Furthermore, MHM contract-compliance reports and the minutes from CQI meetings consistently reported that Tutwiler's caseload is "bursting at [the] seams," and that MHM had difficulty meeting outpatient needs for counseling. Ex. 670, April 2015 Quarterly CQI Meeting Minutes (doc. no. 1056-7) at MHM031224; see also Pl. Ex. 532, 2015 Contract-Compliance Report (doc. no. 1070-7) at 4, 13 ("At Tutwiler, staff are attempting to manage extremely large caseloads, which at times can be very challenging"; "significant staffing shortages in psychiatry" reported at Tutwiler); Pl. Ex. 114, 2013 Contract-Compliance Report (doc. no. 1070-4) at 1-2 (discussing decrease in treatment availability at Tutwiler due to staffing cuts and increasing size of caseload across all facilities).

In sum, inadequate identification and classification of mental-health needs, inadequate screening for suicide risk, and inadequate psychotherapy create a substantial risk of serious harm to mentally ill prisoners at Tutwiler. On the other hand, while also concerned about

the number of crisis cells, suicide-watch placements, segregation placements, and treatment and monitoring available in segregation and in crisis care at Tutwiler, the court does not have sufficient evidence to find that those areas pose a substantial risk of serious harm to Tutwiler's prisoners.[78]

10. Other Issues

This section discusses several issues on which the court does not at this time find for the plaintiffs. First, there is substantial evidence that periodic mental-health evaluations for all prisoners in segregation are inadequate, but the court, out of an abundance of caution and exercising its discretion, leaves this issue to be further addressed by the parties. Second, evidence was insufficient to establish a substantial risk of serious harm arising from ADOC's

78. The court also notes that the experts from both sides presented affirmative evidence that the care being provided in the Tutwiler RTU is adequate, or close to adequate.

medication management practices or the supervision of certified registered nurse practitioners.

On the first issue, substantial evidence suggested that ADOC is not conducting adequate periodic mental-health assessments of prisoners in segregation to identify those who become mentally ill while in segregation. Dr. Haney credibly opined that periodic out-of-cell assessments are necessary not only to monitor for decompensation among those identified as mentally ill, but also to identify prisoners not on the mental-health caseload who may develop mental illness while in segregation. Just as identification and classification of mental-health needs at intake are essential in a functioning mental-health care system, it is also essential to identify those who need mental-health treatment in segregation. ADOC's own administrative regulation requires periodic mental-health assessments of prisoners in segregation, even for those who are not on the caseload, though it does not appear to require out-of-cell assessments. Joint Ex. 127, Admin. Reg. §

625 (doc. no. 1038-150). However, evidence suggested that such assessments at ADOC are cursory at best. For example, as discussed above, plaintiff R.M.W.'s segregation mental-health evaluation form completed in the same month when she was sent to suicide watch twice and had multiple incidents of self-injury simply had some check marks and stated "inmate appropriate for placement" and "segregation placement not impacting inmate's mental health." Joint Ex. 404, March 28, 2014 Review of Segregation Inmates R.M.W. (doc. no. 1038-859) at MR017081. No mention of her suicide-watch placements or self-injury episodes was included, and no suicide risk-assessment tool was completed. Ample evidence of correctional and mental-health understaffing--and the fact that staff are often unable to conduct segregation rounds consisting of much shorter, cursory cell-front interactions--also suggests that ADOC is unable to provide meaningful mental-health assessments of prisoners in segregation. However, the court believes that it should solicit more input from the parties before

determining whether ADOC is conducting adequate periodic mental-health assessments of prisoners in segregation. Therefore, the Eighth Amendment finding remains open as to this discrete issue, and the court will take it up with the parties after this opinion is issued.

Second, the court is able to conclude on the record before it that plaintiffs did not present sufficient evidence to establish that prisoners in ADOC custody face a substantial risk of serious harm in two areas: medication management and supervision of certified registered nurse practitioners. Plaintiffs did not present sufficient evidence to establish that ADOC's medication management practices are inadequate based on ADOC allegedly letting cost concerns override clinical needs and not being responsive to patients' concerns about side effects. While plaintiffs presented anecdotal evidence of providers' refusal to continue previously prescribed medications or to switch medications despite continuing side effects, the court did not see any independent clinical assessments of these patients'

medication needs. Absent any contrary clinical assessments, credibility findings, or more direct evidence of ADOC's failure to prioritize patients' clinical needs over medication costs, a constitutional determination about the adequacy of these kinds of medication decisions would invade the province of psychiatric providers' medical judgment. Estelle v. Gamble, 429 U.S. 97, 107 (1976) (holding that matters for "medical judgment" do not raise an Eighth Amendment concern). The testimony established only that clinicians talk about the cost of medications during meetings, and that managers commend providers for keeping prices down as a team; further, some prisoners were discontinued on medications they were originally prescribed, but there is no documentation about the reasons those medications were discontinued. However, these unconnected dots are not sufficient to find that ADOC prioritizes cost concerns over clinical needs when making prescription decisions, because the court is ill-equipped to discern whether the decisions were clinically inappropriate.

Furthermore, even plaintiffs' expert Burns found that keeping the cost of medications in mind when making prescribing decisions was not on its own inappropriate or unusual, especially because MHM clinicians' requests for medications that are not pre-approved for use are almost always granted. In other words, absent contrary clinical findings, there is not enough evidence to find that ADOC systematically overrides clinical needs due to cost concerns such that its medication management practices are constitutionally inadequate.

In addition, plaintiffs argued that ADOC's certified registered nurse practitioners were not properly supervised by psychiatrists. Evidence suggested that some of the CRNPs employed by MHM could not meet the state regulatory requirement that they collaborate with an on-site psychiatrist at least 10 % of the hours they work. However, evidence also showed that psychiatrists do supervise and collaborate with CRNPs through other, more informal channels. Therefore, there is insufficient evidence to establish that inadequate supervision has

created a substantial risk of serious harm for mentally ill prisoners.

C. Deliberate Indifference

Having found that ADOC's mental-health care system creates substantial risks of serious harm to mentally ill prisoners (defined in this opinion as those with serious mental-health needs), the court now turns to the deliberate-indifference prong of the Eighth Amendment inquiry. In order to prove an Eighth Amendment violation, plaintiffs must show not only that state officials subjected mentally ill prisoners to a substantial risk of serious harm, but also that defendants acted with deliberate indifference to that risk. 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.[79]

To establish deliberate indifference, plaintiffs must show that defendants had subjective knowledge of the harm or risk of harm, and disregarded it or failed to act reasonably to alleviate it. Thomas v. Bryant, 614 F.3d 1288, 1312 (11th Cir. 2010). Officials must "be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists," and "draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). The defendant's subjective awareness of a risk of harm can be determined based on circumstantial evidence, including "the very fact that the risk was obvious." Id. at 842. In other words, if a particular risk was "longstanding, pervasive, well-documented, or expressly noted by prison officials in the past, and the

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79. Defendants also asserted that because the named ADOC officials were not involved in the direct provision of mental-health care to prisoners, they could not have been deliberately indifferent to the plaintiffs' serious mental-health needs. This court has already rejected this argument. See Dunn v. Dunn, 219 F. Supp. 3d 1100, 1157-60 (M.D. Ala. 2016).

circumstances suggest that the defendant-official being sued had been exposed to information concerning the risk and thus 'must have known' about it," such evidence permits a trier of fact to conclude that the officials had actual knowledge of the risk. Id. at 842-43 (internal citation omitted).

The disregard prong can be proven in many ways. In the area of medical care, disregard of a risk of harm may consist of "failing to provide care, delaying care, or providing grossly inadequate care," when doing so causes a prisoner to needlessly suffer the pain resulting from his or her illness. McElligott v. Foley, 182 F.3d 1248, 1257 (11th Cir. 1999). Put differently, Eighth Amendment liability may be found if a defendant with subjective awareness of a serious need provides "an objectively insufficient response to that need." Taylor v. Adams, 221 F.3d 1254, 1258 (11th Cir. 2000). Although considered part of the subjective component, the requirement that the defendant disregard a risk of harm actually evaluates her response (or lack thereof) by an

objective 'reasonableness' standard. Farmer, 511 U.S. at 847.

In some circumstances, a defendant's disregard of a known risk is quite obvious. For example, the defendant might "simply refuse[] to provide" medical care known to be necessary. Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 704 (11th Cir. 1985) (allegations that prisoner required a psychiatric evaluation that defendants refused to provide satisfies disregard requirement). If a defendant provides some medical care, the Constitution does not require that the care be "perfect" or the "best obtainable." Harris v. Thigpen, 941 F.2d 1495, 1510 (11th Cir. 1991). Nonetheless, a defendant's disregard of the risk can still be found through "delaying the treatment," providing "grossly inadequate care," making "a decision to take an easier but less efficacious course of treatment," or providing "medical care which is so cursory as to amount to no treatment at all." McElligott, 182 F.3d at 1255 (collecting cases). In other words, a choice to provide care known to be less effective because

it is easier or cheaper can constitute deliberate indifference. In the context of mental-health care, "the quality of psychiatric care can be so substantial a deviation from accepted standards as to evidence deliberate indifference to those serious psychiatric needs." Steele v. Shah, 87 F.3d 1266, 1269 (11th Cir. 1996) (citing Greason v. Kemp, 891 F.2d 829, 835 (11th Cir. 1990)). Deliberate indifference can also be found when "[a] prison official persists in a particular course of treatment in the face of resultant pain and risk of permanent injury" to the prisoner. Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir. 1999).

In challenges to a correctional institution's provision of medical care, evidence of systemic deficiencies can also establish the 'disregard' element of deliberate indifference. Harris, 941 F.2d at 1505. For example, this element may be met "by proving that there are 'such systemic and gross deficiencies in staffing, facilities, equipment, or procedures that the inmate population is effectively denied access to

adequate medical care.'" Id. (quoting Ramos v. Lamm, 639 F.2d 559, 575 (10th Cir. 1980), cert. denied, 450 U.S. 1041 (1981)). As an evidentiary matter, these systemic deficiencies may be identified by a "series of incidents closely related in time" or "[r]epeated examples of delayed or denied medical care." Rogers v. Evans, 792 F.2d 1052, 1058-59 (11th Cir. 1986). Further, prison officials' efforts to correct systemic deficiencies that "simply do not go far enough" when weighed against the risk of harm also support a finding of deliberate indifference, Laube v. Haley, 234 F. Supp. 2d 1127, 1251 (M.D. Ala. 2002) (Thompson, J.), because such efforts are not "reasonable measures to abate" the identified substantial risk of serious harm. Farmer, 511 U.S. at 847.

Finally, the defendant institution's response to a known risk must be more blameworthy than "mere negligence." Farmer, 511 U.S. at 835 (citing Estelle v. Gamble, 429 U.S. 97, 106 (1976)). In other words, the defendant must have disregarded the risk with "more than

ordinary lack of due care for the prisoner's interests or safety." Id. (quoting Whitley v. Albers, 475 U.S. 312, 319 (1986)). However, while an "inadvertent failure" to provide adequate medical care does not satisfy the deliberate-indifference standard, Estelle, 429 U.S. at 105-06, in challenges to health-care systems, repeated examples of negligent conduct support an inference of systemic disregard for the risk of harm facing mentally ill prisoners. See Ramos, 639 F.2d at 575 ("In class actions challenging the entire system of health care, deliberate indifference to inmates' health needs may be shown by proving repeated examples of negligent acts which disclose a pattern of conduct by the prison medical staff.").

In an official-capacity suit, the suit is not "against the official personally, for the real party in interest is the [governmental] entity"; therefore, the deliberate-indifference inquiry focuses on the institution's "historical indifference" to the identified risk of harm, rather than the named defendant

official's personal indifference. LaMarca v. Turner, 995 F.2d 1526, 1542 (11th Cir. 1993) (finding that substitution of a new defendant, "a dedicated public servant who is trying very hard to make [the prison] an efficient and effective correctional institution" does not preclude a deliberate-indifference finding); see also Laube, 234 F. Supp. 2d at 1249 ("[T]he real parties in interest are the responsible entities: the Department of Corrections and, ultimately, the State of Alabama.").

This case is likely sui generis in the extent to which the top ADOC officials had personal knowledge of the substantial risks of serious harm posed by its deficient care and has not responded reasonably to those risks. Much of the evidence came from ADOC officials' own mouths: defendants--particularly Associate Commissioner Naglich--and other officials readily admitted to the existence of serious deficiencies, the risk of harm arising from them, and ADOC's failure to respond. As a result, although plaintiffs do not have to prove personal deliberate indifference by the named

defendants in order to establish institutional deliberate indifference, the court's finding of deliberate indifference is well supported by defendants' own admissions of knowledge and failure to act, in addition to the other circumstantial evidence more typically seen in official-capacity suits.

1. ADOC's Knowledge of Harm and Risk of Harm

The inadequacies plaguing ADOC's mental-health care system were pervasive and well-documented in multiple ways: ADOC received monthly statistical reports and annual contract-compliance reports from MHM; ADOC communicated with senior MHM managers through emails and quarterly CQI meetings; ADOC received corrective-action plans from MHM after compliance reviews and audits; ADOC also performed two audits of MHM's performance since 2011. As a result, ADOC has been well aware of the risks presented by the deficiencies in its mental-health care.

ADOC has been well aware of the significant and adverse impact of overcrowding, mental-health

understaffing, and correctional understaffing on the provision of mental-health care. Associate Commissioner Naglich admitted that, since 2010, MHM has been struggling to meet contractual requirements due to staffing cuts and increasing caseloads. In addition, MHM's program director Houser repeatedly raised concerns about inadequate mental-health staffing with Naglich, requesting for over a year to amend the contract to increase staffing across facilities; she also told Naglich repeatedly that MHM needed more counselors in order to meet the rising demand, because ADOC's psychological associates were not taking counseling caseloads from MHM providers as anticipated.

Both Dunn and Naglich have been aware that persistent correctional understaffing has interfered with MHM's ability to provide mental-health care. According to Naglich, in the years since 2010, MHM has repeatedly informed ADOC that the lack of sufficient correctional staffing has been seriously impacting its ability to provide care. ADOC's own audit of the Donaldson RTU in

2013 also revealed that check-in rounds, individual appointments, and regularly scheduled activities had to be delayed or canceled due to the limited number of officers assigned to the mental-health unit. At least since 2013, Naglich has repeatedly complained to ADOC's Commissioner, former Commissioner, and Associate Commissioner of Operations about the chronic shortage of correctional officers interfering with mental-health care. She characterized correctional understaffing as "probably one of the most serious problems facing the department." Naglich Testimony at vol.2, 174-75.

Ample evidence also demonstrates ADOC's knowledge of the risks of harm arising out of the specific deficiencies in the treatment of mentally ill prisoners discussed earlier. First, MHM managers repeatedly informed ADOC in their reports and emails that the deficiencies arising out of staffing shortages--including difficulties in providing timely counseling sessions and activities--were seriously undermining their ability to provide care. Second,

Naglich admitted that that the failure to meet the mental-health needs of prisoners with serious mental illness--in other words, the risk of harm arising from failing to identify prisoners in need of mental-health care and providing them with the appropriate level of care--puts them at risk of decompensating.

ADOC was also well aware of the specific deficiencies. To begin, ADOC was aware that its processes for identifying and classifying mentally ill prisoners were inadequate. ADOC has had a persistently low prevalence rate of mental illness, and ADOC officials have known that LPNs with extremely limited training are responsible for identifying prisoners' needs for mental-health services. Moreover, Associate Commissioner Naglich was informed of the persistent pattern of self-injury, attempted suicides, and suicides involving prisoners who had not been identified as mentally ill; MHM's corporate office had repeatedly informed her in contract-compliance reports that requests for mental-health services were not being processed appropriately according to their urgency

level. In sum, the circumstances make clear that she had been exposed to information concerning the problems and thus 'must have known' about them. Farmer, 511 U.S. at 842-43.

Deficiencies in treatment planning have been longstanding, persistent, and well documented, including in reports directly delivered to Associate Commissioner Naglich. MHM notified ADOC of the lack of individualization of treatment plans for years in audits and quarterly CQI meetings. MHM's annual contract-compliance reports to ADOC between 2011 and 2016 also noted that treatment plans were inadequate across all levels of care, from outpatient to crisis care. ADOC's own 2013 audit of Donaldson identified as a problem that treatment team meetings--where treatment planning occurs--frequently were held without all necessary participants.

The problem of insufficient counseling services has also been longstanding and well known. First, Naglich admitted her knowledge of a persistent shortage of

counselors and increasing caseloads, as well as a chronic shortage of correctional officers for escorting prisoners to appointments. Second, multiple sources informed her and other ADOC officials of serious problems in the provision of group counseling services; she also admitted that the shortage of correctional officers hindered MHM's ability to provide group therapy sessions. Contract-compliance reports given to Naglich repeatedly informed her that multiple facilities were not getting enough group counseling sessions over the years. MHM's monthly operations reports to ADOC, which contain statistics on the number of individual treatment encounters and group sessions each month, also made clear that little group counseling was occurring at multiple prisons. For example, the monthly operations report for April 2016 showed that no outpatient group therapy was offered at Donaldson, Easterling, Kilby, or St. Clair. Moreover, MHM has repeatedly discussed the problem of increasing caseloads for counselors and the unavailability of group treatment at many facilities

during quarterly CQI meetings, which ADOC Chief Psychologist Tytell attends on behalf of the agency.

ADOC officials have also been aware of the array of well-documented problems plaguing inpatient-level care. MHM has been reporting low utilization rates for RTU and SU beds to Naglich and her office every month; Naglich admitted that she has been aware of the presence of prisoners in segregation without any mental-health needs in mental-health units, and that this disrupts the therapeutic environment; ADOC's audit of Donaldson revealed that patients were not getting sufficient out-of-cell time and counseling; and Naglich has known that ADOC does not provide hospital-level care to patients who need it.

ADOC officials have been well aware of the inadequacies in suicide prevention and crisis care. Commissioner Dunn personally reviews suicide-incident reports and has been aware of the precipitous increase in the suicide rate in the last two years; he has been also aware that most of the suicides were committed by

hanging and in segregation. For her part, Naglich has known even of the specific, system-wide conditions that create substantial risks of suicide: she was notified of the chronic crisis-cell shortage[80] and the backlog at the Bullock SU that has been driving the shortage; MHM complained to her about unsafe crisis cells with tie-off points and low visibility, and her office's own audit included the same findings; and MHM repeatedly reported to Naglich that sharp items were found in crisis cells. Naglich also admitted that not having a constant-watch procedure for the most acutely suicidal inmates is a serious problem that poses a risk of harm in such a way that "someone could die." Naglich Testimony at vol. 3, 228.

Perhaps most dramatically, ADOC has been aware of the actual harm and the substantial risk of serious harm that ADOC's segregation practices pose to mentally ill

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80. ADOC Associate Commissioner Culliver and the regional coordinator for medical care, Brendan Kinard, also have been aware of crisis-cell shortage and the resulting placement of suicidal prisoners in non-crisis cells for years.

prisoners. Commissioner Dunn has been aware of the fact that mentally ill prisoners resided in segregation, and that segregation could exacerbate their mental illness. Naglich has been receiving monthly reports that showed overrepresentation of mentally ill prisoners in segregation. MHM staff repeatedly communicated to ADOC officials--both orally and in writing--their concern about ADOC's placement of mentally ill prisoners in segregation. MHM's annual contract-compliance reports between 2012 and 2016 reported that multiple facilities had disproportionate numbers of prisoners on the mental-health caseload in segregation and recommended further review of the mental-health consultation process and monitoring. See Pl. Ex. 1191, 2012 Contract-Compliance Report (doc. no. 1070-9); Pl. Ex. 114, 2013 Contract-Compliance Report (doc. no. 1070-4); Pl. Ex. 115, 2016 Contract-Compliance Report (doc. no. 1070-5). Moreover, MHM leadership has communicated the grave and potentially lethal risks of such segregation practices to ADOC officials, including Naglich. For

example, over the last four to five years on multiple occasions, Dr. Hunter, MHM's medical director, has had discussions with ADOC leadership regarding mentally ill prisoners' potential to deteriorate while in segregation. MHM's program director Houser has repeatedly informed ADOC officials that placement of mentally ill prisoners in segregation should be avoided because of the potential harm to those prisoners. Naglich herself admitted that housing mentally ill prisoners in segregation is "categorically inappropriate." Naglich Testimony at vol. 5, 73.

While aware of the substantial risk of serious harm posed by segregation, ADOC has also known that certain ADOC disciplinary practices result in frequent placement of mentally ill prisoners in segregation. Associate Commissioner Naglich admitted that ADOC has had a practice of disciplining prisoners for engaging in self-injurious behaviors. Furthermore, both MHM's and ADOC's own audits revealed that the mental-health consultation component of the disciplinary process was

not properly functioning to keep mentally ill prisoners out of segregation.

Lastly, ADOC has also been aware of the inadequate monitoring and access to treatment for prisoners in segregation. ADOC's chief psychologist Tytell informed Naglich that segregation rounds by mental-health staff were not being done properly and that mental-health patients in segregation were not receiving treatment. Furthermore, ADOC officials have been well aware that segregation placement has been a common factor among suicides. Indeed, the great danger to mentally ill prisoners in segregation is obvious: prisoners are locked away for weeks at a time in cells with little monitoring and easy access to the means to kill themselves. In other words, ADOC has been aware of the actual harm that has resulted from segregation practices, in addition to the substantial risk of serious harm that ADOC's segregation practices have imposed on mentally ill prisoners.

In sum, evidence established that ADOC has been aware of the gross deficiencies found in its treatment of mentally ill prisoners.

2. ADOC's Disregard of Harm and Risk of Harm

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. Suicide risk-assessment tools are still not being used outside of intake; referral requests are still not being triaged according to their urgency levels; records from late 2016 indicated a continued lack of individualized treatment

plans and inadequate frequency of individual and group counseling; segregation prisoners without mental-health needs are still found in mental-health units; no hospitalization option or hospital-level care for the most severely ill exists; suicidal prisoners continue to be housed in unsafe cells without adequate monitoring; and mentally ill prisoners still are placed in segregation without a meaningful mental-health consultation process and have even less access to treatment.[81]

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81. Likewise, the current levels of mental-health and correctional understaffing and overcrowding also illustrates ADOC's disregard of risk of harm. First, ADOC's response to the shortages of mental-health and correctional staff have been objectively insufficient, because systemic and gross deficiencies arising from understaffing have persisted and effectively denied prisoners access to adequate mental-health care. Taylor, 221 F.3d at 1258 (holding that the 'disregard' prong under Estelle and Farmer can be satisfied through an "objectively insufficient response" by prison officials); Harris, 941 F.2d at 1505 (deliberate indifference can be established through "systemic and gross deficiencies in staffing" that effectively deny prisoners access to adequate medical care); see also Coleman v. Wilson, 912 F. Supp. 1282, 1319 (E.D. Cal. 1995)(Karlton, J.)("[G]iven the nature and extent of the crisis and its duration," defendants' purported efforts to remedy the acute shortage of mental-health staff in the prison

In addition to its failure to respond reasonably to these deficiencies, ADOC's disregard for the substantial

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system were not sufficient to defeat a deliberate-indifference finding). Furthermore, difficulties in recruiting do not negate the fact that understaffing has caused this serious systemic deficiency. See Wellman v. Faulkner, 715 F.2d 269, 273 (7th Cir. 1983) (failure of a prison to fill authorized position weighs "more heavily against the state than for it," partly because the authorized salary was woefully inadequate and the prison's effort was insufficient); Madrid v. Gomez, 889 F. Supp. 1146, 1227 (N.D. Cal. 1995) (Henderson, J.) (finding "recruitment difficulties do not excuse compliance with constitutional mandates."). In other words, ADOC's failure to provide mental-health and correctional staffing sufficient to operate a minimally adequate mental-health care system is in itself an unreasonable response under the deliberate-indifference standard.

The same logic applies to overcrowding. While it is true that ADOC does not have the authority to release prisoners or stem the inflow of prisoners from the state's criminal justice system, ADOC's response to overcrowding has been objectively insufficient. This is because the court does not consider the overcrowding problem in a vacuum. ADOC has been well aware of the magnitude and impact of overcrowding on every facet of its operations for years. ADOC's efforts--belatedly pushing for construction of new prisons in 2016, for example--to alleviate the problem have been too little and too late, as reflected in the current 170 % occupancy rate. Considering the institution's historical deliberate indifference to the problem of overcrowding, rather than what ADOC has done under the current leadership only, the court finds that ADOC has disregarded to the harm and risk of harm caused by overcrowding and understaffing.

risk of serious harm to mentally ill prisoners manifested itself in two additional ways: its persistent refusal to exercise any meaningful oversight of MHM's delivery of care; and its unreasonable responses to critical incidents and discrete issues brought to their attention over the years.

a. ADOC's Failure to Exercise Oversight of the Provision of Mental-Health Care

ADOC's Office of Health Services, run by Associate Commissioner Naglich, has done vanishingly little to exercise oversight of the provision of care to mentally ill prisoners. This failure exemplifies ADOC's disregard of the substantial risk of serious harm to mentally ill prisoners within ADOC. Two facts provide important context for understanding this failure: first, ADOC has been well aware of the inadequacies in the treatment of mentally ill prisoners discussed above; second, as explained in this section, ADOC has known that MHM's own quality-control process is hopelessly inadequate in implementing corrective actions. Despite clear

indications that the same inadequacies persisted year after year, and that its contractor has been failing to implement corrective actions, ADOC chose to exercise close to no oversight, abdicating its constitutional obligation to ensure that the provision of mental-health care is minimally adequate.[82] Such inaction is clearly unreasonable and therefore amounts to deliberate indifference.

As an initial matter, a brief overview of MHM's quality-control processes illustrates the unreasonable nature of ADOC's response. Though designed for 'continuous quality improvement,' MHM's quality-control processes do not ensure that the identified deficiencies

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82. In fact, instead of penalizing MHM for its known inadequacies, ADOC extended the contract with MHM for one more year in September 2016. Associate Commissioner Naglich credibly testified that, as a result of her negative view of MHM's performance, she recommended awarding the mental-health contract in 2013 to another contractor, rather than renewing the contract with MHM; She likewise stated that before the department extended its contract with MHM in 2016, she told Commissioner Dunn that MHM was not "measuring up," Naglich Testimony at vol. 4, 121, adding that Dunn was also dissatisfied with all the issues that ADOC has had with MHM. And yet, ADOC renewed the contract with MHM regardless.

are corrected, mainly because many of the necessary corrective actions require cooperation and action by ADOC. MHM's corporate office's annual contract-compliance audit is the only system-wide review of MHM's performance that either MHM or ADOC conducts. Once the review is complete, MHM sends a contract-compliance report, as well as a corrective-action plan, to Naglich's Office of Health Services.[83] However, it is unclear whether anyone within MHM monitors the implementation of corrective actions. Moreover, for many of the identified deficiencies, MHM cannot address them effectively without ADOC's help: corrective actions--such as obtaining adequate staff to facilitate therapy appointments and

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83. One former MHM employee testified that these audit results are not reliable, because MHM staff on site pull medical records to be audited ahead of time and get them up to par before the corporate auditors review them. Plaintiffs' expert Dr. Burns also observed that the facility staff select the files for review, rather than the corporate office randomly selecting the files. While this testimony raises a concern that the reports may have minimized negative findings, the court relies on them to the extent the reports still found serious deficiencies in the provision of mental-health care.

group activities--often require action by ADOC officers and, crucially, more staffing.[84] As a result, without action on ADOC's part, contract-compliance reports often note the same problems recurring year after year: for example, multiple annual reports found that treatment plans were not updated consistently; that crisis cells in various facilities were unsafe for suicidal prisoners; and that prisoners in segregation and mental-health units were not getting regular treatment due to the shortage of correctional officers.[85]

The regional-level quality-improvement exercises--which includes quarterly audits and 'spot

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84. MHM's corrective-action plans reflect this conundrum: while MHM is required to send a corrective-action plan in response, much of what is required to fix the deficiencies identified in contract-compliance reports involves ADOC actions. For example, follow-up findings in the corrective-action plan for 2016 included statements such as: "This is a work in progress. Due to the staffing issues currently are not being completed during the required time frame"; "Still working with the MHPs on ensuring that the treatment plan is completed during this time frame of admission." Pl. Ex. 1247, July 2016 Bullock IP Corrective Action Plan (doc. no. 1099-10).

85. To be clear, the court notes that many identified problems could be fixed by MHM, but are not.

audits' by MHM's CQI manager--also do not seem to result in corrective actions. In fact, the CQI manager admitted that no one is responsible for ensuring that site administrators address the issues identified through her spot checks: she is only responsible for reporting the findings, not addressing the problems; no documentation of site-level follow-up is required. In her own words, "the buck doesn't stop with anyone." Davis-Walker Testimony at vol. 2, 152.[86]

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86. Asked how she knows that MHM is meeting contract compliance goals if all follow ups are done at the site level and she does not see any of those results, the CQI manager responded, "[O]bviously, you do not understand quality." Davis Walker Testimony at vol. 2, 237. She testified that the purpose of CQI is "refining [] process[es]," which she defined as determining how to collect data and reflect it in a database. Davis-Walker Testimony at vol. 1, 83. This singular focus on process rather than substance on her part led to one of the more bizarre exchanges of this trial: she insisted that all spot-audit results showing failures to meet contract or regulatory standards were exclusively attributable to data-entry problems, and never to any actual failure to provide appropriate care. For example, she insisted that noncompliance reported in the audit, such as treatment plans that were "outdated or requiring review," reflected database entry problems, even though finding the date of the latest treatment plan did not involve looking in the database. Davis-Walker Testimony at vol. 2, 130-32. Needless to say, the court did not find credible her

Naglich was well aware of MHM's inability to address identified problems. In fact, Naglich blamed MHM for most of the deficiencies in mental-health care at ADOC and expressed particular dissatisfaction with MHM's CQI process: she complained in court that MHM identifies problems, but does not help ADOC solve those problems. But this was the proverbial pot calling the kettle black: in spite of her concerns about MHM's internal oversight and her knowledge of deficiencies in care, Naglich and OHS--the only ADOC department with responsibility for monitoring mental-health care--have done almost nothing that resembles 'quality-improvement' or even bare-bones contract monitoring in response.

First, Associate Commissioner Naglich admitted that she does not review the contract-compliance reports in full or take actions based on their findings. She asserted that Dr. Tytell, the only staff member at OHS with mental-health expertise, is responsible for reviewing the reports. However, Tytell denied ever

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testimony that all identified problems are attributable to mere data entry errors.

receiving the reports or being responsible for reviewing them.[87] Not surprisingly, Naglich's testimony also revealed that neither she nor anyone else in her office has taken any corrective measures in response to the numerous inadequacies identified in the reports.

Second, ADOC has failed to monitor MHM's provision of mental-health care, despite having the tools to do so. ADOC's contract with MHM grants it access to MHM's files and the right to conduct scheduled and unannounced performance reviews. The contract also authorizes ADOC to assess fines for noncompliance found during formal audits. However, ADOC has not made use of these provisions. Since 2011, Naglich's office has conducted only one informal audit--in response to a specific concern raised by a medical provider about a mentally ill inmate--and one 'pilot audit,' both of which were limited

87. Lynn Brown, the only other person within OHS who interacts with MHM regularly, also denied ever seeing the reports or being responsible for reviewing them.

to the Donaldson facility.[88] (Only the first, informal audit produced a written report.) Despite Naglich's own assessment that MHM was "not measuring up," Naglich Testimony at vol. 4, 121, ADOC has not audited, even informally, mental-health care at any prison other than Donaldson, and has not conducted formal audits at any prisons. Because it has not conducted any formal audits, ADOC has not been able to assess MHM any fines for contractual noncompliance.

Even when ADOC conducted the informal audits at Donaldson, it did nothing to address the identified problems. The 2013 informal audit of Donaldson revealed that the care provided at the Donaldson RTU was deficient in many ways--so much so that Associate Commissioner Naglich described it as a "failed audit." Naglich Testimony at vol. 2, 55. As discussed earlier in more detail in Section V.B.5, the audit revealed that providers had difficulties accessing patients because of

88. MHM's program manager Houser explained that Naglich told her the 'pilot audit' would not "count" and that the results would not be used as an "I gotcha." Houser Testimony at vol. 2, 176.

the correctional staffing shortage; group programming was inadequate; bed space in the treatment units was used to house segregation inmates; mental-health staffing was inadequate; security for mental-health staff was inadequate; and patients were not getting sufficient out-of-cell time. MHM's corrective-action plan identified tasks for both ADOC and MHM. However, Naglich was unable to identify a single follow-up action taken by her office or MHM to address any of these issues. ADOC's lead auditor, Brendan Kinard, admitted that OHS did not do anything to resolve problems identified in the Donaldson audit.

Associate Commissioner Naglich offered no reasonable explanation when pressed about the reason for the lack of follow-up after the dismal results of the 2013 Donaldson audit. She blamed the death of Dr. Cavanaugh, the chief psychologist of OHS and Dr. Tytell's predecessor, who unexpectedly passed away in March 2014. According to Naglich, Cavanaugh had been responsible for contract monitoring, including conducting formal and

informal audits of MHM's delivery of care, and for ensuring that the quality of mental-health care is adequate. However, Naglich's excuse did not hold water: when asked to produce any documentation of audits or follow-ups done by Dr. Cavanaugh before he passed away, she was unable to do so; he apparently produced no written reports or emails about his findings or audits. According to MHM's program director Houser, Cavanaugh conducted no system-wide or even facility-wide audits; he simply performed 'reviews' that did not result in corrective-action plans or written reports.

Moreover, the testimony of Dr. Tytell, who took Dr. Cavanaugh's place later in 2014, made clear that ADOC still does little to ensure that MHM is meeting contractual requirements. Tytell admitted that he does not conduct any system-wide or facility-wide audits, and that he only examines patient records when he is trying to learn something about a specific patient. He attends MHM's quarterly CQI meetings, which last a whole day, but he leaves around lunch time; he has missed one or two of

the four quarterly meetings in the last year. He does not look into issues raised at CQI meetings, unless specifically told to do so by Naglich.[89] Likewise, although he receives programming logs and monthly operations reports from MHM, Tytell does nothing with them because the information is "already old data" that is "a couple months behind." Tytell Testimony at __.

The 2015 Donaldson 'pilot audit' also exemplified ADOC's inadequate response to identified problems in the provision of mental-health care. While conducting the audit, Tytell became concerned that many of the medical records he was examining were not meeting the benchmarks, and called Associate Commissioner Naglich in the middle of the audit to report the "dismal" results. Tytell Testimony at __. Naglich simply told him to finish the audit. On the last day of the audit, Tytell informally

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89. Lynn Brown, the other ADOC employee who attends the MHM CQI meetings but does not have any mental-health training, testified that she is not responsible for reporting from the meetings unless specifically told to do so. This office-wide lack of involvement in the CQI process further supports the finding that ADOC has chosen to abdicate its duty of ensuring that MHM's delivery of mental-health care is minimally adequate.

discussed his preliminary findings in an exit interview with the site administrator and two people from MHM's regional office. However, no one at OHS formally communicated with MHM regarding the problems found in the audit or gave written feedback, even though many of the same inadequacies from the 2013 audit were identified again, and Houser specifically asked for feedback. Because there was no written report, MHM did not develop any corrective-action plans.

After he revised the audit tools based on the 'pilot audit' results, Tytell asked Naglich whether OHS should re-audit Donaldson using the new tools. Naglich told him to not worry about it. Naglich also told him not to conduct any more audits of any other facilities. Tytell disagreed with the decision not to re-audit but did as he was told: as he explained, he "learned to stay in [his] lane," that is, "to do as I am ordered." Tytell Testimony at __. OHS has not conducted any audit using the revised audit tools since then.

In sum, in failing to exercise adequate oversight of MHM's performance and to address deficiencies identified in the "failed" results of the 2013 Donaldson audit and the "dismal results" of the 2015 Donaldson audit, ADOC's response to its knowledge of harm and risk of harm in the mental-health care system has been objectively unreasonable.

b. ADOC's Unreasonable Responses to Identified Deficiencies

ADOC has also failed to respond reasonably to discrete issues that come to its attention, even when lives may be at stake. In response to many of the deficiencies identified above, ADOC officials admitted to doing nothing in response to being informed. ADOC officials also repeatedly testified that they simply told someone else about the risk of harm being created by deficient treatment of mentally ill prisoners, and took no other action, even though informing someone else within ADOC previously had failed to result in any change. Insisting upon a course of action that has already proven

futile is not an objectively reasonable response under the deliberate-indifference standard.

Examples of such unreasonable responses abound. First, as multiple ADOC and MHM staff admitted, sharp items in crisis cells have been a recurring problem in multiple facilities. When Dr. Tytell was asked about this problem, he simply stated: "I'm always told that things will be taken care of and things will be done. How to check up on it and follow up on it, I don't know how unless I'm told that it happens again." Tytell Testimony at __. Tytell's statement epitomized ADOC's inadequate response to problems that pose serious risks to prisoners: the sole ADOC official with mental-health expertise insists on passing the buck even when the issue involves self-harm by suicidal prisoners, and even when his past experience has clearly shown him that simply bringing problems to the attention of others does not fix those problems.

Associate Commissioner Naglich likewise shirked responsibility when asked about the issue of sharp items

found in crisis cells: even though she knew that correctional officers were not following protocol by failing to search crisis cells for sharp items that could be used for self-harm, she maintained that she does not have the authority to tell correctional officers to follow the protocols "because it's a security concern, so all that we can do is relay that concern to security." Naglich Testimony at vol. 4, 115. However, Associate Commissioner Culliver credibly testified that as an associate commissioner herself, Naglich has the authority to tell correctional officers to comply with administrative regulations and protocols.

Associate Commissioner Naglich's testimony was also full of admissions that, despite knowledge of risks of harm, ADOC took no action at all. She admitted that she had known about problems regarding visibility into crisis cells at least since ADOC's 2013 audit of Donaldson, but she did not know what, if anything, had been done to correct these problems in the years since. When asked why she has not done anything personally to address this

issue that she acknowledged as "critical," she stated that she does not have enough staff to do so. Naglich Testimony at vol. 1, 173-74. Naglich also admitted that ADOC officials did nothing in response to their own audit finding that ADOC had a practice of automatically applying disciplinary sanctions for self-injury. Likewise, she took no action in response to MHM's repeatedly-expressed concern--which she shared--that mentally ill prisoners are overrepresented in segregation, until after she told the court that mentally ill prisoners should not be in segregation. She unconvincingly testified that if she had been notified that the mentally ill were disproportionately being housed in segregation, she "would have looked at each one of those facilities." Naglich Testimony at vol. 5, 138. Naglich, in fact, had been informed for years that mentally ill prisoners have been overrepresented in segregation.[90] Yet, she admitted that she never inquired

90. As explained in the knowledge section, MHM managers, including Dr. Hunter and Houser, have both discussed this issue with her on multiple occasions. In

into the facilities reported to have disproportionate numbers of mentally ill prisoners in segregation.

ADOC's response to the skyrocketing suicide rate also demonstrates a frankly shocking level of disregard for a known substantial risk of serious harm. At the highest level, Commissioner Dunn testified that he personally tracks suicide rates and has looked at incident reports; he is, of course, aware of the sharp increase in suicide rates in the last two years within ADOC. However, more than a month after this trial began, he testified that he has not ordered his staff to take any concrete measures other than asking his chief of staff, Steve Brown, to "look into it." Dunn Testimony at vol. 1, 45. He has never attended any meetings regarding suicides, or asked for a written report or follow-up after suicide-related meetings that took place in October 2015 and October 2016.

Associate Commissioner Naglich was not only aware of the increase in the suicide rate, but also the risk factors for suicides. Yet, she and other ADOC officials

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addition, MHM has been sending monthly operations reports and annual contract compliance reports stating the same.

made almost no effort to address the problem. In Naglich's view, suicide is a risk for anyone with untreated mental illness--in other words, a lack of treatment, as well as a lack of acute care and suicide-prevention measures, places all mentally ill prisoners at risk of the most serious bodily harm possible. She attended an October 2015 meeting focused on the increase in suicide rates, where she learned that segregation placement was a common factor among suicides. However, neither she nor anyone else at ADOC took any action to change ADOC's housing of mentally ill prisoners in segregation, and no follow-up meeting was scheduled until October 2016. During that 12-month period, six prisoners committed suicide, doubling the annual rate from 2015. After the second meeting, ADOC again took no action. Appallingly, ADOC officials directly responsible for mental health--Naglich and Tytell--and prisoner placement--Culliver--all admitted that they were aware of the sharp rise in suicides, participated in these two meetings on the suicide rate, and took no action.

Associate Commissioner Naglich attempted to explain this lack of response by stating that a new mental-health coding system prohibiting placement of seriously mentally ill prisoners in segregation was in the middle of a roll-out at the time of her testimony in December 2016. However, as explained earlier, her representation was disputed by the testimony of two of her colleagues, who explained that OHS moved ten mentally ill prisoners out of segregation into the Donaldson RTU only after her testimony, and that there was no official policy change.[91] In a way, Naglich's belated transfer of the prisoners is all the more damning: the fact that she and Dr. Tytell

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91. Tytell also tried to evade responsibility by saying that he was not responsible for the actual transfer or monitoring of the transfer: he first contended that whether mentally ill prisoners are actually being transferred out of segregation was up to the wardens and site administrators, because they have the mental-health codes of prisoners in segregation; he insinuated that he did not have any way of monitoring the movement of mentally ill prisoners in and out of segregation. However, he then admitted that both himself and Associate Commissioner Naglich do have access to the mental-health codes of prisoners in segregation. At the time of his testimony, Dr. Tytell had never run a report to ascertain how many mentally ill prisoners remain to be moved out of segregation, and Naglich had never requested to see such a report.

could move ten RTU-level prisoners out of segregation and into the RTU over the course of a few weeks suggests that it was well within their ability to prevent seriously mentally ill prisoners from being housed in segregation. They could have taken this action in 2015, after the first meeting on suicides, or in 2016, after the second meeting, rather than waiting until January 2017. By that time, twelve more people, including a plaintiff in this lawsuit, had committed suicide.

D. Ongoing Violation

Before granting injunctive relief against a state official for an Eighth Amendment violation, the court must find that the violation is ongoing and continuous in order to fall under the Ex parte Young exception of the Eleventh Amendment bar. 209 U.S. 123 (1908); see Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 281 (1997) ("An allegation of an ongoing violation of federal law where the requested relief is prospective is ordinarily sufficient to invoke the Young fiction."). In

interpreting this requirement, the Eleventh Circuit has held that "the ongoing and continuous requirement merely distinguishes between cases where the relief sought is prospective in nature, i.e., designed to prevent injury that will occur in the future, and cases where relief is retrospective." Summit Med. Assocs., P.C. v. Pryor, 180 F.3d 1326, 1338 (11th Cir. 1999). In this case, plaintiffs are seeking prospective injunctive relief to remedy serious inadequacies in the mental-health care system that will continue to put mentally ill prisoners at a substantial risk of serious harm if not corrected. However, during the trial, defendants suggested that in three different areas of mental-health care at issue here, ADOC has started remedying the inadequacies, rendering plaintiffs' claims as to those areas moot and not suitable for resolution by the court. The court disagrees, and addresses each area in turn.[92]

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92. The interplay between the mootness inquiry and the ongoing-violation requirement under Ex parte Young is somewhat unsettled. However, the Eleventh Circuit, along with the Fifth Circuit and the Sixth Circuit, has suggested that a threat of recurrence sufficient to

First, during the trial, defendants repeatedly argued that the 2014 partial settlement between the parties regarding the distribution of razor blades to prisoners in crisis cells and segregation units has rendered the issue of dangerous items in crisis cells moot. However, the settlement deals solely with the policy of distributing razor blades for shaving to prisoners in those units, rather than the distinct issue of keeping dangerous items--including but not limited to

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render a claim not moot should also be sufficient for the ongoing-violation requirement. See Nat'l Ass'n of Bds. of Pharm. v. Bd. of Regents of the Univ. Sys. of Ga., 633 F.3d 1297, 1308-09 (11th Cir. 2011) (treating a dispute regarding whether the plaintiff alleged an ongoing violation as a mootness inquiry); K.P. v. LeBlanc, 729 F.3d 427, 439 (5th Cir. 2013) (rejecting the contention that a non-moot claim did not meet the ongoing-violation requirement, because "[that] theory, if accepted, would work an end-run around the voluntary-cessation exception to mootness where a state actor is involved"); Russell v. Lundergan-Grimes, 784 F.3d 1037, 1047 (6th Cir. 2015) ("[A]t the point that a threatened injury becomes sufficiently imminent and particularized to confer Article III standing, that threat of enforcement also becomes sufficient to satisfy ... Ex parte Young."); see also Muhammad v. Crews, No. 4:14CV379-MW/GRJ, 2016 WL 3360501, at *6 n.5 (N.D. Fla. June 15, 2016) (Walker, J.) (summarizing the case law). Here, the court addresses both the mootness argument and the ongoing-violation argument, though the analyses overlap.

razor blades--from being introduced into crisis cells by other means. Multiple employees of ADOC and MHM testified that the presence of dangerous items in crisis cells has been an ongoing problem. Accordingly, the 2014 settlement of the razor-distribution issue does not moot this inquiry or prevent the court from finding an ongoing violation.

Second, defendants argued that the January 2017 interim agreement 'revamping' suicide prevention protocols moots the issue of suicide prevention and crisis care in general. However, as discussed earlier, suicide prevention encompasses much more than requiring constant watch for the most acutely suicidal prisoners and ensuring staggered-interval checks of others. In fact, various suicide prevention measures discussed in this case are not covered by the interim agreement, and defendants have not implemented them, despite their knowledge of the risk of harm posed by the current conditions. For example, as this court saw firsthand during its facility tours after the trial, segregation

cells and some crisis cells continue to have easily accessible tie-off points, despite the fact that most suicides happen in segregation cells.[93] Likewise, despite the recommendation of defendants' own expert that a suicide risk-assessment tool be used for all prisoners at a heightened risk of suicide, not just prisoners coming through the intake process for the first time, ADOC has failed to assess prisoners for suicide risks outside of the intake process.[94] When asked by the court

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93. MHM's program director Houser explained that ADOC started looking into fixing the doors on the Holman suicide watch cells (which have bars that can provide a tie-off point) during the last week of December 2016. This was close to a month after the trial had begun, and years after MHM started reporting to ADOC that Holman crisis cells are not safe. These belated actions illustrate that without a court order, ADOC will continue to look the other way despite the glaring deficiencies that put mentally ill prisoners at a substantial risk of serious harm, including death.

94. As discussed earlier, many prisoners who commit suicide while in ADOC custody are not actually on suicide watch at the time; in fact, many reside in general population units without receiving any mental-health treatment. This suggests that meaningful remedial suicide prevention efforts cannot be confined to those already identified as high risk, but also must include identifying those at high risk among the general population.

why this part of Dr. Patterson's recommendation is not being followed, Associate Commissioner Naglich answered that she is "not sure where all it's being used" and "it would be a question better asked of MHM."[95] Naglich Testimony at vol. 3, 231.

Furthermore, evidence suggests that even the limited remedial actions covered by the interim agreement have not been fully implemented. Allegations of noncompliance with the constant-watch procedure resulted in a modification of the interim agreement in order to allow plaintiffs' counsel frequent monitoring visits to crisis cells. The court also witnessed firsthand during the post-trial site visits that essential parts of suicide-watch procedures were still not being followed: many forms for 15-minute and 30-minute staggered-interval checks of prisoners on suicide watch and mental-health observation were pre-filled and at exact intervals. ADOC's inability to carry out the terms of the interim

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95. The court attributes this lack of knowledge to the Associate Commissioner being overwhelmed due to understaffing.

agreement even in anticipation of this court's announced visit illustrates a severe, ongoing dysfunction in the system, a striking indifference by ADOC to a substantial risk of serious harm, or both. Needless to say, the court finds that the inadequacies in ADOC's suicide-prevention measures are ongoing.

Partly for this reason, the court declines to rely on Commissioner Dunn's testimony that he intends to abide by the interim agreement's constant-watch procedures until an expert or the court tells him otherwise. Dunn's statement regarding his intent to enforce it indefinitely is not reliable given the evidence of noncompliance already shown and Houser's testimony that the budget and the layout of crisis cells make constant watch unsustainable. In addition, Dunn's statement of intention is not enforceable in court, especially given that the order approving the interim agreement specifically states that it does not resolve any of the issues raised in trial. See Interim Agreement on Suicide Prevention Measures (doc. no. 1102). In other words, defendants

have not satisfied the requirements for making a claim moot by voluntary cessation: the Commissioner's statement cannot be said to have "completely and irrevocably eradicated the effects of the alleged violation," and there is a reasonable expectation that the alleged violation may recur, due to the risk and evidence of non-compliance and the unenforceability of the defendant's statement in court. See Reich v. Occupational Safety and Health Review Comm'n, 102 F.3d 1200, 1202 (11th Cir. 1997) (holding that a request for injunctive relief may become moot if: (1) "it can be said with assurance that there is no reasonable expectation that the alleged violation will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.").

Third, defendants have also failed to show that the inquiry into their segregation practices has become moot or that they have stopped placing seriously mentally ill

prisoners in segregation.[96] As discussed above, evidence suggests that the new coding system as described by Associate Commissioner Naglich has not yet been implemented. ADOC's failure to address such an obvious risk of harm despite their knowledge of the issue for over two years vividly illustrates that the violation is ongoing and will continue if the defendants are left to their own devices.

E. Ex parte Young Defenses

Defendants advance two arguments regarding the Ex parte Young doctrine: first, that the defendants, sued in their official capacities, lack the authority to implement the remedy, and therefore cannot be proper defendants; second, that the remedy would require the State to expend money, and therefore is barred by the

96. Defendants did not make this argument explicitly during the trial, but the court addresses it since Associate Commissioner Naglich's contention regarding the new coding system could be construed as arguing that plaintiffs' claim regarding ADOC's segregation practice is now moot.

Eleventh Amendment--an argument that this court already rejected in the summary judgment opinion. Neither argument is viable under the Eleventh Amendment case law and Ex parte Young, 209 U.S. 123 (1908).

The case law does not support the argument that the Commissioner and the Associate Commissioner were not the proper defendants to sue due to their alleged lack of authority to implement the remedy. The Supreme Court rejected this line of argument in Papasan v. Allain, 478 U.S. 265 (1986), where the State of Mississippi contended that plaintiffs had not sued officials who could grant the relief requested, which was to remedy the State's unequal distribution of the benefits from the State's school land. The Court held that one of the named defendants, the Secretary of State, was a proper defendant because he was responsible under a state statute for "general supervision" of the local school officials' administration of the lands in question; because of those responsibilities, he could be properly enjoined under Ex parte Young. Id. at 282 & n.14. The

Court's holding ensured that if a state official violates the Constitution while carrying out a responsibility created by virtue of the defendant's office, that defendant may be enjoined under Ex parte Young. See also Ex parte Young, 209 U.S. at 157 (explaining that "the fact that the state officer, by virtue of his office, has some connection with the enforcement of the act, is the important and material fact"). The defendant's authority to implement the remedy was not relevant to the Ex Parte Young analysis.

This circuit has repeatedly held that defendants simply must have "'have some connection with' the unconstitutional act or conduct complained of" in order to be proper defendants for an injunctive-relief suit under Ex parte Young. Luckey v. Harris, 860 F.2d 1012, 1015-16 (11th Cir. 1988) (quoting and citing Ex parte Young, 209 U.S. at 157 (internal alterations omitted)). For example, in Grizzle v. Kemp, 634 F.3d 1314 (11th Cir. 2011), the Eleventh Circuit held that the Secretary of State is a proper defendant in a suit challenging the

legality of a state election law--even though that official cannot implement the relief of changing the law--since he has "both the power and the duty to ensure that [local boards of elections] comply with Georgia's election code," which "'sufficiently connect[s] him with the duty of enforcement'" for the potentially unconstitutional law. Id. at 1319 (quoting Ex Parte Young, 209 U.S. at 161). Conversely, in Summit Med. Assocs., PC v. Pryor, 180 F.3d 1326 (11th Cir. 1999), the court found that a state prosecutor is not a proper defendant in a lawsuit challenging a private civil-enforcement statute creating a private cause of action, because a prosecutor has no connection with the enforcement of a civil statute that enables an affected private individual to sue. The application of Ex parte Young in the Eleventh Circuit as well as other circuits is palpably distinct from the defendants' formulation, which elides the distinction between having "'some connection' ... with the conduct complained of," Luckey, 860 F. 2d at 1015-16 (quoting Ex Parte Young, 209 U.S.

at 157), and the "authority to remedy the alleged wrongs." Defs.' Ex parte Young Trial Br. (doc. no. 1098) at 12.

Applying the proper formulation of Ex parte Young, the Commissioner and the Associate Commissioner have the constitutional duty to provide minimally adequate mental-health care as the officials responsible for running the Alabama Department of Corrections and its Office of Health Services; therefore, they have "the ability to commit the unconstitutional act" of failing to provide minimally adequate mental-health care, and the Ex parte Young doctrine applies. Okpalobi v. Foster, 244 F.3d 405, 421 (5th Cir. 2001) (en banc).

Defendants also seem to argue that any time a state official requires someone else's cooperation in order to remedy a constitutional violation, that state official's unconstitutional act is immune from suit. This cannot be. The Ex parte Young case law is replete with examples where a court finds the conduct of a state agency unconstitutional, even when the named defendants in their official capacities cannot remedy the violation alone.

For example, the Eleventh Circuit found that the Ex parte Young doctrine applied to a lawsuit challenging the adequacy of counsel provided to indigent criminal defendants in the State of Georgia in Luckey v. Harris, 860 F.2d 1012 (11th Cir. 1988), quoting the "some connection" language from Ex parte Young. Remedying some of the allegations in that case, such as inadequate supervision of court-appointed criminal defense counsel, would have required third parties' cooperation, including hiring new personnel to supervise defense attorneys and related budget appropriations--just as potential remedies proposed by the parties in this case might require an additional budget appropriation and the recruitment of new personnel. In other words, the fact that the named defendants in their official capacities may need third parties' cooperation to carry out some of the potential remedies does not bar Ex parte Young's applicability, because the doctrine only requires "some connection" between the alleged wrongdoing and the officials' responsibility.

Defendants' second argument--that the remedy would require state expenditures in violation of the Eleventh Amendment--is equally unavailing. Defendants argue that because the Commissioner and the Associate Commissioner do not have the authority to appropriate more money to their own budget, they are immune from this lawsuit under the Eleventh Amendment. The Supreme Court has clearly held that the Eleventh Amendment does not bar an order requiring expenditure of state funds if it is ancillary to injunctive relief for an ongoing violation. In Edelman v. Jordan, 415 U.S. 651, 668 (1974), the Supreme Court noted that the Eleventh Amendment did not bar suits that had "fiscal consequences to state treasuries" that "were the necessary result of compliance with decrees which by their terms were prospective in nature." The Court in Edelman also observed that having to spend more money from the state treasury because the State needs to conform its conduct to the court order is an "ancillary effect" that is "a permissible and often an inevitable consequence of the principle announced in Ex parte Young."

Id. at 668. The Court reiterated this principle in Milliken v. Bradley, 433 U.S. 267, 289 (1977), upholding a district court's order requiring the State defendants to pay one-half of the additional costs attributable to a remedial education scheme to support school desegregation. In both of these cases, the Supreme Court recognized that the State must pay for ancillary costs of prospective, injunctive relief, regardless of whether the named defendants in their official capacities--who were standing in for the State based on the Ex parte Young fiction--had the ability to appropriate more money to their own budget. See also Lane v. Cent. Ala. Cmty. Coll., 772 F.3d 1349, 1351 (11th Cir. 2014) ("The Supreme Court has recognized that compliance with the terms of prospective injunctive relief will often necessitate the expenditure of state funds.") (citing Edelman v. Jordan, 415 U.S. 651 (1974)). In fact, rather than precluding relief, courts have found inadequate funding to be a basis for finding of deliberate indifference. See, e.g., Wellman v. Faulkner, 715 F.2d 269, 273 (7th Cir. 1983).

In sum, defendants are not immunized from liability arising from ongoing constitutional violations simply because they lack financial resources or the authority to mandate certain specific measures that might remedy the violation. On the contrary, the Ex parte Young doctrine allows this court to find liability and ensure that the prison system provides minimally adequate mental-health care.

VI. CONCLUSION

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. Based on the abundant evidence presented in support of the Eighth Amendment claim, the court

summarizes its factual findings in the following roadmap, identifying the contributing factors to the inadequacies found in ADOC's mental-health care system:

(1) Failing to identify prisoners with serious mental-health needs and to classify their needs properly;

(2) Failing to provide individualized treatment plans to prisoners with serious mental-health needs;

(3) Failing to provide psychotherapy by qualified and properly supervised mental-health staff and with adequate frequency and sound confidentiality;

(4) Providing insufficient out-of-cell time and treatment to those who need residential treatment; and failing to provide hospital-level care to those who need it;

(5) Failing to identify suicide risks adequately and providing inadequate treatment and monitoring to those who are suicidal, engaging in self-harm, or otherwise undergoing a mental-health crisis;

(6) Imposing disciplinary sanctions on mentally ill prisoners for symptoms of their mental illness, and imposing disciplinary sanctions without regard for the impact of sanctions on prisoners' mental health;

(7) Placing seriously mentally ill prisoners in segregation without extenuating circumstances and for prolonged periods of time;[97] placing prisoners with serious mental-health needs in segregation without adequate consideration of the impact of segregation on mental health; and providing inadequate treatment and monitoring in segregation.

The court further finds that persistent and severe shortages of mental-health staff and correctional staff, combined with chronic and significant overcrowding, are the overarching issues that permeate each of the above-identified contributing factors of inadequate mental-health care.

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97. The court recognizes that 'extenuating circumstances' and 'prolonged periods of time' are somewhat ambiguous terms but leaves them to be defined during the remedy phase with the parties' input.

*** * ***

Accordingly, it is ORDERED that the court and the parties will meet to discuss a remedy. The court emphasizes that given the severity and urgency of the need for mental-health care explained in this opinion, the proposed relief must be both immediate and long term. No partial final judgment shall issue at this time as to the claim resolved in this entry.

DONE, this the 27th day of June, 2017.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE

April 2, 2019

The Honorable Kay Ivey
Governor of Alabama
Alabama State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130

Re: Notice Regarding Investigation of Alabama's State Prisons for Men

Dear Governor Ivey:

We write to report the results of the investigation into the conditions of confinement in Alabama's State Prisons for Men (Alabama's prisons) by the Civil Rights Division and the Alabama United States Attorneys' Offices, conducted under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997. Consistent with the statutory requirements of CRIPA, we provide this Notice of the alleged conditions that we have reasonable cause to believe violate the Constitution. We also notify you of the supporting facts giving rise to, and the minimum remedial measures that we believe may remedy, those alleged conditions.

After carefully reviewing the evidence, we conclude that there is reasonable cause to believe that conditions at Alabama's prisons violate the Eighth Amendment to the Constitution and that these violations are pursuant to a pattern or practice of resistance to the full enjoyment of rights protected by the Eighth Amendment. In particular, we have reasonable cause to believe that Alabama routinely violates the constitutional rights of prisoners housed in the Alabama's prisons by failing to protect them from prisoner-on-prisoner violence and prisoner-on-prisoner sexual abuse, and by failing to provide safe conditions. The violations are exacerbated by serious deficiencies in staffing and supervision and overcrowding.[1]

We are obligated to advise you that 49 days after issuance of this Notice, the Attorney General may initiate a lawsuit under CRIPA to correct the alleged conditions we have identified if Alabama officials have not satisfactorily addressed them. 42 U.S.C. § 1997b(a)(1). The Attorney General may also move to intervene in related private suits 15 days after issuance of this letter. 42 U.S.C. § 1997c(b)(1)(A).

[1] The Department's investigation of Alabama's prisons was opened to investigate three issues: (1) whether Alabama's prisons are protecting prisoners from physical and sexual violence at the hand of other prisoners; (2) whether Alabama's prisons are providing safe and sanitary living conditions; and (3) whether Alabama's prisons are protecting prisoners from excessive force and sexual abuse from staff. This Notice Letter applies to the first two issues. The Department's investigation into third issue is ongoing because the Department's petition to enforce its subpoena for documents relevant to that issue is pending with the court.

We hope, however, to resolve this matter through a more cooperative approach and look forward to working with you to address the alleged violations of law we have identified. The lawyers assigned to this investigation will be contacting the Alabama Department of Corrections to discuss this matter in further detail. Please also note that this Notice is a public document. It will be posted on the Civil Rights Division's website.

If you have any questions, please call United States Attorney Jay E. Town at (205) 244-2001 or Steven H. Rosenbaum, Chief of the Civil Rights Division's Special Litigation Section, at (202) 616-3244.

Sincerely,

Eric S. Dreiband
Assistant Attorney General
Civil Rights Division

Louis V. Franklin, Sr.
United States Attorney
Middle District of Alabama

Jay E. Town
United States Attorney
Northern District of Alabama

Richard W. Moore
United States Attorney
Southern District of Alabama

cc: Steven T. Marshall
Attorney General
State of Alabama

Jefferson Dunn
Commissioner
Alabama Department of Corrections

Deborah Toney
Warden
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565 Bibb Lane
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Patrice Richie
Warden
Bullock Correctional Facility
P.O. Box 5107
Union Springs, AL 36089

Christopher Gordy
Warden
Donaldson Correctional Facility
100 Warrior Lane
Bessemer, AL 35203

Walter Myers
Warden
Easterling Correctional Facility
200 Wallace Drive
Cilo, AL 36017

Joseph Headley
Warden
Elmore Correctional Facility
3520 Marion Spillway Road
Elmore, AL 36025

Mary Cooks
Warden
Fountain Correctional Facility
Fountain 3800
Atmore, AL 36503

Guy Noe
Warden
Hamilton Aged & Infirmed Correctional Facility
223 Sasser Drive
Hamilton, AL 35570

Cynthia Stewart
Warden
Holman Correctional Facility
Holman 3700
Atmore, AL 36503

Leon Bolling
Warden
Kilby Correctional Facility
P.O. Box 150
Mt. Meigs, AL 36057

DeWayne Estes
Warden
Limestone Correctional Facility
28779 Nick Davis Road
Harvest, AL 35749

Karla Jones
Warden
St. Clair Correctional Facility
1000 St. Clair Road
Springville, AL 35146

John Crow
Warden
Staton Correctional Facility
P.O. Box 56
Elmore, AL 36025

Michael Strickland
Acting Warden
Ventress Correctional Facility
379 Alabama Highway 239 North
Clayton, AL 36016

Attachment: Section 1997b Notice

INVESTIGATION OF ALABAMA'S STATE PRISONS FOR MEN

United States Department of Justice
Civil Rights Division

United States Attorney's Offices for the
Northern, Middle, and Southern Districts of Alabama

April 2, 2019

TABLE OF CONTENTS

I. INTRODUCTION

The Civil Rights Division and the three U.S. Attorney's Offices for the State of Alabama ("Department" or "Department of Justice") provide notice, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §§ 1997 *et seq.* ("CRIPA"), that there is reasonable cause to believe, based on the totality of the conditions, practices, and incidents discovered that: (1) the conditions in Alabama's prisons for men (hereinafter "Alabama's prisons")[1] violate the Eighth Amendment of the U.S. Constitution; and (2) these violations are pursuant to a pattern or practice of resistance to the full enjoyment of rights protected by the Eighth Amendment. The Department does not serve as a tribunal authorized to make factual findings and legal conclusions binding on, or admissible in, any court, and nothing in this Notice Letter ("Notice") should be construed as such. Accordingly, this Notice is not intended to be admissible evidence and does not create any legal rights or obligations.

Consistent with the statutory requirements of CRIPA, we write this Notice to notify Alabama of the Department's conclusions with respect to numerous constitutional violations, the facts supporting those conclusions, and the minimum remedial measures necessary to address the identified deficiencies.[2]

There is reasonable cause to believe that the Alabama Department of Corrections ("ADOC") has violated and is continuing to violate the Eighth Amendment rights of prisoners housed in men's prisons by failing to protect them from prisoner-on-prisoner violence, prisoner-on-prisoner sexual abuse, and by failing to provide safe conditions, and that such violations are pursuant to a pattern or practice of resistance to the full enjoyment of rights secured by the Eighth Amendment. The violations are severe, systemic, and exacerbated by serious deficiencies in staffing and supervision; overcrowding; ineffective housing and classification protocols; inadequate incident reporting; inability to control the flow of contraband into and within the prisons, including illegal drugs and weapons; ineffective prison management and training;

[1] At present, there are 13 such correctional facilities: Bibb Correctional Facility; Bullock Correctional Facility; Donaldson Correctional Facility; Easterling Correctional Facility; Elmore Correctional Facility; Fountain Correctional Facility; Hamilton Aged & Infirmed; Holman Correctional Facility; Kilby Correctional Facility; Limestone Correctional Facility; St. Clair Correctional Facility; Staton Correctional Facility; and Ventress Correctional Facility. We also investigated the conditions at Draper Correctional Facility; however, in late 2017, the Alabama Department of Corrections ("ADOC") closed that facility. We did not review the conditions in other ADOC facilities, such as work release facilities or the Julia Tutwiler Prison for Women.

[2] The Department's investigation of Alabama's prisons was opened to investigate three issues: (1) whether ADOC is protecting prisoners from physical and sexual violence at the hand of other prisoners; (2) whether ADOC is providing safe and sanitary living conditions; and (3) whether ADOC is protecting prisoners from excessive force and sexual abuse from staff. This Notice applies to the first two issues. The Department's investigation into third issue is ongoing because the Department's petition to enforce its subpoena for documents relevant to that issue is pending with the court.

insufficient maintenance and cleaning of facilities; the use of segregation and solitary confinement to both punish and protect victims of violence and/or sexual abuse; and a high level of violence that is too common, cruel, of an unusual nature, and pervasive.

Our investigation revealed that an excessive amount of violence, sexual abuse, and prisoner deaths occur within Alabama's prisons on a regular basis. Indeed, a review of a single week in Alabama's prisons—a week in September 2017—provides a window into a broken system that too often disregards prisoners' safety.

The "Hot Bay" at Bibb[3] was a housing unit populated exclusively with prisoners with disciplinary infractions. It had limited supervision and no programming. On a Friday in September 2017, three days before the Department of Justice arrived at Bibb for the first full facility tour of our investigation, two prisoners stood guard at the doors of the Hot Bay, an open dormitory housing men in bunkbeds multiple rows deep, watching for rarely-seen correctional officers. At the back of the dormitory and not visible from the front door, two other prisoners started stabbing their intended victim. The victim screamed for help. Another prisoner tried to intervene and he, too, was stabbed. The initial victim dragged himself to the front doors of the dormitory. Prisoners banged on the locked doors to get the attention of security staff. When an officer finally responded, he found the prisoner lying on the floor bleeding from his chest. The prisoner eventually bled to death. One Hot Bay resident told us that he could still hear the prisoner's screams in his sleep.

That same day, at Staton, a prisoner was stabbed multiple times by another prisoner and had to be medically evacuated by helicopter to a nearby hospital. The following day, at Elmore, a prisoner was beaten and injured by four other prisoners. At Ventress, officers performed a random pat down on a prisoner, finding 17 cigarettes laced with drugs, a plastic bag of methamphetamine, and a bag filled with another hallucinogen drug referred to as "cookie dough."[4]

On Sunday, a prisoner asleep in the honor dormitory—a dormitory reserved for prisoners with good behavior—at St. Clair was woken from sleep when two prisoners started beating him with a sock filled with metal locks. The victim was injured so severely that he was transported to an outside hospital for emergency treatment. That same day at Ventress, a prisoner was punched so forcefully in the eye by another prisoner that he was sent to an outside hospital. Another prisoner was stabbed by two other prisoners with homemade knives. A different

[3] The "Hot Bay" is an internal nickname for what is also called the "Behavior Modification" dormitory or "restricted housing unit." It is where prisoners who have been disciplined for drugs or violence are placed and are not allowed to leave the dormitory for meals or the canteen line, are not given a microwave or television, or allowed to attend any outside programs or jobs. Since we inspected Bibb and informed ADOC of our initial findings that the Hot Bay was critically dangerous, the Hot Bay at Bibb has been closed, but "Behavior Modification" dormitories continue to operate at other facilities.

[4] "Cookie dough" is a brown or white synthetic crystalline powder made of poisonous chemicals that is mixed with tobacco and smoked. It causes extreme paranoia, severe hallucinations, and violent nausea. It is sometimes referred to as "Brown Clown."

Ventress prisoner was punched so hard in the face by prisoners with shirts covering their faces that he was transported to an outside hospital for treatment. At Staton, a prisoner threatened a correctional officer with a knife measuring seven inches in length. And another prisoner reported that he had been sexually assaulted by a fellow prisoner after he had only agreed, in exchange for three store items, to lower his pants for that prisoner to view his buttocks while masturbating.

On Tuesday, at Fountain, a prisoner set fire to another prisoner's bed blanket while he was sleeping, leading to a fight between the two men. Officers searching a dormitory at Ventress found 12 plastic bags of an unknown substance, 79 cigarettes laced with drugs, two bags containing "cookie dough," and a bag of methamphetamine.

On Wednesday morning, a prisoner at Easterling was sexually assaulted inside of a segregation cell by an inmate. Four days prior, this same prisoner had been forced at knifepoint to perform oral sex on two other prisoners.

On Thursday, at Ventress, a prisoner was so severely assaulted by four other prisoners that he had to be transported to an outside hospital for treatment. A different Ventress prisoner reported being sexually assaulted.

At Bullock, a prisoner was found unresponsive on the floor by his bed and later died; his death was caused by an overdose of a synthetic cannabinoid. On Friday at Ventress, an officer observed a prisoner bleeding from the shoulder due to a stab wound; the prisoner was transported to an outside hospital for treatment.

These incidents in Alabama's prisons are just some of those reported in ADOC's own records during one week. And based on what we learned from our investigation and statements made by ADOC's head of operations, it is likely that many other serious incidents also occurred this week but were not reported by prisoners or staff.

II. INVESTIGATION

In October 2016, the Department opened a CRIPA investigation into the conditions in ADOC facilities housing male prisoners. The investigation focused on whether ADOC (1) adequately protects prisoners from physical harm and sexual abuse at the hands of other prisoners; (2) adequately protects prisoners from use of excessive force and staff sexual abuse by correctional officers; and (3) provides prisoners with sanitary, secure, and safe living conditions.

Five experienced expert consultants in correctional practices assisted with this investigation. Three of these experts are former high-ranking corrections officials with significant experience leading state and local corrections departments; the remaining two are nationally recognized experts in medical care and sexual safety in prisons. At least two of the experts accompanied us on site visits to Alabama prisons, interviewed ADOC staff and prisoners, reviewed documents, and provided their expert opinions and insight to help inform the investigation and its conclusions. The remaining experts reviewed documents and provided their

expert opinions and insights to assist the Department in forming conclusions and recommending remedies to tackle the significant problems encountered during the investigation.

Between February 2017 and January 2018, we conducted site visits to four Alabama prisons: Donaldson, Bibb, Draper, and Holman. Our investigation was aided by numerous sources of information.

Throughout the course of this investigation, we interviewed approximately 55 ADOC staff members. Our site visits included interviews with wardens, deputy wardens, captains, Prison Rape Elimination Act ("PREA")[5] compliance officers, sergeants, medical staff, mental health staff, classification staff, and maintenance managers. In addition, we also met with staff of ADOC's central office, including the Deputy Commissioner of Operations, the head of the Intelligence and Investigations Division ("I&I"), the PREA Coordinator, and other members of ADOC management and the investigations branch.

We also interviewed over 270 prisoners. In addition to four site visits, we sent two Department investigators to interview prisoners in seven Alabama prisons—Limestone, Donaldson, Staton, Ventress, Easterling, Bullock, and Fountain. ADOC did allow prisoners to access a toll-free number with direct access to Department personnel. As a result, the Department conducted over 500 interviews with prisoners and family members by phone. We received and reviewed more than 400 letters from ADOC prisoners. We also received hundreds of emails from prisoners and family members to a special email address established specifically for this investigation.

We augmented our site visits by requesting and reviewing hundreds of thousands of pages of documents and data from 2015 to 2018. In order to inform our understanding of ADOCs practices, we reviewed incident reports, medical records, autopsies, policies and regulations, training materials, mental health records, personnel files, staffing plans, shift rosters, duty post logs, and a limited number of investigative files. ADOC produced its entire incident report database from 2015 through June 2017 and a portion of its incident report database from June 2017 through April 2018.

In some sections of this Notice, we provide more examples to illustrate the variety of circumstances in which the violation occurs, while in others we focus on one or two examples that demonstrate the nature of the violations we found. The number of examples included in a particular section is not indicative of the number of violations that we found. These examples comprise a small subset of the total number of incidents upon which we base our conclusions. And though there may be more examples from facilities we visited and certain others from which we received more information, given the enormous breadth of ADOC's Eighth Amendment violations—including the lack of certain statewide policies, our concerns with ADOC management, and the fact that prisoners are frequently transferred to different facilities—it is evident the examples described in this Notice are typical of the system as a whole.

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[5] 34 U.S.C. §§ 30301-30309.

III. BACKGROUND

ADOC currently houses approximately 16,000 male prisoners in 13 prisons with varying custody levels. Based on the most recent ADOC Annual Report available, five of these facilities—Donaldson, Holman, Kilby, Limestone, and St. Clair—are maximum, or close custody, meaning they are "designed for incarcerating the most violent and highest classified offenders admitted to ADOC." In the close custody facilities, many of the prisoners are housed in cells, as opposed to open dormitory-style housing. They range in population from just over 900 prisoners at St. Clair to over 2,000 at Limestone. ADOC classifies eight of its facilities—Bibb, Bullock, Easterling, Elmore, Fountain, Hamilton Aged & Infirmed, Staton, and Ventress—as medium custody, which are "less secure than close custody for those inmates who have demonstrated less severe behavioral problems." Hamilton houses fewer than 275 prisoners, while Bibb houses almost 1,800. Many of the prisoners housed in medium custody facilities live in open dormitories; however, even in these facilities, there are a number of segregation cells.

ADOC operated a fourteenth men's prison called Draper at the time that we opened our investigation. We inspected Draper in October 2017, and discovered numerous dangerous and unsanitary conditions within the prison. For example, there was open sewage running by the pathway we used to access the facility. Numerous prisoners informed us that toilets and plumbing pipes in dormitories and segregation required frequent maintenance, yet were still often overflowing or clogged, with standing sewage water on the floors. In addition, there were reports of rats and maggots in the kitchen. After the inspection, our experts informed ADOC of their shock at the state of the facility. In fact, during our inspection of Draper, one of our experts had to leave the kitchen area before becoming sick from the toxic fumes of the cleaning chemicals. Approximately one month after our site visit, we learned through press reports that ADOC was closing Draper after engineering experts hired by ADOC concluded that the facility was "no longer suitable to house inmates, or to be used as a correctional facility."

IV. CONDITIONS IDENTIFIED

ADOC fails to protect prisoners from serious harm and a substantial risk of serious harm. *See Farmer v. Brennan*, 511 U.S. 825, 833 (1994); *Helling v. McKinney*, 509 U.S. 25, 33-35 (1993); *Harrison v. Culliver*, 746 F.3d 1288, 1298 (11th Cir. 2014). 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, extortion, drugs, and weapons. Prisoner-on-prisoner homicide and sexual abuse is 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. Prisoners are often found in unauthorized areas. Some prisoners sleep in dormitories to which they are not assigned in order to escape violence. Prisoners are being extorted by other prisoners without appropriate intervention of management. Contraband is rampant. The totality of these conditions pose a substantial risk of serious harm both to prisoners and correctional officers.

Laube v. Haley, 234 F. Supp. 2d 1227, 1245 (M.D. Ala. 2002); *see also Helling*, 509 U.S. at 33 ("That the Eighth Amendment protects against future harm to inmates is not a novel concept. The Amendment . . . requires that inmates be furnished with the basic human needs, one of which is reasonable safety.").

The Eighth Amendment applies to the States through the Due Process Clause of the Fourteenth Amendment and prohibits the infliction of "cruel and unusual punishments." *Estelle v. Gamble*, 429 U.S. 97, 101 (1976). The Eighth Amendment's ban on cruel and unusual punishments applies to the "treatment a prisoner receives in prison and the conditions under which he is confined." *Farmer*, 511 U.S. at 832; *Bass v. Perrin*, 170 F.3d 1312, 1316 (11th Cir. 1999). The conditions in Alabama's prisons are objectively unsafe, as evidenced by the high rate of prisoner-on-prisoner homicides and violence, including sexual abuse. Alabama is incarcerating prisoners under conditions that pose a substantial risk of serious harm, even when that harm has not yet occurred. Alabama is deliberately indifferent to that harm or serious risk of harm and it has failed to correct known systemic deficiencies that contribute to the violence. The deplorable conditions within Alabama's prisons lead to heightened tensions among prisoners. And, as a result, the violence is spilling over so that it is affecting not only prisoners, but ADOC staff as well.

That ADOC's prisons are dangerous appears to be acknowledged at all levels. The following data highlights that danger. Alabama prisoners endure an extraordinarily high rate of violence at the hands of other prisoners. Based on the latest data available from the Department of Justice's Bureau of Justice Statistics, Alabama's prisons have the highest homicide rate in the country. In 2014, the national average homicide rate in prisons was seven homicides per 100,000 prisoners. During fiscal year 2017, ADOC publicly reported nine homicides in its men's prisons, which house about 16,000 prisoners (a rate of homicide of 56 per 100,000 prisoners). This is approximately eight times the 2014 national rate.

Our experts observed that, based on their experience, the amount of prisoner-on-prisoner violence in Alabama's prisons was much higher than other similar systems. Based on ADOC's publicly reported statistics, the number of prisoner-on-prisoner violent incidents has increased dramatically over the last five-and-a-half years.

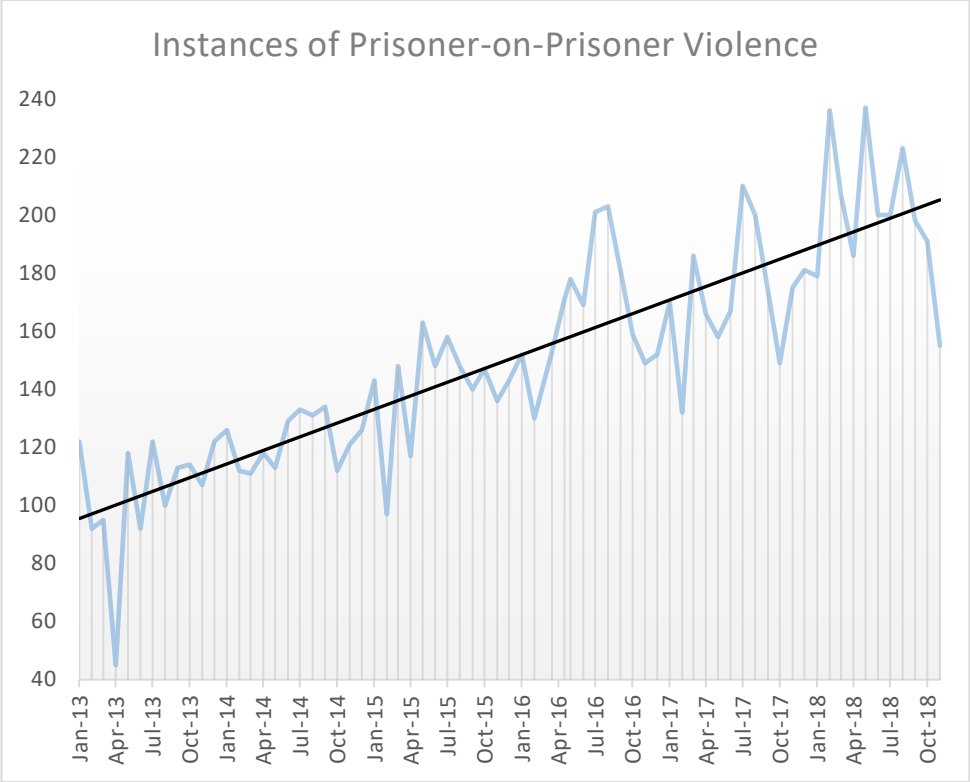


Chart 1: ADOC's reported instances of prisoner-on-prisoner violence

This increase in violent incidents has persisted and continued even after our investigation began. Our experts have consistently raised concerns about the levels of violence with ADOC leadership and suggested potential solutions throughout our investigation.

ADOC correctional staff are also harmed by the violence. Shortly before we notified ADOC of our investigation, a correctional officer was stabbed to death at Holman. ADOC's own incident reports indicate that, since 2017, correctional officers have been stabbed, punched, kicked, threatened with broken broomsticks or knives, and had their heads stomped on. One officer at Donaldson was quoted as saying, "Walking out of these gates, knowing you're still alive, that's a successful day." At the same time, dozens of ADOC correctional officers have been arrested in the past two years for crimes related to drug trafficking and other misconduct within Alabama's prisons. And ADOC told us that ADOC staff are bringing illegal contraband into Alabama's prisons.

As detailed below, there is reasonable cause to believe that there is a pattern or practice of Eighth Amendment violations throughout the ADOC system. To establish a pattern or practice of violations, the United States must prove "more than the mere occurrence of isolated or 'accidental' or sporadic discriminatory acts." *See Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336 (1977). It must "establish by a preponderance of the evidence that . . . [violating federal law] was . . . the regular rather than the unusual practice." *Bazemore v. Friday*, 478 U.S. 385, 398 (1986) (quoting *Teamsters*, 431 U.S. at 336); *see also EEOC v. Am. Nat'l Bank*, 652 F.2d 1176, 1188 (4th Cir. 1981) (explaining that a "cumulation of evidence, including

statistics, patterns, practices, general policies, or specific instances of discrimination" can be used to prove a pattern or practice).

A. ADOC's Overcrowding Contributes to Serious Harm to Prisoners.

One factor leading to the overwhelming amount of violence within Alabama's prisons is severe overcrowding. Alabama has one of the most overcrowded prison systems in the nation. In 2013, Alabama had an imprisonment rate of 646 per 100,000 residents—the fourth highest in the nation and well above the average U.S. incarceration rate of 417 per 100,000 residents. The Alabama rate was well above the rates for other similarly situated states, such as Georgia and South Carolina.

According to recent data published by ADOC, Alabama's prisons have a system-wide occupancy rate of 165%. ADOC houses approximately 16,327 prisoners in its major correctional facilities, but the system was designed to hold 9,882. However, the average occupancy rate at the 13 major correctional institutions that we reviewed is approximately 182%, after excluding work release and other facilities. For example, Staton, a medium security prison, is designed to hold 508 prisoners and held 1,385 in November 2018 for an occupancy rate of 272.6%. And Kilby, a close security prison, has a design capacity of 440 beds, and held 1,407 prisoners at the end of November 2018—an occupancy rate of 319.8%. This severe overcrowding remains despite the fact that Alabama convened a Prison Reform Task Force in February 2014, to recommend solutions to the problem of overcrowding. Based on the Task Force's recommendations, the Legislature passed Senate Bill 67, which took effect in January 2016. In an effort to decrease the prison population, the law created a new class of felonies for low-level drug and property crimes and reformed parole boards. However, it did not apply retroactively and the effect on Alabama's prison population has been minimal. In the two years that this investigation has been ongoing, the prison population in male correctional facilities has decreased by approximately 1,615 prisoners, but, because ADOC closed one major correctional facility during that time, the average occupancy rate per facility has not decreased.

While overcrowding is not an Eighth Amendment violation on its own, it can cause and exacerbate unconstitutional conditions. *See Rhodes v. Chapman*, 452 U.S. 337, 347-50 (1981); *Collins v. Ainsworth*, 382 F.3d 529, 540 (5th Cir. 2004); *French v. Owens*, 777 F.2d 1250, 1252-53 (7th Cir. 1985) (holding that overcrowding was unconstitutional where it led to unsafe and unsanitary conditions).

In *Brown v. Plata*, the Supreme Court affirmed a three-judge court ruling that overcrowding in the California state prison system had overtaken the limited resources of prison staff; imposed demands well beyond the capacity of medical and mental health facilities; and created unsanitary and unsafe conditions. *Brown v. Plata*, 563 U.S. 493, 518-19 (2011). The Court also upheld the lower court's order that California reduce its state prison population to 137% of capacity to attain a reasonable level of safety. *Id.* at 540-41.

In another case, *Mobile County Jail Inmates v. Purvis*, the district court entered a finding of contempt when a county failed to correct unconstitutional conditions of overcrowding. *Mobile Cty. Jail Inmates v. Purvis*, 551 F. Supp. 92, 94 (S.D. Ala. 1982) ("'Overcrowding is the

root and basic problem' contributing to the deplorable physiological and psychological effects of the Mobile County Jail . . . ."). The Eleventh Circuit later affirmed. *Mobile Cty. Jail Inmates v. Purvis*, 703 F.2d 580 (11th Cir. 1983) (unpublished table decision).

Similarly, in *Maynor v. Morgan County*, 147 F. Supp. 2d 1185 (S.D. Ala. 2001), the district court made a preliminary finding that conditions in a county jail violated the Eighth Amendment when inmates were forced to sleep on the floor under bunks, on the floor between bunks, on tables, and between tables. *Maynor v. Morgan Cty.*, 147 F. Supp. 2d 1185, 1186, 1188 (S.D. Ala. 2001) ("Plaintiffs have carried their burden of showing that the conditions extant in the Morgan County Jail violate their rights to the minimal civilized measures of life's necessities and protection from a substantial risk of serious harm under the Eighth Amendment.").

In Alabama's prisons, the overcrowding combined with understaffing is driving prisoner-on-prisoner violence. *See Laube*, 234 F. Supp. 2d at 1245 (holding that a combination of substantial overcrowding and significantly inadequate supervision in open dormitories deprives inmates of their right to be protected from the constant threat of violence).

B. ADOC's Severe Understaffing Exposes Prisoners to Serious Harm.

Staffing in Alabama's prisons is at a crisis level. For fiscal year 2017, ADOC publicly reported "critical levels of authorized staffing shortages." In January 2019, ADOC's Commissioner, Jefferson S. Dunn, announced to the Legislature that he would request funding to hire 500 more correctional officers, which is a fraction of the additional staff deemed necessary by ADOC's own analysis. One month later, in February 2019, ADOC acknowledged that it needs to hire over 2,000 correctional officers and 125 supervisors in order to adequately staff its men's prisons. Commissioner Dunn explained to the Legislature that "there is a direct correlation between the shortage of officers in our prisons and the increase in violence," noting that the current level of violence is "unacceptably high."

This egregious level of understaffing equates to inadequate supervision that results in a substantial risk of serious harm. *See Alberti v. Klevenhagen*, 790 F.2d 1220, 1227-28 (5th Cir. 1986) (upholding district court's finding that inadequate staffing and supervision, among other factors, led to a pattern of constitutional violations); *Ramos v. Lamm*, 639 F.2d 559, 573 (10th Cir. 1980) ("Violence and illegal activity between inmates . . . is further facilitated by the inadequacy of the staffing levels."); *Van Riper v. Wexford Health Sources, Inc.*, 67 F. App'x 501, 505 (10th Cir. 2003) ("When prison officials create policies that lead to dangerous levels of understaffing and, consequently, inmate-on-inmate violence, [there is a violation of the Eighth Amendment.]"). ADOC does not have sufficient staff to supervise its overcrowded prisons. Dormitories of prisoners, housing up to 180 men, are often unsupervised for hours or shifts at a time.

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—

28%; and Ventress—30%. Three others have less than 40%: Donaldson—35%; Staton—35%; and Kilby—36%. Only three remaining prisons also have correctional officer staffing levels over 40%: Elmore—41%; Limestone—56%; and Hamilton—75%. Hamilton A&I (which houses approximately 275 elderly and sick prisoners and is authorized for only 45 officers) at 75% staffing is still dangerously understaffed. A former ADOC warden stated that with this level of understaffing, "the convicts are in extreme danger and the correctional officers working there are in extreme danger." Correctional staffing levels have decreased over time as shown in the following chart:

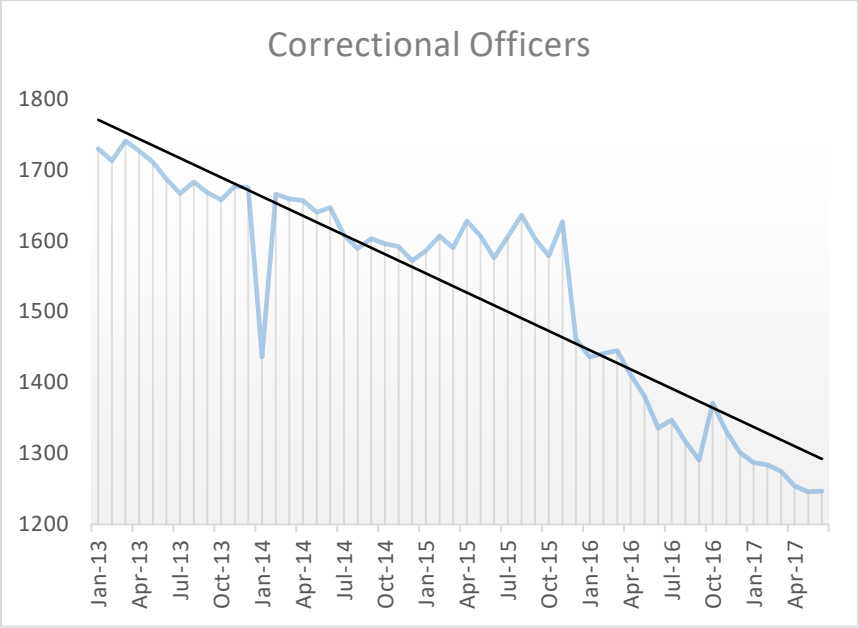


Chart 2: ADOC's reported correctional officer staffing levels

In reality, the deficit in the number of security staff working any given shift can be worse than 20% below required levels. For example, the Warden at Holman told us that, on any given day, she estimates that she has "probably 11" security staff, both officers and supervisors, per shift for the entire complex—a prison population of approximately 800. And the Warden at Bibb stated that he currently has only 66 assigned security staff, both officers and supervisors, covering approximately 1,800 prisoners over four shifts. Leadership at the facilities have used a variety of measures to fill the extreme shortages. These include mandated overtime, which allows supervisors to require that correctional officers stay an additional four hours past the end of their 12-hour shift.

In another stop-gap measure intended to address the extreme understaffing, officers are required to work oxymoronic "voluntary mandatory overtime," which requires officers to work two additional 12-hour shifts a month. It is not uncommon for officers to be disciplined for refusing to stay for mandated time or for mandatory overtime, leaving prisons even more understaffed. By the same token, staffing prisons with exhausted staff makes for ineffective and, in this system, potentially life-threatening outcomes.

In fiscal year 2017, a correctional officer at St. Clair with a base pay of $38,426.60, earned almost $80,000 in overtime. Extrapolating that amount in overtime pay, the officer averaged 90-95 hours per week. Within Alabama, ADOC is the state department with the highest total amount of overtime paid to employees—$31.6 million. The next highest state department paid $6.77 million in overtime. Officers are tired and the hours are affecting job performance and officer morale. Prisoners report seeing officers asleep on duty. And incident reports reflect that officers are often disciplined for sleeping. One officer at Donaldson revealed that he has been so tired on duty that he "fell asleep on his feet and hit the floor."

C. ADOC Does Not Reasonably Protect Prisoners from Rampant Violence.

The Eighth Amendment's ban on cruel and unusual punishments requires that ADOC "take reasonable measures to guarantee the safety" of all prisoners. *Farmer*, 511 U.S. at 832 (quoting *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984)). When a state takes a person into custody, the Constitution imposes upon the state a corresponding duty to assume some responsibility for his safety and well-being. *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 851 (1998) (citing *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 199-200 (1989)). The Eleventh Circuit has held that "an excessive risk of inmate-on-inmate violence . . . creates a substantial risk of serious harm . . . ." *Lane v. Philbin*, 835 F.3d 1302, 1307 (11th Cir. 2016) (citing *Harrison v. Culliver*, 746 F.3d 1288, 1299 (11th Cir. 2014)). The Eleventh Circuit has also found a substantial risk of harm where prisoners were housed in conditions that included routine understaffing, dysfunctional locks on cell doors, and the ready availability of homemade weapons. *See Marsh v. Butler Cty.*, 268 F.3d 1014, 1030, 1034 (11th Cir. 2001) (en banc) ("[A]n Eighth Amendment violation can arise from unsafe conditions of confinement even if no assault or similar physical injury has yet occurred." (citing *Helling*, 509 U.S. at 33-34, *abrogated on other grounds by Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 561-63 (2007).

ADOC officials must take precautions to protect prisoners from violence, and are "not free to let nature take its course." *Farmer*, 511 U.S. at 833-34. It is clear from the number of deaths, fights, and stabbings in Alabama's prisons that ADOC is failing to protect its prisoners and nature is taking its course.

1. ADOC Must Accurately Classify the Deaths That Occur Within Its Custody.

According to ADOC's public reports, between January 2015 and June 2018, 24 prisoner deaths have occurred as a result of a homicide (eight in 2015; three in 2016; nine in 2017; and four from January through June of 2018). We definitively identified three additional homicides—two in 2017 and one in the first half of 2018. These unreported homicides provide reasonable cause to believe that ADOC's homicide rate is higher than what ADOC has publicly reported. There are numerous instances where ADOC incident reports classified deaths as due to "natural" causes when, in actuality, the deaths were likely caused by prisoner-on-prisoner violence. This is especially concerning given that these incident reports are used for public statistical reporting as required by law. For example:

- A prisoner died in February 2018, from wounds he sustained four days earlier in a knife fight at Kilby. The autopsy details multiple stab wounds to the prisoner's head, abdomen, back, and arm. One stab wound extended "through the scalp and impact[ed] the skull and [was] associated with a depressed skull fracture 1/4 inch in diameter." The toxicological analysis report also revealed the presence of methamphetamine in his system. The incident report listed this prisoner's death as "Natural," despite the original incident report narrative describing an altercation with a weapon. Though ADOC reported the death as "Natural," the autopsy report definitively states that manner of death was "homicide."

- In November 2017, a prisoner was rushed to a hospital from Elmore with a brain bleed. Prior to the transfer, the prison's health care unit had refused to provide medical attention to the prisoner—even though he was "bleeding from his head"—because he appeared to be "under the influence." At the hospital, he ultimately required emergency brain surgery. Further investigation revealed that another prisoner had physically assaulted the decedent. The incident report does not detail how the assault occurred. Approximately one month later, following readmission, the hospital informed ADOC officials that the prisoner died. ADOC classified the death as "Inmate Death – Natural." In contrast, the autopsy report describes "multiple contusions present on the right upper chest, wrists and arms." The autopsy concludes that the manner of death was "homicide" caused by "blunt force head trauma," which resulted in a subdural hematoma (a pool of blood between the brain and its outermost covering).

- In October 2017, a correctional officer observed a prisoner lying on the bathroom floor, "nonresponsive," in a dormitory at Elmore. The incident report notes that "Brown Timberland steel toe boots" were taken into evidence, but gives no indication of what injuries the prisoner had and why these boots were evidence. The prisoner died three days later. A spreadsheet of prisoner deaths from 2017, which ADOC's medical contractor produced to us, indicates that he died from a "[p]ossible assault—[f]acial bleeding and [o]ccipital [fracture]." The incident report, however, lists the cause of the prisoner's death as "Inmate Death – Natural." The autopsy report contains a detailed description of his death: "This 55-year-old male . . . was an inmate at Elmore Correctional Facility when he smoked a synthetic cannabinoid on 10/02/17. Another inmate reportedly began to punch, kick, and slam [him] who was likely unable to resist due to his intoxicated condition. [He] was taken to the shower room in an attempt to arouse him from his 'high.' Correctional officers determined that [he] was unresponsive and he was transported to Kilby Health Center, then onward to Jackson Hospital for a higher level of care. [He] expired on 10/05/17 from his injuries." The autopsy report noted injuries to the scalp, a skull fracture, and bleeding on the surface of the brain. The prisoner also sustained a fractured rib, which caused bleeding into the right chest cavity. The autopsy report concludes that the manner of death was "homicide" as caused by "blunt force injuries of the head and chest."

2. The Excessive Number of Deaths Due to Violent, Deadly Assaults Demonstrates that ADOC Is Unable to Adequately Keep Its Prisoners Safe.

Our investigation revealed that an alarming number of prisoners are killed by other prisoners using homemade knives. The knives used in these assaults are frequently long and sharp, thus able to easily penetrate the victim's body and puncture vital organs. Several prisoners who were stabbed to death also had been stabbed in past incidents. ADOC, with the knowledge that previously stabbed prisoners were at risk for further violence, took no meaningful efforts to protect these prisoners from serious harm—harm that was eventually deadly. As detailed by the examples of killings described below, ADOC does not protect prisoners in its custody from death caused by prisoner-on-prisoner violence.

- In September 2018, a prisoner was stabbed to death at St. Clair. The autopsy classified the death as a homicide caused by multiple sharp force injuries resulting in significant blood loss. It further described stab wounds to the neck, left back, and right back. One of those stab wounds penetrated approximately 5½ inches. The prisoner had previously been stabbed in July 2017 while incarcerated at St. Clair.

- In July 2018, a prisoner was stabbed to death at Ventress. The autopsy noted that "another prisoner with a prison-made 'shank' reportedly stabbed him." And the autopsy further noted that "[t]he cause of death was a stab wound of the chest. A sharp force injury of the left chest injured the left lung and the heart, causing massive bleeding into the left chest cavity." In January 2016, this same prisoner was stabbed in the back by several prisoners at Holman.

- In August 2017, two prisoners got into a knife fight in the institutional yard at Staton. The fight apparently broke out because one prisoner stole a contraband cellphone from the other prisoner. The incident was discovered when the correctional officer in the tower observed a group of prisoners gathered by the volleyball court and called for assistance. When two other officers arrived, they deployed pepper spray to compel the prisoners to disperse and get down on the ground. At that point, they discovered that a prisoner had been stabbed in the chest. ADOC recovered an 11-inch knife with a four-inch handle and a 10-inch knife with a three-inch handle near the scene. The injured prisoner died four days later, and his death was classified as a homicide due to "[s]tab wound of the chest".

- In July 2017, a prisoner at St. Clair was found tied up and strangled to death. The incident report listed the incident type as "Death – Inmate-on-Inmate" but contained no details about the nature of the death. The incident report said only that at 2:15 p.m., officers entered the cell and observed the prisoner lying unresponsive on the floor and when he was checked, "appeared not to be breathing." The report stated that a nurse was escorted to the cell and reported that the prisoner "had no signs of life." A photograph from the aftermath of the murder painted a different, gruesome picture. It clearly showed that the decedent's hands remained tied to a bedpost when prison officials found his lifeless body. The strangulation marks on his neck are clearly

visible. The autopsy classified the death as a homicide caused by "Asphyxia due to Ligature Strangulation." It further noted the presence of ligature contusions to both wrists.

- In May 2017, a prisoner at Bibb was stabbed to death in the chest. The autopsy noted that the wound penetrated the prisoner's heart: "The blade is seen to incise the heart at the AV junction on the right with an incision of the right atrium and ventricle approximately 1 inch in length. This wound is associated with a right hemothorax of approximately 2 liters." The incident report classified the death as the result of an "Inmate-on-Inmate" assault. The incident report stated that at 10:50 a.m., an officer observed several prisoners fighting with a weapon and called for back-up. When his supervisor arrived, he noticed a prisoner bleeding from the chest and took him to the medical unit. From there, he was sent by ambulance to the hospital where he was pronounced dead.

3. ADOC Is Routinely Unable to Adequately Protect Prisoners Even When Officials Have Advance Warning.

ADOC is frequently unable to protect its prisoners from violence, despite having advance notice that the prisoners may be in danger. Our investigation uncovered numerous instances where prisoners explicitly informed prison officials that they feared for their safety and were later killed. In other cases, prisoners were killed by individuals with a lengthy history of violence against other prisoners.

- In February 2018, a prisoner was killed at Bullock—one day after expressing concern for his safety to prison officials. On the day prior to his death, the prisoner entered the Shift Commander's office and informed officials that he had been threatened over a cellphone that another prisoner had stolen while he was guarding it. The prisoner said that he had been "slapped a few times" for nonpayment related to the missing cellphone, and was afraid. The autopsy classified his death as a homicide by blunt-force head trauma that caused intracranial bleeding, as well as hemorrhages in the brainstem.

- A prisoner was killed in a knife fight at St. Clair in February 2018, by another prisoner with an extensive history of being disciplined for possessing knives. The knife fight occurred in the front of a dormitory around 11:30 a.m. The victim was rushed to the hospital but was pronounced dead at 12:58 pm. The autopsy noted multiple stab wounds to the right lung, heart, liver, spleen, colon, and soft tissues. The assailant had been involved in a different knife fight at Holman in June 2016. He was found with knives in December 2016, and again in January 2017, when he was housed in segregation.

- In September 2017, a prisoner at Bibb died of stab wounds to the chest. The autopsy report described at least 22 puncture wounds. These included several stab wounds to the neck, a fact not referenced in the incident report. Since April 2017, the victim had been involved in at least two other physical altercations at Bibb with two separate

prisoners. And, in October 2016, while the victim was housed at Fountain, a correctional officer witnessed a different prisoner repeatedly stabbing him.

- A prisoner at St. Clair was strangled to death in May 2016. When officers found the prisoner, he was lying face down in his bed, and his face was flattened, indicating that he had been dead for quite some time. At some point, the assailants appeared to have urinated on the victim. Additionally, staff noted that the numbers "1636" had been carved post-mortem into the decedent's ribcage. The victim was a known gang member, and the number 1636 is a gang-related reference to "cardinal sin," indicating that the person is a traitor or snitch. Less than two weeks before his death, the victim had been assaulted over a debt. Following that assault, the victim was placed in segregation for his protection. He was released from segregation hours before he was killed.

4. ADOC Must Accurately Track the Deaths that Occur Within Its Custody.

In order to properly assess and respond to prisoner violence and dangerous conditions posed by drug trafficking and other contraband within Alabama's prisons, it is essential to track and review prisoner mortalities and other serious incidents to identify necessary corrective actions. However, ADOC does not have a reliable system of tracking the deaths of prisoners that occur within its custody. In response to our subpoena, ADOC and its medical contractor separately produced spreadsheets compiling prisoner deaths from January 2015 through 2017. After comparing those spreadsheets with autopsy reports produced by other agencies, we identified at least 30 deaths that ADOC did not disclose to the Department. ADOC was unable to provide an explanation for these omissions. ADOC cannot address and prevent recurring harmful situations if it is unaware of the scope of the problems within Alabama's prisons. As some of the following examples show, some of the missing deaths resulted from prisoner-on-prisoner violence:

- In May 2017, a prisoner at Bullock died after being stabbed multiple times by multiple fellow prisoners. The incident report described the prisoner "running towards the grillgate in Dormitory I1 bleeding from his facial area." I&I investigated the matter as a murder. One prisoner informed I&I that he had witnessed an altercation earlier in the day when several prisoners were bullying the victim for having same-sex relationships. It is unknown why this prisoner's death does not appear on the list of prisoner deaths that ADOC produced to the Department.

- In February 2017, a prisoner died at the Staton Health Care Unit. I&I investigated the matter and found that the victim and another prisoner began fighting near the officer cubical because the victim felt the other prisoner was standing too close to him. Once the two were separated, the victim followed the other prisoner back to the bed area. The assailant produced a homemade knife and another fight ensued in which the victim was stabbed and ultimately died. The autopsy detailed numerous stab wounds to the victim's back and chest. ADOC could not explain why this prisoner's death does not appear on the list of prisoner deaths that they produced to the Department, but does appear on a list of deaths that its private medical care provider tracked.

- In February 2017, a prisoner died two days after being assaulted by several prisoners at Elmore. An incident report described the prisoner as being "laid out on the floor" of the dormitory with a serious injury. The I&I Investigative Report indicates that the prisoner was fighting with another prisoner and was hit in the head, knocked out, and fell so that he hit his head again on the floor. The unconscious prisoner had to be carried to the health care unit and taken by helicopter to a local hospital where he died two days later. Elmore's incident report classified the prisoner's death as "Inmate Death – Natural." In contrast, the I&I Investigative Report states that, according to the autopsy report, the cause of death was Blunt Force Head Trauma and the manner of death was Homicide.

In addition to not accurately tracking deaths within its custody, ADOC has acknowledged that it does not maintain a centralized repository for all autopsies that have been performed. And, even apart from maintaining autopsies and tracking deaths, ADOC has no other mechanism in place to identify patterns in causes of death. As discussed in more detail below, this is particularly troublesome given the level of contraband that is readily available within the system, including knives and a significant amount of illicit substances that have caused and/or contributed to a number of deaths.

5. High Numbers of Life-Threatening Injuries Are Additional Strong Evidence that ADOC Is Not Adequately Protecting Its Prisoners.

In March 2018, from his glass cube, an officer at Donaldson observed a prisoner come to the door of one of the two cellblocks he was responsible for observing. The cellblocks at Donaldson house approximately 96 prisoners each. The prisoner "appeared to be severely injured" and "was unable to talk due to the injuries to his mouth." The officer manually opened the door of the dormitory from the cube and allowed the prisoner into the corridor, where the prisoner collapsed. The officer radioed a correctional sergeant for assistance. The sergeant arrived and found the prisoner lying on his back and severely injured. The prisoner was sent by ambulance to the nearest emergency room where, in addition to other observable injuries, it was discovered that a broomstick had been inserted into his rectum. Emergency surgery was necessary to remove the object. Four prisoners were identified as suspects and received disciplinary violations for Assault on an Inmate with a Weapon and Sexual Assault (forcible). Yet no ADOC staff member was aware of the assault until the seriously injured victim sought out a correctional officer for help

This incident is just one of hundreds of similar incidents that are documented by ADOC throughout Alabama's prisons. Prisoner-on-prisoner violence is systemic and life-threatening. ADOC is failing to adequately protect its prisoners from harm, in violation of the Eighth Amendment. Prisoners have "a constitutional right to be protected from the constant threat of violence and from physical assault by other inmates." *Zatler v. Wainwright*, 802 F.2d 397, 400 (11th Cir. 1986) (per curiam). Constitutional conditions of confinement include the requirement to "take reasonable measure[s] to ensure the safety of the inmates." *Gates v. Cook*, 376 F.3d 323, 332 (5th Cir. 2004) (citing *Farmer*, 511 U.S. at 832). "[H]aving stripped [prisoners] of virtually every means of self-protection and foreclosed their access to outside aid, the

government and its officials are not free to let the state of nature take its course." *Farmer*, 511 U.S. at 833.

Courts have held that protecting prisoners from violence requires adequate supervision and staffing. *Alberti*, 790 F.2d at 1225-28 (upholding district court's order requiring specific staffing and hourly visual inspections by guards to address high violence and sexual assault at jail); *Smith v. Sullivan*, 553 F.2d 373, 380 (5th Cir. 1977) (upholding requirement for hourly guard visits, and disapproving not having a guard on each floor); *see also Swofford v. Mandrell*, 969 F.2d 547, 549 (7th Cir. 1992) (holding that while low staffing levels do not, by themselves, constitute due process violations, they provide support for a conclusion that the inmates are treated "recklessly or with deliberate indifference" to their safety); *Ramos*, 639 F.2d at 573 ("Violence and illegal activity between inmates . . . is further facilitated by the inadequacy of the staffing levels."); *Tillery v. Owens*, 719 F. Supp. 1256, 1276-77 (W.D. Pa. 1989) (holding that officials failed to provide adequate security in violation of the Eighth Amendment largely on the basis that staffing shortages resulted in deficient supervision), *aff'd*, 907 F.2d 418 (3d Cir. 1990).

Evidence of prisoner-on-prisoner violence in Alabama's prisons abounds—weekly in some prisons, daily in others—and is documented in ADOC's incident reports. In many instances, prisoners were so gravely injured that they had to be airlifted or taken by ambulance to local hospitals for emergency treatment. The following are just a few examples from among the hundreds in ADOC's incident reports:

- In March 2018, two Staton prisoners were involved in a fight. An officer ordered them to stop, but they refused, so the officer sprayed them with pepper spray. One prisoner then dropped a 10-inch long homemade knife. One of the prisoners had to be airlifted to an outside hospital due to a stab wound in his stomach.

- In October 2017, at Holman, a cubicle officer observed two prisoners yelling at each other in an open dormitory and called for assistance. When officers arrived, a prisoner was standing at the gate of the housing unit bleeding from his stomach and face. The victim was transported to a local community hospital where he was then taken by helicopter to a larger medical center where he was successfully treated.

- In September 2017, at St. Clair, when a lieutenant was conducting rounds in two open dormitories, he observed two prisoners fighting with box cutters and homemade knives. The lieutenant radioed for assistance and waited for other officers to arrive. As two officers escorted one of the prisoners to the health care unit, a third prisoner quickly approached and stabbed the escorted prisoner in the back. Officers sprayed the third attacker with pepper spray while a fourth prisoner tried to stab the third attacker with a knife and he too was sprayed with pepper spray. One of the prisoners was taken by ambulance to an outside emergency room for treatment of his stab wounds.

- In July 2017, at Elmore, an officer working alone in an open dormitory observed a prisoner stab another prisoner. He radioed for help and ordered the attacker to drop the knife. The prisoner refused and ran away with the knife in his hand. He only stopped

when another officer responded to the call for assistance and sprayed the attacker in the face with pepper spray. The victim was taken by helicopter to an outside emergency room for treatment.

- In March 2017, at St. Clair, an officer saw a prisoner being stabbed by two other prisoners and radioed for help. The two prisoners had attacked their victim from behind while he was on the way to the dining hall. When the officer yelled for them to stop, one of the assailants ran from the officer, while the other continued stabbing the victim. Four other officers eventually arrived and stopped the assault. The victim was transported to an outside emergency room for treatment of stab wounds to the back, a perforated lung, and a stab wound to the head.

Many of ADOC's incident reports document life-threatening injuries to prisoners—only discovered by officers after the injury occurred. These incident reports demonstrate a strong pattern of evidence of deficient supervision and ADOC's systemic failure in its duty to "provide humane conditions of confinement" and to "'take reasonable measures to guarantee the safety of the inmates.'" *Farmer*, 511 U.S. at 832-33. The following are a few of the hundreds of grave injuries to prisoners that were inflicted out of the sight of ADOC correctional officers:

- In April 2018, a Bullock prisoner, his shirt covered in blood, approached an officer and stated that he had been stabbed by several other prisoners. He had to be airlifted to an outside hospital for treatment.

- In April 2018, an officer at Kilby noticed a crowd of prisoners gathered in the back of an open dormitory. When the officer approached, he discovered a prisoner with a bleeding, partially detached ear. He had been fighting with another prisoner who tried to bite off his ear. The prisoner was ultimately taken to an outside hospital for treatment.

- In March 2018, a prisoner at Kilby approached an officer with visible burns on his body. The prisoner told the officer another prisoner had thrown hot shaving cream on him—hot enough to cause second degree chemical burns. The prisoner was taken to an outside emergency room, but his condition was so bad that he had to be transported by ambulance to a hospital an hour and a half away.

- In February 2018, a Fountain prisoner was stabbed 10 times by another prisoner, including stab wounds to his medial lower elbow through the fascia, left upper shoulder, left bicep, left inner upper arm, left palm, left upper thigh, left upper medial calf, lower medial calf, and behind his right knee. He was airlifted to an outside hospital. A search recovered a homemade weapon that was approximately nine inches long.

- In February 2018, a Holman officer noticed a prisoner walking toward the gate of his housing unit with blood on his clothes. He had been stabbed 22 times by two other prisoners, with wounds to his back and head, and had to be airlifted to an outside hospital.

- In January 2018, a Holman prisoner came to the gate of his housing unit, bleeding. He had been stabbed 22 times, including to his chest, upper arm, thigh, back, buttock, foot, and face, by six other prisoners.

- In January 2018, a cubicle officer at Holman noticed a prisoner walking towards the shower area covered in blood. He had been attacked by two prisoners with a knife, resulting in a facial laceration that severed an artery. The prisoner had to be airlifted to an outside hospital due to arterial bleeding.

- In December 2017, at Holman, a cubicle officer observed a prisoner standing at the housing unit gate bleeding from his arm and chest. The prisoner had been assaulted and stabbed by multiple prisoners, suffering puncture wounds to his back, chest, arm, and head, as well as lacerations to his arm and head. Due to the severity of his injuries, the prisoner had to be airlifted to an outside hospital.

- In November 2017, a Holman prisoner was stabbed in the head, back, shoulders, and both arms and legs. He had to be transported to an outside hospital for emergency surgery. An officer only became aware of the stabbing when he heard several prisoners banging on the cell bars and shouting to get his attention, then saw other prisoners carrying the victim, who was bleeding profusely, toward the unit's door.

- In November 2017, at Holman, a cubicle officer observed a prisoner walking towards the gate of an open dormitory with blood on his clothing, and called for assistance. When officers arrived, they found a prisoner with a bloody face. The prisoner, and another witness to the assault, confirmed he had been stabbed in the eye and beaten by two prisoners for resisting a sexual assault. The victim was sent by ambulance to an outside emergency room.

- In October 2017, St. Clair officers noticed a prisoner leave his unit and enter the prison yard wearing only a blanket and socks. Only then did staff discover that the prisoner "had been assaulted and severely beaten," appearing to have been bound and taped around his hands, ankles, mouth, and head, and had a fresh burn mark on his face.

- In September 2017, at Easterling, a prisoner was attacked in the prison yard by three prisoners and stabbed multiple times. But no ADOC staff were aware of the assault until an officer saw several prisoners carrying the victim toward the health care unit.

- In July 2017, at Elmore, an officer observed a gathering of prisoners at the back of the dormitory and saw that one prisoner was bleeding from his chest. He radioed for assistance and the prisoner was escorted to the health care unit. The prisoner was taken by helicopter to an outside emergency room. The stabbing happened when the victim tried to intercede and stop a fight between two other prisoners.

- In July 2017, a prisoner at Kilby approached the shift commander to let him know that he had been stabbed in the chest by two other prisoners. The prisoner was sent by

ambulance to an emergency room for treatment. Later, a homemade knife was found under the mattress of one of the suspected attackers.

- In April 2017, at Elmore, a prisoner informed an officer in an open dormitory that he had just been stabbed in the back. The prisoner was taken by ambulance to an outside hospital where he underwent emergency surgery for a punctured lung. The weapon used to stab the victim could not be found.

- In April 2017, an officer at Limestone saw a prisoner standing in the day room with multiple injuries to his head. The prisoner was escorted to the health care unit and then taken to an outside hospital for treatment for facial lacerations. The prisoner reported he had been attacked by another prisoner over a missing jug of julep (a prison-made alcoholic mixture).

- In February 2017, at Bibb, an officer saw a prisoner with blood running from his face. He escorted the prisoner to the health care unit where he was immediately transported to an outside emergency room. Later video review showed that the prisoner had been assaulted by two other prisoners with a mop. The victim required numerous stitches, and because of a cut to his lung, he had to be hospitalized overnight at an outside hospital.

Another pattern that emerges in ADOC's incident reports is the prevalence of drugs in the facilities, and the effect that has on prisoner-on-prisoner violence. ADOC management, staff, and prisoners all reported that prisoners on drugs often "wig out" and harm others, and the inability to pay drug debts has led to beatings, stabbings, and homicides. The following are some of the many examples documented in ADOC incident reports:

- In April 2018, an officer observed that a Donaldson prisoner had blood on his clothing. The prisoner was transported to the hospital with multiple stab wounds. The investigation revealed that the victim "was likely under the influence of narcotics" when he began poking another prisoner, who was asleep, with a knife. That prisoner woke up, grabbed the knife, and stabbed the first prisoner several times.

- In September 2017, officers were called to a Draper dormitory due to one prisoner bleeding from multiple stab wounds and another bleeding from the crown on his head. The prisoner who had been stabbed admitted that he had been high on Suboxone for two days. While he was high, the prisoner had bleach poured on him, was beaten with a broken mop handle, and was stabbed several times. The drugged prisoner also assaulted another prisoner with a lock on a string.

- In August 2017, a Bibb prisoner stabbed another prisoner in the back multiple times while high on drugs. The victim had to be airlifted to an outside hospital. Officers recovered the assailant's knife. Despite noting that the assailant had slurred speech and "appeared to be on an unknown substance," there is no indication that ADOC officers conducted a search for contraband drugs.

- In April 2017, a Bibb prisoner was stabbed in the back and left temple while asleep, and had to be airlifted to an outside hospital. This prisoner had a history of drug debts and had previously tested positive for drugs. His attacker explained that the victim owed him a $200 debt and was not going to pay, so he "got it in blood."

- In February 2017, an Elmore prisoner was killed because of a failed drug transaction. Multiple prisoners attacked the victim while he lay asleep in bed, then he was dragged on a blanket to the common room, where a correctional officer eventually discovered him. He was airlifted to an outside hospital for emergency surgery due to a brain hemorrhage. He died two days later.

Yet another pattern that emerges is the prevalence of contraband, especially homemade weapons, which appear to be very easy for prisoners to produce or procure. Many of the incidents already described demonstrate the widespread availability of such weapons, as do the following, which also illustrate just how dangerous these weapons can be:

- In April 2018, a prisoner at Ventress attacked another prisoner with a homemade hatchet. The victim was taken to an outside hospital with excessive blood loss and a possible punctured lung. ADOC described the "hatchet like weapon" as having a foot-long broom handle with a "lawn edging blade" attached to the top.

- In February 2018, an officer noted a St. Clair prisoner running down the hallway and stopped him. The prisoner turned and showed the officer that he had a knife embedded in his head. The prisoner had to be transported to an outside hospital for the removal of an eight-inch, metal homemade knife from the back of his head.

An effective prison system encourages prisoners and staff to report threats and/or violence, so that management can properly discipline assailants and seek to ensure that violence is averted. In Alabama, staff instead sometimes discipline the very prisoners who report threats or are themselves victims of assaults. For example, when a prisoner voluntarily admits to a minor rule infraction, such as accruing a debt to another prisoner, while seeking assistance or protection from violence, staff will indiscriminately discipline the very prisoners who report threats or are themselves victims of assaults. While ADOC has an interest in enforcing institutional rules, the disciplinary system should be implemented in a way that allows for discretion and avoids subjecting victims to unnecessary disciplinary actions for minor infractions voluntarily admitted when they are seeking assistance or protection from ADOC due to threatened or actual violence. A system that punishes prisoners who report violence if the victim bears any fault or has engaged in any misconduct will necessarily discourage prisoners from reporting and make it more difficult for ADOC to prevent violence in Alabama's prisons. By focusing on the reporting victim's past misconduct instead of his allegations of abuse, ADOC misses the opportunity to prevent violence while simultaneously discouraging other prisoners from coming forward. In each of the examples below, the prisoners who reported being assaulted or sought protection from ADOC were subjected to discipline because they voluntarily admitted to having accrued debts to other prisoners:

- In April 2018, a drug treatment counselor at St. Clair reported to a captain that a prisoner feared for his safety because of debts he owed to gang members. The captain questioned the prisoners he had named, all known gang members, who denied the allegations. The prisoner who made the report was disciplined for intentionally creating a security/safety/health hazard and placed in restricted housing for admitting to having accrued a debt.

- In March 2018, a prisoner at Elmore reported to the administrative lieutenant that he was in fear for his life because he owed money to four prisoners who were threatening him. The lieutenant questioned the named prisoners about the allegation, which they denied. Although those prisoners were not disciplined, the reporting prisoner was ordered to provide a urine sample and transferred pending disciplinary action for intentionally creating a security/safety/health hazard. The incident report confirms that "no further action" was taken.

- In January 2018, a Bibb prisoner approached staff to report that he had been assaulted by multiple other prisoners over a drug debt. A medical examination showed he sustained several bruises and scratches to the facial area. Video surveillance footage confirmed the assault. While the assailants were cited for assault on an inmate, the reporting prisoner was also disciplined for intentionally creating a security/safety/health hazard because he admitted to the drug debt.

In some cases, it appears that ADOC disciplines prisoners simply for refusing to name the individuals who they fear may harm them, which requires the prisoner to choose between discipline and the danger he may face from retaliation if he identifies his assailant.

- In October 2017, a prisoner at Bibb entered the health care unit, bleeding. The prisoner had sustained two puncture wounds to the back of his neck, a bite mark to the base of his skull, and multiple scratches to his mid- and lower back. Because the prisoner declined to name the person who had assaulted him, he was given a disciplinary for intentionally creating a security/safety/health hazard. He was then reassigned to the Hot Bay.

- In September 2017, a prisoner from Draper died at Jackson Hospital. His cause of death was listed as "Inmate Death – Natural" on the facility's incident report. Two days earlier, he was found unresponsive on his bunk in a dormitory at Draper. The autopsy, however, indicated that he died of "[s]ynthetic cannabinoid toxicity (5F-ADB)." Several months prior to his death—in July 2017, while housed at Holman—the decedent had requested to be placed in segregation because he feared for his life. Although the incident report notes no wrongdoing on the part of the victim, he was subjected to discipline for intentionally creating a security/safety/health hazard after he failed to name the prisoners he feared. The decedent had expressed similar fears in August 2016, and was subject to discipline at that time as well, after failing to provide names.

The violent incidents discussed in this section of the report were all culled from ADOC's own incident reports. We have reasonable cause to believe that ADOC does not record all violent incidents in incident reports. First, high-level management in ADOC admitted to us that not all incidents are recorded in incident reports. Second, we interviewed many prisoners and received hundreds of calls to our dedicated toll-free number from prisoners and concerned family members, many of whom reported to us specific details about contemporaneous events. When we searched for evidence in ADOC's incident reports to confirm or refute what we had been told, for many of the allegations, there were no corresponding incident reports. Because ADOC did not produce most of the subpoenaed investigative files, it is possible and perhaps likely that the violence and harm to prisoners in ADOC prisons is even greater than that which we report.

6. Unchecked Extortion Presents a Risk of Serious Harm.

Extortion of prisoners and family members of prisoners is common in Alabama's prisons. Extortion by fellow prisoners is commonly reported by prisoners calling the toll-free number established by the Department. Investigators with ADOC's I&I confirmed extortion of family members and prisoners is a significant problem in Alabama's prisons. Alabama's inability to prevent and address the extortion of prisoners and prisoners' family members leads to a substantial risk of serious harm. *Marsh*, 268 F.3d at 1028 (holding that correctional facility conditions that provide the opportunity for harm and fail to allow for adequate supervision pose a substantial risk of serious harm). For example:

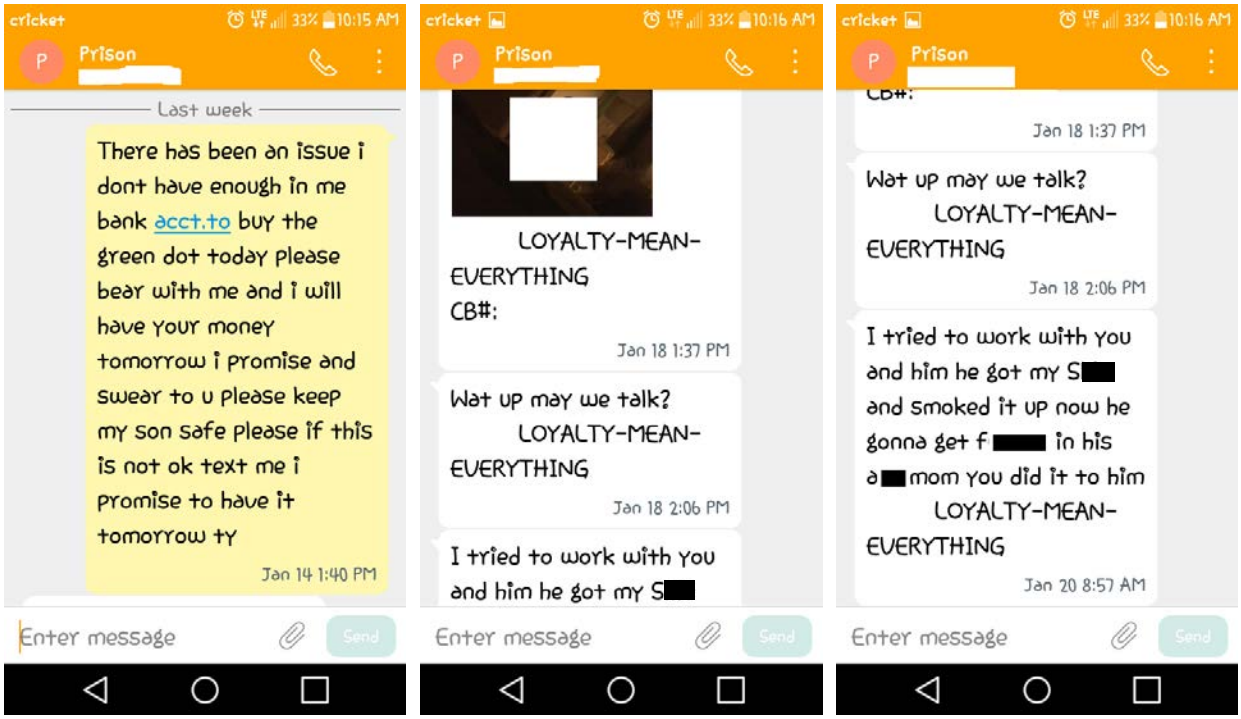
- In August 2018, a prisoner at Bibb called the Department's toll-free number to report that he was forced into nonconsensual sex acts with other prisoners while being extorted for drug money. He reported that he was constantly sleeping in other dormitories to escape the prisoners. He told us that when he reported the matter to Bibb's PREA resource officer, the officer told him that because he was in debt to another prisoner, nothing could be done.

- In May 2018, a prisoner at Bibb called the toll-free number to report that in February of that year, he had been held hostage in an open dormitory over the course of several days over a money debt and was severely beaten by several prisoners. When he was finally able to escape and notify a correctional officer, an incident report confirmed the severity of his beating by noting that he was immediately sent to an emergency room and required two facial surgeries.

- Over the course of several days in February 2018, a prisoner at St. Clair was repeatedly physically and sexually assaulted at night by his cell mate, as evidenced by fresh and healing bruising on his body. When he finally approached an officer, he reported that his cell mate had been extorting him to pay $1,000 and was forcing him into sex and payment of four packs of tobacco each day until he satisfied the $1,000 debt. ADOC placed both prisoners in restricted housing.

- In January 2018, the mother of a prisoner at Ventress called our toll-free number to report that she and her son were being extorted for money to pay off an alleged $600 debt to another prisoner. Because of his failure to pay, the victim was beaten and

threatened with rape. His mother later called to report that she was being extorted by a prisoner at Ventress who texted her photos of a prisoner's genitals from a cell phone. Through texts, he threatened to chop her son into pieces and rape him if she did not send him $800. In February 2018, the inmate called our toll-free line and affirmed what his mother had reported. The following screenshots were sent to us:



Text messages attempting to extort a prisoner's family member

- Similarly, in December 2017, a woman reported that her brother, a prisoner at Donaldson, was being held hostage inside a cell. When a correctional sergeant sought the prisoner out, he was found with several bruises on his face and it was determined he had been assaulted. The prisoner told the correctional officers that he and his family were being extorted by his captor for money. During the investigation, the alleged perpetrator admitted that the victim had been "short on his payment," and was placed in segregation pending disciplinary action. The victim was placed in the Restricted Privileges cell.

- In October 2017, a prisoner at Staton was moved by security staff to Bibb because he was physically assaulted and extorted for $10,000 by four prisoners who were members of the Crips Gang. The gang members targeted the victim after learning that he received an inheritance following his mother's death earlier that year.

- In November 2017, a prisoner at Bullock called the Department's toll-free number to report that he believed he would soon be killed over a debt. Later that day, a correctional captain questioned the prisoner about his call. The prisoner told the captain he was indebted to other prisoners and could not pay and wanted protection.

> The prisoner refused to provide the names of the prisoners who were extorting him. ADOC then required the victim to provide a urine sample and moved him to restricted housing while giving him a disciplinary action for intentionally creating a Security/Safety/Health Hazard.

7. Access to Dangerous Weapons Contributes to Serious Violence.

ADOC does not effectively control the introduction, manufacture, and use of weapons. This leads to a substantial risk of violence. While the majority of weapons recovered inside Alabama's prisons are "homemade," some weapons appear to be commercially manufactured and smuggled into the facilities. One way control could be accomplished is to require all staff to undergo screening prior to entering a facility, as the federal Bureau of Prisons has required since 2013. Enhanced screening of visitors would also evidence a commitment to addressing this problem.

The Constitution requires that prison officials adequately monitor prisoners and confiscate weapons and other dangerous contraband to ensure prisoners' health and safety. *Hudson*, 468 U.S. at 527 ("[Prison officials] must prevent, so far as possible, the flow of illicit weapons into the prison . . . ."). Our review of incident reports for the year 2017 revealed that in hundreds of incidents reports, weapons of some kind were used and subsequently confiscated. And any given incident report may include the collection of more than one weapon from more than one individual. It is clear from interviews with staff and prisoners that weapons are ubiquitous in Alabama's prisons. And, as the examples recounted previously demonstrate, stabbings are frequent throughout the system.

At Bibb, a captain estimated that perhaps 200 prisoners possess homemade knives, also known as shanks. He told us that in May 2017, security staff collected 166 shanks at one time. He told us that prisoners were making weapons from metal cut from fences in the yard, light fixtures, dish racks, and elsewhere. And at least one Bibb prisoner recounted seeing a correctional officer watching a weapon being made without intervening. Prisoners at Bibb said that "everyone" has knives, and prisoners need a weapon to stay alive. One prisoner stated that "Bibb is a place where you have to fight the day you arrive or you'll be a bitch, so you get a knife." Another recounted being warned by officers when he arrived at Bibb that he would need a knife for protection.

From interviews with prisoners at multiple facilities, it was clear that many prisoners felt they needed a weapon for self-defense. At facilities we visited, shift commanders estimated that anywhere from 50-75% of prisoners were armed with some sort of weapon. Prisoners at Draper and Holman stated that knives are "everywhere." At Holman, three different lieutenants said "all" prisoners have a weapon of some sort. One prisoner stated that it was just "good common sense" to have one in that environment. Another stated that no security measures can get rid of all the knives hidden in the open dormitories.

Multiple prisoners interviewed at different facilities confirmed that knives are pervasive. One prisoner at Donaldson recounted seeing knives as big as machetes. A weapon that was essentially a small sword was recovered at St. Clair in 2017.

Correctional officer holding a weapon recovered at St. Clair in 2017

The number of prisoners we interviewed who had either been stabbed or had stabbed another prisoner was overwhelming—for example, one prisoner recounted that he had been stabbed 11 different times since he arrived in prison and he was currently in segregation for stabbing someone. And many of these stabbings go unreported to security staff. It is clear from these reports and from the level of violence and stabbings indicated in ADOC's own incident reports that whatever measures are in place to prevent the creation and introduction of weapons, those measures are failing.

8. Ineffective and Unsafe Housing Assignments Increase the Risk of Violence.

ADOC fails to implement effective classification and housing policies, which results in violence by commingling prisoners who ought to be kept separate within the same, under-supervised housing units. *See Marsh*, 268 F.3d at 1014 (lack of classification and risk assessment system constitutes deliberate indifference where inmates were harmed by other inmates because housing assignments did not account for the risk violent prisoners posed). ADOC's classification process has not been validated for effectiveness. In addition, classification specialists handle a large number of prisoners, limiting effectiveness. For example, at Bibb, each classification specialist handles a caseload of 360 prisoners.

While ADOC makes some attempt to separate potential predators from potential victims, prisoners can and do frequently thwart attempts to keep prisoners separate by wandering from housing unit to housing unit without staff intervention or knowing how to break into compromised cell doors. A review of incident reports from 2017 revealed over 1,100 incidents

of prisoners being in an unauthorized location. The initial screening for determining a prisoner's custody level, and corresponding facility assignment, is done centrally. Housing unit and bed assignment is done at the facility-level. There is inadequate screening for prisoners' risks of being violent or sexually abusive, or for potential vulnerabilities, as is required by PREA. And prisoner transfers are ubiquitous and numerous; almost every prisoner we talked to had been transferred to many different prisons throughout their time in the ADOC system. Segregation is used to house prisoners who do not want to stay in general population and are fearful for their life or safety. But segregation is also used to house prisoners being punished for rule infractions and prisoners placed there for being a threat to safety, which results in a dangerous mix of predatory and vulnerable prisoners in the same unit with inadequate supervision.

It is a common correctional practice to assign prisoners who have received disciplinary infractions to a disciplinary housing unit where they are subject to higher security measures, including segregation or reduced out-of-cell time and curtailed privileges. ADOC utilizes a disciplinary dormitory at several of its facilities, also known as the Hot Bay, for prisoners who receive a disciplinary action for misconduct. Most often, that misconduct involves violence, resulting in these dormitories housing a high percentage of violent prisoners. Although some ADOC disciplinary units are termed "Behavior Modification" units, there is no additional staffing or behavioral programming offered in these units. Prisoners are commingled and under-supervised, but still housed in an open dormitory. They are also being denied access to programming and visits to the canteen. Food is brought to them on trays. They are only given access to the yard if there are enough officers to supervise outside time, which rarely happens. These deprivations raise tension levels within the unit. However, unlike disciplinary units in other correctional systems, which require increased correctional staffing and supervision, prisoners and staff reported that there is little supervision in ADOC's Hot Bays, greatly contributing to the high level of violence in these units. In fact, during one facility visit, when we entered the Hot Bay, a captain muttered, "Enter at your own risk."

During our tour of Bibb, also referred to by prisoners as "Bloody Bibb," we learned that to gain the attention of correctional staff, who are rarely present in the Hot Bay, prisoners must bang on the door or chain on the door until someone responds. Prisoners reported that rapes, torture, and physical assaults occur in the back of the dormitory, where there are blind spots preventing the line of sight for correctional staff to view activities through the windows. Many prisoners stated that officers do not ever enter the Hot Bay, with one noting, "unless someone is killed and they have to come clean up the aftermath." Since we inspected Bibb and informed ADOC of our initial findings that the Hot Bay was critically dangerous, ADOC closed the Hot Bay there, but similar "Behavior Modification" dormitories continue to operate at other facilities.

9. ADOC's Failure to Protect Prisoners from Harm Also Negatively Impacts the Safety of Correctional Staff.

ADOC's failure to provide adequate supervision and staffing harms not just its prisoners, but also its officers working within the prisons. The same underlying causes of prisoner-on-prisoner violence—understaffing, overcrowding, and prisoners' unfettered access to weapons and drugs—also leads to violence against correctional staff.

We interviewed a former ADOC warden who discussed with us the dangerous staffing levels at the prisons. He called the staffing levels "barbaric" and concluded that both prisoners and correctional officers in Alabama's prisons "are in extreme danger." Less than a month before we notified Alabama of our investigation, a correctional officer, Kenneth Bettis, was killed at Holman. Officer Bettis was stabbed in the head by a prisoner while working in the dining hall. The prisoner was angry that Officer Bettis refused to allow him to get a second food tray. At the time, he was the only officer working inside the cafeteria. Shortly after his death in 2016, correctional officers at all facilities were issued stab vests for their protection. Despite the addition of stab vests, correctional staff continue to be harmed by prisoner violence, as the examples listed below show:

- In March 2018, at St. Clair, seven prisoners surrounded a correctional officer with homemade knives drawn. One prisoner cut the officer in his stomach with a knife before help arrived and the prisoners were handcuffed.

- In March 2018, at Fountain, several correctional officers were performing a contraband search. They informed a prisoner that they were going to pat search him, and he refused. When the officers tried to place the prisoner in handcuffs, he punched a lieutenant in the face and then kicked him in the chest. Other officers were able to subdue and handcuff the prisoner. He was searched, and found to have on his person a five-inch box cutter with a razor blade attached.

- In February 2018, at Donaldson, a prisoner attacked a correctional officer with a lock tied to a sock. Once he was subdued and handcuffed, officers found a handmade knife on his person.

- In February 2018, at Ventress, a correctional officer observed a prisoner with a handmade knife, approximately six inches long, in his hand. The officer ordered the prisoner to drop the knife, and the prisoner complied. But when the officer ordered the prisoner to turn around to be handcuffed, the prisoner punched the officer in the face. The officer was eventually able to handcuff the prisoner. A pat search of the prisoner revealed two more handmade knives.

- In February 2018, at Staton, a prisoner ran at a correctional officer, swinging and hitting the officer in his face. A scuffle ensued, and after spraying the prisoner with his chemical agent, the officer was able to subdue the prisoner. A search of the prisoner's jacket revealed two homemade knives, each about eight inches in length.

- In January 2018, in the Behavioral Modification Dormitory at Draper, a correctional officer was in a bathroom area when he noticed a prisoner starting a fire in a trashcan. When the officer went to extinguish the flames, several prisoners surrounded him and told him to leave. One prisoner came from behind the officer and tried to take the officer's baton. The officer was then hit in the back of the head with a hard object.

- In December 2017, at St. Clair, a correctional officer directed several prisoners to exit a dormitory. One prisoner hit the officer several times in the face with his fist and stabbed him in the face with a prisoner-made ice pick.

- In November 2017, at Easterling, a correctional officer ordered a prisoner to return to his dormitory. The prisoner failed to comply, grabbing the officer around his neck and striking him twice in the face with his fist. A subsequent pat search of the prisoner yielded a handmade knife.

- In October 2017, at St. Clair, a correctional officer ordered a prisoner to put a shirt on. The prisoner left the area and returned with a 26-inch-long prisoner-made knife. He began chasing the officers in the area, attempting to strike four officers.

- In August 2017, at Bullock, a lieutenant entered a dormitory to conduct a search on a prisoner. The lieutenant discovered a cell phone in the prisoner's pants pocket. When the lieutenant reached for it, the prisoner slapped it out of the lieutenant's hand. The lieutenant then grasped the prisoner by his shoulders and threw him to the floor. The incident quickly escalated. While on the floor, the lieutenant observed multiple prisoners with broomsticks gathering behind him. The lieutenant retrieved his pepper spray and pointed it at the group of prisoners, ordering them to move back. He called for assistance, and four more officers arrived. A prisoner attempted to attack the lieutenant, but another officer restrained and subdued him. While the officers were attempting to depart the dormitory, another prisoner struck an officer in the face. The officers pepper sprayed that prisoner and placed him in handcuffs. Soon after, two prisoners ran towards the officers swinging broomsticks while yet another swung his fists. The officers pepper sprayed these prisoners, eventually subduing them.

- In July 2017, at Bullock, an officer observed a prisoner walking through a door to the Receiving Unit. He asked the prisoner why he was there, and the prisoner stated, "They are going to kill me." The prisoner attempted to force his way into the Receiving Unit. The officer grabbed his left arm in an attempt to stop him. The prisoner then retrieved two handmade knives from his pocket and attempted to strike the officer. The officer moved out of the way and was unharmed. He called for assistance via radio and grabbed the prisoner, ordering him to drop the knives. The prisoner refused, continuing to attempt to strike the officer. Two officers arrived to assist. During the officers' attempt to subdue the prisoner, the prisoner stabbed another officer in the upper right side of his back and attempted to stab the third officer in the chest but failed to puncture the skin. Four additional officers arrived to assist. After a protracted altercation, which included the use of physical force, a baton, and pepper spray, the officers finally subdued the prisoner. Three officers were sent to an offsite hospital for further treatment.

- In July 2017, at Bibb, a prisoner approached an officer from behind and began to stab him in the back with a prisoner-made knife. Another officer saw the stabbing and issued an emergency call for assistance, and additional staff arrived at the scene and

assisted in subduing the prisoner. The officer who was stabbed was transported to Bibb Medical Center for further treatment.

- In June 2017, at Draper, a correctional officer ordered a prisoner to stand for a pat search. The prisoner stood, but informed the officer that he was not going to be pat searched. He then reached behind his back to retrieve a knife, and swung toward the officer. The officer and another officer deployed pepper spray in an attempt to subdue the prisoner, but the prisoner ran away and began swinging his knife at another prisoner. The officer was able to apprehend the prisoner after using pepper spray a second time.

- In May 2017, at Bibb, a prisoner assaulted a captain conducting routine security rounds in the Hot Bay. The prisoner struck the captain in the face several times. When the captain fell to the ground, the prisoner plus two other prisoners began stomping on the captain's head.

- In April 2017, at Ventress, a sergeant and an officer became involved in an altercation between two prisoners, one swinging a piece of metal towards another. One of the prisoners threw the piece of metal down and picked up a broken broomstick. The sergeant ordered the prisoner to drop the broomstick. The prisoner refused and struck the sergeant across the top of his head twice and on the forearm once, causing an eight-centimeter laceration at the center of the sergeant's head.

- In April 2017, at Donaldson, several officers responded to a radio call regarding a prisoner with a weapon, and discovered an officer lying on the dormitory floor. The responding officers assisted the officer while other officers tried to restrain the prisoner, who was swinging a knife. The prisoner continued to fight the officers, but eventually dropped his knife and was restrained. The officer on the floor was placed on a gurney, taken to the infirmary, and later taken to a hospital for further treatment.

- In April 2017, at Bullock, a prisoner who refused to comply with an officer's orders to return to the dormitory pulled a handmade knife from his pocket and attempted to stab the officer in the abdomen. The officer jumped out of the way, sprayed the prisoner with pepper spray, and called for help. The prisoner attempted to stab the officer a second time. The officer took the prisoner to the ground but the prisoner continued to fight, stood back up, and tried to run to the dormitory. Four additional officers responded to the scene and took the prisoner to the ground. The prisoner continued to resist being handcuffed, but eventually he dropped the knife.

D. ADOC's Failure to Prevent Illegal Drugs Within Alabama's Prisons Results in Prisoner Deaths and Serious Violence.

Dangerous and illegal drugs are highly prevalent in Alabama's prisons, and ADOC appears unable or unwilling to prevent the introduction and presence of drugs in its prisons. These drugs contribute to the ongoing violence and pose a substantial risk of future violence. ADOC prisoners are dying of drug overdoses and being subjected to severe violence related to

the drug trade in Alabama's prisons. Agents of ADOC's I&I Division, including the I&I Director, stated that "drugs are the biggest problem in prison" because prisoners are "wigging out" and harming others. One ADOC investigator stated that "drugs are the biggest driver of violence in Alabama's prisons." Another investigator saw five or six prisoners laid out in a hallway at Bullock after smoking the same drug and thought it looked like "triage in a warzone."

The presence of synthetic cannabinoid, frequently referred to as 5F-ADB, within Alabama's prisons presents a particularly serious health risk for prisoners. According to the World Health Organization's Expert Committee on Drug Dependence, this substance can cause "severe and fatal poisoning," and its effects may include "rapid loss of consciousness/coma, cardiovascular effects . . . , seizures and convulsions, vomiting/hyperemesis, delirium, agitation, psychosis, and aggressive and violent behavior."

A review of autopsies from 2017 and the first half of 2018 revealed that the substance was present in many facilities, including Bibb, Bullock, Draper, Elmore, Fountain, and Staton. An I&I investigation into a prisoner death at Bullock in December 2016 revealed that these drugs were readily and cheaply available inside the prison. Indeed, a review of autopsy reports from prisoner deaths dating December 2016 through August 2018 revealed that at least 22 were caused by "synthetic cannabinoid toxicity" overdoses. And since we opened our investigation into Alabama's prisons, the problem has become worse—there were three deadly overdoses in 2016 and nine in 2017. The first half of 2018 (after which ADOC stopped producing documents to us) was especially deadly; during that timeframe, at least 10 deaths were attributed to synthetic cannabinoid toxicity.

To the extent contraband is introduced by staff, it is contributing to the problem. ADOC staff, who are not screened for contraband upon entry to a prison, have been consistently identified by ADOC leadership as contributing to the contraband problem. Requiring all individuals—management and line staff—to be screened at entry, would ensure ADOC takes seriously the need to prevent and address contraband within Alabama's prisons.

Often, ADOC's incident reports list the cause of overdose deaths as "Natural," and although autopsies later reveal the true cause of death, ADOC does not centrally collect or track these autopsies and is thus unable to distinguish overdose deaths from other non-homicide deaths and to fully understand the deadly effects of such dangerous contraband within its system. The following are only a few examples of the deaths associated with synthetic cannabinoid:

- In May 2018, a prisoner at Fountain died of synthetic cannabinoid toxicity. Incident reports list the cause of death as suspected drug overdose. Approximately two years before his death, this same prisoner was stabbed at Holman in a drug-related altercation.

- In March 2018, at Easterling, a prisoner died from the "[t]oxic effects of 5F-ADB." The incident report, which listed his death as accidental, stated that a correctional officer on a security check observed the prisoner lying on his bed. The officer tapped him on the shoulder but received no response. Despite efforts to resuscitate him, the prisoner was pronounced dead within an hour.

- In March 2018, a prisoner at Bibb was found lying on his bed unresponsive during a count. He died at Bibb that same day. The autopsy listed "[s]ynthetic cannabinoid (5F-ADB) toxicity" as the cause of death. It further noted that the prisoner "was seen earlier in the day to be smoking what was believed to be spice." In July 2016, this prisoner was reprimanded after he was identified as one of four prisoners shown in a social media video of men at Bibb lying on the floor under the influence of "flakka."

- In February 2018, a prisoner at Bibb died from synthetic cannabinoid toxicity. The autopsy report notes that the prisoner was observed "smoking a substance and then collapsing to the floor." The autopsy also mentions the existence of video surveillance footage showing the prisoner "sitting on his bed smoking and then collapsing to the floor." The incident report lists his cause of death as "Natural."

- In February 2018, a prisoner at Bibb died from "[s]ynthetic cannabinoid toxicity (5F-ADB)." He was found unresponsive and lying on his bed during an institutional count. CPR was administered by a nurse, and he was eventually pronounced dead at an outside hospital. The incident report listed his cause of death as "Natural."

- In January 2018, a prisoner died at Bullock from "[s]ynthetic cannabinoid toxicity." According to the incident report, which listed the death as "Natural," another prisoner thought that the overdosed prisoner had smoked a "stick" possibly two hours prior.

- In October 2017, a Staton prisoner was found unresponsive while lying on his bed. The autopsy noted that he was "found unresponsive in his cell after smoking a synthetic cannabinoid." It further concluded that "the cause of death is ascribed to synthetic cannabinoid (5F-ADB) toxicity with hypertensive and atherosclerotic cardiovascular disease and cirrhosis as significant contributing factors." ADOC's incident report, however, classified his death as "Inmate Death – Natural."

In addition to the synthetic drug overdoses, another four deaths in 2018 and one in 2017 were attributed to mixed drug toxicities resulting from methamphetamines or Fentanyl, as well as complications from the intravenous use of methamphetamine, or even an unknown "white powder." For example:

- In May 2018, a prisoner at Bibb died from "Acute fentanyl toxicity." According to the autopsy, a postmortem toxicology report revealed "the presence of Fentanyl and 4-Anilino-N-Phenethylpiperidine (4-ANPP). The presence of 4-ANPP, an intermediate chemical precursor in the synthesis of fentanyl, is an impurity in non-pharmaceutical fentanyl, highly indicating illicitly manufactured fentanyl." No incident report was located related to this prisoner's death.

- In February 2018, an Easterling prisoner died from "mixed drug (Methamphetamine, synthetic opioid U-47700) toxicity." The incident report classified his death as "Natural" and noted that he was found "laying on the floor in the front of [his] bed." This prisoner previously tested positive for methamphetamine and buprenorphine

(Suboxone) in November 2015 while at Staton, and again on May 14, 2017 when he was at Elmore. He was also caught at Staton with Suboxone on his person in January 2017.

- In October 2017, a prisoner at Kilby died of an overdose from an unknown drug. The prisoner was found face down and unresponsive on the floor next to his bed. A piece of plastic containing a white powder, initially identified as "no-show," was found next to him. The prisoner was taken to the Kilby emergency room where he was pronounced dead.

Synthetic drugs and methamphetamines have also been mentioned in the autopsies of homicide victims. In 2018 alone, autopsies revealed the presence of synthetic drugs in two victims, methamphetamines in two others, and one prisoner who had both synthetic drugs and methamphetamines in his system.

Many of the prisoners we interviewed painted a portrait of a system where drugs are ubiquitous, dangerous, and contribute to violence. Over 70% of the prisoners we interviewed specifically mentioned the prevalence of drug use within the prisons. Many prisoners thought that part of the danger from drugs is that drug usage leads to drug debts, which leads to violence and sexual abuse when prisoners are unable to pay. Prisoners at different facilities reported seeing other prisoners smoke something, "wig out," fall on the ground, pass out, or vomit. A common theme in our interviews of prisoners was that correctional officers observe the drug use and take no action.

It is difficult to know the exact number of prisoners using drugs in Alabama's prisons, as drug tracking and testing is inconsistent. In 2017, there were over 375 incident reports documenting prisoners possessing drugs, but many of these reports reflect that more than one prisoner was in possession of drugs. Many prisoners referred to the drug problem as an "epidemic." In fact, several prisoners we interviewed had either been stabbed by someone "wigging out" on drugs, or had stabbed another prisoner while on drugs. One shift commander said that more than once a day she encounters a prisoner passed out or acting violently after using drugs. Two shift commanders of death row and segregation at Holman estimated that 50-60% of their prisoners were using drugs. One shift commander over general population at Holman estimated that 95% of that facility's prisoners were using drugs.

There are varying explanations for how the drugs are getting into ADOC's prisons. During one facility tour, leadership admitted that drugs were arriving a variety of ways—through staff, from prisoners returning from other places, individuals throwing bags over the fence, and visitors. Prisoners corroborated these same avenues by which drugs were entering the prisons. An I&I investigator interviewed at ADOC headquarters, whose job includes investigating staff corruption, stated that, "without a doubt" the number one way contraband is getting into prisons is "by staff smuggling it in." A former ADOC warden told us the same thing. Another investigator pointed to a recent I&I investigation into staff corruption that had already ensnared 11 officers at one prison. The investigator stated that he had not yet uncovered the end of the corruption. In another investigation at a different prison, I&I discovered that a staff member

made $75,000 bringing in contraband and his accomplice, a prisoner, made $100,000. Clearly, current ADOC policies have been unable to control or limit the drug trade in its prisons.

E. ADOC Is Not Adequately Protecting Prisoners from Sexual Abuse by Other Prisoners.

Sexual abuse in Alabama's prisons is severe and widespread, and is too often undetected or prevented by ADOC staff. We reviewed over 600 incident reports from late 2016 through April 2018 that ADOC classified as "Sexual Assault – Inmate-on-Inmate." The majority of these incident reports described sexual abuse allegations of forced anal or oral sex. Medical examinations and ADOC investigations substantiate a significant number of the allegations of sexual abuse. In reviewing hundreds of reports, we did not identify a single incident in which a correctional officer or other staff member observed or intervened to stop a sexual assault. Because of inadequate supervision, correctional officers do not observe the rampant sexual abuse, they do not intervene, and the cycle of abuse continues. As such, ADOC fails to protect prisoners from the harm of sexual abuse. *Farmer*, 511 U.S. at 833 (holding that prison officials have a duty to protect prisoners from violence at the hands of other prisoners, including sexual assault).

1. Sexual Abuse Is Highly Prevalent in ADOC Correctional Facilities.

ADOC documents a high level of sexual abuse within Alabama's prisons. ADOC produced 313 incident reports classified as "Sexual Assault – Inmate-on-Inmate" from the year 2017. ADOC produced 257 such incident reports from 2016. Many of the incident reports confirm that ADOC substantiated the allegations. Indeed, in 2016, the Survey of Sexual Victimization data that ADOC publicly reported pursuant to the National Standards for the Detection, Prevention, and Punishment of Prison Rape, 28 C.F.R. § 115 ("PREA standards"), confirmed that ADOC substantiated nearly 25% of all allegations of "inmate-on-inmate nonconsensual sexual act."[6] ADOC substantiated over 30% of allegations of "inmate-on-inmate abusive sexual contact."[7] Nationwide, prisons substantiate an average of 6.3% of allegations of

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[6] Ala. Dep't of Corrs., Survey of Sexual Victimization, 2016, at 2, http://www.doc.state.al.us/docs/PREA/SSV2016.pdf. The number of substantiated incidents is likely even higher, as the investigations for 20% of the allegations of "Nonconsensual Sexual Acts" had not yet been completed at the time of publication. *Id.* "Nonconsensual Sexual Acts" are defined as:

> "Sexual contact of any person without his or her consent, or of a person who is unable to consent or refuse; AND [c]ontact between the penis and the vulva or the penis and the anus including penetration, however slight; OR [c]ontact between the mouth and the penis, vulva, or anus; OR [p]enetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument."

Id.

[7] *Id*. at 3. "Inmate-on-inmate abusive sexual contact" is defined as: "Sexual contact of any person without his or her consent, or of a person who is unable to consent or refuse; AND [i]ntentional touching, either directly or through the

"inmate-on-inmate nonconsensual sexual act," and 11.7% of allegations of "inmate-on-inmate abusive sexual contact." In its Survey of Sexual Victimization data for 2017, ADOC reported substantiating only 1 out of 162 allegations of "inmate-on-inmate nonconsensual sexual act" and only 1 out of 65 allegations of "inmate-on-inmate abusive sexual contact." In ADOC's 2017 Annual PREA Report, ADOC reported 227 incidents of "Inmate on Inmate Sexual Victimization," with two reports substantiated, 95 unsubstantiated, 20 unfounded, and 46 open at the time of reporting. ADOC's PREA Coordinator is the ADOC official responsible for production of data on sexual abuse, but she was unable to explain the variations and discrepancies in the 2016 and the 2017 data. While certain Alabama prisons reported more sexual abuse than others, the incidents of prisoners being sexually abused by other prisoners are widespread across the system.

In addition, it is likely that the levels of sexual abuse are actually higher than what ADOC reports. In every "Sexual Assault – Inmate-on-Inmate" incident report we reviewed, the sexual abuse was reported by the victim or a prisoner witness afterwards. Because many prisoners do not report abuse out of fear of retaliation, shame, or because they do not believe that ADOC's system to address complaints of sexual abuse will result in any changes, the incident reports coded as "Sexual Assault" do not capture the complete picture of prisoner-on-prisoner sexual abuse in the ADOC system. Moreover, we did not identify any incidents where a correctional officer or other staff member observed or intervened to stop a sexual assault in progress—leading us to conclude officers are either failing to report abuse or failing to monitor prisoners. Because correctional officers are not observing the incidents of sexual abuse, if the victim or a witness does not report it, the abuse will not be recorded or addressed.

Moreover, one of our experts reviewed numerous incident reports in which a prisoner reported an allegation of sexual abuse, but the ADOC staff member writing the incident report failed to categorize the incident as a "Sexual Assault" because staff dismissed it as consensual "homosexual activity." There is no indication that these incidents were investigated or referred to the Inspector General's office. Because they were not categorized as "Sexual Assault," they would not be included in ADOC's publicly reported PREA data. This is in violation of the PREA standards, which require that correctional agencies investigate all allegations of sexual abuse, 28 C.F.R. § 115.71(a), and results in further under-reporting of sexual abuse in Alabama's prisons.

Despite the mischaracterization of some incidents of sexual abuse and likely under-reporting, the incident reports that ADOC does code as "Sexual Assault Inmate-on-Inmate" demonstrate a pattern of undeterred systemic sexual abuse in Alabama's prisons.

2. Inadequate Supervision Allows Sexual Abuse to Continue Undeterred.

ADOC's incident reports document sexual abuse occurring in the dormitories, cells, recreation areas, the infirmary, bathrooms, and showers at all hours of the day and night.

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clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person." *Id.* at 2. "[I]ncidents in which the contact was incidental to a physical altercation" are excluded. *Id.*

Staffing ratios are so low in some dormitories that ADOC is essentially providing no security for prisoners. Our experts found that the physical plant designs and layout of ADOC's housing units make visibility difficult, which, when coupled with deficient staffing levels, results in inadequate supervision. Large open living units with multiple bunks or stacked bunks contain many blind spots that make it impossible for the limited staff to provide adequate safety and security. There are very few convex mirrors to increase visibility. The cameras that are present are not monitored sufficiently to augment supervision by housing unit officers. Prisoners interviewed and incident reports frequently reference sexual assaults occurring in bunks that have sheets or towels hung up to conceal activity, often referred to as "the hump." The "Sexual Assault" incident reports do not document correctional officers making any effort to remove these sight barriers. Although the PREA standards require that ADOC "designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards," 28 C.F.R. § 115.11, ADOC's PREA Coordinator reported that she does not have the authority to direct wardens to address blind spots that pose a threat to prisoners' sexual safety within their facilities.

As discussed above, the incident reports confirm that ADOC is only alerted to prisoner sexual abuse when a victim or witness reports the incident afterwards. The fact that hundreds of documented incidents of sexual abuse occur unobserved demonstrates an unconstitutional lack of supervision in housing units throughout ADOC. *LaMarca v. Turner*, 995 F.2d 1526, 1535 (11th Cir. 1993) (holding that "evidence presented at trial of an unjustified constant and unreasonable exposure to violence" in a prison "inflicted unnecessary pain and suffering" under the Eighth Amendment standard); *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991) (citing *Ramos*, 639 F.2d at 575) (suggesting that inadequate staffing may rise to the level of deliberate indifference as to prisoner safety).

For example, in February 2017, a prisoner at Fountain was gang raped inside his dormitory during the evening meal. Two prisoners held him down while a third "penetrated his anus," then they "forced him to perform oral sex." A nurse's examination at the facility noted "several tears to his anus," and he was transported to the Sexual Assault Nurse Examiner's Center for further treatment. ADOC substantiated the incident. Yet no ADOC staff reported the assault. Prior to the victim giving a nurse a note stating that he had been raped the day before, ADOC staff did not report the incident. Either ADOC staff responsible for monitoring the dormitory did not observe the incident, or they observed it but did not report it.

Sexual abuse of prisoners is often connected to the drug trade and other contraband problems that result from inadequate supervision and corruption in Alabama's prisons. Our experts' on site interviews of captains and lieutenants revealed that many ADOC staff appear to accept the high level of violence and sexual abuse in ADOC as a normal course of business, including acquiescence to the idea that prisoners will be subjected to sexual abuse as a way to pay debts accrued to other prisoners. Many prisoners report that they were sexually assaulted because of debts they owed (or that the assailants said they owed), often related to drugs or other contraband. For example:

- In January 2018, a Correctional Sergeant and the Institutional PREA Compliance Manager separately questioned a prisoner at Bullock about "an incident that took place"

a few days earlier. The prisoner admitted that he had been sexually abused. He stated that he was in debt to several prisoners and one of them told another prisoner "he could fuck me for what I owe him." He told his assailant "no," but the prisoner sexually assaulted him anyway. Because the victim refused medical treatment, stated that he did not want to press charges, and signed a Release of Responsibility, ADOC determined that no further action would be taken and released the victim to his original dormitory unit.

- In August 2017, a prisoner at Bibb reported to a lieutenant that he had been sexually assaulted because he was indebted to another prisoner and could not pay the debt. The other prisoner forced him to perform oral sex as payment.

- In June 2017, a prisoner at Bibb reported that he had been raped because he owed seven "Tops," or packets of cigarettes, to several unidentified prisoners. The prisoner was transported to an outside hospital and ADOC substantiated the allegation based on the evidence from the resulting sexual assault kit.

- In April 2017, a prisoner at Bibb reported that he was anally raped by another prisoner to whom he owed money. While the victim was waiting at the Health Care Unit for transportation to an outside hospital, he cut his wrist with a razor.

- In March 2017, a prisoner at Fountain reported to a nurse that he had been physically assaulted and raped the night before. He was transported to the Sexual Assault Nurse Examiner's Center for further assessment and reassigned to segregation, pending the outcome of the investigation. During his interview, the victim stated that he owed a debt to another prisoner, and he "assumed [he] was raped due to the debt owed."

- In November 2016, a prisoner at Fountain reported to a Mental Health Site Administrator that another prisoner had extorted him to engage in anal and oral sex over a period of two months. The victim was placed on suicide watch and the alleged aggressor was permitted to remain in general population. One month later, ADOC sent the victim a letter confirming that the allegation had been substantiated.

The theme of sexual abuse as a consequence of debt is so common that some incident reports specifically highlight a prisoner's debt history. For example, in February and March of 2018, separate prisoners at Ventress each reported sexual assaults. The incident reports each note that a review of the victim's incident history "revealed that he has not made any previous PREA related allegations," but does reflect a history of drug use and debt. Interviews with ADOC staff revealed an understanding that debt, particularly drug debt, can result in sexual abuse. This was a common point raised by the prisoners we interviewed on site. Submission to sexual abuse under the threat of violence resulting from the drug trade does not indicate consent.

Many prisoners also report that they were sexually abused after being drugged, becoming incapacitated by drugs they took voluntarily, or when the assailant was under the influence. Some of the drugs that are widely available in Alabama's prisons can have the effect of

immobilizing an individual or rendering him unconscious, which makes him vulnerable to sexual abuse. For example:

- In March 2018, a prisoner at Holman reported that he had been raped after he had passed out from smoking "flakka." He awoke to one prisoner punching him in the eye and then four or five prisoners put a partition around his bed and took turns raping him.

- In February 2018, a prisoner at Bibb reported to a mental health professional that he had been raped. At approximately 1:00 a.m. in a dormitory unit, an unidentified prisoner propositioned him to smoke a marijuana cigarette. While smoking, the victim "became incoherent" and awoke with the unidentified prisoner penetrating him from the rear.

- In December 2017, a prisoner at Limestone reported that two prisoners attempted to force him to perform oral sex, which resulted in a physical altercation, with a third prisoner coming to his aide. The incident was substantiated and the incident report notes that when one of the assailants was interviewed following the altercation, he had slurred speech and smelled of alcohol.

- In January 2017, a prisoner at Donaldson reported that a prisoner offered him a cigarette and, upon smoking it, he began "to feel funny and could not move." Two prisoners then took him into the shower and sexually assaulted him. ADOC substantiated this incident.

- In January 2017, a prisoner at Draper reported that he had voluntarily used methamphetamine and blacked out. When he regained consciousness, he was experiencing anal pains and other prisoners indicated that he had been sexually assaulted.

Many of the assaults happen at knifepoint, with no indication that ADOC conducted a comprehensive weapons search in response. For example:

- In April 2018, a prisoner at Ventress reported that he had been forced at knifepoint to perform oral sex on another prisoner. The incident report notes that the victim was reassigned to another dormitory and the victim and assailant received mental health referrals, but there is no mention of a housing change for the alleged assailant or a search of his dormitory for weapons. The incident report does note that a previous PREA-related allegation had been made against the assailant.

- In April 2018, ADOC officers interviewed a prisoner at Elmore after his mother called to report that he had been sexually abused. The prisoner stated that he had been raped at knifepoint because he owed his assailant $250. The incident report notes that the alleged assailant "submitted a written statement and was allowed to return back to population without incident." There is no mention of a search for the weapon.

- In February 2018, a prisoner at Staton reported that the night before, two prisoners had held knives to his neck while a third prisoner forced him to perform oral sex. The victim alleged that the whole dormitory was aware of the attack. The victim was escorted to the health center for a medical examination and then transferred to a holding cell while the alleged assailants remained in the dormitory. There is no mention of a search for weapons.

- In December 2017, a prisoner at Staton reported that he was jumped in the shower by a prisoner who held a knife and penetrated him from behind. ADOC transported the victim to the Sexual Assault Nurse Examiner Center and ultimately referred this incident to the County District Attorney's Office. There is no mention of a search for the weapon.

- In January 2017, the chaplain at Draper notified ADOC that a prisoner had reported to him that he had been raped that morning. At approximately 5:30 AM, three prisoners forced the victim into the shower area of the dormitory. Two of the assailants had knives. A blanket was hanging from the wall, blocking the area from view. The prisoner stated that the dormitory officer was in the hall outside of the dormitory escorting prisoners back from breakfast, which had been late that morning. One prisoner held a knife to the victim's neck and another waved a knife in his face while the third penetrated him anally. The incident report confirms the victim's transport to the Sexual Assault Nurse Examiner's Clinic and that I&I would interview the victim and secure the forensic evidence from his examination, but there is no mention of searching the dormitory for weapons.

Some prisoners suffer sexual abuse in retaliation for having reported previous sexual abuse. For example:

- In March 2018, a prisoner at Ventress reported that he had been sexually assaulted on the gym porch by a prisoner whose cousin had previously sexually assaulted the victim at Bullock. The victim reported that his assailant told him he was going to get him back for telling on his cousin. A week later, the victim reported another attack by the same assailant, which required an outside Sexual Assault Nurse Examiner assessment. However, the second incident report makes no mention of the first report.

- Also in March 2018, a correctional lieutenant "received information" that a prisoner was "being tortured" in a dormitory at Ventress. The lieutenant located the prisoner and escorted him to the Health Care Unit. The prisoner reported that he was "tied up, burned, and tortured for two days and that a broom handle was stuck up his rectum." The prisoner stated that the torture was in retaliation for his documented report of a prior sexual assault in February 2018.

3. Deficiencies in ADOC's PREA Screening and Housing Contribute to the Unsafe Environment.

The unsafe environment created by ADOC's deficient supervision and overcrowding is exacerbated by failings in ADOC's PREA screening, classification, and housing of prisoners. The PREA standards require that all prisoners be assessed during intake screening and upon transfer to another facility for their risk of being sexually abused by, or sexually abusive toward, other prisoners. 28 C.F.R. § 115.41(a). The PREA standards also require that ADOC use information from the risk screening "to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive." 28 C.F.R. § 115.42(a).

While ADOC has basic policies in place to conduct PREA risk screenings, ADOC fails to use the information from the screenings to house prisoners safely and, even if an appropriate housing assignment is made, the classification system is defeated by lax supervision that allows prisoners to wander throughout the prison facilities without authorization. ADOC's knowledge of, and failure to comply with the PREA standards, is further evidence of ADOC's subjective recklessness with regard to prisoner safety. *Farmer*, 511 U.S. at 843; *see also Crawford v. Cuomo*, 796 F.3d 252 (2d Cir. 2015) (finding PREA and other such legislative enactments to be reliable evidence of contemporary standards of decency, and thus relevant in evaluating whether specific acts of sexual abuse or sexual harassment rise to an Eighth Amendment claim).

ADOC classification staff reported that the initial classification determines only a prisoner's security level, which informs his assignment to a particular prison. Once he arrives at the prison, an Inmate Control Services officer assigns the prisoner to a housing unit and bed. While the Inmate Control Services officer should have access to a prisoner's classification and screening information, it is unclear how and if this information is used, especially given the degree of overcrowding at some ADOC prisons. Documents provided from a PREA audit at Draper indicated that for three quarters of 2016, Draper had zero occurrences of a prisoner screening for risk of victimization or abusiveness, and did not use the PREA screening information for three quarters of 2016. At some facilities, ADOC case managers conduct the initial PREA screening. At Bibb, we noted that the screening setting was not private, so other prisoners could hear confidential information a prisoner reported during his screening, which could discourage prisoners from answering truthfully. When conducting and scoring the screening, case managers had no access to a prisoner's previous screening results. ADOC's PREA audits demonstrated a need for corrective action in the adequacy of PREA risk screening and the use of the screening information to house people safely within the facilities.

In addition, while ADOC's facility PREA Compliance Managers have ultimate responsibility for the PREA risk screening and for monitoring prisoners identified as potential victims or aggressors, ADOC's facility PREA Compliance Managers did not have sufficient information to accomplish these important tasks.

The PREA standards identify Lesbian, Gay, Bi-Sexual, Transgender, and Intersex ("LGBTI") prisoners as being at a heightened risk for sexual abuse. Accordingly, the PREA

standards include several provisions specifically aimed at increasing sexual safety for LGBTI prisoners.

ADOC is refusing or failing to comply with the PREA standards. For example, only one of the PREA Compliance Managers we interviewed on-site was able to give specific information about the LGBTI prisoners housed at that prison. The other PREA Compliance Managers had little or no information about LGBTI prisoners. If ADOC's PREA Compliance Managers have no knowledge of the vulnerable prisoners within the population, they cannot comply with their duties to provide a reasonable level of safety to those prisoners.

Regardless of whether prisoners receive a safe housing assignment based on an appropriate PREA screening and classification, supervision is often deficient such that prisoners can roam from housing unit to housing unit without intervention. A review of ADOC incident reports from January 2015 to early April 2018 at Bibb alone indicated 553 incidents of prisoners being cited for being in an "unauthorized location." Some of the "Sexual Assault – Inmate-on-Inmate" incident reports indicate that either the aggressor or the victim was not in his assigned housing unit at the time of the attack, but make no reference to discipline or remedial action for prisoners accessing unauthorized areas of the facility. By allowing potential predators to commingle with potential victims without adequate staff supervision, ADOC fails to effectively protect prisoners from harm of sexual abuse.

4. ADOC's Sexual Abuse Investigations Are Incomplete and Inadequate.

If a correctional agency does not adequately investigate allegations of sexual abuse, it will be unable to determine the factors that enable abuse to occur and the corrective actions necessary to address the problem. *See Jacoby v. PREA Coordinator*, No. 5:17-cv-00053-MHH-TMP, 2017 WL 2962858, at *5 (N.D. Ala. April 4, 2017) (citing *Farmer*, 511 U.S. at 833) (noting that failure to investigate can be a constitutional violation if the failure prevents prison officials from protecting prisoners). The PREA standards require that correctional agencies investigate all allegations of sexual abuse "promptly, thoroughly, and objectively[,]" 28 C.F.R. § 115.71(a), even if victim or witness is challenging or unwilling to cooperate. To conduct a thorough investigation, investigators must "gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data," and must "interview alleged victims, suspected perpetrators, and witnesses." 28 C.F.R. § 115.71(c). Although we have been unable to review I&I files related to sexual abuse because ADOC refused to produce them, we are able to make the following conclusions based on the incident reports and other evidence in our possession. And based on this evidence, ADOC fails to follow these standards and dismisses many incidents as unsubstantiated without a thorough investigation.

For example, in August 2017, a prisoner at Bibb entered the Shift Commander's office and reported that he had been held hostage and physically and sexually assaulted over the past few weeks. The sergeant "observed several bruises and abrasions to the facial area" of the prisoner. However, when the incident was closed as "unsubstantiated," the report incredibly notes that "no evidence was found to substantiate [the prisoner's] claims that he was physically assaulted."

In addition, ADOC's incident reports confirm that many allegations are declared "unsubstantiated" on the basis that the victim declined to press criminal charges or otherwise cooperate with the investigation, which is not a sufficient reason for reaching such a conclusion in an administrative investigation. For example:

- In February 2018, a prisoner at Bibb notified the facility PREA Compliance Manager that he had been "forcibly sexually assaulted" two days prior and that he had not bathed, so the perpetrator's semen was still inside him. The prisoner was examined by the facility nurse and upon completion of the medical examination, the prison physician advised that the prisoner should be transported to an outside hospital for a Sexual Assault Kit. Although the prisoner named his rapist, the incident report confirms that upon conclusion of the investigation, the victim "stated that he did not desire to prosecute and signed a waiver of prosecution. Therefore, this allegation is unsubstantiated."

- In May 2017, "several" prisoners reported to a captain that two other prisoners were held and assaulted in a dormitory unit at Fountain over the weekend by a group of four or five prisoners. One of the identified victims provided a written statement of allegations of sexual assault, while the other reported a physical assault. ADOC provided the first victim with written confirmation that the allegation of sexual assault was "found to be unfounded and exceptionally cleared due to your lack of cooperation with the prosecution of [his assailant] for reported Sexual Assault and you[r] signing of a Prosecution Waiver Form."

Although a victim's refusal to press charges could complicate an attempt to criminally prosecute an assailant, it is not a valid reason to find an administrative investigation unsubstantiated, particularly where there are other indicia of sexual abuse. Indeed, some incident reports confirm that ADOC has other options. For example:

- In March 2017, a prisoner at Donaldson reported that he had been sexually assaulted in his cell the night before. He was transported to the Sexual Assault Nurse Examiner's Clinic for an assessment. Although the victim refused to provide a written statement to I&I, the I&I Director substantiated the allegation of sexual assault based on the facts presented.

- In December 2016, a prisoner at Bibb reported that a prisoner in his dormitory had raped him at knifepoint. When the other prisoner responded to the allegation by claiming that he had consensual sex with the victim, the victim "became belligerent and refused to cooperate with the investigation." Ultimately, ADOC deemed the allegation "substantiated but cleared as refusal to cooperate or prosecute."

When ADOC dismisses reports of sexual abuse as unsubstantiated on the sole basis of a victim's refusal to pursue criminal charges, it also fails to take action to prevent future abuse. For example, multiple incident reports from St. Clair in late 2017 confirm not only that the report of sexual abuse "had been concluded with a disposition of 'unsubstantiated'" that is "based on"

the victim's refusal to prosecute, but go on to state that a "sexual abuse incident review" was conducted and no "further action" would be taken. Indeed, despite the high number of sexual abuse reports documented by ADOC, there is no record of meaningful corrective action to address the problem in ADOC's prisons.

5. ADOC Discourages Reporting of Sexual Assaults.

Many ADOC incident reports reflect conduct that likely discourages additional reports of sexual abuse. As discussed above, ADOC has a tendency to dismiss claims of sexual abuse by gay prisoners as consensual "homosexual activity" without further investigation, implying that a gay man cannot be raped. Some victims are given a Release of Liability to sign after reporting sexual abuse.

In other cases, in addition to the trauma of a sexual assault, the victim is subjected to disciplinary action for facts he discloses as part of the investigative process. For example, in February 2017, a prisoner at Donaldson reported that he had been raped two days earlier, and named his assailant. He was transported to the Sexual Assault Nurse Examiner Clinic for an assessment and returned to Donaldson at approximately 10:00 PM. The next morning at 4:45 AM, he was interviewed by the PREA Compliance Manager and stated that he was in debt to the prisoner who had raped him and several other prisoners, but "was adamant" that he had been sexually assaulted. The PREA Compliance Manager advised the victim that he would receive a disciplinary action for "Intentionally Creating a Safety, Security and/or Health Hazard" for admitting that he had accrued debt to other prisoners.

As noted with regard to prisoners who report violence, while ADOC has an interest in enforcing institutional rules, it should implement its disciplinary process in a way that avoids discouraging victims from reporting sexual abuse. ADOC should give due consideration before subjecting victims of sexual abuse to disciplinary actions if, in the context of seeking assistance or protection from ADOC, they voluntarily admit to past, minor rule infractions. Experts confirm that the current practice, which appears to punish victims for any wrongdoing they may confess while seeking assistance or protection, has a chilling effect on reporting. Especially given that the rampant sexual abuse in Alabama's prisons is almost never reported by correctional officers, a system that punishes prisoners who report violence if the victim is not blameless will discourage victims from reporting and allow sexual abuse to continue unabated in Alabama's prisons.

6. ADOC Improperly Subjects Victims of Sexual Abuse to Segregation.

ADOC commonly places a victim in segregated restricted housing after he reports sexual abuse, often in response to a prisoner's request for protection from harm, which can subject the victim to further trauma. While accommodating a prisoner's request for segregated housing is not inappropriate, due to the seriously unsafe conditions that exist in Alabama's prisons, ADOC has created a situation where vulnerable prisoners who have already suffered sexual abuse have no other choice if they want to stay safe from further sexual abuse. For example:

- In April 2018, a prisoner at Bullock reported that over three days, he had endured extortion; punching, kicking, and beatings with a stick; and anal and oral rape by a group of four prisoners. He finally reported the abuse after one of the prisoners told him "he had more work to do." Although ADOC identified all of the perpetrators, after the victim returned from the Sexual Assault Nurse Examiner Center, he was placed in segregation "per inmate's request."

- In January 2018, a prisoner at Bullock resorted to cutting his wrist after an attempted sexual assault and physical assault "because he feared being in population and needed to be placed in a single cell." He reported that two nights prior, two prisoners had attempted to rape him but were unable to penetrate him because he defecated during the assault. The prisoners then poured hot water on him, causing burn marks to his buttocks and the back of his head. ADOC placed the victim in segregation and allowed the perpetrators to remain in general population. The incident report notes that the perpetrators would receive "disciplinary actions for assault," and that no further action would be taken.

- In December 2017, a prisoner at Bibb sent a letter to the Assistant PREA Compliance Manager stating that he had been sexually abused at knife point. The victim reportedly requested placement in segregation because he feared for his safety, so the victim was placed in segregation while his alleged assailant remained in his assigned living area. ADOC substantiated this allegation.

While incident reports often note that the victim is being placed in segregation at his own request, if a victim of sexual abuse has no other realistic way to stay safe, a request for segregation may be the product of a lack of other, more suitable options. Restricted housing in Alabama's prisons houses prisoners seeking protection, as well as prisoners being punished for rule infractions and prisoners who are a threat to safety. Subjecting victims of sexual abuse to segregation can inflict further trauma. This is why the PREA standards require that victims of sexual abuse not be involuntarily segregated for their own protection unless "an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers." 28 C.F.R. §§ 115.43(a), 115.68. Alternatives utilized by other correctional facilities include vulnerable persons units that provide a safe environment for prisoners whose screening indicates they are at risk for being abused or protective custody units that do not result in a restriction of privileges. By failing to offer these or other options to keep victims of sexual abuse safe from further abuse, ADOC is not adequately presenting such victims with a reasonable alternative to segregation.

In addition, the size of ADOC's prison system presents the opportunity to transfer prisoners between facilities to protect victims from retaliation. For example, in February 2017, a prisoner at Elmore reported that he was raped at knife point in the dormitory shower area. Following an examination at the Sexual Assault Nurse Examiner's Clinic and an interview by I&I, the victim was transferred to Draper "at his request." However, in the vast majority of incident reports, there is no indication that ADOC is making a determination that no safe alternative exists before placing victims of sexual abuse into segregation. Because ADOC has no alternate means of keeping victims of sexual abuse safe from harm, ADOC requires

vulnerable prisoners to subject themselves to the punitive conditions of segregation and the potential trauma that may entail, so that the prisoners can obtain the reasonable level of safety guaranteed by the Constitution.

F. Facility Conditions in Alabama's Prisons Violate the Constitution.

The Constitution requires that officials provide prisoners with adequate shelter, which includes maintaining facility conditions in a manner that promotes prisoner safety and health. *See Helling*, 509 U.S. at 32. The Eighth Amendment's prohibition of cruel and unusual punishments imposes a duty on corrections officials to "provide humane conditions of confinement" and to "'take reasonable measures to guarantee the safety of the inmates.'" *Farmer*, 511 U.S. at 832-33 (quoting *Hudson*, 468 U.S. at 526-27).

ADOC prisons do not provide adequate humane conditions of confinement. They have a number of significant physical plant-related security issues that contribute to the unreasonable risk of serious harm from prisoner violence. These problems include defective locks; insufficient or ineffective cameras; a lack of mirrors; deteriorating electrical and plumbing systems; as well as structural design issues and weaknesses with the buildings and their perimeters. These problems allow prisoners to leave secure areas, obtain contraband, and improperly associate with or assault other prisoners. Even if no single one of these conditions of confinement would be unconstitutional in itself, "'exposure to the cumulative effect of prison conditions may subject inmates to cruel and unusual punishment.'" *Rhodes*, 452 U.S. at 363 (quoting *Laaman v. Helgemoe*, 437 F. Supp. 269, 322-23 (D.N.H. 1977)). ADOC's failure to correct these issues poses a serious risk to prisoner safety and health.

For example, at Bibb, there was a tall chain link fence separating the two halves of the facility, and both halves could only be exited through a gate opened and closed with a physical key. We heard from several prisoners that victims of stabbings had waited for an extended time at the gate, often bleeding profusely, while staff searched for the key to open the gate. Visibility in the back of large dormitories containing bunkbeds is also an issue, as reflected in the large number of violent incidents that happen unobserved in the back of such dormitories.

Short of new facilities or drastic renovations, there are relatively simple physical plant corrections that could increase safety in the facilities. For example, there were few convex mirrors in the living units we visited. Adding such mirrors would increase the visibility of areas within the units, especially given the many large open living units in the prisons. Yet ADOC has not made this easy fix. In addition, many incident reports reference assaults occurring in bunks in which sheets or towels are hung to conceal prisoner activity, but there appears to be no concerted effort by security staff to remove these visibility barriers.

The deficiencies in the facilities' infrastructure are well-known to ADOC officials. In February 2019, the Governor noted that the physical condition of ADOC's prisons have been described as "deplorable," "horrendous," and "inadequate." Just one month earlier, Commissioner Dunn commented publicly that repairs and renovations are needed because facilities have outlived their usefulness. These concerns have been acknowledged for years. In 2017, for example, Commissioner Dunn noted the system's "outdated, outmoded, and overgrown

infrastructure." He has said that over 70% of the prisons "are well beyond their useful life and must be replaced." Yet, despite this knowledge, ADOC has been unable to improve its infrastructure.

It should be noted that while we did not visit every prison in Alabama, those that we did visit were in incredibly poor physical shape, and—based in part on the Governor's and Commissioner's public statements—are largely representative of the prison system as a whole. The Governor and Commissioner Dunn have frequently discussed the "crumbling infrastructure" within ADOC prisons. As one of our experts opined, the physical structure of the prisons we visited is "severely worn," which leads to dangerous conditions for prisoners and staff alike. Another expert commented that she was "shocked and dismayed at the state of the . . . prisons we visited." The prisons are old and have not undergone serious renovation, and thus have deteriorated significantly. The physical conditions of ADOC prisons present a safety risk. A February 2017 inspection by engineering consultants hired by ADOC noted that not a single facility has a working fire alarm.

Based on our site visits, hundreds of prisoner interviews, and public statements made by ADOC officials, it is clear that decrepit conditions are common throughout Alabama's prisons. During facility visits, we observed makeshift showers created because the original showers were not functioning. We also saw numerous showers and urinals that were leaking or broken. Because the facilities house far more prisoners than they were designed to hold, there is enormous strain on plumbing, electrical systems, ventilation, showers, sinks, and toilets, leading to unsanitary conditions. We heard repeatedly about showers covered in mold, and without hot water. Numerous prisoners mentioned toilets, sinks, and showers that leak, get stopped up, or are otherwise broken. One prisoner told us that a mop sink was being used as a urinal because the toilets were backed up.

Images of bathroom facilities at Donaldson, Draper, and Holman

In February 2017, nearly eight months before we toured Draper, Commissioner Dunn provided a tour of Draper to the press. In a video of that tour, he pointed out the poor condition of portions of the kitchen floor, which had become so compromised that the concrete subfloor was all that remained. We noticed similar conditions in the kitchen floors at Donaldson and Holman. In the video from Draper, Commissioner Dunn went on to say that the kitchen at Draper would be closed, and that food would be cooked offsite at Staton, and be shipped back to Draper.

Prisoners with whom we spoke throughout ADOC consistently told us about the poor state of the facilities. Some mentioned that spiders and other bugs would regularly fall from the ceilings. More than one prisoner discussed seeing rats and bugs in the kitchen and food storage areas. Prisoners in segregation described especially poor conditions. One prisoner described large cockroaches in segregation. Several told us that a plate covered the only window in their unit, so that they could never see out and there was little ventilation. Numerous prisoners described having no light in their cell. Some mentioned broken toilets and sinks, as well as leaky roofs, and a lack of heat.

While new facilities might cure some of these physical plant issues, it is important to note that new facilities alone will not resolve the contributing factors to the overall unconstitutional condition of ADOC prisons, such as understaffing, culture, management deficiencies, corruption, policies, training, non-existent investigations, violence, illicit drugs, and sexual abuse. And new facilities would quickly fall into a state of disrepair if prisoners are unsupervised and largely left to their own devises, as is currently the case.

G. Evidence Suggests Some ADOC Officials Are Deliberately Indifferent to the Risk of Harm.

Federal law precludes corrections officials and staff from acting with "deliberate indifference" to the substantial risk of serious harm posed to prisoners. *Farmer*, 511 U.S. at 828. An official acts with deliberate indifference when she or he "knows of and disregards an excessive risk to prisoner health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id*. at 837. A court may conclude that "a prison official knew of a substantial

risk from the very fact that the risk was obvious." *Id*. at 842. In other words, "an official responds 'in an objectively unreasonable manner if he knew of ways to reduce harm but knowingly declined to act or if he knew of ways to reduce the harm but recklessly declined to act.'" *Johnson v. Boyd*, 701 F. App'x 841, 847 (11th Cir. 2017) (quoting *Rodriguez v. Sec'y for Dep't of Corrs.*, 508 F.3d 611, 620 (11th Cir. 2007)).

In determining whether conduct violates the deliberate indifference standard of the Eighth Amendment, there must be persuasive evidence of the following: (1) facts presenting an objectively substantial risk to prisoners and awareness of these facts on the part of the officials charged with deliberate indifference; (2) the officials drew the subjective inference from known facts that a substantial risk of serious harm existed; and (3) the officials responded in an objectively unreasonable manner. *Doe v. Ga. Dep't of Corrs.*, 248 F. App'x 67, 70 (11th Cir. 2007); *Marsh*, 268 F.3d at 1028-29.

ADOC has long been aware that conditions within its prisons present an objectively substantial risk to prisoners. Yet little has changed. As early as 1975, a federal court enjoined ADOC from accepting any new prisoners, except escapees and those who had their paroles revoked, into four of its prisons until the population in each was reduced to design capacity. *James v. Wallace*, 406 F. Supp. 318 (M.D. Ala. 1976). In 2011, that same court found that ADOC facilities were understaffed and overcrowded. *Limbaugh v. Thompson*, No. 2:93cv1404–WHA (WO), 2:96cv554–WHA, 2011 WL 7477105 (M.D. Ala. July 11, 2011). Indeed, language from a 2002 federal court opinion related to Alabama's prison housing women indicates that ADOC is aware of its Eighth Amendment obligations and of the specific types of conditions that run afoul of the Eighth Amendment. In *Laube*, the U.S. District Court for the Middle District of Alabama found that conditions at Julia Tutwiler Prison for Women were unconstitutionally unsafe as a result of overcrowded and understaffed open dormitories:

> The sheer number of inmates housed in open dorms pose a significant security problem. Idleness is less of a safety concern when each inmate is confined to her own cell or shares a cell with just a few other inmates. In dormitories, however, idleness heightens the potential for disruptive behavior because each potentially aggressive idle inmate now has other inmates whom she may target, as well as other potentially aggressive inmates with whom she may congregate. Dorms at Tutwiler hold 60 to 228 inmates, and some of these inmates sit idly during the day. While the evidence submitted does not reveal the extent to which inmates are idle at Tutwiler, even limited periods of idleness can engender safety problems. Open dorms are particularly dangerous when a facility is also plagued by, among other things, inadequate supervision, increased violence, and inmate access to weapons, as discussed below.

Laube, 234 F. Supp. 2d at 1233.

Our investigation into the violence, contraband, corruption, and harm occurring in Alabama's prisons evidences issues previously known to ADOC. For instance, several years before we initiated our investigation, ADOC was acutely aware of extensive problems at St. Clair. In 2014 alone, there were at least three publicly reported prisoner-on-prisoner homicides.

In April 2014, the Equal Justice Initiative ("EJI") urged ADOC to investigate, among other violence, the fatal and non-fatal stabbings that were escalating at St. Clair. Following another homicide in June 2014, EJI renewed its formal request that ADOC address the violence. In the face of ADOC's inaction and yet another homicide, in October 2014, a group of prisoners incarcerated at St. Clair filed a class action lawsuit in federal court. The suit alleged an extraordinarily high rate of violence at St. Clair, including six homicides in the preceding three years. The plaintiffs asserted that the violence in the severely overcrowded facility could be traced to poor management, noncompliance with protocols and procedures, the prevalence of drugs and other contraband, and corruption. Three years later, in November 2017, the plaintiffs and ADOC reached a settlement. ADOC promised many reforms in the settlement. For instance, ADOC promised to ask the Alabama Legislature for funding to install video cameras for monitoring at the prison. ADOC did not make good on that promise. By June 2018, ADOC had not satisfied several of the settlement requirements. The parties went back into mediation in June 2018—only eight months after ADOC made all of its promises to reform St. Clair.

ADOC management is acutely aware of the substantial risk of harm caused by its critically dangerous understaffing. Alabama officials, from the Governor to ADOC's Commissioner, have recently reiterated that overcrowding and understaffing continue to plague the system. In ADOC's most recent Annual Report, Commissioner Dunn even highlighted "critical shortages in correctional officer staffing" as a major challenge. And, in early 2019, he explicitly acknowledged the direct link between the levels of violence in Alabama's prisons and the understaffing: "We are still down to 50 percent or lower staffing at many facilities. There's a direct correlation between the shortage of officers and violence."

Due to the extreme staffing shortages, correctional officers are tired, and there are simply not enough individuals to adequately and safely staff Alabama's prisons. Incident reports from 2017 reveal numerous instances of correctional officers not showing up for work or refusing to work mandated overtime. We also found numerous incident reports where correctional officers were found sleeping in cubicles, in hospitals, and in perimeter security vehicles. These security problems have persisted despite ADOC's awareness of our investigation and our numerous on-site inspections of several facilities. In fact, the majority of the examples of unconstitutional conditions described throughout this letter occurred *after* we began our investigation.

Throughout this investigation, ADOC has not responded consistently when alerted to serious issues within its prisons. On multiple occasions, we notified ADOC legal counsel of calls we received from prisoners afraid for their lives and physical safety. We received little information as to what was being done by ADOC to address these calls. On occasion, we learned that a prisoner was transferred to another facility; however, we often received follow-up calls from fearful prisoners stating that ADOC had taken no meaningful action. Additionally, following our site visits of each facility, we coordinated calls with ADOC and prison management to share our experts' preliminary conclusions. In these calls, our experts outlined specific conclusions about the unsafe conditions in the prisons that we visited. During these calls, ADOC officials rarely, if ever, asked substantive questions of our experts. And the violence in Alabama's prisons has only increased since our inspections and those calls took place.

In other ongoing litigation, ADOC has admitted that its prisons are dangerously understaffed. In *Braggs v. Dunn*, the plaintiffs sued ADOC for failing to provide adequate medical and mental health care, and for discriminating against prisoners with disabilities. The court ordered ADOC to determine how many correctional officers were needed to adequately staff its prisons. In February 2019, ADOC filed a report indicating that it needs to hire over 2,200 correctional officers and 130 supervisors over the next four years in order to adequately staff its men's prisons. These staggering staffing deficiencies were determined by ADOC's own experts. A former ADOC warden told us that he did not think it would be possible to hire and train over 2,000 correctional officers with "the proper education, the proper sense of duty, and with the proper mindset" in the next four years. Our corrections consultant opined that ADOC will require more than two years to overcome its current staffing deficiencies, even with its best efforts and under ideal conditions.

V. MINIMAL REMEDIAL MEASURES

To remedy the constitutional violations identified in this Notice, we recommend that ADOC implement, at minimum, the remedial measures listed below. We recognize ADOC has begun to make some positive changes in recent years. For example, in 2015, ADOC hired its first ever Inspector General to conduct security audits and inspection of facilities, teach and train employees, and provide assistance to employees. As of December 2017, the Inspector General had conducted one security audit using ADOC staff. In 2018, after revising its state code, ADOC addressed compensation issues for staff, providing a location pay differential for correctional officers and a pay raise to assist with recruitment and retention. And in November 2018, ADOC announced that 35 new correctional officers had graduated from its correctional academy. Recently, after ADOC's head of operations retired after being placed on administrative leave pending the outcome of a misconduct investigation, ADOC hired a new Deputy Commissioner for Operations with experience at the federal Bureau of Prisons. ADOC is again proposing a pay increase for correctional staff to be addressed in the current legislative session. Finally, ADOC announced on February 28, 2019, that it is conducting a joint operation with other law enforcement agencies targeting contraband at St. Clair and plans to conduct similar operations at other prisons in the future.

In addition, ADOC has made some changes in response to conditions we identified during our investigation. For instance, shortly after we visited Draper and shared our observations about its overall deplorable conditions, we learned that ADOC closed that prison. Additionally, after we visited Bibb and our experts reported to ADOC their shock at the critically dangerous conditions present in Bibb's Hot Bay, ADOC closed the Bibb Hot Bay. Nevertheless, these efforts have been inadequate, as evidenced by the serious issues that continue to plague the prisons, described above. The following remedial measures are necessary.

A. Immediate Measures

1. Understaffing and Overcrowding. ADOC should:

- Immediately deploy resources to staff and electronically monitor the perimeters of Alabama's prisons and assist in screening anyone entering facilities.

- Within one month, consult a nationally recognized expert, approved by the Department, with experience realigning low-risk, nonviolent prison inmates to local oversight, to assess such feasibility in Alabama.

- Within two weeks, contact the Acting Director of the National Institute of Corrections ("NIC") to arrange a joint conversation among ADOC, NIC, and the Department to discuss the areas in ADOC prisons that need immediate attention. Within the confines of its fiscal resources, NIC will provide follow up with an action plan of both sequential and overlapping elements to address the areas that need immediate attention, consistent with the Department's findings. Any direct technical assistance that is able to be provided by NIC will be done at no cost to the state of Alabama. NIC will also identify other federal resources that may be available to Alabama in addressing the identified issues.

- Within time frames identified with NIC, properly screen, hire, and fully train 500 corrections officers. Determine how many of these new officers will be assigned to each facility, based on current vacancy rates. Within six months, in consultation with NIC, staff prisons with at least 500 additional individuals to provide security.

- Within six months, commission a study to examine the feasibility of transferring prisoners to non-ADOC facilities in numbers sufficient to provide adequate staffing for the remaining prisoners.

- Within six months, assess the leadership skills of all Wardens (I, II, and III) and institutional coordinators, in a process overseen by ADOCs Commissioner, Inspector General, and the Director of Operations, in concert with NIC. Based on this assessment, make determinations about staffing all Warden (I, II, and III) positions and implement those determinations within the next three months. Provide ongoing professional development for all personnel in supervisory and leadership positions.

2. Violence. ADOC should:

- Immediately revise ADOC's disciplinary process to avoid subjecting victims to unnecessary disciplinary actions for conduct unrelated to the instant abuse, when they seek assistance or protection from harm.

- Within two months, in consultation with NIC, and with the aid of a consultant approved by the Department, review all relevant ADOC, and individual facility, policies and procedures. Based upon the review, ADOC should, within two months, make appropriate changes to ADOC's—and to each individual prison's—policies and procedures.

- Within six months, provide remedial training on security measures, with a curriculum approved by the Department, to all correctional staff. Thereafter, provide at least 40 hours of in-service training to all staff annually.

- Within two months, ensure that security rounds are conducted in all living areas at least once every hour, and at least once every half hour in any special management population areas (segregation, mental health housing, etc.), or more frequently as required for prisoners on suicide watch. These rounds should be documented in a bound log book maintained on each housing unit, as well as a master log for each prison, and the documentation should be reviewed at least weekly by facility leadership and not less than quarterly by ADOC leadership. Deficiencies in complying with these requirements should be addressed immediately.

- Within two months, develop a centralized system that will contain autopsies of all prisoners who die in ADOC custody. ADOC should conduct an interdisciplinary administrative and medical post mortem following each death and, at least quarterly, assess the system for patterns and trends, and implement remedial measures to correct any identified issues.

3. Contraband. ADOC should:

- Immediately implement shakedowns such that at least 15% of all housing units are searched every day, with congregate areas searched weekly; written documentation showing the results of those shakedowns must be maintained. ADOC should immediately implement daily searches of the interior of the perimeter, the yard, and congregate feeding and recreation areas before and after each use by prisoners, and searches of visiting rooms (including restrooms) before and after every visiting period, with the results of these searches documented. Those results should be analyzed for patterns and trends. ADOC should implement plans to address any patterns or trends discovered.

- Within one month, draft a policy requiring the screening of *every* individual who enters a facility (staff, visitors, volunteers, etc.). Once the policy has been submitted to the Department and approved, implement the policy system-wide within one month.

- Within two months, ensure that each facility has working metal detectors at every entrance, and that each facility has implemented a procedure to use them on all persons entering the prison.

- Within one month, consult with a nationally recognized expert, approved by the Department, to determine other methods of detecting illegal drugs and other contraband being brought into the facilities, for those drugs that will not be detected by metal detectors. Include recommended measures in ADOC policy on screening.

- Within six months, implement any reasonable additional screening procedures for illegal drugs and other contraband that cannot be detected by a metal detector.

- Within two months, provide adequate medical treatment, using evidence-based treatment, for all prisoners detoxifying as illegal drugs and other contraband are reduced and eventually eliminated from the facilities.

4. Sexual Abuse.

   ADOC should:

- Immediately revise ADOC's disciplinary process to avoid subjecting victims to unnecessary disciplinary actions when they seek assistance or protection from ADOC due to threatened or actual sexual abuse.

- Immediately institute a process whereby every allegation of sexual abuse is investigated and the investigation is properly documented. In order to do so, ADOC should ensure a professional investigation unit is in place with the training, skills, and sufficient staffing to investigate every allegation within 60 days.

- Within one month, hire a nationally recognized expert on PREA, to be approved by Department, who will produce a report within two months of hiring. The report should suggest immediate and long-term remedies to address the sexual safety issues in Alabama's prisons. ADOC should implement all immediate measures within three months of receiving the report.

- Within three months, reclassify every prisoner for sexual safety issues, and ensure that potential predators are separated from potential victims.

5. Facility Conditions. ADOC should:

- Within one month, identify all broken locks in Alabama's prisons, and identify how they will be repaired or replaced. Within a month after that, secure funds for such repairs or replacement, and hire a contractor to perform the job within 30 days.

- Within six months, ensure that at least 80 percent of toilets, sinks, and showerheads at each prison are in working condition.

- Within six months, install cameras throughout all prisons that will remain open for more than one year, with locations to be approved by the Department. All video should be retained for 90 days unless an assault on a prisoner or staff occurs in an area surveilled, in which case the video should be preserved until the matter is fully investigated and prosecuted or dismissed by authority of the Commissioner. Wardens should review video at least monthly. Any out-of-service video equipment should be replaced within 72 hours.

- Within 90 days, identify the three prisons in the worst physical condition and take preliminary steps to ensure remedies are initiated which provide humane living conditions.

B. Long-Term Measures

ADOC should:

- By 2020, staff Alabama's prisons consistent with the requirements of the *Braggs* staffing orders.

- Establish competitive base starting salaries and benefits packages for employees.

- Ensure that applicants for ADOC employment can apply and interview in their local area, and provide frequent testing for applicants.

- Continuously track correctional officer turnover by year, breaking out exits by years of service, age, gender, ethnicity, and facility, and use information learned through this tracking to remedy reasons for attrition.

- Employ systematic exit interviews of correctional officers and report annually on reasons for departures, cross-tabulated by age, gender, ethnicity, and facility.

- Ensure that prisoner housing areas are adequately supervised, through direct supervision, whenever prisoners are present.

- Ensure that prisoners are tested for synthetic drugs on a regular, but random, basis. Each prisoner should be tested at least every six months, and the testing should be documented and the results reviewed by ADOC administrators.

- Develop a plan and implement a policy for detecting and reducing the amount of contraband throughout ADOC facilities, including the appointment of a Chief Interdiction Officer for contraband interdiction.

- Ensure that ADOC has, and is following, policies and procedures for an appropriate, objective classification system that separates prisoners in housing

units by classification levels in order to protect prisoners from unreasonable risk of harm.

- Discontinue the use of "behavior modification" dormitories ("Hot Bays") unless mental health professionals play a role in both the assignment of prisoners to such placements and are involved in the treatment provided.

- Ensure that every prisoner-on-prisoner assault is documented and investigated, and that staff is trained on how to prevent and address such incidents.

- Comply with PREA and its implementing regulations, the National Standards to Prevent, Detect, and Respond to Prison Rape (28 C.F.R. §§ 115 *et seq.*).

- Develop and implement a policy on prevention, detection, reporting, and investigation of prisoner-on-prisoner and staff extortion of prisoners and their families.

- Develop a written institutional plan to coordinate actions taken in response to an incident of physical abuse, sexual abuse, and/or extortion among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

- Develop an effective substance abuse disorder program.

- Develop and implement an effective grievance process. In the event that a grievance is filed against a staff member, the submission process must allow for options of submission that are neither seen by, nor referred to, the staff member who is the subject of the complaint.

- Develop and implement a plan to prevent prisoners from entering housing units other than the ones to which they are assigned.

- Implement procedures to ensure sanitary prisons.

VI. CONCLUSION

The Department has reasonable cause to believe that ADOC violates the constitutional rights of prisoners housed in Alabama's prisons by failing to protect them from prisoner-on-prisoner violence, prisoner-on-prisoner sexual abuse, and by failing to provide safe conditions.

We are obligated to advise you that 49 days after issuance of this letter, the Attorney General may initiate a lawsuit pursuant to CRIPA to correct deficiencies identified in this letter if State officials have not satisfactorily addressed our concerns. 42 U.S.C. § 1997b(a)(1). The Attorney General may also move to intervene in related private suits 15 days after issuance of

this letter. 42 U.S.C. § 1997c(b)(1)(A). Please also note that this Notice is a public document. It will be posted on the Civil Rights Division's website.

The Governor's Study Group on Criminal Justice Policy

Date: September 4, 2019

Time: 2:00 P.M.

Location: Alabama Statehouse Room 807

Chairman

Justice Champ Lyons

Members

Attorney General Steve Marshall	Senator Cam Ward	Representative Jim Hill
Finance Director Kelly Butler	Senator Bobby Singleton	Representative Connie Rowe
Corrections Commissioner Jeff Dunn	Senator Clyde Chambliss	Representative Chris England

Agenda

Call to Order & Welcome ..... Justice Lyons

Introduction ..... Commissioner Jeff Dunn

Overview of DOC Operations ..... Jeff Williams

Overview of Women's Facility Operations ..... Dr. Wendy Williams

DOC Staffing ..... Matthew Brand

DOC Operations ..... Charlie Daniels

Questions and Answers ..... Justice Lyons

Next Steps & Adjournment ..... Justice Lyons

The Governor's Study Group on Criminal Justice Policy
Meeting Timeline

Time	Description
October 3, 2019	Data-Based Evaluation of Sentencing Policy
Late October 2019	Correctional Facility Tour
November 8, 2019	Strategies for Reducing Recidivism
December 4, 2019	Public Proposal Meeting
January 2020	Final Meeting and Discussion of Findings

Alabama Department of Corrections

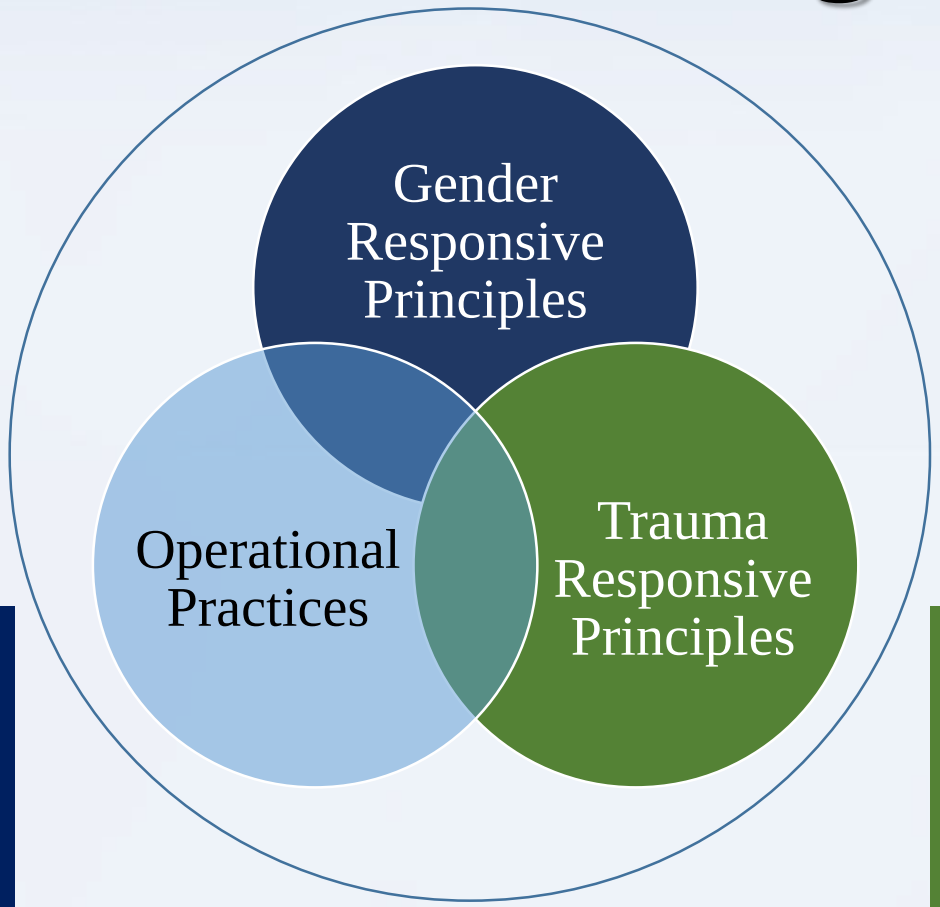
Women's Service

Dr. Wendy Williams
Deputy Commissioner

DOJ Tutwiler

- DOJ investigation at Tutwiler began in February 2013, focus on sexual safety and the reporting culture (Tut I)
- Findings letter received January 17, 2014, outlining a second focus area of environmental health & safety (Tut II)
- Tut I settlement negotiations began in March 2014
- Tut II extended investigation began June 2014
- Tut I settlement agreement executed May 28, 2015, included provisions impacting Tut II investigation
- ADOC is now compliant with 41 of 44 provisions
- Tut II investigation still open, no findings letter to date

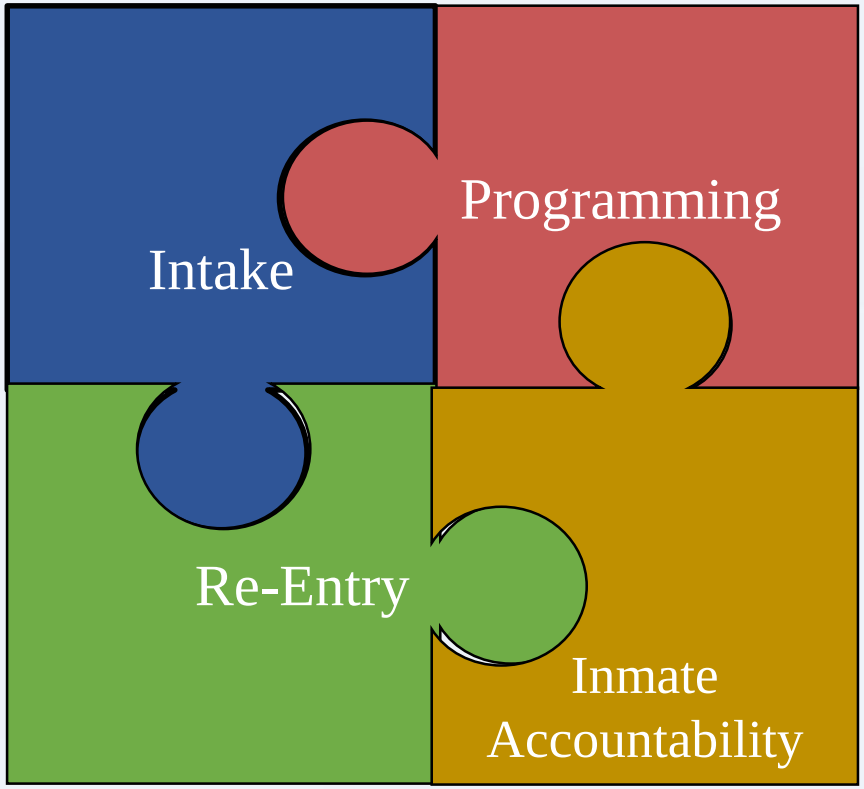
Culture Change



Gender-Responsive
Creating an environment that reflects an understanding of the realities of women's lives and addresses the issues of the women."
- Bloom & Covington

Trauma-Responsive
Creating an environment that acknowledges the widespread impact of trauma by integrating knowledge of signs and symptoms."
- SAMSHA

Putting the Puzzle Pieces Together



Impacts to Date

- June 2019 survey of Tutwiler women reports:
  - 96% understand their right to sexual safety
  - 77% report feeling sexually safe
- Classification custody improvements:

	8/1/2016	5/28/2019
Medium	30%	17%
Minimum	47%	73%
Community	23%	10%

Impacts to Date

- Use of restrictive housing reduced by 75% since 2013
- Institutional misconduct reductions:

	2017	2018	2019
Major Disciplinaries	640	316	120
Behavior Intervention Strategies	N/A	76	18
Verbal Redirects	N/A	241	90

Infrastructure Challenges

- Facility is 77 years old
- Overall facility design is staff intensive
- Programming, rehabilitative, and healthcare space limited
- Living areas do not provide for privacy
- Limited open space for air circulation and group activities

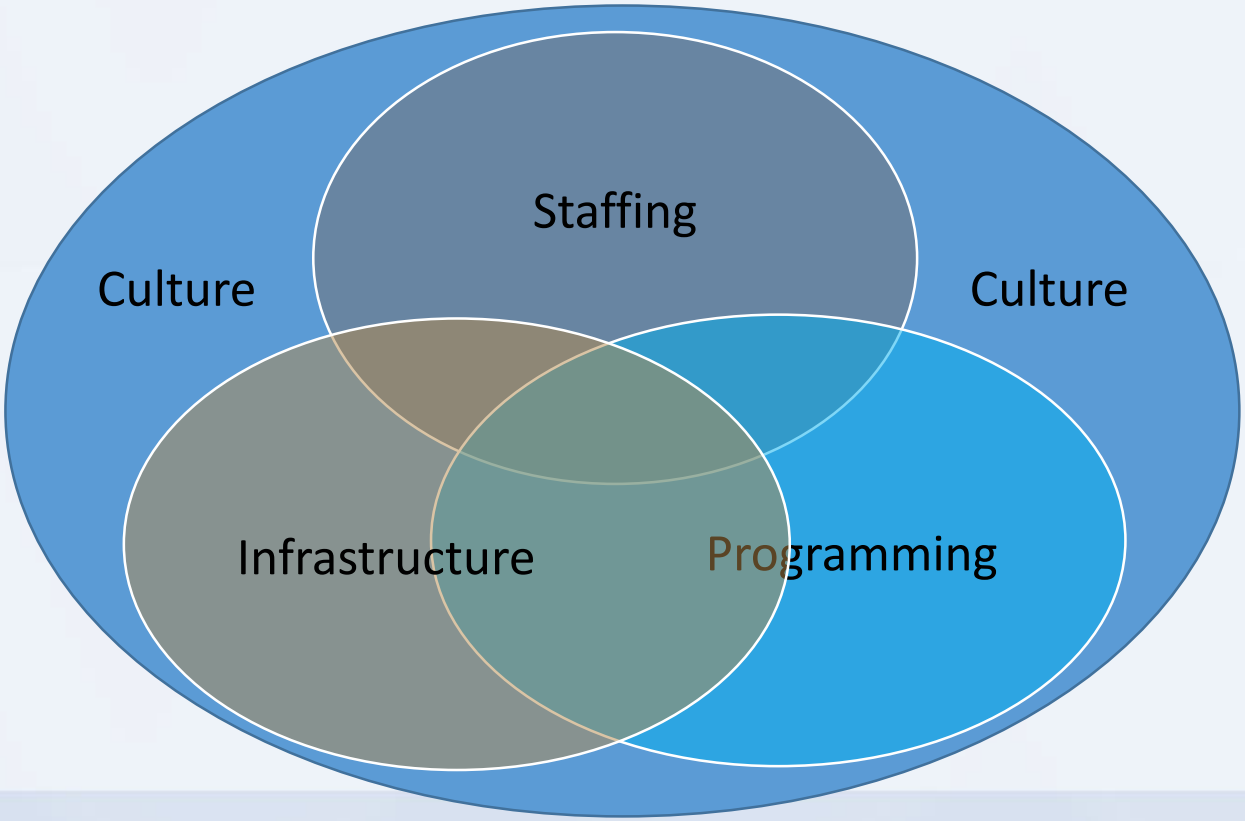
Alabama Department of Corrections

Staffing and Culture:
Two Focus Areas Heading in the Right Direction

Matthew Brand, Colonel, USAF (Retired)

Associate Commissioner
Administrative Services

The Strategic Plan 2019-2022
Four Focus Areas



Professional Development Courses (Improving Culture)

- Annual Exec. Leadership Conference (Fall 2007)
- Exec. Staff Prof. Development (Spring 2017)
- Senior Leader Academy (Spring 2018)
- Intermediate Leadership Academy (Summer 2017)
- FORWARD (2015)
- NIC New Supervisor Training (2007)
- Sergeants Academy (Fall 2016)
- Basic Leadership Academy (Fall 2019)
- Leadership Academy Refresher Course (Fall 2019)

Staffing

- Staffing plummeted from 2016-2018
- ADOC contracted three external studies
  - Savage Study focused on correctional manpower by facility—Industry experts on proper staffing levels
  - Condrey Study on proper CO compensation
  - Warren Averett study on recruiting and retention
- ADOC worked with State Personnel Division and legislature to get new compensation package
  - All correctional officers/supervisors benefited
  - Differential pay remains in place for Level 4/5 prisons

Staffing: The Numbers

- ADOC has gained a net 175 officers since November 1st 2018, most in last three months.
- Will graduate approximately 90 COs this month
- 50 more entering training by Oct. 1st, 75 more to enter queue for a later October session.
- Better compensation, new positions, leadership training all contributing to better hiring numbers.

Departmental Operations

Charles Daniels

Deputy Commissioner of Operations

Alabama Department of Corrections

Professionalism – Integrity – Accountability

Operations Executive Leadership Purpose

- Ensure the men and women we lead return home safely to their families and loved ones at the end of their tour of duty.
- Ensure the offenders entrusted to our care are housed in safe and humane conditions.
- Prepare offenders for a successful re-entry back into society through:
  - Rehabilitation
  - Education
  - Programming
  - Addiction interdiction
  - Life skills training

Facilities

- **15 Major Facilities**
  - 13 Male Facilities
  - 2 Female Facilities
- **11 Community Based Facilities**
  - 10 Male Facilities
  - 1 Female Facility

Male Offenders
By Facility Security Level

Security Level	FY 2018 Population Average*	Percentage
5	6,591	34%
4	10,102	52%
1 and 2	2,583	14%

Total Average Male Inmates: 19,276

* Based upon FY 2018 facility operations statistics as published in the FY 2018 ADOC Annual Report

Special Sentencing

Death Row	Life Without Parole
178	1,532

* Based upon FY 2018 facility operations statistics as published in the FY 2018 ADOC Annual Report and includes female population.

Public Safety

- Primary groups of concern:
  - Security Threat Groups (STG) – Gangs
  - Acute Substance Abusers
- Community Threats:
  - Extortion
  - Continuing Criminal Enterprises
  - Substance Abuse
  - Identity Theft
  - Scams

Staff and Inmate Safety

Contraband Control

Controlled Movement

- Scheduled and coordinated movement of inmates individually or in groups
- Purpose: enhance staff safety by
  - minimizing number of inmates in one place at one time; and
  - reducing risks in the event of an emergent situation.
- Methods
  - Rotational recreation
  - Physical and securable barriers in yards
  - Warden and captain presence between 2 and 10 pm.
  - Targeted searches (CERT)
  - Rotational use of CERT

Operation Restore Order

- **Mission – conduct institution-wide searches of all**
  - Housing
  - Education
  - Program
  - Work areas
- **Primary Purpose – detect, identify and remove contraband**
- **Emphasis – recovery of**
  - Weapons
  - Narcotics
  - Cell phones

Alabama Department of Corrections

Operation Restore Order

- **Level 5**
  - St. Clair Correctional Facility (February)
  - Holman Correctional Facility (April)
  - Donaldson Correctional Facility (July)
- **Level 4**
  - Bibb Correctional Facility (June)
  - Staton Correctional Facility (August)

Alabama Department of Corrections

Operation Restore Order Partners

Northern Region

- Alabama Law Enforcement Agency
- Highway Patrol
- State Bureau of Investigations
- Support Services (SWAT/Aviation/EOD)
- K9
- St. Clair County Sheriff's Office
- Pell City Police Department
- Odenville Police Department
- Jefferson County Sheriff's Office
- Pardons and Paroles
- Alabama EMA
- Alabama DOT LE Special Agents
- Brent PD
- Birmingham PD

Operation Restore Order Partners

Central Region

- Pardons and Paroles
- Alabama EMA
- Alabama DOT LE Special Agents
- ALEA K9
- Millbrook Police Department
- Elmore County Sheriff's Office
- Prattville Police Department
- Alexander City Police Department
- Tallapoosa County Sheriff's Office

Operation Restore Order Partners

Southern Region

- Pardons and Paroles
- Atmore Police Department
- Baldwin County Sheriff's Office
- Bay Minette Police Department
- Monroe County Sheriff's Office
- Butler County Sheriff's Office
- Escambia County Sheriff's Office
- Brewton Police Department
- Alabama EMA
- DOT LE Special Agents

Operation Restore Order

Successes

- Contraband detection and removal
- Extraordinary teamwork:
  - Federal, State, County and Local
  - Law enforcement, Pardons and Paroles and Corrections
- Successful use of Unified and Incident Command Systems
- Unequaled communication and cooperation internally and externally

On The Horizon

- Data driven - Analytics
- Encourage and Support Programs

Future Operation Requriements

- **Contraband Detection equipment**
- **Information Technology**
- **Communication**
- **Perimeter Security**

How can you support ADOC Operations?

- **Communications**
  - Handheld equipment with digital programming
  - Upgraded digital trunking systems
  - Mobile command center
- **Perimeter Security**
  - Improved high mast lighting
  - Perimeter fence netting
  - Razor wire
  - Thermal Fence contraband interdiction

Alabama Department of Corrections

Professionalism – Integrity – Accountability

The Governor's Study Group on Criminal Justice Policy

Date: October 3, 2019

Time: 10:00 A.M.

Location: Alabama Statehouse Room 200

Chairman

Justice Champ Lyons

Members

Attorney General Steve Marshall	Senator Cam Ward	Representative Jim Hill
Finance Director Kelly Butler	Senator Bobby Singleton	Representative Connie Rowe
Corrections Commissioner Jeff Dunn	Senator Clyde Chambliss	Representative Chris England

Agenda

Call to Order & Welcome ..... Justice Champ Lyons

Introduction ..... Justice Champ Lyons

Sentencing Commission Presentation ..... Bennet Wright

Questions and Answers ..... Justice Champ Lyons

Next Steps & Adjournment ..... Justice Champ Lyons

Meeting Timeline

Time	Description
October 22, 2019	Holman Correctional Facility Tour
November 1, 2019	In-Facility Programming, Diversion and Alternative Courts and Reducing Recidivism
December 4, 2019	Public Proposal Meeting
January 14, 2020	Final Meeting and Discussion of Findings

Overview of Sentencing Policy in Alabama

By Bennet Wright, Executive Director of the Alabama Sentencing Commission
Remarks Delivered on October 3, 2019

Alabama Sentencing Commission

The Alabama Sentencing Commission exists to improve Alabama's criminal justice system. The Commission makes recommendations to the Governor, Legislature, Attorney General and Chief Justice on ways to make Alabama's criminal justice system more effective, fair and efficient. The use of data informs and is the backbone of all Commission decisions. By using data to inform decisions, Alabama can have confidence in the ramifications of decisions for now, and later. Having the ability to be able to answer the "what if?" questions of criminal justice is vital when crafting a system designed to improve public safety while at the same time protecting scarce taxpayer resources.

Complexity of Alabama's Criminal Justice System

Criminal Justice systems are inherently complex, and Alabama's system is no different. It is important to acknowledge the complexity of our system to ward off the call for easy fixes. The temptations of oversimplifying a complicated process and accepting easy answers if not resisted, dilute the effectiveness of any proposed solution(s). So called easy fixes or easy answers are usually based upon limited information or faulty assumptions. Any solution proposed must be mindful of the reality that multiple factors have influence when considering the efficacy of criminal justice proposal in Alabama.

Alabama's Criminal Justice system includes Judges, District Attorneys, Defense Lawyers, the Alabama Department of Corrections, the Alabama Bureau of Pardons and Paroles, County Jails, and Community Corrections. Adding to the complexity of the system is the array of options, policies and laws that exist at every stop of the process from pre-trial diversion and detainment to trials in court, possibly culminating in how someone is sentenced and determining the length of time someone serves while on a sentence. There are numerous issues to be considered when evaluating the existing system and considering changes, and none of these proposed changes can be viewed as "the" solution or operating within a vacuum.

ADOC Population 1980s Forward

Alabama's experience with a rising prison population in the 1980s, 1990s, and into the 2000s was shared by virtually every other state as well. Some states have experienced different trajectories from others with the extent of corrections growth, but growth was seen across the nation since the 1980s. Alabama's prison population doubled in size from 1981 (6,300) to 1989 (12,400). Alabama's prison population saw large growth during the 1990s as well. By 2000, the prison population had reached over 22,000. By 2003, the prison population was nearly 25,000 and a special second parole board was seated temporarily reducing the population. By 2012 however, the population had reached in

excess of 26,000. Presumptive Sentencing Standards (Guidelines) became effective in 2013 and "prison reform" legislation became effective in 2016 and 2017 resulting in a prison population reduction of nearly 6,000 by 2018. The prison population has increased by over 1,000 since last year after a restructuring of the Bureau of Pardons and Paroles and a few halts in parole dockets in the past year.

Recent reform efforts have dramatically re-shaped the composition of offenders within Alabama's prisons. The majority (53 percent) of offenders in prison are serving for a Class A felony offense. Another 26 percent of the prison population is serving a sentence for a Class B felony offense. Nearly four-fifths of the prison system is comprised of Class A and Class B felony offenders. Prior to reform efforts, Class C felony offenders constituted a much larger proportion of the prison population. Over one-third of the prison population is serving a sentence of Capital Murder, Murder, Robbery 1st, or Rape 1st.

LWOP & LIFE Populations

Two specialty population groups that are frequently discussed are the Life Without the Possibility of Parole ("LWOP"), and Life With the Possibility of Parole ("LIFE") groups. Alabama has approximately 1,500 LWOP inmates with almost half of those serving Capital Murder sentences. The other non-drug LWOP cases were sentenced pursuant to the State's Habitual Offender Law and primarily includes offenders convicted of Murder, Robbery 1st, Rape 1st, and Burglary 1st. There are 21 offenders serving an LWOP sentence for a drug offense.

There are approximately 3,100 offenders in Alabama serving Life With the Possibility of Parole sentences. Almost half of all LIFE sentences are Murder offenders, while Robbery 1st, Rape 1st, Burglary 1st and Attempted Murder offenders constitute over a quarter more of all LIFE sentences. All life sentences are eligible for initial parole consideration after serving 10 or 15 years depending on the severity of the offense.

Prison Population Dynamics

As Alabama continues to grapple with determining what the size of the prison population will be for the foreseeable future, only two factors determine the size of any prison population – how many offenders are sentenced to prison, and how long offenders stay in prison. Both factors that determine the size of a prison population are nuanced and carry with them public safety, equity, proportionality, and fiscal costs making them often controversial choices. These decisions must be carefully evaluated and measured to ensure that short-term and long-term results and costs have been contemplated.

Last year approximately 9,400 offenders were admitted into Alabama's prison system. Of all the admissions, thirty percent were "dunk" offenders. The state restricts court and parole board responses for technical violations of probation and parole ("dunks") for most felony offenders to a maximum of 45 days in prison. Although the number of "dunk" offenders admitted to prison last year was large (approximately 2,800), the short

period of time these offenders stay in prison (less than 40 days on average) does not take up a lot of prison beds. These "dunk" offenders must be processed, classified and transported the same way another other prison admission would so the dunks while not taking up a lot of prison beds, do take up valuable prison resources in other ways.

Trying to identify populations of possible groups of individuals to possibly reduce prisons admissions and/or restrict the length of time spent in prison generally begins with "low level/non-violent" felonies. Beginning in 2016, a Class D felony category was created and offenders that were convicted of a Class D felony had new restrictions placed on both when incarceration was possible and if it was possible, on the length of the permissible sentence. The State has cut down on prison admissions and length of stay for offenders convicted of Class D felony offenses. The issue of who pays for criminal justice decisions is tangible in Alabama with the fiscal realities of felonies vs misdemeanors. The State pays for prison incarceration and probation and parole services for felony offenders, while the local government pay for all consequences arising from a misdemeanor conviction.

Another special interest population is those offenders convicted of what now constitutes a Presumptive Sentencing Standards but were convicted and sentenced prior to the effective date (October 1, 2013) of the Presumptive Sentencing Standards. This group of offenders that could be eligible for possibly retroactive re-sentencing (not necessarily released however) numbers approximately 400 individuals.

Priorities Moving Forward

Opportunities for further criminal justice reform and improvement in Alabama's felony criminal justice system exist. Recent reforms in the past seven years have yielded significant results targeting restricting use of prison and reducing sentencing lengths for non-violent offenders and creating a framework for a more effective system of community supervision. Now more so than ever, it is imperative that all branches of government, and all entities involved with criminal justice, coordinate funding and policy to ensure full cooperation for the betterment of all Alabamians.

Governor's Study Group on Criminal Justice Policy

Bennet Wright

October 3, 2019

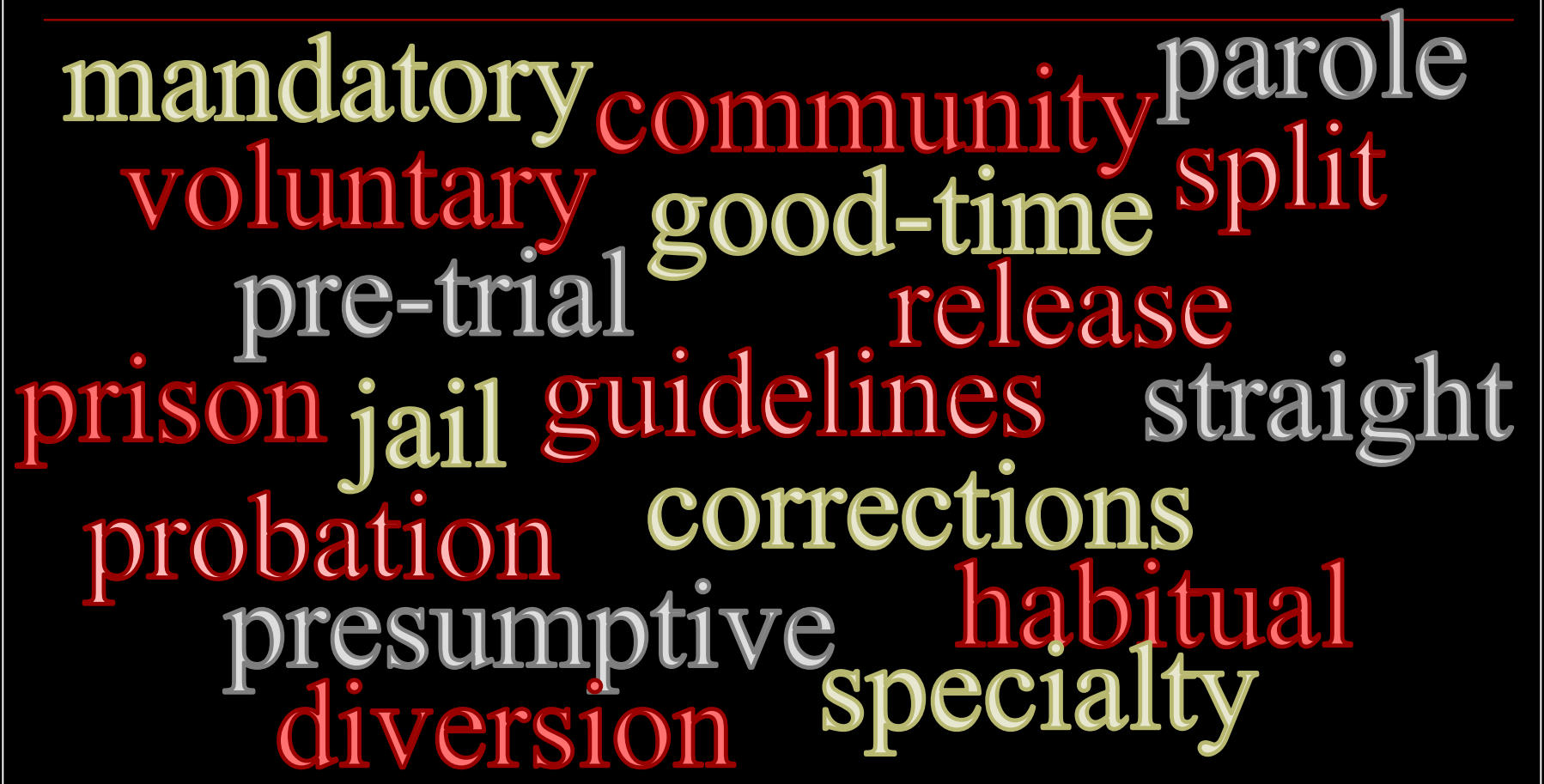
Wise Words

"It is vital that we do not succumb to oversimplifying a complicated process and accepting easy answers. In this complicated area of law, solutions that sound simple are invariably based upon limited information or faulty assumptions."

Joseph A. Colquitt

Retired Circuit Judge and Professor of Law

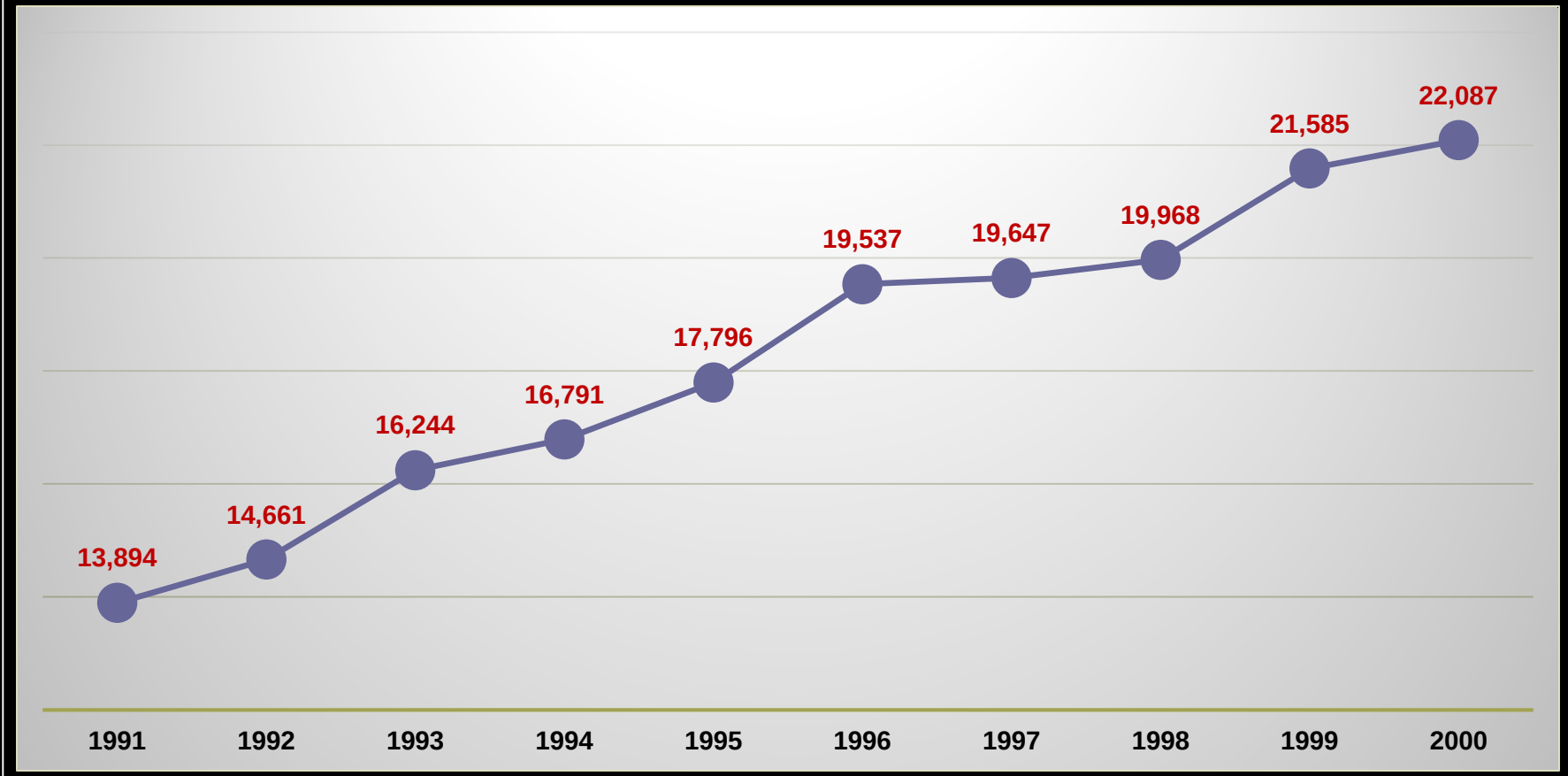
Alabama's Complex System



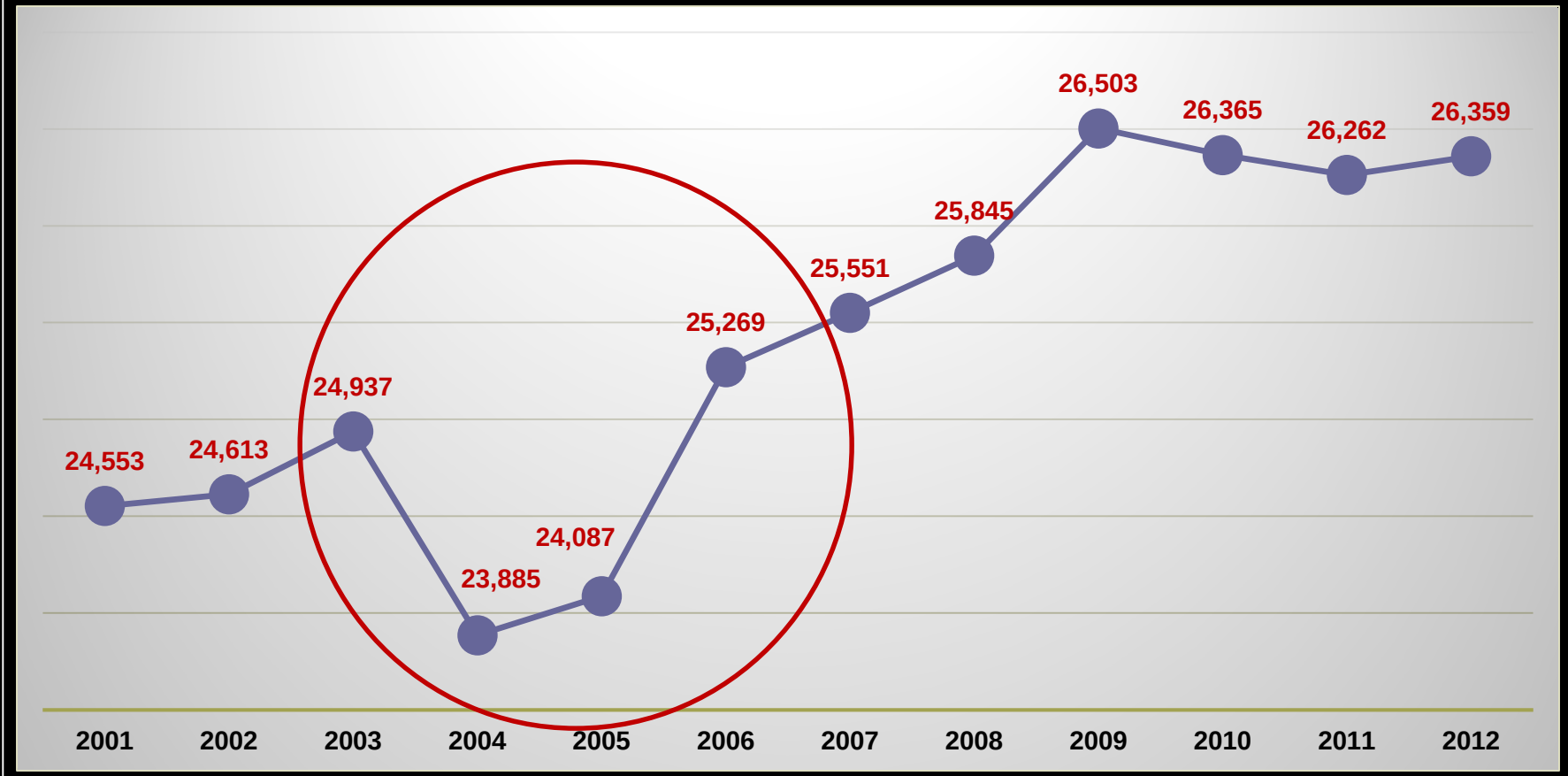
ADOC Population – 1980s

- 1981 6,300
- 1989 12,400

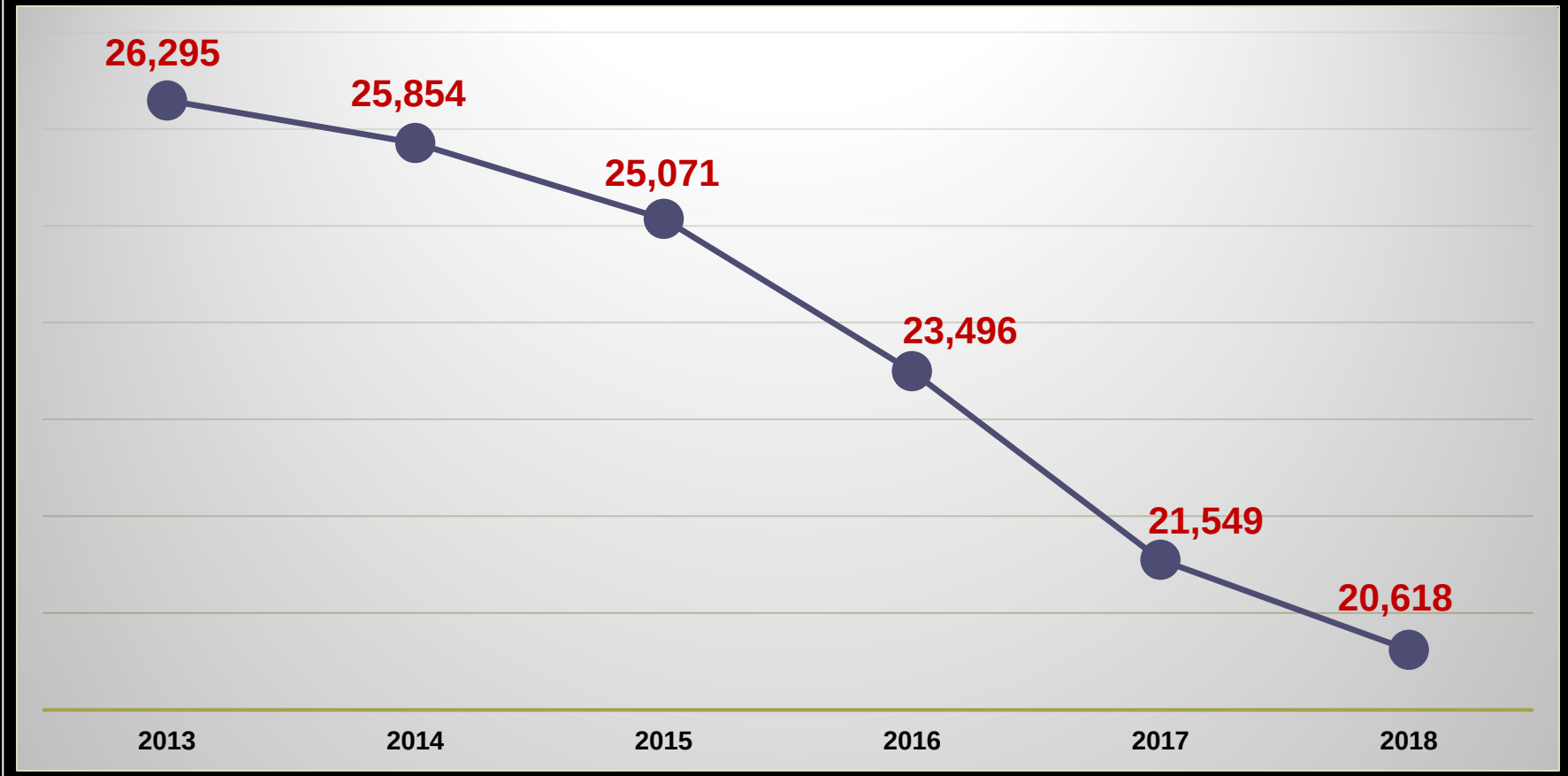
Alabama Prison Population 1991 - 2000



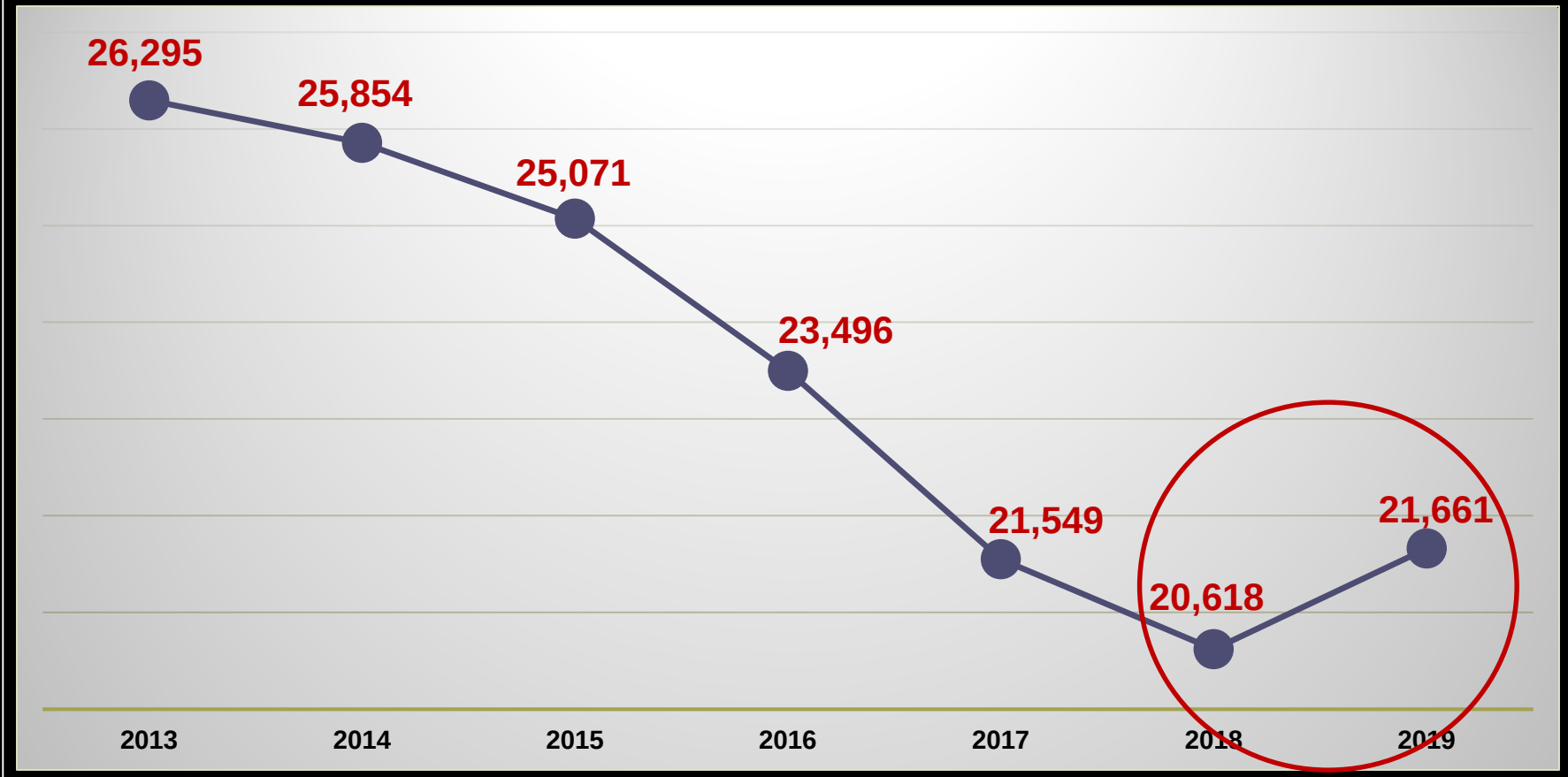
Alabama Prison Population 2001 - 2012



Alabama Prison Population 2013 - 2018



Alabama Prison Population 2013 - 2019

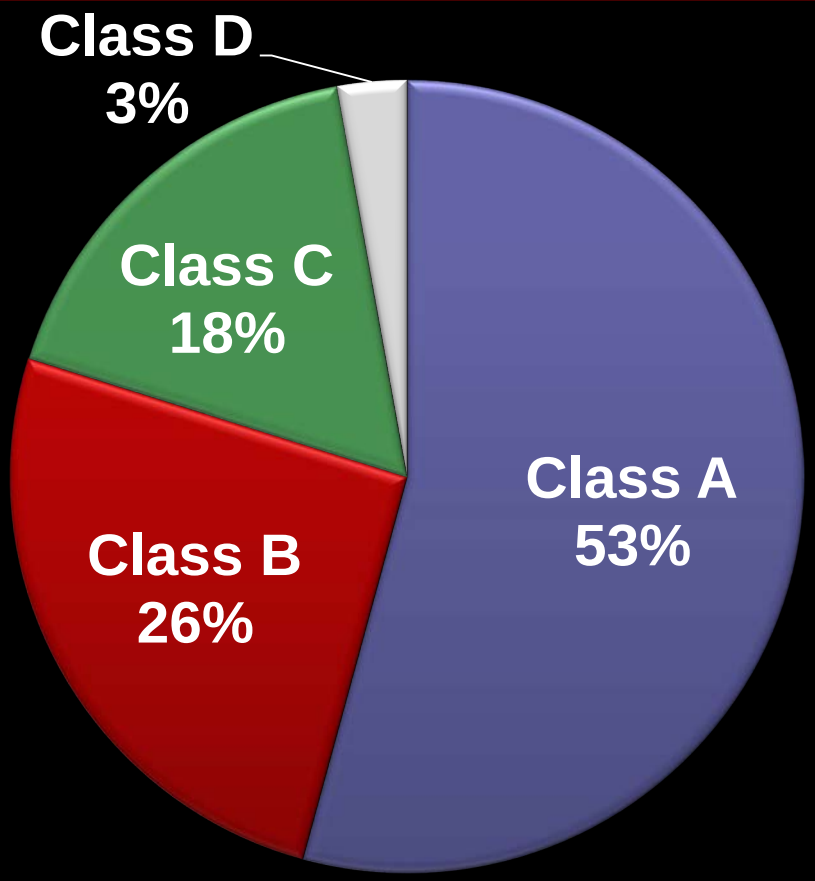


ADOC
Prison Population Composition

ADOC Population - Top 20

Murder	3,284	Unlawful Possession CS (F-D)	536
Robbery 1st	2,591	Trafficking Drugs	501
Rape 1st	1,042	Sodomy 1st	498
Capital Murder	1,005	Assault 1st	454
Distribution of CS	914	Robbery 3rd	391
Burglary 1st	844	Sexual Abuse Child<12	390
Attempted Murder	672	Manufacturing CS 1st	366
Burglary 3rd	672	Receiving Stolen Prop 1st	360
Manslaughter	630	Assault 2nd	340
Theft of Prop 1st	627	Burglary 2nd	298

ADOC Population Felony Class



ADOC Life Without Parole

Non-Capital Offenses	
Murder	240
Robbery 1st	239
Rape 1st	84
Burglary 1st	75
Kidnapping 1st	38
Attempted Murder	34
Sodomy 1st	24
Trafficking Drugs	19
Other Offenses	14

Total LWOP ~1,500

ADOC Life (with Parole)

Murder	1,484
Robbery 1st	297
Rape 1st	278
Burglary 1st	186
Attempted Murder	151
Trafficking Drugs	99
Sodomy 1st	90
Manslaughter	78
Kidnapping 1st	62
Other Offenses	~380

Total Life ~3,100

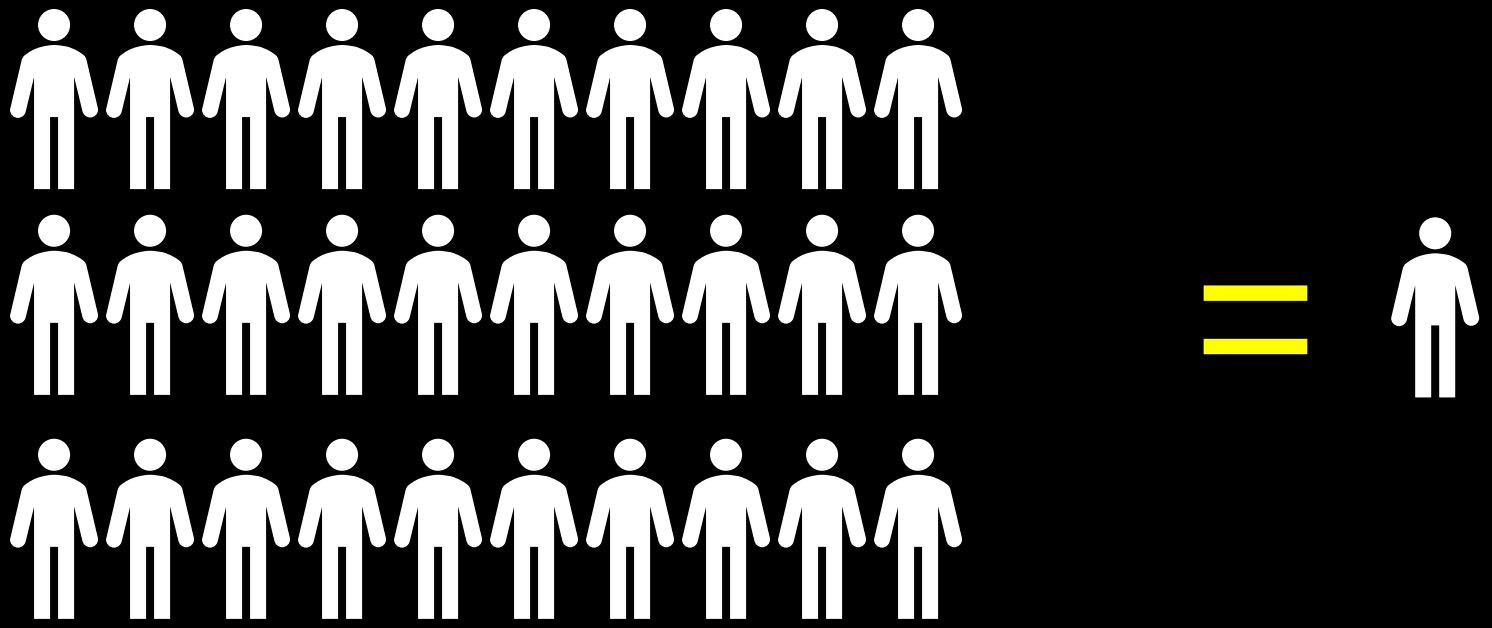
Sentencing & Prison Population

- There are **only** two factors that determine the size of the prison population, but both are nuanced and often controversial
  - The number of people sentenced to prison
  - The length of time served in prison

Policy Decisions - “DUNKS”

- ADOC Custodial Admits 9.4K
- ADOC DUNK Admits 2.8K

30 DUNKS = One 3-year Split



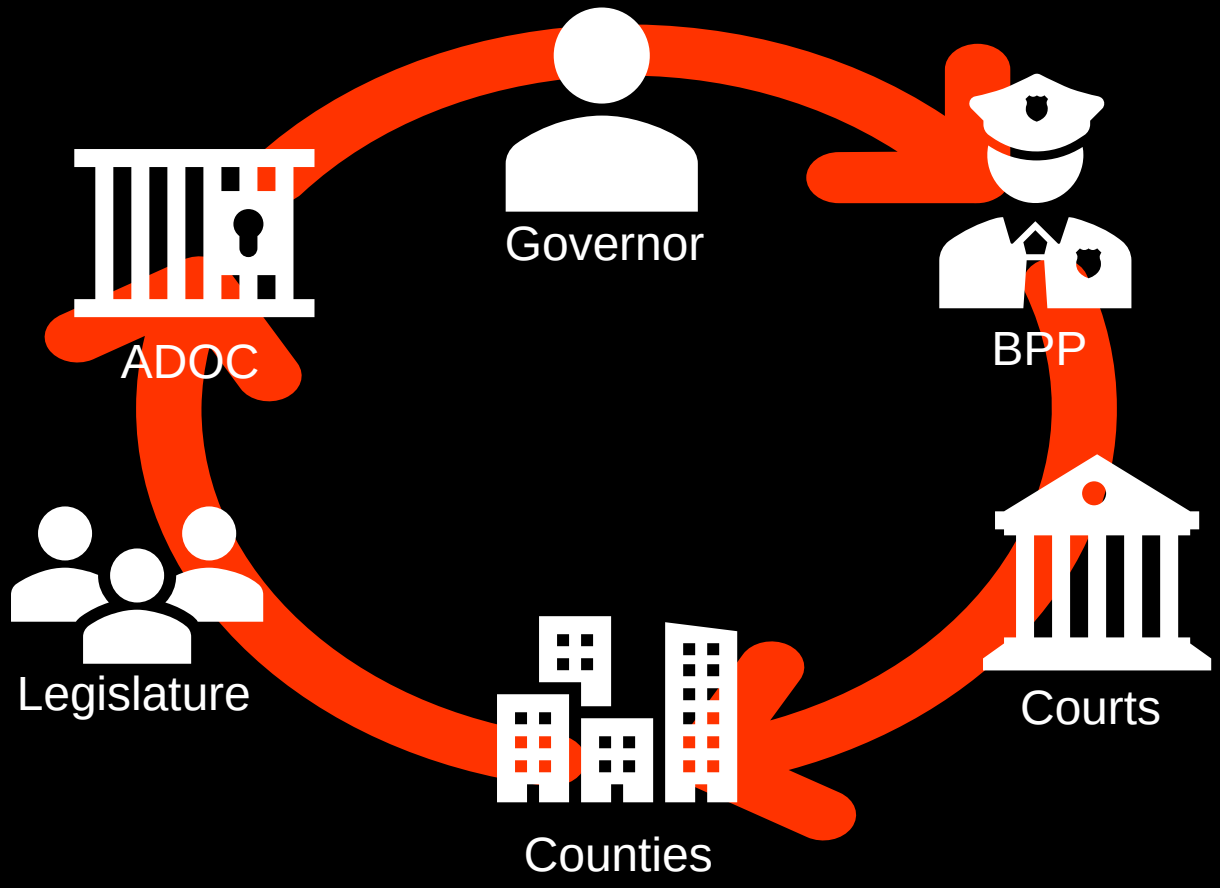
Policy Decisions - Class D Offenses

- Restrictions on Class D sentencing
- Felonies vs. Misdemeanors

Policy Decisions - Retroactivity

- Presumptive Sentencing Standards
- Recent LWOP Decisions

The Emerging Importance of Coordination & Cooperation



The Governor's Study Group on Criminal Justice Policy

Date: November 1, 2019

Time: 2:00 P.M.

Location: Alabama Statehouse Room 200

Chairman

Justice Champ Lyons

Members

Attorney General Steve Marshall	Senator Cam Ward	Representative Jim Hill
Finance Director Kelly Butler	Senator Bobby Singleton	Representative Connie Rowe
Corrections Commissioner Jeff Dunn	Senator Clyde Chambliss	Representative Chris England

Agenda

Call to Order & Welcome ..... Justice Champ Lyons

Pre-Trial Services Introduction ..... Justice Champ Lyons

- Office of Prosecution Services..... Barry Matson
- Circuit Court Judges .....Judge Teresa Pulliam and Judge Phil Seay
- Department of Mental Health .....Commissioner Lynn Beshear

In-Facility Programming and Education Introduction..... Justice Champ Lyons

- Department of Corrections..... Deputy Commissioner Steve Watson
- Ingram State Technical College..... President Annette Funderburk

Reducing Recidivism Strategies Introduction ..... Justice Champ Lyons

- Alabama Board of Pardons and Paroles..... Meridith Barnes
- Alabama Department of Commerce ..... Josh Laney

Next Steps & Adjournment..... Justice Champ Lyons

Meeting Timeline

Time	Description
December 4, 2019	Public Proposal Meeting
January 14, 2020	Final Meeting and Discussion of Findings

Public Meeting Proposal Submission

Each member of the group will be able to submit proposals from groups (private or public) for consideration. All proposals must be submitted to Jonathan Hester (jonathan.hester@governor.alabama.gov) no later than November 8, 2019. Proposals must be submitted in the format below. Sponsored proposals do not have to be fully supported by the sponsoring member, but all proposals must be given to the group by a sitting member of the study group. If you plan to send in multiple proposals, please send them in order of preference. Every attempt will be made to allocate speaking slots equitably within the time constraints of a two-hour meeting and in light of the Study Group's established purposes as set out in Executive Order 718.

Contained in each proposal must be:

Group Name

Speaker

Proposal Topic

Brief Summary (2 – 3 Sentences)

Governor's Study Group on Criminal Justice Policy

November 1, 2019

ADAA

ALABAMA DISTRICT ATTORNEYS ASSOCIATION

DEFERRED PROSECUTION

OFFICE OF PROSECUTION SERVICES
ALABAMA DISTRICT ATTORNEYS ASSOCIATION

Barry Matson

Executive Director

Office of Prosecution Services, OPS

Alabama District Attorneys Association, ADAA

State of Alabama

334 242-4191

barry.matson@alabamada.gov

MORGAN COUNTY ALABAMA


Morgan County Courthouse - Decatur, AL

District Attorney Scott Anderson

- Operates under the statewide statute since 2013.
- 710 participants with 487 successfully completing program.
- 11% recidivism rate (based on subsequent arrest).
- Program includes employment assistance.
- Substance abuse problems are referred to drug court.

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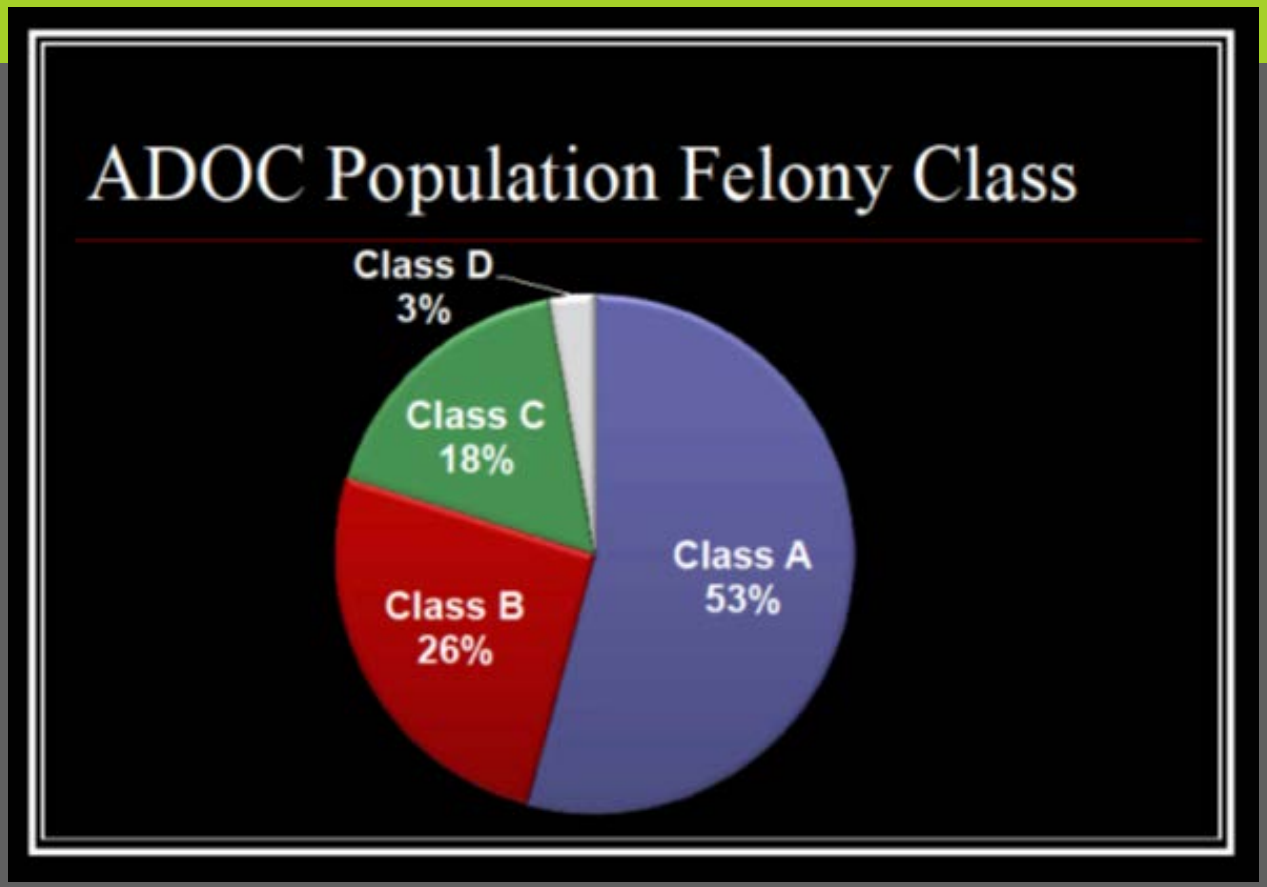
ALABAMA SENTENCING COMMISSION



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RECIDIVISM

Measuring success and failure of pretrial programs.

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

SPECIAL REPORT

MAY 2018 NCJ 250975

2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)

Mariel Alper, Ph.D., and Matthew R. Durose, *BJS Statisticians*
Joshua Markman, *former BJS Statistician*

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RECIDIVISM: A SLIPPERY STATISTIC

- As long as we are considering recidivism rates as a measure of public safety risk, we should also consider how recidivism is defined and measured. While this may sound esoteric, this is an issue that affects an important policy question: at what point — and with what measure — do we consider someone's re-entry a success or failure?
- The term "recidivism" suggests a relapse in behavior, a return to criminal offending. But what is a valid sign of criminal offending: self-reported behavior, arrest, conviction, or incarceration? Defining recidivism as re-arrest casts the widest net and results in the highest rates, but arrest does not suggest conviction, nor actual guilt.
- Other measures include conviction for a new crime, re-incarceration, or a new sentence of imprisonment.
- **We do not measure misdemeanor recidivism in municipal court, arrests for any misdemeanor or felony in state court, technical failures under supervision of pardons and parole or community corrections, out of state arrests or convictions, federal arrests or convictions, custodial violations, or death of subject. Using re-incarceration as the only measure, fails to adequately understand recidivism as it relates to the success or failure of programs and initiatives.**

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NATIONAL INSTITUTE OF JUSTICE, 2018 STUDY

Prosecutor Led Pretrial Diversion

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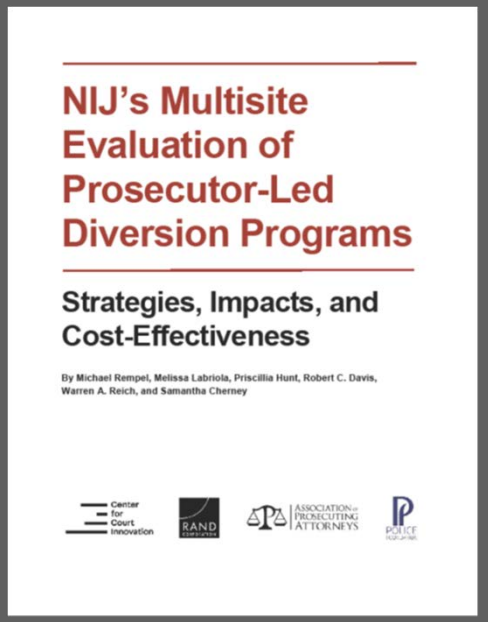
2018 NIJ STUDY

- **Overarching goals of Prosecutor Led Pretrial Diversion:**
  - (1) Reduced Collateral Consequences;
  - (2) Community Engagement;
  - (3) Defendant Accountability;
  - (4) Recidivism Reduction;
  - (5) Give victims and community a roll in outcomes, restitution;
  - (6) Rehabilitation;
  - (7) Restorative Justice; and
  - (8) Administrative Efficiency/Cost Savings.



ALABAMA'S 2013 DEFERRED PROSECUTION LEGISLATION

Providing a statewide framework for pretrial diversion in all 67 counties.

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2013 DEFERRED PROSECUTION LEGISLATION

Legislature adopted an unfunded statewide a mechanism for local district attorneys to adopt a deferred prosecution similar to what many prosecutors had done by local act. 12=17-226.10, Code of Alabama, 1975.

Legislation was broad in an effort to accommodate different jurisdictions and expressly included references to work in conjunction with ongoing drug courts, pretrial diversion programs, and other successful programs.

Legislation also allowed district attorneys to attempt financing of this program through fees and other solicitations for funds.

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2013 DEFERRED PROSECUTION LEGISLATION

- PRETRIAL DIVERSION PROGRAM or PROGRAM. A voluntary option that allows an offender, upon advice of counsel or where counsel is waived in a judicial process, to knowingly agree to the imposition by the district attorney of certain conditions of behavior and conduct for a specified period of time upon the offender which would allow the offender to have his or her charges reduced, dismissed without prejudice, or otherwise mitigated, should all conditions be satisfied during the time frame set by the district attorney as provided in the agreement.

2013 DEFERRED PROSECUTION LEGISLATION

- **Section 12-17-226.1**
- **Authorization to establish program; discretionary powers; supervision and control; intervention plans.**
- (a) The district attorney of any judicial circuit of this state may establish a pretrial diversion program within that judicial circuit or any county within that judicial circuit.
- (b) All discretionary powers endowed by the common law, provided for by statute and acts of this state, or otherwise provided by law for the district attorneys of this state shall be retained.
- (c) A county pretrial diversion program established under subsection (a) shall be under the direct supervision and control of the district attorney. The district attorney may contract with any agency, person, or corporation, including, but not limited to, certified and judicially sanctioned community corrections programs, certified mental health and drug treatment programs, family service programs, or any certified not-for-profit programs for services related to this division. The district attorney may employ persons necessary to accomplish the purposes of this division, who shall serve at the pleasure of the district attorney.
- (d) The pretrial diversion program should utilize individual and realistic intervention plans which feature achievable goals. Any plan formulated shall occur as soon as possible after enrollment by the offender and shall be reduced to writing.
- (e) This division shall not apply to juvenile delinquency proceedings in juvenile court.

2013 DEFERRED PROSECUTION LEGISLATION

Section 12-17-226.6

- **Acceptance into program; termination from program; completion of program; Restorative Justice Initiative; violations of terms or conditions.**

  - (b)(1) Upon acceptance of an offender into the program by the district attorney, the district attorney shall submit the written application of the offender, together with a statement of fact of the offense, and the agreement of the offender and the district attorney, to a court of competent jurisdiction presiding over the affected case for approval.

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DEFERRED PROSECUTION DATABASE: (STATE AND MUNICIPAL)

PARTNERSHIPS ACROSS ALABAMA

Working cooperatively with state, local agencies, non-profits and federal partners.

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PARTNERSHIPS ACROSS ALABAMA

- **Availability of resources across Alabama vary.**
  - What is available in Jefferson, St. Clair, Madison Counties are not available in Butler, Crenshaw, Calhoun and Morgan Counties.
  - Example of Diversion partners include; faith based rehabilitation, 501 not-for-profit rehabilitation organizations, regional mental health care, community corrections, CRO, specialty courts, job training, educational institutions, community action agencies, and family services.

ALABAMA DEPARTMENT OF VETERANS AFFAIRS

VETERANS TREATMENT COURTS

The Veterans Treatment Court (VTC) mission is to divert veterans, who meet strict requirements, from the traditional criminal justice system and provide them with tools to lead a productive and law-abiding life. Veterans in the program must attend regular court status conferences, participate in the development of their treatment plans, and engage in community groups as required.

VTCs are hybrid drug and mental health courts that help veterans struggling with addiction, serious mental illness or other disorders. Studies show that such courts enhance public safety, cut recidivism and are more cost effective than the typical manner of processing offenders.

Stressful combat duty does not necessarily end for veterans after they return home. Many return with post-traumatic stress syndrome or other mental health issues. Additionally, drug or alcohol abuse may be caused or aggravated by their military service. The U.S. Department of Justice estimates that approximately 10 percent of adults arrested have served in the military.

Veterans are offered the opportunity to participate in the court on a voluntary basis. Veterans who choose to participate are assessed by a mental health professional and their treatment needs are determined. The veteran will then have his or her charges deferred pending successful completion of the treatment plan, at which time the charges will be dismissed.

Research shows that treatment court judges are motivators who provide ongoing encouragement to participants as they undertake the difficult work of recovery. VTCs also link veterans with services, benefits and program providers, including the VA, Veterans Service Organizations and volunteer veteran mentors.

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ALABAMA DEPARTMENT OF VETERANS AFFAIRS

VETERANS TREATMENT COURTS

Who is Eligible?

Varies by court, but may include:

- Active Service, Prior Service, and Military Retirees
- National Guard and Reserves
- War-time and Peace-time Service
- All Discharges despite Character of Service

Veteran Treatment Courts (VTCs) were developed to avoid unnecessary incarceration of veterans with mental health and/or substance abuse problems. In the program, veterans may receive medical and mental health treatment, training and help with finding a job, as well as housing and transportation assistance. Veterans who successfully complete the program will have the charges against them dismissed and may be eligible to have their records expunged. Read more

Transfers of Cases

If your court does not have a VTC, you may request the court to transfer your case to a nearby court which has a VTC. If both courts agree, your case may be transferred.

Veterans Court Guide

For detailed information designed for legal personnel, especially court personnel, please see the State Bar Veterans Court Guide (2014)

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THANK YOU!

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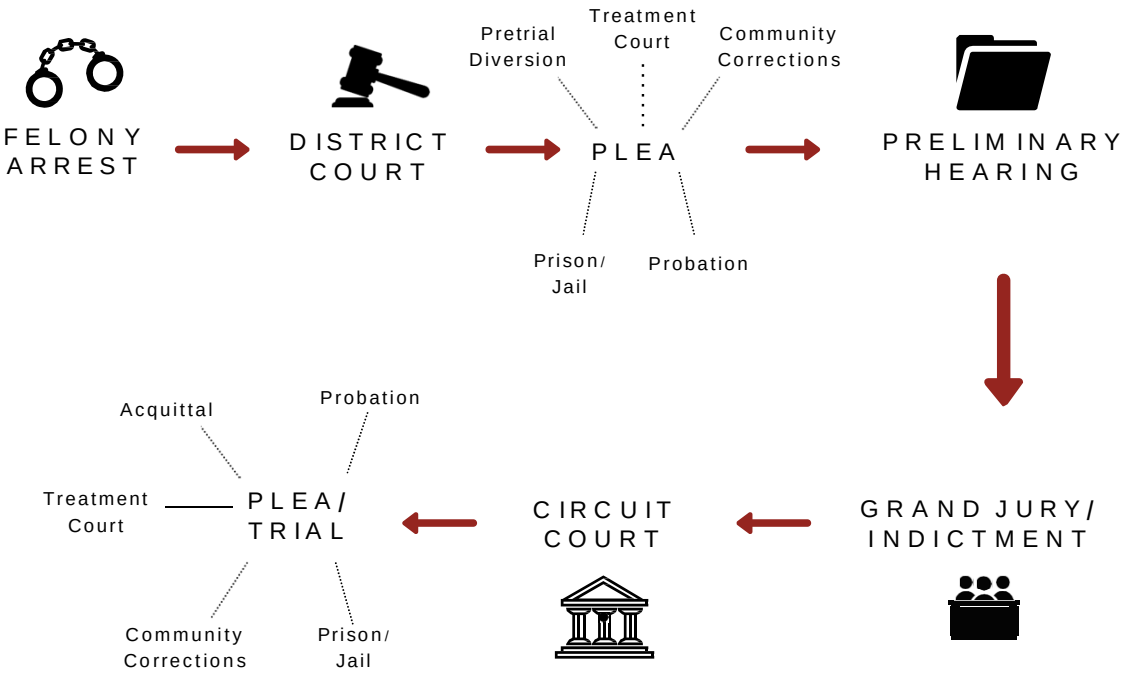
Governor's Study Group on Criminal Justice Policy

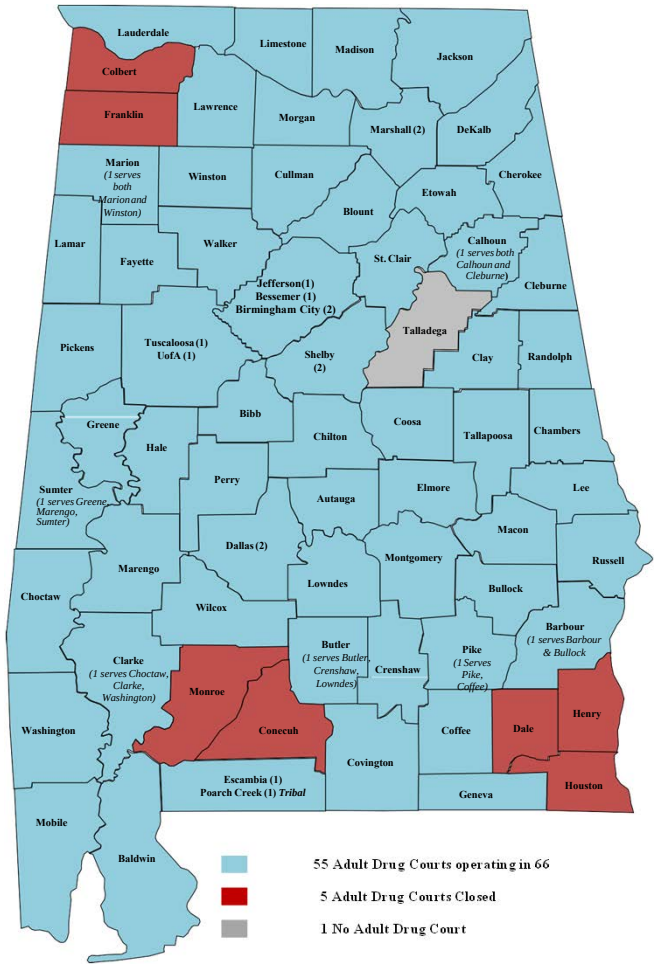
November 1, 2019

Alternative Courts

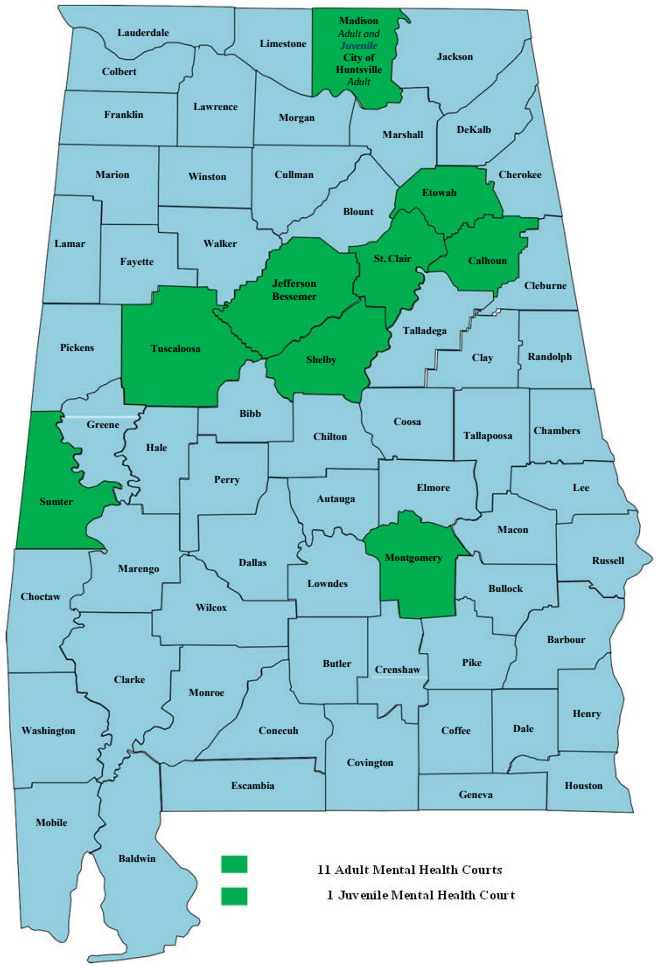
Judge Teresa Pulliam
Judge Phil Seay

November 1, 2019


FELONY ARREST
DISTRICT COURT
Pretrial Diversion
Treatment Court
Community Corrections
PLEA
Prison/ Jail
Probation
PRELIMINARY HEARING
GRAND JURY/ INDICTMENT
CIRCUIT COURT
PLEA/ TRIAL
Acquittal
Probation
Treatment Court
Community Corrections
Prison/ Jail

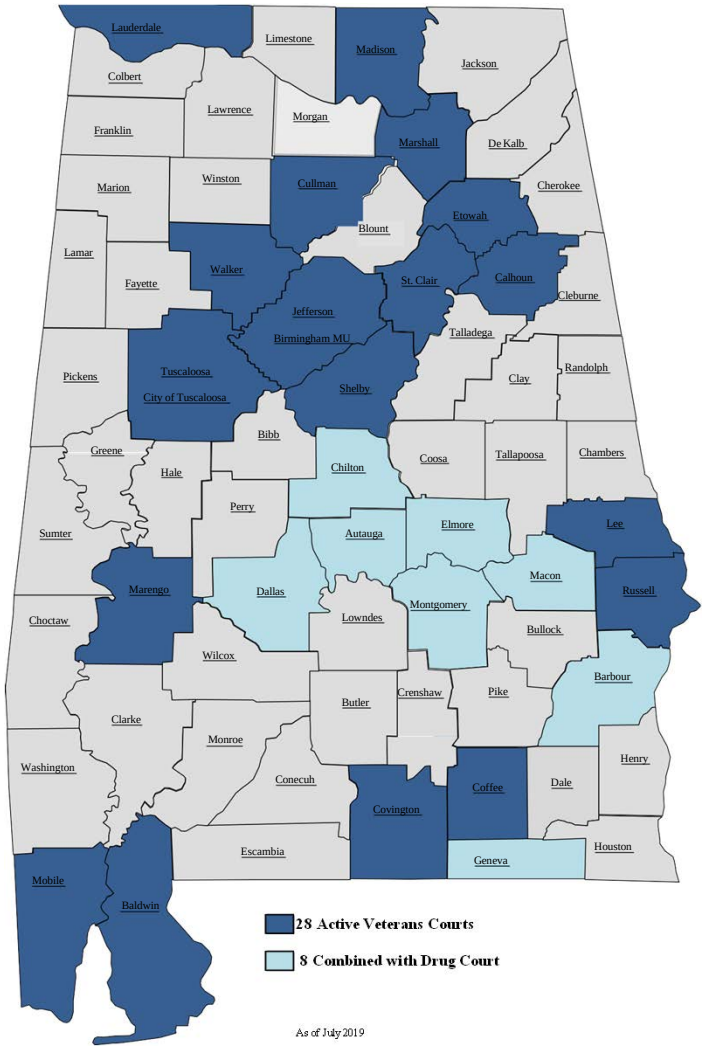

Lauderdale
Limestone
Madison
Jackson
Colbert
Franklin
Lawrence
Morgan
Marshall (2)
DeKalb
Marion
(1 serves both Marion and Winston)
Winston
Cullman
Etowah
Cherokee
Blount
Lamar
Walker
Calhoun
(1 serves both Calhoun and Cleburne)
Fayette
St. Clair
Jefferson(1)
Bessemer (1)
Birmingham City (2)
Cleburne
Talladega
Pickens
Tuscaloosa (1)
UofA (1)
Shelby
(2)
Clay
Randolph
Bibb
Coosa
Greene
Chilton
Tallapoosa
Chambers
Hale
Perry
Sumter
(1 serves Greene, Marengo, Sumter)
Autauga
Elmore
Lee
Macon
Dallas (2)
Montgomery
Russell
Marengo
Lowndes
Bullock
Choctaw
Wilcox
Barbour
(1 serves Barbour & Bullock
Butler
(1 serves Butler, Crenshaw, Lowndes)
Pike
(1 Serves Pike, Coffee)
Crenshaw
Clarke
(1 serves Choctaw, Clarke, Washington)
Monroe
Henry
Washington
Conecuh
Coffee
Dale
Covington
Escambia (1)
Poarch Creek (1) Tribal
Geneva
Houston
Mobile
Baldwin
55 Adult Drug Courts operating in 66
5 Adult Drug Courts Closed
1 No Adult Drug Court

May 2018


Lauderdale
Limestone
Madison
Adult and Juvenile
City of Huntsville
Adult
Jackson
Colbert
Franklin
Lawrence
Morgan
Marshall
DeKalb
Marion
Winston
Cullman
Cherokee
Etowah
Blount
Lamar
Fayette
Walker
St. Clair
Calhoun
Jefferson
Bessemer
Cleburne
Talladega
Pickens
Tuscaloosa
Shelby
Clay
Randolph
Bibb
Coosa
Greene
Hale
Chilton
Tallapoosa
Chambers
Perry
Elmore
Lee
Sumter
Autauga
Macon
Montgomery
Russell
Marengo
Dallas
Lowndes
Bullock
Choctaw
Wilcox
Barbour
Butler
Crenshaw
Pike
Clarke
Monroe
Henry
Washington
Conecuh
Coffee
Dale
Covington
Escambia
Geneva
Houston
Mobile
Baldwin
11 Adult Mental Health Courts
1 Juvenile Mental Health Court

July 2, 2018

AOC -Veterans Courts



Governor's Study Group on Criminal Justice Policy

November 1, 2019

Stepping Up Alabama: Overview

Governor's Criminal Justice Study Group

Commissioner Lynn Beshear

November 1, 2019

THE STEPPING UP INITIATIVE

Introduction

- According to national statistics
  - 11 million people admitted to jail annually
  - Approximately 2 million people have serious mental illness (SMI)
- Mentally ill individuals are overrepresented in our jails
  - Individuals with SMI make up 5% of the general population and 17% of the jail population
  - 72% of inmates with SMI also have substance addiction
- These inmates tend to have longer stays in jail and upon release have limited access to healthcare resulting in higher recidivism rates

THE STEPPING UP INITIATIVE

Stepping Up Initiative

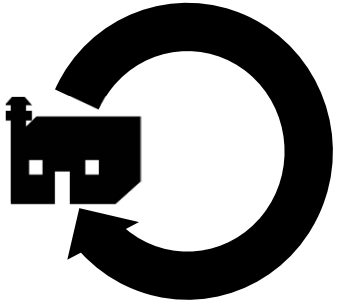
- Launched in 2015 as a partnership of:
  - National Association of Counties
  - Council of State Governments Justice Center
  - American Psychiatric Association Foundation
- Goal to reduce the number of people who have mental illness in jails
- Utilizes a data-driven, multi-sector approach to reduce the number of individuals in jail, involving:
  - Behavioral Health
  - Law Enforcement
  - Courts
  - Probation

Key Measures of Success

1. Reduce the number of people who have mental illnesses booked into jails

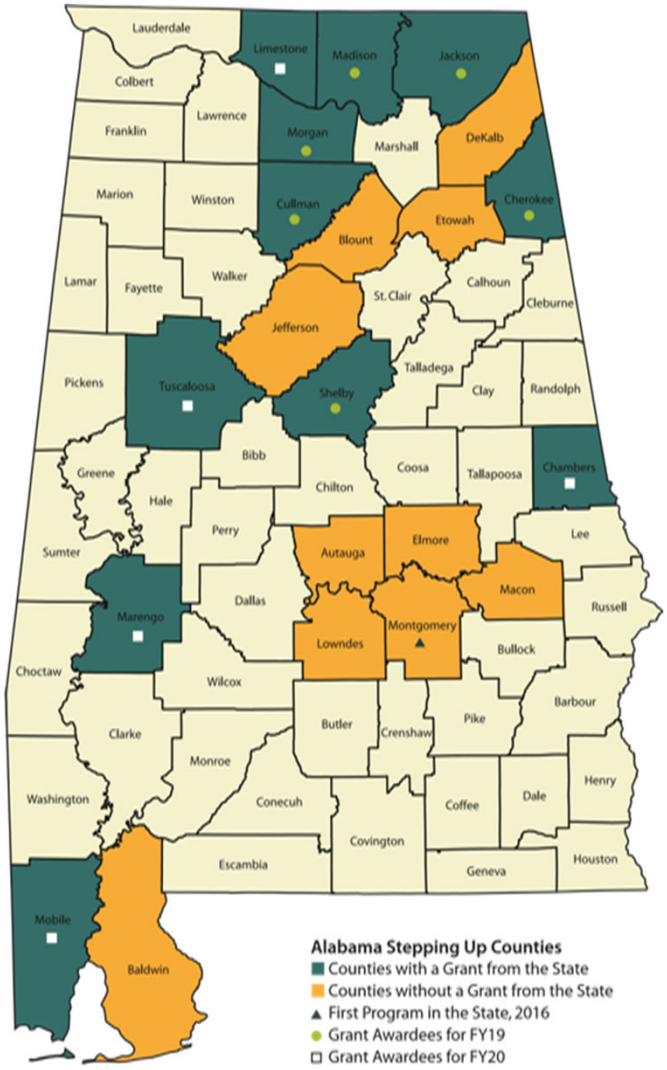
2. Shorten the length of stay in jails for people who have mental illnesses

3. Increase connection to treatment for people who have mental illnesses



4. Reduce recidivism rates for people who have mental illnesses

THE STEPPING UP INITIATIVE



Stepping Up: National & Local

More than 500 counties in 43 states have passed the Stepping Up Resolution or Proclamation to join the Stepping Up Initiative.

In Alabama 21 of the 67 counties have passed this same resolution or proclamation.

Implementing Stepping Up Alabama

- First-person experience and intimate knowledge also influenced the *UNIQUE* addition to Stepping up Alabama to serve populations in both *JAILS* and *EMERGENCY ROOMS*
- May 2018: ADMH contracted with The Dannon Project to provide Training & Technical Assistance and Evaluation Support
- June 2018: ADMH released an RFP for community health centers to apply for a ONE-TIME award of up to $50,000
- Oct. 2018 – Sept. 2019 (Year 1): 6 sites were funded
- Oct. 2019 – Sept. 2020 (Year 2): 5 sites were funded

THE STEPPING UP INITIATIVE

Stepping Up Alabama – Year 1

2018-2019 6 Funded Sites:

1. Etowah-Dekalb-Cherokee (CED) Mental Health Board, Inc. – Cherokee County, AL
2. Mental Health Board of Chilton and Shelby Counties – Shelby County, AL
3. Mountain Lakes Behavioral Healthcare – Jackson County, AL
4. Mental Health Center of North Central Alabama – Morgan County, AL
5. Wellstone, Inc. – Cullman County, AL
6. Wellstone, Inc. – Madison County, AL

THE STEPPING UP INITIATIVE

Stepping Up Alabama – Year 2

2019-2020 Funded Sites:

1. AltaPointe Health, Inc – Mobile, AL
2. East Alabama Mental Health Center– Chambers County, AL
3. Indian Rivers Behavioral Health – Tuscaloosa County, AL
4. Mental Health Center of North Central Alabama – Limestone County, AL
5. West Alabama Mental Health Center – Marengo County, AL

THE STEPPING UP INITIATIVE

Required Program Elements

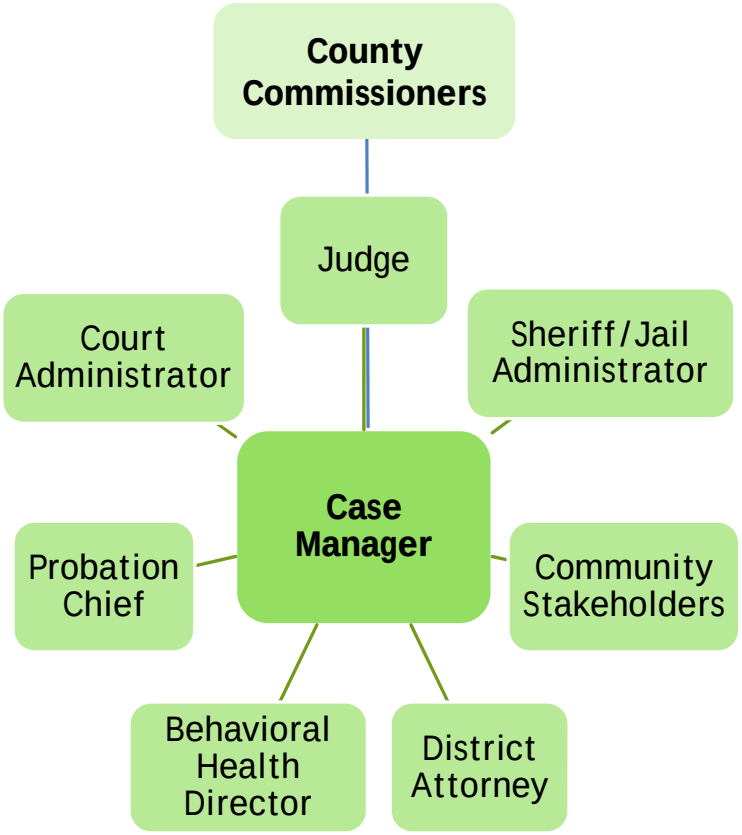
Policy Level

- Pass a County-level Stepping Up Proclamation
- Submit MOUs from identified community partners
- Convene and facilitate a strong planning committee that includes membership from various sectors
- Develop referral system with local jail and emergency rooms

Individual Level

- Provide Case management
- Present Crucial Conversations to local community members
- Conduct Stepping Up “Month of Action” activities

THE STEPPING UP INITIATIVE



Engaging Policy Makers: Planning Committee

- Engage a program "Champion" with strong political and social influence
- Engage decision-makers who are the key in each stakeholder group to programmatic success
- Case Manager and Program Coordinator develop relationships and facilitate regular group meetings
- Outcome is to identify gaps in the system and opportunities to create a continuum of care

THE STEPPING UP INITIATIVE

Engaging Clients from Jail & ER

- Clients can be served by Stepping Up Case Management at various stages with Law Enforcement
  - Initial Contact
  - Arrest
  - Jail-Based
  - Court-Based
  - Prison-Based
  - Probation
  - Parole
- Clients are served upon release from their ER or Inpatient Psychiatric visit

THE STEPPING UP INITIATIVE

Preliminary Year 1 Outcomes

- Over 2,000 individuals were screened by Stepping Up, over 1,500 screened positive for serious mental illness (SMI)
  - 73% of inmates screened positive
  - 53% of ER patients screened positive
- Over 150 individuals received case management services
- Received almost 4 times more jail referrals than ER referrals into Stepping Up
- 80% of individuals who received case management services also received mental health treatment
- 10% of those who screened positive for SMI were re-arrested

THE STEPPING UP INITIATIVE

Program Successes

- Developing strong collaborations among previously siloed agencies
- Brokering strong relationships between jails, hospitals, mental health centers and other community resources
- Identifying sources of funding for sustainability
- Garnering media attention around the issue
- Increasing community awareness and education through media exposure and hosting seven Crucial Conversations
- Developing relationships with jails to improve data management systems
- Utilization of data for decision making among key stakeholders

THE STEPPING UP INITIATIVE

Barriers to Success

- Strain placed on county jails due to
  - Varied Staff Levels
  - Inconsistent Systems for Data Management
  - Space and security issues for conducting assessments/screenings
  - Environment (lawsuits, medical contracts vs mental health services, medication management)
- Misperceptions about data sharing across agencies
- Maintaining established relationships after administration changes
- Lack of financial resources to support case management in jail

THE STEPPING UP INITIATIVE

Lessons Learned

- Need for crisis stabilization – 24/7 crisis stabilization units as Mental Health Centers are not open 24 hours a day
- The importance of collaboration to avoid redundancies and identify gaps and create an efficient system to divert the mentally ill from jails and emergency rooms
- Need for consistency with data management systems
- Availability of people in the community willing to work collaboratively when given the opportunity

THE STEPPING UP INITIATIVE

Moving Forward

- For $350,000 in Year One, ADMH was able to touch over 2,000 individuals and create sustainable change in at least three counties
- Two of the Year 1 sites applied for and will receive Innovator Status
- The Dannon Project will provide continued Training and Technical Assistance (T/TA) and Evaluation Services to 3 of Year 1 sites
- In Year 2, 5 new sites will receive T/TA and Evaluation Services
- A user-friendly tracking system has been developed to improve Stepping Up data collection and management in real-time
- Sites and stakeholders will be coached on best methods for collecting baseline recidivism data so cost-benefit analysis can be conducted

THE STEPPING UP INITIATIVE

thank you

- Lynn T. Beshear. Commissioner
- Alabama Department of Mental Health (ADMH)
- Telephone - (334) 242-3640
- Email – Lynn.Beshear@mh.alabama.gov

THE STEPPING UP INITIATIVE

Questions and Answers

THE STEPPINGUP INITIATIVE

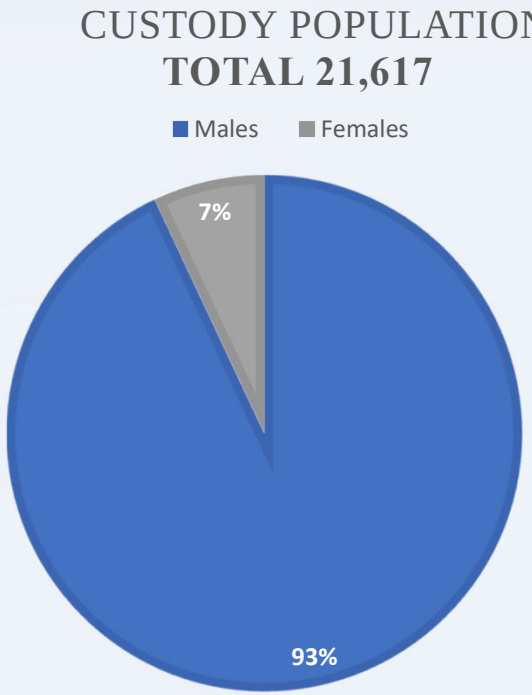
Governor's Study Group on Criminal Justice Policy

November 1, 2019

ADOC Mission Statement

Dedicated professionals providing public safety through the safe and secure confinement, ***rehabilitation, and successful re-entry of offenders.***

ADOC Population



**Data as of August 31, 2019*

WS(1

Alabama Department of Corrections

Daily Intake

Kilby Receiving and Classification Center (Male)
Receive 43 inmates daily, 8 of which are "Dunks"

Julia Tutwiler Prison for Women
9 Daily Intakes, 3 of which are "Dunks"

Dunk- intermediate sanction for parolee or probationer technical violation- up to 45 days

"Melting Pot"

- Age
- Socio-Economic Status
- History of Addiction
- Mental Health Disorders
- Past Trauma
- Co-Occurring Substance Abuse/Mental Health
- First Offenders/Repeat Offenders
- Lack of Family or other Support System
- Educational Attainment
- Issues with Employment/Employability
- Issues with Basic Life Skills/Cognitive

Education attainment- 10th grade average (self report)

ADOC Releases

Per Code of Alabama- At release, the ADOC provides:

- ✓ $10
- ✓ Bus fare to County of Sentence
- ✓ Suit of Clothes

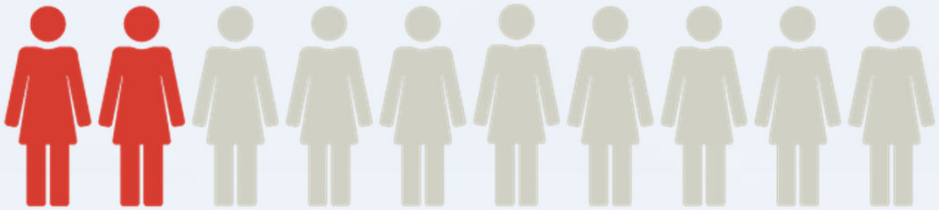
Challenges released inmates must overcome

- Housing/Transitional Housing
- Job/Employment and lack of educational credentialing/attainment
- Pending legal issues/warrants and court-ordered payments
- Medical and Mental Health Conditions
- Identification- Driver's license/ Social Security card/ Birth Certificate
- Transportation
- Child care
- Aftercare for substance abuse/addictions
- "The world has changed since I came in" for inmates who have served longer sentences

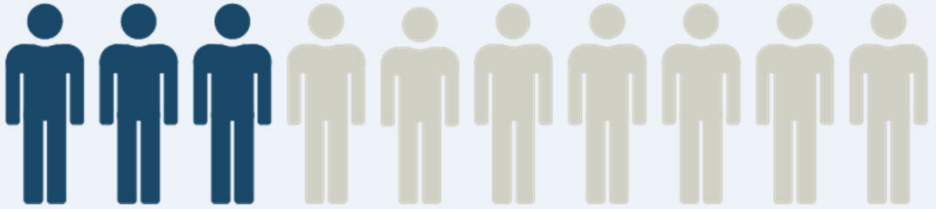
Recidivism

Overall- 29.39 %

Recidivism – an inmate who returns to the ADOC prison system within 3 years of release from an ADOC prison.



Females – 20.66%



Males – 30.78%

Alabama Department of Corrections

Preparing Inmates for Release

ADOC

- Work Release Program
- Limestone Pre-Release Program
- Institutional Pre-Release Programs
- Alabama Correctional Industries (ACI)
- Apprenticeship Program (Coming Soon)

Collaboration Programs

- College Partnerships
  - Career Technical Education
  - GED Programs
  - Adult Basic Education Programs
  - Soft skills
- Alabama Therapeutic Education Facility (ATEF)
- Lifelink CORE (Community/Opportunity/Restoration/Education)
- Jumpstart-Alabama
- Religious Volunteer Programs

Alabama Department of Corrections

ADOC Strategic Plan

PROGRAMMING

cu**L**TURE

st**A**FFING

I**N**FRASTRUCTURE

Professionalism – Integrity – Accountability

Alabama Department of Corrections

Male Inmate Pilot Risk Reduction Plan

2019 - 2022

Staton and Elmore Correctional Facility

Women's Services Strategic Plan

2019 - 2022

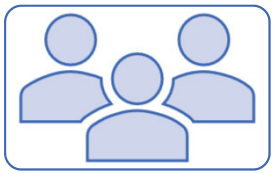
Working with National Institute of Corrections (NIC) and The Moss Group, Inc.

Begin with the End in Mind…

- Targeting specific criminogenic patterns which research has shown contribute to recidivism
- Improved staff and inmate safety
- Increased community safety
- Reduced recidivism rates
- More opportunities for positive offender change/rehabilitation

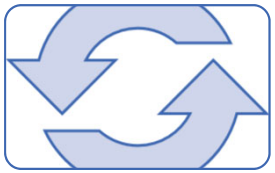
Alabama Department of Corrections

How Do We Get There?

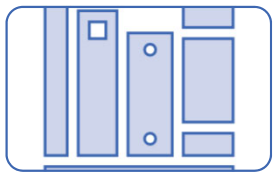


Goal one: Create an environment supportive of positive offender change and rehabilitation.

Goal two: Implement a validated risk and need assessment tools to inform case management and plan.



Goal three: Implement and utilize assessment-driven, ongoing case management to connect inmates to programs and services.



Goal four: Implement research-based programs and activities to promote safe facility operations, successful reentry, and risk reduction.

Male Inmate Pilot Risk Reduction Plan/Women's Services Strategic Plan

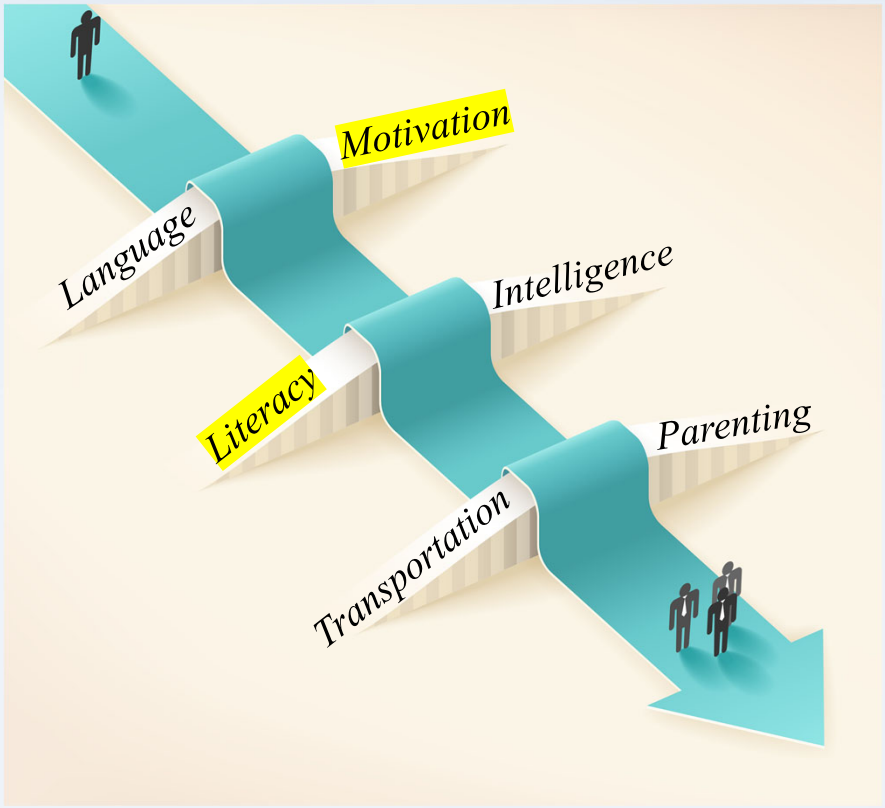
Risk and Needs Principles

- Reserve most intensive correctional intervention for high-risk and moderate individuals.
- Target dynamic criminogenic needs
- Antisocial attitudes, values, and beliefs
- Antisocial associates
- Antisocial personality characteristics
- **Education/employment**
- Family and relationship circumstances
- Substance abuse/Mental Health
- Pro-social leisure and recreational pursuits

Male Inmate Pilot Risk Reduction Plan/Women's Services Strategic Plan

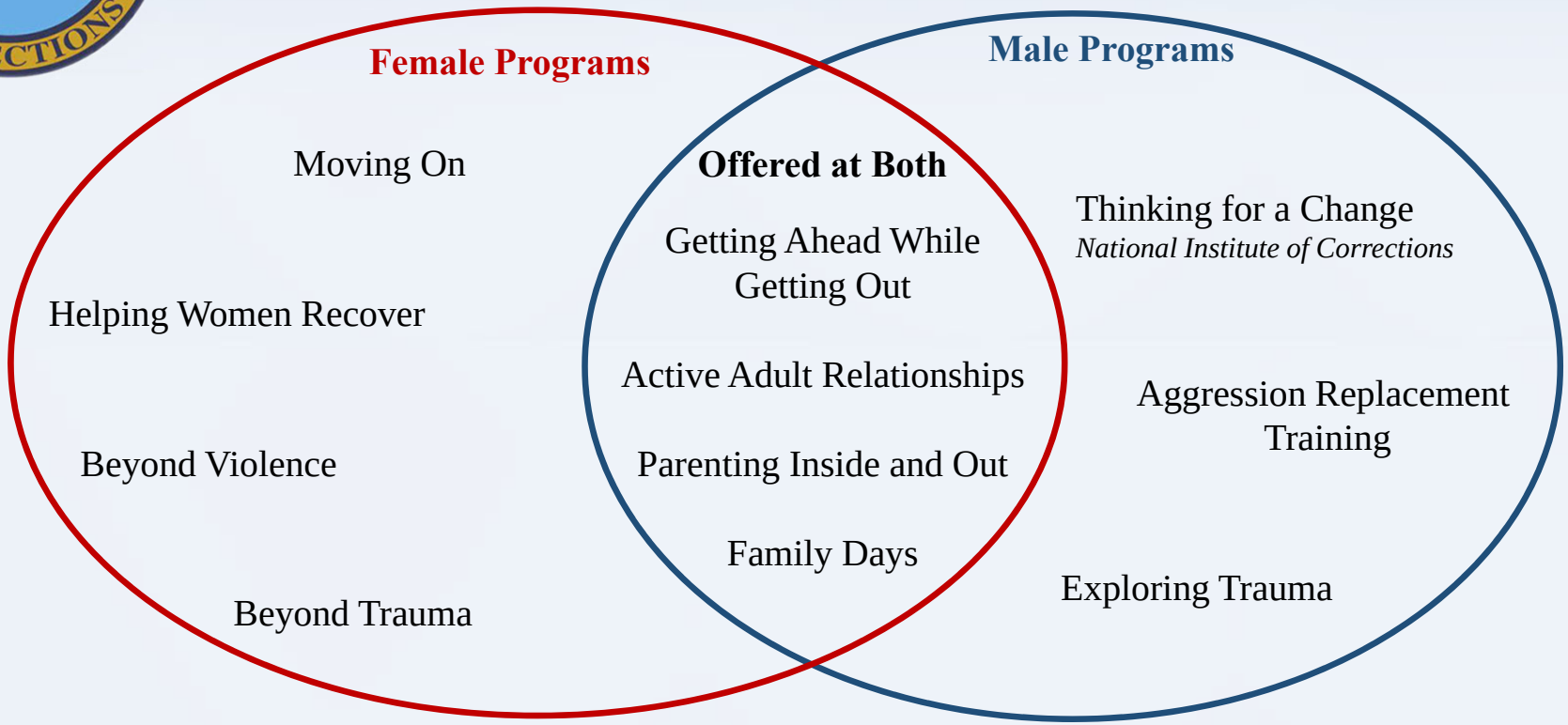
Offender Barriers

Customize interventions to address an individual's responsivity factors or barriers to success.



Alabama Department of Corrections

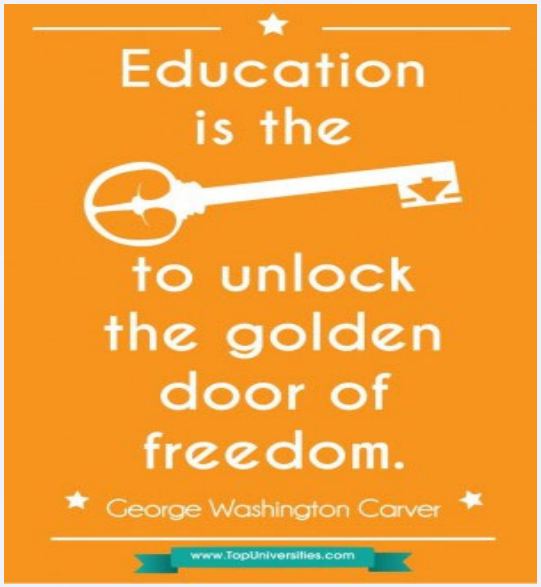
Current/Upcoming Programs



Challenges faced by ADOC and stakeholders during implementation

- Shortage of security staff
- Classroom space for inmate students and office space for staff
- Insufficient number of program facilitator staff
- Incentive for effective participation by inmate population
- Insufficient Inmate Management System (IT) for data analysis

Alabama Department of Corrections



The Department of Education estimates that **60%** of the unemployed lack the basic skills necessary to be trained for high-tech jobs.

In collaboration with our Education partners, the ADOC is committed to advancing literacy, credentials, and career-readiness for our inmate population

Alabama Community College System
Correctional Education Data Report

Presented by

Annette Funderburk, President

Ingram State Technical College

November 1, 2019


INGRAM STATE

Incarcerated Population Overview
2014-15 through 2018-19
Enrollment by College

	14-15	15-16	16-17	17-18	18-19
Coastal Alabama Community College	247	318	355	348	257
Gadsden State Community College	96	87	94	98	83
Wallace Community College—Dothan	228	185	184	176	204
JF Ingram State Technical College	864	849	764	727	806
John C. Calhoun Community College	398	445	464	359	297
GRAND TOTAL	**1,833**	**1,884**	**1,861**	**1,708**	**1,647**

Prepared by the ACCS Office of Organizational Effectiveness

Source: Data extracted from the DAX STU and SPECPOP tables 9/26/19 by Kelly Birchfield

Note: All students had a special population code indicating they were incarcerated at leas one semester during the academic year.

Incarcerated Population Overview
2014-15 through 2018-19
Awards Conferred by College*

	14-15	15-16	16-17	17-18	18-19
Coastal Alabama Community College	0	0	0	81	62
Gadsden State Community College	41	39	23	38	62
Wallace Community College—Dothan	120	102	133	92	90
JF Ingram State Technical College	629	928	713	773	856
John C. Calhoun Community College	137	172	131	92	111
GRAND TOTAL	**927**	**1,241**	**1,000**	**1,076**	**1,181**

*Includes short and long certificates, AAS, AAT and AS degrees

Prepared by the ACCS Office of Organizational Effectiveness

Source: Data extracted from the DAX STU and SPECPOP tables 9/26/19 by Kelly Birchfield

Note: All students had a special population code indicating they were incarcerated at leas one semester during the academic year or received an award from the same institution in which they were previously enrolled and coded as incarcerated, even if they were not enrolled during the year the award was conferred. In some cases, awards are granted in terms after the student has completed program matriculation.

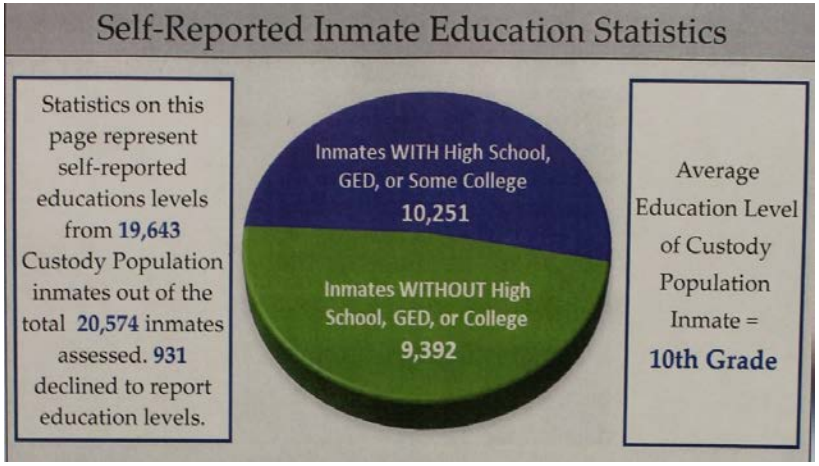
Adult Education Enrollment*

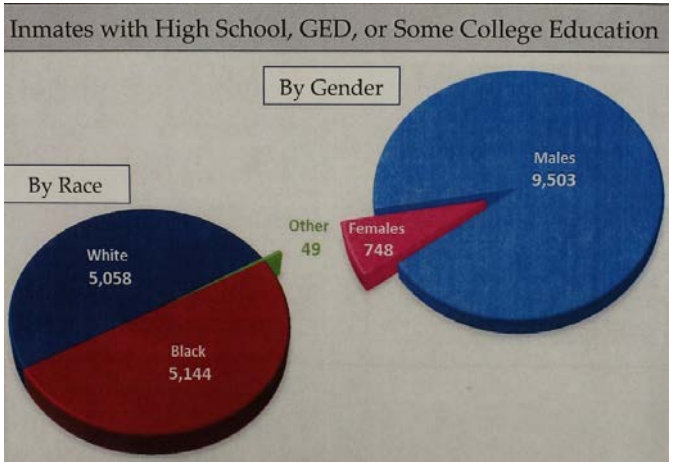
COLLEGE NAME	7-1-16 thru 6-30-17		7-1-17 thru 6-30-18		7-1-18 thru 6-30-19	
	Students Enrolling In AE WITH a HS Diploma/GED	Students Enrolling In AE WITHOUT a HS Diploma/GED	Students Enrolling In AE WITH a HS Diploma/GED	Students Enrolling In AE WITHOUT a HS Diploma/GED	Students Enrolling In AE WITH a HS Diploma/GED	Students Enrolling In AE WITHOUT a HS Diploma/GED
Alabama Southern Community College*	141	377	119	323	N/A	N/A
Bevill State Community College	0	26	0	14	2	12
Bishop State Community College*	N/A	N/A	0	11	1	15
Calhoun Community College*	9	127	53	191	62	172
Central Alabama Community College*	75	105	60	92	67	143
Coastal Alabama Community College*	N/A	N/A	N/A	N/A	109	314
Enterprise - Ozark Community College*	60	168	30	79	20	42
Gadsden State Community College*	0	79	4	99	14	70
Ingram State Technical College	30	729	76	736	85	682
Jefferson Davis Community College*	10	217	3	233	N/A	N/A
Lawson State Community College*	1	20	11	30	0	5
Shelton State Community College*	0	158	0	120	6	249
Trenholm State Technical College*	1	26	0	33	2	67
Wallace Communty College - Dothan*	1	210	1	218	4	229

*enrollment data include city/county jail programs, and/or P&P day reporting centers

Source: Alabama Adult Education System of Accountability and Performance (AAESAP)

Alabama Department of Corrections Data*





*Alabama Department of Corrections FY2018 Annual Report

ALABAMA DEPARTMENT OF CORRECTIONS:

TECHNICAL PROGRAMS

- LIMESTONE CF
- WILLIAM E. DONALDSON CF
- ST. CLAIR CF
- ATEF
- BIBB CF
- FRANK LEE WR/CWC
  STATON/ELMORE TUTWILER WF/ANNEX
- EASTERLING CF
  VENTRESS CF
- FOUNTAIN CF

Career Technical Program Offerings

Calhoun Community College
Limestone Correctional Facility
- Carpentry
- Design Technology
- Electrical Technology
- Horticulture
- Masonry
- Welding

Coastal Alabama Community College
Fountain Correctional Facility
- Auto Body Repair
- Auto Mechanics
- Barbering
- Cabinetmaking
- Commercial Food Service
- Small Engine Repair
- Welding

Gadsden State Community College
St. Clair Correctional Facility
- Electrical Technology
- HVAC
- Masonry
- Welding

Ingram State Technical College
ATEF
- Carpentry, HVAC, Plumbing & Welding (all non-credit)

Bibb Correctional Facility (FY19-20)
- Carpentry
- HVAC

Donaldson Correctional Facility
- Barbering
- Electrical Technology
- Masonry

Elmore Correctional Facility
Frank Lee Community Work Center
- Auto Mechanics
- Barbering
- Cabinetmaking
- Carpentry
- HVAC
- Industrial Maintenance
- Upholstery
- Welding

Staton Correctional Facility
- Auto Body Repair
- Barbering
- Commercial Truck Driving (non credit)

Ingram State Technical College (con't)
Staton Correctional Facility (con't)
- Diesel Mechanics
- Electrical Technology
- HVAC
- Logistics
- Masonry
- Plumbing
- Welding

Tutwiler Prison for Women
- Auto Mechanics
- Cosmetology
- Logistics
- Office Administration
- Welding

Wallace Community College – Dothan
Easterling Correctional Facility
- Cabinetmaking
- Drafting & Design Technology
- Electrical Technology
- Msonry
- Plumbing

Ventress Correctional Facility
- HVAC

Determining Which Career Technical Education Programs to Offer

Factors impacting the decision to launch a new career technical education program:

- needs of industry
- emerging trends
- financial commitment required to launch a new program

Additional factors for incarcerated student programs:

- barriers to employment based on prior incarceration
- requirement for internship or co-op learning (students cannot leave the corrections environment)
- internet access: not compatible with ADOC security requirements

Career technical training programs that reflect the needs of business and industry and prepare students to earn a sustainable wage face a third hurdle: they must be cost-effective to launch and deliverable within the space available

Career Technical Education Programs Start-Up Costs

Start-up budget for correctional education programs slated to get underway at Bibb Correctional Facility in January 2020. Program offerings will include Carpentry and HVAC, both of which are mid-price programs in that they require equipment and classroom resources for training, but do not have the on-going supply costs of some others program (i.e. welding).

Start-Up Costs	
Salary and Benefits (instructional/administrative/support)	323,348
Facility Upgrades and Maintenance	294,755
Contract Services (including utilities)	63,000
Non-Capitalized Equipment (<$5,000)	83,404
Capitalized Equipment ($5,000>)	56,000
Classrooms, offices and labs	40,181
Non-capitalized Technology	11,600
Supplies (hand/power tools/ trainer install/inst. supplies)	127,712
TOTAL	**1,000,000**

Alabama Community College System
Prison Operating and Maintenance Appropriations*

	FY16-17	FY17-18	FY18-19	FY19-20
Coastal Alabama Community College**	$784,508	$786,262	$844,448	$958,128
Gadsden State Community College	$420,384	$403,493	$390,040	$388,336
Wallace Community College—Dothan	$621,874	$614,932	$626,217	$645,287
JF Ingram State Technical College	$2,824,887	$2,831,305	$2,908,190	$3,059,278
John C. Calhoun Community College	$754,054	$769,736	$824,819	$919,005
GRAND TOTAL	**$5,405,728**	**$5,405,728**	**$5,593,714**	**$5,970,034**

*Approved annually by the ACCS Board of Trustees

**allocation to Jefferson Davis Community College until FY18-19

Incarcerated Student Barriers to Learning

Prior Learning Experience

- Low literacy levels
- Drop-out
- Education viewed as a "low-value" commodity, not a pathway to success

Social / Personal

- Low expectations
- little experience in completing or succeeding
- Lack of family or peer support
- Depression / Anxiety

Logistics

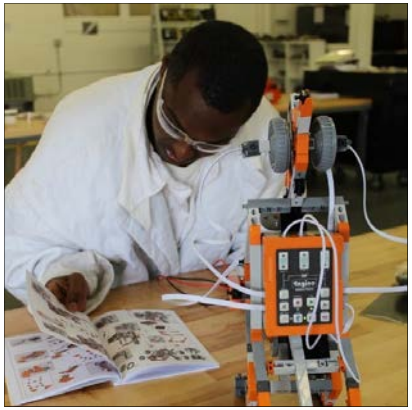
- Security searches
- Lack of ability to transport homework
- Prioritizing healthcare/ commissary appointments

Environment

- Noise/distractions
- Harassment
- Random violence

ISTC Job Placement Snapshot

January 1, 2019 – October 25, 2019



ISTC Students Released by ADOC **249**

Business and Industry Contacts **641**

Students Placed in Jobs and Employment Confirmed* **259**

* Some students obtaining employment during this period were released prior to 1/1/19

Resources

Alabama Hardship Drivers License: Established by the Alabama Legislature in 2019 to assist incarcerated individuals and others who lack documentation needed to begin work, holders of this license may drive to jobs, school and for daily errands. The license can be used to secure additional workplace documents.
https://www.alea.gov/dps/driver-license/license-and-id-cards/hardship-driver-license

Federal Bonding Program: Issued free to employers, these business insurance policies protect them in case of theft, forgery, larceny, or embezzlement of money or property by an employee. This program benefits at-risk job applicants whose backgrounds may lead employers to question their honesty and deny them a job.
www.bonds4jobs.com

Ready to Work: Described as a “pathway for individuals with limited education and employment experience”, this program teaches soft skills essential for success in the workplace. Since it debuted in 2000 (called *Alabama Works*) RTW has provided thousands of unemployed and underemployed Alabamians with job skills training.
https://alabamareadytowork.org/

Questions?

Annette Funderburk, President
Ingram State Technical College
Post Office Box 220350
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ISTC
INGRAM STATE TECHNICAL COLLEGE

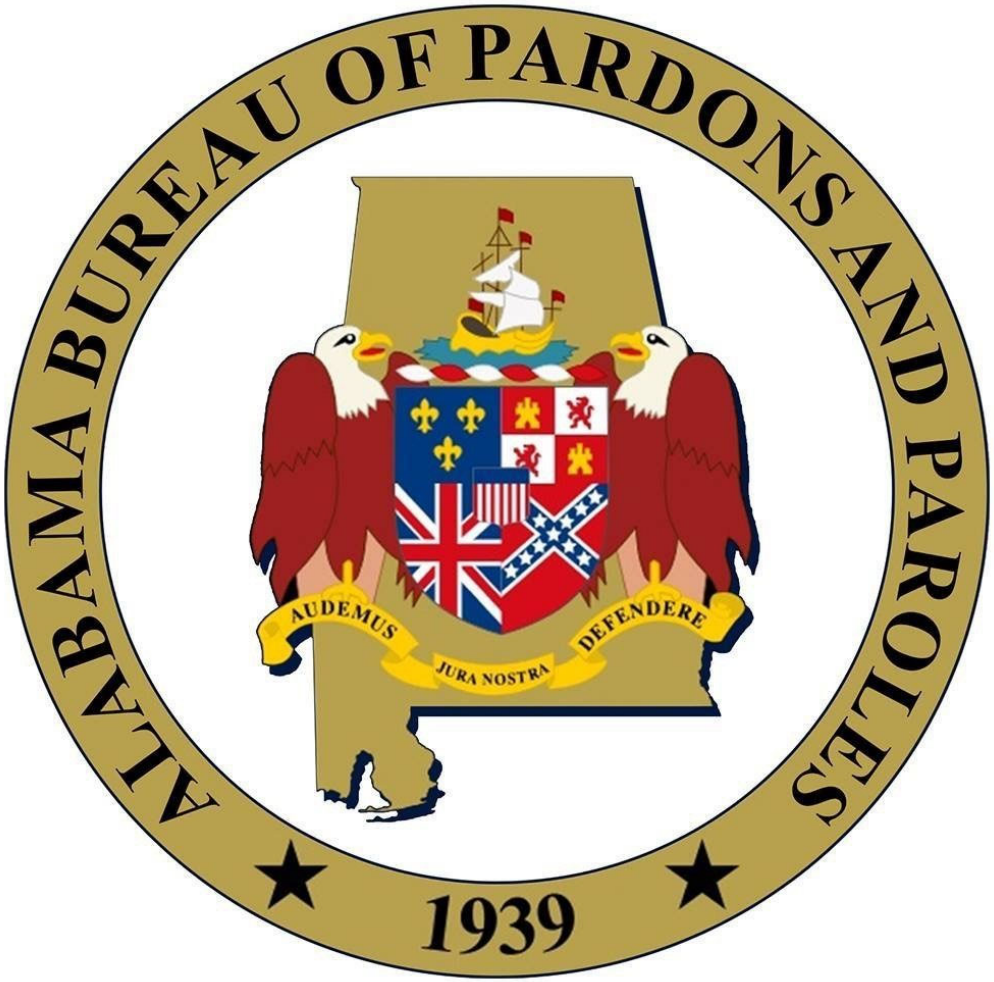
Governor's Study Group on Criminal Justice Policy

November 1, 2019

The Governor's Study Group on Criminal Justice Policy

Alabama Bureau of Pardons and Paroles

Meridith H. Barnes,
General Counsel



Immediate Bureau Strategic Plan

- Phased Headquarters Relocation – Improve Work Environment and Increase Professionalism
- Revitalize Probation and Parole Field Infrastructure
- Properly Equip Field – Training, Vehicles, Equipment, Uniforms, and Support
- Revamp Recruiting, Streamline Hiring, Increase Work Force – Probation and Parole Officers and Specialists
- Create True Crime Victims Assistance Function
- Improve Morale and Agency Culture – Communications

Update: Jefferson County Probation and Parole Office

- Temporary Plan – Reporting to Jefferson County Courthouse Basement
- New Lease – Final Negotiations for Relocation
- January 2020 Occupancy Hopeful
- Advance Notification of Probationers and Parolees and Criminal Justice Stakeholders
- Shelby County Location to be Repurposed

Bureau
Data Unit
Reestablished

DR. JESSICA GRATZ

EVIDENCE-BASED PRACTICES

ADDITIONAL DATA ANALYSTS

Parole Decision Making Reform

- Professional Development – Board Members
- Meaningful Information to the Board
- Implement Parole Guidelines
- Collect and Analyze Data to Continuously Improve Processes

Actuarial Risk Assessment Tools

Improve Supervision Outcomes

01

Ongoing field training and professional development

02

Increase workforce to decrease size of caseloads

03

Expand programming and treatment infrastructure

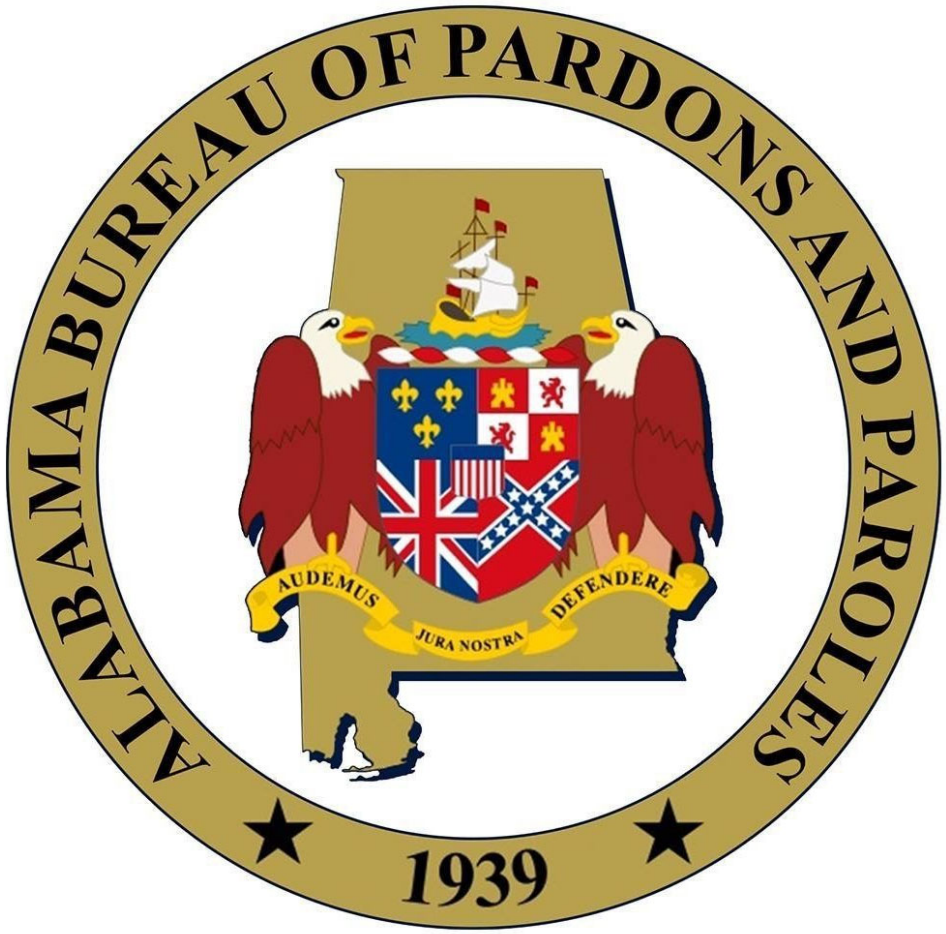
04

Collect and analyze supervision data

Fiscal Year 2021 Budget Request

$106,182,741 includes:

- Hiring, training, and equipping 50 Parole Officers
- Hiring, training, and equipping 75 Specialists
- Hiring for administrative divisions to support field operations
- Improving technology for field operations




Mandatory Release
Dunks
Video Conferencing
JR Act – Clean Ups

Governor's Study Group on Criminal Justice Policy

November 1, 2019

Governor Ivey's

Three Prong Re-Entry Program

3PRP

The Three Prongs

FOR SUCCESSFUL RE-ENTRY AND AVOIDANCE OF RECIDIVISM

1. The Alabama Job Court Program
2. The Alabama Reentry Program
3. The Recidivism Prevention Program

3PRP

Alabama Job Court Program

Job Court

- Based on a pilot launched between the Alabama Workforce Development Board and the Alabama Second Judicial Circuit (Dallas, Crenshaw, and Butler Counties), individuals who find themselves perpetually before a district court judge for **low-level property crimes, drug crimes, and other non-violent misdemeanor offenses may be sentenced by the judge**, with the future support and consent of each district attorney, **to the Alabama Job Court Program**.
- Participants will complete the Alabama Certified Worker Program and will earn **the Alabama Certified Worker, Ready to Work (RtW) credential**. The RtW work credential will be customized to support attainment of occupation-specific knowledge in all sixteen career clusters.
- Training will be provided through a partnership between the local workforce development boards (WIOA), the regional workforce council (RWC), and the Alabama Community College System (ACCS.) **Completion of the program will take approximately 6-18 weeks**, depending on the career cluster chosen.
- Participants will also be linked to adult education, career and technical education programs, and apprenticeship programs. Participants may be eligible for the Program, and the human capital development fund, and individual training accounts (ITAs) through the Workforce Innovation and Opportunity Act (WIOA).

3PRP

Alabama Reentry Program

Reentry

- Based on a pilot program, known as Prep, between West Alabama Works (the regional workforce council for Alabama's third workforce region centered in Tuscaloosa) and Phifer Wire, Inc., the Alabama reentry program would provide a **rigorous training program** that couples **social and emotional, reformative education and counseling along with career pathways** training and education.
- Participants complete a **competitive application process**, a **twelve to twenty-four-month training program** while incarcerated and are then provided **temporary transitional housing** and **work-based training and employment by a sponsoring employer upon release**.
- Participants also complete a work-release transition program to prepare them for release. Participants will be potentially eligible for **Second Chance Pell** while incarcerated. Upon release, completers will have access to the human capital development fund and individual training accounts (ITAs) through the WIOA.
- Each of Alabama's RWCs and local WIOA boards will recruit employer sponsors. Preparing individuals to enter a career that pays a family-sustaining wage will encourage self-sufficiency and will reduce recidivism.
- As of March 1, 2019, there were 20,722 fully under the control of the Alabama Department of Corrections (not in county jails or in community corrections programs. Out of that number 10,379, or 49.93 percent had a high school diploma or a general education diploma or other high school equivalency.
- Over the last 2 years, an average of 242 GED completions and 693 vocational certificates were awarded per year to ADOC inmates.

Reentry

3PRP

Goal 1: GED attainment will increase by 5 % per year between now and 2025.

Goal 2: Vocational certificates will increase by 5 % per year between now and 2025

GED	Year	Vocational Certificate
250	2019	700
263	2020	735
276	2021	772
290	2022	810
304	2023	850
319	2024	893
335	2025	938
2,037	Cumulative	5,698

Reentry (Cont'd)

- The ADOC has awarded a contract with Securus (vender) to provide PEDs **(personal electronic devices) to inmates in our prisons**, and roll-out should be initiated by January 2020. This is important because security limitations have prevented access to internet for inmates to date.
- The ADOC is working with Alabama Public Television, ACCS, and Kentucky Educational Television to provide an enhanced ability to provide educational services to inmates in the ADOC via a promising program called Fast Forward.
- The ADOC is working with LifeLink and the PREP Re-Entry Committee in Tuscaloosa at Bibb Correctional Facility to provide additional opportunities for education, including RTW, life skills, vocational pathways, jobs, and other necessary support systems for Re-Entry success.
- The vocational component is still in infancy stage. The ADOC is working with Drake State University on a Prison Entrepreneurial Program utilizing the SCORE curriculum to prepare inmates for business opportunities upon release. This collaboration is occurring at Limestone CF Pre-Release. The ADOC is exploring a partnership with the business community in Baldwin County to initiate an apprenticeship program, in tandem with Loxley Work Release.
- Preliminary discussions are occurring with Morgan County (Penny Townson) on alternative workforce availability (Work Release) for inmates in our custody, and education of Economic Development in that community.

3PRP

Recidivism Prevention Program

Recidivism Prevention

- Over 95 percent of the Alabama Department of Correction's inmates will be released back into the community. Last year, 3,000 Alabamians were paroled. Alabama's recidivism rate is 35 percent.
- As the following chart will demonstrate, ensuring that ex-offenders earn a credential and enter an in-demand occupation is key to achieving Governor Ivey's Success Plus postsecondary education attainment goal of adding 500,00 credentialed workers to Alabama's workforce by 2025.
- The Recidivism Prevention Program would take up where the Alabama Reentry Program leaves off by ensuring that ex-offenders and formerly incarcerated individuals are provided wrap-around services to persist in their career pathways, if they participated in the Alabama Reentry Program, or access to the basic skills and workforce training if they were not an Alabama Reentry Program Participant.
- Recidivism Prevention Program participants may be eligible for the human capital development fund and individual training accounts (ITAs) through the WIOA.

Recidivism Prevention

3PRP

Alabama's Estimated WIOA Eligible Ex-Offender Population (Statewide and by Region)				
Region	Estimate	Attainment Goal	2019-2020 Goal	2019-2020 LFPR
Statewide	15,224	10,690	1,690	1,690
Region 1	3,470	2,893	289	289
Region 2	1,916	1,143	114	114
Region 3	795	466	47	47
Region 4	2,791	2,263	223	223
Region 5	2,000	1,568	157	157
Region 6	1,488	756	76	76
Region 7	2,464	1,602	160	160

Thank You.

Nick Moore

334 706 1324

Josh.laney@commerce.alabama.gov

Governor's Study Group on Criminal Justice Policy

November 1, 2019

The Governor's Study Group on Criminal Justice Policy

Date: December 4, 2019

Time: 10:00 A.M.

Location: Alabama Statehouse Room 200

Chairman

Justice Champ Lyons

Members

Attorney General Steve Marshall	Senator Cam Ward	Representative Jim Hill
Finance Director Kelly Butler	Senator Bobby Singleton	Representative Connie Rowe
Corrections Commissioner Jeff Dunn	Senator Clyde Chambliss	Representative Chris England

Agenda

Call to Order & Welcome ..... Justice Champ Lyons

Meeting Structure Introduction ..... Justice Champ Lyons

General Presentations Introduction ..... Justice Champ Lyons

- Former Chief Justice Of The Alabama Supreme Court ..... Sue Bell Cobb
- Prison Fellowship ..... Mark Wilkerson
- Attorney ..... Donna Wesson Smalley
- Questions and Answers ..... Justice Champ Lyons

DOC Operations Presentations Introduction ..... Justice Champ Lyons

- Alabama Justice Initiative ..... Diyawn Caldwell
- Family Member of Incarcerated Person ..... Courtney Davis
- Questions and Answers ..... Justice Champ Lyons

Sentencing Presentations Introduction ..... Justice Champ Lyons

- Foundry Ministries ..... Albert Pugh
- Criminal Defense Attorney ..... Michael Hanle

- Questions and Answers ..... Justice Champ Lyons
- Law Student ..... Hayden Sizemore
- Ordinary People Society ..... Rodreshia Russaw
- Attorney ..... Dagney Walker
- Questions and Answers ..... Justice Champ Lyons

In-Facility Programming, Diversion and Alternative Courts, and Reducing Recidivism

Presentations Introduction ..... Justice Champ Lyons

- City of Birmingham, Office of P.E.A.C.E. and Policy ..... Brandon Johnson
- Office of Prosecution Services ..... Barry Matson
- Jefferson County Dept. of Health ..... Mark Wilson and Darlene Traffanstedt
- Questions and Answers ..... Justice Champ Lyons
- Offender Alumni Association ..... Dena Dickerson and Donald Butler
- Alabama Arise ..... Jim Carnes
- Alabama Appleseed Center for Law and Justice ..... Leah Nelson
- Questions and Answers ..... Justice Champ Lyons
- UAB TASC (Retired) ..... Foster Cook
- Juvenile Parole Officer ..... Veronica Johnson
- Attenti ..... Rachel Semago
- Questions and Answers ..... Justice Champ Lyons
- Alliance Re-Entry ..... Scott Frye
- Southeast Alabama Court Services ..... Cheryl Leatherwood
- Questions and Answers ..... Justice Champ Lyons

Next Steps & Adjournment ..... Justice Champ Lyons

Meeting Timeline

Time	Description
January 14, 2020	Final Meeting and Discussion of Findings

Sue Bell Cobb
Alabama Supreme Court Chief Justice (Ret.)

TOPIC:

- Model Drug Courts & specialty courts- the importance of requiring and enforcing fidelity to model/best practice
- Unifying and state funding for community corrections and work release centers
- Establishing objective criteria for Pardon & Paroles, prioritizing lack of disciplinaries by inmates and success in obtaining education and skills
- Mandating standards for District Attorney Diversion Programs so that indigents are protected and all participants are evaluated to determine if they have substance abuse problems or other risk factors for reoffending, thus requiring protocol similar to Drug Court or Hope court.
- Retroactivity of mandatory supervision upon release
- Resentencing of inmates who were sentenced prior to the Sentencing
- Guidelines being put into effect, ways to reduce opposition
- HOPE Courts
- Modification of sentencing requirements on all drug laws (review legislation introduced in 2011)

PRISON FELLOWSHIP

REMEMBER THOSE IN PRISON

The Governor's Study Group on Criminal Justice Policy
600 Dexter Avenue
Montgomery, AL 36130

December 2, 2019

Dear Justice Lyons and esteemed members of the Study Group:

Prison Fellowship is the nation's largest Christian nonprofit serving prisoners, former prisoners, and their families and a leading advocate for justice reform. Founded in 1976 by Charles Colson, a former aide to President Nixon who served a seven-month sentence in Montgomery for a Watergate-related crime, we work to restore those affected by crime and incarceration. As the trusted Christian voice on both prison ministry and criminal justice, we envision a safer, more redemptive society that recognizes the value and potential of every person. We mobilize Christians to advocate for justice reforms that advance proportional punishment, constructive corrections culture, and second chances. We call for churches and communities to be at the forefront of providing care for prisoners and advocating for justice reform.

We do not embark on this work alone - more than 4,700 Christians and prominent faith leaders have signed on to the Justice Declaration, a statement proclaiming the unique responsibility and capacity of the Church to address crime and overincarceration. These voices join Prison Fellowship, the Ethics and Religious Liberty Commission of the Southern Baptist Convention, the Charles Colson Center for Christian Worldview and the National Association of Evangelicals to say that our misguided response to crime has pervasive, devastating, and long-lasting consequences for individuals, families, communities, and the nation.

We can also look to the federal government as proof that this is not a partisan issue. Through bipartisan work of Congress and President Trump's leadership, the recently passed First Step Act demonstrates that prison reform is something Americans believe in. Data also supports justice reform. Data analysis has revealed a sometimes-inverse relationship between longer sentences and safer communities.[1] When punishment for a crime includes excessively long terms of incarceration, an incarcerated person's family and community ties are often broken—and these ties have been shown to positively impact the person's societal reintegration post-incarceration.[2] It is also important to note that the risk of an incarcerated person reoffending after release declines notably after a certain length of incarceration.[3] In fact, a 2004 study utilizing a risk assessment system found that many of those who committed nonviolent crimes could have been released at an earlier date without posing a threat to public safety.[4]

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[1] National Resource Council,, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, The National Academies Press (2014), https://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes.

[2] *Id.* at 262.

[3] Douglas N. Evans, *Punishment Without End*, John Jay College of Criminal Justice Research & Evaluation Center (July 2014), https://jjrec.files.wordpress.com/2014/07/jf_johnjay1.pdf.

[4] Pew, *Time Served: The High Cost, Low Return of Longer Prison Terms*, The Pew Charitable Trusts (June 2012), http://www.pewtrusts.org/en/research-and-analysis/reports/2012/06/06/time-served-the-high-cost-low-return-of-longer-prison-terms.

The issues of whether punishment fits the crime, the culture within prisons, and how to safely extend second chances have reached a critical point in Alabama. The Department of Justice has found that Alabama has one of the most overcrowded prison systems nationally with the fourth highest imprisonment rate in the U.S.[5]. The system-wide occupancy rate for Alabama's prisons are at 165% with 16,327 prisoners being held in major facilities that were designed to hold only 9,882.[6] The DOJ has noted that the 24 self-reported homicides from January 2015 to June 2018 are likely much higher,[7] while shockingly 13 persons have been killed in Alabama prisons in 2019 alone.[8] Certainly, Alabama faces a crisis. However, with your leadership, our state can rise up and meet this moment as an opportunity. An opportunity to examine what other states have done to right the course in their corrections systems and form a new path forward that keeps people safe, respects the dignity and value of every life, lends to flourishing families, and offers second chances when someone has served their time. We can look to Texas, who closed eight prisons in six years[9] and has seen its lowest crime rate since the 1960's.[10] We can look to Louisiana, who saved $12.2 million in the first year it instituted reforms and saved $17.8 million in 2019 with 70 percent reinvested into correction initiatives and programs.[11] Louisiana has also seen the overall prison population decline by 9 percent, the community supervision population decline by 12 percent, and prison admission for supervision revocations drop by 5 percent.[12] Ninety-five percent of the people incarcerated in state prisons will reenter society[13] - so the question is, will they be prepared to obtain employment, housing, and reconnect with families and friends as they become productive taxpayers? Reforming Alabama's correctional facilities, environment, and culture are key to rehabilitating and correcting the behavior and decision-making that leads to Alabamians being incarcerated – and helping to prevent them from making the same poor decisions after they reenter society. We understand this Study Group is seeking Alabama data to assist in forming appropriate legislation and the examples of fellow Southern states will help in crafting solutions tailored to Alabama's current problems.

There are several areas where Alabama can ensure our justice system is one that not only punishes, but also restores those who are in the system. Rather than warehouse people, prison should afford opportunities to make amends and earn back the public's trust, fostering a constructive prison culture and success upon release. This

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[5] Eric Dreiband, et al., , *Notice Regarding Investigation of Alabama's State Prisons for Men*, U.S. Dept. of Justice(Apr. 2, 2019),https://www.justice.gov/opa/press-release/file/1150276/download.

[6] *Id.*

[7] *Id* at 11

[8] Mike Cason, *Equal Justice Initiative sounds alarm over sharp rise in Alabama prison slayings*, AL.com, Nov. 18, 2019 https://www.al.com/news/2019/11/equal-justice-initiative-sounds-alarm-over-sharp-rise-in-alabama-prison-slayings.html.

[9] Brandi Grissom, *With crime, incarceration rates falling, Texas closes record number of prisons*, The Dallas Morning News, July 5, 2017,https://www.dallasnews.com/news/politics/2017/07/05/with-crime-incarceration-rates-falling-texas-closes-record-number-of-prisons/.

[10] Pew, *Public Safety in Texas*, The Pew Charitable Trusts (2015), https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2013/01/14/public-safety-in-texas.

[11] Pew, *Louisiana Continues Efforts to Protect Public Safety and Reform Justice System*, The Pew Charitable Trusts(Nov. 2019) https://www.pewtrusts.org/en/research-and-analysis/articles/2019/11/19/louisiana-continues-efforts-to-protect-public-safety-and-reform-justice-system?utm_campaign=2019-11-25+PSPP&utm_medium=email&utm_source=Pew.

[12] *Id.*

[13] Timothy Hughes & Doris James Wilson, *Reentry Trends in the U.S.*, Bureau of Justice Statistics (September 2019),

includes making a variety of programming available, including higher education. The programs at Ingram State Technical College for incarcerated Alabamians are to be commended and should be expanded in this age of online education to help prisoners obtain valued skills for jobs after release. While proportional punishment may require a minimum amount of prison time served in order to satisfy what is owed for the harm to the victim, a restorative approach to justice may also allow for a portion of someone's sentence to be shortened when a prisoner can demonstrate he or she has made a concerted effort to live positively and regain society's trust. Earned time policies send a message that making amends and earning back the public's trust are the expectation during punishment. Furthermore, diversion programs are desperately needed statewide, specifically mental health courts (mental illnesses affect approximately half of males and two-thirds of females incarcerated in state prisons[14]), veterans courts (one in five veterans will face some mental health problems at some time during his or her life[15]), and drug courts (to overcome the underlying additions of defendants).

Every person has been created in the image of God, worthy of dignity and with capacity for redemption. As you approach these issues and form recommendations to the governor to address the problems faced by our state, we ask you to do so with reverence for faith values, supported by data, and in a way that provides for safer communities, stronger families, and the opportunity for a second chance.

Respectfully,

Craig DeRoche
Senior VP, Advocacy & Public Policy
Prison Fellowship

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[14] Ojmarrh Mitchell, et al., *Assessing the Effectiveness of Drug Courts on Recidivism: A Meta-Analytic Review of Traditional and Non-Traditional Drug Courts*, 40 J. Crim. Just. 60 (February 2012); Christine M. Sarteschi, et al., *Assessing the Effectiveness of Mental Health Courts: A Quantitative Review*, 39 J. Crim. Just. 12 (February 2011); Elizabeth K. Drake, et al., *Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State*, 4 Victims and Offenders 170 (2009), http://www.wsipp.wa.gov/ReportFile/1033/Wsipp_Evidence-Based-Public-Policy-Options-to-Reduce-Crime-and-Criminal-Justice-Costs-Implications-in-WashingtonState_Full-Report.pdf; Nancy Wolff & Wendy Pogorzelski, *Measuring the Effectiveness of Mental Health Courts: Challenges and Recommendations*, 11 Psychol. Pub. Pol'y L. 539 (December 2005); Steven Belenko, *Research on Drug Courts: A Critical Review 2001 Update*, Columbia University (June 2001), https://pdfs.semanticscholar.org/1450/f4776d89877366bd93b1a696c1040c30adae.pdf.

[15] William McMichael & Jennifer Altman, *The Battle on the Home Front: Special courts turn to those who served to help troubled vets regain discipline, camaraderie*, 97 ABA J. 42 (November 2011); Samantha Walls, *The Need for Special Veteran Courts*, 39 Seton [illegible]

November 8, 2019

Dear Rep. Christopher England,

Thank you for agreeing to sponsor my proposals to the Prison Reform Study Group for their consideration. I hope that these suggestions, while not comprehensive, will be given careful consideration. I am a member of various groups advocating for prisoners and their families, but I submit this as an individual. I have asked Attorney Frank Ozment to help me, and he has ended up sending me a document that I hope to attach, as I felt it might be very useful.

Having practiced civil law in Alabama since 1979, even I was not aware of the crisis within our criminal justice system until the last few years. Once I started hearing the horror stories, I could not wrap my head around the atrocities I was hearing. In checking them out, I found they were true.

Thus, I have become an advocate for those incarcerated citizens, and their families, and for the other citizens of the state of Alabama, who I believe are good and decent citizens, and who would not approve of the current prison operations if they were made aware of them. Because of the opiod crisis, more and more people are becoming aware of the horrors of Alabama's prisons, and insisting on change. Here are some specific proposals that may be implemented without huge financial investments nor long delay:

1. BODY CAMERAS- Because of the continuing increase in violence, resulting in injuries and deaths to inmates in the Alabama Prison system, I am proposing that each and every employee of the prison system be required to wear a body camera at all times that they are on duty within a state facility. This should be required regardless of rank or placement, and should provide safeguards that do not currently exist to prevent inappropriate and excess use of force by the Corrections Officers against the inmates. While acknowledging the understaffing and the difficulty of the jobs, there seems to be a pervasive attitude of violence that is not supportive of rehabilitation goals, nor is it supportive of a safe environment for the prisoners nor the employees. Even small town police departments now have these cameras available, and they should be obtained and REQUIRED immediately.

Although the number of prisoners has fallen in the last few years, as evidenced by the ADOC reports from 2010 through 2018, the number of physical assaults and deaths has increased. There have been at least 20 deaths of inmates as of the date of this writing during the calendar year of 2019. This is unacceptable.

The rate of violence was one of the main problems documented in the DOJ report of April, 2019, and yet nothing has been done to reduce the violence, or at least nothing has been successfully done, as the violence has continued at a dangerous and alarming pace.

This is not a systemic and wide ranging proposal, but it is one that should be affordable and should be implemented immediately.

2. CORRECTION OFFICERS- should have immediate consequences for assaults and or injuries to inmates. Currently, there are CO's that are well known for their propensity to use excessive and unnecessary force. Yet, even after being involved in the beating deaths of some inmates, they continue to be employed by the state of Alabama as CO's. THIS IS UNACCEPTABLE. The thorough vetting and training of CO's must be systemic change implemented by the state. Increased numbers of CO's would reduce the stress of the workload, and hopefully change the culture of sadistic violence that seems to pervade the prison system currently. However, the immediate loss of income and position by CO's who are involved in inappropriate injuries of inmates MUST be implemented by the state to STOP change the dangerous condition the inmates currently live in, and to stem the liability (and expense) incurred by the taxpayers for such negligence and mistreatment.

3. MEDICAL & MENTAL HEALTH CARE- must be improved. The current lack of appropriate and timely medical and mental health care has significantly increased the dangerous conditions of the state prisons, and must be addressed immediately. In too many instances, sick or injured inmates are not taken to medical personnel promptly. The death toll has become untenable. Each and every prisoner death must be promptly and transparently investigated. Recently, the delay in reports of prisoners' deaths to family members has been a cause of public outcry and dismay and must be addressed in some more compassionate and effective method. Furthermore, any and all deaths which are reasonably alleged to be caused by the acts or neglect of state personnel should be compensated, at the very least, with free funeral services for the families. Currently, the families are given a deadline for retrieving the loved ones' bodies, or allowing the prison to "dispose" of them! Since so many of the family members are poor, this is preposterous.

4. PARDONS & PAROLE - needs to be used to reduce the population of the incarcerated citizens and to get prisoners returned to productive citizenship as soon as such is reasonably feasible in consideration of public safety concerns.
There is no evidence to suggest that draconian prison sentences are an effective deterrent to crime. The recent changes to the Pardons and Parole system seem to indicate a contumacious disregard of the Constitutional rights of the prisoners in Alabama, as well documented by the DOJ report. Governor Ivey should not get to have this both ways: Either she is going to work to correct the problems with the prisons, or she is going to lock up every suspect and surrender the system to the Feds. The DOJ seems to be overly lenient in allowing this administration yet another chance to correct the evil of their ways.

5. INCONSISTENT SENTENCING - and a lack of coordination of the various criminal statutes and codes, not to mention the inconsistent application of administrative prison rules; and (in many instances) the total lack of rehabilitative programs, create another set of injustices suffered by those who are incarcerated. The implicit racial bias that continues to control public discourse and action is never more apparent than in the prison/ criminal justice system. Today, one in every 3 black men will serve time in jail or prison, while only 1 in 17 of white men will do so. America accounts for the majority of incarcerated citizens in the world, far outpacing our proportionate number of citizens. The statistics are all carefully researched and effectively displayed in Montgomery at the EJI museum, and are too voluminous to repeat here. BUT, the time has come for us to take a serious look at the high cost to society to have so many of our

what trends are indicated after careful analysis of the facts presented. For example the number and severity of assaults at medium confinement facilities has increased significantly since 2015, even though the overall number of prisoners at those facilities has decreased. Therefore, overcrowding alone cannot be said to be the cause of the violence. The large increase in drug charges among prisoners has occurred over the last few years, without any provision of drug rehabilitation programs or even adequate medical care.

12. PHYSICAL FACILITIES - must be addressed, but such should be done without costing the taxpayers $900,000,000! This past summer, while Heat Advisories dominated the evening news in Alabama, citizens were incarcerated in cells that sometimes reached heat indexes of 120 F! This is inhumane. We would not allow our pets- or even the pets of others- to be treated as such. SO- there is a need for improvement in the current physical facilities. BUT, the construction of 3 new MEGA PRISONS to be operated by private prison industries is NOT THE ANSWER! As a matter of fact, we can learn from the negative experiences in other states who have tried this before us: PRIVATE PRISONS ARE A BOON-DOGGLE, and do not work. There are alternatives, and we can figure them out without spending anywhere close to that kind of money. At the very least, we must require that all investors and individuals that have an interest in the financing of any and all new prison facilities be disclosed to the public before the bid for the work is allowed. Transparency in the processes of government- especially in this most important area- is requirement that cannot be compromised.

The real goal should be to reduce the need for prisons at all. It is well documented by social science studies that the number one way to do that is to increase the quality of education offered to our children, so that they have a future of hope and promise. But, alas, we have just learned that Alabama ranks 51st- dead last, even below Puerto Rico and Mississippi, in our students' test scores. And the charter schools have not been the answer that many thought they might be; instead they have been a financial sinkhole.

We need to do away with the slave labor provision for "those convicted of crime" in the 13th Amendment, and give up the money earned by the prison industries in Alabama. The slave to prison pipeline is not just a theory- It is a reality for many Alabamians. We must decide "IS THIS WHO WE ARE? WHO DO WE WANT TO BE?" I think we can be better than this, and by taking the first steps we have a chance to move Alabama to our rightful place as a leader in human rights in the world.

Thank you for your careful consideration of these proposals. I will seek to provide research and additional information upon request.

Sincerely,

Donna Wesson Smalley,
Attorney at Law

FRANK OZMENT
Attorney-at-Law

December 3, 2019

Donna Smalley
Attorney at Law
216C DeSales Avenue
Mobile, AL
36607

Dear Donna:

With the help of Marsha Courchane, Adam Gailey, James Ozment and others, data regarding the Alabama Department of Corrections and the inmates under ADOC's custody have been loaded on the Google Drive for AlabamaPrisonReform@gmail.com. That data includes all the ADOC Annual Reports from 2003 to 2018, data from the prisoner profiles on all prisoners currently in ADOC's custody, and a table of selected data from the ADOC reports. If anyone wants access to that data, just have them send a message to the gmail account noted above.

The United States Department of Justice found that the conditions of confinement for men in the Alabama prison system violate Federal law. The Department made that finding pursuant to the Civil Rights of Institutionalized Persons Act, which only permits the Department to bring actions to enforce minimally acceptable conditions of confinement. In other words, the Act does not allow the Department to "push the envelope" to achieve new, ever more humane or lenient conditions of incarceration. The Department's findings indicate that Alabama's prison system is not merely imperfect, but instead is fundamentally broken.

While professionals (and especially career professionals) at the Department may generally discharge their duties without regard to politics, it's important to remember that the Department made these findings during the Trump administration, pursuant to an investigation that was conducted for the most part while Jeff Sessions was the Attorney General. I don't know Mr. Sessions except by reputation. But, his record demonstrates that he is not soft on crime or on criminals—so much so that, when the Department published its findings about Alabama prisons, some people speculated that the findings were part of a conspiracy whereby the Department would force Alabama to build new prisons to benefit companies in which Mr. Sessions had an ownership interest. I reject that speculation out of hand, but repeat it here simply to emphasize that some people apparently could not believe that prison conditions could ever get so bad that Mr. Sessions would find them worthy of even of serious investigation, much less unacceptable under the standards required by the Act.

As you might expect, the data referenced above are consistent with the Department's findings. The general sentiment is that overcrowding causes a lot of the problems that the

system currently experiences. No one would argue that overcrowding has *not* been a problem for the system as a whole. [1]

That being said, some important trends tend to get lost in the public discussion about overcrowding. For one thing, Alabama prisons were becoming much less crowded until the parole board stopped hearing cases this year. In fact, the prison population as a whole decreased about 17% from 2015 to 2018.

But, while overcrowding has gotten better, the prisons have gotten worse, at least according to some basic measurements. For example, the number of assaults across the prison system increased by about 56.5%. The increase in assaults during a period when overcrowding eased suggests there are factors other than overcrowding at work.

One thing that appears to correlate very strongly with the increase in prison incidents is the number of guards employed by the system. As problems in the system have increased over the past several years, the ratio of inmates to guards has increased from nearly 12:1 to over 14:1. This does not mean that there are 14 inmates per guard at any facility at any given time. The number of guards will vary from shift to shift, so there may be far more than 14 inmates per guard during some shifts. And, during a shift, not every guard is available. But one inference is inescapable: the decline in the number of guards in the system has outpaced the decrease in the number of prisoners.

While it's clear that the number of guards has decreased for the entire system in recent years, public data do not show whether the number of guards have decreased at any particular facility over a particular period. The gross number of incidents at minimum security facilities has remained fairly steady over the past several years. If you knew the extent to which the number of guards had decreased at each facility or at least with each type of facility in a given period in which assaults increased, you might be able to make useful observations regarding the impact of having too few guards.

Beginning with last year (2018), the State no longer publishes the ratio of correctional officers to inmates for the entire system. However, in the most recent Annual Report about the system, Commissioner Dunn acknowledged that it was a priority to hire more guards. I think it's fair to infer that the inmate to guard ratio is probably still a problem.

Given that assaults have increased while the inmate to correctional officer ratio has also increased, hiring more officers may lead to fewer assaults. Of course, that outcome would depend in part on the guards causing fewer problems than they prevent, which seems a reasonable expectation if you also assume they are adequately trained and effectively deployed.

Even if guards are not extensively trained, it may be that increasing headcount still yields an improvement in conditions. If a prison is understaffed, it's common sense that a warden may struggle to discipline problematic guards: when an underperforming guard works in a seriously

[1] See https://www.bls.gov/content/pub/pdf/p17.pdf table 16.

understaffed environment, a warden may just have to put up with him or her, at least until a replacement can be found. If a warden can't discipline a problematic guard, that inability might aggravate other problems even in a prison that otherwise has plenty of good guards. Having more guards may give wardens more useful management options in otherwise problematic environments.

It may be that all facilities require substantial upgrades. However, based on the relatively sparse data at hand, the minimum-security facilities seem to be working reasonably well even in the face of serious overcrowding. It is difficult to make a case for closing those facilities based on the data at hand.

There are many questions about prison reform that the data cannot answer. For example, the data cannot answer how the State can modify its practices for solitary confinement to conform to constitutional requirements. At least one Federal court in the South has held that unairconditioned solitary confinement violates the Eighth Amendment prohibition against cruel and unusual punishment in the Summer, and you have advised that Alabama prisons generally lack air conditioning or even ventilation for most solitary confinement. The data do not allow any sort of cost benefit analysis regarding whether it makes more sense to build new prisons instead of renovating or enlarging some of the existing ones, although the data do suggest that the State should proceed cautiously if it plans to shut down minimum confinement facilities just to build new prisons.

The data say practically nothing about the conditions in the county and municipal jails in Alabama, some of which jails have conditions that might compare very unfavorably with those in prisons. In part because many prisoners have spent considerable time in jails before coming to prison, the problems in the prisons may continue to get worse no matter what the State does for those facilities, as long as so many jails employ guards without any training at all, offer no rehabilitative services whatsoever, and provide grossly inadequate medical care. To really reduce recidivism, the State may have to improve conditions in jails. Sheriff Mark Pettway, a Democrat in Jefferson County, and Sheriff Nick Smith, a Republican in Walker County, both took over jails with terrible reputations, and both men have attempted to introduce significant improvements. You can only hope they get adequate funding from their respective county commissions.

I hope you will forgive me for closing on a personal note. You have worked very, very hard on this issue, and I admire your passion for it. In Lamentations 3:34, Jeremiah wrote:

> To crush underfoot
> all prisoners in the land,
> to deny people their rights
> before the Most High,
> to deprive them of justice,
> would not the Lord see such things?

I hope that you and everyone else can take some comfort in that truth. I remain

Sincerely yours

Frank Ozment

JFO/dw

cc: Michele Pate
Andrew Allen

Diyawn Caldwell Remarks
Governor's Criminal Justice Study Group
December 4, 2019

My name is Diyawn Caldwell, and my husband Cordarius Caldwell, has been incarcerated in the Alabama Department of Corrections for 15yrs. He is currently incarcerated at Elmore Correctional Facility. I am here today to give you a glimpse of my life as someone with a loved one who is incarcerated.

Having a husband in prison impacts every single part of my life. My family and I live in Pensacola, Florida. If I want to see my husband, I have to travel the three hours each way that it takes to drive to Elmore. Each time we go, we hope that our visit will be accepted – that the prison won't be on lockdown, that we'll be allowed to see my husband, that our visit won't be rejected without any reason given. Or perhaps just from the guards themselves just having a bad day. If I am allowed to see him the supposedly 3 hr visit I drove 3 hrs for turns into 2 hrs because they never start the visitation process on time. However, despite their obstacles they definitely end on time.

For the times that we cannot make the six hour round trip drive, I have to simply wait for his call. Each time he calls us, it costs .80 for a 15 min phone call. We can usually get in about 30minutes before someone else needs the phone, and every call is recorded. It is incredibly hard to hear the stories he tells me about life each day inside those walls. I know you have heard some of them on the news and in the report from the United States Department of Justice.

Regardless of how difficult the conversations are, I cherish every single phone call I get from my husband. It is the times that he doesn't call that are the worst. In October and November alone, there were at least eight deaths not from natural causes in ADOC. Men who died by overdose, by homicide, or by suicide. Every single time I hear a news report of another stabbing, my heart drops. Each unconfirmed death is another family member out there waiting for a call – or not. Sandy Davis never even heard from any official at ADOC after her son, Steven, died – he was beaten to death by guards at Donaldson in October. The only call she got was from the chaplain to pass on his condolences.

The constant anxiety, worry, and stress I feel for my husband every single day is enough to do anyone in. But that is only half of it. The emotional toll that my husband's incarceration takes on my family is coupled with the real and persistent financial toll that my family feels. Not only do we have the economic burden of financing his incarceration – through paying for phone calls, gas for visits, money for blankets to keep him warm in the winter, canteen visits to supplement the abhorrent meals they receive – we also have the weight of missing an entire income.

I am responsible for all of our family's financial needs. When my husband gets out of prison, it is unlikely this will get better very quickly. Since most employers require that people disclose their conviction history, it will be difficult for him to find a job. And as one of the members of this very study group rightly pointed out, the Alabama Department of Corrections does anything but correct. My husband and others like him do not have access to the rehabilitative programs – the job training, the mental health programming, the drug treatment – that they will need to be successful members of society when they reenter. Instead, we lock them up and throw away the key. This is no way to encourage success. We – as a state – have chosen to set my husband up for failure.

And when we do that, what incentive do incarcerated people have to be successful? When we cut them off from their families, provide them with no programming, refuse to give them good time, don't focus

on rehabilitation, and allow our prisons to descend in to chaos and violence? I'd encourage each of you to look inside yourselves and consider for a moment what it might look like to reimagine our justice system in Alabama. One that saw that incarcerating someone doesn't just impact them – it impacts entire families, entire communities, entire towns. One that is focused on rehabilitation and redemption instead of revenge and retribution. I hope that some day, we might build that together. Thank you.

Courtney Davis
Remarks to the Governor's Criminal Justice Study Group
December 4, 2019

My name is Courtney Davis. I am the mother of a 16 year-old daughter that I homeschool, I have a great job in property management, lead several small groups at my church, attend the evening program at Highlands College...and I am the wife of David Davis, who is incarcerated at Bibb County Correctional Facility. I tell you all of this so that you know a little about me before I open up about the experience we have had in our journey under the subpar care of the Alabama Department of Corrections.

To give you a little back story of how we ended up here, David was in a car accident on June 11, 2018 while under the influence of heroin. He was in a head-on collision about a mile from our then-home in St. Clair County. Sadly, a passenger in the other car passed away. David was critically injured and almost lost his life as well. He was taken to UAB where he underwent emergency surgery to remove part of his colon. The seatbelt had severed his intestines and he had a torn artery in his neck. He stayed in the trauma unit at UAB for almost a month where he underwent 2 more surgeries for infections in is abdomen. Upon his release from UAB, he was sent home with a wound vac and supplies for me, and home health care nurses, to pack his open incisions. David was in unimaginable pain pretty much all of the time and unable to do simple physical activities. If it involved more than just walking, he couldn't do it. He became extremely depressed, and even talked of suicide. Six months after his wreck, and a week after seeing his primary care doctor and setting up an appointment with a psychologist, David was arrested for murder. He was held on a $500,000 bond and St. Clair County decided to charge my husband with murder instead of vehicular homicide. They knew the charge wouldn't stick, because David had priors from his early twenties, they knew he would have to plea down to manslaughter and they could give him he maximum sentence. That is exactly what Judge Seay did. He gave him 20 years with no split...and told us that if we took it to trial and lost, he would give David life in prison. David was in a car accident as the result of an addiction he's battled with most of his adult life. That doesn't make him a bad person.

While in the custody of St. Clair County, David was seen by 3 different doctors after large hernias emerged in his abdomen – not because the county cared, but because I was persistent. Each doctor and surgeon said the same thing – he needs surgery. His condition is not something that will get better, only worse. The medical provider at the jail even put David on a second blood pressure pill in order to mask the distress he was in. After denying our continuance, Judge Seay said that David would have to sign the plea deal if he was going to take it, but that he would agree to hold off on sentencing until David could get the surgery he desperately needed. That didn't happen. David signed the plea deal, was taken to a consultation at UAB with a surgeon, and then with no explanation or warning, Judge Seay moved up his sentencing a month early and shipped him off to Kilby within 3 days.

While in prison with the Alabama Department of Corrections, my husband has been ignored, he has been denied medical care, and he has been put in harm's way by the staff who is supposed to help rehabilitate him. David has very large hernias, as well as an obstruction. His abdominal wall is completely torn, which means that he has nothing in front of or holding in his hernias and intestines. David, who is usually in an XL, is in a 3XL in order to accommodate his ever-growing abdomen. He's been told by the prison infirmary staff that "We don't have your medical records yet..." and "You're just bloated from being constipated". He is given stool softeners daily along with his blood pressure pills. If

he puts in a sick call, he is given milk of magnesia and Tylenol and then sent back to his dorm – and that's if he actually gets to go to. David's missed appointments because there isn't a staff member available to go get my husband and take him to the infirmary. David stays constipated because his bowels are restricted, he can't stand or lean over for too long because of the pressure on his abdomen, he can't lay on his back because the hernias push into his lungs, the skin on his abdomen stretches and splits open, he is extremely uncomfortable and finds it hard to breath...just to name a few of the symptoms he lives with daily. His condition has also caused unnecessary security issues for him in the prison. He has been stopped several times by employees of the correctional facility wanting to know what contraband he has under his shirt. While leaving chow hall 2 months ago, David was hit in the stomach by Sgt. Dent on the CERT team. After David was able to compose himself and lift his shirt up, Sgt. Dent's response was, "I didn't hit you that hard...". I called to the prison to report it, but no one ever talked to David about the incident. If I'm correct, in the real world, the Sgt. would have been arrested for battery.

I reached out to an investigative reporter who wrote an eye-opening piece about my husband's serious medical issues and the lack of care he's received while in custody of the Alabama Department of Corrections. At the last Study Group on November 1st, I approached Judge Seay and Commissioner Dunn. Judge Seay said he didn't recall my husband, but the look on his face said otherwise. Commissioner Dunn promised me an invite to Bibb County Correctional Facility to sit down with my husband and a healthcare provider, but that hasn't happened yet. I have also spoken with Ruth Naglich twice after David was finally taken to UAB for a consultation on November 5th. We are still waiting for the next steps, which needs to be surgery, but we don't know if or when it will happen.

I will continue to call, text, email, and show up at places like this in order to fight for my husband's life. And then I'll continue doing it for others...because not everyone has a Courtney at home who promised to love and honor them through sickness and health, for better or for worse. And although it shouldn't take an article being published, or a life-threatening condition that is now to the point of potentially being irreversible, to finally get someone's attention, that's apparently exactly what it takes. I cannot imagine my heart being in such a condition that it does not allow me to care about the one that Jesus gave His own life to save. He came for the lost. Everyone has a name, everyone has a story, and everyone matters to God. Just because you have a different title or position in life, in the eyes of God, you are no more important than my husband sitting in inhumane conditions at Bibb County Correctional Facility.

People always assume this could never happen to them, or it doesn't matter because it's not their loved one in prison, "do the crime, pay the time", or that's just karma doing it's job. I'm here to tell you that it most certainly can happen to you. My husband was impaired because of drugs...but it could be your husband leaving a football party after having a few beers, your daughter leaving a college party after having her first drink, your wife applying her makeup while driving, or your son sending that text. Your family is human just like mine. And humans make mistakes. I promise you – you'd feel a lot differently about "those people" in prison if those were your people.

In conclusion – I hope hearing about my husband's suffering and lack of care helps illustrate the clear fact that the Alabama Department of Corrections is so understaffed and dysfunctional, it cannot adequately provide medical care for the people in its custody. New prisons will not solve these problems.

My name is Albert Pugh, I am 64 years old and I served over 30 years in the Alabama prison system. I'd like to share my experience with you and why I believe the habitual offender law is keeping many people in prison for too long and why many others with life sentences deserve a second chance like I was given.

My Dad died when I was 6 and I grew up with 6 sisters and a brother. My home life was not bad I just didn't learn the things I needed to become a responsible adult.

I hung out with the wrong crowd and began to get in trouble at an early age. Also I began to drink alcohol and later started using drugs.

By the time I was 22 I had lost hope for the future and had a long list of convictions, 4 or 5 car theft cases, burglary, drug sales and robbery. I was considered a habitual offender.

In May of 1983 I was 28 years old and sentenced for 2 Robbery cases and given 2 LWOP sentences. At this point I was angry and lost, not realizing how bad it was. Once I got to prison to begin my life without parole sentence, I stayed in trouble for fighting and was always looking for a way to escape.

This was my 4th trip to prison; I grew up in prison and knew how to survive there but didn't know how to survive in society.

In November of 1984 I attended a Kairos weekend; this is a prison ministry that has a very unique curriculum that helps men experience the love of God in an overwhelming way. I'm glad I was able to attend and that Kairos are still very active in our prisons. During this weekend I realized that God was real and that he loved me. I had heard this before but now I knew it in my heart and on December 31st 1984 I made a commitment to Christ and my life began to turn around. But you have to realize that even after getting saved I still had issues and a lot to learn in order to have a life. I had to learn to love myself because I'd made many mistakes in life and it was only through the love of God that I was able to see myself as He sees me and begin to feel good about who I am and who I was becoming.

During this time of growth I attended many classes offered inside Alabama prisons, those in the chapel, a Fatherhood class, Kenneth Hagin's Rehma Bible College. I went through the Therapeutic Community and graduated after 21 months but stayed and worked with them for 13 years. This program was at St. Clair Correctional and at the time was considered the most intense behavior modification program inside Alabama prisons. I learn how to submit to authority and to be in authority over others. This was an amazing time of growth for me; it helped me to understand why I used drugs and to realize there was a better way, that I could do better whereas before I didn't believe in myself enough to even try to do better.

In 2004 Junior Mack Kirby who was sentenced to LWOP as a habitual offender was deemed a non violent offender and was given a sentence reduction. This opened the door for many of us to ask for a sentence reduction as well. I filed back into the court that sentence me in 1983, asking for a sentence reduction. Like many other habitual offenders, the court initially denied my requests based on my criminal record. I continued to file for the next five years until a judge granted me a hearing in July of 2010, sixty six people showed up for my hearing, 25 testified and the hearing lasted 4 hours. At the end of my hearing the judge stated he would look at the evidence and get back to us. Two weeks later my sentences were reduced and one year later I was given a parole. I left St. Clair Correctional Facility on August 1, 2011.

Today I am married, an ordained minister, and my wife and I are buying a home in Logan, Alabama.

I've had 3 jobs in the eight years I've been home.

My first with Emerson Durbin Steel Fabrication, I worked with them for 6 months until I was ask to come work with the Foundry Ministries.

March 1, 2012 I started to work with the Foundry Ministries and work with them over 7 years. I worked with the Foundry as a Christian counselor for six and a half years, and then received a promotion to Director over the Foundry's Re-entry program where I was to oversee 56 residents. Mostly men who were paroled to our facility for help in re-entering society.

Now I work full time in the 2 transitional homes I started in Cullman, Al.

At my transitional home the first year we had 12 beds and were able to add 16 more beds in the 18 months we've been open. In this time we've had 150 men come through our doors.

The Foundry has a total of 413 beds, I was there over 7 years and helped hundreds of men, sharing my testimony and counseling people just coming out of prison, many times sharing my past to give them hope that they too, could overcome mistakes and succeed in life.

In conclusion, I hope my story helps you recognize the value of second chances, even for people who are sentenced to life without parole. I am also the beneficiary of good rehabilitative programming and I believe more programs like Kairos and the therapeutic community could help give people hope and change their behavior.

I've been involved in the Alabama prison system since 1971. I was a prisoner, worked with prisoners and have ministered to prisoners all of my life.

The stories we hear from our prisons are the worst I've ever heard. Prisoners seem to have lost hope for the future and it is on us to help bring about positive change to their lives. If we don't it can only get worse!

Thank you for your time.

ALABAMA CRIMINAL DEFENSE LAWYERS ASSOCIATION

Governor's Study Group on Criminal Justice Policy

The Alabama Criminal Defense Lawyers Association has members in every corner of the state, and in every type of criminal defense practice—public defenders, contract attorneys, appointed counsel, and members of the private bar. The ACDLA exists to promote excellence in the practice of criminal law, which benefits criminal defense attorneys, criminal defendants, and the state.

The members of the ACDLA have firsthand experience of how Alabama's criminal code is actually applied in the real world. Based on that experience, the ACDLA has several commonsense recommendations for the Study Group:

1. **Unlawful Possession of Marijuana in the First Degree** (Ala. Code § 13A-12-213). Alabama treats marijuana possession uniquely. Rather than characterize simple possession of marijuana as a Class D felony *like all other controlled substances* (Ala. Code § 13A-12-212), marijuana possession has its own framework. Marijuana possessed for "other than personal use" is a Class C felony. This standard is much vaguer than the "intent to distribute" weights established for most other illicit drugs in Ala. Code § 13A-12-211(c). ACDLA advocates regularizing this system, removing the possibility of incarceration for simply possessing marijuana.

2. **Theft of Property Thresholds** (Ala. Code §§ 13A-8-3–5). Alabama generally classifies simple theft of property into four degrees based on the value of the property stolen: greater than $2,500 is a Class B felony; between $1,500 and $2,500 is a Class C felony; between $500 and $1,500 is a Class D felony; less than $500 is a Class A misdemeanor. Though there have been some tweaks to these figures, the maximum threshold ($2,500) hasn't increased in more than 15 years. ACDLA recommends raising all of the thresholds so that the significant punishments associated with higher level felonies only attach when significant amounts of property are stolen.

3. **Habitual Felony Offender Act** (Ala. Code § 13A-5-9). Alabama imposes a tremendous burden on itself by enhancing punishments for repeat felony offenders under the HFOA. The examples of relatively minor offenses triggering staggeringly long sentences are well known. ACDLA strongly supports meaningful reforms—or even repeal—of the HFOA, including lookbacks and mandatory judicial review of sentences. As a corollary, ACDLA supports reconsideration of the violent/nonviolent offense framework in any retroactive review of sentences.

Governor's Study Group on Criminal Justice Policy
December 4, 2019

Hayden Glass Sizemore

Recommended publication:

Griffin Edwards, et al., *The Effects of Voluntary and Presumptive Sentencing Guidelines*, 98 TEX. L. REV. 1 (2019).
Available online at: https://texaslawreview.org

Topic Outline:

Review of the conclusions in *The Effects of Voluntary and Presumptive Sentencing Guidelines*
Issues with sentencing guidelines:

- Not retroactive or applicable to all offenses or offenders
- Despite the built-in enhancements for repeat offenders, habitual offenders are specifically exempted and subject to § 13A-5-9
- SB 67 was not retroactive

First Step Act (Public Law 115-391)

- Shortens some sentences, including a reduction in the sentence for third-strike crimes from "life imprisonment without release" to "a term of imprisonment of not less than 25 years."
  - But was not retroactive.
- "Safety valves" which allow judicial discretion to bypass mandatory-minimum sentences
- Allows offenders to apply for retroactive application of a 2010 law that reduces the sentencing disparity between crack and cocaine offenses.
- Allows inmates to earn credits toward early supervised release by completing programs to reduce recidivism.
- As of December 3, 2019, within the last 12 months the First Step Act has resulted in:
  - 2,243 orders granted for retroactive sentence reductions
  - 342 offenders approved for elderly offender home confinement
  - 107 offenders approved for compassionate release or reduction in sentence

Recommendations:

- Repeal § 13A-5-9 in favor of the guidelines or release after a term of years with retroactivity
- Legislation to make the guidelines applicable to all non-capital offenses
- Expand DOC medical furlough program to include elderly inmates not suffering from terminal disease or illness.

Other noteworthy items (omitted for time constraint):

Second Chance Act

- Provides needed support for cost-effective programs in 49 states and the District of Columbia to help men, women and juveniles successfully transition from correctional confinement to productive members in their communities – through a focus on proven strategies such as housing and jobs programs.

American Bar Association Recommendations & Sentencing Standards

- Expansion of recidivism-reducing programs
- Compassionate release for the elderly and terminally ill
- The elimination of sentences of life without parole and solitary confinement for juveniles
- Standard 18-2.5 Determinacy and disparity
  - The legislature should create a sentencing structure that sufficiently guides the exercise of sentencing courts' discretion to the end that unwarranted and inequitable disparities in sentences are avoided.

Hayden Glass Sizemore, *A Death Sentence without an Execution Date: The Presumptive Unconstitutionality of Life without Parole for Recidivists*, (2019).
Available by request to: hayden.sizemore@faulkner.edu

To: Governor Kay Ivey's Study Group on Criminal Justice Reform

Topic: Reform of Alabama's Marijuana Laws

Presenter: Dagney Johnson, Attorney at Law

Alabama's war on marijuana ensnares thousands of otherwise law-abiding people in the criminal justice system and is enforced with staggering racial disparities, with black people four times as likely as white people to be arrested for simple possession, according to research from Alabama Appleseed and the Southern Poverty Law Center.

As a criminal defense attorney practicing in the Birmingham metro area over the last 18 years, I've represented African American and Latino clients who were prosecuted for having small amounts of marijuana. I've seen the harm that a marijuana conviction can have on someone's future, their job prospects, and the high cost of court fines and fees they must pay. Even when that conviction does not lead to prison time, it creates barriers to employment, housing and stability. A second conviction for possession alone is a felony in Alabama, so our laws make felons of approximately 1,000 people per year, who would not be considered felons in much of America.

I am a resident of Mountain Brook, an affluent community where residents have resources to hire the best attorneys if needed. However, those resources are rarely used in drug arrests. Having observed the habits and practices of people in my community for decades, I assure you that a significant percentage of adults use marijuana in various forms, from smoking to gummies. They never worry about getting arrested because Alabama's drug laws are not enforced equally across racial and socioeconomic lines. I have a 15-year-old son and I guarantee, should he or any of his white friends get stopped with marijuana they would face none of the criminal penalties that a black teenager in a different community would face.

While there are both moral and economic arguments for modifying Alabama's marijuana laws, what is clear to me as I speak to friends, neighbors, and colleagues is that Alabama's current enforcement system is an expensive failure. According to recent research, Alabama spends approximately $22 million dollars each year enforcing marijuana possession cases alone – draining limited resources of local law enforcement, district attorneys, forensic science labs, and courts. This is a substance that's legal in states where half of Americans live. This strategy is not keeping us safer and is diverting precious law enforcement resources away from serious public safety problems. Alabama should do what other southern states have done and pass comprehensive marijuana reform to:

- End felony convictions in possession of marijuana cases; replace with a citation-only violation, punishable by a fine of not more than $150, for possession of one ounce or less of marijuana
- Set reasonable weight thresholds for sale/distribution and remove zone enhancements
- Expand expungement eligibility, including retroactive application so that an arrest in high school or college does not stay on someone's record indefinitely.

Group Name: City of Birmingham, Office of P.E.A.C.E. and Policy

Speaker: Brandon F. Johnson, Director

Proposal Topic: Birmingham Office of Reentry

Summary: Every year approximately 1500 formerly incarcerated people return home to Jefferson County from the Alabama Department of Corrections, a majority of which settle in the City of Birmingham. As the largest city in the state of Alabama, the City of Birmingham would like to play a leading role is assisting the State of Alabama in reducing its prison population. One of the best ways to assist in this effort is to reduce recidivism. To this end, the City of Birmingham is standing up its Office of Reentry with the following key components: 1) Peer support groups; 2) Case management and benefits navigation; 3) Incorporation of permanent supportive housing into the city's overall affordable housing plan; 4) workforce development and employer incentives to stimulate full employment of the formerly incarcerated; 5) programming to support family reunification; and 6) a "welcoming center" to facilitate the orderly transition of formerly incarcerated persons into the Birmingham community. The Office of P.E.A.C.E and Policy is working to build an innovative reentry model that can be replicated throughout the State of Alabama. This proposal ultimately seeks to do this in partnership with the state for the good of Alabama as a whole.

PRISON REFORM

OFFICE OF PROSECUTION SERVICES
ALABAMA DISTRICT ATTORNEYS ASSOCIATION

PRETRIAL DIVERSION

- Finance a resource person in each county to coordinate Pretrial Diversion programs with DA.
- Allow discretionary Pre-Arrest Diversion with the District Attorneys. (For example, Chemical Endangerment cases with pregnant mothers as defendants.)
- Expand resources for drug testing or other similar supervision resources that cost the diversion programs and prohibit participation by jurisdictions with fewer resources.

REPEAL CLASS D FELONIES

- Reclassify property crimes raising the misdemeanor level to $1,000.
- Drug offenses should be Class C felonies, addressed by Sentencing Commission, Diversion Programs, and drug courts.
- Other property crimes, such as forgery, fraudulent use of a credit card or identity theft should remain felonies. Remove either the restriction regarding confinement from these remaining class D offenses or make these offenses unclassified. This prevents their use as an enhancing offense for HFOA but would give judges discretion for sentencing. Maximum sentence remains 5 years.
- Make it mandatory for municipal courts to refer court ordered funds to restitution recovery units. If not, these crimes which previously included recovery efforts by the district attorneys, would no longer be pursued by a specialized unit. In some jurisdictions, there would be no efforts for post-conviction recovery.

REVOCATIONS

- Do away with dips (48-hour administrative revocation).
- Allow credit for time served in county jail for technical violations (DUNKS). This is only recommended if the Sheriffs receive compensation from the State.

DEFENDANT'S RIGHTS

- Remove requirement to pay all costs before obtaining a certificate of eligibility to vote.
- Amend youthful offender statute to exclude violent offenses and expand to cover all first offenses regardless of age. Specifically, no Youthful Offender for murder, sex offenses or robbery. However, it would be available for a 30-year-old with no criminal history for a minor offense.

Substance Use in Pregnant Women: Addressing Challenges Faced by Alabama Families

On November 20-21, 2019, a statewide, multi-disciplinary Leadership Summit hosted by the Jefferson County Department of Health convened to explore the issue of substance use in pregnancy, review best practices and provide recommendations for short and long-term actions. The following represents a consensus of these discussions.

People with behavioral health conditions, including serious mental illness and substance use disorders including opioid use disorders, are overrepresented in Alabama's criminal justice system. Pregnant women with substance use disorders pose further challenges to the overburdened system by utilizing exponentially more jail/prison healthcare funding to ensure the safety of both mother and child.

Illinois and Fulton County, Georgia are among entities addressing this legislatively with successful jail diversion and law enforcement deflection initiatives. [1,2,3]

In response, we propose:

1) Determine, by first appearance before a Magistrate or Judge (ideally within 48 hours), if any criminally detained woman of childbearing age is pregnant.

2) Create pathways to divert pregnant women facing non-violent offenses, including chemical endangerment offenses, away from incarceration.

3) Create minimum standards for diversion developed jointly by the Office of Prosecution Services in collaboration with the Administrative Office of Courts, the Alabama Department of Mental Health, Alabama Department of Human Resources, the Alabama Department of Public Health and supported by consumer representation.

4) Incorporate "best practices", data driven statewide standards for such pre-arrest and pre-trial diversion pathways for pregnant women, utilizing partnership networks of peer support, child welfare, Family Drug Courts, behavioral health and addiction treatment services.

5) Appropriate additional funding to the Alabama Department of Mental Health for - (a) a minimum of 32 additional substance use disorder treatment beds with priority access for pregnant women, and (b) additional peer recovery support resources for this vulnerable population. (Note - Supplemental treatment resources are necessary for the expansion of pre-arrest pre-trial diversion, or Drug Courts to be successful across the state.)

References

1) Atlanta/Fulton County Pre Arrest Diversion Initiatives, www.prearrrestdiversion.org
2) http://www2.centerforhealthandjustice.org/content/project/sb-3023-community-law-enforcement-partnership-deflection-and-addiction-treatment-act
3) U.S. Department of Health and Human Services, Approaches to Early Jail Diversion: Collaborations and Innovations, July, 2019, https://aspe.hhs.gov/basic-report/approaches-early-jail-diversion-collaborations-and-innovations

Synopsis of Alabama Arise testimony for Criminal Justice Study Group meeting 12-4-19

By Jim Carnes, Policy Director, Alabama Arise

Alabama Arise believes one essential step in solving the state's prison crisis is to extend health coverage to uninsured Alabama adults with low incomes. Harnessing Alabamians' federal tax dollars to raise Alabama's Medicaid eligibility limit -- one of the country's most restrictive – would address the prison crisis in four ways:

1) Untreated mental illnesses and substance use disorders helped bring us to this point, and Medicaid expansion tackles these challenges head-on. Too often, serious problems left unaddressed in the outside world lead to prison and only worsen there. An increase of $40 million for Corrections for 2020 falls far short of addressing the neglect of prison mental health needs that an ongoing federal lawsuit seeks to remedy.

   Outside our prison system, Alabama uses scarce General Fund dollars to support local mental health and substance use treatment services for people who are ineligible for Alabama's stringent Medicaid. But for people who could gain coverage under Medicaid expansion, the state would only have to spend a dime on the dollar for those same services. In other words, the 90 percent federal match for Medicaid expansion would allow Alabama to expand mental health and substance use services ten-fold for the same state investment. Those services would address the mental illnesses and substance use disorders that cause many former offenders to return to prison. And they would keep thousands of individuals each year from entering the criminal justice system in the first place.

2) A widespread challenge for newly released prisoners is lack of affordable health coverage. The setbacks that result from untreated asthma, hypertension or diabetes make it harder to find and keep a job. And the jobs that many former prisoners get are unlikely to offer health insurance. Medicaid coverage would help more people make successful transitions to life after prison.

3) The permanent 90% federal funding for Medicaid expansion would slash state costs for hospitalizing prisoners. Today, Alabama spends about $15 million a year to pay for prisoner hospitalizations that occur outside of prisons. Covering those same hospitalizations under Medicaid would save corrections about $12 million a year. These savings could be redirected to staffing and other critical needs.

4) On the generational scale, the best antidote to incarceration is education, and Medicaid expansion would stimulate major new funding for schools. The first four years of federal matching funds for expansion would generate $11.4 billion in new economic activity, according to a study by Dr. David Becker, a health economist at the UAB School of Public Health. As a result, state tax revenues would increase by $446 million over the same period, and local revenues by $270 million. This new money would flow to the Education Trust Fund to support public schools.

   The 36 states that have accepted Medicaid expansion are case studies in how a single policy decision can strengthen the health care system, make the population healthier and shore up state budgets. Alabama's legacy of failure on all three counts is a major contributor to the prison crisis. And Medicaid expansion is an essential part of the solution.

ALABAMA APPLESEED
CENTER for LAW & JUSTICE

From: Leah Nelson, Research Director, Alabama Appleseed
To: Governor's Study Group on Criminal Justice Reform
Re: Diversion Programs and Alternatives to Incarceration: How Alabama's hard criminal laws and underfunded courts collide to deny poor Alabamians equal access to diversion
Date: Dec. 4, 2019

For the past two years, Alabama Appleseed has worked with a network of partners across the state to survey and interview hundreds of Alabamians about their experience with treatment courts, DA diversion, community corrections, CRO, and other diversion programs and alternatives to incarceration. What we've learned is that these programs are too expensive for poor people who lack wealth to participate in them without making outrageous sacrifices. They are not designed to accommodate the everyday realities of folks who have jobs, children, or other obligations.

"Ryan," a young man we encountered at Shelby County's drug court, exemplifies the shortcomings of the system as it currently exists. In 2017, Ryan was convicted of unauthorized possession of a controlled substance and put on probation in Chilton County. In early 2019, he reoffended in Shelby County and was accepted into Shelby's drug court, widely acknowledged to be one of the toughest in the state. Ryan excelled in rehab and got his life back together, but he didn't understand he was supposed to still be checking in with his probation officer in Chilton. He thought his supervision had been consolidated in Shelby. When he learned there was a warrant out for his arrest, he turned himself in and sat in jail for 3 months while much of the work he had done to rebuild his life disintegrated. He's out now, but he's struggling. He earns $400 a week to support himself and his young son. **Between drug tests, supervision fees, drug court fees, and fines, he pays about $700 a month. That's almost half of his income.**

Ryan is not alone in struggling with the financial and operational obligations of diversion programs in Alabama. In 2018, Appleseed worked with partners to survey nearly 900 Alabamians about their experience with the courts.

- **About 20% of the people we surveyed reported they were turned down for a diversion program like drug court because they could not afford it**
- **About 15% had been kicked out of a diversion program because they were unable to keep up with payments.**

In 2019, we followed up with a survey of a smaller group of people.

- The median amount our 2019 survey-takers reported paying for diversion programs was $1500.
- Only 11% had ever had their payments reduced due to inability to pay.
- 66% gave up a basic necessity like food, rent, or car payments to keep up with their payments. 36% took out a payday loan.
- **30% admitted they had committed a crime to keep up with their payments.**

Alabama can and must make diversion programs more accessible to poor people.

- Judges should conduct individualized ability to pay determinations that take people's financial realities into account.
- Programs should be portable and easy to consolidate. As a rule, no one should be on more than one form of diversion or paying for supervision by multiple jurisdictions or entities. Individuals should be able to serve their sentences where they live, not where they offended.
- Diversion programs should track individuals' progress, make graduation and recidivism rates pubic, and remain vigilant about how they can do better. If these programs are to serve their dual purpose of giving Alabamians who have made mistakes a second chance and keeping families and communities healthy and strong, they must account for the everyday realities of the people who participate in them.

State of Alabama

On Safe Ground with Attenti

Rachel Semago, Director of Business Development
rsemago@attentigroup.com
727.247.5971

12/04/19

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Attenti as a Company

Providing electronic monitoring solutions for almost 25 years

- In-house Engineering
- Production and Repair
- Shipping and Receiving
- Primary Monitoring Center
- Primary Data Center
  - Bulletproof Glass
  - Bio-metric Access Control
- 30,000 sq. ft. Facility
- 24/7 Security Services
- ISO 9001:2015 Certified

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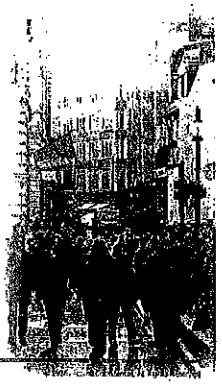
Attenti Customer Scope

A reliable partner to make safer societies

- Experience in over 30 countries worldwide
  - Monitoring over 69,000 worldwide
  - Monitoring over 42,000 in the US
- Most state electronic monitoring contracts
  - Customers in 42 states
- 240 state and county level programs in the US:
  - Florida Department of Corrections (7,800 units on leg)
  - Texas Department of Criminal Justice (5,300 units on leg)
  - Michigan Department of Corrections (4,200 units on leg)
  - Massachusetts Office of the Commissioner of Probation (3,500 units on leg)
  - Iowa Department of Corrections (1,000 units on leg)
  - Cook County Sheriff (2,500 units on leg)



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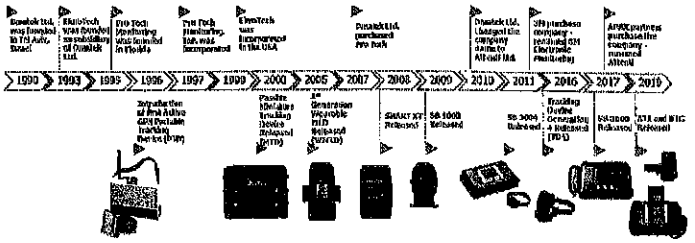
Attenti's Years of Experience

A long history of innovation



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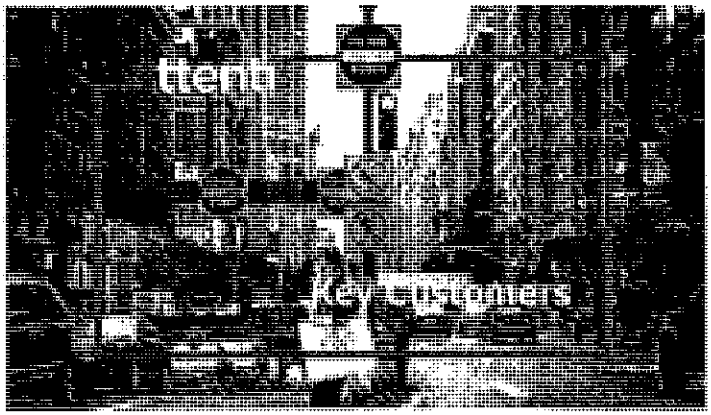

Attenti Customer Satisfaction Survey Highlights

Survey of 450+ Attenti Customers, August – October 2017

- 96% feel Monitoring Center is courteous and professional

Attenti EM Software

- 89% said our software has high quality reporting capabilities and functionality
- 86% feel our software increases their job efficiency

Attenti R&D

- 83% feel that Attenti technology is innovative

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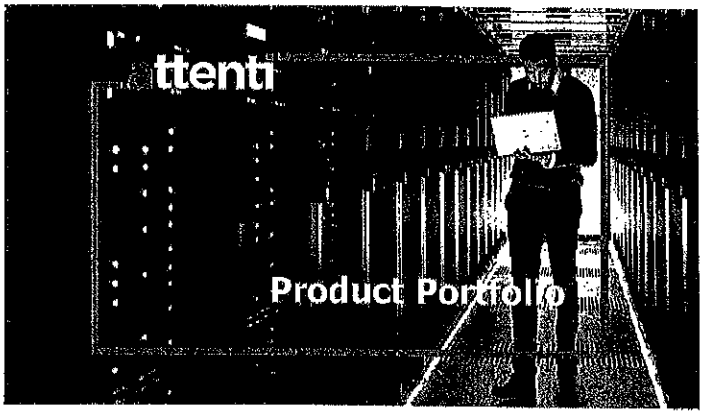
Representative Contracts:

- Florida Department of Corrections (8,100 units on leg)
- Texas Department of Criminal Justice (5,300 units on leg)
- Michigan Department of Corrections (4,200 units on leg)
- Massachusetts Office of the Commissioner of Probation (3,500 units on leg)
- Iowa Department of Corrections (1,000 units on leg)
- Cook County (3,000 units on leg)
- Oklahoma Department of Corrections (700 units on leg)
- Connecticut Department of Corrections (550 units on leg)
- Vermont Department of Corrections (225 units on leg)
- Louisiana Department of Corrections (200 units on leg)
- West Virginia Division of Corrections (200 units on leg)
- Pinellas County Sheriff (250 GPS and 225 SCRAM units on leg)

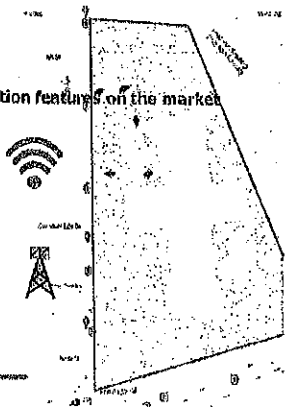


Attenti Products

Focusing on Communication

Attenti Devices have the most communication features on the market

- GPS:
  - Multiple tracking technologies:
    - GPS
    - WI-FI
    - Enhanced Tower Based Tracking
  - Multiple data transfer options:
    - Cellular
    - WI-FI
- RF:
  - Handset for communication
  - LTE cellular communication



Electronic Monitoring vs. Prison

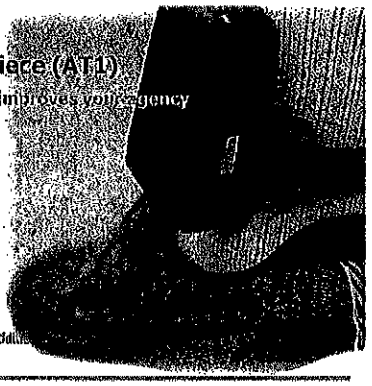
Saving tax dollars

- Average prison bed night $55
- Average GPS day with monitoring $5
- $50 savings per inmate per day
- 1,000 inmates
- $50k savings per day, $18,250,000 savings per year

Attenti Tracker One-Piece (AT1)

Focusing on technology that improves your agency

- Wi-Fi Tracking/Communication
- GPS/Cellular Jamming Detection
- Shielding Detection
- Active, Hybrid, Passive, and RF
- 2 Second GPS Sampling
- Pursuit Mode
- Onboard Processing
- Over the Air Updates
- Motion Sensors
- 37-hour+ battery life; 48+ hours with addi
- Instant Communication with Participant



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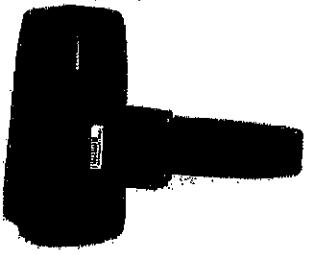
Attenti Tracker One-Piece (AT1)

Focusing on technology that improves your agency

- Technical Specs:
  - Height: 3.72 inches
  - Width: 3.30 inches
  - Depth: 1.82 inches
  - Weight: <6.2 ounces
- Key Features:
  - Simple Installation and Activation
  - Onboard Processing
  - Pursuit Mode
  - Optional Indoor Beacon
  - Jamming and Shielding Detection
  - User-friendly Software and Mobile App



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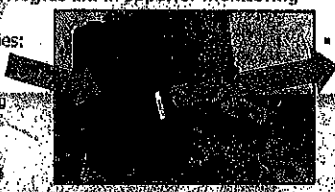
Maximizing Technology

Multiple technologies aid in superior monitoring

- Tracking Technologies:
  - GPS
  - Wi-Fi Tracking
  - Tower-Based Tracking
- Communication:
  - LTE Network
  - Wi-Fi Networks



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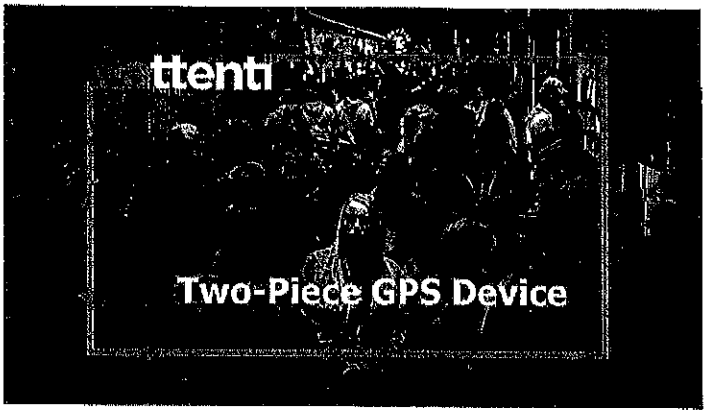
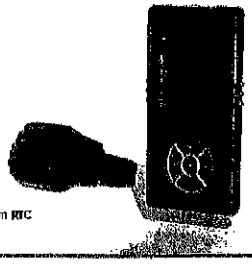


RTC – New Two-Piece GPS

Harnessing the power of communication to assist in compliance

Key Features:

- Voice Communication with Offender
- Can be programmed with 5 numbers to dial out
- GPS & Cellular Jamming
- Shielding Detection
- Pursuit Mode
- Wi-Fi Tracking
- Data over WiFi (helps in rural areas and at work)
- Multiple LTE Cellular Providers
- Tamper Detections
- Zone Layers
- RTC waterproof to 10 feet
- Bracelet waterproof to 66 feet and vibrates when too far from RTC



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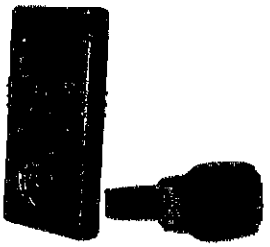
Attenti Two-Piece GPS Tracking Device (RTC)

A tracking system for those who know it's about more than tracking

- Attenti's RTC takes supervision to the next level offering:
  - Direct communication with participant
  - Multiple tracking technologies:
    - GPS
    - Wi-Fi
    - Enhanced Tower Based Tracking
  - Multiple data transfer options:
    - Cellular
    - Wi-Fi
  - Multiple supervision levels
  - Interference detection
  - Custom program configuration



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Bracelet - BTX

A secure asset to your tracking system

- Weighs less than 1.6 ounces
- 1-year battery life and 2-year shelf life
- Waterproof to 66 feet
- Designed to make physical tamper evident
- Patented light focusing technology
  - Maximizes strap tamper detection.
- Strap design improves durability and stretch resistance
- Can notify participant via vibration
- Adjustable ranges (low, medium, high)

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Attenti EM Manager Software

The heart of your monitoring program

- Establish Rules, Zones, and Schedules
- Case Management
- Assign/Deactivate Hardware
- Reporting System
- Help Documents/RoboHelp
- Inventory Management
- View Offender's GPS Points
- Offender Monitor
- Offender Tracking
- Point Tracking
- Crime Tracking
- Point Analysis

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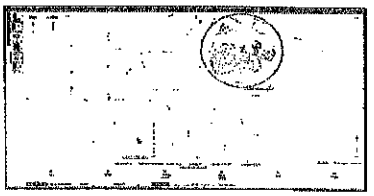
Attenti EM Manager Software

Easily identifiable zones

- Inclusion and Exclusion Zones are identified on the maps by their respective colors.
- Inclusion Zones are green.
- Exclusion Zones are red.



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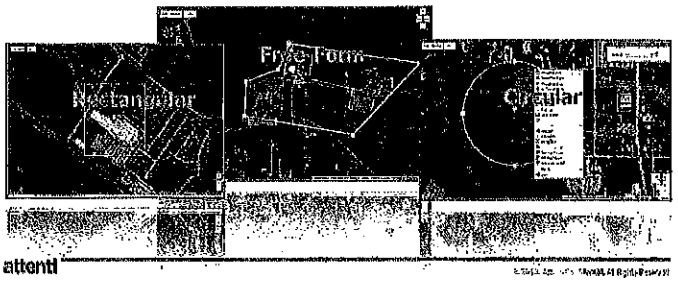
Many shaped zones to fit your many needs



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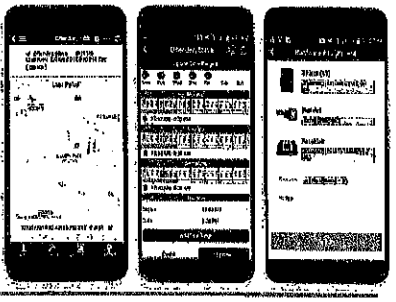
Mobile EM Manager App

- Perform essential monitoring functions through the app on a cell phone
  - Connect via Wi-Fi or Cellular Network
- Create/Edit Rule Schedules
- Assign and Unassign devices
- Fully functional device messaging/alert capabilities
- The ability to contact participants by calling or emailing them directly from the device
- Fully Integrated Google Maps
- Pursuit Mode feature



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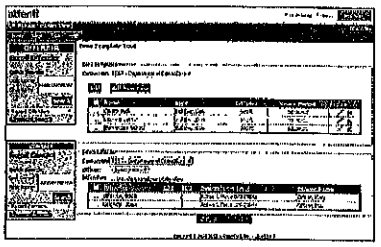
Zone Layers

Zoning tools that fit your needs

- Establish layers of similar zones
  - Schools, parks, daycares, etc.
- Automatically or manually apply layers to the appropriate participants



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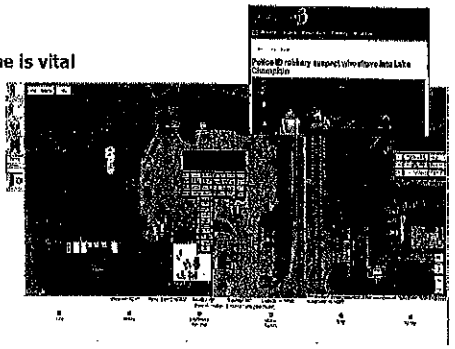
Pursuit Mode

When response time is vital

- Reports a GPS point every 15 seconds
- Automated point download
- Refreshes map every 15 seconds
- It works for customers



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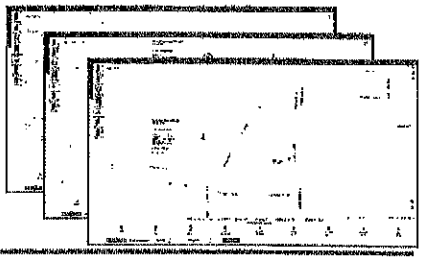
Attenti EM Manager Software

Location based services for accurate tracking

- Multiple location tracking technologies for best results:
  - GPS
  - WI-FI
  - Tower Based Tracking



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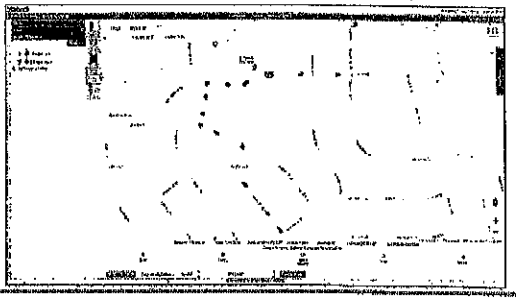
View multiple participants' points to get a bigger picture



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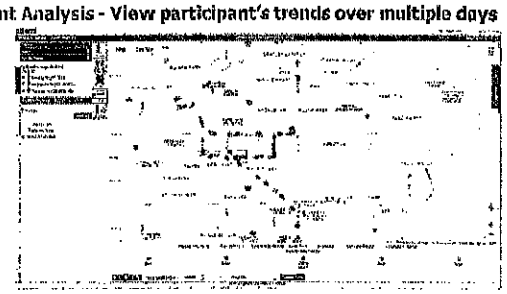
Point Analysis - View participant's trends over multiple days



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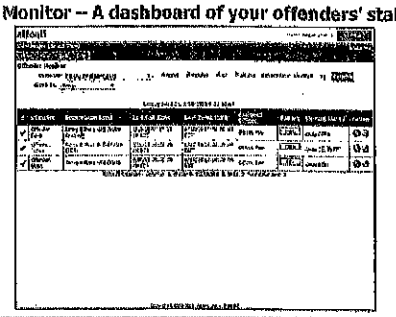
Offender Monitor – A dashboard of your offenders' status



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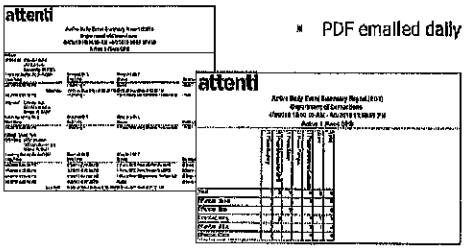
EM Manager Software

Your Daily Event Summary Report (DESR)



- PDF emailed daily

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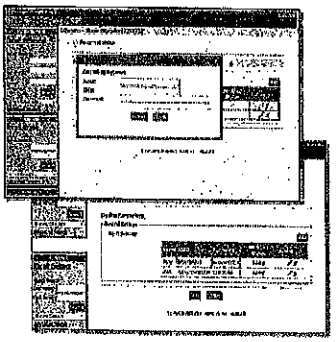
Wi-Fi Data Transfer

More ways to report activities

- Allows communication from device when cellular coverage is poor
- Easy to enter through EM Manager
- Password protected enabling a secure data transfer



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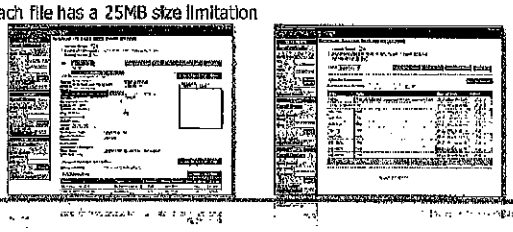
Document Uploading

Adding important insights to help manage cases

- To help in case management, document upload allows multiple files upload to each record
- Each file has a 25MB size limitation



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Attenti Monitoring Center

Experienced Customer Service Agents

- Built on a reputation of excellence:
  - Extensively trained for quick and accurate answers
  - Bilingual agents (English and Spanish)
  - Additional translation services available
  - Quality Assurance Coordinator
- Redundant Locations:
  - Main Center: Odessa, FL
  - Redundant Center: Memphis, TN

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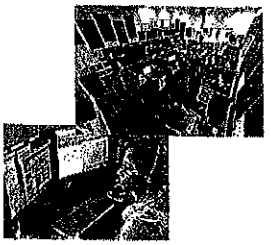
Attenti Monitoring Center Services

Cost-effective solutions to help reduce your workload

- 24/7 Monitoring Center Support:
  - Included for all Attenti Customers
  - Inbound customer support
  - Participant enrollment, scheduling, and device assignment/deactivation
  - Equipment and software support
- Additional Monitoring Services:
  - Alert Triage
  - Outbound alert resolution:
    - Calls to participants
    - Calls to officers
  - Enhanced escalation and call tree programs



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Thank You!
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ALLIANCE REENTRY CENTERS, INC. – speech to Governor's Commission on Reentry Solutions:

Good Morning Honorable Committee Members. My name is Scott Frye, President and CEO of Alliance Reentry Centers, Inc., ARC for short. ARC is a multi-city buildout of re-entry and success centers throughout Alabama oriented for post-incarceration individuals who deserve the support needed to oblige the difficult task of assimilating to the rigors of entry back into society. Our design is centered around the re-entrant and the approach to individual responsibility; building employment skills, employment retention, family reunification skills, improving the well-being of children and the mothers of children in the State of Alabama. Our proprietary model is one of sustainability.

We believe with your endorsement that we can be a part of the solution to the dangerous and unconstitutional overcrowding of Alabama's jails and prisons and lowering recidivism. We know that you did not cause this problem, but you inherited a creeping legacy of institutional handoffs in the correctional system that we feel we have an advanced solution. The cost to you and the state and taxpayers is non-existent. Our recompense is for you to recognize our effort and ability to improve the lives of those who have faltered and who desire a helping hand to regain a step back into a revered and demanding society through trust and hard work.

We focus on reintegrating men, and soon, women, from jail and prison back into society and allow them to be productive members through life skills training, job placement, housing and other tools to develop "Success Stories." We are doing that now as we speak. We have numerous testimonials that evidence our success and the success of our Participants and unfortunately don't have the time today to tell you about them, but I will say this, any of you are welcome at any time to tour our centers to see first hand. Our centers have state of the art technologies such as keyless entry (we do not own keys), cloud based remote motion sensor video cameras, and we are even developing our own mobile app for tracking and monitoring which is called ARC COMPLY. Our app will cater, and be helpful to parole/probation officers, judges, DA's, etc. because they can manage by information more efficiently to enhance public safety.

ARC COMPLY is our proprietary cloud based software application specifically designed for this industry. It incorporates the latest facial and voice recognition and GPS, time date recording for remote Check In's, drug testing management, and

geofencing to make sure Participants are where they should be or should not be all geared to ensure public safety.

Our goal is to build out 1,500 to 2,000 beds across Alabama over the next 3 to 5 years by repurposing facilities, acquiring homes or building new facilities. We have our ~~pilot~~ model ~~facility~~ center, ARC of Bessemer, ~~in Bessemer, Alabama~~ that houses 56 men and a women's ~~facility~~ center, ARC Women of Bessemer, which ~~will~~ houses 8 women. We ~~have also identified future~~ are also under contract with 3 properties in Montgomery, and have identified future centers in Decatur, Mobile and Tuscaloosa ~~and Montgomery~~ with an estimated 150+ beds for Participants.

The cost to house an inmate in the Alabama system was an average of $60.34 per day based on the FY2018 ADOC Executive Summary. A reentry and success program such as our ARC program, costs around $25 to $27 per day depending on transportation needs or any other things our Participant needs. If we only pulled 1,000 people from the system, that is a potential savings to the people of Alabama of approximately ~~$900k~~1.8 million/mo. Or almost ~~$11~~22 million per year. Plus, the potential in recidivism savings. The cost to Alabama taxpayers is NOTHING!

With undeniable success, we have been working with judges, DA's, members of ADOC, Parole Board and Parole/Probation Officers, Community Corrections, TASC and even community colleges and municipalities to develop the best solution which we believe we have.

When those who are sentenced they should be sentenced to Success. That is our message and all we ask is your acknowledgement and support to further our message.

Thank you.

SOUTHEAST ALABAMA COURT SERVICES
PRESENTATION

How to expand Community Corrections Programs to all Counties in Alabama.

1. You must create artificial boundaries that do not necessarily correspond to County Lines or to Judicial Circuits.

    a. This creates the need for
        1. Multiple offices
        2. Significant travel

    (both of which obviously increases the expense to the oversight agency).

2. The agency must be a not-for-profit agency. County Commissions cannot respond quickly to the needs of the agency or the clients. A director must have the flexibility to allocate staff and resources to meet the needs of

3. Technology is critical to successful implementation.

    a. Statewide data base to actually track recidivism of participants ($$)
    b. Use of reporting technology that is efficient and cost effective ($11. Per client per month for phone reporting system).

ALABAMIANS FOR FAIR JUSTICE

To: Governor's Study Group on Criminal Justice Policy
From: Alabamians for Fair Justice
Date: September 23, 2019
Re: Recommendations for reforms in response to Alabama's prison crisis

Introduction

The State of Alabama has, for decades, demonstrated an inability to fund and operate safe, humane prisons in compliance with the U.S. Constitution. In April, for the first time in the 39-year history of the Civil Rights of Institutionalized Persons Act ("CRIPA"), the U.S. Department of Justice found an entire state prison system for men operating in violation of the U.S. Constitution here in Alabama. The nationally publicized DOJ report found "[t]he 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, extortion, drugs, and weapons."

Alabamians for Fair Justice formed in response to this crisis. As a coalition of people directly impacted by the criminal justice system and supporting organizations, we bring decades of experience and knowledge to these problems. And, we are dedicated to keeping this crisis in front of the public and our elected officials until significant improvements occur.

The daily harm inflicted on incarcerated people and their families and the long-term implications for our State are dire and demand sweeping, holistic reforms. Reorienting the state's criminal justice system requires Alabama policymakers to adopt solutions for the entire state prison system, both men's and women's prisons, within the following framework:

- Punishment must be proportionate to crime, fairly balance public safety risks, and applied equitably along economic, geographic, and racial demographics.
- Drug addiction and serious mental illnesses must be recognized as public health concerns with needs that should be addressed outside of the justice system.
- State and local governments must invest in community supervision and diversion programs that do not restrict access based on ability to pay.
- Returning community members must be seen with dignity and provided opportunities to succeed through well-resourced reentry programs that provide the economic, emotional, and rehabilitative support necessary following incarceration in Alabama's chaotic prisons.

Drawing on our collective expertise, we will offer the policy proposals in five categories:

- Sentencing
- Jail populations
- Mental health, mental health courts, substance abuse treatment
- Diversion and Community Corrections
- Reentry

In advance of the October 3 study group meeting, we provide the first policy proposal to address sentencing.

Alabamians for Fair Justice Sentencing Proposals

1) Modify marijuana laws
Alabama spends approximately $22 million dollars each year enforcing marijuana possession cases alone – draining limited resources of local law enforcement, district attorneys, forensic science labs, and courts. Trafficking is labeled as a "violent offense" despite only requiring possession of 2.2 lbs.
Impact: Approximately 1,000 fewer felony possession convictions per year and fewer collateral consequences for school, employment, and housing

- End felony convictions in all possession of marijuana cases and establish a citation-only violation, punishable by a fine of not more than $150, for possession of one ounce or less of marijuana
- Set reasonable weight thresholds for sale/distribution and remove zone enhancements
- Increase trafficking thresholds to 10 lbs. and remove "violent" classification
- Establish a reset period of 5 years for possession cases
- Expand expungement eligibility, including retroactive application

2) Modify controlled substance laws
Drug addiction must be addressed as a public health crisis. Community services provide a fiscally responsible way of addressing the need and protecting public safety from addiction-related or caused offenses, whereas incarceration is the most costly and ineffective means.
Impact: Possession of a controlled substance is the most frequent felony conviction for the past 5 years, with 3,500 to 4,600 cases per year.

- Reclassify unlawful possession of a Schedule II through V controlled substance as a misdemeanor or set a possession threshold (e.g. five or fewer pills) to trigger a felony charge
- Distinguish substances by schedule and provide lesser penalties for substances considered less harmful per schedule designation

3) Increase all theft of property thresholds

Impact: 1st and 2nd degree theft of property are among the top ten offenses for new prison admissions, accounting for about 750 new prisoners annually.

- Increase first-degree TOP amount, now at >$2,500 to $10,000
- Increase second-degree TOP amount, now at $1,500 to $2,500
- Increase third-degree TOP amount, now at $500 to $1,500
- Establish lesser penalty for theft of lost property

4) Habitual Felony Offender Act: Repeal or Modify
Impact: Reducing the numbers of Life and Life Without Parole sentences will significantly reduce long-term incarceration rates and incentivize good behavior

- Remove the possibility of Life Without Parole sentencing enhancement thereby limiting Life Without Parole to capital murder cases
- Remove the possibility of Life sentencing enhancement on third felony conviction. Replace with sentence enhancement of not more than 15 years for third conviction if it is a Class B felony, or not more than 20 years for third conviction if it is a Class A felony
- Create reset period, limiting eligible convictions to those within 5 years or 10 years
- Require triggering offense to be more serious than priors
- Limit "strike" list to Class A and B felonies
- Reinstitute "Kirby" retroactive repeal of mandatory LWOP for non-homicide offenders
- Set up a process for efficient review of "Kirby" claims, including appointment of a special panel of judges
- Remove the prohibition against earning good time for the first 15 years of a sentence

5) Retroactivity of Sentencing Guidelines
Impact: Sentencing Guidelines became presumptive in October 2013 and are credited with being a contributor to population declines. However, as the prison population is on the rise, retroactive application of the Sentencing Guidelines will ensure fairness in sentence length, without sacrificing public safety.

- For drug and property offenses, limit judges' ability to sentence defendant to prison when guideline recommends Community Corrections.
- Make guidelines fully retroactive. Require ADOC to produce a list of all inmates sentenced prior to October 2013 who have served sentences equal to or exceeding maximum sentence under guidelines.

6) Redefine "violent offenses"
Ala. Code Sec. 12-25-32(14)(a) currently defines a long list of felonies including drug trafficking, extortion, and burglary of an empty building as violent, and it does not require that the crime result in physical harm to a victim to be violent. Additionally, alabama defines whether a person is violent based exclusively on the crime of conviction

In Alabama, 51 felonies are defined as violent; in the FBI's crime reporting program, violent crimes consist of only four offenses.
Impact: Properly defining the crimes of burglary and drug trafficking as nonviolent would result in ADOC's in house population at 31% non-violent offenders, as opposed to the current 22%.

- Violent felonies should be redefined to cases involving physical injury or a serious, immediate threat.
- At a minimum, burglary III and trafficking should be removed from the list.

Alabamians for Fair Justice is comprised formerly incarcerated individuals and family members of those currently or recently serving time in Alabama's prisons, advocates, and the following organizations:

- ACLU of Alabama
- ACLU's Campaign for Smart Justice
- Alabama Appleseed
- Alabama Arise
- Alabama Civic Engagement Coalition
- Alabama CURE
- Alabama Disabilities Advocacy Program
- Alabama Justice Initiative
- Faith in Action Alabama
- Greater Birmingham Ministries
- Offender Alumni Association
- SPLC Action Fund
- The Ordinary People Society

ALABAMIANS FOR FAIR JUSTICE

To: Governor's Study Group on Criminal Justice Policy
From: Alabamians for Fair Justice
Date: October 31, 2019
Re: Recommendations for reforms in response to Alabama's prison crisis

Introduction

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The daily harm inflicted on incarcerated people and their families and the long-term implications for our State are dire and demand sweeping, holistic reforms. Reorienting the state's criminal justice system requires Alabama policymakers to adopt solutions for the entire state prison system, both men's and women's prisons, within the following framework:

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- Returning community members must be seen with dignity and provided opportunities to succeed through well-resourced reentry programs that provide the economic, emotional, and rehabilitative support necessary following incarceration in Alabama's chaotic prisons.

Drawing on our collective expertise, Alabamians for Fair Justice offers our second set of policy proposals, following our initial proposals submitted regarding sentencing reform. The follow proposals cover alternatives to incarceration and community-based services in the following categories:

- Jails
- Mental health and substance use treatment
- Pretrial diversion and Community Corrections
- Reentry

1. Jails

Alabama jails are severely overcrowded with inmates sleeping on floors, crowded into converted trailers, or worse. Untreated mental illness, substance abuse, and poor medical care often leave people in much worse shape when they leave jail than when they arrived. Law enforcement officials are not mental health experts; the state should not leave the burden to municipalities and counties to bear the burden of response where treatment and community-based services are more appropriate and cost-efficient. Under Alabama's cash bail system, people arrested for misdemeanors, property crimes, and drug crimes are often stuck in jail for long periods of time -- not because they are considered dangerous -- but because they are too poor to post bail. Keeping someone in jail – even for a few days - can have devastating consequences to a person and his or her family. Missing work leads to unemployment. Lost wages lead to eviction, repossession of the family car and unpaid child support. And, people in jail are more likely to plead guilty to avoid lengthy incarceration. This cycle contributes to Alabama's prison crisis.

AFJ recommends:

1) Eliminate secured money bail

Bail isn't a fine; it isn't supposed to be used as punishment because there's been no finding of guilt. Bail was intended to represent an incentive and promise to return for a future court date. But, secured money bail perpetuates a two-tiered, wealth-based justice system. Two people arrested on the same day with the same charge have very different post-arrest experiences based on their ability to pay the bail amount set. All defendants, of all income levels, are innocent until proven guilty. This system of money bail is not only discriminatory — it's ineffective.

It's not cheap to house someone in jail. Smaller cities and counties don't have large jails and those beds need to be reserved for people who pose a risk to public safety. Communities don't benefit from money bail: it doesn't make communities safer and it doesn't increase a person's likelihood to appear before the court. The only people who benefit from money bail are private bail bond companies. This industry exploits people's desperation and earns about $2 billion in profits each year.

Alabama must eliminate wealth-based detention as follows:

- **Limit Pretrial Detention.** Pretrial detention should be used only when the defendant poses an imminent risk to public safety or as the only means of guarantying the defendant's appearance at the next court hearing.
    - Pretrial detention eligibility based on flight risk or dangerousness should be an option only for the most serious offenses--such as those charged with violent felonies--and only when a judge finds, in a hearing, that there is a substantial risk that the defendant will inflict serious bodily harm on a specifically identified individual. Ensure no one outside of this eligibility "net" is detained pretrial.
    - However, the court must distinguish between those who are at risk of intentionally fleeing from those who are at risk of nonappearance. No one should be detained simply because they are at risk of nonappearance: instead, people who are at a risk of nonappearance should be offered effective and low-cost services to help them appear in court.

- **Require Use of the Least Restrictive Condition.** Any condition of release ordered must be the least restrictive condition necessary to reasonably ensure public safety and court appearance. Judges should be required to make specific findings in writing or on the record when any condition of release that may result in pretrial detention is imposed.

- **Maximize Pretrial Liberty.** Alabama should mandate expedited release of almost all arrestees to prevent harms that even a few days in jail cause, including providing a prompt initial appearance as soon as practicable and no more than 48 hours of arrest for any arrestee who is not released before that time.

- **Require a Robust Process for Pretrial Detention.** For those limited cases where pretrial detention is permitted, the process must be rigorous and include:
    - A prompt adversarial hearing with defense counsel and the ability to present and confront evidence;
    - Clear and convincing evidentiary standard prior to any detention order;
    - A finding on the record that no condition, or combination of conditions, short of pretrial detention could mitigate a specifically identified danger to another person;
    - An expedited right to appeal any order that results in pretrial detention (or electronic monitoring).

- **Prohibit Fees for Court-Related Services.** No person who qualifies for court-appointed counsel or who falls below 125% of the poverty guidelines should be charged fees for any condition of release (e.g., drug testing or electronic monitoring); before any fees are assessed for any condition of release, a judge should make a substantive ability to pay finding.

- **Implement Services like text-message reminders that encourage court attendance.**

2) Increased use of citation in lieu of arrest

Alabama law allows local governments to authorize their law enforcement officers to issue a citation in lieu of arrest for violations of local ordinances and certain Class C

misdemeanors. To lessen the harm of unnecessary jail for poor people, Alabama should provide statewide uniformity and make citations presumptive where there is no risk to public safety.

- Amend Ala. Code § 11-45-9.1 to authorize issuance of a citation, rather than an arrest, making it presumptive for misdemeanors and violations, except DUIs, domestic violence or violation of a protective orders, or other similar potential threats to public safety.
- Allow application to certain felonies, with the consent of the district attorney.

2. Mental Health and Substance Use Treatment Services

ADVERSE IMPACTS OF CURRENT SYSTEM:

There are extremely high levels of drug addiction and serious mental illness among incarcerated people. Not routinely addressing this fact contributes to overcrowding of jails and prisons, over incarceration of poor and vulnerable people and chronic recidivism. Currently we overuse incarceration, which is the most restrictive and most costly means of dealing with these issues.

A federal court found in *Braggs v. Dunn* that Alabama prisons provide "horrendously inadequate" mental health care, with problems ranging from understaffing, failure to identify prisoners with mental illness, cursory counseling that is not confidential, and deficient suicide prevention measures.

Continuing to funnel people with mental illness into Alabama prisons is clearly not sustainable. Where possible, we should move toward treating substance use/abuse and mental illness as public health issues not criminal justice issues. Policy and practice across Alabama should provide ways out of the system, where possible, across the criminal justice process. The state should expand community-based service options, providing fiscally responsible way of addressing the crisis of overcrowding, over incarceration and chronic recidivism. We need to move toward proven models by developing and expanding programs that link the criminal justice system to the community-based treatment system.

AFJ recommends the following:

- Provide for routine screening, assessment, and referral of mentally ill and substance abusing individuals pre-trial, at sentencing and post incarceration;

- Provide targeted funding for model programs to provide these functions, connecting the criminal justice system to the community-based treatment system;

- Increase the use of treatment in lieu of incarceration, with expanded funding through the Department of Mental Health for community-based treatment;

- Insure, through adequate funding, that no person is denied diversion to treatment due to inability to pay.

- Initiate and expand the law enforcement tool of pre-arrest diversion by Crisis Intervention Teams (CIT). CIT training prepares first responders to provide diversion to mental health interventions without incarceration. (Florence and other cities have instituted this model successfully);

- Expand Mental Health Courts as a proven model -- Defendants with mental illness awaiting trial are detained longer in jail than other defendants facing the same charges and require much higher medical care costs, as well as higher levels of staff supervision. In addition, people with mental illness often get worse in jail, are often not given adequate care and current medications, and can become a danger to themselves and others if not provided adequate treatment. Properly implemented mental health courts can reduce the length of pre-trial incarceration for this population, saving counties money and freeing up jail beds.

- Increase funding in order to increase the number of Mental Health Courts. This new funding should be provided by the legislature to the Department of Mental Health where it can be augmented by Medicaid funds. This will promote a continuum of care between the justice system and the community-based treatment system.

- Mental Health Courts can theoretically be piggybacked onto Drug Court programs to combine staff and services. This has rarely happened because, to date, drug courts have existed primarily on client fees and offenders with mental illness are mostly indigent.

3. Pretrial Diversion and Community Corrections

ADVERSE IMPACTS OF THE CURRENT SYSTEM

Various alternatives to incarceration are available throughout the state. But these programs lack uniformity, common standards or meaningful oversight. Costs and accessibility vary widely from county to county. Programs rely on user fees, which not everyone can afford. They contribute to a two-tiered justice system where defendants with resources get access to community alternatives and poor people are sent to jail or prison. They also harm poor families by requiring all participants, no matter their income, to pay thousands of dollars in costs and fees to the government.

Alabama utilizes two forms of diversion to reduce the number of people incarcerated in prisons: pre-trial diversion from prosecution, and post-conviction diversion from prison. Both types of diversionary programs are underfunded by the legislature, creating perverse financial incentives for the officials running the programs.

- Pre-trial diversion programs: prosecutorial diversion and judicial diversion
    - Prosecutors may create programs to divert low-risk arrestees from formal prosecution.

    - Judges may establish specialty courts—such as drug court or mental health court—to give arrestees access to treatment options instead of pure punishment.
    - Individuals who successfully complete either kind of program are able to return home without a criminal conviction on their record.
- Post-conviction diversion programs: Court Referral and Community Corrections
    - Judges may sentence eligible defendants to probation or parole with supervision from Court Referral Officers, who are supposed to provide drug treatment and monitoring to help defendants successfully re-enter society.
    - Prison officials may divert eligible defendants from prisons into Community Corrections programs, which are designed to help low-risk defendants remain in the community with their support systems.

AJF recommends the State do the following:

- Adequately fund the existing programs and eliminate user fees to resolve wealth-based disparities.

- In the absence of the elimination of all user fees, establish universal eligibility and completion requirements to ensure that (1) no person is denied access to a diversion program due to inability pay, (2) no person is terminated from a diversion program solely due to inability to pay, and (3) no person is extended on a diversion program solely due to inability to pay.

- Codify oversight, roles and standards to ensure participating programs are uniform, productive, and compliant.

- Ensure that participants can easily transfer supervision or program participation across Alabama counties and are accessible to users (including extended hours/weekends and offer services provided through phone or other technology) to reduce avoidable non-compliance and technical violations which result in removal from the program and incarceration.

- Establish statewide guidelines regarding drug test utilization and eliminate all user fees for drug tests.

- Require all participating diversion and community corrections programs to collect and report, annually, data related to:
    - Number of clients served, including those with indigency status, racial demographics;
    - A summary of programs offered, qualifications of staff, and participation rates among clients for each;
    - Fees charged, including but not limited to drug testing, housing, and monitoring services, as well as any fees waived for clients who cannot afford the fees;
    - Completion or graduation rates for all program participants, as well as any other success or failure metrics;

- Grants applied for and any monies received

- Conduct a **county-by-county survey or study** to determine the types of diversion programs available in each county, the population served, the completion rates of each program, and where duplication exists in the form of multiple programs serving the same categories of offenders. The survey should also track and examine funds collected by program users. The results of the study should be made public. Out of county staff should manage surveys to ensure independence.

- **Require Community Corrections-eligible defendants** to be tracked as a discrete group, with each county tracking numbers of defendants sentenced to in-house ADOC custody over the last 5 years in order to show historical patterns as to which counties are populating prison beds.

- **Require ADOC accountability in Community Corrections** through periodic file reviews, financial transparency, technical assistance and client surveys to improve Community Corrections efficacy.

- **Implement the use of Risk Assessments in Community Corrections, specifically:**
  - All Community Corrections programs, along with Pre-trial and Post-conviction Diversion programs, should administer the Alabama Risk Assessment Scale to determine risk level and assign the most effective and efficient supervision strategies to manage that risk.
  - Individuals should be re-assessed every 90-180 days to adjust supervision strategies (for example, reduced drug tests or reporting schedules) to reflect any reduction in risk factors or enhance services as risk level increases due to factors such as substance abuse relapse or loss of employment.

- **Mandate diversion programs**, including DA Diversion, Drug Court, and Court Referral to:
  - Provide proper indigency determinations for eligible individuals. Indigent individuals should have administrative fees, drug testing fees, and program fees waived;
  - Defendants who are not indigent but who cannot afford all administrative fees, drug testing fees, and program fees should have those fees reduced or remitted in accordance with their present ability to pay;
  - Provide incentives and services; not rely on punitive sanctions as primary behavioral interventions.

4. Reentry

ADVERSE IMPACT OF CURRENT SYSTEM:

Most individuals who have served their time leave prison with enormous court debt, including restitution, court costs, fines and fees associated with the underlying criminal conviction, as well

as debt from unpaid traffic tickets or other minor offenses incurred prior to their incarceration. Hundreds, or sometimes thousands, of dollars in costs are imposed in each case to fund the courts and General Fund. Failure to pay this debt can result in re-arrest or parole revocation, as well as an additional 30% collection fee. Any money paid by an individual is first applied to the 30% collection fee imposed by prosecutors—not to the victims who are owed restitution. Additionally, the State suspends driver's licenses for reasons unrelated to traffic safety—including unpaid court debt and drug convictions, so many individuals leave prison with no driver's license, thus no way to get to work, and a mountain of debt to repay.

There are clear public safety risks to this system. Recent research has shown that almost four in ten (38.3%) admitted to having committed at least one crime to pay to their court debt, including almost one in five (19.6%) whose only previous offenses were traffic violations. The most common offense committed to pay off court debt was selling drugs, followed by stealing and sex work. Survey respondents also admitted to passing bad checks, gambling, robbery, selling food stamps, and selling stolen items. Some individuals are trapped for decades in the criminal justice system due solely to these fees. These counterproductive policies impede successful re-entry and undermine victim's ability to receive restitution.

Currently, Alabama has few publicly supported re-entry programs. Absent family support or private resources, people returning from incarceration are on their own to find transitional housing, transportation, and even necessities such as food and clothing. Further, people on parole are required to report in person to a parole officer during regular business hours, which can be impossible for people who have secured full-time employment.

AFJ recommends the following:

- Ensure that only fines and costs that an individual can afford to pay over a limited and reasonable time period are imposed at sentencing and waive those amounts that a person cannot afford to pay.

- Allow returning individuals at least 6 months in the community before they must begin paying fines and restitution. The requirement that payment must immediately begin on fines and restitution is unrealistic for people with little access to housing, transportation, or jobs and is counterproductive to successful re-entry.

- Credit time served in ADOC toward certain financial obligations owed by defendants.

- Direct any payments made by individuals first to their underlying debts and restitution, not to the 30% collection fee that goes directly to District Attorneys.

- Reduce court costs, including eliminating all costs that are unconnected to the prosecution at issue. Fully fund the judiciary so that judges, DAs, and the indigent defense system are not reliant on collections from individuals to keep operating.

- Establish services within ADOC that assist people with obtaining copies of birth certificates, social security cards, and valid driver's licenses before they are released.

Without these vital documents, returning individuals cannot apply for jobs, cash checks, or open bank accounts.

- End automatic suspensions of driver's licenses for cases unrelated to traffic safety, including unpaid court debt or drug offenses unrelated to traffic safety.

- Prohibit the issuance of arrest warrants for a person's failure to appear at payment review hearings while incarcerated. Allow individuals with missed court dates to appear at the courthouse and obtain a new court date rather than require their arrest.

- Establish services within ADOC for people re-entering to have health care coverage, which they are mandated by federal law to have.

- Provide bridge medications to people transitioning from ADOC so that they have at least 3 months of medications following release.

- Provide adequate re-entry supports for people with mental health needs returning from prison. Specifically, an individual who was on ADOC's mental health caseload should have, at a minimum, a confirmed appointment at a community mental health center within days of release.

- Provide centrally-located probation and parole offices accessible by public transportation, and at the very minimum locate those offices in the same county where the clients assigned live.

- Conduct ability-to-pay assessments for parole and probation fees. Waive or reduce fees for people who meet indigency requirements of for whom payment of existing fees creates substantial hardship.

- Make parole reporting possible for people with 9-5 employment. Currently many people on parole are required to report so frequently during regular work hours and/or report for drug testing that they lose their jobs. Consider weekend or evening reporting.

- Use technology to make probation and parole reporting less time-consuming. In the federal probation system, kiosks are available for people to report using fingerprint check-in, which avoids lengthy wait times to see probation officers.

Alabamians for Fair Justice is comprised of formerly incarcerated individuals and family members of those currently or recently serving time in Alabama's prisons, advocates, and the following organizations:

- ACLU of Alabama's Campaign for Smart Justice
- Alabama Appleseed
- Alabama Arise

- Alabama Civic Engagement Coalition
- Alabama CURE
- Alabama Disabilities Advocacy Program
- Alabama Justice Initiative
- Faith in Action Alabama
- Greater Birmingham Ministries
- Offender Alumni Association
- SPLC Action Fund
- The Ordinary People Society

Justice Champ Lyons

Attorney General Steve Marshall

Commissioner Jeff Dunn

Director Kelly Butler

Senator Clyde Chambliss

Senator Cam Ward

Senator Bobby Singleton

Representative Chris England

Representative Jim Hill

Representative Connie Rowe

To the Members of the Governor's Criminal Justice Study Group:

The carnage in our prisons has continued unabated.

On December 4, Alabamians for Fair Justice held a press conference in which coalition members invoked the names of twenty-one people who have died by homicide, suicide, or overdose in Alabama prisons this year. Sandy Ray, whose son Steven Davis was beaten to death by correctional officers in October, urged Alabama Department of Corrections Commissioner Jefferson Dunn to act. She told the crowd that some of the officers involved in her son's killing are still employed by ADOC. But rather than meaningful action, we have seen more death – within days of Ray's remarks, at least three more men died in Alabama prisons.

Since the press conference, ADOC has confirmed the deaths of Michael Smith, Willie Leon Scott, and Cornelius Jackson. Like Davis, Smith was beaten to death by correctional officers. Several more violent deaths have been reported to Alabamians for Fair Justice in the days since the press conference but remained unconfirmed by ADOC. Commissioner Dunn's answer to this escalating crisis is to form an "internal task force." According to ADOC officials, concerns about deadly use of force will be addressed through a "refreshment course" for correctional officers.

We demand more.

If ADOC wants to invite real oversight of its violent prisons, it must include independent, external observers in its new task force. The people of Alabama do not trust prison officials to provide meaningful oversight of the violence in their prisons and amidst their correctional officers' ranks.

They have had that option for the last several years and they have failed. In September, Deputy Commissioner Charles Daniels presented ADOC's plan to address violence to the Governor's Study Group on criminal justice. Two months and several deaths later, Commissioner Daniels left ADOC. The violence remained.

In the past year alone, ADOC has been put on notice by the US Department of Justice, by the Equal Justice Initiative, by Alabamians for Fair Justice, and by the press that their prisons are the deadliest in the country. Time and time again ADOC has committed to new forms of internal oversight, and new strategic plans. It has been in the midst of this heightened scrutiny that these latest deaths have occurred.

To signal its commitment to accountability and transparency, Alabamians for Fair Justice calls upon Commissioner Dunn and Governor Ivey to include independent, external observers on any new task force on prison violence. At the least, these observers should include:

- Legislators with experience on the prison oversight committee
- Advocates who have served time in ADOC prisons
- Lawyers who represent people in prison
- Family members of people who have been victims of violence in ADOC prisons
- Currently incarcerated advocates

We welcome ADOC to discuss the composition of its new task force with Alabamians for Fair Justice. In the meantime, we demand that ADOC release information about the investigations into the murders of Steven Davis, Michael Smith, and any other people killed by correctional officers. We demand to know whether ADOC still employs officers involved in their deaths, and if so, why. We demand more.

Signed,

Alabamians for Fair Justice

SUPREME COURT OF ALABAMA

HEFLIN-TORBERT JUDICIAL BUILDING
300 DEXTER AVENUE
MONTGOMERY, ALABAMA 36104-3741
(334) 229-0700

December 3, 2019

Dear Governor's Study Group on Criminal Justice Policy:

As you plan for Alabama's future, with regard to Criminal Justice and Prison Reform, I wanted to remind you of the Interim Judges Bill which was introduced last Legislative Session. With the influx of individuals into Alabama's Trial Courts, we know that a need exists for additional circuit and district judges across the State. We also know that the cost of adding additional judgeships is not a reality, at this time.

Therefore, we have proposed the creation of Interim Judges to fill the need in the *interim* for the Unified Judicial System. The Interim Judges Bill would provide for retired judges coming back into service working a 75% caseload and being compensated at one-fourth of an active judges pay. This is a fraction of the cost of additional judgeships and is estimated at $3.6 million.

It is important for you to have all options at your disposal as you tackle the mounting criminal justice problems in Alabama. If your recommendations to the Legislature include any resentencing for those currently incarcerated, the judiciary will need a full bench to handle this increased workload. I encourage you to include the Interim Judges Bill in your Prison Reform package.

If you have any questions, please do not hesitate to contact me or Rich Hobson, Administrative Director of Courts.

Sincerely,

Tom Parker
Chief Justice

c: Dr. Rich Hobson, Administrative Director of Courts

SUPREME COURT OF ALABAMA

HEFLIN-TORBERT JUDICIAL BUILDING
300 DEXTER AVENUE
MONTGOMERY, ALABAMA 36104-3741
(334) 229-0700

December 3, 2019

Dear Governor's Study Group on Criminal Justice Policy:

One of the innovative practices of case management in the Alabama Unified Judicial System has been the use of Specialty Courts throughout the State. The most typical court is Drug Court, designed to give substance abusers and addicts a second chance at normalcy by spending more time with them in the judicial process and placing requirements on them such as frequent drug testing, counseling, and job training-related opportunities for those in need. Alabama has consistently experienced recidivism rates of 16% in these courts. Other examples are Mental Health Court and Veterans' Court, with similar results.

These specialty courts became widespread over 10 years ago; however, they were created with several limitations. Inadequate funding forced the Alabama Unified Judicial System to start programs up piecemeal and to rely on the good graces of local efforts. The result has been a group of loosely held together specialty courts with many lacking the necessary resources to properly administer such courts. Thus, throughout the State, many programs operate outside of established guidelines and oversight. In addition, many specialty courts, such as Mental Health Court, have not been implemented due to continued inadequate resources. In order for all counties in the state to have operational Adult Drug Courts, Mental Health Courts and Veterans Treatment Courts, each county would need to employ, at a minimum, a Coordinator, three case managers (1 each for each Court), a lab director and possibly 2-4 other lab personnel (based on size of the programs) to perform observed testing and other administrative duties.

As you continue looking for solutions to the growing prison population, please keep in mind the effective use of Specialty Courts and the need for additional funding to ensure a quality program. Staying out of prison allows defendants to focus on their underlying problems, while at the same time providing relief to the prison overcrowding problem. We have enough judges to handle these courts, but lack sufficient staff and equipment to do the job correctly.

We stand ready to assist in any way possible.

Sincerely,

Tom Parker
Chief Justice

c: Dr. Rich Hobson, Administrative Director of Courts

ADMINISTRATIVE OFFICE OF COURTS
300 Dexter Avenue
Montgomery, Alabama 36104
(334) 954-5000

Tom Parker
Chief Justice

Rich Hobson
Administrative Director of Courts

December 13, 2019

Dear Governor's Study Group on Criminal Justice Policy:

At the last Study Group's meeting, a presentation was made about alternative courts and programs. In response to some of the comments and information, a group of circuit and district judges agreed to serve on a task force to address innovative judicial reforms.

Formed just three weeks ago, the Task Force on Innovative Criminal Justice Reform sent out a survey to all the judges in our State asking for the description of any innovative programs and courts in their circuits and districts. We received over 95 responses and the Task Force met on Monday, December 2 in Montgomery to distill the information. We want to provide you with a preliminary report of what the judicial branch already has in place in response to the need for criminal justice reform.

Attached are maps of the drug, veterans, mental health alternative courts and community punishment programs currently operating in the State. In addition to these courts and programs, however, many circuit and district judges provided information about innovative programs designed to address the needs of our communities. These programs focus on work force development, substance and mental health treatment, public safety and reducing recidivism. The Study Group heard about Job Court in Dallas county at the last meeting, but we learned about other programs such as Family Wellness Courts, PEACE (domestic violence program), Saving Teens At-Risk (STAR), Drugs Erase Dreams, Theft Court, and Gun Court, among many others. Many of the programs focus on crime prevention. Many programs partner with faith-based programs, junior colleges and homeless services.

As we discussed the voluminous responses, the Task Force identified uniformity of access, fees, and process as key issues relating to these programs. Access to justice has always been a concern of the judiciary, as well as achieving evidence-based results while addressing real world issues. As a result of our discussions on Monday, Judge Scott Donaldson of the Court of Civil Appeals agreed to chair a sub-committee to explore the problems and make recommendations to address our concerns. Other Task Force members will identify success factors in these programs and coordinate potential community partners such as Children's

Policy Council, the US National Guard, the Family Guidance Center, Alabama's Community Colleges and Universities, and private foundations and corporations.

Our Task Force is committed to two goals: recommending best practices within the programs that currently exist in drug, veterans, mental health and other alternative courts; and to provide program proposals and best practices approaches for innovative judicial reform that all courts can implement throughout the state. We hope to continue to be a partner with the other branches of government to continue to provide justice and improve safety in our communities.

Sincerely,

Hon. Terri Bozeman Lovell
(Co-Chair)
Presiding Circuit Court Judge
2nd Judicial Circuit

Hon. Phil Seay
(Co-Chair)
Presiding Circuit Court Judge
30th Judicial Circuit

Hon. Sarah H. Stewart
Associate Justice
Supreme Court of Alabama

Hon. Scott Donaldson
Judge
Alabama Court of Civil Appeals

Hon. Burt Smithart
Presiding Circuit Court Judge
3rd Judicial Circuit

Hon. Mike Bellamy
Presiding Circuit Court Judge
6th Judicial Circuit

Hon. Jeff Kelley
Presiding Circuit Court Judge
12th Judicial Circuit

Hon. Dave Jordan
Presiding Circuit Court Judge
21st Judicial Circuit

Hon. Sam Junkin
Presiding Circuit Court Judge
24th Judicial Circuit

Hon. Bill Filmore
Presiding Circuit Court Judge
33rd Judicial Circuit

Hon. John Graham
Presiding Circuit Court Judge
38th Judicial Circuit

Hon. Teresa Pulliam
Circuit Court Judge
10th Judicial Circuit

Hon. Wes Pipes
Circuit Court Judge
13th Judicial Circuit

Hon. Clark Stankoski
Circuit Court Judge
28th Judicial Circuit

Hon. Lang Floyd
Circuit Court Judge (Retired)
28th Judicial Circuit

Hon. Wes Mobley
District Court Judge
Cherokee County

Hon. Bob Armstrong
District Court Judge
Dallas County

Hon. Carole Medley
District Court Judge
Lauderdale County

Hon. Adrian Johnson
District Court Judge
Lowndes County

Hon. Don Rizzardi
District Court Judge
Madison County

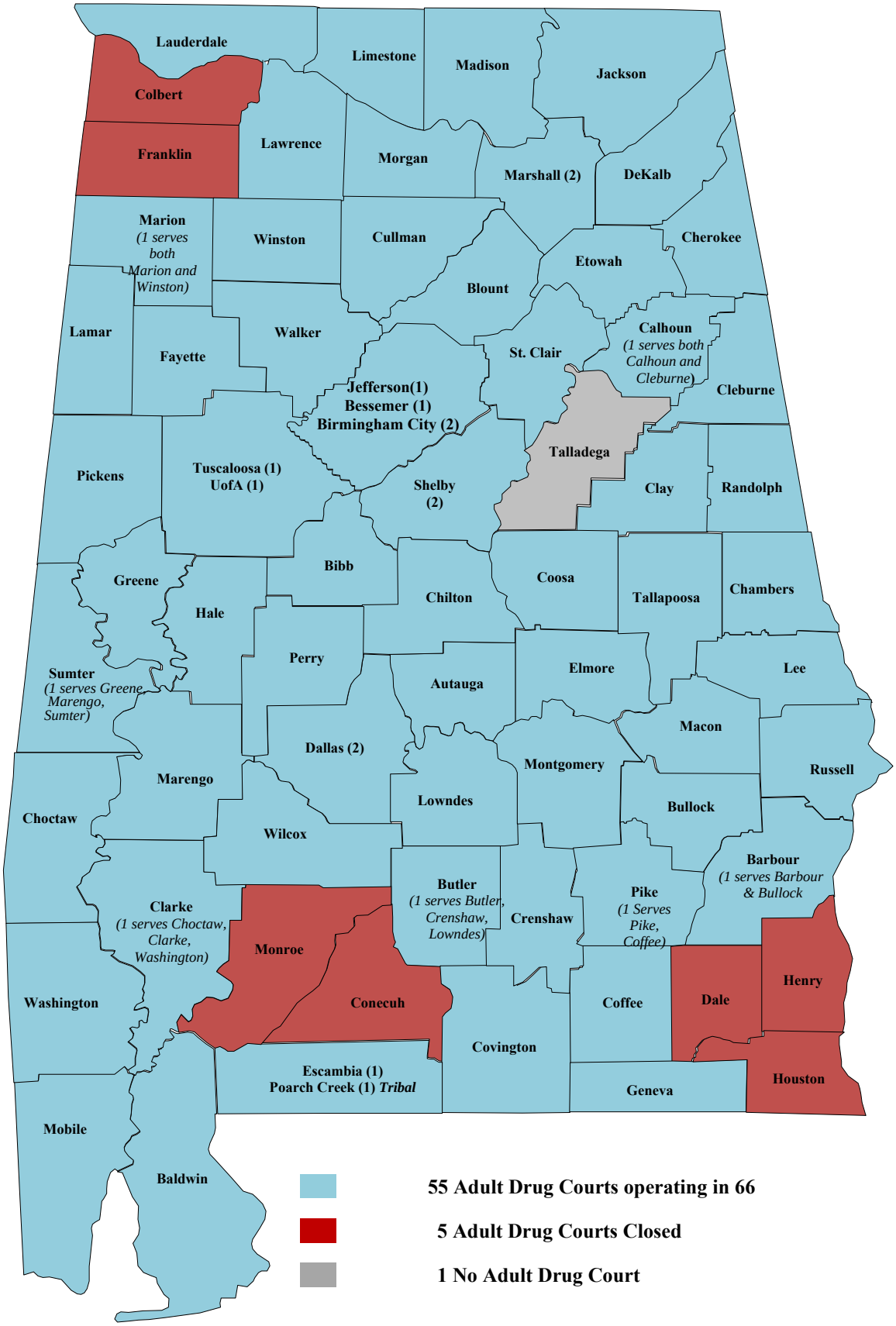
Hon. Pamela Higgins
District Court Judge
Montgomery County

Hon. Tammy Montgomery
District Court Judge
Sumter County

Hon. Alan Furr
District Court Judge
St. Clair County

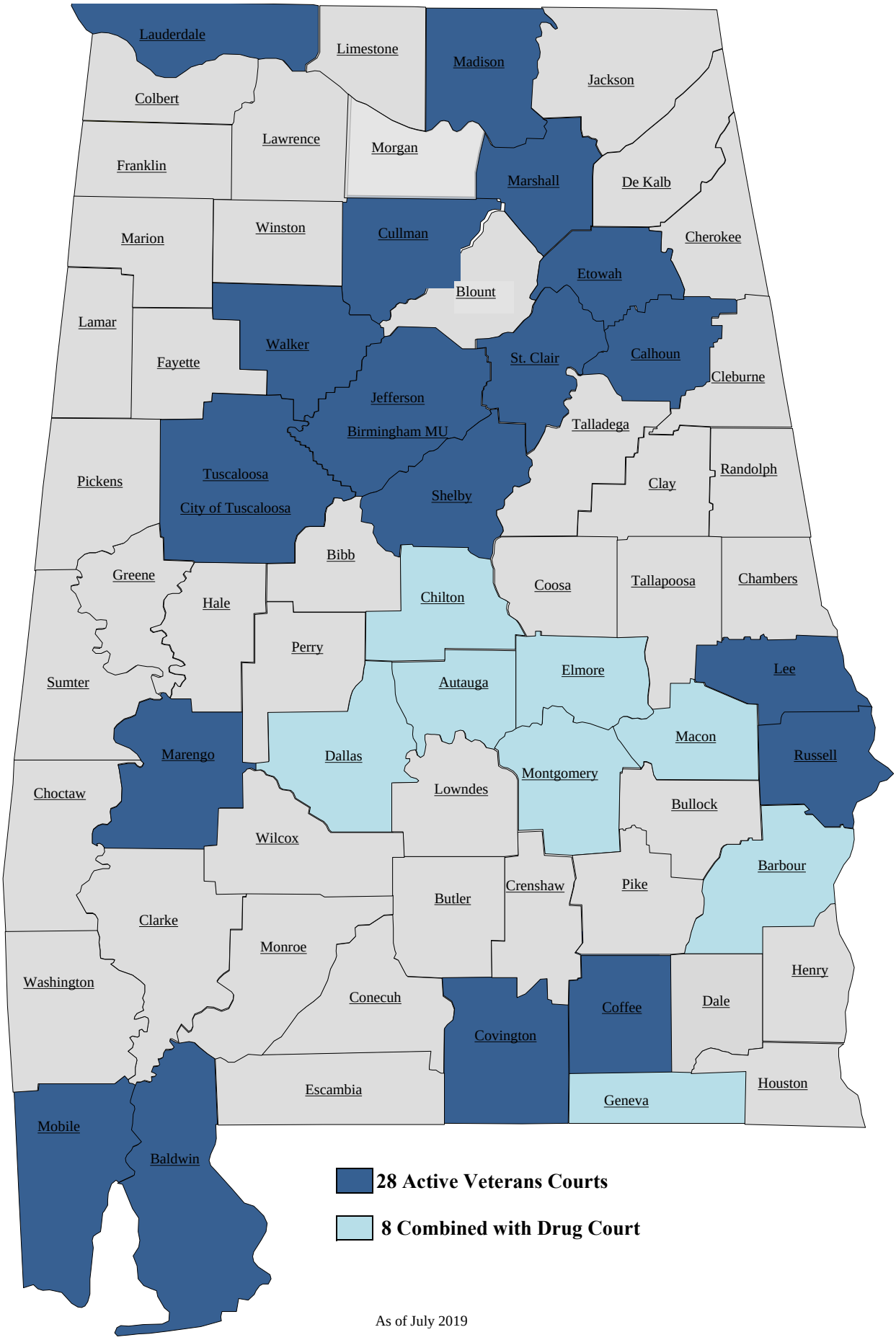
Hon. Mike Newell
District Court Judge
Winston County

Adult Drug Courts in Alabama



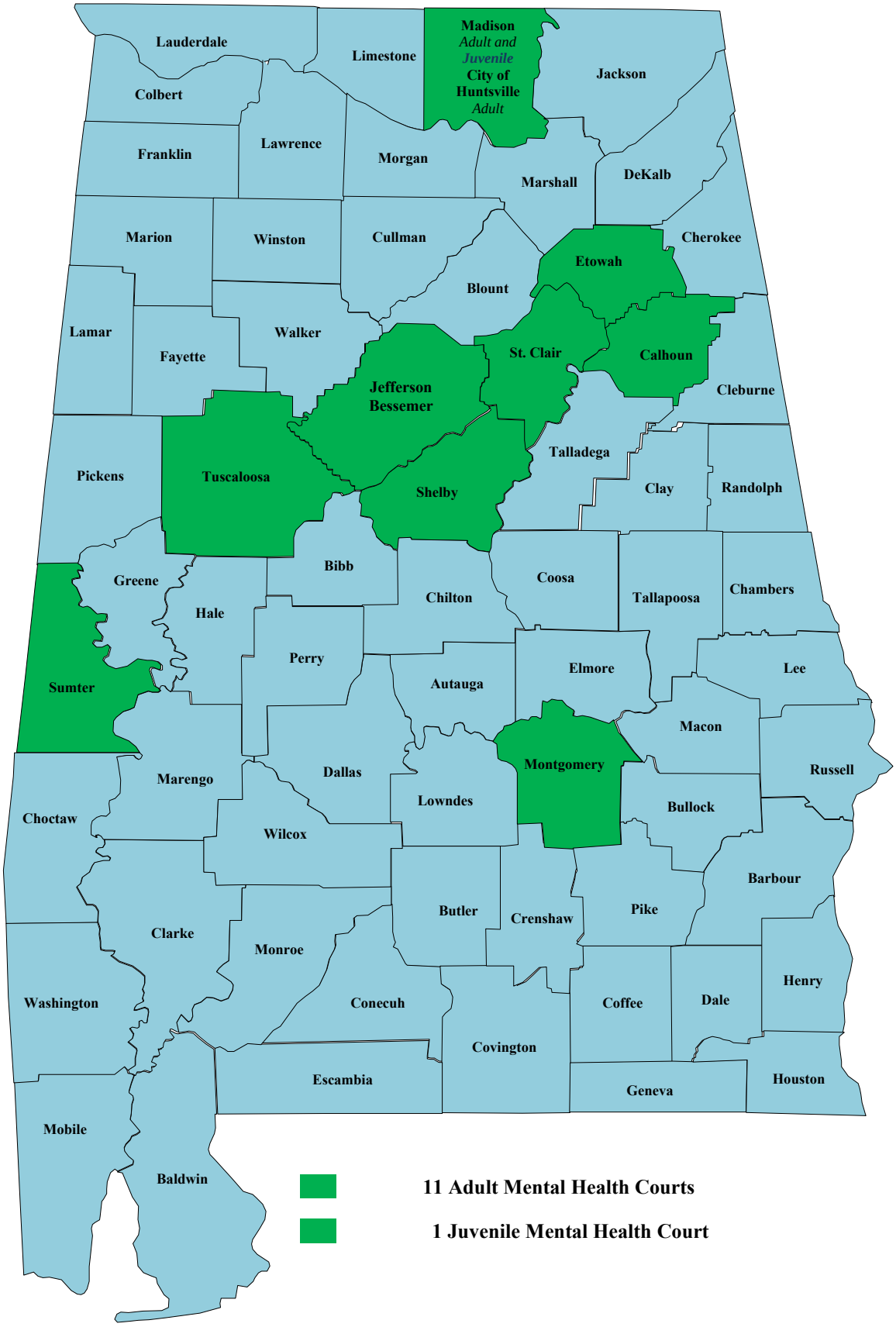
May 2018

Veterans Courts in Alabama



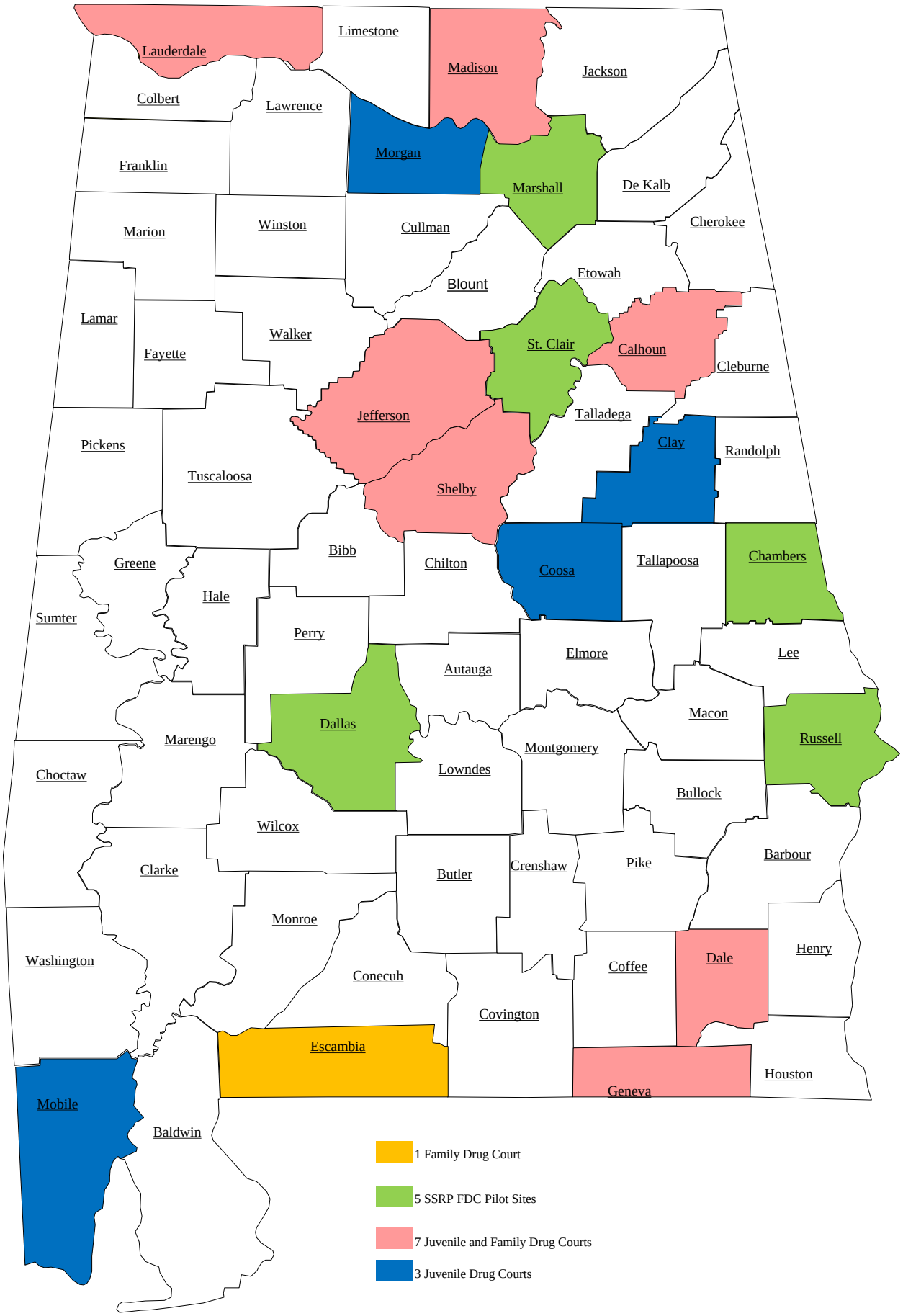
As of July 2019

Mental Health Courts in Alabama



July 2, 2018

Alabama's Family and Juvenile Drug Courts



HELPING FAMILIES INITIATIVE

Better Futures for Students, Families and Communities

A program of Volunteers of America SOUTHEAST

Presented to the Governor's Study Group on Criminal Justice Policy

December 18, 2019

John M. Tyson, Jr., Director

jtyson@hfialabama.com

251-533-1621

WHAT

hfialabama.com

Volunteers of America SOUTHEAST

HELPING FAMILIES INITIATIVE

Better Futures for Students, Families, and Communities

We help students with truancy or disciplinary problems build productive futures while improving the safety and learning environments for all.

District Attorney

As the chief law enforcement official, the District Attorney is charged by law to enforce Alabama's mandatory school attendance law.

Find out more

Schools

Keeping our schools safe and secure is a primary objective of HFI. Most school violence tragedies are initiated by current or former students.

Find out more

Community

HFI helps to focus and align community for families that are most in need of services.

Find out more

VE
ities

WHO
District Attorneys

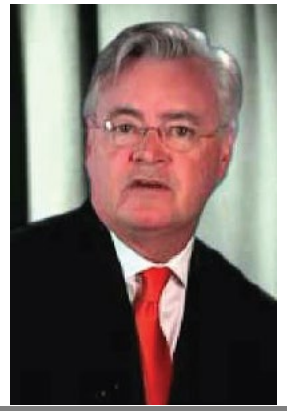
Hon. Spence Walker
1st Judicial Circuit

Hon. Jeremy Duerr
5th Judicial Circuit

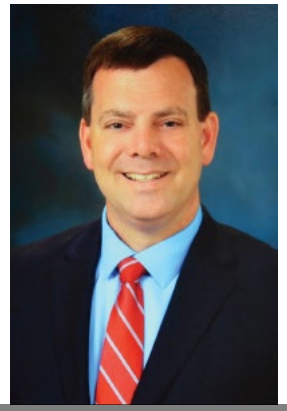
Hon. Brian McVeigh
7th Judicial Circuit

Hon. Danny Carr
10th Judicial Circuit - Birmingham

Hon. Lynneice Washington
10th Judicial Circuit – Bessemer



Hon. Kenneth E. Davis
26th Judicial Circuit



Hon. Daryl Bailey
15th Judicial Circuit

Hon. Randall Houston
19th Judicial Circuit

Hon. Scott A. Slatton
25th Judicial Circuit

Hon. Wilson Blaylock
32nd Judicial Circuit

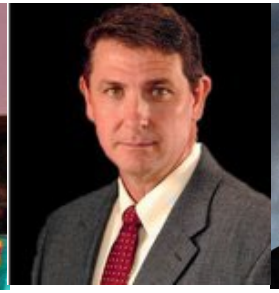
Volunteers of America SOUTHEAST | HELPING FAMILIES INITIATIVE
Better Futures for Students, Families, and Communities

WHO
Superintendents


Larry Bagley
Clarke County


Garth Moss
Thomasville City


Dr. J. A. Brooks
Macon County


Dr. Keith Lankford
Alexander City


Joseph C Windle
Tallapoosa County


Donald Turner
Calhoun County


Dr, Lisa Hering
Birmingham City


Shelly Mize
Tarrant City


Dr. Autumm Jeter
Bessemer City


Dr. Regina Thompson
Fairfield City


Dr. Shun Williams
Midfield City


Dr. Ann Ray Moore
Montgomery County


Spence Agee
Autauga County


Jason Griffin
Chilton County


Richard E. Dennis
Elmore County


Wade Shipman
Tallassee City


Ann West
Marion County


Chris Cook
Winfield City


Randy Wilkes
Phenix City


Dr. Brenda Coley
Russell County


Dr. Susan Patterson
Cullman City


Dr. Shane Barnette
Cullman City

Volunteers of America SOUTHEAST | HELPING FAMILIES INITIATIVE
Better Futures for Students, Families, and Communities

WHO

"The power of the D.A. makes him or her the actor—the only actor—who can start to fix what's broken without changing a single law."

-- Emily Bazelon

Senior Research Fellow at Yale Law School

Mandatory School Attendance Act

WHO

Every child between the ages of six and 17 is required to attend a public school, private school, church school, or be instructed by a private tutor certified by the state of Alabama for the entire length of the school term in every scholastic subject under the compulsory attendance law…

-- *Code of Alabama 1975 §§16-28-3, 16-28-1, 16-28-7*

The purposes of this article are to secure the prompt and regular attendance of pupils and to secure their proper conduct, and to hold the parent, guardian or other person in charge or control of a child responsible and liable for such child's nonattendance and improper conduct as a pupil…

-- *Code of Alabama 1975 Section 16-28-2*

The district attorney shall vigorously enforce this section to ensure proper conduct and required attendance by any child enrolled in public school.

-- ***Code of Alabama 1975 Section 16-28-12(c)***

WHEN

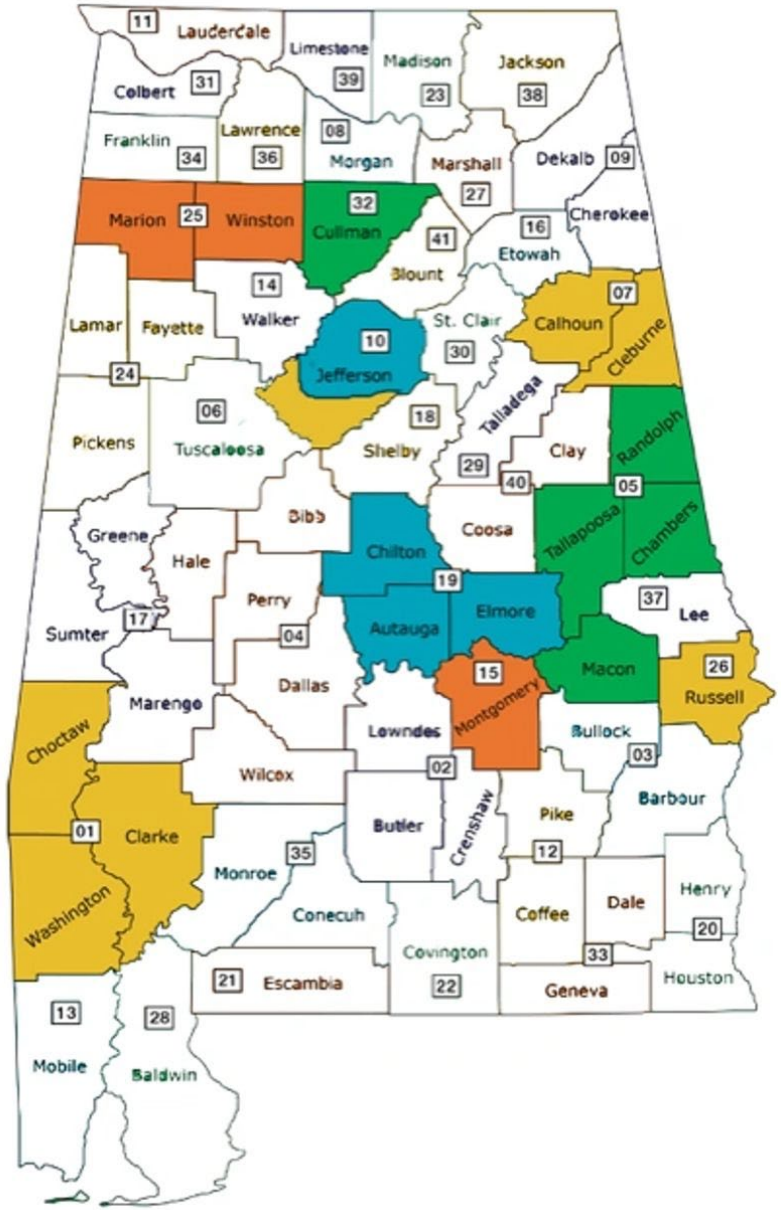
The Helping Families Initiative (HFI) that began in Mobile 15 years ago seeks to expand in Alabama to enable more families and schools to turn young people away from crime and toward more productive lives.

-- Business Council of Alabama
February 6, 2018

- **2003 - 2013** — 13th Judicial Circuit
- **2007** — 15th Judicial Circuit
- **2008** — 19th Judicial Circuit
- **2015** — HFI Incubated by Univ. of Alabama
- **2016** — 10th Circuit Birmingham
- **2016**
  - 6th Circuit
  - 7th Circuit
  - 32nd Circuit
- **2017** — HFI Hosted by Volunteers of America Southeast
- **2019**
  - 1st Circuit
  - 5th Circuit
  - 10th Bessemer
  - 25th Circuit

Volunteers of America SOUTHEAST | HELPING FAMILIES INITIATIVE
Better Futures for Students, Families, and Communities

WHERE



Circuit 1
Clarke County, Thomasville City
Circuit 5
Alexander City, Macon County
Tallapoosa County
Circuit 7
Calhoun County
Circuit 10 - BHM
Birmingham City, Tarrant City
Circuit 10 - BES
Bessemer City, Fairfield City
Midfield City

Circuit 15
Montgomery County
Circuit 19
Autauga County, Chilton County
Elmore County, Tallassee City
Circuit 25
Marion County
Winfield City
Circuit 26
Phenix City, Russell County
Circuit 32
Cullman City, Cullman County

Volunteers of America SOUTHEAST | HELPING FAMILIES INITIATIVE
Better Futures for Students, Families, and Communities

WHY

One study found that sixteen- to twenty-four- year-old high school dropouts were sixty-three times more likely to be institutionalized than those with a bachelor's degree or higher.

--Alliance for Excellent Education

Saving Futures, Saving Dollars: The Impact of Education on Crime Reduction and Earnings

September 2013

WHY

”**Our goal is to keep kids out of the criminal justice system**," District Attorney Daryl Bailey said. "**Almost every homicide** we have in **Montgomery**, when I go and review their records**, they were high school dropouts**. You look at robberies, violent offenses, it’s the same thing. There’s some type of correlation between kids who are not in school and those who are causing problems in our community.”

-- Montgomery Advertiser
March 9, 2018

WHY

Juvenile population, ages 0 to 17, 2018 1,089,840
Juvenile Arrest Rates (per 100,000 juveniles ages 10 to 17)

Reporting Coverage, 2018	63%
Aggravated assault arrest rate, 2018	48
Robbery arrest rate, 2018	35
Larceny arrest rate, 2018	306
Drug abuse arrest rate, 2018	41

-- US Department of Justice

HOW

Critical Partners

- Education
- Community Agencies
- State Agencies

HOW

Data Driven Decisions

Early Identification

Truancy	Disciplinary Problems

Preliminary Actions

Letter to Parents	Family Assessments – Root Causes

Individualized Intervention Plan

Interagency Team Meeting

Referrals

Public & Private Agencies	Monitor/Evaluate Progress

Volunteers of America SOUTHEAST | HELPING FAMILIES INITIATIVE
Better Futures for Students, Families, and Communities

RESULTS

- Safer and More Secure Schools
- Improved attendance in school
- Improved behavior in school
- Improved grades
- Improved safety and security of students, families, schools and communities
- Improved delivery of comprehensive, cooperative and coordinated services
- Improved values of existing tax and charitable dollars

RESULTS: FY 2019

LOW COST

HIGH IMPACT

$500,000 Investment Yields Big Results

13,272 Families Served Directly
118,272 Students Served Indirectly
15,307 Staff Activities
1,450 Community Service Referrals
1,395 Community Agencies
4,552 Community Meetings and Presentations
9 Counties Served — 18 Potential Counties in Participating Circuits
12 School Systems Served — 44 Potential School Systems in Participating Circuits

-- *Report to Legislative Fiscal Office*
November, 2019

Volunteers of America SOUTHEAST | HELPING FAMILIES INITIATIVE
Better Futures for Students, Families, and Communities

RESULTS: FY 2020

1st Circuit results in this year's first month of operation

Total Number of students with an unexcused absence during the month of November:

- 2017 - 170
- 2018 - 156 (8% reduction from 2017)
- 2019 - 92 (**42% reduction** from 2018)

Total number of unexcused absences during the month of November

- 2017 - 234
- 2018 - 206 (12% reduction from 2017)
- 2019 - 110 (**47% reduction** from 2018)

Total number of students with 2 or more unexcused absences during the month of November

- 2017 - 39
- 2018 - 36 (9% reduction from 2017)
- 2019 - 9 (**75% reduction** from 2018)

RESULTS: FY 2014

15th Circuit Criminal Justice
Results 2008-2013

Research on 218 youth who successfully completed the Helping Families program between 2008-2013 showed that 75 percent of them had no involvement with the justice system after their cases were closed.

-- Daryl Bailey
Helping Montgomery Families Initiative
August 22, 2014

Volunteers of America SOUTHEAST | HELPING FAMILIES INITIATIVE
Better Futures for Students, Families, and Communities

POLICY CONSIDERATIONS

Kay Ivey

OFFICE OF THE GOVERNOR

GOVERNOR ADMINISTRATION PRIORITIES NEWSROOM CONTACT

Governor Ivey Establishes Study Group on Criminal Justice Policy

Press Releases

Posted on July 18, 2019

MONTGOMERY – Governor Kay Ivey on Thursday announced that by executive order, she has established the Governor's Study Group on Criminal Justice Policy. The primary purpose of this group is to receive and analyze accurate data, as well as evidence of best practices, ultimately helping to further address the challenges facing Alabama's prison system.

The Ivey Administration inherited decades-old, systemic problems in the state's prison system, including overcrowding and understaffing. The governor has consistently reminded the people of Alabama that reforming the prison system is a matter of public safety.

"The people of Alabama are not unaware of the complexities that face our state's prison system, which take a toll on their hard-earned dollars and negatively impact public safety. The challenges we face are multifaceted, and in turn, a multifaceted solution, driven by data is necessary," Governor Ivey said. "In establishing the Governor's Study Group on Criminal Justice Policy, I am looking to see data driving us to even further reforms in the system. Thanks to my Administration and the Legislature, we are well on our way to making meaningful progress, and I am confident this group will help us dive even further into the facts to ensure the state's existing efforts lead us to an Alabama solution."

POLICY CONSIDERATION

Crime Prevention

Helping Families Initiative
FY 21 Budget Request

Judicial Circuits and School Support

1.0	Team Leaders	20
2.0	Team Leader Unit Cost	$70,000
	Total	$1,400,000

Statewide Support

1.0	Personnel	$250,000
2.0	Technical Infrastructure	$196,986
3.0	Travel	$96,000
4.0	Indirect Costs @10.5%	$57,014
	Total	$600,000

$2,000,000

Volunteers of America SOUTHEAST | HELPING FAMILIES INITIATIVE
Better Futures for Students, Families, and Communities

HELPING FAMILIES INITIATIVE

Better Futures for Students, Families and Communities

A program of Volunteers of America SOUTHEAST

Presented to the Governor's Study Group on Criminal Justice Policy

December 18, 2019

John M. Tyson, Jr., Director

jtyson@hfialabama.com

251-533-1621

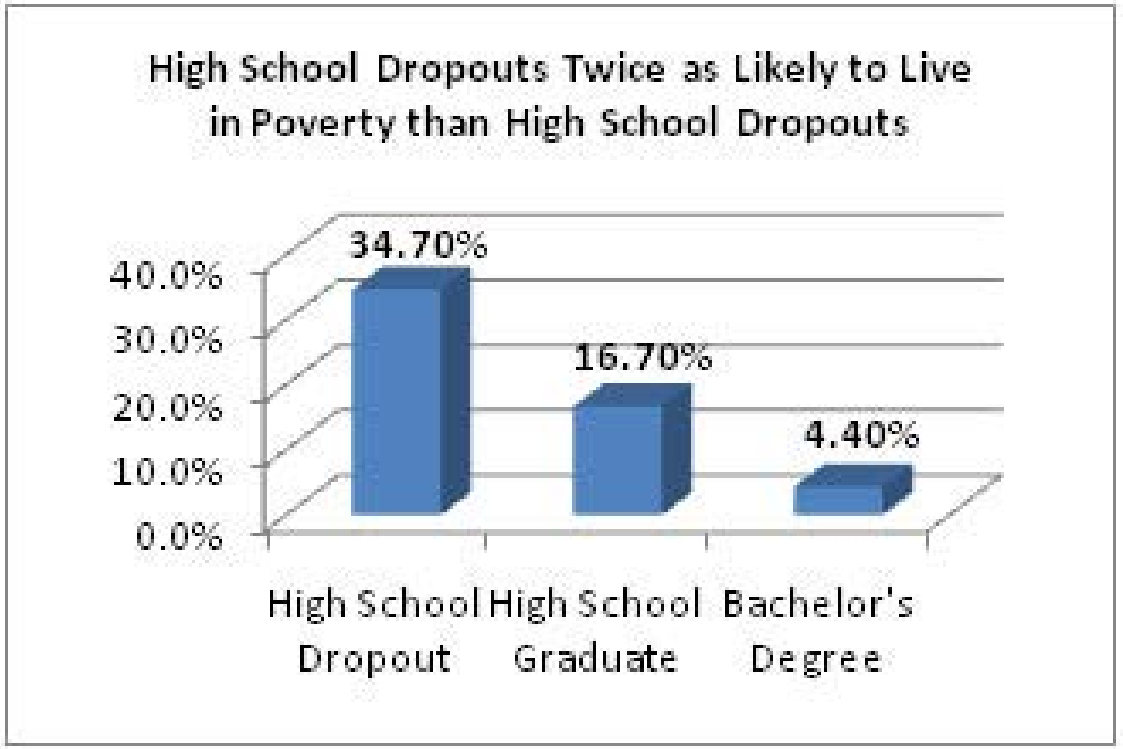
WHO

- School Files Petition in Juvenile Court
- Court Begins Judiciary Process

- School Provides Truancy/ Behavior Data to District Attorney
- District Attorney Begins Helping Families Process

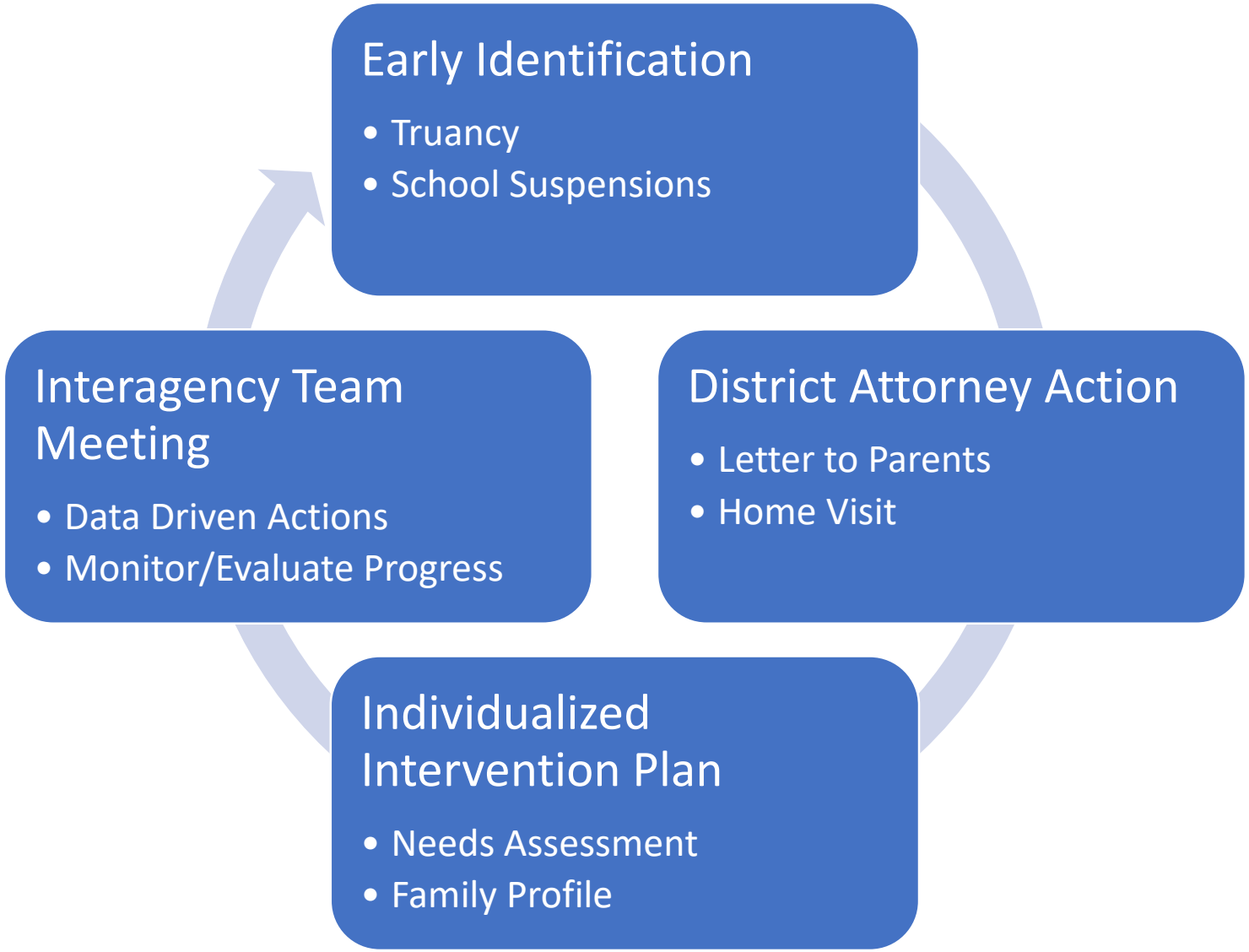
BENEFIT: BETTER EDUCATED WORKFORCE

Economic Growth



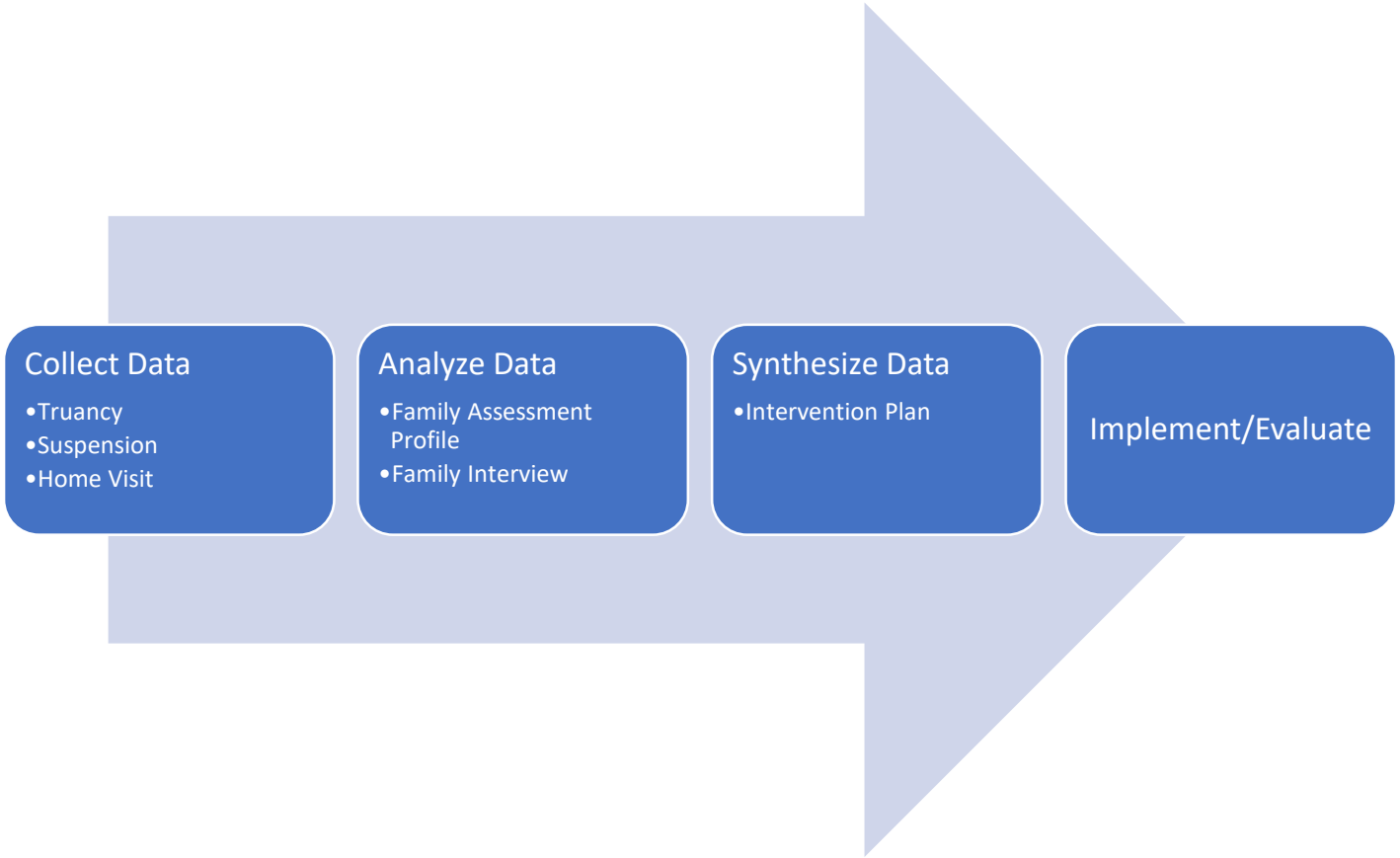
Alliance for Excellent Education
https://all4ed.org/more-than-one-third-of-recent-high-school-dropouts-living-in-poverty/

HOW

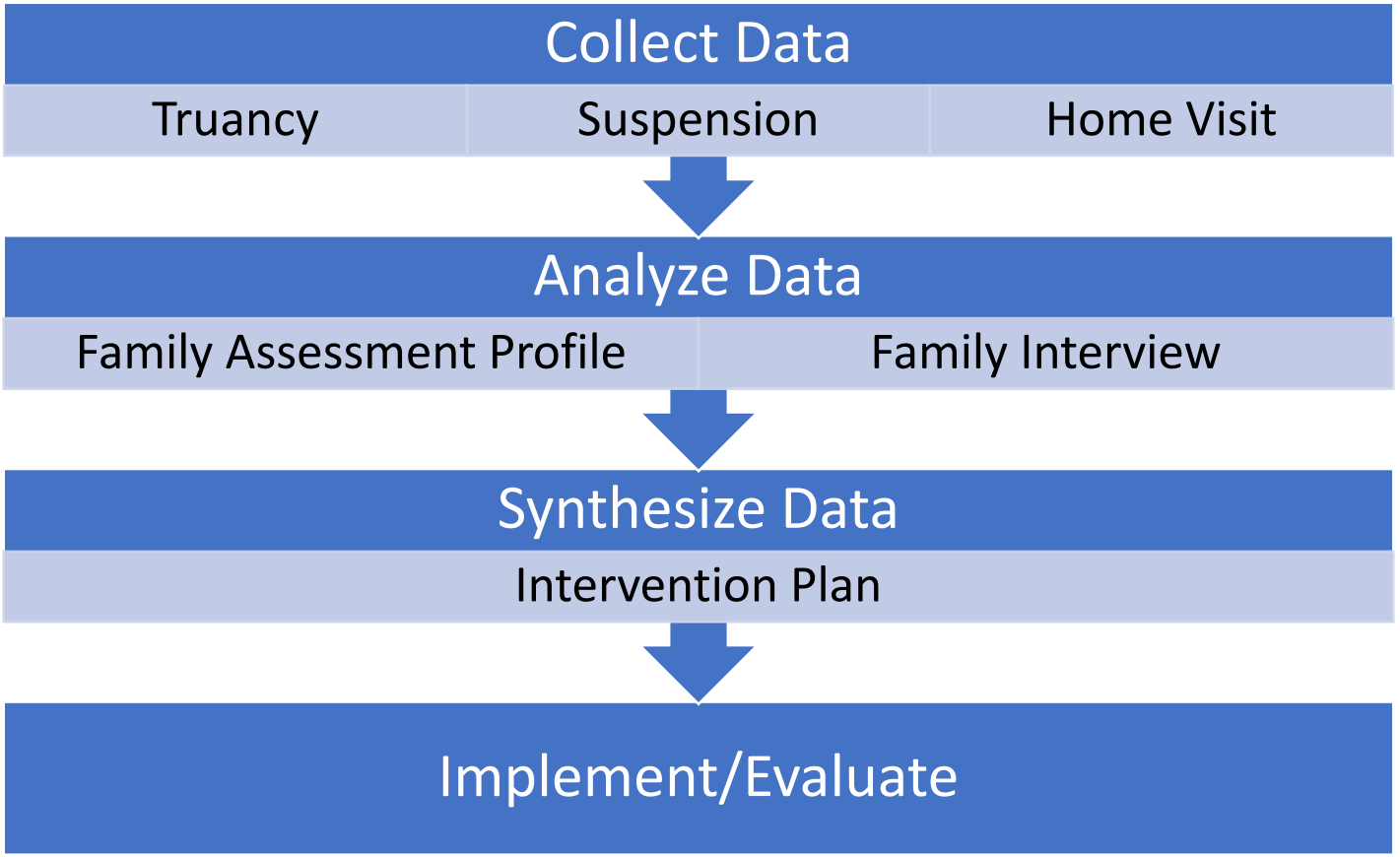


Volunteers of America SOUTHEAST | HELPING FAMILIES INITIATIVE
Better Futures for Students, Families, and Communities

DATA DRIVEN DECISIONS



DATA DRIVEN DECISIONS



Alabama Prisons

&

Criminal Justice Reform

Jay E. Town
United States Attorney
Northern District of Alabama
United States Department of Justice

U.S. Department of Justice

Jay E. Town
United States Attorney
Northern District of Alabama

1801 Fourth Avenue North
Birmingham, AL 35203-2101

(205) 244-2001

December 3, 2019

Via Hand Delivery
Justice Champ Lyons
Chairman,
Governor's Study Group on Criminal Justice Policy

Your Honor,

Please find the attached memoranda and correspondence drafted by me for the purposes of generating discussion regarding legislative adjustments that may tend to abate against the Eighth Amendment issues afoot in Alabama state prisons. It is my judgment that developing a criminal justice system that will withstand Eighth Amendment scrutiny for generations is a worthy goal.

You will find enclosed the Justice Department's Letter of Findings, memoranda regarding possible statutory reforms related to criminal justice, and separate correspondence to the Alabama District Attorneys and the Governor of Alabama. I generated these memos at the request of stakeholders in this process and have been authorized by the Department of Justice to engage at the highest levels of Alabama government to assist in discourse regarding any legislative adjustments or additions to Alabama's justice system that might abate against the issues in Alabama prisons identified by DOJ's Letter of Findings. All of the enclosures, and any communications by me, should be taken in the context of the Department's potential litigation with the Alabama Department of Corrections under the Civil Rights for Institutionalized Persons Act and the role designated to me in this process by the Department of Justice.

I appreciate your efforts in this process and I will make myself available to you or your study group should you deem it necessary. Thank you again.

Sincerely,

Jay E. Town

ENCLOSURES

- DOJ Letter of Findings, dated April 2. 2019
- Memorandum: "ADOC & Criminal Justice Reforms in Alabama", dated May 16, 2019
- Memorandum: "ADOC: Criminal Statutory Adjustments", dated October 29, 2019
- Letter to Governor Kay Ivey, dated April 26, 2019
- Letter to Alabama District Attorneys, dated June 10, 2019

ENCLOSURE

DOJ Letter of Findings, dated April 2. 2019

April 2, 2019

The Honorable Kay Ivey
Governor of Alabama
Alabama State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130

Re: Notice Regarding Investigation of Alabama's State Prisons for Men

Dear Governor Ivey:

We write to report the results of the investigation into the conditions of confinement in Alabama's State Prisons for Men (Alabama's prisons) by the Civil Rights Division and the Alabama United States Attorneys' Offices, conducted under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997. Consistent with the statutory requirements of CRIPA, we provide this Notice of the alleged conditions that we have reasonable cause to believe violate the Constitution. We also notify you of the supporting facts giving rise to, and the minimum remedial measures that we believe may remedy, those alleged conditions.

After carefully reviewing the evidence, we conclude that there is reasonable cause to believe that conditions at Alabama's prisons violate the Eighth Amendment to the Constitution and that these violations are pursuant to a pattern or practice of resistance to the full enjoyment of rights protected by the Eighth Amendment. In particular, we have reasonable cause to believe that Alabama routinely violates the constitutional rights of prisoners housed in the Alabama's prisons by failing to protect them from prisoner-on-prisoner violence and prisoner-on-prisoner sexual abuse, and by failing to provide safe conditions. The violations are exacerbated by serious deficiencies in staffing and supervision and overcrowding.[1]

We are obligated to advise you that 49 days after issuance of this Notice, the Attorney General may initiate a lawsuit under CRIPA to correct the alleged conditions we have identified if Alabama officials have not satisfactorily addressed them. 42 U.S.C. § 1997b(a)(1). The Attorney General may also move to intervene in related private suits 15 days after issuance of this letter. 42 U.S.C. § 1997c(b)(1)(A).

[1] The Department's investigation of Alabama's prisons was opened to investigate three issues: (1) whether Alabama's prisons are protecting prisoners from physical and sexual violence at the hand of other prisoners; (2) whether Alabama's prisons are providing safe and sanitary living conditions; and (3) whether Alabama's prisons are protecting prisoners from excessive force and sexual abuse from staff. This Notice Letter applies to the first two issues. The Department's investigation into third issue is ongoing because the Department's petition to enforce its subpoena for documents relevant to that issue is pending with the court.

We hope, however, to resolve this matter through a more cooperative approach and look forward to working with you to address the alleged violations of law we have identified. The lawyers assigned to this investigation will be contacting the Alabama Department of Corrections to discuss this matter in further detail. Please also note that this Notice is a public document. It will be posted on the Civil Rights Division's website.

If you have any questions, please call United States Attorney Jay E. Town at (205) 244-2001 or Steven H. Rosenbaum, Chief of the Civil Rights Division's Special Litigation Section, at (202) 616-3244.

Sincerely,

Eric S. Dreiband
Assistant Attorney General
Civil Rights Division

Louis V. Franklin, Sr.
United States Attorney
Middle District of Alabama

Jay E. Town
United States Attorney
Northern District of Alabama

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Warden
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Cilo, AL 36017

Joseph Headley
Warden
Elmore Correctional Facility
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Elmore, AL 36025

Mary Cooks
Warden
Fountain Correctional Facility
Fountain 3800
Atmore, AL 36503

Guy Noe
Warden
Hamilton Aged & Infirmed Correctional Facility
223 Sasser Drive
Hamilton, AL 35570

Cynthia Stewart
Warden
Holman Correctional Facility
Holman 3700
Atmore, AL 36503

Leon Bolling
Warden
Kilby Correctional Facility
P.O. Box 150
Mt. Meigs, AL 36057

DeWayne Estes
Warden
Limestone Correctional Facility
28779 Nick Davis Road
Harvest, AL 35749

Karla Jones
Warden
St. Clair Correctional Facility
1000 St. Clair Road
Springville, AL 35146

John Crow
Warden
Staton Correctional Facility
P.O. Box 56
Elmore, AL 36025

Michael Strickland
Acting Warden
Ventress Correctional Facility
379 Alabama Highway 239 North
Clayton, AL 36016

Attachment: Section 1997b Notice

INVESTIGATION OF ALABAMA'S STATE PRISONS FOR MEN

United States Department of Justice
Civil Rights Division

United States Attorney's Offices for the
Northern, Middle, and Southern Districts of Alabama

April 2, 2019

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I. INTRODUCTION

The Civil Rights Division and the three U.S. Attorney's Offices for the State of Alabama ("Department" or "Department of Justice") provide notice, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §§ 1997 *et seq.* ("CRIPA"), that there is reasonable cause to believe, based on the totality of the conditions, practices, and incidents discovered that: (1) the conditions in Alabama's prisons for men (hereinafter "Alabama's prisons")[1] violate the Eighth Amendment of the U.S. Constitution; and (2) these violations are pursuant to a pattern or practice of resistance to the full enjoyment of rights protected by the Eighth Amendment. The Department does not serve as a tribunal authorized to make factual findings and legal conclusions binding on, or admissible in, any court, and nothing in this Notice Letter ("Notice") should be construed as such. Accordingly, this Notice is not intended to be admissible evidence and does not create any legal rights or obligations.

Consistent with the statutory requirements of CRIPA, we write this Notice to notify Alabama of the Department's conclusions with respect to numerous constitutional violations, the facts supporting those conclusions, and the minimum remedial measures necessary to address the identified deficiencies.[2]

There is reasonable cause to believe that the Alabama Department of Corrections ("ADOC") has violated and is continuing to violate the Eighth Amendment rights of prisoners housed in men's prisons by failing to protect them from prisoner-on-prisoner violence, prisoner-on-prisoner sexual abuse, and by failing to provide safe conditions, and that such violations are pursuant to a pattern or practice of resistance to the full enjoyment of rights secured by the Eighth Amendment. The violations are severe, systemic, and exacerbated by serious deficiencies in staffing and supervision; overcrowding; ineffective housing and classification protocols; inadequate incident reporting; inability to control the flow of contraband into and within the prisons, including illegal drugs and weapons; ineffective prison management and training;

[1] At present, there are 13 such correctional facilities: Bibb Correctional Facility; Bullock Correctional Facility; Donaldson Correctional Facility; Easterling Correctional Facility; Elmore Correctional Facility; Fountain Correctional Facility; Hamilton Aged & Infirmed; Holman Correctional Facility; Kilby Correctional Facility; Limestone Correctional Facility; St. Clair Correctional Facility; Staton Correctional Facility; and Ventress Correctional Facility. We also investigated the conditions at Draper Correctional Facility; however, in late 2017, the Alabama Department of Corrections ("ADOC") closed that facility. We did not review the conditions in other ADOC facilities, such as work release facilities or the Julia Tutwiler Prison for Women.

[2] The Department's investigation of Alabama's prisons was opened to investigate three issues: (1) whether ADOC is protecting prisoners from physical and sexual violence at the hand of other prisoners; (2) whether ADOC is providing safe and sanitary living conditions; and (3) whether ADOC is protecting prisoners from excessive force and sexual abuse from staff. This Notice applies to the first two issues. The Department's investigation into third issue is ongoing because the Department's petition to enforce its subpoena for documents relevant to that issue is pending with the court.

insufficient maintenance and cleaning of facilities; the use of segregation and solitary confinement to both punish and protect victims of violence and/or sexual abuse; and a high level of violence that is too common, cruel, of an unusual nature, and pervasive.

Our investigation revealed that an excessive amount of violence, sexual abuse, and prisoner deaths occur within Alabama's prisons on a regular basis. Indeed, a review of a single week in Alabama's prisons—a week in September 2017—provides a window into a broken system that too often disregards prisoners' safety.

The "Hot Bay" at Bibb[3] was a housing unit populated exclusively with prisoners with disciplinary infractions. It had limited supervision and no programming. On a Friday in September 2017, three days before the Department of Justice arrived at Bibb for the first full facility tour of our investigation, two prisoners stood guard at the doors of the Hot Bay, an open dormitory housing men in bunkbeds multiple rows deep, watching for rarely-seen correctional officers. At the back of the dormitory and not visible from the front door, two other prisoners started stabbing their intended victim. The victim screamed for help. Another prisoner tried to intervene and he, too, was stabbed. The initial victim dragged himself to the front doors of the dormitory. Prisoners banged on the locked doors to get the attention of security staff. When an officer finally responded, he found the prisoner lying on the floor bleeding from his chest. The prisoner eventually bled to death. One Hot Bay resident told us that he could still hear the prisoner's screams in his sleep.

That same day, at Staton, a prisoner was stabbed multiple times by another prisoner and had to be medically evacuated by helicopter to a nearby hospital. The following day, at Elmore, a prisoner was beaten and injured by four other prisoners. At Ventress, officers performed a random pat down on a prisoner, finding 17 cigarettes laced with drugs, a plastic bag of methamphetamine, and a bag filled with another hallucinogen drug referred to as "cookie dough."[4]

On Sunday, a prisoner asleep in the honor dormitory—a dormitory reserved for prisoners with good behavior—at St. Clair was woken from sleep when two prisoners started beating him with a sock filled with metal locks. The victim was injured so severely that he was transported to an outside hospital for emergency treatment. That same day at Ventress, a prisoner was punched so forcefully in the eye by another prisoner that he was sent to an outside hospital. Another prisoner was stabbed by two other prisoners with homemade knives. A different

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[3] The "Hot Bay" is an internal nickname for what is also called the "Behavior Modification" dormitory or "restricted housing unit." It is where prisoners who have been disciplined for drugs or violence are placed and are not allowed to leave the dormitory for meals or the canteen line, are not given a microwave or television, or allowed to attend any outside programs or jobs. Since we inspected Bibb and informed ADOC of our initial findings that the Hot Bay was critically dangerous, the Hot Bay at Bibb has been closed, but "Behavior Modification" dormitories continue to operate at other facilities.

[4] "Cookie dough" is a brown or white synthetic crystalline powder made of poisonous chemicals that is mixed with tobacco and smoked. It causes extreme paranoia, severe hallucinations, and violent nausea. It is sometimes referred to as "Brown Clown."

Ventress prisoner was punched so hard in the face by prisoners with shirts covering their faces that he was transported to an outside hospital for treatment. At Staton, a prisoner threatened a correctional officer with a knife measuring seven inches in length. And another prisoner reported that he had been sexually assaulted by a fellow prisoner after he had only agreed, in exchange for three store items, to lower his pants for that prisoner to view his buttocks while masturbating.

On Tuesday, at Fountain, a prisoner set fire to another prisoner's bed blanket while he was sleeping, leading to a fight between the two men. Officers searching a dormitory at Ventress found 12 plastic bags of an unknown substance, 79 cigarettes laced with drugs, two bags containing "cookie dough," and a bag of methamphetamine.

On Wednesday morning, a prisoner at Easterling was sexually assaulted inside of a segregation cell by an inmate. Four days prior, this same prisoner had been forced at knifepoint to perform oral sex on two other prisoners.

On Thursday, at Ventress, a prisoner was so severely assaulted by four other prisoners that he had to be transported to an outside hospital for treatment. A different Ventress prisoner reported being sexually assaulted.

At Bullock, a prisoner was found unresponsive on the floor by his bed and later died; his death was caused by an overdose of a synthetic cannabinoid. On Friday at Ventress, an officer observed a prisoner bleeding from the shoulder due to a stab wound; the prisoner was transported to an outside hospital for treatment.

These incidents in Alabama's prisons are just some of those reported in ADOC's own records during one week. And based on what we learned from our investigation and statements made by ADOC's head of operations, it is likely that many other serious incidents also occurred this week but were not reported by prisoners or staff.

II. INVESTIGATION

In October 2016, the Department opened a CRIPA investigation into the conditions in ADOC facilities housing male prisoners. The investigation focused on whether ADOC (1) adequately protects prisoners from physical harm and sexual abuse at the hands of other prisoners; (2) adequately protects prisoners from use of excessive force and staff sexual abuse by correctional officers; and (3) provides prisoners with sanitary, secure, and safe living conditions.

Five experienced expert consultants in correctional practices assisted with this investigation. Three of these experts are former high-ranking corrections officials with significant experience leading state and local corrections departments; the remaining two are nationally recognized experts in medical care and sexual safety in prisons. At least two of the experts accompanied us on site visits to Alabama prisons, interviewed ADOC staff and prisoners, reviewed documents, and provided their expert opinions and insight to help inform the investigation and its conclusions. The remaining experts reviewed documents and provided their

expert opinions and insights to assist the Department in forming conclusions and recommending remedies to tackle the significant problems encountered during the investigation.

Between February 2017 and January 2018, we conducted site visits to four Alabama prisons: Donaldson, Bibb, Draper, and Holman. Our investigation was aided by numerous sources of information.

Throughout the course of this investigation, we interviewed approximately 55 ADOC staff members. Our site visits included interviews with wardens, deputy wardens, captains, Prison Rape Elimination Act ("PREA")[5] compliance officers, sergeants, medical staff, mental health staff, classification staff, and maintenance managers. In addition, we also met with staff of ADOC's central office, including the Deputy Commissioner of Operations, the head of the Intelligence and Investigations Division ("I&I"), the PREA Coordinator, and other members of ADOC management and the investigations branch.

We also interviewed over 270 prisoners. In addition to four site visits, we sent two Department investigators to interview prisoners in seven Alabama prisons—Limestone, Donaldson, Staton, Ventress, Easterling, Bullock, and Fountain. ADOC did allow prisoners to access a toll-free number with direct access to Department personnel. As a result, the Department conducted over 500 interviews with prisoners and family members by phone. We received and reviewed more than 400 letters from ADOC prisoners. We also received hundreds of emails from prisoners and family members to a special email address established specifically for this investigation.

We augmented our site visits by requesting and reviewing hundreds of thousands of pages of documents and data from 2015 to 2018. In order to inform our understanding of ADOCs practices, we reviewed incident reports, medical records, autopsies, policies and regulations, training materials, mental health records, personnel files, staffing plans, shift rosters, duty post logs, and a limited number of investigative files. ADOC produced its entire incident report database from 2015 through June 2017 and a portion of its incident report database from June 2017 through April 2018.

In some sections of this Notice, we provide more examples to illustrate the variety of circumstances in which the violation occurs, while in others we focus on one or two examples that demonstrate the nature of the violations we found. The number of examples included in a particular section is not indicative of the number of violations that we found. These examples comprise a small subset of the total number of incidents upon which we base our conclusions. And though there may be more examples from facilities we visited and certain others from which we received more information, given the enormous breadth of ADOC's Eighth Amendment violations—including the lack of certain statewide policies, our concerns with ADOC management, and the fact that prisoners are frequently transferred to different facilities—it is evident the examples described in this Notice are typical of the system as a whole.

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[5] 34 U.S.C. §§ 30301-30309.

III. BACKGROUND

ADOC currently houses approximately 16,000 male prisoners in 13 prisons with varying custody levels. Based on the most recent ADOC Annual Report available, five of these facilities—Donaldson, Holman, Kilby, Limestone, and St. Clair—are maximum, or close custody, meaning they are "designed for incarcerating the most violent and highest classified offenders admitted to ADOC." In the close custody facilities, many of the prisoners are housed in cells, as opposed to open dormitory-style housing. They range in population from just over 900 prisoners at St. Clair to over 2,000 at Limestone. ADOC classifies eight of its facilities—Bibb, Bullock, Easterling, Elmore, Fountain, Hamilton Aged & Infirmed, Staton, and Ventress—as medium custody, which are "less secure than close custody for those inmates who have demonstrated less severe behavioral problems." Hamilton houses fewer than 275 prisoners, while Bibb houses almost 1,800. Many of the prisoners housed in medium custody facilities live in open dormitories; however, even in these facilities, there are a number of segregation cells.

ADOC operated a fourteenth men's prison called Draper at the time that we opened our investigation. We inspected Draper in October 2017, and discovered numerous dangerous and unsanitary conditions within the prison. For example, there was open sewage running by the pathway we used to access the facility. Numerous prisoners informed us that toilets and plumbing pipes in dormitories and segregation required frequent maintenance, yet were still often overflowing or clogged, with standing sewage water on the floors. In addition, there were reports of rats and maggots in the kitchen. After the inspection, our experts informed ADOC of their shock at the state of the facility. In fact, during our inspection of Draper, one of our experts had to leave the kitchen area before becoming sick from the toxic fumes of the cleaning chemicals. Approximately one month after our site visit, we learned through press reports that ADOC was closing Draper after engineering experts hired by ADOC concluded that the facility was "no longer suitable to house inmates, or to be used as a correctional facility."

IV. CONDITIONS IDENTIFIED

ADOC fails to protect prisoners from serious harm and a substantial risk of serious harm. *See Farmer v. Brennan*, 511 U.S. 825, 833 (1994); *Helling v. McKinney*, 509 U.S. 25, 33-35 (1993); *Harrison v. Culliver*, 746 F.3d 1288, 1298 (11th Cir. 2014). 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, extortion, drugs, and weapons. Prisoner-on-prisoner homicide and sexual abuse is 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. Prisoners are often found in unauthorized areas. Some prisoners sleep in dormitories to which they are not assigned in order to escape violence. Prisoners are being extorted by other prisoners without appropriate intervention of management. Contraband is rampant. The totality of these conditions pose a substantial risk of serious harm both to prisoners and correctional officers.

Laube v. Haley, 234 F. Supp. 2d 1227, 1245 (M.D. Ala. 2002); *see also Helling*, 509 U.S. at 33 ("That the Eighth Amendment protects against future harm to inmates is not a novel concept. The Amendment . . . requires that inmates be furnished with the basic human needs, one of which is reasonable safety.").

The Eighth Amendment applies to the States through the Due Process Clause of the Fourteenth Amendment and prohibits the infliction of "cruel and unusual punishments." *Estelle v. Gamble*, 429 U.S. 97, 101 (1976). The Eighth Amendment's ban on cruel and unusual punishments applies to the "treatment a prisoner receives in prison and the conditions under which he is confined." *Farmer*, 511 U.S. at 832; *Bass v. Perrin*, 170 F.3d 1312, 1316 (11th Cir. 1999). The conditions in Alabama's prisons are objectively unsafe, as evidenced by the high rate of prisoner-on-prisoner homicides and violence, including sexual abuse. Alabama is incarcerating prisoners under conditions that pose a substantial risk of serious harm, even when that harm has not yet occurred. Alabama is deliberately indifferent to that harm or serious risk of harm and it has failed to correct known systemic deficiencies that contribute to the violence. The deplorable conditions within Alabama's prisons lead to heightened tensions among prisoners. And, as a result, the violence is spilling over so that it is affecting not only prisoners, but ADOC staff as well.

That ADOC's prisons are dangerous appears to be acknowledged at all levels. The following data highlights that danger. Alabama prisoners endure an extraordinarily high rate of violence at the hands of other prisoners. Based on the latest data available from the Department of Justice's Bureau of Justice Statistics, Alabama's prisons have the highest homicide rate in the country. In 2014, the national average homicide rate in prisons was seven homicides per 100,000 prisoners. During fiscal year 2017, ADOC publicly reported nine homicides in its men's prisons, which house about 16,000 prisoners (a rate of homicide of 56 per 100,000 prisoners). This is approximately eight times the 2014 national rate.

Our experts observed that, based on their experience, the amount of prisoner-on-prisoner violence in Alabama's prisons was much higher than other similar systems. Based on ADOC's publicly reported statistics, the number of prisoner-on-prisoner violent incidents has increased dramatically over the last five-and-a-half years.

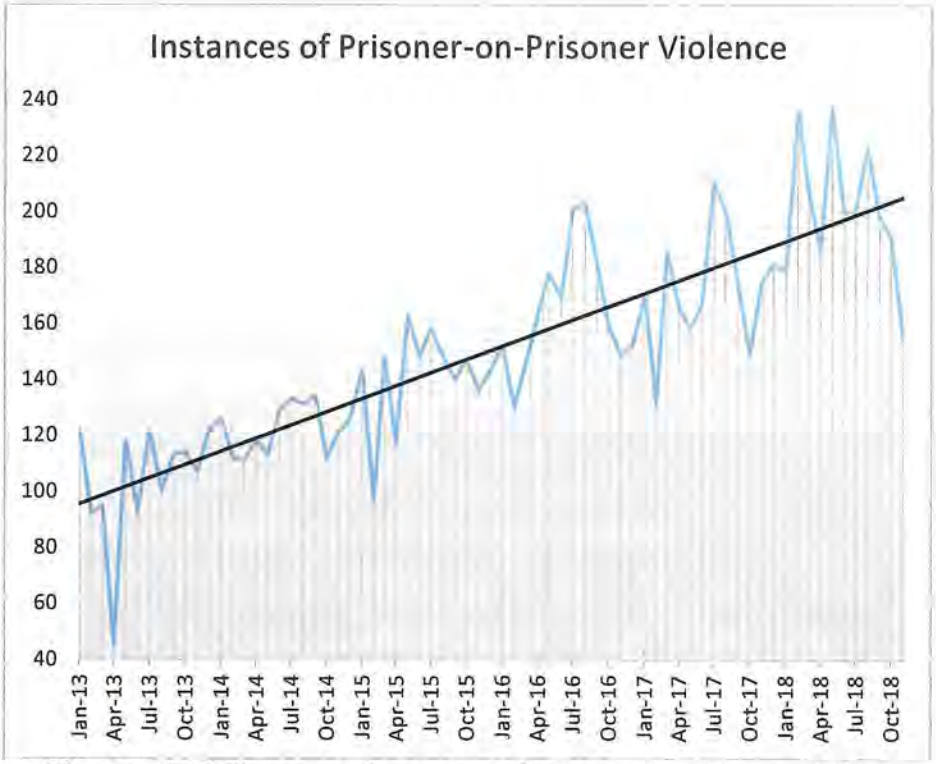


Chart 1: ADOC's reported instances of prisoner-on-prisoner violence

This increase in violent incidents has persisted and continued even after our investigation began. Our experts have consistently raised concerns about the levels of violence with ADOC leadership and suggested potential solutions throughout our investigation.

ADOC correctional staff are also harmed by the violence. Shortly before we notified ADOC of our investigation, a correctional officer was stabbed to death at Holman. ADOC's own incident reports indicate that, since 2017, correctional officers have been stabbed, punched, kicked, threatened with broken broomsticks or knives, and had their heads stomped on. One officer at Donaldson was quoted as saying, "Walking out of these gates, knowing you're still alive, that's a successful day." At the same time, dozens of ADOC correctional officers have been arrested in the past two years for crimes related to drug trafficking and other misconduct within Alabama's prisons. And ADOC told us that ADOC staff are bringing illegal contraband into Alabama's prisons.

As detailed below, there is reasonable cause to believe that there is a pattern or practice of Eighth Amendment violations throughout the ADOC system. To establish a pattern or practice of violations, the United States must prove "more than the mere occurrence of isolated or 'accidental' or sporadic discriminatory acts." *See Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336 (1977). It must "establish by a preponderance of the evidence that . . . [violating federal law] was . . . the regular rather than the unusual practice." *Bazemore v. Friday*, 478 U.S. 385, 398 (1986) (quoting *Teamsters*, 431 U.S. at 336); *see also EEOC v. Am. Nat'l Bank*, 652 F.2d 1176, 1188 (4th Cir. 1981) (explaining that a "cumulation of evidence, including

statistics, patterns, practices, general policies, or specific instances of discrimination" can be used to prove a pattern or practice).

A. ADOC's Overcrowding Contributes to Serious Harm to Prisoners.

One factor leading to the overwhelming amount of violence within Alabama's prisons is severe overcrowding. Alabama has one of the most overcrowded prison systems in the nation. In 2013, Alabama had an imprisonment rate of 646 per 100,000 residents—the fourth highest in the nation and well above the average U.S. incarceration rate of 417 per 100,000 residents. The Alabama rate was well above the rates for other similarly situated states, such as Georgia and South Carolina.

According to recent data published by ADOC, Alabama's prisons have a system-wide occupancy rate of 165%. ADOC houses approximately 16,327 prisoners in its major correctional facilities, but the system was designed to hold 9,882. However, the average occupancy rate at the 13 major correctional institutions that we reviewed is approximately 182%, after excluding work release and other facilities. For example, Staton, a medium security prison, is designed to hold 508 prisoners and held 1,385 in November 2018 for an occupancy rate of 272.6%. And Kilby, a close security prison, has a design capacity of 440 beds, and held 1,407 prisoners at the end of November 2018—an occupancy rate of 319.8%. This severe overcrowding remains despite the fact that Alabama convened a Prison Reform Task Force in February 2014, to recommend solutions to the problem of overcrowding. Based on the Task Force's recommendations, the Legislature passed Senate Bill 67, which took effect in January 2016. In an effort to decrease the prison population, the law created a new class of felonies for low-level drug and property crimes and reformed parole boards. However, it did not apply retroactively and the effect on Alabama's prison population has been minimal. In the two years that this investigation has been ongoing, the prison population in male correctional facilities has decreased by approximately 1,615 prisoners, but, because ADOC closed one major correctional facility during that time, the average occupancy rate per facility has not decreased.

While overcrowding is not an Eighth Amendment violation on its own, it can cause and exacerbate unconstitutional conditions. *See Rhodes v. Chapman*, 452 U.S. 337, 347-50 (1981); *Collins v. Ainsworth*, 382 F.3d 529, 540 (5th Cir. 2004); *French v. Owens*, 777 F.2d 1250, 1252-53 (7th Cir. 1985) (holding that overcrowding was unconstitutional where it led to unsafe and unsanitary conditions).

In *Brown v. Plata*, the Supreme Court affirmed a three-judge court ruling that overcrowding in the California state prison system had overtaken the limited resources of prison staff; imposed demands well beyond the capacity of medical and mental health facilities; and created unsanitary and unsafe conditions. *Brown v. Plata*, 563 U.S. 493, 518-19 (2011). The Court also upheld the lower court's order that California reduce its state prison population to 137% of capacity to attain a reasonable level of safety. *Id.* at 540-41.

In another case, *Mobile County Jail Inmates v. Purvis*, the district court entered a finding of contempt when a county failed to correct unconstitutional conditions of overcrowding. *Mobile Cty. Jail Inmates v. Purvis*, 551 F. Supp. 92, 94 (S.D. Ala. 1982) ("'Overcrowding is the

root and basic problem' contributing to the deplorable physiological and psychological effects of the Mobile County Jail . . . ."). The Eleventh Circuit later affirmed. *Mobile Cty. Jail Inmates v. Purvis*, 703 F.2d 580 (11th Cir. 1983) (unpublished table decision).

Similarly, in *Maynor v. Morgan County*, 147 F. Supp. 2d 1185 (S.D. Ala. 2001), the district court made a preliminary finding that conditions in a county jail violated the Eighth Amendment when inmates were forced to sleep on the floor under bunks, on the floor between bunks, on tables, and between tables. *Maynor v. Morgan Cty.*, 147 F. Supp. 2d 1185, 1186, 1188 (S.D. Ala. 2001) ("Plaintiffs have carried their burden of showing that the conditions extant in the Morgan County Jail violate their rights to the minimal civilized measures of life's necessities and protection from a substantial risk of serious harm under the Eighth Amendment.").

In Alabama's prisons, the overcrowding combined with understaffing is driving prisoner-on-prisoner violence. *See Laube*, 234 F. Supp. 2d at 1245 (holding that a combination of substantial overcrowding and significantly inadequate supervision in open dormitories deprives inmates of their right to be protected from the constant threat of violence).

B. ADOC's Severe Understaffing Exposes Prisoners to Serious Harm.

Staffing in Alabama's prisons is at a crisis level. For fiscal year 2017, ADOC publicly reported "critical levels of authorized staffing shortages." In January 2019, ADOC's Commissioner, Jefferson S. Dunn, announced to the Legislature that he would request funding to hire 500 more correctional officers, which is a fraction of the additional staff deemed necessary by ADOC's own analysis. One month later, in February 2019, ADOC acknowledged that it needs to hire over 2,000 correctional officers and 125 supervisors in order to adequately staff its men's prisons. Commissioner Dunn explained to the Legislature that "there is a direct correlation between the shortage of officers in our prisons and the increase in violence," noting that the current level of violence is "unacceptably high."

This egregious level of understaffing equates to inadequate supervision that results in a substantial risk of serious harm. *See Alberti v. Klevenhagen*, 790 F.2d 1220, 1227-28 (5th Cir. 1986) (upholding district court's finding that inadequate staffing and supervision, among other factors, led to a pattern of constitutional violations); *Ramos v. Lamm*, 639 F.2d 559, 573 (10th Cir. 1980) ("Violence and illegal activity between inmates . . . is further facilitated by the inadequacy of the staffing levels."); *Van Riper v. Wexford Health Sources, Inc.*, 67 F. App'x 501, 505 (10th Cir. 2003) ("When prison officials create policies that lead to dangerous levels of understaffing and, consequently, inmate-on-inmate violence, [there is a violation of the Eighth Amendment.]"). ADOC does not have sufficient staff to supervise its overcrowded prisons. Dormitories of prisoners, housing up to 180 men, are often unsupervised for hours or shifts at a time.

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—

28%; and Ventress—30%. Three others have less than 40%: Donaldson—35%; Staton—35%; and Kilby—36%. Only three remaining prisons also have correctional officer staffing levels over 40%: Elmore—41%; Limestone—56%; and Hamilton—75%. Hamilton A&I (which houses approximately 275 elderly and sick prisoners and is authorized for only 45 officers) at 75% staffing is still dangerously understaffed. A former ADOC warden stated that with this level of understaffing, "the convicts are in extreme danger and the correctional officers working there are in extreme danger." Correctional staffing levels have decreased over time as shown in the following chart:

Chart 2: ADOC's reported correctional officer staffing levels

In reality, the deficit in the number of security staff working any given shift can be worse than 20% below required levels. For example, the Warden at Holman told us that, on any given day, she estimates that she has "probably 11" security staff, both officers and supervisors, per shift for the entire complex—a prison population of approximately 800. And the Warden at Bibb stated that he currently has only 66 assigned security staff, both officers and supervisors, covering approximately 1,800 prisoners over four shifts. Leadership at the facilities have used a variety of measures to fill the extreme shortages. These include mandated overtime, which allows supervisors to require that correctional officers stay an additional four hours past the end of their 12-hour shift.

In another stop-gap measure intended to address the extreme understaffing, officers are required to work oxymoronic "voluntary mandatory overtime," which requires officers to work two additional 12-hour shifts a month. It is not uncommon for officers to be disciplined for refusing to stay for mandated time or for mandatory overtime, leaving prisons even more understaffed. By the same token, staffing prisons with exhausted staff makes for ineffective and, in this system, potentially life-threatening outcomes.

In fiscal year 2017, a correctional officer at St. Clair with a base pay of $38,426.60, earned almost $80,000 in overtime. Extrapolating that amount in overtime pay, the officer averaged 90-95 hours per week. Within Alabama, ADOC is the state department with the highest total amount of overtime paid to employees—$31.6 million. The next highest state department paid $6.77 million in overtime. Officers are tired and the hours are affecting job performance and officer morale. Prisoners report seeing officers asleep on duty. And incident reports reflect that officers are often disciplined for sleeping. One officer at Donaldson revealed that he has been so tired on duty that he "fell asleep on his feet and hit the floor."

C. ADOC Does Not Reasonably Protect Prisoners from Rampant Violence.

The Eighth Amendment's ban on cruel and unusual punishments requires that ADOC "take reasonable measures to guarantee the safety" of all prisoners. *Farmer*, 511 U.S. at 832 (quoting *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984)). When a state takes a person into custody, the Constitution imposes upon the state a corresponding duty to assume some responsibility for his safety and well-being. *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 851 (1998) (citing *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 199-200 (1989)). The Eleventh Circuit has held that "an excessive risk of inmate-on-inmate violence . . . creates a substantial risk of serious harm . . . ." *Lane v. Philbin*, 835 F.3d 1302, 1307 (11th Cir. 2016) (citing *Harrison v. Culliver*, 746 F.3d 1288, 1299 (11th Cir. 2014)). The Eleventh Circuit has also found a substantial risk of harm where prisoners were housed in conditions that included routine understaffing, dysfunctional locks on cell doors, and the ready availability of homemade weapons. *See Marsh v. Butler Cty.*, 268 F.3d 1014, 1030, 1034 (11th Cir. 2001) (en banc) ("[A]n Eighth Amendment violation can arise from unsafe conditions of confinement even if no assault or similar physical injury has yet occurred." (citing *Helling*, 509 U.S. at 33-34, *abrogated on other grounds by Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 561-63 (2007).

ADOC officials must take precautions to protect prisoners from violence, and are "not free to let nature take its course." *Farmer*, 511 U.S. at 833-34. It is clear from the number of deaths, fights, and stabbings in Alabama's prisons that ADOC is failing to protect its prisoners and nature is taking its course.

1. ADOC Must Accurately Classify the Deaths That Occur Within Its Custody.

According to ADOC's public reports, between January 2015 and June 2018, 24 prisoner deaths have occurred as a result of a homicide (eight in 2015; three in 2016; nine in 2017; and four from January through June of 2018). We definitively identified three additional homicides—two in 2017 and one in the first half of 2018. These unreported homicides provide reasonable cause to believe that ADOC's homicide rate is higher than what ADOC has publicly reported. There are numerous instances where ADOC incident reports classified deaths as due to "natural" causes when, in actuality, the deaths were likely caused by prisoner-on-prisoner violence. This is especially concerning given that these incident reports are used for public statistical reporting as required by law. For example:

- A prisoner died in February 2018, from wounds he sustained four days earlier in a knife fight at Kilby. The autopsy details multiple stab wounds to the prisoner's head, abdomen, back, and arm. One stab wound extended "through the scalp and impact[ed] the skull and [was] associated with a depressed skull fracture 1/4 inch in diameter." The toxicological analysis report also revealed the presence of methamphetamine in his system. The incident report listed this prisoner's death as "Natural," despite the original incident report narrative describing an altercation with a weapon. Though ADOC reported the death as "Natural," the autopsy report definitively states that manner of death was "homicide."

- In November 2017, a prisoner was rushed to a hospital from Elmore with a brain bleed. Prior to the transfer, the prison's health care unit had refused to provide medical attention to the prisoner—even though he was "bleeding from his head"—because he appeared to be "under the influence." At the hospital, he ultimately required emergency brain surgery. Further investigation revealed that another prisoner had physically assaulted the decedent. The incident report does not detail how the assault occurred. Approximately one month later, following readmission, the hospital informed ADOC officials that the prisoner died. ADOC classified the death as "Inmate Death – Natural." In contrast, the autopsy report describes "multiple contusions present on the right upper chest, wrists and arms." The autopsy concludes that the manner of death was "homicide" caused by "blunt force head trauma," which resulted in a subdural hematoma (a pool of blood between the brain and its outermost covering).

- In October 2017, a correctional officer observed a prisoner lying on the bathroom floor, "nonresponsive," in a dormitory at Elmore. The incident report notes that "Brown Timberland steel toe boots" were taken into evidence, but gives no indication of what injuries the prisoner had and why these boots were evidence. The prisoner died three days later. A spreadsheet of prisoner deaths from 2017, which ADOC's medical contractor produced to us, indicates that he died from a "[p]ossible assault—[f]acial bleeding and [o]ccipital [fracture]." The incident report, however, lists the cause of the prisoner's death as "Inmate Death – Natural." The autopsy report contains a detailed description of his death: "This 55-year-old male . . . was an inmate at Elmore Correctional Facility when he smoked a synthetic cannabinoid on 10/02/17. Another inmate reportedly began to punch, kick, and slam [him] who was likely unable to resist due to his intoxicated condition. [He] was taken to the shower room in an attempt to arouse him from his 'high.' Correctional officers determined that [he] was unresponsive and he was transported to Kilby Health Center, then onward to Jackson Hospital for a higher level of care. [He] expired on 10/05/17 from his injuries." The autopsy report noted injuries to the scalp, a skull fracture, and bleeding on the surface of the brain. The prisoner also sustained a fractured rib, which caused bleeding into the right chest cavity. The autopsy report concludes that the manner of death was "homicide" as caused by "blunt force injuries of the head and chest."

2. *The Excessive Number of Deaths Due to Violent, Deadly Assaults Demonstrates that ADOC Is Unable to Adequately Keep Its Prisoners Safe.*

Our investigation revealed that an alarming number of prisoners are killed by other prisoners using homemade knives. The knives used in these assaults are frequently long and sharp, thus able to easily penetrate the victim's body and puncture vital organs. Several prisoners who were stabbed to death also had been stabbed in past incidents. ADOC, with the knowledge that previously stabbed prisoners were at risk for further violence, took no meaningful efforts to protect these prisoners from serious harm—harm that was eventually deadly. As detailed by the examples of killings described below, ADOC does not protect prisoners in its custody from death caused by prisoner-on-prisoner violence.

- In September 2018, a prisoner was stabbed to death at St. Clair. The autopsy classified the death as a homicide caused by multiple sharp force injuries resulting in significant blood loss. It further described stab wounds to the neck, left back, and right back. One of those stab wounds penetrated approximately 5½ inches. The prisoner had previously been stabbed in July 2017 while incarcerated at St. Clair.

- In July 2018, a prisoner was stabbed to death at Ventress. The autopsy noted that "another prisoner with a prison-made 'shank' reportedly stabbed him." And the autopsy further noted that "[t]he cause of death was a stab wound of the chest. A sharp force injury of the left chest injured the left lung and the heart, causing massive bleeding into the left chest cavity." In January 2016, this same prisoner was stabbed in the back by several prisoners at Holman.

- In August 2017, two prisoners got into a knife fight in the institutional yard at Staton. The fight apparently broke out because one prisoner stole a contraband cellphone from the other prisoner. The incident was discovered when the correctional officer in the tower observed a group of prisoners gathered by the volleyball court and called for assistance. When two other officers arrived, they deployed pepper spray to compel the prisoners to disperse and get down on the ground. At that point, they discovered that a prisoner had been stabbed in the chest. ADOC recovered an 11-inch knife with a four-inch handle and a 10-inch knife with a three-inch handle near the scene. The injured prisoner died four days later, and his death was classified as a homicide due to "[s]tab wound of the chest".

- In July 2017, a prisoner at St. Clair was found tied up and strangled to death. The incident report listed the incident type as "Death – Inmate-on-Inmate" but contained no details about the nature of the death. The incident report said only that at 2:15 p.m., officers entered the cell and observed the prisoner lying unresponsive on the floor and when he was checked, "appeared not to be breathing." The report stated that a nurse was escorted to the cell and reported that the prisoner "had no signs of life." A photograph from the aftermath of the murder painted a different, gruesome picture. It clearly showed that the decedent's hands remained tied to a bedpost when prison officials found his lifeless body. The strangulation marks on his neck are clearly

visible. The autopsy classified the death as a homicide caused by "Asphyxia due to Ligature Strangulation." It further noted the presence of ligature contusions to both wrists.

- In May 2017, a prisoner at Bibb was stabbed to death in the chest. The autopsy noted that the wound penetrated the prisoner's heart: "The blade is seen to incise the heart at the AV junction on the right with an incision of the right atrium and ventricle approximately 1 inch in length. This wound is associated with a right hemothorax of approximately 2 liters." The incident report classified the death as the result of an "Inmate-on-Inmate" assault. The incident report stated that at 10:50 a.m., an officer observed several prisoners fighting with a weapon and called for back-up. When his supervisor arrived, he noticed a prisoner bleeding from the chest and took him to the medical unit. From there, he was sent by ambulance to the hospital where he was pronounced dead.

3. ADOC Is Routinely Unable to Adequately Protect Prisoners Even When Officials Have Advance Warning.

ADOC is frequently unable to protect its prisoners from violence, despite having advance notice that the prisoners may be in danger. Our investigation uncovered numerous instances where prisoners explicitly informed prison officials that they feared for their safety and were later killed. In other cases, prisoners were killed by individuals with a lengthy history of violence against other prisoners.

- In February 2018, a prisoner was killed at Bullock—one day after expressing concern for his safety to prison officials. On the day prior to his death, the prisoner entered the Shift Commander's office and informed officials that he had been threatened over a cellphone that another prisoner had stolen while he was guarding it. The prisoner said that he had been "slapped a few times" for nonpayment related to the missing cellphone, and was afraid. The autopsy classified his death as a homicide by blunt-force head trauma that caused intracranial bleeding, as well as hemorrhages in the brainstem.

- A prisoner was killed in a knife fight at St. Clair in February 2018, by another prisoner with an extensive history of being disciplined for possessing knives. The knife fight occurred in the front of a dormitory around 11:30 a.m. The victim was rushed to the hospital but was pronounced dead at 12:58 pm. The autopsy noted multiple stab wounds to the right lung, heart, liver, spleen, colon, and soft tissues. The assailant had been involved in a different knife fight at Holman in June 2016. He was found with knives in December 2016, and again in January 2017, when he was housed in segregation.

- In September 2017, a prisoner at Bibb died of stab wounds to the chest. The autopsy report described at least 22 puncture wounds. These included several stab wounds to the neck, a fact not referenced in the incident report. Since April 2017, the victim had been involved in at least two other physical altercations at Bibb with two separate

prisoners. And, in October 2016, while the victim was housed at Fountain, a correctional officer witnessed a different prisoner repeatedly stabbing him.

- A prisoner at St. Clair was strangled to death in May 2016. When officers found the prisoner, he was lying face down in his bed, and his face was flattened, indicating that he had been dead for quite some time. At some point, the assailants appeared to have urinated on the victim. Additionally, staff noted that the numbers "1636" had been carved post-mortem into the decedent's ribcage. The victim was a known gang member, and the number 1636 is a gang-related reference to "cardinal sin," indicating that the person is a traitor or snitch. Less than two weeks before his death, the victim had been assaulted over a debt. Following that assault, the victim was placed in segregation for his protection. He was released from segregation hours before he was killed.

4. ADOC Must Accurately Track the Deaths that Occur Within Its Custody.

In order to properly assess and respond to prisoner violence and dangerous conditions posed by drug trafficking and other contraband within Alabama's prisons, it is essential to track and review prisoner mortalities and other serious incidents to identify necessary corrective actions. However, ADOC does not have a reliable system of tracking the deaths of prisoners that occur within its custody. In response to our subpoena, ADOC and its medical contractor separately produced spreadsheets compiling prisoner deaths from January 2015 through 2017. After comparing those spreadsheets with autopsy reports produced by other agencies, we identified at least 30 deaths that ADOC did not disclose to the Department. ADOC was unable to provide an explanation for these omissions. ADOC cannot address and prevent recurring harmful situations if it is unaware of the scope of the problems within Alabama's prisons. As some of the following examples show, some of the missing deaths resulted from prisoner-on-prisoner violence:

- In May 2017, a prisoner at Bullock died after being stabbed multiple times by multiple fellow prisoners. The incident report described the prisoner "running towards the grillgate in Dormitory I1 bleeding from his facial area." I&I investigated the matter as a murder. One prisoner informed I&I that he had witnessed an altercation earlier in the day when several prisoners were bullying the victim for having same-sex relationships. It is unknown why this prisoner's death does not appear on the list of prisoner deaths that ADOC produced to the Department.

- In February 2017, a prisoner died at the Staton Health Care Unit. I&I investigated the matter and found that the victim and another prisoner began fighting near the officer cubical because the victim felt the other prisoner was standing too close to him. Once the two were separated, the victim followed the other prisoner back to the bed area. The assailant produced a homemade knife and another fight ensued in which the victim was stabbed and ultimately died. The autopsy detailed numerous stab wounds to the victim's back and chest. ADOC could not explain why this prisoner's death does not appear on the list of prisoner deaths that they produced to the Department, but does appear on a list of deaths that its private medical care provider tracked.

- In February 2017, a prisoner died two days after being assaulted by several prisoners at Elmore. An incident report described the prisoner as being "laid out on the floor" of the dormitory with a serious injury. The I&I Investigative Report indicates that the prisoner was fighting with another prisoner and was hit in the head, knocked out, and fell so that he hit his head again on the floor. The unconscious prisoner had to be carried to the health care unit and taken by helicopter to a local hospital where he died two days later. Elmore's incident report classified the prisoner's death as "Inmate Death – Natural." In contrast, the I&I Investigative Report states that, according to the autopsy report, the cause of death was Blunt Force Head Trauma and the manner of death was Homicide.

In addition to not accurately tracking deaths within its custody, ADOC has acknowledged that it does not maintain a centralized repository for all autopsies that have been performed. And, even apart from maintaining autopsies and tracking deaths, ADOC has no other mechanism in place to identify patterns in causes of death. As discussed in more detail below, this is particularly troublesome given the level of contraband that is readily available within the system, including knives and a significant amount of illicit substances that have caused and/or contributed to a number of deaths.

5. High Numbers of Life-Threatening Injuries Are Additional Strong Evidence that ADOC Is Not Adequately Protecting Its Prisoners.

In March 2018, from his glass cube, an officer at Donaldson observed a prisoner come to the door of one of the two cellblocks he was responsible for observing. The cellblocks at Donaldson house approximately 96 prisoners each. The prisoner "appeared to be severely injured" and "was unable to talk due to the injuries to his mouth." The officer manually opened the door of the dormitory from the cube and allowed the prisoner into the corridor, where the prisoner collapsed. The officer radioed a correctional sergeant for assistance. The sergeant arrived and found the prisoner lying on his back and severely injured. The prisoner was sent by ambulance to the nearest emergency room where, in addition to other observable injuries, it was discovered that a broomstick had been inserted into his rectum. Emergency surgery was necessary to remove the object. Four prisoners were identified as suspects and received disciplinary violations for Assault on an Inmate with a Weapon and Sexual Assault (forcible). Yet no ADOC staff member was aware of the assault until the seriously injured victim sought out a correctional officer for help

This incident is just one of hundreds of similar incidents that are documented by ADOC throughout Alabama's prisons. Prisoner-on-prisoner violence is systemic and life-threatening. ADOC is failing to adequately protect its prisoners from harm, in violation of the Eighth Amendment. Prisoners have "a constitutional right to be protected from the constant threat of violence and from physical assault by other inmates." *Zatler v. Wainwright*, 802 F.2d 397, 400 (11th Cir. 1986) (per curiam). Constitutional conditions of confinement include the requirement to "take reasonable measure[s] to ensure the safety of the inmates." *Gates v. Cook*, 376 F.3d 323, 332 (5th Cir. 2004) (citing *Farmer*, 511 U.S. at 832). "[H]aving stripped [prisoners] of virtually every means of self-protection and foreclosed their access to outside aid, the

government and its officials are not free to let the state of nature take its course." *Farmer*, 511 U.S. at 833.

Courts have held that protecting prisoners from violence requires adequate supervision and staffing. *Alberti*, 790 F.2d at 1225-28 (upholding district court's order requiring specific staffing and hourly visual inspections by guards to address high violence and sexual assault at jail); *Smith v. Sullivan*, 553 F.2d 373, 380 (5th Cir. 1977) (upholding requirement for hourly guard visits, and disapproving not having a guard on each floor); *see also Swofford v. Mandrell*, 969 F.2d 547, 549 (7th Cir. 1992) (holding that while low staffing levels do not, by themselves, constitute due process violations, they provide support for a conclusion that the inmates are treated "recklessly or with deliberate indifference" to their safety); *Ramos*, 639 F.2d at 573 ("Violence and illegal activity between inmates . . . is further facilitated by the inadequacy of the staffing levels."); *Tillery v. Owens*, 719 F. Supp. 1256, 1276-77 (W.D. Pa. 1989) (holding that officials failed to provide adequate security in violation of the Eighth Amendment largely on the basis that staffing shortages resulted in deficient supervision), *aff'd*, 907 F.2d 418 (3d Cir. 1990).

Evidence of prisoner-on-prisoner violence in Alabama's prisons abounds—weekly in some prisons, daily in others—and is documented in ADOC's incident reports. In many instances, prisoners were so gravely injured that they had to be airlifted or taken by ambulance to local hospitals for emergency treatment. The following are just a few examples from among the hundreds in ADOC's incident reports:

- In March 2018, two Staton prisoners were involved in a fight. An officer ordered them to stop, but they refused, so the officer sprayed them with pepper spray. One prisoner then dropped a 10-inch long homemade knife. One of the prisoners had to be airlifted to an outside hospital due to a stab wound in his stomach.

- In October 2017, at Holman, a cubicle officer observed two prisoners yelling at each other in an open dormitory and called for assistance. When officers arrived, a prisoner was standing at the gate of the housing unit bleeding from his stomach and face. The victim was transported to a local community hospital where he was then taken by helicopter to a larger medical center where he was successfully treated.

- In September 2017, at St. Clair, when a lieutenant was conducting rounds in two open dormitories, he observed two prisoners fighting with box cutters and homemade knives. The lieutenant radioed for assistance and waited for other officers to arrive. As two officers escorted one of the prisoners to the health care unit, a third prisoner quickly approached and stabbed the escorted prisoner in the back. Officers sprayed the third attacker with pepper spray while a fourth prisoner tried to stab the third attacker with a knife and he too was sprayed with pepper spray. One of the prisoners was taken by ambulance to an outside emergency room for treatment of his stab wounds.

- In July 2017, at Elmore, an officer working alone in an open dormitory observed a prisoner stab another prisoner. He radioed for help and ordered the attacker to drop the knife. The prisoner refused and ran away with the knife in his hand. He only stopped

when another officer responded to the call for assistance and sprayed the attacker in the face with pepper spray. The victim was taken by helicopter to an outside emergency room for treatment.

- In March 2017, at St. Clair, an officer saw a prisoner being stabbed by two other prisoners and radioed for help. The two prisoners had attacked their victim from behind while he was on the way to the dining hall. When the officer yelled for them to stop, one of the assailants ran from the officer, while the other continued stabbing the victim. Four other officers eventually arrived and stopped the assault. The victim was transported to an outside emergency room for treatment of stab wounds to the back, a perforated lung, and a stab wound to the head.

Many of ADOC's incident reports document life-threatening injuries to prisoners—only discovered by officers after the injury occurred. These incident reports demonstrate a strong pattern of evidence of deficient supervision and ADOC's systemic failure in its duty to "provide humane conditions of confinement" and to "'take reasonable measures to guarantee the safety of the inmates.'" *Farmer*, 511 U.S. at 832-33. The following are a few of the hundreds of grave injuries to prisoners that were inflicted out of the sight of ADOC correctional officers:

- In April 2018, a Bullock prisoner, his shirt covered in blood, approached an officer and stated that he had been stabbed by several other prisoners. He had to be airlifted to an outside hospital for treatment.

- In April 2018, an officer at Kilby noticed a crowd of prisoners gathered in the back of an open dormitory. When the officer approached, he discovered a prisoner with a bleeding, partially detached ear. He had been fighting with another prisoner who tried to bite off his ear. The prisoner was ultimately taken to an outside hospital for treatment.

- In March 2018, a prisoner at Kilby approached an officer with visible burns on his body. The prisoner told the officer another prisoner had thrown hot shaving cream on him—hot enough to cause second degree chemical burns. The prisoner was taken to an outside emergency room, but his condition was so bad that he had to be transported by ambulance to a hospital an hour and a half away.

- In February 2018, a Fountain prisoner was stabbed 10 times by another prisoner, including stab wounds to his medial lower elbow through the fascia, left upper shoulder, left bicep, left inner upper arm, left palm, left upper thigh, left upper medial calf, lower medial calf, and behind his right knee. He was airlifted to an outside hospital. A search recovered a homemade weapon that was approximately nine inches long.

- In February 2018, a Holman officer noticed a prisoner walking toward the gate of his housing unit with blood on his clothes. He had been stabbed 22 times by two other prisoners, with wounds to his back and head, and had to be airlifted to an outside hospital.

- In January 2018, a Holman prisoner came to the gate of his housing unit, bleeding. He had been stabbed 22 times, including to his chest, upper arm, thigh, back, buttock, foot, and face, by six other prisoners.

- In January 2018, a cubicle officer at Holman noticed a prisoner walking towards the shower area covered in blood. He had been attacked by two prisoners with a knife, resulting in a facial laceration that severed an artery. The prisoner had to be airlifted to an outside hospital due to arterial bleeding.

- In December 2017, at Holman, a cubicle officer observed a prisoner standing at the housing unit gate bleeding from his arm and chest. The prisoner had been assaulted and stabbed by multiple prisoners, suffering puncture wounds to his back, chest, arm, and head, as well as lacerations to his arm and head. Due to the severity of his injuries, the prisoner had to be airlifted to an outside hospital.

- In November 2017, a Holman prisoner was stabbed in the head, back, shoulders, and both arms and legs. He had to be transported to an outside hospital for emergency surgery. An officer only became aware of the stabbing when he heard several prisoners banging on the cell bars and shouting to get his attention, then saw other prisoners carrying the victim, who was bleeding profusely, toward the unit's door.

- In November 2017, at Holman, a cubicle officer observed a prisoner walking towards the gate of an open dormitory with blood on his clothing, and called for assistance. When officers arrived, they found a prisoner with a bloody face. The prisoner, and another witness to the assault, confirmed he had been stabbed in the eye and beaten by two prisoners for resisting a sexual assault. The victim was sent by ambulance to an outside emergency room.

- In October 2017, St. Clair officers noticed a prisoner leave his unit and enter the prison yard wearing only a blanket and socks. Only then did staff discover that the prisoner "had been assaulted and severely beaten," appearing to have been bound and taped around his hands, ankles, mouth, and head, and had a fresh burn mark on his face.

- In September 2017, at Easterling, a prisoner was attacked in the prison yard by three prisoners and stabbed multiple times. But no ADOC staff were aware of the assault until an officer saw several prisoners carrying the victim toward the health care unit.

- In July 2017, at Elmore, an officer observed a gathering of prisoners at the back of the dormitory and saw that one prisoner was bleeding from his chest. He radioed for assistance and the prisoner was escorted to the health care unit. The prisoner was taken by helicopter to an outside emergency room. The stabbing happened when the victim tried to intercede and stop a fight between two other prisoners.

- In July 2017, a prisoner at Kilby approached the shift commander to let him know that he had been stabbed in the chest by two other prisoners. The prisoner was sent by

ambulance to an emergency room for treatment. Later, a homemade knife was found under the mattress of one of the suspected attackers.

- In April 2017, at Elmore, a prisoner informed an officer in an open dormitory that he had just been stabbed in the back. The prisoner was taken by ambulance to an outside hospital where he underwent emergency surgery for a punctured lung. The weapon used to stab the victim could not be found.

- In April 2017, an officer at Limestone saw a prisoner standing in the day room with multiple injuries to his head. The prisoner was escorted to the health care unit and then taken to an outside hospital for treatment for facial lacerations. The prisoner reported he had been attacked by another prisoner over a missing jug of julep (a prison-made alcoholic mixture).

- In February 2017, at Bibb, an officer saw a prisoner with blood running from his face. He escorted the prisoner to the health care unit where he was immediately transported to an outside emergency room. Later video review showed that the prisoner had been assaulted by two other prisoners with a mop. The victim required numerous stitches, and because of a cut to his lung, he had to be hospitalized overnight at an outside hospital.

Another pattern that emerges in ADOC's incident reports is the prevalence of drugs in the facilities, and the effect that has on prisoner-on-prisoner violence. ADOC management, staff, and prisoners all reported that prisoners on drugs often "wig out" and harm others, and the inability to pay drug debts has led to beatings, stabbings, and homicides. The following are some of the many examples documented in ADOC incident reports:

- In April 2018, an officer observed that a Donaldson prisoner had blood on his clothing. The prisoner was transported to the hospital with multiple stab wounds. The investigation revealed that the victim "was likely under the influence of narcotics" when he began poking another prisoner, who was asleep, with a knife. That prisoner woke up, grabbed the knife, and stabbed the first prisoner several times.

- In September 2017, officers were called to a Draper dormitory due to one prisoner bleeding from multiple stab wounds and another bleeding from the crown on his head. The prisoner who had been stabbed admitted that he had been high on Suboxone for two days. While he was high, the prisoner had bleach poured on him, was beaten with a broken mop handle, and was stabbed several times. The drugged prisoner also assaulted another prisoner with a lock on a string.

- In August 2017, a Bibb prisoner stabbed another prisoner in the back multiple times while high on drugs. The victim had to be airlifted to an outside hospital. Officers recovered the assailant's knife. Despite noting that the assailant had slurred speech and "appeared to be on an unknown substance," there is no indication that ADOC officers conducted a search for contraband drugs.

- In April 2017, a Bibb prisoner was stabbed in the back and left temple while asleep, and had to be airlifted to an outside hospital. This prisoner had a history of drug debts and had previously tested positive for drugs. His attacker explained that the victim owed him a $200 debt and was not going to pay, so he "got it in blood."

- In February 2017, an Elmore prisoner was killed because of a failed drug transaction. Multiple prisoners attacked the victim while he lay asleep in bed, then he was dragged on a blanket to the common room, where a correctional officer eventually discovered him. He was airlifted to an outside hospital for emergency surgery due to a brain hemorrhage. He died two days later.

Yet another pattern that emerges is the prevalence of contraband, especially homemade weapons, which appear to be very easy for prisoners to produce or procure. Many of the incidents already described demonstrate the widespread availability of such weapons, as do the following, which also illustrate just how dangerous these weapons can be:

- In April 2018, a prisoner at Ventress attacked another prisoner with a homemade hatchet. The victim was taken to an outside hospital with excessive blood loss and a possible punctured lung. ADOC described the "hatchet like weapon" as having a foot-long broom handle with a "lawn edging blade" attached to the top.

- In February 2018, an officer noted a St. Clair prisoner running down the hallway and stopped him. The prisoner turned and showed the officer that he had a knife embedded in his head. The prisoner had to be transported to an outside hospital for the removal of an eight-inch, metal homemade knife from the back of his head.

An effective prison system encourages prisoners and staff to report threats and/or violence, so that management can properly discipline assailants and seek to ensure that violence is averted. In Alabama, staff instead sometimes discipline the very prisoners who report threats or are themselves victims of assaults. For example, when a prisoner voluntarily admits to a minor rule infraction, such as accruing a debt to another prisoner, while seeking assistance or protection from violence, staff will indiscriminately discipline the very prisoners who report threats or are themselves victims of assaults. While ADOC has an interest in enforcing institutional rules, the disciplinary system should be implemented in a way that allows for discretion and avoids subjecting victims to unnecessary disciplinary actions for minor infractions voluntarily admitted when they are seeking assistance or protection from ADOC due to threatened or actual violence. A system that punishes prisoners who report violence if the victim bears any fault or has engaged in any misconduct will necessarily discourage prisoners from reporting and make it more difficult for ADOC to prevent violence in Alabama's prisons. By focusing on the reporting victim's past misconduct instead of his allegations of abuse, ADOC misses the opportunity to prevent violence while simultaneously discouraging other prisoners from coming forward. In each of the examples below, the prisoners who reported being assaulted or sought protection from ADOC were subjected to discipline because they voluntarily admitted to having accrued debts to other prisoners:

- In April 2018, a drug treatment counselor at St. Clair reported to a captain that a prisoner feared for his safety because of debts he owed to gang members. The captain questioned the prisoners he had named, all known gang members, who denied the allegations. The prisoner who made the report was disciplined for intentionally creating a security/safety/health hazard and placed in restricted housing for admitting to having accrued a debt.

- In March 2018, a prisoner at Elmore reported to the administrative lieutenant that he was in fear for his life because he owed money to four prisoners who were threatening him. The lieutenant questioned the named prisoners about the allegation, which they denied. Although those prisoners were not disciplined, the reporting prisoner was ordered to provide a urine sample and transferred pending disciplinary action for intentionally creating a security/safety/health hazard. The incident report confirms that "no further action" was taken.

- In January 2018, a Bibb prisoner approached staff to report that he had been assaulted by multiple other prisoners over a drug debt. A medical examination showed he sustained several bruises and scratches to the facial area. Video surveillance footage confirmed the assault. While the assailants were cited for assault on an inmate, the reporting prisoner was also disciplined for intentionally creating a security/safety/health hazard because he admitted to the drug debt.

In some cases, it appears that ADOC disciplines prisoners simply for refusing to name the individuals who they fear may harm them, which requires the prisoner to choose between discipline and the danger he may face from retaliation if he identifies his assailant.

- In October 2017, a prisoner at Bibb entered the health care unit, bleeding. The prisoner had sustained two puncture wounds to the back of his neck, a bite mark to the base of his skull, and multiple scratches to his mid- and lower back. Because the prisoner declined to name the person who had assaulted him, he was given a disciplinary for intentionally creating a security/safety/health hazard. He was then reassigned to the Hot Bay.

- In September 2017, a prisoner from Draper died at Jackson Hospital. His cause of death was listed as "Inmate Death – Natural" on the facility's incident report. Two days earlier, he was found unresponsive on his bunk in a dormitory at Draper. The autopsy, however, indicated that he died of "[s]ynthetic cannabinoid toxicity (5F-ADB)." Several months prior to his death—in July 2017, while housed at Holman—the decedent had requested to be placed in segregation because he feared for his life. Although the incident report notes no wrongdoing on the part of the victim, he was subjected to discipline for intentionally creating a security/safety/health hazard after he failed to name the prisoners he feared. The decedent had expressed similar fears in August 2016, and was subject to discipline at that time as well, after failing to provide names.

The violent incidents discussed in this section of the report were all culled from ADOC's own incident reports. We have reasonable cause to believe that ADOC does not record all violent incidents in incident reports. First, high-level management in ADOC admitted to us that not all incidents are recorded in incident reports. Second, we interviewed many prisoners and received hundreds of calls to our dedicated toll-free number from prisoners and concerned family members, many of whom reported to us specific details about contemporaneous events. When we searched for evidence in ADOC's incident reports to confirm or refute what we had been told, for many of the allegations, there were no corresponding incident reports. Because ADOC did not produce most of the subpoenaed investigative files, it is possible and perhaps likely that the violence and harm to prisoners in ADOC prisons is even greater than that which we report.

6. Unchecked Extortion Presents a Risk of Serious Harm.

Extortion of prisoners and family members of prisoners is common in Alabama's prisons. Extortion by fellow prisoners is commonly reported by prisoners calling the toll-free number established by the Department. Investigators with ADOC's I&I confirmed extortion of family members and prisoners is a significant problem in Alabama's prisons. Alabama's inability to prevent and address the extortion of prisoners and prisoners' family members leads to a substantial risk of serious harm. *Marsh*, 268 F.3d at 1028 (holding that correctional facility conditions that provide the opportunity for harm and fail to allow for adequate supervision pose a substantial risk of serious harm). For example:

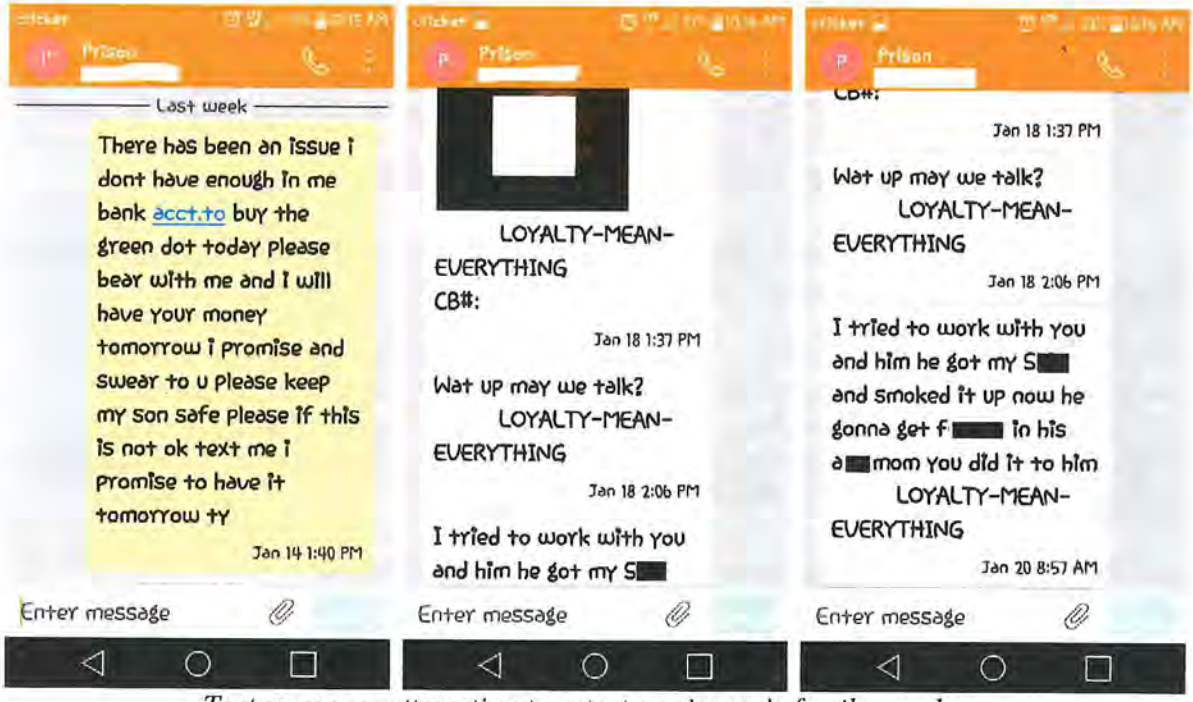
- In August 2018, a prisoner at Bibb called the Department's toll-free number to report that he was forced into nonconsensual sex acts with other prisoners while being extorted for drug money. He reported that he was constantly sleeping in other dormitories to escape the prisoners. He told us that when he reported the matter to Bibb's PREA resource officer, the officer told him that because he was in debt to another prisoner, nothing could be done.

- In May 2018, a prisoner at Bibb called the toll-free number to report that in February of that year, he had been held hostage in an open dormitory over the course of several days over a money debt and was severely beaten by several prisoners. When he was finally able to escape and notify a correctional officer, an incident report confirmed the severity of his beating by noting that he was immediately sent to an emergency room and required two facial surgeries.

- Over the course of several days in February 2018, a prisoner at St. Clair was repeatedly physically and sexually assaulted at night by his cell mate, as evidenced by fresh and healing bruising on his body. When he finally approached an officer, he reported that his cell mate had been extorting him to pay $1,000 and was forcing him into sex and payment of four packs of tobacco each day until he satisfied the $1,000 debt. ADOC placed both prisoners in restricted housing.

- In January 2018, the mother of a prisoner at Ventress called our toll-free number to report that she and her son were being extorted for money to pay off an alleged $600 debt to another prisoner. Because of his failure to pay, the victim was beaten and

threatened with rape. His mother later called to report that she was being extorted by a prisoner at Ventress who texted her photos of a prisoner's genitals from a cell phone. Through texts, he threatened to chop her son into pieces and rape him if she did not send him $800. In February 2018, the inmate called our toll-free line and affirmed what his mother had reported. The following screenshots were sent to us:



Text messages attempting to extort a prisoner's family member

- Similarly, in December 2017, a woman reported that her brother, a prisoner at Donaldson, was being held hostage inside a cell. When a correctional sergeant sought the prisoner out, he was found with several bruises on his face and it was determined he had been assaulted. The prisoner told the correctional officers that he and his family were being extorted by his captor for money. During the investigation, the alleged perpetrator admitted that the victim had been "short on his payment," and was placed in segregation pending disciplinary action. The victim was placed in the Restricted Privileges cell.

- In October 2017, a prisoner at Staton was moved by security staff to Bibb because he was physically assaulted and extorted for $10,000 by four prisoners who were members of the Crips Gang. The gang members targeted the victim after learning that he received an inheritance following his mother's death earlier that year.

- In November 2017, a prisoner at Bullock called the Department's toll-free number to report that he believed he would soon be killed over a debt. Later that day, a correctional captain questioned the prisoner about his call. The prisoner told the captain he was indebted to other prisoners and could not pay and wanted protection.

The prisoner refused to provide the names of the prisoners who were extorting him. ADOC then required the victim to provide a urine sample and moved him to restricted housing while giving him a disciplinary action for intentionally creating a Security/Safety/Health Hazard.

7. Access to Dangerous Weapons Contributes to Serious Violence.

ADOC does not effectively control the introduction, manufacture, and use of weapons. This leads to a substantial risk of violence. While the majority of weapons recovered inside Alabama's prisons are "homemade," some weapons appear to be commercially manufactured and smuggled into the facilities. One way control could be accomplished is to require all staff to undergo screening prior to entering a facility, as the federal Bureau of Prisons has required since 2013. Enhanced screening of visitors would also evidence a commitment to addressing this problem.

The Constitution requires that prison officials adequately monitor prisoners and confiscate weapons and other dangerous contraband to ensure prisoners' health and safety. *Hudson*, 468 U.S. at 527 ("[Prison officials] must prevent, so far as possible, the flow of illicit weapons into the prison . . . ."). Our review of incident reports for the year 2017 revealed that in hundreds of incidents reports, weapons of some kind were used and subsequently confiscated. And any given incident report may include the collection of more than one weapon from more than one individual. It is clear from interviews with staff and prisoners that weapons are ubiquitous in Alabama's prisons. And, as the examples recounted previously demonstrate, stabbings are frequent throughout the system.

At Bibb, a captain estimated that perhaps 200 prisoners possess homemade knives, also known as shanks. He told us that in May 2017, security staff collected 166 shanks at one time. He told us that prisoners were making weapons from metal cut from fences in the yard, light fixtures, dish racks, and elsewhere. And at least one Bibb prisoner recounted seeing a correctional officer watching a weapon being made without intervening. Prisoners at Bibb said that "everyone" has knives, and prisoners need a weapon to stay alive. One prisoner stated that "Bibb is a place where you have to fight the day you arrive or you'll be a bitch, so you get a knife." Another recounted being warned by officers when he arrived at Bibb that he would need a knife for protection.

From interviews with prisoners at multiple facilities, it was clear that many prisoners felt they needed a weapon for self-defense. At facilities we visited, shift commanders estimated that anywhere from 50-75% of prisoners were armed with some sort of weapon. Prisoners at Draper and Holman stated that knives are "everywhere." At Holman, three different lieutenants said "all" prisoners have a weapon of some sort. One prisoner stated that it was just "good common sense" to have one in that environment. Another stated that no security measures can get rid of all the knives hidden in the open dormitories.

Multiple prisoners interviewed at different facilities confirmed that knives are pervasive. One prisoner at Donaldson recounted seeing knives as big as machetes. A weapon that was essentially a small sword was recovered at St. Clair in 2017.

Correctional officer holding a weapon recovered at St. Clair in 2017

The number of prisoners we interviewed who had either been stabbed or had stabbed another prisoner was overwhelming—for example, one prisoner recounted that he had been stabbed 11 different times since he arrived in prison and he was currently in segregation for stabbing someone. And many of these stabbings go unreported to security staff. It is clear from these reports and from the level of violence and stabbings indicated in ADOC's own incident reports that whatever measures are in place to prevent the creation and introduction of weapons, those measures are failing.

8. Ineffective and Unsafe Housing Assignments Increase the Risk of Violence.

ADOC fails to implement effective classification and housing policies, which results in violence by commingling prisoners who ought to be kept separate within the same, under-supervised housing units. *See Marsh*, 268 F.3d at 1014 (lack of classification and risk assessment system constitutes deliberate indifference where inmates were harmed by other inmates because housing assignments did not account for the risk violent prisoners posed). ADOC's classification process has not been validated for effectiveness. In addition, classification specialists handle a large number of prisoners, limiting effectiveness. For example, at Bibb, each classification specialist handles a caseload of 360 prisoners.

While ADOC makes some attempt to separate potential predators from potential victims, prisoners can and do frequently thwart attempts to keep prisoners separate by wandering from housing unit to housing unit without staff intervention or knowing how to break into compromised cell doors. A review of incident reports from 2017 revealed over 1,100 incidents

of prisoners being in an unauthorized location. The initial screening for determining a prisoner's custody level, and corresponding facility assignment, is done centrally. Housing unit and bed assignment is done at the facility-level. There is inadequate screening for prisoners' risks of being violent or sexually abusive, or for potential vulnerabilities, as is required by PREA. And prisoner transfers are ubiquitous and numerous; almost every prisoner we talked to had been transferred to many different prisons throughout their time in the ADOC system. Segregation is used to house prisoners who do not want to stay in general population and are fearful for their life or safety. But segregation is also used to house prisoners being punished for rule infractions and prisoners placed there for being a threat to safety, which results in a dangerous mix of predatory and vulnerable prisoners in the same unit with inadequate supervision.

It is a common correctional practice to assign prisoners who have received disciplinary infractions to a disciplinary housing unit where they are subject to higher security measures, including segregation or reduced out-of-cell time and curtailed privileges. ADOC utilizes a disciplinary dormitory at several of its facilities, also known as the Hot Bay, for prisoners who receive a disciplinary action for misconduct. Most often, that misconduct involves violence, resulting in these dormitories housing a high percentage of violent prisoners. Although some ADOC disciplinary units are termed "Behavior Modification" units, there is no additional staffing or behavioral programming offered in these units. Prisoners are commingled and under-supervised, but still housed in an open dormitory. They are also being denied access to programming and visits to the canteen. Food is brought to them on trays. They are only given access to the yard if there are enough officers to supervise outside time, which rarely happens. These deprivations raise tension levels within the unit. However, unlike disciplinary units in other correctional systems, which require increased correctional staffing and supervision, prisoners and staff reported that there is little supervision in ADOC's Hot Bays, greatly contributing to the high level of violence in these units. In fact, during one facility visit, when we entered the Hot Bay, a captain muttered, "Enter at your own risk."

During our tour of Bibb, also referred to by prisoners as "Bloody Bibb," we learned that to gain the attention of correctional staff, who are rarely present in the Hot Bay, prisoners must bang on the door or chain on the door until someone responds. Prisoners reported that rapes, torture, and physical assaults occur in the back of the dormitory, where there are blind spots preventing the line of sight for correctional staff to view activities through the windows. Many prisoners stated that officers do not ever enter the Hot Bay, with one noting, "unless someone is killed and they have to come clean up the aftermath." Since we inspected Bibb and informed ADOC of our initial findings that the Hot Bay was critically dangerous, ADOC closed the Hot Bay there, but similar "Behavior Modification" dormitories continue to operate at other facilities.

9. ADOC's Failure to Protect Prisoners from Harm Also Negatively Impacts the Safety of Correctional Staff.

ADOC's failure to provide adequate supervision and staffing harms not just its prisoners, but also its officers working within the prisons. The same underlying causes of prisoner-on-prisoner violence—understaffing, overcrowding, and prisoners' unfettered access to weapons and drugs—also leads to violence against correctional staff.

We interviewed a former ADOC warden who discussed with us the dangerous staffing levels at the prisons. He called the staffing levels "barbaric" and concluded that both prisoners and correctional officers in Alabama's prisons "are in extreme danger." Less than a month before we notified Alabama of our investigation, a correctional officer, Kenneth Bettis, was killed at Holman. Officer Bettis was stabbed in the head by a prisoner while working in the dining hall. The prisoner was angry that Officer Bettis refused to allow him to get a second food tray. At the time, he was the only officer working inside the cafeteria. Shortly after his death in 2016, correctional officers at all facilities were issued stab vests for their protection. Despite the addition of stab vests, correctional staff continue to be harmed by prisoner violence, as the examples listed below show:

- In March 2018, at St. Clair, seven prisoners surrounded a correctional officer with homemade knives drawn. One prisoner cut the officer in his stomach with a knife before help arrived and the prisoners were handcuffed.

- In March 2018, at Fountain, several correctional officers were performing a contraband search. They informed a prisoner that they were going to pat search him, and he refused. When the officers tried to place the prisoner in handcuffs, he punched a lieutenant in the face and then kicked him in the chest. Other officers were able to subdue and handcuff the prisoner. He was searched, and found to have on his person a five-inch box cutter with a razor blade attached.

- In February 2018, at Donaldson, a prisoner attacked a correctional officer with a lock tied to a sock. Once he was subdued and handcuffed, officers found a handmade knife on his person.

- In February 2018, at Ventress, a correctional officer observed a prisoner with a handmade knife, approximately six inches long, in his hand. The officer ordered the prisoner to drop the knife, and the prisoner complied. But when the officer ordered the prisoner to turn around to be handcuffed, the prisoner punched the officer in the face. The officer was eventually able to handcuff the prisoner. A pat search of the prisoner revealed two more handmade knives.

- In February 2018, at Staton, a prisoner ran at a correctional officer, swinging and hitting the officer in his face. A scuffle ensued, and after spraying the prisoner with his chemical agent, the officer was able to subdue the prisoner. A search of the prisoner's jacket revealed two homemade knives, each about eight inches in length.

- In January 2018, in the Behavioral Modification Dormitory at Draper, a correctional officer was in a bathroom area when he noticed a prisoner starting a fire in a trashcan. When the officer went to extinguish the flames, several prisoners surrounded him and told him to leave. One prisoner came from behind the officer and tried to take the officer's baton. The officer was then hit in the back of the head with a hard object.

- In December 2017, at St. Clair, a correctional officer directed several prisoners to exit a dormitory. One prisoner hit the officer several times in the face with his fist and stabbed him in the face with a prisoner-made ice pick.

- In November 2017, at Easterling, a correctional officer ordered a prisoner to return to his dormitory. The prisoner failed to comply, grabbing the officer around his neck and striking him twice in the face with his fist. A subsequent pat search of the prisoner yielded a handmade knife.

- In October 2017, at St. Clair, a correctional officer ordered a prisoner to put a shirt on. The prisoner left the area and returned with a 26-inch-long prisoner-made knife. He began chasing the officers in the area, attempting to strike four officers.

- In August 2017, at Bullock, a lieutenant entered a dormitory to conduct a search on a prisoner. The lieutenant discovered a cell phone in the prisoner's pants pocket. When the lieutenant reached for it, the prisoner slapped it out of the lieutenant's hand. The lieutenant then grasped the prisoner by his shoulders and threw him to the floor. The incident quickly escalated. While on the floor, the lieutenant observed multiple prisoners with broomsticks gathering behind him. The lieutenant retrieved his pepper spray and pointed it at the group of prisoners, ordering them to move back. He called for assistance, and four more officers arrived. A prisoner attempted to attack the lieutenant, but another officer restrained and subdued him. While the officers were attempting to depart the dormitory, another prisoner struck an officer in the face. The officers pepper sprayed that prisoner and placed him in handcuffs. Soon after, two prisoners ran towards the officers swinging broomsticks while yet another swung his fists. The officers pepper sprayed these prisoners, eventually subduing them.

- In July 2017, at Bullock, an officer observed a prisoner walking through a door to the Receiving Unit. He asked the prisoner why he was there, and the prisoner stated, "They are going to kill me." The prisoner attempted to force his way into the Receiving Unit. The officer grabbed his left arm in an attempt to stop him. The prisoner then retrieved two handmade knives from his pocket and attempted to strike the officer. The officer moved out of the way and was unharmed. He called for assistance via radio and grabbed the prisoner, ordering him to drop the knives. The prisoner refused, continuing to attempt to strike the officer. Two officers arrived to assist. During the officers' attempt to subdue the prisoner, the prisoner stabbed another officer in the upper right side of his back and attempted to stab the third officer in the chest but failed to puncture the skin. Four additional officers arrived to assist. After a protracted altercation, which included the use of physical force, a baton, and pepper spray, the officers finally subdued the prisoner. Three officers were sent to an offsite hospital for further treatment.

- In July 2017, at Bibb, a prisoner approached an officer from behind and began to stab him in the back with a prisoner-made knife. Another officer saw the stabbing and issued an emergency call for assistance, and additional staff arrived at the scene and

assisted in subduing the prisoner. The officer who was stabbed was transported to Bibb Medical Center for further treatment.

- In June 2017, at Draper, a correctional officer ordered a prisoner to stand for a pat search. The prisoner stood, but informed the officer that he was not going to be pat searched. He then reached behind his back to retrieve a knife, and swung toward the officer. The officer and another officer deployed pepper spray in an attempt to subdue the prisoner, but the prisoner ran away and began swinging his knife at another prisoner. The officer was able to apprehend the prisoner after using pepper spray a second time.

- In May 2017, at Bibb, a prisoner assaulted a captain conducting routine security rounds in the Hot Bay. The prisoner struck the captain in the face several times. When the captain fell to the ground, the prisoner plus two other prisoners began stomping on the captain's head.

- In April 2017, at Ventress, a sergeant and an officer became involved in an altercation between two prisoners, one swinging a piece of metal towards another. One of the prisoners threw the piece of metal down and picked up a broken broomstick. The sergeant ordered the prisoner to drop the broomstick. The prisoner refused and struck the sergeant across the top of his head twice and on the forearm once, causing an eight-centimeter laceration at the center of the sergeant's head.

- In April 2017, at Donaldson, several officers responded to a radio call regarding a prisoner with a weapon, and discovered an officer lying on the dormitory floor. The responding officers assisted the officer while other officers tried to restrain the prisoner, who was swinging a knife. The prisoner continued to fight the officers, but eventually dropped his knife and was restrained. The officer on the floor was placed on a gurney, taken to the infirmary, and later taken to a hospital for further treatment.

- In April 2017, at Bullock, a prisoner who refused to comply with an officer's orders to return to the dormitory pulled a handmade knife from his pocket and attempted to stab the officer in the abdomen. The officer jumped out of the way, sprayed the prisoner with pepper spray, and called for help. The prisoner attempted to stab the officer a second time. The officer took the prisoner to the ground but the prisoner continued to fight, stood back up, and tried to run to the dormitory. Four additional officers responded to the scene and took the prisoner to the ground. The prisoner continued to resist being handcuffed, but eventually he dropped the knife.

D. ADOC's Failure to Prevent Illegal Drugs Within Alabama's Prisons Results in Prisoner Deaths and Serious Violence.

Dangerous and illegal drugs are highly prevalent in Alabama's prisons, and ADOC appears unable or unwilling to prevent the introduction and presence of drugs in its prisons. These drugs contribute to the ongoing violence and pose a substantial risk of future violence. ADOC prisoners are dying of drug overdoses and being subjected to severe violence related to

the drug trade in Alabama's prisons. Agents of ADOC's I&I Division, including the I&I Director, stated that "drugs are the biggest problem in prison" because prisoners are "wigging out" and harming others. One ADOC investigator stated that "drugs are the biggest driver of violence in Alabama's prisons." Another investigator saw five or six prisoners laid out in a hallway at Bullock after smoking the same drug and thought it looked like "triage in a warzone."

The presence of synthetic cannabinoid, frequently referred to as 5F-ADB, within Alabama's prisons presents a particularly serious health risk for prisoners. According to the World Health Organization's Expert Committee on Drug Dependence, this substance can cause "severe and fatal poisoning," and its effects may include "rapid loss of consciousness/coma, cardiovascular effects . . . , seizures and convulsions, vomiting/hyperemesis, delirium, agitation, psychosis, and aggressive and violent behavior."

A review of autopsies from 2017 and the first half of 2018 revealed that the substance was present in many facilities, including Bibb, Bullock, Draper, Elmore, Fountain, and Staton. An I&I investigation into a prisoner death at Bullock in December 2016 revealed that these drugs were readily and cheaply available inside the prison. Indeed, a review of autopsy reports from prisoner deaths dating December 2016 through August 2018 revealed that at least 22 were caused by "synthetic cannabinoid toxicity" overdoses. And since we opened our investigation into Alabama's prisons, the problem has become worse—there were three deadly overdoses in 2016 and nine in 2017. The first half of 2018 (after which ADOC stopped producing documents to us) was especially deadly; during that timeframe, at least 10 deaths were attributed to synthetic cannabinoid toxicity.

To the extent contraband is introduced by staff, it is contributing to the problem. ADOC staff, who are not screened for contraband upon entry to a prison, have been consistently identified by ADOC leadership as contributing to the contraband problem. Requiring all individuals—management and line staff—to be screened at entry, would ensure ADOC takes seriously the need to prevent and address contraband within Alabama's prisons.

Often, ADOC's incident reports list the cause of overdose deaths as "Natural," and although autopsies later reveal the true cause of death, ADOC does not centrally collect or track these autopsies and is thus unable to distinguish overdose deaths from other non-homicide deaths and to fully understand the deadly effects of such dangerous contraband within its system. The following are only a few examples of the deaths associated with synthetic cannabinoid:

- In May 2018, a prisoner at Fountain died of synthetic cannabinoid toxicity. Incident reports list the cause of death as suspected drug overdose. Approximately two years before his death, this same prisoner was stabbed at Holman in a drug-related altercation.

- In March 2018, at Easterling, a prisoner died from the "[t]oxic effects of 5F-ADB." The incident report, which listed his death as accidental, stated that a correctional officer on a security check observed the prisoner lying on his bed. The officer tapped him on the shoulder but received no response. Despite efforts to resuscitate him, the prisoner was pronounced dead within an hour.

- In March 2018, a prisoner at Bibb was found lying on his bed unresponsive during a count. He died at Bibb that same day. The autopsy listed "[s]ynthetic cannabinoid (5F-ADB) toxicity" as the cause of death. It further noted that the prisoner "was seen earlier in the day to be smoking what was believed to be spice." In July 2016, this prisoner was reprimanded after he was identified as one of four prisoners shown in a social media video of men at Bibb lying on the floor under the influence of "flakka."

- In February 2018, a prisoner at Bibb died from synthetic cannabinoid toxicity. The autopsy report notes that the prisoner was observed "smoking a substance and then collapsing to the floor." The autopsy also mentions the existence of video surveillance footage showing the prisoner "sitting on his bed smoking and then collapsing to the floor." The incident report lists his cause of death as "Natural."

- In February 2018, a prisoner at Bibb died from "[s]ynthetic cannabinoid toxicity (5F-ADB)." He was found unresponsive and lying on his bed during an institutional count. CPR was administered by a nurse, and he was eventually pronounced dead at an outside hospital. The incident report listed his cause of death as "Natural."

- In January 2018, a prisoner died at Bullock from "[s]ynthetic cannabinoid toxicity." According to the incident report, which listed the death as "Natural," another prisoner thought that the overdosed prisoner had smoked a "stick" possibly two hours prior.

- In October 2017, a Staton prisoner was found unresponsive while lying on his bed. The autopsy noted that he was "found unresponsive in his cell after smoking a synthetic cannabinoid." It further concluded that "the cause of death is ascribed to synthetic cannabinoid (5F-ADB) toxicity with hypertensive and atherosclerotic cardiovascular disease and cirrhosis as significant contributing factors." ADOC's incident report, however, classified his death as "Inmate Death – Natural."

In addition to the synthetic drug overdoses, another four deaths in 2018 and one in 2017 were attributed to mixed drug toxicities resulting from methamphetamines or Fentanyl, as well as complications from the intravenous use of methamphetamine, or even an unknown "white powder." For example:

- In May 2018, a prisoner at Bibb died from "Acute fentanyl toxicity." According to the autopsy, a postmortem toxicology report revealed "the presence of Fentanyl and 4-Anilino-N-Phenethylpiperidine (4-ANPP). The presence of 4-ANPP, an intermediate chemical precursor in the synthesis of fentanyl, is an impurity in non-pharmaceutical fentanyl, highly indicating illicitly manufactured fentanyl." No incident report was located related to this prisoner's death.

- In February 2018, an Easterling prisoner died from "mixed drug (Methamphetamine, synthetic opioid U-47700) toxicity." The incident report classified his death as "Natural" and noted that he was found "laying on the floor in the front of [his] bed." This prisoner previously tested positive for methamphetamine and buprenorphine

(Suboxone) in November 2015 while at Staton, and again on May 14, 2017 when he was at Elmore. He was also caught at Staton with Suboxone on his person in January 2017.

- In October 2017, a prisoner at Kilby died of an overdose from an unknown drug. The prisoner was found face down and unresponsive on the floor next to his bed. A piece of plastic containing a white powder, initially identified as "no-show," was found next to him. The prisoner was taken to the Kilby emergency room where he was pronounced dead.

Synthetic drugs and methamphetamines have also been mentioned in the autopsies of homicide victims. In 2018 alone, autopsies revealed the presence of synthetic drugs in two victims, methamphetamines in two others, and one prisoner who had both synthetic drugs and methamphetamines in his system.

Many of the prisoners we interviewed painted a portrait of a system where drugs are ubiquitous, dangerous, and contribute to violence. Over 70% of the prisoners we interviewed specifically mentioned the prevalence of drug use within the prisons. Many prisoners thought that part of the danger from drugs is that drug usage leads to drug debts, which leads to violence and sexual abuse when prisoners are unable to pay. Prisoners at different facilities reported seeing other prisoners smoke something, "wig out," fall on the ground, pass out, or vomit. A common theme in our interviews of prisoners was that correctional officers observe the drug use and take no action.

It is difficult to know the exact number of prisoners using drugs in Alabama's prisons, as drug tracking and testing is inconsistent. In 2017, there were over 375 incident reports documenting prisoners possessing drugs, but many of these reports reflect that more than one prisoner was in possession of drugs. Many prisoners referred to the drug problem as an "epidemic." In fact, several prisoners we interviewed had either been stabbed by someone "wigging out" on drugs, or had stabbed another prisoner while on drugs. One shift commander said that more than once a day she encounters a prisoner passed out or acting violently after using drugs. Two shift commanders of death row and segregation at Holman estimated that 50-60% of their prisoners were using drugs. One shift commander over general population at Holman estimated that 95% of that facility's prisoners were using drugs.

There are varying explanations for how the drugs are getting into ADOC's prisons. During one facility tour, leadership admitted that drugs were arriving a variety of ways—through staff, from prisoners returning from other places, individuals throwing bags over the fence, and visitors. Prisoners corroborated these same avenues by which drugs were entering the prisons. An I&I investigator interviewed at ADOC headquarters, whose job includes investigating staff corruption, stated that, "without a doubt" the number one way contraband is getting into prisons is "by staff smuggling it in." A former ADOC warden told us the same thing. Another investigator pointed to a recent I&I investigation into staff corruption that had already ensnared 11 officers at one prison. The investigator stated that he had not yet uncovered the end of the corruption. In another investigation at a different prison, I&I discovered that a staff member

made $75,000 bringing in contraband and his accomplice, a prisoner, made $100,000. Clearly, current ADOC policies have been unable to control or limit the drug trade in its prisons.

E. ADOC Is Not Adequately Protecting Prisoners from Sexual Abuse by Other Prisoners.

Sexual abuse in Alabama's prisons is severe and widespread, and is too often undetected or prevented by ADOC staff. We reviewed over 600 incident reports from late 2016 through April 2018 that ADOC classified as "Sexual Assault – Inmate-on-Inmate." The majority of these incident reports described sexual abuse allegations of forced anal or oral sex. Medical examinations and ADOC investigations substantiate a significant number of the allegations of sexual abuse. In reviewing hundreds of reports, we did not identify a single incident in which a correctional officer or other staff member observed or intervened to stop a sexual assault. Because of inadequate supervision, correctional officers do not observe the rampant sexual abuse, they do not intervene, and the cycle of abuse continues. As such, ADOC fails to protect prisoners from the harm of sexual abuse. *Farmer*, 511 U.S. at 833 (holding that prison officials have a duty to protect prisoners from violence at the hands of other prisoners, including sexual assault).

1. Sexual Abuse Is Highly Prevalent in ADOC Correctional Facilities.

ADOC documents a high level of sexual abuse within Alabama's prisons. ADOC produced 313 incident reports classified as "Sexual Assault – Inmate-on-Inmate" from the year 2017. ADOC produced 257 such incident reports from 2016. Many of the incident reports confirm that ADOC substantiated the allegations. Indeed, in 2016, the Survey of Sexual Victimization data that ADOC publicly reported pursuant to the National Standards for the Detection, Prevention, and Punishment of Prison Rape, 28 C.F.R. § 115 ("PREA standards"), confirmed that ADOC substantiated nearly 25% of all allegations of "inmate-on-inmate nonconsensual sexual act."[6] ADOC substantiated over 30% of allegations of "inmate-on-inmate abusive sexual contact."[7] Nationwide, prisons substantiate an average of 6.3% of allegations of

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[6] Ala. Dep't of Corrs., Survey of Sexual Victimization, 2016, at 2, http://www.doc.state.al.us/docs/PREA/SSV2016.pdf. The number of substantiated incidents is likely even higher, as the investigations for 20% of the allegations of "Nonconsensual Sexual Acts" had not yet been completed at the time of publication. *Id.* "Nonconsensual Sexual Acts" are defined as:

> "Sexual contact of any person without his or her consent, or of a person who is unable to consent or refuse; AND [c]ontact between the penis and the vulva or the penis and the anus including penetration, however slight; OR [c]ontact between the mouth and the penis, vulva, or anus; OR [p]enetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument."

Id.

[7] *Id.* at 3. "Inmate-on-inmate abusive sexual contact" is defined as: "Sexual contact of any person without his or her consent, or of a person who is unable to consent or refuse; AND [i]ntentional touching, either directly or through the

"inmate-on-inmate nonconsensual sexual act," and 11.7% of allegations of "inmate-on-inmate abusive sexual contact." In its Survey of Sexual Victimization data for 2017, ADOC reported substantiating only 1 out of 162 allegations of "inmate-on-inmate nonconsensual sexual act" and only 1 out of 65 allegations of "inmate-on-inmate abusive sexual contact." In ADOC's 2017 Annual PREA Report, ADOC reported 227 incidents of "Inmate on Inmate Sexual Victimization," with two reports substantiated, 95 unsubstantiated, 20 unfounded, and 46 open at the time of reporting. ADOC's PREA Coordinator is the ADOC official responsible for production of data on sexual abuse, but she was unable to explain the variations and discrepancies in the 2016 and the 2017 data. While certain Alabama prisons reported more sexual abuse than others, the incidents of prisoners being sexually abused by other prisoners are widespread across the system.

In addition, it is likely that the levels of sexual abuse are actually higher than what ADOC reports. In every "Sexual Assault – Inmate-on-Inmate" incident report we reviewed, the sexual abuse was reported by the victim or a prisoner witness afterwards. Because many prisoners do not report abuse out of fear of retaliation, shame, or because they do not believe that ADOC's system to address complaints of sexual abuse will result in any changes, the incident reports coded as "Sexual Assault" do not capture the complete picture of prisoner-on-prisoner sexual abuse in the ADOC system. Moreover, we did not identify any incidents where a correctional officer or other staff member observed or intervened to stop a sexual assault in progress—leading us to conclude officers are either failing to report abuse or failing to monitor prisoners. Because correctional officers are not observing the incidents of sexual abuse, if the victim or a witness does not report it, the abuse will not be recorded or addressed.

Moreover, one of our experts reviewed numerous incident reports in which a prisoner reported an allegation of sexual abuse, but the ADOC staff member writing the incident report failed to categorize the incident as a "Sexual Assault" because staff dismissed it as consensual "homosexual activity." There is no indication that these incidents were investigated or referred to the Inspector General's office. Because they were not categorized as "Sexual Assault," they would not be included in ADOC's publicly reported PREA data. This is in violation of the PREA standards, which require that correctional agencies investigate all allegations of sexual abuse, 28 C.F.R. § 115.71(a), and results in further under-reporting of sexual abuse in Alabama's prisons.

Despite the mischaracterization of some incidents of sexual abuse and likely under-reporting, the incident reports that ADOC does code as "Sexual Assault Inmate-on-Inmate" demonstrate a pattern of undeterred systemic sexual abuse in Alabama's prisons.

2. Inadequate Supervision Allows Sexual Abuse to Continue Undeterred.

ADOC's incident reports document sexual abuse occurring in the dormitories, cells, recreation areas, the infirmary, bathrooms, and showers at all hours of the day and night.

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clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person." *Id.* at 2. "[I]ncidents in which the contact was incidental to a physical altercation" are excluded. *Id.*

Staffing ratios are so low in some dormitories that ADOC is essentially providing no security for prisoners. Our experts found that the physical plant designs and layout of ADOC's housing units make visibility difficult, which, when coupled with deficient staffing levels, results in inadequate supervision. Large open living units with multiple bunks or stacked bunks contain many blind spots that make it impossible for the limited staff to provide adequate safety and security. There are very few convex mirrors to increase visibility. The cameras that are present are not monitored sufficiently to augment supervision by housing unit officers. Prisoners interviewed and incident reports frequently reference sexual assaults occurring in bunks that have sheets or towels hung up to conceal activity, often referred to as "the hump." The "Sexual Assault" incident reports do not document correctional officers making any effort to remove these sight barriers. Although the PREA standards require that ADOC "designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards," 28 C.F.R. § 115.11, ADOC's PREA Coordinator reported that she does not have the authority to direct wardens to address blind spots that pose a threat to prisoners' sexual safety within their facilities.

As discussed above, the incident reports confirm that ADOC is only alerted to prisoner sexual abuse when a victim or witness reports the incident afterwards. The fact that hundreds of documented incidents of sexual abuse occur unobserved demonstrates an unconstitutional lack of supervision in housing units throughout ADOC. *LaMarca v. Turner*, 995 F.2d 1526, 1535 (11th Cir. 1993) (holding that "evidence presented at trial of an unjustified constant and unreasonable exposure to violence" in a prison "inflicted unnecessary pain and suffering" under the Eighth Amendment standard); *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991) (citing *Ramos*, 639 F.2d at 575) (suggesting that inadequate staffing may rise to the level of deliberate indifference as to prisoner safety).

For example, in February 2017, a prisoner at Fountain was gang raped inside his dormitory during the evening meal. Two prisoners held him down while a third "penetrated his anus," then they "forced him to perform oral sex." A nurse's examination at the facility noted "several tears to his anus," and he was transported to the Sexual Assault Nurse Examiner's Center for further treatment. ADOC substantiated the incident. Yet no ADOC staff reported the assault. Prior to the victim giving a nurse a note stating that he had been raped the day before, ADOC staff did not report the incident. Either ADOC staff responsible for monitoring the dormitory did not observe the incident, or they observed it but did not report it.

Sexual abuse of prisoners is often connected to the drug trade and other contraband problems that result from inadequate supervision and corruption in Alabama's prisons. Our experts' on site interviews of captains and lieutenants revealed that many ADOC staff appear to accept the high level of violence and sexual abuse in ADOC as a normal course of business, including acquiescence to the idea that prisoners will be subjected to sexual abuse as a way to pay debts accrued to other prisoners. Many prisoners report that they were sexually assaulted because of debts they owed (or that the assailants said they owed), often related to drugs or other contraband. For example:

- In January 2018, a Correctional Sergeant and the Institutional PREA Compliance Manager separately questioned a prisoner at Bullock about "an incident that took place"

a few days earlier. The prisoner admitted that he had been sexually abused. He stated that he was in debt to several prisoners and one of them told another prisoner "he could fuck me for what I owe him." He told his assailant "no," but the prisoner sexually assaulted him anyway. Because the victim refused medical treatment, stated that he did not want to press charges, and signed a Release of Responsibility, ADOC determined that no further action would be taken and released the victim to his original dormitory unit.

- In August 2017, a prisoner at Bibb reported to a lieutenant that he had been sexually assaulted because he was indebted to another prisoner and could not pay the debt. The other prisoner forced him to perform oral sex as payment.

- In June 2017, a prisoner at Bibb reported that he had been raped because he owed seven "Tops," or packets of cigarettes, to several unidentified prisoners. The prisoner was transported to an outside hospital and ADOC substantiated the allegation based on the evidence from the resulting sexual assault kit.

- In April 2017, a prisoner at Bibb reported that he was anally raped by another prisoner to whom he owed money. While the victim was waiting at the Health Care Unit for transportation to an outside hospital, he cut his wrist with a razor.

- In March 2017, a prisoner at Fountain reported to a nurse that he had been physically assaulted and raped the night before. He was transported to the Sexual Assault Nurse Examiner's Center for further assessment and reassigned to segregation, pending the outcome of the investigation. During his interview, the victim stated that he owed a debt to another prisoner, and he "assumed [he] was raped due to the debt owed."

- In November 2016, a prisoner at Fountain reported to a Mental Health Site Administrator that another prisoner had extorted him to engage in anal and oral sex over a period of two months. The victim was placed on suicide watch and the alleged aggressor was permitted to remain in general population. One month later, ADOC sent the victim a letter confirming that the allegation had been substantiated.

The theme of sexual abuse as a consequence of debt is so common that some incident reports specifically highlight a prisoner's debt history. For example, in February and March of 2018, separate prisoners at Ventress each reported sexual assaults. The incident reports each note that a review of the victim's incident history "revealed that he has not made any previous PREA related allegations," but does reflect a history of drug use and debt. Interviews with ADOC staff revealed an understanding that debt, particularly drug debt, can result in sexual abuse. This was a common point raised by the prisoners we interviewed on site. Submission to sexual abuse under the threat of violence resulting from the drug trade does not indicate consent.

Many prisoners also report that they were sexually abused after being drugged, becoming incapacitated by drugs they took voluntarily, or when the assailant was under the influence. Some of the drugs that are widely available in Alabama's prisons can have the effect of

immobilizing an individual or rendering him unconscious, which makes him vulnerable to sexual abuse. For example:

- In March 2018, a prisoner at Holman reported that he had been raped after he had passed out from smoking "flakka." He awoke to one prisoner punching him in the eye and then four or five prisoners put a partition around his bed and took turns raping him.

- In February 2018, a prisoner at Bibb reported to a mental health professional that he had been raped. At approximately 1:00 a.m. in a dormitory unit, an unidentified prisoner propositioned him to smoke a marijuana cigarette. While smoking, the victim "became incoherent" and awoke with the unidentified prisoner penetrating him from the rear.

- In December 2017, a prisoner at Limestone reported that two prisoners attempted to force him to perform oral sex, which resulted in a physical altercation, with a third prisoner coming to his aide. The incident was substantiated and the incident report notes that when one of the assailants was interviewed following the altercation, he had slurred speech and smelled of alcohol.

- In January 2017, a prisoner at Donaldson reported that a prisoner offered him a cigarette and, upon smoking it, he began "to feel funny and could not move." Two prisoners then took him into the shower and sexually assaulted him. ADOC substantiated this incident.

- In January 2017, a prisoner at Draper reported that he had voluntarily used methamphetamine and blacked out. When he regained consciousness, he was experiencing anal pains and other prisoners indicated that he had been sexually assaulted.

Many of the assaults happen at knifepoint, with no indication that ADOC conducted a comprehensive weapons search in response. For example:

- In April 2018, a prisoner at Ventress reported that he had been forced at knifepoint to perform oral sex on another prisoner. The incident report notes that the victim was reassigned to another dormitory and the victim and assailant received mental health referrals, but there is no mention of a housing change for the alleged assailant or a search of his dormitory for weapons. The incident report does note that a previous PREA-related allegation had been made against the assailant.

- In April 2018, ADOC officers interviewed a prisoner at Elmore after his mother called to report that he had been sexually abused. The prisoner stated that he had been raped at knifepoint because he owed his assailant $250. The incident report notes that the alleged assailant "submitted a written statement and was allowed to return back to population without incident." There is no mention of a search for the weapon.

- In February 2018, a prisoner at Staton reported that the night before, two prisoners had held knives to his neck while a third prisoner forced him to perform oral sex. The victim alleged that the whole dormitory was aware of the attack. The victim was escorted to the health center for a medical examination and then transferred to a holding cell while the alleged assailants remained in the dormitory. There is no mention of a search for weapons.

- In December 2017, a prisoner at Staton reported that he was jumped in the shower by a prisoner who held a knife and penetrated him from behind. ADOC transported the victim to the Sexual Assault Nurse Examiner Center and ultimately referred this incident to the County District Attorney's Office. There is no mention of a search for the weapon.

- In January 2017, the chaplain at Draper notified ADOC that a prisoner had reported to him that he had been raped that morning. At approximately 5:30 AM, three prisoners forced the victim into the shower area of the dormitory. Two of the assailants had knives. A blanket was hanging from the wall, blocking the area from view. The prisoner stated that the dormitory officer was in the hall outside of the dormitory escorting prisoners back from breakfast, which had been late that morning. One prisoner held a knife to the victim's neck and another waved a knife in his face while the third penetrated him anally. The incident report confirms the victim's transport to the Sexual Assault Nurse Examiner's Clinic and that I&I would interview the victim and secure the forensic evidence from his examination, but there is no mention of searching the dormitory for weapons.

Some prisoners suffer sexual abuse in retaliation for having reported previous sexual abuse. For example:

- In March 2018, a prisoner at Ventress reported that he had been sexually assaulted on the gym porch by a prisoner whose cousin had previously sexually assaulted the victim at Bullock. The victim reported that his assailant told him he was going to get him back for telling on his cousin. A week later, the victim reported another attack by the same assailant, which required an outside Sexual Assault Nurse Examiner assessment. However, the second incident report makes no mention of the first report.

- Also in March 2018, a correctional lieutenant "received information" that a prisoner was "being tortured" in a dormitory at Ventress. The lieutenant located the prisoner and escorted him to the Health Care Unit. The prisoner reported that he was "tied up, burned, and tortured for two days and that a broom handle was stuck up his rectum." The prisoner stated that the torture was in retaliation for his documented report of a prior sexual assault in February 2018.

3. *Deficiencies in ADOC's PREA Screening and Housing Contribute to the Unsafe Environment.*

The unsafe environment created by ADOC's deficient supervision and overcrowding is exacerbated by failings in ADOC's PREA screening, classification, and housing of prisoners. The PREA standards require that all prisoners be assessed during intake screening and upon transfer to another facility for their risk of being sexually abused by, or sexually abusive toward, other prisoners. 28 C.F.R. § 115.41(a). The PREA standards also require that ADOC use information from the risk screening "to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive." 28 C.F.R. § 115.42(a).

While ADOC has basic policies in place to conduct PREA risk screenings, ADOC fails to use the information from the screenings to house prisoners safely and, even if an appropriate housing assignment is made, the classification system is defeated by lax supervision that allows prisoners to wander throughout the prison facilities without authorization. ADOC's knowledge of, and failure to comply with the PREA standards, is further evidence of ADOC's subjective recklessness with regard to prisoner safety. *Farmer*, 511 U.S. at 843; *see also Crawford v. Cuomo*, 796 F.3d 252 (2d Cir. 2015) (finding PREA and other such legislative enactments to be reliable evidence of contemporary standards of decency, and thus relevant in evaluating whether specific acts of sexual abuse or sexual harassment rise to an Eighth Amendment claim).

ADOC classification staff reported that the initial classification determines only a prisoner's security level, which informs his assignment to a particular prison. Once he arrives at the prison, an Inmate Control Services officer assigns the prisoner to a housing unit and bed. While the Inmate Control Services officer should have access to a prisoner's classification and screening information, it is unclear how and if this information is used, especially given the degree of overcrowding at some ADOC prisons. Documents provided from a PREA audit at Draper indicated that for three quarters of 2016, Draper had zero occurrences of a prisoner screening for risk of victimization or abusiveness, and did not use the PREA screening information for three quarters of 2016. At some facilities, ADOC case managers conduct the initial PREA screening. At Bibb, we noted that the screening setting was not private, so other prisoners could hear confidential information a prisoner reported during his screening, which could discourage prisoners from answering truthfully. When conducting and scoring the screening, case managers had no access to a prisoner's previous screening results. ADOC's PREA audits demonstrated a need for corrective action in the adequacy of PREA risk screening and the use of the screening information to house people safely within the facilities.

In addition, while ADOC's facility PREA Compliance Managers have ultimate responsibility for the PREA risk screening and for monitoring prisoners identified as potential victims or aggressors, ADOC's facility PREA Compliance Managers did not have sufficient information to accomplish these important tasks.

The PREA standards identify Lesbian, Gay, Bi-Sexual, Transgender, and Intersex ("LGBTI") prisoners as being at a heightened risk for sexual abuse. Accordingly, the PREA

standards include several provisions specifically aimed at increasing sexual safety for LGBTI prisoners.

ADOC is refusing or failing to comply with the PREA standards. For example, only one of the PREA Compliance Managers we interviewed on-site was able to give specific information about the LGBTI prisoners housed at that prison. The other PREA Compliance Managers had little or no information about LGBTI prisoners. If ADOC's PREA Compliance Managers have no knowledge of the vulnerable prisoners within the population, they cannot comply with their duties to provide a reasonable level of safety to those prisoners.

Regardless of whether prisoners receive a safe housing assignment based on an appropriate PREA screening and classification, supervision is often deficient such that prisoners can roam from housing unit to housing unit without intervention. A review of ADOC incident reports from January 2015 to early April 2018 at Bibb alone indicated 553 incidents of prisoners being cited for being in an "unauthorized location." Some of the "Sexual Assault – Inmate-on-Inmate" incident reports indicate that either the aggressor or the victim was not in his assigned housing unit at the time of the attack, but make no reference to discipline or remedial action for prisoners accessing unauthorized areas of the facility. By allowing potential predators to commingle with potential victims without adequate staff supervision, ADOC fails to effectively protect prisoners from harm of sexual abuse.

4. ADOC's Sexual Abuse Investigations Are Incomplete and Inadequate.

If a correctional agency does not adequately investigate allegations of sexual abuse, it will be unable to determine the factors that enable abuse to occur and the corrective actions necessary to address the problem. *See Jacoby v. PREA Coordinator*, No. 5:17-cv-00053-MHH-TMP, 2017 WL 2962858, at *5 (N.D. Ala. April 4, 2017) (citing *Farmer*, 511 U.S. at 833) (noting that failure to investigate can be a constitutional violation if the failure prevents prison officials from protecting prisoners). The PREA standards require that correctional agencies investigate all allegations of sexual abuse "promptly, thoroughly, and objectively[,]" 28 C.F.R. § 115.71(a), even if victim or witness is challenging or unwilling to cooperate. To conduct a thorough investigation, investigators must "gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data," and must "interview alleged victims, suspected perpetrators, and witnesses." 28 C.F.R. § 115.71(c). Although we have been unable to review I&I files related to sexual abuse because ADOC refused to produce them, we are able to make the following conclusions based on the incident reports and other evidence in our possession. And based on this evidence, ADOC fails to follow these standards and dismisses many incidents as unsubstantiated without a thorough investigation.

For example, in August 2017, a prisoner at Bibb entered the Shift Commander's office and reported that he had been held hostage and physically and sexually assaulted over the past few weeks. The sergeant "observed several bruises and abrasions to the facial area" of the prisoner. However, when the incident was closed as "unsubstantiated," the report incredibly notes that "no evidence was found to substantiate [the prisoner's] claims that he was physically assaulted."

In addition, ADOC's incident reports confirm that many allegations are declared "unsubstantiated" on the basis that the victim declined to press criminal charges or otherwise cooperate with the investigation, which is not a sufficient reason for reaching such a conclusion in an administrative investigation. For example:

- In February 2018, a prisoner at Bibb notified the facility PREA Compliance Manager that he had been "forcibly sexually assaulted" two days prior and that he had not bathed, so the perpetrator's semen was still inside him. The prisoner was examined by the facility nurse and upon completion of the medical examination, the prison physician advised that the prisoner should be transported to an outside hospital for a Sexual Assault Kit. Although the prisoner named his rapist, the incident report confirms that upon conclusion of the investigation, the victim "stated that he did not desire to prosecute and signed a waiver of prosecution. Therefore, this allegation is unsubstantiated."

- In May 2017, "several" prisoners reported to a captain that two other prisoners were held and assaulted in a dormitory unit at Fountain over the weekend by a group of four or five prisoners. One of the identified victims provided a written statement of allegations of sexual assault, while the other reported a physical assault. ADOC provided the first victim with written confirmation that the allegation of sexual assault was "found to be unfounded and exceptionally cleared due to your lack of cooperation with the prosecution of [his assailant] for reported Sexual Assault and you[r] signing of a Prosecution Waiver Form."

Although a victim's refusal to press charges could complicate an attempt to criminally prosecute an assailant, it is not a valid reason to find an administrative investigation unsubstantiated, particularly where there are other indicia of sexual abuse. Indeed, some incident reports confirm that ADOC has other options. For example:

- In March 2017, a prisoner at Donaldson reported that he had been sexually assaulted in his cell the night before. He was transported to the Sexual Assault Nurse Examiner's Clinic for an assessment. Although the victim refused to provide a written statement to I&I, the I&I Director substantiated the allegation of sexual assault based on the facts presented.

- In December 2016, a prisoner at Bibb reported that a prisoner in his dormitory had raped him at knifepoint. When the other prisoner responded to the allegation by claiming that he had consensual sex with the victim, the victim "became belligerent and refused to cooperate with the investigation." Ultimately, ADOC deemed the allegation "substantiated but cleared as refusal to cooperate or prosecute."

When ADOC dismisses reports of sexual abuse as unsubstantiated on the sole basis of a victim's refusal to pursue criminal charges, it also fails to take action to prevent future abuse. For example, multiple incident reports from St. Clair in late 2017 confirm not only that the report of sexual abuse "had been concluded with a disposition of 'unsubstantiated'" that is "based on"

the victim's refusal to prosecute, but go on to state that a "sexual abuse incident review" was conducted and no "further action" would be taken. Indeed, despite the high number of sexual abuse reports documented by ADOC, there is no record of meaningful corrective action to address the problem in ADOC's prisons.

5. ADOC Discourages Reporting of Sexual Assaults.

Many ADOC incident reports reflect conduct that likely discourages additional reports of sexual abuse. As discussed above, ADOC has a tendency to dismiss claims of sexual abuse by gay prisoners as consensual "homosexual activity" without further investigation, implying that a gay man cannot be raped. Some victims are given a Release of Liability to sign after reporting sexual abuse.

In other cases, in addition to the trauma of a sexual assault, the victim is subjected to disciplinary action for facts he discloses as part of the investigative process. For example, in February 2017, a prisoner at Donaldson reported that he had been raped two days earlier, and named his assailant. He was transported to the Sexual Assault Nurse Examiner Clinic for an assessment and returned to Donaldson at approximately 10:00 PM. The next morning at 4:45 AM, he was interviewed by the PREA Compliance Manager and stated that he was in debt to the prisoner who had raped him and several other prisoners, but "was adamant" that he had been sexually assaulted. The PREA Compliance Manager advised the victim that he would receive a disciplinary action for "Intentionally Creating a Safety, Security and/or Health Hazard" for admitting that he had accrued debt to other prisoners.

As noted with regard to prisoners who report violence, while ADOC has an interest in enforcing institutional rules, it should implement its disciplinary process in a way that avoids discouraging victims from reporting sexual abuse. ADOC should give due consideration before subjecting victims of sexual abuse to disciplinary actions if, in the context of seeking assistance or protection from ADOC, they voluntarily admit to past, minor rule infractions. Experts confirm that the current practice, which appears to punish victims for any wrongdoing they may confess while seeking assistance or protection, has a chilling effect on reporting. Especially given that the rampant sexual abuse in Alabama's prisons is almost never reported by correctional officers, a system that punishes prisoners who report violence if the victim is not blameless will discourage victims from reporting and allow sexual abuse to continue unabated in Alabama's prisons.

6. ADOC Improperly Subjects Victims of Sexual Abuse to Segregation.

ADOC commonly places a victim in segregated restricted housing after he reports sexual abuse, often in response to a prisoner's request for protection from harm, which can subject the victim to further trauma. While accommodating a prisoner's request for segregated housing is not inappropriate, due to the seriously unsafe conditions that exist in Alabama's prisons, ADOC has created a situation where vulnerable prisoners who have already suffered sexual abuse have no other choice if they want to stay safe from further sexual abuse. For example:

- In April 2018, a prisoner at Bullock reported that over three days, he had endured extortion; punching, kicking, and beatings with a stick; and anal and oral rape by a group of four prisoners. He finally reported the abuse after one of the prisoners told him "he had more work to do." Although ADOC identified all of the perpetrators, after the victim returned from the Sexual Assault Nurse Examiner Center, he was placed in segregation "per inmate's request."

- In January 2018, a prisoner at Bullock resorted to cutting his wrist after an attempted sexual assault and physical assault "because he feared being in population and needed to be placed in a single cell." He reported that two nights prior, two prisoners had attempted to rape him but were unable to penetrate him because he defecated during the assault. The prisoners then poured hot water on him, causing burn marks to his buttocks and the back of his head. ADOC placed the victim in segregation and allowed the perpetrators to remain in general population. The incident report notes that the perpetrators would receive "disciplinary actions for assault," and that no further action would be taken.

- In December 2017, a prisoner at Bibb sent a letter to the Assistant PREA Compliance Manager stating that he had been sexually abused at knife point. The victim reportedly requested placement in segregation because he feared for his safety, so the victim was placed in segregation while his alleged assailant remained in his assigned living area. ADOC substantiated this allegation.

While incident reports often note that the victim is being placed in segregation at his own request, if a victim of sexual abuse has no other realistic way to stay safe, a request for segregation may be the product of a lack of other, more suitable options. Restricted housing in Alabama's prisons houses prisoners seeking protection, as well as prisoners being punished for rule infractions and prisoners who are a threat to safety. Subjecting victims of sexual abuse to segregation can inflict further trauma. This is why the PREA standards require that victims of sexual abuse not be involuntarily segregated for their own protection unless "an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers." 28 C.F.R. §§ 115.43(a), 115.68. Alternatives utilized by other correctional facilities include vulnerable persons units that provide a safe environment for prisoners whose screening indicates they are at risk for being abused or protective custody units that do not result in a restriction of privileges. By failing to offer these or other options to keep victims of sexual abuse safe from further abuse, ADOC is not adequately presenting such victims with a reasonable alternative to segregation.

In addition, the size of ADOC's prison system presents the opportunity to transfer prisoners between facilities to protect victims from retaliation. For example, in February 2017, a prisoner at Elmore reported that he was raped at knife point in the dormitory shower area. Following an examination at the Sexual Assault Nurse Examiner's Clinic and an interview by I&I, the victim was transferred to Draper "at his request." However, in the vast majority of incident reports, there is no indication that ADOC is making a determination that no safe alternative exists before placing victims of sexual abuse into segregation. Because ADOC has no alternate means of keeping victims of sexual abuse safe from harm, ADOC requires

vulnerable prisoners to subject themselves to the punitive conditions of segregation and the potential trauma that may entail, so that the prisoners can obtain the reasonable level of safety guaranteed by the Constitution.

F. Facility Conditions in Alabama's Prisons Violate the Constitution.

The Constitution requires that officials provide prisoners with adequate shelter, which includes maintaining facility conditions in a manner that promotes prisoner safety and health. *See Helling*, 509 U.S. at 32. The Eighth Amendment's prohibition of cruel and unusual punishments imposes a duty on corrections officials to "provide humane conditions of confinement" and to "'take reasonable measures to guarantee the safety of the inmates.'" *Farmer*, 511 U.S. at 832-33 (quoting *Hudson*, 468 U.S. at 526-27).

ADOC prisons do not provide adequate humane conditions of confinement. They have a number of significant physical plant-related security issues that contribute to the unreasonable risk of serious harm from prisoner violence. These problems include defective locks; insufficient or ineffective cameras; a lack of mirrors; deteriorating electrical and plumbing systems; as well as structural design issues and weaknesses with the buildings and their perimeters. These problems allow prisoners to leave secure areas, obtain contraband, and improperly associate with or assault other prisoners. Even if no single one of these conditions of confinement would be unconstitutional in itself, "'exposure to the cumulative effect of prison conditions may subject inmates to cruel and unusual punishment.'" *Rhodes*, 452 U.S. at 363 (quoting *Laaman v. Helgemoe*, 437 F. Supp. 269, 322-23 (D.N.H. 1977)). ADOC's failure to correct these issues poses a serious risk to prisoner safety and health.

For example, at Bibb, there was a tall chain link fence separating the two halves of the facility, and both halves could only be exited through a gate opened and closed with a physical key. We heard from several prisoners that victims of stabbings had waited for an extended time at the gate, often bleeding profusely, while staff searched for the key to open the gate. Visibility in the back of large dormitories containing bunkbeds is also an issue, as reflected in the large number of violent incidents that happen unobserved in the back of such dormitories.

Short of new facilities or drastic renovations, there are relatively simple physical plant corrections that could increase safety in the facilities. For example, there were few convex mirrors in the living units we visited. Adding such mirrors would increase the visibility of areas within the units, especially given the many large open living units in the prisons. Yet ADOC has not made this easy fix. In addition, many incident reports reference assaults occurring in bunks in which sheets or towels are hung to conceal prisoner activity, but there appears to be no concerted effort by security staff to remove these visibility barriers.

The deficiencies in the facilities' infrastructure are well-known to ADOC officials. In February 2019, the Governor noted that the physical condition of ADOC's prisons have been described as "deplorable," "horrendous," and "inadequate." Just one month earlier, Commissioner Dunn commented publicly that repairs and renovations are needed because facilities have outlived their usefulness. These concerns have been acknowledged for years. In 2017, for example, Commissioner Dunn noted the system's "outdated, outmoded, and overgrown

infrastructure." He has said that over 70% of the prisons "are well beyond their useful life and must be replaced." Yet, despite this knowledge, ADOC has been unable to improve its infrastructure.

It should be noted that while we did not visit every prison in Alabama, those that we did visit were in incredibly poor physical shape, and—based in part on the Governor's and Commissioner's public statements—are largely representative of the prison system as a whole. The Governor and Commissioner Dunn have frequently discussed the "crumbling infrastructure" within ADOC prisons. As one of our experts opined, the physical structure of the prisons we visited is "severely worn," which leads to dangerous conditions for prisoners and staff alike. Another expert commented that she was "shocked and dismayed at the state of the . . . prisons we visited." The prisons are old and have not undergone serious renovation, and thus have deteriorated significantly. The physical conditions of ADOC prisons present a safety risk. A February 2017 inspection by engineering consultants hired by ADOC noted that not a single facility has a working fire alarm.

Based on our site visits, hundreds of prisoner interviews, and public statements made by ADOC officials, it is clear that decrepit conditions are common throughout Alabama's prisons. During facility visits, we observed makeshift showers created because the original showers were not functioning. We also saw numerous showers and urinals that were leaking or broken. Because the facilities house far more prisoners than they were designed to hold, there is enormous strain on plumbing, electrical systems, ventilation, showers, sinks, and toilets, leading to unsanitary conditions. We heard repeatedly about showers covered in mold, and without hot water. Numerous prisoners mentioned toilets, sinks, and showers that leak, get stopped up, or are otherwise broken. One prisoner told us that a mop sink was being used as a urinal because the toilets were backed up.


Images of bathroom facilities at Donaldson, Draper, and Holman

In February 2017, nearly eight months before we toured Draper, Commissioner Dunn provided a tour of Draper to the press. In a video of that tour, he pointed out the poor condition of portions of the kitchen floor, which had become so compromised that the concrete subfloor was all that remained. We noticed similar conditions in the kitchen floors at Donaldson and Holman. In the video from Draper, Commissioner Dunn went on to say that the kitchen at Draper would be closed, and that food would be cooked offsite at Staton, and be shipped back to Draper.

Prisoners with whom we spoke throughout ADOC consistently told us about the poor state of the facilities. Some mentioned that spiders and other bugs would regularly fall from the ceilings. More than one prisoner discussed seeing rats and bugs in the kitchen and food storage areas. Prisoners in segregation described especially poor conditions. One prisoner described large cockroaches in segregation. Several told us that a plate covered the only window in their unit, so that they could never see out and there was little ventilation. Numerous prisoners described having no light in their cell. Some mentioned broken toilets and sinks, as well as leaky roofs, and a lack of heat.

While new facilities might cure some of these physical plant issues, it is important to note that new facilities alone will not resolve the contributing factors to the overall unconstitutional condition of ADOC prisons, such as understaffing, culture, management deficiencies, corruption, policies, training, non-existent investigations, violence, illicit drugs, and sexual abuse. And new facilities would quickly fall into a state of disrepair if prisoners are unsupervised and largely left to their own devises, as is currently the case.

G. Evidence Suggests Some ADOC Officials Are Deliberately Indifferent to the Risk of Harm.

Federal law precludes corrections officials and staff from acting with "deliberate indifference" to the substantial risk of serious harm posed to prisoners. *Farmer*, 511 U.S. at 828. An official acts with deliberate indifference when she or he "knows of and disregards an excessive risk to prisoner health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* at 837. A court may conclude that "a prison official knew of a substantial

risk from the very fact that the risk was obvious." *Id.* at 842. In other words, "an official responds 'in an objectively unreasonable manner if he knew of ways to reduce harm but knowingly declined to act or if he knew of ways to reduce the harm but recklessly declined to act.'" *Johnson v. Boyd*, 701 F. App'x 841, 847 (11th Cir. 2017) (quoting *Rodriguez v. Sec'y for Dep't of Corrs.*, 508 F.3d 611, 620 (11th Cir. 2007)).

In determining whether conduct violates the deliberate indifference standard of the Eighth Amendment, there must be persuasive evidence of the following: (1) facts presenting an objectively substantial risk to prisoners and awareness of these facts on the part of the officials charged with deliberate indifference; (2) the officials drew the subjective inference from known facts that a substantial risk of serious harm existed; and (3) the officials responded in an objectively unreasonable manner. *Doe v. Ga. Dep't of Corrs.*, 248 F. App'x 67, 70 (11th Cir. 2007); *Marsh*, 268 F.3d at 1028-29.

ADOC has long been aware that conditions within its prisons present an objectively substantial risk to prisoners. Yet little has changed. As early as 1975, a federal court enjoined ADOC from accepting any new prisoners, except escapees and those who had their paroles revoked, into four of its prisons until the population in each was reduced to design capacity. *James v. Wallace*, 406 F. Supp. 318 (M.D. Ala. 1976). In 2011, that same court found that ADOC facilities were understaffed and overcrowded. *Limbaugh v. Thompson*, No. 2:93cv1404–WHA (WO), 2:96cv554–WHA, 2011 WL 7477105 (M.D. Ala. July 11, 2011). Indeed, language from a 2002 federal court opinion related to Alabama's prison housing women indicates that ADOC is aware of its Eighth Amendment obligations and of the specific types of conditions that run afoul of the Eighth Amendment. In *Laube*, the U.S. District Court for the Middle District of Alabama found that conditions at Julia Tutwiler Prison for Women were unconstitutionally unsafe as a result of overcrowded and understaffed open dormitories:

> The sheer number of inmates housed in open dorms pose a significant security problem. Idleness is less of a safety concern when each inmate is confined to her own cell or shares a cell with just a few other inmates. In dormitories, however, idleness heightens the potential for disruptive behavior because each potentially aggressive idle inmate now has other inmates whom she may target, as well as other potentially aggressive inmates with whom she may congregate. Dorms at Tutwiler hold 60 to 228 inmates, and some of these inmates sit idly during the day. While the evidence submitted does not reveal the extent to which inmates are idle at Tutwiler, even limited periods of idleness can engender safety problems. Open dorms are particularly dangerous when a facility is also plagued by, among other things, inadequate supervision, increased violence, and inmate access to weapons, as discussed below.

Laube, 234 F. Supp. 2d at 1233.

Our investigation into the violence, contraband, corruption, and harm occurring in Alabama's prisons evidences issues previously known to ADOC. For instance, several years before we initiated our investigation, ADOC was acutely aware of extensive problems at St. Clair. In 2014 alone, there were at least three publicly reported prisoner-on-prisoner homicides.

In April 2014, the Equal Justice Initiative ("EJI") urged ADOC to investigate, among other violence, the fatal and non-fatal stabbings that were escalating at St. Clair. Following another homicide in June 2014, EJI renewed its formal request that ADOC address the violence. In the face of ADOC's inaction and yet another homicide, in October 2014, a group of prisoners incarcerated at St. Clair filed a class action lawsuit in federal court. The suit alleged an extraordinarily high rate of violence at St. Clair, including six homicides in the preceding three years. The plaintiffs asserted that the violence in the severely overcrowded facility could be traced to poor management, noncompliance with protocols and procedures, the prevalence of drugs and other contraband, and corruption. Three years later, in November 2017, the plaintiffs and ADOC reached a settlement. ADOC promised many reforms in the settlement. For instance, ADOC promised to ask the Alabama Legislature for funding to install video cameras for monitoring at the prison. ADOC did not make good on that promise. By June 2018, ADOC had not satisfied several of the settlement requirements. The parties went back into mediation in June 2018—only eight months after ADOC made all of its promises to reform St. Clair.

ADOC management is acutely aware of the substantial risk of harm caused by its critically dangerous understaffing. Alabama officials, from the Governor to ADOC's Commissioner, have recently reiterated that overcrowding and understaffing continue to plague the system. In ADOC's most recent Annual Report, Commissioner Dunn even highlighted "critical shortages in correctional officer staffing" as a major challenge. And, in early 2019, he explicitly acknowledged the direct link between the levels of violence in Alabama's prisons and the understaffing: "We are still down to 50 percent or lower staffing at many facilities. There's a direct correlation between the shortage of officers and violence."

Due to the extreme staffing shortages, correctional officers are tired, and there are simply not enough individuals to adequately and safely staff Alabama's prisons. Incident reports from 2017 reveal numerous instances of correctional officers not showing up for work or refusing to work mandated overtime. We also found numerous incident reports where correctional officers were found sleeping in cubicles, in hospitals, and in perimeter security vehicles. These security problems have persisted despite ADOC's awareness of our investigation and our numerous on-site inspections of several facilities. In fact, the majority of the examples of unconstitutional conditions described throughout this letter occurred *after* we began our investigation.

Throughout this investigation, ADOC has not responded consistently when alerted to serious issues within its prisons. On multiple occasions, we notified ADOC legal counsel of calls we received from prisoners afraid for their lives and physical safety. We received little information as to what was being done by ADOC to address these calls. On occasion, we learned that a prisoner was transferred to another facility; however, we often received follow-up calls from fearful prisoners stating that ADOC had taken no meaningful action. Additionally, following our site visits of each facility, we coordinated calls with ADOC and prison management to share our experts' preliminary conclusions. In these calls, our experts outlined specific conclusions about the unsafe conditions in the prisons that we visited. During these calls, ADOC officials rarely, if ever, asked substantive questions of our experts. And the violence in Alabama's prisons has only increased since our inspections and those calls took place.

In other ongoing litigation, ADOC has admitted that its prisons are dangerously understaffed. In *Braggs v. Dunn*, the plaintiffs sued ADOC for failing to provide adequate medical and mental health care, and for discriminating against prisoners with disabilities. The court ordered ADOC to determine how many correctional officers were needed to adequately staff its prisons. In February 2019, ADOC filed a report indicating that it needs to hire over 2,200 correctional officers and 130 supervisors over the next four years in order to adequately staff its men's prisons. These staggering staffing deficiencies were determined by ADOC's own experts. A former ADOC warden told us that he did not think it would be possible to hire and train over 2,000 correctional officers with "the proper education, the proper sense of duty, and with the proper mindset" in the next four years. Our corrections consultant opined that ADOC will require more than two years to overcome its current staffing deficiencies, even with its best efforts and under ideal conditions.

V. MINIMAL REMEDIAL MEASURES

To remedy the constitutional violations identified in this Notice, we recommend that ADOC implement, at minimum, the remedial measures listed below. We recognize ADOC has begun to make some positive changes in recent years. For example, in 2015, ADOC hired its first ever Inspector General to conduct security audits and inspection of facilities, teach and train employees, and provide assistance to employees. As of December 2017, the Inspector General had conducted one security audit using ADOC staff. In 2018, after revising its state code, ADOC addressed compensation issues for staff, providing a location pay differential for correctional officers and a pay raise to assist with recruitment and retention. And in November 2018, ADOC announced that 35 new correctional officers had graduated from its correctional academy. Recently, after ADOC's head of operations retired after being placed on administrative leave pending the outcome of a misconduct investigation, ADOC hired a new Deputy Commissioner for Operations with experience at the federal Bureau of Prisons. ADOC is again proposing a pay increase for correctional staff to be addressed in the current legislative session. Finally, ADOC announced on February 28, 2019, that it is conducting a joint operation with other law enforcement agencies targeting contraband at St. Clair and plans to conduct similar operations at other prisons in the future.

In addition, ADOC has made some changes in response to conditions we identified during our investigation. For instance, shortly after we visited Draper and shared our observations about its overall deplorable conditions, we learned that ADOC closed that prison. Additionally, after we visited Bibb and our experts reported to ADOC their shock at the critically dangerous conditions present in Bibb's Hot Bay, ADOC closed the Bibb Hot Bay. Nevertheless, these efforts have been inadequate, as evidenced by the serious issues that continue to plague the prisons, described above. The following remedial measures are necessary.

A. Immediate Measures

1. Understaffing and Overcrowding. ADOC should:

- Immediately deploy resources to staff and electronically monitor the perimeters of Alabama's prisons and assist in screening anyone entering facilities.

- Within one month, consult a nationally recognized expert, approved by the Department, with experience realigning low-risk, nonviolent prison inmates to local oversight, to assess such feasibility in Alabama.

- Within two weeks, contact the Acting Director of the National Institute of Corrections ("NIC") to arrange a joint conversation among ADOC, NIC, and the Department to discuss the areas in ADOC prisons that need immediate attention. Within the confines of its fiscal resources, NIC will provide follow up with an action plan of both sequential and overlapping elements to address the areas that need immediate attention, consistent with the Department's findings. Any direct technical assistance that is able to be provided by NIC will be done at no cost to the state of Alabama. NIC will also identify other federal resources that may be available to Alabama in addressing the identified issues.

- Within time frames identified with NIC, properly screen, hire, and fully train 500 corrections officers. Determine how many of these new officers will be assigned to each facility, based on current vacancy rates. Within six months, in consultation with NIC, staff prisons with at least 500 additional individuals to provide security.

- Within six months, commission a study to examine the feasibility of transferring prisoners to non-ADOC facilities in numbers sufficient to provide adequate staffing for the remaining prisoners.

- Within six months, assess the leadership skills of all Wardens (I, II, and III) and institutional coordinators, in a process overseen by ADOCs Commissioner, Inspector General, and the Director of Operations, in concert with NIC. Based on this assessment, make determinations about staffing all Warden (I, II, and III) positions and implement those determinations within the next three months. Provide ongoing professional development for all personnel in supervisory and leadership positions.

2. Violence. ADOC should:

- Immediately revise ADOC's disciplinary process to avoid subjecting victims to unnecessary disciplinary actions for conduct unrelated to the instant abuse, when they seek assistance or protection from harm.

- Within two months, in consultation with NIC, and with the aid of a consultant approved by the Department, review all relevant ADOC, and individual facility, policies and procedures. Based upon the review, ADOC should, within two months, make appropriate changes to ADOC's—and to each individual prison's—policies and procedures.

- Within six months, provide remedial training on security measures, with a curriculum approved by the Department, to all correctional staff. Thereafter, provide at least 40 hours of in-service training to all staff annually.

- Within two months, ensure that security rounds are conducted in all living areas at least once every hour, and at least once every half hour in any special management population areas (segregation, mental health housing, etc.), or more frequently as required for prisoners on suicide watch. These rounds should be documented in a bound log book maintained on each housing unit, as well as a master log for each prison, and the documentation should be reviewed at least weekly by facility leadership and not less than quarterly by ADOC leadership. Deficiencies in complying with these requirements should be addressed immediately.

- Within two months, develop a centralized system that will contain autopsies of all prisoners who die in ADOC custody. ADOC should conduct an interdisciplinary administrative and medical post mortem following each death and, at least quarterly, assess the system for patterns and trends, and implement remedial measures to correct any identified issues.

3. Contraband. ADOC should:

- Immediately implement shakedowns such that at least 15% of all housing units are searched every day, with congregate areas searched weekly; written documentation showing the results of those shakedowns must be maintained. ADOC should immediately implement daily searches of the interior of the perimeter, the yard, and congregate feeding and recreation areas before and after each use by prisoners, and searches of visiting rooms (including restrooms) before and after every visiting period, with the results of these searches documented. Those results should be analyzed for patterns and trends. ADOC should implement plans to address any patterns or trends discovered.

- Within one month, draft a policy requiring the screening of *every* individual who enters a facility (staff, visitors, volunteers, etc.). Once the policy has been submitted to the Department and approved, implement the policy system-wide within one month.

- Within two months, ensure that each facility has working metal detectors at every entrance, and that each facility has implemented a procedure to use them on all persons entering the prison.

- Within one month, consult with a nationally recognized expert, approved by the Department, to determine other methods of detecting illegal drugs and other contraband being brought into the facilities, for those drugs that will not be detected by metal detectors. Include recommended measures in ADOC policy on screening.

- Within six months, implement any reasonable additional screening procedures for illegal drugs and other contraband that cannot be detected by a metal detector.

- Within two months, provide adequate medical treatment, using evidence-based treatment, for all prisoners detoxifying as illegal drugs and other contraband are reduced and eventually eliminated from the facilities.

4. Sexual Abuse.

   ADOC should:

- Immediately revise ADOC's disciplinary process to avoid subjecting victims to unnecessary disciplinary actions when they seek assistance or protection from ADOC due to threatened or actual sexual abuse.

- Immediately institute a process whereby every allegation of sexual abuse is investigated and the investigation is properly documented. In order to do so, ADOC should ensure a professional investigation unit is in place with the training, skills, and sufficient staffing to investigate every allegation within 60 days.

- Within one month, hire a nationally recognized expert on PREA, to be approved by Department, who will produce a report within two months of hiring. The report should suggest immediate and long-term remedies to address the sexual safety issues in Alabama's prisons. ADOC should implement all immediate measures within three months of receiving the report.

- Within three months, reclassify every prisoner for sexual safety issues, and ensure that potential predators are separated from potential victims.

5. Facility Conditions. ADOC should:

- Within one month, identify all broken locks in Alabama's prisons, and identify how they will be repaired or replaced. Within a month after that, secure funds for such repairs or replacement, and hire a contractor to perform the job within 30 days.

- Within six months, ensure that at least 80 percent of toilets, sinks, and showerheads at each prison are in working condition.

- Within six months, install cameras throughout all prisons that will remain open for more than one year, with locations to be approved by the Department. All video should be retained for 90 days unless an assault on a prisoner or staff occurs in an area surveilled, in which case the video should be preserved until the matter is fully investigated and prosecuted or dismissed by authority of the Commissioner. Wardens should review video at least monthly. Any out-of-service video equipment should be replaced within 72 hours.

- Within 90 days, identify the three prisons in the worst physical condition and take preliminary steps to ensure remedies are initiated which provide humane living conditions.

B. Long-Term Measures

ADOC should:

- By 2020, staff Alabama's prisons consistent with the requirements of the *Braggs* staffing orders.

- Establish competitive base starting salaries and benefits packages for employees.

- Ensure that applicants for ADOC employment can apply and interview in their local area, and provide frequent testing for applicants.

- Continuously track correctional officer turnover by year, breaking out exits by years of service, age, gender, ethnicity, and facility, and use information learned through this tracking to remedy reasons for attrition.

- Employ systematic exit interviews of correctional officers and report annually on reasons for departures, cross-tabulated by age, gender, ethnicity, and facility.

- Ensure that prisoner housing areas are adequately supervised, through direct supervision, whenever prisoners are present.

- Ensure that prisoners are tested for synthetic drugs on a regular, but random, basis. Each prisoner should be tested at least every six months, and the testing should be documented and the results reviewed by ADOC administrators.

- Develop a plan and implement a policy for detecting and reducing the amount of contraband throughout ADOC facilities, including the appointment of a Chief Interdiction Officer for contraband interdiction.

- Ensure that ADOC has, and is following, policies and procedures for an appropriate, objective classification system that separates prisoners in housing

units by classification levels in order to protect prisoners from unreasonable risk of harm.

- Discontinue the use of "behavior modification" dormitories ("Hot Bays") unless mental health professionals play a role in both the assignment of prisoners to such placements and are involved in the treatment provided.

- Ensure that every prisoner-on-prisoner assault is documented and investigated, and that staff is trained on how to prevent and address such incidents.

- Comply with PREA and its implementing regulations, the National Standards to Prevent, Detect, and Respond to Prison Rape (28 C.F.R. §§ 115 *et seq.*).

- Develop and implement a policy on prevention, detection, reporting, and investigation of prisoner-on-prisoner and staff extortion of prisoners and their families.

- Develop a written institutional plan to coordinate actions taken in response to an incident of physical abuse, sexual abuse, and/or extortion among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

- Develop an effective substance abuse disorder program.

- Develop and implement an effective grievance process. In the event that a grievance is filed against a staff member, the submission process must allow for options of submission that are neither seen by, nor referred to, the staff member who is the subject of the complaint.

- Develop and implement a plan to prevent prisoners from entering housing units other than the ones to which they are assigned.

- Implement procedures to ensure sanitary prisons.

VI. CONCLUSION

The Department has reasonable cause to believe that ADOC violates the constitutional rights of prisoners housed in Alabama's prisons by failing to protect them from prisoner-on-prisoner violence, prisoner-on-prisoner sexual abuse, and by failing to provide safe conditions.

We are obligated to advise you that 49 days after issuance of this letter, the Attorney General may initiate a lawsuit pursuant to CRIPA to correct deficiencies identified in this letter if State officials have not satisfactorily addressed our concerns. 42 U.S.C. § 1997b(a)(1). The Attorney General may also move to intervene in related private suits 15 days after issuance of

this letter. 42 U.S.C. § 1997c(b)(1)(A). Please also note that this Notice is a public document. It will be posted on the Civil Rights Division's website.

ENCLOSURE

Memorandum: "ADOC & Criminal Justice Reforms in Alabama",
dated May 16, 2019

Memorandum

Subject	Date
ADOC & Criminal Justice Reforms in Alabama	May 16, 2019

To	From
Alabama District Attorney's Association	Jay E. Town, USA, NDAL

Overview

On April 2, 2019, the Department of Justice ("Department") issued its Letter of Findings on Eighth Amendment concerns inside of the Alabama Department of Corrections ("ADOC").[1] In particular, the Department found that ADOC failed to protect prisoners from inmate violence, failed to protect prisoners from inmate sexual abuse, and failed to provide reasonably safe conditions in ADOC facilities. All of these violations are exacerbated by serious deficiencies in staffing, supervision, and bedspace.

Since delivering the Letter of Findings to Governor Kay Ivey, and the Letter of Findings then becoming public, I have engaged in meaningful, substantive discussions with Alabama leadership and stakeholders to address myriad equities, however slight or broad, to ensure that the full scope of all of the issues are captured in the broad discussion. As ADOC and the Department continue to discuss potential remedial measures, it will continue to be my priority to hold as many conversations as are requested of me with designated or appropriate interested parties. From my vantage, these discussions assist in identifying any unintended consequences, have the virtue of offering full transparency to this effort, and allows me to continue to assess the Department's need for litigation under the Civil Rights for Institutionalized Persons Act ("CRIPA").[2]

This entire memorandum should be taken in the context of the Department's potential litigation with ADOC, the Eighth Amendment issues afoot in ADOC facilities, and the global remedial measures being pursued by ADOC, the Department, and the State of Alabama. I have been authorized by the Department of Justice to engage at the highest levels of Alabama government to assist in discussing, examining, reviewing, or reviewing any legislative adjustments or additions

[1] https://www.justice.gov/opa/press-release/file/1150276/download

[2] 42 U.S.C. §1997, *et seq.*

to the Alabama criminal justice system that might aid ADOC in resolving its issues with the Department. Specifically, broad authority has been given to me by Main Justice "to influence [Alabama lawmakers and stakeholders] to make necessary legislative changes that impact the ability of the Alabama Department of Corrections (ADOC) to remedy the concerns stated in the report of investigation." It should also be noted that I have been invited by Governor Ivey, leaders in the legislature, the Alabama District Attorneys Association, the Alabama Attorney General, and other stakeholders to engage in discussing legislative and policy changes that might positively impact remedial measures at ADOC.

Meaningful prison reform should be accompanied by discussions of meaningful criminal justice reform in most, if not all, instances since the prison system and the criminal justice system are rarely mutually exclusive. In this context, this memorandum primarily:

- presents findings by the Department regarding recidivating defendants (in order to explain the statistical likelihood of Alabama felons engaging in future criminal activity, which may aid in discussions about prevention and reentry programs);
- provides analysis regarding ADOC populations and determines the most likely sources of those populations;
- proffers certain *prospective* statutory reforms that may positively impact ADOC populations and even discusses the impacts those reforms might have on other agencies, to include county sheriffs and their jails.

Background on Recidivism

Common discussions regarding prison reform often examine more than simply the time that an individual is incarcerated. The efficacy of prevention and reentry programs are examined alongside the status of corrections facilities and the thresholds of certain criminal offenses that impact individual defendants. The manner in which individuals become inmates, how long they are inmates, and whether they return again as an inmate are all factors to consider as part of a "holistic" criminal justice system.

In May of 2018, the Department's Bureau of Justice Statistics released a report on recidivism.[3] The study followed 401,288 prisoners[4] released from state prisons around the country in 2005 for a period of nine years.[5] The data was then collected for analysis and some glaring patterns emerged.

For instance, the 401,288 prisoners sampled were arrested nearly 2,000,000 times during the 9-year period after their release in 2005, which is an average of around five arrests per prisoner.[6]

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[3] "2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)", DOJ, BJA, May 2018; https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf

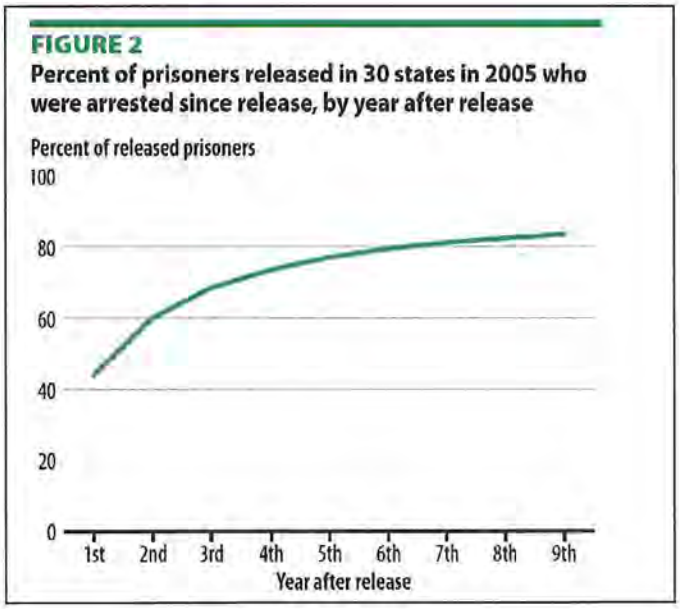
[4] Some characteristics of the prisoners sampled: 89.3% were male; 40% were white; 40% were black; 18% were Latino/Hispanic; 38% were under the age of 29 at release; 31.2% were 40 or older at release; 26% were released from a violent crime conviction as their most serious offense, 30% property, 32% drug. Source: Ibid.

[5] Ibid.

[6] Ibid.

Moreover, an estimated 68% of those prisoners sampled were arrested within the first three years, and nearly 80% within six years, after their release in 2005.[7] After the nine year period, an estimated 83% of those prisoners had been rearrested at least once.[8] Approximately 77% of those prisoners that were drug offenders were rearrested for a non-drug crime within nine years.[9] A staggering 44% of the prisoners were rearrested within the first year following their release in 2005, and 24% were arrested again in year nine.[10] Only 5% of those arrested in the first year after release were not arrested again during the nine year period.[11] Conversely, only 18% of those prisoners were not arrested in the first three years after their release, which is about the same percentage of desistance in the nine year period (17%).[12] Ninety-five percent (95%) of those prisoners arrested in the first year following their release were arrested again in the nine year period.[13] Very few of those rearrested were arrested outside of the state in which they served time and were released to in 2005.[14]

Any discussion of recidivism in the context of ADOC and the Department's Letter of Findings is relevant insomuch as prevention and reentry programs, along with internal programs within ADOC facilities, might marginalize the number of former prisoners that return to prison. When this study is coupled with an analysis of data regarding prior felony convictions for inmates currently serving direct sentences in ADOC, it does offer some insight as to predictions of success and measuring future populations based on current data. It also informs us of the likelihood of defendants returning to prison under the status quo.



[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Ibid (emphasis added).

[11] Ibid

[12] Ibid.

[13] Ibid.

[14] Ibid.

Current State of the Alabama Department of Corrections

The Alabama Department of Corrections has undergone a series of reforms over the course of the last decade designed to reduce the population in ADOC. Without question, those reforms reflected the best wisdom at the time and were widely supported. Despite those efforts, ADOC's prisons remain at approximately 164% capacity.[15] On any given day, there are approximately 21,000 inmates in ADOC facilities.[16] There are approximately 28,000 individuals[17] total on ADOC jurisdiction.[18] Of those 28,000, over 7,000 are the result of probation revocation with an additional 1,200 (approx.) individuals reentering ADOC jurisdiction by virtue of parole revocation.[19] The ADOC In-house Designed Capacity for all ADOC facilities is 12,412.[20] By comparison, the jurisdictional and in-house populations of ADOC in March 2016 was 30,495 and 20,395 respectively.[21] In addition to the 21,000 (approx.) inmates currently residing inside of an ADOC facility, an additional 10,000 inmates were at one time inside an ADOC facility for some period of time in a given year.[22] In addition to the jurisdictional population of ADOC, there are 55,000

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[15] "Monthly Statistical Report for March 2019", Alabama Dep't. of Corrections; this memorandum uses data from both the February and March 2019 Monthly Statistical Reports because the March report was released after much of this memorandum had been drafted. The changes in the numbers were slight and negligible.

[16] Ibid; this number fluctuates daily, indeed hourly, so it is important to understand that any survey of ADOC population is a "snapshot" that represents the population at the moment of the survey. The population tends to swell or deplete regularly. It is important to understand the definitions of three important ADOC categories: "ADOC Jurisdiction" refers to the total number of individuals ADOC is charged with monitoring, to include the in-house population and those on community corrections or in county jails serving state time. "ADOC In-House Population" refers only to those individuals inside an ADOC facility. "In-House Designed Capacity" or "Facility Capacity" or "Facility Design Capacity" refers to the total number of individuals that ADOC facilities are designed to house.

[17] By comparison, states with similar populations to Alabama (within one million persons) have the following prisoners on their DOC jurisdiction as of 2017: Colorado: 19,946; Kentucky: 23,543; Louisiana: 35,682; Minnesota: 10,708; Oregon: 15,218; South Carolina: 19,906; Wisconsin: 22,325. This is not an "apples-to-apples" comparison, but simply underscores the fact that population density is not necessarily attributed to high crime rates or high incarceration rates. For instance, New Jersey's population is approximately 9m persons compared to Alabama's population of around 5m persons. New Jersey has approximately 19,000 on their jurisdiction compared to Alabama's approximately 28,000. (Source: "Prisoners in 2017", Bureau of Justice Statistics, https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6546).

[18] "Monthly Statistical Report for March 2019", Alabama Dep't. of Corrections; the number of individuals on "jurisdiction" subsumes the total number of inmates that our inside of the facilities and those that are not in a facility but technically monitored by ADOC (e.g. various release programs, community corrections, county jails, etc.). This number fluctuates daily, if not hourly, as well.

[19] "Monthly Statistical Report for March 2019", Alabama Dep't. of Corrections.

[20] "March 2019 Monthly Statistical Report", Alabama Dep't. of Corrections; the previous design capacity was 13,318 in FY2018. This number was reduced based on facility closures and other changes to ADOC facilities with the new fiscal year on October 1, 2018. It is important to understand the significance of the "In-house Designed Capacity" as it relates to overcrowding, understaffing, facility safety, and facility conditions. By comparison, imagine an office with 100 employees that was deemed to functioning at its "design capacity", which means that there were just enough computers, bathrooms, break rooms, desks, chairs, offices, etc. Now imagine the same office, with the same number of computers, bathrooms, chairs, etc., but with 164 employees. That office might be able to accommodate or "fit" the additional 64 workers somehow, but without adding more offices, bathrooms, computers, etc., the office itself would be beyond capacity or beyond its "designed capacity."

[21] "Monthly Statistical Report for March 2016", Alabama Dep't. of Corrections.

[22] Source: Alabama Sentencing Commission. In other words, approximately 31,000 individuals are housed inside of an ADOC facility for some period of time in a given calendar year.

(approximately) individuals that are being monitored by Alabama State Probation or Parole officers on any given day.[23]

The Top 35 felony offenses attributed to the 21,000 (approx.) inmates confined within an ADOC facility account for approximately 95% of all offenses represented in the ADOC prison population.[24] Of those Top 35 offenses, approximately 55%, or 11,000 inmates, are confined for violent offenses.[25] Therefore, the remaining 45% (or approximately 10,000 inmates) are being confined for non-violent offenses.[26] Around 500 inmates are confined for Class D felonies on a given day.[27]

The number of violent offenders vs. non-violent offenders actually inside an ADOC facility has been the subject of some debate over the past decade. It has been said that the number of violent offenders was as high as 85%[28] inside an ADOC facility. It has also been asserted that a high percentage, indeed "most", individuals inside an ADOC facility were serving time for non-violent offenses. The aforementioned statistics seem to suggest that neither assertion is an accurate accounting of the actual ADOC in-house population.

ADOC Population Currently

Understanding from where the largest numbers of inmates come could be useful to the State of Alabama and Department in a number of ways. The direction of resources might be employed differently based on data. Moreover, the programs that develop, pilot or otherwise, may best be directed initially to those areas that contribute most heavily to ADOC's inmate population and jurisdiction.

The February 2019 monthly report from ADOC[29] indicates that the top 4 counties that contribute to ADOC's inmate jurisdiction (9,619) is nearly the same as the bottom 53 counties that contribute

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[23] Ibid; this number does NOT subsume the number of individuals on ADOC jurisdiction but is in addition to that number. Moreover, theoretically all 55,000 individuals being monitored by state probation/parole could reenter ADOC jurisdiction on any given day by way of revocation.

[24] Source: Alabama Sentencing Commission.

[25] Ibid. The Top 35 offenses considered as "violent offenses", for the purposes of this memorandum, are: Murder, Robbery (all degrees), Rape (all degrees), Capital Murder, Manslaughter, Sodomy (all degrees), Attempted Murder, Kidnapping (all degrees), DV-2nd, Sexual Abuse 1st, Child Abuse, and Discharging a Gun into Occupied Vehicle/Dwelling.

[26] Ibid. The Top 35 offenses considered as "non-violent" for the purposes of this memorandum are: Distribution of a Controlled Substance, Theft of Property (all degrees), Burglary (all degrees), Possession of a Controlled Substance, Narcotics Trafficking, Manufacturing a Controlled Substance (all degrees), Receiving Stolen Property (all degrees), SORNA, Possession of Marihuana 1st, B&E, and Escape 1st.

[27] Source: Alabama Sentencing Commission; It is important to note that the Department of Justice is concerned about the number of inmates confined to an ADOC facility on a given day. Data regarding the actual lengths of stay in ADOC are in some ways not relevant to the Letter of Findings delivered by the DOJ to Governor Ivey on April 2, 2019. This is because the overcrowding issue, which is accompanied by some many other issues of violence, abuse, and unsafe conditions, has to be analyzed on the average daily in-house population framework.

[28] This "85% violent offender" number has been relayed falsely for years. The data simply does not support the contention that 85% of those individuals on ADOC jurisdiction, or populating ADOC in-house, is even close to 85%.

[29] "Monthly Statistical Report for February 2019 (Fiscal Year 2019)", ADOC; http://www.doc.state.al.us/docs/MonthlyRpts/2019-02.pdf

to ADOC's inmate jurisdiction (9,778).[30] Approximately 2/3 of all defendants (at least) that enter ADOC jurisdiction do so as an inmate inside an ADOC facility.[31] Also, of the 5,815 individuals that were admitted into ADOC jurisdictional custody FY-T-D, 44% were new commitments, 27% of those individuals were revoked from probation, and 17% were revoked from parole.[32] Fifty-eight percent (58%) of the 5,815 individuals entered ADOC jurisdictional custody with a sentence of five (5) years or less and eighty-percent (80%) entered with a sentence of ten (10) years or less.[33] According to the report, 4,030 of the 5,815 individuals admitted into ADOC jurisdictional custody were admitted as an inmate inside an ADOC facility.[34] Of those 4,030 individuals, 60% were in custody for property or drug offenses.[35]

The jurisdiction of ADOC is significant in the Department's investigation because the direct supervisory responsibility rests with ADOC. However, it is important to note that none of the individuals on ADOC jurisdiction includes individuals currently on state probation or parole, which number approximately 55,000 individuals. Therefore, the number of individuals admitted to both ADOC jurisdiction and ADOC facilities is critical to understanding ADOC resource depletion. It is just as critical to understand the number of individuals that could potentially, and often do, enter ADOC jurisdiction via revocation of probation or parole.

Prior Felony Convictions & ADOC Inmates

Any discussion about prison sentence length, prospective sentencing guideline adjustment, or prospective sentencing reform generally should not ignore the examination of the prior felony convictions that either enhance or aggravates a sentence under the sentencing guidelines. Mr. Bennet Wright with the Alabama Sentencing Commission sought to perform just such an analysis and examined the records of fifty (50) ADOC inmates that resided inside an ADOC facility on a random date.[36] These inmates were serving non-revocation sentences for property offenses.[37] None of the 50 inmates were revoked from probation or parole, none were "dunks", and none were serving time for a Class D felony.[38]

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[30] There are 67 counties in the State of Alabama. The top 4 counties that contribute to ADOC's jurisdiction are Jefferson (3,601), Mobile (2,704), Montgomery (1,663), and Madison (1,651) Counties, respectively. By comparison, Marshall County is ranked 20th fairly consistently and has contributed only 387 individuals to ADOC's jurisdiction (it is not known how many of these 387 are "in-house", but statistically roughly 2/3 of those on jurisdiction reside "in-house"...or around 260).

[31] "Monthly Statistical Report for February 2019 (Fiscal Year 2019)", ADOC; http://www.doc.state.al.us/docs/MonthlyRpts/2019-02.pdf; For instance, 4,030/5,815 in February '19 or 21,000/28,000 ADOC-wide currently (3/4 or 75%).

[32] Ibid; "New Commitments" includes direct sentences and split sentences (2,564). Probation revocations number 1,556 and parole revocations numbered 988.

[33] Ibid.

[34] Ibid.

[35] Ibid; Property (1,178) + Drugs (1,237) = 2,415 or 60% of 4,030.

[36] Source: Alabama Sentencing Commission; this can be provided upon request.

[37] Ibid.

[38] Ibid.

The statistical sample of prior felony convictions, while not entirely scientific, did produce some patterns that might have been expected. Generally, those 50 inmates had a total of 250 prior felony convictions.[39] Of those 250, the priors were broken into four classes of felonies: property,[40] drugs,[41] violent,[42] and other.[43] Nearly 80% of the 250 prior felony convictions were for property offenses and 12% were drug offenses.[44] Only 2% of the 250 prior felony convictions were for violent offenses.[45] Those individual felony offenses are broken down generally, and most notably, as follows:

- Burglary 3rd Degree – 28%;
- Theft 1st & 2nd Degrees – 20%;
- Receiving Stolen Property 1st & 2nd Degrees – 10%;
- Breaking & Entering a Vehicle – 8%;
- Possession of a Forged Instrument – 7%;
- Possession of a Controlled Substance – 6.5%;
- Possession of Marihuana 1st Degree – 2%.[46]

If just two offenses were combined (Burglary 3rd Degree & Theft of Property 2nd Degree), then those prior felony convictions would account for 40% of the 250 prior felony convictions represented in the sample.[47] In addition to those percentages, six defendants had ten (10) or more prior felony convictions.[48] One defendant had nineteen (19) prior felony convictions. Twenty (20) defendants had five or more prior felony convictions.[49]

This data supports the conventional wisdom in law enforcement that those who are imprisoned for property crimes have a history of committing property crimes.[50] The data further suggests that

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[39] Ibid.

[40] Property Felonies: Theft (all classes), RSP (all classes), Burglary 3rd Degree, B&E, FUCC, POFI, Forgery (all classes), Possession of Burglar Tools, Criminal Mischief.

[41] Drug Felonies: POM1, POCS/UPCS, Unlawful Distribution of a CS, Manufacturing of a CS 2nd Degree.

[42] Violent Felonies: Capital Murder, Murder, Assault (all classes), DV (all classes), Burglary 1st & 2nd Degrees; Robbery (all classes), Sexual Abuse, Rape (all classes), Terrorist Threats.

[43] Other Felonies: All other felonies, but for the purposes of those reviewed in the aforementioned sample, Escape (all classes), Promoting Prison Contraband, SORNA.

[44] Source: Alabama Sentencing Commission.

[45] Ibid.

[46] Ibid.

[47] Ibid.

[48] Ibid.

[49] Ibid.

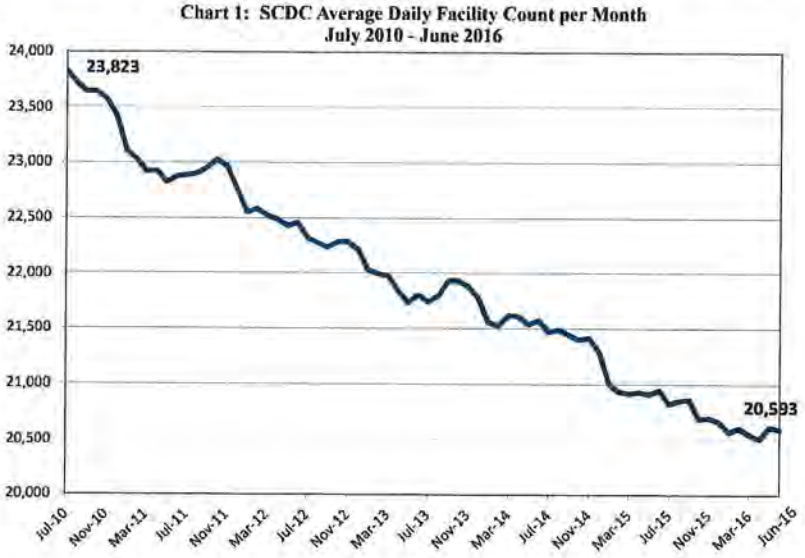
[50] A similar exercise for narcotics possession may produce similar results insomuch as many of the prior felony convictions for those serving non-revocation drug possession sentences inside an ADOC facility might likely be non-violent drug offenses. The collective prosecutorial experience further informs this likelihood.

those who commit property offenses have a negligible history of prior felony convictions for violent crimes. This data may support the conclusion that adjusting threshold levels for property crimes and related prospective sentencing worksheet "scores" for certain offenses.

Other States & Criminal Justice Reform

The sentencing reforms implemented by many states have helped keep prison populations at manageable levels, while prioritizing prison space for the most violent offenders. Many states have undergone a series of reforms. Many states continue to review those reforms or the potential for a series of reforms..

For instance, South Carolina's sentencing reforms of 2010 saw prison admissions for the reformed crime categories drop approximately 15%, along with the state's overall prison population.[51] In fact, the daily prison population in South Carolina decreased from 23,823 to 20,593.



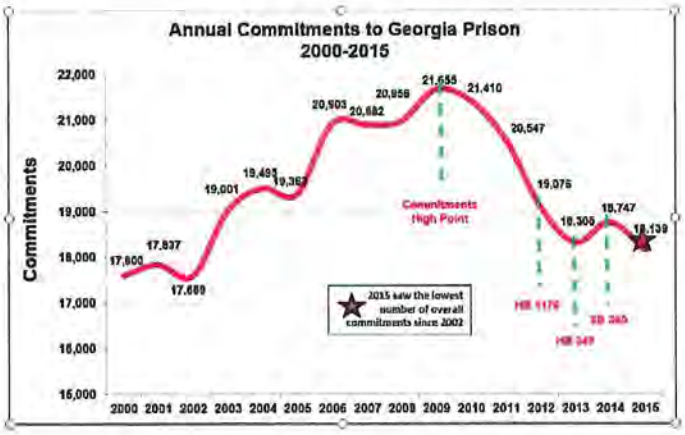
Also, in the early 2000's, Texas's prison population was more than 170,000, with a projected need for an additional 17,000 beds.[52] In 2003, Texas began instituting a series of reforms, including revising sentencing and threshold for felony property and drug offenses and, as a result, the Texas'

[51] "South Carolina Reduced Theft Penalties While Safely Cutting Prison Population", April 4, 2018. http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/04/south-carolina-reduced-theft-penalties-while-safely-cutting-prison-population.; It is important to note that South Carolina moved to a "summons warrant" or "summons" system that coincided with its other criminal justice/prison reforms.

[52] *See generally* U.S. Department of Justice, Bureau of Justice Statistics/Texas; *Prison Reform: How Texas Did It*, APR, September 17, 2016, *http://apr.org/post/prison-reform-how-texas-did-it#stream/0*.

prison population has dropped significantly. Texas' approach emphasized the creation of therapeutic treatment facilities and diversion programs.[53]

In 2012, Georgia began institutiting a series of justice reforms modeled after those implementedin Texas. In 2010, more than 40,000 inmates were within Georgia state prisons, with more than 20,000 people being admitted each year. Following the reforms, Georgia prison population has dropped significantly over the last five years, while admissions to state prisons have also decreased by a comparable amount.[54]



Source: Georgia Department of Corrections

Other states continue to struggle with implementing the most appropriate reforms for their criminal justice system. Those state reforms listed here are only examples. Since no two state

[53] *Ibid*; While Texas has enacted minor reforms to its felony drug possessions guidelines, it has utilized graduated weight amounts to determine possession grades, while also utilizing community-based placement for low-level drug offenders. Nearly 150,000 people contacted the Texas justice system in 2016, of which nearly 10% were for felony possession of controlled substances. However, due to increased usage of jails and therapeutic treatment facilities, nearly 60% of offenders never enter state prison – versus 2/3 being held in prison prior to the reforms. The Texas prison population remains at approximately 90% capacity, one of the best in the nation.

[54] Georgia Average Daily Population Counts FY 2010 – 2017.

systems are identical in the full catalogue of criminal statutes, probation structures, prison capacities, etc., comparing reforms only serves to further the discussion as to what reforms, if any, is best for the State of Alabama.

Other States & Criminal Justice Reform: Property and Drug Felony Thresholds

Property and controlled substance felony offenses are two of the primary drivers of growing state incarceration rates.[55] Raising the minimum thresholds for theft and felony possession of prescription drug offenses often have the net effect of reducing the number of defendants sent to prison.[56] Research[57] indicates a direct correlation, in most instances, between those states with the highest incarceration rates and those states with lower felony theft and drug thresholds. Encouraging states to make reasonable and regular adjustments to their minimum felony thresholds, even if just "adjusting for inflation", might preserve state and federal bedspace for worst offenders.

States with lower minimum felony thresholds often have the highest incarceration rates. They also too often have what the public might consider an unreasonably injudicious or hasty parole system. If thresholds were raised, then those low-level offenses that were originally felonies would become misdemeanor offenses. Those misdemeanors, whether a direct sentence or a probation revocation to jail, would push punishments down to the county or municipal levels. The county or city jail would house low-level offenders, not the state department of corrections. The natural result of this shift would mean that there would be less individuals under the jurisdiction of the state prisons, less individuals with felony records that would then require harsher sentences and longer periods of incarceration in state or federal prison, and would put the obligation on the county and city governments to house these offenders.

The fifteen states with the highest per capita incarceration rates (Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, South Dakota, Tennessee, Texas, and Virginia), incarcerate approximately 25,000 annually for felony

[55] Sentencing reform is directly related to prison reform in terms of prison population reforms only. The global concept of prison reform is a much larger discussion than the analysis here.

[56] Defendants find their way to *prison*, as opposed to *jail*, in a number of ways. Most theft and drug offenses, even if a second or third felony conviction, will typically result in a suspended prison sentence and that defendant placed on probation. However, often times those individuals are revoked from probation (for a variety of reasons) and sent to state prison to serve the balance of their sentence. Since these offenses are deemed "non-violent offenses", the defendants who are revoked from probation, or directly sentenced, usually are either paroled quickly (within a year) or are declared at "end of sentence" well before actual end of awarded sentence. It is often the case that a defendant with a substantial sentence from a theft or "pill" offense is sent to prison for a long prison term only to serve a tiny fraction of the actual sentence. This is just a function of the financial strain from which state departments of correction currently suffer and a common disparity.

[57] An AUSA in the U.S. Attorney's Office for the Northern District of Alabama directly examined the theft and controlled substance thresholds in the fifty states.

theft offenses. On average, the felony theft threshold in these states is approximately $800 with some states having felony minimum thresholds as low as $250-$300.[58]

Since 2001, more than 30 states have legislatively revised the minimum dollar threshold for theft offenses. However, the effects of most of these reforms have been blunted, due to their failure to keep pace with inflation. For instance, a threshold of $500 in 1986 equates to more than $1,100 today.[59] However, only eleven (11) states have minimum felony theft thresholds in excess of $1,000, [60] while the 13 states have thresholds of $500 or less.[61]

States that have enacted felony theft threshold revisions[62] have seen **decreases** in the state prison population for these offenses. For example, in 2010 South Carolina doubled the felony threshold for most property offenses to $2000.[63] In the three years following the reform, incarceration for property offenses with reformed felony thresholds was down by 15%.[64] In 2012, Georgia increased its felony theft threshold from $500 to $1,500.[65] Over the following three years, prison commitments for felony theft dropped by 15% and probation commitments dropped by 27%.[66] In 2015, Texas raised its threshold from $1,500 to $2,500 and, since, commitments to Texas prisons for felony theft have dropped by nearly 15%.[67] Of the 6,500 felony theft offenders encountered by the state justice system, 80% were admitted to short-term state jails or therapeutic substance abuse facilities.[68] Similar, sustained decreases in prison populations for felony theft offenses were experienced in the other states whose reforms outpaced the rate of inflation.[69]

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[58] $500 – Illinois, Kentucky, Missouri, Nebraska, New Mexico, Oklahoma, Tennessee, Virginia; $300 – Florida, Hawaii; $250 – Alabama, Massachusetts; $200 – New Jersey.

[59] https://www.usinflationcalculator.com/

[60] $2,500 – Texas, Wisconsin; $2,000 – Colorado, Connecticut, Pennsylvania, South Carolina; $1,500 – Delaware, Georgia, Montana, Rhode Island, Utah.

[61] $500 – Illinois, Kentucky, Missouri, Nebraska, New Mexico, Oklahoma, Tennessee, Virginia; $300 – *Florida, Hawaii; $250 – Alabama, Massachusetts; $200 – New Jersey. *Florida has, or is proposing, raising thresholds significantly.

[62] South Carolina, Georgia, and Texas are rarely viewed as state judicial systems that are "soft on crime", yet they made the reforms suggested here.

[63] "South Carolina Reduced Theft Penalties While Safely Cutting Prison Population", April 4, 2018. http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/04/south-carolina-reduced-theft-penalties-while-safely-cutting-prison-population

[64] *Ibid.*

[65] "Assessing the Impact of Georgia's Sentencing Reforms", Urban Institute, July 2017. https://www.urban.org/sites/default/files/publication/91731/ga_policy_assessment.pdf

[66] *Ibid.*

[67] *Prison Reform: How Texas Did It*, APR, September 17, 2016, *http://apr.org/post/prison-reform-how-texas-did-it#stream/0*; [67] FY 2014 and FY 2016 Texas Department of Criminal Justice Statistical Reports - http://www.tdcj.texas.gov/documents/Statistical_Report_FY2014.pdf and http://www.tdcj.texas.gov/documents/Statistical_Report_FY2016.pdf

[68] *Ibid.*

[69] Ibid.

Adjusting Felony Thresholds: Property Offenses

Currently, the Alabama Criminal Code contains a number of offenses that are considered "property offenses" for the purposes of this memorandum.[70] Those felony property offenses have arbitrary thresholds attributed to each offense. Those felony offenses are expressed in the relevant $2500, $1500, and $500 increments. Alabama's felony theft statutes have changed over time. For instance, in 1992 Theft of Property in the Second Degree was changed to reflect an arbitrary range of $250-$1000 to constitute this Class C felony.[71] In fact, there have been several tweaks of thresholds in the past thirty years. This includes the relatively new Class D felonies born to Alabama in 2015.[72] A simple adjustment for inflation would nearly double the thresholds currently held by Theft of Property 1st & 2nd Degree felonies.

The latest Annual Report[73] by the Alabama Department of Corrections identifies theft-related offenses and receiving stolen property offenses as the 3rd and 6th most represented confining offenses admitted to ADOC jurisdiction.[74] Taken together, those two offenses would be the 2nd most represented confining offenses admitted to ADOC jurisdiction. The discussion about raising the thresholds of property offenses, especially theft and receiving stolen property offenses, affects not only the confining offenses, but also sentencing guidelines scores.

One option to consider would be to consider adjusting certain property offense thresholds by $1000. Generally, the Class B threshold would be changed from *more than* $2500 to *more than* $3500, the Class C threshold range from $1500-$2500 to $2500-$3500, the Class D threshold range from $500-$1499 to $1500-$2499, and the Class A misdemeanor threshold range from *less than* $500 to *less than* $1500. I am unaware of any studies that suggest or guarantee that a certain threshold will swiftly reduce the inmate population in Alabama prisons.

As an aside, Class D felonies do pose some challenges to the current criminal justice system in its entirety. While Class D felons only make up about 2.5% of the ADOC inmate population, nearly all Class D felons are being supervised by a state probation office. The number of individuals on state probation, as I am told, "has never been higher." State probation officers are generally charged with the monitoring of probationers. But due to volume, and that volume persisted well before the advent of the Class D felony, most state probation officers find it

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[70] See FN 41 for what might be considered "Property Offenses". However, when discussing adjusting the thresholds in this memo, Theft of Property; Theft of Lost Property; Theft of Services; Receiving Stolen Property, Theft by Fraudulent Leasing or Rental Property are the only offenses considered. Other offenses which might be categorized as "property offenses", such as Forgery or Fraudulent Use of a Credit Card, do not have reconcilable thresholds.

[71] See http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0002641.PDF

[72] The introduction of the Class D felony in Alabama had the purpose, among other things, of providing the ability to prosecute offenders but keep those offenders from entering the prison system. Currently, about 500 Class D felons sit inside an ADOC facility, most there on a "dunk". It is interesting to note that the Class D felony was not an attempt to "adjust for inflation" but seems to have been more a mechanism by which a felony could be prosecuted without the normal sanction associated with a felony. Source: Alabama Sentencing Commission.

[73] http://www.doc.state.al.us/docs/AnnualRpts/2017AnnualReport.pdf

[74] Ibid, p. 46.

difficult to effectively monitor probationers. Less monitoring normally results in more recidivist behavior, more crime, and more individuals scoring an "in" on the sentencing guidelines or for longer sentences by virtue of the Habitual Felony Offender Act. Prevention does not always mean diversion and one of the primary roles of the probation/parole officer is to meaningfully monitor probationers/parolees such that they do not recidivate.

Adjusting Felony Thresholds: Certain Narcotics Possession Offenses

The latest Annual Report[75] by the Alabama Department of Corrections identifies theft-related offenses and receiving stolen property offenses as number the most common confining offenses admitted to ADOC jurisdiction.[76] This large number, nearly double the second most represented confining offense, does not break down offenses by narcotic, but Possession of Marijuana in the First Degree and Possession of a Controlled Substance (where four or fewer pills are the corpus of the offense) are fairly common.[77] These offenses not only overwhelmingly contribute to ADOC jurisdiction, they also contribute to the prior felony convictions that lead to confinement, longer sentences in confinement, or both.

Nearly every state has revised traditional zero-tolerance policies related to drug possession. Most states consider possession of Schedule I – II drugs to be a felony offense, with some greater latitude (misdemeanor classification) for possession of Schedule III - V drugs before triggering the felony threshold. Many jurisdictions have created specialty courts and alternative sentencing programs to address the rise of low-level drug usage but often lack a sufficient quantity of programs to meet the demand for alternatives to incarceration. Thus, many low-level drug offenders cycle through state prisons over short periods of time.[78]

In the U.S. in 2015, approximately 1.3 million people were charged with possession of a controlled substance.[79] That same year, nearly 45,000 people were incarcerated in state prisons for felony possession of controlled substances.[80] Felony thresholds for possessing controlled substance range among the states from "some" permissible amounts of all scheduled substances to Alabama which

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[75] http://www.doc.state.al.us/docs/AnnualRpts/2017AnnualReport.pdf

[76] Ibid, p. 46.

[77] The collective prosecutorial experience might suggest this as fact, but it is asserted here with the caveat of the admission of the difficulty in directing resources to assert this as fact.

[78] "Justice Reinvestment in Alabama", Council of State Governments Presentation, Third Presentation to Prison Reform Task Force, December 11, 2014. "High-Volume Property and Drug Cases Spending Twice as Long in Prison since FY2009", p. 23 - https://csgjusticecenter.org/wp-content/uploads/2015/01/WAPrisonReformTaskForce.pdf.

[79] "Crime in the United States 2015 - Arrests," FBI Uniform Crime Report (Washington, DC: US Dept. of Justice, September 2016), p. 1, and Arrest Table: Arrests for Drug Abuse Violations.

[80] "Prisoners in 2016". (Washington, DC: US Dept. of Justice Bureau of Justice Statistics, January 2018), *NCJ251149, p. 19.*

considers possession of any Schedule I – V controlled substance (other than marijuana) to be a felony.

States possessing low thresholds for felony prescription drug possession offenses frequently suffer from an overburdened justice system and highly over-populated prisons. In Alabama, between 2010 – 2015, felony possession of controlled substances was the most prevalent felony offense – more than double any other offense category.[81]

Adjusting Felony Thresholds: Potential Impact on Alabama Jails

If felony statutory thresholds are raised and/or the bail bond schedule is adjusted upward, it is possible that the jail populations could increase. This is especially true in Alabama's four major population centers (Huntsville, Birmingham, Montgomery, and Mobile) where the majority of all state prosecutions occur. Therefore, it is important to discuss the impact that bail bonds have on the criminal justice as a whole to fully navigate any alternatives to the current bonding schedule and system. Moreover, if the arbitrary dollar thresholds for a felony offense in Alabama were to increase, with misdemeanor offenses filling that gap, then there is the potential for more misdemeanor offenses in Alabama by the virtue of the broader range of that criminal conduct. Therefore, a discussion on how arbitrary thresholds for certain non-violent criminal activity impact Alabama's system of justice might produce meaningful alternatives to the current system.

Increasing the suggested amounts of the bond schedule might positively impact public safety. It would have a tangential impact on ADOC as well. The bond schedule, as it is today, could be considered as requiring relatively low amounts of money to post a bond. In the State of Alabama, the stated purpose of a bond is to impose is a facet of the "least onerous conditions...that will reasonably assure the defendant's appearance [in court] or that will eliminate or minimize the risk of harm to others or to the public at large."[82] The relatively low amounts of the bond schedule undermine the Rule. For instance, a defendant charged with Murder, a Class A felony, would likely be given a scheduled bond amount of $60,000, only 10% of which is owed to the surety and can even be paid (and often is) in installments. The charge suggests that probable cause exists that the defendant has taken a life, which is obviously defeats concerns about other less onerous conditions that would prevent a "risk of harm to others."

If greater amounts for bail were considered, such that the highest level of violent offender, already considered by the very nature of their charge to be a "real and present danger to others or to the public at large", then fewer of those charged individuals would be able to reoffend prior to the disposition of their charges.

The consequence of raising thresholds on drug or property offenses in the State of Alabama might be that more misdemeanors are prosecuted. Those misdemeanors have the potential to result in jail time by any given defendant. Thus, Alabama jail populations, if all policies and laws remain static, could swell. This might otherwise be the unintended consequence of increasing the bonding

[81] Alabama Sentencing Commission, 2017 Report. "Most Frequent Felony Offense at Conviction". p. 17.

[82] Rule 7.2, Alabama Rules of Criminal Procedure

schedule and raising felony thresholds. Any discussion about doing either should consider these equities.

In addition, consideration of a summons warrant system to counter the increased schedule of bonds for more serious offenses is worthy of consideration. Such a system would allow for officer discretion in certain limited, non-violent circumstances to release a misdemeanant without arrest. Instead, the misdemeanant would be issued a summons, much like a traffic citation, and make an initial appearance in court on the date declared by the summons. This has the net effect of not reducing the police posture of a given shift in order to book into the jail a non-violent misdemeanant. It also avoids having to house a misdemeanant in jail for unnecessary periods of time while they await the disposition of their charges (not every accused defendant can make a bond, however slight).

Moreover, as county and city jails become more crowded[83] it is highly likely that sheriffs, police chiefs, county commissions, and mayors would naturally create greater opportunities for diversionary measures (e.g., pretrial diversion programs, diversionary courts) in order to relieve the overcrowding.[84] Diversionary measures are proven methods of lowering recidivism rates. Maintaining low thresholds for felony offenses may, in fact, encourage felonious behavior because there is no "real" sanction for the commission of those crimes.

Adjusting Felony Thresholds: Sentencing Guidelines

In addition to examining the significance of adjusting felony thresholds for limited property and narcotics possession offenses, it may be necessary to adjust the value of these offenses in the sentencing guidelines calculations. ***Prospective*** adjustment of the value of offenses prior to the thresholds being raised might better reflect the "value" of those prior felony convictions when determining if a given defendant should be incarcerated or in calculating the length of a sentence (suspended or otherwise). Again, this could simply be done on the worksheet in a prospective, not retroactive[85], manner.

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[83] It is important to note that a large percentage of jail populations consist of inmates awaiting trial or disposition of their charges. In most cases, this is the result of a lack of bail opportunity. Many times, defendants will serve months in jail without trial, but with bond eligibility, simply because they are unable to make bond. Many states have gone to a "summons system" which, much like a traffic ticket, indicates the date of a defendant's first appearance. If the same defendant was booked into the jail, and posted a bond through a surety shortly thereafter, they would get a similar notice from the jail or notice mailed to them weeks later.[83] States without a summons system for law enforcement to book into jail every individual that they develop probable cause to believe a misdemeanor has occurred. Such a system requires the officer to leave their patrol, sometimes for hours, and jeopardizes the overall police posture and officer safety of a given shift. A summons system also preserve bedspace for those worst offenders who should not have bail while awaiting trial.

[84] Costs to house inmates in jail average around $50 per day per inmate (Source: Alabama Sheriff's Association). A much larger ADOC reports that costs are over $50 per day per inmate. *See* "ADOC Annual Report Fiscal 2017". County and municipal officials would quickly realize the financial reality that diversionary programs, early release programs, or other alternative sentencing initiatives would cost a fraction of just the daily prisoner expenses. Plus, those alternative measures would likely serve to lower recidivism rates.

[85] Retroactive application of new criminal thresholds might pose several legal and constitutional issues. It could also potentially require adjusting not only the current sentence of the 28,000 individuals currently under ADOC's

Consideration of every aspect of the Alabama criminal justice system will likely guard against unintended consequences and produce the best long-term criminal justice model.

Conclusion & Potential Solutions

The DOJ Letter of Findings offers great detail of the issues currently afoot in ADOC. Overcrowding, understaffing, physical and sexual violence, extortion, contraband, and unsafe facilities, among other things, are too common in Alabama prisons. The Eighth Amendment requires every prison to generally provide "reasonably safe conditions" and thus the purpose of the Letter of Findings is to find remedial measures that will pull ADOC into compliance and avoid those constitutional collision

The data provided and discussed herein is designed to be considered as part of broader and further discussions. ADOC remains unconstitutionally overcrowded and beyond capacity.[86] We also know that those convicted of felonies will likely be arrested again. Felons recidivate at alarming rates with alarming regularity. Further, we know that those in prison on a direct sentence have several prior felony convictions, the vast majority of which are similar to the confining offense. Also, we can learn from some of the reforms undertaken by other states that have faced similar realities in their criminal justice systems. Those reforms seem to have significantly and positively impacted their entire criminal justice systems.

Adjusting felony thresholds, especially for the most common felony offenses, is one reform that could alleviate over-crowding while also ensuring that the criminal punishment is commensurate with punishment. The two categories of felonies referenced for adjustment, property and narcotics possession offenses, account for the largest portion of all felony prosecutions and incarcerations. They also account for the largest portion of all prior felony convictions which are used in calculating future punishments by state and federal courts. Pushing low-level offenses down to misdemeanor levels might alleviate the congestion and overcrowding in prisons that too often lead to quick paroles or end of sentence declarations, too often well before the actual incarceration awarded by our courts. Other reforms, such as adopting a summons warrant system, adding summons fees to the bail bond statutes, and adjusting the bonding schedule also merit some discussion and analysis.

The Letter of Findings has brought a lot of attention to Alabama's prison system specifically and criminal justice system generally. However, rather than simply try to only adopt a few "quick fixes", it is my hope that the State of Alabama will take this opportunity to examine sustainable, long-term adjustments to the criminal justice system which would also have the virtue of aiding ADOC in alleviating the Eighth Amendment concerns that have been expressed by the Department of Justice.

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jurisdiction, but also the 55,000 individuals currently on probation or parole. The resources needed for such an endeavor would be significant.

[86] While not discussed in depth herein, "over-capacity prisons" often suffer the greatest number of civil rights violations and greater systemic levels of violence. The solutions discussed herein would have the lateral impact of reducing the likelihood of both.

Memo: ADOC & Criminal Justice Reforms in Alabama

ATTACHMENTS

ATTACHMENT

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April 26, 2019

The Honorable Kay Ivey
Governor of Alabama
Alabama State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130

Re: Alabama Department of Corrections Legislative Suggestions: Update

Dear Governor Ivey,

I write to offer you the courtesy of an update on what I perceive as the positive progress in efforts to address some of the issues identified in the Letter of Findings, dated April 2, 2019, issued by the Department of Justice ("Department"). To be clear, I write in my individual capacity, and not on behalf of the Department as a whole. It is in that capacity that I think it is important for the State of Alabama to be fully apprised of the specific legislative measures being discussed. I am happy to provide more of these types of updates.

The breadth of this process is truly commensurate with the breadth of the investigation that was performed by the Department into Eighth Amendment issues within the Alabama Department of Corrections ("ADOC"). Settlement negotiations between the Department and ADOC have already begun, and I know the participants hope to work productively towards a comprehensive resolution. Since the settlement discussions are private amongst the parties, it would be inappropriate for me to detail those conversations here. It would also be inappropriate for me to comment on any term or condition being negotiated currently; however, I remain hopeful that the negotiations will continue to be effective and positive.

As you know, as someone with lengthy experience in Alabama's criminal justice system, I have been invited by the legislature to discuss potential reforms that may provide long-term solutions to some of the issues identified in the Letter of Findings. Over the course of the past several weeks, I have had meaningful discussions with members of your staff, including Chief of Staff Jo Bonner and General Counsel Bryan Taylor. I have also had productive conversations with Speaker Mac McCutcheon, Senate Pro Tem Del Marsh, Attorney General Steve Marshall, Senate Judiciary Committee Chairman Cam Ward, several members of both the majority and minority caucuses of both chambers of the legislature, Executive Director Bennet Wright from the Alabama Sentencing

Commission, multiple stakeholders that may be impacted by any legislation being discussed (such as representatives from the Alabama District Attorneys Association and the Alabama Sheriffs Association), and others.

I have been asked by several of these individuals to provide my thoughts on specific proposed reforms to Alabama's criminal justice model. I have limited my thoughts and comments on specific changes to criminal laws, criminal procedures, or other Alabama policies to those changes that I think may affect issues identified by the Department in its Letter of Findings. I have refrained from discussing the merit of potential reforms that, in my judgment, will not be beneficial in some way to the issues identified by the Department. While such proposed criminal justice reforms may prove worthy of passage, it would be inappropriate, and perhaps cause unnecessary confusion, for me to comment on legislation which I believe is outside of the purpose and scope of my role in this process. For clarity, I believe that the following subject matter is within the scope of what is appropriate to discuss with you, your office, members of the legislature, stakeholders, and the public:

- Adjustment of thresholds for what constitutes a felony for property offenses (e.g., Theft of Property, Theft of Services, Receiving Stolen Property, Breaking & Entering a Vehicle);
- Adjustment of a specific threshold for what constitutes a felony for the possession of prescription narcotics (e.g., the number of pills that would make such a felony, which is currently at 1 pill);
- Adjustment of the number of convictions required to make possession of marihuana for personal use a felony (the current threshold is two convictions);
- Whether Class D felony classifications of offenses and whether that class of felony is intrusive to normative sentencing principles and/or crime prevention or diversionary anti-recidivist programs;
- Shifting to a discretionary summons system for delineated, non-violent misdemeanor offenses;
- Adjustment of the recommended scheduled range of bail, as currently contained in Alabama Rule of Criminal Procedure 7.2;
- Addition of "summons fees" to Section 12-19-311 of the Alabama Criminal Code;
- Potential for hiring personnel at ADOC that are in the Retirement System of Alabama, and accompanying ethical and legal considerations;
- Roles and resources for law enforcement agencies that have the ability to provide the monitoring of felons through various functions or programs, such as probation and prosecution offices;
- Adjustment of the operation of laws that would allow for the return of a convicted person's driver's license upon release from custody or at end of sentence; and
- Prospective application in the sentencing guidelines that reflect any adjustments to the Alabama Criminal Code.

As I stated previously, I will not be discussing any other legislative or specific policies with anyone from the State or legislature in my capacity here. Moreover, these are the only reforms that may be attributed to my discussions in this effort. It must be understood that any suggested reforms

even slightly different from what is listed here would be outside of the scope of what I am able to discuss in my capacity. However, it is my judgment that any legislative solutions that Alabama deems appropriate to help resolve the Eighth Amendment issues at ADOC certainly could positively impact the Department and ADOC's settlement negotiations. I believe that complimentary statutory reforms and solutions could signal to the Department that Alabama is making significant strides toward correcting the Eighth Amendment issues detailed in the Department's Letter of Findings.

I am happy to provide similar correspondence to you upon your request. Moreover, I am available to discuss any of the specific matters detailed in this letter with you or your staff. Good men and women are working very hard to resolve the issues identified in the Letter of Findings, and I personally remain hopeful that our efforts will constrain the need for litigation. Please contact me directly should you have and comments, questions, or concerns about the information contained within this letter. Thank you for your courtesies and consideration in this matter.

Respectfully yours,

Jay E. Town
United States Attorney
Northern District of Alabama

Distribution list (via electronic mail):

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Alabama State Senator Cam Ward
ADOC Commissioner Jeff Dunn
Chief of Staff Jo Bonner, Office of the Governor
General Counsel Bryan Taylor, Office of the Governor

ATTACHMENT
B

Alabama Department of Corrections
Active Inmates as of October 2018

Murder	1	3,224
Robbery 1st	2	2,742
Rape 1st	3	1,246
Capital Murder	4	976
Distribution of Controlled Substance	5	745
Burglary 3rd	6	699
Manslaughter	7	688
Theft of Property 1st	8	659
Burglary 1st	9	656
Possession of Controlled Substance	10	609
Sodomy 1st	11	571
Trafficking Drugs	12	458
Attempted Murder	13	385
Robbery 3rd	14	383
Assault 1st	15	373
Sexual Abuse of Child < 12 years	16	360
Manufacturing Controlled Substance 1st	17	341
Assault 2nd	18	311
Kidnapping 1st	19	294
Robbery 2nd	20	278
Community Notification Act Violations	21	277
Burglary 2nd	22	270
Rape 2nd	23	267
Sexual Abuse 1st	24	263
Manufacturing Controlled Substance 2nd	25	242
Receiving Stolen Property 1st	26	210
Theft of Property 2nd	27	203
Possession of Marihuana 1st	28	134
Break/Enter a Vehicle	29	132
Domestic Violence 2nd	30	120
Discharge Gun Occupied Bldg/Vehicle	31	105
Child Abuse	32	79
Escape 1st	T33	69
Kidnapping 2nd	T33	69
Sodomy 2nd	35	68
Top 35 Offenses		**18,506**
Other Offenses		1,679
Total In-House Population		**20,185**

ATTACHMENT C

ADOC Inmates as of October 2018
Prior Felony Convictions

The listed inmates are/were serving non-revocation sentences for Property offenses.

The first number in front of the 4-character offense code represents the number of prior felony convictions for that particular offense. The offense codes are listed on page 3.

Example: **6 BEMV** = 6 prior felony convictions for Breaking/Entering a Motor Vehicle

INMATE	PRIORS						
1	1 UPCS	1 ASS2	1 BUR3	1 TOP2			
2	2 BUR3	1 TOP1	1 BEMV				
3	2 BUR3	2 RSP2					
4	6 BEMV	3 BUR3	4 TOP1	1 CRMS	1 PBTO		
5	2 BUR3						
6	1 POM1	1 UPCS					
7	2 UPCS						
8	1 RSP2	1 BUR3					
9	1 BUR3	1 MCS2					
10	1 TOP2	2 ESC2	3 ESC3	1 BUR3	1 CRMS	1 SXA1	
11	1 PFI2	1 RSP1	1 BEMV	1 BUR3	1 ROB3	1 UDCS	
12	1 PFI2	2 RSP2	1 ESC2	1 BUR3	1 TOP2	1 FOR2	
13	5 BUR3	1 TOP2	3 RSP1	1 UPCS	1 SXA1		
14	2 BUR3	1 TOP2					
15	3 PFI2	12 BUR3	1 TOP2	1 UPCS	2 UDCS		
16	1 POM1	1 RSP2					
17	1 BEMV	1 BUR3	1 ESC3	2 RSP2	1 RSP1		
18	4 BUR3						
19	1 BUR3						
20	1 TOP2	1 BUR3					
21	2 MCS2	2 CONA	1 TOP2				
22	1 BUR3						
23	1 CRMS	5 BUR3	1 TOP1	1 TOP2			
24	1 TOP2	3 BUR3					
25	1 BUR3	1 ROB1					
26	3 POM1						
27	3 BEMV	2 TOP2					
28	5 TOP2	2 PFI2	2 TOP2	1 BUR3	1 RSP2		
29	4 RSP1	1 TOP1					
30	2 TOP1	1 FOR2					
31	2 PFI2	2 FRCC	3 TOP2				
32	1 TOP2	1 BEMV	2 BUR3				
33	1 ASS2	1 RSP3	1 TOP1	2 RSP2	1 BUR3	2 PFI2	1 TOP2
34	2 BUR3						
35	1 TOP1	1 BUR2					
36	1 UPCS	1 TOP1	1 TOP2	2 FRCC			

ADOC Inmates as of October 2018
Prior Felony Convictions

INMATE	PRIORS							
37	1 PFI2	1 TOP1						
38	2 UPCS	2 RSP1	5 BUR3	1 TOP2				
39	4 TOP1	1 FRCC	1 PPC2					
40	1 BEMV	1 BUR3						
41	1 UPCS	2 BUR3	1 BEMV	1 UDCS				
42	1 BEMV	3 PFI2	1 BUR3	1 RSP2				
43	1 RSP1	1 BEMV	1 TOP2					
44	2 BEMV	2 FRCC	1 RSP1	2 UPCS	1 PPC2	4 TOP2	1 TOP1	1 FOR2
45	1 TOP1	1 TOP2	1 TERR					
46	2 UPCS	1 ESC3	1 BUR3	2 TOP2				
47	1 UPCS	1 FRCC						
48	1 MCS2	1 UPCS	1 BUR3					
49	3 PFI2							
50	1 BUR2	2 BUR3						

ADOC Inmates as of October 2018
Prior Felony Convictions

Offense Code	Offense Literal
ASS2	Assault 2nd
BEMV	Breaking/Entering a Motor Vehicle
BUR2	Burglary 2nd
BUR3	Burglary 3rd
CRMS	Criminal Mischief 1st
CONA	Community Notification Act
ESC2	Escape 2nd
ESC3	Escape 3rd
FRCC	Fraud Use of Credit/Debit Card
FOR2	Forgery 2nd
MCS2	Manufacture Controlled Substance 2nd
PFI2	Possess Forged Instrument 2nd
PBTO	Possess Burglar's Tools
PPC2	Promote Prison Contraband 2nd
SXA1	Sexual Abuse 1st
ROB1	Robbery 1st
ROB3	Robbery 3rd
POM1	Possession of Marihuana 1st
UPCS	Possession of Controlled Substance
UDCS	Distribution of Controlled Substance
RSP1	Receiving Stolen Property 1st
RSP2	Receiving Stolen Property 2nd
RSP3	Receiving Stolen Property 3rd
TOP1	Theft of Property 1st
TOP2	Theft of Property 2nd
TERR	Terrorist Threats

ATTACHMENT D

Memorandum

Subject	Date
ADOC: Criminal Statutory Adjustments	April 22, 2019
To	**From**
File	U.S. Attorney Jay Town Northern District of Alabama

This memorandum serves only to convey suggested matters for discussion as they relate to the ongoing negotiations in the ADOC investigation. Nothing in this memorandum is intended to convey, either by the Department of Justice or by United States Attorney for the Northern District of Alabama, mandatory or non-negotiable legislative amendments that address the Alabama justice system and ADOC. The memo simply conveys discussion points that may allow all parties to more efficiently arrive at the appropriate, reasonable, and lawful remedial measures necessary to help alleviate constitutional concerns in ADOC.

Overcrowding and staffing levels in ADOC have persisted at unacceptable levels such that the safety and protection of both inmates and detention officers is compromised. Staffing levels are presumably addressed in a different section, but the appropriations for this solution is a legislative one.

The criminal laws in the State of Alabama dramatically impact the number of felons that fall under the jurisdiction of ADOC. Sentencing reform initiatives may have initially contributed to fewer individuals being directly confined for convictions of various felonies. However, virtually none of those sentencing reforms reduced the number of individuals under the jurisdiction of ADOC.[1] What is also too often lost in the criminal reform discussion is the fact that state probation officers are so inundated with probationers that they are, in most cases, unable to leave their desks to conduct live or in-person site visits with probationers. Typically, a monthly meeting and perhaps a urinalysis are the only requirements of most probationers. This unintended consequences of the current Alabama criminal statutes works against the maintenance and oversight of anti-recidivist behaviors of probationers. Probationers reoffend and then remain under the jurisdiction of ADOC

[1] It is important to note that exchanging prison time for probation does not alleviate the roles and responsibilities of the Board of Pardons and Paroles as it relates to those individuals on probation. In fact, the more felony convictions one has...regardless of prior periods of detention...the more likely the sentencing guidelines will result in a recommendation of confinement or an "in" sentencing worksheet. Adjustments to the state criminal code, even if just to adjust for inflation, would eliminate a great number of future felony convictions since those offenses would now be Class A misdemeanors.

for longer periods, often leading to confinement due to the commission of a more serious offense or due to a revocation of probation. The same is true for parolees. If the thresholds are adjusted, as suggested below, then more offenses would be charged as misdemeanors. In Alabama, the County or Municipal Probation Offices normally oversee probationers convicted of misdemeanor offenses. Every individual on County or Municipal Probation is an individual who is not under the jurisdiction of ADOC. In many cases, the probation is monitored directly by the court. The Sheriff could also maintain authority over defendants post-conviction to consider and issue parole to those inmates ordered into that Sheriff's custody.[2]

Reducing the ADOC jurisdiction of individuals on parole or probation would allow State Probation officers to be more impactful in the lives of their probationers. State Parole officers can ensure that parolees are not engaging in criminal behaviors. And the prison system has less individuals who, if revoked from probation, will be sent to the state penitentiary (which for non-violent offenses is typically a very brief stay, regardless of the sentence ordered).

The following statutory adjustment raise the thresholds on crimes that account for the vast majority of those cases docketed in the various judicial circuits in Alabama. The basic statutory adjustment for theft offenses is raise the Class B threshold from more than $2500 to more than $3500, the Class C threshold range from $1500-$2500 to $2500-$3500, the Class D threshold range from $500-$1499 to $1500-$2499, and the Class A misdemeanor threshold range from "less than $500" to "less than "$1500". These are simple thousand dollar adjustments. The controlled substance offenses raise the threshold from one prescription pill to "4 or fewer" and raise the number of Possession of Marihuana offenses for personal use from two to four.[3] A "summons system" is also considered, which would allow law enforcement the option to issue an "arrest summons", versus an arrest warrant, for certain delineated misdemeanor offenses while still maintaining the ability to issue an arrest warrant in their discretion in every circumstance. Also, Rule 7.2 under the Alabama Rules of Criminal Procedure reflects a significant upward adjustment to the Bond Schedule.[4]

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[2] Some states have given Sheriffs the ability to parole inmates in the county jail post-conviction. This ability should come with guidelines and rigid structuring, much like we have in the state Board of Pardons and Paroles. Financial considerations should never be a factor in releasing an inmate at any level. However, a fully deteriorated threat to the public and other factors could justify early release. The Sheriffs could also maintain jurisdiction over the individual, either through a monitor or through a recognizance bond that is revocable should a parolee reoffend or violate any of the terms of his or her release.

[3] In Alabama, the number of DUIs that it takes to become a felony is four. POM2 could be the same when for personal use.

[4] The Alabama Rules of Criminal Procedure are normally changed by the Alabama State Supreme Court, but can be changed or forced by legislative action.

THEFT OF PROPERTY IN THE FIRST DEGREE (13A-8-3)

(a) The theft of property which exceeds ~~two~~ three thousand five hundred dollars in value, or property of any value taken from the person of another, constitutes theft of property in the first degree.

(b) The theft of a motor vehicle, regardless of its value, constitutes theft of property in the first degree.

(c)(1) The theft of property which involves all of the following constitutes theft of property in the first degree:

a. The theft is a common plan or scheme by one or more persons; and

b. The object of the common plan or scheme is to sell or transfer the property to another person or business that buys the property with knowledge or reasonable belief that the property is stolen;

and

c. The aggregate value of the property stolen is at least one thousand dollars ($~~1~~2,000) within a 180-day period.

(2) If the offense under this subsection involves two or more counties, prosecution may be commenced in any one of those counties in which the offense occurred or in which the property was disposed.

(d) Theft of property in the first degree is a Class B felony.

THEFT OF PROPERTY IN THE SECOND DEGREE (13A-8-4)

(a) The theft of property between ~~one~~ two thousand five hundred dollars ($~~1~~2,500) in value and ~~two~~ three thousand five hundred dollars ($~~2~~3,500) in value, and which is not taken from the person of another, constitutes theft of property in the second degree.

(b) Theft of property in the second degree is a Class C felony.

(c) The theft of a firearm, rifle, or shotgun, regardless of its value, constitutes theft of property in the second degree.

(d) The theft of any substance controlled by Chapter 2 of Title 20 or any amendments thereto, regardless of value, constitutes theft of property in the second degree.

(e) The theft of any livestock which includes cattle, swine, equine or equidae, or sheep, regardless of their value, constitutes theft of property in the second degree.

THEFT OF PROPERTY IN THE THIRD DEGREE (13A-8-4.1)

(a) The theft of property that exceeds ~~five~~ fifteen hundred dollars ($1500) in value but does not exceed ~~one~~ two thousand four hundred and ninety-nine dollars ($~~1~~2,499) in value, and which is not taken from the person of another, constitutes theft of property in the third degree.

(b) Theft of property in the third degree is a Class D felony.

(c) The theft of a credit card or a debit card, regardless of its value, constitutes theft of property in the third degree.

THEFT OF PROPERTY IN THE FOURTH DEGREE (13A-8-5)

(a) The theft of property which does not exceed ~~five~~ fifteen hundred dollars ($1500) in value and which is not taken from the person of another constitutes theft of property in the fourth degree.

(b) Theft of property in the fourth degree is a Class A misdemeanor

THEFT OF LOST PROPERTY IN THE FIRST DEGREE (13A-8-7)

(a) The theft of lost property which exceeds ~~two~~ three thousand five hundred dollars ($~~2~~3,500) in value constitutes theft of lost property in the first degree.

(b) Theft of lost property in the first degree is a Class B felony.

THEFT OF LOST PROPERTY IN THE SECOND DEGREE (13A-8-8)

(a) The theft of lost property between ~~one~~ two thousand five hundred dollars ($~~1~~2,500) in value and ~~two~~ three thousand five hundred dollars ($~~2~~3,500) in value constitutes theft of lost property in the second degree.

(b) Theft of lost property in the second degree is a Class C felony.

THEFT OF LOST PROPERTY IN THE THIRD DEGREE (13A-8-8.1)

(a) The theft of lost property which exceeds ~~five~~ fifteen hundred dollars ($1500) in value but does not exceed ~~one~~ two thousand four hundred and ninety-nine dollars ($~~1~~2,499) in value constitutes theft of lost property in the third degree.

(b) Theft of lost property in the third degree is a Class D felony.

THEFT OF LOST PROPERTY IN THE FOURTH DEGREE (13A-8-9)

(a) The theft of lost property which does not exceed ~~five~~ fifteen hundred dollars ($1500) in value constitutes theft of lost property in the fourth degree.

(b) Theft of lost property in the fourth degree is a Class A misdemeanor.

THEFT OF SERVICES IN THE FIRST DEGREE (13A-8-10.1)

(a) The theft of services which exceeds ~~two~~ three thousand five hundred dollars ($~~2~~3,500) in value constitutes theft of services in the first degree.

(b) Theft of services in the first degree is a Class B felony

THEFT OF SERVICES IN THE SECOND DEGREE (13A-8-10.2)

(a) The theft of services between ~~one~~ two thousand five hundred dollars ($~~1~~2,500) in value and ~~two~~ three thousand five hundred dollars ($~~2~~3,500) in value constitutes theft of services in the second degree.

(b) Theft of services in the second degree is a Class C felony.

THEFT OF SERVICES IN THE THIRD DEGREE (13A-8-10.25)

(a) The theft of services which exceeds ~~five~~ fifteen hundred dollars ($1500) in value but does not exceed ~~one~~ two thousand four hundred and ninety-nine dollars ($~~1~~2,499) in value constitutes theft of services in the third degree.

(b) Theft of services in the third degree is a Class D felony.

THEFT OF SERVICES IN THE FOURTH DEGREE (13A-8-10.3)

(a) The theft of services which does not exceed ~~five~~ fifteen hundred dollars ($1500) in value constitutes theft of services in the fourth degree.

(b) Theft of services in the fourth degree is a Class A misdemeanor

RECEIVING STOLEN PROPERTY IN THE FIRST DEGREE (13A-8-17)

(a) Receiving stolen property which exceeds ~~two~~ three thousand five hundred dollars ($~~2~~3,500) in value constitutes receiving stolen property in the first degree.

(b) Receiving stolen property in the first degree is a Class B felony.

RECEIVING STOLEN PROPERTY IN THE SECOND DEGREE (13A-8-18)

(a) Receiving stolen property:

(1) Which is between ~~one~~ two thousand five hundred dollars ($~~1~~2,500) in value and ~~two~~ three thousand five hundred dollars ($~~2~~3,500) in value; or

(2) Of any value under the circumstances described in subdivision (b)(3) of Section 13A-8-16 ; constitutes receiving stolen property in the second degree.

(b) Receiving stolen property in the second degree is a Class C felony

RECEIVING STOLEN PROPERTY IN THE THIRD DEGREE (13A-8-18.1)

(a) Receiving stolen property which exceeds ~~five~~ fifteen hundred dollars ($1500) in value but does not exceed ~~one~~ two thousand four hundred and ninety-nine dollars ($~~1~~2,499) in value constitutes receiving stolen property in the third degree.

(b) Receiving stolen property in the third degree is a Class D felony.

RECEIVING STOLENT PROPERTY IN THE FOURTH DEGREE (13A-8-19)

(a) Receiving stolen property which does not exceed ~~five~~ fifteen hundred dollars ($1500) in value constitutes receiving stolen property in the fourth degree.

(b) Receiving stolen property in the fourth degree is a Class A misdemeanor.

THEFT BY FRAUDULENT LEASING OR RENTAL PROPERTY (13A-8-144)

The crime of theft by fraudulent leasing or rental of property shall be a Class A misdemeanor if the subject matter of the lease or rental agreement had a value of ~~five~~ fifteen hundred dollars ($1500) or less; if the value of such property was in excess of ~~five~~ fifteen hundred dollars ($1500), the crime shall be a Class C felony.

UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE IN THE FIRST DEGREE (13A-12-212)

(a) A person commits the crime of unlawful possession of controlled substance in the first degree if:

(1) Except as otherwise authorized, and consistent with 13a-12-212.1, he or she possesses a controlled substance enumerated in Schedules I through V.

(2) He or she obtains by fraud, deceit, misrepresentation, or subterfuge or by the alteration of a prescription or written order or by the concealment of a material fact or by the use of a false name or giving a false address, a controlled substance enumerated in Schedules I through V or a precursor chemical enumerated in Section 20-2-181 .

(b) Unlawful possession of a controlled substance is a Class D felony.

UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SECOND DEGREE (13A-12-212.1) [**New Statute****]**

(a) A person commits the crime of unlawful possession of controlled substance in the second degree if:

(1) Except as otherwise authorized, and consistent with 13a-12-212.1, he or she possesses four (4) or fewer pills of a controlled substance enumerated in Schedules II through V.

(b) Unlawful possession of a controlled substance in the second degree is a Class A misdemeanor.

UNLAWFUL POSSESSION OF MARIHUANA (13A-12-213)

(a) A person commits the crime of unlawful possession of marihuana in the first degree if, except as otherwise authorized:

(1) He or she possesses marihuana for other than personal use; or

(2) Upon a fourth or subsequent conviction of unlawful possession of marihuana in the second degree for his or her personal use only, ~~H~~he or she possesses marihuana for his or her personal use ~~only after having been previously convicted of unlawful possession of marihuana in the second degree or unlawful possession of marihuana for his or her personal use only~~.

(b) Unlawful possession of marihuana in the first degree pursuant to subdivision (1) of subsection (a) is a Class C felony.

(c) Unlawful possession of marihuana in the first degree pursuant to subdivision (2) of subsection (a) is a Class D felony.

Alabama Code Title 15. Criminal Procedure Section 15-10-1

An arrest may be made, under a warrant or without a warrant or by issuance of a summons, by any sheriff or other officer acting as sheriff or his deputy, or by any constable, acting within their respective counties, or by any marshal, deputy marshal or policeman of any incorporated city or town within the limits of the county.

Alabama Code Title 15. Criminal Procedure Section 15-10-3.1

(a) An officer may issue a summons to a person without an arrest warrant, on any day and at any time in any of the following instances:

(1) If a public offense has been committed or a breach of the peace threatened in the presence of the officer.

(2) When a misdemeanor has been committed, though not in the presence of the officer, by the person issued the summons, and the officer has reasonable cause to believe that the person arrested committed the felony.

(4) When the officer has reasonable cause to believe that the person arrested has committed a misdemeanor, although it may afterwards appear that a misdemeanor had not in fact been committed.

(5) When a charge has been made, upon reasonable cause, that the person arrested has committed a misdemeanor.

(b) An officer may not issue a summons to a person, on any day and at any time in any of the following instances:

(1) If the public offense that has been committed is a felony of any class;

(2) If the defendant currently has an outstanding warrant for his or her arrest;

(3) If the defendant is currently charged with an offense, whether by arrest warrant or arrest summons, and that charge, or those charges, remain pending;

(4) If the defendant is currently on probation or parole with any agency in the United States;

(5) If the public offense that has been committed is any of the following misdemeanor offenses:

i. Domestic Violence; ii. Driving Under the Influence; iii. Assault in the Third Degree; iv. Leaving the Scene of an Accident;

v. Attempt, Conspiracy, or Solicitation to commit a crime of violence, the commission of which would be a felony;

v. Attempt, Conspiracy, or Solicitation to commit a burglary, the commission of which would be a felony;

vi. Unlawful imprisonment;

vii. Attempt, Conspiracy, or Solicitation to commit Sexual Abuse in the First Degree;

viii. Sexual Abuse II; ix. Indecent Exposure;

xii. Failure to Register as a Sex Offender;

xi. Any offense under Alabama Code Section 13A-11-70, et seq (Section 13A-11-70 to 13A-11-85; Sections 13A-11-90);

xii. Any offense where the officer believes the individual to be a threat to society or unlikely to appear in court;

xiii. Any offense where the defendant is not from a surrounding state (Tennessee, Georgia, Florida, Mississippi).

(c) The discretion on whether to issue an arrest summons or an arrest warrant remains with the arresting officer. The arresting officer should always consider, when exercising that discretion, the following factors:

(1) Defendant's reputation and character;

(2) Defendant's prior criminal record;

(3) Violence or lack of violence in the alleged commission of the instant offense;

(4) Threats made against victims and/or victims;

(5) Residence of the defendant;

(6) Likelihood that the defendant will appear in court;

(7) Reasonable belief that the defendant poses a real and present danger of harm to any other person, to include himself, or to the public at large.

(d) A court of competent jurisdiction may cause warrants to issue to a defendant that was previously issued a summons if the court believes, under any circumstance, that an arrest warrant and bond, to include a no bond, would be appropriate. The court need not develop new information from all known or available information at the time of the summons to cause such warrants to issue.

(e) The prosecuting authority of competent jurisdiction may seek an arrest warrant to be served on a defendant that was previously issued a summons if the prosecuting authority believes, under any circumstance, that an arrest warrant and bond, to include a request for no bond, would be appropriate. The prosecuting authority need not develop new information from all known or available information at the time of the summons to cause such warrants to issue.

(1) The term "prosecuting authority" shall include the District Attorney, City Attorney, Municipal Attorney, Alabama Attorney General, all assigns or designated personnel from any of those prosecuting authorities, or any other special prosecuting authority designated by a court.

Alabama Rules of Criminal Procedure Rule 7.2 Release.

(b) BAIL SCHEDULE. The following schedule is established as a general rule for circuit, district and municipal courts in setting bail for persons charged with bailable offenses. Except where release is required in the minimum schedule amount pursuant to the Rules of Criminal Procedure, courts should exercise discretion in setting bail above or below the scheduled amounts.

BAIL SCHEDULE
Recommended Range

Felonies:

Capital felony	$250,000 to No Bail Allowed
Murder	$~~1~~250,000 to $ ~~1~~500,000
Class A felony	$100,000 to $ ~~6~~250,000
Class B felony	$ 50,000 to $ ~~3~~100,000
Class C felony	$ ~~2~~10,~~5~~000 to $ ~~1~~50,000
Drug manufacturing	$50,000 to $1,500,000
Drug trafficking	$50,000 to $1,500,000
Class D felony	$1,000 to $ 10,000

Misdemeanors (not included elsewhere in the schedule):

Class A misdemeanor	$ ~~300~~ 1000 to $ ~~6~~5,000
Class B misdemeanor	$ ~~3~~500* to $ ~~3~~1,000
Class C misdemeanor	$ ~~3~~500 to $ 1,000
Violation	$ 300 to $ 500

Municipal Violations	$ 300 to $ 1,000

Alabama Code Title 12. Bail Bond Fees 12-19-311

Bail Bond and Summons fees.

(a)(1) In addition to all other charges, costs, taxes, or fees levied by law on bail bonds or summons, additional fees as detailed in paragraph a. and paragraph b. shall be imposed on every bail bond or summons in all courts of this state.

The fee shall not be assessed in traffic cases, except for those serious traffic offenses enumerated in Title 32, Chapter 5A, Article 9. Where multiple charges arise out of the same incident, the bond or summons fee pursuant to this section shall only be assessed on one charge. For the purposes of this section, the term same incident shall be defined as the same date, location, and proximate time. If a charge or charges that were initiated by a summons result in a bond, then

both a summons and bail bond fee are due and owing. Where the charge is negotiating a worthless negotiable instrument, the fee shall not be assessed more than three times annually per person charged. The fees shall be assessed as follows:

a. A filing fee in the amount of thirty-five dollars ($35) on each bond or summons executed.

b. For a misdemeanor offense, a bail bond fee in the amount of 3.5 percent of the total face value of the bail bond or one hundred dollars ($100), whichever is greater, but not to exceed four hundred fifty dollars ($450). For a felony offense, a bail bond fee of 3.5 percent of the total face value of the bail bond or one hundred fifty dollars ($150), whichever is greater, but not to exceed seven hundred fifty dollars ($750). Except that if a person is released on a judicial public bail, recognizance, or signature bond, including a bond on electronic traffic and nontraffic citations, the fee shall be affixed at twenty-five dollars ($25). For purposes of this section, face value of bond shall mean the bond amount set by court or other authority at release, not the amount posted at release on bail.

(2) The fees assessed pursuant to paragraph a. of subdivision (1) of subsection (a) are required whether a summons, or the release from confinement or admittance to bail is based on cash, judicial public bail, personal recognizance, a signature bond, including a bond on electronic traffic and nontraffic citations for those serious traffic offenses enumerated in Title 32, Chapter 5A, Article 9, an appearance bond, a secured appearance bond utilizing security, a bond executed by a professional surety company, or a professional bail company using professional bondsmen; provided, however that no fee shall be assessed pursuant to paragraph a. of subdivision (1) of subsection (a) if a person is released on judicial public bail or on personal recognizance for a documented medical reason. The fee shall be assessed at the issuance, reissuance, or reinstatement of the bond.

(b) The fee in paragraph a. of subdivision (1) of subsection (a) shall be collected by either the official executing the bond or summons or by the clerk of the court. If the fee is collected by the official executing the bond or summons, it shall be collected at the execution of the bond or at the time of release. If the fee is collected by the clerk of the court, it shall be collected at the execution of the bond, at the time of release, or within two business days of release or initial appearance, whichever is sooner. The fee may be remitted via money order, electronic means, U.S. mail to the court clerk postmarked within 48 hours of release, or by any other method approved by the sheriff. If the fee is collected by an official other than the clerk of the court, the official shall remit the fee to the clerk of the court, attached to the executed bond or summons, within 30 days or upon adjudication or conviction of the underlying offense, whichever occurs first; if the fee is not collected by the official, the official shall provide documentation of the nonpayment, attached to the executed bond, to the clerk of the court within two business days. The clerk of the court may accept the payment of the fee if the clerk has the executed bond or summons, together with proof of nonpayment and charging instrument, in hand. This fee shall be paid by the bondsman, surety, guaranty, or person signing as surety for the undertaking of bail, or in the case of a summons, paid by the person to whom the summons was issued. If the person is released on own recognizance, judicial public bail, or non-custodial offense pursuant to Rule 20 of the Alabama Rules of Judicial Administration, the fee shall be assessed at the time of adjudication or at the time that any other fees and costs are assessed.

(c) Upon the failure to pay the fee in paragraph a. of subdivision (1) of subsection (a) and upon a finding of contempt in subsection (d), the bondsman, surety, guaranty, or individuals

required to pay the fee, to include the person to whom a summons was issued, shall be punished by a fine of not less than five hundred dollars ($500) in addition to the fee imposed in paragraph a. of subdivision (1) of subsection (a). The fine shall not be remitted, waived, or reduced unless the person(s) fined can show cause to the court that he or she cannot pay the fine in the reasonably foreseeable future. In addition, upon a finding of contempt, if the responsible party is a professional surety company or a professional bail company or otherwise operating as a bondsman under Alabama law, the presiding judge may revoke the entity or individual's authority to write or issue bonds pursuant to Section 15-13-159 or 15-13-160 until such time as the payment is rendered in full.

(d) If the fee in paragraph a. of subdivision (1) of subsection (a) is not paid in full within 30 days, the clerk of the court shall provide notification of the delinquency to the district attorney or prosecuting attorney on a monthly basis. Upon receipt of the certification of delinquency or failure to pay from the court, the district attorney or prosecuting attorney may take appropriate action which may include, but shall not be limited to, contempt proceedings. If contempt proceedings are initiated the district attorney or prosecuting attorney shall send notice by U.S. Mail, or any other electronic means likely to provide adequate notice, to the last known address, email address, or phone number of the person charged with the crime, bondsman, surety, guaranty, or person signing as surety for the undertaking of bail of the failure to pay, or in the case of a summons, to the person to whom the summons was issued, and provide them 10 days to remit payment in full pursuant to this section. If the surety is the person charged with the crime where the fee applies, the district attorney or prosecuting attorney may file a petition for contempt and the court shall set the contempt hearing on the person's next regularly scheduled court appearance. If the surety is not the person charged with the crime the district attorney or prosecuting attorney may file a petition for contempt with the court, which may, after hearing, find the bondsman, surety, guaranty or person signing as surety the undertaking of bail, or in the case of a summons, the person to whom the summons was issued, in contempt. The municipal court clerk shall provide a list to the prosecuting attorney and district attorney every 60 days that shall include, but not be limited to, the name of every person who has failed to pay the fee, the municipal case number, and the name of the person signing as surety for the undertaking bail. If the prosecuting authority of the municipality does not initiate contempt proceedings pursuant to this section within 30 days of receiving notice from the clerk of the court, the district attorney with jurisdiction may file the contempt petition in the municipal court. If the district attorney initiates contempt proceedings in a municipal case and the person is found in contempt, the fine shall be distributed as follows: 50% to the general fund of the municipality and 50% to the district attorney Solicitor's Fund.

(e)(1) The fee imposed on bail bonds or summons under paragraph b. of subdivision (1) of subsection (a) shall be assessed to the defendant and be imposed by the court when the defendant appears in court for adjudication or sentencing.

(2) Notwithstanding (e)(1), if the bail bond has been secured by cash, the conditions of release have been performed, and the defendant has been discharged from all obligations of the bond, or if the cash bail bond is forfeited the clerk of the court shall, unless otherwise ordered by the court, retain as the bail bond fee the amount pursuant to paragraph b. of subdivision (1) of subsection (a) and disburse the remainder as provided by law.

(3) Notwithstanding (e)(1), if the property bail bond has been secured, the conditions of release have been performed and the defendant has been discharged or released from all

obligations of the bond, or if the property bail bond is forfeited, then the bond shall be reduced to the bail bond fee amount pursuant to paragraph b. of subdivision (1) of subsection (a) and the property shall not be discharged or released by the court until the bail bond fee pursuant to paragraph b. of subdivision (1) of subsection (a) has been paid in full.

(4) The fees shall be collected pursuant to paragraph b. of subdivision (1) of subsection (a) by the clerk of the court. The fees pursuant to this section shall not be remitted, waived, or reduced unless the defendant proves to the reasonable satisfaction of the sentencing judge that the defendant is not capable of paying the same within the reasonably foreseeable future. The fees pursuant to this section shall not be remitted, waived, or reduced unless all other costs, fees, and charges of court are remitted or waived.

(5) The fees shall not reduce or affect the funds allocated to the office of the court clerk, the sheriff, the municipality, the district attorney, or the Alabama Department of Forensic Sciences under any local act or other funding mechanism under the law. These funds shall be in addition to and not in lieu of any funds currently available to the office of the court clerk, sheriff, municipality, the district attorney, and the Alabama Department of Forensic Sciences.

(f) The court clerks shall distribute on a monthly basis as other fees are distributed, the fees collected pursuant to paragraph a. of subdivision (1) of subsection (a) as follows: Ten percent from each fee shall be distributed either to the county general fund to be earmarked and distributed to the Sheriff's Fund, administered by the sheriff, in the county where the bond or summons was executed or, where the bond or summons is executed by the municipality, to the municipality; 45 percent of the fee to the court clerk's fund where the bond or summons was executed or where the bond or summons is executed by the municipal court, to the municipality; 45 percent of the fee to the Solicitor's Fund in the county where the bond or summons was executed. The bail bond or summons fee records shall be audited by the Department of Examiners of Public Accounts.

(g) The court clerks shall distribute on a monthly basis as other fees are distributed, the fees collected pursuant to paragraph b. of subdivision (1) of subsection (a) as follows: Twenty-one dollars and fifty cents ($21.50) from each fee shall be distributed to the county general fund which shall be earmarked and distributed to the Sheriff's Fund, administered by the sheriff, in the county where the bond or summons was executed or, where the bond or summons was executed by a municipality, to the municipality; 40 percent of the remainder of the fee to the court clerk's fund where the bond or summons was executed or where the bond or summons is executed by the municipal court, to the municipality; 45 percent of the remainder of the fee to the Solicitor's Fund in the county where the bond or summons was executed; five percent to the State General Fund and ten percent to the Alabama Forensic Services Trust Fund. The bail bond or summons fee records shall be audited by the Department of Examiners of Public Accounts.

ENCLOSURE

Memorandum: "ADOC: Criminal Statutory Adjustments",
dated October 29, 2019

Memorandum

Subject	Date
ADOC: Criminal Statutory Adjustments	October 29, 2019
To	**From**
File	U.S. Attorney Jay Town Northern District of Alabama

This memorandum serves only to convey suggested matters for discussion as they relate to the ongoing negotiations in the ADOC investigation. Nothing in this memorandum is intended to convey, either by the Department of Justice or by United States Attorney for the Northern District of Alabama, mandatory or non-negotiable legislative amendments that address the Alabama justice system and ADOC. The memo simply conveys discussion points that may allow all parties to more efficiently arrive at the appropriate, reasonable, and lawful remedial measures necessary to help alleviate constitutional concerns in ADOC.

The criminal laws in the State of Alabama dramatically impact the number of felons that fall under the jurisdiction of ADOC. In addition to the sentencing reform initiatives in which the State of Alabama has already implemented, there remain ongoing discussions about adjusting a variety of criminal statutes in Alabama that might tend to abate against the Eight Amendment issues identified by the Department of Justice in our Letter of Findings dated April 2, 2019. In the extraordinary authority granted me by the Department of Justice, I am able to suggest statutory changes to the Alabama State Legislature, Governor of Alabama, or other similarly engaged officials that might assist Alabama in abating against the Eighth Amendment issues afoot in Alabama prisons.

THE CLASSIFICATION OF AN OFFENSES AS "VIOLENT"

The debate about how many inmates in ADOC are incarcerated for a violent offense has caused some confusion and consternation among some. It is clear that definitions and data sets are important when providing analysis about the violent or non-violent nature of any offender or offense. Using data provided by ADOC seems to be the most desirable and logical clearinghouse for inmate and facility data. Alabama state law defines what constitutes a violent offense and it is reasonable for any Alabama official or citizen to analyze data base upon those definitions provided by Alabama statute. Specifically, Alabama Code Section 12-25-32 is the authority that defines what is a "VIOLENT OFFENSE" in Alabama, a classification which has a vast impact on the

entire criminal justice system in the State of Alabama[1] There, 50 types of offenses are specifically delineated as those attributed as "violent offenses".[2] Also included in the statute is criteria that justifies the "basis for defining these offenses as violent". At least one criterion must be met in order for an offense to be classified as a violent offense. The four criteria are (1) has an element involving a deadly weapon, dangerous weapon, or physical force against a person, (2) involves a substantial risk of physical injury to a person, (3) is a non-consensual sex offense, or (4)[3] is particularly reprehensible.[4] In reviewing the delineated crimes, it appears that is possible that at least some of those statutes listed may not adequately or neatly fit within any of the first three criteria listed under the statute.

Offense Classification & Pardons, Paroles, and Probation

The Bureau of Pardons and Paroles, to include the Alabama Parole Board have particular actions or considerations that the agency contemplates based upon the classification of an offense committed by the offender under review for parole or on probation or parole already.[5] The classification of an offense and offender informs the parole board in order to adequately and effectively consider the parole inmates from ADOC while balancing public safety within reasonable probability.[6] It is also significant that the Bureau be able to appropriately prescribe terms and conditions to a parolee or probationer that will most likely result in that non-recidivating behaviors. The classification of offense is a factor considered for monitoring purposes by the Bureau.[7] Moreover, effective and accurate classification of offenders and offenses will better clarify the terms of conditions fashioned by a sentencing judge or state probation officer when awarding a suspended sentence accompanied by probation. Therefore, the classification of a particular offense as either violent or non-violent is of great importance.

State vs Federal Definitions of "Violent Offenses"

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[1] Ala. Code 12-25-32 (15). While this Subsection of the Code goes to great lengths to specifically identify violent offenses under the Alabama Criminal Code, the same statute defines "NONVIOLENT OFFENSES" as "[a]ll offenses which not violent offenses. See Ala. Code 12-25-32(7).

[2] Ala. Code 12-25-32(15)(a)

[3] This particular criterion is so general that it is hard to find a violation of the criminal code, especially where a victim of some sort is involved (e.g. theft victim) where that victim might consider such criminal behavior "reprehensible". Therefore, no analysis was given under this lone criterion under this memorandum.

[4] Ala. Code Section 12-25-32(15)(b).

[5] See generally Ala. Code Section 15-22-1, *et. seq*. It is my understanding, and has been reported, that at least some of the internal policies and strategies employed by the Bureau of Pardons and Paroles are under review, may change, or have changed. It is important that this variable be considered after the date of this memorandum.

[6] Ala. Code Section 15-22-26.

[7] It is my understanding that the Ohio Risk Assessment tool is used to consider myriad factors in order for the Bureau of Pardons and Paroles to most effectively and accurately develop a monitoring program for a given parolee or probationer. The classification of the parolee/probationer's offenses, both current and prior, is a significant factor.

Moreover, some of the offenses listed in Ala. Code Section 12-25-32(15)(a) might not be considered violent offenses under a federal definition.[8] For instance, Title 18 U.S.C 16 specifically defines a crime of violence as (1) an offense that has an element of the use or threat of use of force against the person or property of another OR (2) a felony offense that, by its very nature, involves a ***substantial risk*** of physical force against the person or property of another in the commission of that offense.[9] This definition certainly would be considered by any federal court, should litigation ensue in the ADOC case, as determining what type of offense and offender should be considered violent. There are variety of reasons that such may be significant, none discussed here. Therefore, if the Alabama definitions were adjusted to comport with the federal definition of "VIOLENT OFFENSES", at least some of the offenses delineated in the Ala. Code Section 12-25-32(15)(a) would not meet the definition and would therefore be considered a non-violent offense under Ala. Code Section 12-25-32(7).

Data and the Difference with Definitions

Data is often used when discussing the type of offender that resides in Alabama prisons. It is often declared that 80-85% of all inmates in ADOC facilities are classified as violent offenders incarcerated for violent offenses. Again, it is perfectly reasonable to classify all Alabama offenders consistent with Ala. Code Section 12-25-32(15). However, it is also the express duty of the Alabama Sentencing Commission to "review state sentencing structure, including laws, policies, and practices, and recommend changes" to the Alabama sentencing structure.[10] In fact, legislative findings were introduced in the Sentencing Commission statute that state the goal of the state punitive system is to be "fair, effective, and efficient" by "taking into account" data and any relevant factor that might tend to improve the system overall. This reasonable and responsible view of the evolution of Alabama's criminal justice most certainly includes how we define criminality and what types of offenses fit within those provided definitions.

In the fifty or so offenses listed as "violent offenses" in the statute, at least three offenses are worthy of review as to whether or not they contain an element of violence or threat of violence. These offenses might be as follows: Burglary in the Third Degree,[11][12] Drug Trafficking Offenses,[13] and Elder Abuse in the Second Degree.[14] These offenses might be justifiably re-classified as "non-violent offenses" by "taking into account" the elements of these offenses. Upon

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[8] This point is significant in that should Alabama enter into litigation in federal court that involves defining the types of inmate and offenders, based in large part on the offenses those offenders committed that resulted in their incarceration, then there is at least some likelihood, if not a great certainty, that the federal definition of "violent offense" might be used by the federal court.

[9] See 18 U.S.C. 16, *et seq.*

[10] See Ala. Code Section 12-25-9(1).

[11] See Ala. Code Section 12-25-31.1.

[12] According to the Alabama Sentencing Commission, in April 2019 there were 674 inmates under this offense title.

[13] According to the Alabama Sentencing Commission, in April 2019 there were 505 inmates under this offense title.

[14] According to the Alabama Sentencing Commission, in April 2019 there were 8 inmates under this offense title.

doing so, the percentage of violent offenses/offenders in Alabama's prisons drops in a relatively significant manner.

To support this contention, data was provided by the Alabama Sentencing Commission from April 2019.[15] Upon review, that data was juxtaposed against those offenses delineated as "Violent Offenses" in Ala. Code Section 12-25-32(15). This gave a total number of violent offenses, by class of felony, under the current definitions. Those numbers were weighed against the ADOC facility data for the same time period, April 2019, in order to compare the total number of violent offense inmates with the total number of inmates in ADOC custody.[16]

Under the State of Alabama's current definition of "violent offenses", the findings were as follows in approximate numbers:

Applying Current Alabama Definition of "Violent Offense"

1. April 2019 Felony Inmates: 21,058[17]
2. Class A Violent Offense Inmates: 10,884
3. Class B Violent Offense Inmates: 3,086
4. Class C Violent Offense Inmates: 1,932
5. Class D Violent Offense Inmates: -0-
6. Total Violent Offense Inmates: 15,902
7. Percentage of Violence Offense Inmates vs Total Felony Inmates: 75.5%[18]

Under the state definition, 75.5% of the total inmate population was incarcerated for a violent offense.

The federal definition of "violent offense"[19] was then applied to each offense that comprised the sum of "Total Violent Offense Inmates" listed under the current definition above (15,902). By applying the federal definition, the number of violent offenses diminished marginally, only eliminating three non-violent offenses. However, upon application of the federal definition, the number of violent offense inmates diminished considerably.

Under the federal definition, the findings were as follows in approximate numbers:

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[15] See Attachment A.

[16] See Attachment B.

[17] Alabama Sentencing Commission; NOTE: This number include "In-house inmates" and ATEF inmates. The ADOC CUSTODY POPULATION listed on the ADOC website lists the number of inmates 21,119 (which is a combination of "in-house inmates" and ATEF inmates. This delta of 61 inmates is the result of ADOC's population literally changing hourly, certainly daily. This amount is negligible and thus the Alabama Sentencing Commission number will be the basis for any percentages drawn in the text herein.

[18] Formula: Total of Violent Offense Inmates (15,902) divided by Total Number of Inmates (21,058).

[19] See 18 U.S.C. 16.

Applying Federal Definition of "Violent Offense"

1. April 2019 Felony Inmates: 21,058[20]
2. Class A Violent Offense Inmates: 10,379[21]
3. Class B Violent Offense Inmates: 3,078[22]
4. Class C Violent Offense Inmates: 1,260[23]
5. Class D Violent Offense Inmates: -0-[24]
6. Total Violent Offense Inmates: 14,717
7. Percentage of Violence Offense Inmates vs Total Felony Inmates: 69.8%[25]

Under the federal definition of "Violent Offense", there were 1,185 fewer inmates classified as violent offense inmates under the federal definition as opposed to the current Alabama statutory definition. This amounts to approximately 6% of the total felony inmate population and is around 8% of the violent offense inmate population. These numbers are significant for a variety of reasons. Non-violent offenders are typically eligible for parole sooner, might be supervised less arduously while on probation or parole, and are presumptively scored under the Alabama Sentencing Guidelines making incarceration less likely for non-violent offenses.[26]

Moreover, the permutations seem endless when analyzing the impact on sentencing worksheet scores if certain offenses are reclassified as non-violent since the point value would be reduced, the total worksheet score would diminish accordingly, and the likelihood of incarceration would initially recede. A recent statistical sample of current felony inmates drawn at random did produce some patterns that might have been expected.[27] Generally, those 50 inmates had a total of 250 prior felony

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[20] Alabama Sentencing Commission; NOTE: This number include "In-house inmates" and ATEF inmates. The ADOC CUSTODY POPULATION listed on the ADOC website lists the number of inmates 21,119 (which is a combination of "in-house inmates" and ATEF inmates. This delta of 61 inmates is the result of ADOC's population literally changing hourly, certainly daily. This amount is negligible and thus the Alabama Sentencing Commission number will be the basis for any percentages drawn in the text herein.

[21] Formula: 10,884 (Total Class A Violent Offenses: State Definition) - 501 (Trafficking) – 4 (Trafficking Enterprise) = 10,379, per the federal definition of violent offense.

[22] Formula: 3,086 (Total Class B Violent Offenses: State Definition) – 8 (Elder Abuse & Neglect 2nd) = 3,078, per the federal definition of violent offense.

[23] Formula: 1,932 (Total Class C Violent Offenses: State Definition) – 672 (Burglary 3rd) = 1,260 , per the federal definition of violent offense.

[24] No change; there are no violent Class D offense inmates in ADOC in the ascribed data set.

[25] Formula: New Total of Violent Offense Inmates (14,717) divided by Total Number of Inmates (21,058).

[26] There are a number of authorities to support the contentions expressed here. The statutory and policy requisites of the Bureau of Pardons and Paroles, the parole eligibility guidelines, probation guidelines, and guidelines for implementation of the Alabama Sentencing Guidelines per the Alabama Sentencing Commission all serve to source the thought here. That said, it is just as persuasive that most any experienced probation/parole officer, investigator, prosecutor, or judge employed by the State of Alabama could tell you the same without having read one policy missive or state law.

[27] See Attachment C; this was discussed in a previous memo I generated on May 14, 2019 entitled "Prison Populations & Sentencing Reform", which was distributed to various stakeholders and interested parties, to include the Alabama District Attorneys Association, Alabama Attorney General, and the Office of Governor Kay Ivey.

convictions.[28] Of those 250, the priors were broken into four classes of felonies: property,[29] drugs,[30] violent,[31] and other.[32] Nearly 80% of the 250 prior felony convictions were for property offenses and 12% were drug offenses.[33] Only 2% of the 250 prior felony convictions were for violent offenses.[34] Those individual felony offenses are broken down generally, and most notably, as follows:

- Burglary 3rd Degree – 28%;
- Theft 1st & 2nd Degrees – 20%;
- Receiving Stolen Property 1st & 2nd Degrees – 10%;
- Breaking & Entering a Vehicle – 8%;
- Possession of a Forged Instrument – 7%;
- Possession of a Controlled Substance – 6.5%;
- Possession of Marihuana 1st Degree – 2%.[35]

If just two offenses were combined (Burglary 3rd Degree & Theft of Property 2nd Degree), then those prior felony convictions would account for 40% of the 250 prior felony convictions represented in the sample.[36]

Since Burglary in the Third Degree represents such a large amount of prior felony convictions, and is considered a violent offense under the state definition of "violent offense", this criminal code violation alone is worthy of reconsideration for reclassification as a crime of violence. The state definition may be having the net effect of inflating the guidelines scores and resulting in more presumptive "in" worksheets. Moreover, 3% of the "violent inmates" incarcerated currently are incarcerated for the offense of Burglary in the Third Degree.[37]

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[28] Ibid.

[29] Property Felonies: Theft (all classes), RSP (all classes), Burglary 3rd Degree, B&E, FUCC, POFI, Forgery (all classes), Possession of Burglar Tools, Criminal Mischief. NOTE: under the current state definition, Burglary in the Third Degree is a violent offense.

[30] Drug Felonies: POM1, POCS/UPCS, Unlawful Distribution of a CS, Manufacturing of a CS 2nd Degree.

[31] Violent Felonies: Capital Murder, Murder, Assault (all classes), DV (all classes), Burglary 1st & 2nd Degrees; Robbery (all classes), Sexual Abuse, Rape (all classes), Terrorist Threats.

[32] Other Felonies: All other felonies, but for the purposes of those reviewed in the aforementioned sample, Escape (all classes), Promoting Prison Contraband, SORNA.

[33] Source: Alabama Sentencing Commission.

[34] Ibid; this number excludes the three offenses suggested for exclusion in the discussion herein regarding the federal definition of violent offenses.

[35] Ibid.

[36] Ibid.

[37] The elements of Burglary in the Third Degree are that the defendant knowingly (1) entered or remained unlawfully in a dwelling or building with the intent to commit a crime therein; (2) enter or remains unlawfully in an occupied building with the intent to commit a crime therein; or (3) enters or remains unlawfully in an unoccupied building with the intent to commit a crime therein. See Ala. Code 13A-7-7. A vast majority of prosecutions for Burglary 3rd is for entry into an unoccupied building.

Discussions of Accurate Data

The discussion about the number of violent and non-violent offenders in Alabama prisons is an important discussion. Equally important is the use of accurate data to inform on various aspects of the Alabama prison population. It has been expressed repeatedly that upwards of 80-85% of the Alabama prison population is incarcerated for a violent offense. This number, if true, obviously presents great challenges when considering the State of Alabama's overcrowding considerations. The vast majority of prisoners in Alabama's prisons are, indeed, incarcerated for violent offenses. In this April 2019 data set, 75.5% of all inmates are incarcerated for violent offenses under the current statutory definition. However, when the federal definition is applied to the same data set, the percentage of inmates incarcerated for violent offenses drops to 69.8%. Neither approach 85%, a number which has a tendency to anticipate a lack of ability for alternatives to incarceration at the current levels in ADOC. Using accurate data will drive accurate discourse.

The Possible Impact of Reclassifying Violent Offenses on Sentencing Guidelines

Furthermore, the Alabama Sentencing Standards Manual provides that presumptive sentencing standards apply to non-violent offenses and that the sentence in those types of cases shall allow a departure in rare cases where aggravating or mitigating are proven and agreed upon in the sound discretion of the sentencing judge.[38] Conversely, the voluntary sentencing guidelines mandate that the sentencing judge only consider the guidelines recommendation, but may depart freely in their sound discretion. Normally this is an upward departure. Obviously, then, the classification or re-classification of an offense as non-violent allows for sentencing flexibility that presumptive guidelines might not. In other words, a sentencing recommendation for probation or an alternative sentence can be accepted by the court under the voluntary guidelines, even if the sentencing worksheet suggests incarceration. Such is normally not the case if the presumptive guidelines called for incarceration (otherwise known as an "in" worksheet) because the sentencing judge has limited discretion as to the award of confinement. Also, non-violent offenses are weighted or "scored" differently than violent offenses. This perfectly reasonable attribution of criminality is significant, but when common offenses are re-classified as non-violent then the worksheet "scores" recede such that an "in" worksheet might then become an "out" worksheet.[39]

The three offenses suggested for re-classification above per the federal definition of "violent offense" are Burglary in the 3rd Degree, Trafficking Offenses, and Elder Neglect 2nd. These offenses have a point value much higher than similar non-violent offenses. For instance, on the Property Crime Sentencing Worksheet, Burglary in the 3rd Degree (a Class C felony) has a point value of 11. The rest of the Class C felony offenses have a point value of 9. A Property "in" worksheet only needs a total of 15 for a recommendation of incarceration. The value of only 2 points may seem insignificant, but the same Property Crime Sentencing Worksheet values 4 prior adult felony convictions as worth 2 points. Obviously, every point on a sentencing worksheet has

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[38] See Ala. Code Section 12-25-35.

[39] The "in" or "out" worksheet is common vernacular which refers to the sentencing recommendation regarding incarceration provided by the scores on the Alabama Sentencing Guidelines Worksheets. A number of aggravating factors, to include criminal history, are added to a sum. The guidelines have thresholds where the sentence recommended is "in prison" or "out of prison/non-prison".

significance.[40] Evaluation of the value of certain offenses, especially those without a single element of violence in its proofs, is worthy of consideration for reclassification as a non-violent offense.

Conclusion

Examining the definition of what constitutes a "Violent Offense" in the State of Alabama is worthy of reconsideration. The impact of such reclassification may have far-reaching effects on the future prison population in Alabama, the ability for greater implementation of prevention methods, and allow Alabama to further abate against the Eighth Amendment issues in the Alabama Department of Corrections. The current definition of violent offenses, per Ala. Code Section 12-25-32(15) and the offenses delineated therein, may be worthy of review as over-inclusive.

Based on the foregoing suggestions, such statutory changes may be properly constructed as follows:

Section 12-25-32 (as Amended)

Definitions.

For the purposes of this article, the following terms have the following meanings:
(1) COMMISSION. The Alabama Sentencing Commission, established as a state agency under the Supreme Court by this chapter.
(2) CONTINUUM OF PUNISHMENTS. An array of punishment options, from probation to incarceration, graduated in restrictiveness according to the degree of supervision of the offender including, but not limited to, all of the following:
a. Active Incarceration. A sentence, other than an intermediate punishment or unsupervised probation, that requires an offender to serve a sentence of imprisonment. The term includes time served in a work release program operated as a custody option by the Alabama Department of Corrections or in the Supervised Intensive Restitution program of the Department of Corrections pursuant to Article 7, commencing with Section 15-18-110, of Chapter 18 of Title 15.
b. Intermediate Punishment. A sentence that may include assignment to any community based punishment program or may include probation with conditions or probation in conjunction with a period of confinement. Intermediate punishments include, but are not limited to, all of the following options:
1. A split sentence pursuant to Section 15-18-8.
2. Assignment to a community punishment and corrections program pursuant to the Alabama Community Punishment and Corrections Act or local acts.
3. Assignment to a community based manual labor work program pursuant to Sections 14-5-30 to 14-5-37, inclusive.
4. Intensive probation supervision pursuant to Section 15-22-56.
5. Cognitive and behavioral training.
6. Community service work.
7. County probation.
8. Day fines or means-based fines.

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[40] There is no readily accessible data set that would suggest how many prior felony convictions for violent offenses are "behind" the sentences of those inmates currently incarcerated for violent offenses.

9. Day reporting.
10. Drug or alcohol testing.
11. Drug court programs.
12. Educational programs.
13. Electronic monitoring.
14. Home confinement or house arrest.
15. Ignition interlock.
16. Intermittent confinement.
17. Jail and prison diversion programs.
18. Job readiness and work.
19. Literacy and basic learning.
20. Pretrial diversion programs.
21. Residential drug treatment.
22. Residential community based punishment programs in which the offender is required to spend at least eight hours per day, or overnight, within a facility and is required to participate in activities such as counseling, treatment, social skills training, or employment training, conducted at the residential facility or at another specified location.
23. Restorative justice as established in Section 12-17-226.6.
(i) Victim impact panels.
(ii) Voluntary victim offender conferencing.
(iii) Voluntary victim offender mediation.
24. Self-help groups.
25. Sobrietor or breath alcohol remote monitoring.
26. Substance abuse education and treatment.
27. Treatment alternatives to street crime (TASC).
28. Voice recognition, curfew restriction, or employment monitoring.
29. Work release, other than those work release programs operated by the Alabama Department of Corrections, as a custody option.
c. Unsupervised Probation. A sentence in a criminal case that includes a period of probation but does not include supervision, active incarceration, or an intermediate punishment.
d. Post-release Supervision. A mandatory period of supervision following sentences of active incarceration as defined in paragraph a. that may include one or more intermediate punishment options.
(3) COURT. Unless otherwise stated, a district or circuit court exercising jurisdiction to sentence felony offenders.
(4) EVIDENCE-BASED PRACTICES. Policies, procedures, programs, and practices proven by widely accepted and published research to reliably produce reductions in recidivism.
(5) FELONY OFFENSE. A noncapital felony offense.
(6) INITIAL VOLUNTARY STANDARDS. The voluntary sentencing standards effective on October 1, 2006. These standards were based on statewide historic sentences imposed with normative adjustments designed to reflect current sentencing policies.
(7) NONVIOLENT OFFENSE. All offenses which are not violent offenses.
(8) NONVIOLENT OFFENDER. Any offender who does not qualify as a violent offender pursuant to subdivision (14).
(9) OFFENDER. A person convicted of a noncapital felony offense.
(10) RELEASE AUTHORITY. Any public official, agency, or other entity authorized by law to release a sentenced offender from incarceration or other conditions of a sentence.
(11) VALIDATED RISK AND NEEDS ASSESSMENT. An actuarial tool that has been validated and established by administrative rule in Alabama to determine the likelihood of an offender engaging in future criminal behavior. The Board of Pardons and Paroles and the Department of Corrections shall adopt compatible

tools to conduct a validated risk and needs assessment upon offenders within the jurisdiction of the state. A validated risk and needs assessment shall include, but not be limited to, an offender's prior criminal history, the nature and severity of the present offense, and potential for future violence.
(12) TRUTH-IN-SENTENCING STANDARDS. Truth in sentencing is scheduled to become effective October 1, 2020.
(13) UNDER SUPERVISION. All offenders under the supervision of any criminal justice agency or program including, but not limited to, any of the following entities:
a. The Alabama Department of Corrections.
b. State or county probation offices.
c. Community corrections programs pursuant to Alabama Community Corrections Act.
d. Jails.
e. State or local law enforcement agencies.
f. Any court.
(14) VIOLENT OFFENDER. A violent offender is an offender who has been convicted of a violent offense, or who is determined by the trial court judge or a release authority to have demonstrated a propensity for violence, aggression, or weapons related behavior based on the criminal history or behavior of the offender while under supervision of any criminal justice system agency or entity.
(15) VIOLENT OFFENSE.
a. For the purposes of this article, a violent offense includes each of the following offenses, or any substantially similar offense to those listed in this subdivision created after June 20, 2003:
1. Capital murder pursuant to Sections 13A-6-2 and 13A-5-40.
2. Murder pursuant to Section 13A-6-2.
3. Manslaughter pursuant to Section 13A-6-3.
4. Criminally negligent homicide pursuant to Section 13A-6-4.
5. Assault I pursuant to Section 13A-6-20.
6. Assault II pursuant to Section 13A-6-21.
7. Compelling street gang membership pursuant to Section 13A-6-26.
8. Kidnapping I pursuant to Section 13A-6-43.
9. Kidnapping II pursuant to Section 13A-6-44.
10. Rape I pursuant to Section 13A-6-61.
11. Rape II pursuant to Section 13A-6-62.
12. Sodomy I pursuant to Section 13A-6-63.
13. Sodomy II pursuant to Section 13A-6-64.
14. Sexual torture pursuant to Section 13A-6-65.I.
15. Sexual abuse I pursuant to Section 13A-6-66.
16. Enticing a child to enter a vehicle for immoral purposes pursuant to Section 13A-6-69.
17. Stalking pursuant to Section 13A-6-90.
18. Aggravated stalking pursuant to Section 13A-6-91.
19. Soliciting a child by computer pursuant to Section 13A-6-110.
20. Domestic violence I pursuant to Section 13A-6-130.
21. Domestic violence II pursuant to Section 13A-6-131.
22. Burglary I pursuant to Section 13A-7-5.
23. Burglary II pursuant to Section 13A-7-6.
~~24. Burglary III pursuant to subdivision (1) or subdivision (2) of subsection (a) of Section 13A-7-7.~~
25. Arson I pursuant to Section 13A-7-41.
26. Criminal possession of explosives pursuant to Section 13A-7-44.
27. Extortion I pursuant to Section 13A-8-14.
28. Robbery I pursuant to Section 13A-8-41.
29. Robbery II pursuant to Section 13A-8-42.

30. Robbery III pursuant to Section 13A-8-43.
31. Pharmacy robbery pursuant to Section 13A-8-51.
32. Terrorist threats pursuant to Section 13A-10-15.
33. Escape I pursuant to Section 13A-10-31.
34. Promoting prison contraband I pursuant to Section 13A-10-36, involving a deadly weapon or dangerous instrument.
35. Intimidating a witness pursuant to Section 13A-10-123.
36. Intimidating a juror pursuant to Section 13A-10-127.
37. Treason pursuant to Section 13A-11-2.
38. Discharging a weapon into an occupied building, dwelling, automobile, etc., pursuant to Section 13A-11-61.
39. Promoting prostitution I pursuant to Section 13A-12-111.
40. Production of obscene matter involving a minor pursuant to Section 13A-12-197.
~~41. Trafficking pursuant to Section 13A-12-231.~~
42. Child abuse pursuant to Section 26-15-3.
43. Elder abuse pursuant to Section 38-9-7 (only if recklessness results in physical harm).
44. Terrorism pursuant to Section 13A-10-152.
45. Hindering prosecution for terrorism pursuant to Section 13A-10-154.
46. Domestic violence III pursuant to subsection (d) of Section 13A-6-132.
47. Domestic violence by strangulation or suffocation pursuant to Section 13A-6-138.
48. Human trafficking I pursuant to Section 13A-6-152.
49. Human trafficking II pursuant to Section 13A-6-153.
50. Hindering prosecution in the first degree pursuant to Section 13A-10-43.
51. Any substantially similar offense for which an Alabama offender has been convicted under prior Alabama law or the law of any other state, the District of Columbia, the United States, or any of the territories of the United States.
b. The basis for defining these offenses as violent is that each offense meets at least one of the following criteria:
1. Has as an element, the use, attempted use, or threatened use of a deadly weapon or dangerous instrument or physical force against the person of another.
2. Involves a substantial risk of physical injury against the person of another.
3. Is a nonconsensual sex offense.
~~4. Is particularly reprehensible.~~
c. Any attempt, conspiracy, or solicitation to commit a violent offense shall be considered a violent offense for the purposes of this article.
d. Any criminal offense which meets the criteria provided in paragraph b. enacted after 2003.
(Act 2003-354, p. 948, §3; Act 2009-742, p. 2220, §1; Act 2012-473, p. 1304, §1; Act 2014-346, p. 1289, §1(b)(3); Act 2015-185, §1.)

ATTACHMENT
A

ADOC Class A Felony Inmates	Class A
MURDER	3,284
ROBBERY 1ST	2,591
RAPE 1ST	1,042
CAPITAL MURDER	1,005
BURGLARY 1ST	844
ATTEMPTED MURDER	672
TRAFFICKING DRUGS	501
SODOMY 1ST	498
MANUFACTURE CONTROLLED SUBSTANCE 1ST	366
KIDNAPPING 1ST	206
PORN PARENT/MINORS IN SEX	79
ARSON 1ST	54
DOMESTIC VIOLENCE 1ST	47
SEXUAL TORTURE/ABUSE	22
FACILITATE TRAVEL TO MEET CHILD FOR SEX	17
CONSPIRACY-MURDER	13
DIS/SALE DRUGS TO MINOR	4
HUMAN TRAFFICKING 1ST	4
TRAFFICK ENTERPRISE CRIM DRUG	4
CHEMICAL ENDANGER EXPOSE MINOR CONT SUBS - DEATH	1
ELDER ABUSE & NEGLECT 1ST	1
Total Class A	11,255

ADOC Class B Felony Inmates	Class B
DISTRIBUTION OF CONTROLLED SUBSTANCE	914
MANSLAUGHTER	630
THEFT OF PROPERTY 1ST	627
ASSAULT 1ST	454
SEXUAL ABUSE OF CHILD < 12 YEARS	390
RECEIVING STOLEN PROPERTY 1ST	360
BURGLARY 2ND	298
ROBBERY 2ND	294
RAPE 2ND	271
MANUFACTURE CONTROLLED SUBSTANCE 2ND	255
DISCHARGE GUN OCCUPIED BLDG/VEHICLE	133
DOMESTIC VIOLENCE 2ND	129
CHEMICAL ENDANGER EXPOSE MINOR CONT SUBS - SER PHY INJ	79
ESCAPE 1ST	76
KIDNAPPING 2ND	67
SODOMY 2ND	64
ATTEMPT-RAPE 1ST	60
POSS FORGED INSTRUMENT 1ST	50
ARSON 2ND	48
DOMESTIC VIOLENCE - STRANGLE/SUFFOCATE	48
SOLICITATION OF CHILD BY COMPUTER	40
DRUG PARAPHERNALIA TO MINOR	26
THEFT BY DECEPTION 1ST	22
TRAFFICKING STOLEN IDENTITES	17
CONSPIRACY-ROBBERY 1ST	16
ATTEMPT-SODOMY 1ST	15
ATTEMPT-BURGLARY 1ST	11
ATTEMPT-KIDNAPPING 1ST	11
BRING STOLEN PROPERTY INTO STATE 1ST	8
ELDER ABUSE & NEGLECT 2ND	8
PORN OBSCENE MATTER DISPLAY MINOR	6
STALKING AGGRAVATED	6
FINANCIAL EXPLOITATION OF ELDER 1ST	5
HUMAN TRAFFICKING 2ND	4
ATTEMPT-ROBBERY 1ST	3
FORGERY 1ST	3
PROMOTING PROSTITUTION 1ST	3
SCHOOL EMPLOYEE SEXUAL ACT STUDENT < 19 YRS	3
DESTRUCTIVE DEVICE - POSS/DIST BIO WEAPON	2
PUBLIC OFFICIAL - USE POSITION FOR PERSONAL GAIN	2

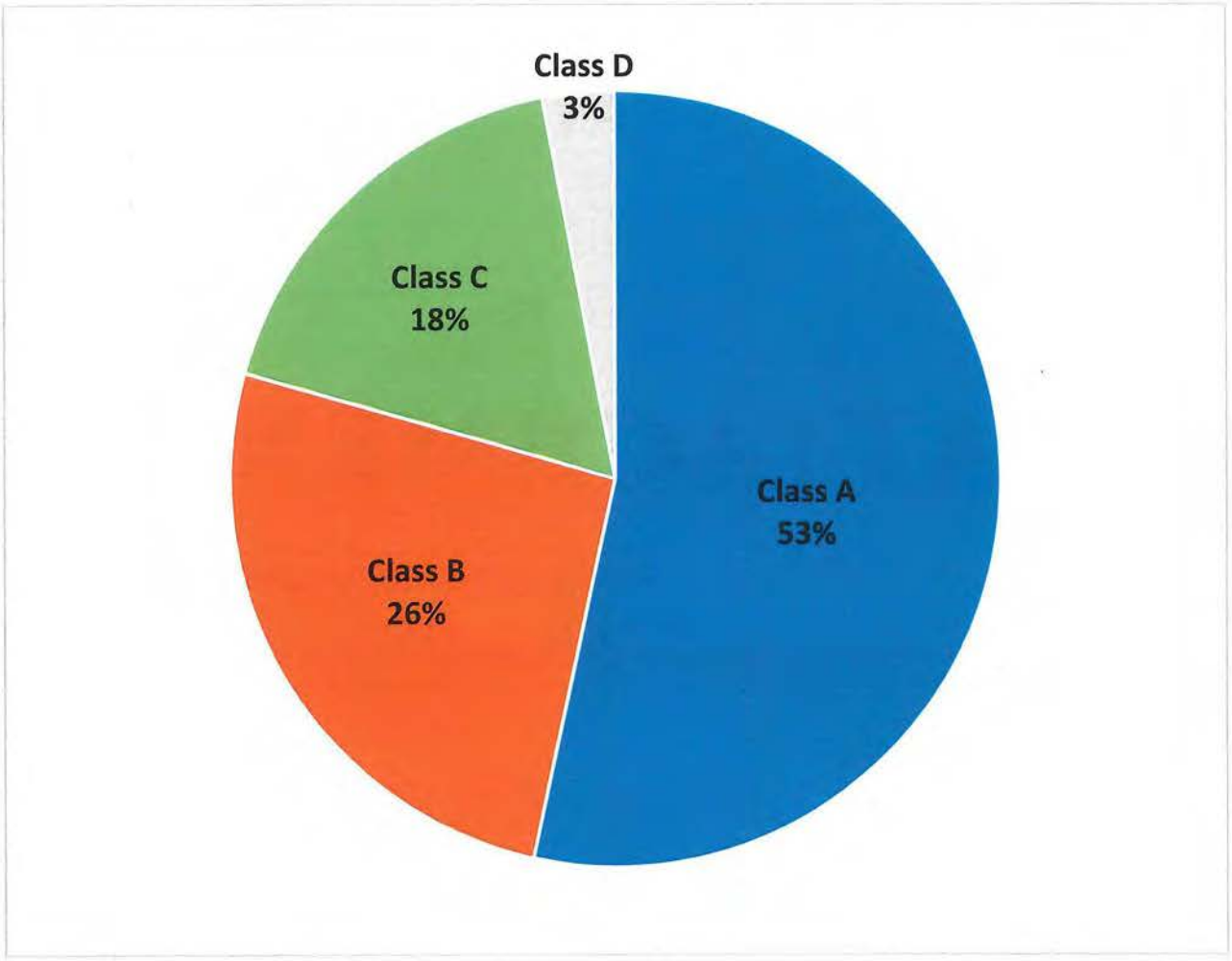
THEFT OF LOST PROPERTY 1ST	2
ATTEMPT-DOMESTIC VIOLENCE 1ST	1
ATTEMPT-PORN - PRODUCING W/MINORS	1
ATTEMPT-ARSON 1ST	1
CHILD ABUSE AGGRAVATED	1
CONSPIRACY-BURGLARY 1ST	1
Total Class B	5,465

ADOC Class C Felony Inmates	Class C
BURGLARY 3RD	672
ROBBERY 3RD	391
ASSAULT 2ND	340
SEX OFFENDER-FAIL REGISTER	275
BREAK/ENTER A VEHICLE	252
POSS/REC CONTROLLED SUBSTANCE (F-C)	250
SEXUAL ABUSE 1ST	238
POSS MARIHUANA 1ST	151
THEFT OF PROPERTY 2ND	148
CHILD ABUSE	84
OBSTRUCT JUSTICE-FALSE IDENTITY	74
PORN POSS MATERIAL MINORS	67
POSS FORGED INSTRUMENT 2ND	61
ATTEMPT-SEXUAL ABUSE OF CHILD < 12 YRS	59
CREDIT/DEBIT CARD-POSS/FRD USE	57
RECEIVING STOLEN PROPERTY 2ND	48
ESCAPE 3RD	47
ENTICING CHILD TO ENTER	39
LEAVING SCENE ACCIDENT W/INJURY	38
PERSONS FORBIDDEN-FIREARM	37
ESCAPE 2ND	33
PROMOTE PRISON CONTRABAN 2ND	30
FORGERY 2ND	28
ATTEMPT-ASSAULT 1ST	26
IDENTITY THEFT 1ST	26
CRIM MISCHIEF 1ST	22
DOMESTIC VIOLENCE 3RD - ASSAULT 3RD	15
CHEMICAL ENDANGER EXPOSE MINOR CONT SUBS	14
DISCHARGE GUN UNOCCUPIED BLDG/VEHICLE	14
CRIM NEGLIGENT HOMICIDE - DUI	13
POSS BURGLAR'S TOOLS	13
PROMOTE PRISON CONTRABAN 1ST	12
STALKING	12
DOMESTIC VIOLENCE 3RD - HARRASSMENT	11
TERRORIST THREAT	10
FELONY DUI	8
INCEST	8
POSS FIREARM-SHORTBARREL	7
YOUTHFUL OFFENDER	7
DESTROY STATE PROPERTY BY INMATE	6

INMATE/CORR OFFICER POSSESS CELL PHONE	6
POSS FIREARM W/ALTERED ID	6
ATTEMPT TO ELUDE LAW - DEATH INJURY	3
THEFT BY FRAUD-LEASE/RENTAL	3
THROW DEADLY/DANGER/MISSLE	3
ATTEMPT-BURGLARY 2ND	2
ATTEMPT-KIDNAPPING 2ND	2
ATTEMPT-RAPE 2ND	2
ATTEMPT-THEFT OF PROPERTY 1ST	2
BURGLARY 3RD - UNOCCUPIED BLDG	2
DOMESTIC VIOLENCE 3RD - CRIM MISCHIEF 3RD	2
HINDERING PROSECUTION 1ST	2
INTERFER W/CUSTODY	2
OBSCURE ID VEHICLE	2
PORN OBSCENE MATERIAL-PRODUCE	2
PROMOTING PROSTITUTION 2ND	2
SEXUAL ABUSE 2ND (SUBSEQ)	2
THEFT BY DECEPTION 2ND	2
DOG/CAT CRUELTY 1ST	1
DRUG PARAPHENALIA MANUFACTURE	1
EXPLOSIVE-CRIMINAL POSS	1
EXTORTION 2ND	1
FAIL TO AFFIX STAMP MARIHUANA	1
IMPERSONATE PEACE OFFICER	1
INDECENT EXPOSURE FELONY	1
INTIMIDATING A WITNESS	1
MUTILATION OF CORPSE	1
SECONDARY METAL RECYCLING	1
SECURITIES - FRAUD IN SALE	1
STALKING AGGRAVATED 2ND	1
THEFT OF SERVICES 2ND	1
Total Class C	3,703

ADOC Class D Felony Inmates	Class D
POSS/REC CONTROL SUBSTANCE (F-D)	536
THEFT OF PROPERTY 3RD (F-D)	40
POSS FORGED INSTRUMENT 3RD (F-D)	25
CREDIT/DEBIT CARD-POSS/FRD USE (F-D)	19
RECEIVING STOLEN PROPERTY 3RD (F-D)	12
FORGERY 3RD (F-D)	3
Total Class D	635

ADOC Inmate Felony Classification as of April 2019



ATTACHMENT B

Jefferson S. Dunn
Commissioner

Compiled and Published
by
The Research and Planning
Division
www.doc.alabama.gov
334.353.3883

ALABAMA DEPARTMENT OF CORRECTIONS

Monthly Statistical Report

for

April 2019

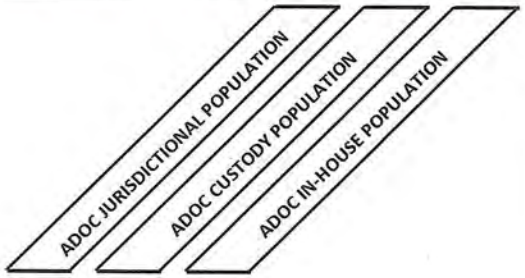
Fiscal Year 2019

All data in this report is for the end of month unless otherwise stated.

Alabama Department of Corrections
April 2019 Monthly Statistical Report

Legend

ADOC INMATE JURISDICTIONAL - CUSTODY ASSIGNMENT BY LOCATION



LOCATION

Population data are for the last working day of the month and is collected 60 days later to allow for processing of admissions and releases.

LOCATION	ADOC JURISDICTIONAL POPULATION	ADOC CUSTODY POPULATION	ADOC IN-HOUSE POPULATION
ADOC Major Institution	•	•	•
ADOC Community Work Center	•	•	•
ADOC Work Release	•	•	•
Alabama Theraputic Education Facility (ATEF)	•	•	
Supervised Re-Entry Program (SRP)	•	•	
Medical Furlough	•	•	
Leased Facilities	•	•	
State Mental Facility	•	•	
Other Locations	•		
Central Records Monitor	•		
County Jail	•		
Community Corrections Program	•		
Federal Prison	•		
Other States	•		

ADOC Jurisdictional Population: Defines an inmate sentenced by the court to the Alabama Department of Corrections. ADOC Jurisdictional Population includes all inmates serving time within ADOC facilities / programs, as well as in the custody of other correctional authorities, such as county jails, other State DOCs, Community Correction Programs, Federal Prisons, and Privately Leased Facilities.

ADOC Custody Population: Defines an inmate where ADOC maintains and/or oversees custody of an inmate sentenced by the court. ADOC Custody Population includes In-House Population plus those housed in other ADOC leased facilities and special programs.

ADOC In-House Population: Defines an inmate where ADOC maintains custody of an inmate to a period of incarceration. ADOC In-House Population inmates are housed within correctional facilities owned and operated by ADOC; this includes transient inmates between correctional facilities.

Alabama Therapeutic Education Facility (ATEF): Leased facility with contracted bed space, as well as intensive inmate rehabilitative and training services, located in Columbiana, AL.

Central Records Monitor: Defines the temporary status of an inmate pending transition to the status of *release, death, or escape*. After the change, the inmate will be removed from the corresponding inmate population count.

Community Corrections Program: Community based corrections program, including non-profits and those operated by county government, with oversight provided by ADOC. Governed by the 1991 Community Punishment and Corrections Act, Alabama Code, 1975, §15-18-170 et al., as amended in 2003.

Leased or contract Facilities: Private or municipal/county government owned correctional facilities that provide supplemental leased or contract inmate bed space to ADOC.

Major Facility: Includes all Close and Medium security correctional facilities.

Medical Furlough Program: The ***Alabama Medical Furlough Act*** became law on September 1, 2008. This act provides the Commissioner of the Department of Corrections discretionary authority to grant medical furloughs for terminally ill, permanently incapacitated, and geriatric inmates who suffer from a chronic infirmity, illness, or disease related to aging, and who do not constitute a danger to themselves or society.

Prison Reform / Justice Reinvestment Initiative Population: Offenders who are technical violators of parole or probation, and are sanctioned to ADOC custody for a period up to 45 days. Also includes offenders sentenced to ADOC custody for Class D felonies.

Split Sentence Inmates: Inmates sentenced under Act 754 of the Alabama Code, allowing the sentencing judge to retain control over the inmate length of sentence with the option of probation after a specified length of incarceration.

Supervised Re-Entry Program (SRP): Defines an inmate in a residential environment, under supervision of a sponsor and an ADOC SRP Supervisor, where they may obtain employment, education, and / or training and pay court-ordered restitution.

Year or YTD: Year or YTD column headings are cumulative totals for the current fiscal year, October to September.

Alabama Department of Corrections
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Trend Summaries

	Apr 2018	May 2018	Jun 2018	Jul 2018	Aug 2018	Sep 2018	Oct 2018	Nov 2018	Dec 2018	Jan 2019	Feb 2019	Mar 2019	Apr 2019	12-Month ▲
ADOC POPULATION TREND SUMMARY														
ADOC JURISDICTIONAL POPULATION[1]	26,919	27,098	27,157	26,985	26,850	26,790	26,858	26,950	27,191	27,243	27,571	27,554	27,660	741
ADOC CUSTODY POPULATION[1]	20,828	20,762	20,707	20,670	20,615	20,585	20,691	20,786	20,855	20,830	20,972	21,013	21,119	291
ADOC IN-HOUSE POPULATION[1]	20,318	20,217	20,143	20,102	20,063	20,087	20,195	20,251	20,276	20,240	20,325	20,369	20,468	150
ADOC In-House Designed capacity	*13,318*	*13,318*	*13,318*	*13,318*	*13,318*	*13,318*	*12,412*	12,412	12,412	12,412	12,412	12,412	12,412	(906)
ADOC IN-HOUSE POPULATION TREND SUMMARY														
Close Security Facilities	7,228	7,300	7,205	7,110	7,143	7,204	7,253	7,260	7,221	7,100	7,175	7,194	7,237	9
Medium Security Facilities	10,318	10,186	10,176	10,237	10,204	10,146	10,169	10,217	10,232	10,223	10,233	10,190	10,181	(137)
Minimum Security - Work Centers	1,639	1,634	1,669	1,636	1,664	1,669	1,688	1,679	1,683	1,785	1,785	1,770	1,798	159
Minimum Security - Work Release Facilities	1,133	1,097	1,093	1,119	1,052	1,068	1,085	1,095	1,140	1,132	1,132	1,215	1,252	119
SPECIAL INTEREST POPULATION TREND SUMMARY														
SUPERVISED RE-ENTRY PROGRAM	8	8	13	10	9	7	6	4	5	3	3	3	6	(2)
THERAPEUTIC EDUCATION FACILITY	233	242	240	278	294	281	311	333	365	339	375	366	341	108
COMMUNITY CORRECTIONS	3,500	3,535	3,556	3,547	3,620	3,597	3,547	3,532	3,585	3,559	3,639	3,618	3,611	111
COUNTY JAIL: Total Population	2,159	2,378	2,466	2,346	2,282	2,263	2,279	2,284	2,408	2,509	2,583	2,572	2,592	433
County JAIL: *On-The-Way*[2] Population	122	251	448	454	378	389	297	363	329	391	611	634	601	
LEASED/CONTRACT BEDS	265	292	307	274	244	203	485	526	568	581	638	631	635	370

ADMISSIONS / RELEASES TREND SUMMARY

	Apr 2018	May 2018	Jun 2018	Jul 2018	Aug 2018	Sep 2018	Oct 2018	Nov 2018	Dec 2018	Jan 2019	Feb 2019	Mar 2019	Apr 2019	12-Month ▲
ADMISSIONS														
New Commitment	153	247	177	106	235	178	178	165	177	191	238	183	225	
Split Sentence	206	305	214	172	293	205	252	178	183	257	257	235	273	
Parole Re-admissions	183	214	190	205	217	182	186	165	151	198	176	194	185	
Probation Revocation	250	318	336	237	346	263	281	229	272	313	322	295	353	
Returned Escapees	56	65	58	81	67	55	58	58	54	53	68	57	73	
Others	87	107	117	83	110	96	93	64	56	85	104	82	85	
Total Monthly Jurisdictional Admissions	935	1,256	1,092	884	1,268	979	1,048	859	893	1,097	1,165	1,046	1,194	
Jurisdictional Admissions Y-T-D	*7,607*	*9,123*	*10,402*	*11,491*	*12,879*	*14,054*	*1,048*	2,153	3,363	4,527	5,815	7,013	*8,332*	725
Admissions to ADOC Custody	806	892	780	893	1,001	806	980	827	744	718	779	890	866	
Admissions to ADOC Custody Y-T-D	5,390	*6,226*	*6,960*	*7,791*	*8,701*	*9,436*	*980*	1,807	2,550	3,258	4,030	4,899	*5,738*	348
RELEASES														
End of Sentence	241	229	242	252	270	215	232	214	226	236	208	265	250	
Paroles Granted[4]	329	437	267	287	337	218	92	128	102	200	176	84	112	(217)
Parole Releases	501	323	306	309	459	391	268	187	162	232	198	252	195	
Parole Releases Y-T-D	*2,360*	*2,661*	*2,951*	*3,231*	*3,679*	*4,017*	*268*	*456*	617	846	1,035	1,291	*1,482*	(878)
Split Sentence	358	376	338	321	385	330	340	330	322	335	303	344	333	
Other	340	293	323	354	330	294	329	356	277	271	238	337	334	
Total Monthly Jurisdictional Releases	1,440	1,221	1,209	1,236	1,444	1,230	1,169	1,087	987	1,074	947	1,198	1,112	
Jurisdictional Releases Y-T-D	*8,698*	*9,966*	*11,193*	*12,457*	*13,982*	*15,225*	*1,169*	*2,261*	3,265	4,338	5,302	6,547	*7,704*	(994)
Total Monthly Custody Releases	1,069	838	852	874	1,030	865	813	720	653	716	607	828	703	
Custody Releases Y-T-D	*6,043*	*6,890*	*7,732*	*8,605*	*9,694*	*10,551*	*813*	*1,533*	2,184	2,895	3,502	4,346	*5,066*	(977)

[1] See Legend on page 1 for definition.

[2] *On-the-way* describes those inmates programmed for transfer from county to an ADOC facility.

[3] Original architecural design plus renovations.

[4] Paroles Granted are not included in Release Totals.

[5] Parole and Probation Dunks are included in Parole Re-admissions, Probation Revocations, and Other Admissions

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Facility Operations

	FACILITY	Designed Capacity[1]	Current Beds[6]	Month End Population	Difference[2]	Occupancy Rate[3]	TOTAL DISCIPLINARIES		TOTAL ASSAULTS		DEATHS		ESCAPES		VISITS & PASSES[4]		LEAVES & FURLOUGHS[5]	
							Month	Y-T-D	Month	Y-T-D	Month	Y-T-D	Month	Y-T-D	Month	Y-T-D	Month	Y-T-D
CLOSE SECURITY	Holman	581	840	698	142	120.1%	27	201	0	1	0	3	0	0	0	0	0	0
	Death Row	56	190	150	40	267.9%	0	8	3	74	0	1	0	0	0	0	0	0
	Kilby	440	1,447	1,375	72	312.5%	94	816	13	51	2	11	0	0	0	0	0	0
	St. Clair	984	1,075	867	208	88.1%	55	590	8	54	1	12	0	0	0	0	0	0
	(Female) Tutwiler	417	698	642	56	154.0%	18	155	7	36	0	0	0	0	0	0	0	0
	(Female) Death Row	5	5	5	0	100.0%	0	0	0	0	0	0	0	0	0	0	0	0
	Donaldson	968	1,438	1,341	97	138.5%	76	587	16	90	3	11	0	0	0	0	0	0
	Death Row	24	24	22	2	91.7%	0	4	0	0	0	0	0	0	0	0	0	0
	Limestone	1628	2,456	2,137	319	131.3%	62	407	5	19	2	7	0	0	5	12	0	0
	Close Subtotal	**5,103**	**8,173**	**7,237**	**936**	**141.8%**	**332**	**2,768**	**52**	**325**	**8**	**45**	**0**	**0**	**5**	**12**	**0**	**0**
MEDIUM SECURITY	Bibb	918	1,823	1,806	17	196.7%	167	1,580	19	104	0	5	0	0	0	0	0	0
	Bullock	919	1,573	1,507	66	164.0%	58	791	23	117	0	2	0	0	0	0	0	0
	Easterling	652	1,110	1,066	44	163.5%	31	474	11	69	0	0	0	0	0	0	0	0
	Elmore	600	1,180	1,168	12	194.7%	94	917	7	55	0	2	0	0	0	0	0	0
	Fountain	831	1,268	1,241	27	149.3%	161	1,255	14	85	2	7	0	0	0	1	0	0
	Hamilton A/I	123	298	285	13	231.7%	13	122	0	5	1	3	0	0	0	0	0	0
	(Female) Montgomery[7]	192	300	257	43	133.9%	21	128	3	11	0	0	0	0	0	24	0	6
	Staton	508	1,399	1,388	11	273.2%	67	514	10	95	0	4	0	0	0	15	0	0
	(Female) Tutwiler Annex	128	266	250	16	195.3%	7	22	0	5	0	0	0	0	0	0	0	0
	Ventress	650	1,334	1,213	121	186.6%	51	554	18	149	0	4	0	0	0	0	0	0
	Med Subtotal	**5,521**	**10,551**	**10,181**	**370**	**184.4%**	**670**	**6,357**	**105**	**695**	**3**	**27**	**0**	**0**	**0**	**40**	**0**	**6**
MIN SECURITY - WORK CENTER	Alex City	35	56	56	0	160.0%	7	27	0	0	0	0	0	0	0	0	0	0
	(Female) Birmingham	30	172	167	5	556.7%	1	20	0	1	0	0	0	0	0	0	0	0
	Camden	15	64	38	26	253.3%	2	40	0	1	0	0	0	0	0	0	0	0
	Childersburg	151	260	255	5	168.9%	39	233	0	1	0	0	0	2	0	0	0	0
	Elba	15	88	81	7	540.0%	16	45	0	0	0	0	0	0	0	0	0	0
	Frank Lee	109	150	147	3	134.9%	9	75	0	0	0	0	0	0	0	0	0	0
	Hamilton	25	108	101	7	404.0%	7	17	0	1	0	0	0	0	0	0	0	0
	Loxley	120	220	215	5	179.2%	61	267	0	2	0	0	0	0	0	0	0	0
	Mobile	15	102	95	7	633.3%	25	130	0	1	0	0	0	0	0	0	0	0
	North Alabama	37	352	338	14	913.5%	51	384	0	4	0	0	0	2	0	0	0	0
	Red Eagle	104	312	305	7	293.3%	9	134	0	5	0	0	0	1	0	0	0	0
	WC Subtotal	**656**	**1,884**	**1,798**	**86**	**274.1%**	**227**	**1,372**	**0**	**16**	**0**	**0**	**0**	**5**	**0**	**0**	**0**	**0**
MIN SECURITY-WORK RELEASE	Alex City	145	188	147	41	101.4%	41	155	0	0	0	0	0	1	73	472	1	30
	(Female) Birmingham	120	96	92	4	76.7%	2	21	0	1	0	0	0	0	0	50	16	90
	Camden	40	14	12	2	30.0%	3	12	0	0	0	0	0	0	0	3	3	24
	Childersburg	176	150	148	2	84.1%	19	105	0	0	0	0	1	2	18	135	17	147
	Elba	40	166	155	11	387.5%	45	201	0	1	0	0	0	1	0	18	0	2
	Frank Lee	119	150	143	7	120.2%	23	90	2	3	0	0	0	0	0	39	14	79
	Hamilton	91	170	87	83	95.6%	5	50	0	0	0	0	0	1	25	132	1	5
	Loxley	175	166	161	5	92.0%	30	216	0	1	0	1	0	0	4	11	0	3
	Mobile	135	160	91	69	67.4%	8	70	1	1	0	0	0	1	0	8	0	4
	North Alabama	91	363	216	147	237.4%	19	158	0	3	0	0	2	2	8	170	21	123
	WR Subtotal	**1,132**	**1,623**	**1,252**	**371**	**110.6%**	**195**	**1,078**	**3**	**10**	**0**	**1**	**3**	**8**	**128**	**1,038**	**73**	**507**
	In-House Total[8]	**12,412**	**22,231**	**20,468**	**1,763**	**164.9%**	**1,424**	**11,575**	**160**	**1,046**	**11**	**73**	**3**	**13**	**133**	**1,090**	**73**	**513**

1-Original architecural design plus renovations.

2-The number of unused beds include special management beds which are not suitable for general population inmates, such as segregation, hospital, treatment, special program, or intake.

3-Occupancy Rate is the result of month end population divided by designed capacity

4-Visits and Passes include emergency visits and discretionary passes IAW AR 405, Inmate Emergency Visit, Pass, and Leave program.

5-Leaves and Furloughs include Discretionary Leaves and Discretionary Furloughs IAW AR 405, Inmate Emergency Visit, Pass, and Leave program.

6-Current Beds do not include beds being held for out-gated inmates.

7-The Montgomery WF "Month End Population" has 67 Medium, 163 minimum and 27 Work Release inmates for the month of April

8-In-House total for Designed Capacity does not include the closed facilities of Draper CF (656) and J.O. Davis (250)

Alabama Department of Corrections
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Disciplinaries, Assaults, Homicides, and Suicides

	FACILITY	DISCIPLINARIES				INMATE ON INMATE								INMATE ON STAFF								Inmate on Inmate Homicides		Prisoner on Staff Homicides		PRISONER SUICIDES			
		MAJOR AR 403		MINOR AR 403		Assault w/ Serious Injury		Victims		Assault w/o Serious Injury		Fights		Assault by Throwing Substances		Assault w/ Serious Injury		Victims		Assault w/o Serious Injury		Assault by Throwing Substances						Completed		Attempted	
		Month	Year	Month	Year	Month	Year	Month	Year	Month	Year	Month	Year	Month	Year	Month	Year	Month	Year	Month	Year	Month	Year	Month	Year	Month	Year	Month	Year	Month	Year
CLOSE SECURITY	Holman	10	*107*	17	*94*	0	*0*	0	*1*	0	*1*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Death Row	0	*6*	0	*2*	1	*20*	7	*67*	1	*39*	1	*7*	0	*0*	0	*0*	1	*14*	0	*7*	1	*7*	0	*1*	0	*0*	0	*1*	0	*0*
	Kilby	75	*636*	19	*180*	1	*2*	11	*31*	10	*32*	6	*22*	0	*0*	0	*1*	2	*18*	1	*11*	1	*4*	0	*1*	0	*0*	0	*1*	0	*0*
	St. Clair	36	*468*	19	*122*	0	*10*	9	*36*	7	*24*	3	*14*	0	*0*	0	*1*	1	*19*	1	*13*	0	*4*	0	*2*	0	*0*	0	*1*	0	*1*
	(Female) Tutwiler	15	*130*	3	*25*	0	*0*	7	*32*	6	*26*	1	*6*	0	*1*	0	*0*	1	*12*	1	*8*	0	*1*	0	*0*	0	*0*	0	*0*	0	*2*
	(Female) Death Row	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Donaldson	61	*510*	15	*77*	0	*8*	9	*61*	9	*59*	2	*9*	0	*1*	0	*0*	10	*28*	6	*21*	1	*1*	0	*0*	0	*0*	0	*1*	0	*1*
	Death Row	0	*4*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Limestone [1]	52	*356*	10	*51*	3	*4*	9	*17*	2	*8*	2	*8*	0	*0*	0	*2*	0	*7*	0	*2*	0	*3*	0	*0*	0	*0*	0	*2*	0	*1*
	Close Subtotal	249	2,217	83	551	5	44	52	245	35	189	15	66	0	2	0	4	15	98	9	62	3	20	0	4	0	0	0	6	0	5
MEDIUM SECURITY	Bibb	144	*1,277*	23	*303*	3	*22*	11	*68*	13	*64*	17	*98*	0	*0*	0	*3*	3	*18*	3	*13*	0	*0*	0	*2*	0	*0*	0	*0*	0	*0*
	Bullock	44	*569*	14	*222*	4	*14*	20	*97*	15	*79*	8	*23*	0	*1*	0	*1*	5	*24*	3	*21*	1	*1*	0	*0*	0	*0*	0	*0*	0	*0*
	Easterling	22	*372*	9	*102*	1	*7*	7	*48*	8	*41*	12	*36*	0	*0*	0	*0*	2	*25*	2	*17*	0	*4*	0	*0*	0	*0*	0	*0*	0	*1*
	Elmore	76	*705*	18	*212*	1	*9*	8	*43*	6	*31*	16	*111*	0	*0*	0	*0*	0	*19*	0	*13*	0	*1*	0	*1*	0	*0*	0	*0*	0	*0*
	Fountain	122	*1,076*	39	*179*	0	*9*	16	*81*	14	*66*	10	*32*	0	*0*	0	*0*	0	*11*	0	*10*	0	*0*	0	*0*	0	*0*	0	*1*	0	*5*
	Hamilton A&I	12	*106*	1	*16*	0	*0*	0	*3*	0	*4*	0	*1*	0	*0*	0	*0*	0	*1*	0	*1*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	(Female) Montgomery	13	*97*	8	*31*	1	*1*	1	*5*	1	*6*	1	*4*	0	*0*	0	*0*	1	*5*	1	*4*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Staton	50	*442*	17	*72*	2	*15*	9	*78*	6	*56*	5	*35*	0	*0*	2	*6*	3	*31*	0	*17*	0	*0*	0	*1*	0	*0*	0	*1*	1	*2*
	(Female) Tutwiler Annex	4	*16*	3	*6*	0	*0*	0	*4*	0	*5*	1	*1*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Ventress	38	*409*	13	*145*	6	*24*	20	*166*	12	*111*	6	*26*	0	*0*	0	*0*	0	*17*	0	*13*	0	*1*	0	*0*	0	*0*	0	*0*	1	*4*
	Medium Subtotal	525	5,069	145	1,288	18	101	92	593	75	463	76	367	0	1	2	10	14	151	9	109	1	7	0	4	0	0	0	2	2	12
MIN SECURITY - WORK CENTER	Alex City	4	*19*	3	*8*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	(Female) Birmingham	1	*20*	0	*0*	0	*0*	0	*1*	0	*1*	0	*1*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Camden	2	*21*	0	*19*	0	*0*	0	*1*	0	*1*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Childersburg	35	*192*	4	*41*	0	*0*	0	*1*	0	*1*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Elba	13	*19*	3	*26*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Frank Lee	7	*38*	2	*37*	0	*0*	0	*0*	0	*0*	0	*1*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Hamilton	3	*10*	4	*7*	0	*1*	0	*1*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Loxley	51	*231*	10	*36*	0	*1*	0	*2*	0	*1*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Mobile	16	*98*	9	*32*	0	*0*	0	*0*	0	*1*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	North Alabama	46	*336*	5	48	0	0	1	4	0	4	1	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Red Eagle	5	*106*	4	*28*	0	*1*	0	*1*	0	*1*	0	*1*	0	*0*	0	*1*	0	*4*	0	*2*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Work Center Subtotal	183	1,090	44	282	0	3	1	11	0	10	1	8	0	0	0	1	0	4	0	2	0	0	0	0	0	0	0	0	0	0
MIN SECURITY - WORK RELEASE	Alex City	30	*114*	11	*41*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	(Female) Birmingham	1	*20*	1	*1*	0	*0*	0	*1*	0	*1*	0	*2*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Camden	2	*7*	1	*5*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Childersburg	14	*80*	5	*25*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Elba	38	*141*	7	*60*	0	*0*	0	*1*	0	*1*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Frank Lee	12	*54*	11	*36*	0	*0*	1	*2*	1	*2*	0	*0*	0	*0*	0	*0*	1	*1*	1	*1*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Hamilton	5	*36*	0	*14*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Loxley	28	*181*	2	*35*	0	*0*	0	*1*	0	*1*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	Mobile	7	*58*	1	*12*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*	1	*1*	1	*1*	0	*0*	0	*0*	0	*0*	0	*0*	0	*0*
	North Alabama	16	105	3	53	0	0	0	3	0	3	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Work Release Subtotal	153	796	42	282	0	0	1	8	1	8	0	4	0	0	0	0	2	2	2	2	0	0	0	0	0	0	0	0	0	0
	In-House Total	1,110	9,172	314	2,403	23	148	146	857	111	670	92	445	0	3	2	15	31	255	20	175	4	27	0	8	0	0	0	8	2	17

[1]Limestone CF: Separate housing has been eliminated for HIV positive inmates in order to comply with the Americans with Disabilities Act.

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Inmate Distributions with County Jails

Location	ADOC JURISDICTIONAL POPULATION		ADOC CUSTODY POPULATION	ADOC IN-HOUSE POPULATION	Male	Female
	Based on Month End Populations					
TOTAL DISTRIBUTION	**27,660**		**21,119**	**20,468**	**25,088**	**2,572**
Percentage of Total	*100%*		*76%*	*74.0%*	*90.7%*	*9.3%*
In-House						
ADOC Major Institution	17,418		17,418	17,418	16,264	1,154
ADOC Work Release	1,252		1,252	1,252	1,160	92
ADOC Community Work Center	1,798		1,798	1,798	1,631	167
Sub-Total	20,468		20,468	20,468	19,055	1,413
ADOC Custody--Contract Facilities						
Supervised Re-entry Program	6		6		0	6
Medical Furlough Program	10		10		9	1
Taylor Hardin State Mental Health Facility	0		0		0	0
Alabama Therapeutic Education Facility	341		341		286	55
Pre-Therapeutic Community Program--*Contract*	294		294		294	0
Brookwood Medical Facility--*Contract*	0		0		0	0
Citizens Baptist Medical Center	0		0		0	0
Sub-Total	651		651		589	62
Jurisdictional Only						
Central Records Monitor	20				18	2
County Jail	2,592	*9.37%*			2,229	363
Community Corrections Program	3,611	*13.05%*			2,900	711
Other Locations[1]	0				0	0
Federal Prison	99				92	7
Other State Correctional Facility	219				205	14
Sub-Total	6,541	*23.65%*			5,444	1,097
Total Leased or contract Beds	*635*	*2.3%*				

COUNTY JAIL DISTRIBUTION

Jurisdictional Population Detailed by County Jail Location

Autauga	13	Dallas	10	Marion	25
Baldwin	78	DeKalb	31	Marshall	44
Barbour	10	Elmore	38	Mobile	314
Bibb	1	Escambia	23	Monroe	4
Blount	24	Etowah	137	Montgomery	78
Bullock	0	Fayette	18	Morgan	142
Butler	5	Franklin	36	Perry	1
Calhoun	91	Geneva	13	Pickens	13
Chambers	18	Greene	1	Pike	17
Cherokee	23	Hale	0	Randolph	7
Chilton	12	Henry	9	Russell	55
Choctaw	2	Houston	66	Shelby	60
Clarke	16	Jackson	43	St. Clair	62
Clay	13	Jefferson[2]	234	Sumter	2
Cleburne	10	Lamar	7	Talladega	42
Coffee	18	Lauderdale	26	Tallapoosa	34
Colbert	12	Lawrence	36	Tuscaloosa	94
Conecuh	4	Lee	85	Unknown	0
Coosa	6	Limestone	42	Walker	26
Covington	49	Lowndes	5	Washington	4
Crenshaw	2	Macon	11	Wilcox	0
Cullman	55	Madison	196	Winston	27
Dale	10	Marengo	2		

County Jail Distrubution Total **2,592**

[1]Other Locations typically includes inmates held under the custody of Pardon and Paroles (Life Tech) or Department of Youth Services (DYS).

[2]Jefferson County includes Jefferson (203) and Bessemer (0)

The number of county jail inmates that are *On-the-Way* to ADOC, as of January 31, 2019. **601**

Over 30 day Count **109**

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Admissions into ADOC Jurisdictional Custody

ADMISSIONS BY TYPE	NEW COMMITMENTS	SPLIT SENTENCE	PAROLE RE-ADMISSIONS[1]	PROBATION REVOCATIONS[3]	RETURNED ESCAPEES	OTHER	TOTAL
	225	273	185	353	73	85	1,194
Y-T-D	1613	2,020	1,416	2274	457	552	8,332

Jurisdictional Admission Details

Sentence Length	Number Inmates	*Y-T-D*
Up to 2 yrs	478	3,345
2 to 5 yrs	215	1,484
5 years	93	662
5 to 10 yrs	98	721
10 years	53	418
10 to 15 yrs	25	131
15 years	65	402
15 to 20 yrs	19	125
20 years	82	523
20 to 25 yrs	12	69
25 to 35 yrs	26	203
Over 35 years	7	60
Life	18	164
Life/Barred Parole	0	0
Life without Parole	2	22
Death	1	3
Unknown	0	0
Total	**1,194**	**8,332**

Ages	Number Inmates	*Y-T-D*
15	0	1
16	0	3
17	1	27
18	14	80
19	23	142
20	22	166
21-25	168	1,297
26-30	254	1,693
31-35	248	1,638
36-40	171	1,314
41-45	123	785
46-50	76	583
51-55	55	338
56-60	25	166
60+	14	99
Total	**1,194**	**8,332**

Offenses	Number Inmates	*Y-T-D*
Personal	173	1,288
Property	373	2,643
Drugs	420	2,952
Other	141	871
Public	87	578
Total	**1,194**	**8,332**

Race	Number Inmates	Y-T-D
Black	492	*3,304*
White	693	*4,967*
Unknown	9	*61*
Total	**1,194**	**8,332**

Sex	Number	Y-T-D
Male	1,004	6,958
Female	190	1,374
Unknown	0	0
Total	**1,194**	***8,332***

Admissions into ADOC Custody

ADMISSIONS BY TYPE	NEW COMMITMENTS	SPLIT SENTENCE	PAROLE RE-ADMISSIONS[2]	PROBATION REVOCATIONS[5]	RETURNED ESCAPEES	OTHER[2]	TOTAL
	172	153	154	272	48	67	866
Y-T-D	1186	981	988	1,799	265	519	5,738

Custody Admission Details

Offenses	Number Inmates	*Y-T-D*
Personal	143	1,064
Property	297	1,714
Drugs	251	1,735
Other	112	780
Public	63	445
Total	**866**	***5,738***

Race	Number Inmates	*Y-T-D*
Black	310	2,322
White	549	3,356
Unknown	7	60
Total	**866**	***5,738***

Sex	Number Inmates	*Y-T-D*
Male	704	4,879
Female	162	859
Unknown	0	0
Total	**866**	***5,738***

135 Parole Re-Admissions were revocations.[1] **(YTD = 552)**
270 Parole Re-Admissions and other admissions were dunks.[2] **(YTD = 1824)**
174 of the 353 Probation Revocations were split sentence revocations.[3] **(YTD = 1008)**
119 of the 272 Probation Revocations were split sentence revocations.[5] **(YTD = 807)**

Leading Contributors

LEADING CONTRIBUTORS OF INMATES TO JURISDICTIONAL POPULATION

Within the Jurisdictional Population

County	1st Alabama Incarceration	Previous Incarceration[1]	Total Contributed	Percent	Habitual Offenders[2]	Recidivists[3]
	Number of Offenders Serving First or Subsequent Incarceration				*Offenders that are Classified as*	
All Other Counties	3895	3356	7,251	*26.2%*	1,517	1,731
Jefferson	1940	1627	3,567	*12.9%*	776	926
Mobile	1486	1218	2,704	*9.8%*	235	684
Montgomery	905	753	1,658	*6.0%*	395	429
Madison	824	826	1,650	*6.0%*	416	450
Tuscaloosa	593	617	1,210	*4.4%*	321	291
Houston	645	510	1,155	*4.2%*	275	302
Etowah	528	549	1,077	*3.9%*	262	292
Calhoun	482	442	924	*3.3%*	199	252
Morgan	455	405	860	*3.1%*	218	209
Baldwin	439	306	745	*2.7%*	133	171
Lee	390	252	642	*2.3%*	69	149
Russell	385	167	552	*2.0%*	205	82
Shelby	285	256	541	*2.0%*	216	142
Talladega	265	240	505	*1.8%*	210	148
Lauderdale	235	248	483	*1.7%*	110	120
Walker	256	213	469	*1.7%*	20	119
St. Clair	230	226	456	*1.6%*	134	125
Cullman	196	230	426	*1.5%*	25	114
Covington	198	196	394	*1.4%*	108	127
Marshall	219	173	392	*1.4%*	55	98
Total	**14,851**	**12,810**	**27,661**	***100.0%***	**5,899**	**6,961**
	53.7%	*46.3%*			*21.3%*	*25.2%*

Jurisdictional Monthly Admissions

County	Total Contributed	Percent
All Other Counties	319	*26.7%*
Mobile	97	*8.1%*
Jefferson	94	*7.9%*
Madison	83	*7.0%*
Etowah	62	*5.2%*
Calhoun	59	*4.9%*
Morgan	56	*4.7%*
Baldwin	45	*3.8%*
Tuscaloosa	41	*3.4%*
Houston	40	*3.4%*
Montgomery	38	*3.2%*
Shelby	38	*3.2%*
St. Clair	34	*2.8%*
Russell	26	*2.2%*
Cullman	25	*2.1%*
Elmore	25	*2.1%*
Covington	24	*2.0%*
Lee	24	*2.0%*
Tallapoosa	24	*2.0%*
Marshall	20	*1.7%*
Walker	20	*1.7%*
Total	**1,194**	***100.0%***

Note:

1 - Includes all inmates with previous sentence to ADOC jurisdiction.

2 - Habitual Offender convictions are defined and sentenced under the Code of Alabama, 1975, as amended, § 13A-5-9.

3 - % of Jurisdictional Population that are recidivists(returned to ADOC Jurisdiction within 3 years of release).

4 - Jefferson County includes Jefferson and Bessemer Circuit Court Districts, subtotals are: 1940 (1,646/294), 1627 (1378/249), 776 (614/162), 926 (799/127)

5 - Jefferson County includes Jefferson (79) and Bessemer (15) Circuit Court Districts.

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Correctional Industries

Correctional Industries Totals	Inmates	Expenses	Revenues (Billed & Pending)	Profit/Loss
	386	$8,694,951.02	$9,552,066.89	$857,115.87

Detailed by Activity

Activity	Average Inmates	Expenses YTD	Revenues YTD	Profit/Loss
Chair Plant	13	$257,702.85	$315,311.83	$57,608.98
Chemical Plant	19	$421,246.42	$553,715.47	$132,469.05
Tutwiler/Holman Clothing	87	$813,583.51	$1,338,248.44	$524,664.93
Draper Furniture	50	$361,126.15	$441,011.50	$79,885.35
Furniture Restoration	37	$112,831.62	$121,341.15	$8,509.53
Mattress Plant	5	$200,965.75	$351,741.20	$150,775.45
Modular Plant	16	$351,722.87	$346,479.07	($5,243.80)
Printing Plant	77	$1,281,894.92	$1,605,200.67	$323,305.75
Vehicle Tag Plant	29	$1,817,116.14	$3,494,450.89	$1,677,334.75
Sub-Total	**333**	**5,618,190.23**	**8,567,500.22**	**2,949,309.99**
Fleet Services	45	$961,244.02	$969,392.02	$8,148.00
Sub-Total	**45**	**$961,244.02**	**$969,392.02**	**$8,148.00**
Admin & Warehouse Services	8	$2,115,516.77	$15,174.65	($2,100,342.12)

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Prison Reform/ Justice Reinvestment Initiative

	Apr 2018	May 2018	Jun 2018	Jul 2018	Aug 2018	Sep 2018	Oct 2018	Nov 2018	Dec 2018	Jan 2019	Feb 2019	Mar 2019	Apr 2019	YTD
Probation Dunks Details														
Admissions	117	171	136	153	154	148	157	124	85	96	164	168	118	912
Releases	160	149	144	159	164	126	146	163	129	88	90	158	176	950
Month-End Population	157	179	171	185	155	177	188	149	106	114	188	198	140*	—
Parole Dunks Details														
Admissions	66	111	115	78	153	90	105	94	85	84	108	88	114	678
Releases	78	90	90	105	89	124	119	116	86	101	61	120	80	683
Month-End Population	90	110	135	107	171	137	123	101	100	83	130	98	131*	—
Class D Offenders Details														
Monthly Admissions	104	149	116	63	156	103	110	88	99	136	148	138	170	889
Month-End Population	1,021	1,112	1,190	1,121	1,182	1,225	1,260	1,304	1,330	1,432	1,460	1,514	1,575	—
Class D Offenders Population Demographics														
Details by Race														
Black	343	363	393	369	374	382	388	401	406	439	456	466	488	—
White	673	744	792	748	801	836	865	896	916	986	996	1,041	1,079	—
Unknown	5	5	5	4	7	7	7	7	8	7	8	7	8	—
Total	1,021	1,112	1,190	1,121	1,182	1,225	1,260	1,304	1,330	1,432	1,460	1,514	1,575	—
Details by Sex														
Male	821	876	937	886	926	959	1,002	1,039	1,060	1,120	1,143	1,183	1,228	—
Female	200	236	253	235	256	266	258	265	270	312	317	331	347	—
Unknown	0	0	0	0	0	0	0	0	0	0	0	0	0	—
Total	1,021	1,112	1,190	1,121	1,182	1,225	1,260	1,304	1,330	1,432	1,460	1,514	1,575	—
Details by Major Offense														
Poss/Control Substance	854	924	998	944	998	1,028	1,080	1,119	1,134	1,231	1,240	1,288	1,340	—
Other	167	188	192	177	184	197	180	185	196	201	220	226	235	—
Total	1,021	1,112	1,190	1,121	1,182	1,225	1,260	1,304	1,330	1,432	1,460	1,514	1,575	—
Institution Population Class D Offenders														
ADOC	342	343	368	349	361	420	412	401	397	403	431	452	474	—
Community Corrections	533	602	637	613	642	636	672	695	712	760	775	816	832	—
County Jail	122	151	151	127	144	135	146	170	179	200	190	203	204	—
Unassigned	24	16	34	32	35	34	30	38	42	69	64	43	65	—
Total	1,021	1,112	1,190	1,121	1,182	1,225	1,260	1,304	1,330	1,432	1,460	1,514	1,575	—

*Parole and Probation Dunk end-of-month populations are based on those inmates serving dunks in ADOC custody at the end of the month.

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Work Release Program

FISCAL TRANSACTIONS	Alex City	Birmingham[1]	Camden	Childersburg	Elba	Frank Lee	Hamilton	Loxley	Mobile	Montgomery[1]	North Alabama	Total	YTD
Gross Salaries Earned	**$161,627.25**	**$108,148.01**	**$16,188.75**	**$203,236.44**	**$195,460.93**	**$140,796.75**	**$195,356.19**	**$294,130.47**	**$148,727.59**	**$15,759.40**	**$255,996.53**	**$1,735,428.31**	***$10,316,457.95***
Federal Tax Withheld	$5,677.95	$6,712.06	$827.36	$10,068.46	$13,063.97	$3,718.43	$10,522.02	$21,237.71	$4,897.12	$533.74	$6,750.31	$84,009.13	***$464,528.92***
State Tax Withheld	$3,834.41	$3,247.85	$447.96	$6,096.50	$6,744.20	$3,544.56	$6,083.46	$10,355.13	$3,682.04	$493.73	$4,106.01	$48,635.85	***$282,508.34***
City Tax Withheld	$304.42	$433.13	$0.00	$0.00	$0.00	$0.00	$939.42	$5.91	$46.74	$0.00	$11.90	$1,741.52	***$11,005.04***
Social Security	$9,207.46	$6,688.78	$1,007.42	$12,456.64	$11,559.76	$7,122.60	$11,399.55	$18,455.30	$8,829.80	$977.07	$12,679.48	$100,383.86	***$599,540.05***
SUI	$2,152.11	$1,559.14	$231.03	$2,913.22	$2,691.68	$1,665.76	$2,664.75	$4,018.08	$2,003.80	$228.52	$2,625.01	$22,753.10	***$136,797.62***
Other Misc. Deds.	$4,716.36	$1,930.30	$0.00	$7,447.31	$6,298.90	$4,883.80	$6,988.94	$4,852.15	$1,889.51	$0.00	$3,889.73	$42,897.00	***$272,449.95***
Average Monthly Inmate Salary	**$1,482.82**	**$1,481.48**	**$1,471.70**	**$1,612.99**	**$1,615.38**	**$1,436.70**	**$2,382.39**	**$2,195.00**	**$1,729.39**	**$1,575.94**	**$1,312.80**	**$1,660.70**	
Total Deductions	$25,892.71	$20,571.26	$2,513.77	$38,982.13	$40,358.51	$20,935.15	$38,598.14	$58,924.28	$21,349.01	$2,233.06	$30,062.44	$300,420.46	***$1,766,829.92***
Net Salaries Earned	$135,734.54	$87,576.75	$13,674.98	$164,254.31	$155,102.42	$119,861.60	$156,758.05	$235,206.19	$127,378.58	$13,526.34	$225,934.09	$1,435,007.85	***$8,549,628.03***
Amount Paid to ADOC	**$64,650.87**	**$43,259.16**	**$6,475.49**	**$81,294.50**	**$78,184.37**	**$56,308.09**	**$78,142.45**	**$117,639.75**	**$60,524.31**	**$6,303.76**	**$102,398.51**	**$695,181.26**	
Amount Paid to ADOC--*year-to-date*	**$421,494.12**	**$254,924.42**	**$40,708.79**	**$451,882.13**	**$412,454.69**	**$379,661.08**	**$550,655.77**	**$569,821.33**	**$387,091.11**	**$59,428.58**	**$598,299.07**	**$4,126,421.09**	
ADOC Transportation Fees	$7,055.00	$6,970.00	$260.00	$9,952.50	$9,430.00	$10,777.50	$7,815.00	$9,752.50	$7,085.00	$1,100.00	$7,765.00	$77,962.50	***$516,582.50***
Dependent Disbursements	$0.00	$0.00	$0.00	$0.00	$0.00	$1,360.00	$0.00	$0.00	$0.00	$0.00	$2,464.67	$3,824.67	***$37,749.67***
Restitution & Civil Claims Paid	$6,954.85	$5,866.83	$755.53	$8,559.17	$10,620.15	$10,134.92	$9,399.67	$12,092.25	$13,400.07	$1,722.27	$12,202.01	$91,707.72	***$590,515.40***
Medical/Dental Payments to private providers	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$244.10	$0.00	$0.00	$0.00	$0.00	$244.10	***$8,349.54***
Miscellanous Bills Paid	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	***$486.00***
Amount Disbursed to Inmate	$4,484.00	$0.00	$603.00	$2,794.00	$80.00	$3,065.00	$2,884.00	$3,046.00	$3,972.00	$222.00	$7,621.00	$28,771.00	***$253,676.00***
Court Ordered Child Support through ADOC	$3,957.03	$1,600.78	$0.00	$5,330.88	$5,257.41	$3,156.09	$2,201.26	$3,218.50	$1,539.16	$0.00	$1,974.50	$28,235.61	***$163,651.74***
Medical Co-Pay Paid	$188.00	$280.00	$0.00	$408.00	$280.00	$184.00	$8.00	$828.00	$96.00	$352.00	$364.00	$2,988.00	***$19,048.00***
Positive Drug Test Fees Paid	$0.00	$441.00	$0.00	$0.00	$63.00	$0.00	$0.00	$63.00	$63.00	$220.50	$220.50	$1,071.00	***$4,630.50***
Replacement ID Fee Paid	$0.00	$3.00	$0.00	$12.00	$27.00	$36.00	$3.00	$12.00	$21.00	$3.00	$42.00	$159.00	***$1,032.00***
Amount Deposited to Inmate Accounts	**$52,928.79**	**$29,155.98**	**$6,183.96**	**$58,697.26**	**$51,240.49**	**$37,905.00**	**$58,944.57**	**$91,600.19**	**$44,650.04**	**$3,824.81**	**$98,502.90**	**$533,633.99**	***$3,081,161.59***
Inmates Owing Restitution	98	45	11	56	79	109	109	102	84	37	201	931	
Inmates Paid Restitution	53	43	6	47	73	86	53	68	66	15	124	634	
Average Restitution Paid per Payment	$131.22	$136.44	$125.92	$182.11	$145.48	$117.85	$177.35	$177.83	$203.03	$114.82	$98.40	$144.65	
Inmates Employed	**109**	**73**	**11**	**126**	**121**	**98**	**82**	**134**	**86**	**10**	**195**	**1,045**	
Percent Inmates Employed	**73.6%**	**78.5%**	**91.7%**	**84.0%**	**78.1%**	**68.5%**	**95.3%**	**81.2%**	**93.5%**	**38.5%**	**90.3%**	**81.3%**	**81.5%**
Average Monthly Salary	$1,482.82	$1,481.48	$1,471.70	$1,612.99	$1,615.38	$1,436.70	$2,382.39	$2,195.00	$1,729.39	$1,575.94	$1,312.80	$1,660.70	$1,581.27
Inmates Unemployed	39	20	1	24	34	45	4	146	6	16	21	356	
Inmates on Staff, in SAP, or Restricted	14	6	0	5	0	29	4	16	1	4	6	85	
Inmates eligible for employment	25	14	1	19	34	16	0	130	5	12	15	271	

INMATE TRANSACTIONS	Alex City	Birmingham[1]	Camden	Childersburg	Elba	Frank Lee	Hamilton	Loxley	Mobile	Montgomery[1]	North Alabama	Total	YTD
In W/R brought forward	133	86	13	143	132	147	79	160	90	29	223	1,235	
New Admissions	25	8	0	14	39	12	13	27	14	0	21	173	2,011
Transferred In	2	5	0	2	0	1	2	0	0	1	0	13	328
Transferred Out	1	0	1	0	0	1	3	1	0	0	6	13	117
Terminated: Disciplinary	1	2	0	5	2	7	0	10	7	0	12	46	259
Terminated: Due Process	2	0	0	0	3	0	0	1	0	0	0	6	68
Removed Medical	2	0	0	0	1	1	1	0	0	0	1	6	45
Escaped	0	0	0	1	0	0	0	0	0	0	2	3	20
Released: EOS	3	0	0	0	2	5	4	2	1	0	1	18	143
Released: Parole	3	3	0	3	8	3	0	8	4	1	6	39	276
Released: Death	0	0	0	0	0	0	0	0	0	0	0	0	51
Released: To SRP/CCP	0	1	0	0	0	0	0	0	0	3	0	4	6
Total End-of-Month	148	93	12	150	155	143	86	165	92	26	216	1286	
Black Males	94	0	7	100	81	86	37	97	48	0	108	658	
White Males	52	0	5	49	73	57	48	68	43	0	107	502	
Black Females	0	30	0	0	0	0	0	0	0	5	0	35	
White Females	0	63	0	0	0	0	0	0	0	21	0	84	
Other Males	2	0	0	1	1	0	1	0	1	0	1	7	
Other Females	0	0	0	0	0	0	0	0	0	0	0	0	
Check Total	**148**	**93**	**12**	**150**	**155**	**143**	**86**	**165**	**92**	**26**	**216**	**1,286**	

1- Work Release Program for Women
2- Provided to assist each facility to report accurate information.

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Releases From ADOC Jurisdiction

RELEASES by RELEASE TYPE	END of SENTENCE		PAROLE		SPLIT-SENTENCE		OTHER		TOTAL	
	Month	Y-T-D	Month	Y-T-D	Month	Y-T-D	Month	Y-T-D	Month	Y-T-D
	250	1,669	195	1,482	333	2,331	334	2,222	1,112	7,704
% of total		21.7%		19.2%		30.3%		28.8%		100.0%
Number of Releases--Female Inmates	43	277	24	207	57	389	54	387	178	1,260
Number of Releases--Male Inmates	207	1392	171	1275	276	1,942	280	1835	934	6,444

RELEASES by FACILITY TYPE	END of SENTENCE		PAROLE		SPLIT-SENTENCE		OTHER		TOTAL	
	Month	Y-T-D	Month	Y-T-D	Month	Y-T-D	Month	Y-T-D	Month	Y-T-D
CLOSE FACILITY	20	173	20	174	24	178	146	1136	210	1,661
MEDIUM FACILITY	69	531	85	625	95	663	106	540	355	2,359
WORK CENTER	14	90	27	227	12	119	2	32	55	468
WORK RELEASE	15	79	37	288	24	183	6	20	82	570
LEASED FACILITIES	0	0	0	0	0	1	0	1	0	2
SRP	1	2	0	4	0	0	0	0	1	6
State Mental Health	0	0	0	0	0	0	0	0	0	0
CUSTODY SUB-TOTAL	119	**875**	169	**1318**	155	**1144**	260	**1729**	703	**5,066**
COMMUNITY CORRECTIONS	86	520	0	0	106	710	70	442	262	1,672
COUNTY JAIL	45	251	26	159	71	470	3	44	145	924
FEDERAL PRISON	0	7	0	5	1	7	0	0	1	19
OTHER STATES	0	15	0	0	0	0	1	3	1	18
ALL OTHERS	0	1	0	0	0	0	0	4	0	5
SUB-TOTAL	131	**794**	26	**164**	178	**1187**	74	**493**	409	**2,638**
JURISDICTIONAL TOTAL	250	1,669	195	1,482	333	2,331	334	2,222	1,112	7,704

RELEASES by SECURITY LEVEL	END of SENTENCE		PAROLE		SPLIT-SENTENCE		OTHER		TOTAL	
	Month	Y-T-D	Month	Y-T-D	Month	Y-T-D	Month	Y-T-D	Month	Y-T-D
Close	7	43	5	24	9	49	8	51	29	167
Medium	81	577	77	490	119	789	92	583	369	2,439
Minimum	50	366	68	569	65	493	37	340	220	1,768
Community	27	194	45	355	42	362	45	355	159	1,266
Unclassified	85	489	0	44	98	638	152	893	335	2,064
JURISDICTIONAL TOTAL	250	1,669	195	1,482	333	2,331	334	2,222	1,112	7,704

Alabama Department of Corrections
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Demographics and Sentencing

Inmate Population by Race and Sex

	Jurisdictional Population						Habitual Offenders				
	Male		Female		Totals		Male		Female		Totals
White	11,183	40.4%	1,930	7.0%	13,113	47.4%	2,412	40.8%	232	3.9%	2,644
Black	13,721	49.6%	633	2.3%	14,354	51.9%	3,171	53.7%	75	1.3%	3,246
Other	204	0.7%	9	0.0%	213	0.8%	18	0.3%	2	0.0%	20
Totals	25,108	90.7%	2,572	9.3%	27,680		5,601	94.8%	309	5.2%	5,910

Inmate Population by Age

	Jurisdictional		Habitual Offenders	
Age 15	1	0.0%	0	0.0%
Age 16	0	0.0%	0	0.0%
Age 17	7	0.0%	0	0.0%
Age 18	32	0.1%	0	0.0%
Age 19	88	0.3%	0	0.0%
Age 20	179	0.6%	4	0.1%
Ages 21-25	2092	7.6%	116	2.0%
Ages 26-30	4004	14.5%	556	9.4%
Ages 31-35	4327	15.6%	786	13.3%
Ages 36-40	4569	16.5%	1,043	17.6%
Ages 41-45	3657	13.2%	942	15.9%
Ages 46-50	2944	10.6%	828	14.0%
Ages 51-60	3936	14.2%	1,143	19.3%
Ages 60+	1844	6.7%	492	8.3%
Totals	27,680	100.0%	5,910	100.0%

Inmate Population by Custody Level

Close	552	2.0%
Medium	11,640	42.1%
Minimum-Community	2,317	8.4%
Minimum-Out	4,283	15.5%
Minimum-In	2,120	7.7%
Escape	91	0.3%
Recaptured Escapee	320	1.2%
Recaptured Parolee	745	2.7%
Unclassified	5,612	20.3%
Total	27,680	100.0%

Violent Offenders by Race and Sex

White Male	6440	35.8%
Black Male	10435	58.0%
Other Male	148	0.8%
White Female	619	3.4%
Black Female	359	2.0%
Other Female	3	0.0%
Total	18,004	100.0%

*% of Jurisdictional Population 65.0%

Distribution of LWOP Inmate Population by Custody Level

Institution	Close	Medium	Unclass	Totals
Donaldson	33	606	0	639
St. Clair	14	359	1	374
Holman	12	371	0	383
Tutwiler	0	54	0	54
Kilby	0	10	0	10
Other*	1	3	10	14
Hamilton A&I	0	6	0	6
Limestone	9	50	0	59
Fountain	0	0	0	0
Easterling	0	0	0	0
ADOC Clay County	0	0	0	0
Total	69	1,459	11	1,539

* Includes inmates in ADOC jurisdiction that are currently in federal or another state's custody.

Inmate Deaths

	Month	YTD
Homicides	0	8
Suicides	0	8
Executions	0	1
Other*	11	56
Total	11	73

* Includes deaths due to natural causes and those deaths where a cause has yet to be determined.

Sentence Length Summary: Jurisdictional Population

Sentence Length	Total	Percent
Up to 2 yrs	3,441	12.4%
Between 2 and 5 yrs	3,022	10.9%
5 yrs	1,710	6.2%
Between 5 & 10 yrs	1,742	6.3%
10 yrs	1,599	5.8%
Between 10 & 15 yrs	560	2.0%
15 yrs	1,881	6.8%
From 15 to 20 yrs	706	2.6%
20 yrs	3,827	13.8%
From 20 to 25 yrs	577	2.1%
25 yrs	1,274	4.6%
From 25 to 35 yrs	1,182	4.3%
Over 35 yrs	1,100	4.0%
Life	3,350	12.1%
Life/Barred Parole	14	0.1%
Life without Parole	1,487	5.4%
Death Row	177	0.6%
Unknown	31	0.1%
Total	27,680	100.0%

Sentence Length Summary: Habitual Offenders

Sentence Length		
Up to 2 yrs	277	4.7%
Between 2 and 5 yrs	382	6.5%
5 yrs	265	4.5%
Between 5 and 10 yrs	280	4.7%
10 yrs	241	4.1%
Between 10 & 15 yrs	92	1.6%
From 15 to 20 yrs	728	12.3%
From 20 to 25 yrs	1217	20.6%
From 25 to 35 yrs	592	10.0%
Over 35 yrs	219	3.7%
Life	1089	18.4%
Life/Barred from Parole	3	0.1%
Life without Parole	521	8.8%
Death Row	4	0.1%
Total Hab Offenders	5,910	100.0%

% Habitual of Jurisdictional Population: 21.4%

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Program Totals Since Inception

	Since Inception [1]	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Supervised Re-Entry Program--*Entered*	***8,822***	141	1,155	1,273	1,419	1,089	1,117	960	747	527	361	18	15	--
Supervised Re-Entry Program--*Released* *Successfully released through end of sentence or Parole*	***6,885***	--	775	936	1,057	937	846	862	572	412	420	56	12	--
Alabama Therapeutic Education Facility Graduates	***6,629***	--	98	574	775	708	631	634	617	609	543	610	527	303
Offenders Receiving GED[3]	***6,863***	872	980	593	703	658	593	646	412	694	227	237	248	--
Offenders Receiving VocTech Certificate[3]	***10,272***	718	645	612	699	599	816	1,377	1,161	1,185	551	716	1,193	--
Offenders Completing Drug Treatment	***37,723***	--	4,807	4,463	5,242	4,177	3,377	2,930	2,733	2,698	2,760	1,851	1,869	816
Re-Start Graduates[2]	***518***	--	--	--	--	112	106	99	67	107	27	--	--	--
In-House Re-entry Graduates	***35,116***	--	--	--	5,193	4,899	4,727	4,162	3,239	5,298	2,684	1,925	1,769	1,220
Limestone Re-entry Graduates	***4,783***	--	--	--	529	441	396	355	770	660	557	509	452	114
Offenders Entering Medical Furlough	***72***	--	--	5	4	5	6	6	9	4	13	4	6	10

1- Since Inception is based on inception of the program or when program data was first collected.
2-Alabama Re-Start Program is no longer implemented.
3-This data will be provided at the end of FY2019.

Alabama Department of Corrections
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Women's Treatment & Education Programs

Treatment & Education Programs

	Brought Forward	New Enrollments	Terminated: Disciplinary	Terminated: Other Reasons	Graduated	Total Participating EOM	Total Graduated YTD	Race: Black	Race: White	Race: Other	Race: Total-EOM
	Offender Transactions							Offender Race			
Re-Entry: Getting Ahead While Getting Out	19	3	0	1	4	**17**	51	7	10	0	**17**
Moving On: Program for At Risk Women	3	0	0	0	3	**0**	12	0	0	0	**0**
Helping Women Recover - 8 Week SAP	18	40	0	2	12	**44**	164	6	37	1	**44**
Beyond Violence	30	0	0	3	12	**15**	84	7	8	0	**15**
Beyond Trauma: A Healing Journey for Women	21	40	0	10	10	**41**	125	10	31	0	**41**
Active Adult Relationships	6	46	0	10	0	**42**	110	14	28	0	**42**
Parenting Inside Out	33	36	0	3	30	**36**	30	9	27	0	**36**
RSAT - 6 Month Crime Bill	23	2	0	2	0	**23**	16	4	19	0	**23**

SAP: *Substance Abuse Program*
RSAT: *Residential Substance Abuse Treatment Program*
EOM: *End of Month*
YTD: *Year to Date*

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Treatment & Education Programs

Inmate Drug Treatment Activities

Program	Currently Enrolled	Completed Month	Completed *Year*
Primary Drug Treatment Programs			
Relapse Treatment	0	0	*37*
8-Week SAP	439	0	*583*
8 Wk Mtrx	21	0	*19*
8 Week Co-Occurring	19	0	*21*
6-Month Crime Bill (RSAT)	218	0	*154*
Therapeutic Community	187	0	*2*
Total	884	0	*816*
Pre-Treatment & Aftercare Programs			
Pre-Treatment 8 Week SAP	76	0	--
Aftercare	612	0	--
Pre-Treatment 6-Month Crime Bill (RSAT)	0	--	--
Total	688	--	--

Inmate Re-entry Programs

	Month	Year
Completed In-House Re-entry Program	228	*1,220*
Completed Limestore CF 6-month Re-entry Program	0	*114*
Total	228	1334

SAP: *Substance Abuse Program*
RSAT: *Residential Substance Abuse Treatment Program*
GED: *General Education Development test*

Alabama Therapeutic Education Facility (ATEF)

	Month	*Year*
Intakes/Transfer Information		
New Intakes	66	*450*
Transfers Out	67	*400*
Treatment Information		
Graduates	55	*303*
GED	4	*13*
Vocation Cert	147	*864*
Alabama Career Readiness Cert	0	*0*
Anger Mgmt	8	*121*
Domestic Violence	1	*2*
Meth Matrix	10	*55*
SAP	27	*303*
Stress Mgmt	0	*0*
Thinking for a Change	62	*329*
Disciplinary Returns	9	*53*
Administrative Returns	3	*25*
Case Managers	25:1	---
Drug Screen Information		
Positive Drug Screens Upon Enrollment	0	*17*
Random Drug Screens	167	*1,141*
Positive Drug Screens	0	*13*
Security Information		
Escapes	0	*0*

Medical Furlough Program

	Currently Enrolled	New Enrollees Month	New Enrollees Year
Medical Furlough Program Totals	10	5	*10*

ATTACHMENT C

ADOC Inmates as of October 2018
Prior Felony Convictions

The listed inmates are/were serving non-revocation sentences for Property offenses.

The first number in front of the 4-character offense code represents the number of prior felony convictions for that particular offense. The offense codes are listed on page 3.

Example: **6 BEMV** = 6 prior felony convictions for Breaking/Entering a Motor Vehicle

INMATE	PRIORS						
1	1 UPCS	1 ASS2	1 BUR3	1 TOP2			
2	2 BUR3	1 TOP1	1 BEMV				
3	2 BUR3	2 RSP2					
4	6 BEMV	3 BUR3	4 TOP1	1 CRMS	1 PBTO		
5	2 BUR3						
6	1 POM1	1 UPCS					
7	2 UPCS						
8	1 RSP2	1 BUR3					
9	1 BUR3	1 MCS2					
10	1 TOP2	2 ESC2	3 ESC3	1 BUR3	1 CRMS	1 SXA1	
11	1 PFI2	1 RSP1	1 BEMV	1 BUR3	1 ROB3	1 UDCS	
12	1 PFI2	2 RSP2	1 ESC2	1 BUR3	1 TOP2	1 FOR2	
13	5 BUR3	1 TOP2	3 RSP1	1 UPCS	1 SXA1		
14	2 BUR3	1 TOP2					
15	3 PFI2	12 BUR3	1 TOP2	1 UPCS	2 UDCS		
16	1 POM1	1 RSP2					
17	1 BEMV	1 BUR3	1 ESC3	2 RSP2	1 RSP1		
18	4 BUR3						
19	1 BUR3						
20	1 TOP2	1 BUR3					
21	2 MCS2	2 CONA	1 TOP2				
22	1 BUR3						
23	1 CRMS	5 BUR3	1 TOP1	1 TOP2			
24	1 TOP2	3 BUR3					
25	1 BUR3	1 ROB1					
26	3 POM1						
27	3 BEMV	2 TOP2					
28	5 TOP2	2 PFI2	2 TOP2	1 BUR3	1 RSP2		
29	4 RSP1	1 TOP1					
30	2 TOP1	1 FOR2					
31	2 PFI2	2 FRCC	3 TOP2				
32	1 TOP2	1 BEMV	2 BUR3				
33	1 ASS2	1 RSP3	1 TOP1	2 RSP2	1 BUR3	2 PFI2	1 TOP2
34	2 BUR3						
35	1 TOP1	1 BUR2					
36	1 UPCS	1 TOP1	1 TOP2	2 FRCC			

ADOC Inmates as of October 2018
Prior Felony Convictions

INMATE	PRIORS							
37	1 PFI2	1 TOP1						
38	2 UPCS	2 RSP1	5 BUR3	1 TOP2				
39	4 TOP1	1 FRCC	1 PPC2					
40	1 BEMV	1 BUR3						
41	1 UPCS	2 BUR3	1 BEMV	1 UDCS				
42	1 BEMV	3 PFI2	1 BUR3	1 RSP2				
43	1 RSP1	1 BEMV	1 TOP2					
44	2 BEMV	2 FRCC	1 RSP1	2 UPCS	1 PPC2	4 TOP2	1 TOP1	1 FOR2
45	1 TOP1	1 TOP2	1 TERR					
46	2 UPCS	1 ESC3	1 BUR3	2 TOP2				
47	1 UPCS	1 FRCC						
48	1 MCS2	1 UPCS	1 BUR3					
49	3 PFI2							
50	1 BUR2	2 BUR3						

ADOC Inmates as of October 2018
Prior Felony Convictions

Offense Code	Offense Literal
ASS2	Assault 2nd
BEMV	Breaking/Entering a Motor Vehicle
BUR2	Burglary 2nd
BUR3	Burglary 3rd
CRMS	Criminal Mischief 1st
CONA	Community Notification Act
ESC2	Escape 2nd
ESC3	Escape 3rd
FRCC	Fraud Use of Credit/Debit Card
FOR2	Forgery 2nd
MCS2	Manufacture Controlled Substance 2nd
PFI2	Possess Forged Instrument 2nd
PBTO	Possess Burglar's Tools
PPC2	Promote Prison Contraband 2nd
SXA1	Sexual Abuse 1st
ROB1	Robbery 1st
ROB3	Robbery 3rd
POM1	Possession of Marihuana 1st
UPCS	Possession of Controlled Substance
UDCS	Distribution of Controlled Substance
RSP1	Receiving Stolen Property 1st
RSP2	Receiving Stolen Property 2nd
RSP3	Receiving Stolen Property 3rd
TOP1	Theft of Property 1st
TOP2	Theft of Property 2nd
TERR	Terrorist Threats

U.S. Department of Justice

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April 26, 2019

The Honorable Kay Ivey
Governor of Alabama
Alabama State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130

Re: Alabama Department of Corrections Legislative Suggestions: Update

Dear Governor Ivey,

I write to offer you the courtesy of an update on what I perceive as the positive progress in efforts to address some of the issues identified in the Letter of Findings, dated April 2, 2019, issued by the Department of Justice ("Department"). To be clear, I write in my individual capacity, and not on behalf of the Department as a whole. It is in that capacity that I think it is important for the State of Alabama to be fully apprised of the specific legislative measures being discussed. I am happy to provide more of these types of updates.

The breadth of this process is truly commensurate with the breadth of the investigation that was performed by the Department into Eighth Amendment issues within the Alabama Department of Corrections ("ADOC"). Settlement negotiations between the Department and ADOC have already begun, and I know the participants hope to work productively towards a comprehensive resolution. Since the settlement discussions are private amongst the parties, it would be inappropriate for me to detail those conversations here. It would also be inappropriate for me to comment on any term or condition being negotiated currently; however, I remain hopeful that the negotiations will continue to be effective and positive.

As you know, as someone with lengthy experience in Alabama's criminal justice system, I have been invited by the legislature to discuss potential reforms that may provide long-term solutions to some of the issues identified in the Letter of Findings. Over the course of the past several weeks, I have had meaningful discussions with members of your staff, including Chief of Staff Jo Bonner and General Counsel Bryan Taylor. I have also had productive conversations with Speaker Mac McCutcheon, Senate Pro Tem Del Marsh, Attorney General Steve Marshall, Senate Judiciary Committee Chairman Cam Ward, several members of both the majority and minority caucuses of both chambers of the legislature, Executive Director Bennet Wright from the Alabama Sentencing

Commission, multiple stakeholders that may be impacted by any legislation being discussed (such as representatives from the Alabama District Attorneys Association and the Alabama Sheriffs Association), and others.

I have been asked by several of these individuals to provide my thoughts on specific proposed reforms to Alabama's criminal justice model. I have limited my thoughts and comments on specific changes to criminal laws, criminal procedures, or other Alabama policies to those changes that I think may affect issues identified by the Department in its Letter of Findings. I have refrained from discussing the merit of potential reforms that, in my judgment, will not be beneficial in some way to the issues identified by the Department. While such proposed criminal justice reforms may prove worthy of passage, it would be inappropriate, and perhaps cause unnecessary confusion, for me to comment on legislation which I believe is outside of the purpose and scope of my role in this process. For clarity, I believe that the following subject matter is within the scope of what is appropriate to discuss with you, your office, members of the legislature, stakeholders, and the public:

- Adjustment of thresholds for what constitutes a felony for property offenses (e.g., Theft of Property, Theft of Services, Receiving Stolen Property, Breaking & Entering a Vehicle);
- Adjustment of a specific threshold for what constitutes a felony for the possession of prescription narcotics (e.g., the number of pills that would make such a felony, which is currently at 1 pill);
- Adjustment of the number of convictions required to make possession of marihuana for personal use a felony (the current threshold is two convictions);
- Whether Class D felony classifications of offenses and whether that class of felony is intrusive to normative sentencing principles and/or crime prevention or diversionary anti-recidivist programs;
- Shifting to a discretionary summons system for delineated, non-violent misdemeanor offenses;
- Adjustment of the recommended scheduled range of bail, as currently contained in Alabama Rule of Criminal Procedure 7.2;
- Addition of "summons fees" to Section 12-19-311 of the Alabama Criminal Code;
- Potential for hiring personnel at ADOC that are in the Retirement System of Alabama, and accompanying ethical and legal considerations;
- Roles and resources for law enforcement agencies that have the ability to provide the monitoring of felons through various functions or programs, such as probation and prosecution offices;
- Adjustment of the operation of laws that would allow for the return of a convicted person's driver's license upon release from custody or at end of sentence; and
- Prospective application in the sentencing guidelines that reflect any adjustments to the Alabama Criminal Code.

As I stated previously, I will not be discussing any other legislative or specific policies with anyone from the State or legislature in my capacity here. Moreover, these are the only reforms that may be attributed to my discussions in this effort. It must be understood that any suggested reforms

even slightly different from what is listed here would be outside of the scope of what I am able to discuss in my capacity. However, it is my judgment that any legislative solutions that Alabama deems appropriate to help resolve the Eighth Amendment issues at ADOC certainly could positively impact the Department and ADOC's settlement negotiations. I believe that complimentary statutory reforms and solutions could signal to the Department that Alabama is making significant strides toward correcting the Eighth Amendment issues detailed in the Department's Letter of Findings.

I am happy to provide similar correspondence to you upon your request. Moreover, I am available to discuss any of the specific matters detailed in this letter with you or your staff. Good men and women are working very hard to resolve the issues identified in the Letter of Findings, and I personally remain hopeful that our efforts will constrain the need for litigation. Please contact me directly should you have and comments, questions, or concerns about the information contained within this letter. Thank you for your courtesies and consideration in this matter.

Respectfully yours,

Jay E. Town
United States Attorney
Northern District of Alabama

Distribution list (via electronic mail):

Assistant Attorney General Eric Drieband, DOJ
U.S. Attorney Louis Franklin, MDAL, DOJ
U.S. Attorney Richard Moore, SDAL, DOJ
Speaker of the House Mac McCutcheon
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Alabama Attorney General Steve Marshall
Alabama State Senator Cam Ward
ADOC Commissioner Jeff Dunn
Chief of Staff Jo Bonner, Office of the Governor
General Counsel Bryan Taylor, Office of the Governor

Memorandum

Subject	Date
ADOC: Criminal Statutory Adjustments	April 22, 2019

To	From
File	U.S. Attorney Jay Town Northern District of Alabama

This memorandum serves only to convey suggested matters for discussion as they relate to the ongoing negotiations in the ADOC investigation. Nothing in this memorandum is intended to convey, either by the Department of Justice or by United States Attorney for the Northern District of Alabama, mandatory or non-negotiable legislative amendments that address the Alabama justice system and ADOC. The memo simply conveys discussion points that may allow all parties to more efficiently arrive at the appropriate, reasonable, and lawful remedial measures necessary to help alleviate constitutional concerns in ADOC.

Overcrowding and staffing levels in ADOC have persisted at unacceptable levels such that the safety and protection of both inmates and detention officers is compromised. Staffing levels are presumably addressed in a different section, but the appropriations for this solution is a legislative one.

The criminal laws in the State of Alabama dramatically impact the number of felons that fall under the jurisdiction of ADOC. Sentencing reform initiatives may have initially contributed to fewer individuals being directly confined for convictions of various felonies. However, virtually none of those sentencing reforms reduced the number of individuals under the jurisdiction of ADOC.[1] What is also too often lost in the criminal reform discussion is the fact that state probation officers are so inundated with probationers that they are, in most cases, unable to leave their desks to conduct live or in-person site visits with probationers. Typically, a monthly meeting and perhaps a urinalysis are the only requirements of most probationers. This unintended consequences of the current Alabama criminal statutes works against the maintenance and oversight of anti-recidivist behaviors of probationers. Probationers reoffend and then remain under the jurisdiction of ADOC for longer periods, often leading to confinement due to the commission of a more serious offense or due to a revocation of probation. The same is true for parolees. If the thresholds are adjusted,

[1] It is important to note that exchanging prison time for probation does not alleviate the roles and responsibilities of the Board of Pardons and Paroles as it relates to those individuals on probation. In fact, the more felony convictions one has…regardless of prior periods of detention…the more likely the sentencing guidelines will result in a recommendation of confinement or an "in" sentencing worksheet. Adjustments to the state criminal code, even if just to adjust for inflation, would eliminate a great number of future felony convictions since those offenses would now be Class A misdemeanors.

as suggested below, then more offenses would be charged as misdemeanors. In Alabama, the County or Municipal Probation Offices normally oversee probationers convicted of misdemeanor offenses. Every individual on County or Municipal Probation is an individual who is not under the jurisdiction of ADOC. In many cases, the probation is monitored directly by the court. The Sheriff could also maintain authority over defendants post-conviction to consider and issue parole to those inmates ordered into that Sheriff's custody.[2]

Reducing the ADOC jurisdiction of individuals on parole or probation would allow State Probation officers to be more impactful in the lives of their probationers. State Parole officers can ensure that parolees are not engaging in criminal behaviors. And the prison system has less individuals who, if revoked from probation, will be sent to the state penitentiary (which for non-violent offenses is typically a very brief stay, regardless of the sentence ordered).

The following statutory adjustment raise the thresholds on crimes that account for the vast majority of those cases docketed in the various judicial circuits in Alabama. The basic statutory adjustment for theft offenses is raise the Class B threshold from more than $2500 to more than $3500, the Class C threshold range from $1500-$2500 to $2500-$3500, the Class D threshold range from $500-$1499 to $1500-$2499, and the Class A misdemeanor threshold range from "less than $500" to "less than "$1500". These are simple thousand dollar adjustments. The controlled substance offenses raise the threshold from one prescription pill to "4 or fewer" and raise the number of Possession of Marihuana offenses for personal use from two to four.[3] A "summons system" is also considered, which would allow law enforcement the option to issue an "arrest summons", versus an arrest warrant, for certain delineated misdemeanor offenses while still maintaining the ability to issue an arrest warrant in their discretion in every circumstance. Also, Rule 7.2 under the Alabama Rules of Criminal Procedure reflects a significant upward adjustment to the Bond Schedule.[4]

---

[2] Some states have given Sheriffs the ability to parole inmates in the county jail post-conviction. This ability should come with guidelines and rigid structuring, much like we have in the state Board of Pardons and Paroles. Financial considerations should never be a factor in releasing an inmate at any level. However, a fully deteriorated threat to the public and other factors could justify early release. The Sheriffs could also maintain jurisdiction over the individual, either through a monitor or through a recognizance bond that is revocable should a parolee reoffend or violate any of the terms of his or her release.

[3] In Alabama, the number of DUIs that it takes to become a felony is four. POM2 could be the same when for personal use.

[4] The Alabama Rules of Criminal Procedure are normally changed by the Alabama State Supreme Court, but can be changed or forced by legislative action.

THEFT OF PROPERTY IN THE FIRST DEGREE (13A-8-3)

(a) The theft of property which exceeds ~~two~~ three thousand five hundred dollars in value, or property of any value taken from the person of another, constitutes theft of property in the first degree.

(b) The theft of a motor vehicle, regardless of its value, constitutes theft of property in the first degree.

(c)(1) The theft of property which involves all of the following constitutes theft of property in the first degree:

a. The theft is a common plan or scheme by one or more persons; and

b. The object of the common plan or scheme is to sell or transfer the property to another person or business that buys the property with knowledge or reasonable belief that the property is stolen;

and

c. The aggregate value of the property stolen is at least one thousand dollars ($~~1~~2,000) within a 180-day period.

(2) If the offense under this subsection involves two or more counties, prosecution may be commenced in any one of those counties in which the offense occurred or in which the property was disposed.

(d) Theft of property in the first degree is a Class B felony.

THEFT OF PROPERTY IN THE SECOND DEGREE (13A-8-4)

(a) The theft of property between ~~one~~ two thousand five hundred dollars ($~~1~~2,500) in value and ~~two~~ three thousand five hundred dollars ($~~2~~3,500) in value, and which is not taken from the person of another, constitutes theft of property in the second degree.

(b) Theft of property in the second degree is a Class C felony.

(c) The theft of a firearm, rifle, or shotgun, regardless of its value, constitutes theft of property in the second degree.

(d) The theft of any substance controlled by Chapter 2 of Title 20 or any amendments thereto, regardless of value, constitutes theft of property in the second degree.

(e) The theft of any livestock which includes cattle, swine, equine or equidae, or sheep, regardless of their value, constitutes theft of property in the second degree.

THEFT OF PROPERTY IN THE THIRD DEGREE (13A-8-4.1)

(a) The theft of property that exceeds ~~five~~ fifteen hundred dollars ($1500) in value but does not exceed ~~one~~ two thousand four hundred and ninety-nine dollars ($~~1~~2,499) in value, and which is not taken from the person of another, constitutes theft of property in the third degree.

(b) Theft of property in the third degree is a Class D felony.

(c) The theft of a credit card or a debit card, regardless of its value, constitutes theft of property in the third degree.

THEFT OF PROPERTY IN THE FOURTH DEGREE (13A-8-5)

(a) The theft of property which does not exceed ~~five~~ fifteen hundred dollars ($1500) in value and which is not taken from the person of another constitutes theft of property in the fourth degree.

(b) Theft of property in the fourth degree is a Class A misdemeanor

THEFT OF LOST PROPERTY IN THE FIRST DEGREE (13A-8-7)

(a) The theft of lost property which exceeds ~~two~~ three thousand five hundred dollars ($~~2~~3,500) in value constitutes theft of lost property in the first degree.

(b) Theft of lost property in the first degree is a Class B felony.

THEFT OF LOST PROPERTY IN THE SECOND DEGREE (13A-8-8)

(a) The theft of lost property between ~~one~~ two thousand five hundred dollars ($~~1~~2,500) in value and ~~two~~ three thousand five hundred dollars ($~~2~~3,500) in value constitutes theft of lost property in the second degree.

(b) Theft of lost property in the second degree is a Class C felony.

THEFT OF LOST PROPERTY IN THE THIRD DEGREE (13A-8-8.1)

(a) The theft of lost property which exceeds ~~five~~ fifteen hundred dollars ($1500) in value but does not exceed ~~one~~ two thousand four hundred and ninety-nine dollars ($~~1~~2,499) in value constitutes theft of lost property in the third degree.

(b) Theft of lost property in the third degree is a Class D felony.

THEFT OF LOST PROPERTY IN THE FOURTH DEGREE (13A-8-9)

(a) The theft of lost property which does not exceed ~~five~~ fifteen hundred dollars ($1500) in value constitutes theft of lost property in the fourth degree.

(b) Theft of lost property in the fourth degree is a Class A misdemeanor.

THEFT OF SERVICES IN THE FIRST DEGREE (13A-8-10.1)

(a) The theft of services which exceeds ~~two~~ three thousand five hundred dollars ($~~2~~3,500) in value constitutes theft of services in the first degree.

(b) Theft of services in the first degree is a Class B felony

THEFT OF SERVICES IN THE SECOND DEGREE (13A-8-10.2)

(a) The theft of services between ~~one~~ two thousand five hundred dollars ($2~~1~~,500) in value and ~~two~~ three thousand five hundred dollars ($~~2~~3,500) in value constitutes theft of services in the second degree.

(b) Theft of services in the second degree is a Class C felony.

THEFT OF SERVICES IN THE THIRD DEGREE (13A-8-10.25)

(a) The theft of services which exceeds ~~five~~ fifteen hundred dollars ($1500) in value but does not exceed ~~one~~ two thousand four hundred and ninety-nine dollars ($~~1~~2,499) in value constitutes theft of services in the third degree.

(b) Theft of services in the third degree is a Class D felony.

THEFT OF SERVICES IN THE FOURTH DEGREE (13A-8-10.3)

(a) The theft of services which does not exceed ~~five~~ fifteen hundred dollars ($1500) in value constitutes theft of services in the fourth degree.

(b) Theft of services in the fourth degree is a Class A misdemeanor

RECEIVING STOLEN PROPERTY IN THE FIRST DEGREE (13A-8-17)

(a) Receiving stolen property which exceeds ~~two~~ three thousand five hundred dollars ($~~2~~3,500) in value constitutes receiving stolen property in the first degree.

(b) Receiving stolen property in the first degree is a Class B felony.

RECEIVING STOLEN PROPERTY IN THE SECOND DEGREE (13A-8-18)

(a) Receiving stolen property:

(1) Which is between ~~one~~ two thousand five hundred dollars ($~~1~~2,500) in value and ~~two~~ three thousand five hundred dollars ($~~2~~3,500) in value; or

(2) Of any value under the circumstances described in subdivision (b)(3) of Section 13A-8-16 ; constitutes receiving stolen property in the second degree.

(b) Receiving stolen property in the second degree is a Class C felony

RECEIVING STOLEN PROPERTY IN THE THIRD DEGREE (13A-8-18.1)

(a) Receiving stolen property which exceeds ~~five~~ fifteen hundred dollars ($1500) in value but does not exceed ~~one~~ two thousand four hundred and ninety-nine dollars ($~~1~~2,499) in value constitutes receiving stolen property in the third degree.

(b) Receiving stolen property in the third degree is a Class D felony.

RECEIVING STOLENT PROPERTY IN THE FOURTH DEGREE (13A-8-19)

(a) Receiving stolen property which does not exceed ~~five~~ fifteen hundred dollars ($1500) in value constitutes receiving stolen property in the fourth degree.

(b) Receiving stolen property in the fourth degree is a Class A misdemeanor.

THEFT BY FRAUDULENT LEASING OR RENTAL PROPERTY (13A-8-144)

The crime of theft by fraudulent leasing or rental of property shall be a Class A misdemeanor if the subject matter of the lease or rental agreement had a value of ~~five~~ fifteen hundred dollars ($1500) or less; if the value of such property was in excess of ~~five~~ fifteen hundred dollars ($1500), the crime shall be a Class C felony.

UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE IN THE FIRST DEGREE (13A-12-212)

(a) A person commits the crime of unlawful possession of controlled substance in the first degree if:

(1) Except as otherwise authorized, and consistent with 13a-12-212.1, he or she possesses a controlled substance enumerated in Schedules I through V.

(2) He or she obtains by fraud, deceit, misrepresentation, or subterfuge or by the alteration of a prescription or written order or by the concealment of a material fact or by the use of a false name or giving a false address, a controlled substance enumerated in Schedules I through V or a precursor chemical enumerated in Section 20-2-181 .

(b) Unlawful possession of a controlled substance is a Class D felony.

UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SECOND DEGREE (13A-12-212.1) [**New Statute****]**

(a) A person commits the crime of unlawful possession of controlled substance in the second degree if:

(1) Except as otherwise authorized, and consistent with 13a-12-212.1, he or she possesses four (4) or fewer pills of a controlled substance enumerated in Schedules II through V.

(b) Unlawful possession of a controlled substance in the second degree is a Class A misdemeanor.

UNLAWFUL POSSESSION OF MARIHUANA (13A-12-213)

(a) A person commits the crime of unlawful possession of marihuana in the first degree if, except as otherwise authorized:

(1) He or she possesses marihuana for other than personal use; or

(2) Upon a fourth or subsequent conviction of unlawful possession of marihuana in the second degree for his or her personal use only, ~~H~~he or she possesses marihuana for his or her personal use ~~only after having been previously convicted of unlawful possession of marihuana in the second degree or unlawful possession of marihuana for his or her personal use only~~.

(b) Unlawful possession of marihuana in the first degree pursuant to subdivision (1) of subsection (a) is a Class C felony.

(c) Unlawful possession of marihuana in the first degree pursuant to subdivision (2) of subsection (a) is a Class D felony.

Alabama Code Title 15. Criminal Procedure Section 15-10-1

An arrest may be made, under a warrant or without a warrant or by issuance of a summons, by any sheriff or other officer acting as sheriff or his deputy, or by any constable, acting within their respective counties, or by any marshal, deputy marshal or policeman of any incorporated city or town within the limits of the county.

Alabama Code Title 15. Criminal Procedure Section 15-10-3.1

(a) An officer may issue a summons to a person without an arrest warrant, on any day and at any time in any of the following instances:

(1) If a public offense has been committed or a breach of the peace threatened in the presence of the officer.

(2) When a misdemeanor has been committed, though not in the presence of the officer, by the person issued the summons, and the officer has reasonable cause to believe that the person arrested committed the felony.

(4) When the officer has reasonable cause to believe that the person arrested has committed a misdemeanor, although it may afterwards appear that a misdemeanor had not in fact been committed.

(5) When a charge has been made, upon reasonable cause, that the person arrested has committed a misdemeanor.

(b) An officer may not issue a summons to a person, on any day and at any time in any of the following instances:

(1) If the public offense that has been committed is a felony of any class;

(2) If the defendant currently has an outstanding warrant for his or her arrest;

(3) If the defendant is currently charged with an offense, whether by arrest warrant or arrest summons, and that charge, or those charges, remain pending;

(4) If the defendant is currently on probation or parole with any agency in the United States;

(5) If the public offense that has been committed is any of the following misdemeanor offenses:

i. Domestic Violence; ii.

Driving Under the Influence; iii.

Assault in the Third Degree; iv.

Leaving the Scene of an Accident;

v. Attempt, Conspiracy, or Solicitation to commit a crime of violence, the commission of which would be a felony;

v. Attempt, Conspiracy, or Solicitation to commit a burglary, the commission of which would be a felony;

vi. Unlawful imprisonment;

vii. Attempt, Conspiracy, or Solicitation to commit Sexual Abuse in the First Degree;

viii. Sexual Abuse II; ix. Indecent Exposure;

xii. Failure to Register as a Sex Offender;

xi. Any offense under Alabama Code Section 13A-11-70, et seq (Section 13A-11-70 to 13A-11-85; Sections 13A-11-90);

xii. Any offense where the officer believes the individual to be a threat to society or unlikely to appear in court;

xiii. Any offense where the defendant is not from a surrounding state (Tennessee, Georgia, Florida, Mississippi).

(c) The discretion on whether to issue an arrest summons or an arrest warrant remains with the arresting officer. The arresting officer should always consider, when exercising that discretion, the following factors:

(1) Defendant's reputation and character;

(2) Defendant's prior criminal record;

(3) Violence or lack of violence in the alleged commission of the instant offense;

(4) Threats made against victims and/or victims;

(5) Residence of the defendant;

(6) Likelihood that the defendant will appear in court;

(7) Reasonable belief that the defendant poses a real and present danger of harm to any other person, to include himself, or to the public at large.

(d) A court of competent jurisdiction may cause warrants to issue to a defendant that was previously issued a summons if the court believes, under any circumstance, that an arrest warrant and bond, to include a no bond, would be appropriate. The court need not develop new information from all known or available information at the time of the summons to cause such warrants to issue.

(e) The prosecuting authority of competent jurisdiction may seek an arrest warrant to be served on a defendant that was previously issued a summons if the prosecuting authority believes, under any circumstance, that an arrest warrant and bond, to include a request for no bond, would be appropriate. The prosecuting authority need not develop new information from all known or available information at the time of the summons to cause such warrants to issue.

(1) The term "prosecuting authority" shall include the District Attorney, City Attorney, Municipal Attorney, Alabama Attorney General, all assigns or designated personnel from any of those prosecuting authorities, or any other special prosecuting authority designated by a court.

Alabama Rules of Criminal Procedure Rule 7.2 Release.

(b) BAIL SCHEDULE. The following schedule is established as a general rule for circuit, district and municipal courts in setting bail for persons charged with bailable offenses. Except where release is required in the minimum schedule amount pursuant to the Rules of Criminal Procedure, courts should exercise discretion in setting bail above or below the scheduled amounts.

BAIL SCHEDULE
Recommended Range

Felonies:

Capital felony	$250,000 to No Bail Allowed
Murder	$~~1~~250,000 to $ ~~1~~500,000
Class A felony	$100,000 to $ ~~6~~250,000
Class B felony	$ 50,000 to $ ~~3~~100,000
Class C felony	$ ~~2~~10,~~5~~000 to $ ~~1~~50,000
Drug manufacturing	$50,000 to $1,500,000
Drug trafficking	$50,000 to $1,500,000
Class D felony	$1,000 to $ 10,000

Misdemeanors (not included elsewhere in the schedule):

Class A misdemeanor	$ ~~300~~1000 to $ ~~6~~5,000
Class B misdemeanor	$ ~~3~~500* to $ ~~3~~1,000
Class C misdemeanor	$ ~~3~~500 to $ 1,000
Violation	$ 300 to $ 500

Municipal Violations	$ 300 to $ 1,000

Alabama Code Title 12. Bail Bond Fees 12-19-311

Bail Bond and Summons fees.

(a)(1) In addition to all other charges, costs, taxes, or fees levied by law on bail bonds or summons, additional fees as detailed in paragraph a. and paragraph b. shall be imposed on every bail bond or summons in all courts of this state.

The fee shall not be assessed in traffic cases, except for those serious traffic offenses enumerated in Title 32, Chapter 5A, Article 9. Where multiple charges arise out of the same incident, the bond or summons fee pursuant to this section shall only be assessed on one charge. For the purposes of this section, the term same incident shall be defined as the same date, location, and proximate time. If a charge or charges that were initiated by a summons result in a bond, then

both a summons and bail bond fee are due and owing. Where the charge is negotiating a worthless negotiable instrument, the fee shall not be assessed more than three times annually per person charged. The fees shall be assessed as follows:

a. A filing fee in the amount of thirty-five dollars ($35) on each bond or summons executed.

b. For a misdemeanor offense, a bail bond fee in the amount of 3.5 percent of the total face value of the bail bond or one hundred dollars ($100), whichever is greater, but not to exceed four hundred fifty dollars ($450). For a felony offense, a bail bond fee of 3.5 percent of the total face value of the bail bond or one hundred fifty dollars ($150), whichever is greater, but not to exceed seven hundred fifty dollars ($750). Except that if a person is released on a judicial public bail, recognizance, or signature bond, including a bond on electronic traffic and nontraffic citations, the fee shall be affixed at twenty-five dollars ($25). For purposes of this section, face value of bond shall mean the bond amount set by court or other authority at release, not the amount posted at release on bail.

(2) The fees assessed pursuant to paragraph a. of subdivision (1) of subsection (a) are required whether a summons, or the release from confinement or admittance to bail is based on cash, judicial public bail, personal recognizance, a signature bond, including a bond on electronic traffic and nontraffic citations for those serious traffic offenses enumerated in Title 32, Chapter 5A, Article 9, an appearance bond, a secured appearance bond utilizing security, a bond executed by a professional surety company, or a professional bail company using professional bondsmen; provided, however that no fee shall be assessed pursuant to paragraph a. of subdivision (1) of subsection (a) if a person is released on judicial public bail or on personal recognizance for a documented medical reason. The fee shall be assessed at the issuance, reissuance, or reinstatement of the bond.

(b) The fee in paragraph a. of subdivision (1) of subsection (a) shall be collected by either the official executing the bond or summons or by the clerk of the court. If the fee is collected by the official executing the bond or summons, it shall be collected at the execution of the bond or at the time of release. If the fee is collected by the clerk of the court, it shall be collected at the execution of the bond, at the time of release, or within two business days of release or initial appearance, whichever is sooner. The fee may be remitted via money order, electronic means, U.S. mail to the court clerk postmarked within 48 hours of release, or by any other method approved by the sheriff. If the fee is collected by an official other than the clerk of the court, the official shall remit the fee to the clerk of the court, attached to the executed bond or summons, within 30 days or upon adjudication or conviction of the underlying offense, whichever occurs first; if the fee is not collected by the official, the official shall provide documentation of the nonpayment, attached to the executed bond, to the clerk of the court within two business days. The clerk of the court may accept the payment of the fee if the clerk has the executed bond or summons, together with proof of nonpayment and charging instrument, in hand. This fee shall be paid by the bondsman, surety, guaranty, or person signing as surety for the undertaking of bail, or in the case of a summons, paid by the person to whom the summons was issued. If the person is released on own recognizance, judicial public bail, or non-custodial offense pursuant to Rule 20 of the Alabama Rules of Judicial Administration, the fee shall be assessed at the time of adjudication or at the time that any other fees and costs are assessed.

(c) Upon the failure to pay the fee in paragraph a. of subdivision (1) of subsection (a) and upon a finding of contempt in subsection (d), the bondsman, surety, guaranty, or individuals

required to pay the fee, to include the person to whom a summons was issued, shall be punished by a fine of not less than five hundred dollars ($500) in addition to the fee imposed in paragraph a. of subdivision (1) of subsection (a). The fine shall not be remitted, waived, or reduced unless the person(s) fined can show cause to the court that he or she cannot pay the fine in the reasonably foreseeable future. In addition, upon a finding of contempt, if the responsible party is a professional surety company or a professional bail company or otherwise operating as a bondsman under Alabama law, the presiding judge may revoke the entity or individual's authority to write or issue bonds pursuant to Section 15-13-159 or 15-13-160 until such time as the payment is rendered in full.

(d) If the fee in paragraph a. of subdivision (1) of subsection (a) is not paid in full within 30 days, the clerk of the court shall provide notification of the delinquency to the district attorney or prosecuting attorney on a monthly basis. Upon receipt of the certification of delinquency or failure to pay from the court, the district attorney or prosecuting attorney may take appropriate action which may include, but shall not be limited to, contempt proceedings. If contempt proceedings are initiated the district attorney or prosecuting attorney shall send notice by U.S. Mail, or any other electronic means likely to provide adequate notice, to the last known address, email address, or phone number of the person charged with the crime, bondsman, surety, guaranty, or person signing as surety for the undertaking of bail of the failure to pay, or in the case of a summons, to the person to whom the summons was issued, and provide them 10 days to remit payment in full pursuant to this section. If the surety is the person charged with the crime where the fee applies, the district attorney or prosecuting attorney may file a petition for contempt and the court shall set the contempt hearing on the person's next regularly scheduled court appearance. If the surety is not the person charged with the crime the district attorney or prosecuting attorney may file a petition for contempt with the court, which may, after hearing, find the bondsman, surety, guaranty or person signing as surety the undertaking of bail, or in the case of a summons, the person to whom the summons was issued, in contempt. The municipal court clerk shall provide a list to the prosecuting attorney and district attorney every 60 days that shall include, but not be limited to, the name of every person who has failed to pay the fee, the municipal case number, and the name of the person signing as surety for the undertaking bail. If the prosecuting authority of the municipality does not initiate contempt proceedings pursuant to this section within 30 days of receiving notice from the clerk of the court, the district attorney with jurisdiction may file the contempt petition in the municipal court. If the district attorney initiates contempt proceedings in a municipal case and the person is found in contempt, the fine shall be distributed as follows: 50% to the general fund of the municipality and 50% to the district attorney Solicitor's Fund.

(e)(1) The fee imposed on bail bonds or summons under paragraph b. of subdivision (1) of subsection (a) shall be assessed to the defendant and be imposed by the court when the defendant appears in court for adjudication or sentencing.

(2) Notwithstanding (e)(1), if the bail bond has been secured by cash, the conditions of release have been performed, and the defendant has been discharged from all obligations of the bond, or if the cash bail bond is forfeited the clerk of the court shall, unless otherwise ordered by the court, retain as the bail bond fee the amount pursuant to paragraph b. of subdivision (1) of subsection (a) and disburse the remainder as provided by law.

(3) Notwithstanding (e)(1), if the property bail bond has been secured, the conditions of release have been performed and the defendant has been discharged or released from all

obligations of the bond, or if the property bail bond is forfeited, then the bond shall be reduced to the bail bond fee amount pursuant to paragraph b. of subdivision (1) of subsection (a) and the property shall not be discharged or released by the court until the bail bond fee pursuant to paragraph b. of subdivision (1) of subsection (a) has been paid in full.

(4) The fees shall be collected pursuant to paragraph b. of subdivision (1) of subsection (a) by the clerk of the court. The fees pursuant to this section shall not be remitted, waived, or reduced unless the defendant proves to the reasonable satisfaction of the sentencing judge that the defendant is not capable of paying the same within the reasonably foreseeable future. The fees pursuant to this section shall not be remitted, waived, or reduced unless all other costs, fees, and charges of court are remitted or waived.

(5) The fees shall not reduce or affect the funds allocated to the office of the court clerk, the sheriff, the municipality, the district attorney, or the Alabama Department of Forensic Sciences under any local act or other funding mechanism under the law. These funds shall be in addition to and not in lieu of any funds currently available to the office of the court clerk, sheriff, municipality, the district attorney, and the Alabama Department of Forensic Sciences.

(f) The court clerks shall distribute on a monthly basis as other fees are distributed, the fees collected pursuant to paragraph a. of subdivision (1) of subsection (a) as follows: Ten percent from each fee shall be distributed either to the county general fund to be earmarked and distributed to the Sheriff's Fund, administered by the sheriff, in the county where the bond or summons was executed or, where the bond or summons is executed by the municipality, to the municipality; 45 percent of the fee to the court clerk's fund where the bond or summons was executed or where the bond or summons is executed by the municipal court, to the municipality; 45 percent of the fee to the Solicitor's Fund in the county where the bond or summons was executed. The bail bond or summons fee records shall be audited by the Department of Examiners of Public Accounts.

(g) The court clerks shall distribute on a monthly basis as other fees are distributed, the fees collected pursuant to paragraph b. of subdivision (1) of subsection (a) as follows: Twenty-one dollars and fifty cents ($21.50) from each fee shall be distributed to the county general fund which shall be earmarked and distributed to the Sheriff's Fund, administered by the sheriff, in the county where the bond or summons was executed or, where the bond or summons was executed by a municipality, to the municipality; 40 percent of the remainder of the fee to the court clerk's fund where the bond or summons was executed or where the bond or summons is executed by the municipal court, to the municipality; 45 percent of the remainder of the fee to the Solicitor's Fund in the county where the bond or summons was executed; five percent to the State General Fund and ten percent to the Alabama Forensic Services Trust Fund. The bail bond or summons fee records shall be audited by the Department of Examiners of Public Accounts.

ENCLOSURE

Letter to Governor Kay Ivey, dated April 26, 2019

U.S. Department of Justice

Jay E. Town
United States Attorney
Northern District of Alabama

1801 Fourth Avenue North
Birmingham, AL 35203-2101

(205) 244-2001
FAX (205) 244-2171

April 26, 2019

The Honorable Kay Ivey
Governor of Alabama
Alabama State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130

Re: Alabama Department of Corrections Legislative Suggestions: Update

Dear Governor Ivey,

I write to offer you the courtesy of an update on what I perceive as the positive progress in efforts to address some of the issues identified in the Letter of Findings, dated April 2, 2019, issued by the Department of Justice ("Department"). To be clear, I write in my individual capacity, and not on behalf of the Department as a whole. It is in that capacity that I think it is important for the State of Alabama to be fully apprised of the specific legislative measures being discussed. I am happy to provide more of these types of updates.

The breadth of this process is truly commensurate with the breadth of the investigation that was performed by the Department into Eighth Amendment issues within the Alabama Department of Corrections ("ADOC"). Settlement negotiations between the Department and ADOC have already begun, and I know the participants hope to work productively towards a comprehensive resolution. Since the settlement discussions are private amongst the parties, it would be inappropriate for me to detail those conversations here. It would also be inappropriate for me to comment on any term or condition being negotiated currently; however, I remain hopeful that the negotiations will continue to be effective and positive.

As you know, as someone with lengthy experience in Alabama's criminal justice system, I have been invited by the legislature to discuss potential reforms that may provide long-term solutions to some of the issues identified in the Letter of Findings. Over the course of the past several weeks, I have had meaningful discussions with members of your staff, including Chief of Staff Jo Bonner and General Counsel Bryan Taylor. I have also had productive conversations with Speaker Mac McCutcheon, Senate Pro Tem Del Marsh, Attorney General Steve Marshall, Senate Judiciary Committee Chairman Cam Ward, several members of both the majority and minority caucuses of both chambers of the legislature, Executive Director Bennet Wright from the Alabama Sentencing

Commission, multiple stakeholders that may be impacted by any legislation being discussed (such as representatives from the Alabama District Attorneys Association and the Alabama Sheriffs Association), and others.

I have been asked by several of these individuals to provide my thoughts on specific proposed reforms to Alabama's criminal justice model. I have limited my thoughts and comments on specific changes to criminal laws, criminal procedures, or other Alabama policies to those changes that I think may affect issues identified by the Department in its Letter of Findings. I have refrained from discussing the merit of potential reforms that, in my judgment, will not be beneficial in some way to the issues identified by the Department. While such proposed criminal justice reforms may prove worthy of passage, it would be inappropriate, and perhaps cause unnecessary confusion, for me to comment on legislation which I believe is outside of the purpose and scope of my role in this process. For clarity, I believe that the following subject matter is within the scope of what is appropriate to discuss with you, your office, members of the legislature, stakeholders, and the public:

- Adjustment of thresholds for what constitutes a felony for property offenses (e.g., Theft of Property, Theft of Services, Receiving Stolen Property, Breaking & Entering a Vehicle);
- Adjustment of a specific threshold for what constitutes a felony for the possession of prescription narcotics (e.g., the number of pills that would make such a felony, which is currently at 1 pill);
- Adjustment of the number of convictions required to make possession of marihuana for personal use a felony (the current threshold is two convictions);
- Whether Class D felony classifications of offenses and whether that class of felony is intrusive to normative sentencing principles and/or crime prevention or diversionary anti-recidivist programs;
- Shifting to a discretionary summons system for delineated, non-violent misdemeanor offenses;
- Adjustment of the recommended scheduled range of bail, as currently contained in Alabama Rule of Criminal Procedure 7.2;
- Addition of "summons fees" to Section 12-19-311 of the Alabama Criminal Code;
- Potential for hiring personnel at ADOC that are in the Retirement System of Alabama, and accompanying ethical and legal considerations;
- Roles and resources for law enforcement agencies that have the ability to provide the monitoring of felons through various functions or programs, such as probation and prosecution offices;
- Adjustment of the operation of laws that would allow for the return of a convicted person's driver's license upon release from custody or at end of sentence; and
- Prospective application in the sentencing guidelines that reflect any adjustments to the Alabama Criminal Code.

As I stated previously, I will not be discussing any other legislative or specific policies with anyone from the State or legislature in my capacity here. Moreover, these are the only reforms that may be attributed to my discussions in this effort. It must be understood that any suggested reforms

even slightly different from what is listed here would be outside of the scope of what I am able to discuss in my capacity. However, it is my judgment that any legislative solutions that Alabama deems appropriate to help resolve the Eighth Amendment issues at ADOC certainly could positively impact the Department and ADOC's settlement negotiations. I believe that complimentary statutory reforms and solutions could signal to the Department that Alabama is making significant strides toward correcting the Eighth Amendment issues detailed in the Department's Letter of Findings.

I am happy to provide similar correspondence to you upon your request. Moreover, I am available to discuss any of the specific matters detailed in this letter with you or your staff. Good men and women are working very hard to resolve the issues identified in the Letter of Findings, and I personally remain hopeful that our efforts will constrain the need for litigation. Please contact me directly should you have and comments, questions, or concerns about the information contained within this letter. Thank you for your courtesies and consideration in this matter.

Respectfully yours,

Jay E. Town
United States Attorney
Northern District of Alabama

Distribution list (via electronic mail):

Assistant Attorney General Eric Drieband, DOJ
U.S. Attorney Louis Franklin, MDAL, DOJ
U.S. Attorney Richard Moore, SDAL, DOJ
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Alabama Attorney General Steve Marshall
Alabama State Senator Cam Ward
ADOC Commissioner Jeff Dunn
Chief of Staff Jo Bonner, Office of the Governor
General Counsel Bryan Taylor, Office of the Governor

ENCLOSURE

Letter to Alabama District Attorneys, dated June 10, 2019

U.S. Department of Justice

Jay E. Town
United States Attorney
Northern District of Alabama

1801 Fourth Avenue North
Birmingham, AL 35203-2101

(205) 244-2001

June 10, 2019

Via Electronic Mail
All District Attorneys
State of Alabama

Subject: Alabama Department of Corrections & Potential Criminal Code Changes

Dear District Attorneys,

I wanted to express my gratitude for the audience I received in our meeting on Friday, June 7th. I very much appreciated the candor and content of our discussion, along with the respect shown for my role in this process. It is my hope that Alabama will find an Alabama solution and I will make myself available to each of you, and the ADAA, should the Alabama District Attorneys desire my input.

The opportunity to join you in private conference last week to discuss those issues that are currently affecting the state prison system in Alabama was humbling. Specifically, we were able to address the Eighth Amendment violations afoot inside our state prisons, recognizing that those issues must be abated under federal law. As United States Attorney, it is my role to ensure the consideration of any remedial measure that makes such corrective action more likely to succeed. Moving forward, it is my judgment that the Alabama District Attorneys are the subject matter experts on the practical implications of any changes to the Alabama Criminal Code and thus I believe your continued input to not only be necessary, but critical to the systemic and interminable realization of those remedial measures. It gives me great confidence to learn that the ADAA will work throughout the summer to identify specific measures that might work to maintain the highest possible levels of public safety while considering the equities such changes may have on the constitutional issues that exist currently within the Alabama Department of Corrections.

Thank you all for your courtesies and your continued service to make Alabama as safe as she can be. Please do not hesitate to contact me should any of you have any questions or comments for about the Department of Justice's Letter of Findings or any other matter.

Respectfully yours,

Jay E. Town
United States Attorney
Northern District of Alabama

ALABAMA'S UNRESOLVED INMATE CRISIS

A Report on the Unintended Impact of the 2015 Prison Reform Act

ALABAMA COUNTIES' PERSPECTIVE

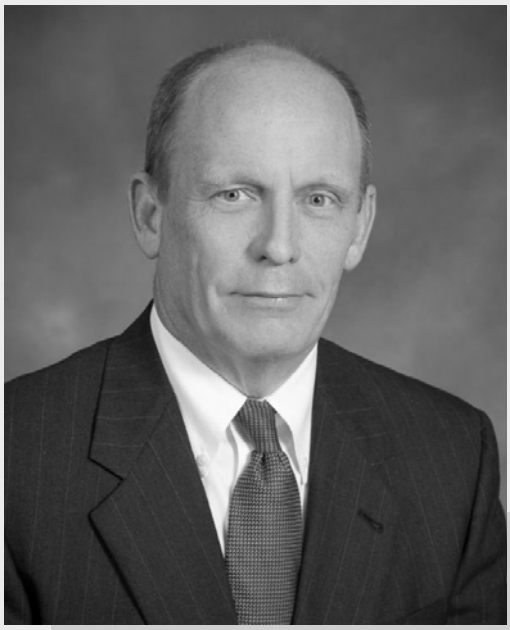
In 2014, Alabama faced a crisis with its prison system amid mounting problems with overcrowding, unsatisfactory conditions inside the facilities and a looming federal takeover. In response, the Alabama Legislature created a broad-based task force to search for innovative solutions. Although the focus of the group was relief to the overcrowded state facilities, the two county representatives on the panel spoke often and clearly about the impact many of the proposed measures could have on the local communities.

In fact, the county representatives — former Marshall County Commissioner Bill Stricklend and Baldwin County Sheriff Hoss Mack — urged the task force to delay introduction of legislation, writing that the proposed measures would "clearly and directly impact county jails, sheriffs and county budgets in a significant and negative way" and urged that "legislation be presented only after additional review and debate."

The Legislature moved forward despite the cries of concern. In the years that have followed, Alabama's counties have experienced the increase in jail and law enforcement costs that Stricklend and Mack precisely predicted.

The counties' representatives specifically wrote:

> *"The use of the county jail as a tool for producing more acceptable behavior by parolees will place excessive pressure on county government. The proposed unscheduled drop-off of parole violators and the use of the county jail as a holding tank for parole violators set to make as many as three repeat trips to the prison system will clearly cause havoc at the county level. Although those who support this concept point to a modest reduction in state inmate populations in other states, Alabama's unique requirements on inmate transfers, medical costs and frequent litigation will clearly serve to significantly increase costs for counties."*



SONNY BRASFIELD, EXECUTIVE DIRECTOR
ASSOCIATION OF COUNTY COMMISSIONS OF ALABAMA
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@sonnybrasfield

The data contained in this report confirms their reservations. The cost of operating Alabama's county jails and the 67 sheriff's departments has increased dramatically from the year before the passage of the reforms (fiscal year 2014) to fiscal year 2018. The number of state inmates in county jails has increased at an alarming rate — from almost 2,000 inmates in fiscal year 2014 to almost 7,800 in fiscal year 2018. The increased cost to counties has been so significant that those inside county government are concerned about the long-term viability of continued implementation of the 2015 changes.

Clearly, the intent of the 2015 reforms was to make it easier for probation and parole violators to stay in the community, despite displaying conduct that would have landed them back under the custody of the Department of Corrections before the passage of the new measures. The reforms also established a process allowing probation officers to drop off so-called "technical" violators at the county jail for as many as six different three-day stays (known as "dips") to help curb their unacceptable behavior.

Likewise, the 2015-created authority for repeated technical violators to be held in county jails while awaiting a 45-day transfer to state custody (known as "dunks") has applied additional pressure on the limited bed space in most county jails and produced a corresponding increase in medical costs and lawsuits.

ALABAMA COUNTIES' PERSPECTIVE

As the Appendix E chart shows, during fiscal year 2017, at least 4,725 persons were held in county jails for dips and dunks. The number climbed to 5,527 persons in fiscal year 2018. Numbers are not yet available for fiscal year 2019.

This enormous influx of inmates otherwise held in state custody — with no additional funding for the corresponding costs — has provided relief to the state prison system at the expense of the 67 county governments. And the "dunk" process has also further impacted jail space because of difficulties in efficiently moving these inmates from county jails. Adding the "dunks" to the usual inflow of permanent inmates has stretched the Department's ability to respond in a timely manner.

SONNY BRASFIELD,
EXECUTIVE DIRECTOR
ASSOCIATION OF COUNTY COMMISSIONS OF ALABAMA

Information provided by the Alabama Sentencing Commission shows that 30 percent of the inmates received into the custody of the Alabama Department of Corrections intake process today are actually persons being returned to state custody through the "dunk" process. It is important to note that no solution has been offered to move the "dunk" inmates into regional facilities, rather than through the centralized process, despite the 2015 legislation requiring the Department to work with counties to develop such an alternative process.

As a result, the number of state inmates in county jails awaiting permanent transfer to the Department has spiked within the past 12 months. In fact, the number of inmates exceeding the 30-day limit established by the Alabama Supreme Court has reached more than 140 per week in 2019. This backlog also places additional stress and expense on county governments and has resulted in additional litigation at the counties' expense.

In addition, the costs of operating Alabama's county jails has increased by 14.2 percent between 2014 and 2018 — a number that is more than twice the rate of inflation during that time period. Likewise, county expenditures on the operation of the sheriff's office, already stressed by the impact of the new Class D felony arrests included in the 2015 reforms, increased by 12.2 percent during the same timeframe.

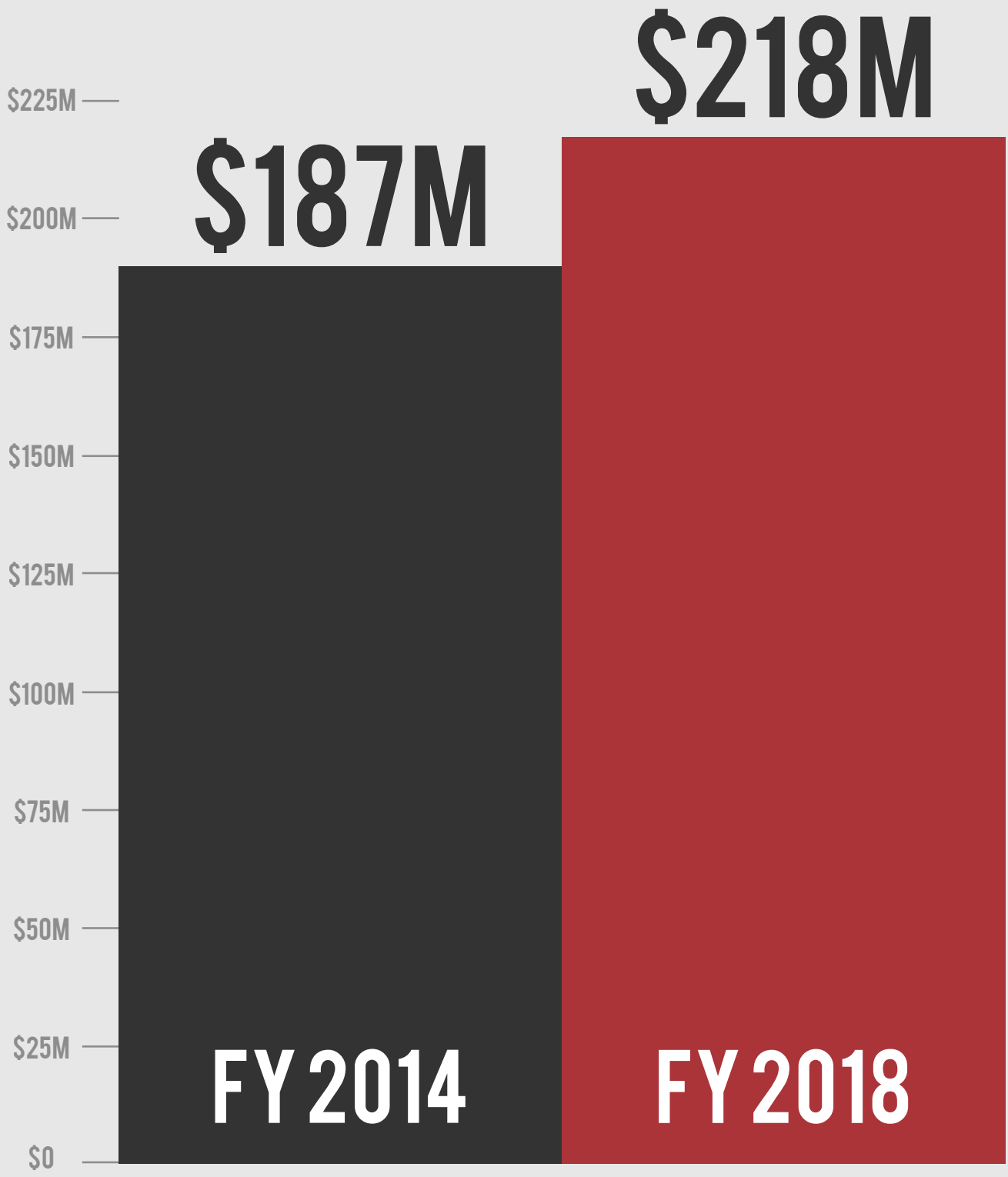
In all, county expenditures on jail and law enforcement increased by more than $63 million per year between 2014 and 2018. *Data on county expenditures is shown on Pages 4-6, and the specific expenditures for each county during fiscal years 2014 through 2018 is detailed in Appendices B and C.*

In conclusion, the influx of inmates has so negatively impacted county budgets that during the 2019 Annual Convention of the Association of County Commissions of Alabama, the membership unanimously adopted a resolution urging the Alabama Legislature to re-examine the 2015 reforms — and the impact on county resources — before moving forward with any future changes. *The resolution can be found in the Appendix of this report as Appendix A.*

The resolution states that *"Alabama's County Governments oppose any additional Sentencing Reform Legislation before the Alabama Legislature that would result in additional diversion of inmates, probationers or parolees into Alabama's county jails without full reimbursement of all costs resulting from such diversion...[and] call on the Alabama Legislature to fully fund the reforms of 2015 by providing counties with the necessary revenue to address the unfunded mandates resulting from the 2015 Alabama Prison Reform Act."*

County government recognizes the unavoidable link between county jails and the Alabama Department of Corrections. All involved in this effort must recognize that reform at either level has a direct — and dramatic — impact on the financial well-being of the other level of government. Effective solutions to this long-standing problem must include revisions to the 2015 reforms, which have proven so costly to counties that the county jails now face a crisis not unlike that which confronted the State in 2014.

COST TO OPERATE COUNTY JAILS

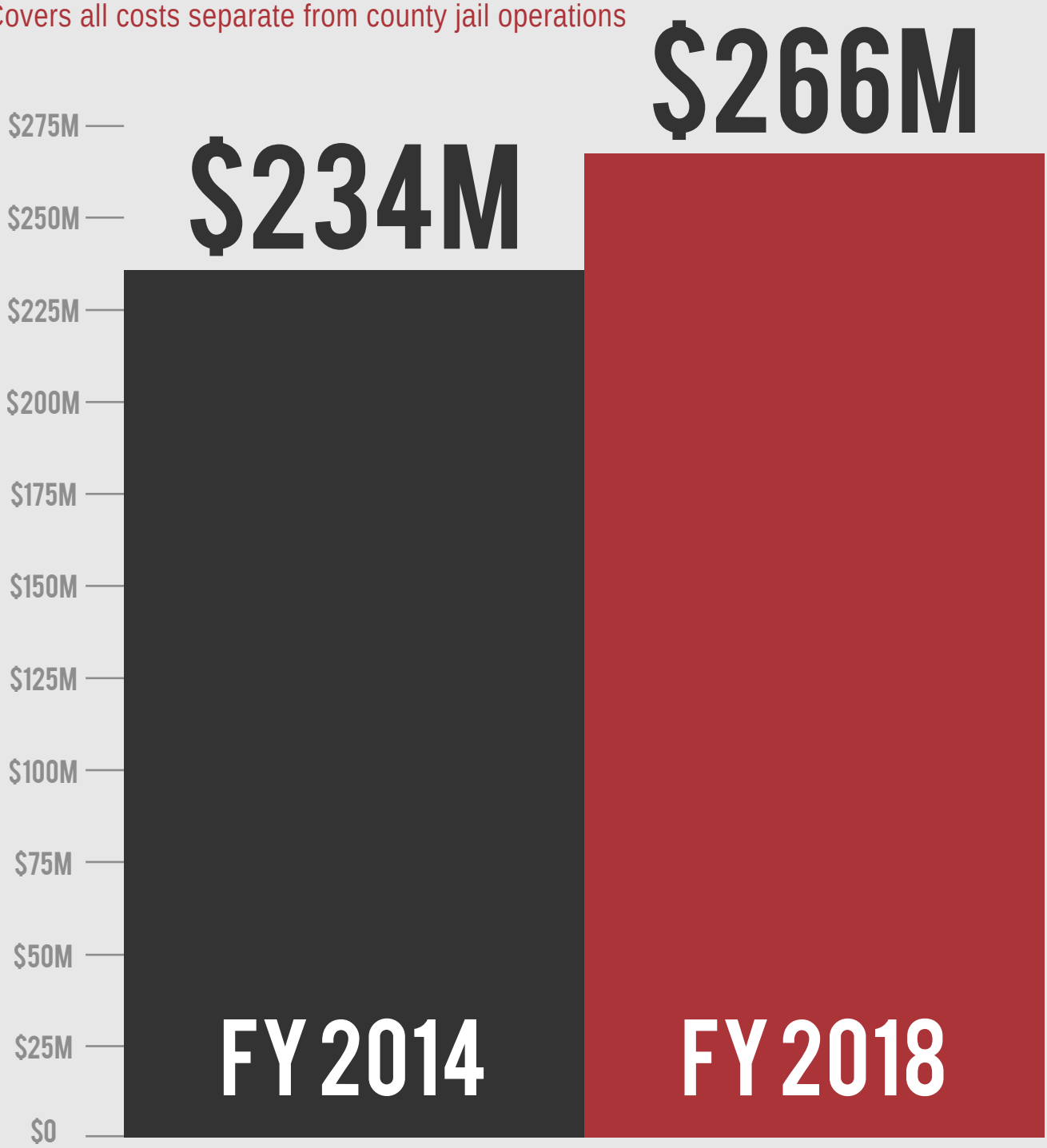


County costs increased by $31M from 2014 to 2018, more than **twice the rate of inflation**.

See Appendix B for a complete breakdown of county-by-county jail operation costs.

COST TO OPERATE COUNTY SHERIFF'S DEPARTMENTS

*Covers all costs separate from county jail operations

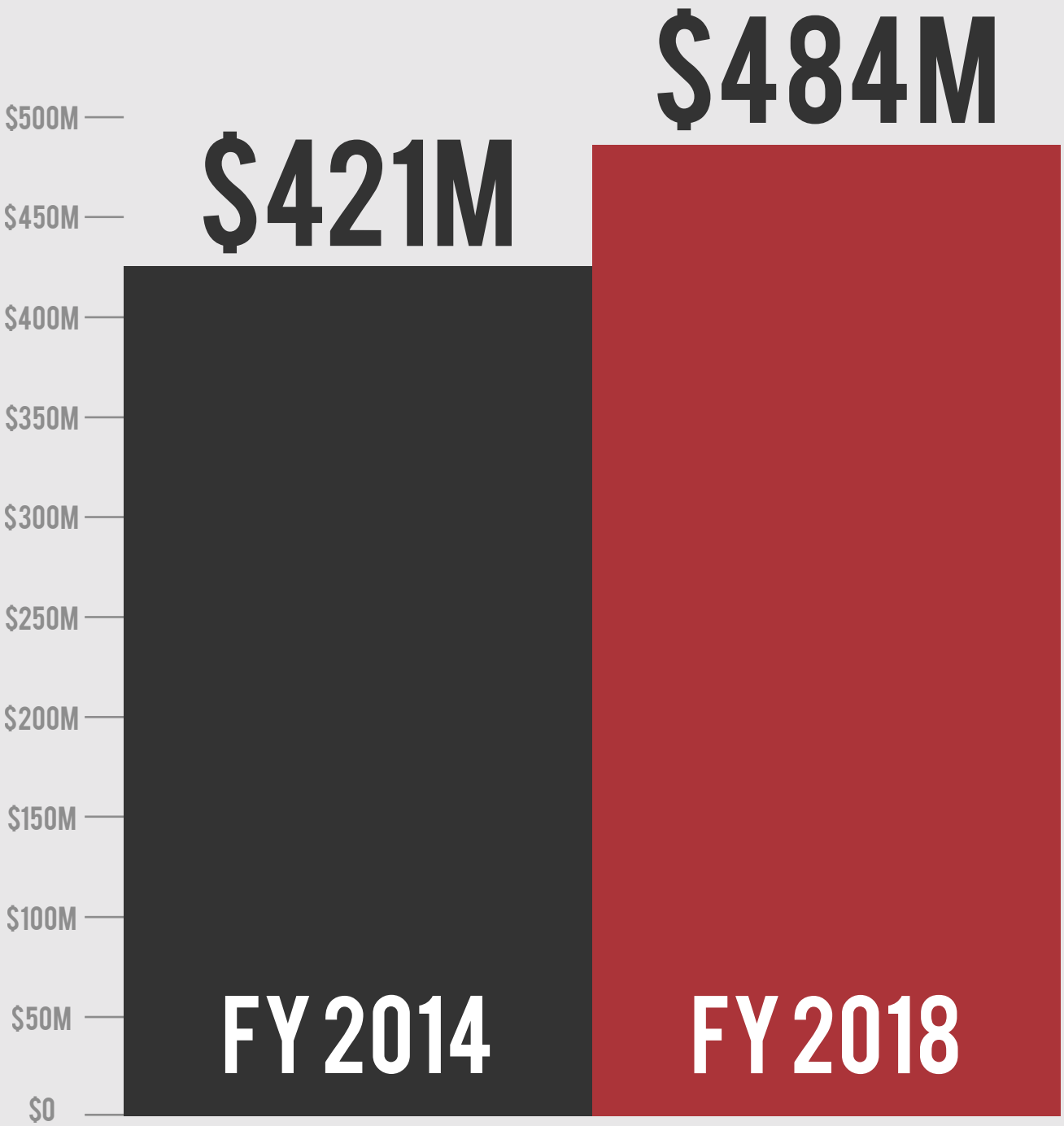


County costs increased by $32M from 2014 to 2018, **twice the rate of inflation**.

See Appendix C for a complete breakdown of county-by-county sheriff's department operation costs.

COMBINED COST TO COUNTIES FOR STATE INMATE INFLUX

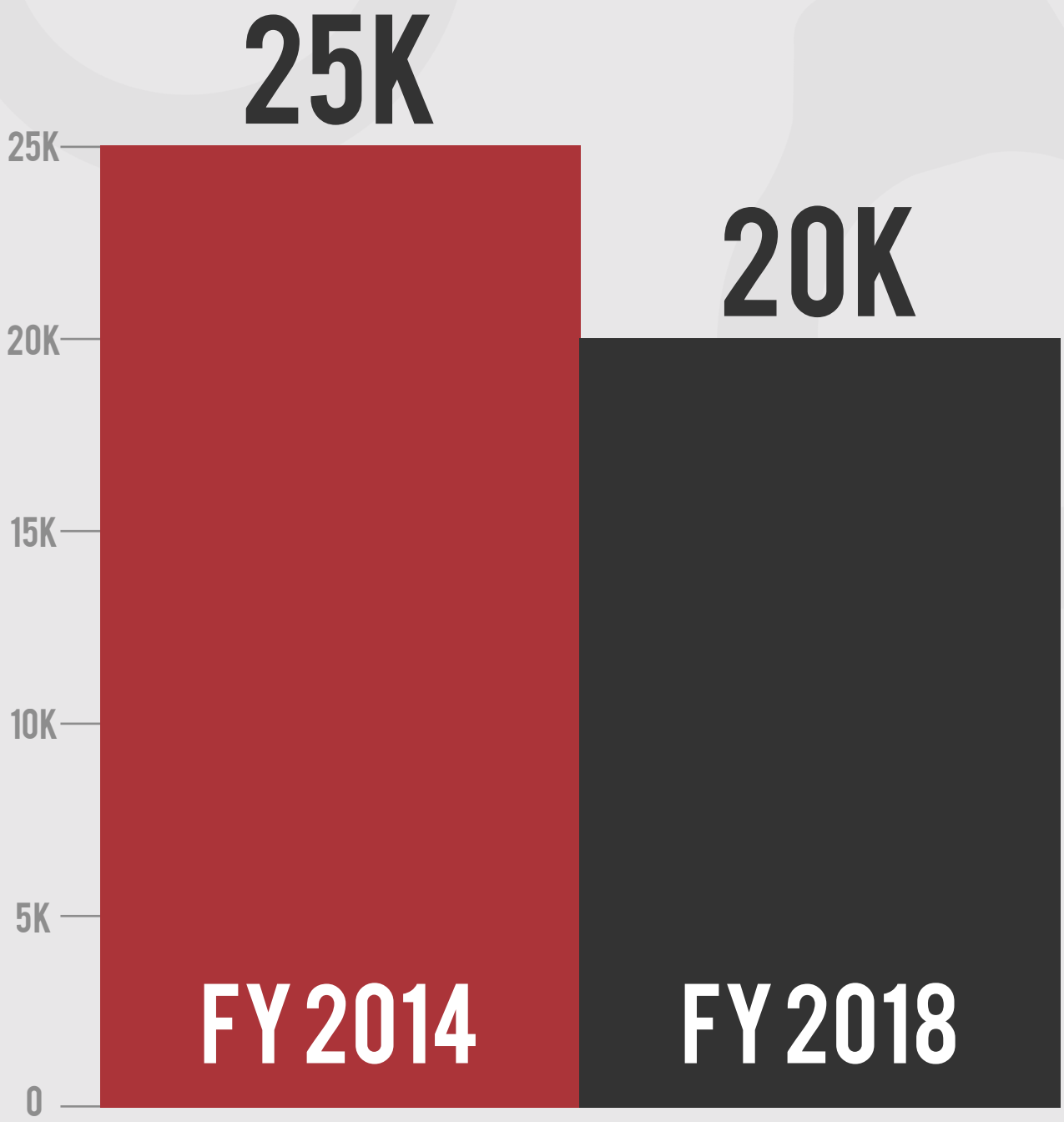
*Covers jail operation costs and sheriff's department costs



County costs increased by $63M from 2014 to 2018, more than **twice the rate of inflation**.

STATE INMATE POPULATION IN STATE PRISONS

*Based on public data provided by the Alabama Department of Corrections and Alabama Board of Pardons and Paroles



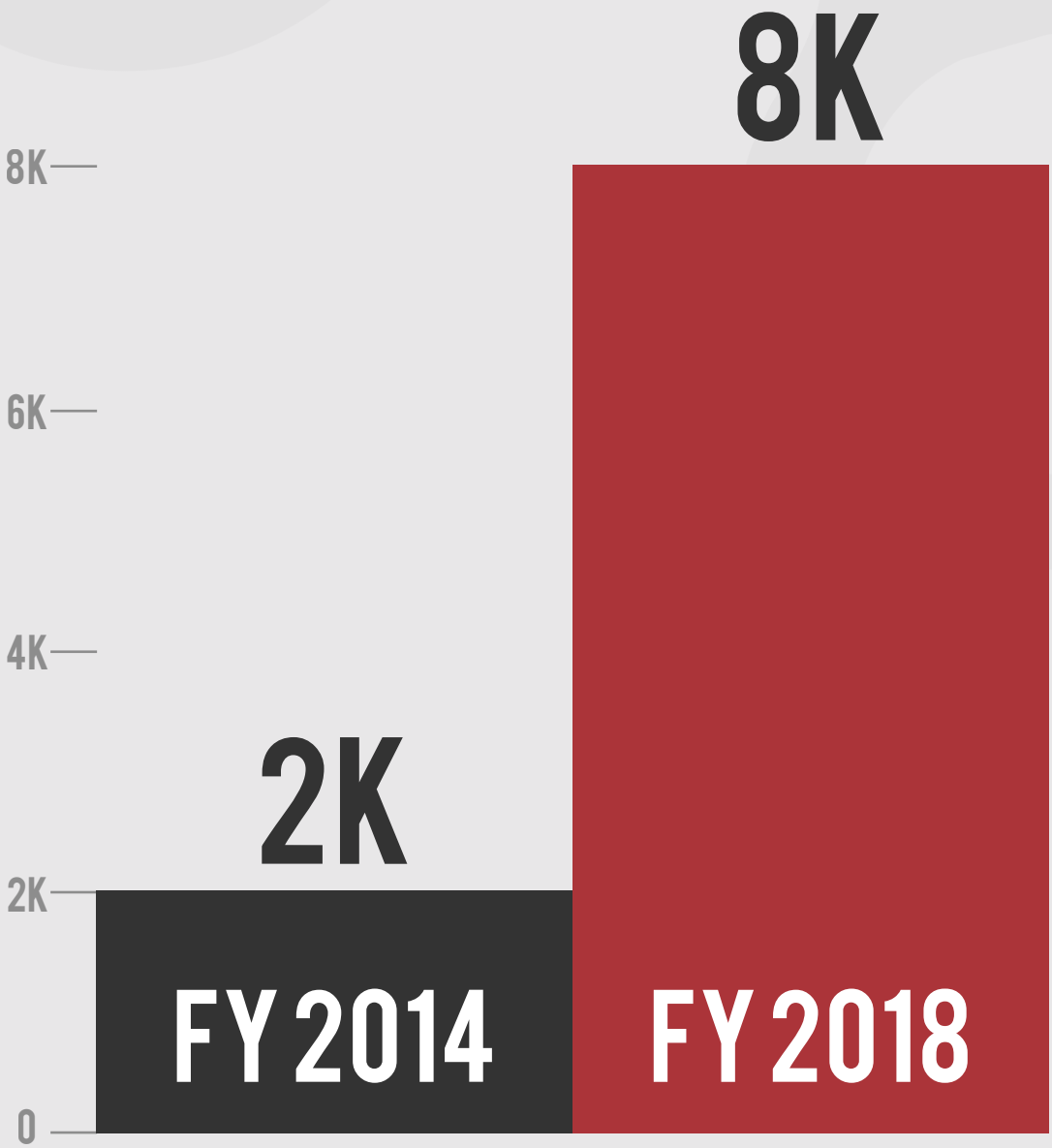
The number of inmates in state prisons decreased by 5K from 2014 to 2018.

See Appendix D for a complete breakdown of the state inmate population in state prisons from 2014 to 2018.

STATE INMATE POPULATION IN COUNTY JAILS

*Based on public data provided by the Alabama Department of Corrections and Alabama Board of Pardons and Paroles

These conservative figures account for state inmates in county jails, as well as the "dips and dunks" state inmate population created by the 2015 Alabama Prison Reform Act. Probation and parole violators can receive six "dips" — up to a three-day stay in a county jail — before being "dunked" for up to 45 days in a state prison. "Dunked" inmates often remain in a county jail for weeks before being picked up and transferred to a state prison.

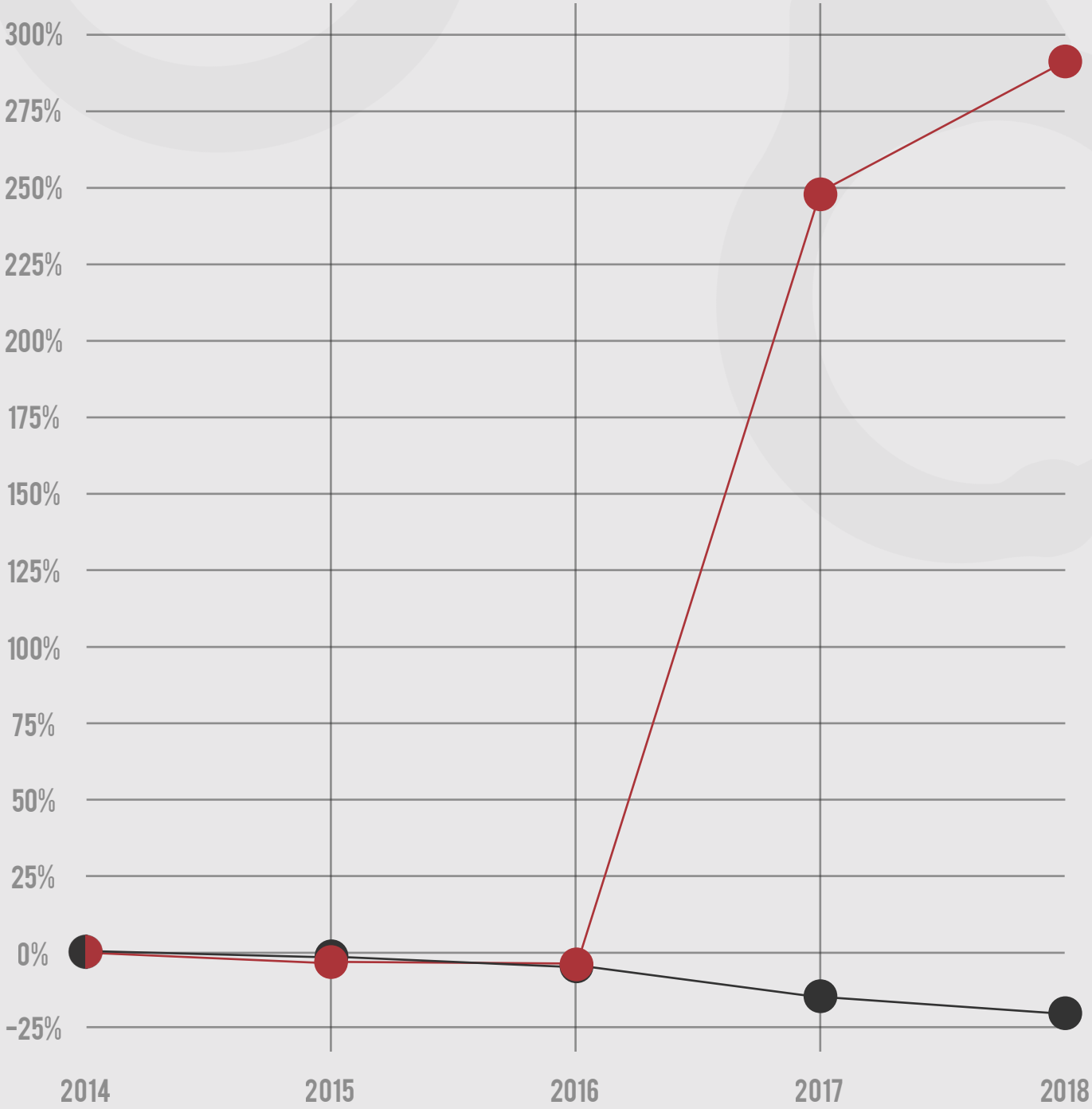


The number of state inmates in county jails increased by 6K from 2014 to 2018.

See Appendix E for a complete breakdown of the state inmate population in county jails from 2014 to 2018.

STATE INMATE POPULATION PERCENTAGE CHANGE

*Based on public data provided by the Alabama Department of Corrections and Alabama Board of Pardons and Paroles



STATE INMATES IN STATE PRISONS

STATE INMATES IN COUNTY JAILS

APPENDIX A

COUNTIES' INMATE CRISIS RESOLUTION

ACCA
Association of County Commissions of Alabama

Resolution

EXPRESSING ALABAMA COUNTY GOVERNMENTS' OPPOSITION TO ANY SENTENCING REFORM LEGISLATION BEFORE PROVIDING COUNTIES WITH THE NECESSARY REVENUE TO ADDRESS THE UNFUNDED MANDATES RESULTING FROM THE 2015 ALABAMA PRISON REFORM ACT

WHEREAS, the 2015 Alabama Prison Reform Act, Act No. 2015-185, ("the Act) implemented sweeping changes to the Alabama Criminal Justice System, including the creation of the Class D felony, reformed parole and probation violation procedures, new efforts to enhance and increase alternatives to incarceration, and additional measures to reduce the General Population in State Prisons; and

WHEREAS, the Act utilized all 67 county government jails as the alternative to Alabama Department of Corrections ("ADOC") for holding technical parole and probation violators and the primary entity to incarcerate Class D Felons; and

WHEREAS, the Act reduced the Alabama Department of Corrections in-house population of incarcerated individuals by seventeen percent (17%) in three years; and

WHEREAS, the Act failed to make any significant improvement on the number of available community corrections programs from thirty-five (35) in 2015 to thirty-eight (38) in 2018; failed to increase the number of community correction mental health services; and failed to divert revenues saved from the reduction of ADOC in-house population to more effective community correction services as intended in the Act; and

WHEREAS, since the law's passage, the 67 Alabama Counties have experienced an increase of more than one-hundred and fifty percent (153.42%) of individuals in violation of parole and probation and ADOC inmate population diverted into the county jails and have experienced an increase in spending on jails and law enforcement of more than sixty million dollars ($61,366,776.41); and

WHEREAS, the implementation of the Act unequivalently established an unfunded mandate for county governments and established county jails as a designated entity for the incarceration of individuals that otherwise would have been ordered to the custody of ADOC before the enactment of the reform measures; and

WHEREAS, the Act failed to allocate any funds to county governments for mandating the custody of Class D felons, for the temporary custody of probation and parole violators, for the costs associated with medical treatment, or transportation costs for individuals from county jails to ADOC; and

WHEREAS, a new task force has been established by Governor Kay Ivey to search for additional reforms intended to reduce the prison population under the supervision of the ADOC and to make further changes to Alabama's sentencing laws, and that such changes will likely produce more costly mandates on Alabama's County Governments.

NOW, THEREFORE, BE IT RESOLVED BY THE ASSOCIATION OF COUNTY COMMISSIONS OF ALABAMA that Alabama's County Governments oppose any additional Sentencing Reform Legislation before the Alabama Legislature that would result in an additional diversion of inmates, probationers or parolees into Alabama's county jails without full reimbursement of all costs resulting from such diversion; and

BE IT FURTHER RESOLVED that Alabama's County Governments call on the Alabama Legislature to fully fund the reforms of 2015 by providing counties with the necessary revenue to address the unfunded mandates resulting from the 2015 Alabama Prison Reform Act.

IN WITNESS WHEREOF, the Association has caused this resolution to be executed in its name and on its behalf by its President and Executive Director and has caused its corporate seal to be impressed thereon, all on this 22nd day of August, 2019.

President, ACCA

Executive Director, ACCA

APPENDIX B

Data pulled from a survey of all 67 county governments

County	2014 Cost to Operate County Jail	2018 Cost to Operate County Jail	County	2014 Cost to Operate County Jail	2018 Cost to Operate County Jail
Autauga	$1,975,600.00	$2,215,500.00	Houston	$5,048,838.00	$5,246,080.00
Baldwin	$7,832,474.00	$10,159,130.00	Jackson	$2,119,670.00	$2,019,117.00
Barbour	$939,185.00	$952,866.00	Jefferson	$13,631,966.00	$20,901,608.00
Bibb	$708,465.00	$808,403.00	Lamar	$520,327.37	$477,036.87
Blount	$1,715,147.00	$1,820,133.00	Lauderdale	$2,601,865.00	$3,331,434.00
Bullock	$223,464.00	$229,984.00	Lawrence	$805,040.00	$884,865.40
Butler	$727,629.00	$798,768.00	Lee	$4,365,957.00	$5,577,964.00
Calhoun	$3,263,742.00	$4,361,228.00	Limestone	$3,605,288.00	$4,608,849.00
Chambers	$1,506,738.07	$2,030,194.00	Lowndes	$1,591,335.00	$2,060,205.00
Cherokee	$1,879,096.00	$1,898,140.00	Macon	$907,223.00	$1,008,333.00
Chilton	$1,572,150.00	$1,841,342.00	Madison	$16,250,507.00	$16,615,108.00
Choctaw	$387,729.96	$416,397.65	Marengo	$770,858.96	$841,924.86
Clarke	$1,163,442.00	$1,223,867.00	Marion	$884,796.16	$1,001,802.81
Clay	$648,638.00	$709,626.00	Marshall	$2,351,100.00	$4,967,190.00
Cleburne	$763,794.00	$851,259.00	Mobile	$22,466,249.00	$24,991,146.00
Coffee	$1,398,199.00	$1,610,226.16	Monroe	$1,609,456.47	$1,639,911.92
Colbert	$1,238,105.00	$1,441,658.00	Montgomery	$14,928,418.00	$16,121,337.00
Conecuh	$1,091,825.66	$1,146,323.81	Morgan	$5,641,305.00	$7,051,030.84
Coosa	$615,352.00	$673,715.00	Perry	$744,583.00	$696,268.00
Covington	$1,504,746.00	$1,846,249.00	Pickens	$1,352,079.00	$1,359,428.00
Crenshaw	$535,950.00	$551,187.00	Pike	$563,700.00	$665,700.00
Cullman	$3,386,819.00	$3,634,732.00	Randolph	$882,323.00	$761,872.00
Dale	$961,712.00	$1,182,351.00	Russell	$4,163,026.00	$4,569,003.00
Dallas	$1,628,834.00	$1,847,287.00	St. Clair	$2,705,872.00	$3,293,977.00
DeKalb	$2,869,400.00	$2,838,000.00	Shelby	$5,276,597.00	$7,123,456.00
Elmore	$2,069,814.00	$2,227,906.00	Sumter	$642,742.00	$666,149.00
Escambia	$1,676,795.00	$1,946,675.00	Talladega	$3,628,362.00	$3,997,200.00
Etowah	$4,075,970.00	$4,316,737.00	Tallapoosa	$1,175,119.00	$1,371,298.00
Fayette	$345,820.57	$403,309.98	Tuscaloosa	$8,095,587.00	$8,767,505.00
Franklin	$1,735,539.00	$1,742,197.00	Walker	$3,044,272.85	$3,109,645.98
Geneva	$668,850.00	$828,200.00	Washington	$467,154.00	$556,200.00
Greene	$976,512.00	$886,747.00	Wilcox	$444,809.00	$480,345.00
Hale	$690,492.00	$811,505.00	Winston	$812,435.00	$755,690.00
Henry	$435,168.00	$427,394.00			

	2014	2018
TOTAL COST TO OPERATE COUNTY JAILS	$187,312,058.07	$218,197,918.28

COST TO OPERATE COUNTY SHERIFF'S DEPARTMENTS

APPENDIX C

Data pulled from a survey of all 67 county governments

County	2014 Cost to Operate Sheriff's Dept.	2018 Cost to Operate Sheriff's Dept.	County	2014 Cost to Operate Sheriff's Dept.	2018 Cost to Operate Sheriff's Dept.
Autauga	$2,143,800.00	$2,677,800.00	Houston	$5,765,995.00	$7,446,090.00
Baldwin	$11,425,488.00	$14,988,419.00	Jackson	$2,842,610.00	$2,827,575.00
Barbour	$845,171.00	$816,897.00	Jefferson	$35,068,034.00	$40,360,583.00
Bibb	$701,668.00	$732,893.00	Lamar	$555,966.77	$592,560.01
Blount	$2,677,672.00	$2,596,754.00	Lauderdale	$3,732,373.00	$4,043,680.00
Bullock	$455,068.20	$447,551.50	Lawrence	$2,009,988.47	$2,107,705.07
Butler	$1,003,151.00	$991,998.00	Lee	$6,606,805.00	$7,747,186.00
Calhoun	$3,017,155.00	$3,247,105.00	Limestone	$4,377,516.00	$4,561,895.00
Chambers	$1,296,906.65	$1,493,680.00	Lowndes	$1,061,900.00	$1,090,900.00
Cherokee	$1,554,905.00	$2,075,922.00	Macon	$1,277,146.00	$1,474,189.00
Chilton	$1,924,515.00	$2,168,102.00	Madison	$11,384,829.00	$13,164,669.00
Choctaw	$697,653.89	$808,873.80	Marengo	$1,066,920.87	$1,121,731.24
Clarke	$1,064,703.00	$1,437,897.00	Marion	$937,285.85	$1,304,221.17
Clay	$635,712.00	$722,292.00	Marshall	$2,480,414.00	$2,530,536.00
Cleburne	$840,949.00	$947,701.00	Mobile	$20,434,484.00	$22,704,553.00
Coffee	$1,674,879.00	$1,945,065.68	Monroe	$873,102.09	$885,221.07
Colbert	$2,261,021.88	$2,480,252.00	Montgomery	$12,281,241.00	$14,027,846.00
Conecuh	$993,028.06	$788,868.82	Morgan	$4,107,165.06	$3,891,800.43
Coosa	$696,758.00	$737,489.00	Perry	$99,168.00	$77,382.00
Covington	$1,841,940.00	$1,996,418.00	Pickens	$880,299.00	$1,079,245.00
Crenshaw	$543,886.00	$608,589.00	Pike	$1,603,500.00	$1,886,000.00
Cullman	$6,249,046.00	$7,858,424.00	Randolph	$992,264.00	$1,313,315.00
Dale	$1,751,714.00	$1,912,189.00	Russell	$3,380,915.00	$4,388,516.00
Dallas	$2,127,290.00	$2,282,334.00	St. Clair	$4,954,761.00	$5,394,385.00
DeKalb	$3,002,975.00	$3,287,550.00	Shelby	$14,245,529.00	$16,123,456.00
Elmore	$4,019,196.00	$4,077,887.00	Sumter	$703,722.00	$851,014.00
Escambia	$2,446,424.00	$2,698,200.00	Talladega	$3,155,500.00	$3,304,800.00
Etowah	$3,925,751.00	$4,950,649.00	Tallapoosa	$2,140,565.00	$2,300,994.00
Fayette	$654,057.60	$676,954.25	Tuscaloosa	$12,819,647.00	$14,787,530.00
Franklin	$1,574,770.00	$1,717,239.00	Walker	$2,360,235.95	$2,172,312.15
Geneva	$1,062,117.00	$1,213,004.00	Washington	$936,147.00	$1,051,907.00
Greene	$570,504.00	$736,430.00	Wilcox	$305,946.00	$349,961.00
Hale	$717,136.00	$932,364.00	Winston	$876,932.00	$938,630.00
Henry	$967,374.00	$1,073,611.00			

TOTAL COST TO OPERATE COUNTY SHERIFF'S DEPARTMENTS	2014	2018
	$233,683,292.34	$266,029,791.19

APPENDIX D

Data pulled from the 2014-2018 annual and monthly reports of the Alabama Department of Corrections

Fiscal Year	Number of State Inmates in State Prisons	Percentage Change in State Inmate/Prison Population
2014	24,813	0
2015	24,191	-2.51%
2016	23,328	-5.98%
2017	21,213	-14.51%
2018	20,087	-19.05%

STATE INMATE POPULATION IN COUNTY JAILS

APPENDIX E

*Data pulled from the 2017 and 2018 annual reports of the Alabama Board of Pardons and Paroles

All other data pulled from the 2014-2018 annual and monthly reports of the Alabama Department of Corrections

Fiscal Year	Number of State Inmates in County Jails	Number of State Parole "Dunks" in Jails	Number of State Probation "Dunks" in Jails	Number of State "Dips" in Jails	Total	Percentage Change in State Inmate/ Jail Population
2014	1,990	0	0	0	1,990	0
2015	1,877	0	0	0	1,877	-5.68%
2016	1,872	0	0	0	1,872	-5.93%
2017	2,204	2,300*	1,570	855*	6,929	248.19%
2018	2,263	2,988*	1,683	856*	7,790	291.46%

RESOLVING ALABAMA'S INMATE CRISIS

A Plan for Addressing the 2015 Prison Reform Act's Unintended Impact on Alabama's 67 Counties

The increase in the number of State inmates in Alabama's county jails since the enactment of the 2015 Prison Reform Act has had alarming impacts on the collective financial condition of Alabama's counties. During the first three full years of the reform's changes to penalties for felony property crimes and violations of parole and probation conditions, county spending on jails and law enforcement increased at twice the rate of inflation —shifting more than $63 million in annual county resources to jails and law enforcement. State inmates housed in county jails soared from 2,000 in 2014 to almost 7,800 in 2018.

And with the increased number of high-risk State prisoners, lawsuits against counties have increased significantly. The Association of County Commissions of Alabama (Association) provides liability insurance coverage for 58 county governments. During the last three years prior to the 2015 reforms becoming effective, the Liability Fund's participants averaged 36 serious jail lawsuits per year. In the first three years after the reforms (2016-2018), the average more than doubled to 80 serious jail lawsuits per year. Likewise, the housing of high-risk inmates (many of who are placed in the jail because they have failed drug screens) has contributed to growing medical costs.

For these reasons and many others, the Association recommends the statutory changes below to help alleviate the unintended burden being currently placed on county jails, county law enforcement and county government as a whole.

Providing Intended Legal Protection for County Jailers

In 2011, the Alabama Legislature attempted to slow the growing trend of lawsuits against jailers by amending §14-6-1 to provide jailers with liability protection similar to that afforded deputies. In the years that have followed, the courts have eroded this protection because the wording used rendered the "protection" almost completely ineffective. In order to combat the staggering increase in jail lawsuits since the 2015 reforms, the Association urges the Alabama Legislature to:

- Clarify the 2011 statute to reflect its original intent, which was to provide protection from liability unless it can be demonstrated the jailer acted outside the line and scope of his or her duties.

Reimbursing County Expenses for State Inmates

The influx of prisoners since 2015, coupled with the usual flow of those convicted and then sentenced to State custody, has placed jails under extreme stress. Over the past 12 months, the Alabama Department of Corrections (DOC) has struggled to keep up with its court-established requirement to remove inmates within 30 days after receiving notice of convictions. Although counties have never sought direct State funding for the housing of State inmates, the current crisis demands a change in philosophy. Counties would prefer to use the "threat" of reimbursement to encourage operational changes to the intake process. For each day that inmates remain in county jails beyond the 30-day limit, DOC saves a staggering amount of State revenue.

For example, on one particular day in Madison County, the county jail housed 169 State inmates. The expense amounted to a county loss of more than $6,000 on this single day. When similar expenses are multiplied everyday — and in every county — the losses soar to millions of dollars.

County Expenses: Inmate Housing and Medical Care

Counties suffer the impact of the influx of prisoners in the arena of housing and medical costs. Laws must be amended to clearly reflect that the State is responsible for the expenses of State inmates housed in county jails.

ACCA
Association of County Commissions of Alabama

RESOLVING ALABAMA'S INMATE CRISIS

A Plan for Addressing the 2015 Prison Reform Act's Unintended Impact on Alabama's 67 Counties

For inmates in county jails who belong in State prisons, the Association proposes to:

- Amend §14-3-30(a) to codify portions of the 1998 settlement agreement entered into between the counties and DOC, which was upheld by the Alabama Supreme Court. The law must be amended to reflect that if State inmates are not transferred to State custody within 30 days after DOC's receipt of a court transcript, DOC must pay counties DOC's average cost of housing and daily care for the previous fiscal year — beginning on the 31st day.
- In the alternative, amend the law to require DOC to pay each county the actual cost spent on any prisoner awaiting a 30-day, post-conviction transfer from the day of conviction to the day of transfer.

Today, the State is responsible for payment of inmates' medical expenses only after conviction and before transfer to DOC custody. Counties should not continue to be held responsible for the healthcare costs of State inmates when they are held in county jails awaiting trial or when returned to the county for testimony or when alleged violators under the supervision of the Alabama Board of Pardons and Paroles are returned through the "dips" and "dunks" process established in 2015.

Finally, Alabama is one of few states that does not provide for a statutorily mandated limit on allowable charges to the counties for medical care provided to inmates. Hospitals that receive the proceeds of taxes levied or collected at the local level are not even required to administer care to inmates at a reduced rate, thereby providing the hospitals yet another payment from taxpayers. Alabama law should be amended to limit the costs paid for inmates to the Medicaid rate for those hospitals accepting Medicaid patients and to the Medicare rate for all other hospitals.

County Expenses: Inmate "Dips" and "Dunks"

Dips (§15-22-29): The 2015 reforms provided for persons who repeatedly violate the terms of their parole or probation to serve time in county jails to deter their unacceptable behavior. Each person is eligible for a maximum of six short stays of no more than three days each. During these stays, the full costs are absorbed by counties.

Dunks (§15-22-31): Violators who do not change their behavior after these short stays subject themselves to the possibility of 45 days in State custody. However, these violators commonly wait for weeks in county jails before being transferred to the State — only to be released back into the community after 45 days. Again, the cost of holding these violators while the State "frees up beds" is being shifted down to the local level.

The Association recommends to:

- Sunset the 45-day stays, known as "dunks," effective July 31, 2020.
- Require the State to reimburse counties for medical care and housing — at the State's average daily cost — for all violators staying in county jails during the three-day stays, known as "dips," effective January 1, 2021.

Leasing Available Bed Space in County Jails

Even in these times of overcrowding and escalating costs, the Association recognizes that some counties actually have excess bed space that could be utilized by the State. The Association has consistently expressed concern about the long-term impact of such contracts but offers the following suggested course in Alabama:

- Establish, by statute, a system for counties and sheriffs to submit a joint petition to DOC to offer extra beds in county jails for lease by DOC at an agreed upon rate between DOC, the county commission and the sheriff.

ACCA
Association of County Commissions of Alabama