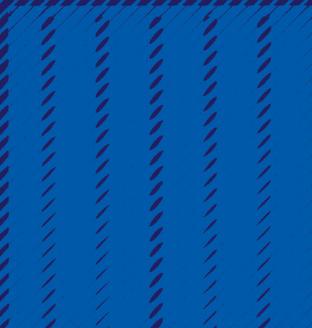


Blueprint for Smart Justice
Alabama



Blueprint *for* Smart Justice Alabama

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Executive Summary

Over the past five decades, the United States has dramatically increased its reliance on the criminal justice system as a way to respond to drug addiction, mental illness, and poverty. As a result, the United States today incarcerates more people, in both absolute numbers and per capita, than any other nation in the world. Millions of lives have been upended and families torn apart. This mass incarceration crisis has transformed American society, damaged families and communities, and wasted trillions of taxpayer dollars.

We all want to live in safe and healthy communities, and our criminal justice policies should be focused on the most effective approaches to achieving that goal. But the current system has failed us. It's time for the United States to end its reliance on incarceration, invest instead in alternatives to prison and in approaches better designed to break the cycle of crime and recidivism, and help people rebuild their lives.

The ACLU's Campaign for Smart Justice is committed to transforming our nation's criminal justice system and building a new vision of safety and justice. The Campaign is dedicated to cutting the nation's incarcerated population in half and combatting racial disparities in the criminal justice system.

To advance these goals, the Campaign partnered with the Urban Institute to conduct a two-year research project to analyze the kinds of changes needed to cut by half the number of people in prison in every state and reduce racial disparities in incarceration. In each state, Urban Institute researchers identified primary drivers of incarceration. They then predicted the impact of reducing prison admissions and length of stay on

state prison populations, state budgets, and the racial disparity of those imprisoned.

The analysis was eye-opening.

In every state, we found that reducing the prison population by itself does little to diminish racial disparities in incarceration — and in some cases would worsen them. In Alabama — where Black people represent 55 percent of the adult prison population despite constituting only 26 percent of the state's adult population overall¹ — reducing the number of people imprisoned will not on its own reduce racial disparities within the prison system. This finding confirms for the Campaign that urgent work remains for communities, policymakers, and criminal justice advocates in Alabama and across the nation to focus on efforts — like reducing incarceration before trial through bail reform, preventing the incarceration of people arrested on misdemeanor and low-level felony charges, and expanding parole opportunities — that are specific to combatting these disparities.

In Alabama, the incarcerated population has skyrocketed since 1980, growing fourfold as of 2016.² This growth has bloated and strained those prisons, forcing them to operate at 164 percent of design capacity in 2017.³ Much of this growth has come as a result of prison sentences for drug offenses — in 2017, 34 percent of all system-wide admissions into Alabama's prison system were for such offenses.⁴ More than one in five admissions were for drug possession that year, indicating that Alabama is in dire need of alternatives to incarceration for people convicted of drug offenses, including those in need of treatment and rehabilitation for addiction problems.⁵ Overall, more

than one in three people incarcerated in Alabama's state-run prisons in 2016 were serving time for a property or drug-related crime.⁶

Contributing to the rise in Alabama's prison population has been a series of sentencing enhancement laws that increase sentence severity for people who have prior felony convictions. Recent reforms have decreased the use of the "habitual offender enhancement" — the most severe of Alabama's enhancement laws — but thousands of people who were sentenced under this law remain in prison.⁷ As of 2017, around half of people in Alabama's prisons are serving a sentence of 20 years or more.⁸ For people with a history of substance use disorder, options are limited both in and outside of prison. Estimates indicate that 75 to 80 percent of people in Alabama's prisons have a history of substance use.⁹

And all this is expensive. In 2016, Alabama spent \$478 million — nearly half a billion dollars — of its general fund on corrections.¹⁰ Spending on other priorities, like education, has lagged behind the state's high corrections spending.

So what's the path forward?

Any meaningful effort to reach a 50 percent reduction in incarceration in Alabama must encourage prevention-oriented approaches to public safety, such as recognizing drug addiction as a public health problem. Rather than relying on jails and prisons, policymakers should implement evidence-based alternatives, like expanded treatment or mental health care programs, to help divert people to rehabilitative programs. Given Alabama's high rate of prison admissions for drug possession and other drug offenses, reevaluating the use of incarceration to address drug abuse and distribution will be crucial in reducing the state's bloated prison population. In addition, reducing sentencing ranges — especially for drug offenses, burglary, assault, robbery, and public order offenses like disorderly conduct — will lower costs and shrink the number of imprisoned Alabamians.

Alabama should also reform its juvenile justice system, which mandates that children who are 16 or older be automatically tried as adults for capital crimes as well

as some felonies and drug offenses.¹¹ Studies show that youths are more likely to recidivate when they are incarcerated with adults,¹² and there is evidence that transfers of youth to the adult justice system exacerbate racial disparities.¹³ A plan to reduce the prison population must include extending juvenile jurisdiction at least through the age of 17 for all crimes, as well as ending fines and fees in the juvenile justice system, restricting the prevalence of out-of-home placements for juveniles, and preventing inappropriate arrests in Alabama schools.

In 2015, Alabama enacted justice reinvestment legislation, which in part sought to address low parole rates by training staff in decision-making practices. The reforms have paid dividends, increasing the number of people granted parole by 17 percentage points between 2015 and 2017 alone.¹⁴ But there is still more that can be done. Only half of the people whose applications were considered by the parole board were granted parole in 2017.¹⁵ More than one in five people in Alabama prisons that year were older than 50.¹⁶ If someone is eligible for parole and there is no overwhelming need to keep them imprisoned, the presumption should shift towards their release rather than continued and costly time in prison.

The next steps are ultimately up to Alabama's voters, policymakers, communities, and criminal justice reform advocates as they move forward with the urgent work of ending the state's obsession with mass incarceration.

The State of the Alabama Prison System

Alabama’s incarcerated population has soared in recent decades, growing more than fourfold between 1980 and 2016.¹⁷ It reached its peak in 2012, when 32,574 people were in prison.¹⁸ Because of reforms in recent years, Alabama’s prison population was slightly lower in 2017, at 28,296.¹⁹ However, Alabama’s prisons remain extremely overcrowded,²⁰ and as of 2016 the state ranked sixth in the nation in the rate of people imprisoned.²¹

In June 2017, 21,888 people were housed in Alabama’s state-run prisons, which were operating at an astonishing 164 percent of design capacity.²² When people sentenced by the court to the Alabama Department of Corrections system and who are being held in jails and under community supervision are included, the total number of people in Alabama’s prison system adds up to 28,296 people.²³ As a result of the extreme overcrowding that has plagued the

AT A GLANCE

ALABAMA PRISONS*

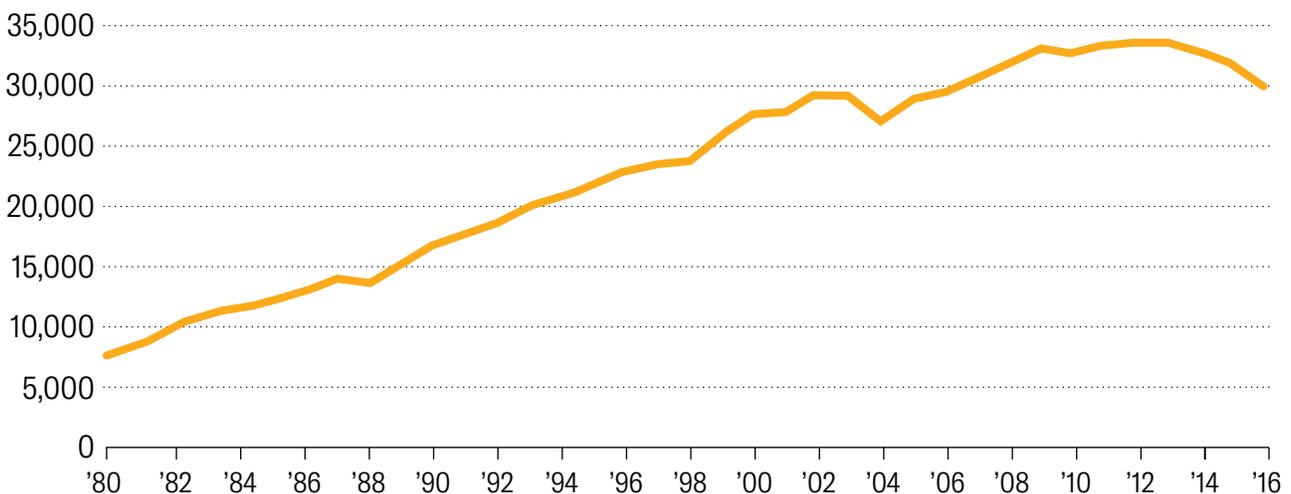
Alabama’s prisons are among the **most overcrowded** in the country.

Alabama ranks **sixth** nationally in the rate of people imprisoned as of 2016.

In 2017, **28,296** people were in Alabama’s prison system.

* Council of State Governments, *Alabama’s Justice Reinvestment Approach: Reducing Prison Overcrowding and Strengthening Community-Based Supervision (May 2015)*, <https://csgjusticecenter.org/wp-content/uploads/2015/05/AlabamasJusticeReinvestmentApproach.pdf>

ALABAMA PRISON POPULATION



state prison system for decades, many people serve their prison sentences either in local jails or under community supervision instead.²⁴

What Is Driving People Into Prison?

In Alabama, a litany of offenses drives people into prisons.²⁵ In 2017, 34 percent of all systemwide admissions were for drug offenses.²⁶ Drug possession accounted for just over one in five admissions (21 percent), closely followed by drug distribution, trafficking, and manufacturing (13 percent).²⁷ The next most common offenses for all people entering Alabama prisons were theft (11 percent), burglary (9 percent), and robbery (8 percent).²⁸

The Current Prison and Jail Population

According to the most recent available data (from 2015), Alabama incarcerates an estimated 11,368 people in county jails. Most have not been convicted of a crime — more than 70 percent are awaiting trial.²⁹ More than one in three people housed in Alabama’s state-run prisons³⁰ were serving time for a property or drug-related crime as of 2016.³¹ Distribution of a controlled substance was the sixth most common conviction offense among people in Alabama’s

AT A GLANCE

ALABAMA JAIL AND PRISON POPULATIONS

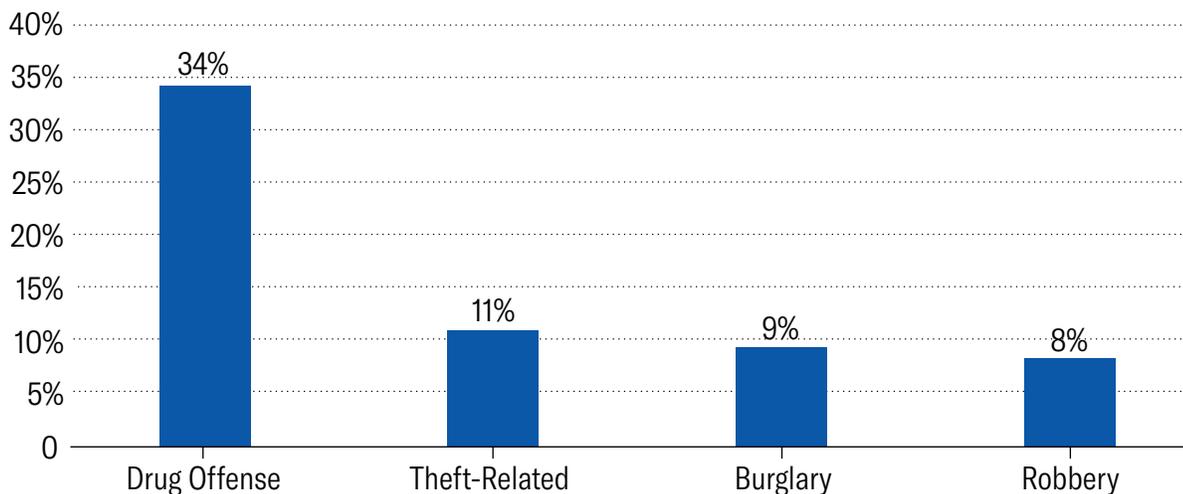
In 2015, more than **70 percent** of people in Alabama county jails had not been convicted of a crime.

Alabama prisons were overcrowded and operating at **164 percent** of design capacity in 2017.

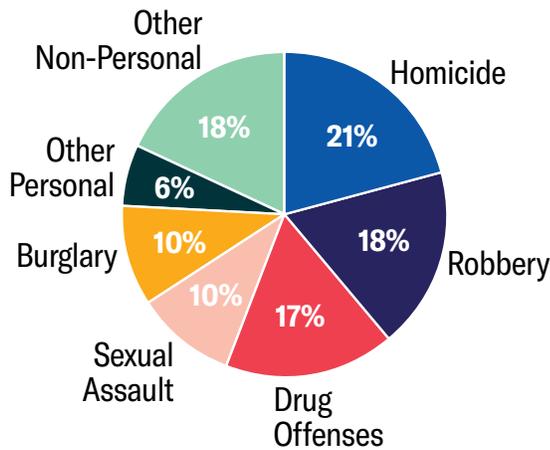
Around **one in three** people in Alabama’s state-run prisons were locked up for a drug or property offense in 2017.

state-run prisons in 2016, accounting for 4 percent of the prison population, followed closely by possession of a controlled substance, which was the eighth most common conviction offense, accounting for 3 percent of the state-run prison population.³²

ALABAMA PRISON ADMISSIONS BY TOP OFFENSE TYPES (FY 2017)



ALABAMA PRISON POPULATION BY OFFENSE TYPE (FY 2015)



BJS National Corrections Reporting Program, 2015. Note: Personal offenses in Alabama are those defined as involving danger to a person, and are defined separately from offenses involving violence, which include any offense involving use, attempted use, or threatened use of a weapon or physical force; substantial risk of physical injury; or that is particularly reprehensible.

Why Do People Stay in Prison for So Long?

Alabama’s sentencing laws allow for high maximum sentences — up to 99 years or life in prison — for a range of offenses.³³ As a result, roughly 18 percent of the prison population in Alabama is serving a life sentence, nearly a third of whom have no possibility of parole. An additional 30 percent of the prison population is serving sentences of 20 years or more. Together, this means that around half of Alabama’s prison population is serving a sentence of at least 20 years.³⁴

AT A GLANCE

LENGTH OF IMPRISONMENT

Around half of people in Alabama’s prisons are serving a sentence of **20 years** or more.

In 2017, the Alabama Board of Pardons and Paroles granted parole to **54 percent** of applicants.

Over the past 15 years, there has been a dramatic increase in the number of people imprisoned in Alabama, resulting from both a recent decline in people released from prison as well as an increase in the amount of time people spend in prison.

Between 2007 and 2014, Alabama saw a 30 percent decline in the number of people serving the shortest prison terms, yet its total prison population stayed fairly flat, thanks in part to a 57 percent increase in the number of people serving the longest prison terms.³⁵

Between 2010 and 2015, the number of parole applications considered by the Alabama Board of Pardons and Paroles declined by 12 percent (from 6,788 to 5,958). In both years, the board granted parole to only around 2 in 5 applicants. As parole considerations dropped, releases from Alabama prisons also steadily declined.³⁶ However, more parole applications were both considered and granted in 2016 and 2017. In 2016, the parole board considered 6,458 applications and granted slightly fewer than half (48 percent); in 2017, the board considered 7,098 applications and granted more than half (54 percent).³⁷

Alabama’s harsh sentencing enhancement laws have also inflated the prison population by causing individuals to serve longer terms in prison than they otherwise would have, most often due to prior felony convictions.³⁸ While recent reforms have decreased the use of the “habitual offender enhancement” — the most severe of Alabama’s enhancement laws — thousands of people in Alabama prisons who were sentenced under this law remain in prison.³⁹

Who Is Imprisoned

Black Alabamians: One in 30 Black men in Alabama was imprisoned as of 2017 — nearly four times the rate of white men.⁴⁰ While Black people constituted only 26 percent of the total state adult population in 2017, they made up the majority (55 percent) of the Alabama prison population.⁴¹

Female Alabamians: According to the most recent available data (2016), the rate of imprisonment for women in Alabama is the 11th highest in the country.⁴²

AT A GLANCE

DEMOGRAPHICS

55 percent of the Alabama prison population was Black in 2017.

Alabama ranked **11th** nationally for the rate of women imprisoned in 2016.

1 in 5 people in the 2017 Alabama prison population was older than 50.

Between 2008 and 2017, the population of women in prison increased by 14 percent, while the population of men in prison fell by 9 percent.⁴³

Older Alabamians: Alabama's prison population is rapidly graying. Though generally considered to pose a negligible risk to public safety,⁴⁴ the proportion of people under the jurisdiction of the Alabama Department of Corrections who are older than 50 nearly doubled between 2007 and 2017, accounting for more than one in five people in Alabama's prison population as of 2017.⁴⁵ This trend is driven largely by people spending more time in prison, as admissions to prison for people over 50 years old have remained relatively constant in recent years, growing only 1 percent between 2011 and 2017.⁴⁶

Alabamians With Low Educational Attainment: According to self-reported statistics, the average educational attainment level in the Alabama prison population is 5th grade. Fewer than half of people assessed reported that they had completed high school or earned a GED.⁴⁷

People With Mental Health and Substance Use Disorders

Both within and outside of the criminal justice system, Alabama does not provide people with many options for treating their own or a loved one's mental health or substance use disorder. Compounding matters, when people with mental health or substance use disorders

AT A GLANCE

BUDGET

Alabama spent **\$478 million** of its general fund on corrections in 2016.

General fund spending on corrections in Alabama increased by **126 percent** between 1985 and 2016.

enter the criminal justice system, judges are left with few sentencing alternatives to prison.⁴⁸

Estimates indicate that 75 to 80 percent of people in Alabama prisons have a history of substance abuse.⁴⁹

Budget Strains

As Alabama's incarcerated population has risen, so has the cost burden. In 2016, Alabama spent nearly half a billion dollars (\$478 million) of its general fund on corrections, an increase of 126 percent since 1985 that far outpaced growth in general fund spending on higher education.⁵⁰

Ending Mass Incarceration in Alabama: A Path Forward

There are many potential policy changes that can help Alabama end its mass incarceration crisis, but it will be up to the people and policymakers of Alabama to decide which changes to pursue. To reach a 50 percent reduction, policy reforms will need to reduce the amount of time people serve in prisons and/or reduce the number of people entering prison in the first place. Were Alabama to reach that reduction, it could save nearly half a billion dollars by 2025 that it could spend on other state priorities or give back to taxpayers.

Reducing Admissions

To end mass incarceration, Alabama must break its overreliance on prisons as a means to hold people accountable for their crimes — even for more serious crimes and crimes involving violence. Evidence indicates that prisons seldom offer adequate solutions to wrongful behavior. At worst, imprisonment can be counterproductive — failing to end cycles of misbehavior and violence or to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.⁵¹ Here are some strategies:

- **Alternatives to incarceration:** The good news is that alternatives exist. Several types of alternative-to-incarceration programs have shown great success in reducing both violent and nonviolent criminal activity. Programs offering support services such as substance abuse treatment, mental health care, employment, housing, health care, and vocational training — often with some element of court supervision and/or a community service requirement — have significantly reduced recidivism rates for

participants. Other successful models include programs that divert people to treatment and support services before arrest and programs led by prosecutors that divert people before they are charged.⁵² Alternatives to incarceration also produce savings, portions of which can be used to fund and develop programs and treatment centers. Alabama should expand its focus on and funding for diversion programs at no cost to participants. Judges, police officers, sheriffs, and state attorneys should be educated about the benefits of diversion and encouraged to make use of such programs wherever possible.

- **Expanded treatment:** Alabama should expand its funding for mental health care and substance abuse programs across the state. Substance abuse disorders can be underlying drivers of other more serious offenses, including burglaries, robberies, and assaults. Actually reducing the incidence of these crimes may be better and more effectively achieved through the expanded availability of evidence-based alternative responses instead of prison time in a substantial number of cases.⁵³ Similarly, mental health treatment and supervision can provide another better and more productive alternative for many behaviors — minor and more serious — and are again more effective in addressing underlying needs and improving overall public safety in the long term. Further, these options are more cost effective than incarceration. In fact, a 2012 study found that if only 10 percent of those eligible for diversion nationwide were sent to community-based substance abuse treatment

programs in lieu of prison, the justice system would save \$4.8 billion.⁵⁴

- **Juvenile justice:** Too many juveniles in Alabama are being tried, sentenced, and imprisoned as adults. Children who are 16 or older are automatically tried as adults for capital crimes, certain felonies, and certain drug offenses.⁵⁵ Furthermore, once a young person has been tried for an offense as an adult under this direct transfer statute and not acquitted, that child will be tried as an adult for any future offenses.⁵⁶ Additionally, the state's transfer statute allows children as young as 14 accused of any criminal offense to be tried and sentenced as adults if the prosecutors' motion for transfer is approved.⁵⁷ These transfer exceptions should be removed so that juvenile jurisdiction extends through at least the age of 17 for all crimes. There has been increased interest in reforming juvenile justice, and in 2017 the Legislature approved a bipartisan Juvenile Justice Task Force to study the system and make recommendations.⁵⁸ The recommendations, published in 2017, include ending fines and fees in the juvenile justice system, restricting the prevalence of out-of-home placement for juveniles, and preventing inappropriate arrests in Alabama schools.⁵⁹ These would all be good steps, but they do not go far enough: The Legislature should also do away with direct and discretionary transfers. There are many reasons why not punishing juveniles as adults would help Alabama reduce its long-term rates of incarceration while better pursuing goals of public safety and rehabilitation. For one thing, studies show that youths are more likely to recidivate when they are incarcerated with adults.⁶⁰ There is also evidence that transfers of youth to the adult justice system exacerbate racial disparities.⁶¹ Studies further show that Black and Hispanic defendants are transferred at disproportionately high rates, which are not accounted for by differences in the nature of the crimes committed.⁶²

- **Sentencing reform — drug offenses:** Despite the state's 2015 sentencing reforms, drug offenses continue to drive incarceration in Alabama. For example, while marijuana possession for personal use is a misdemeanor, possession of any amount beyond personal use or conviction of an additional personal use offense becomes a felony.⁶³ The state should expand the misdemeanor classification for marijuana and other low-level drug offenses so that mere possession is never classed a felony, even in the case of repeat offenses. Prison time, a felony record, and the countless collateral consequences that attach to felony convictions serve only to make it harder for someone to find work, find housing, or support a family after their release from prison. For low-level drug offenses, stakeholders could look to evidence-based alternatives such as diversion into substance abuse treatment or decriminalization of personal use and possession altogether. The savings that come from reducing the number of people imprisoned for relatively low-level drug offenses could be shifted toward a public health approach to substance use and abuse.
- **Sentencing reform — property offenses:** Alabama should increase the value threshold that defines whether a property offense is a misdemeanor or a felony, and it should reclassify all nonviolent property crimes as Class D felonies or misdemeanors. Currently, all property offenses over \$500 are classified as felonies,⁶⁴ a threshold lower than that of most states.⁶⁵ Alabama should reform its policies to avoid incarcerating people with low-level, nonviolent convictions. Property crimes from \$500 to \$1,500 are classified as Class D felonies; however, even the less punitive felony category D carries the stigma and damaging effects of a felony conviction. Alabama should raise the threshold at which a property offense becomes a felony to at least \$1,500. The state should also encourage judges to consider diversion or probation for those convicted of nonviolent, relatively low-level property offenses. Alabama should further reform its property offenses

to remove actually nonviolent offenses from the “violent” category and reclassify them as misdemeanors or Class D felonies. For example, Burglary III is currently classified as a Class C felony, even though it includes the nonviolent offense of burglary of an unoccupied building.⁶⁶ According to a recent study, raising the monetary threshold has no impact on overall property crime or larceny rates.⁶⁷

- **Maintaining judicial discretion:** Judges must have a variety of options at their disposal besides imprisonment, allowing them to offer treatment, mental health care, restorative justice, or other evidence-based alternatives to incarceration. These programs, whether built out of existing ones like community corrections or newly developed ones, should be available to the court in all or most cases, regardless of the severity of the offense or someone’s prior criminal history. The court, not the legislature, should be in a position to decide whether such an option is appropriate in individual cases. The state should carefully consider how to ensure that this change will not exacerbate current racial disparities by tracking sentencing data and developing policy where needed in order to combat any increases.

Reducing Time Served

Reducing the amount of time people serve, even by just a few months, can lead to thousands of fewer people in Alabama’s prisons. Here’s how:

- **Sentencing reform – general:** The Legislature can amend Alabama’s criminal code to reduce sentencing ranges, especially for drug offenses, burglary, assault, robbery, and public order offenses such as disorderly conduct. Alabama has a number of laws and mechanisms that produce longer sentences, including sentencing enhancements, mandatory minimums, and habitual offender laws. In addition to contributing to the state’s mass incarceration problem, longer sentences do not serve the goals of the justice system:

rehabilitation and deterrence. Alabama will not be able to make a significant change in the overall size of its prison population if the widespread problem of overly long sentence lengths is not directly and substantively addressed.

- **Sentencing reform – mandatory minimums:** The state should significantly scale back or eliminate mandatory minimums. They impose a one-size-fits-all model that cannot adequately take into account the particular facts in a specific case. By shifting all discretion away from judges, mandatory minimums also give disproportionate power to prosecutors, who get to decide whether to charge a person in a way that triggers the mandatory sentence. The availability of mandatory minimums often leads prosecutors to charge severely in order to pressure defendants into taking a plea deal.⁶⁸ This dynamic can induce defendants to plead guilty, forfeit a strong defense, give false information, or waive their constitutional rights.⁶⁹ Studies have also indicated that mandatory minimums exacerbate racial and socioeconomic disparities in the criminal justice system⁷⁰ and produce higher rates of recidivism.⁷¹
- **Sentencing reform – habitual offender laws:** Alabama’s Habitual Felony Offender Act (HFOA) is one of the most punitive habitual offender laws in the country. The state’s 2015 criminal justice reforms reduced its reach slightly by creating a new “D” felony classification to which the HFOA does not apply. However, for all other felony offenses, the act triggers life sentences without parole upon one’s third felony conviction.⁷² This highly punitive approach does not serve the goal of rehabilitation; instead, it results in the lifetime incarceration of many Alabamians. Many of these people could and should be rehabilitated so that they can one day contribute to their communities again. Furthermore, studies have shown that long sentences are not correlated to increased deterrence, with any slight effect completely leveling off for punishments that last

several years.⁷³ Alabama should do away with its Habitual Felony Offender Act, which fuels the state's epidemic of prison crowding, an aging prison population, and unjust, disproportionate sentencing.

- **Sentencing reform – enhancements:**

Alabama has very harsh mandatory sentencing enhancements, which lead to overly punitive punishments that are often disproportionate to the offense. One such enhancement requires courts to impose five years to a sentence for any drug offense that took place within three miles of a school, college, university, or public housing unit.⁷⁴ Another enhancement triggers an additional five years' incarceration for possessing a firearm while involved in drug trafficking.⁷⁵ Alabama should do away with these mandatory enhancements, which contribute to draconian sentences and create troubling inconsistencies in sentencing for similar offenses. Judges should instead be encouraged to use their discretion to take aggravating factors, such as possession of a firearm, into account when sentencing. This allows judges to consider the totality of the circumstances and determine whether these factors relate to the crime. Eliminating these enhancements could make a significant dent in the number of people in Alabama prisons and their lengths of stay.

- **Sentencing reform – guidelines:** The Legislature can expand the coverage of Alabama's presumptive sentencing guidelines – which are parameters used by the sentencing commission to calculate sentence ranges based on criminal history and current crime, and have been effective at controlling incarceration for low-level offenses⁷⁶ – to include all offenses.

- **Parole reform:** Improving parole and release policies and practices to ensure that more eligible people are released earlier from prison is another key way to reduce the length of time people serve. Previous efforts have been quite successful for Alabama. In 2015, for example, Alabama's justice reinvestment legislation in part sought to address low parole rates by training staff

in decision-making practices. Between 2015 and 2017, the number of parole considerations went up 19 percent and the proportion of people granted parole increased by 17 percentage points.⁷⁷ Alabama should take further steps to implement presumptive parole policies that can streamline and speed up the release of imprisoned people who have demonstrated good behavior and have served their minimum sentences.

- **Earned time/credit reform:** Similarly, the state should eliminate or reform eligibility restrictions that prevent thousands of people from earning credits against their prison sentences through participation in educational, vocational, and other opportunities while in prison. The incentive structure that earned time creates for pro-social behavior and participation in constructive activities helps to explain the clear link between earned time and reduced recidivism.⁷⁸ Additionally, given the violence afflicting Alabama prisons,⁷⁹ putting an increased emphasis on earned time and other programs that incentivize good behavior and structured, pro-social activities is especially important. In addition to the social, recidivism, and safety benefits, earned time saves significant amounts of money.⁸⁰
- **Compassionate release:** Alabama should expand access to compassionate release for elderly people in prison. The state's prison population is rapidly aging,⁸¹ in large part due to longer prison terms.⁸² Studies have clearly shown that the propensity to commit crimes drops off precipitously as one ages, so the interest in protecting public safety through removing someone from society is much less relevant for older persons.⁸³ Making more aging persons eligible for early release will also save the state very substantial sums of money, as it costs more than twice as much to incarcerate an aging person as it does to incarcerate a younger one.⁸⁴ Increasing access to compassionate release makes particular sense given Alabama's

acute struggles with overcrowding and lack of sufficient prison resources and staff.⁸⁵

Reducing Racial Disparities

Reducing the number of people who are imprisoned in Alabama will not on its own significantly reduce racial disparities in the prison system.

People of color (especially Black, Latino, and Native American people) are at a higher risk of becoming involved in the justice system, including living under heightened police surveillance and being at higher risk for arrest. This imbalance cannot be accounted for by disparate involvement in illegal activity, and it grows at each stage in the justice system, beginning with initial law enforcement contact and increasing at subsequent stages, such as pretrial detention, conviction, sentencing, and post-release opportunity.⁸⁶ Focusing on only one of the factors that drives racial disparity does not address issues across the whole system.

Racial disparity is so ingrained in the system that it cannot be mitigated by solely reducing the scale of mass incarceration. Shrinking the prison population across the board will likely result in lowering imprisonment rates for all racial and ethnic populations, but it will not address comparative disproportionality across populations. For example, focusing on reductions to prison admissions and length of stay in prison is critically important, but those reforms do not address the policies and practices among police, prosecutors, and judges that contribute greatly to the racial disparities that plague the prison system.

New Jersey, for example, is often heralded as one of the most successful examples of reversing mass incarceration, passing justice reforms that led to a 26 percent decline in the state prison population between 1999 and 2012.⁸⁷ However, the state did not target racial disparities in incarceration and, in 2014, Black people in New Jersey were still more than 12 times as likely to be imprisoned as white people — the highest disparity of any state in the nation.⁸⁸

Ending mass incarceration is critical to eliminating racial disparities but insufficient without companion

efforts that take aim at other drivers of racial inequities outside of the criminal justice system. Reductions in disparate imprisonment rates require implementing explicit racial justice strategies.

Some examples include:

- Ending over-policing in communities of color
- Evaluating prosecutors' charging and plea-bargaining practices to identify and eliminate bias
- Investing in diversion/alternatives to detention in communities of color
- Reducing the use of pretrial detention and eliminating wealth-based incarceration
- Ending sentencing enhancements based on location (drug-free school zones)
- Reducing exposure to reincarceration due to revocations from supervision
- Requiring racial impact statements before any new criminal law or regulation is passed and requiring legislation to proactively rectify any potential disparities that may result with new laws or rules
- Fighting discriminatory gang sentencing enhancements that disproportionately target people of color
- Addressing any potential racial bias in risk assessment instruments used to assist decision-making in the criminal justice system
- Shifting funding from law enforcement and corrections to community organizations, job creation, schools, drug and mental health treatment, and other social service providers

Reducing Disability Disparities

The rates of people with disabilities in the U.S. criminal system is two to six times that of the general population.⁸⁹ In particular, people with psychiatric

disabilities are dramatically overrepresented in jails and prisons across the country.⁹⁰

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.⁹¹
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than other people in prison.⁹²
- People with mental illness stay in prison longer because they frequently face disciplinary action from conduct that arises due to their illness — such as attempted suicide — and they seldom qualify for early release because they are not able to participate in rehabilitative programming, such as educational or vocational classes.⁹³

Furthermore, sentencing reforms appear to leave people in prison with psychiatric disabilities behind. In recent years in California, for example, the prison population has decreased by more than 25 percent, but the number of people with a serious mental disorder has increased by 150 percent — an increase in both the rate and the absolute number of incarcerated people with psychiatric disabilities.

Screening tools to evaluate psychiatric disabilities vary by state and jurisdiction, but the most reliable data indicates that more than half of jail populations and close to half of prison populations have mental health disabilities.⁹⁴ The fact that people with mental health disabilities are arrested more frequently, stay incarcerated longer, and return to prisons faster is not due to any inherent criminality related to psychiatric disabilities. It arises in part because of the lack of accessible and appropriate mental health treatment in the community; in part because of a perception of dangerousness by police, prosecutors and judges; and in part because prison staff and probation officers fail to recognize and accommodate disability.

Many people of color in jails and prisons are also people with disabilities, and efforts to reduce racial disparities must go hand in hand with efforts to reduce disability disparities.⁹⁵ Not surprisingly, many of the strategies to reduce disability disparities are similar to approaches that reduce racial disparities. Some examples include:

- Investing in pre-arrest diversion:
 - Creating behavioral health centers, run by state departments of health, as alternatives to jails, or emergency rooms for people

TAKING THE LEAD

Prosecutors: They decide what charges to bring and which plea deals to offer. They can decide to divert more people to treatment programs (for example, drug or mental health programs) rather than send them to prison. And they can decide to charge enhancements that require the imposition of prison sentences.

State lawmakers: They decide which offenses to criminalize, how long sentences can be, and when to take away judges' discretion. They can change criminal laws to remove prison as an option when better alternatives exist, and they can also fund the creation of new alternatives.

Parole boards: They decide when to allow people to leave prison. In Alabama, the parole board is an especially important player when it comes to reforming how long people spend in prison.

Judges: They often have discretion over pretrial conditions imposed on defendants, which can make a difference. For example, individuals who are jailed while awaiting trial are more likely to plead guilty and accept longer prison sentences than people who are not held in jail pretrial. Judges can also have discretion in sentencing and should consider alternatives to incarceration when possible.

“Merely reducing sentence lengths, by itself, does not disturb the basic architecture of the New Jim Crow. So long as large numbers of African Americans continue to be arrested and labeled drug criminals, they will continue to be relegated to a permanent second-class status upon their release, no matter how much (or how little) time they spend behind bars. The system of mass incarceration is based on the prison label, not prison time.”⁹⁸

— From *The New Jim Crow*, Michelle Alexander

experiencing mental health crises or addiction issues

- Training dispatchers and police to divert people with mental health issues who commit low-level nuisance crimes to these behavioral health centers. Jurisdictions that have followed this approach have significantly reduced their jail populations⁹⁶
- Ending arrest and incarceration for low-level public order charges, such as being drunk in public, urinating in public, loitering, trespassing, vandalism, or sleeping on the street. If needed, referring people who commit these crimes to behavioral health centers.
- Requiring prosecutors to offer diversion for people with mental health and substance abuse disabilities who are charged with low level crimes
- Evaluating prosecutors’ charging and plea-bargaining practices to identify and eliminate disability bias
- Investing in diversion programs and alternatives to detention designed for people with disabilities, including programs that provide supportive housing, Assertive Community Treatment,

wraparound services, and mental health supports

- Reducing the use of pretrial detention while increasing reminders of court dates and other supports to ensure compliance with pretrial requirements
- Reducing reincarceration due to parole or probation revocations through:
 - Intensive case management
 - Disability-competent training for officers on alternatives to incarceration and reasonable modifications to requirements of supervision
 - No return to incarceration for first and second technical violations,
- Addressing bias against mental disabilities in risk assessment instruments used to assist decision-making in the criminal justice system
- Shifting funding away from law enforcement and corrections into supportive housing, intensive case management, schools, drug and mental health treatment, community organizations, job creation, and other social service providers

Forecaster Chart

There are many pathways to cutting the prison population in Alabama by 50 percent. To help end mass incarceration, communities and policymakers will need to determine the optimal strategy to do so. This table presents one potential matrix of reductions that can contribute to cutting the state prison population in half by 2025. The reductions in admissions and length of stay for each offense category were selected based on potential to reduce the prison population, as well as other factors. To chart your own path to reducing mass incarceration in Alabama, visit the interactive online tool at <https://urbn.is/ppf>.

CUTTING BY 50%: PROJECTED REFORM IMPACTS ON POPULATION, DISPARITIES, AND BUDGET ⁹⁷

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome***	Prison population Impact	Impact on racial and ethnic makeup of prison population****	Cost savings by 2025*****
Drug offenses	<ul style="list-style-type: none"> Reduce average time served for drug distribution by 70 percent (from 1.45 to 0.43 years) Institute alternatives that reduce admissions for drug distribution by 70 percent (1,582 fewer people admitted) Institute alternatives that end all admissions for drug possession (1,772 fewer people admitted) 	3,590 fewer people (14.36 percent reduction)	White: 4.3% decrease Black: 3.1% increase Native American: 16.8% increase Asian: 16.8% increase	\$53,611,219
Robbery	<ul style="list-style-type: none"> Reduce average time served by 60 percent (from 4.38 to 1.75 years) Institute alternatives that reduce admissions by 30 percent (259 fewer people admitted) 	2,627 fewer people (10.50 percent reduction)	White: 6.6% increase Black: 4.8% decrease Native American: 11.7% increase Asian: 11.7% increase	\$26,228,753
Burglary	<ul style="list-style-type: none"> Reduce average time served by 60 percent (from 1.49 to 0.60 years) Institute alternatives that reduce admissions by 40 percent (606 fewer people admitted) 	1,730 fewer people (6.92 percent reduction)	White: 0.3% decrease Black: 0.2% increase Native American: 7.4% increase Asian: 7.4% increase	\$21,524,368
Public order offenses*****	<ul style="list-style-type: none"> Reduce average time served by 70 percent (from 2.10 to 0.63 years) Institute alternatives that reduce admissions by 70 percent (610 fewer people admitted) 	1,639 fewer people (6.55 percent reduction)	White: 3.1% decrease Black: 2.2% increase Native American: 7.0% increase Asian: 7.0% increase	\$19,978,882

Impact Compared to 2025 Baseline*

Offense category**	Policy outcome***	Prison population Impact	Impact on racial and ethnic makeup of prison population****	Cost savings by 2025*****
Theft	<ul style="list-style-type: none"> Reduce average time served by 60 percent (from 0.96 to 0.39 years) Institute alternatives that reduce admissions by 40 percent (587 fewer people admitted) 	1,073 fewer people (4.29 percent reduction)	White: 2.0% decrease Black: 1.5% increase Native American: 4.5% increase Asian: 4.5% increase	\$13,645,455
Assault	<ul style="list-style-type: none"> Reduce average time served by 60 percent (from 2.39 to 0.96 years) Institute alternatives that reduce admissions by 30 percent (142 fewer people admitted) 	805 fewer people (3.22 percent reduction)	White: 0.6% increase Black: 0.4% decrease Native American: 3.3% increase Asian: 3.3% increase	\$8,830,284
Other property offenses*****	<ul style="list-style-type: none"> Reduce average time served by 60 percent (from 0.88 to 0.35 years) Institute alternatives that reduce admissions by 40 percent (345 fewer people admitted) 	575 fewer people (2.30 percent reduction)	White: 0.6% decrease Black: 0.4% increase Native American: 2.4% increase Asian: 2.4% increase	\$7,422,765
Fraud	<ul style="list-style-type: none"> Reduce average time served by 60 percent (from 0.83 to 0.33 years) Institute alternatives that reduce admissions by 40 percent (220 fewer people admitted) 	348 fewer people (1.39 percent reduction)	White: 0.4% decrease Black: 0.3% increase Native American: 1.4% increase Asian: 1.4% increase	\$4,480,311
Weapons offenses*****	<ul style="list-style-type: none"> Reduce average time served by 60 percent (from 1.80 to 0.72 years) 	124 fewer people (0.49 percent reduction)	White: 0.2% increase Black: 0.2% decrease Native American: 0.5% increase Asian: 0.5% increase	\$1,337,878

*The baseline refers to the projected prison population based on historical trends, assuming that no significant policy or practice changes are made.

**The projections in this table are based on the offense that carries the longest sentence for any given prison term. People serving prison terms may be convicted of multiple offenses in addition to this primary offense, but this model categorizes the total prison term according to the primary offense only.

***Racial and ethnic disproportionality is traditionally measured by comparing the number of people in prison – of a certain race – to the number of people in the state’s general population of that same race. For example, nationally, Black people comprise 13 percent of the population, while white people comprise 77 percent. Meanwhile, 35 percent of people in state or federal prison are Black, compared to 34 percent who are white. While the proportion of people in prison who are Black or white is equal, Black people are incarcerated at nearly three times their representation in the general population. This is evident in Alabama, where Black people make up 55 percent of the prison population but constitute only 26 percent of the state’s total adult population. Note: Data on Hispanic/Latino ethnicity is not available in Alabama.

****Cost impact for each individual policy change represents the effect of implementing that change alone and in 2015 dollars. The combined cost savings from implementing two or more of these changes would be greater than the sum of their combined individual cost savings since more capital costs would be affected by the population reductions.

*****Some public order offenses include drunk or disorderly conduct, escape from custody, obstruction of law enforcement, court offenses, failure to comply with sex offense registration requirements, prostitution, and stalking, as well as other uncategorized offenses.

*****Some other property offenses include stolen property trafficking, vandalism, property damage, criminal mischief, unauthorized vehicle use, and trespassing.

*****Some weapons offenses include unlawful possession, sale, or use of a firearm or other type of weapon (e.g., explosive device).

Total Fiscal Impact

If Alabama were to carry out reforms leading to the changes above, 12,511 fewer people would be in prison in Alabama by 2025, a 50.02 percent decrease. This would lead to a total cost savings of \$469,391,583 by 2025.

Methodology Overview

This analysis uses prison term record data from the National Corrections Reporting Program to estimate the impact of different policy outcomes on the size of Alabama’s prison population, racial and ethnic representation in the prison population, and state corrections spending. First, trends in admissions and exit rates for each offense category in recent years are analyzed and projected out to estimate a baseline state prison population projection through 2025, assuming recent trends will continue. Then, a mathematical model is used to estimate how various offense-specific reform scenarios (for example, a 10 percent reduction in admissions for drug possession or a 15 percent reduction in length of stay for robbery) would change the 2025 baseline projected prison population. The model allows for reform scenarios to include changes to the number of people admitted to prison and/or the average length of time served for specific offenses. The model then estimates the effect that these changes

would have by 2025 on the number of people in prison, the racial and ethnic makeup of the prison population, and spending on prison. The analysis assumes that the changes outlined will occur incrementally and be fully realized by 2025.

All results are measured in terms of how outcomes under the reform scenario differ from the baseline projection for 2025. Prison population size impacts are measured as the difference between the 2025 prison population under the baseline scenario and the forecasted population in that year with the specified changes applied. Impacts on the racial and ethnic makeup of the 2025 prison population are measured by comparing the share of the prison population made up by a certain racial or ethnic group in the 2025 baseline population to that same statistic under the reform scenario, and calculating the percent change between these two proportions. Cost savings are calculated by estimating the funds that would be saved each year based on prison population reductions relative to the baseline estimate, assuming that annual savings grow as less infrastructure is needed to maintain a shrinking prison population. Savings relative to baseline spending are calculated in each year between the last year of available data and 2025, and then added up to generate a measure of cumulative dollars saved over that time period.

Endnotes

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- 2 Bureau of Justice Statistics (BJS) Jurisdictional Population 1980-2016, Correctional Statistical Analysis Tool.
- 3 Alabama Department of Corrections, *Monthly Statistical Report for June 2017*, <http://www.doc.state.al.us/docs/MonthlyRpts/2017-06.pdf>. State-run prison population is defined as the Alabama Department of Corrections' (ADOC) "in-house population," or population housed within correctional facilities owned and operated by ADOC.
- 4 Alabama Department of Corrections, *Annual Report Fiscal Year 2017*, <http://www.doc.state.al.us/docs/AnnualRpts/2017AnnualReport.pdf>. Drug offenses include both possession of a controlled substance and drug manufacturing, trafficking, and distribution. Offense breakdowns in this ACLU Smart Justice 50-State Blueprint are based on the most serious, or "controlling," offense for which a person in prison is serving time. Some people in prison are serving time for multiple convictions and are categorized here only under the controlling offense types.
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