

THE ALABAMA STATEHOUSE-TO-PRISON PIPELINE



FALL 2021

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AN OVERVIEW

We embrace the definition of the carceral state articulated by Dr. Ruby C. Tapia.

The ACLU of Alabama is focused on ensuring clear and consistent information about legislation and its impact for both legislators and Alabamians across the state, particularly as we all adapted to the COVID-19 restrictions at the Statehouse during the 2021 Regular Session.

Each year, our policy and advocacy team closely monitor legislation and often acts when it concerns civil liberties. Over time, it has become evident that the Legislature is overlooking the urgent need to address the criminal justice system in our state.

In this publication, the first Alabama Statehouse to Prison Pipeline report, we present and examine a record of legislation that creates new criminal penalties and/or enhances current penalties.

Many of the penalties carry a punishment of incarceration, whether in a county jail or state prison, and they expand the carceral state in Alabama.

We embrace the definition of the carceral state articulated by Dr. Ruby C. Tapia, Chair of the Department of Women's and Gender Studies and Associate Professor of English and Women's and Gender Studies at the University of Michigan:

"Yes, the carceral state encompasses the formal institutions and operations and economies of the criminal justice system proper, but it also encompasses logics, ideologies, practices, and structures, that invest in tangible and sometimes intangible ways in punitive orientations to difference, to poverty, to struggles to social justice and to the crossers of constructed borders of all kinds."

Our goal is to demonstrate to legislators, elected officials, stakeholders, and all interested parties that the primary reason Alabama is facing a crisis in its prisons, a lawsuit from the U.S. Department of Justice (DOJ), and a continuous cycle of Alabamians who have been destabilized, lost housing, employment, and voting rights is because the Legislature continues to ignore root causes of crime and violence.

Considered alone, many criminal sentencing bills may sound innocuous. Individually, few add significantly to the prison population. But, together, year after year, the lawmaking practice of ceaselessly inventing new crimes and longer sentences causes the tide of imprisonment to rise.

This is mass incarceration in policy and in practice. Even when crime falls, imprisonment expands or goes up. And Alabama families, communities, and taxpayers are bearing the brunt of our growing criminal punishment system.

With our Statehouse-to-Prison Pipeline report, we want to start a conversation about the ways we confront mass incarceration and the expanding carceral state together at every level: state, local, and federal.

To be sure, we have spotlighted some positive bills that were advanced during our previous legislative session to represent impactful reforms and reimagined approaches to sentencing, prison oversight, and community re-entry.

Not only do we encourage more of these efforts, but the ACLU of Alabama is committed to working alongside advocates and policymakers to address the crisis in our prisons and communities by addressing root causes with approaches that strengthen our collective safety and commitment to civil rights and civil liberties.

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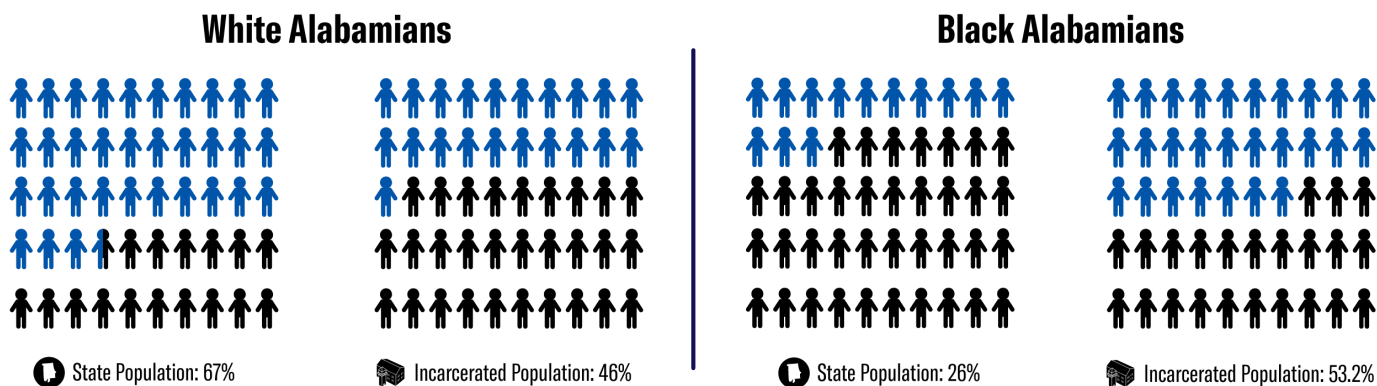
ALABAMA PRISONS AT A GLANCE

In the 2021 fiscal year, the [Alabama Department of Corrections \(ADOC\)](#) was allocated \$584,805,971 in tax dollars from the Legislature.

According to ADOC's May 2021 statistical report, our total jurisdictional population, the population 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 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, is 25,249.

The in-house population, representative of the individuals who are in custody inside an ADOC correctional facility, is 16,792. The cost of incarcerating people rises dramatically as they get older, but evidence strongly supports a decreased risk of reoffending as people age. Alabama simply cannot afford to warehouse people who pose no threat to public safety in overcrowded, violent prisons.

While white Alabamians make up 67% of the population, they are 46% of the Alabama prison and jail population. Black Alabamians make up just 26% of the population but account for more than half of the incarcerated population at 53.2%, based on the May 2021 ADOC statistical report.



This icon matrix compares the state and incarcerated population percentages of white and Black Alabamians.

ALABAMA PRISONS AT A GLANCE

Following two reports by the [U.S. Department of Justice \(DOJ\)](#) outlining the horrific conditions, routine violence and abuse, and dramatic overcrowding in ADOC facilities, on December 10, 2020, the DOJ filed suit against the ADOC and the State of Alabama.

DOJ's statement noted:

"The Department of Justice conducted a thorough investigation of Alabama's prisons for men and determined that Alabama violated and is continuing to violate the Constitution because its prisons are riddled with prisoner-on-prisoner and guard-on-prisoner violence. The violations have led to homicides, rapes, and serious injuries."

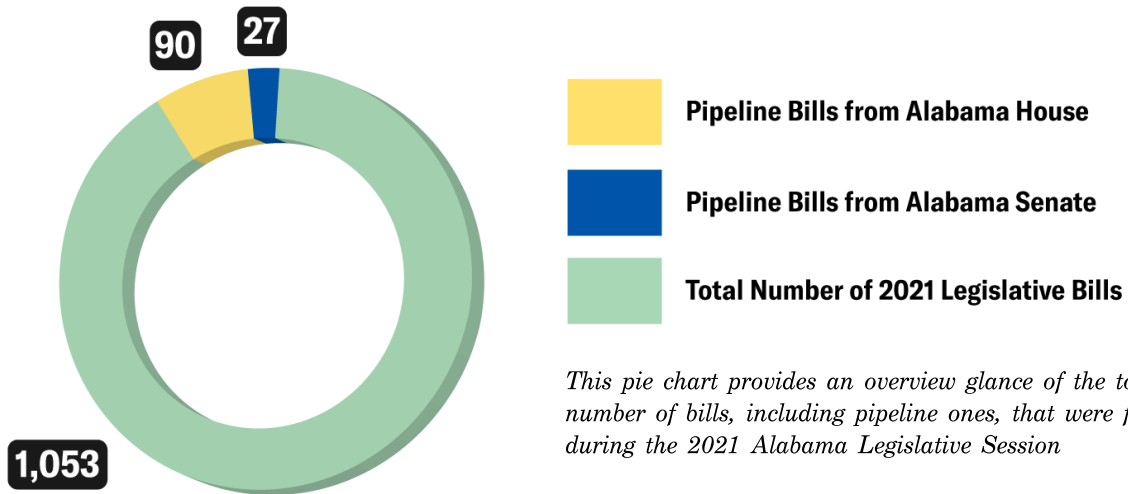
2021 LEGISLATIVE SESSION

The COVID-19 pandemic significantly altered the work of the 2021 Regular Session, impacting the availability of lawmakers and public access at the Statehouse, frequency and protocols for committee meetings and public hearings, and lobbying.

Despite the pandemic looming over the lead up to and over the course of the session, no legislation to strengthen or fortify our healthcare system for a public health crisis, improve vital sectors like transportation and education, or revitalize communities deeply affected by the pandemic was passed. Still, legislators remained busy. [From February 2021 to May 2021, 1,053 bills were introduced in the Regular Session.](#)

Of those, 117 bills are what we consider pipeline bills. More specifically, 90 of the 648 (13.89%) House bills and 25 of the 405 (6.67%) Senate bills contained mass incarceration provisions. [Ultimately, 52 of these bills passed and were signed into law.](#)

2021 LEGISLATIVE SESSION



A CLOSER LOOK AT THE PIPELINE

Chamber	Total Bills	Pipeline Bills
House	648	90
Senate	405	27

This table provides a detailed breakdown of the number of total bills and pipeline bills that each Alabama Legislative chamber filed during the 2021 Alabama Legislative Session.

New and Enhanced Sentencing

A majority of the pipeline legislation in the 2021 Regular Session was related to creating new and enhanced sentencing, including several that would define new criminal penalties or harsher sentences on critical issues of civil rights and civil liberties.

Following months of protests across our state and the country in response to the killings of several Black people by law enforcement, [House Bill 445](#) sponsored by Rep. Allen Treadaway (House District 51) was introduced with the aim to establish the crimes of aggravated riot and unlawful traffic interference.

This bill also denies bail consideration for a period of time and includes a mandatory period of incarceration that is not subject to probation or parole. This legislation threatens expression of speech after months of peaceful protests by Alabamians inspired by a movement for racial justice, but it also has a negative impact by broadening the bail detention net.

Similar legislation sponsored by Rep. Chip Brown (HD-105), like [House Bill 130](#) and [House Bill 131](#), expands the categories of people who can be denied bail and provides more power to the Legislature to determine pre-trial rights.

“We decry the efforts of the Legislature to pass HB 445, a bill that is arbitrary in its framing, vague in its scope, and punitive in its intent to deny the right of free speech for those who challenge those who govern to pass just laws.”

— Alabama faith leaders in a special to the Montgomery Advertiser in May 2021

Reproductive Freedom and Medical Autonomy

The ACLU of Alabama has an extensive history of speaking out against policies that seek to criminalize abortion access, reproductive rights, and diminish the liberties of bodily autonomy and an individual's personal medical decisions.

[House Bill 237](#), sponsored by Rep. Ginny Shaver (HD-39), sought to criminalize physicians if they fail to provide care to a child “born alive” following an attempted abortion, creating a new crime based on the false notion that physicians are not already providing a duty of care. This bill was signed by Governor Ivey. Additionally, [House Bill 317](#) and [House Bill 377](#), sponsored by Rep. Kerry Rich (HD-26) and by Rep. Andrew Sorrell (HD-3) respectively, created more obstacles for people seeking safe abortions in our state and carried criminal penalties for physicians.

Alabama was one of 33 states to also introduce legislation that targeted transgender rights, particularly those of trans youth. Sen. Shay Shelnett and Rep. Wes Allen filed companion bills, [House Bill 1](#) and [Senate Bill 10](#), which would strip transgender youth of access to gender-affirming medical care from their physicians, including hormone therapy or puberty blockers. Any physician who would provide care in violation of the law would face a Class C felony.

Pipeline legislation contributes to the mass incarceration crisis in Alabama but also threatens the reproductive rights and medical autonomy of Alabamians while also sending a message to patients and their doctors that they are not qualified to make their own private medical decisions.

“They are correct that vulnerable people need to be cared for, even protected. But they are very wrong in thinking that criminalizing medical care for this vulnerable population is protection.”

— Dr. Morissa Ladinsky, Associate Professor of Pediatrics, UAB Pediatrics, Division of Academic General Pediatrics and co-lead of the UAB Youth Multidisciplinary Gender Health Team, [in an op-ed to AL.com](#)

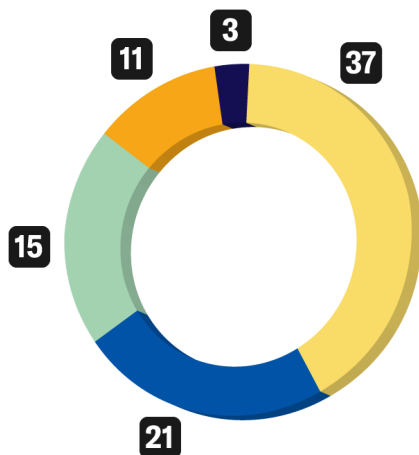
Surveillance & Privacy

Surveillance represents one of the best examples of our expanding carceral state. Privacy today faces growing threats from a growing surveillance apparatus that is often justified in the name of public safety and national security. Legislation such as [House Bill 111](#) sponsored by Rep. Jim Hill (HD-50) would require every parolee to comply with electronic monitoring. Individuals on electronic monitoring are still considered under the custody of the ADOC.

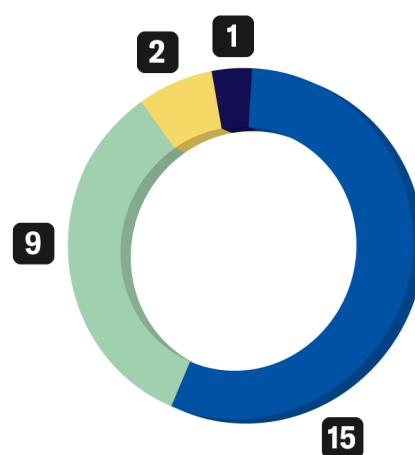
In addition, [Senate Bill 71](#) and [House Bill 17](#), sponsored by Sen. Butler (SD-2) and Rep. Reynolds (HD-21) respectively, codify guidelines for wiretapping by law enforcement. These bills include weak notification requirements and will even allow for the interception of communications which the suspect is not a party to.

HOUSE & SENATE PIPELINE BILLS

Alabama House



Alabama Senate



Increases funding for police and/or corrections Creates or enhances a civil penalty Creates or enhances a criminal penalty Expands the scale, scope, and power of policing, and/or law enforcement in Alabamians' daily lives Expands the reach of jails, prisons, and surveillances in Alabamians' daily lives

These pie charts show the effects of the pipeline bills that were filed during the 2021 Alabama Legislative Session.

POSITIVE BILLS

On the positive side, we saw movement toward repealing the [Habitual Felony Offender Act \(HFOA\)](#), a lead priority in the ACLU of Alabama’s Campaign for Smart Justice platform, which would restore discretion back to judges and address the unconstitutional overcrowding in state prisons due to extreme mandatory sentencing.

While [House Bill 107](#), sponsored by Rep. Chris England, ultimately ran out of time in the House, getting this bill filed and out of the House Judiciary Committee with bipartisan support represents significant progress we hope to build on either next year or during a possible special session later this year.

In the final hours of the session, the Legislature also passed [House Bill 106](#), which will expand accountability and oversight of ADOC by the Joint Legislative Oversight Committee. Considering the well-documented problems with ADOC and the facilities they operate, more oversight is a step in the right direction, but there is certainly more work to be done.

House Bill 107

Lead Sponsor: Rep. Chris England (House District 70)

Vote(s): This bill passed the House Judiciary Committee with bipartisan support and was indefinitely postponed.

This Law Will: Allow individuals sentenced under the HFOA, Alabama’s “three-strikes law,” to apply for resentencing in the court where they were originally sentenced.

Why This Bill Is Needed: Currently, HFOA creates widespread sentencing disparity and unjustly incarcerates too many people for far too long. Alabama has about 5,000 people serving time under the HFOA, according to the Alabama Sentencing Commission. About half of those are serving sentences of 20 years or longer. About 1,100 are serving life sentences, and another 501 are serving life sentences with no possibility of parole. Overly punitive policies like the habitual offender law have contributed to Alabama’s horrendously overcrowded prisons.



POSITIVE BILLS

House Bill 106

Lead Sponsor: Rep. Chris England (House District 70)

Vote(s): This bill passed both chambers and was signed by the Governor. Two amendments were added in the House before advancing to the Senate. The House passed the bill as amended 101-0 and the Senate vote 31-0.

This Law Will: Require ADOC to provide quarterly reports to the Joint Legislative Prison Oversight Committee on the number and manner of deaths of incarcerated individuals and incidents of sexual violence, data on staffing, total population, and participation in training and rehabilitation programs, as well as data on cell phones or other electronic devices, weapons, and controlled substances recovered within an ADOC facility. The bill also requires that the committee meet quarterly and that at least one of those committee meetings includes a public hearing. The complete quarterly report will be made available on ADOC's website within 10 days of its delivery to the Legislature. The reporting requirement goes into effect August 1.

Why This Bill Is Needed: As Alabama's prison crisis has worsened, the ADOC has failed to provide transparent information to lawmakers or the public regarding the aforementioned areas. This bill will require data collection and reporting.



House Bill 24

Lead Sponsor: Rep. Jim Hill (House District 50)

Votes: This bill passed the House with a vote of 63-33. After passing the House, the Senate judiciary committee also passed the bill with one amendment.

This Law Will: Allow individuals sentenced with nonviolent offenses prior to 2014 to apply to their trial court for new sentences under the new guidelines.

Why This Bill Is Needed: The Legislature passed new sentencing guidelines in 2010 as voluntary at a judge's discretion, which became presumptive, or recommended, in 2013, unless judges presented a reason for granting a harsher sentence. Those sentenced prior to 2010 and 2013 may have been given a harsher sentence than they would be today, and this bill will provide an opportunity for them to apply for resentencing. While an improvement, allowing people with only nonviolent offenses to apply excludes hundreds, if not thousands of currently incarcerated people. The ACLU of Alabama supports stronger sentencing reform that does not stop short of people with violent offenses.



POSITIVE BILLS

Senate Bill 149

Lead Sponsor: Sen. Bobby Singleton (Senate District 24)

Vote(s): This bill passed the Senate Judiciary committee with bipartisan support and was indefinitely postponed.

This Law Will: Reduce the penalty for the possession of up to two ounces of marijuana from a criminal misdemeanor, punishable by up to one year in prison and a maximum fine of \$6,000, to a non-criminal violation punishable only by a maximum fine of \$250.

Why This Bill Is Needed: Alabama's marijuana laws are regressive and overly punitive. Community resources are wasted on arrest, booking, and prosecution for marijuana offenses and these charges can have long term consequences. According to Alabama Appleseed and the Southern Poverty Law Center, Alabama spent \$22 million enforcing marijuana laws in 2016.



CALLS TO ACTION

Public

1. Visit alabamasmartjustice.org for more information about the Habitual Felony Offender Act (HFOA), Alabama's prison crisis, and the parole backlog.
2. Contact your lawmakers and ask them to address the overcrowding and draconian sentencing laws and ask for meaningful reforms to address sentencing, prison conditions, parole, and re-entry.
3. Share report with your family, friends, and other elected officials in your community. Join together and identify strategies to even address criminal justice reform at the local level.

Legislators

1. Address the root causes of crime and incarceration with policymaking that addresses racial disparities, healthcare, education, housing, and poverty.
2. Provide pathways to success for people released and paroled to make a successful re-entry into society.
3. Stop introducing legislation that creates new penalties or enhances penalties.



The ACLU of Alabama's Policy & Advocacy staff is responsible for the contents of this report, which was researched, authored, and designed by Dillon Nettles, Stef Bernal-Martinez, and Monica Riley.

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Contact

ACLU of Alabama
Montgomery, AL
(334) 265-2754

acualabama.org 

info@acualabama.org 

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