

# HABITUAL FELONY OFFENDER ACT

*Driving Mass Incarceration Since 1977*

## HISTORY OF ALABAMA'S HFOA LAW

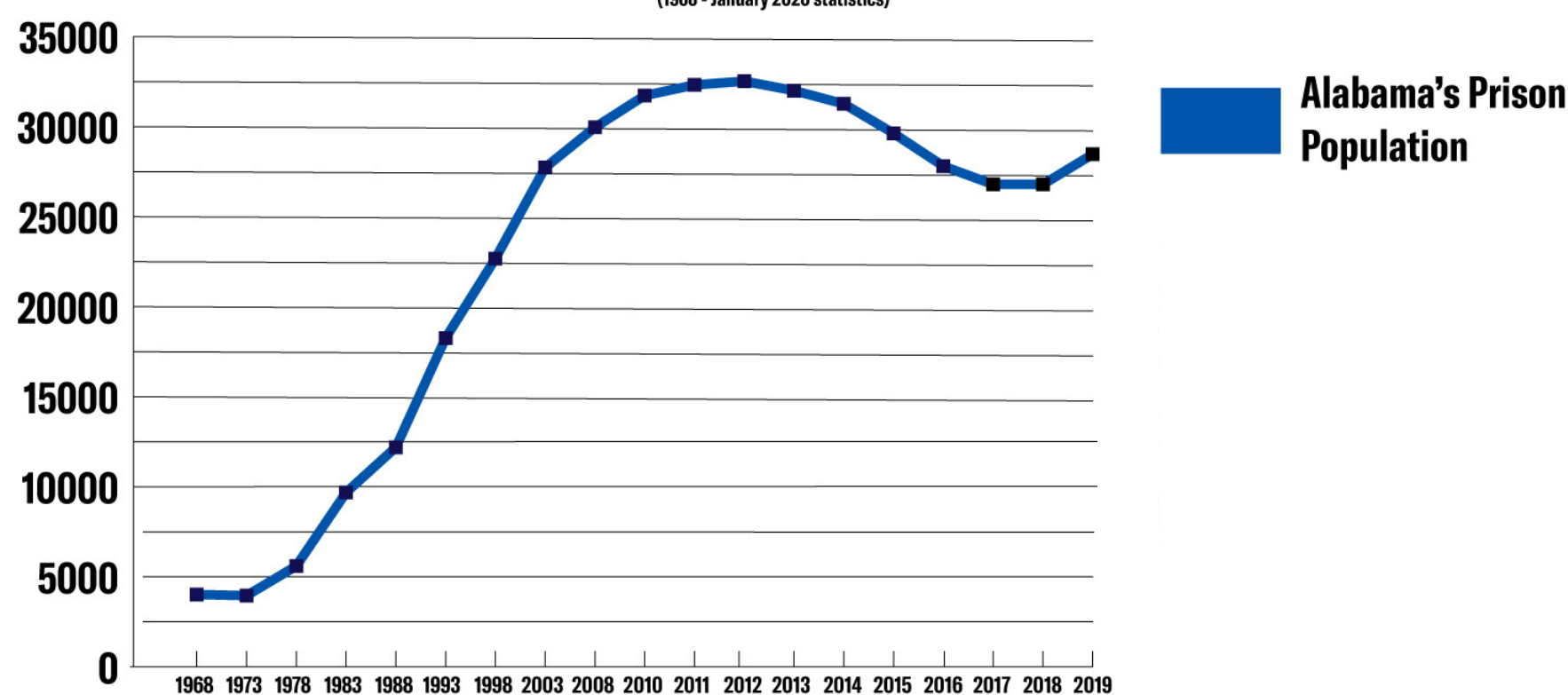
In 2020, more than 500 people are serving life without parole under Alabama's draconian "Habitual Felony Offender Act" or HFOA. The law, passed at the dawn of the tough-on-crime era, mandates longer sentences each time someone commits a felony, regardless of the time between offenses. The law was amended in 2000, ostensibly to make it less severe, but it still mandates a life without parole (LWOP) sentence for anyone convicted of a Class A offense if they have three prior felonies on their record and one of them is a Class A offense, even if the prior offenses were committed decades ago. Class A offenses include murder and rape, but also robbery, burglary, drug trafficking and manufacturing of a controlled substance.

In 1976, Federal Judge Frank Johnson found Alabama prisons to be overcrowded, violent and "wholly unfit for human habitation." That didn't stop Alabama's Legislature from passing the HFOA in 1977, one year after Johnson's landmark ruling. The new law was considered the harshest in the nation because of its ironclad mandatory punishments: a life without parole sentence for anyone convicted of a Class A offense with any three prior felonies on their record and a life sentence for anyone who was convicted of a Class B felony with any three prior felonies on their record.

This meant someone could be sentenced to die in prison for a single burglary or robbery and three prior forgery or drug convictions. The outsized punishment resulted in hundreds of people being sent to prison for the rest of their natural lives for a handful of offenses committed when they were young, many involving no bodily injury. Alabama's law is vastly out of line with similar "three-strike" laws in other states because it doesn't account for the time between prior offenses and allows for multiple offenses to arise from a single incident.

### Overcrowding in Alabama Prisons

(1968 - January 2020 statistics)



Source: Alabama Department of Corrections' 2012 Annual Report and Monthly Statistical Reports

In 2014, Alabama's legislature repealed the retroactive application of the 2000 amendment to the HFOA, taking away the only avenue available for this population to apply for a sentence reduction. The legislature did this at the request of Alabama's Court of Criminal Appeals, which complained that the law was being used by "prolific pro se litigants to file frivolous petitions." The result of the repeal means hundreds of people who wouldn't be sentenced to LWOP today are trapped in Alabama's violent and overcrowded prisons until they die with no legal means for release.

### AT A GLANCE

#### PEOPLE SENTENCED TO LWOP UNDER HFOA

**527**  
are serving LWOP for offenses other than murder.

**Over 300**  
have no sex offenses on their record.

**187**  
most serious offense was robbery.

**165**  
have no prior Class A offenses on their record, and therefore would not be sentenced to LWOP today.

\*According to the Alabama Sentencing Commission, October 2019



# WHO IS IN THE LWOP POPULATION UNDER HFOA?

The racial disparity resulting from Alabama’s HFOA is significant. Three out of four people sentenced to die in prison under HFOA are Black. According to the latest data available from the Alabama Sentencing Commission, in October 2019, 527 people were serving life without parole for offenses other than murder, with the most common triggering offenses being robbery, rape and burglary.

However, an analysis of the population revealed at least 300 people serving LWOP under HFOA have no sex offenses on their records, and 165 people have no prior Class A felonies, which means they wouldn’t be sentenced to life without parole today.

## 3 OUT OF 4



people **sentenced to die in prison** under HFOA are **Black**.



**MR. ARTHUR MALLORY** is 73 years old and **has been incarcerated for over 38 years.**

In 1981, he was convicted of robbery after acting as the lookout during the crime. His **prior offenses** included three forgeries and a robbery in 1970.


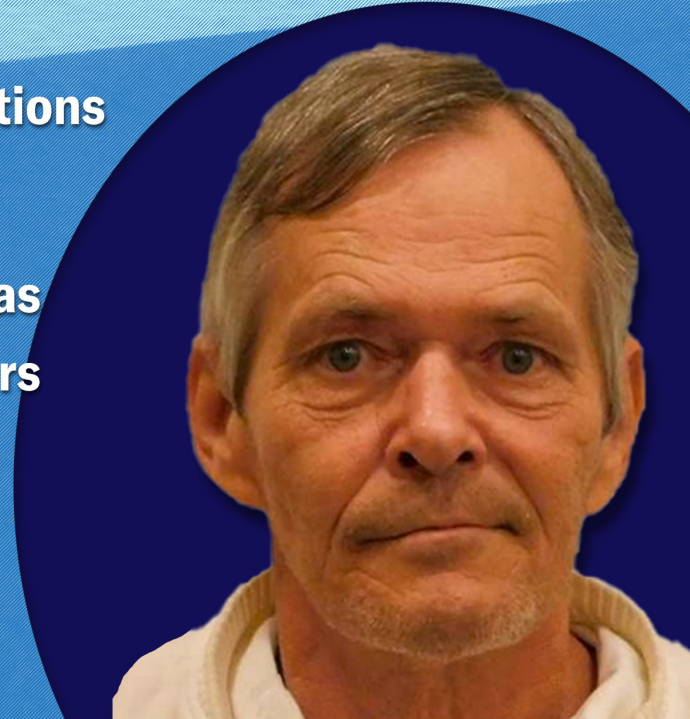
Because of these crime committed 50 years ago, **the courts have denied his appeals.**



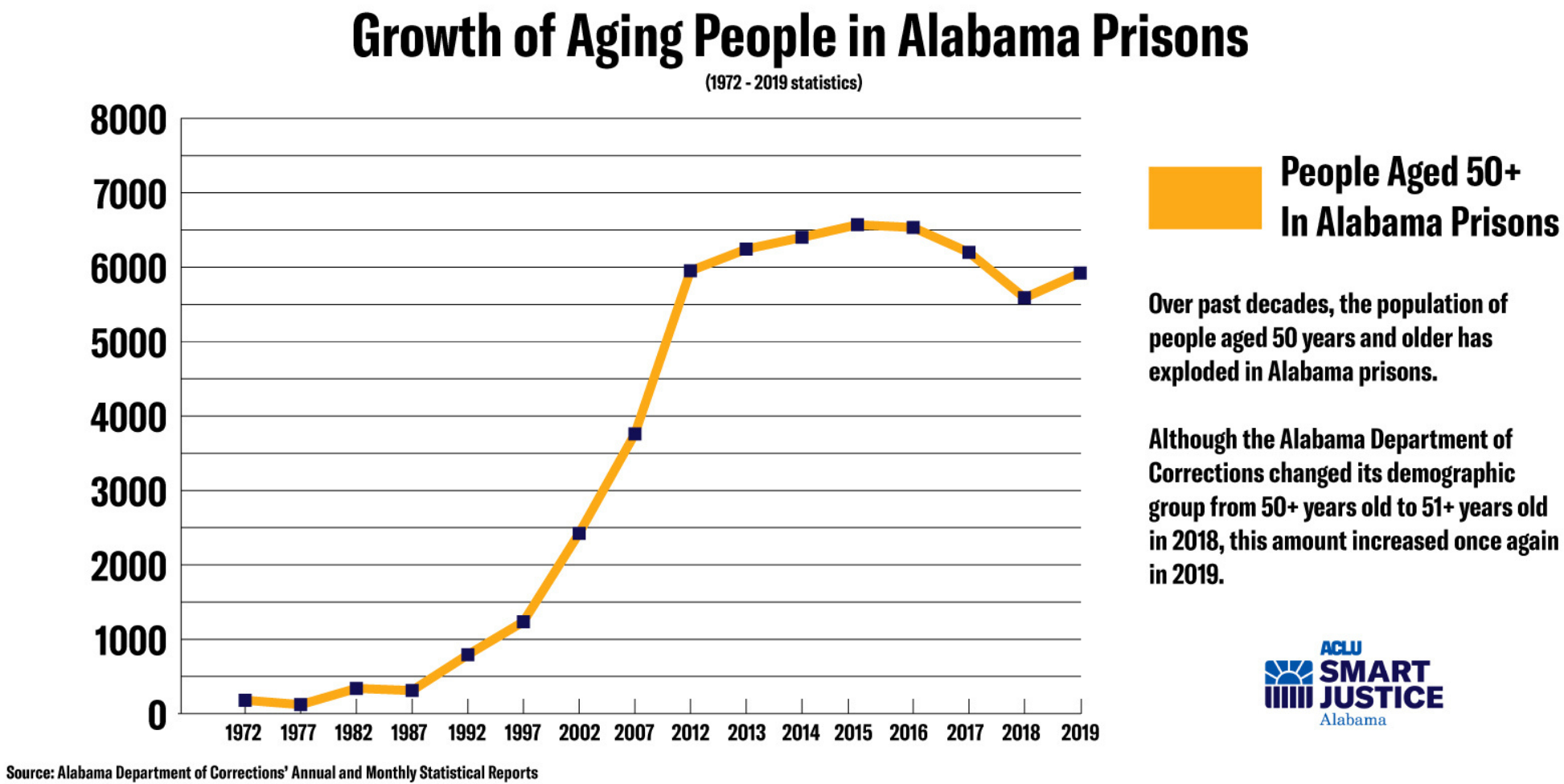
**MR. MICHAEL SCHUMACHER** was **sentenced to life without parole in 1985** for the robbery of a convenience store in which no one was physically injured.

Alabama **prosecuted him under HFOA** because he had three prior drug-related convictions from Georgia.

His co-defendant was sentenced to 10 years **for the same crime.**



112 men in this population committed their last offense in the 1980’s. 100 of them have served at least 30 years in prison. 208 people, or 69 percent of the 300 people in this population with no sex offenses, are over 50-years old. The average age in this population is 54, with 87 people between 60-69 years old and 19 people over 70.





# HOW HAS HFOA CONTRIBUTED TO ALABAMA’S UNCONSTITUTIONAL PRISONS?


HFOA’s effect on Alabama’s prison system was immediate and dramatic. When the law was passed, Alabama prisons incarcerated fewer than 4000 people. By the year 2000, the system, designed to hold 13,000, was bursting with 25,000 people. Today there are over 6,100 people serving longer, enhanced sentences under Alabama’s HFOA, with over 1,100 serving life and 527 serving LWOP, which is the harshest possible punishment next to a death sentence.


Despite new sentencing guidelines, which became presumptive in 2013, the HFOA is still an available tool for prosecutors, who invoke it at their discretion. This allows for enormous disparity in sentencing. Since 2003, 177 people have been sentenced to LWOP under the HFOA. Because of the continuous flow of people admitted into Alabama prisons with permanent sentences, the population serving LWOP under HFOA never meaningfully changed, despite reforms intended to reduce terminal sentences.

**MR. ROBERT CHEEKS** is 78 years old and has been incarcerated over 36 years for a robbery with no physical injury and several property crimes.

**Despite a positive prison record, all of his appeals have been rejected.**

“I have no bitterness toward anyone else for my own problems, **but I would very much like to experience a full measure of freedom, to live out the remainder of my days.**” he says.





## Alabama’s Cost of Incarceration

	ADOC Medical Expenses	ADOC Overall Expenses	Avg. Inmate Cost Per Day
2009	\$89,100,000	\$421,738,840.31	\$41.42
2010	\$102,500,000	\$442,628,853.25	\$42.30
2011	\$97,400,000	\$463,191,343.85	\$43.61
2012	\$101,700,000	\$449,099,598.38	\$42.54
2013	\$89,200,000	\$435,241,728.07	\$41.94
2014	\$92,800,000	\$451,308,094.45	\$44.09
2015	\$93,300,000	\$458,559,968.41	\$47.69
2016	\$112,100,000	\$467,834,042.34	\$48.47
2017	\$114,400,000	\$455,643,561.67	\$52.07
2018	\$134,700,000	\$490,035,367.42	\$60.34
2019	\$142,500,000	\$535,104,001.51	*ADOC's 2019 annual report, which reports costs per inmate, has not been published.

Source: Alabama Department of Finance's Open Checkbook and Alabama Department of Corrections' Annual Reports

Alabama prisons are horrifically overcrowded and violent, largely due to long-term and life sentences that resulted from the HFOA. 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.