



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
- Reinstigate “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