

Alabama Public Safety and Sentencing Coalition

Consensus Report | March 2011



Highlights

The Alabama Public Safety and Sentencing Coalition was convened in April 2010 for the purpose of developing data-driven consensus legislative proposals that will enhance public safety, hold offenders accountable, and manage the prison population.

KEY CHALLENGES. Alabama has the fourth highest imprisonment rate in the nation. Yet, Alabama's crime rate has dropped much more slowly over the past 10 years than the national average. Alabama has one of the most crowded prison systems in the nation, and projections show that without action the state will have to build capacity to house an additional 1,500 inmates over five years at a cost of up to \$151 million. The state lacks the funds to build and operate more prisons, and risks federal court intervention if crowding is not reduced.

PRISON DRIVERS. An extensive review of data revealed that Alabama's high rate of imprisonment is due to sending significant numbers of non-violent, low-level drug and property offenders to prison, keeping them behind bars for longer amounts of time, and high rates of recidivism due in part to the release each year of thousands of inmates with no post-release supervision.

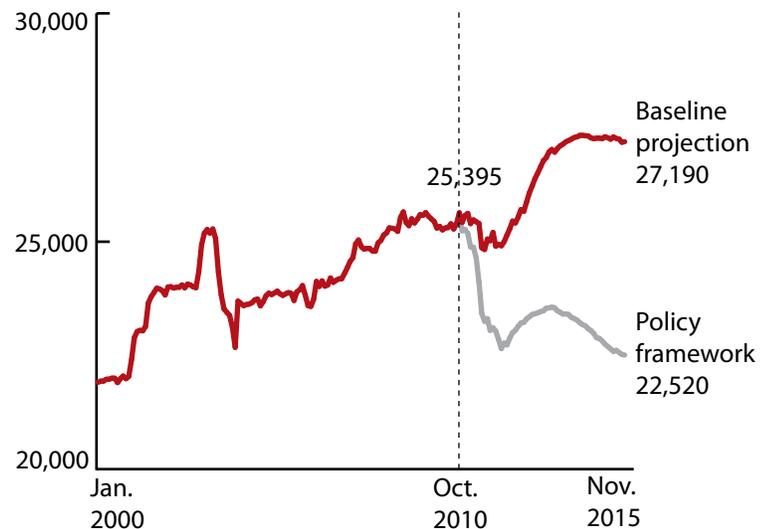
COALITION PROCESS. Since April 2010, a bipartisan, inter-branch coalition of criminal justice agencies and stakeholders, assisted by the Vera Institute of Justice, Applied Research Services, and the Pew Center on the States, has analyzed sentencing data and reviewed corrections and community supervision policies, for the purpose of developing a package of reforms that will manage the correctional population and costs while protecting public safety and holding

offenders accountable for their actions. The coalition has coordinated closely with the Alabama Sentencing Commission.

RECOMMENDATIONS. The coalition has forged consensus on a set of policy recommendations that will bring taxpayers a better public safety return on their corrections dollars. The policy options concentrate prison resources on violent and career criminals, focus probation and parole supervision on the highest-risk offenders, and offer new strategies to reduce recidivism and hold offenders accountable.

IMPACT. The coalition's policy package is projected to reduce Alabama's prison population projection by almost 5,000 inmates over the next five years and save Alabama taxpayers an estimated \$106 million in prison operation costs. The proposals will also improve public safety and reduce victimization through declining recidivism.

PRISON POPULATION



A System in Crisis

Alabama taxpayers are getting a poor return on their public safety dollars. Despite having one of the highest incarceration rates in the country and a growing correctional budget, recidivism rates remain stubbornly high and the crime rate has not fallen as fast as in other states.

One in every 75 adults in Alabama is behind bars, making the state's incarceration rate sixth highest in the nation.¹ Just looking at the prison population, Alabama has the fourth highest imprisonment rate, trailing only Louisiana, Mississippi and Oklahoma.

But at over 190 percent of institutional capacity, Alabama's prisons are among the most crowded in the country² and have the nation's highest inmate to prison staff ratio, with 9.3 inmates for each correctional officer.³ Some facilities are severely crowded, teeming at 329 percent, 271 percent, and 255 percent of capacity.⁴ In total, Alabama's prisons have nearly 12,000 more inmates than what they were designed to hold,⁵ often creating unsafe conditions for inmates and correctional officers alike.

Over the last 10 years, the number of inmates housed in Alabama Department of Corrections facilities has increased by over 15 percent, reaching 25,395 in September 2010.⁶ In that same time period, correctional spending in Alabama has nearly doubled, to \$573 million. Twenty years ago, correctional spending was just \$133 million.⁷

But this growth in imprisonment rates and spending has had little impact on public safety. The recidivism rate, which is defined as the percentage of inmates who return to Alabama prisons within three years of release, has increased each year (except one) since at least 1997. For inmates released that year, the three-year return rate was a little over 24 percent, while for inmates released in 2006, the rate was nearly 35 percent.⁸

Meanwhile, the crime rate in Alabama has fallen

much more slowly over the past decade than in other states. The national crime rate dropped nearly 19 percent from 1999 to 2009. In Alabama, the crime rate fell just four percent.⁹

Without Action, Costs Will Rise more than \$150 Million

According to an analysis conducted for the Alabama Public Safety and Sentencing Coalition, if current policies continue, Alabama's in-house prison population will increase by more than 1,500 inmates over the next five years. By 2015, the already strained prison system would need to accommodate more than 27,000 inmates.

The cost of building a new prison to accommodate this growth would consume an estimated \$58 million. The additional projected operating costs for these inmates in the new prison is \$93 million over five years. These costs are prohibitive to Alabama in good times, and all but impossible in fiscally difficult times.

How will Alabama absorb this additional projected population? Leasing private or out-of-state beds is a short-term and expensive solution. Early release of inmates at the discretion of the Department of Corrections or a Parole Board "rocket docket" would further discredit a system that offenders, district attorneys, victims, judges, and probation officers already describe as flawed and inconsistent. Under the worst case scenario, Alabama's prison system could be put under control of the federal courts, as California's has been, and face orders to release inmates or follow other potentially undesirable mandates.

Fortunately, inmate population growth is not a phenomenon beyond policy makers' control. States that have contained and even reduced prison populations – including Texas, South Carolina, Michigan and others – all began by analyzing the drivers of their growth and forging agreement on a commonsense package of reforms.

Factors Behind Alabama's Prison Growth

Over the past year, the Alabama Public Safety and Sentencing Coalition, with assistance from the Vera Institute of Justice, Applied Research Services and the Pew Center on the States, conducted an extensive review of Alabama's sentencing and corrections data, reviewed policies and practices at state criminal justice agencies, and consulted a wide range of stakeholders to identify specifically what factors are behind the state's prison growth.

Increases in crime or the state's general population are always prime suspects, but that is not the case in Alabama. The state's resident population has seen only modest growth and has remained stable among males between 18-25, the segment most likely to commit crimes. Additionally, although property arrest rates have increased over the last several years, the arrest rates for violent and drug arrests are stable.

Instead, analysis reveals that the prison population is growing in large part because the state is sending an increasing number of non-violent offenders to prison, holding inmates behind bars for longer stays, and returning offenders to prison at high rates when they fail on community supervision.

Large numbers of prison admissions for non-violent offenders

Alabama's corrections data reveal that low-level drug and property offenders are largely fueling growth of the state's prison system. Each year, approximately 70 percent of admissions to Alabama prisons are individuals convicted of drug or property offenses, and over half of all admissions are Class C (the lowest level) offenses.¹⁰ Drug offenses account for about 37 percent of new admissions while property offenses make up about 33 percent.¹¹ Those percentages have held relatively steady over the past several years. But because the number of convicted felony offenders in Alabama has

increased nearly every year since 2001 (jumping from 16,195 in 2001 to 21,184 in 2009), absolute numbers are increasing.¹²

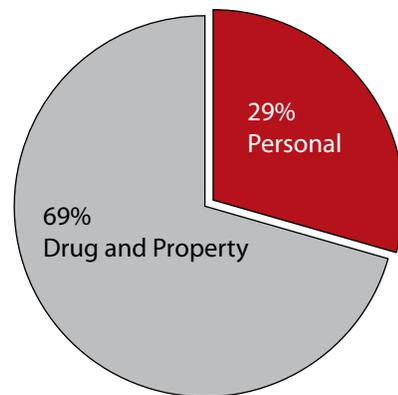
A look at the prison admissions in 2009 shows that six of the top 10 most common offenses are for non-violent crimes. These include possession/receipt of a controlled substance (the No. 1 admission offense), as well as distribution of a controlled substance, burglary in the 3rd degree, theft of property in the 1st and 2nd degrees, and possession of marijuana in the 1st degree.¹³

Longer prison terms for non-violent offenders

While the bulk of Alabama's prisoners are serving time for violent offenses, non-violent offenders continue to make up nearly half of Alabama's incarcerated population.¹⁴

Many non-violent offenders are receiving long sentences under the state's Habitual Felony Offender Act, a "one-strike" law that enhances the offense class after one prior felony conviction and applies to both violent and non-violent crimes. As of October 2010, more than 5,000 drug or property offenders were classified as habitual offenders by the Department of Corrections.¹⁵

ADMISSIONS TO PRISON 2009



Note: New offenses only, does not include reovcations.

Other categories=2%

Due to a combination of sentencing and release factors, time served in prison for non-violent offenses has increased. Non-violent offenders released in 2009 spent an average of 24.7 months behind bars, nearly six months longer than those released in 2005.

Increased revocations and recidivism

During FY2010 more than 4,000 inmates were released from the Department of Corrections at the expiration of their sentence. These individuals received no supervision or monitoring and no mandatory reentry assistance. Research shows that evidence-based supervision by parole officers helps to ease the transition from prison to the community and reduce recidivism rates. Without such supervision and assistance, the likelihood of individuals reoffending greatly increases.

Over the last five years, thousands of offenders on probation or parole had their supervision revoked, and many of these offenders ended up serving a portion of their sentence in prison.¹⁶ While recent efforts have resulted in an overall decrease in probation and parole revocations, such admissions to the Department of Corrections remain a primary driver of the prison population. In 2010, the average caseload was 196 offenders for each probation or parole officer.

Additionally, reoffending has been increasing at an alarming rate in Alabama. An inmate recidivism study conducted by the Alabama Department of Corrections reports a recidivism rate of 34.9 percent for inmates released in 2006, up from 24.3 percent just ten years ago.¹⁷ In the current correctional population, 40 percent of offenders have a previous sentence to the Department of Corrections, and nearly 25 percent of current inmates returned to the jurisdiction of the Department of Corrections within three years of their last release.¹⁸

Building a Consensus for Alabama

Over the past decade, Alabama has responded to its crowding problem with a host of alternative sentencing options and other initiatives, many of them innovative and successful. In 2006, for example, the Legislature approved voluntary sentencing standards, which were drafted by the Alabama Sentencing Commission and are now required to be considered in all felony cases for which standards exist. Sentencing patterns have changed since the adoption of the sentencing standards, and the use of prison has reduced (as a matter of percentage) for all drug and property offenses since 2006.¹⁹

The Department of Corrections has enhanced its use of reentry programs to help reduce recidivism, and the state's Board of Pardons and Paroles introduced transitional living centers to better manage offenders failing on community supervision. Drug courts have been launched in over 50 counties, and, with leadership from the state's Chief Justice and the Sentencing Commission, policymakers are developing community-based sentencing options for low-risk offenders in pilot sites around the state.

In his state of the state address in January 2006, Governor Bob Riley found reason for optimism: "With ... these reforms, we'll alleviate our prison and jail crowding problems, we'll keep violent criminals locked up, and we'll make Alabama a safer place to live." But despite these promising efforts, Alabama's prison population numbers have continued to increase, while funding for the system has dwindled.

In April 2010, the Alabama Public Safety and Sentencing Coalition was formed, uniting a bipartisan group of legislators, judges, prosecutors, defense lawyers, members of the Board of Pardons and Paroles and Sentencing Commission, and law enforcement officials. The Coalition's task was to analyze Alabama's sentencing and corrections data, consider best practic-

es used in other states and reach consensus on a package of reforms to hold offenders accountable, control prison population growth, and reinvest a portion of the savings in evidence-based community supervision strategies.

The following package of policies emerged from the Coalition’s analysis and discussions. If adopted, these proposals are expected to help Alabama reduce recidivism, protect public safety, hold offenders accountable, and contain corrections costs. Over the next several months, the Coalition will push for enactment of these policies through legislation, court rules and agency action, as required.

A Data-Driven, Fiscally Sound Approach to Sentencing and Corrections

In developing its menu of reforms, the Coalition strived to advance a set of common-sense policies anchored in the best available research about what works in sentencing and corrections. Outlined below, each policy proposal is linked to the others in a productive cycle designed to deliver results. By concentrating prison and supervision resources on the most violent and high-risk offenders, Alabama will control incarceration costs while protecting public safety and holding offenders accountable.

The Coalition is proposing a package of policies that will achieve the following objectives:

1. Concentrate prison resources on violent and high-risk offenders.
2. Focus supervision resources on higher-risk offenders.
3. Hold offenders accountable and reduce recidivism.
4. Protect and support victims of crime.

There is a final dimension to the package: At least some of the savings from reduced imprisonment must be reinvested in agencies and programs charged with managing the growing number of offenders supervised in the community. Under any realistic scenario for the state, growing numbers of offenders will be under some form of probation or parole. To maintain public safety and hold offenders accountable, it is critical that the agencies responsible for monitoring them have adequate resources.

Concentrate Prison Resources on Violent and High-Risk Offenders

CREATE A NEW CLASS D FELONY OFFENSE FOR CERTAIN LOW-LEVEL PROPERTY AND DRUG OFFENSES.

- Class D offenders would face a minimum sentence of one year and a maximum of three years.
- Convictions of Class D felonies will not be used for purposes of enhancement under the Habitual Felony Offender Act calculation.

REVISE DRUG AND PROPERTY STATUTES AND DISTINGUISH BETWEEN DRUG USERS AND CAREER CRIMINALS

- Raise the felony theft thresholds for Theft of Property, Receipt of Stolen Property, and other property crimes.
- Reclassify Criminal Mischief, Forgery, and other property crimes to incorporate Class D offenses.
- Create a new Class D offense of Burglary in the 4th degree for unoccupied buildings (not including dwellings of any kind, or schools or religious buildings).
- Amend the quantity thresholds in marijuana laws to bring them in line with levels in neighboring states and distinguish between drug users and career criminals.
- Amend the quantity thresholds in Schedule 1 con-

trolled substances laws (“street drugs”) to distinguish between individual drug users and professional traffickers.

- With the assistance of the State Board of Public Health, restructure drug penalties for Schedule II to V drugs (“prescription drugs”) based on recommended dosages for therapeutic use.

AMEND TECHNICAL VIOLATOR BILL

- Reserve the use of prison for revocation to those probationers who have been found by a court to be in violation of conditions on more than two previous occasions.
- Provide the court with an alternative revocation sanction of a 90-day program at the Department of Corrections for eligible non-violent probationers.

ENACT FIRST TIME OFFENDER ACT

- Establish a first time offender act similar to Alabama’s Youthful Offender Act for all Class B and C felony offenders (excluding capital crimes).
- Upon successful completion of probation, first time offender’s case is discharged and criminal record sealed.

Focus Supervision Resources on Higher-Risk Offenders

INCENTIVIZE PROBATION COMPLIANCE

- Provide a behavioral incentive for probationers by placing them on non-reporting probation status for the final one-third of their probationary term if they have complied with conditions of supervision. In addition to promoting positive behavior, this provision helps create resources for probation by clearing low-risk offenders off of caseloads and allowing officers to focus their attention on offenders who are not in compliance.
- Increase the collection of court-ordered monies by

providing incentives to those probationers whose only non-compliance is the payment of restitution, court fines and costs.

CODIFY STANDARDS FOR CREATION OF PROGRAMS MODELED ON HOPE PROGRAM

- Hawaii’s Opportunity Probation with Enforcement program cuts crime and drug use among high-risk probationers by responding to each detected violation with swift and certain sanctions, including jail.
- Minimum standards would authorize presiding judges to establish HOPE-style programs and mandate the measurement of outcomes.

Hold Offenders Accountable and Reduce Recidivism

IMPOSE MANDATORY REENTRY SUPERVISION FOR INMATES REACHING THE EXPIRATION OF THEIR SENTENCES

- Approximately one-third of Department of Corrections releases, 4,100 per year, result from the expiration of a sentence and include neither post-release supervision nor reentry services.²⁰ This means that these inmates are released to the street without any monitoring or assistance to land on their feet.
- Mandatory reentry supervision would provide non-violent offenders with up to six months of supervision under the Board of Pardons and Paroles.
- Some of the projected savings from this provision would be reinvested in the Board of Pardons and Paroles and other providers of community-based supervision and services to help reduce recidivism rates.

AMEND DRIVER'S LICENSE SUSPENSION LAW TO APPLY ONLY TO TRAFFICKING AND DRIVING-RELATED OFFENSES

- In Alabama, unlike other states, those convicted of a felony drug offense have their drivers' licenses suspended for six months, hindering employment and participation in treatment or rehabilitative programs.
- Exempting drug offenses not related to the use of a vehicle (except trafficking) will enhance an offender's ability to succeed in the community.

Protect and Support Victims of Crime

DEVELOP AN ELECTRONIC VICTIM NOTIFICATION SYSTEM

- Provide victims with the opportunity and autonomy to register for notification of any change in an offender's status as the offender progresses through the criminal justice system.
- Informational resources for victims would be developed and distributed, including a state-of-the-art victims' webpage.
- Key stakeholders in the criminal justice community would be educated and trained to assist victims with registration.

AMEND VICTIM NOTIFICATION LAWS TO MODERNIZE COMMUNICATION WITH VICTIMS

- Board of Pardons and Paroles would notify victims of parole, pardon, and remission hearings after receiving contact information for victims.
- Primary mode of notification would move from a paper-based certified mail system to an automated electronic notification system (with the option for paper-based notice upon request).

Projected Impact

If fully adopted, the Coalition's policy package is projected to reduce Alabama's current prison population by over 3,000 inmates. That was roughly the size of the population in 2001. By reversing the growth of incarceration in the state, the reforms are forecast to save Alabama taxpayers an estimated \$106 million in prison operation costs over the next five years. Conversely, the cost of doing nothing could result in Alabama spending an additional \$151 million in construction and operating costs.

This package of reforms will result in \$106 million of savings, some of which must be reinvested in public safety initiatives.

Reinvesting a portion of that savings in community supervision agencies and effective, research-driven reentry programs is essential to help Alabama protect public safety, hold offenders accountable and reduce recidivism. The Coalition urges the legislature to avoid budget cuts that would undermine the existing community supervision system and frustrate the aims of this policy package. The Coalition will also propose a resolution that a designated state agency should track the savings achieved by the population management strategies offered in this report and reinvest a portion of those savings and averted costs into a stronger public safety system for the State of Alabama.

Endnotes

- 1 Pew Center on the States, *One in 31: The Long Reach of American Corrections* (Washington, DC: The Pew Charitable Trusts, March 2009).
- 2 Bureau of Justice Statistics, *Prisoners in 2009*, Appendix Table 23.
- 3 Bureau of Justice Statistics, *Census of State and Federal Correctional Facilities, 2005*.
- 4 Alabama Department of Corrections, *Monthly Statistical Report for October 2010* (ADOC Research and Planning Division).
- 5 Alabama Department of Corrections, *Monthly Statistical Report for October 2010* (ADOC Research and Planning Division).
- 6 Alabama Department of Corrections, *Monthly Statistical Report for September 2010* (ADOC Research and Planning Division).
- 7 State Expenditure Reports, National Association of State Budget Officers (reviewing reports from 2009, 2000, and 1990). The actual corrections expenditure (state plus federal funding) in these years was \$573 million in FY2009, \$305 million in FY1999, and \$133 million in FY1989.
- 8 Alabama Department of Corrections, *Annual Report for Fiscal Year 2009*.
- 9 Calculations based on data from the U.S. Department of Justice, Federal Bureau of Investigation and Bureau of Justice Statistics.
- 10 Bennet Wright, Alabama Sentencing Commission, presentation to Sentencing Workshop on September 8, 2010.
- 11 Bennet Wright, Alabama Sentencing Commission, presentation to Sentencing Workshop on September 8, 2010.
- 12 Bennet Wright, Alabama Sentencing Commission, presentation to Sentencing Workshop on September 8, 2010.
- 13 Bennet Wright, Alabama Sentencing Commission, presentation to Sentencing Workshop on September 8, 2010.
- 14 John Speir, Presentation to the Alabama Public Safety and Sentencing Coalition, August 4, 2010.
- 15 Alabama Department of Corrections, *Monthly Statistical Report for October 2010* (ADOC Research and Planning Division).
- 16 The Alabama Board of Pardons and Paroles Annual Reports 2006-2009.
- 17 Alabama Department of Corrections, *Annual Report for Fiscal Year 2009*. At the end of each calendar year, the Alabama Department of Corrections studies a cohort population and conducts an inmate recidivism study for inmates released and returned to prison during the previous three years.
- 18 Alabama Department of Corrections, *Monthly Statistical Report for October 2010* (ADOC Research and Planning Division).
- 19 Bennet Wright, Alabama Sentencing Commission, presentation to Coalition, April 2010.
- 20 Alabama Department of Corrections, *Monthly Statistical Report for September 2010* (ADOC Research and Planning Division).