



To: Governor's Study Group on Criminal Justice Policy
From: Alabamians for Fair Justice
Date: October 31, 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, Alabamians for Fair Justice offers our second set of policy proposals, following our initial proposals submitted regarding sentencing reform. The following proposals cover alternatives to incarceration and community-based services in the following categories:

- Jails
- Mental health and substance use treatment
- Pretrial diversion and Community Corrections
- Reentry

1. Jails

Alabama jails are severely overcrowded with inmates sleeping on floors, crowded into converted trailers, or worse. Untreated mental illness, substance abuse, and poor medical care often leave people in much worse shape when they leave jail than when they arrived. Law enforcement officials are not mental health experts; the state should not leave the burden to municipalities and counties to bear the burden of response where treatment and community-based services are more appropriate and cost-efficient. Under Alabama's cash bail system, people arrested for misdemeanors, property crimes, and drug crimes are often stuck in jail for long periods of time -- not because they are considered dangerous -- but because they are too poor to post bail. Keeping someone in jail -- even for a few days - can have devastating consequences to a person and his or her family. Missing work leads to unemployment. Lost wages lead to eviction, repossession of the family car and unpaid child support. And, people in jail are more likely to plead guilty to avoid lengthy incarceration. This cycle contributes to Alabama's prison crisis.

AFJ recommends:

1) Eliminate secured money bail

Bail isn't a fine; it isn't supposed to be used as punishment because there's been no finding of guilt. Bail was intended to represent an incentive and promise to return for a future court date. But, secured money bail perpetuates a two-tiered, wealth-based justice system. Two people arrested on the same day with the same charge have very different post-arrest experiences based on their ability to pay the bail amount set. All defendants, of all income levels, are innocent until proven guilty. This system of money bail is not only discriminatory -- it's ineffective.

It's not cheap to house someone in jail. Smaller cities and counties don't have large jails and those beds need to be reserved for people who pose a risk to public safety. Communities don't benefit from money bail: it doesn't make communities safer and it doesn't increase a person's likelihood to appear before the court. The only people who benefit from money bail are private bail bond companies. This industry exploits people's desperation and earns about \$2 billion in profits each year.

Alabama must eliminate wealth-based detention as follows:

- **Limit Pretrial Detention.** Pretrial detention should be used only when the defendant poses an imminent risk to public safety or as the only means of guarantying the defendant's appearance at the next court hearing.
 - Pretrial detention eligibility based on flight risk or dangerousness should be an option only for the most serious offenses--such as those charged with violent felonies--and only when a judge finds, in a hearing, that there is a substantial risk that the defendant will inflict serious bodily harm on a specifically identified individual. Ensure no one outside of this eligibility "net" is detained pretrial.
 - However, the court must distinguish between those who are at risk of intentionally fleeing from those who are at risk of nonappearance. No one should be detained simply because they are at risk of nonappearance: instead, people who are at a risk of nonappearance should be offered effective and low-cost services to help them appear in court.
- **Require Use of the Least Restrictive Condition.** Any condition of release ordered must be the least restrictive condition necessary to reasonably ensure public safety and court appearance. Judges should be required to make specific findings in writing or on the record when any condition of release that may result in pretrial detention is imposed.
- **Maximize Pretrial Liberty.** Alabama should mandate expedited release of almost all arrestees to prevent harms that even a few days in jail cause, including providing a prompt initial appearance as soon as practicable and no more than 48 hours of arrest for any arrestee who is not released before that time.
- **Require a Robust Process for Pretrial Detention.** For those limited cases where pretrial detention is permitted, the process must be rigorous and include:
 - A prompt adversarial hearing with defense counsel and the ability to present and confront evidence;
 - Clear and convincing evidentiary standard prior to any detention order;
 - A finding on the record that no condition, or combination of conditions, short of pretrial detention could mitigate a specifically identified danger to another person;
 - An expedited right to appeal any order that results in pretrial detention (or electronic monitoring).
- **Prohibit Fees for Court-Related Services.** No person who qualifies for court-appointed counsel or who falls below 125% of the poverty guidelines should be charged fees for any condition of release (e.g., drug testing or electronic monitoring); before any fees are assessed for any condition of release, a judge should make a substantive ability to pay finding.
- **Implement Services like text-message reminders that encourage court attendance.**

2) Increased use of citation in lieu of arrest

Alabama law allows local governments to authorize their law enforcement officers to issue a citation in lieu of arrest for violations of local ordinances and certain Class C misdemeanors. To lessen the harm of unnecessary jail for poor people, Alabama should provide statewide uniformity and make citations presumptive where there is no risk to public safety.

- Amend Ala. Code § 11-45-9.1 to authorize issuance of a citation, rather than an arrest, making it presumptive for misdemeanors and violations, except DUIs, domestic violence or violation of a protective orders, or other similar potential threats to public safety.
- Allow application to certain felonies, with the consent of the district attorney.

2. Mental Health and Substance Use Treatment Services

ADVERSE IMPACTS OF CURRENT SYSTEM:

There are extremely high levels of drug addiction and serious mental illness among incarcerated people. Not routinely addressing this fact contributes to overcrowding of jails and prisons, over incarceration of poor and vulnerable people and chronic recidivism. Currently we overuse incarceration, which is the most restrictive and most costly means of dealing with these issues.

A federal court found in *Braggs v. Dunn* that Alabama prisons provide “horrendously inadequate” mental health care, with problems ranging from understaffing, failure to identify prisoners with mental illness, cursory counseling that is not confidential, and deficient suicide prevention measures.

Continuing to funnel people with mental illness into Alabama prisons is clearly not sustainable. Where possible, we should move toward treating substance use/abuse and mental illness as public health issues not criminal justice issues. Policy and practice across Alabama should provide ways out of the system, where possible, across the criminal justice process. The state should expand community-based service options, providing fiscally responsible way of addressing the crisis of overcrowding, over incarceration and chronic recidivism. We need to move toward proven models by developing and expanding programs that link the criminal justice system to the community-based treatment system.

AFJ recommends the following:

- Provide for routine screening, assessment, and referral of mentally ill and substance abusing individuals pre-trial, at sentencing and post incarceration;
- Provide targeted funding for model programs to provide these functions, connecting the criminal justice system to the community-based treatment system;

- Increase the use of treatment in lieu of incarceration, with expanded funding through the Department of Mental Health for community-based treatment;
- Insure, through adequate funding, that no person is denied diversion to treatment due to inability to pay.
- Initiate and expand the law enforcement tool of pre-arrest diversion by Crisis Intervention Teams (CIT). CIT training prepares first responders to provide diversion to mental health interventions without incarceration. (Florence and other cities have instituted this model successfully);
- Expand Mental Health Courts as a proven model -- Defendants with mental illness awaiting trial are detained longer in jail than other defendants facing the same charges and require much higher medical care costs, as well as higher levels of staff supervision. In addition, people with mental illness often get worse in jail, are often not given adequate care and current medications, and can become a danger to themselves and others if not provided adequate treatment. Properly implemented mental health courts can reduce the length of pre-trial incarceration for this population, saving counties money and freeing up jail beds.
- Increase funding in order to increase the number of Mental Health Courts. This new funding should be provided by the legislature to the Department of Mental Health where it can be augmented by Medicaid funds. This will promote a continuum of care between the justice system and the community-based treatment system.
- Mental Health Courts can theoretically be piggybacked onto Drug Court programs to combine staff and services. This has rarely happened because, to date, drug courts have existed primarily on client fees and offenders with mental illness are mostly indigent.

3. Pretrial Diversion and Community Corrections

ADVERSE IMPACTS OF THE CURRENT SYSTEM

Various alternatives to incarceration are available throughout the state. But these programs lack uniformity, common standards or meaningful oversight. Costs and accessibility vary widely from county to county. Programs rely on user fees, which not everyone can afford. They contribute to a two-tiered justice system where defendants with resources get access to community alternatives and poor people are sent to jail or prison. They also harm poor families by requiring all participants, no matter their income, to pay thousands of dollars in costs and fees to the government.

Alabama utilizes two forms of diversion to reduce the number of people incarcerated in prisons: pre-trial diversion from prosecution, and post-conviction diversion from prison. Both types of

diversionary programs are underfunded by the legislature, creating perverse financial incentives for the officials running the programs.

- Pre-trial diversion programs: prosecutorial diversion and judicial diversion
 - Prosecutors may create programs to divert low-risk arrestees from formal prosecution.
 - Judges may establish specialty courts—such as drug court or mental health court—to give arrestees access to treatment options instead of pure punishment.
 - Individuals who successfully complete either kind of program are able to return home without a criminal conviction on their record.
- Post-conviction diversion programs: Court Referral and Community Corrections
 - Judges may sentence eligible defendants to probation or parole with supervision from Court Referral Officers, who are supposed to provide drug treatment and monitoring to help defendants successfully re-enter society.
 - Prison officials may divert eligible defendants from prisons into Community Corrections programs, which are designed to help low-risk defendants remain in the community with their support systems.

AJF recommends the State do the following:

- Adequately fund the existing programs and eliminate user fees to resolve wealth-based disparities.
- In the absence of the elimination of all user fees, establish universal eligibility and completion requirements to ensure that (1) no person is denied access to a diversion program due to inability to pay, (2) no person is terminated from a diversion program solely due to inability to pay, and (3) no person is extended on a diversion program solely due to inability to pay.
- Codify oversight, roles and standards to ensure participating programs are uniform, productive, and compliant.
- Ensure that participants can easily transfer supervision or program participation across Alabama counties and are accessible to users (including extended hours/weekends and offer services provided through phone or other technology) to reduce avoidable non-compliance and technical violations which result in removal from the program and incarceration.
- Establish statewide guidelines regarding drug test utilization and eliminate all user fees for drug tests.
- Require all participating diversion and community corrections programs to collect and report, annually, data related to:
 - Number of clients served, including those with indigency status, racial demographics;

- A summary of programs offered, qualifications of staff, and participation rates among clients for each;
 - Fees charged, including but not limited to drug testing, housing, and monitoring services, as well as any fees waived for clients who cannot afford the fees;
 - Completion or graduation rates for all program participants, as well as any other success or failure metrics;
 - Grants applied for and any monies received
- Conduct a **county-by-county survey or study** to determine the types of diversion programs available in each county, the population served, the completion rates of each program, and where duplication exists in the form of multiple programs serving the same categories of offenders. The survey should also track and examine funds collected by program users. The results of the study should be made public. Out of county staff should manage surveys to ensure independence.
- **Require Community Corrections-eligible defendants** to be tracked as a discrete group, with each county tracking numbers of defendants sentenced to in-house ADOC custody over the last 5 years in order to show historical patterns as to which counties are populating prison beds.
- **Require ADOC accountability in Community Corrections** through periodic file reviews, financial transparency, technical assistance and client surveys to improve Community Corrections efficacy.
- **Implement the use of Risk Assessments in Community Corrections, specifically:**
 - All Community Corrections programs, along with Pre-trial and Post-conviction Diversion programs, should administer the Alabama Risk Assessment Scale to determine risk level and assign the most effective and efficient supervision strategies to manage that risk.
 - Individuals should be re-assessed every 90-180 days to adjust supervision strategies (for example, reduced drug tests or reporting schedules) to reflect any reduction in risk factors or enhance services as risk level increases due to factors such as substance abuse relapse or loss of employment.
- **Mandate diversion programs**, including DA Diversion, Drug Court, and Court Referral to:
 - Provide proper indigency determinations for eligible individuals. Indigent individuals should have administrative fees, drug testing fees, and program fees waived;
 - Defendants who are not indigent but who cannot afford all administrative fees, drug testing fees, and program fees should have those fees reduced or remitted in accordance with their present ability to pay;
 - Provide incentives and services; not rely on punitive sanctions as primary behavioral interventions.

4. Reentry

ADVERSE IMPACT OF CURRENT SYSTEM:

Most individuals who have served their time leave prison with enormous court debt, including restitution, court costs, fines and fees associated with the underlying criminal conviction, as well as debt from unpaid traffic tickets or other minor offenses incurred prior to their incarceration. Hundreds, or sometimes thousands, of dollars in costs are imposed in each case to fund the courts and General Fund. Failure to pay this debt can result in re-arrest or parole revocation, as well as an additional 30% collection fee. Any money paid by an individual is first applied to the 30% collection fee imposed by prosecutors—not to the victims who are owed restitution. Additionally, the State suspends driver's licenses for reasons unrelated to traffic safety—including unpaid court debt and drug convictions, so many individuals leave prison with no driver's license, thus no way to get to work, and a mountain of debt to repay.

There are clear public safety risks to this system. Recent research has shown that almost four in ten (38.3%) admitted to having committed at least one crime to pay to their court debt, including almost one in five (19.6%) whose only previous offenses were traffic violations. The most common offense committed to pay off court debt was selling drugs, followed by stealing and sex work. Survey respondents also admitted to passing bad checks, gambling, robbery, selling food stamps, and selling stolen items. Some individuals are trapped for decades in the criminal justice system due solely to these fees. These counterproductive policies impede successful re-entry and undermine victim's ability to receive restitution.

Currently, Alabama has few publicly supported re-entry programs. Absent family support or private resources, people returning from incarceration are on their own to find transitional housing, transportation, and even necessities such as food and clothing. Further, people on parole are required to report in person to a parole officer during regular business hours, which can be impossible for people who have secured full-time employment.

AFJ recommends the following:

- Ensure that only fines and costs that an individual can afford to pay over a limited and reasonable time period are imposed at sentencing and waive those amounts that a person cannot afford to pay.
- Allow returning individuals at least 6 months in the community before they must begin paying fines and restitution. The requirement that payment must immediately begin on fines and restitution is unrealistic for people with little access to housing, transportation, or jobs and is counterproductive to successful re-entry.
- Credit time served in ADOC toward certain financial obligations owed by defendants.

- Direct any payments made by individuals first to their underlying debts and restitution, not to the 30% collection fee that goes directly to District Attorneys.
- Reduce court costs, including eliminating all costs that are unconnected to the prosecution at issue. Fully fund the judiciary so that judges, DAs, and the indigent defense system are not reliant on collections from individuals to keep operating.
- Establish services within ADOC that assist people with obtaining copies of birth certificates, social security cards, and valid driver's licenses before they are released. Without these vital documents, returning individuals cannot apply for jobs, cash checks, or open bank accounts.
- End automatic suspensions of driver's licenses for cases unrelated to traffic safety, including unpaid court debt or drug offenses unrelated to traffic safety.
- Prohibit the issuance of arrest warrants for a person's failure to appear at payment review hearings while incarcerated. Allow individuals with missed court dates to appear at the courthouse and obtain a new court date rather than require their arrest.
- Establish services within ADOC for people re-entering to have health care coverage, which they are mandated by federal law to have.
- Provide bridge medications to people transitioning from ADOC so that they have at least 3 months of medications following release.
- Provide adequate re-entry supports for people with mental health needs returning from prison. Specifically, an individual who was on ADOC's mental health caseload should have, at a minimum, a confirmed appointment at a community mental health center within days of release.
- Provide centrally-located probation and parole offices accessible by public transportation, and at the very minimum locate those offices in the same county where the clients assigned live.
- Conduct ability-to-pay assessments for parole and probation fees. Waive or reduce fees for people who meet indigency requirements or for whom payment of existing fees creates substantial hardship.
- Make parole reporting possible for people with 9-5 employment. Currently many people on parole are required to report so frequently during regular work hours and/or report for drug testing that they lose their jobs. Consider weekend or evening reporting.

- Use technology to make probation and parole reporting less time-consuming. In the federal probation system, kiosks are available for people to report using fingerprint check-in, which avoids lengthy wait times to see probation officers.

Alabamians for Fair Justice is comprised of 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’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