
IN TROUBLE

HOW THE PROMISE OF DIVERSION CLASHES WITH
THE REALITY OF POVERTY, ADDICTION, AND STRUCTURAL
RACISM IN ALABAMA'S JUSTICE SYSTEM



ALABAMA APPLESEED
CENTER for LAW & JUSTICE

About Alabama Appleseed Center for Law & Justice

Alabama Appleseed Center for Law and Justice is a non-profit, non-partisan 501(c)(3) organization founded in 1999 whose mission is to work to achieve justice and equity for all Alabamians. Alabama Appleseed is a member of the national Appleseed Network, which includes 18 Appleseed Centers across the U.S. and in Mexico City. Alabama Appleseed is also a member of the Sargent Shriver National Center on Poverty Law's Legal Impact Network, a collaborative of 36 advocacy organizations from across the country working with communities to end poverty and achieve racial justice at the federal, state, and local levels.

For more information about

ALABAMA APPLESEED CENTER FOR LAW & JUSTICE

www.alabamaappleseed.org

IN TROUBLE

HOW THE PROMISE OF DIVERSION CLASHES WITH
THE REALITY OF POVERTY, ADDICTION, AND STRUCTURAL
RACISM IN ALABAMA'S JUSTICE SYSTEM



ALABAMA APPLESEED
CENTER for LAW & JUSTICE

© 2020 Alabama Appleseed

Report Highlights

We surveyed 1,011 justice-involved Alabamians in 2018 and 2019, asking those who were involved with diversion how those programs affected their daily lives.

Most of our survey-takers were poor. Fifty-five percent of them made less than \$14,999 per year. The median amount they reported paying for diversion was \$1,600 – more than ten percent of their total income. Only one in ten had ever been offered a reduced fee or fee waiver based on their inability to pay.

Without that relief, to cover their diversion payments:

- More than eight in ten gave up a necessity like food, rent, or prescription medication.
- Nearly two-thirds were forced to request money or food assistance from a faith-based charity they would not otherwise have needed.
- Close to half used a high-cost payday or title loan.
- The overwhelming majority borrowed money from a relative or friend.

Even making those desperate choices, some people couldn't keep up.

- One in five had been turned down for a diversion program because they could not afford it.
- About the same proportion had been kicked out of a diversion program because they could not keep up with payments.

Structural obstacles proved just as devastating:

- More than one in five had to turn down an opportunity to participate in diversion because of work, childcare, or school obligations.
- One in five had to drop out of a diversion program because of work, childcare, or school.
- More than half did not have a driver's license. One in five had to turn down an offer of diversion, and almost a quarter dropped out of a diversion program, because they lacked transportation.

CONTENTS

EXECUTIVE SUMMARY	4
INTRODUCTION.....	8
DIVERSION IN ALABAMA	
A BRIEF HISTORY.....	10
FINDINGS AND DISCUSSION	
METHODOLOGY.....	14
THE PROGRAMS IN PERSON	
WHAT WE LEARNED.....	25
RECOMMENDATIONS.....	49
APPENDIX	54
ENDNOTES	62
ACKNOWLEDGMENTS.....	64

EXECUTIVE SUMMARY

As the second decade of the new millennium begins, the state of Alabama faces two distinct yet intimately intertwined crises.

First, a public health crisis that has devastated communities across the state, where at least 717 people died from drug overdoses in 2019.¹ Opioids such as heroin and fentanyl likely accounted for the majority of those deaths.²

Second, a crisis in our prisons, where, following a multiyear investigation, the United States Department of Justice found the entire state prison system for men in violation of the Eighth Amendment's prohibition against cruel and unusual punishment. Alabama's prisons are the deadliest in the nation, are infested with drugs, rife with abusive and corrupt staff, and operating with about one third of the number of officers necessary for safety.³

No single innovation, investment, or reform will be adequate to solve such persistent, systemic dysfunction. But there are approaches to criminal justice that can help — among them, diversion programs that help low-level offenders, particularly those whose behavior is linked to addiction, get the

treatment they need and avoid convictions and incarceration.

In a series of meetings in 2019, the governor's study group on criminal justice reform heard from judges, prosecutors, and experts who urged the expansion of these programs, both as a means of relieving pressure on our overcrowded, unconstitutionally violent prisons and as a tool to help people who are struggling with addiction. What was lacking — because it has not, to this point, existed — was data on how Alabama's diversion programs actually perform, and particularly how they are experienced by the thousands of Alabamians who plead into or are sentenced to them each year.

This report is a first-of-its kind effort to examine, in detail, that experience. It is a product of Alabama Appleseed's work with the Annie E. Casey Foundation's Southern Partnership to Reduce Debt, which is developing strategies to lessen the impact of criminal and civil judicial fines and fees, as well as medical fees and high-cost consumer products, on communities of color.

We surveyed 1,011 justice-involved

Diversion programs are often expensive, onerous, and carry costs that are unclear to people before they plead in. Fifty-five percent of survey-takers made less than \$14,999 per year, yet the median amount they reported paying for diversion was \$1,600 — more than ten percent of their total income. **Only one in ten had ever been offered a reduced fee or fee waiver based on their inability to pay.**

Alabamians in 2018 and 2019, asking those who were involved with diversion how those programs affected their daily lives. We interviewed dozens of Alabamians about their experience with diversion, observed drug courts across the state, met with current and former administrators of drug courts, pretrial programs, community corrections, and court referral, and sought data about the operation of the most opaque of Alabama's diversion programs: pretrial diversion run by district attorneys.

The term “diversion” can mean many things. For the purposes of this report, it includes programs other than state probation available to people that allow them to avoid either a conviction or incarceration if they abide by certain terms.

Pre-adjudication diversion programs like pretrial diversion and drug courts are an opportunity for low-level offenders to avoid convictions and their collateral consequences by engaging in programming intended to improve their circumstances and help them make lawful choices.

Post-adjudication diversion can keep people out of prison, permitting them to serve their sentences in their communities with support and supervision from professionals who can help them get services, counseling, and treatment as needed. In Alabama, post-adjudication diversion options include community corrections and court referral.

Though intended to keep low-level offenders from getting into more trouble,

our research shows that the perverse reality is that diversion programs actually drive many of the behaviors and circumstances they were devised to mitigate. They are intended to reduce crime, but we found that more than four in ten diversion-involved individuals committed a crime to cover the costs of participating in diversion programs. They are meant to enable people to continue to support themselves and live successfully within their communities, but we found that more than one in eight diversion-involved people had been fired from jobs because they had to be in court in connection with a diversion program.

Diversion programs are often expensive, onerous, and carry costs that are unclear to people before they plead in. Most of our survey-takers were poor. Fifty-five percent of them made less than \$14,999 per year, yet the median amount they reported paying for diversion was \$1,600 — more than ten percent of their total income. Only one in ten had ever been offered a reduced fee or fee waiver based on their inability to pay. What this means is that Alabamians who are too poor to afford lawyers are nevertheless expected to hand over thousands of dollars to the government in order to avoid criminal convictions and prison.

Without that relief, to cover their diversion payments:

- More than eight in ten gave up a necessity like food, rent, or prescription medication.
- Nearly two-thirds were forced to request



MORE THAN EIGHT IN TEN gave up a necessity like food, rent, or prescription medication to cover diversion payments.



money or food assistance from a faith-based charity they would not otherwise have needed.

- Close to half used a high-cost payday or title loan.

- The overwhelming majority borrowed money from a relative or friend.

Even making those desperate choices, some people couldn't keep up.

- One in five had been turned down for a diversion program because they could not afford it.

- About the same proportion had been kicked out of a diversion program because they could not keep up with payments.

Structural obstacles proved just as devastating:

- More than one in five had to turn down an opportunity to participate in diversion because of work, childcare, or school obligations.

- One in five had to drop out of a diversion program because of work, childcare, or school.

- More than half did not have a driver's license. One in five had to turn down an offer of diversion, and almost a quarter dropped out of a diversion program, because they lacked transportation.

As a result, obstacles to completing diversion, including its cost and structure, are contribut-

ing to the human rights crisis in Alabama's prisons.

One in five diversion-involved survey-takers were incarcerated after dropping out or having their stint in diversion terminated. Prosecutors and judges deemed these Alabamians well-suited for a second chance. They were trying to improve their circumstances, to support and

care for their families. But because they were poor, lacked driver's licenses, had to care for their children or go to work, they found themselves locked away in prisons that the Department of Justice has determined are "rife with violence, extortion, drugs, and weapons. Prisoner-on-prisoner homicide and sexual abuse are common. Prisoners who are seriously injured or stabbed must find their way to security staff elsewhere in the facility or bang on the door of the dormitory to gain the attention of correctional officers. Prisoners have been tied up for days by other prisoners while unnoticed by security staff."⁴ In 2019 alone, there were 29 preventable deaths in prison from homicide, suicide, or drug overdose.

Some of those prisoners were people who were only in prison because they could not afford to remain in diversion.

We must do better.

But there is also good news. Almost two-thirds of our survey-takers said they had at some point participated in a diversion program that helped them overcome a problem. In other words, diversion programs, at their best, do more than simply ease the prison population. They help people.

Diversion could be a meaningful tool to combat the human rights crisis in our prisons and the public health crisis in our communities. But if they are to serve the people who need them most, programs need to be accountable, accessible, and properly funded.

STATE LAWMAKERS SHOULD...

- Establish and enforce uniform statewide standards for all diversion programs and alternatives to incarceration.
- Pass an omnibus bill to combine and simplify the layered, inconsistent, and overlapping acts under which most diversion programs in the state operate.
- Develop a mechanism for making programs portable so that people can participate in diversion where they have homes, family, and/or social support, not where they offended.
- Develop a mechanism to coordinate programs and reduce duplicative requirements of individuals being supervised in multiple jurisdictions.
- Fully fund diversion programs and alternatives to incarceration.
- Fund mental health courts through the Department of Mental Health to divert mentally ill offenders from jails and prisons while providing expanded community-based psychiatric services.
- Require transparency and accountability.
- End the practice of suspending driver's licenses for anything but dangerous driving.
- Adopt proportionate sanctions that scale the amount an individual is fined to their financial circumstances.
- Mandate the creation of a system making it possible for judges to easily see the totality of an individual's obligations, including court debt and participation in diversion, and require all jurisdictions including municipal courts to participate.
- Create a truly unified court system that includes municipal courts.
- Modernize Alabama's drug policy.

PROGRAMS SHOULD...

- Operate in keeping with standards and recommendations of professional associations and be structured with an eye to the everyday realities of the people most likely to participate in them.
- Operate on extended hours so that people who work or have other obligations can also attend court when necessary.
- Require as few in-person check-ins as possible, to minimize the need for people to miss work, arrange for childcare, or otherwise step away from critical obligations.

COURTS SHOULD...

- Make individualized ability-to-pay determinations and reduce or waive all discretionary fines, costs and fees for individuals who are unable to pay.
- Avoid using diversion programs as a means to compel people to pay unrelated fines and fees.
- Order drug tests only for people who have a demonstrated problem with addiction.
- Keep court appearances as brief as possible.
- Avoid using jail time as a sanction for noncompliance.
- Avoid using community service as a sanction for nonpayment or late payment of program fees.
- Avoid using court appearances as a punishment for nonpayment.

Detailed recommendations are at the end of the report.

1,011

THE NUMBER OF ALABAMIANS SURVEYED in 2018 and 2019 for this report. All participants were involved in the justice system.

Introduction

“Faith” buried her first husband on his 28th birthday, in 2010. Their older son was just starting kindergarten; their youngest was still in diapers.

Faith, 27 at the time, was overwhelmed. She started using drugs.

A few years later, she was charged with drug possession. She pled into Shelby County’s drug court and began to attend weekly court dates.

For the first few weeks, the 4-hour court appearances were difficult, but not impossible. Then Faith got into a car accident on her way to drug court. She missed her appearance that week, but limped in on crutches the next, bringing her hospital records with her.

She was sanctioned with jail time anyway. Her boyfriend and mother watched her children while she was locked up, telling them their mom was still in the hospital getting better.

After that, Faith told her lawyer she did not want anything to do with drug court. She was found guilty of drug possession and sentenced to probation, which was extended when she was unable to pay her supervision fees.

Years passed. Faith moved to neighboring Chilton County. Got engaged. Continued to use.

Faith’s partner also struggled with drug addiction. They both spent time in jail. They both spent time involuntarily unemployed. They both spent time in recovery, sometimes guided by the criminal justice system, sometimes not.

Eventually, Faith was put on Court Referral (CRO), a diversion system that operates across the state, monitoring low-level drug

offenders and helping connect them with services. Her fiancé was on CRO too, and paying \$840 per month for suboxone that was supposed to help him stop using opioids.

The couple also had fees for supervision by CRO and probation. To make ends meet, they gave up basic needs, borrowed money from family and friends, sought assistance from food banks, committed crimes. “For a while there we were having to sell some of [my husband’s] suboxone to pay probation fees while he was still looking for a job,” Faith told Appleseed.

It took her more than three years to complete her treatment through CRO, at a total cost to her of about \$8,425.

For the first couple years, she said, she wasn’t taking recovery seriously. Then something clicked. She started paying attention in the classes she was assigned to take and stopped using drugs. Her court referral officer was strict and did not tolerate messing around, but when Faith started getting serious, the officer helped her create a budget and open a bank account.

“You have to want it and you have to be doing what you’re supposed to do, but it was indeed helpful,” she said.

Faith now has a part-time job. She brings in about \$12,000 a year.

She still suffers the consequences of that first, failed attempt at drug court. Because of the drug conviction, she lost her driver’s license. The average commute to work where she lives tops 30 minutes.⁵ She still drives — “very carefully and nervously the whole time” — but has continued to accrue tickets

connected to driving without a license, because driving is a necessity. Including tickets and a reinstatement fee, it will cost her over \$2,000 to get her license back. She also permanently lost her right to own a firearm, no small inconvenience in a part of the state where custom and necessity mean that many people supplement their diets by hunting.

Of drug court, she said, “It seemed it was set up for failure.”

Faith is not alone in feeling defeated by some diversion programs, helped by others. And she is not alone in having paid thousands of dollars, given up basic needs, borrowed, accepted charity, and committed crimes to get through Alabama’s criminal justice-infused response to the public health crisis of addiction.

This report chronicles the experiences of Alabamians who, like Faith, have participated in diversion programs including drug court, pretrial diversion, community corrections, and CRO.

It explores how these programs work and how they fail, highlighting the ways in which good intentions collide with harsh drug laws and a “do the crime, do the time” mentality that has no space for the lived realities of people like Faith.

It shows how the state’s refusal to fund these programs means that even people the court finds “pitiful” and “destitute” are forced to pay for their own supervision, often in programs whose policies result in participants being fired from the jobs they are required to maintain as a condition of participation.

It describes how historical factors and present-day structural racism mean that African-American Alabamians are disproportionately likely to be ensnared by the criminal justice system and exposed to diversion and supervision programs, even as those same factors mean they have less access to the financial resources necessary to successfully complete them without making terrible sacrifices.

It exposes how various state agencies, including the Administrative Office of Courts and Office of Prosecution Services, decline to maintain basic data about who is in their diversion programs and how well those programs work.

And it maps out steps the state can take to do better, including recommendations for lawmakers, programs, and courts seeking to do better.

The mere existence of diversion programs and alternatives to incarceration proves that even tough-on-crime Alabama understands that people like Faith deserve a second chance, not prison. But mere existence is not enough. The state must invest, financially and intellectually, in these programs, or they will never live up to their potential.

There is so much hope in diversion. And there so much work to be done.

What is Diversion?

This report explores how Alabama’s diversion programs are experienced by those who participate in them and features deeper exploration of three common types of diversion in Alabama.

For purposes of this report, diversion is defined as **a program that allows justice-involved participants to avoid either a conviction or incarceration.**

Pre-adjudication diversion programs like pretrial diversion and drug courts permit people who are accused of certain offenses to admit guilt but avoid a criminal record if they abide by the terms of supervision. Those terms usual include random drug tests, check-ins with a court or supervisor, and participation in educational and/or rehabilitative programming deemed necessary by the program administrator.

Post-adjudication diversion programs like court referral (CRO) and community corrections allow people who have been convicted of certain crimes to avoid prison time as long as they comply with terms that are often roughly similar to those required by pre-adjudication programs.

Probation and parole are forms of supervision that do not constitute diversion for the purposes of this report — though they sometimes conflict with it, as discussed elsewhere in this report.

DIVERSION IN ALABAMA

A BRIEF HISTORY

Though statutorily distinct from each other, diversion programs in Alabama are a tangle of sometimes overlapping, sometimes conflicting arrangements.

The oldest, court referral (also called CRO), started in 1985 as a form of “accountability court” focused on individuals convicted of driving under the influence. Court referral is intended to operate in a fairly standard way statewide, starting with a screening evaluation of the individual to determine what level of education or treatment they need.⁶ Depending on their needs, participants may be assigned classes on substance abuse and the law, required to attend self-help meetings, or referred for inpatient or intensive outpatient treatment.

Over the years, court referral programs have been subject to various allegations of overreach and self-dealing. There have been credible complaints that judges were improperly sitting on the boards of service providers that made money from business referred by court referral programs.⁷ In 2019, an investigation revealed that a CRO program in northwest Alabama was charging participants duplicative fees.⁸ Appleseed interviewed many stakeholders, including diversion participants and program administrators, who expressed concern that the CRO program is ripe for abuse and misuse.

These reports are credible, troubling, and worthy of further investigation. But the problems with court referral stem largely

from ways in which it is misused. From the lived-experience perspective that is the focus of this report, it is more troubling that Alabama’s three other diversion systems are little more than a patchwork that is uniform only in being experienced by participants as expensive, confusing, and onerous.

This is not surprising. Each of the four programs (pretrial diversion, drug court, community corrections, and CRO) is authorized by a different statute. According to people who participated in the creation of these statutes, little thought was given to how they would interact, and potentially conflict, with each other. Despite good intentions, their implementation has been rife with unintended consequences, and oversight has been patchy and problematic.

Nearly all diversion programs require participants to pay for their services. This includes both pre-adjudication programs like pretrial diversion and drug court where successful conclusion leads to charges being dropped, and post-adjudication programs like community corrections to which individuals are sentenced as an alternative to incarceration. Costs can include application fees, program fees, supervision fees, drug test fees, evaluation fees, treatment fees, and others.

And conflict they do. Participants in the

Nearly all diversion programs **require participants to pay** for their services.

programs stand accused or convicted of largely similar behavior. Major decisions about which program they are funneled into, including whether they are able to avoid conviction via a pre-adjudication program, are delegated by statute to prosecutors.

In some jurisdictions, drug courts run by judges have been replaced by prosecutor-run pretrial diversion programs that

serve roughly the same population of alleged offenders. Often, the only meaningful difference between programs is the gatekeeper, the price tag, and the entities that collect the fees — not the level of supervision. Since little to no data is collected about the outcomes of pre-adjudication programs, there is no way to tell which have the best results.

Structural Racism in Diversion

The historical reasons for Alabama's racial wealth gap are well known and older than the state itself. More than a century of chattel slavery, followed by a century of segregation and racial violence, relegated African Americans to second-class citizenship. Jim Crow laws, the convict labor system, lending discrimination, segregated schools and institutions of higher learning, and formal and informal exclusion from lucrative professions all mean that in Alabama as nationwide, African-American families are far less likely than their white peers to have accumulated wealth.⁹

Alabama's brutal past birthed a present filled with pernicious obstacles to economic advancement for African Americans, including income inequality, regressive taxation, unequal schools, lending discrimination, over-policing, and other structural factors.

As a result of all this, the financial circumstances of black and white Alabamians are

still dramatically disparate. In 2013, the median household income for white Alabamians was \$49,465. African-American households' median income the same year was \$29,210 — only about 59% of the figure for white people.¹⁰

But income is not the whole story. It does not guarantee wealth, or even economic security. People who have assets, those who own homes and have savings in the bank, the stock market, retirement accounts, or inheritances — and people whose families have access to those kinds of assets — have far more to fall back on than those who do not. In 2011, a typical white family in the bottom income quintile (earning less than \$19,000 annually) owned \$15,000 in wealth. A typical African-American family earning the same amount owned just \$100 in wealth.¹¹ That's not enough to cover a typical family phone plan,¹² and is far less than the total cost of

a single month of diversion in most places.

There is reason to be concerned that African-American Alabamians are disproportionately blocked from participating in diversion programs because they lack access to wealth.

At the same time, they are more likely than white Alabamians to be exposed to arrest and criminal charges. In 2015, black people in Alabama were over four times as likely than white people to be arrested for marijuana possession,¹³ despite robust evidence that the two groups use marijuana at roughly the same rate.¹⁴ Between 2011 and 2015, 74% of the people convicted in state court of felony marijuana possession — a charge that, for first offenses at least, rests heavily on the personal belief of the arresting officer about the intended use of the marijuana found — were black men.¹⁵

In 2016, African Americans were more than twice as likely as white people to be arrested for six of the 20 charges for which the most Alabamians were arrested that year, including several offenses, like marijuana possession, that hinge on the perception and inclinations of the individuals observing the alleged wrongdoing. African Americans were 3.7 times as likely as white people to be arrested for disorderly conduct in 2016; 2.3 times as likely to be arrested for trespassing (which can include remaining in public accommodations like restaurants after being asked to leave), and twice as likely to be arrested for resisting an officer and contempt of court.¹⁶

In Alabama, African Americans make up 56% of the prison population¹⁷ but only about 27% of the state's population.¹⁸ They are over-represented in jails at roughly the same rate.¹⁹ Yet they comprised only 47% of the diversion-involved individuals we surveyed.

There is reason to be concerned that African-American Alabamians are disproportionately blocked from participating in diversion programs because they lack access to wealth.

Despite their onerous costs and requirements, pre-adjudication diversion programs are singular opportunities to avoid the even worse collateral consequences of a criminal record, including heavy fines and fees, legalized employment discrimination, potential loss of voting rights, and lifelong stigma. Meanwhile, post-adjudication programs like community corrections and court referral can keep families together and stabilize communities. In the present environment of deadly violence at Alabama's prisons, they can be lifesavers. The likelihood that African-American Alabamians are disproportionately excluded from them, therefore, demands attention and remediation.

FINDINGS AND DISCUSSION

Methodology

SURVEY DEVELOPMENT AND COLLECTION

The data presented in this report was generated through survey methodology developed at the University of Alabama at Birmingham's Treatment Alternatives for Safer Communities (UAB TASC). The survey was based upon an earlier study conducted by UAB TASC in 2014.²⁰ In 2018, additional questions were added with input from the Alabama Appleseed Center for Law and Justice, Greater Birmingham Ministries, and Legal Services of Alabama. In both the design of the survey instrument and the recruitment of respondents, we tried to capture the criminal justice experience as it relates to court debt across the criminal justice system and, where it might apply, the civil justice system. In 2019, the survey was revised to focus on the experience of diversion programs, though many questions remained that had been asked of 2018 participants.

We recruited over 1,000 survey participants through a variety of social service and criminal justice agencies. We discarded surveys that were deemed to be spoiled because they were largely left blank, leaving 879 surveys for analysis in 2018 and a further 132 in 2019.

Survey participants reported residency, by zip code, in 41 of Alabama's 67 counties. Survey participants were not limited to felony offenders under criminal justice supervision but were recruited more broadly

from a variety of local sites, including re-entry programs, drug courts, drug treatment facilities, homeless shelters, community corrections, and halfway houses, among others. Participants were prescreened to include only persons who owed or had owed court costs, fines and fees which were paid over time, or who had helped other people pay court debt. Most participants were given a \$15 Wal-Mart gift card to thank them for their time, though a few of the facilities at which surveys were administered disallowed the use of compensation. Participants were granted anonymity, and those who shared their stories in greater detail did so with knowledge that the stories and names would be included in this report.

SAMPLE DESCRIPTION

This report relies on survey data collected by Alabama Appleseed and its partners in 2018 and 2019. The 2018 data come from Alabama Appleseed's report, "Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama's racial wealth divide,"²¹ in which 879 justice-involved Alabamians provided information about their experiences with court debt. Of those 879 respondents, 282 reported that they were currently under some form of supervision at the time they took the survey and an additional 182 reported being supervised at some point.

We recruited over 1,000 survey participants through a variety of social service and criminal justice agencies. We discarded surveys that were deemed to be spoiled because they were largely left blank, leaving **879 surveys for analysis in 2018** and a further **132 in 2019**.

SURVEY PARTICIPANT

Demographics

AGE Survey-takers ranged in age from 18 to 79, with a median age of 40.

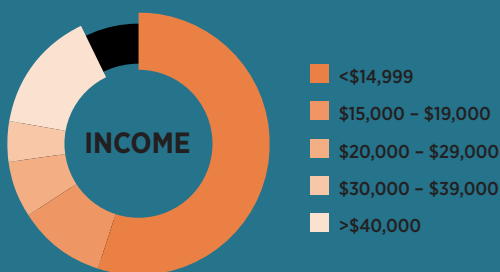
GENDER 67% of survey-takers identified as male, 32% identified as female.

RACE 45% identified as Caucasian or White, 47% as African American, Black, or West Indian, 0.3% as Latino or Hispanic, 0.2% as Asian or Asian American, 0.4% as Native American or Alaskan Native, and 0.1% as Native Hawaiian or other Pacific Islander. 2% did not provide information about their race.

EMPLOYMENT 47% of survey takers were employed, and 50% did not have a job when they took the survey.

INCOME 55% of survey-takers made less than \$14,999, 11% made between \$15,000-\$19,999, 7% made between \$20,000-29,999, 5% made between \$30,000-\$39,999, and 15% made more than \$40,000. 7% did not respond to this question.

FAMILY SITUATION 43% of survey-takers had at least one child under the age of 19.



African American/Black
/West Indian

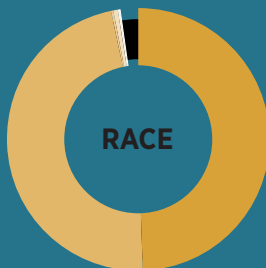
Caucasian/White

Latino/Hispanic

Asian/Asian American

Native American/Alaskan Native

Native Hawaiian/Pacific Islander



Although the scope of this report is different than that of the 2018 report, many questions were included in the 2019 survey that had been asked in 2018. For example, in both 2018 and 2019, respondents were asked if they were currently on court referral, drug court, and pretrial diversion. As such, respondents from 2018 who reported being on any of the three programs at the time of the survey were included in the analysis for the current report. In 2019, 84 respondents out of the 132 surveyed, reported that they were currently being supervised under at least one of the three programs, and an additional 38 out of the 132 reported being supervised at some point. Therefore, our sample size consists of a total of 366 respondents under current supervision and 593 respondents who had been supervised at some point. This number applies to results based on survey questions that were asked in both 2018 and 2019. Several questions included in this report were only asked of the 2019 supervision population. The sample size for these results is 122.

DATA ANALYSIS

The additional surveys collected in 2019 were inputted into the software program SPSS where a dataset was created. At this phase, datasets for both 2018 and 2019 were filtered to include only the respondents under current supervision and only the questions that were asked in both years. The datasets were then merged into one dataset in the software program STATA where the analysis took place. The results consist of descriptive statistics. Frequency distributions and cross-tabulations were generated to answer each research question.

A NOTE ABOUT RACE AND ETHNICITY

Study participants were asked to identify as Caucasian; African American, black, or West Indian; Latino/Hispanic; Asian or Asian American; Native American or Alaskan Native; or Native Hawaiian or other Pacific Islander. The vast majority of participants identified as either Caucasian (45%) or African American (47%).

This is not representative of Alabama’s overall population, which is 69% white, 27% black or African American, 4% Hispanic or Latino, with other races and ethnic groups comprising less than 2% of the population each.²² However, the percentage of survey participants who were African-American is closer to the percentage of Alabama’s jail and prison population that is African-American (54%).²³ White people are slightly overrepresented in our sample as compared to their percentage of the prison and jail population (42%).²⁴

Latino and Hispanic participants are underrepresented in our survey as compared to their representation in both the state population and the jail and prison population (4%).²⁵ Partly because Alabama’s Hispanic and Latino population is disproportionately concentrated in rural northern Alabama cities where we did not survey people,²⁶ and partly due to limited resources such as the lack of a Spanish-speaking interpreter, we did not succeed in surveying this population in proportion to its presence in the state and in jails and prisons.

SUPERVISION AND DIVERSION

The term “diversion” can mean many things. For the purposes of this report, it includes programs that allow people to avoid either a conviction or incarceration if they abide by certain terms. On the pre-adjudication side of things, diversion programs include pretrial diversion programs run by district attorneys and treatment courts such as drug court, gun court, or mental health court. On the post-adjudication side, diversion includes community corrections and court referral (CRO).

State and private probation and parole are forms of supervision that do not constitute diversion, but whose requirements often interact with the requirements of diversion programs. We have included certain data on individuals’ participation in probation and parole in this section for that reason.

Many survey-takers were being supervised or participating in a diversion program at the time they took the survey. Troublingly, some were being supervised by multiple entities. Of these, 45 people were on both CRO and drug court, 10 were on both CRO and DA diversion, and 8 were on both Drug Court and DA diversion.

Supervision

Our survey population reported being previously or currently supervised in the following ways at the following rates

TYPE OF PROGRAM	PAST	CURRENT
Court Referral (CRO)	55%	31%
Community Corrections	20%	34%
State Probation	45%	21%
Parole	16%	7%
Drug Court	42%	21%
DA Diversion	13%	7%
Private Probation		4%

PARTICIPANTS SATISFACTION

We asked a subset of survey-takers if they had ever participated in a diversion program that provided treatment, classes, or other programming that helped them overcome a problem. 63% said yes. The remainder found their experience with diversion unhelpful.

PROGRAM COSTS

Nearly all diversion programs charge fees for various services and participation requirements. Application and up-front costs are often published in the plea agreements individuals sign when they enter into programs like pretrial diversion or drug court, but the total costs can be unpredictable. This is particularly true for individuals who are randomly tested for drug use and must pay for each drug test.

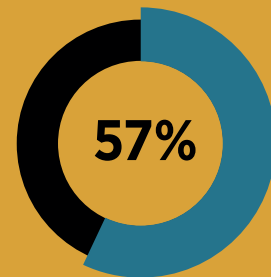
We asked a subset of survey-takers how much they paid for diversion. The median was \$1,600, not counting court costs, fines, fees, and restitution in cases where those were relevant. Only 45% were aware of the cost before agreeing to participate.

Survey-takers reported paying for a variety of fees and services:

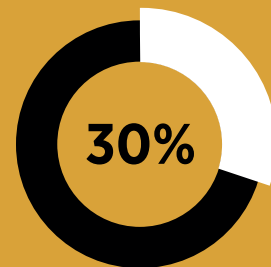
Type of Fee	% of Survey-Takers Who Reported Paying
Up-Front Cost for Participating	54%
Drug Test (per test)	60%
Supervision	50%
Treatment	23%
Evaluation	21%

Giving Up

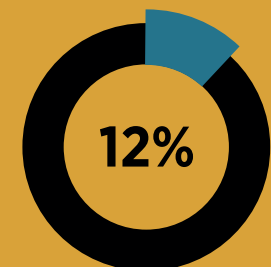
The majority of our sample made **less than \$15,000 a year**, but the median amount they paid for diversion was \$1600, more than a tenth of their income. More than eight in ten gave up a basic necessity to cover the cost of diversion. Here's what they gave up ...



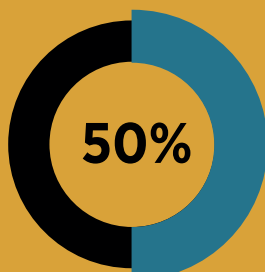
FOOD/GROCERIES



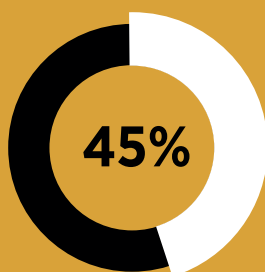
MEDICAL BILLS
OR PRESCRIPTIONS



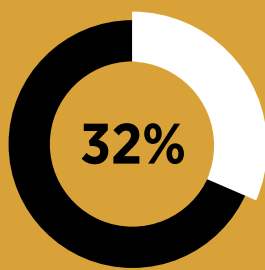
CHILD SUPPORT



UTILITIES



RENT



CAR PAYMENTS

“I make a \$600 wkly check but they take away every last dime. So I don’t see any of my money. I’ve been to jail so many times for failure to pay in the last 10 yrs. Its extremely hard to find work and pay bills and support family. Sometimes I’m forced to do what I did to get a felony just to feed my family.”

Impossible Choices, Terrible Costs

Most of our survey-takers lived in financially precarious circumstances. We asked a subset about their annual income: 55% made less than \$15,000 per year. 66% made less than \$20,000 per year. 70% had been found indigent or appointed a lawyer because they could not afford one.

We asked a subset of survey-takers if they were ever offered a reduced fee or fee waiver based on their inability to pay. Despite the staggeringly high rates of poverty and indigence among them, only 10% were ever offered a reduced fee or fee waiver based on their inability to pay.

Without that relief, 82% gave up a basic necessity like food, rent, or car payments to keep up with their payments. Many people gave up more than one.

- 63% were forced to request money or food assistance from a faith-based charity they would not otherwise have needed in order to cover their payments.

- 45% used a payday or title loan to cover payments.

- 85% borrowed money from a relative or friend to pay what they owed.

- 42% admitted to committing a crime to pay diversion costs and fees; 29% sold drugs; 24% stole. Thirteen survey-takers engaged in sex work to cover the cost of diversion. Others reported passing bad checks, selling stolen items, and fraud.

DURATION OF PARTICIPATION

Diversion programs are intended to last for a limited amount of time and then end, freeing participants from supervision, ideally more healthy and able to cope with the stresses of everyday life.

But individuals participating in pre-adjudication diversion programs like drug court face dire consequences, including conviction and likely incarceration, if they fail to complete the program or are forced to drop out. Many pre-adjudication programs accommodate this reality by permitting people to remain in the program past the expected deadline, sometimes for years.

We asked a subset of survey-takers how much time they spent in diversion.

Duration of Participation	% Reporting
0-6 months	13%
7-12 months	18%
13-18 months	12%
19-24 months	16%
More than 2 years	8%
I am still in the program	26%
I dropped out or was kicked out	6%

31% of this subset had had their time in a diversion program extended because they failed a drug test. Others' stints were extended for other reasons, including inability to pay.

PUNISHED MORE FOR BEING POOR

Perhaps the most troubling finding of this report is that not every eligible person can afford to participate in diversion. This means that poor people who do not have access to money through friends, family, or loans are shut out of a system that, in the case of pretrial diversion and treatment courts, can spare them the burdens of a felony conviction or, in the case of CRO or Community Corrections, can help them remain in their communities while they are serving their

Stuck in the Middle

THE COST OF ANSWERING TO MULTIPLE PROGRAMS AT ONCE

Dozens of our diversion-involved survey population reported being supervised by more than one program (including probation, which is a form of supervision that does not constitute diversion) at the time they took our survey. Individuals who must answer to multiple supervision programs are devastated by the overlapping, often conflicting demands. A few of them shared their stories with us.

“What time do I have to work?”

Bernard's Story | Jefferson County and Birmingham Municipal Court

More than anything, “Bernard” wants to get a job and help support his wife, his high school-student daughter, and his infant grandchild. But between the obligations he has to Jefferson County Community Corrections and the city of Birmingham's municipal drug court, the 53-year-old Birmingham resident doesn't know where he'll find the time.

“They put me in drug court and I'm in community corrections at the same time, with classes in both community corrections and drug court at the same time, same days, different hours, morning and evenings,” he said. “I have no time to even find a place to stay. I'm homeless now. I lost my apartment while I was in jail and I'm going to a faith-based facility when I leave here, just to try to save money so I can get a place.”

Meanwhile, “My daughter is in high school and my wife has a disease in her legs and can barely get around. She really can’t get up and move around that much. So coming to court, going to classes at night and the daytime, there’s nobody there to keep the grandbaby. And I was doing most of the babysitting and taking care at home, and then you have to go to court. Maybe five or six times I had to take the baby to court with me. Sometimes they don’t allow babies in the courtroom so I had to let somebody I don’t know hold the baby in the hallway. Once I was late for court and I had a positive urinalysis and the judge sanctioned me. There are some people who could have kept the baby, but we didn’t trust them. So my daughter had to come out of school and come to the court and get the baby.”

“I don’t even see where I’ll be able to work to pay a fine because of scheduled classes in the morning, in the evening — what time do I have to work?” Bernard wondered. “If I get a midnight job and work at night and I have to get up, I get home at 7:30, 8:00 and I have to be right back in classes at 9. I don’t think anybody can do that.”

“Either way it’s just about a trap.”

Archie’s Story | Dallas County

Archie, 39, from Selma, is a construction worker, welder, and father of four. He knows he can make good money and provide for his children. But diversion-related court appearances have made keeping a job difficult.

Archie makes less than \$15,000 a year and does not have a driver’s license because he cannot afford to pay off his old traffic tickets. When we met, he was participating both in CRO and drug court. He has given up basic necessities, stolen, and sold drugs to keep up with diversion-related payments.

Initially, he hoped diversion programming could help him. In fact, it made things harder. “I ended up losing a job about it — going back and forth to court,” he said.

“If you miss court, that’s a warrant and you go to jail for that too. But you gotta go. And some jobs, like we’re scarce on jobs here in Alabama so you just — they might not want you to be off. And you’re like, well I’ve got to go to court. I’ve got to go see my probation officer; I’ve got to go somewhere with law enforcement. And they’re like, we really don’t care about that, we need you here at the job. So now you gotta choose between going to court, which you

know if you don’t go to court then chances are you might go to jail. But you also need your job, ‘cause you got kids depending on you. So it’s like — you stuck in the middle juggling this and that,” he said.

“Either way it’s just about a trap.”

“I thought everything would be under drug court.”

Ryan’s Story | Shelby and Chilton Counties

“Ryan,” 33, has struggled with addiction since he was 18 years old. In 2017, he was convicted of drug possession and put on 20 months’ probation in Chilton County. About a year later, he was arrested again for the same thing, this time in Shelby County, right next door.

Ryan, who has a 13-year-old son, wanted to get clean. He wanted to be in drug court, where he knew the regular drug testing and check-ins would keep him accountable. And he excelled. After spending three weeks in Shelby County’s community corrections facility while he waited for a treatment bed to open, he went to an inpatient rehab program in south Alabama. About four weeks later, he returned to Shelby County. Months passed; he never failed a test. He was never sanctioned. He got a job and fixed up his vehicle.

Then, when he went to get it registered, “It showed up that I had a felony probation violation warrant.”

Ryan was confused. “I thought everything would be under drug court because it’s a more extensive program.”

He turned himself in, and from May to July 2019, he bided his time in Chilton County jail. When Appleseed met him there, he had not been outdoors in three months. The jail was so crowded people slept on mattresses on the floor.

After the Chilton County judge finally released him, Ryan returned to Shelby County and set about rebuilding his life for a second time. It wasn’t easy. Unable to afford rent, he stayed off the streets by staying with family. He found a job that paid about \$400 a week, but owed \$40 a month to probation in Chilton County and was paying his Shelby County drug court fees off as quickly as he could, at a rate of about \$100 a week, plus \$10 each time he was called to leave a urine sample, which happened 2-3 times a week. He also owed \$50 a month toward fines connected to his conviction in Chilton. Altogether, nearly half his income each month goes toward court- and diversion-related costs, fines, and fees.

THREAT OF BEING FIRED

One in eight survey participants had lost a job because of the rigid demands of diversion.



sentences. Due to Alabama’s racial wealth gap, there is good reason to believe that African Americans are more likely to be shut out of diversion for these reasons.

20% of survey-takers had been turned down for a diversion program because they could not afford it. Another 19% had been kicked out of a diversion program because they could not keep up with payments.

STRUCTURAL OBSTACLES, UNCONSCIONABLE CONSEQUENCES

Poverty is not the only obstacle to success. For many people, fundamentals such as working, parenting, or lack of transportation made it impossible for them to benefit from diversion.

We asked a subset of survey-takers about structural obstacles. 22% of them were offered an opportunity to participate in a diversion program that they had to turn down because of work, childcare, or school.

Responsibility Preventing Participation	%
Work	20%
Childcare	9%
School	4%

Many people enter diversion because they are desperate for the chance, but once in, find they are unable to succeed because of fundamental obligations. We asked a subset of survey-takers about this. 20% reported being forced to drop out of a diversion program due to work, childcare, school, or other responsibilities.

Responsibility Preventing Completion	%
Work	15%
Childcare	12%
School	5%

EMPLOYMENT

Most diversion programs require non-disabled participants to work or actively seek employment. But employers expect their employees to come to work — while judges and supervisors expect diversion clients to come to court, show up for random drug screens, and complete lengthy stints of community service. For some people, particularly those whose employment opportunities are limited by a felony record, disability, regional job scarcity, the demands of parenting or of caring for

elderly relatives, these conflicting demands make diversion impossible.

We asked a subset of survey-takers about how work affected their participation in diversion. 14% were offered the chance to participate in a diversion program that they had to reject because of their job. Another 12% had to drop out of a diversion program because of work.

Those who attempted to balance diversion obligations against work obligations faced a different set of consequences. 28% had faced the threat of being fired because they had to miss work to be in court for a diversion program. Another 13% had actually been fired because they had to be in court for a diversion program.

TRANSPORTATION

In interviews, diversion program administrators consistently described lack of transportation as a primary obstacle to compliance and successful completion of diversion. This is no surprise.

54% of diversion-involved survey-takers reported that they did not have a driver's license. 19% said the reason for this was either because they could not afford a reinstatement fee or because they could not pay for insurance. 45% relied on friends and family or Alabama's all-but-nonexistent public transportation system to get where they needed to be.


We asked a subset of survey-takers how transportation issues affected their ability to participate in diversion. 20% of survey-takers said they had to turn down an offer of diversion because they lacked access to transportation. Another 23% had to drop out of a program because of transportation issues.

SUNK COSTS, HARSH CONSEQUENCES

20% spent six months or less in diversion before dropping out or being kicked out. 26% spent less than a year.

Afterwards, 21% of them were incarcerated.

Many people enter diversion because they are desperate for the chance, but once in, find they are unable to succeed because of fundamental obligations. 20% reported being forced to drop out of a diversion program due to work, childcare, school, or other responsibilities. Second chances should not be contingent on wealth or family circumstances.



A GROUND-LEVEL VIEW OF DIVERSION

WHAT WE LEARNED

This report rests largely on surveys and interviews of justice- and diversion-involved Alabamians. But in the course of our research, Appleseed also sought to learn from diversion providers, including judges, lawyers, social workers, court referral officers, corrections officials, and others, how the programs work. We traveled to drug courts across the state, requested data from dozens of entities, and interviewed providers to understand their perspective on and experience with diversion in Alabama.

Drug Courts

THE STATUTE

“The presiding judge of each judicial circuit, with the consent of the district attorney of that judicial circuit, may establish a drug court or courts, under which drug offenders shall be processed, to appropriately address the identified substance abuse problem of the drug offender as a condition of pretrial release, pretrial diversion, probation, jail, prison, parole, community corrections, or other release or diversion from a correctional facility. The structure, method, and operation of each drug court may differ and should be based upon the specific needs of and resources available to the judicial district or circuit where the drug court is located, but shall be created and operate pursuant to this chapter and in compliance with rules promulgated by the Alabama Supreme Court.”²⁷

THE REALITY

Greenville, Ala. — On a muggy September morning, Alabama Appleseed witnessed a rather touching exchange between a judge and a man named Chris who had graduated from drug court that day.

On his way out of the courthouse for what he hoped would be the last time, Chris lobbed a “Roll Tide,” at Judge Adrian Johnson, an Auburn fan whose allegiance to his team is so fierce that another drug court participant had worn his Crimson Tide t-shirt inside out that day, hiding the offending Alabama “A” as a joking but conspicuous show of respect.

“I’ll give you a Roll Tide back — and you won’t hear me say that too often,” Johnson said.

Earlier that morning, Chris had delivered an impassioned address to his soon-to-be former fellow drug court participants. After a lifetime of on-and-off drug dependence, “These folks have helped me quit,” he said. “I made \$30,000 this year. I got a car.” He shared plans to save enough to buy some land and a trailer.

On his way out, Chris asked if there was anything he could do to get his past record, which includes a felony, expunged. He wanted to hunt again, and as a felon he cannot possess a firearm. He also wanted to vote.

Over-policing of African Americans means that they are more likely to be arrested and charged with drug crimes than white Alabamians, unfairly increasing their exposure to the costs and risks of drug courts.

Johnson told him that under Alabama law, there is nothing he can do to eliminate the felony record. He suggested Chris look into getting a crossbow. The judge also advised him on how to get his voting rights restored.

With that, they parted ways, each hoping not to see each other again in the courtroom.

The exchange we witnessed in Greenville, the county seat of Butler County, Ala., in many ways represents the ideal of what drug courts can accomplish: Helping individuals who want to become addiction-free get the support they need to begin recovering; transforming the relationship between judge and defendant into something more personal and constructive; offering the resources, knowledge, and structure that can help people get their lives on a track that they feel good about. It felt like a clear success story.

It was also an outlier.

For five months in 2019, Alabama Appleseed crisscrossed Alabama, observing drug courts in Shelby, Marengo, and Butler counties and the Second Chance Diversion Program in Tuscaloosa, a pretrial diversion program that functions like a drug court. (For the purpose of this section of the report, we are considering the Tuscaloosa program a drug court.)

The court in Columbiana serves Shelby

County, a suburban and rural county that borders Birmingham at its northern end. It is significantly whiter and wealthier than the state on average.²⁸

The court in Linden serves Greene, Marengo, and Sumter counties, which are at the western end of Alabama's "Black Belt," a poor, rural region of the state that was once home to wealthy white landowners who enslaved African-Americans and later leased land through sharecropping and tenancy. Today, many of those landowners' descendants have left the region behind, though the land is still largely owned by white people.²⁹ The majority of residents in these Greene, Marengo, and Sumter counties are African-American.³⁰

The court in Greenville serves Butler, Crenshaw, and Lowndes counties, which are at the center of the Black Belt. These counties' populations are somewhat whiter, with higher median incomes, than their neighbors to the west.³¹

The court in Tuscaloosa serves Tuscaloosa County, home to the University of Alabama, which maintains its own separate drug court to which many students who run afoul of Alabama's harsh drug laws are referred. Tuscaloosa County includes urban, suburban, and rural areas. Its median

income is slightly higher than Alabama's overall, and it has a slightly higher proportion of African-American residents than the state overall.³²

We were granted access to the staffing meetings in Tuscaloosa, Columbiana, and Greenville, where we observed and asked questions as drug court teams considered the progress, setbacks, and circumstances of the defendants under their supervision. We also sat through numerous dockets and interviewed current and former participants in drug courts across the state.

What we learned was that while the promise of drug court is great, the way it plays out is deeply flawed. Among other things:

Over-policing of African Americans means that they are more likely to be arrested and charged with drug crimes than white Alabamians, unfairly increasing their exposure to the costs and risks of drug court.

People who lack wealth, who don't live in the same jurisdiction where they offended, who have inflexible jobs or childcare obligations or who lack driver's licenses or access to transportation are at great risk of failing. Wealthier people with more flexible schedules, family support, and access to transportation are better positioned to succeed.

Alabama's harsh drug laws mean that individuals who use drugs recreationally but who do not have a problem with addiction may find themselves ensnared in expensive, onerous programs that destabilize their lives.

Alabama does not maintain any data on drug courts. The state does not maintain information about demographics, cost to participants, criminal charges, recidivism rates, length of time in drug court before graduation or termination, or any other data that would permit researchers, legislators, judges or anyone else to assess the efficacy of its drug courts. In the course of conducting research for this report, Appleseed encountered an employee of the Administrative Office of Courts (AOC) who is initiating research into some drug courts that, the state hopes, will make the system eligible for grant

money, so it is possible at least some data will exist in the future — though unclear if it will be shared with the public.

DRUG LAWS

In Alabama, unlawful possession of any controlled substance except marijuana is considered a Class D felony on the first offense. This includes both prescription medications an individual has obtained without a valid prescription as well as possession of illegal substances like cocaine, heroin, or methamphetamine.³³

Possession of marijuana is controlled by a different law and can be either a misdemeanor or a felony on the first offense, depending on whether law enforcement believes the marijuana was for personal use or intended for distribution. Possession for personal use is a Class A Misdemeanor the first time a person is caught³⁴ and a Class D felony after that. Possession for "other than personal use" is a Class C felony.³⁵

It is unusual for an individual to be sentenced to time in jail or prison solely for unauthorized possession of a controlled substance, including marijuana. More common penalties include probation, community corrections, accompanied by heavy financial sanctions. Fines for Class A misdemeanors can be as much as \$6,000; for Class D felonies, as much as \$7,500, and for Class C felonies, as much as \$15,000.³⁶ And individuals with felonies on their records face stigma and limitations on their liberty that may follow them until they die.

The harsh consequences for possession of even a single marijuana cigarette or half a Xanax are powerful incentives for individuals to participate in drug courts, which offer them an opportunity to clear their records and carry on with their lives.

RACIAL DISPARITIES IN POLICING AND ENFORCEMENT

In Alabama, African Americans are arrested, prosecuted, and convicted at higher rates than white people. For example, while Afri-

can Americans and white people use illegal drugs at roughly the same rate,³⁷ in Alabama, African Americans are over four times as likely as white people to be arrested for marijuana possession.³⁸

These policing disparities mean that African-American Alabamians are more likely than white Alabamians to find themselves in a position to participate in drug court, even though there is no particular difference between the two groups' rate of violating drug possession laws. If anything, there is some research indicating that white people are more likely than black people to report having the type of serious issues with addiction that drug courts are theoretically designed to address.³⁹

There is no centralized database showing drug court participants' demographics, and no individual drug court we contacted was able to provide that information either. Respondents to our survey who participated in drug court were evenly split between black and white. However, variations in racial demographics and arrest disparities by location, and a lack of suitable data on how individuals are charged after being arrested, mean it is difficult if not impossible to determine what the racial demographics of drug court participants would be if they reflected the demographics of people charged with drug crimes.

HOW DO DRUG COURTS WORK?

The basic premise of drug court is that it's a place that encourages recovery through treatment, accountability, and regular consultation with case workers who evaluate individual participants' needs and develop treatment plans accordingly.

The stakes are high. Successful completion of a drug court program means charges are dropped and conviction is avoided,

though the arrest and charging record remains unless the individual can pay additional money to have it expunged. Failure to finish the program for any reason means conviction and, in many places, a harsher sentence — possibly including prison time — than the individual would have received if they had foregone drug court and accepted a traditional plea deal.

In most places, drug courts are only available to individuals alleged to have committed a narrow range of low-level offenses, such as unauthorized possession of a controlled substance, possession of marijuana, or possession of paraphernalia. Some jurisdictions permit people concurrently accused of other crimes, such as theft, to plead into drug court programs, if the victim of the theft agrees and the drug court participant pays all required restitution. Some let people who were not charged with drug possession but whose behavior is determined to have been driven by drug misuse to plead into their programs.

In general, prosecutors act as gatekeepers who determine whether a given defendant may plead into drug court. The programs discussed in this section all operate at the county or circuit level, not the municipal level, so the prosecutors referred to throughout are affiliated with district attorney offices.

Once the eligibility determination is made, the individual is offered an opportunity to plead in to drug court. Typically, they plead guilty, but the judge does not pronounce the verdict. If they complete the program successfully, the prosecutor moves to dismiss the charges, the judge accepts the motion, and the guilty plea never turns into a guilty verdict. If they fail, the judge pronounces them guilty and imposes a sentence of probation or prison time.

After they plead in, participants in some drug courts are evaluated and assigned

a “track” based on their needs. Programs may require participants to attend a treatment program of some type, participate in recovery groups like Narcotics Anonymous, submit to drug tests, and attend court at regular intervals until they have completed the program or failed out.

Often, drug courts contract with treatment providers. In some places, participants sent to inpatient with the contracted provider do not incur costs for that treatment but do incur costs if they elect and are permitted to seek treatment at a different provider. State-certified treatment providers must be secular. However, many non-certified providers are faith-based. Due to a lack of capacity in certified programs, many people find themselves in programs that incorporate Christian prayer into their services as a matter of policy or practice, raising concerns about how welcoming and accessible these programs are to religious minorities and LGBTQ Alabamians.

COSTS

Whether or not they pay for treatment separately, nearly all drug court participants pay dearly for the privilege of drug court. Costs typically include a fee for participating, evaluation fees, and monthly or per-test fees for drug testing.

It is nearly impossible for people who plead in to know how much they will have to pay before they graduate. Indeed, drug courts we asked were unable to come up with a total price themselves, or even a price range. Courts know exactly how much *they* charge: \$1000 per participant plus extra for drug tests in Tuscaloosa’s Second Chance Program; \$2000 per participant plus extra for drug tests in Shelby County; \$125 per person per month including drug tests in Butler County. But many programs charge extra monthly fees when participants take longer than expected to finish, and those cannot be predicted at the outset.

On top of that, all programs require participants to be tested for drug use. Some, such as

the Linden-based court that serves Marengo and four other counties in Alabama’s western Black Belt, have participants test once a week for a set fee (in Linden’s case, \$20 per test). Others, like Shelby County’s Columbiana-based court, put participants on randomized drug tests. Appleseed spoke with some drug court participants who were required to test up to 28 times a month. Prices per test range from \$10 to \$25 per test, depending on the location and what the individual is being tested for. All these variables make it impossible to predict how much drug court will cost in total.

Alabama’s Administrative Office of Courts makes modest grants available to drug courts that meet certain requirements. Alabama Appleseed requested details about the grants, including a list of courts that have taken advantage of them and how they are

THE SHELBY COUNTY drug testing lab is where nearly all participants in drug court must test many times a month, even if they live hours away.



“I eventually got out of it. I paid enough money.”

MARILYN'S STORY | SHELBY COUNTY

Marilyn, from Homewood, was 30 when she pled into Shelby County's drug court after being caught with marijuana and a small pipe at a 2013 concert in that county. Marilyn had a small amount of marijuana between her fingers when police burst into the truck where she and her friends were tailgating. Police took her name and cell number but did not arrest her, telling her she could stay out of trouble if she identified other individuals at the concert who were using or selling drugs.

Marilyn didn't see anyone using drugs. She left the concert early. For several weeks, she received phone calls from one of the officers, who insisted that the only way she could avoid charges was to turn someone else in.

Marilyn was not able to do that. Eventually, she learned there was a warrant out for her arrest on charges of misdemeanor possession of drug paraphernalia. She turned herself in, hired a lawyer, and on his advice pled into drug court.

Marilyn lived about 45 minutes from where the drug court and drug testing facilities were located and was forced to negotiate with her boss for time off whenever she had court or her color was called. Though she never tested positive for drug use, she was called in for tests multiple times each week, enduring an intimate search of her person and undergarments each time she did.

For nine months, she was unable to leave the area even for a short time to spend the holidays with her family, because her color could be called at any time. She also endured severe pain because she was not allowed to take prescribed pain medication in connection with a root canal, so she opted to wait to have the procedure until drug court was over.

Worst of all was the anxiety.

“Just hearing [the judge] talk to anyone else gave me anxiety, because everyone was being put on the spot, and these people would be there with their children and their children would be hearing these ways these people were talking to them, and there would be all these other people in orange jumpsuits, handcuffed, ankle chained and all this stuff.”

“I eventually got out of it,” she said. “I paid enough money. I never thought that I would. It felt when I was in there, like, is this system meant for people to fail?”

used, but received no information despite multiple conversations by email with the public information office. Based on conversations with judges and court staff, the grants come with time-consuming requirements, and are not enough to pay for salary and benefits for even a single staff member. Some counties apparently choose not to seek them for this reason.

STAFFING MEETINGS

Appleseed attended staffing meetings in Butler, Shelby, and Tuscaloosa counties. As a condition of the unprecedented access we were granted to these meetings, we agreed not to divulge personal details that would reveal the identities of drug court participants in connection with the deliberation about their specific cases. Drug court docket days are open to the public, but out of respect for participants' privacy, we have not included the last names of anyone who did not expressly grant us permission to do so.

Though variation existed across counties, staffing meetings generally included the judge, at least one assistant district attorney, a master's-level social worker, and one or more case managers whose job is to maintain close contact with participants and report on their progress. In Shelby County, meetings also included the head of the county Community Corrections program, which oversees drug testing, and two public defense lawyers who represent the majority of the clients in that court. Defense counsel was also present at the Butler County meeting. In Tuscaloosa, we were told that defense counsel is invited but does not typically attend.

Staffing meetings generally consisted of a thorough discussion of each partic-

ipant's progress as well as any setbacks or noncompliance issues. The team deliberates about each case, with the judge listening to recommendations about sanctions from case managers and defense counsel where they were available. It was our observation that judges were relatively deferential to the recommendations of staff, though they pushed back against and overruled recommendations they considered to be too harsh or too weak.

Staffers' knowledge of clients' circumstances and personalities was impressive. They knew whose partner had just given birth, who was looking for a new job, whose boyfriend was probably the reason they had slipped up again. They knew whose mother had died when they were young, precipitating a life of bouncing between relatives' homes.

In general, sanctions were devised with these individual circumstances in mind, so a person the staff believed was genuinely trying to comply was likely to be sanctioned less harshly than someone the staff felt was being evasive or dishonest. Even more intimate knowledge of participants' circumstances was present in the smallest drug court we observed: In rural Butler County, the judge had personal knowledge that one participant traveled around the region shoveling silage, a seasonal job, and opted against sanctioning him for failing to attend the required number of recovery meetings because of the intense demand for such work during that particular time of year.

Nearly all decisions about how individuals would be sanctioned were made during those meetings, though participants were also given an opportunity to speak up for themselves in brief, semi-private conversations with judges before the sanction was finalized. Participants generally knew what to expect before they showed up. Testing positive for drug use or missing a drug screen nearly universally resulted in at least 24 hours in jail, for instance, and most people already knew if they had tested positive before coming in.

The form of enforcement varies, however. Shelby County is experimenting with alternative sanctions for people who fail drug screens early on in their drug court participation, on the evidence-backed theory that people with addiction issues will experience setbacks on the road to recovery. But anyone who *is* sanctioned with jail in Shelby County is handcuffed, booked in, and locked up immediately.

By contrast, individuals sanctioned with jail in Butler and Marengo counties are given the option of turning themselves in later after calling their bosses, making childcare arrangements, and otherwise attending to personal matters. The judge in Marengo County was unusually compassionate in this regard: When he learned that a man who had tested positive for alcohol use had a new job and was also the one responsible for taking his father to appointments for dialysis and chemotherapy, he decided on the spot not to jail the man, but instead issue a stern warning that this was the only time such an accommodation would be made.

An element of performance is evident in judges' dealings with participants. In every staffing meeting we saw, there were specific recommendations about the tone the judge should take with any given client. Some who were to be sanctioned were to be showered with praise for trying hard; some who were to be let off with a warning were to be spoken to sternly, to let them know this would be the last time noncompliance would be tolerated. In court, sanctions are delivered in an almost dramatic fashion clearly intended to serve as a warning and lesson for participants. Praise and positive reinforcement from the bench are similarly ostentatious, including things like printed certificates and cake to celebrate graduation.

“DEFEATED BY FINANCES”

Everywhere we went, we witnessed discussion of how to manage participants' financial circumstances. Just as they were aware of clients' other life circumstances and major

milestones, so too were drug court staffers familiar with their financial straits.

Poverty was a universal theme.

In a Shelby County staffing meeting, a woman who repeatedly relapsed just before she was due to graduate was described as “defeated by finances” — in other words, the staffer thought she was relapsing because she could not afford to pay to finish the program and could not bear to face that reality. Also in Shelby, it was acknowledged that one participant, a disabled man who relied on a walker, was living in a homeless shelter partly due to the cost of participating in drug court.

In Tuscaloosa, staffers privately described one participant as “destitute” and “pitiful,” observing that he is forced to walk to court from miles across town because he does not have a car. In Butler, the team deliberated at length about how to handle the case of a man who was complying with all requirements but was not paying his drug court fees. On one hand, the man had a job, and they felt it was unfair to give him a break that other participants wouldn’t get. On the other hand, they were impressed by his outstanding compliance and felt bad setting him back solely for financial reasons. In Butler County, nearly a quarter of residents — including people who work — live below the poverty line.⁴⁰

In conversations with Appleseed, drug court judges and staffers expressed discomfort with the imperative of extracting money from people they knew didn’t have it. But the universal bottom line was that, due to lack of state funding, the programs would cease to exist if people did not pay to participate. The sentiment was: better this than nothing.

Left unsaid was the fact that drug courts make choices too — including choices that increase the cost of participation. Shelby

County, for instance, uses a state-of-the-art device that screens samples for a wider range of drugs than the machines used in other counties. The lease for that machine costs about \$80,000 per year,⁴¹ and some of that money comes from drug court participants.

Shelby County is proud of the thoroughness of this test and rarely lets participants test elsewhere, meaning that nearly everyone who participates in Shelby County Drug Court must drive to Columbiana, Ala., every time they are selected for a random screening. The lab is open from 7:00 in the morning to 7:00 at night: Individuals who arrive at 7:01 p.m. find a locked door and are sanctioned for missing a test, which the court considers equivalent to testing positive for drug use. Exceptions are made on a case-by-case basis for people with long work hours or lengthy commutes: These individuals may test as late as 10 p.m. On docket days in Shelby County, Appleseed observed numerous participants who had to travel several hours to get to court and to test multiple times a week.

Interestingly, Shelby County charges drug court participants less per test than it charges individuals under pretrial supervision, even though the two are tested the same way.⁴² The justification offered by the head of Shelby County Community Corrections, who oversees both programs, was that drug court participants are in the program longer and are paying for other services.

IT AIN’T OVER TILL IT’S OVER

In every program we encountered, completion meant complying with an individualized treatment plan, meeting certain benchmarks such as a certain number of weeks with clean drug tests, finishing all required community service, and paying all fees in full. Butler County permits people to provision-

ally graduate and stop attending court and drug testing if they have paid all their drug court fees but still owe fines, fees, or restitution on other cases that were included in the drug court pleas, but does not formally drop their charges until all payments are made in full. Shelby County requires all restitution on cases associated with the drug court plea to be paid up front.

In Shelby County, where the shortest drug court “track” is 6 months, the longest is at least 12 months, and it routinely takes people three or more years to complete the program, people are promoted to less-intensive levels of supervision as they progress through the program. However, they cannot “level up” to a less intensive form of supervision until they have paid what they owe up to that point. Shelby County participants who get seriously behind on payments are required to come once a week. “Life’s a little inconvenient when you have to come here every week. You have financial obligations, and you’ll pay them,” Judge Mike Joiner told “pay plan” participants at a June 2019 docket.

One requirement of Shelby County’s drug court is that participants agree to allow law enforcement to search their phones, homes, and vehicles at any time, meaning that people who are in the program longer are far more exposed to the possibility of re-arrest than those who can pay quickly and get out.⁴³

In Tuscaloosa, Appleseed observed a meeting of the “slow docket,” tailored to people who have complied with treatment obligations on the expected timeline but who have failed to complete the 40 hours of community service and pay the \$1000 expected of all participants, whether they are on the 3-month “track” devised for low-risk offenders or the 12-month track devised for people deemed to require more services.⁴⁴ There,

even a late payment can result in sanctions: The day Appleseed observed court, the judge sanctioned a woman who paid a few hours late with additional community service. Later in the docket, it looked as though the judge was going to remit the outstanding balance owed by a man his staffers had called pitiful and destitute, but he seemed to stop himself on the verge of mercy, and told the man to pay what he could and come back next month. He privately expressed anguish at this decision, but felt he had no choice because the program needs user fees to operate.

People on Tuscaloosa’s slow docket are only required to come to court if they have failed to meet their financial or community service obligations for the previous month, meaning that people who lack access to wealth are more likely to have to miss work to attend court and explain themselves. Meanwhile, people with spare cash have the option of purchasing items like clothing, household supplies, and pet food for donation to local charities in lieu of 20 of their 40 hours of community service, meaning that Tuscaloosa drug court participants with access to wealth can buy their way out of part of their obligation. Only people who are unable to work due to disability are routinely let out of court without fulfilling their financial obligations.

In Butler County, every drug court participant is on the same 12-month track and pays \$125 per month until they finish, even if that goes beyond 12 months. However, they pay no additional fees for drug testing. Once they complete all program requirements, they are permitted to graduate on a rolling basis, though charges are not dropped until all payments are made.

Making matters more complicated, in some instances, individuals may have to pay additional fees unrelated to drug court in

◀ Payment structures varied everywhere we went. **None of them were affordable** for people who lack wealth.

order to graduate. For instance, obtaining a valid driver's license is a common condition of drug court — but many poor Alabamians have their licenses suspended in connection with unpaid tickets. To comply with court orders and graduate, these people are not only expected to come up with the money directly associated with drug court, but also to pay off whatever court debt is preventing them from having licenses. In Shelby County, a woman spoke proudly of getting her driver's license back after paying off \$600 worth of debt. "I could graduate in July but I won't have enough money to do it then," she told the judge in June. "We'll be happy to have you around for a few more months," he replied.

An additional arrest could be catastrophic for a drug court participant, even one who has complied with the program in all ways but has not yet paid all they owe. In a worst-case scenario, an additional arrest can result in termination from the program, reinstatement of charges, the imposition of a guilty verdict, and prison time. The fact that people remain exposed in that manner solely because they cannot pay, while similarly situated people who have completed payments are offered the chance to deal with any new charges as though they have a clean slate, raises serious questions about the justice of this system.

STRUCTURAL OBSTACLES

Although the cost of drug court is the most readily quantified of its problems (and even that data is sparse due to drug courts' failure to quantify, audit, and track costs), other structural obstacles are as much of a problem or greater. Simply put, most drug courts are not designed in a way that meets the needs of the population that they serve.

DISTANCE

People are required to plead in to and attend drug courts in the jurisdiction where they are charged, not the jurisdiction where they live. Some drug courts, such as the one in Tuscaloosa, allow people who live more than a certain number of miles away (250, in the case of Tuscaloosa) to be supervised where they live and limit their required in-person check-ins with the court to once every few months. But for the most part, people who live in Alabama would not live far enough away to qualify for such an accommodation.

As a result, many people must drive hours and hours to get to and from court. Even a docket that lasts less than an hour means a full day of travel for such individuals, who are also burdened with the cost of making frequent, lengthy car trips. At a Friday morning docket in Marengo County, we encountered a man who lived across the state in Etowah County. He was charged with possessing marijuana while traveling to visit family in Greene County (which is part of the circuit the Marengo-based court serves), and thus ended up in a drug court that is very far from home. While the court arranged for him to drug test and do outpatient work where he lives, he must still arrange his own transportation to Marengo County one Friday per month to attend a docket. It is 364 miles round-trip, and just under eight hours of driving. For drug court participants who don't have licenses or who lack access to a vehicle of their own, this is a terrible obstacle, even an impossible one.

TIMING

Most drug courts meet during the day on weekdays, meaning that participants are forced to take time off of work in order to comply. Judges typically issue Failure to Appear (FTA) warrants for people who miss their court dates. When law enforcement

“I could graduate in July
but I won’t have enough
money to do it then.”

finds the person, those warrants typically result in jail time. Some judges sanction people who are merely late, though most courts we saw were relatively understanding when people walked in within a few minutes of the start of court — as long as they had communicated with a staffer beforehand.

The drug court dockets we observed lasted at least an hour each, often much more. Drug court in Shelby County runs about four hours. The majority of participants were permitted to leave after being addressed by the judge, but some were required to sit through the entire docket, either as punishment or because their case was called last. Drug courts typically require participants to appear at least once a month and sometimes as frequently as once a week, forcing those who work hourly jobs to forfeit income every time they come. They also typically require participants who are not disabled to work.

The tension is obvious but unspoken: Most people who work full-time struggle to take parts of a day off on a regular basis, yet drug court participants must find a way to do so.

TESTING

The problem is exacerbated by drug testing requirements. Most drug court programs require participants to submit to randomized drug screens. Typically, people are put on the “Color Code” system, which assigns them a “color” and requires them to test every time that color is called. To find out if they must test, they call an 800 number

and enter a PIN. If their color is called, they must test that same day. Different colors can expect to be called at different frequencies, and people considered to be at higher risk are assigned to colors that are called more often. After showing progress for a period of time, they can petition to be assigned a different color that is called less often. But all calls are random, meaning that when a person’s color is up, they must make time that day to get to a testing facility and leave a urine sample.

Testing facilities do not make that easy. Some, like the one in Tuscaloosa, operate only during regular business hours and are closed during lunch. Shelby County’s facility is somewhat unusual in that it is open from 7:00 a.m. to 7:00 p.m. (with extended hours as late as 10 p.m. in special circumstances), but nearly all participants in Shelby County’s drug court are required to test there, even if they live many hours away. One former Shelby County drug court participant we spoke with said she knew of a fellow drug court participant who decided to move from north Florida to Shelby County in order to successfully comply with this requirement.

NOWHERE TO GO HOW A SHORTAGE OF TREATMENT FACILITIES DRIVES JAIL POPULATIONS

Unsurprisingly, many drug court participants are addicted to drugs. Yet due to a shortage of licensed facilities in Alabama, people whose substance use warrants inpatient treatment are unlikely to get the help they need right

“I can not get back on my feet because of my criminal debt. My fines have increased in 35% interest fee since I have been in a rehab that was court ordered.”

away. This problem is exacerbated by the fact that treatment facilities, unless they have adopted medication-assisted treatment protocols, typically are not equipped to handle the sometimes-severe withdrawal symptoms that accompany the detoxification process. As a workaround, they require people to have all drugs out of their system when they enter. According to insiders familiar with the system, the state funds substance abuse treatment facilities so inadequately that there are no treatment beds even in places like Huntsville. Meanwhile, lack of Medicaid expansion has stifled the expanse of treatment services. Sources inside the system say that more than half of substance abusers who are deemed appropriate for referral to residential treatment and placed on the Department of Mental Health’s waiting list either die, are incarcerated, or drop off the list. Due to lack of appropriate facilities, many people experience the miserable and dangerous detox process in jail.

Again and again in drug court staffing meetings, staff struggled with what to do with people who were unable to stop using drugs voluntarily and required inpatient treatment. In many instances, drug court teams reluctantly decided to confine such people in jails or similar facilities until treatment beds opened up — sometimes for weeks. Not a single drug court staffer we encountered liked this solution. They simply saw no viable alternative for guaranteeing that people with serious addictions who had already detoxed would not use drugs again while they waited for space in treatment facilities.

ALABAMA’S DRUG POLICY WHEN THE PUNISHMENT IS WORSE THAN THE CRIME

Although many drug court participants struggle with addiction, some do not. Some people in drug court are recreational users

of illegal substances — often but not always marijuana. Once charged with possession of marijuana or another controlled substance, successful completion of drug court may be the only guaranteed way to avoid a potentially life-changing conviction. A wide net for diversion also means more revenue for government agencies and systems that control these programs.

But the National Association of Drug Court Professionals cautions that drug court is best suited to treat people with substance use disorder, observing that, “Drug Courts that focus their efforts on these individuals—commonly referred to as high-risk/high-need offenders — reduce crime approximately twice as much as those serving less serious offenders and return approximately 50% greater cost savings to their communities.”⁴⁵

In fact, exposing low-risk individuals to the onerous requirements of drug court can actually harm them: “Providing substance use disorder treatment for nonaddicted substance users can lead to higher rates of reoffending or substance use or a greater likelihood of these individuals eventually becoming addicted. In particular, mixing participants with different risk or need levels together in treatment groups or residential facilities can make outcomes worse for the low-risk or low-need participants by exposing them to antisocial peers or interfering with their engagement in productive activities, such as work or school.”⁴⁶

Some drug courts have different “tracks” tailored to people with different levels of need, but many require all or nearly all participants to engage with programming not designed to serve people who do not have addiction issues. In other words, in large part because of Alabama’s harsh drug laws, the only system available to people who want clean records endangers some participants.

A quarter of a century ago, conservative icon Williams F. Buckley observed that only a minority of people who use illegal drugs become addicted and concluded that the costs to society of the war on drugs far outweighed its benefit. He called the criminalization of marijuana and its consequences “the legal equivalent of a My Lai massacre” and advocated that the sale of all controlled substances, not just marijuana, be legalized and regulated.⁴⁷

The Cato Institute, a libertarian-leaning public policy organization focused on individual liberty, limited government, and free markets,⁴⁸ calls for an end to drug prohibition because it “has contributed to an increase in drug overdoses and fostered and sustained the creation of powerful drug cartels.” The War on Drugs, Cato concludes, “not only fails in its own right, but also actively undermines

the goals of the Global War on Terror.”⁴⁹

On an individual level, harsh drug laws can result in increased mortality rates from overdoses, because they force people to weigh the risk of arrest if they contact law enforcement in response to an overdose. The harsh laws drive mass incarceration and disproportionately impact individuals and communities of color despite similar rates of drug use across racial lines.⁵⁰

The American Public Health Association, a 150-year-old nonpartisan professional organization focused on improving public health,⁵¹ recommends “a full reorientation toward a health approach to drug use” and “recommends ending the criminalization of drugs and drug consumers, prioritizing proven treatment and harm reduction strategies, and expanding (and removing barriers to) treatment and harm reduction strategies.”⁵²

“At the Discretion of the District Attorney”

THE STATUTE

“PRETRIAL DIVERSION PROGRAM or PROGRAM. A voluntary option that allows an offender, upon advice of counsel or where counsel is waived in a judicial process, to knowingly agree to the imposition by the district attorney of certain conditions of behavior and conduct for a specified period of time upon the offender which would allow the offender to have his or her charges reduced, dismissed without prejudice, or otherwise mitigated, should all conditions be satisfied during the time frame set by the district attorney as provided in the agreement.”⁵³

THE REALITY

In 2013, as today, the State of Alabama faced pressure to reduce prison overcrowding and improve the treatment of incarcerated people. Among the acts passed to address the crisis was a law expanding district attorneys’ authority to create their own pretrial diversion programs. Prior to passage of this bill, a number of DAs and municipalities had created locally run diversion programs, but the 2013 law gave the green light to all prosecutors’ offices to set up diversion programs, whether or not similar options such as drug court were already in place.

Pretrial diversion can be a way for low-level offenders to demonstrate they can safely remain in their communities, improve their lives, and repay society for harm they may have caused. As with drug court, people who successfully completed the program avoid criminal conviction.

As the Office of Prosecution Services described in a recent report: “The act allows each jurisdiction to tailor a voluntary program based on available resources.”⁵⁴ In practice, this means that district attorneys decide who is offered the option of participating in pretrial diversion, how long participants must stay, and what they must do to complete the program.⁵⁵

District attorneys also collect the money from participant fees — and decide how to spend it.

The programs rely on payments from the people trying to avoid a conviction. This arrangement has resulted in prosecutors collecting at least \$6.83 million in application and administrative fees from people charged with various felonies and misdemeanors in less than five years, according to the Office of the Examiners of Public Accounts.⁵⁶ These fees do not include additional costs participants incur for requirements such as drug screens, drug counseling, classes, educational programs, court costs, or restitution.⁵⁷ The varying structure of the programs means some people pay a few hundred dollars, others pay several thousand.

What’s consistent about pretrial diversion programs is that prosecutors alone retain power over people’s punishment — and in many circuits, the longer a defendant stays in a program, the more that person pays. What’s more, defendants must plead guilty and waive their right to a trial in order to enter a pretrial diversion program. If they cannot complete program requirements or keep paying the fees, they risk a felony conviction.

Multiple district attorneys’ offices have taken in around a half a million dollars each in just a few years.⁵⁸ The monies represent a direct transfer of wealth from people arrested for low-level offenses to the elected officials with authority to wipe those convictions off their records.

HOW PRETRIAL DIVERSION PROGRAMS WORK — AND WHO THEY WORK FOR

Pretrial diversion, also called DA Diversion, Pretrial Intervention (PTI) or Deferred Pros-

ecution, operated by district attorneys is not unique to Alabama. As states have grappled with overcrowded prisons, increasing prosecution and court costs, and related system inefficiencies, 37 states have adopted some form diversion operated by district attorneys or courts.⁵⁹

In Alabama, the programs generally work as follows: A person is arrested in connection with a low-level felony or misdemeanor, such as drug possession, shoplifting, or forgery. People charged with the most serious offenses such as murder, robbery, rape, known as Class A offenses, or crimes involving physical injury or harm to a child, are not eligible. Applicants fill out forms and answer questions about their criminal history, education, family, and job. If the district attorney agrees to accept them, the person waives their right to a trial and pleads guilty.

Additionally, the judge may require the applicant to:

- Waive their right to counsel;⁶⁰
- Provide a written statement admitting guilt;
- Agree in writing to all conditions established by the district attorney, including payment of program fees;
- Agree to pay restitution, which might be an unknown amount. The participant may have to agree “for restitution to remain open for future changes due to the nature of the injury or loss pursuant to the agreement.”
- Agree to pay law enforcement expenses “if the law enforcement agency incurred extraordinary law enforcement expenses as determined by the district attorney.”
- Agree in writing that the court will retain jurisdiction over them after they have completed the program to enforce collection of restitution and court fines and fees — the same costs they would have to pay if convicted.⁶¹

The district attorney’s office can impose up to 27 different requirements on program participants such as job training, drug treatment, and community service. Other potential requirements include: refrain from traveling outside the state, learn to read and write, agree to having wages garnished

for program fees, refrain from possessing a firearm, or not endangering the dignity or morals of anyone else.⁶²

A CONFLICTED ARRANGEMENT

On paper, pretrial diversion appears to be a promising way to provide a clean slate to first-time offenders who prove they stay on the straight and narrow for an extended period of supervision and can support their good intentions with regular payments.

In reality, as policymakers, legislators, and attorneys who work in this system increasingly observe, it's a conflicted arrangement that is inherently more accessible to people with access to wealth. People who want to avoid incarceration become eager, though sometimes desperate, revenue sources.

"We incentivize, through our lack of [legislative] action, prosecutors to figure out a different system of justice based on your ability to pay. We incentivize a pay for play system," Rep. Chris England (D-Tuscaloosa) commented at an October 2019 meeting of the Governor's Study Group on Criminal Justice Reform. In his view, "Poor people cannot afford second chances, which breaks down along racial lines."

DOLLARS AND CENTS

So how much can an individual expect to pay? As with other kinds of diversion programs, costs vary widely. For starters, the statute permits district attorneys to assess an administration fee of up to \$1,000, "for each case for which the offender makes application for acceptance into the pretrial diversion program."⁶³

Additionally, many offices charge one-time application fees of \$100 to \$350 just for people to find out if they are eligible for diversion. This fee is often nonrefundable. Monthly monitoring fees may also apply. In interviews with participants, we learned that they are often required to submit to — and pay for — weekly drug screens, which generally run \$10 to \$25. Finally, participants might be required to

"District attorneys also collect the money participant fees — and decide how to spend it."

pay for their own court-ordered treatment, education, or rehabilitation program, even their appointed attorney.

The Baldwin County District Attorney's Office, which operates a particularly active pretrial diversion program, requires participants to pay the following costs in felony cases:

- \$1,000 administrative fee
- \$350 application fee
- \$100 per month monitoring fee for 12 months, which drops to \$25 per month if the participant has followed all the rules and paid all the fees for 12 months.
- \$20 per week drug screen (paid to a different organization)⁶⁴

Altogether, 18 months of pretrial diversion in Baldwin can cost an individual \$3,010. A family of three in poverty would pay 14% or more of their annual income into this program.

Lee County, with another active program, has a full menu of cost options based on the severity of the offense. Traffic cases can be disposed of through pretrial diversion for \$673, DUIs are \$1,183, while felony drug offenses cost \$1,713. Participants deemed poor enough for an appointed attorney can be required to pay an additional \$500 in appointed attorneys fees, pushing the total cost for a felony above \$2,000.⁶⁵

Diversion in the Second Judicial District (Butler, Crenshaw, and Lowndes counties) is more affordable. Felonies cost \$750; misdemeanors \$500. But even in this high-poverty area, additional fees may be assessed, including: \$50 to the court clerk, \$25 to the arresting agency, \$50 to the county general fund.⁶⁶

These variations are not inconsequential. The lack of a few hundred dollars can extend

someone's length of supervision and monitoring. Extended supervision and monitoring can cost hundreds more dollars. Worse, a slip-up such as a positive test for alcohol or marijuana use while under supervision, can end with a participant being removed from the program and incarcerated. Geography and wealth, not dangerousness, can determine whether someone is jailed.

As with costs to participants, collections by district attorneys' offices vary dramatically. Baldwin County reported \$986,669 in pretrial diversion revenue in fewer than three years of operation, from December 2013 to July 2016. The 19th Judicial District (Autauga, Chilton, and Elmore counties) took in about half that amount, \$418,761, but the administration fee is less there; it's \$887.

Jefferson County's District Attorney, Alabama's largest jurisdiction, collected no money from participants because it does not run a pretrial diversion program. Instead, the Jefferson County Commission funds specialty courts which serve as the county's deferred sentencing program. From 2015-2018, the county spent approximately \$1.2 million per year on these services, which are provided by the UAB School of Medicine's Department of Psychiatry. In Jefferson, 1,232 participants completed these programs.

FOLLOW THE MONEY — IF YOU CAN

With increasing attention from legislators on so-called "pay to play" justice, district attorneys have been quick to point out that their pretrial diversion programs do not exclude the indigent. However, the 2013 law was drafted to require more than just a general indigency determination before a low-income participant can enter the program. An applicant must prove not only are they poor now, but they will be poor later and are not *capable* of becoming less poor in the "foreseeable future."

The statute reads: "Any costs or fees shall not be waived or omitted unless the defendant or the party responsible for paying any fees **proves to the reasonable satisfaction of the judge presiding or sentencing judge that the defendant**

or party is not capable of paying the same within the reasonably foreseeable future."⁶⁷

The statute lacks any requirement or monitoring function to ensure people who have legally qualified as indigent receive the same second chances as people who can afford to pay thousands in fees and costs.

In researching this report, Appleseed sent open records requests to Alabama district attorneys who operate pretrial diversion programs. Among the information requested was the number of indigent participants accepted into their programs in the last year.

Only the Madison County district attorney supplied a comprehensive response. Madison County enrolled 206 people into Pretrial Diversion in 2018. Only 1.4% of participants — three people — were indigent and still allowed into the program. During that time, the DA's office collected \$183,590 in participant fees, according to responses provided by Madison County DA Robert Broussard's office.

Over the last two years, Appleseed has surveyed more than 1,000 Alabamians with experiences paying court costs, fines, and fees. Most of those surveyed were low-income people receiving services at homeless shelters, prison re-entry facilities, and other direct services available to the poor. Only 2.9% of those surveyed had been in pretrial diversion programs. Given their higher rate of participating in supervision programs targeting low-level offenders such as drug courts, CRO, and probation, this number raises concerns about whether pretrial diversion programs are accessible, or even offered, to people who lack wealth.

Though Appleseed was able to document nearly \$7 million in pretrial diversion participant fees collected by DA's offices statewide, there is no publicly available data showing whether Alabamians too poor to pay into these programs also get second chances.

Even those who helped create the system acknowledge its shortcomings. "The DAs in Alabama prefer that diversion be funded by the state and that we have a robust data

collection and reporting system,” said Barry Matson of the Office of Prosecution Services.

Diversion was sold as a way for the state to save money, help overburdened courts and relieve packed prisons. But it has transformed into a revenue stream for district attorneys’ offices that has been permitted to operate without providing evidence that it fulfills original intent.⁶⁸

There is very little oversight or transparency as to how the money is spent, what happens to people in diversion programs, or whether people who can’t afford to pay dollars get access. The secrecy occurs in large part because of provisions in the law that give the district attorneys control over who gets in and what happens to them, and how much they pay the prosecutors in charge of granting these coveted second chances. And the database collecting this information is secret — by law.⁶⁹

The law also provides enormous discretion as to how the fees are spent. All fees collected from the program be paid into the District Attorney’s Solicitor Fund and “shall be used to pay costs associated with the administration of the pretrial diversion program or *any other law enforcement purpose*.”⁷⁰ The statute requires all program costs be paid from fees, including “but not limited to” salaries, rent, travel, vehicles, and clothing for staff.⁷¹

Former Houston County District Attorney Doug Valeska apparently interpreted that to mean clean vehicles. He spent pretrial diversion fees to have his SUV washed, waxed, and detailed several times. Valeska also spent thousands in program fees to provide business suits to attorneys in his office, and even sheet cakes for retiring judges.⁷² There was plenty to spend from Alabama’s Twentieth Judicial Circuit, which includes Houston and Henry counties. The circuit ran an especially robust pretrial diversion program that reported \$505,995 in fees collected from 2014 to 2017, according to the Office of the Examiner of Public Accounts.

Along with office expenses and clothing for staff, the law permits district attorneys to spend pretrial diversion collections

SPOTLIGHT

Montgomery’s Diversion Program

This report raises serious questions about the wisdom of allowing district attorneys to run their own diversion programs, particularly under the present statute. But at least one program deserves commendation for its focus on rehabilitation and its use of county funds rather than user fees to operate.

Montgomery County’s pretrial diversion program is fully funded by the county, and any fees collected are deposited into county coffers. According to District Attorney Daryl Bailey, the program has an annual budget of about \$700,000, but collected only \$71,584 in fees in 2018 — a tenth of its operating cost and a fraction of what many counties with much smaller numbers of participants take in. Additionally, the District Attorney in 2019 codified a policy he says has been in place since he took office in 2014 of barring the program from rejecting or terminating participants who are unable to pay program costs, court costs, or fines. They are expected to pay restitution to make victims whole.⁸⁹

Pretrial diversion participants must do 60 hours of community service, attend group and individual counseling, and participate in drug treatment if they have an addiction issue. Counseling is available both during the day and after business hours, to give participants a wider range of options for completing the program.

Defendants are not sanctioned with jail time if they are able to explain why they missed a mandatory element of diversion such as a drug test or appointment. However, missed appointments may result in more rigorous oversight, such as mandatory inpatient treatment for individuals struggling with addiction.

Participants are expected to find employment and to work towards completing their GEDs or advancing their education, usually by taking free classes online or at a local community college. The basic idea of the program, Chief Deputy District Attorney Lloria James told Appleseed, is to “get people to take a stake in their own life.”

on services to assist participants, such as educational or treatment services. Appleseed twice submitted records requests to the Office of Prosecution Services requesting names of any treatment providers whose services are funded by participant fees. OPS declined to provide this information.

A major challenge to assessing the usefulness of these programs is that most of the data is collected by the District Attorneys and maintained by the Office of Prosecution Services in a private database.⁷³ Over the course of five months, Appleseed submitted open records requests to OPS as well as the individual district attorneys who operate pretrial diversion programs. We requested data that would help us evaluate the critical question of whether their programs are equally available to poor people, or whether they truly are pay-to-play programs, as some legislators and attorneys have suggested. We asked for the numbers of people deemed indigent who were admitted into programs, as well as demographic data that would show whether African Americans, who are overrepresented in the criminal justice system, have equal access to pretrial diversion. Only Madison County provided the requested information as to indigent admissions.

Barry Matson of the Office of Prosecution Services explained the lack of data as follows: “I do agree that the court system and DAs have much difficulty in data collection. Many of our DAs still use 3 X 5 index cards as a case management or have closed systems that do not connect with [Administrative Office of the Courts], [Office of Prosecution Services] or other district attorney’s offices.”

Appleseed is not the only entity scrutinizing these programs. In 2019, OPS and the Alabama District Attorneys Association provided a report on pretrial diversion to the Governor’s Study Group on Criminal Justice Reform, which was working to address the prison crisis. The report included a chart with statistics on numbers of people who entered, completed

and were terminated from programs by judicial circuit. But in 5,581 cases, approximately one third of all pretrial diversion cases in the last five years, data were missing as to whether participants who entered completed or were terminated. Some of the most active circuits, including Baldwin, Mobile, and Geneva/Dale counties provided no outcomes for participants. And only Morgan County provided recidivism data showing 11 percent of the 283 participants who completed its program re-offended.

However, even in reporting to the six legislators and three executive agency heads on the study group, there were gaps in data, as OPS explained: “Complete statistics are not maintained in a consistent manner.”

Appleseed sought clarification regarding the gaps in data, and Matson responded in an email, “The time periods for which they were collected were not consistent. Some counties provided two or more years of numbers while other could only provide one. Some counties were unable to provide numbers or at best only gave samplings.”

Matson continued, “I believe the information should be public and I will work to improve data collection and reporting in the 2020 legislative session.”

Like other diversion programs we have investigated, there is little question that pretrial diversion operated by state and municipal prosecutors has provided second chances to deserving individuals whose incarceration would have provided no public safety benefit to our communities, but instead would have contributed to an already bloated, overcrowded, inhumane corrections system. These programs can help people who have made mistakes move on with their lives. But it would be intolerable if that help were only available to those who can pay and who have lifestyles that can accommodate program requirements. Like drug courts, pretrial diversion programs must be accessible, affordable, and structured in a way that accommodates the lived reality of the people who need them.

“A Deadly Amount”

Rondell Johnson's Story | Montgomery County

Montgomery is trying to do things differently. And yet, even a program designed to accommodate the needs of poor people with full-time jobs struggles to overcome all the obstacles created by Alabama's harsh and mindlessly punitive mechanisms for punishing low-level offenders.

Rondell Johnson is a sanitation worker who received an offer to participate in pretrial diversion in connection with a 2016 nonviolent felony charge.

He jumped at the chance, eager to put his mistake behind him. But Johnson also owed about \$3,000 in traffic debt. He got one of the tickets, he recalls, on the way to take a test to become a corrections officer. He missed the test.

Under the district attorney's rules about ability to pay, the fact that Johnson owes money in other jurisdictions did not bar him from participating in the program. But the Failure to Appear (FTA) warrants do.

Johnson owed traffic debt in several jurisdictions. Some places allow people to clear FTAs by paying some or all of what they owe, but in some places, clearing an FTA can come with jail time. At one point, Johnson was stopped in Montgomery and extradited to Autauga County on an FTA related to unpaid traffic debt. He spent several nights in jail there and was only able to get on a payment plan after borrowing money to pay \$500 toward what he owed. He could not afford to do that elsewhere.

The attorney appointed to represent Johnson in Montgomery County was not authorized to represent him in the other jurisdictions where he owes traffic debt, nor was he legally entitled to an attorney

on those traffic debt cases even though he could not afford to hire one and his liberty was at stake. His license is suspended because of the unpaid fines and FTAs.

Johnson's efforts to get a second job were stymied because some employment agencies would not accept his application due to his pending felony. His take-home pay after taxes, insurance, and the child support that is automatically deducted from his check, was about \$330 every two weeks. He lived with relatives because he cannot afford rent and utilities.

Johnson described his outstanding debt as “a deadly amount. Like an amount that I know I can't come up with. I don't have no one I can go to and say hey, let me borrow this \$300, I have to pay. It's not that easy.”

Though desperate to improve his circumstances and move forward with his life, it took Johnson nearly a year after the initial offer of pretrial diversion was made to clear the FTA warrants and start the program.

“I got good potential. Good background. But no one's going to hire me because my case is pending,” he said. “I got a little on my back right now. I just got to get those things behind me.”



“It doesn’t go toward nothing.”

Kim Armstead’s Story | Lawrence County

Kim Armstead had struggled with addiction since being prescribed painkillers for severe endometriosis as a teenager. “I couldn’t even swallow pills when I first had it,” she shared. “Then I took that one and the pain went away, and it all went downhill from there.”

She enrolled in multiple drug rehabilitation programs seeking help for what became a pain pill addiction. But it was marijuana, not prescription drugs, that landed her in Lawrence County’s Pretrial Diversion program. Armstead, 35, was originally charged with unlawful sale of marijuana. Prosecutors offered diversion if she pled guilty to

unlawful possession of marijuana in the first degree — possession for other than personal use. Hanging over her head was a potential 5-year prison sentence if she did not complete the program. “They gave me 60 months. If I mess up at all ... I will have to do 13 to 60 months in prison. I don’t go back in front of the judge I go straight to jail,” she said. “They gave me 60 months behind something that’s legal most everywhere.”

Avoidance of this fate is heavily tied to regular payments to the Lawrence County District Attorney’s Office, plus additional fees to Drug Court and Court Referral, the costly and overlapping system of diversion programs that ensnare thousands of Alabamians with minor drug charges.

Enrollment in the district attorney’s pretrial diversion program began with a \$537 payment. Armstead understood that amount to be the startup fee. “It doesn’t go toward nothing because I still have to pay \$100 a month for 12 months.” In addition, she paid \$50 per month for mandatory drug testing and supervision by a Court Referral Office.

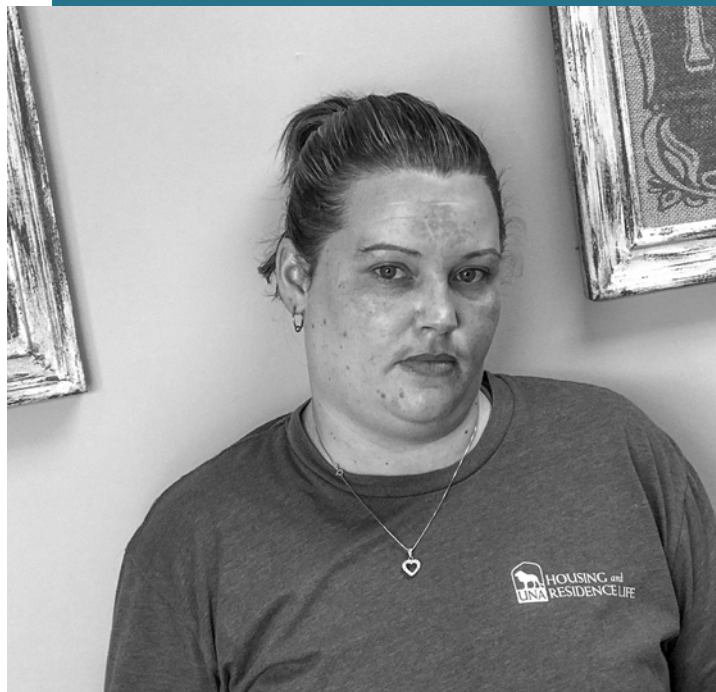
Armstead still suffers from debilitating endometriosis and is trying to cope drug-free. Doctors have recommended a hysterectomy. But she is newly married and hopes for a child someday.

She is steadily employed as a restaurant cashier, and working double shifts helps her maintain the payments. But with rent and utilities, it’s not easy.

In addition, law enforcement seized her car at the time of the arrest. The PT Cruiser was paid for, and she was not even arrested in the car. But with all of the other challenges, Armstead was unable to mount a legal case to get the car back, and recently purchased another vehicle with help from her husband.

However, before she is released from her diversion obligations, she will also have to pay \$633 in court fines and fees, which could extend her \$100 monthly payments to the District Attorney if she cannot come up with this amount all at once.

In total, she’ll hand over at least \$2,970, and perhaps a 2008 PT Cruiser, because of a small amount of marijuana. “It’s going to take me a long time to get back all the money I done paid to these folks.”



Community Corrections

THE STATUTE

“(a) An offender who meets one of the following minimum criteria shall be considered eligible for punishment in the community under this article: (1) Persons who, without this option, would be incarcerated in a correctional institution or who are currently incarcerated in a correctional institution. (2) Persons who are convicted of misdemeanors. (b) The following offenders are excluded from consideration for punishment in the community: (1) Persons who are convicted of offenses as listed in subdivision (14) of Section 15-18-171. (2) Persons who demonstrate a pattern of violent behavior. In reaching this determination, the court may consider prior convictions and other acts not resulting in conviction or criminal charges, and the offender’s behavior while in state or county confinement. (c) The eligibility criteria established in this section shall be interpreted as guidelines for the benefit of the court in making a determination of eligibility of offenders and assessment of funds under this article. (d)(1) Except as provided in subsection (a) of Section 15-18-172, the court may sentence an eligible offender as defined in this section directly to any appropriate community-based alternative provided, either as a part of or in conjunction with a split sentence as provided for in Section 15-18-8, or otherwise as an alternative to prison; or as a condition for a defendant to meet in conjunction with probation; and under such additional terms and conditions as the court may prescribe. Notwithstanding the foregoing, a defendant may only be sentenced to participate in community punishment and corrections programs when adequate space and staff are available. No program shall be required to operate beyond its staffing and design capabilities as provided in Section 15-18-172.”⁷⁴

THE REALITY

“The goal of community supervision,” according to the Alabama Department of Corrections, “is to control, monitor, and rehabilitate those persons who, according to a court of law, may serve their sentence within the community.”⁷⁵

In Alabama, one mechanism for fulfilling this goal is community corrections programs, or CCP. Established in 1991 by the Community Punishment and Corrections Act, CCPs are intended to be a way of permitting some individuals to live within their communities.

Community corrections is available to people who would otherwise be incarcerated in prison, including people whose probation has been revoked as long as they do not have any pending felonies.⁷⁶ People convicted of murder, first degree kidnapping, first degree rape, first degree sodomy, first degree arson, selling or trafficking controlled substances, first degree robbery, first degree sexual abuse, lewd and lascivious acts upon a child, forcible sex crimes, and first degree assault if the victim was “permanently disfigured or disabled,” are excluded from consideration for CCP, as are people who “demonstrate[] a pattern of violent behavior.”⁷⁷

Officially, participants in community corrections are Department of Corrections inmates. They are subject to a more intense form of supervision than that provided by probation. Non-compliance can be considered “escape,” and carry serious penalties including additional charges. Though they are not in prison, the threat of prison looms should they fail to comply with CCP requirements.

Participation in community corrections can benefit individuals, families, communities, and the state. Many programs permit at least some of their participants to live independently or with their families, keeping parents together with their children and permitting them to work regular jobs even as they serve their sentences. This keeps communities more stable and reduces the

exposure to Alabama’s violent, dangerous, and overcrowded prisons.

But this potentially beneficial program is not without its problems, particularly in terms of racial demographics, costs, and structure.

DISTURBING RACIAL DISPARITIES

In 2018, the Alabama Department of Corrections had 20,585 inmates in its “custody population.” Of these, 43.2 percent were white, 56.1 percent were black, and 0.7 percent were categorized as “other.”⁷⁸ The same year, the population of Community Corrections programs was 58.9 percent white, 40.7 percent black, and about 0.5 percent “unknown.”⁷⁹

The disparity between the racial demographics of the population in custody, who must bear the violence, danger, and misery of Alabama’s prisons, and the racial demographics of those in Community Corrections, who

enjoy a measure of liberty, is striking. African Americans, who comprise about 27 percent of Alabama’s total population,⁸⁰ are already overrepresented in Alabama’s correctional system. The fact that even within that system, their distribution skews even more lopsidedly towards the most miserable, most punitive form of punishment — incarceration in a prison — is disturbing.

COSTS AND STRUCTURE

Community corrections programs are run locally, with little oversight from the Department of Corrections. Many are nonprofit entities; others are associated with county agencies.

They are reimbursed at \$5-\$15 per day per inmate,⁸¹ which is a considerable savings from the \$60.34 ADOC cites as the average daily cost of maintaining inmates system-wide.⁸²

Many CCPs charge additional fees, such as supervision, drug testing and electronic

“No Food”

Shelby County’s Community Corrections Program

Columbiana, Ala. (June 6, 2019) — Alabama Appleseed was afforded an opportunity to take an unscheduled tour of Shelby County’s Community Corrections facility. Julius Cook, executive director of Shelby County’s CCP, led the tour, which lasted roughly an hour.

What we saw was eye-opening.

Many community corrections programs maintain housing facilities for at least some inmates. Shelby County, however, appears to be unique in requiring *all* CCP participants to live in its residential facility, which consists of a series of prefabricated buildings with separate quarters for men and women inmates.

Much of the facility is taken up by bunk beds, which include tiny areas where inmates may store personal

belongings. There are 66 beds for men and 24 for women. Fluorescent lights are on nearly all the time because inmates work different shifts. When we visited, some people were asleep on their bunks while others were at work.

In addition to sleeping quarters, there is a multipurpose space that can be used for classes or other events, or as overflow housing when all beds are taken, and a small exercise yard with a few free weights. Pay phones are available; cell phones are prohibited. The entire facility is surrounded by barbed wire, which Cook said was mainly to keep outsiders out, not to keep inmates in. Guards at the facility are not certified through Alabama’s Peace Officer Standards and Training Commission (APOST) and do not forcibly restrain inmates who walk off the premises. However, if an

inmate leaves without authorization, a warrant is issued for their arrest. After their initial adjustment period, inmates can earn the right to a day pass to leave the premises to visit with family.

All participants in the Shelby County Community Corrections Program are expected to work. Many of them work at fast food restaurants in the area, though other jobs are available. Their paychecks are deposited directly with the CCP, which takes 40 percent of their income in exchange for housing them.

Beyond the extremely basic fare of hot dogs, sandwich meat, peanut butter and jelly, and white bread, Shelby County’s CCP does not provide for inmates’ sustenance. There is a break room-style facility that has refrigerators, toaster ovens, and a few

monitoring fees, that are paid by the people in their custody. A 2019 investigation of Community Corrections programs by the Southern Poverty Law Center found these fees vary wildly from county to county, with drug screens ranging from \$7 to \$30 per test and electronic monitoring fees ranging from \$3 to \$15 per day.⁸³

There are other costs. Some CCPs house certain inmates in work release programs. Those inmates' paychecks are paid directly to the CCP, which deducts 25 percent of their gross wages to cover "costs incident to the offender's confinement, if applicable." At minimum, CCPs also deduct 10 percent of gross income to cover court costs, fines, and fees, and 10 percent to cover restitution. What remains is kept in a sort of bank account maintained by the local CCP, and returned to the inmate upon their release from the program.⁸⁴

The Department of Corrections requires

CCPs to assess all new inmates using the Alabama Risk Assessment System-Community Supervision Tool (ARAS-CST) to determine their risks and needs.⁸⁵ All programs "supervision and programming policies shall focus on the criminogenic needs of the population,"⁸⁶ and "shall target those participants who score **moderate** or **higher** on the ARAS by providing them with more supervision, more referrals, and more programming. If the CCP provides programming and/or treatment groups, **they shall not mix low risk participants with moderate and high risk participants** in the programming."⁸⁷

All this appears to indicate a mission of keeping participants on the least-restrictive form of supervision to which they are suited according to the ARAS, and clear instructions to separate low-risk participants from moderate- and high-risk ones. Yet on the ground, this is not how things play out.

old microwaves, but nothing close to a fully functioning kitchen even though people must live there. There are vending machines. When we visited, one of the refrigerators had "no food" scrawled in black Sharpie. Because the facility does not prepare food for inmates, it is not subject to ADOC's food service regulations, which says residential offenders must "have access to meals meeting nutritional requirements established as U.S. Daily Required Averages" and that "food shall be stored, prepared, and served in compliance with all state and local codes, laws, and regulations."⁹⁰ According to Cook, most inmates eat out or buy food to bring back with them. Most inmates stay in Shelby County CCP between eight and 18 months.

Asked why Shelby County feels it is necessary to keep every single CCP



inmate in its residential facility even though other CCPs allow at least some inmates the liberty to live in the community, Cook said that Shelby County has high standards and space to house inmates, and it has found this program is what serves the county's needs best.

Shelby County's community corrections program **takes 40% of people's paychecks** in return for housing them as inmates.

“There’s nothing like your own mom.”

Amber’s Story | Madison County

Amber had been at Tutwiler Correctional Facility for about a year after her probation was revoked on a robbery conviction when she learned she was eligible for apply for transfer to Community Corrections.

She started applying right away. Eight months later, in early fall 2019, she was released into the supervision of Madison County Community Corrections.

Amber was thrilled to be reunited with her children. As an inmate, she is not allowed to have custody of them, but she can live with and support them while her mother remains their legal guardian. After returning, Amber fixed up her mother’s house. Her youngest son, who was devastated by her absence, had punched holes in the walls while she was gone; she hung new sheetrock, repainted, and used some of the money she earned working to replace her boys’ bedbug-infested mattresses.

Amber’s relative liberty came with a heavy financial burden. Within 24 hours of her release, she was required to show up at the CCP office with \$290 with her to pay for her first month of monitoring by an electronic monitoring device. She also owes at least \$20 a week for random drug tests and is expected to contribute regularly toward the roughly \$5500 she owes in fines, fees, court costs, and restitution. And she needs to get her driver’s license back, but that costs \$350.

Madison County CCP let Amber know her participation is contingent on paying the monitoring and drug testing fees. If she failed to pay, they said, she would be sent back to Tutwiler. Seeking to learn more about how Madison County CCP evaluates risk and determines the need for electronic monitoring, Applesseed left a voicemail with the program’s director on Dec. 20, 2019, but did not receive a call back. We also reported the situation to the officer that oversees Community Corrections statewide and were told an investigation had been initiated.

Amber is a willing worker who received multiple certifications during her time at Tutwiler, including certification as a logistics technician, OSHA certification, and a forklift license. She took communications classes and learned basic Spanish to make herself a more appealing job applicant.

And she received job offers, including a \$15 per hour position at GE. She took a 32-hour training course and passed a drug screen, but at the last minute, the offer was rescinded because of her criminal history. Another time, she showed up for her first day of work at a different job only to learn she’d been rejected after it was offered. Eventually, she found work through a staffing agency that takes part of her paycheck. She is determined to find a way to pay what she owes.

“Most teenagers don’t want to talk with their moms, but my kids enjoy being around me,” she said. “I cook dinner every day. And on Saturdays and Sundays, I make breakfast on Saturdays. They love that. My mom tried the best she could when I was gone, but nothing’s like having your mom. The way she folds your clothes. She may use a certain laundry detergent. There’s nothing like your own mom.”

Recommendations

There is much promise in diversion. But its potential will not be realized without operational, programmatic, and fiscal reforms to make programs more accessible to all Alabamians regardless of their personal circumstances.

RECOMMENDATIONS FOR STATE LAWMAKERS

Establish and enforce uniform statewide standards for all diversion programs and alternatives to incarceration | The programming and operation of diversion programs and alternatives to incarceration varies greatly from location to location. In consultation with experts, lawmakers should establish and enforce uniform standards for all programming to ensure that participants in diversion programs and alternatives to incarceration benefit from high-quality, evidence-based programming:

- Eligibility requirements should be uniform statewide for each diversion program.
- Standardized instruments designed by experienced professionals should be used to evaluate participants and determine the level of care and supervision they require.
- Program lengths and intensity should be uniform across the state and determined according to individual participants' risks and needs, not the operational convenience of program administrators.

Pass an omnibus bill to combine and simplify the layered, inconsistent, and overlapping acts under which most diversion programs in the state operate | Other than pretrial diversion programs run by district attorneys, most diversion programs in Alabama operated under three layered, inconsistent, and

overlapping acts: The Mandatory Treatment Act, the Drug Court Act, and the Community Corrections Act. The legislature should pass an omnibus bill which combines and simplifies these acts and creates statewide, uniform operational standards.

Develop a mechanism for making programs portable so that people can participate in diversion where they have homes, family, and/or social support, not where they offended | Many diversion programs require participants who live within the state of Alabama to be supervised in the jurisdiction where they offended, not where they live. But the great promise of diversion and community-based alternatives is that they allow people to remain in their communities, parents to live with their children, workers to stay in their jobs. This benefits individuals, families, and communities, and should be encouraged to the greatest extent possible. While the jurisdiction in which the offense occurred should continue to have jurisdiction for purposes of adjudication and sentencing, to the greatest extent possible, it should be the norm for individuals to be supervised where they have stable community ties.

Develop a mechanism to coordinate programs and reduce duplicative requirements of individuals being supervised in multiple jurisdictions | An unknown number of Alabamians are being supervised by multiple programs, including pre-adjudication diversion programs like drug court and pretrial diversion, post-adjudication programs like community corrections and CRO, and

non-diversion supervision like probation and parole. In some instances, they may be on multiple forms of supervision in a single jurisdiction, even within the same agency; other times, they may be on multiple forms in various different places. Regardless, the negative externalities created by participating in supervision can amplify disastrously when a single individual is required to comply with requirements set by multiple forms of supervision that do not coordinate with each other.

Ideally, supervision of any given individual should be consolidated under the most restrictive form of supervision they are serving. To effectuate this, the state would have to create a centralized system enabling judges to see where individuals are already being supervised in any program, including those run by municipalities, and develop a standard hierarchy of supervision. Jurisdictions would then have to coordinate to ensure supervision is concurrent and that no individual is needlessly on more than one form of supervision. Not only would this make it more likely for participants to succeed, it would be a more efficient.

Fully fund diversion programs and alternatives to incarceration | Diversion programs should be fully funded by the state, not by those who use them. Alabama Department of Corrections inmates do not pay for their own incarceration. Neither should people who are supervised by alternative programs, whether pre- or post-adjudication.

To remain eligible for funding, programs should provide a budget each year and report yearly on how they spent their money. Use of funding should be limited strictly to program and operational expenses. To the extent that any fees are collected from program partici-

pants, those should also be used for program expenses. Current law permitting district attorneys to use diversion fees for things like clothing and miscellaneous office expenses should be repealed and replaced to ensure that diversion and supervision programs do not become a hidden tax on people accused of crimes.

Fund mental health courts through the Department of Mental Health to divert mentally ill offenders from jails and prisons while providing expanded community-based psychiatric services |

At present, people with mental illnesses are routinely denied access to diversion programs because they cannot conform to program requirements without the mental health services they need. More jurisdictions should create mental health courts to intervene and divert individuals from jails and prisons. However, few will be able to afford this because many people with mental illnesses lack the wealth to pay their way through a fee-based diversion program. Lawmakers should route funding through the Department of Mental Health, where it can be partially supported by Medicaid.

Require transparency and accountability |

Diversion and alternative programs should track and publicly report various types of data, including but not limited to demographic data about their participants (including the charges and/or convictions that triggered enrollment), period of enrollment, number of graduations, and recidivism rates, as well as operational information including the names of treatment providers and the cost of each service provided (including all fees associated with participation, whether or not they are paid to third parties).

The state should create a mechanism for monitoring program costs and contracts, to ensure that programs are charging (and, where third party vendors are involved, are being charged) a fair price for services like drug testing and electronic monitoring.

End the practice of suspending driver's licenses for anything but dangerous driving

| Right now, Alabamians' driver's licenses can be suspended for failure to pay traffic tickets, failure to appear at a court hearing regarding non-payment of traffic tickets, and also for certain drug offenses. More than half of diversion-involved survey-takers lacked a license, 20% had to turn down an offer of diversion because they lack access to transportation, and another 23% had to drop out of a program because of transportation issues. Diversion administrators, meanwhile, consistently described transportation as a primary obstacle to compliance and success. Lawmakers should address these concerns and change the law so that drivers' licenses are suspended only for dangerous driving.

Adopt proportionate sanctions that scale the amount an individual is fined to their financial circumstances

| Alabama's current one-size-fits-all approach to fines and fees puts poor people in desperate straits and makes it far more difficult for people who lack access to wealth to complete diversion programs and comply with the financial aspects of their sentences. Lawmakers should establish meaningful ability-to-pay standards that account for the totality of an individual's financial circumstances, to ensure that poor Alabamians are not disproportionately burdened by fines, fees, and costs associated with the criminal justice system.

Mandate the creation of a system making it possible for judges to easily see the totality of an individual's obligations, including court debt and participation in diversion, and require all jurisdictions including municipal courts to participate

| At present, judges are not able to

The great promise of diversion and community-based alternatives is that they allow people to remain in their communities, parents to live with their children, workers to stay in their jobs.

quickly determine the totality of a person's obligations, including court debt and things like diversion-related court appearances (or even participation), leading each jurisdiction to impose obligations and sanctions as though operating in a vacuum. Creating a clearing-house for this information and requiring all jurisdictions to participate would go a long way in enabling judges to make informed decisions about defendants' obligations. It would improve public safety, efficiency, and reduce obstacles to compliance.

Create a truly unified court system that includes municipal courts

| Alabama created a unified court system in 1973. Since then, funding constraints faced by the courts have upended

that reform. In addition, Alabama's municipal courts are not truly unified, leaving lawmakers, judges, and taxpayers without clarity around case status, convictions, programs, assessments, collections, and expenses. Lawmakers should reaffirm the importance of a unified judicial system by bringing all court systems under a single umbrella.

Modernize Alabama's drug policy | Over half of Americans live in places where marijuana is fully legal, taxed, and regulated.⁸⁸ Even more live in states where simple possession of marijuana carries a civil penalty, not criminal consequences. It is long past time for Alabama to follow suit, and at the very least reclassify simple possession of marijuana as a civil offense.

For public health, public safety, and fiscal reasons, lawmakers should also consider modifying laws regarding simple possession of all controlled substances, and move toward a public health approach to drug use rather than a criminal justice approach.

RECOMMENDATIONS FOR PROGRAMS

This report does not attempt to delve too deeply into the programmatic aspects of making diversion better. But in general, diversion programs and alternatives to incarceration should operate in keeping with the recommendations of professional associations like the National Association of Drug Court Professionals or similar bodies. Additionally, they should be structured with an eye to the everyday realities of the people most likely to participate in them. That means they should:

Operate on extended hours so that people who work or have other obligations can also

attend court when necessary | Some diversion programs require participants who are not disabled to have full-time jobs, yet also require them to take time off from those jobs in order to appear in court. Even those that do not require employment, however, impose a substantial burden when they require people who work to appear in court during rigidly defined hours. Hourly workers may be forced to forfeit wages to appear; and some workers simply lose their jobs. To the extent that court appearances or other in-person check-ins are necessary, courts and providers should operate on extended hours to accommodate the employment realities of diversion participants.

Require as few in-person check-ins as possible, to minimize the need for people to miss work, arrange for childcare, or otherwise step away from critical obligations | As much as possible, programs should use phone-based tracking systems as alternatives to face-to-face check-ins. When electronic monitoring is deemed to be necessary, phone-based technologies may be a cheaper alternative to costly ankle monitors.

Keep program requirements minimal and ensure that requirements match the needs and realities of participants' lives | While it is tempting to use diversion programs as a social intervention that attempts to address various perceived deficits in participants' lives and lifestyles, the reality is that having too many requirements can decrease participants' ability to successfully complete the program. No diversion program can solve all problems, and programs should be designed to be completed by people who are making

reasonable efforts to do so, not to serve as a panacea for the lifetime of struggles that may have prompted a given individual to find themselves in the program.

RECOMMENDATIONS FOR COURTS

Make individualized ability-to-pay determinations and reduce or waive all discretionary fines, costs, and fees for individuals who are unable to pay | People who were found indigent for the purposes of representation likely cannot afford to pay for supervision either — yet many diversion programs still require people who were found indigent to pay for their own supervision. To ensure that programs are accessible to all Alabamians regardless of poverty, judges should make ability-to-pay determinations and eliminate or scale any fees charged proportionately. Ability-to-pay determinations should also inform judges' decisions about the imposition of fines, fees, costs, and other financial consequences related to an individual's plea or sentence.

Avoid using diversion programs as a means to compel people to pay unrelated fines and fees | Some pre-adjudication diversion programs, such as drug courts, require individuals to get their driver's licenses back before the program can be completed. While well-intentioned, this requirement can be a nearly insurmountable hurdle for people who owe thousands of dollars in tickets or have warrants in other jurisdictions. People don't end up in diversion programs because of unpaid court debt or because they don't have driver's licenses, and they should not be kept in diversion programs for those reasons either.

Order drug tests only for people who have a demonstrated problem with addiction | Even if they were free, drug tests are intrusive and time-consuming. People should only be subject to them if they have a demonstrated problem with addiction, not just because they have found themselves in a diversion program.

Keep court appearances as brief as possible

| When in-person court appearances are necessary, they should be as brief as possible to accommodate the reality that people need to work, attend to children, and otherwise live their lives.

Avoid using jail time as a sanction for noncompliance

| Relapsing is part of recovering, so sanctioning people who have substance use disorder for failing drug tests with jail time only punishes them for a known symptom of their illness.

Avoid using community service as a sanction for nonpayment or late payment of program fees

| Requiring poor people with family and job obligations to do additional community service as punishment for their poverty is perverse and does nothing to improve their ability to pay. No one should be punished more for being poor.

Avoid using court appearances as a punishment for nonpayment

| Requiring people who cannot pay to come to court more frequently than counterparts with access to wealth punishes them for being poor and can perversely hinder their ability to pay by taking them away from work.

Appendix 1

2018 Court Debt Survey

Alabama Appleseed and its partners are collecting information on the impact of court costs, fines, and fees in the criminal justice system. This survey is totally ANONYMOUS. **You will not be asked to give us your name to participate in this survey.** Please fill in each bubble and answer each question to the best of your ability. If you have any questions at any time or are unsure of your answer, please ask the survey monitor for help.

- ▶ Do you currently owe, or have you ever owed any court costs, fines, and/or fees not including traffic tickets where you didn't go to court and didn't pay over time ☐ Y ☐ N
- ▶ Have you ever paid any court costs, fines, and/or fees for someone else? ☐ Y ☐ N

If you answered YES to one or both of these questions, please continue.

1. The first section is about your experience.

If you have never personally owed any court costs, but have paid for someone else, skip to section four on PAGE 8

To the best of your ability, please answer the following questions.

1. **Have you ever been charged with? Check all that apply.**
 - ☐ Traffic violation (speeding, DUI, driving without a license)
 - ☐ Misdemeanor (non-traffic)
 - ☐ Felony
2. **Are you currently under supervision for a felony or a misdemeanor?** ☐ Y ☐ N ☐ Unsure
3. **Have you ever been under supervision for a felony or misdemeanor?**
☐ Y ☐ N ☐ Unsure
4. **Are you currently on the following? Check all that apply.**
 - ☐ Court Referral (CRO) ☐ Community Corrections ☐ State Probation ☐ Parole
 - ☐ Drug Court ☐ DA Diversion ☐ Private Probation ☐ Other (specify)
5. **Have you ever been on the following?**
 - ☐ Court Referral (CRO) ☐ Community Corrections ☐ State Probation ☐ Parole
 - ☐ Drug Court ☐ DA Diversion ☐ Private Probation ☐ Other (specify)
6. **Have you ever been turned down for a diversion program (Drug Court, DA diversion, Community Corrections, CRO) because you could not afford it?** ☐ Y ☐ N
7. **Have you ever been kicked out of a diversion program for failure to make payments?**
☐ Y ☐ N
8. **Have you ever been declared indigent by the court, appointed a lawyer, or represented by a public defender?** ☐ Y ☐ N
9. **Have you ever been denied housing due to a criminal record?** ☐ Y ☐ N
10. **Have you ever been denied employment due to a criminal record?** ☐ Y ☐ N

II. This section is about court costs, fines/fees, and criminal justice debt that you owe. Please respond to the following questions to the best of your ability.

11. What types of fees or payments have you made? Check all that apply.
☐ Court costs and restitution (state) ☐ Court costs/fines (municipal court)
☐ Community corrections fees ☐ Drug court fees ☐ Probation supervision fees (state) ☐ CRO fees ☐ Court ordered child support
12. How much have you paid for court costs, fines, and/or fees? _____
13. Have you made multiple payments over a period of time? ☐ Y ☐ N
14. How long were you in a situation where you owed court costs, fines, and/or fees? _____
15. If you are unsure of how long, can you give us your best guess?
☐ Less than a year ☐ 1 to 5 years ☐ 6 to 10 years ☐ More than 10 years ☐ More than 20 years ☐ I still owe money
16. Do you feel you will be able to pay what you owe? ☐ Y ☐ N
17. Have you ever had to choose between paying for necessities such as food, utilities, rent, and court costs, fines, and/or fees? ☐ Y ☐ N
18. IF YES, please tell us what you had to give up to pay for court costs, fines and/or fees. Check all that apply. ☐ Food/Groceries ☐ Utilities ☐ Rent ☐ Medical Bills ☐ Child Support ☐ Car Payments ☐ Other (specify) _____
19. Have you ever accepted food or money for things like utilities from a church or faith based organization because you did not have money after paying your court costs, fines, and/or fees? ☐ Y ☐ N
20. Have you ever used a payday or title loan to pay for any court costs, fines and/or fees? ☐ Y ☐ N
21. Have you ever borrowed money from a relative or friend to pay any court costs, fines, and/or fees? ☐ Y ☐ N
22. Have you ever been offered community service instead of paying court costs, fines, and/or fees? ☐ Y ☐ N
23. How much off your court costs, fines, and/or fees have you received for an hour of community service? _____
24. Have you ever had to commit a crime to get money to pay court costs, fines, and/or fees? ☐ Y ☐ N
25. IF YES, what did you have to do? ☐ Sell drugs ☐ Steal ☐ Other (specify) _____
26. How much do you currently owe for court costs, fines, and/or fees? _____
27. If you don't know or are unsure of how much you owe, what would be your best guess?
☐ Less than \$500 ☐ \$500-\$999 ☐ \$1,000-\$4,999
☐ \$5,000-\$9,999 ☐ \$10,000-\$19,999 ☐ \$20,000-\$29,999
☐ \$30,000-\$39,999 ☐ \$40,000-\$49,999 ☐ More than \$50,000

III. This section is about failure to make payments related to your personal court costs, fines/fees or criminal justice debt. Please answer each question to the best of your ability.

28. Have you ever been threatened with jail because you cannot pay court costs, fines, and/or fees? ☐ Y ☐ N
29. Have you ever been jailed for failure to pay court costs, fines, and/or fees? ☐ Y ☐ N
30. Have you ever had the amount you owe increased due to failure to pay court costs, fines, and/or fees? ☐ Y ☐ N
31. Have you ever had the amount you owe decreased due to failure to pay court costs, fines, and/or fees? ☐ Y ☐ N
32. Is it clear to you whether you can ask for your court debt payments to be reduced or deferred? ☐ Y ☐ N
33. Have you ever had money taken out of your paycheck to cover any court costs, fines, and/or fees? ☐ Y ☐ N
34. Has your driver's license ever been suspended for failure to pay court costs, fines, and/or fees? ☐ Y ☐ N ☐ Never had a license
35. Have you ever had money taken out of your Alabama income tax return to pay for any court costs, fines, and/or fees? ☐ Y ☐ N ☐ Unsure
36. Have you ever been jailed for failure to pay child support? ☐ Y ☐ N
37. Have you ever taken out a payday or title loan to pay child support? ☐ Y ☐ N

IV. This section applies to your experience in having to borrow money or make payments for SOMEONE ELSE'S court costs, fines, and/or fees. Please answer each question to the best of your ability.

38. Who have you made payments for? Check all that apply.
☐ Family member ☐ Friend, ☐ Other (please specify)
39. Have you helped make payments for this person over a period of time? ☐ Y ☐ N
40. What is the total amount of money you have given to someone else for court costs, fines, and/or fees? _____
41. Have you ever borrowed money from a family member or friend to pay for SOMEONE ELSE'S court costs, fines, and/or fees? ☐ Y ☐ N
42. Have you ever taken out a payday or title loan to pay for someone else's court costs, fines, and/or fees? ☐ Y ☐ N
43. Have you ever had to choose between paying court costs, fines, and/or fees for someone else and necessities such as food and utilities? ☐ Y ☐ N

V. The final section is about you. Please answer each question to the best of your ability.

44. Age: _____
45. Gender ☐ Male ☐ Female
46. Race ☐ Caucasian ☐ African American ☐ Latino/Hispanic ☐ Asian/Pacific Islander
☐ Native American ☐ Black/West Indian ☐ Bi-Racial ☐ Other

47. **What is the highest level of education you have completed?**
☐ Some high school ☐ High school diploma/GED ☐ Some college ☐ 2-year college degree ☐ 4-year college degree ☐ Other (specify)
48. **In the past 30 days, where have you lived most of the time?**
☐ Apartment/House (Own or Rent) ☐ Institution ☐ Options: Hospital
☐ Nursing Home ☐ Jail/Prison ☐ Residential Treatment Center ☐ Halfway House
☐ Shelter/Homeless ☐ Staying with friend/family member
49. **What is your zip code?** _____
50. **Are you currently employed?** *(If not, skip to question 55).* ☐ Y ☐ N
51. **Do you work full-time or part-time?** ☐ Full-time ☐ Part-time
52. **Do you receive a paycheck?** ☐ Y ☐ N
53. **IF YES, how often do you get paid?** ☐ Weekly ☐ Bi-weekly ☐ Monthly
☐ By the job ☐ Other (specify)
54. **How many months have you been employed in your current job?** _____
55. **What other sources of income do you have?**
☐ Disability ☐ SSI ☐ Food Stamps ☐ Other (specify) ☐ None
56. **Do you currently have a driver's license?** ☐ Y ☐ N
57. **If not, why not?** ☐ Police took it ☐ Court took it ☐ Cannot afford reinstatement fee
☐ Cannot afford insurance ☐ Never had one
58. **What is your primary mode of transportation?**
☐ Car ☐ Public Transportation ☐ Friend/Family Member ☐ Other
59. **Do you have auto insurance?** ☐ Y ☐ N
60. **Do you have a bank account at this time?** ☐ Y ☐ N
61. **If you had to get money to stay out of jail, how much cash would you have access to today?** _____
62. **Are you registered to vote?** ☐ Y ☐ N
63. **If not, why not? Options:** ☐ Previous criminal conviction ☐ Outstanding fines or fees
☐ Never registered ☐ Unsure ☐ Choose not to vote ☐ Other (specify)
64. **Did you know that the law changed last year to allow some people with criminal convictions to vote?** ☐ Y ☐ N
65. **If yes, how did you learn about the law change?**
☐ Legal aid or criminal defense attorney ☐ A representative of the Alabama government
☐ Community Advocate ☐ Other (specify)

Finally, please leave any comments you have about your experience with criminal justice debt in the box below.

Appendix 2

2019 Diversion Survey

Alabama Appleseed and its partners are collecting information on people's experiences with diversion programs such as drug court, gun court, pretrial diversion, and court referral. You are eligible to take this survey if you have participated in a diversion program in the state of Alabama, including court referral, drug court, gun court, mental health court, pretrial diversion (also called DA diversion), or any other program where you participated in classes and court appearances over a period of time with the promise of having charges dropped upon successful completion. *You do not have to have successfully completed the program in order to take this survey.*

This survey is totally confidential. You will not be asked to give us your name to participate.

Please fill in each bubble or blank and answer each question to the best of your ability. If you have any questions or are unsure of your answer, please ask the survey monitor for help.

This first section is about your personal experience with diversion.

1. **Are you currently on the following? Check all that apply.** ☐ Court Referral (CRO) ☐ Drug Court ☐ Gun Court ☐ Pretrial Diversion (also called DA Diversion) ☐ Other (specify) _____
2. **Have you ever been on the following? Check all that apply.** ☐ Court Referral (CRO) ☐ Drug Court ☐ Gun Court ☐ Pretrial Diversion (also called DA Diversion) ☐ Other (specify) _____
3. **How many diversion programs have you participated in, including those you did not successfully complete?** ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ More than 4
4. **How many diversion programs have you successfully completed?**
☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ More than 4
5. **What costs or fees are or were associated with the program(s) you have participated in? Check all that apply.** ☐ Up-front cost for participating ☐ Drug test fees ☐ Supervision fees ☐ Treatment fees ☐ Evaluation fees ☐ Other fees (please specify) _____
6. **How much did you pay in total, including program costs, treatment costs, supervision costs? If you don't know exactly, give your best estimate.** _____
7. **For each fee or cost, how much did you pay? Please write down if this is a one-time charge, a monthly charge, or if you pay each time you go.** ☐ Up-front cost for participating ☐ Drug test fees ☐ Supervision fees ☐ Treatment fees ☐ Evaluation fees ☐ Other fees _____
8. **Were you aware of what the total cost (including all fees) would be prior to agreeing to participate?** ☐ Y ☐ N
9. **Were you ever offered a reduced fee or fee waiver based on your inability to pay?**
☐ Y ☐ N
10. **Were you ever forced to choose between paying diversion-associated costs (including fees for supervision or drug testing) and paying for basic necessities?** ☐ Y ☐ N

11. IF YES, what necessities did you give up to pay for diversion (check all that apply)?
☐ Food/Groceries ☐ Utilities ☐ Rent ☐ Medical Bills or Prescriptions
☐ Child Support ☐ Car Payments ☐ Other (specify)
12. Have you ever accepted food or money for things like utilities from a church or faith-based organization because you did not have money after paying diversion program costs or fees? ☐ Y ☐ N
13. Have you ever used a payday or title loan to pay for diversion program costs or fees? ☐ Y ☐ N
14. Have you ever borrowed money from a relative or friend to pay diversion program costs or fees? ☐ Y ☐ N
15. Have you ever had to commit a crime to get money to pay diversion program costs or fees? ☐ Y ☐ N
16. IF YES, what did you have to do? ☐ Sell drugs ☐ Steal ☐ Sex work ☐ Other
17. How long did it take you to complete the diversion program? ☐ 0-6 months ☐ 7-12 months ☐ 13-18 months ☐ 19-24 months ☐ More than two years (If so, how long?)
☐ I am still in the diversion program ☐ I dropped out or was kicked out (If so, after how long? _____)
18. Has any diversion program you ever participated in provided treatment, classes, or other programming that helped you overcome a problem? ☐ Y ☐ N
19. Have you ever had your time in a diversion program extended because you failed a drug test? ☐ Y ☐ N
20. IF YES, how much was it extended for each failed test? _____
21. Have you ever been turned down for a diversion program (Court Referral, CRO, Drug Court, Gun Court, Pretrial Diversion, DA Diversion) because you could not afford it? ☐ Y ☐ N
22. Have you ever been offered the opportunity to participate in a diversion program but been unable to accept the offer because you could not meet requirements due to work responsibilities, child care responsibilities, school, or other responsibilities? ☐ Y ☐ N
23. IF YES, what were the responsibilities that stopped you from accepting the offer of diversion? ☐ Work ☐ Child care ☐ School ☐ Other responsibility
24. Have you ever been offered the opportunity to participate in a diversion program but had to turn down the offer because you did not have reliable access to transportation? ☐ Y ☐ N
25. Have you ever been forced to drop out of a diversion because you did not have reliable access to transportation? ☐ Y ☐ N
26. Have you ever been offered the opportunity to participate in a diversion program but had to turn down the offer because of your job? ☐ Y ☐ N

27. Have you ever been forced to drop out of a diversion program because of your job? ☐ Y ☐ N
28. Have you ever been threatened with being fired from a job because you had to miss work to be in court for a diversion program? ☐ Y ☐ N
29. Have you ever been fired from a job because you had to miss work to be in court for a diversion program? ☐ Y ☐ N
30. Have you ever been offered the opportunity to participate in a diversion program but were unable to accept the offer for some other reason? ☐ Y ☐ N
31. If YES, what was the reason? _____
32. Have you ever been kicked out of a diversion program for failure to make payments? ☐ Y ☐ N
33. Have you ever been forced to drop out of a diversion program due to work, childcare, school, or other responsibilities? ☐ Y ☐ N
34. IF YES, what were the responsibilities that caused you to drop out?
☐ Work ☐ Child care ☐ School ☐ Other responsibility
35. If you dropped out or were kicked out of the program for any reason, how long were you in before dropping out or being kicked out? _____
36. If you dropped out or were kicked out of the program for any reason, how much did you spend on the program before dropping out? _____
37. If you dropped out or were kicked out of the program for any reason, what happened to your charges afterward? (How were you sentenced?) _____

This section is for people who have supported others in participating in a diversion program. Support can mean financial help or other kinds of help such as providing childcare. If you have not helped someone participate, skip to question 47.

38. Who did you help participate in a diversion program? Check all that apply. ☐ My child
☐ My husband or wife ☐ Other family ☐ My boyfriend or girlfriend ☐ Other (please specify)
39. What type of diversion program did the person you helped participate in? Check all that apply. ☐ Court Referral (CRO) ☐ Drug Court ☐ Gun Court ☐ Pretrial Diversion (also called DA Diversion) ☐ Other (specify)
40. What type of payments did you help the person make? Check all that apply.
☐ Up-front cost for participating ☐ Drug test fees ☐ Supervision fees
☐ Treatment fees ☐ Other fees (please specify)
41. How much did you give altogether? If you don't know exactly, give your best estimate.
42. Have you ever given up basic necessities to pay diversion program costs or fees for someone else? ☐ Y ☐ N
43. Have you ever used a payday or title loan to pay for diversion program costs or fees for someone else? ☐ Y ☐ N
44. Have you ever borrowed money from a relative or friend to pay diversion program costs or fees for someone else? ☐ Y ☐ N

45. Have you ever provided other kinds of support (for instance, childcare or transportation) to help someone else participate in a diversion program? ☐ Y ☐ N
46. IF YES, what kinds of support did you provide? Check all that apply.
☐ Childcare ☐ Transportation ☐ Other (please specify)

This final section is about you. Please answer each question to the best of your ability.

47. Age: _____
48. Gender ☐ Male ☐ Female
49. Race ☐ Caucasian ☐ African American ☐ Latino/Hispanic ☐ Asian/Pacific Islander
☐ Native American ☐ Black/West Indian ☐ Bi-Racial ☐ Other
50. What is your ZIP code? _____
51. Are you currently employed? ☐ Y ☐ N
52. What is your annual income, including all sources of income?
☐ Less than \$14,999 ☐ \$15,000-\$19,999 ☐ \$20,000-\$24,999 ☐ \$25,000-\$29,999
☐ \$30,000-\$34,999 ☐ \$35,000-\$39,999 ☐ More than \$40,000
53. Have you ever been given a public defender or free lawyer because you could not afford to hire your own lawyer? ☐ Y ☐ N
54. Do you have a child or children under the age of 19? ☐ Y ☐ N
55. IF YES, how many?
56. Do you have a driver's license? ☐ Y ☐ N
57. If not, why not? ☐ Police took it ☐ Court took it ☐ Cannot afford reinstatement fee
☐ Cannot afford insurance ☐ Never had one
58. What is your primary mode of transportation?
☐ A car that I drive myself ☐ Public transportation ☐ Friend/family member ☐ Other

If you have any comments about your experience with diversion programs that you would like to share, please write them below. You may use the back of the paper if you wish. This survey is anonymous, but we would love to follow up. *If you want to talk further with a researcher, please provide your name and contact information. You do NOT have to provide your name and contact information in order to complete this comments section.*

Endnotes

- 1 “Provisional Drug Overdose Death Counts,” Centers for Disease Control and Prevention (Jan. 5, 2020). www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm
- 2 “Alabama Opioid Summary,” National Institute on Drug Abuse (May 2019). www.drugabuse.gov/drugs-abuse/opioids/opioid-summaries-by-state/alabama-opioid-summary
- 3 “Investigation of Alabama’s State Prisons for Men,” United States Department of Justice Civil Rights Division (April 2, 2019). www.justice.gov/opa/press-release/file/1150276/download. DOJ “found reasonable cause to believe that the Alabama Department of Corrections has violated and is continuing to violate the Eighth Amendment rights of prisoners housed in men’s prisons by failing to protect them from prisoner-on-prisoner violence, prisoner-on-prisoner sexual abuse, and by failing to provide safe conditions.”
- 4 “Investigation of Alabama’s State Prisons for Men,” United States Department of Justice Civil Rights Division (April 2, 2019). www.justice.gov/opa/press-release/file/1150276/download
- 5 “QuickFacts: Chilton County, Ala.,” U.S. Census Bureau (Population estimates July 1, 2018). www.census.gov/quickfacts/fact/table/chiltoncountyalabama,US/PST045218
- 6 “Accountability Courts — Education Programs,” Alabama Administrative Office of Courts (accessed Dec. 27, 2019). <http://www.alacourt.gov/EducationalPrograms.aspx>
- 7 “Advisory Opinion 99-738,” Alabama Judicial Inquiry Commission (Sept. 30, 1999). www.alabar.org/assets/JIC/1999-738.pdf
- 8 Kathryn Casteel and Will Tucker, “Opportunity Costs: Unequal Justice in Alabama’s Community Corrections Program,” Southern Poverty Law Center (Aug. 15, 2019). www.splcenter.org/news/2019/08/15/opportunity-costs-unequal-justice-alabamas-community-corrections-programs
- 9 For a more extensive discussion of causes of Alabama’s racial wealth gap, please see “Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama’s racial wealth divide,” Alabama Appleseed (2018). <http://www.alabamaappleseed.org/underpressure/>
- 10 Bryan Lyman, “Census Data: Incomes rise in Alabama, but gaps between men & women, blacks & whites remain,” Montgomery Advertiser (Sept. 25, 2014) www.montgomeryadvertiser.com/story/news/politics/southunionstreet/2014/09/25/in-alabama-major-income-gaps-between-races-genders/16226769/
- 11 Bryan Lyman, “Census Data: Incomes rise in Alabama, but gaps between men & women, blacks & whites remain,” Montgomery Advertiser (Sept. 25, 2014) www.montgomeryadvertiser.com/story/news/politics/southunionstreet/2014/09/25/in-alabama-major-income-gaps-between-races-genders/16226769/
- 12 Mindy Woodall, “Best Family Cell Phone Plans of 2020,” Reviews.org (Dec. 11, 2019). www.reviews.org/mobile/best-family-cell-phone-plans/
- 13 “Alabama’s War on Marijuana: Assessing the human and fiscal toll of criminalization,” Alabama Appleseed and Southern Poverty Law Center (Oct. 2018). www.alabamaappleseed.org/waronmarijuana/
- 14 Dayna Bowen Matthew and Richard V. Reeves, “Social Mobility Memos,” Brookings (Jan. 13, 2017). www.brookings.edu/blog/social-mobility-memos/2017/01/13/trump-won-white-voters-but-serious-inequities-remain-for-black-americans/; see also “The War On Marijuana In Black And White,” American Civil Liberties Union (June 2013). www.aclu.org/files/assets/aclu-thewaronthemarijuana-rel2.pdf
- 15 Kent Faulk, “Few go to prison on felony pot charges today, but Alabama police still busy making arrest,” AL.com (March 6, 2017). www.al.com/news/birmingham/index.ssf/2017/03/fewer_in_alabama_serving_time.html
- 16 According to 2016 data provided to the Southern Poverty Law Center by the Alabama Law Enforcement Agency. Data and calculations courtesy the Southern Poverty Law Center.
- 17 “Annual Report Fiscal Year 2018,” Alabama Department of Corrections (May 20, 2019). <http://www.doc.state.al.us/docs/AnnualRpts/2018AnnualReport.pdf>
- 18 “QuickFacts selected: Alabama,” United States Census Bureau, Population estimates, July 1, 2016 (V2016). www.census.gov/quickfacts/fact/table/AL/PST045216.
- 19 Incarceration Trends — Alabama,” Vera Institute for Justice (Accessed Dec. 15, 2017) www.vera.org/projects/incarceration-trends
- 20 Foster Cook, “The Burden of Criminal Justice Debt in Alabama,” UAB TASC (2014). www.prisonpolicy.org/scans/uabtascthe_burden_of_criminal_justice_debt_in_alabama-_part_1_main_report.pdf
- 21 www.alabamaappleseed.org/underpressure/
- 22 “QuickFacts: Alabama,” United States Census Bureau, Population Estimates, July 1, 2017. www.census.gov/quickfacts/al
- 23 Alabama Profile, Prison Policy Initiative, www.prisonpolicy.org/profiles/AL.html (Accessed Aug. 31, 2018).
- 24 Ibid.
- 25 Ibid.
- 26 Chris Kolmar, “These Are The 10 Alabama Cities With The Largest Hispanic Population For 2018,” Homesnacks (Jan. 6, 2018). www.homesnacks.net/most-hispanic-cities-in-alabama-1210747/
- 27 AL Code § 12-23A-4(a)(1) (2013)
- 28 “Quickfacts: Shelby County, Ala.,” U.S. Census Bureau (Population estimates July 1, 2018). www.census.gov/quickfacts/fact/table/shelbycountyalabama,US/PST045218
- 29 Allen Tullos, “The Black Belt,” Southern Spaces (April 19, 2004). southernspaces.org/2004/black-belt/
- 30 “Quickfacts: Greene County, Ala.,” U.S. Census Bureau (Population estimates July 1, 2018); “Quickfacts: Marengo County, Ala.,” U.S. Census Bureau (Population estimates July 1, 2018); “Quickfacts: Sumter County, Ala.,” U.S. Census Bureau (Population estimates July 1, 2018). www.census.gov/quickfacts/fact/table/US/PST045218
- 31 “Quickfacts: Lowndes County, Ala.,” U.S. Census Bureau (Population estimates July 1, 2018); “Quickfacts: Crenshaw County, Ala.,” U.S. Census Bureau (Population estimates July 1, 2018); “Quickfacts: Butler County, Ala.,” U.S. Census Bureau (Population estimates July 1, 2018). www.census.gov/quickfacts/fact/table/US/PST045218
- 32 “Quickfacts: Tuscaloosa County, Ala.,” U.S. Census Bureau (Population estimates July 1, 2018). www.census.gov/quickfacts/fact/table/US/PST045218
- 33 Code of Alabama § 13A-12-212
- 34 Code of Alabama § 13A-12-214
- 35 Code of Alabama § 13A-12-213. The amount of marijuana that qualifies for “other than personal use” is not defined by statute and largely left up to the discretion of law enforcement.
- 36 Code of Alabama § 13A-5-11 and Code of Alabama § 13A-5-12
- 37 “Rates of Drug Use and Sales, by Race; Rates of Drug Related Criminal Justice Measures, by Race,” The Hamilton Project, Brookings (Oct. 21, 2016). www.hamiltonproject.org/charts/rates_of_drug_use_and_sales_by_race_rates_of_drug_related_criminal_justice
- 38 “Alabama’s War on Marijuana: Assessing the Fiscal and Human Toll of Decriminalization,” Alabama Appleseed and Southern Poverty Law Center (2018). <http://www.alabamaappleseed.org/waronmarijuana/>
- 39 Alana Rosenberg, Allison K. Groves, Kim M. Blankenship, “Comparing Black and White Drug Offenders: Implications for

Racial Disparities in Criminal Justice and Reentry Policy and Programming,” *J Drug Issues* (2017); 47(1) 132-142. www.ncbi.nlm.nih.gov/pmc/articles/PMC5614457/

40 “Quickfacts: Butler County, AL,” U.S. Census Bureau (accessed Dec. 14, 2019). www.census.gov/quickfacts/fact/table/butlercountyalabama/PST040218

41 Email from Julius Cook, on file with author (Dec. 31, 2020).

42 Interview with Julius Cook (June 7, 2019).

43 “Shelby County Specialty Court Application,” Shelby County, Ala. (Nov. 2, 2018), p. 14.

44 “Second Chance Program Participant Handbook,” Tuscaloosa County Diversion Programs (June 2016), p. 2.

45 “Adult Drug Court Best Practice Standards, Vol. I, Text Revision” National Association of Drug Court Professionals (2018), p. 6. (Citations omitted). www.nadcp.org/wp-content/uploads/2018/12/Adult-Drug-Court-Best-Practice-Standards-Vol-ume-I-Text-Revision-December-2018-1.pdf

46 “Adult Drug Court Best Practice Standards, Vol. I, Text Revision” National Association of Drug Court Professionals (2018), p. 7. (Citations omitted). www.nadcp.org/wp-content/uploads/2018/12/Adult-Drug-Court-Best-Practice-Standards-Vol-ume-I-Text-Revision-December-2018-1.pdf

47 William F. Buckley, “The War on Drugs is Lost,” *National Review* (Feb. 12, 1996). www.nationalreview.com/2014/07/war-drugs-lost-nro-staff/

48 “About Cato,” Cato Institute (accessed Dec. 26, 2019). www.cato.org/about

49 Christopher J. Coyne and Abigail R. Hall, “Four Decades and Counting: The Continued Failure of the War on Drugs,” Cato Institute (April 12, 2017). www.cato.org/publications/policy-analysis/four-decades-counting-continued-failure-war-drugs

50 “Defining and Implementing a Public Health Response to Drug Use and Misuse,” American Public Health Association (Nov. 5, 2013). www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/08/04/defining-and-implementing-a-public-health-response-to-drug-use-and-misuse

51 “About APHA,” American Public Health Association (accessed Dec. 26, 2019). www.apha.org/about-apha

52 “Defining and Implementing a Public Health Response to Drug Use and Misuse,” American Public Health Association (Nov. 5, 2013). www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/08/04/defining-and-implementing-a-public-health-response-to-drug-use-and-misuse

53 Code of Alabama § 12-17-226 (7)

54 Office of Prosecution Services and Alabama District Attorneys Association, *Deferred Prosecution*, report presented to Governor’s Study Group on Criminal Justice Reform October 22, 2019.

55 See Code of Alabama § 12-17-226.3; Code of Alabama § 12-17-226.4(a) (“Notwithstanding current law, admittance into the pretrial diversion program shall be in the discretion of the District Attorney.”); Code of Alabama § 12-17-226.10(a) (“In any case in which an offender is admitted into a pretrial diversion program established under this division, there shall be a written agreement between the district attorney and the offender. The agreement shall include the terms of the pretrial diversion program, the length of the program, as practicable as possible, the costs

of the program to the offender, and the period of time after which the district attorney must dispose of the charges against the offender.”)

56 Appleseed arrived at this total by calculating income from District Attorney’s Diversion Programs as documented by state audits produced by the Office of the Examiners of Public Accounts. Those audits can be found here and searched by Circuit. examiners.alabama.gov/audit_reports.aspx

57 Code of Alabama § 12-17-226.10 (b) (setting forth up to 27 requirements that District Attorneys can impose upon participants)

58 Department of Examiners of Public Accounts, *Report on the 19th Judicial District*, Dec. 13, 2019 (finding \$418,761 in Pretrial Diversion fees from 2015-2019); Department of Examiners of Public Accounts, *Report on the Office of the 20th Judicial District*, May 26, 2017 (finding \$505,995 in Pretrial Diversion funds collected 2014-2016); Department of Examiners of Public Accounts, *Report on the Office of the 28th Judicial District*, Feb. 17, 2017 (finding \$986,669 in Pretrial Intervention funds in Baldwin County from 2013-2016); Department of the Examiners of Public Accounts, *Report on the Office of the District Attorney 16th Judicial District*, Dec. 30, 2016 (finding \$416,076 in Pretrial Diversion funds in Etowah County from 2013-2016); available at examiners.alabama.gov/audit_reports.aspx.

59 National Conference of State Legislatures, *Pretrial Diversion* <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-diversion.aspx>.

60 Code of Alabama § 12-17-226.5(a)

61 Code of Alabama § 12-17-226.6(a)

62 Code of Alabama § 12-17-226.10(b)

63 Code of Alabama § 12-17-226.8(b)

64 Unless otherwise indicated, amounts of the costs and fees for individual programs were supplied by state officials with access to these records.

65 37th Judicial Circuit Pretrial Diversion Fee Schedule, provided by the Lee County District Attorney’s Office in response to an Open Records request from Alabama Appleseed.

66 Code of Alabama § 45-7-82.27.

67 Code of Alabama § 12-17-226.8.

68 Randy Hillman, then executive director of the District Attorneys Association, said pretrial Diversion would mean people covered by the new law might have ended up in local jails on misdemeanor convictions. “It will substantially impact the amount of people who do jail time.” Brendan Kirby, “ACLU Praises Alabama Diversion Law But Experts See Little Impact on Prison Population,” *AL.com* (May 31, 2013) www.al.com/wire/2013/05/aclu-praises-alabama-diversion.html

69 Code of Alabama § 12-17-226.17(b) (“Unless otherwise provided for by law, information contained in the database shall only be accessible by court order, the district attorney, or other law enforcement agency.”)

70 Code of Alabama § 12-17-226.11(b)

71 Code of Alabama § 12-17-226.11(b)(c)

72 Debbie Ingram, “DA Oversees Spending of Pretrial Diversion Receipts Totaling \$310,000,” *Dothan Eagle*, (May 5, 2009) www.dothaneagle.com/news/da-oversees-spending-of-pretrial-diversion-receipts-totaling/article_4a4d89ea-095e-5eb4-89a3-46df09f877d.html

73 Code of Alabama § 12-17-226.17(b).

74 Alabama Code Title 15. *Criminal Procedure* § 15-18-175 codes.findlaw.com/al/title-15-criminal-procedure/al-code-sect-15-18-175.html

75 “Minimum Standards for Community Punishment and Corrections Programs,” Alabama Department of Corrections (July 25, 2016), p. 18. <http://www.doc.state.al.us/docs/AlabamaMinimumStandardsforCCP.pdf>

76 “Administrative Regulation 490,” Alabama Department of Corrections (Sept. 11, 2007), p. 5. <http://www.doc.state.al.us/docs/AdminRegs/AR490.pdf>

77 *Ibid.*

78 “Annual Report, Fiscal Year 2018,” Alabama Department of Corrections (May 20, 2019), p. 46. <http://www.doc.state.al.us/docs/AnnualRpts/2018AnnualReport.pdf>

79 “Annual Report, Fiscal Year 2018,” Alabama Department of Corrections (May 20, 2019), p. 26. <http://www.doc.state.al.us/docs/AnnualRpts/2018AnnualReport.pdf>. (Showing that in 2018, the white population of community corrections totaled 2,090 and the black population totaled 1,444, with 17 “unknown” and a total population of 3,551.)

80 “QuickFacts: Alabama,” U.S. Census Bureau (Population estimates July 1, 2018). www.census.gov/quickfacts/AL

81 “Administrative Regulation Number 490,” Alabama Department of Corrections (Sept. 11, 2007), p. 14. <http://www.doc.state.al.us/docs/AdminRegs/AR490.pdf>

82 “Annual Report, Fiscal Year 2018,” Alabama Department of Corrections (May 20, 2019), p. 21. <http://www.doc.state.al.us/docs/AnnualRpts/2018AnnualReport.pdf>

83 Kathryn Casteel and Will Tucker, “Opportunity Costs: Unequal Justice in Alabama’s Community Corrections Programs,” *Southern Poverty Law Center* (Aug. 15, 2019). www.splcenter.org/news/2019/08/15/opportunity-costs-unequal-justice-alabamas-community-corrections-programs

84 “Administrative Regulation Number 490,” Alabama Department of Corrections (Sept. 11, 2007), p. 14. <http://www.doc.state.al.us/docs/AdminRegs/AR490.pdf>

85 “Minimum Standards for Community Punishment and Community Corrections,” Alabama Department of Corrections (July 25, 2016), p. 8. <http://www.doc.state.al.us/docs/AlabamaMinimumStandardsforCCP.pdf>

86 “Minimum Standards for Community Punishment and Community Corrections,” Alabama Department of Corrections (July 25, 2016), p. 9. <http://www.doc.state.al.us/docs/AlabamaMinimumStandardsforCCP.pdf>

87 “Minimum Standards for Community Punishment and Community Corrections,” Alabama Department of Corrections (July 25, 2016), p. 10. (emphasis in original) <http://www.doc.state.al.us/docs/AlabamaMinimumStandardsforCCP.pdf>

88 Chris Nichols, “Do a majority of Americans live in states with legal marijuana?” *Politifact* (April 19, 2018). www.politifact.com/california/statements/2018/apr/20/john-chiang/do-majority-americans-live-states-legal-marijuana/

89 Memo to Pretrial Diversion Staff from Montgomery District Attorney Daryl Baily regarding indigent defendants (June 28, 2019). On file with author.

90 “Minimum Standards for Community Punishment and Community Corrections,” Alabama Department of Corrections (July 25, 2016), p. 15. <http://www.doc.state.al.us/docs/AlabamaMinimumStandardsforCCP.pdf>

Acknowledgments

This research was funded by the Annie E. Casey Foundation. We thank them for their support but acknowledge that the findings and conclusions presented in this report are those of the report's authors alone, and do not necessarily reflect the opinions of the Foundation. We would also like to thank Don Baylor and Velvet Bryant of the Annie E. Casey Foundation for their time, ideas, and support throughout this project.

This report is a project of the Alabama Appleseed Center for Law and Justice, but we could not have completed it without the generosity, time, and expertise of numerous individuals and nonprofits across the state of Alabama and beyond. Leah Nelson was the primary author of the report. Carla Crowder researched and wrote the section on pretrial diversion. Marshall Lorraine White, a PhD candidate at Georgia State University, analyzed the data and wrote the methodology section. Dana Sweeney provided reporting assistance, and Jean Hibino assisted with research and organizing information. The survey that underpins this report is based on a 2014 survey designed by Foster Cook and Ralph Hendrix, formerly of UAB-TASC. Foster and Ralph were also invaluable resources in the development of this report, which is far richer for their contributions to it.

This report was designed by Val Downes, and Mark Leslie copy edited it.

Appleseed is grateful to the following individuals and organizations for their assistance in disseminating and administering our 2019 surveys and identifying individuals who were willing to share their stories: Alethia House, Callie Greer, the Selma Center for Nonviolence, and Mothers Against All Violence in Selma, Cheryl Leatherwood, Steve Rygiel of Birmingham AIDS Outreach, Dena Dickerson of the Offender Alumni Association, Adrian Muller of the Alabama Non-Violent Offender Organization, and Carol Potok of Aid to Inmate Mothers. We thank judges Adrian Johnson, Mike Joiner, Philip Lisenby, and Vincent Deas for opening their courtrooms to us and sharing their insight. We are grateful to the Shelby County drug court team for fielding endless questions and repeatedly letting us sit in on staffing meetings, and to Shelly Rawlings of Tuscaloosa's Second Chance Program for her candor and thoughtfulness.

We would like to thank the following individuals for reviewing portions of this report and providing feedback: Foster Cook, Ralph Hendrix, Stephen Wallace, Suzi Huffaker, Teresa Pulliam, Bennet Wright, Alex Jordan, Ellen Degnan, Will Tucker, and Val Judah.

We are grateful to the Drug Policy Alliance for guidance regarding the relevant section of this report.

Finally, we thank the 1,011 Alabamians who took our surveys in 2018 and 2019, and the dozens who shared their stories with us and who trusted us to use that information wisely.

Alabama Appleseed managed, directed, and made all final editorial decisions regarding this project. Any errors and omissions are the responsibility of Alabama Appleseed.

“CRO, you have to pay, fines you have to pay, court cost you have to pay, if your drivers license was taken you have to pay, if it’s a DUI device interlock you have to pay, if you have a bad driving record your insurance is higher you have to pay. It seems like to me it makes it harder to survive and your forced to either go to jail or work for nothing. Its madness like the hamster on the wheel.”

ALABAMA DIVERSION PROGRAM // Survey participant

“... the situation feels like being in a
PRESSURE COOKER!!!!”

“A lot of things like color code seems almost designed to fail. Having a job an hour away and having to appear on the same day not knowing until the morning of. Additionally the office you are to appear at opens after I am already at work and closes before I get off makes it almost impossible to make it there.”

**“I know I did wrong and deserve
punishment but taking my drivers
license then losing my job due to court
dates and CRO classes is so depressing.
Sometimes I don’t see a way out.”**

ALABAMA DIVERSION PROGRAM // Survey participant

“You commit a crime then have to
continue a life of crime to pay the
Court or you’ll be jailed.”

“Drug Court is very expensive. It’s hard to pay a lot of months.
But you make sacrifices so you don’t get kicked out and not go to
jail. So you make the payments even if it means extending it.”

“Had to forgo doctors appointment to neralgist and
regular physician after having stroke. I had \$100 to my
name. It was a hard decision. I choose to pay the state.”

“My license is suspended and I wasn’t able to get a ride the day
my color got called, I tried calling multiple people multiple
times a day for 3 days to explain why I couldn’t be there and the
day I went they wouldn’t let me take my drug test and marked
me as non compliant. I was only supposed to be on this program
for 9 months and I’m still on it having to make payments for
over a year. I think the system is set up just to make money.”

“The money I had to pay to the whole Drug Court team along the way became the
most important issue above all else. If you got behind a week they would suspend
you until you were caught up, and being on Color Code was very unpredictable!
I might spend \$20 a week or \$20 a month on drug screens. I guess the most
dissapointing part of the 2 yrs in Drug Court was finding out on the 21st month of
the program that I couldn’t graduate until my restitution was paid in full!”

“It’s a trap. ... Purposely makes it where you are
persuaded to take a long probation, community
correction or court referral program sentence, and
give you unrealistic goals and rules designed for you
to fail. You can pay more money than you should
and in no way helps in rehabilitation.”



ALABAMA APPLESEED
CENTER for LAW & JUSTICE