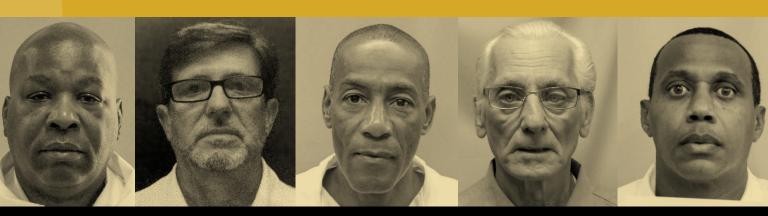
# CONDEMNED

HUNDREDS OF MEN ARE SENTENCED
TO DIE IN PRISON FOR CRIMES
WITH NO PHYSICAL INJURY.
THEY HAVEN'T GIVEN UP ON LIFE.



WHY HAS ALABAMA GIVEN UP ON THEM?





### **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

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### HERE'S WHAT THE UNITED STATES SUPREME COURT HAS HELD **CONCERNING DISPROPORTIONATELY HARSH SENTENCES:**

The Constitution requires us to examine Helm's sentence to determine if it is proportionate to his crime. Applying objective criteria, we find that Helm has received the penultimate sentence for relatively minor criminal conduct. He has been treated more harshly than other criminals in the State who have committed more serious crimes. He has been treated more harshly than he would have been in any other jurisdiction, with the possible exception of a single State. We conclude that his sentence is significantly disproportionate to his crime, and is therefore prohibited by the Eighth Amendment. Solem v. Helm, 463 U.S. 277, 303 (1983)

### **INTRODUCTION**

## A DEATH-IN-PRISON SENTENCE FOR TWO POLO SHIRTS AND THE FLASH OF A POCKET KNIFE

"Shoplifting gone wrong." That's how a numerous courses on self-improvement, Houston County judge described Americain Felder's crime. Americain was accused of taking two poloshirts from a department store.1 When a loss-prevention officer chased him into the parking lot, Americain held out a pocketknife and told the officer to leave him alone, then he drove away. He and the officer were never closer than 8 feet. Jurors had a choice to convict Americain either of misdemeanor theft or first-degree robbery. They chose robbery, and he was sentenced to a mandatory life imprisonment without parole sentence.

Americain Felder's sentence was required under Alabama's Habitual Felony Offender Act (HFOA) based on nonviolent prior convictions from the 1990s, when Americain was in his early 20s. He and several older siblings were found in possession of 30 grams of cocaine, just over the minimum weight of 28 grams necessary for a trafficking charge. He was convicted of drug trafficking along with two lesser drug offenses, which led to his only prior prison sentence.

In 2001, he was released on parole. With multiple felonies on his record, he took a low-paying job and worked steadily for the next six years. He avoided any new arrests. Following the polo shirt incident at the Dothan mall, he will die in prison unless Alabama's laws change.

Over the course of his 13.5 years in custody, American has demonstrated exemplary behavior and had zero disciplinary infractions. He has earned his GED, completed

held multiple jobs with no pay, and received glowing work reports from supervisors.

Donaldson Prison Chaplain David Bucher wrote a letter of support for Americain detailing his experience with him over more than a decade of regular interactions in the pris-

on's faith and honor dorm. He noted that Americain has shown the utmost respect to him and other staff members. As one of his supervisors, Chaplain Bucher stated that Americain displays a positive attitude and is always diligent in completing job assignments. Americain has been a positive role model for younger men in the bleakest of settings.



The facts in Americain's case are remarkably similar to those in the United States Supreme Court case on excessive punishment under the 8th Amendment, Solem v. Helm, 463 U.S. 277, 284 (1983). In Solem, a defendant was convicted of theft. Due to his six prior felonies, none of which involved any bodily harm to another person, he was sentenced to life without the possibility of parole. The Court held that the sentence was drastically disproportionate to the offense charged and found it violated the 8th Amendment's protection against cruel and unusual punishment.

ALABAMA APPLESEED

### **EXECUTIVE SUMMARY**

The honor dorms of Alabama prisons have become another Death Row, filled with older men who have long turned away from violence, drugs, and crime. The Department of Corrections houses them in honor dorms because they are role models within the prison system, men who have earned the trust of chaplains, wardens, counselors. To flip through their thick stacks of diplomas and certificates is a history lesson in the rehabilitative and educational opportunities offered in the prisons over the last 40 years. Drug treatment, anger management, barbering, Bible studies — to name a few.

They will die in prison anyway.

Alabama's declaration that hope and redemption are not available for certain people is known as the Habitual Felony Offender Act. It is responsible for ensuring that people swept up in the failed Drug War policies of the 1980s and 1990s never get out of prison, despite robust evidence that they are precisely the population that ages out of criminal behavior<sup>2</sup> and could safely be released.

This report shares their stories. None of the men profiled here have convictions for crimes involving homicide or sexual offenses. For the vast majority, their most serious offense was first-degree robbery involving no physical injury, or burglary where no victim was even present. Often, their convictions stemmed from untreated alcohol and drug use, from growing up in dangerous homes in dangerous neighborhoods. We spoke with men who started drinking at age 10, using drugs at 14. No one offered them drug treatment, not in the 1980s. By age 21, or 25, maybe 30, the system passed final judgment, determining they were irredeemable. After three felonies, even non-violent felonies like forgeries committed on the same day or stealing tools from a shed, they were gone for good on the next strike, usually a convenience store robbery or two while intoxicated.

Life imprisonment without parole assumes rehabilitation is impossible, but these lives have shown that to be a lie. The human capacity for growth and change — when people have purpose - is irrepressible.<sup>3</sup> That people with no hope for release have transformed while confined in prisons filled with drugs and violence is additional evidence that the system was wrong. And still is.

The old men in honor dorms did not give up on themselves. They earned community college degrees, became tutors, mentors, artists, and worked for no pay in prison cafeterias or laundries. Their past selves are unrecognizable.

At 55, Michael Blair has been locked up 32 years for a robbery conviction out of Mobile County. After being born to a single mother and witnessing family violence as a young boy,

he stumbled into gang culture as a young teen, which led to his criminal convictions decades ago. After reviewing Mr. Blair's growth and accomplishments in prison, even a judge has acknowledged the excessiveness of life without parole in his case. "[I]t was apparent ten years ago that Blair was not the same 22-yearold who committed a few non-violent felonies and then the robbery which led to the sentence in this case. The correctional officer reports ... confirm Blair no longer needs to be locked behind the wall of a penitentiary," wrote Mobile County Circuit Court Judge Michael Youngpeter.4 His July 27, 2020 order denied Mr. Blair's petition for re-sentencing based on court procedural rules and current laws that preclude judges from reconsidering old sentences in most all cases.

This procedural preclusion creates situations that most all observers agree are absurd.

Take the case of John Coleman. At 88,

he has undergone kidney dialysis, survived pneumonia, and kept himself occupied with jobs reserved for trusted prisoners such as office runner and hospital runner. "I'm proud to say that at 88 years old, I can still bathe myself, still put my underwear and clothes on right, my socks and shoes all by myself." Not surprisingly, the victims in his 1980s cases have long since passed away of causes completely unrelated to the offense.

The old men in honor dorms demonstrated accountability within a prison system often accountable to no one.

The federal government has given the state an incalculable number of chances to get its wretched prisons into shape, dating back to 1976 and extending to December of 2020, when the United States Department of Justice filed a lawsuit against the State of Alabama and the Alabama Department of Corrections. <sup>5</sup> The lawsuit followed two DOJ reports document-

A crowded dorm at St. Clair Correctional facility



ing horrific violence, corruption, understaffing, excessive force against incarcerated people, and numerous other violations prohibited by Eighth Amendment protections against harm and danger in government custody. "In the 20 months following the United States' original notification to the State of Alabama of unconstitutional conditions of confinement, Alabama prisoners have continued daily to endure a high risk of death, physical violence, and sexual abuse at the hands of other prisoners," according to the federal complaint filed in December 2020.

The problems cited by the DOJ have only gotten worse since the lawsuit was filed. Despite a court order in a separate federal lawsuit for the prison system to add 2,200 officers, the agency experienced a net decrease of 415 security staff in 2022<sup>6</sup>. Of 3,326 positions for correctional officials, 1810 are filled.

Not surprisingly, understaffed overcrowded dorms are dangerous. In 2022, at least 266 incarcerated Alabamians died, a record number of deaths in government custody and a nearly 200% increase in prisoner deaths in a decade.<sup>7</sup>

As state prisons have descended into brutal violence and decay, staffed by half of the officers needed for any semblance of order, the classes and programs that gave the old-timers purpose and insight are largely gone, with idleness and violence filling the void.<sup>8</sup> Newer, younger prisoners fend

for themselves, while limited correctional dollars pour into the health care needs of the geriatric prison population.

The Habitual Felony Offender Law has been a huge contributor to this crisis in governance and public safety.

When the federal government sued the state over prison conditions in the 1970s, the entire prison population was roughly 5,000 people. Currently there are more than 5,400 serving enhanced sentences under the Habitual Felony Offender Act alone, and more than 26,000 incarcerated systemwide, a 381% increase with no noticeable public safety benefits.

The drafters of the Habitual Felony Offender Act surely intended to improve public safety. But they neglected to consider one of the oldest truisms in criminal justice research: crime is a young person's game. <sup>9</sup> Life sentences provide diminishing returns for public safety while soaking up resources that could be better spent on crime prevention or drug treatment. <sup>10</sup>

There is a way to fix this.

Current sentencing statutes, including the legislatively approved Sentencing Guidelines, permit significantly shorter sentences for people convicted today of the same offenses that once required life sentences. Under current law, some of these men would be eligible for 15-to-20 year sentences, with 3-5 years to serve in prison and the remainder on probation. Others would have been

parole-eligible 20 years ago under current law. Allowing the Sentencing Guidelines to be fully retroactive and ending Life Without Parole sentences for crimes involving no serious physical injury would go far. Nationwide, numerous states are considering Second Look laws, which permit judges to review long sentences, examine a prisoner's accomplishments, and determine if additional punishment is warranted or if resentencing is a wiser approach.<sup>11</sup>

The Habitual Felony Offender Act does not make us safer. It fills prisons with old men reading their Bibles, writing poems, mopping floors, and seeking one more class, one more program, one more chance to finally prove they are more than who they were 30 years ago.

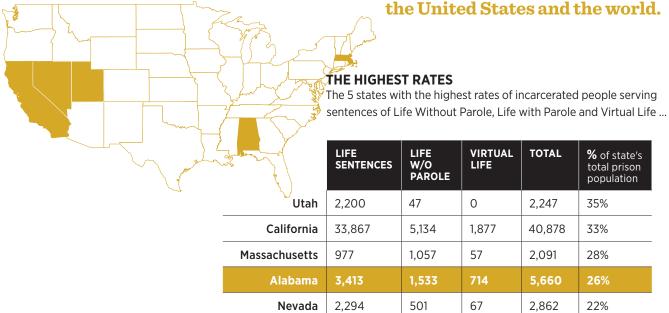
# THE LAW How a Robbery Conviction Leads to a Death-In-Prison Sentence

#### Alabama Criminal Code § 13A-5-9(c)

- (c) In all cases when it is shown that a criminal defendant has been previously convicted of any three felonies that are Class A, Class B, or Class C felonies and after such convictions has committed another Class A, Class B, or Class C felony, he or she must be punished as follows:
- (1) On conviction of a Class C felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.
- (2) On conviction of a Class B felony, he or she must be punished by imprisonment for life or any term of not less than 20 years.
- (3) On conviction of a Class A\* felony, where the defendant has no prior convictions for any Class A felony, he or she must be punished by imprisonment for life or life without the possibility of parole, in the discretion of the trial court.
- (4) On conviction of a Class A felony, where the defendant has one or more prior convictions for any Class A felony, he or she must be punished by imprisonment for life without the possibility of parole.
- \*Class A felonies include Murder, Rape I, Sexual Torture, Kidnapping I, Domestic Violence I, Burglary I, Arson I and Robbery I. By definition, no physical injury is required for a conviction for Robbery I or Burglary I. Ala Code 13A-1-5, 13A-8-43(1). Robbery is defined in state law as when a person commits theft and in the process (1) uses force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance; or (2) threatens the imminent use of force against the person of the owner or any person present with intent to compel acquiescence to the taking of or escaping with the property. It becomes Robbery I when the defendant is (1) Is armed with a deadly weapon or dangerous instrument; or (2) Causes serious physical injury to another. Alabama Code Sections 13A-8-41, 43.

### The State of Alabama relies on long prison sentences at some of the highest rates in

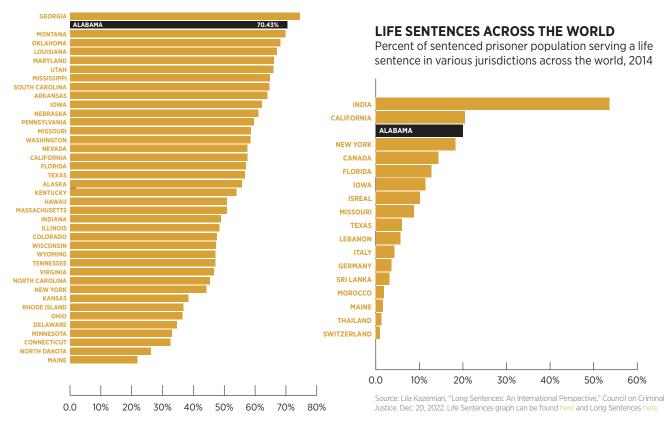
the United States and the world.



Source: Ashley Nellis and Savannah En, No End in Sight: America's Enduring Reliance on Life Imprisonment, The Sentencing Project, 2021, p. 10 at www.sentencingproject.org.

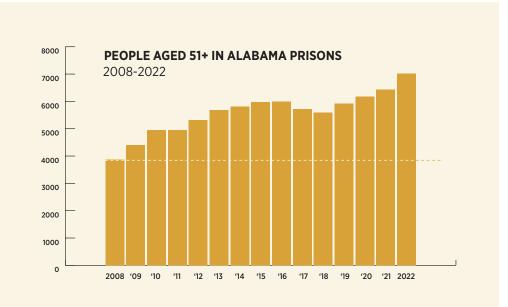
### **LONG SENTENCES BY STATE** | 2019

Percent of sentenced prisoner population serving long sentences (10+ years) by State



■What are we getting in return? An 81% increase in the number of people aged 51 and older in Alabama prisons in 15 years ...



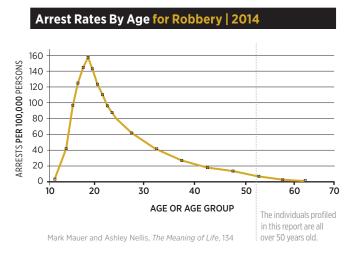


**119% INCREASE IN MEDICAL COSTS** IN ALABAMA PRISONS **IN 15 YEARS** 

### **HUGE GROWTH IN PRISON MEDICAL COSTS**

The incarceration of older adults comes at high economic costs while contributing little to a reduction in crime. Rates of crime decline dramatically after age 55 while the costs of incarceration for older adults greatly exceed care costs for younger individuals.<sup>12</sup> In Alabama, prison medical costs have jumped 119% in 15 years. This increase can be corelated directly to the rise in older incarcerated people.<sup>13</sup>

### TAX DOLLARS WASTED TO INCARCERATE THOSE **LEAST LIKELY TO REOFFEND ...**



With irrefutable data showing re-offense drops enormously as people reach their 40s and to almost zero by age 60, there is no public safety justification for these sentences.

## STORIES OF MEN CONDEMNED TO DIE IN PRISON

These men — and many others — are serving extreme sentences that would not be imposed today. Why a change in the law is needed to fix this injustice.

### **JOHN MANLEY | AGE 60**

John Manley is serving a sentence of life without parole after being convicted of burglary 35 years ago. No one was physically injured or threatened with a weapon; he had no interaction with the victim and no money or property was stolen. The prior convictions used to enhance

his sentence under the Habitual Felony Offender Act were all part of one sentencing event and stemmed from burglaries of unoccupied dwellings committed when he was 20 years old.<sup>14</sup>

Now, the victim in this case believes the sentence excessive and has sought to assist Mr. Manley. "After much thought and reflection, I would like it to be known that I would support Mr. Manley's release from prison. I

believe his institutional record demonstrates that he is no longer the same person he was when he was 24 years old and burglarized my house," he wrote in an affidavit. Yet, without changes to Alabama law, Mr. Manley will die in prison despite

the victim's wishes because the District Attorney is resisting efforts to resentence 60-year-old John Manley.<sup>15</sup>

John grew up in Montgomery, the son of a decorated WWII combat veteran, James Manley, who passed away recently at age 94. John's mother Ann Manley still mourns her husband and longs for her son's freedom. But she is 87 and time is running out.

While in DOC custody, John worked in the prison kitchen, as a barber, and a trade school clerk. For the past 14 years, he has worked as an accounting clerk. Despite the fact he is serving a sentence that allows no chance for release, he earned an Associate's Degree from Gadsden State Community College and completed 17 courses on Christianity, including several offered by Samford University.

Former U.S. Congressman Spencer Bachus first contacted Appleseed about John's case after getting to know him through prison ministry. Congressman Bachus, a Republican who served 12 years in Congress representing Alabama's 6th District, has advocated for John's release.

"I've seen firsthand the injustice of life without parole sentences under the Habitual Felony Offender Act. Individuals, like John, whose offenses involved no physical harm to another person should not be forced to die in prison," Congressman Bachus said. "I support a Second Chance law that would allow judges to evaluate whether someone who has served 15 or 20 years truly deserves more punishment or has earned an opportunity to live their final years outside prison."

#### **EDWARD DAUGHTRY | AGE 64**

Edward Daughtry has spent 24 years incarcerated without a single disciplinary infraction, despite a sentence that condemns him to die in prison for an offense with no physical injury. Court records show that in December 1998 he entered a gas station, laid a gun on the counter, and told the cashier he was not going to hurt her. He then demanded money and left with \$161.16 He was convicted of first-degree robbery.

Daughtry's criminal history began with drug addiction at a time when drug courts were unavailable and treatment options scarce. In 1989, he was convicted of possession of a controlled substance for about \$20 worth of crack cocaine in his pocket. Years later, he received convictions for theft and third-degree robbery, an incident involving several men who stopped at a gas station and one of Daughtry's friends grabbed \$40.50 out of the cash register.

Due to changes to Alabama law, the drug possession conviction can no longer be used to enhance sentences under the HFOA, and a life without parole sentence would be an impossible sentencing outcome. Pursuant to Alabama's legislatively approved Sentencing Guidelines, Daughtry, if sentenced today, would be eligible for a sentence ranging

from 6.5 years and 17 years with the option of serving only 18 months in prison and the remainder on probation.

As soon as he entered prison, Daughtry began a long-term drug rehabilitation program known as "Crime Bill." Eventually, he became a program facilitator. He has taken courses in restorative justice and learned to consider his offenses from the perspective of victims. He has provided over 100 certificates, and transcripts of his program enrollment throughout his incarceration amounting to

1,981 hours of programs through the honor dorm from 2004 until 2017.

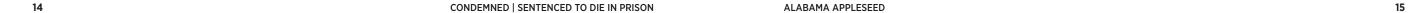
"As I awaited trial, I saw what drugs and crime had caused me to destroy: a wife and family, jobs, and other relationships and even opportunities. I took a very serious and honest personal inventory and decided that I had to change and become a better human being, a better man. I finally made the decision to get clean in prison: I looked

back on my life, and I played the whole tape, looked at the good and the bad – the addiction, the alcohol, the heartbreak I brought my family, the fact I wasn't there to raise my children. I also took an empathy class that was transformative to me and wrote letters to the victims of my crimes," he told Appleseed.

Daughtry has a clear record without any citations or disciplinaries throughout a quarter century of incarceration. He spends most of his time in the Donaldson chapel, ministering and singing for the chapel choir. He has amassed glowing letters of recommendations from retired US Army Colonels, university professors, classification specialists, and beyond.

Appleseed approached the Baldwin County District Attorney's Office about resentencing Mr. Daughtry under today's laws, but they declined.







### **JOHN COLEMAN | AGE 88**

LOCKED IN ST. CLAIR CORRECTIONAL
FACILITY, ONE OF AMERICA'S MOST VIOLENT
PRISONS, UNTIL HIS RELEASE IN 2023.
PRIORS OCCURRED IN THE 1970S.



"I grew up in the Southside of Birmingham. I didn't have a father, only mom and sisters. I did what I could to help my momma until she died. Me and my mom put my sisters through school, but I never finished school myself.

"In my 50 years of prison I've worked many jobs. Most were as one of the most trusted prisoners. I've worked in

JEFFERSON COUNTY

"I'm 88 years old and all alone. Please don't let me die in prison. I'm not ready to die yet. I pray for what years I have left to be on the other side of this fence ... but that seems hopeless in Alabama." the administrative office as a runner for wardens, inside prison infirmaries as a hospital runner and in 1985 in the state investigator's office (I&I) making their coffee, cleaning up, taking care of them. Only the most trusted are chosen for these jobs.

"I am housed in dorm G-5, under a medical hold due to my kidney disease. I'm proud to say that at 86 years old, I can still bathe myself, still put my underwear and clothes on right, my socks and shoes all by myself.... My desire is to have another chance in society and build relationships with my children, grandchildren and great grandchildren." ///

### MYRON MONROE | AGE 62

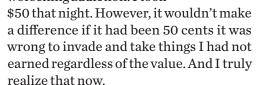
HAS SERVED 32 YEARS FOR \$50 ROBBERY WHILE ARMED WITH A KNIFE.

"During my childhood, my mother was left to care for nine children on her own because my father did not care about us and was never in our lives. So, I never really had a male figure to look up to or someone to teach me things I needed to know in order to be a productive citizen. My older brother was a junkie and he was in and out of jail and prison most of his life. I started doing things like hanging out with the wrong group of people that did not set a good example for me at all. Being in this environment, I learned to adapt to what I was exposed to, which didn't give me much hope of having the kinds of morals and values I needed to embrace the world in a positive way.

MOBILE COUNTY

"After 30 years in prison, I have been rehabilitated. Any more time would be too long for snatching money from a cash register, which although wrong, is not deserving of my entire life. I am truly sorry. All I want is to go home to my family that I left so many years ago."

"I began using drugs and this is when my life of crime began. I would steal money from my mother's purse to buy drugs. The conviction that led to my life without parole sentence was the night I pulled out a knife, not to hurt anyone but as a scare tactic, to try and get more money to supply my worsening addiction. I took



"I have been here at Holman prison throughout all of my 30s, 40s, and 50s. Being incarcerated has given me a whole new outlook on life as an individual. I have changed my entire life, and I have given it over to God because I know there is hope through Christ Jesus. ... I am not the same person I was back then. I no longer have an addiction nor am I a user of drugs, alcohol, or any controlled substance.

"Since my time at Holman, I have taken many classes and completed Alcoholics Anonymous (AA) and Narcotics Anonymous (NA). I have passed some of my GED, and I plan to finish and receive my diploma. God has blessed me to work for the warden here



at Holman, and I am around people in the free world all the time. They would tell you that I am very trustworthy in handling things for them. I also clean the hospital to make sure everything stays sanitized. These are just some of the duties I perform that exemplify that I can be trusted to be released back into society."///

### **JAMES OLIVER JONES | AGE 75**

HAS SERVED 39 YEARS WITH TWO
DISCIPLINARY INFRACTIONS, INCLUDING ONE
FOR HAVING AN UNAUTHORIZED COOKIE.

Mr. Jones persevered seven years in order to earn an associate's degree while incarcerated, then went on to tutor others in Adult Basic Education classes. The ADOC no longer permits people serving life imprisonment without parole to enroll in college classes. Mr. Jones has tried to continue his education with religious classes taught by volunteers.

"I have scores of certificates from Bible courses, dating back 20 years. Yes, I am one of the oldest members of the faith-based



honor dorm. I've been in the [honor dorm] approximately 20 years.

My most recent experiences here in prison are quite different from when I first came to prison. The respect factor is now nearly non-existent. Maybe we have too many young guys here now. The cellphones and dope have changed prison forever. And to be honest, the current administration just don't know how to deal with this obvious problem."///

JEFFERSON COUNTY

"To give a person life without when he took no life is draconian. ... We have just too many bodies in prison."

### **HOW ALABAMA COMPARES WITH OTHER STATES**

ESPECIALLY SOUTHERN STATES

In Alabama, the **Habitual Felony Offender Act** permits life imprisonment without parole upon conviction of one robbery with no physical injury if the defendant has three minor felony convictions, even low-level drug or property offenses. Across the South, only one other state permits a death in prison sentence under similar circumstances: Mississippi.

Alabama's statute is harsher than "three strikes" statutes in other states for a variety of additional reasons.
Alabama's law even stands out among southern states. A few examples:

Arkansas, Georgia, Florida,
Kentucky, North Carolina, South
Carolina, Tennessee, Virginia, Kansas,
Utah, Maryland and Mississippi
require that prior convictions used
for enhancement arise from separate
incidents. Alabama does not. Multiple prior offenses — such as receiving

- stolen property that occurred in a single incident can count as separate offenses for enhancement purposes.
- North Carolina, South Carolina, Tennessee, Texas, Virginia, Utah, and Maryland only use certain prior offenses to enhance, specifically violent and sex-related offenses. Alabama does not take into account the nature of prior offenses. Non-violent priors are treated the same as violent priors throughout Alabama's law.
- In Arkansas, all life sentences are parole-eligible once the individual reaches age 55. Arkansas also reserves life imprisonment without parole for repeat sex offenders. Alabama does not.
- Oklahoma provides parole eligibility for all life sentences, including habitual offender sentences. Alabama does not offer any opportunity for release.

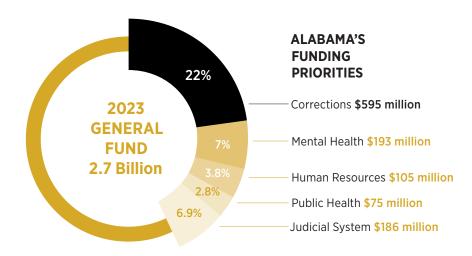
- eligibility for all life sentences, except those for murder. Alabama does not. As a result, approximately 220 individuals are serving life imprisonment without parole for robbery, burglary, or drug trafficking involving no physical injury to the victim.
- In Virginia, individuals with life sentences for repeat violent offenses can receive conditional release in their 60s.
- Kentucky, North Carolina, Tennessee, and Utah repeat offender laws include provisions limiting the use of prior offenses committed by youth from being used to enhance sentences. In Alabama, people can be sentenced to life without parole based on prior offenses committed as juveniles.

### Recommendations

- At a minimum, Alabama should provide a mechanism for judges to review the sentences of people serving life without parole under the Habitual Federal Offender Act. **Judges should maintain jurisdiction or otherwise have the discretion to "look back" and resentence these older individuals** with a demonstrated record of rehabilitation and participation in prison programming. Numerous experts and organizations have recommended implementation of Second Look laws, which allow judges to review cases where individuals are serving extreme sentences to determine if additional punishment is warranted or if resentencing or release is appropriate. The American Bar Association suggests a threshold of ten years for reconsideration of lengthy sentences, noting that with limited opportunities for rehabilitation in prison, ten years is a reasonable period of time to achieve the goal of sentencing while not eroding an individual's long-term prospects for life on the outside. The Model Penal Code recommends individuals should be eligible for release after 15 years. The Model Penal Code recommends individuals should be eligible for release after 15 years.
- Lawmakers should **remove the possibility of life imprisonment without parole for robbery convictions**, joining Arkansas, Oklahoma, South Carolina, and Virginia. All exclude robbery from death-in-prison sentences or provide a release mechanism for older individuals.
- Alabama should join a host of other southern states and **limit the types of prior offenses that can be used to enhance a sentence**. Currently minor offenses including drug possession, forgery, and burglary III (breaking into an empty building) can be used to enhance a sentence to life or life without parole.
- The reforms passed in 2015 should be applied retroactively. Currently, people are serving sentences of life without parole for offenses committed in the 1980s and 1990s. The same offenses today would never permit a death-in-prison sentence.
- Alabama should require that offenses used for enhancement purposes arise out of separate incidents, as do Arkansas, Georgia, Florida, Kentucky, North Carolina, South Carolina, Tennessee, and Virginia. Current charging laws and practices prosecutors to charge multiple felonies arising from a single incident.

18 CONDEMNED | SENTENCED TO DIE IN PRISON





### STRIKE ONE | PEOPLE AGE OUT OF CRIMINAL BEHAVIOR

The peak age for robbery is nineteen, according to the U.S. Bureau of Justice Statistics, with the rate dropping to almost zero by age 60. Across the country, there are 160 robbery arrests per 100,000 people at age 19; by age 60 that number plummets to less than five arrests per 100,000 people. <sup>18</sup>

Nevertheless, in Alabama the Habitual Felony Offender Act has ensnared roughly 550 people whose most serious offense was robbery, who are serving sentences of life or life without parole. Like the men who shared their stories above, 200 of these individuals are growing old in prison with no chance for release because they were sentenced to life without the possibility of parole. Hundreds more are serving parole-eligible life sentences but are denied parole because robbery is classified as a violent crime. With irrefutable data showing re-offense drops enormously as people reach their 40s and to almost zero by age 60, there is no public safety justification for these sentences.

Given the well-established fact that crime tends to peak in adolescence or early adulthood and then decline with age, sentences of life and life without parole mean we incarcerate people long after their risk for violence has diminished. The technical term for the relationship between age and crime is known as the "age-crime curve." The "age-crime curve" can be explained in part by the fact that brain development continues well into people's twenties, particularly in the prefrontal cortex, which regulates impulse control and reasoning. "Young adults are more likely to engage in risk-seeking behavior, have difficulty moderating their responses in emotionally charged situations, or have not fully developed a future-oriented method of decision-making." <sup>19</sup>

The age-crime curve is relevant in evaluating reforms needed in Alabama because numerous individuals serving life without parole, including John Manley and Myron Monroe profiled above, were incarcerated in their mid-twenties. By issuing such lengthy sentences for young people convicted of violent crime, we are also ignoring their potential for personal transformation and rehabilitation. Such excessive sentences have diminishing returns and, ultimately, opportunity costs to individuals, communities, and taxpayers.<sup>20</sup>

Finally, research from the Bureau of Justice Statistics shows that formerly incarcerated people over the age of 40 have the lowest recidivism rates of any age group.<sup>21</sup>

### STRIKE TWO | OLDER PRISONERS ARE EXPENSIVE TO HOUSE

Since 2000, the average age of a person incarcerated in Alabama has risen from 35 years old to 42, in part because of lengthy sentences



mandated by the Habitual Felony Offender Act. <sup>22</sup> Health care costs for aging prisoners have exploded the prison system's budget. In 2006, the first year that ADOC reported out "Medical and other Professional Services" in its annual reports, that figure was \$97.3 million. In 2021 those services costs \$221 million, or an increase of 128%. <sup>23</sup> There is no end in sight. ADOC just signed a new 4.5 year healthcare contract for \$1.06 billion dollars.

Robust research has repeatedly found that aging prisoners are more expensive to house because of increased health care needs and other services, although the findings as to how much more expensive vary. The National Institute of Corrections reported that **the annual cost of providing** 

### care to elderly prisoners with chronic medical needs is about double the cost of housing a younger prisoner.<sup>24</sup>

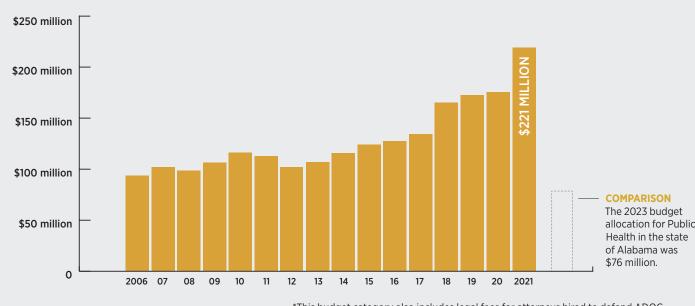
Alabama is a poor state with chronic challenges in funding basic government services. The ever-growing prison budget has meant fewer resources invested in other services, including investments in mental health, public health, crime prevention, and district attorneys — investments that could make Alabama safer.

# STRIKE THREE | PEOPLE WHO COMMIT VIOLENT OFFENSES ARE OFTEN LEAST LIKELY TO REOFFEND

The men profiled above have been convicted of robbery, and therefore are

#### **COST OF PRISON MEDICAL CARE IN ALABAMA**

ADOC'S general fund allocation has swelled by \$285 MILLION in the last decade with no end in sight, in part because of these rising healthcare costs. Now the state is poised to spend another \$1.3 billion, including \$400 million in federal COVID-relief funds, on two new mega prisons.



\*This budget category also includes legal fees for attorneys hired to defend ADOC against lawsuits over prisons conditions, mental health care, and excessive force against incarcerated people by ADOC staff.

classified as violent offenders by the state, which makes them ineligible for the myriad, recent criminal justice reforms enacted in Alabama, such as shorter sentences or increased access to diversion programs, targeting people convicted of nonviolent offenses. However, the Bureau of Justice Statistics has found — in a special report conducted over nine years — that recidivism is lowest among people convicted of a violent offense.<sup>25</sup> Researchers looked at people convicted of four categories of crime: property, drug, violent, and public order. "Prisoners released for a violent offense were less likely to have been arrested for any type of crime" than prisoners released for a property or drug offense[.]<sup>26</sup>

Research has consistently shown that people convicted of violent offenses are not inherently violent. Violence is influenced by a range of factors, such as youth and life circumstances. It is not a static characteristic. No one has proven this more persuasively than the older men who populate the honor dorms of Alabama's prisons.

Like the men in this report, most people incarcerated long enough to grow old in prison were given long sentences for violent offenses. Therefore, reforms that recognize the diminishing returns of incarcerating older people and that address the enormous costs of medical care for an aging prison population should not exclude people convicted of violent offenses.

Research has consistently shown that people convicted of violent offenses are not inherently violent. Violence is influenced by a range of factors, such as youth and life circumstances. It is not a static characteristic. No one has proven this more persuasively than the older men who populate the honor dorms of Alabama's prisons. They have avoided violence in the most violent prisons in the country.

THE NUMBERS<sup>56</sup>

220

People Serving Life Imprisonment Without Parole for offenses with no physical injury to the victim

297

People Serving Life Sentences for Robbery I, which usually involves no physical injury.

5,927

Total Number of Alabamians **Serving Enhanced Sentences** Under the Habitual Felony Offender Act

1,745

Total Number of Life and Life Without Parole Sentences Under the Habitual Felony Offender Act

# THE WORST HABITUAL OFFENDER | THE ALABAMA DEPARTMENT OF CORRECTIONS

As the lives of these older men attest, they have changed. They have demonstrated irrefutable evidence of rehabilitation despite being condemned to die in prison with no reasonable hope for release.

Yet the prison system that houses them has gotten worse as the years wear on. Alabama has repeatedly been condemned by federal courts and the United States Department of Justice for violating the United States Constitution — the highest law of the land — in how it treats incarcerated Alabamians. Most recently, despite being put on notice four years ago that the U.S. Department of Justice was investigating the entire prison system for men, conditions only deteriorated, abysmally low staffing levels stagnated, violence escalated, decrepit prisons closed, and overcrowding persisted. The DOJ was forced to sue the state, making Alabama the only state in the nation that has faced two systemwide lawsuits from the federal government over unconstitutional prison conditions.

Examples of federal court findings from the last 45 years:

### PUGH V. LOCKE<sup>27</sup> 1976 federal court order addressing system-wide living conditions

"There can be no question that the present conditions of confinement in the Alabama penal system violate any current judicial definition of cruel and unusual punishment, a situation evidenced by the defendants' admission that serious Eighth Amendment violations exist." <sup>28</sup>

"The living conditions in Alabama prisons constitute cruel and unusual punishment. Specifically, lack of sanitation throughout the institutions in living areas, infirmaries, and food service presents an imminent danger to the health of each and every inmate. Prisoners suffer from further physical deterioration because there are no opportunities for exercise and recreation. Treatment for prisoners with physical or emotional problems is totally inadequate."<sup>29</sup>

"The response of the defendants to the matters set forth in this opinion consistently has been that they cannot alleviate the conditions because of inadequate funding by the state legislature. However, a state is not at liberty to afford its citizens only those constitutional rights which fit comfortably within

ALABAMA APPLESEED 25

its budget. The Alabama Legislature has had ample opportunity to make provision for the state to meet its constitutional responsibilities in this area, and it has failed to do so."<sup>30</sup>

# AUSTIN V. HOPPER<sup>31</sup> | 1998 federal case concerning unconstitutional conditions of confinement, such as chain gangs, hitching posts, and denial of visitation

"The deprivation of these basic human necessities plainly violates the Eighth Amendment. ... Further, the corrections officers' refusal to provide inmates who had urinated or defecated upon themselves with means to clean their bodies constituted a further violation of the inmates' Eighth Amendment rights .... The adverse conditions of the hitching post, including its placement in the direct sunlight, causing inmates to suffer symptoms of heat exhaustion and sunburn, also violated the minimum standards required by the Eighth Amendment." 32

"This court is not an expert on penological matters and accords the Commissioner great deference in conceiving and implementing policies to control inmate behavior in his institutions. However, it is also the duty of this court to protect prisoners within such institutions from practices that violate their constitutional rights. The manner in which the DOC has used the hitching post does just this." 33

# BRADLEY V. HALEY, ET AL<sup>34</sup> | 2000 federal case concerning mental health treatment in men's prisons

"Whereas on January 15, 1992, Plaintiffs filed suit challenging the constitutional adequacy of the mental health treatment provided to persons with serious mental illness by the Alabama Department of Corrections (ADOC) ... The Defendant agrees to comply with the requirements for an adequate mental health system for Alabama inmates with serious mental illness as contained in the document entitled 'Agreement of Experts' (August 8, 2000)." 35

"In our judgment, the ADOC fails to provide even minimally adequate mental health care for its inmates with serious mental illness, and the record provides evidence that ADOC administration either knew or ignored the serious shortcomings of the system." <sup>36</sup>

"The ADOC's system for providing care to the seriously mentally ill requires substantial change if it is to become even minimally adequate. We have observed many inmates with mental illness greatly suffering needless pain and offer this report in the hopes that it can assist the court to fashion a solution that will ameliorate this suffering." <sup>37</sup>

# HOPE V. PELZER<sup>38</sup> | 2002 Supreme Court hitching-post case raising Eight and Fourteenth Amendment constitutional violations

"The use of the hitching post under these circumstances violated the 'basic concept underlying the Eighth Amendment[, which] is nothing less than the dignity of man.' This punitive treatment amounts to gratuitous infliction of 'wanton and unnecessary' pain that our precedent clearly prohibits."<sup>39</sup>

"Respondents violated clearly established law. Our conclusion that "a reasonable person would have known," ... of the violation is buttressed by the fact that the DOJ specifically advised the ADOC of the unconstitutionality of its practices before the incidents in this case took place. The DOJ had conducted a study in 1994 of Alabama's use of the hitching post. Among other findings, the DOJ report noted that ADOC's officers consistently failed to comply with the policy of immediately releasing any inmate from the hitching post who agrees to return to work. The DOJ concluded that the systematic use of the restraining bar in Alabama constituted improper corporal punishment. Ibid. Accordingly, the DOJ advised the ADOC to cease use of the hitching post in order to meet constitutional standards."40

# LAUBE V. HALEY<sup>41</sup> 2002 case concerning unconstitutional conditions of confinement and overcrowding in Alabama's women's prison

"In sum, the court holds that the plaintiffs are entitled to preliminary-injunctive relief on their claim that they are subject to a substantial risk of serious harm caused by Tutwiler's greatly overcrowded and significantly understaffed open dorms. Indeed, the court is not only convinced that these unsafe conditions have resulted in harm, and the threat of harm, to individual inmates in the immediate past, it is also convinced that they are so severe and widespread today that they are essentially a time bomb ready to explode facility-wide at any unexpected moment in the near future."<sup>42</sup>

### LEATHERWOOD V. HALEY<sup>43</sup> | 2002 Limestone case concerning HIV Unit conditions and medical care

"It is evident that lives were lost due to preventable lapses in the medical treatment. HIV prisoners died without necessary intervention by the Limestone medical staff or ADOC." U.S. District Magistrate Judge John Ott "(U.S.D.C., N.D. Ala. (Western Div.))"

"[T]he most egregious failure at Limestone is the number of preventable deaths. ... In almost all instances, the death was preceded by a failure to provide proper medical care or treatment. Consistently, patients died of preventable illness. ... At least one patient had such severe pneumonia that he suffocated in front of the medical staff despite the patient's request for treatment and hospitalization. Another, critically ill Terrell Grey, was taken in a van for two hours to a Birmingham hospital, instead of to a local facility; he died en route, "tended" to by only two guards. The plaintiffs had testified that many HIV -positive prisoners "housed in dormitory 16, [the] warehouse HIV infirmary, died

a horrible death, literally standing on their feet," Court-appointed mortality expert Dr. Stephen Tabet, who found the number of deaths from AIDS at Limestone "remarkably high" compared to other prison systems.<sup>44</sup>

# TUTWILER PRISON FOR WOMEN | 2014 federal investigation of Tutwiler's rampant sexual abuse<sup>45</sup>

"We conclude that the State of Alabama violates the Eighth Amendment of the United States Constitution by failing to protect women prisoners at Tutwiler from harm due to sexual abuse and harassment from correctional staff."

"Officials at the Alabama Department of Corrections ("ADOC") and Tutwiler have failed to remedy the myriad systemic causes of harm to the women prisoners at Tutwiler despite repeated notification of the problems. ADOC and Tutwiler have demonstrated a clear deliberate indifference to the harm and substantial risk of harm to women prisoners. They have failed to take reasonable steps to protect people in their custody from the known and readily apparent threat of sexual abuse and sexual harassment. Officials have been on notice for over eighteen years of the risks to women prisoners and, for over eighteen years, have chosen to ignore them."

"This is not the first time we have notified Tutwiler and ADOC of unconstitutional conditions of confinement at Tutwiler. In 1995, we issued a findings letter detailing unconstitutional medical and mental health care treatment at Tutwiler. Although not a subject of the investigation, the 1995 letter also noted inappropriate sexual contact between prisoners and staff. ... Eighteen years since notifying ADOC and Tutwiler officials of inappropriate sexual activity between staff and prisoners, problems in the area of sexual abuse and harassment have only worsened." 48

27

# BRAGGS V. DUNN<sup>49</sup> 2014 ongoing federal lawsuit concerning unconstitutional treatment of severe mentally ill incarcerated individuals

"Mentally ill ADOC prisoners, defined here as prisoners with serious mental-health needs, have suffered harm and are subject to a substantial risk of serious harm due to ADOC's inadequate mental-health care. Based on the trial testimony, the court finds seven interrelated areas of inadequacy: (1) identification and classification of prisoners with mental illness; (2) treatment planning; (3) psychotherapy; (4) inpatient mental-health care units; (5) crisis care and suicide prevention; (6) use of disciplinary actions for symptoms of mental illness; and (7) use of segregation for mentally ill prisoners." 50

"As discussed below, despite being repeatedly informed that significant deficiencies existed, ADOC has disregarded and failed to respond reasonably to the actual harm and substantial risks of serious harm posed by its deficient mental-health care system" <sup>51</sup>

"Despite its knowledge of actual harm and substantial risks of serious harm to mentally ill prisoners, ADOC has failed to respond reasonably to identified issues in the delivery of mental-health care. On a global level, the state of the mental-health care system is itself evidence of ADOC's disregard of harm and risk of harm: in spite of countless reports, emails,

and internal documents putting ADOC on notice of the actual harm and substantial risks of serious harm posed by the identified inadequacies in mental-health care, those inadequacies have persisted for years and years."52

"For the reasons above, the court holds that the Commissioner of the Alabama Department of Corrections and the Associate Commissioner of Health Services, in their official capacities, are violating the Eighth Amendment rights of the plaintiff class and of plaintiff Alabama Disabilities Advocacy Program's constituents with serious mental-health needs who are in ADOC custody. Simply put, ADOC's mental-health care is horrendously inadequate." 53

### Acknowledgements

THIS REPORT WOULD NOT BE POSSIBLE without incarcerated men in Alabama who were willing to share their stories with us in letters, legal visits and phone calls. They revealed some of the most painful aspects of their lives to near strangers in hopes their struggles could help change our broken system. We are grateful to Americain Felder, Michael Blair, John Coleman, John Manley, James Oliver Jones, Myron Monroe, Edward Daughtry, Charlie Kolb, and many other older men in Alabama's prisons whose experience and insights inform our work.

This report was written by Appleseed Executive Director Carla Crowder. Scott Fuqua and Alex LaGanke provided research and writing. Additional research was provided by Appleseed interns Eva Dorrough, McKenzie Driskill and Isabel Coleman. Val Downes designed the report. Mark Leslie assisted with copyediting. This report benefited greatly from the breakthrough research of investigative journalist Beth Shelburne, whose collection of data and stories about the Alabama Habitual Felony Offender Act has been critical to changing the conversation about this draconian law, and who generously shared her data with us.

We are grateful to the National Football League Foundation that has generously funded Appleseed's work through its Inspire Change program. We could not have embarked on this project without the NFL's support.

This report is dedicated to the irrepressible Alvin Kennard, whose case first sparked Alabama Appleseed's involvement in HFOA reform. Mr. Kennard served 36 years for a \$50 robbery at a Bessemer bakery before being resentenced from life without parole to time served in August 2019. He emerged to fill the lives of his friends and family with joy and light and continues at age 61 to report to work daily at Town and Country Ford in Bessemer so that customers can enjoy freshly painted cars. He is an inspiration.

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### **POST SCRIPT**

### **Second Chances Matter**

Appleseed first published an earlier version of this report in January 2021, which featured Joe Bennett, who was then serving a Life Without Parole sentence in Donaldson Correctional Facility, where he had been incarcerated for 22 years without a single disciplinary infraction. Nine months later, under an agreement with Jefferson County District Attorney Danny Carr, we won release for Mr. Bennett.

Joe Bennett is employed fulltime at a Birmingham-area tree service, where he has gotten a raise and taken on additional duties. "Joe has been a trustworthy and excellent employee for over a year. He's contributed to the success of my business, even overcoming a serious injury and quickly return ing to the job," said businessowner Robert Reid at Greenbrier Tree Service. "I wish there were more people like him to hire."

Reid met Joe at Donaldson prison through Prison Fellowship, where he volunteered, then provided the job when Joe was released.



Joe Bennett (right) enjoying his first meal as a free man on the day he was released from Donaldson prison. His employer, Robert Reid, met him at the prison gates.

Additionally, Joe has gotten a driver's license, registered to vote, supports himself in his own apartment, and paid income taxes. He has reunited with family and even learned to cook for himself in a crock pot.

In September 2022, Joe suffered a bad break in his wrist while on the job. His injury required surgery and extensive physical therapy. Thankfully, Appleseed's Board member, Dr. Michael Smith at Southlake Orthopedics and Spine Surgery, assisted with that challenging and urgent need. Joe quickly returned to work and continues to be an asset to Alabama's work force, rather than an unnecessary expense on taxpayers.

"I am so, so grateful," he has said, over and over again, about his second chance at life.

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32 CONDEMNED | SENTENCED TO DIE IN PRISON

#### **CALL TO ACTION**

FROM THE HONORABLE MICHAEL YOUNGPETER, MOBILE COUNTY'S PRESIDING JUDGE IN THE CASE OF MICHAEL BLAIR, SENTENCED TO DIE IN PRISON FOR ROBBERY AT AGE 22

"[I]t was apparent ten years ago that Blair was not the same 22-year-old who committed a few non-violent felonies and then the robbery which led to the sentence in this case .... A simple review of this case shows that 30+ years in prison is enough. If the opportunity for a "do over" arises, the Court intends to resentence Blair so that he has the chance to be paroled."

BLAIR V. STATE | MOBILE COUNTY CIRCUIT COURT | CASE NO. CC-1990-1352

