

2016 ALABAMA LEGISLATURE // REGULAR SESSION

# LEGISLATIVE GUIDE

THE SOUTHERN POVERTY LAW CENTER  
is dedicated to fighting hate and bigotry and  
to seeking justice for the most vulnerable members  
of our society. Using litigation, education,  
and other forms of advocacy, the Center works  
toward the day when the ideals of equal justice  
and equal opportunity will be a reality.

# Alabama legislators have been entrusted with great responsibility.

Each year, they face decisions that shape the future of this state and its people for generations. As this legislative guide by the Southern Poverty Law Center (SPLC) makes clear, the 2016 session is no exception.

Every day, our sentencing laws send too many nonviolent offenders into overcrowded prisons. What's more, children are too easily swept into the adult criminal justice system. Meanwhile, our public schools are losing funding, and vulnerable children are trapped in failing schools.

Elsewhere, families struggling to make ends meet are not only facing an economic gap in Alabama but also a justice gap. Many are exploited by predatory lenders operating with virtual impunity.

Further, the fundamental belief in a fair wage for a fair day's work is disappearing in Alabama. Many must work several minimum-wage jobs just to ensure basic necessities. Others must rely on government services despite holding down a job. It's a struggle eclipsed only by the fear of a catastrophic health emergency.

Other Alabamians are finding their rights under assault. Despite the U.S. Supreme Court ruling in favor of marriage equality, there's still the prospect of legislation that threatens discrimination against lesbian, gay, bisexual and transgender (LGBT) residents.

These are a few of the issues the SPLC has encountered as it has worked across the state to ensure justice for the most vulnerable members of society. This 2016 legislative guide examines these issues, identifies key problems and recommends solutions that should be part of any legislation. Our assessment is based not only on our work in Alabama, but a 45-year history of addressing such issues across the Deep South.

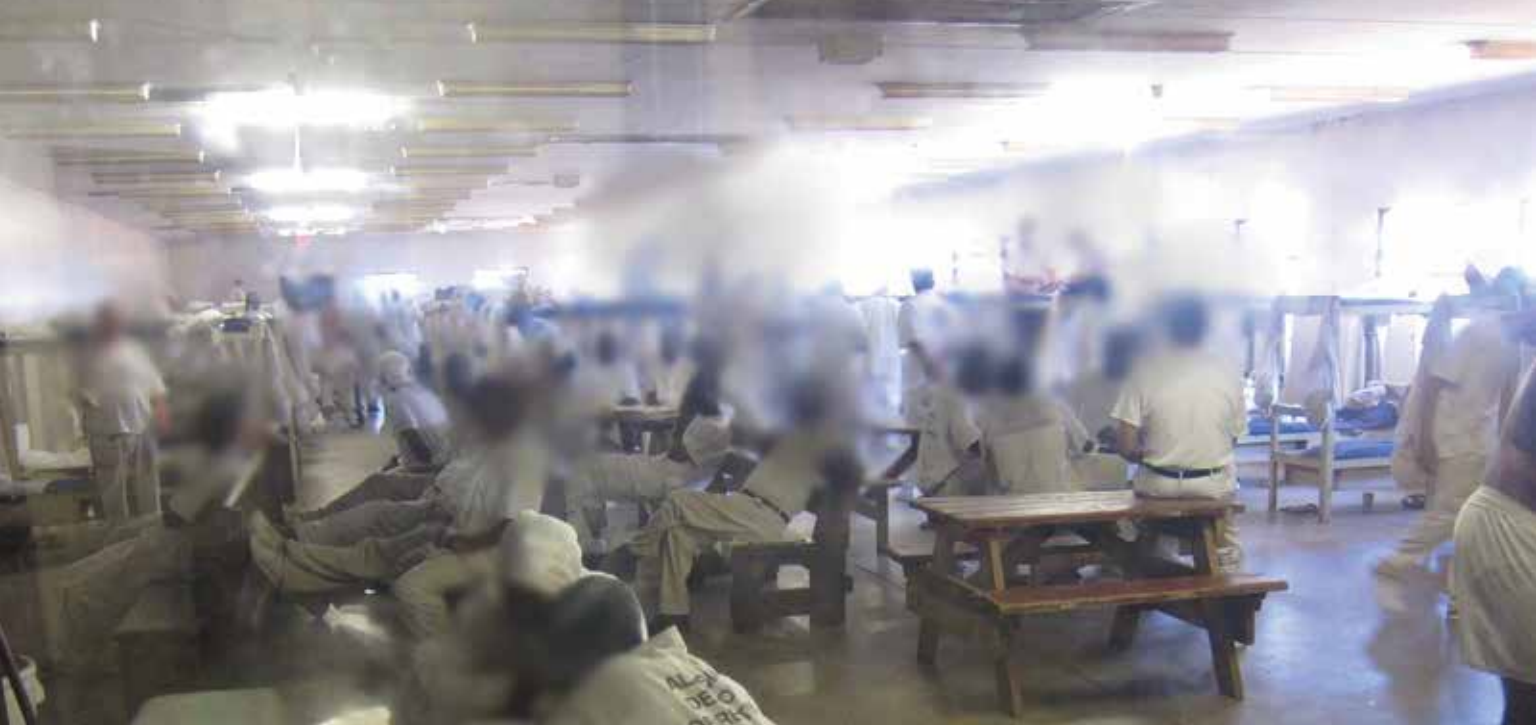
The Legislature's response will make a fundamental statement about our state's values, its priorities and its commitment to ensuring fairness and equality for all Alabamians.



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**ALABAMA LEGISLATURE // 2016 REGULAR SESSION**

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**END MASS  
INCARCERATION**



# GET SMART WITH SENTENCING

DESPITE THE REFORMS ENACTED IN 2015, more action is needed to address prison overcrowding and create an efficient and humane system that truly rehabilitates prisoners, reduces recidivism and makes our communities safer.

Alabama's prisons are the most overcrowded in the United States, holding almost *twice* the number of people they were designed to accommodate.<sup>1</sup> This overcrowding is the direct result of misguided policies that led to exponential growth in the prison population over the past 40 years. Since 1977, the year the Alabama Legislature passed the Habitual Felony Offender Act (“three strikes” law),<sup>2</sup> the number of state prisoners has grown by more than 800 percent, vastly outpacing the general population’s 23 percent increase over the same period.<sup>3</sup>

Today, Alabama imprisons more of its citizens, per capita, than all but two other states,<sup>4</sup> yet it ranks last in spending per prisoner.<sup>5</sup> This imbalance has resulted in costly federal lawsuits, including a current class action alleging that prisoners

SINCE 1995,  
PRISON SPENDING  
HAS INCREASED  
BY **171 PERCENT.**

have been deprived of constitutionally required medical and mental health care.

There is no clear correlation between increased incarceration and reduced crime. In fact, states that decreased their rate of imprisonment during this period had much greater decreases in crime than Alabama.<sup>6</sup> In the meantime, since 1994, Alabama's incarceration rate has climbed 45 percent even as the crime rate has declined by 19 percent.<sup>7</sup> In short: Incarcerating so many people is not making our communities safer.

Alabama's high incarceration rate also costs taxpayers a lot of money. Since 1995, prison spending has increased by 171 percent and currently accounts for 22 percent of the General Fund (\$394 million in the 2015 budget).

<b>ALABAMA DEPARTMENT OF CORRECTIONS</b>	<b>1995</b>	<b>2015</b>
Cost to the General Fund	\$145,579,511	\$394,281,304
Percent of General Fund spending	17%	22%
Percent increase in spending since 1995		171%

Even in its underfunded state, our overcrowded prison system is straining the state's budget and becoming a liability for Alabama. The state must further reduce the overcrowding and expense of our prisons.

## **PROBLEM**

### **ALABAMA IS SENDING - AND KEEPING - TOO MANY NONVIOLENT OFFENDERS BEHIND BARS**

Nonviolent property and drug offenses account for two-thirds of all new sentences to prison.<sup>8</sup> The Alabama Department of Corrections also fails to release many people who are no longer a threat to society and are eligible for parole.

### **ALABAMA PRISONS ARE DANGEROUSLY OVERCROWDED**

The current level of overcrowding is dangerous for prisoners, corrections officials and surrounding communities, and it is leading to federal lawsuits alleging unconstitutional conditions of confinement. This is the direct result of ineffective and overly harsh sentencing laws.

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## **SOLUTION**

### **RETROACTIVELY APPLY THE 2000 HABITUAL FELONY OFFENDER ACT AMENDMENT**

The Habitual Felony Offender Act was amended in 2000 to give judges the discretion to impose a sentence other than life without parole for nonviolent habitual offenders. The provisions of the amended act were made retroactive in 2001 to persons sentenced under the prior law, but then the retroactivity provision was repealed in 2014. Alabama should reinstate the retroactivity provision of the 2000 Habitual Felony Offender Act amendment.

### **APPLY CURRENT SENTENCING STRUCTURE TO ALL PRISONERS**

Alabama's new sentencing structure for nonviolent crimes gives many people shorter prison terms or a community-based alternative. However, people sentenced under the old structure are still serving long prison terms for *the same offenses*. This is unfair and expensive. All prisoners should be automatically re-sentenced under the current sentencing structure.



## PROMOTE ALTERNATIVES TO PRISON, SUCH AS DRUG AND MENTAL HEALTH COURTS

Drug and mental health courts confront underlying causes of crime and reduce recidivism.<sup>9</sup> Alabama should spend more on public education, treatment and intervention rather than continued spending on incarceration and harsh sanctions.

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1 Alex Aubuchon, Prison Reform Task Force, Fred Gray Speech and ACREcon, Alabama Public Radio, January 30, 2015, <http://apr.org/post/prison-reform-task-force-fred-gray-speech-and-acrecon>.

2 The Habitual Felony Offender Act required that offenders convicted of a third felony be sentenced to life without the possibility of parole.

3 Brendan Kirby, "How an effort to crack down on Alabama career criminals in 1977 helped cause this staggering spike," AL.com, June 8, 2014; "Monthly Statistical Report for September 2015," Alabama Department of Corrections.

4 E. Ann Carson, Prisoners in 2014, NCJ 248955, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, September 2015.

5 James J. Stephan, State Prison Expenditures, 2001, NCJ 20294, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, June 2004.

6 PEW Charitable Trusts, Prison and Crime: A Complex Link: Crime drop since 1994 has been bigger in states that cut imprisonment rates, (September 11, 2014) available at <http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/prison-and-crime>.

7 PEW Charitable Trusts, Prison and Crime: A Complex Link: Crime drop since 1994 has been bigger in states that cut imprisonment rates, (September 11, 2014) available at <http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/prison-and-crime>.

8 The Council of State Governments Justice Center, Justice Reinvestment in Alabama, Presentation to Prison Reform Task Force, (June 2014), <https://csjjusticecenter.org/jr/al/publications/> (analyzing data from the Alabama Sentencing Commission felony sentencing data).

9 Families Against Mandatory Minimums, Alternatives To Incarceration In A Nutshell, (July 8, 2011), available at <http://famm.org/wp-content/uploads/2013/08/FS-Alternatives-in-a-Nutshell-7.8.pdf>.





# STOP CHARGING CHILDREN AS ADULTS

EVERY YEAR, ABOUT 1,000 CHILDREN IN ALABAMA are charged as adults. Depending on the offense, 16- and 17-year-old children can be taken directly to adult jails (also known as “direct file”) in Alabama. Prosecutors have the discretion to transfer a child between the ages of 14 and 17 to the adult system.

Research has shown that young people are still maturing and may not appropriately judge the risks and consequences of dangerous and/or illegal behavior – findings that also mean children have a unique propensity for change.

Unfortunately, the state too often squanders the opportunity for rehabilitation, choosing instead harsh punishment that needlessly derails young lives at the expense of taxpayers and public safety.

## PROBLEM

### FUNNELING CHILDREN INTO THE ADULT SYSTEM THREATENS PUBLIC SAFETY

Children housed in adult facilities are 34 percent more likely to be arrested after release compared with youths in juvenile facilities adjudicated for similar acts.<sup>10</sup> Children in the adult system often witness inmate-on-inmate violence and can be socialized into career criminals.<sup>11</sup>

### **ONLY JUVENILE FACILITIES CAN PROVIDE APPROPRIATE EDUCATION AND TRANSITION SERVICES**

Without the appropriate education and special education services, children in adult facilities are ill-equipped to re-enter society.

### **CHILDREN IN THE ADULT SYSTEM ARE AT RISK OF VICTIMIZATION AND SUICIDE**

Children housed in adult facilities are 36 times more likely to commit suicide than those in juvenile facilities.<sup>12</sup> They are also at the highest risk for sexual abuse.<sup>13</sup>

### **COUNTY JAILS ARE NOT DESIGNED TO HOUSE CHILDREN SEPARATELY**

Children tried as adults present a dilemma for jailers and wardens. They must decide whether to house them in the general population – a decision that puts children at serious risk of victimization – or place them in solitary confinement, which has been widely condemned as psychologically damaging to the point of torture.

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## **SOLUTION**

### **HOUSE ALL CHILDREN IN FACILITIES DESIGNED FOR JUVENILES**

Facilities designed to house youths offer more opportunity for rehabilitation and education while protecting them from becoming hardened criminals or victimization in the adult system.

### **RETURN DISCRETION TO JUDGES**

Juvenile judges are in the best position to determine if juvenile court is appropriate for a young person. No child should be sent directly into the adult system by a prosecutor.

### **ENSURE A PATH BACK TO THE JUVENILE SYSTEM WHEN APPROPRIATE**

Once a child is in the adult criminal justice system, there should be a path back to the juvenile justice system. Currently, a 16- or 17-year-old youth's case will be returned to the juvenile court only if a grand jury fails to issue an indictment for the offenses that allowed the child to be sent into the adult system.

A child's case should also be returned to the juvenile court in other situations – such as a judge dismissing the action or an acquittal on a charge – that leaves the child facing a case that normally would have fallen under juvenile court jurisdiction.

Lawmakers should also ensure that when children as young as 14 are transferred to an adult court by a juvenile court judge that they receive “youthful offender” status. This means the child, if convicted in criminal court, will not be sentenced as an adult. Currently, these children do not always receive “youthful offender” status in Alabama.

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10 Department of Health and Human Resources, Centers for Disease Control, “Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System,” November 2007, Vol. 56, No. RR-9.

11 Redding, Richard, “Juvenile Transfer Laws: An Effective Deterrent to Delinquency?,” Office of Juvenile Justice Delinquency and Prevention: Juvenile Justice Bulletin, June 2010.

12 Jailing Juveniles (2007, November). Washington, D.C.: Campaign for Youth Justice.

13 National Prison Rape Elimination Commission, Report 18 (June 2009), available at <http://www.ncjrs.gov/pdffiles1/226680.pdf>.

# REFORM EDUCATION



# KEEP CHILDREN IN SCHOOL

TOO MANY OF ALABAMA'S CHILDREN are being pushed out of school and into the criminal justice system for childish misbehavior. Many Alabama school officials have turned to police stationed within their schools – known as school resource officers – to address minor school discipline issues. The result is behavior that once resulted in a trip to the principal's office can now land a child in juvenile court or worse.

Every year since 2011, more than half of all school discipline incidents fell into vague and subjective categories such as “defiance of authority,” “disobedience,” “disorderly conduct” and “other incidents.”<sup>14</sup>

Pushing kids out of school for childish misbehavior is ineffective, expensive and counterproductive. Vulnerable children, especially children of color and those with disabilities or mental health conditions are particularly at risk.

School safety can be improved without criminalizing common student misbehavior.<sup>15</sup> The Legislature should ensure no child is needlessly pushed out of school and into the justice system unless there is a serious threat that will cause physical injury.

# PROBLEM

## **CHILDREN PULLED FROM THEIR CLASSROOMS FACE DIRE CONSEQUENCES**

If a child is suspended even once, he or she is more likely to encounter the criminal justice system in the future.<sup>16</sup> Overuse of discipline and school-based policing also depresses achievement for other students in the school – even if those other students are never suspended or expelled.<sup>17</sup>

## **COMMUNITIES SUFFER WHEN CHILDREN ARE PUSHED OUT OF SCHOOL**

Children suspended or expelled even once are 10 times more likely to drop out of high school.<sup>18</sup> Without a high school diploma, these students are more likely to be unemployed or incarcerated, which only drains taxpayer dollars.<sup>19</sup>

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# SOLUTION

## **ENSURE SCHOOL ADMINISTRATORS, NOT POLICE, ARE RESPONSIBLE FOR DISCIPLINE**

Teachers and school administrators – not police officers – must be responsible for discipline. They should also implement evidence-based approaches to discipline that ensure children are rehabilitated instead of pushed into the criminal justice system.

## **BAR POLICE FROM CRIMINALIZING ADOLESCENT MISCONDUCT IN SCHOOL**

Typical adolescent misbehavior must not become a criminal matter. School administrators must maintain sole responsibility for school discipline. Law enforcement should become involved only if student conduct amounts to a criminal offense that requires an arrest to ensure safety. No child should ever be arrested, jailed or detained for a noncriminal offense.

## **MANDATE TRAINING FOR SCHOOL RESOURCE OFFICERS**

School resource officers must complete training that provides them with the tools to understand the distinct challenges of working with children. This requirement is crucial to maintaining safe schools without criminalizing adolescent misbehavior.

## **PROTECT STUDENT PRIVACY**

As young people grow and mature, they will make mistakes. When those mistakes are reflected in student records, student privacy must be protected. Once students are rehabilitated they must have an opportunity to move beyond their past.

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14 Alabama State Department of Education, 2013 School Incident Report Data.

15 [http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest\\_fullreport.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf)

16 Virginia Costenbader & Samia Markson, School Suspension: A Student with Secondary School Students, 36 J. Sch. Psychol. 59, 61 (1998); see also Linda M. Raffaele Mendez, Predictors of Suspension and Negative School Outcomes, 99 New Directions for Youth Dev. 17, 26 (2003).

17 Daniel Losen, Cheri Hodson, Michael A. Keith, II, Katrina Morrison, & Shakti Belway, The Center for Civil Rights Remedies, Are We Closing the School Discipline Gap? 9 (Feb. 2015).

18 American Academy of Pediatrics, Policy Statement: Out-of-School Suspension and Expulsion e1001 (2013).

19 Andrew Sum, Ishwar Khatiwada, Joseph McLaughlin & Sheila Palma, The Consequences for Dropping out of High School 2, 10 (Oct. 2009).



# ENSURE EQUAL ACCESS TO EDUCATION

IN ALABAMA, THOUSANDS OF STUDENTS have left traditional public schools since 2014 as part of the growing “school choice” movement across the country. This movement has led to more students attending private and parochial schools and even virtual schools.

But this does not mean all students benefit from these options. Some of the most vulnerable students have few, if any, options. Across the nation, many alternatives to traditional public schools frequently turn away English language learners and students with disabilities or behavioral disorders. Other schools do not adhere to rigorous teaching and academic standards.

Virtual school programs also present a challenge. Although, starting in the fall of 2016, Alabama’s school districts will be required to allow students to pursue a virtual education and can monitor programs that use technology to provide an education from teachers miles away, it is the virtual education programs – not the districts – that retain significant discretion over these programs.

There are also serious questions about whether the Alabama Accountability Act is fulfilling its aim of providing students with an opportunity to escape failing schools by providing them with scholarships. Out of the nearly 5,800 students who received scholarships through the Alabama Accountability Act in 2014, less than 30 percent would have otherwise attended failing schools.<sup>20</sup> And although its scholarships are intended to serve Alabama’s public school students, more than

20 percent of the students receiving scholarships for the first time in 2014 were enrolled in a private school for the entire year before they received their scholarships.<sup>21</sup>

With the introduction of public charter schools expected in the fall of 2017,<sup>22</sup> the number of students leaving traditional public schools will only continue to grow, further undermining support for schools that serve the state's most disadvantaged children. The Legislature must ensure that every child in Alabama has access to a quality education, not just those who opt out of the traditional public system.

## PROBLEM

### **PUBLIC SCHOOLS ARE LOSING FUNDING**

Since students receiving scholarships through the Alabama Accountability Act may apply those scholarships to private schools, public school systems across the state stand to lose thousands of dollars.<sup>23</sup>

### **STUDENTS WITH DISABILITIES ARE MORE LIKELY TO BE ABANDONED IN FAILING PUBLIC SCHOOLS**

Nationally, students with disabilities represent approximately 13 percent of the student body at traditional public schools, yet students with disabilities represent less than 7 percent of students<sup>24</sup> at the vast majority of charter schools.<sup>25</sup>

### **THE QUALITY OF A VIRTUAL SCHOOL EDUCATION IS QUESTIONABLE**

Early evidence suggests that students in virtual schools are far less likely to receive a meaningful education. While 52 percent of public schools nationwide met federally mandated Adequate Yearly Progress goals, only about 27 percent of virtual schools operated by one of the nation's largest virtual school companies, K12 Inc., met those same standards.<sup>26</sup> Those virtual school students also graduated at significantly lower rates – 49 percent versus 79 percent of students at traditional public schools in those states.<sup>27</sup>

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## SOLUTION

### **ENSURE ALABAMA'S VULNERABLE CHILDREN HAVE ACCESS TO ALL EDUCATIONAL OPTIONS**

Charter schools must be barred from excluding children because of disability, English language learner status, behavioral disorders or academic difficulties. Virtual schools should be required to provide services for at-risk students. Scholarships meant to prevent at-risk students from being stranded in failing schools should be awarded to those students. Alabama must ensure that students left in failing schools are not abandoned.

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20 2014 Scholarship Granting Organization Public Report Information, [http://revenue.alabama.gov/accountability/documents/2014\\_Annual\\_SGO\\_Public\\_Report\\_Information.pdf](http://revenue.alabama.gov/accountability/documents/2014_Annual_SGO_Public_Report_Information.pdf).

21 Id.

22 [http://www.al.com/news/index.ssf/2016/01/ed\\_richardson\\_expecting\\_only\\_a.html](http://www.al.com/news/index.ssf/2016/01/ed_richardson_expecting_only_a.html)



23 Trisha Powell Crain, New Numbers Posted on AAA Scholarship Recipients, Alabama School Connection, <http://alabamaschoolconnection.org/2015/09/02/new-numbers-posted-on-aaa-scholarship-recipients/>.

24 Gary Miron et al., Review of ‘Separating Fact and Fiction: What You Need to Know About Charter Schools,’ National Education Policy Center, Feb. 2015, available at <http://nepc.colorado.edu/files/ttr-charterclaims-mmw-1.pdf>

25 Excluding those that specialize in serving students with disabilities.

26 Gary Miron & Jessica L. Urschel, Understanding and Improving Full Time Virtual Schools, National Education Policy Center, July 2012, available at <http://nepc.colorado.edu/files/nepcrbk12miron.pdf>.

27 Id. At 26





# FUND EDUCATION

ALABAMA FUNDS PUBLIC SCHOOLS at some of the lowest levels in the country. Only six states<sup>28</sup> spend less than Alabama's \$8,797 per student.<sup>29</sup>

The result speaks for itself: Alabama ranks 44<sup>th</sup> in the country in the National Assessment of Educational Progress for all students.<sup>30</sup> Despite this poor showing, Alabama's main source of education savings – the Education Trust Fund – is routinely targeted for cuts by the Legislature. What's more, school choice initiatives such as the Alabama Accountability Act threaten to strip more funding from schools. The Legislature must ensure schools are adequately funded.

## PROBLEM

### FAILING TO ADEQUATELY FUND EDUCATION

According to a 2015 report commissioned by the Alabama State Department of Education (ALSDE), between the 2006-07 school year and the 2012-13 school year, Alabama's school financing system has become even more inequitable.

Over those six years, the financing system has either barely met or entirely failed to meet generally accepted

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equity standards, both in general and for students with special needs.<sup>31</sup> Between 2006-07 and 2012-13, per-student funding levels actually decreased \$513, when accounting for inflation.<sup>32</sup> The ALSDE report also concluded that Alabama districts spent between 22 and 37 percent less on education in 2012-13 (excluding capital, transportation and food services) than would be adequate.<sup>33</sup>

Lawmakers too often fail to recognize that a fully funded education budget represents only a school system funded at one of the lowest levels in the nation – with the results to show for it. A fully funded education budget should not be seen as the final goal but a starting point. Rather than directing funding away from education, the Legislature should ensure a robust annual education budget and should only tap into savings mechanisms like the Education Trust Fund to provide better opportunities for Alabama schoolchildren.

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## SOLUTION

### PRIORITIZE ALABAMA'S SCHOOLCHILDREN

Alabama's lawmakers must invest in our children and their education by funding education and ensuring that the General Fund is not funded at the expense of education. When the General Fund falls short, the Legislature must consider other sources of revenue.

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28 Those states are Arizona, Indiana, Mississippi, North Carolina, North Dakota, Oklahoma, and Utah. Mississippi is nearly the same, at \$8,779.

29 National Education Association, Rankings and Estimates, Rankings of States 2014 and Estimates of School Statistics 2015, Highlights Table 2, at 67 (2015), [http://www.nea.org/assets/docs/NEA\\_Rankings\\_And\\_Estimates-2015-03-11a.pdf](http://www.nea.org/assets/docs/NEA_Rankings_And_Estimates-2015-03-11a.pdf).

30 Dr. Matthew Ladner, Report Card on American Education, American Legislative Exchange Council, at 43 (2015) available at [http://www.slideshare.net/ALEC\\_states/report-card-on-american-education-20th-edition](http://www.slideshare.net/ALEC_states/report-card-on-american-education-20th-edition).

31 APA Consulting, Equity and Adequacy in Alabama Schools and Districts (Prepared for Alabama State Department of Education) at 24 (March 2015)

32 Id. at 27. The actual dollar amount increased from \$7,383 in 2006-07 to \$7,841 in 2012-13, not enough of an increase to keep up with inflation.

33 Id. at 72. The report determined the adequate funding level by examining 13 successful districts and consulting with education experts from ALSDE and Alabama school districts.



# ECONOMIC JUSTICE REFORMS



# ENSURE ACCESS TO HEALTH CARE

MEDICAID – THE FEDERAL PROGRAM designed to ensure the poor, particularly children, have access to medical care – has helped provide a measure of security to many Alabamians in poverty. Unfortunately, many residents are ineligible for Medicaid but unable to afford private insurance. Approximately 139,000 people in Alabama currently fall into this coverage gap,<sup>34</sup>

Alabama is not unique. Across the South, the percentage of uninsured people is in the double digits.<sup>35</sup> The federal Affordable Care Act sought to address the problem by expanding Medicaid to more low-income individuals. More than 30 states have participated in the expansion. Although the benefits are clear, Alabama has not accepted the federal money necessary to expand Medicaid, leaving many of the state’s most vulnerable residents at risk.

## PROBLEM

### TOO MANY ALABAMIANS GO WITHOUT HEALTH CARE

Far too many Alabamians cannot get well or manage their illnesses because they don’t have access to the care they need. Many face financial ruin as a result of major illness or emergency room

visits that may have been avoided by better access to health care. Ensuring broad access to health care saves lives, improves our health care system and lowers costs for everyone.

### **WE ALL FOOT THE BILL FOR THE UNINSURED**

Alabamians pay a high price for uninsured people. When the uninsured have no choice but to seek care in the emergency room, they often cannot pay for the high cost of that care. These costs are absorbed by the system and eventually passed on to other consumers.

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## **SOLUTION**

### **ELIMINATE THE COVERAGE GAP**

Alabama must eliminate the coverage gap to ensure that health care coverage is available to all people, regardless of income. Expanding Medicaid would not only help Alabamians trapped in the coverage gap, research shows it would also benefit the state budget and generate billions of dollars of additional economic activity in Alabama.<sup>36</sup>

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34 <http://kff.org/health-reform/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid-an-update/>

35 [http://www.nytimes.com/interactive/2015/10/31/upshot/who-still-doesnt-have-health-insurance-obamacare.html?\\_r=0](http://www.nytimes.com/interactive/2015/10/31/upshot/who-still-doesnt-have-health-insurance-obamacare.html?_r=0)

36 <http://www.soph.uab.edu/files/faculty/mmorrisey/Becker-Morrisey%20Study%20of%20Alabama%20Medicaid%20Expansion%202012.pdf>





# TREAT PEOPLE EQUALLY IN COURT

EQUAL JUSTICE UNDER THE LAW is a fundamental American ideal. Unfortunately, in many parts of Alabama there is a two-tiered justice system – one for those with money and one for those without. This is a serious concern, particularly in a state where 20 percent of the population lives at or below the federal poverty line.<sup>37</sup>

When people of means must pay fines, fees or other court costs, they simply pay and go. Low-income Alabamians facing the same fines, however, often become ensnared in a system designed to generate revenue for the state and local governments by squeezing more fees and court costs out of those unable to immediately pay their debt.

Poor people already face an economic gap in Alabama; they should not face a justice gap. The state should ensure that Alabamians are not exploited by the justice system simply for being poor.

THERE IS A TWO-TIERED JUSTICE SYSTEM — ONE FOR THOSE WITH MONEY AND ONE FOR THOSE WITHOUT.

# PROBLEM

## ALABAMA FUNDS ITS CRIMINAL JUSTICE SYSTEM BY CHARGING THE POOR

Court costs charged to criminal defendants have steadily increased as the state has shifted the burden of financing the courts to defendants. Those who cannot afford to pay their court debt face an additional fee of 30 percent of the outstanding balance, which is used to fund the district attorney's office. Even people appointed an attorney because they are indigent are routinely required to pay the court thousands of dollars for these "free" lawyers' services.

## COURTS FOCUS TOO MUCH ON GENERATING REVENUE

City and state general funds receive money from fines imposed, as well as a portion of court costs assessed to offenders. A study commissioned by the Alabama State Bar Association showed that only 53 percent of all revenue from criminal court collections went back to the courts, suggesting "the criminal courts function too much as revenue collectors for activities with little relationship to judicial purposes."<sup>38</sup>

## PRIVATE PROBATION COMPANIES MAKE AN UNFAIR SYSTEM WORSE

Private probation companies are for-profit companies that collect minor fines and fees for local governments. Low-income people unable to immediately pay traffic fines and other minor fines and fees are often referred by the court to these companies for "private probation."

These companies place people on a payment plan and charge them an additional monthly "supervision" fee. In Alabama, this additional fee is typically \$40. This practice has resulted in millions of dollars in revenue for these companies and undue hardship for those who can least afford it.

## OTHER TROUBLING METHODS USED TO COERCE PAYMENTS

Several other methods have been adopted to force payments from the indigent, including threatening the suspension of driver's licenses. People also have been jailed for their inability to pay, resurrecting a practice outlawed in this country almost 200 years ago – debtors' prisons. A survey of local officers of the Alabama State Bar Association found that 59 percent of respondents had a client jailed for nonpayment of high court costs, fees or fines.<sup>39</sup>

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# SOLUTION

## ELIMINATE ADDITIONAL BURDENS FOR THE POOR

The state must eliminate factors that place greater burdens on the poor, such as private "probation" companies that profit from people's inability to pay court fees and fines. Alabama also must ensure that people are not incarcerated for their inability to pay court debt.

## ADEQUATELY FUND THE COURTS

Our court system should not be built on the backs of the poor. The Legislature should eliminate or significantly reduce court costs and reform the fine structure so that financial penalties are based on the severity of the crime *and* the ability of the defendant to pay. This not only helps ensure everyone is treated fairly, but eliminates any pressure on judges to act as revenue-generators.

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37 <http://alabamapossible.org/datasheet/>

38 <https://www.alabar.org/assets/uploads/2015/03/PARCA-Court-Cost-Study-FINAL-3-5-15.pdf> (p.15)

39 <https://www.alabar.org/assets/uploads/2015/03/PARCA-Court-Cost-Study-FINAL-3-5-15.pdf> (p.19)





# PROTECT ALABAMIANS FROM PREDATORY LENDERS

TRADITIONALLY, INTEREST RATES ON small-dollar, short-term loans in Alabama have been capped at 36 percent. But the reality for many cash-strapped Alabamians doing business with payday loan and vehicle title lenders today is far different. Many are burdened by short-term loans with triple-digit annual interest rates and are trapped in a cycle of debt that can cost them thousands of dollars in interest alone.

Successful lobbying by payday lenders in the early 2000s allowed these businesses to legally charge such high interest rates. Vehicle title lenders in Alabama can charge as much as 300 percent annually while payday lenders can charge 456 percent annually. Preying on the poor is a booming business: Alabama has four times as many payday lenders as McDonald's restaurants.<sup>40</sup>

Although these small-dollar loans are explained to lawmakers as short-term, emergency credit

extended to borrowers until their next payday, this is only part of the story. The fact is, the profit model of this industry is based on lending to down-on-their-luck consumers unable to pay off loans within a two-week (for payday loans) or one-month (for title loans) period before the lender offers to “roll over” the principal into a new loan.

Their ideal customer is one who cannot afford to pay down the principal but rather makes interest payments month after month – often paying far more in interest than the original loan amount. Borrowers frequently end up taking out multiple loans. As the owner of one payday loan store told the Southern Poverty Law Center, “To be honest, it’s an entrapment – it’s to trap you.”<sup>41</sup>

These products push low-income consumers deeper into poverty and devastate local economies. For every \$1 of interest paid to a payday or title lender, local economies lose almost \$2.

More than 20 states – including conservative states such as Arkansas, South Carolina and Georgia – have implemented payday loan restrictions.<sup>42</sup> Dozens of cities across Alabama have enacted licensing moratoriums and zoning restrictions to curb the growth of payday and title shops.<sup>43</sup> And the federal Consumer Financial Protection Bureau has outlined rules it plans to introduce to ensure that borrowers do not get caught in a cycle of debt by these predatory products. Despite these efforts, the Legislature must enact commonsense consumer safeguards to ensure credit remains available to low-income borrowers at terms that are fair to all.

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THE AVERAGE  
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## PROBLEM

### THE PAYDAY LOAN TRAP

Payday loans may be advertised as quick credit used for an unexpected expense and paid back within two weeks, but national data paints a starkly different picture. The average payday borrower is in debt for 199 days per year (over 28 weeks) because of the cycle of rolling over the loan every two weeks.<sup>44</sup>

In Alabama, the lender levies a \$17.50 fee (interest payment) on every \$100 borrowed. If a borrower takes out a \$500 loan and takes 28 weeks to repay it, the borrower pays \$1,225 *in interest alone*. Alabama has begun collecting data that shows the fees collected from customers rolling over these loans – rather than quickly paying them off – can be highly profitable for lenders. In just two months, about 425,000 loans were taken out in Alabama, and \$23.4 million in fees paid to lenders.<sup>45</sup>

When there is so much money to be made, these lenders have no incentive to act responsibly by assessing a borrower’s ability to pay, explaining loan terms in detail and encouraging consumers to borrow only what they can afford.

## VEHICLE TITLE LOAN DEBT

When a borrower takes out a vehicle title loan, the borrower must surrender their title as collateral for a loan that may be far less than the value of the vehicle. Borrowers are expected to pay back the loan and interest within 30 days or risk repossession of the car. The threat of losing a vehicle often forces borrowers to renew the loan each month at up to 300 percent annual interest.

TitleMax, one of the largest lenders in Alabama, admits most borrowers are in debt for nine months.<sup>46</sup> A borrower with a \$2,000 loan will pay up to \$4,500 in interest over that time. Even worse, title lenders do not ask borrowers *any questions* about their income or ability to repay the loan. Most lenders describe monthly interest payments as the “minimum payment” – leading borrowers to make interest-only payments for months or even years without realizing they have not paid off any of the principal.

When lenders repossess and sell a borrower’s car, they never return any surplus to the borrower. Some borrowers may have paid thousands of dollars in interest and principal by the time the car is repossessed. They lose this money as well as their car.

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## SOLUTION

### CAP INTEREST RATES AT 36 PERCENT FOR ALL CONSUMER LOANS

An interest rate cap is necessary to limit the interest and fees that borrowers pay for these loans. A rate cap is the only effective way to address the multitude of problems identified with this industry, as it prevents predatory payday and title lenders from exploiting other loopholes in the law. Extending the term of the loan to six months to allow borrowers more time to repay the fees charged by these lenders will also effectively lower the interest rate and help protect borrowers from the debt trap.

Effective reform also means the Legislature should not authorize additional, predatory loan products that evade Alabama law or federal reforms designed to protect borrowers from becoming trapped in a cycle of debt.

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40 [https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/downloads/publication/Payday\\_Lending\\_Report\\_web.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/Payday_Lending_Report_web.pdf)

41 Id.

42 <http://www.ncsl.org/research/financial-services-and-commerce/payday-lending-state-statutes.aspx>

43 <http://alreporter.com/in-case-you-missed-it-2/5485-with-more-payday-lenders-than-mcdonald-s-cities-take-action.html>

44 [http://files.consumerfinance.gov/f/201304\\_cfpb\\_payday-dap-whitepaper.pdf](http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf) (p.23)

45 [http://www.timesdaily.com/news/state-capital/state-database-shows-payday-loans-in-months/article\\_d5982a0c-e947-5d56-b896-c71d-42814bec.html](http://www.timesdaily.com/news/state-capital/state-database-shows-payday-loans-in-months/article_d5982a0c-e947-5d56-b896-c71d-42814bec.html)

46 Affidavit of John Robinson, President of Titlemax Holdings LLC, U.S. Bankruptcy Court for the Southern District of Georgia, Savannah Division (April 21, 2009)



# ENSURE FAIR PAY FOR A FAIR DAY'S WORK

MORE THAN 20 PERCENT OF ALABAMIANS live in poverty, and income inequality has only increased in recent years. From the late 1990s to the mid-2000s, the lowest 20 percent of earners have seen their incomes drop by 13.5 percent as the top 20 percent of earners have seen their incomes climb by 12.8 percent.<sup>47</sup>

Despite the difficulty of climbing the economic ladder in Alabama, the state has not set its own minimum wage to help these workers. Instead, Alabama observes the federal minimum wage of \$7.25 an hour.<sup>48</sup> At this rate, a single mother of one working 40 hours a week earns \$15,080 a year, which puts her family below the 2015 federal poverty level of \$15,930 for a family of two.<sup>49</sup>

More than 20 states and a dozen cities, including Birmingham, have established a minimum wage that is higher than the federal minimum wage.<sup>50</sup> Alabama must take action to ensure a basic promise for all workers – the opportunity to lift themselves out of poverty by working 40 hours a week.

## PROBLEM

### TOO MANY ALABAMIANS DON'T EARN A LIVING WAGE DESPITE WORKING 40+ HOURS

Single parents cannot support their families with current wages. They often must work several minimum-wage jobs just to ensure *basic necessities* such as rent, utilities and food. Low wages also keep parents away from children, straining family ties, leaving young people without parental supervision and hurting communities.

### MINIMUM-WAGE EARNERS MUST RELY ON GOVERNMENT SERVICES

Keeping the minimum wage at \$7.25 an hour comes at a price for all Alabamians. Minimum-wage workers frequently rely on government services to meet basic needs despite holding down a job or even multiple jobs.

Taxpayers end up footing the bill for these services, which ultimately prop up a labor market that doesn't pay a fair wage for a fair day's work. Local economies also suffer because there are fewer people with disposable income.

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## SOLUTION

### PROVIDE A LIVING WAGE TO HELP ALABAMIANS ESCAPE POVERTY

Alabama must raise the minimum wage to ensure workers earn a living wage. The state should also protect the ability of municipalities to determine their local minimum wage. The state can reduce poverty, improve the economy and save tax dollars by ensuring that everyone who is willing to work has a real opportunity to get ahead.

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47 <http://www.cbpp.org/sites/default/files/atoms/files/Alabama.pdf>

48 <http://www.dol.gov/whd/minwage/america.htm#Montana>

49 <http://aspe.hhs.gov/2015-poverty-guidelines>

50 <http://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx>





# PROTECT WAGES FROM GARNISHMENT

IN THE WAKE OF THE GREAT RECESSION, there has been a sharp increase in efforts to collect unpaid debt – especially consumer debt accrued from credit cards, medical services, student loans and high-interest loans. Many creditors are seizing a portion of their debtors’ paychecks – a practice known as wage garnishment.

Nationally, wage garnishment for consumer debt is most common among blue-collar workers and lower-income employees – affecting almost 5 percent of workers earning between \$25,000 and \$40,000 per year.<sup>51</sup>

Wage garnishment pushes people into poverty. Several states, including Texas, North Carolina and South Carolina, have banned wage garnishment for most debts. Alabama is not among these states.

Despite lacking a ban on wage garnishment, the Alabama Constitution allows individuals to protect up to \$1,000 of personal property, including wages, from garnishment or seizure. The Alabama Supreme Court has upheld an individual’s right to this exemption, noting that it is necessary to protect individuals and their families from destitution. Any wages above \$1,000 or other personal property accumulated by the debtor that is not exempt may still be claimed by the creditor to satisfy the debt.

## PROBLEM

### **LITTLE PROTECTION FROM WAGE GARNISHMENT**

Alabama lacks a ban on wage garnishment that would eliminate the practice for most debts. The state's Constitution, written in 1901, protected \$1,000 of an individual's personal property from garnishment.

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## SOLUTION

### **PRESERVE THE \$1,000 PERSONAL PROPERTY EXEMPTION AND EXPAND IT TO EXEMPT ALL WAGES.**

Banning wage garnishment entirely would best protect low-income families, Alabama must continue to, at a minimum, protect the \$1,000 personal property exemption by guarding against any attempts to abolish or weaken this already modest protection. Adjusted for inflation, that \$1,000 would be equivalent to approximately \$29,000 today.

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51 <https://assets.documentcloud.org/documents/1301187/adp-garnishment-report.pdf>



**EQUAL RIGHTS  
FOR LGBT  
ALABAMIANS**





# UPHOLD MARRIAGE EQUALITY

IN 2015, THE U.S. SUPREME COURT recognized the constitutional right of same-sex couples to marry. The ruling invalidated provisions of Alabama law that banned same-sex marriage, resulting in the state recognizing same-sex marriages.

Despite the initial reluctance of probate judges across the state to issue same-sex marriage licenses, the vast majority now issue marriage licenses to both same-sex and opposite-sex couples. Only a handful of the judges have decided to refrain from issuing marriage licenses altogether.

## PROBLEM

### MARRIAGE CONTRACTS

In the wake of the U.S. Supreme Court ruling legalizing same-sex marriage, legislation was introduced in the Legislature in 2015 to abolish marriage licenses and replace them with marriage contracts. This legislation, which failed, was supposedly introduced to address probate judges not issuing marriage licenses. It was unnecessary and needlessly risked creating confusion in Alabama domestic relations law.

Replacing marriage licenses with contracts could create untold problems for Alabamians. There is reasonable uncertainty as to whether the private sector, other states or the federal government would recognize such contracts. It is unclear how these contracts would be dissolved for couples seeking a divorce. Such legislation is a solution in search of a problem.



## **SOLUTION**

### **LEAVE ALABAMA'S MARRIAGE LAWS ALONE**

No changes to the state's marriage laws are necessary at this time.





# END DISCRIMINATION AGAINST LGBT ALABAMIANS

ALTHOUGH THE U.S. SUPREME COURT has recognized the constitutional right of same-sex couples to marry, lesbian, gay, bisexual and transgender (LGBT) people living in 28 states – including Alabama – have no statutory protection against discrimination in employment, housing and public accommodations.<sup>52</sup>

But rather than shore up protections for LGBT people, there is a backward-looking movement in some states to pass legislation that would allow even more discrimination under the guise of religious freedom. There is no need for further legislation to protect religious freedom. The “Alabama Religious Freedom Amendment” has been part of the state Constitution for almost two decades and already guarantees that freedom of religion is not burdened by government.<sup>53</sup>

## PROBLEM

Religion is an important part of most Alabamians' lives, and freedom of religion is already protected by the First Amendment of the U.S. Constitution, the Alabama Constitution and state law. Despite this guarantee, freedom of religion does not grant permission to impose one's religious beliefs or discriminate against others. Broad religious exemptions are vague and amount to a sweeping license to discriminate against people simply because of who they are. They risk encouraging people to pick and choose which laws to follow, creating confusion and harm, and risking costly litigation.

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## SOLUTION

### TREAT OTHERS THE WAY YOU WANT TO BE TREATED

All people, including LGBT people, should be treated fairly and equally under the law. This is reflected in the finding that nearly 7 in 10 Americans favor laws that would protect LGBT individuals against discrimination in the workplace, public accommodations and housing.<sup>54</sup>

Alabama should adopt laws that explicitly protect LGBT people from discrimination. It must not pass unnecessary, broad religious exemption laws that would harm its residents and economy by creating a hostile environment for LGBT people and their families.

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52 <http://equalityfederation.org/fairnessproject/facts/>

53 <https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&srctype=smi&srcid=3B15&doctype=cite&docid=31+Cumb.+L.+Rev.+47&key=82c2998d740b7ae0c2a17a48ea482342>

54 <http://publicreligion.org/research/2015/06/survey-majority-favor-same-sex-marriage-two-thirds-believe-supreme-court-will-rule-to-legalize/#.VoFOQDaDDzJ>





