

April 9, 2019

The Honorable Kay Ivey
Alabama State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130

Commissioner Jefferson Dunn
Alabama Department of Corrections
301 South Ripley Street
P.O. Box 301501
Montgomery, Alabama 36130-1501

Proposal to Collaboratively Address Alabama's Prison Crisis

Dear Governor Ivey and Commissioner Dunn:

We write to you out of acute concern for the state of Alabama's prisons and to express our desire to work with you to solve this crisis. On April 2, 2019, the U.S. Department of Justice (DOJ) served a notice letter detailing the results of its two-year investigation into allegations that the Alabama Department of Corrections (ADOC) fails to protect the individuals in its care from egregious harm in violation of the Eighth Amendment to the U.S. Constitution.¹ DOJ's letter corroborates what stakeholders in Alabama already know: What is happening in our prisons is nothing short of a public health and safety emergency.

While we have disagreed about how to approach Alabama's prison problems in the past and are currently engaged in litigation, both ADOC and the Southern Poverty Law Center (SPLC) share the same goals: to efficiently use taxpayer dollars to ensure that prisons are safe for officers and incarcerated people, maintain constitutional standards of care, and protect public safety. Our prison system is facing a crisis of Alabama's own making and, like you, we believe in an Alabama solution. Our hope is that this letter is the first step in a collaborative process to address the deficiencies in the state's prisons, protect the rights of incarcerated people, and ensure the safety of incarcerated people and staff.

I. The Prison Crisis

Although the fundamental problems that underlie the Alabama prison crisis are well known, Alabama's leaders have failed to address them even as conditions have deteriorated and deaths mounted over the last decade.²

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1. United States Department of Justice, Civil Rights Division & United States Attorney's Offices for the Northern, Middle, and Southern Districts of Alabama, Investigation of Alabama's State Prisons for Men, April 2, 2019.
 2. United States Department of Justice, Civil Rights Division & United States Attorney's Offices for the Northern, Middle, and Southern Districts of Alabama, Investigation of Alabama's State Prisons for Men, April 2, 2019, at 48 ("ADOC has long been aware that conditions within its prisons present an objectively substantial risk to prisoners. Yet little has changed.")

First, the population of Alabama’s prison facilities vastly exceeds their design capacity; the prisons are incredibly overcrowded. As a result of sentencing and parole reforms passed by the Alabama Legislature in 2015, some population reductions have occurred, but nowhere near enough to right-size Alabama’s prison population. At 160 percent capacity, ADOC facilities are still among the most overcrowded – if not *the* most overcrowded – in the nation. Facilities that operate beyond their design capacity are ripe for violence, endangering facility staff and incarcerated people. Twenty-six violent deaths occurred in Alabama prisons in the last two years. DOJ’s letter confirms the role overcrowding plays in the crisis. It detailed horrific instances of violence and sexual assault experienced by incarcerated people in ADOC facilities, finding that “severe overcrowding contributes to serious harm to prisoners.”³

Second, Alabama’s prisons are desperately understaffed, which exacerbates the potential for violence through the unimpeded flow of contraband into facilities and the lack of officers to adequately patrol and monitor units and prevent or dispel conflict. ADOC does not (and likely currently cannot, based on recruitment and retention trends) hire an adequate number of correctional staff to ensure the protection of officers, civilian staff, and incarcerated people in its facilities. As a result, violence is pervasive, making it harder for ADOC to recruit, hire, and retain correctional officers. Again, DOJ’s letter corroborates what advocates, including the SPLC, have been saying for years: “The egregious level of under-staffing equates to inadequate supervision” that results in catastrophic, uncontrolled violence.⁴

Indeed, to address the issues with staffing raised as part of the SPLC’s litigation, the U.S. District Court in *Braggs v. Dunn* has already ordered ADOC to hire at least 2,200 correctional officers by 2022. If ADOC does not address its staffing and violence issues, it is highly likely to face additional federal litigation. The DOJ gave ADOC 49 days from the date of the letter, or until May 21, to correct the numerous deficiencies it identified with regard to overcrowding, understaffing, inadequate supervision, inability to control contraband, and ineffective prison management and training.⁵ If ADOC does not act to immediately address the many issues set forth in the findings letter, the U.S. Attorney General could initiate litigation in federal court.⁶

Third, ADOC has a history of providing insufficient mental health care to the individuals in its custody, and the SPLC is currently litigating this constitutional failure in *Braggs v. Dunn*, through testimony of plaintiff and defense experts, and rulings of the court on mental health care. Medical and dental care are equally substandard. The *Braggs* litigation began in 2014 and absent a change in ADOC’s approach, it is likely to continue for at least several more years.

The SPLC believes the best path to fixing these problems is collaborative engagement between the Governor’s Office, ADOC, the SPLC, the DOJ, and other relevant stakeholders. Though we have been on different sides of the issues related to Alabama prisons, we extend an invitation to you to engage in discussion on these issues. To start the conversation, we offer the following proposal to address the Alabama prison crisis.

II. Potential Solutions for Alabama

Alabama must address its prison crisis by making serious investments in prison infrastructure and staffing. At the same time, given budget realities and public safety imperatives, Alabama must revisit ways in

3 United States Department of Justice, Civil Rights Division & United States Attorney’s Offices for the Northern, Middle, and Southern Districts of Alabama, Investigation of Alabama’s State Prisons for Men, April 2, 2019.

4 *Id.* at 9.

5 *Id.* at 55.

6 *See* 42 U.S.C. § 1997.

which it may further reduce its prison population through sentencing reforms and reinvestment in rehabilitative programming. In other words, for the conditions in Alabama prisons to improve, the population must be safely decreased. Only by achieving this balance can Alabama accomplish the goal of a safer, more affordable, and more effective prison system.

A. Fixing Alabama's Prisons

1. Prison Construction

Over several legislative sessions, Alabama officials advanced a plan that authorizes the construction of three (sometimes four) “mega prisons” that house 3,500 to 4,000 people each. The SPLC has been unable to support these proposals for several reasons. First, extensive research and consultation with multiple experts indicates that smaller correctional facilities are easier to manage, more effectively promote rehabilitation, and are safer for staff and incarcerated individuals.⁷ Second, despite multiple requests, ADOC has provided almost no detail on the specifics of the plan, including: 1) how cost savings derived from facility consolidation will actually cover the \$900 million price tag; 2) the location of the proposed new facilities and facilities that will close; 3) the strategy to address correctional staffing needed to operate the proposed facilities; or 4) how ADOC will provide incarcerated people with constitutionally compliant health care in the large facilities.

State legislators have also expressed concerns about the prison expansion plan⁸ and requested additional information regarding its specifics. A decision by the Office of the Governor or Commissioner to embark on a plan that carries an almost billion-dollar price tag without the input and approval of Alabamians through their elected representatives in the Legislature would jeopardize public trust.

Finally, DOJ has also warned ADOC not to invest all its resources in a building binge on the assumption that construction will cure this constitutional crisis: “While new facilities might cure some of these physical plant issues, *it is important to note that new facilities alone will not resolve the contributing factors to the overall unconstitutional condition of ADOC prisons.*”⁹

The SPLC recognizes and agrees that some modest prison construction is necessary. Instead of a billion-dollar building project, however, we propose an incremental, measured, and transparent approach to prison construction that will garner public and legislative support while addressing ADOC's most urgent needs in a fiscally responsible way. Some of the existing prisons should be replaced with facilities that promote constitutional conditions and provide incarcerated people with access to rehabilitative programming. ADOC should begin by closing at least two facilities with the most deplorable conditions and replacing them with facilities that house no more than 1,000 people each, in 500-bed units.¹⁰ The SPLC,

7 See, e.g., David Skarbek, *The Social Order of the Underworld: How Prison Gangs Govern the American Penal System*. The facilities may be clustered together to achieve some operational efficiencies, but each must have a separate warden and adequate staffing.

8 Brian Lyman, *Prison construction plan could bypass Alabama Legislature*, Jan. 8, 2019, <https://www.montgomeryadvertiser.com/story/news/2019/01/18/prison-construction-plan-could-bypass-alabama-legislature/2607569002/>; Brian Lyman, *Corrections' prison design contract draws legislators' criticism*, Jan. 9, 2019, <https://whnt.com/2019/02/18/prison-system-advocacy-groups-get-new-deadline-for-correcting-severe-mental-health-issues-among-inmates/>; Mike Cason, *Alabama lawmaker says Ivey's \$900 million prison plan hard to swallow*, Feb. 13, 2019, https://www.al.com/news/2019/02/alabama-lawmaker-says-iveys-900-million-prison-plan-hard-to-swallow.html#incart_river_mobile_index.

9 United States Department of Justice, Civil Rights Division & United States Attorney's Offices for the Northern, Middle, and Southern Districts of Alabama, *Investigation of Alabama's State Prisons for Men*, April 2, 2019, at 47 (emphasis added).

10 Many Alabama counties that house existing prisons depend on these facilities for economic stability and to support the area's workforce. To avoid the negative economic impact that may befall these counties if prisons in their areas are closed, newly constructed facilities should be in the same location as the closed facilities.

in the interest of bringing concrete ideas to this collaborative process, specifically recommends closing and replacing Holman Correctional Facility, which is plagued by some of the worst violence in the system and is at approximately 150 percent capacity.¹¹

Second, given the acuity of the medical and mental health care deficiencies as evidenced through the *Braggs* litigation, we recommend that ADOC construct a medical and mental health correctional campus to house approximately 2,000 incarcerated people, including those with the most serious mental health and medical conditions.¹² To address the needs of such people, this campus should be located near a major metropolitan city to ensure access to high-quality health care.

ADOC should not privatize the prison system as a part of any construction plan, or as any component of the solution for the prison crisis. Private prisons are focused only on their bottom line, and often cut costs wherever possible. Further, private prisons do not provide accountability or transparency for the public. There are numerous reports that demonstrate the ills that have befallen states that use private companies to manage correctional systems.¹³ We strongly urge you to avoid the pitfalls¹⁴ of privatization.

2. Increasing Correctional Staffing and Reducing Violence

The inadequate staffing numbers and prevalence of violence in ADOC facilities exacerbate each other. The absence of correctional officers in facilities permits violence amongst incarcerated people, and the continuous growth of violence negatively impacts recruitment and retention.¹⁵

To address the staffing crisis, Commissioner Dunn recently requested funds to hire an additional 500 correctional officers from the Legislature. ADOC currently has 3,326 authorized correctional officer positions but has only filled 1,072.¹⁶ Accordingly, Commissioner Dunn's request is inadequate; it will not assist ADOC in making any realistic progress toward the target number set by the federal court.

We urge you to aggressively and transparently pursue a recruitment and retention plan that will allow ADOC to hire 2,200 correctional officers by 2022. ADOC should increase its existing funding request to the Legislature from funds necessary to support 500 officers to funding for 1,100 additional officers

11 Alabama Department of Corrections Monthly Statistical Report for December 2018, available at <http://www.doc.state.al.us/docs/MonthlyRpts/2018-12.pdf>, last visited March 27, 2019.

12 To comply with the Americans with Disabilities Act, 42 U.S.C. § 12101, a significant percentage of the individuals housed at this campus must be individuals without disabilities. The state should confer with the Alabama Disabilities Advocacy Program to ensure that such a facility comports with the ADA.

13 The Southern Poverty Law Center, Private Prisons: The wrong choice for Alabama, available at <https://www.splcenter.org/20171030/private-prisons-wrong-choice-alabama>, last visited March 27, 2019.

14 John Hanna, Governor says Kansas was 'hoodwinked' on new state prison, Feb. 15, 2019, <https://www.apnews.com/c9b69a94f12d4b7888bf62dbf3bb3d36>; Madison Pauly, "Hoodwinked": Kansas' Low-Staff, Long-Term Prison Deal Hints at a Booming Future for Private Prisons, March 21, 2019, https://www.motherjones.com/crime-justice/2019/03/kansas-corecivic-lansing-correctional-contract-brownback/?utm_source=The+Marshall+Project+Newsletter&utm_campaign=5e80459731-EMAIL_CAMPAIGN_2019_03_25_11_46&utm_medium=email&utm_term=0_5e02cdad9d-5e80459731-174422717.

15 Melissa Brown, Staffing issues plague Holman prison: 13 inmates for every one guard, Dec. 18, 2018, <https://www.montgomeryadvertiser.com/story/news/crime/2018/12/18/alabama-prison-violence-holman-prison-staffed-less-than-40-percent/2313665002/>; Courtney Brown, Prison system, advocacy group get new deadline for correcting several mental health issues among inmates, Feb. 18, 2019, <https://whnt.com/2019/02/18/prison-system-advocacy-groups-get-new-deadline-for-correcting-severe-mental-health-issues-among-inmates/>.

16 Alabama Department of Corrections Monthly Statistical Report for December 2018, available at <http://www.doc.state.al.us/docs/MonthlyRpts/2018-12.pdf>, last visited March 27, 2019.

and submit the same request for another 1,100 officers during the next legislative year. Subsequently, ADOC should annually request \$130 million – the amount necessary to maintain appropriate staffing. To fill these positions with high-quality candidates, we urge ADOC to develop a recruitment plan with specific and concrete steps. Specifically, ADOC should develop strategies beyond basic approaches such as attending job fairs and engage in deeper recruitment efforts, such as engaging with potential candidates who are already in law enforcement and engaging with community colleges to recruit individuals who have associate degrees. It is possible that ADOC is already engaged in such efforts. If so, sharing this information would advance transparency. If not, we urge ADOC to consider these methods and share its efforts with the public.

To retain existing staff, ADOC should provide officers with substantial pay raises to appropriately compensate staff for the dangers they face in Alabama’s prisons. We recognize and applaud the fact that ADOC’s recent request to the Legislature included a 20 percent pay raise for existing security staff. However, that requested increase is significantly less than what is needed to retain correctional staff. We also encourage continued incentives for correctional staff.

3. Adopting Additional Sentencing and Parole Reforms

Alabama passed meaningful sentencing and parole reform in 2015 that aided in reducing the prison population, but there are additional opportunities to safely reduce the number of people entering the prison system. Because of the 2015 sentencing reforms, Alabama is projected to save \$350 million in construction and operational costs by fiscal year 2021; reduce the prison population by 4,243 by 2021; and achieve \$152 million in funds to reinvest in supervision, treatment and support for crime victims.¹⁷ Pursuing additional, bipartisan reforms will result in increased savings for the state and assist ADOC in avoiding an almost billion-dollar construction plan. If ADOC engages in reforms that cut the prison population in half by 2025, the department can gain an estimated total cost savings of almost \$500 million.¹⁸ These reforms include changes to the drug, robbery, burglary, public order, and theft statutes.¹⁹

Neighboring Southern states have minimalized criminalization of marijuana-related offenses and increased the threshold amounts for property-related offenses.²⁰ Alabama, in a bipartisan way, can develop and implement an evidence-based plan that returns people who have been rehabilitated and pose little threat to public safety to their communities, while avoiding pandering to fear-mongering and enforcing stereotypes about formerly incarcerated people. The offices of the governor and commissioner should use their respective influences to work with the Alabama Legislature to advocate for these reforms.

B . Establishing Protective Custody Units

Protective custody is a kind of imprisonment that is designed to protect incarcerated people from harm that may flow from other people in prison, or other sources, in facilities. Protective custody is necessary to ensure the safety of incarcerated people who are targeted for potential violence for a variety of reasons, including the nature of their conviction, the desire of others in prison to harm them, or their employment status prior to entering ADOC.

17 Council for State Governments, *Alabama’s Reinvestment Approach: Reducing Overcrowding and Strengthening Community-based Supervision*, May 21, 2015, <https://csgjusticecenter.org/wp-content/uploads/2015/05/AlabamasJusticeReinvestmentApproach.pdf>.

18 American Civil Liberties Union, *Blueprint for Smart Justice: Alabama*, <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-AL.pdf>.

19 *Id.*

20 TX Health & Safety § 481.032, et seq.; TX Penal § 31.03(e)(1)-(3); Miss. Code Ann. § 97-17-43.

ADOC has two protective custody units for the entire system. One of those units is small, and it is unclear whether it is adequate to provide necessary protections to incarcerated people. The department should implement protective custody units in at least four facilities and engage in an annual review to assess protective custody needs.

C. Resolving *Braggs v. Dunn* Litigation

Braggs v. Dunn is a statewide challenge to ADOC's denial of appropriate medical, mental health, and dental care to individuals it incarcerates. The SPLC and its co-counsel represent a class of thousands of individuals with serious mental health needs who are currently in ADOC custody, housed in facilities throughout the state. Since *Braggs* was filed nearly five years ago, in June 2014, the federal court has consistently found in favor of the incarcerated individuals and required ADOC to implement reforms. Fighting this litigation has already cost the state millions of dollars that could instead have been directed toward improving conditions in ADOC prisons. The cost of the continuing litigation flows directly to the taxpayers and incarcerated people who continue to suffer without adequate health care.

ADOC will be required to spend hundreds of millions of dollars in coming years to comply with the remedies already ordered in the litigation. Hiring and retaining correctional staff as required by the court will add well over \$100 million to the ADOC budget every year.

In the interest of allowing all parties to focus on expediting the provision of adequate care and reducing litigation costs, the SPLC is open to discussing potential resolutions to the issues in *Braggs*.²¹ An agreed resolution to the case would ensure ADOC retains control over the process of implementing reforms and diminish the possibility of a "federal takeover" of Alabama's prison system. A global resolution could potentially address the issues raised by the U.S. Department of Justice's investigation into the violence in ADOC's facilities as well.²²

The crisis is not going away; it will only get worse unless we take decisive action that is commensurate with the scale of the problems Alabama faces. We share your commitment to making sure that the solution to Alabama's prison crisis is fiscally responsible, effective, sustainable, and constitutional. We believe that we can best achieve a solution to Alabama's prison crisis if we work together, and to that end we respectfully request a meeting with you as soon as possible to discuss this proposal in detail. We await your response, and we look forward to speaking with you.

Sincerely,



Lisa Graybill
Deputy Legal Director, Criminal Justice Reform

21 Nothing in this letter will be construed to be a settlement offer in *Braggs*.

22 We are merely identifying this as a possibility worth the governor's and the commissioner's consideration. We do not represent any of the parties to that investigation and cannot and do not intend to make any representations to the contrary.



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CC: Carrie McCollum
General Counsel
Alabama Department of Corrections

Members of the Alabama Senate
Members of the Alabama House of Representatives