



SENTENCING IN ALABAMA: A 20-YEAR LOOKBACK

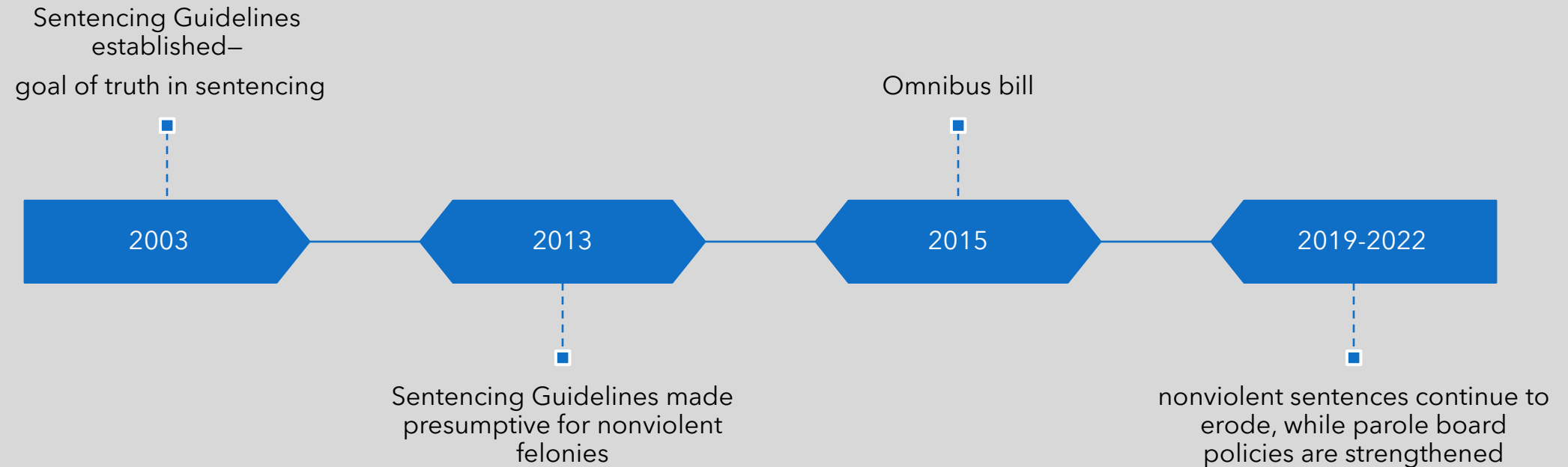
Katherine G. Robertson, Chief Counsel to the Attorney General

Basic Sentencing Ranges for Felonies:

Ala. Code 13A-5-6 provides the range of sentence for each class of felony:

- Class A—10 to 99
- Class B—2 to 20
- Class C—generally, 1 year, 1 day to 10 years
- Class D (new in 2015)—generally, less than 1 year to 5 years. No prison time.

Key Changes in Sentencing Since 2003



Probation & Split Sentences:

Ala. Code 15-18-8 permits a judge to order a defendant to serve a split sentence with a term of probation in most circumstances.

The law defines how long a defendant can be required to serve time in prison vs. probation.



GOOD
TIME...

IS NO
GOOD!



Sentence Served Applying Correctional Incentive Time
Automatic Elevation – No Jail Credit

Sentence	Year	Month	Day
1 Year	—	6	18
2 Years	—	11	5
3 Years	1	2	18
4 Years	1	6	—
5 Years	1	9	13
6 Years	2	—	26
7 Years	2	4	9
8 Years	2	7	22
9 Years	2	11	5
10 Years § 14-9-41(e)	3	2	18
11 Years	3	6	—
12 Years	3	9	13
13 Years	3	11	28
14 Years	4	4	9
15 Years	4	7	22
16 Years (Consecutive)	4	11	5
17 Years (Consecutive)	5	2	18
18 Years (Consecutive)	5	6	—
19 Years (Consecutive)	5	9	13
20 Years (Consecutive)	6	—	26
25 Years (Consecutive)	7	6	—
30 Years (Consecutive)	8	11	5
40 Years (Consecutive)	11	9	13
50 Years (Consecutive)	14	7	22

“Did I say 15
years?
What I meant
was 4 years,
7 months,
and 22 days!”

The Legislature finds and declares that according to 2013 RAND Corporation research, offenders who participate in quality education programs are 43 percent less likely to return to prison within three years. The Legislature further finds and declares that providing this group of individuals with skills essential for post-release success is paramount, in that it will reduce recidivism and improve post-release transition for offenders.

323 (Regular Session 2021)

Not Official Information from

a, N = Nay, A = Abstain, P = Pa

Total Yeas 29 Total Nays

On page 4, line 24, after "conviction of" insert the following:

a violent offense as provided in Section 12-25-32,
or

On page 4, line 25, delete "involving a child"

On page 4, line 26, delete "15-20A-4" and insert in lieu thereof the following:

15-20A-5

Education Incentive Time

Passed unanimously in first house w/o any exceptions for rape, murder, and other violent offenses.

Second house amended the bill to remove all violent offenses from the EIT.

First House non-concurred with this change.

Bill becomes law, excludes violent A & B felons.

South	N	Stadthagen
Standridge	N	Stringer
Sullivan	N	Treadaway
Wadsworth	Y	Warren
Wheeler	N	Whitt
Whorton	N	Wilcox
Wingo	Y	Wood (D)
Wood (R)	N	
Total Yea: 77	Total Nays: 23	

Not Official Information from the Legislative Offices

Y = Yea, N = Nay, A = Abstain, P = Pass (Not Voting or Not Present)

Total Yeas 24 Total Nays 6 Total Abstains 0

Mandatory Pre-release supervision

- Applies to all inmates, except for those serving time for child sex offenses.
- Provides up to one full year of early release with supervision, even on top of good time.
- Kicks in this month.

What do you get when you put all of this together?

If you commit a Class A felony involving danger to persons, then you mostly have a true sentence.

- The parole board can only consider you after you've served 85% or 15 years of your sentence, whichever is less.
- You will get 10-12 months early release with supervision.

If you commit any other Class A offense, then

- You can be considered for parole after you've served one-third of your sentence or 10 years, whichever is less.
- Ineligible for good time; eligible for education incentive time.
- You will get 10-12 months early release with supervision.

For a Class B violent felony with a sentence of over 15 years, then

- You can be considered for parole after you've served one-third of your sentence or 10 years, whichever is less.
- You will get 10-12 months early release with supervision.

What do you get when you put all of this together?

If you commit a Class B felony that is violent, sentenced to less than 15 years

- You can accrue good time, so long as you didn't cause a death with a deadly weapon
- If you accrue good time, then you can be considered for parole early.
- You will be released up to 12 months earlier under supervision.

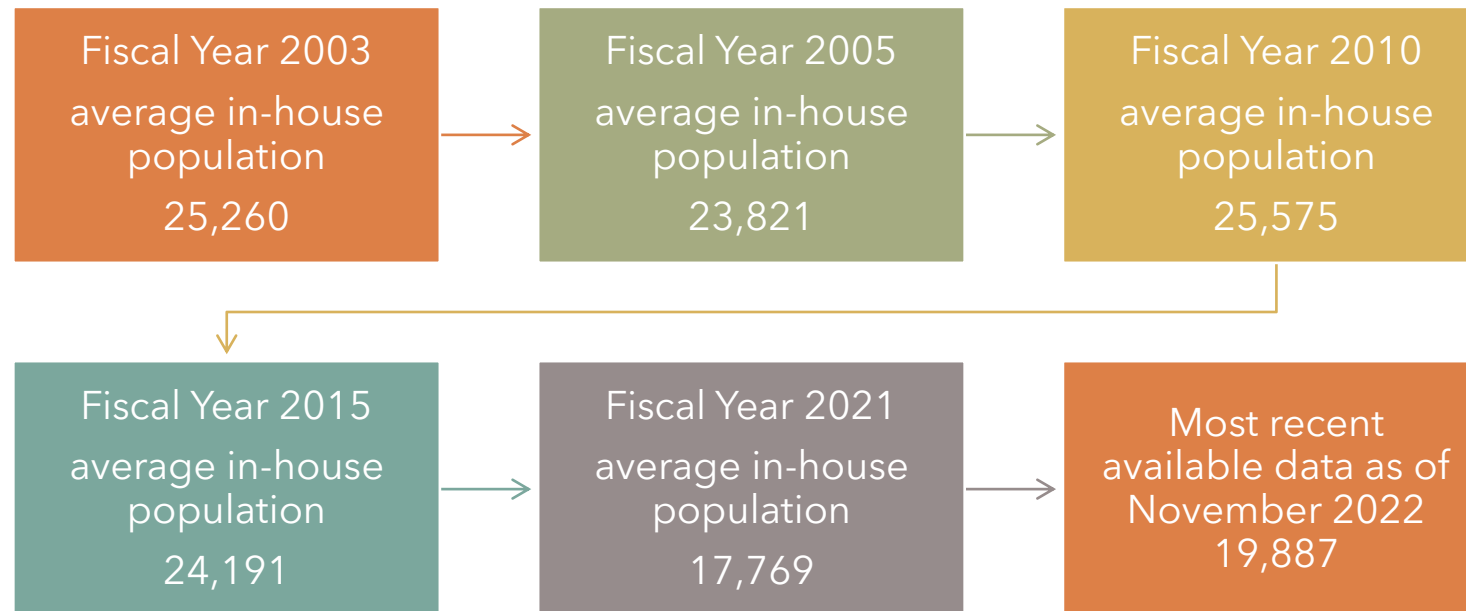
If you commit a Class B felony that is nonviolent, then

- You can accrue good time and will be considered for parole earlier.
- You are eligible for parole consideration up to one additional year earlier with education incentive time.
- You will be released up to 12 months earlier under supervision.

If you commit a Class C felony that is violent or nonviolent, then

- You can accrue good time and will be considered for parole earlier.
- You are eligible for parole consideration up to one additional year earlier with education incentive time.
- You will be released up to 12 months earlier under supervision.

Prison "Overcrowding"



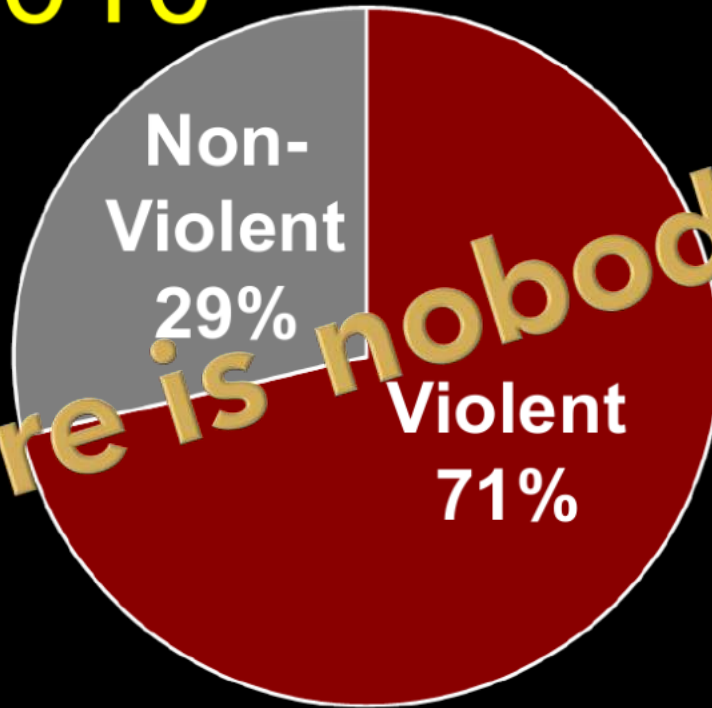
So, who is in
our prisons?

ADOC Custody Population

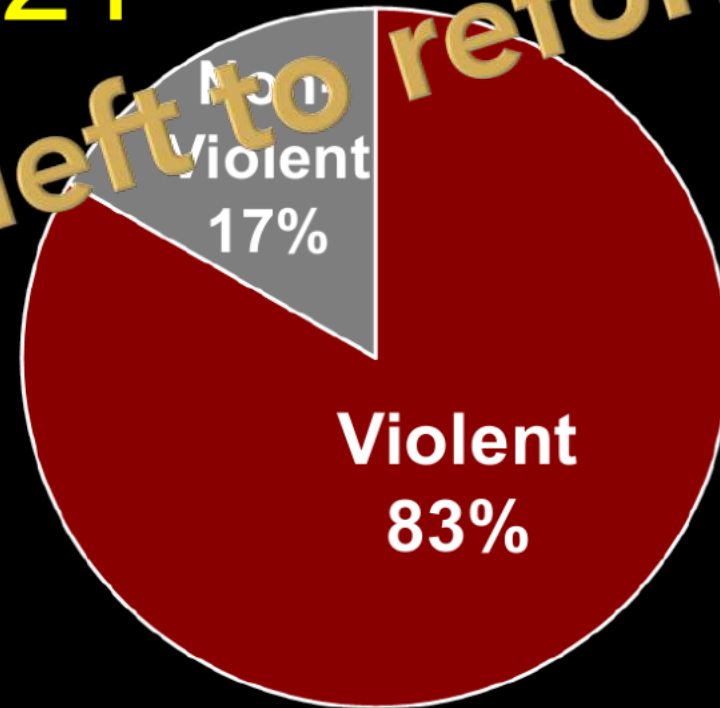
	<u>2010</u>	<u>2021</u>
Drug	20%	10%
Property	21%	15%
Personal	59%	75%

ADOC Custody Population

2010



2021



There is nobody left to reform!



CRIME IS A POLICY
CHOICE!



**National
Outlook**

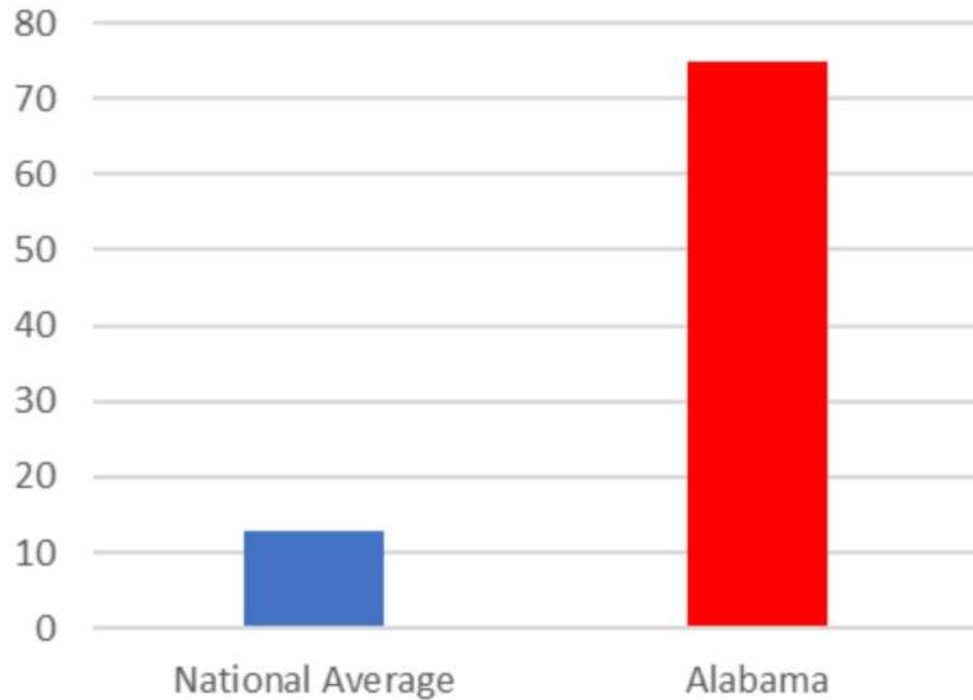
**Overview
of Current
Law**

Why We Need Change

Alabama Good Time

**Deputy
Brad
Johnson
Act**

Alabama vs. National Average



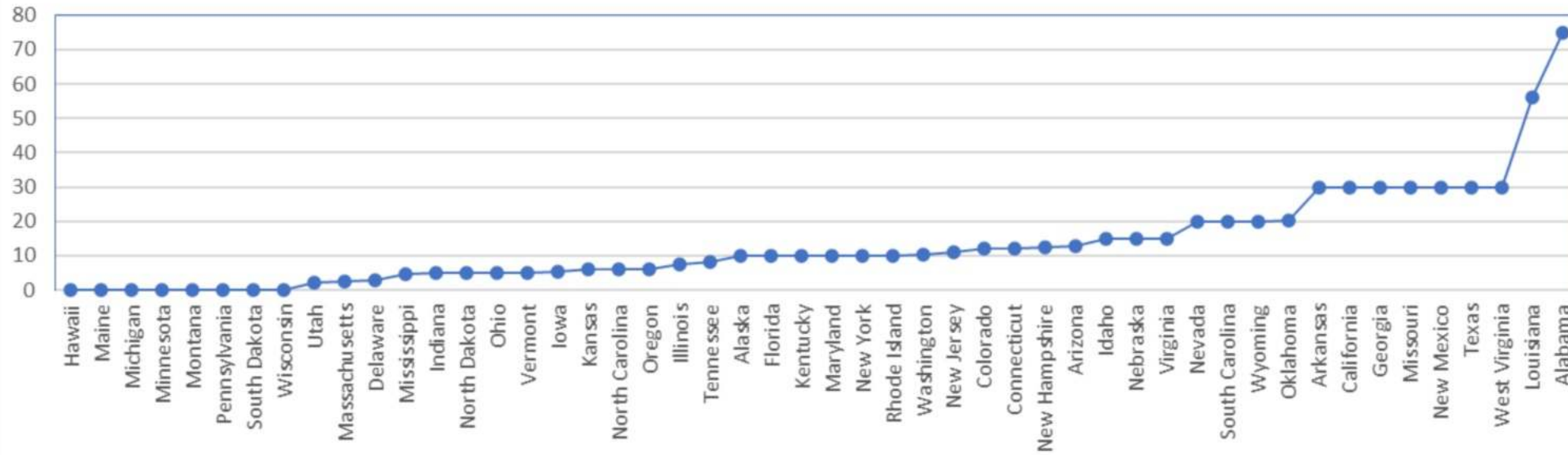
Good Time Credit Nationwide

National Outlook

Where
does
Alabama
Rank?

Why is
this a
problem?

National Outlook: Good Time Credits Awarded by State



It's Time to Reform Good Time

Alabama Ranks LAST!

Alabama has the WEAKEST "good time" law in the nation.

- Alabama's law is 2.5x more lenient than California
- Alabama's law is 5.5x more lenient than the national average.
- In Alabama, it only takes 10 months for inmates to begin receiving 75 days in good time for every 30 days they are incarcerated.
- The current statute allows felons who have committed serious crimes to receive good time.

Convicted killer charged in deaths of Sgt. Nick Risner and man dumped from car, wounding of Lt. Max Dotson

Published: Oct. 06, 2021, 10:21 p.m.



Sgt. Nick Risner

Sheffield police Sgt. Nick Risner

ALABAMA NEWS

Deputy Brad Johnson dies after being shot in Bibb County chase

by: Phil Pinarski
Posted: Jun 30, 2022 / 03:45 PM CDT
Updated: Jun 30, 2022 / 05:59 PM CDT



(Courtesy of the Bibb County Sheriff's Office)

SHARE    ...

BIBB COUNTY, Ala. (WIAT) — One of the two Bibb County sheriff's deputies who were shot during a pursuit Wednesday night has died.

Bibb County District Attorney Michael Jackson has confirmed the passing of Deputy Bradley Johnson at UAB Hospital just after 3:15 p.m. Thursday.

[Carbon Hill man allegedly bites hole into Walker County deputy's arm](#)



Killings Preventable

Police Officers are Dying

2 Officers killed in 2 years by killers that should have been behind bars



**National
Outlook**

**Overview
of Current
Law**

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4 Main Parts:

Overview of the Law

Part I
How
Much?

Part II
Who
Earns it?

Part III
When is it
earned?

Part IV
Why is it
forfeited?

How Much?

(1) Amount of Good Time Accrued

Class 1: 75 days earned for every 30 days incarcerated.

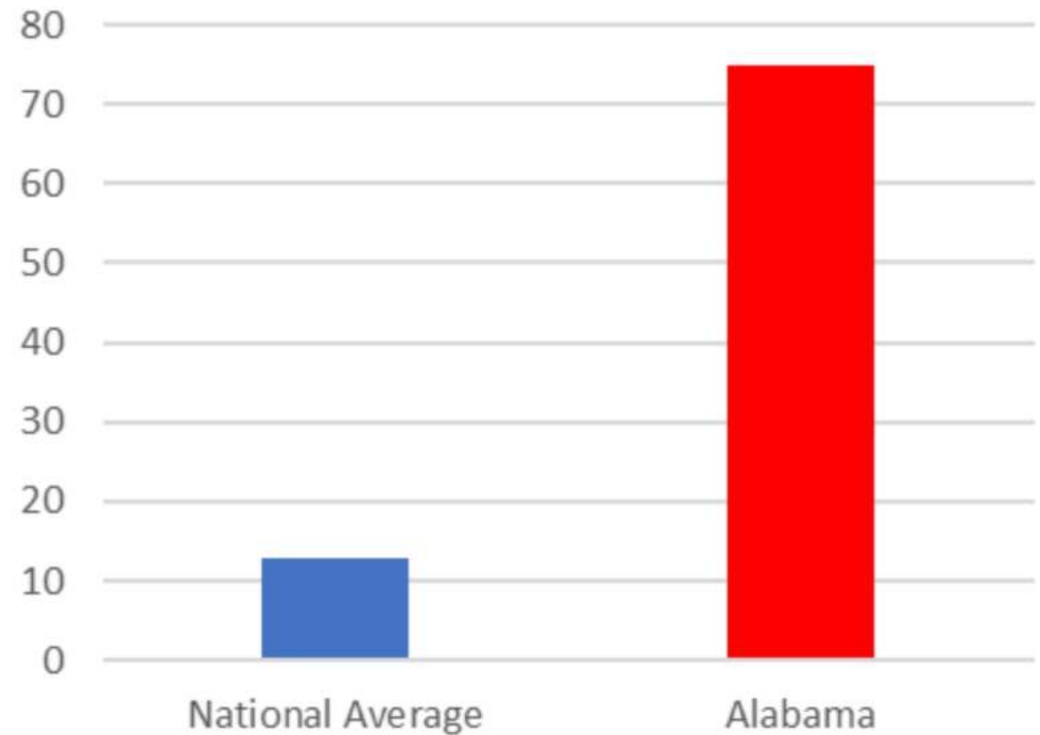
Class 2: 40 days for every 30 days incarcerated.

Class 3: 20 days for every 30 days incarcerated.

Class 4: No good time.

See 14-9-41(a)(1)-(4)

Alabama vs. National Average



Who earns it?

(2) Classifications of Prisoners for earning status

- **Class 1:** prisoners who are most trustworthy in habits, conduct, attitude, and cooperation.
- **Class 2:** prisoners whose jobs are always under the supervision of correctional officers.
- **Class 3:** prisoners with special assignments.
- **Class 4:** prisoners who are not yet classified, not able to work, or who commit disciplinary infractions or do not abide by the rules.

See 14-9-41(c)(1)-(4)

When is it earned?

(3) Waiting period for an inmate to prove trustworthy

Class 4 > Class 3: 30 days

Class 3 > Class 2: 3 months

Class 2 > Class 1: 6 months

= 10 months to earn 75 days

See 14-9-41(c)(1)-(4)



When can it be lost?

(4) Prisoners forfeit good time for bad behavior.
BUT, it can ALL be restored.

- Requires ADOC to remove all or any part of the good time accrued from an inmate who commits an offense or violates a rule.
- **Allows** ADOC officials **to restore** to **any** prisoner **good time that has been forfeited.**

See 14-9-41(f)(1)-(2)



“Ugh! Didn’t you commit this offence last time you were released?”



**National
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**Overview
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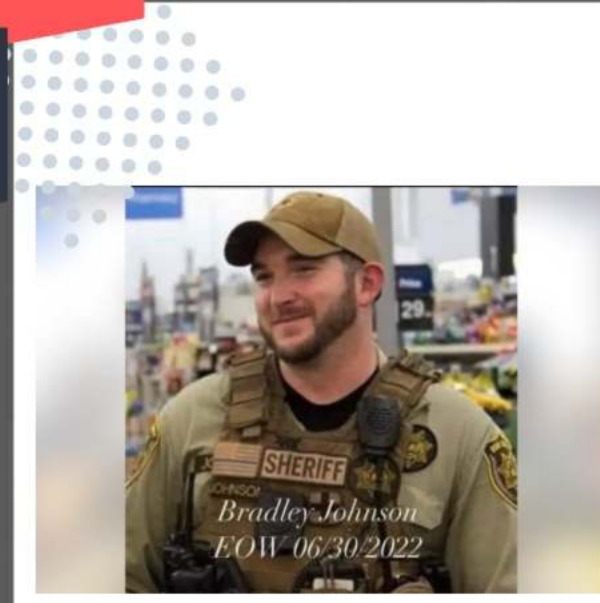
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Deputy Brad Johnson Act

"But why was Hall — who faced charges in multiple other crimes and had a documented history of violence and attempted escape — out of jail in the first place?"



**STEP I:
FIX AMOUNT
OF TIME
ACCRUED**

**STEP II:
FIX LENGTH
OF TIME TO
EARNINGS**

**STEP III:
FIX WHO IS
ELIGIBLE**

**STEP IV:
FIX
MANDATORY
FORFEITURE**

(1) Amount of Good Time Accrued

Class 1: ~~75 days~~ 30 days earned for every 30 days incarcerated.

Class 2: ~~40 days~~ 15 days for every 30 days incarcerated.

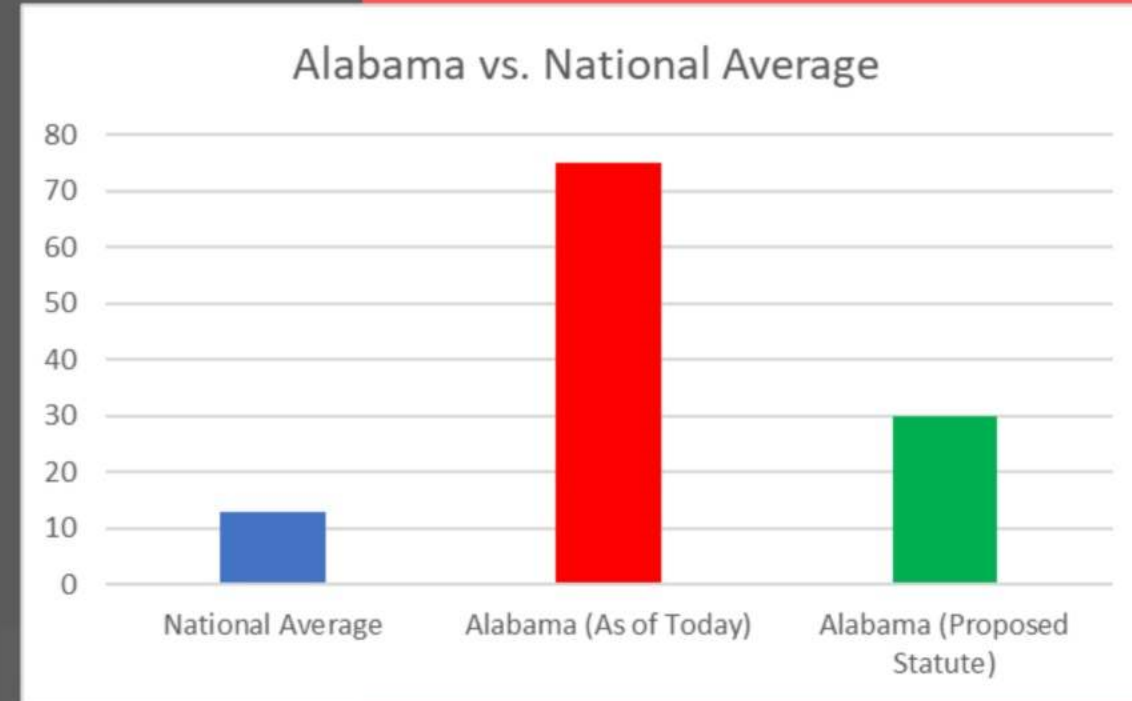
Class 3: ~~20 days~~ 5 days for every 30 days incarcerated.

Class 4: No good time.

See 14-9-41(a)(1)-(4)

STEP I

FIX AMOUNT OF TIME



(2) Waiting period for an inmate to prove trustworthy

Class 4 > Class 3: ~~30 days~~ 3 months

Class 3 > Class 2: ~~3 months~~ 6 months

Class 2 > Class 1: ~~6 months~~ 1 year

= ~~10 months to earn 75 days~~

= 1 year, 9 months to earn 30 days

See 14-9-41(c)(1)-(4)

Part 2

Length of Time to Earn

(3) Inmates who have committed the following crimes are **NO LONGER eligible to receive **ANY** good time (or have their good time restored):**

- (1) Homicide
- (2) Escape from custody
- (3) Assault on any person(s) causing serious bodily injury
- (4) Seizing or holding hostage(s) in any manner
- (5) Sexual assault
- (6) Inciting a riot or rioting
- (7) Fighting with a weapon resulting in serious injury
- (8) Arson

Part 3

Who is Eligible?

(4) Prisoners forfeit good time for bad behavior.

BUT, now it ~~can~~ CANNOT be restored.

- Requires ADOC to remove all or any part of the good time accrued from an inmate who commits an offense or violates a rule.
- ~~Does allow~~ **Does NOT allow** the Commissioner to restore to any prisoner good time that has committed crimes in prison, such as homicide, escape, assault, rape, rioting, fighting, etc.

See 14-9-41(f)(1)-(2)

Part 4

**No restoring good time
for bad actors**



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CLOSING THE JIMMY SPENCER PAROLE LOOPHOLE



JANUARY 25, 2023

LEGISLATIVE MEETING ON CRIMINAL JUSTICE

MONTGOMERY, AL

ASSISTANT COUNSEL
ANDREW A. YERBEY



JANUARY 25, 2023

LEGISLATIVE MEETING ON CRIMINAL JUSTICE

MONTGOMERY, AL

PART I

REVISITING THE CASE OF THE JIMMY O'NEAL SPENCER

PARDONS AND PAROLES

2019 REFORMS

- **In May 2019, the Alabama Legislature passed H.B. 280, which overhauled the badly broken Alabama Board of Pardons and Paroles.**
- **The legislation's reforms included:**
 - **Giving the Governor greater oversight of the Board.**
 - **Creating a Director of Pardons and Paroles, who is appointed by the Governor and approved by the Senate.**
 - **Requiring at least one member on the Board to be a current or former law-enforcement officer with significant experience in the investigation of violent crimes.**
 - **Providing strict rules and guidelines to better ensure violent offenders do not receive early or wrongful release from prison.**

JIMMY O'NEAL SPENCER

2022 PAROLE HEARING

- **In August 2022, Jimmy Spencer was considered for parole while awaiting trial on three capital-murder charges.**
 - **This was not a decision made by the Board—which correctly and swiftly denied Spencer parole—but rather the result of a requirement under the law as currently enacted.**
- **Spencer's case once again served to highlight a fatal flaw in Alabama's criminal laws that needs to be fixed.**
- **Nobody charged with a serious crime should be allowed the possibility of being paroled until after it has been determined whether he or she committed that crime.**
- **The paramount concern must always be public safety.**

PART II

**CLOSING THE JIMMY SPENCER
PAROLE LOOPHOLE**

DRAFT LEGISLATION

AMENDMENT TO ALA. CODE § 15-22-28

(g) Any prisoner who is duly charged with a new federal, state, or local offense punishable by a term of imprisonment exceeding six months shall not be considered for parole until after the charge has been disposed, whether by trial or other means, notwithstanding any provision in this Chapter or law to the contrary.

DRAFT LEGISLATION

AMENDMENT TO ALA. CODE § 15-22-28

(g) Any **prisoner who is duly charged with a new federal, state, or local offense punishable by a term of imprisonment exceeding six months shall not be considered for parole until after the charge has been disposed, whether by trial or other means, notwithstanding any provision in this Chapter or law to the contrary.**

**A person who is being confined in an Alabama state prison,
“whether he is actually in the walls of a prison, or only in the stocks,
or in the custody of any person who had lawfully arrested him.”**

DRAFT LEGISLATION

AMENDMENT TO ALA. CODE § 15-22-28

(g) Any prisoner who is **duly charged with a new federal, state, or local offense punishable by a term of imprisonment exceeding six months shall not be considered for parole until after the charge has been disposed, whether by trial or other means, notwithstanding any provision in this Chapter or law to the contrary.**

Formally accused of an offense as prescribed by law.

DRAFT LEGISLATION

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(g) Any prisoner who is duly charged with a new federal, state, or local offense punishable by a term of imprisonment exceeding six months shall not be considered for parole until after the charge has been disposed, whether by trial or other means, notwithstanding any provision in this Chapter or law to the contrary.

A violation of the law (criminalized at any level of American government) committed by or prosecuted against a current prisoner, unrelated to the violation of the law for which the prisoner is currently being confined.

DRAFT LEGISLATION

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(g) Any prisoner who is duly charged with a new federal, state, or local offense punishable by a term of imprisonment exceeding six months shall not be considered for parole until after the charge has been disposed, whether by trial or other means, notwithstanding any provision in this Chapter or law to the contrary.

Constituting a “serious crime.”

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Subsequent to a final determination, settlement, or termination of the criminal accusation.

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As the result of a conviction, acquittal, dismissal, plea deal, decision not to prosecute, or any other action.

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Preempting all state and local laws that conflict with this provision.

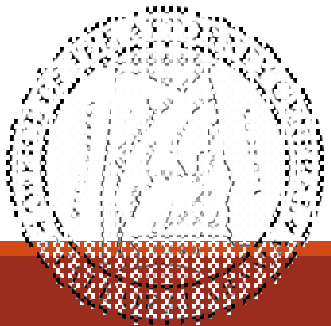


Assistant Chief Deputy – Criminal Division

Assistant Attorney General

GANG USE OF MEDIA

Use music videos to brag about crime.



GANG USE OF MEDIA

June 23, 2021 – Rotary Street, Montgomery

At 1:40 p.m., police responded to a shooting. Two minors dead, two more people injured. Chiraq escaped the scene on foot, leaving his car. HBG later released this video, telling him to come get his car so they could shoot him.



GANG USE OF MEDIA

It's not just Montgomery. It's all over the state.

December 5, 2022

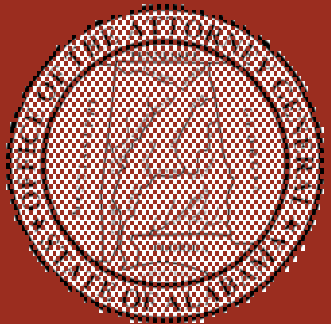
Lee High School,
Montgomery



Feuding Gangs Are Infiltrating Our Schools

December 5, 2022

Lee High School,
Montgomery



Z3 v. 1045 David Drive

- Mostly juveniles
- Occupy neighboring areas

December 5, 2022

Lee High School,
Montgomery



Z3 is also responsible for another shooting on January 5, 2023 on David Drive that seriously injured two minors.

Three people, including two minors, are now facing attempted murder charges.

December 11, 2022

DoubleTree Hotel,
Downtown Montgomery

SOLUTION #1

- Criminalize “gang related activity”
- Enhanced penalties for any charged offense that has the purpose of “benefiting, promoting, or furthering the interests of a criminal street gang . . .”
- Mandatory sentences for use or carry of firearms in furtherance of criminal street gang activity:
 - Possession – 5 years
 - Brandishing – 7 years
 - Discharge – 10 years
- Firearm charges must run consecutive to underlying criminal offense
- Juveniles over 16 certified as adults for charges related to gang activities



RICO IN ALABAMA

The premise of RICO is that if any group of people commits, attempts to commit, solicits, or intimidates the commission of a specified crime *twice* within the span of five years, they are facing a Class A felony.

PROPOSED RICO STATUTE

Define “pattern of racketeering activity” as:

Engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct, excluding any periods of imprisonment.

PROPOSED RICO STATUTE

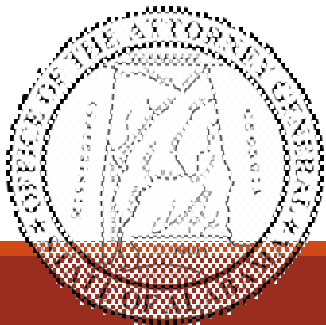
Define “racketeering activity” as:

Committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit:

- a. Offenses chargeable as a felony under Alabama law
- b. Acts of domestic terrorism as described in section 13A-10-151 through 13A-10-154, Code of Alabama 1975.
- c. Offenses set forth in Articles 1, 1A, 2, 2A, 3B, 4, 5A, and 6 through 10, Chapter 8, Title 13A, Code of Alabama 1975.
- d. Promotion of prostitution
- e. Offenses defined in Alabama law relating to the security of state or county or juvenile correctional facility
- f. Any criminal offense committed in violation of the laws of the United States or its territories, dominions, or possessions, any of the several states, or any foreign nation which, if committed in this state, would be considered criminal racketeering.

ALABAMA'S FENTANYL PROBLEM

In 2011, police seized 11.03 kilos of fentanyl in Alabama.



ALABAMA'S FENTANYL PROBLEM

In 2022, that number quadrupled to 44.84 kilos.

That's 22 million lethal doses of fentanyl, or enough to kill each Alabamian four times.

Jefferson County reported 339 deaths confirmed to be fentanyl overdoses.



SOLUTION #2

Fentanyl Trafficking Statute – Ala. Code §13A-12-231(13) (Class A felony)

- Create mandatory sentences for drug amounts
 - 1-2 grams: Adds five years
 - 2-4 grams: Adds six years
 - 4-8 grams: Adds seven years
 - 8+ grams: Adds ten years

Protect First Responders and Law Enforcement

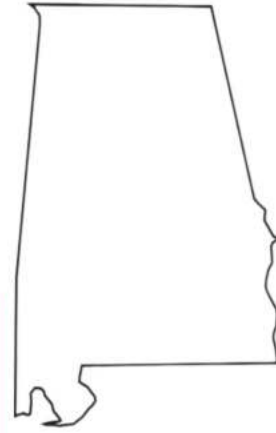
- “First Responder And K-9 Fentanyl Protection Act”
 - Any “reckless exposure” of fentanyl to a first responder would be a Class C felony
 - Mandatory minimum of two years
 - Any “reckless exposure” of fentanyl that results in death or “serious bodily injury” to a first responder would be a Class A felony
 - Mandatory minimum of 20 years



QUESTIONS?

PRISON **LITIGATION**

An exclusive update



PRISON **LITIGATION**

An exclusive update

CASE UPDATE

- Braggs v. Hamm
 - Middle District of Alabama
 - Judge Thompson
- Duke v. Hamm
 - Northern District of Alabama
 - Judge Proctor
- United States v. Alabama
 - Northern District of Alabama
 - Judge Proctor
- Individual Plaintiffs
 - Southern, Middle, and Northern Districts of Alabama

CASE UPDATE

2014 Braggs v. Hamm

- SPLC filed in 2014 regarding inmate mental health care, correctional staffing levels, medical care, and dental care;
- Remedial order entered and appealed;
- Decision expected in late 2023 or early 2024;
- Monitoring team appointed by Court;
- Court remedial order focuses on correctional and mental health staffing.

2014 Duke v. Hamm

- Filed by EJI pertaining to conditions at St. Clair;
- Similar issues raised as to DOJ litigation;
- Discovery ongoing with trial set for September of 2024.

2020 U.S. v. Alabama

- DOJ complaint alleges unconstitutional deprivations involving every male facility;
- Claims centered around levels of violence, levels of correctional staffing, and general conditions inside male facilities;
- DOJ filed suit in December of 2020 in the midst of on-going settlement negotiations;
- Trial set in November of 2024.

2019-2023 Individual Plaintiffs

- Coordinated by EJI;
- Pro bono services by out-of-state law firms;
- Designed to bolster pending cases;
- Targets DOC funds.

2014

SOUTHERN POVERTY LAW CENTER
FOUNDED 1971

Braggs v. Hamm

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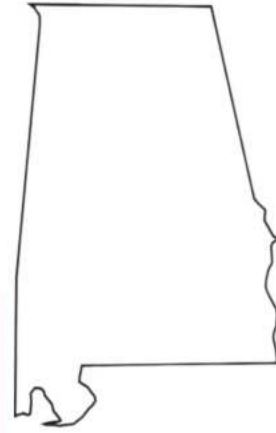
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PRISON **LITIGATION**

An exclusive update



Transcendent Issues of Pending Cases

 > 80% of population are violent offenders

 75-80% of inmates are in dormitory housing

- national norm is 50-50 split
- FBP is 70% cell, 30% dormitory housing

 Facilities

 Staffing  

 Plaintiff's demands are overbroad and excessive

 Time is on our side (if used wisely)




Bullock Correctional
Facility in Alabama
Department of
Corrections.

man these motherfuckers ain't
got no but no guards in the
cubes

Inmates have to fend for
themselves on every
level. Where are our tax
dollars going?

Transcendent Issues of Pending Cases

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 Time is on our side (if used wisely)



PRISON **LITIGATION**

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