



LONG ROAD TO NOWHERE

How Southern States Struggle
with Long-Term Incarceration

February 2021

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“The nature of the criminal justice system has changed. It is no longer primarily concerned with the prevention and punishment of crime, but rather with the management and control of the dispossessed.”

—Michelle Alexander, author of *The New Jim Crow*

INTRODUCTION

The Deep South is the epicenter of mass incarceration. The United States incarcerates more people per capita than any other country, with prison populations growing by 86% between 1990 and 2019. For Southern states, prison populations exploded by 127% during that same period.¹ During this time in history, America implemented “tough on crime” policies that responded to public health issues like the drug epidemic with incarceration instead of rehabilitation. Laws for even nonviolent crimes became more punitive with longer sentences, and people of color were disproportionately pushed into prisons with little hope for parole.

Today, incarceration rates for Latinx and Black people are more than two and five times the incarceration rate of whites, respectively.² The commitment to the “tough on crime” narrative led to significantly overcrowded prisons, which not only put a strain on state budgets, but also created human rights challenges regarding how to maintain a safe and healthy prison environment.

Three Southern states in particular — Alabama, Florida, and Louisiana — exemplify how prison populations have grown to be problematic in three unique ways. Alabama is home to the most overcrowded prisons in the country, currently at 151% of capacity.³ Alabama’s prison crisis has drawn attention from U.S. Department of Justice investigations twice within a 15-month period, and led to a recent lawsuit concerned with how severely overcrowded prisons contribute to unsafe, unsanitary, and increasingly violent conditions.⁴ Even after sentencing reforms were passed in 2017, recent legislation concerning the Alabama Board of Pardons and Paroles has severely diminished the parole chances of currently incarcerated people.

Florida, with over 95,000 imprisoned people, has the third-largest prison population of any state in the country, behind only

Texas and California. However, unlike California and Texas, Florida still adheres to a “Truth in Sentencing” rule requiring incarcerated people to serve at least 85% of their sentences, regardless of any demonstration of rehabilitation. Florida’s abolishment of parole for crimes after October 1983 also makes it nearly impossible to decarcerate in the manner of other states. As a result, Florida has grown to have the oldest prison population in the South, a group whose care is increasingly expensive.

Louisiana, on the other hand, has been known as the “incarceration capital of the world” for consistently having incredibly high incarceration rates. A large factor is the number of people serving life sentences without the possibility of parole, including juveniles. Life-without-parole sentencing, or “LWOP,” has permanently locked over 4,500 people in Louisiana’s prisons, with an additional 1,300 serving “virtual life” sentences of more than 50 years — altogether making up one of every five incarcerated people in the state. Louisiana currently holds more people with LWOP sentences than Alabama, Georgia, New York, and Texas combined.

The lack of early prison release is just one of many contributors to mass incarceration in the South — an issue that presents itself in varying ways across the states. Likewise, the solutions also vary — from expanding parole eligibility and making it retroactive, to increasing incentives for rehabilitation credits, to recalibrating triggers for LWOP sentences. A sensible approach to decarceration in the South would not only make prisons safer and less expensive, but would also create opportunities to reinvest savings in other priorities. This report will investigate the impact that overincarceration has had in three Southern states, and provide recommendations on how each state can address the issue through policy change.

ALABAMA

America's Most Overcrowded Prisons

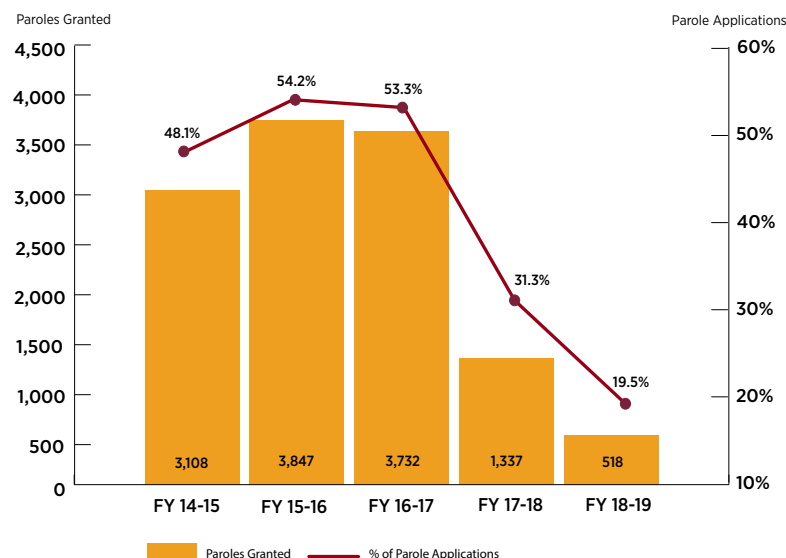
Background

In January 2015, the Alabama Department of Corrections (ADOC) packed 24,770 incarcerated men and women into a prison system designed for only 13,318 — 186% of capacity.⁵ Such overcrowding created problems with public health and prison safety that drew scrutiny from multiple fronts, including litigation over insufficient medical and health care, and two Department of Justice reports finding widespread violence and abuse.⁶ In April 2015, a prison revolt at the St. Clair Correctional Facility left 15 people injured, following a year where the Equal Justice Initiative filed a lawsuit claiming detainment at St. Clair was akin to cruel and unusual punishment.⁷ In December 2020, the Department of Justice also filed a lawsuit claiming that Alabama's dangerously overcrowded prison conditions are unconstitutional.⁸

The risks of severely overcrowded prisons are well-documented, especially regarding increased suicide attempts, violence between incarcerated people, and violence toward staff.⁹ However, when starting at 186% of capacity, Alabama did not have the financial resources to simply build its way out of the overcrowding with new prison construction. After deliberation from former Gov. Robert Bentley's task force charged with researching solutions, decarceration became as much of a necessity as building new prison space. As a result, Alabama passed SB 67, a reform measure that reclassified sentencing for some nonviolent offenses and added efficiencies to the state parole board.¹⁰ From 2016 to 2018, the first two years of SB 67's enactment, the state in-house prison population decreased by over 3,200 people — a 13% decline.¹¹

However, in 2019 the Legislature passed HB 380, allowing the governor to appoint a

Parole Applications Granted in Alabama Figure 1



director over the Alabama Bureau of Pardons and Paroles (ABPP), requiring more time served before parole eligibility, and establishing strict protocols for any early release consideration¹² — all preceded by the governor’s declaration of a 75-day moratorium on parole releases.¹³ The passage of HB 380 ushered in tighter scrutiny of the ABPP under Gov. Kay Ivey’s first appointed parole board director, Charles Graddick — making it rarer for parole hearings to be held at all, much less for parole to be granted. Graddick, a former Alabama attorney general who became notorious for his tough-on-crime rhetoric, instituted an additional two-month parole moratorium immediately upon taking office.¹⁴

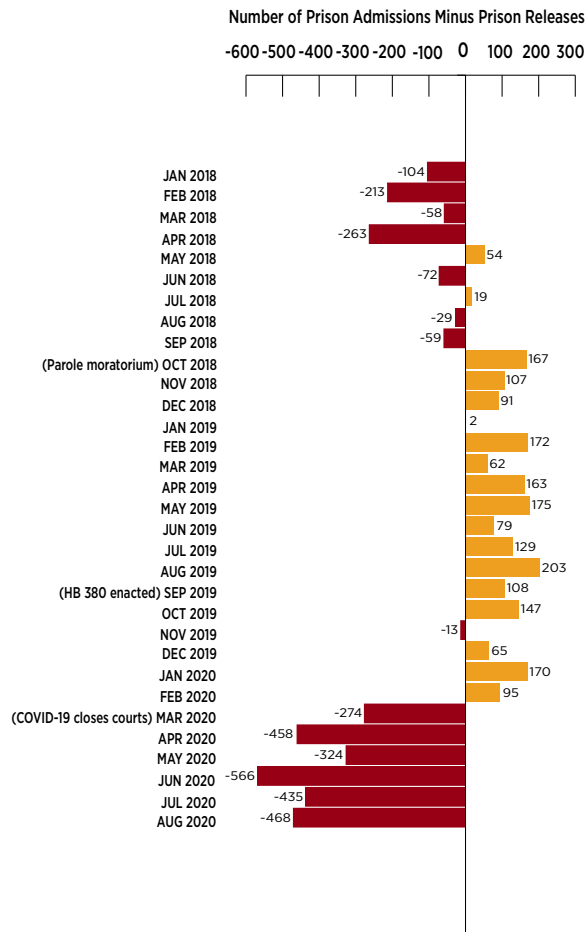
Consequently, parole grants went from 3,732 in FY 2017-18 (53.3% of applicants), to only 518 in FY 2019-20 (19.5% of applicants).¹⁵ Far fewer paroles were granted, even for elderly people, who are most vulnerable in the coronavirus pandemic, and least likely to pose a public safety threat.¹⁶ At the same time, the few people granted parole were more than twice as likely to be white as Black, making the already stark racial disparities of Alabama’s prisons even more pronounced.¹⁷ With a halt on paroles, Alabama’s prison population increased for the first time in six years as the rest of the nation was trending downward.¹⁸

Scope of the Problem

With Alabama’s prison population now on an upward trajectory, the problem of prison overcrowding resurfaces as a major concern. In March 2018, ADOC had to close the Draper Correctional Facility, which had aged beyond repair, raising environmental and safety concerns. In January 2020, the department announced plans to close an additional 1,010 beds at the Holman Correctional Facility — further decreasing available prison space. Overcrowding is exacerbated during the coronavirus pandemic, as it is impossible to socially distance in such confined spaces.

Difference in ADOC Prison Admissions vs. Releases

Figure 2



In response to overcrowding issues and dilapidated facilities, Gov. Ivey proposed to build three new privately constructed men’s prisons in 2021, providing around an additional 10,000 beds to be leased to the state, costing \$2.6 billion over 30 years.¹⁹ Afterwards, ADOC would then lose beds by eventually decommissioning and/or repurposing its older facilities as early as 2023.²⁰ Though it is not yet known which facilities would be closed, Alabama would lose over 4,400 beds if it were to close its three oldest men’s prisons in addition to Holman, including Fountain Correctional Facility (built in 1955), Kilby Correction-

Projected Alabama Prison Overcapacity

Figure 3

	Starting Bed Capacity	New Bed Construction	De-commissioned Beds	Bed Capacity at Year End	Estimated Prison Population at Year End	% of Capacity
Year 1 (2021) — ADOC builds first new facility, closes Holman Correctional Facility	12,412	960	1,010	15,362	19,113	124%
Year 2 (2022) — ADOC builds second new facility	15,362	3,072	0	18,434	20,469	111%
Year 3 (2023) — ADOC builds third new facility, closes Fountain Correctional Facility	18,434	18,434	1,613	19,893	21,826	110%
Year 4 (2024) — ADOC closes Kilby Correctional Facility	19,893	0	1,421	18,472	23,183	126%
Year 5 (2025) — ADOC closes Staton Correctional Facility	18,472	0	1,376	17,096	24,539	144%
Year 6 (2026)	17,096	0	0	17,096	25,896	151%

al Facility (1969), and Staton Correctional Facility (1978).

Before the pandemic closed the state court system, leading to a sharp decline in convictions and prison admissions, ADOC was averaging 113 more admissions than releases per month since Gov. Ivey's parole moratorium. Once the courts resume their normal caseloads, we can expect prison admissions to return to normal levels as well — especially considering the case backlog caused by the pandemic.

Without a plan for decarceration, even if Alabama spends over \$2.6 billion to construct and lease 10,000 new prison beds, the state could return to its current rate of overcapacity (151% as of August 2020) only three years after the new prisons are built.

Possible Solutions

Alabama cannot build its way out of prison overcrowding. Without revitalizing the

possibility of parole release, new prison construction will only be a temporary and unsustainable solution — entirely too expensive for any benefit it would yield. Alabama's prison system must address the core issue that it admits more prisoners than it releases. The ABPP's new director, Cam Ward, who started in December 2020, provides an opportunity to change the trajectory from past leadership.

Before HB 380 was enacted, the state had broader consideration for parole release. People who were elderly, infirm, or had served at least 20 years of a sentence for crimes other than rape and murder had a greater likelihood of release. Studies have shown that the older an incarcerated person is, the less likely that person is to reoffend with violent crime after release.²¹ Likewise, it is not proven that longer prison sentences are a strong deterrent to violent crime.²²

During the pandemic, local advocates stressed the need for releasing medically fragile, older adults and children to ease the spread of coronavirus in overcrowded prison spaces.²³ For infirm people especially, there is also potential for decarcerating through expanding the possibility of medical furlough and parole. Alabama could widen the medical criteria eligible for furlough, and potentially widen the eligible parties that could initiate the medical furlough process. As of December 2020, there have been 54 deaths among Alabama's prison population due to COVID-19 alone, along with 1,164 people testing positive for the virus.²⁴ However, there are only 13 people currently on medical furlough from facilities already deemed unsanitary by the U.S. Justice Department.²⁵

If Alabama were to repeal HB 380 and retroactively reinstate pre-legislation parole considerations, this would immedi-

ately impact over 2,829 incarcerated people currently in ADOC custody.²⁶ With the current ADOC incarceration cost of \$64.01 per person per day, the state could save \$66 million over the course of a year if all parole-eligible people were released.²⁷

Also significant is that if 2,829 people were released on parole, Alabama prisons would drop from 151% of capacity to 128% of capacity — ranking seventh in the country instead of first.²⁸ ADOC Commissioner Jeff Dunn and Ward, the ABPP director, should ensure full compliance with the state's medical furlough and medical parole policies, and seek expansion of the policies' eligibility wherever possible. Over time, restoring and expanding parole would be a less expensive and much more sustainable solution to prison overcrowding than building new prisons that do not address the underlying issues of mass incarceration.

Number of Potentially Parole-Eligible People and Cost Savings

Figure 4

Incarcerated People in ADOC Custody	Number of People Incarcerated	Cost Savings for One Year
Category 1: People age 60+	2,165	\$50.6 million
Category 2: People below age 60 who have served at least 20 years for offenses other than rape or murder	645	\$15.1 million
Category 3: Juveniles age 18-19, not included in Categories 1 or 2	13	\$303,727
Category 4: Infirm people on medical furlough, not included in Categories 1 or 2	6	\$140,182
Total Impact	2,829 people	\$66.1 million

FLORIDA

The South's Oldest Prison Population

Background

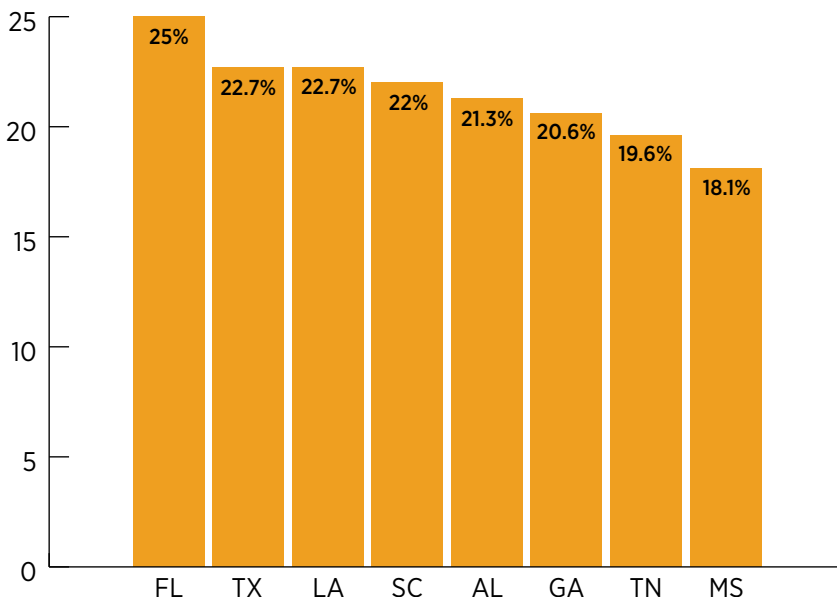
The 1994 federal crime bill set a national precedent for longer prison sentences, including “Truth in Sentencing” laws mandating that people serve a large majority of their prison time. States across the country were incentivized to toughen their sentencing standards with federal funding to build prisons and strengthen law enforcement. Florida’s version of Truth in Sentencing, however, stands out as particularly harsh considering that it requires incarcerated people to serve at least 85% of their sentence, regardless of the offense’s severity. So even for nonviolent convictions, there is no possibility to gain parole eligibility, or reduce the sentence below 85% with “gain time” — credit incentives for demonstrating good

behavior, or taking advantage of rehabilitation and educational programs.

Florida’s Truth in Sentencing law, or “85% Rule,” has created an increasingly older prison population that is more expensive to detain, even though longer prison stays are no guarantee to deter crime,²⁹ and people typically are less likely to recidivate with violent crimes they older they get.³⁰ Placing a cap on the amount of gain time removes incentive to participate in activities designed to reduce recidivism, such as educational and vocational programs. Additionally, Truth in Sentencing makes it increasingly difficult for Florida to decarcerate its prisons. Even with prison admission rates declining 22.2% over the last decade, the size of Florida’s prison population has remained stagnant — only falling 6.5% during that same period.

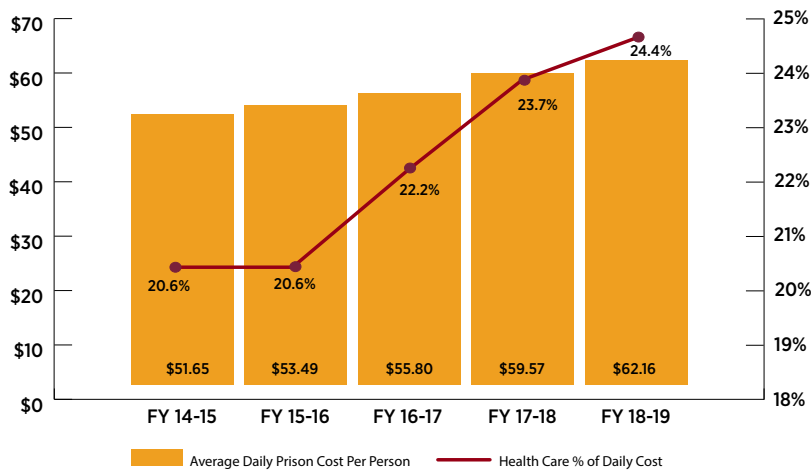
Percentage of Prison Population at Least 50 Years Old (FY 2019)

Figure 5



**Florida's Daily Prison Costs Per Person,
with Percentage of Costs Coming from Health Care**

Figure 6



Scope of the Problem

Even compared to other Southern states with larger prison populations (Texas), or higher incarceration rates (Louisiana), Florida stands out as having the oldest prison population in the South, with a quarter of them over the age of 50. By comparison, people at least 50 years old made up only 7.9% of Florida's prison population in 2000.³¹ According to the Florida Department of Corrections (FDOC) FY 2019 annual report, "The average inmate is now over 40 years old, versus 32 years in 1996. Though the projection for growth of the total inmate population is relatively flat over the next five years, the elderly population is expected to increase from 25% of the total population to 29.8% during that same five-year period." This projection would amount to over 28,700 elderly people in FDOC by 2024, more than the entire prison population of Alabama.

Older people in prison present an additional strain on state budgets, primarily from increased health care costs. Bureau of Justice statistics find that incarcerated elderly people are more susceptible to chronic illness, as they may come to prison with a history of substance abuse and lack of suffi-

cient health care.³² In FDOC for FY 2018-19, 49% of all chronic illness clinic enrollments, 49% of impairment gradings, and 52% of assigned assistive devices went to people age 50 and up.³³

By extension, the cost of medical care for infirm elderly people in prison becomes two to three times the cost of all other incarcerated people on average.³⁴ In FY 2018-19, elderly people made up 58% of all outpatient events, 54% of all hospital admissions, and 64% of all inpatient hos-

Projected Savings from Gain Time Reform over Five Years

Figure 7

	Cumulative Number of Prison Beds Saved	Annual Prison Costs Saved (in millions)
Year 1	7,596	\$74.0
Year 2	8,833	\$174.2
Year 3	9,121	\$186.8
Year 4	9,209	\$210.0
Year 5	9,209	\$215.4
Total	9,209	\$860.4

pital days.³⁵ These costs are also reflected in a current 20% increase in FDOC's daily cost per person over the last five years, as well as a larger portion of that cost coming from health care expenses.

Once the coronavirus pandemic is over, Florida's prison population is projected to slowly increase by at least 1,100 people over the next five fiscal years, according to the Florida Criminal Justice Estimating Conference.³⁶ A lack of opportunity for early release not only grows the prison population, but also the financial commitment necessary to detain prisoners. At the daily cost of \$62.16 to incarcerate one person in FDOC, Florida will pay nearly \$25 million a year just to incarcerate the additional 1,100 people.

Possible Solutions

Florida's prison population will continue to age and cost taxpayers more if opportunities for prison release are not expanded. Before Truth in Sentencing was enacted, "gain time" credits could accumulate to significantly reduce a person's prison sentence. Currently, good behavior can reduce a sentence 10 days per month, while exemplary deeds or completion of a prison program aimed at anti-recidivism can merit a one-time award of up to 60 days.³⁷ However, any earned credits that would reduce a sentence beyond 15% would have no further benefit towards sentence reduction.

Several reform proposals have been put forth in recent years, including an outright repeal of Truth in Sentencing. Other proposals sought to at least expand the impact of gain time credits, such as:

- increasing credit for good behavior from 10 to 20 days per month,
- allowing good time credits to reduce a prison sentence from 15% to 35%, and
- applying these changes retroactively to everyone currently incarcerated with a nonviolent felony conviction.

The Florida Criminal Justice Estimating Conference estimated that retroactive gain time reform for people with nonviolent felonies would have saved the state more than \$860 million over the course of five years and reduced the prison population by more than 9,200 people.³⁸

Likewise, consideration for parole eligibility with people age 50 and over would provide even more significant cost savings. While retroactively expanding gain time for people with nonviolent offenses would be helpful for all age groups in Florida, the older prison population is disproportionately serving time for violent offenses — 65% of people over 50 compared to 56% of the overall prison population. Research has consistently shown that older incarcerated people are less like to commit crimes. Even people convicted of violent crimes are not likely to commit violent crimes again by the time they are 50. On average, only around one in six older parolees return to prison within three years, with the majority of those recidivations stemming from minor parole violations.³⁹

While providing parole eligibility to the 8,380 incarcerated people over age 50 with nonviolent offenses would provide an additional \$190 million in annual savings to FDOC, providing parole eligibility to the entire incarcerated population over 50 (23,946 people), could save FDOC \$543 million annually.⁴⁰ With state prisons approaching 100% capacity (currently at 94%), different opportunities for early release must be considered to avoid projected population increases that would put a dire strain on state resources.⁴¹

LOUISIANA

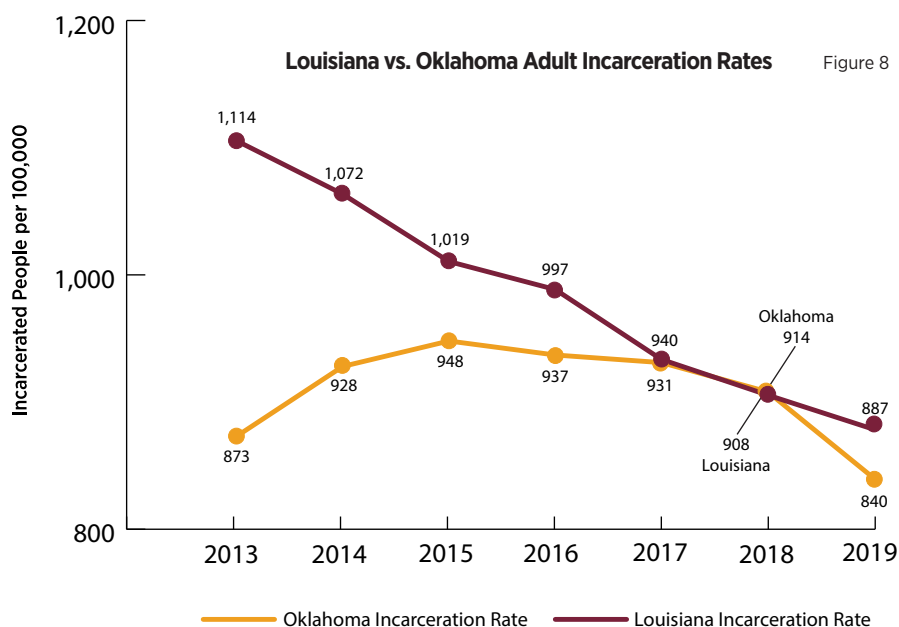
The Highest Incarceration Rate in America

Background

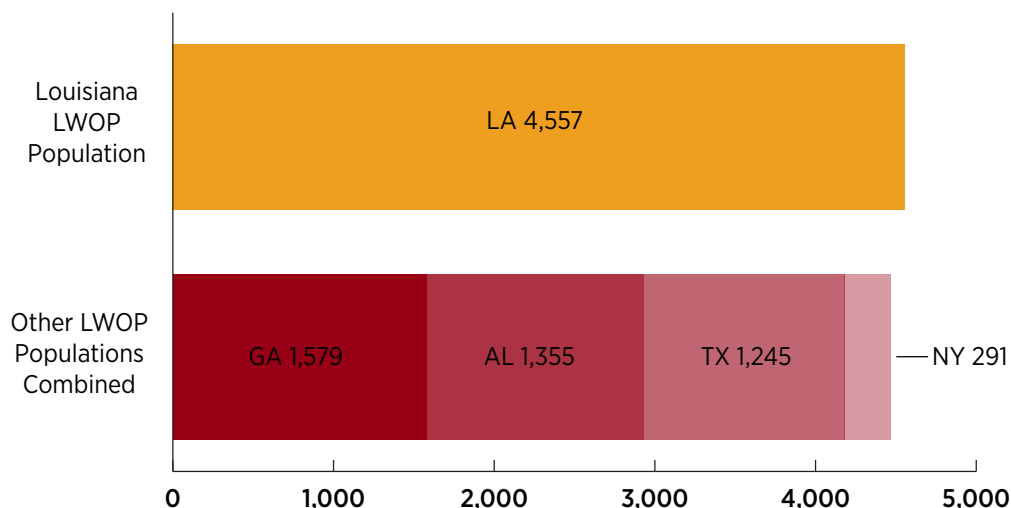
Louisiana, for many years, has worn the crown of “incarceration capital of the world” by having the highest imprisonment rates in the U.S, and by extension the world, given that the U.S. incarcerates more people per capita than any other country. As of 2019, Louisiana incarcerated 887 people per 100,000 state residents, with Oklahoma ranking second at 840 per 100,000 people.⁴² The state’s incarceration rates remain high even after implementing a package of criminal justice reform legislation in 2017. The new laws were designed to “steer less serious offenders away from prison, strengthen alternatives to imprisonment, reduce prison terms for those that can be safely supervised in the community, and remove barriers to successful re-entry.”⁴³

Months after the laws passed, Louisiana celebrated shedding the “incarceration capital” title, passing it on to Oklahoma.⁴⁴ However, while passing bipartisan legislation was a historic step forward, it did not address the topic of life without parole (LWOP) sentences. Louisiana abolished the possibility of parole for anyone sentenced to life in 1979, removing any discretion from judges, juries, or the state parole board. Currently, Louisiana has 4,557 people in prison serving LWOP sentences — one in six people held in state custody.⁴⁵

Erasing the possibility of parole for such a significant portion of the prison rosters creates a crippling obstacle to decarceration, even with recent reforms. As a result, Louisiana’s recent success was short-lived, as it regained the top incarceration rate ranking the following year.



Louisiana's Life Without Parole Population vs. Other States Figure 9



Scope of the Problem

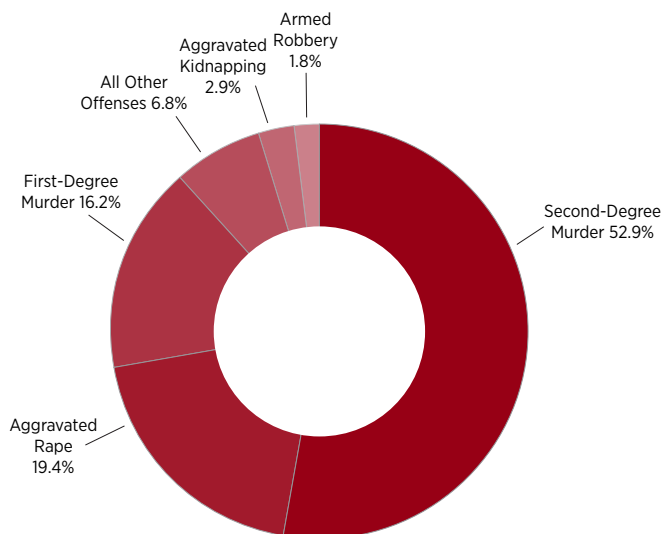
The 4,557 people serving LWOP in Louisiana as of November 2020 is more than the latest reporting of people serving LWOP in Alabama, Georgia, New York, and Texas combined.⁴⁶ This does not include the additional 1,377 people who are serving “virtual life” sentences of over 50 years. If including people with virtual life sentences, one out of every five people in Louisiana prison custody has been sentenced enough prison time to ensure they will die behind bars.

Similar to Florida’s gain time restrictions, Louisiana’s lengthy sentences lock people in prison without regard to their ability to rehabilitate or successfully re-enter society. The average age of incarcerated people in Louisiana is 40 years old, with almost one-fourth (23.7%) over the age of 50 as of November 2020. For people with LWOP sentences, the average age is 50 years old, with over half (51.4%) more than 50 years old.⁴⁷

Historically, the majority of all people sentenced to LWOP in Louisiana have been convicted of second-degree mur-

der, which sentences a getaway driver the same as the person pulling the trigger.⁴⁸ Second-degree murder charges potentially criminalize nonviolent activity as a seriously violent offense. Prosecutors have taken advantage of this legal distinction to garner convictions without having to establish intent, neg-

Louisiana Life Without Parole Offenses Figure 10



Estimated Impact of Louisiana Parole Eligibility Figure 11

	Number of People Impacted by Parole Reform	Average Age	Annual Savings
People with LWOP Sentences and Served 30+ Years	1,002	63	\$19,314,201
People with Virtual Life Sentences of 50+ Years and Served 20+ Years	388	52	\$7,478,952
People Sentenced to LWOP as Juveniles	431	45	\$8,307,805
Totals	1,821	56	\$35,100,958

ligence, or malice. Louisiana is one of only a few states in the country that gives LWOP sentences for second-degree murder convictions. Analyzing a recent roster of Louisiana prisons reveals that second-degree murder still makes up the vast majority of LWOP sentences, at 52.9%, while first-degree murder makes up only 16.2% of LWOP convictions.⁴⁹

Also, of those serving LWOP sentences, 431 people were admitted to prison before the age of 20, with 109 of them admitted before the age of 18.⁵⁰ Today, these people are 45 years old on average. Incarceration before the age of 20 essentially eliminates any chance of redemption before reaching adulthood. Many studies have confirmed that the parts of the human brain responsible for rational judgment, impulse control, and long-term decisions do not finish developing until a person's mid-20s.⁵¹ However, our legal system does not always take immaturity and youthful impulsiveness into account when it comes to criminal sentencing. Juvenile life sentences automatically dispose of a young person's future, and at great financial cost to the state — which spends over \$1 million for each youth sentenced to LWOP in Louisiana.⁵²

Possible Solutions

During 2017 legislative deliberations, lawmakers considered parole eligibility for anyone serving at least 30 years who was at least 50 years old, excluding those convicted of first-degree murder. Prosecutors opposed this with concerns of jeopardizing public safety. Since then, community advocates have pushed for parole eligibility for anyone with a life sentence who has served at least 30 years, and people with sentences of 50 years or more who have already served 20 years.⁵³ Additionally, parole consideration for juveniles with life sentences allows youth a chance at redemption while saving millions of taxpayer dollars.

These recommendations rely on the belief that expanding parole eligibility does not come at a risk to public safety. People who have already served decades of their LWOP or virtual life sentence, or were admitted as juveniles, are now an average of 56 years old. A 56-year-old person has statistically aged out of violent criminal activity, and is much less likely to reoffend.

Expanding parole eligibility for people with LWOP sentences, sentences of 50-plus years, and juveniles would impact

Estimated Changes in Incarceration Rate Rankings Figure 12

		Before Louisiana Parole Reform			After Louisiana Parole Reform		
	State Adult Population, Age 18+	Prison Population (Fall 2020)	Estimated Incarceration Rate per 100,000 Adults	U.S. Rank	Prison Population	Estimated Incarceration Rate per 100,000 Adults	U.S. Rank
Louisiana	3,560,976	27,114	761	1	25,293	710	4
Mississippi	2,276,754	17,297	760	2	17,297	760	1
Oklahoma	3,003,341	21,734	724	3	21,734	724	2
Arkansas	2,317,673	16,506	712	4	16,506	712	3
Arizona	5,641,006	38,394	681	5	38,394	681	5

an estimated 1,821 people currently incarcerated in Louisiana prisons. Release for these individuals would save the state over \$35.1 million per year that could be used to reinvest in anti-recidivism initiatives and re-entry support, and even slightly narrow the racial disparity within Louisiana’s prison population.⁵⁴

Also notable is that an emphasis on parole release would play a significant role in shedding Louisiana’s title of “incarceration capital.” Decarcerating state prisons by over 1,800 people would drop Louisiana from a first-place ranking to a fourth-place ranking, behind Mississippi, Oklahoma, and Arkansas.

CONCLUSION

While prison overcrowding and overincarceration are heightened in Alabama, Florida, and Louisiana, the problem is not unique to these three states. The Deep South has an opportunity to set an example for other Southern states, and for the rest of the country, regarding how to implement solutions that save taxpayer dollars and protect human rights without jeopardizing public safety.

For Alabama, expanding parole eligibility would not only benefit incarcerated people in unsafe prisons, but also address age-old concerns about prison costs and capacity. For Florida, expanding the utility of gain time credits would not only serve an immediate benefit for older incarcerated people, but would save hundreds of millions of dollars in prison expenses. For Lou-

isiana, re-envisioning life without parole sentencing would not only speak to people who have been over-sentenced for years, but also could be the solution that helps the state shed the infamous title of “incarceration capital of the world.”

These are solutions that not only require political will, but also show value towards communities directly impacted by mass incarceration. The South has already proven that throwing money at bigger prisons and longer sentences is not a sustainable plan. Today, a commitment to decarceration is a necessity for progress.

ENDNOTES

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