

CHAMP LYONS, JR.
Supernumerary Associate Justice
Supreme Court of Alabama
P.O. Box 1262
Point Clear, AL 36564

January 29, 2020

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

Dear Governor Ivey:

On behalf of your Study Group on Criminal Justice Policy, I write to present you with the following recommendations for addressing the challenges facing Alabama's prison system.

I. BACKGROUND

Over the past six months, our Study Group has diligently pursued the task you set before us. We have heard from over thirty speakers—including a former inmate; faith-based and secular advocacy organizations; and government officials from every branch and level of government. We have also received and reviewed almost 900 pages of submitted materials. (See the attached "Compilation of Submissions," dated January 14, 2020.)

Throughout this process, we have remained laser-focused on a single question: "What policies and programs can the State of Alabama implement to ensure the long-term sustainability of our prison system without jeopardizing public safety?"

Some would say that finding a satisfactory answer to this question is impossible. And indeed, the challenges facing our prison system are exceedingly complex—ranging from the elimination of contraband weapons and drugs to the recruitment, retention, and training of correctional staff to the size of the inmate population and to the physical condition of an aging and far-flung prison infrastructure. Needless to say, these challenges are also many decades in the making.

But having thought through many of these issues with my Study Group colleagues, especially our legislative members, I can report to you that some meaningful answers to this question are not just possible; they are within our grasp.

II. GENERAL AREAS OF CONSENSUS

In the recommendations that follow, I outline some specific areas where I perceive consensus to exist within the legislative members of the Study Group—as well as some areas where caution or further consideration may be warranted. But beyond these specific recommendations, there are two broad areas of consensus that emerged above all else.

A. The Urgency of Action

First is the urgent need to act. The members of our bipartisan, intragovernmental Study Group do not see eye-to-eye on every policy proposal that came before us. But we do agree on one thing: That the challenges facing our prison system are serious and require a sustained commitment to action, both now and into the future.

We recognize that your Administration, working with the Legislature, has already begun to take meaningful steps to address this situation. But we cannot rest on our laurels.

If we try to adhere to the status quo and decline to spend necessary funds to improve the situation now, we risk burdensome remedies imposed by a federal court—remedies that could be far costlier to the State than some of the proposals that have been discussed in our Study Group and that are available to us now at lower cost.

Moreover, we do not want to find ourselves in the position of California in 2012 when the U.S. Supreme Court held that California's prison system violated inmates' Eighth Amendment rights and affirmed a three-judge panel's order to decrease the population of California's prisons by an estimated 46,000 inmates.

In short, too much is at stake—for crime victims, for inmates, for DOC employees, and ultimately for the cause of public safety itself—for us not to seize this moment and continue building on the efforts of your Administration that are already underway.

B. A New Commitment to Reducing Recidivism

The other broad point of consensus is this: The way to make our prison system more sustainable—without jeopardizing public safety—is through a new, statewide commitment to ensuring that inmates who leave our jails and prisons do so as rehabilitated individuals who will abandon their criminal activity and never return to incarceration. In short, what we need is a new statewide commitment to reducing recidivism.

When it comes to the proper sentence for a given crime, people in our State have a wide variety of views—and that is a debate we will not likely resolve soon. But the fact remains that some 95% of all inmates will leave prison someday, even with no changes to our sentencing laws.

Quite simply, we cannot sustain a system in which these inmates become more violent while in prison and then commit new crimes upon release from prison only to return to prison. It's too costly to the State to continue paying to house these repeat offenders. And it's too costly to future crime victims, who will needlessly suffer at their hands.

For the members of the Study Group, the most effective way to stop this cycle is to invest in strategies that reduce the likelihood of recidivism. If we are successful in this effort, as I know we can be, we will both reduce the long-term burdens on our prison system *and* protect public safety—a true win-win solution for the State of Alabama.

III. SPECIFIC RECOMMENDATIONS

Against this backdrop, I present to you the specific recommendations of the Study Group. They are presented in the order that we encountered them during our Study Group meetings: (1) proposals related to operations of the Department of Corrections; (2) proposals related to sentencing laws; and (3) proposals related to reducing recidivism.

A. DOC Operations

In one way or another, the most immediate challenges confronting DOC concern its own internal operations. For example, one central issue concerns inmate-on-inmate violence. This issue, in turn, raises questions such as “How will the DOC better classify and supervise inmates to prevent violence?” and “Once violence has occurred, how will the DOC better respond through investigations and appropriate disciplinary procedures?”

As evidenced by the DOC's recently issued strategic plan, Corrections Commissioner Jeff Dunn is already working to improve DOC operations in many ways. Nevertheless, on this front, our group offers two principal recommendations in this area:

- **Legislative oversight of DOC.** In the 2019 legislative session, Representative Chris England, a member of the Study Group, sponsored a bill that would have required the DOC to report certain information to the Legislative Prison Oversight Taskforce. Although care must be taken to avoid imposing administrative burdens on DOC that would distract the agency from its core mission, we believe that this idea needs to be

revisited during the 2020 legislative session. As the State’s lawmaking body, the Legislature should receive the information it reasonably needs to take a more active role in addressing DOC’s challenges.

- **Enhanced appropriations for DOC.** I also think we can all agree that the Legislature should increase appropriations for DOC. Over the past three budget years, the Legislature has significantly increased appropriations for DOC to meet court-ordered obligations to expand mental health services and to hire more correctional officers—including by restructuring its compensation plan for correctional officers. Much progress has been made, but there is more work to be done. In FY 2021, the Legislature should again increase DOC’s appropriations to ensure that DOC can continue addressing the specific issues of correctional-staff recruitment and retention, contraband detection and prevention, medical services, mental healthcare services, data management, and more. Regarding contraband detection, in particular, we must further pursue effective means of ensuring that inmates who arrive with addictions get treatment—and that inmates who do not arrive with an addiction do not become addicted while incarcerated.

B. Sentencing Reform

In any discussion of sentencing reform, our Study Group members agree that the Legislature must give due regard for the overarching concern of public safety. As a result, my sense is that the Study Group members wish to proceed with great caution in this area.

There is good reason for this posture. Our Study Group heard from Alabama Sentencing Commission Executive Director Bennet Wright that recent sentencing developments—statutory and otherwise—reduced the prison population by approximately 6,000 inmates between 2013 and 2019. As a result, Mr. Wright told our Study Group, “[n]early four-fifths of the prison system is comprised of Class A and Class B felony offenders.”

Notwithstanding these concerns, I believe that Study Group members could support very narrowly drafted legislation granting targeted, retroactive sentencing relief to certain categories of nonviolent offenders:

- **Reinstatement of “*Kirby* motions.”** During our meeting on December 4th, our group heard from a former inmate who was sentenced under the Habitual Felony Offender Act to life in prison without parole even though he was never convicted of a violent offense. This individual obtained relief from his onerous sentence by going to court

and filing a so-called “*Kirby* motion” under a now-repealed 2001 law that allowed him to seek a new, more reasonable sentence. Today, this individual is a practicing member of the clergy and, by all appearances, a productive member of society. We believe that the Legislature should reinstate *Kirby* motions so that other nonviolent offenders sentenced to life without parole may have a similar avenue to obtain relief—assuming, of course, that such relief is warranted by the inmate’s disciplinary record while incarcerated. Mr. Wright estimates that there are very few inmates in this category, but this proposal would nevertheless reduce burdens on DOC without significantly threatening public safety.

- **Retroactivity of presumptive sentencing guidelines.** According to Mr. Wright, approximately several hundred currently incarcerated inmates are serving sentences for nonviolent offenses imposed prior to October 1, 2013, that are much lengthier than the sentence they may have received under the presumptive standards that became effective at that time. As a matter of basic fairness, it would seem appropriate to allow an inmate in this category a chance to go before a judge and ask to be resentenced—assuming, again, that the inmate’s disciplinary record while incarcerated would warrant that relief. To the extent inmates in this category are successful in obtaining relief, the burdens on DOC could be reduced. At the same time, it is difficult to perceive a significant threat to public safety from reducing the sentences of nonviolent offenders who a judge has found to have been a responsible, rule-following inmate.
- **Further study of targeted sentencing relief.** Under existing law, a habitual offender with convictions of two violent class A felonies receives a mandatory sentence of life without parole. While no consensus exists in this area, one cautionary approach to reconsideration of the propriety of such severe sentences would be to create the option of life imprisonment *with* eligibility for parole in instances where no person has ever suffered any physical harm. A companion area of such further consideration would be creation of a procedure comparable to *Kirby* motions where those similarly situated who were previously sentenced could seek reduction to a life sentence, making release a question for the parole board, if such relief is warranted by the inmate’s disciplinary record while incarcerated. As is the case with *Kirby* reinstatement, no immediate and dramatic reduction in present prison population will be achieved through reforms such as these. But they could result in fairer sentences and *some* reduction in the prison population without a corresponding threat to public safety—both goals that are worthy of pursuit.

C. Recidivism Reduction

As noted at the outset, the area most ripe for consensus—and the area most effective at balancing the goals of reform and public safety—is programs to reduce the likelihood that inmates and other offenders will commit new crimes. For ease of reference, we have called this area “recidivism reduction.”

Our Study Group heard from numerous speakers whose organizations and agencies are doing important work in this area. To reduce the burden on DOC—and ultimately to make Alabama safer and more prosperous—we believe the State should implement the following policies and programs as part of a bold new commitment to reducing recidivism:

- **Increased funding for in-custody educational programs.** During our meeting on November 1, our group had the pleasure of hearing from Dr. Annette Funderburk, President of J.F. Ingram State Technical College. Ingram State, along with other institutions in our State’s community college system, provides educational opportunities and technical training to inmates with the goal of reducing recidivism post-incarceration. From January 2019 to October 2019, Ingram State alone placed 259 formerly incarcerated individuals in jobs throughout our State. When inmates leave prison and become productive members of the workforce, they are less likely to return to prison—and at the same time, they are less likely to commit new crimes. For this reason, we believe increased funding for Ingram State and similar programs would reduce the future burdens on DOC while also promoting public safety.
- **Educational incentive time.** In conjunction with increased educational and technical training opportunities, the idea of enhanced early release incentives being provided to non-violent inmates who participate in educational programming came up in both our November 1st and December 4th meetings. As with sentencing reform, public safety requires great caution in determining who might be eligible for such incentives. Nevertheless, we support the award of early release incentives for those inmates who complete certain courses and maintain good behavior while incarcerated. We heard, time and again, how important the idea of “hope” is to incarcerated people. We believe that this program could give hope to these people, which could positively affect their mental health and decrease the likelihood of their involvement in violent incidents and illegal activity while incarcerated so that they can go on to live productive lives outside of prison walls. Again, this proposal, if carefully crafted, would produce a true win-win solution for Alabama: less burdens on DOC and more law-abiding citizens ready to join Alabama’s workforce and contribute to society.

- **Mandatory, pre-release supervision.** Under existing law passed in 2015, inmates nearing the end of their sentence are required to undergo a specified period of supervised release to help them adjust to life outside prison. *See* Ala. Code § 15-22-26.2. But this existing law applies only to inmates sentenced after its effective date in 2015. To the extent practical, consideration should be given to extending this required supervision period to all inmates nearing their release date, regardless of when they were sentenced. Such a proposal would ease burdens on DOC by releasing inmates a few months early, while at the same time reducing these inmates' likelihood of recidivism and thereby promoting public safety.
- **Identification documents for inmates.** The Study Group heard that inmates reentering society often face challenges associated with the lack of a government-issued photo ID, which can be necessary to cash checks and to get a job. An existing statute requires ALEA to work with the Department of Corrections to provide inmates who are residents of Alabama with a non-driver photo identification card upon release. *See* Ala. Code § 41-27-3.2. Nevertheless, the program is underutilized due to inmates' lack of ability to obtain a birth certificate or social security card while in custody. I believe that our group would support legislation to expand the assistance available to inmates in this area. By doing so, we can remove a barrier to the successful reintegration of inmates into society—and thereby increase the likelihood that they will become productive, law-abiding citizens.
- **Night and weekend hours for parole officers.** Many parolees work jobs that have schedules that are not flexible due to specific working hours and other requirements. But those job requirements often make it more difficult for a parolee to check in with his or her parole officer as required to avoid going back to jail or prison. These parolees thus find themselves in a catch-22: They are trying to better themselves and society by working; but by working, they are more likely to violate the terms of their parole. To resolve this catch-22, we believe the Alabama Bureau of Pardons and Paroles should change the work schedules of its parole officers to provide greater access on nights and weekends. This change could meaningfully reduce the number of parolees returning to prison and at the same time support parolees as they seek to transition to lives of productive citizenship.
- **Redesignation of existing executive-level leadership positions.** If the State plans to commit itself to reducing recidivism, there should be executive-level employees within the Department of Corrections and the Bureau of Pardons and Paroles specifically designated as responsible for implementing that commitment. To that

end, our Study Group recommends designating one existing deputy commissioner within DOC and one existing deputy director within the Bureau as the deputy commissioner or deputy director for inmate or parolee rehabilitation. These newly redesignated executive-level employees should be specifically charged by state law with responsibility for the development, implementation, and improvement of programs to reduce recidivism.

- **Expansion of the Stepping Up Initiative.** During our November 1st meeting, Mental Health Commissioner Lynn Beshear reported that people with mental illness are vastly overrepresented in our State’s county jail population (17% compared to 5% of the general population). But traditional forms of punishment are less likely to be effective with this population. Instead, research indicates that it is more effective to connect these arrestees with appropriate mental health services to address the underlying cause of their criminal behavior. That is the premise of the Department of Mental Health’s Stepping Up Initiative. Begun as a pilot program in 2015, the Stepping Up Initiative has provided seed money at 11 sites around the State to assist local government in hiring mental health case managers. These case managers go into the county jails and help arrestees with serious mental illness find appropriate services, thereby reducing the likelihood that they will be re-arrested. Our Study Group would like to see this program expanded statewide—to reduce the likelihood that people with serious mental illness will end up in the criminal justice system, but also to protect the public from additional criminal activity.
- **Further study of community corrections.** Community corrections programs—the umbrella term for alternative courts (drug courts, veterans courts, etc.) and the pretrial diversion programs administered by district attorneys’ offices and municipal governments—hold enormous potential for the State because they steer low-level offenders into programs that address underlying factors that contribute to criminal activity—substance abuse, lack of educational attainment, and lack of employment. There are several alternative courts and diversion programs across the State that work extremely well and help divert people from further illegal activity. But in many places, these programs are unavailable, underfunded, or simply inaccessible. There are also serious concerns about the “pay-to-play” aspect of some of these programs. Our Study Group strongly believes that improvements to these programs are necessary. Standards and accountability for adherence to such standards would bring needed statewide accessibility. However, we have been unable over the past six months to identify a proposal that would comprehensively address the challenges in improving quality and access. The problem is complicated by the fact that these two

discrete programs operate under separate branches of state government (the judiciary and the executive branches) as well as at separate levels of government (state and local governments). We therefore recommend legislation to require better data collection by government agencies administering these programs. We also recommend the establishment of a legislative study commission to dig deeper into the specific issues surrounding community corrections so that this issue can be comprehensively addressed in the 2021 legislative session.

IV. PARTING THOUGHTS

As with all undertakings of this nature, a few caveats are in order.

First, the devil will be in the details. Although I detect significant areas of consensus as described above, let me emphasize that we still have work to do to reduce these ideas to concrete legislative proposals. Fortunately, I have been in touch with the legislative members of the Study Group and know that they are working diligently to sort through the details of these proposals and produce bills that can win wide acceptance among their colleagues in the Legislature.

Second, by identifying the proposals above, I do not mean to foreclose the possibility of consensus emerging around other ideas. Again, the talks among legislators to which I have been privy are to me an encouraging sign for the legislative process that lies ahead. If additional consensus ideas emerge from this group or other legislators, I encourage you to keep an open mind about them. Although our Study Group conducted a comprehensive review of the issues, I am sure that there are additional ideas out there that are equally deserving of consideration.

Finally, and most importantly, let me reiterate that we will not be able to address all of our prison challenges in a single legislative session or a single budget year. The challenges we have inherited are multifaceted and complex. They are longstanding. And they will require spending significant sums of taxpayer money. But by taking actions like the ones we have identified, I firmly believe that it is possible to set Alabama on a course to operating a prison system that will withstand scrutiny in the courts while ultimately enhancing public safety.

In closing, I commend you for your desire to seek Alabama solutions to our challenges. That spirit—of constantly challenging the status quo—will help us avoid the potentially serious consequences described above. It will also help make our State safer and more prosperous for years to come.

Honorable Kay Ivey
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I also thank you for the honor of serving as chair of your Study Group—and I thank my Study Group colleagues for their thoughtful participation, their support, and their dedication. With your leadership and theirs, I know that we are well on our way to success in addressing these difficult but important issues.

Respectfully,

A handwritten signature in blue ink that reads "Champ Lyons, Jr." with a stylized flourish at the end.

Champ Lyons, Jr.

Attachment: Compilation of Submissions (Jan. 14, 2020)