

Alabama Prisons

True Prison Reform

July 2016

Heather Coleman Davis

**On behalf of the
Alabama Contractors Association**

Phrases underlined are hyperlinks to articles and/or additional information. These references can also be found on the Alabama Contractors Association website at www.alabamacontractors.org

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Preface

No one will deny that there are serious problems with Alabama's correctional system that must be addressed. In February 2014, the Alabama Legislature acknowledged these problems and passed Senate Joint Resolution 20 (SJR 20) to create the Prison Reform Task Force. The Task Force was charged with submitting a report on findings and policy recommendations to the legislature prior to the 2015 legislative session. Alabama then secured the services of The Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance to gather and analyze data and develop appropriate policy options for the state.

In June 2014, the Council for State Government (CSG) Justice Center staff provided the [Justice Reinvestment Approach](#) report to the Prison Reform Task Force outlining the steps they would take to evaluate the conditions of Alabama's prison system, to include:

Step 1: Analyze Data and Develop Policy Options

Step 2: Adopt New Policies and Put Reinvestment Strategies into Place

Step 3: Measure Performance

In March 2015, the CSG Justice Center provided to the Task Force a [Justice Reinvestment in Alabama Analysis and Policy Framework report](#). This report provided an analysis of the research completed by the Justice Center and outlined a policy framework. The report projected 6-year outcomes of justice reinvestment policy framework:

- Provide post-release supervision: 3,000 people newly eligible for supervision
- Increase the number of probation and parole officers: 100 additional officers
- Reduce prison overcrowding by FY2021: 4,531 fewer people
- Avert unnecessary prison construction and operations costs: \$407 million averted
- Reinvest in supervision and behavioral health treatment: \$26 million reinvested in FY2016

In May 2015, the Justice Center provided an additional report to specifically address prison overcrowding [Reducing Prison Overcrowding and Strengthening Community-Based Supervision](#). This report promotes the policy changes designed to reduce recidivism and strengthen community-based supervision. SB67 is projected to reduce Alabama's prison population by 16% (4,243 people) and increase those supervised through community-based programs. The 2016 General Fund Budget, which passed in September 2015, allocated \$16 million to start the implementation of SB67.

There is much more work to be done to address the crisis that Alabama's prison system faces. The *Justice Reinvestment in Alabama Analysis and Policy Framework* report acknowledges a number of these challenges. The one that is receiving the most attention today is **Prison Overcrowding**. However, those in leadership in Alabama have failed to acknowledge the key points brought forward from this report and other professional journals regarding this very issue. Research shows that an increase in the number of people sentenced to incarceration,

long sentences, and lack of rehabilitation as well as recidivism contribute to high prison populations and often contribute to other social and economic problems. There are some, like [Bryan Stevenson, Executive Director of the Equal Justice Initiative](#), who believe that new construction will not solve any problems with our prison system. Nevertheless, the State of Alabama does have a responsibility to make certain that the facilities used to incarcerate are safe, secure, and provide the necessary treatments needed. These are all very big issues that warrant thorough research, evaluation and planning, as the State must consider the needs of all of its people and the responsibility to make wise use of the taxpayer's dollars.

History

The 2016 Mega Prison Legislation SB287 by Pittman HB313 by Clouse

In the 2016 regular legislative session the Governor proposed legislation to construct three new 4,000-bed regional men's prisons and one 1,200-bed women's prison. The Governor's stated main purpose for this legislation was to address the prison overcrowding issue. The prison initiative is part of Governor Bentley's Great State 2019 Plan.

The plan was to consolidate 14 existing prisons into 6 regional prisons. Alabama Corrections Institutions Finance Authority would have paid for the prison construction project with an \$800 million construction bond issued over 30 years (total cost: \$1.5 billion over 30 years).

The debt service on these bonds, estimated at \$50 million a year, was to be paid from savings from the prison consolidation and reduced personnel within the annual budget of Alabama Department of Corrections. Revenue from a one-mill property tax was pledged as a backup source for repayment. The tax generated about \$50 million in revenue in 2015. Portions of it currently go to Veterans Affairs and the Department of Human Resources.

The Governor's proposal sought to circumvent the competitive bid law and proposed to build these prisons using an alternative delivery method called Design-Build. The bill provided that one contractor do all of the work on this \$800MM project. Instead of using the traditional method of design-bid-build, which follows the competitive bid law for public works jobs, Design-Build allows the construction company to be picked – in this case by five people who comprise the "Public Corporation". The Governor insisted that the only way he believed this project could be done was by using the Design-Build method.

Alabama Contractors Association (ACA) recognizes the State's need to address Alabama's prison problems and understands that modern, efficiently designed facilities may generate operating savings. However, ACA strongly opposes alternative delivery methods for design and construction on public works jobs. Therefore, ACA fought to have language allowing alternative delivery methods removed from the legislation. Ultimately, the Governor believed that the alternative delivery methods were more important than the construction of new prison facilities.

ACA opposed SB287/ HB313 because:

- Alternative Delivery Methods create a legal avenue for public officials to award taxpayer funded projects through **NO BID CONTRACTS**
- The competitive bid law is in place to protect taxpayers' dollars and protect

the public from coercion, collusion and corruption. Competitively bidding all public works projects is the law in Alabama and it provides the best price with the job completed on time and brings transparency in the use of taxpayers dollars. There is no good reason to circumvent the competitive bid law.

- Alternative Delivery Methods **do not save money or time**. Actually using **Alternative Delivery Methods often cost the owner (the State) significantly more money**.
- Anyone who qualifies to bid on these jobs should be allowed to bid on these jobs. The Competitive Bid Laws of this State seek to guarantee that qualified businesses capable of doing the work are given equal opportunity and standing under the law.
- The State should consider breaking this job up and bidding it separately to provide for that best value, the best price, and the most efficient building of this project. This procedure would also give more opportunity for local contractors and subcontractors, which includes small and minority businesses, to work on each of these projects.
- The \$800 Million Alabama Prison Transformation Initiative Act would ultimately cost at least \$1.5 billion, but would not solve the prison-overcrowding problem and would be fiscally irresponsible.
- There were no construction cost proposals provided to support SB287/ HB313 and therefore no way to know if \$800 Million would cover the cost needed to build or renovate prisons or if that amount of money is well above what would be necessary. Additionally, it was, and still is, difficult to believe that the debt service could be paid through unrealistic costs savings in the prison budget. Because it is impossible to believe that any saving could be sustained, it became apparent that this would create a bond debt that Alabamians would be paying on for 30 years.
- The Governor did not provide to the legislature any construction costs or provide a plan for where new prisons would be built or where others would be taken out of service.
- There are a lot of direct and indirect jobs in communities across this state that would have been impacted with the closing of 12 prisons, should this bill have passed.
- It is imperative that the Governor provide a written report to the legislature to include a detailed description of construction costs, a feasibility study, an economic impact study, a listing of where these new prisons structures will be located, and a listing of what prisons structures will be taken out of service.

- To ask for \$800 million dollars before this formal written report is provided to the legislature is irresponsible, especially when you plan to hide all of the expenditures on the construction through alternative delivery methods.
- The investments made by communities with prisons to sustain those prisons were leveraged based on the service provided to the prison system. If they loose these prisons the debt service will still have to be paid by citizens through increased rates. These are the same citizens who will be losing their jobs.
- The negative economic impact that the prison legislation would have on communities across the state was so significant that it would take many years to recover.

Overview & Recommendations

The state has many issues to address with regard to prison reform as identified in the studies performed in the past few years.

- Lawsuits
- Overcrowding & Understaffing
- Services for inmates
- Security
- Inmate Rehabilitation and Reentry
- Construction Needs: Renovation and new construction

To address these prison needs the State must review all available research and establish a strategic plan of implementation:

- 1. REVIEW ALL STUDIES COMMISSIONED BY THE STATE OF ALABAMA:** There have been several studies commissioned at great expense to the taxpayers of Alabama. These studies should be reviewed and the expert authors should come forward to testify for the benefit of the Department of Corrections (DOC). Additionally, information on Mental Health, hospice care, Medicaid, and Medicare should also be studied closely and factored into the long-term plan.

- 2. GET COMMENTS FROM ALL ALLIED GROUPS. DETERMINE THE STEPS TO MAKE IMMEDIATE AND SOUND REDUCTIONS:** There are a significant number of groups that should be considered friendly to the DOC. The reform groups that were commissioned offered viable means of reducing the basic prison population without constructing any new facilities. These groups offered a first round of expert opinion based on the experiences of other states. In as much as the State of Alabama has not constructed a new prison facility in a number of years, these experts have offered commentary based on the work product of other states. Additionally, the prison population can be reduced through the implementation of a program to address the needs of geriatric hospice prisoners and Substance Abuse and Serious Mental Illness prisoners.

- 3. BY RESOLUTION, BEGIN A STRATEGIC PLANNING PROCESS TO:**
 - Evaluate the needs addressed in the Justice Reinvestment in Alabama, Analysis and Policy Framework report and develop the best method of implementation
 - Determine the areas for additional research
 - Identify the total number of beds that will be needed when reforms are put in place
 - Determine the best opportunities to serve inmates with mental health, substance abuse, geriatric, and hospice care needs
 - Identify the opportunities to use Medicaid and Medicare dollars to offset prison costs

- Enlist the support of local architects, engineers, and contractors to evaluate the current prison buildings to determine if these buildings are structurally sound, if renovations are necessary and possible, or if the structures should be torn down.
- Provide a written report to the legislature to include a detailed description of construction costs, a feasibility study, and an economic impact study. Should construction become necessary, provide a listing of where these new prisons structures will be located and a listing of what prisons structures, if any, would be taken out of service.

4. BASED ON RESEARCH AND THOROUGH EVALUATION AND THE STRATEGIC PLAN, CONSTRUCT ONE NEW PRISON AT A TIME FOLLOWING THE COMPETITIVE BID LAW, PERHAPS BEGINNING WITH A NEW WOMEN'S FACILITY:

- 1. GET RECOMMENDATIONS TO RESEARCH THE BEST WOMEN'S PRISONS IN THE UNITED STATES:** The work of the members of ACA is focused on solving one of the most sensitive facility issues in the state inventory of prisons. The women's prison at Julia Tutwiler, formally the Wetumpka State Penitentiary, in Wetumpka, Alabama is the most publicly chastised facility. The Tutwiler facility was constructed in 1942 and designed for a population of 702. Currently Tutwiler Prison is under the scrutiny of the Federal Courts and the Honorable Justice Myron Thompson for its lack of accessibility under the Americans With Disabilities Act.
- 2. ARRANGE VISITS TO THE RECOMMENDED AND MOST SUCCESSFUL WOMEN'S PRISONS:** As of the last legislative session, the Commissioner of the Department of Corrections, Jeff Dunn, admitted that he had not visited a single facility to gain insight as to new designs, systems of construction, or staffing and operations for a prison facility to solve the current problems. Across the nation, new concepts in design have come forward and we are not aware of these more current designs. Nor have we had an evaluation of these new prisons to determine what would be the best move to advance Alabama and solve our problems.
- 3. WRITE A COMPREHENSIVE PROGRAM FOR THE DESIGN, CONSTRUCTION AND OPERATION OF THE NEEDED WOMEN'S PRISON:** We believe the members of ACA/AIA in conjunction with allied groups are capable of outlining a comprehensive program for the design and construction of a new women's prison. The programming will provide for an economical facility that answers all the concerns of all parties. This programming will produce a transparent document that allows a level playing field of opportunity, sound and durable construction on a site that offers a long-term solution to the changing conditions to be found in the future.
- 4. DEVELOP A SITE SELECTION, BOUNDARY, TOPOGRAPHIC, UTILITY STUDY TO DETERMINE THE LEAST EXPENSIVE OPTION FOR THE WOMEN'S FACILITY:** Select the site for a new women's prison based on a thorough evaluation of the options, with

no political influence. There are a number of factors to be considered and this document and the input of true experts should be made a part of the work product and final decision of site selection.

5. **SCHEMATIC DESIGN OF THE WOMEN'S FACILITY:** The schematic design should be based on a detailed outline and understanding of the program and the specific numbers as to occupancy, staffing, and management.
6. **ESTABLISH A PRELIMINARY BUDGET FOR THE WOMEN'S FACILITY:** The budget should be developed upon completing the needs of the program spaces and conditions.
7. **COMPETITIVELY BID THE PROJECT:** Each project should then be competitively bid as required by state law.

5. UPON THE COMPLETION OF THE INITIAL PRISON FACILITY (THE WOMEN'S FACILITY) FOLLOW THE SAME PROCESS FOR ANY REMAINING CONSTRUCTION OR RENOVATION WITHIN THE PRISON SYSTEM.

It simply would be irresponsible to jump immediately into a massive prison construction program without a strategic plan; a construction budget; a study of all of the options for housing those who are mentally ill, drug and alcohol dependent, or in need of hospice services; a determination of the number of prison beds the State of Alabama will require after the reform measures are implemented; and without thoroughly evaluating the condition of the existing prison structures to determine renovation versus reconstruction requirements.

ACA stands by its position that all public works projects must be competitively bid and follow the competitive bid law. This is the most transparent method of assuring that taxpayer's dollars are spent wisely and without corrupting influences.

Factors to Consider

The United States has seen a significant increase in the number of people incarcerated over the past few decades. Tough on Crime policies and legislation at both the federal and the state level have increased arrests and lengthened sentences. As a result neighborhoods, cities and states are much safer according to Eli Lehrer, co-founder and president of R Street. . [\(Responsible Prison Reform by Eli Lehrer, National Affairs Number 19, Summer 2013, 19 – 34\).](#) Yet, these policies have resulted in some staggering numbers. The United States now has approximately 5% of the world's population and roughly 25% of its inmates. Alabama's incarceration rate is fifth highest in the world. [\(States of Incarceration: The Global Context 2016, by Peter Wagner and Alison Walsh, June 16, 2016\).](#) As such, it is time to consider both the fiscal and human costs associated with simply locking people up.

In *Justice Reinvestment in Alabama: Analysis and Policy Framework* report, pg3, Challenge 2., the Justice Center clearly states that overcrowded prisons are directly related to the fact that “the majority of prison admissions are people whose supervision has been revoked and people convicted of lower-level property and drug offenses whose average length of stay in prison has increased in recent years.” The policy of large-scale incarceration has failed to demonstrate lasting success in the area of rehabilitation.

Eli Lehrer acknowledges that

Recidivism has declined slightly in recent years due to re-entry programs but most studies show that about 40% of people who are released from prison will be re-arrested within three years. Since vastly more people are serving time behind bars, this pattern of high recidivism suggests that prisons are fostering even more criminality. . [\(Responsible Prison Reform by Eli Lehrer, National Affairs Number 19, Summer 2013, 19 – 34\).](#)

The Justice Center offers strategies to address this issue of high population rates and overcrowded prisons. Alabama must allow a responsible amount of time to implement these strategies, reduce population and evaluate its success. **Notice that nowhere in the report does the Justice Center mention the need for new construction to address the overcrowding issue.**

Funding

Additional funds are necessary to address the prison needs. According to the strategy provided by The Council of State Government Justice Center in the *Justice Reinvestment in Alabama Analysis and Policy Framework* report, there is a need for additional funding to provide an increased number of probation and parole officers and health treatment services. Additionally legislation must be passed to address Alabama's Sentencing Guidelines and reconsider items such as technical probation violations that directly impact the prison population number. It is

important to fund the strategies presented in this report in order to reach the desired outcomes. Texas has proven that an investment in drug treatment, mental health, pre-trial diversion, and other reforms to keep non-violent offenders out of prison can save significant dollars. In an article published in June 2015, [Savings from Prison Reforms in Texas top \\$3 billion, crimes rates hit lowest point since 1968](#) (Freedom Works) the success of reform, both fiscal and economic, is clearly pointed out.

Texas recently began investing in alternatives to incarceration and they have found these alternatives to be cheaper and more cost effective. They are also investing in rehabilitation and have made a huge impact on reducing recidivism. **As a result of reform measures Texas has closed three state prisons and almost two-thirds of Texas parolees are employed.** ([Texas an unlikely model for prison reform](#), Lori Hancock, Feb 22, 2014).

More funding will be necessary if any construction is considered. However, it will be a challenge to find those dollars with all of the other necessary increasing needs of the State, like Medicaid and infrastructure.

Bond Issue for Prison Construction – Research Shows this is a Terrible Idea

Florida issued a bond to pay for prison reconstruction and found this to be a terrible plan. An article published in Prison Legal News, [Florida’s Prison Bond Scheme Obscures Real Costs of Expansion](#) outlines how this concept works.

“Essentially, the state takes money from one pocket (the general fund appropriations to the prison system) and puts it into another pocket (the agency created for the facility), and then the agency distributes the money to bondholders,” Forbes said in describing the scheme to investors.

It is a concept very similar to taking out a mortgage on a house, as for every prison financed with a Certificates of Participation (COP), the state must pay the principal on the loan and the interest on the principal. Forbes reports that, in addition to Florida, California, Texas, New York, Alaska, and Michigan have used this financing technique.

The Florida Supreme Court has held that this technique does not violate the state’s constitutional requirement of voter approval of debt, for the legislature can decide to cancel payments, so the payments are not “real debt,” because there is no definitive legal agreement. Yet, should the state default “on making the lease payments, its credit rating would suffer, and future debt would be incurred at higher rates.”

The article continues by outlining how this plan tends to lead to corruption:

With six prisons built using COPs by 1996, of which all but one was private, millions of dollars were flowing into the Correctional Privatization Commission (CPC). Corruption ensued due to a lack of oversight and a fragmentation of decision makers. The CPC’s

head resigned in 2002 “amid a state ethics probe in which he ultimately was fined \$10,000. That investigation concluded he was profiting from business relationships with prison contractors outside his role as privatization director.”

The scandals did not end there. As PLN reported, another former CPC head pleaded guilty in 2006 to siphoning \$200,000 from a maintenance fund set up for prisons. He ultimately received a 33-month federal prison sentence (See PLN, May 2006, pg. 11) The CPC was dissolved and the Bureau of Private Prison Monitoring, housed in the Department of Management Services (DMS), was created in May 2004 to oversee prison contracts.

The Florida Tax Watch, along with the Collins Center for Public Policy, conducted a study of Florida’s practice to use lease revenue bonds to fund the construction of new prisons. The study determined that the costs of prison construction using these bonds has generated over a billion of dollars in debt that will be paid for by many generations and has failed to make any of the needed policy changes. The report, [A Billion Dollars and Growing: Why Prison Bonding is Tougher on Florida’s Taxpayers Than on Crime](#), outlines the history of lease revenue bonds, how Florida used them, the problems that ensued and recommendations.

It is thoroughly apparent that the use of lease revenue bonds cost taxpayers significantly more than ever projected and offer too many avenues to hide and then redistribute taxpayers’ dollars.

Another alarming factor that must be remembered is that Section 14-2-12 (d) of the Code of Alabama provides that “Any bonds issued pursuant to this section shall be sold by competitive bid **if practical and economically feasible as determined by the authority.**” This is a dangerous Code Section given the size of this bond issue and the many ways it could be manipulated (especially if it is a lease revenue bond). A bond of this size must be competitively bid regardless of what it is to be used for but especially if it will be used to fund an \$800 million no-bid-contract construction project.

Prison Construction and Renovation

Although no formal assessment has been completed to determine the structural condition of Alabama’s prisons, we do know that some prisons are not in compliance with federal guidelines. Therefore, the state should enlist the support of local architects, engineers, and contractors to evaluate the current prisons buildings to determine if these buildings are structurally sound, if renovations are necessary and possible, or if the structures should be torn down.

There are several steps that must take place before any construction begins:

- 1. A COMPLETE ASSESSMENT OF THE CURRENT PRISON STRUCTURES:** Conduct a complete assessment of all of the prisons structures including but not limited to structural, codes and standards, bed space, and a systematic needs assessment to determine and address the gaps between current conditions and desired conditions.
- 2. A WRITTEN COMPREHENSIVE PROGRAM FOR THE DESIGN, CONSTRUCTION AND OPERATION OF THE NEEDED CONSTRUCTION FOR THE PRISON SYSTEM:** Develop a comprehensive program for the design and construction of new prison structures. This programming will produce a transparent document that allows a level playing field of opportunity, and sound, durable construction on a site that offers a long-term solution to the changing conditions to be found in the future.
- 3. SITE SELECTION, BOUNDARY, TOPOGRAPHIC, UTILITY STUDY TO DETERMINE THE LEAST EXPENSIVE:** Provide site selection process for any new structures required, eliminating any political influence. There are a number of factors to be considered and this document and the input of true experts should be made a part of the work product and final decision of site selection.
- 4. SCHEMATIC DESIGN:** The schematic design of each new structure should be based on a detailed outline and understanding of the program for each prison. Specific numbers as to occupancy, staffing, and management must be taken into account. A detailed schematic design for any renovation projects must be handled in a similar fashion.
- 5. ESTABLISH A PRELIMINARY BUDGET:** The budget should be developed upon completing the needs of the program spaces and conditions for each new prison structure and for each renovation project.
- 6. COMPETITIVE BID:** Each project should then be competitively bid as required by state law.

Construction Delivery Methods

History shows that the traditional Design-Bid-Build method provides the owner (The State) the best product at the best price while meeting deadline requirements. The current competitive bid law requires all public works projects to be built using the Design-Bid-Build method. Much has been said recently about using alternative delivery methods in the construction of prisons in Alabama. However, **there is no reason to circumvent this proven, transparent and efficient method for public works projects.**

The competitive bid law is fair and eliminates politics from the bid process. It protects the elected official and well as the taxpayer. Everyone bidding knows the rules. Bids are read aloud, publicly, with no room for manipulation from someone with other outside interests or influences.

The Bid Results from [The March 25th Alabama Department of Transportation Bid Letting](#) show clearly the benefits of the competitive bid law. There were various highway projects bidding that day in various counties in the State. A quick review of the first and second bidders of each project shows the transparency in the Design-Bid-Build Process (As we know, Transparency is not shown in Alternative Delivery Methods). If you will, please take the time to add up the monetary difference between the low bidder and the second place bidder to see how much money the State of Alabama saved (millions of dollars) on March 25th. The Competitive Bid Law in The State of Alabama is absolutely working for the taxpayers of this State.

Proponents of alternative delivery methods (including design-build, Construction Manager/General Contractor, CM@Risk, etc.) argue that this provides for more qualified contractors perform the work. There is already a way to limit the General Contractors (GC) bidding a project based on their qualifications to make sure the GC bidding the project has the ability to perform. The Architect has the ability to pre-qualify GC's based on their qualifications, past experience and financial capability. Currently contractors pre-qualify on approximately 50% of the work they bid and the process is widely accepted in the construction industry. Subcontractors often follow the same process for pre-qualification. Furthermore, the ability to provide bid, performance and payment bonds is a method of pre-qualification.

Proponents for alternative delivery methods often cite decreased projects costs due to fewer change orders and shorter schedules. This is simply not true. Change orders are usually a result of a change in scope from the contract documents. Typically, these change orders are Owner initiated, adding additional work to a project. This will continue to happen regardless of what GC is used and what selection process is implemented.

Using alternative delivery methods will cost the taxpayer more money as there is no way to police the inflated costs of construction budgets that are not open and transparent.

If alternative delivery methods are used the Awarding Authority (Owner) will select the General Contractor from an RFP, solely at their discretion and not price, not schedule, not qualification. This quickly becomes a "who you know" and "whose campaign did you contribute to" issue, which is both dangerous and unethical. In the worst cases it can become a "who have you paid off" issue. Reference the scandal with the [Jefferson County Sewer System](#) and with the [Alabama's Two Year Colleges](#). Alternative delivery methods on public works jobs make this easier to re-occur on a more frequent basis.

Using alternative delivery methods will cost the taxpayer more money as there is no way to police the inflated costs of construction budgets that are not open and transparent.

Oregon initially began using alternative delivery methods to "add an additional tool to the contractor tool box" in 2009. As a result they have identified a number of problems due to

alternative delivery methods to include, but not limited to lack of objectivity, lack of consistency and transparency, use of prequalification to exceed the scope of work of the project to specifically target and disqualify contractors, not disclosing bid scoring measures, bid shopping, lack of timely debriefing, and the list goes on. The [Oregon-Columbia Chapter of NECA published a paper stating](#) that this “system is problematic, confusing and costly.”

Massachusetts decided to implement alternative delivery methods on a commuter rail extension project thinking they would get a better price but quickly learned that there isn't really a guaranteed maximum price and their \$5.3 billion construction budget quickly became a \$10 billion plus project. The Common Wealth Magazine published an article describing the problems with these methods in an article by Jack Sullivan [Contracting System Isn't Saving Money](#). They decided to return to the traditional lowest-bid method that is best for taxpayers.

There are numerous other articles outlining the problems with alternative delivery methods. The list below just names a few:

[Process blamed for Green Line project's soaring costs](#), by Nicole Dungca, Globe Staff, September 14, 2015

[State to Proceed with Scaled-Down Green Line Extension](#), by Nicole Dungca, Globe Staff, May 9, 2016

[How CM at-Risk Fared in Southeastern Public Schools](#) : A journal article shows spending higher than with the more traditional building construction method of design-bid-build, by Engineering News-Record, June 6, 2016

[Perplexing Issues in Design-Build Projects](#), by Susan Linden McGreevy, A. Elizabeth Patrick, Jessica D. McKinney and Norman M. Arnell, American Bar Association, Probate & Property, Nov/Dec 2005. Issues with Design-Build from a lawyers' perspective.

[Project Delivery Method Performance for Public School Construction: Design-Bid-Build versus CM at Risk](#), by Noel Carpenter, PhD., and Dennis C. Bausman, PhD. A Case Study, J. Constr. Eng. Manage., American Society of Civil Engineers. *This study reported that the analysis indicated that performance of the Design-Bid-Build (DBB) method was significantly superior across all cost metrics.*

We must also remember that Alabama has not had good results from other no-bid contract purchases. The \$13 million [Paragon Source contract](#) (supposed to upgrade the state's accounting, payroll and personnel systems) and the \$47-million-dollar software package known as STAARS ([State of Alabama Accounting and Resource System](#)) have both proven to very unsuccessful.

JOB RETENTION, COMMUNITY STABILITY AND EMPLOYEEMENT

As much as possible, prisons should be left in the same areas where they are currently. The infrastructure and the trained workforce are already in place in these areas. Often these communities have invested significant amounts of money or are leveraged to provide those services. The investments that these communities have made with taxpayer dollars are significant.

Should these prisons be moved to three central locations many of the existing employees will not be able to keep their jobs. The unemployment numbers in these rural communities will increase significantly. Job retention has always been a priority in this State, yet this directly opposes our current practices.

With regard to construction: We cannot forget that alternative delivery methods often eliminate local jobs. The small to medium size General Contractor's workforce tends to be local while the large construction companies often bring their workforce with them. Local contractors are the community leaders, the community donors. These are the local businesses that give to local charities, buy local, and support the local little league teams.

Prison Overcrowding: Mental Health, Hospice & Accessing Medicaid and Medicare Dollars

Substance Abuse (SA) and Serious Mental Illness (SMI) attribute to at least 40% of the prison population. Rehabilitation and/or medication, as appropriate, should be the first priority of the State as it relates to these inmates.

The Alabama Department of Corrections (ADOC) currently houses over 24,000 inmates, according to the Alabama Prison Transformation Initiative Information Paper published by the Department of Corrections. The Department of Mental Health confirms that at least 10,000 or those inmates are classified as SA or SMI.

Half of the SASMI population is in prison because of SASMI and these prisoners are treated by an out-of-state contract company. The Alabama Department of Mental Health can treat them in prison. Once these inmates have reached their full potential the Department of Mental Health would petition the court to release these prisoners out and continue to treat them outside of prison by the same professionals who served them inside of prison. These patients would then be covered by Medicaid and possibly Medicare rather than state dollars. Additionally, this would reduce the prison population by 5,000 over time. That would leave less than 20,000 in prison and would reduce the need for prison growth.

Although small number of Alabama's prisoners are in a geriatric hospice prison hospital this equates to a large percentage of the total state dollars spent on inmates. The federal

government will not allow the use of Medicare and Medicaid monies in prisons. Searcy Hospital (Mt Vernon, AL) was a mental health hospital that has now closed and is vacant. Searcy Hospital, which is fully equipped, could be opened up as a hospital for hospice terminally ill and geriatric patients. Geriatric and terminally ill prisoners could be released to this hospital to serve the rest of their days. By being removed from prison these patients would then go from 100% care to as low as 33% state care (state would pay the state match to the feds). Searcy Hospital could be run by an outside company at no additional cost.

When treated SASMI qualified prisoners are paroled out of prisons and geriatric hospice prisoners are moved out of the geriatric prison hospital these beds will be freed up for prisoners in overcrowded areas.

Currently, the Department of Corrections has a 3 year \$36MM contract with MHM Correctional Services Inc. (a Virginia Company) for mental health treatment in prisons that expires in 2017. That is \$12 MM per year. The State Mental Health Department should be serving those prisoners rather than MHM. This would save DOC money and would be better for mental health in the state.

The Department of Corrections, the Department of Mental Health, Department of Veterans Affairs, and Pardons and Paroles should work together to determine the eligibility for early release for SASMI and hospice inmates. Legislation should be enacted which details the eligibility of inmates who fall in these categories based on the charges, assessment of the diagnosis and situation, propensity to succeed in the outside world, etc. ***These guidelines for early release could reduce the number of inmates by 6,000 in less than four years, or a 25% reduction in the prison population.***

Mega Prisons

As changes are implemented in prison reform it is very important to consider the influence of prison gangs in mega prisons. "It is easy to imagine that prison gangs are a natural outgrowth of the harsh conditions of prison life – that as long as we have prisons, we'll have gangs. But economics suggests that it's more complicated than that. More specifically, there is good reason to believe that gangs aren't just a response to prisons, they're a response to the size of prisons." ([To End Prison Gangs, It's time to break up the largest prisons.](#)) Increasing the size of prisons while reducing the number of guards and replacing them with surveillance cameras encourages a prison system run by gangs. The long term negative impact is much greater and cannot be ignored, especially with discussing prison reform. We must remember that gangs are racist organizations that preach race wars and call for the violent overthrow of the government.

The origins of street gangs began in the prison system and later became present on the streets. The younger guys on the streets look up to gang members as role models and "getting sentenced to prison is like getting called up to the majors," according to David Skarbek, an academic who has studied gangs in prisons. "Prison officials have long known that gangs are

highly sophisticated organizations with carefully plotted strategies, business-development plans, bureaucracies, and human-resource departments –all of which, Sharbek argues, lead not to chaos in the prison system but to order.” [The Atlantic: How Gangs Took Over Prisons](#). For this reason, the Department of Corrections often accepts the prison gang leadership and ignore the long-term consequences.

But Skarbek says the prison gangs serve another function for street criminals. In a 2011 paper in *American Political Science Review*, he proposed that prison is a necessary enforcement mechanism for drug crime on the outside. If everyone in the criminal underworld will go to prison eventually, or has a close relationship with someone who will, and if everybody knows that gangs control the fate of all inmates, then criminals on the street will be afraid to cross gang members there, because at some point they, or someone they know, will have to pay on the inside. Under this model, prison gangs are the courts and sheriffs for people whose business is too shady to be able to count on justice from the usual sources. Using data from federal indictments of members of the Mexican Mafia, and other legal documents, Skarbek found that the control of prisons by gangs leads to smoother transactions in the outside criminal world.

In other words, gangs in prisons translate directly to the outside world. The control that these gangs have in prison are a mirror image of the control that they have on the streets and in criminal activity. An article in [The Economist, Aug 31, 2014](#), in an interview with Mr. Souza, an inmate, it is explained that Gangs emerged to provide protection but then developed into businesses, controlling prisons' booming illicit markets, especially in drugs. Gangs can trade far more effectively than lone inmates and members can ease into trade on the outside after their release. Joe 'Pegleg' Morgan was in prison for forty years, beginning with a conviction of murder at the age sixteen. He managed to gain so much power and control of drug trafficking, street crimes, violence and money laundering that he rose to serve as the Mexican Mafia's Godfather in the latter half of his life ([Prison gangs In the US](#)).

[Victor Hassine, a former inmate and author of Life Without Parole](#), describes how prison gangs are everywhere in prison and affect every inmate. When a new convict is admitted he is viewed as fresh meat among the prison gang members and victimized to no end. “Prison gangs are a convict’s means of survival in an environment so starved of morals that violence, rap, and murder are just daily reality.” The violence that they encourage controls the flow of prison life.

These inmates will be reintroduced to society when they have completed their sentence with a lifetime allegiance to a prison gang that has transended to a community gang with ties stronger than blood. The activities that they have been forced into while in prison will follow them for the rest of their lives and will directly impact the society in which they live. Mr. Skarbek argues that if you reduce the demand for gang services by locking up fewer people, reducing the size of prisons, and making prisons safer, then their appeal will diminish.

[Into the Abyss: A Personal Journey into the World of Street Gangs by Mike Carlie](#) explains the problems most clearly. As a result of incarceration, gang members from different cities, around

the country, and across the world, many of them drug dealers, distributors, and terrorists, make new associations and then return to their home community upon release. As an ex-convict they will be respected in the gang community. They will encourage cooperation with former enemy gangs in pursuit of greater gain and increased criminality and will have connections across the state, the country and the world. If we don't diminish the appeal of prison gangs then the list of gangs provided by the [Florida Department of Corrections](#) will become a necessary playbook for all citizens because these members will be the underground rule of law.

Prison Reform

Incarceration is overused and expensive. Nevertheless, opening the doors and releasing people who have been convicted of crimes would return crime rates to intolerable levels. Therefore, reform that emphasizes individual responsibility and continues to incarcerate as an important tool, but that changes the frequency and length of prison stays while vastly improving the circumstances and conditions within the prison walls is of extreme importance.

It is vitally important to implement the reform efforts outlined in the studies commissioned by the State. It is also vitally important to look to other states for reform opportunities that provide a positive impact. Re-entry into society is critical to the successful future of a former inmate and must be managed closely. Furthermore, if the receiving community is unable to provide the returning inmate with housing, job training, and jobs then the reformed former prisoner may easily fall back into old habits as a means of survival. Or worse, the newly achieved status of ex-convict could easily promote this individual to a respected position in the gang community and all hopes of achieving a successful re-entry will be diminished.

Costs of Incarceration

When looking at the costs of incarceration one must consider multiple factors: fiscal expense, failure to prevent repeat behavior, impact on communities, and impact on families.

An article in the Texas News, [Expert Panel: Where to go with Texas, U.S. prison reform](#), points out the costs to families ([Nationwide, there are more than 1 million fathers in prison](#)), and the costs to the state (*according to the Texas Criminal Justice Coalition, the cost to Texas of incarcerating a person is \$50 a day; supervised probation cost is \$1.38 per person per day*).

Financial costs are immense. According to Eli Lehrer, in 2013 housing an inmate can cost anywhere from \$17,500 to upwards of \$100,000 per inmate per year in high-security facilities. The National Bureau of Justice Statistics estimated a total spending on prisons and jails in 2010 to be nearly \$50 billion. But there is so much more to consider. Incarcerated parents have strained relationships with families and many children then grow up with a single parent or

even no parents at all – which correlates directly with more of those children turning to crime according to Eli Lehrer. Additionally, “imprisonment contributes directly to the impoverishment of the prisoner, of his family (with significant cross-generational effect) and of society by creating future victims and reducing future potential economic performance.” [\(United Nations Office on Drugs and Crime, Why Promote Prison Reform?, 1 – 6\)](#)

Implementation and Next Steps

FIRST STEP

Introduce and pass a resolution (attached) to establish a Joint Legislative Committee on Prison Strategic Planning and Implementation, comprised of both legislators and professionals, to develop a strategic plan to address and implement all of the measures proposed in the Justice Reinvestment in Alabama Analysis and Policy Framework report as well as those items addressed in this document. COMPLETELY DEVELOP THE STRATEGIC PLAN BEFORE CONSIDERING ANY CONSTRUCTION PROJECTS.

SECOND STEP

Introduce the *Community Mental Health Prison Initiative* legislation to address the issues of SASMI and geriatric hospice care and the use of the Alabama Department of Mental Health and Medicare and Medicaid dollars.

THIRD STEP

After the strategic planning is complete and has been presented and approved by the legislature:

- Introduce legislation to implement additional reform measures presented in the Justice Reinvestment in Alabama Analysis and Policy Framework report and to implement the proposals in the Strategic Plan.

Present to the legislature a written report with a detailed description of construction costs, a feasibility study, and an economic impact study.

- Introduce legislation to provide funding to build one new prison facility (perhaps the women's facility) following the guidelines established by the Joint Legislative Committee.

FOURTH STEP

Monitor the prison population needs as the reform measures are implemented and strategically plan for renovation/construction as needed.

PROPOSED RESOLUTION

WHEREAS, Alabama's prisons are overcrowded, and Alabama has seen a significant increase in the number of people incarcerated over the past few decades, and

WHEREAS, Alabama's incarceration rate is fifth highest in the world, and

WHEREAS, overcrowding of Alabama prisons has created a potential federal takeover of the state prison system, and

WHEREAS, the consensus of the legislature is that the public safety of its citizens and victims of crime as well as those incarcerated is a critical element in the condition of Alabama.

WHEREAS, the Alabama Legislature created the Alabama Prison Reform Task Force to study and identify causes and potential legislative solutions for the overcrowding of the prison system, and

WHEREAS, the task force studied and identified causes and potential legislative solutions for the overcrowding of the prison system and presented those findings in the Justice Reinvestment in Alabama Analysis and Policy Framework report, now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, that there is created the Joint Legislative Committee on Prison Strategic Planning and Implementation to be comprised of the following members:

- (1) Two members appointed by the Lieutenant Governor.
- (2) Two members appointed by the Alabama District Attorney's Association.
- (3) Two members of the Alabama House of Representatives appointed by the Speaker of the House of Representatives.
- (4) Two members of the Senate appointed by the Senate President Pro Tempore.
- (5) Two representatives of the Governor's office appointed by the Governor.
- (6) One representative of the Attorney General's Office appointed by the Attorney General.
- (7) The Commissioner the Department of Corrections.
- (8) One representative of the Department of Public Safety appointed by the Director of Public Safety.
- (9) The Commissioner of the Department of Medicare

- (10) The Commissioner of the Department of Mental Health
- (11) State Health Officer Alabama Department of Public Health
- (12) Two members of the Alabama Council of The American Institute of Architects appointed by the Governor.
- (13) Two members of the Alabama Contractors Association appointed by Senate President Pro Tempore.
- (14) Two members of the American Council of Engineering Companies of Alabama appointed by the Speaker of the House
- (15) One representative appointed by the chair of the Prison Reform Task Force.
- (16) One member of the House of Representatives appointed by the Chair of the House Judiciary Committee.
- (17) One member of the Senate appointed by the Chair of the Senate Committee on Judiciary.
- (18) The Director of the Alabama Law Institute.
- (19) One representative of the Judicial Department appointed by the Chief Justice of the Supreme Court.
- (20) One attorney licensed in Alabama appointed by the President of the Alabama Bar.
- (21) One representative appointed by Alabama Board of Pardons and Paroles.

The Governor shall appoint the chair once all appointments have been made to the Strategic Planning Committee.

The committee membership shall be inclusive and shall reflect the racial, gender, geographic, urban, rural, and economic diversity of the state, as well as the diversity and demographics of the Alabama prison population.

The committee shall study and evaluate a broad range of issues related to prison inmate overpopulation including but not limited to, opportunities for Medicaid, Medicare and mental health care services to provide care and offset the costs of inmates; impact of mega prisons verses smaller prisons on inmates while in prison and when they are reintroduced to society, estimation of prison bed count when reform measures are put in place; structural, architectural and construction needs of existing prison structures; and opportunities and best practices for new construction in the prison system.

The committee shall report its findings and develop a strategic plan to implement opportunities identified in this study and evaluation process as well as those identified in the Justice Reinvestment in Alabama Analysis and Policy Framework report from May 2015, and shall draft legislation to implement the strategic plan. All documents shall be delivered to the legislature on the 5th day of the 2017 Regular Session, where upon it shall stand dissolved and discharged of any further duties.

Each non-legislative member of the task force may be reimbursed for expenses related to attending meetings consistent with the policies of the various appointing authorities.

Upon the request of the chair, the Secretary of the Senate and Clerk of the House of Representatives shall provide necessary clerical assistance for the work of the task force. Each legislative member of the task force shall be entitled to his or her regular legislative compensation, per diem, and travel expenses for each day he or she attends a meeting of the task force in accordance with Amendment 871 of the Constitution of Alabama of 1901. These payments shall be paid out of any funds appropriated to the use of the Legislature by means of warrants drawn by the state Comptroller on the State Treasury.

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