

Dear Lawmaker:

Alabama's Habitual Felony Offender Act (HFOA), Ala. Code 13A-5-9, is the harshest repeat offender law in the Southeast, with the exception of Mississippi.¹ Alabama's HFOA enhances any subsequent felony conviction without regard to the severity of the previous offense or the time period that separates them. It permits sentences of life without the possibility of parole in cases with no physical injury. It allows prior convictions committed when individuals were less than 18, as well as low-level drug and property crimes, to be used for enhancement purposes.² As a result, nearly 5,600 individuals in Alabama are serving long prison sentences enhanced by the HFOA, including more than 1,600 lifers.

HB 107, sponsored by Rep. Chris England, would repeal the HFOA and provide an opportunity for resentencing. As attorneys in Alabama who understand the desperate need for sentencing reform in our state, we support HB 107. We urge the Alabama Legislature to pass HB 107 this session for the following reasons:

The legislature-approved Sentencing Guidelines, adopted in 2015 and made mandatory in 2017, provide for entirely different sentencing structures for offenses that once required a life or life without parole sentence. Because these Guidelines were not made retroactive, individuals in their 50s and 60s who have served the longest sentences remain incarcerated with no chance for release, even if they have demonstrated extraordinary rehabilitation. This is neither just, nor smart public policy.

The older people serving life and life without parole under the HFOA are both the most costly to incarcerate³ and the least likely to reoffend. Government data shows that re-offense drops dramatically as people reach their 40s to almost zero by age 60,⁴ thus there is no public safety justification for these sentences.

The HFOA has resulted in grossly disproportionate sentencing. For example, 239 people⁵ are serving sentences of life without parole whose most serious offense was robbery, most often with no physical injury. Individuals convicted today of the most aggravated types of murder, including murder of a child, can receive this exact sentence, life without parole, despite the dramatically different nature of this offense. Additionally:

- 100 people in this population have served at least 30 years in prison;
- 208 people are over 50 years old, 19 are over 70.

¹ Alabama Appleseed Center for Law & Justice, *Condemned: Hundreds of Men are Sentenced to Die in Prison for Crimes With No Physical Injury. They Haven't Given Up on Life. Why Has Alabama Given Up on Them*, 17 (How Alabama Compares With Other Southern States).

² Code of Alabama § 13A-5-9

³ B. Jaye Anno, Ph.D., A. Camelia Graham, James E. Lawrence, Ronald Shansky, M.D., Correctional Health Care, Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates, National Institute of Corrections, Feb. 2004, 11, at <https://s3.amazonaws.com/static.nicic.gov/Library/018735.pdf>. See also, Matt McKillop & Alex Boucher, Aging Prison Populations Drive Up Costs, Pew Research Center, Feb. 20, 2018, at <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs>

⁴ Mariel Alper, Ph.D., and Matthew R. Durose, Joshua Markman, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2018 Update on Prisoner Recidivism, A Nine-Year Followup Period (2005-2014) May 2018, 10, at <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>.

⁵ Alabama Sentencing Commission, 2020 Annual Report, 11-12.

HB 107 gives Alabama's Circuit Court judges discretion in reviewing life without parole sentences imposed decades ago and to revisit those sentences in circumstances where incarcerated people in their 50s and 60s have engaged in positive programs, demonstrated rehabilitation, and are no risk to public safety if resentenced and released. Let's be clear: HB 107 does not call for automatic releases.

The HFOA is not necessary to secure lengthy incarceration of dangerous offenders. Should the HFOA be repealed, the remaining sentencing laws in Alabama permit prosecutors to seek life sentences for the most serious violent felonies, including murder, rape, and kidnapping. And, sentences of life without parole or death for capital murder convictions, including murder of a law enforcement officer, are still available.⁶

Now that the United States Department of Justice has determined that conditions throughout Alabama's prison system for men violate the Eighth Amendment's prohibition against cruel and unusual punishment, it is past time for our state to take seriously the chronic overcrowding in our prisons. HB 107 provides a mechanism to do so without compromising public safety and without relying on the federal government to undertake this responsibility for us.

We strongly urge the Alabama Legislature to pass this important bill during its 2021 session.

Sincerely,

Laura Petro, Retired Circuit Judge, Tenth Judicial Circuit

James Hard, Retired Circuit Judge, Tenth Judicial Circuit

Joyce White Vance, former United States Attorney, North District of Alabama, Professor of Law, University of Alabama School of Law

Frank McPhillips, Retired Partner, Maynard, Cooper, and Gale

Bill Clark, Attorney, Wallace, Jordan, Ratliff & Brandt, past president, Alabama State Bar

Dorothy Pak, General Counsel, UAB Health System

Ramona Albin, Law professor and former prosecutor

Nick Gaede, Partner, Bainbridge, Mims, Rogers & Smith

Susan Doss, Retired Partner, Bradley, Arant, Boulton, and Cummings

Heather Elliott, Professor of Law, University of Alabama School of Law

Kira Fonteneau, Attorney, 5 Points Law Group LLC

Sue Bell Cobb, Chief Justice (Ret.), Alabama Supreme Court

Richard Jaffe, Senior Partner, Jaffe, Hanle, Whisonant, and Knight, P.C.

Bryan Fair, Professor of Law, The University of Alabama School of Law

James Sledge, Federal trial judge, retired

⁶ Code of Alabama § 13A-5-40(5) (defining capital offenses, including murder of law enforcement officer)

Adam Danneman, Jefferson County Chief Public Defender, Jefferson County Public Defender's Office

Kristin Sullivan, Attorney, 5 Points Law Group

Richard Carmody, Of Counsel, Adams and Reese LLP

Joseph Van Heest, Public Defender, Tuscaloosa County Office of Public Defender

Amy Kimpel, Director of the Criminal Defense Clinic, University of Alabama School of Law

Richard Storm III, Attorney, Law Office - Richard A. Storm III, P.C.

Courtney Cross, Director, Domestic Violence Law Clinic, University of Alabama School of Law

John Lentine, Partner, Sheffield & Lentine, P.C.

Sarah Hughes, Staff Attorney, Legal Services Alabama

Keyarrow Moore, Attorney, Office of the Public Defender

Everett Hoagland, Assistant Public Defender, Tuscaloosa County Public Defender

Jenny Ryan, Staff Attorney and Children's Rights Clinic Director, University of Alabama School of Law and ADAP

Jill Friedman, Attorney, Retired

Crystal Phillips, Assistant Public Defender, Public Defender's Office

Christine Freeman, Executive Director, Middle District of Alabama Federal Defender

Jessica Vosburgh, Executive & Legal Director, Adelante Alabama Worker Center

Alexandra Jordan, Staff Attorney, Southern Poverty Law Center

Amanda Reid, Assistant Public Defender, Tuscaloosa County Public Defender

Camille Weeks, Associate Attorney, Hughes & Scalise PC

Jacob Robertson, Attorney, Tuscaloosa Office of Public Defender

Patrick Mulvaney, Managing Attorney, Southern Center for Human Rights

Katherine Moss, Staff Attorney, Southern Center for Human Rights

Russell Drake, Attorney, Retired

Alison Ganem, Staff Attorney, Southern Center for Human Rights

Michael Admirand, Staff Attorney, Southern Center for Human Rights

Jilisa Milton, Attorney

Nancy Presley, Assistant Public Defender, Tuscaloosa County Public Defender's Office

Mark Loudon-Brown, Senior Attorney, Southern Center for Human Rights

Ashley Lomers, Assistant Public Defender, Tuscaloosa Office of Public Defender

Kayla Vinson, Attorney, MBO

Virginia Patterson, Partner, Bradley Arant Boult Cummings LLP
Eric Snow, Chief Assistant Public Defender, Tuscaloosa County Public Defender Office
Martha Morgan, Attorney, Retired
Michael Carlson, Attorney
Kris Anderson, Attorney, Clark Partington
Ty Alper, Clinical Professor of Law
Joseph McGuire, Managing Partner, McGuire & Associates, LLC
David Gespass, Lawyer, Gespass & Johnson
Jonathan Barry-Blocker, Staff Attorney, Southern Poverty Law Center
Natalie Unger, Attorney, Equal Justice Initiative
Adam Murphy, Staff Attorney, Office of the Appellate Defender
David Scott, Attorney, D. W. Scott Law LLC
John Fleming, Attorney, Tuscaloosa County Office of the Public Defender
Griffin Sikes, Lawyer, Sikes Law Firm
Laura Washburn, Partner, Bradley Arant Boult Cummings LLP
John Benochi, Assistant Public Defender, Tuscaloosa County Public Defender Office
Chase Arnold, Attorney, Lawton & Associates
Brittany Mercer, Attorney, Jefferson County Public Defender's Office
Malcolm Head, Trial Attorney, Jefferson County Public Defender's Office
Alisha McKay, Assistant Public Defender, Jefferson County Public Defender's Office
Hunter Carmichael, Attorney, Jefferson County Public Defender
Madeline Hillsmith, Trial Attorney, Jefferson County Public Defender's Office
Alex Mason, Attorney, Jefferson County Public Defender's Office
Joseph McGuire, Managing Partner, McGuire & Associates, LLC
Arienna Grody, Trial Attorney, Jefferson County Public Defender
Akiesha Anderson, Policy Director, Alabama Appleseed Center for Law & Justice
Dagney Johnson, Attorney, Dagney Johnson Law Group
Heather Richard, Law Fellow, Equal Justice Initiative
Deborah Young, Professor, Cumberland School of Law (retired)
LaTonia Williams, Attorney, Jefferson County Public Defender's Office
William Dawson, Attorney, Dawson Law, LLC

Stephen Woodall, Attorney, Woodall Law

Keri Michelle Spiker, Defense Attorney, Jefferson County Public Defender's Office

Donald Colee, Attorney

Matthew Bailey, Head Attorney, Law Office of Matthew A. Bailey

Perry G. Jackson, Attorney, Jackson Law Firm

Virginia Boliek, Managing Member , Law Office of Virginia Boliek, LLC

Danielle Blevins, Attorney-Advisor

Russell Rutherford, Attorney

Drew Thagard, Attorney, Jefferson County Public Defender

Amanda Gentle, Attorney-at-Law, The Gentle Law Firm, LLC

LaRae Ganger, Attorney, Jefferson County Public Defender's Office

Laura Morgan, Attorney, Laura Morgan Attorney at Law

Bennett Driggers, Attorney At Law, Private Practice

Sara Williams, Attorney, Alexander Shunnarah

LaJuana Davis, Law Professor

Mary O'Neill, Civil Lawyer

James Tucker, Attorney

Robert Gwin, Attorney

LaTisha Faulks, Legal Director, ACLU of Alabama

Jack Carney, Attorney, Carney Dye, LLC

Lakedra Armstead, Attorney, Lakedra K. Armstead, Attorney at Law

Kay Laumer, Attorney, Laumer Law LLC

Rhonda Brownstein, Legal Director, Alabama Disabilities Advocacy Program

Gabriel Lopez Low, Staff Attorney, Montgomery Public Defender

Chris Sanders, Communications Director, Alabama Arise

Michael Whisonant, Attorney, Jaffe, Hanle, Whisonant, & Knight, P.C.

Frederic Washington, Staff Attorney, Jefferson County Public Defender

Laura Tyrone, Attorney

J.W. Carpenter, Attorney

David Butler, Attorney

Kesa Johnston, Attorney, The Law Firm of Kesa M. Johnston

Dustin Merritt, Attorney, LaPlante Merritt Faulkner Wilson & Clay
Kimberly Fasking, Attorney
Suzanne Ashe, Attorney
Lynn Hogewood, Academic Support Director, Cumberland School of Law
Mark Tindal, Attorney, Tindal Alemany, LLC
Roy West, Attorney, Manly & Manly Attys.
Rachel Martin, Attorney, Cumberland School of Law
Meagan Hurley, Attorney
Ron Thrasher, Attorney, Ron D. Thrasher, LLC
Jonathan Brown, Associate, Jaffe, Hanle, Whisonant & Knight
Daniel Faulkner, Attorney, Laplante, Merritt, Faulkner, Wilson & Clay, LLC
Jack West, Policy and Advocacy Director, Alabama Rivers Alliance
Charlotte Heyrman, Trial Attorney, Office of the Public Defender, Montgomery
Kasey Coan, Public Defender, Office of the Public Defender of Montgomery County
Travis Bell, Senior Trial Attorney, Montgomery County Office of the Public Defender
Glory McLaughlin, Attorney
Dev Wakeley, Policy Analyst, Alabama Arise
Justin Wilson, Attorney, LaPlante Merritt Faulkner Wilson & Clay
Rachel Blume, Attorney, Blume & Blume Attorneys at Law, P.C.
Gary Blume, Attorney - Senior Partner, Blume & Blume Attorneys at Law, P.C.
Brock Boone, Attorney, Southern Poverty Law Center
Ashley Austin, Staff Attorney, Alabama Disabilities Advocacy Program
Larry Canada, Senior Trial Counsel, Alabama Disabilities Advocacy Program
Hank Sherrod, Attorney, Henry F. Sherrod III
Kay Bains, Retired Partner
Cynthia Carter, Attorney, Jefferson County Public Defender's Office
Shandra Monterastelli, Staff Attorney, Alabama Disabilities Advocacy Program
Brett Bloomston, Lawyer, The Bloomston Firm
Melina Mizel-Goldfarb, Attorney, Office of the Jefferson County Public Defender
Christa Winingar, Trial Attorney, Jefferson County Public Defender's Office
Glenn Langner II, Lead Trial Attorney, 15th Judicial Circuit Public Defender's Office

Fred Pickard, Attorney, Fred Pickard attorney solo practitioner
Victor Revill, Attorney-at-Law, Revill Law Firm
Tracy Emond, Associate Attorney, Revill Law Firm
Eva Dilliard, Attorney
Honza Prchal, Attorney
Michael Nissenbaum, Attorney, Michael S. Nissenbaum, Attorney at Law, P.C.
Morgan Epperson, Attorney
Catelyn Swindall, Attorney, Public Defender's Office
Jim Sturdivant, Attorney
Brock Brett, Attorney, Jefferson County Public Defenders Office
Tana Flaten, Trial Attorney, Jefferson County Public Defender's Office
Wendell Sheffield, Attorney, Sheffield & Lentine, P.C.
Michael Shores, Attorney, Retired
Johnathan Austin, Attorney, Austin Law, P.C.
Paul Rand, Trial and Appellate Attorney, Jefferson County Public Defender's Office
Carla Crowder, Executive Director, Alabama Appleseed Center for Law & Justice
Texys Morris, Public Defender, Jefferson County Public Defender's Office
Robert Vance, Attorney, The Bloomston Firm
Jayme Kiszla, Trial Attorney, Montgomery County Public Defenders
Will Clay, Attorney, LaPlante, Merritt, Faulkner, Wilson & Clay LLC
Julie Carter, Attorney
Leroy Maxwell, Attorney, Maxwell + Tillman
Angelica Mamani, Law Clerk
Mary Katherine Alemany, Attorney, Tindal Alemany
Larry Booth, Attorney, M. Wayne Wheeler, PC
Matt Theus, Attorney, Theus Law Firm LLC
Lisa Singer, Staff Attorney, Volunteer Lawyers Birmingham