

The Alabama Prison Transformation Initiative Act

Background

Over the past several decades, overcrowding has been a persistent problem for Alabama’s prison system. Today, Alabama has “the nation’s most congested state corrections system,”¹ with its prisons “holding nearly twice the number of inmates they were built to house.”² Specifically, Alabama’s prison system “houses more than 24,000 inmates in a network designed for 13,318,” putting it at 180% capacity.³

In his 2016 State of the State Address, Governor Robert Bentley announced that “Alabama is about to embark on a complete transformation of the state’s prison system.”⁴ That transformation would come through the Alabama Prison Transformation Initiative Act, which would close fourteen existing “outdated, inefficient” prisons and construct four new “state of the art” prisons, thereby consolidating fourteen smaller prisons into four regional prisons.⁵ Governor Bentley promised that, under his plan, “Alabama’s prison system will go from being an . . . overcrowded system to being *the best*. And Alabama will become *the model for the rest of the nation*.”⁶

The cost of Governor Bentley’s prison-reform plan has been cited as \$800 million, but its total cost would be almost double that. The sum total of the \$800 million would be financed through debt lasting thirty years, requiring payments of \$50 million per year.⁷ Thus, the total cost would be \$1.5 billion—an amount nearly equal to the entire State General Fund.⁸ In fact, \$1.5 billion is more likely the *minimum* cost, with the total cost potentially being much higher.⁹

According to Governor Bentley, however, his plan would essentially be free. “The money we save with the more efficient prisons will in turn be used to pay off the debt of the construction,” he declared to the people of

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- The Alabama Prison Transformation Initiative Act costs \$1.5 billion, yet would not actually solve the overcrowding problem in the prison system.
- It would be an act of fiscal irresponsibility for the Alabama Legislature to pass it.

Alabama.¹⁰ As legislators considered his plan, he assured them that it required “no additional spending.”¹¹

Analysis

The primary arguments that Governor Bentley has used to sell his prison-reform plan are twofold:

1. The plan would “solve [the overcrowding] problem that has plagued our state for decades.”
2. The plan would “[generate] savings . . . adequate to pay [for constructing the new prisons] . . . with no additional spending from the State General Fund.”¹²

Below, each argument is addressed in turn, starting with the second argument.

The Plan Would Not Produce the “Savings” Claimed—and Would Cost Taxpayers Hundreds of Millions of Dollars

The biggest selling point of Governor Bentley’s prison-reform plan has been the guarantee of “no additional spending.”¹³ The plan gives the illusion of being cost-neutral because its “estimates” seem, at first glance, scientific. Upon closer inspection, however, they are revealed to be more akin to “guesstimates” or even “hunches”—not the foundation of informed policymaking.

To illustrate, consider the major estimates of costs and savings that have been provided. It is said that the plan

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would cost \$800 million, the entirety of which would be financed through debt (a bond issue with a term of thirty years);¹⁴ that the annual debt service would cost \$50 million;¹⁵ and that the annual savings from consolidation would equal \$50 million.¹⁶ Of these three figures, only one can be verified as having been methodically arrived at: the annual debt service of \$50 million.¹⁷ Unfortunately, that calculation is based on another of the figures—\$800 million—which has a vague origin, despite repeated inquiries to the Bentley administration by elected leaders, journalists, and API to try to learn more about it.¹⁸ Remarkably few specifics are actually known about how the \$800 million would be spent (e.g., designs have not been drafted and locations have not been determined for the new prisons);¹⁹ and the only clue as to how the amount of \$800 million was determined comes from a single calculation, based on the experience of a single company in constructing a privately-owned prison in Mississippi:

13,200 beds @ \$59,000/bed = \$778,800,000²⁰

The most peculiar of the three figures is annual savings, a number representing the costs that would be saved through the attrition of staff (\$17.5 million), the reduction of overtime (\$20.8 million), the streamlining of healthcare (\$10.1 million), and various other ways (\$1.6 million).²¹ Given how little information has been provided about this figure, annual savings could be mistaken for—or judged correctly for—a number reverse-engineered to *exactly equal* the annual cost of the debt service (\$50 million), thereby making the plan appear costless.²² Favorable coincidences are presumed suspect—and this one especially so, in light of its importance in selling the bill: “All along, advocates for the prison plan have pitched it as a *no-cost solution* to the overcrowding issue.”²³

The idea of “annual savings” is itself unrealistic, going against the very nature of bureaucracies.²⁴ The financial feasibility of the prison-reform plan is premised on a bureaucracy, the Department of Corrections, not only realizing \$50 million in savings for one year, but realizing \$50 million in savings *every year for thirty years*,

consecutively, without fail—for a total savings of \$1.5 billion (to cover the total cost of \$1.5 billion).²⁵ The impossibility of such a feat for a bureaucracy is comparable to a golfer hitting a hole in one, every day, for an entire month.

Because the cost savings cannot be sustained, the scenario where the plan’s debt cannot be paid back is a matter of when, not if. The responsibility for covering the cost will first fall to the sources that the bill pledges as insurance, including the Veterans’ Assistance Fund.²⁶ Ultimately, however, responsibility will land on taxpayers, whether directly (e.g., a rise in state taxes) or indirectly (e.g., a cut to state services).²⁷

The Plan Would Not “Solve” the Overcrowding Problem—yet Would Cost Taxpayers Hundreds of Millions of Dollars

Governor Bentley has proclaimed that his prison-reform plan would “solve [the overcrowding] problem that has plagued our state for decades,”²⁸ but it would not. The plan, according to its own predictions, would merely *reduce* overcrowding to 125%—leaving the prison population at well over 100% capacity.²⁹ In other words, overcrowding would continue to plague our state for decades to come.

As for Governor Bentley’s promises that Alabama’s prison system would become “the best” and “the model for the rest of the nation,”³⁰ they will not come to pass. Even if 125% capacity were achieved, Alabama’s prison system would still rank in the bottom half of all state prison systems in terms of overcrowding.³¹

If Alabama is going to spend \$1.5 billion reforming its prison system, it must actually *solve* the overcrowding problem. Otherwise, such an enormous expense cannot possibly be justified.

Recommendation

During the last legislative session, API strongly supported the prison-reform bill that was passed and signed into law, describing it as “the necessary catalyst of meaningful reform to Alabama’s prison system.”³² The Alabama Prison Transformation Initiative Act is not the continuation of that meaningful reform.

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For this bill to become law—costing \$1.5 billion, yet not actually solving the overcrowding problem—would be an act of fiscal irresponsibility. It is not credible, as the bill’s proponents have asserted, that “the state can complete [this] project without costing taxpayers a dime.”³³ In the absence of evidence that proves otherwise, the bill can reasonably be expected to cost taxpayers hundreds of millions of dollars.

The state’s fragile financial condition necessitates a much higher level of scrutiny over a plan of such a magnitude. As it stands, the scarce information available to the Alabama Legislature and the general public is inadequate to warrant approval of the bill.

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¹ Alan Blinder, “Alabama Grapples With Fixing Prisons as Uprisings Occur,” *New York Times*, Mar. 16, 2016, at A11.

² Associated Press, “Prison Overcrowding Walks ‘Alabama Down Road to Federal Intervention,’ Lawmaker Says,” *AL.com* (June 29, 2015), http://www.al.com/news/index.ssf/2015/06/prison_overcrowding_walks_alab.html [<http://perma.cc/4ZKC-5YWZ>].

³ Blinder, *supra* note 1.

⁴ Governor Robert Bentley, “State of the State Address” (Feb. 2, 2016), available at <http://governor.alabama.gov/newsroom/2016/02/2016-state-state-address-2/> [<http://perma.cc/JNW6-KDCC>].

⁵ *Id.* The Alabama Prison Transformation Initiative Act was introduced into the Alabama Legislature as House Bill 313 (by Representative Clouse) and Senate Bill 287 (by Senators Pittman, Ward, Allen, Williams, and Reed). See H.R. 313, 2016 Leg., Reg. Sess. (Ala. 2016) (as introduced Feb. 24, 2016), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016RS/PrintFiles/HB313-int.pdf> [<http://perma.cc/684E-5B8X>]; S. 287, 2016 Leg., Reg. Sess. (Ala. 2016) (as passed Apr. 5, 2016), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016RS/PrintFiles/SB287-eng.pdf> [<http://perma.cc/B2DK-62US>]. For official overviews of the Act, see generally Office of the Governor of Alabama, *Alabama Prison Transformation Initiative* (2016), <http://governor.alabama.gov/assets/2016/02/Alabama-Prison-Transformation-Initiative-Media-Fact-Sheet-Final.pdf> [<http://perma.cc/ASA6-W5JP>]; Alabama Department of Corrections, *Alabama Prison Transformation Initiative: Information Paper* (2016), <http://www.doc.state.al.us/docs/Alabama%20Prison%20Transformation%20Initiative%20Information%20Paper.pdf> [<http://perma.cc/QP6H-3XTA>].

⁶ Bentley, *supra* note 4 (emphasis added).

⁷ Alabama Department of Corrections, *supra* note 5, at 7–8.

⁸ See Alabama Department of Finance, *State of Alabama General Fund: Fiscal Year 2016 Appropriations* 3 (2016), <http://budget.alabama.gov/pdf/gf/2016/2016FebGFSpreadsheetFY16.pdf> [<http://perma.cc/9DMQ-X6SK>].

⁹ The case of the Madison County Jail is illustrative. See generally Niki Doyle, “Madison County Jail Opens for Media Tour,” *AL.com* (June 18, 2009), <http://blog.al.com/breaking/2009/06/jail.html> [<http://perma.cc/9S8A-TC6J>] (“After 1,637 days and nearly \$80 million, the troubled Madison County Jail addition is . . . three years behind schedule and nearly \$50 million over budget.”).

¹⁰ Bentley, *supra* note 4.

¹¹ Letter from Governor Robert Bentley et al. to Members of the Alabama Legislature (Mar. 22, 2016), available at <http://scribd.com/doc/309222431/> [<http://perma.cc/RM66-S2FC>].

¹² *Id.*

¹³ See *supra* note 12 and accompanying text.

¹⁴ Alabama Department of Corrections, *supra* note 5, at 5.

¹⁵ *Id.* at 8.

¹⁶ Letter from Governor Robert Bentley et al. to Members of the Alabama Legislature, *supra* note 11.

¹⁷ See Fiscal Note for S. 287, 2016 Leg., Reg. Sess. (Ala. 2016) (as introduced Feb. 23, 2016), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016RS/FiscalNotes/FN-35151.htm> [<http://perma.cc/UZ9H-DFWB>].

¹⁸ E.g., Bill Britt, “No Bid Prisons, Questions Unanswered,” *Alabama Political Reporter* (Mar. 16, 2016), <http://www.alreporter.com/no-bid-prisons-questions-unanswered/> [<http://perma.cc/MSN5-7GY3>] (appending a list of “questions sent to the Office of Gov. Robert Bentley”); Bill Britt, “Debate Over Design–Build Versus State Law Continues,” *Alabama Political Reporter* (Mar. 23, 2016), <http://www.alreporter.com/debate-over-design-build-verses-state-law-continues/> [<http://perma.cc/D647-3VPD>] (reporting that the “unanswered questions sent to the Governor’s office almost a month ago remain unanswered”); E-mail from Andrew A. Yerbey, Senior Policy Counsel, Alabama Policy Institute, to Jennifer Ardis, Director of Communications, Office of the Governor of Alabama (Apr. 5, 2016, 2:46 PM) (on file with the Alabama Policy Institute) (inquiring about a previous inquiry, which received no response, about “the numbers behind some major components of the plan”); Interview with Clay Scofield, Alabama State Senator, in Montgomery, Ala. (Apr. 6, 2016) (describing the lack of success that members of the Alabama Legislature have had in getting information on the plan).

¹⁹ Tim Lockette, “‘There’s No Real Show-Me’: Critics Skeptical of State Prison Funding Plan,” *Anniston Star*, Apr. 10, 2016, at A1; Alabama Department of Corrections, *supra* note 5, at 6.

²⁰ Kerrick Whisenant, Cornerstone Detention Products, *SB287—Prison Transformation Act: What Should These Prisons Cost?* (2016), available at <http://scribd.com/doc/309360239/> [<http://perma.cc/23MY-D3FG>]. This handout was given to attendees of the April 13 committee hearing on the House version of the Alabama Prison Transformation Initiative Act.

²¹ Office of the Governor of Alabama, *Summary of the Alabama Prison Transformation Initiative Act* (2016), available at <http://scribd.com/doc/309360729/> [<http://perma.cc/R22P-ZYHL>].

²² The few specifics available for annual savings are contained in two sources. See generally Letter from Governor Robert Bentley et al. to Members of the Alabama Legislature, *supra* note 11; Office of the Governor of Alabama, *supra* note 21.

²³ Lockette, *supra* note 19 (emphasis added).

²⁴ See generally James. Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (1989).

²⁵ As observed by Alabama State Senator Bill Holtzclaw: “We’re asking the bureaucracy of the state to come up with \$50 million annual savings through efficiency measures, and we’re putting ourselves on the dot for an \$800 million, 30-year note.” Lockette, *supra* note 19.

²⁶ S. 287, 2016 Leg., Reg. Sess. (Ala. 2016) (as passed Apr. 5, 2016), <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016RS/PrintFiles/SB287-eng.pdf> [<http://perma.cc/B2DK-62US>] (amending Ala. Code § 14-2-21(c)).

The bill would require that the Alabama Legislature repay any money taken from the Veterans’ Assistance Fund to pay down the debt of the prison-reform plan. *Id.* (amending Ala. Code § 14-2-21(d)). This is not exactly comforting to veterans, however, since the VA “would be at the mercy of the Legislature.” Lockette, *supra* note 19. Ken Rollins, an advocate for veterans, noted the concern: “I don’t believe this will work. . . . I don’t believe they can make the payments on it.” *Id.*

²⁷ See *supra* note 25.

²⁸ See *supra* note 12 and accompanying text.

²⁹ Alabama Department of Corrections, *supra* note 5, at 8.

³⁰ See *supra* note 6 and accompanying text.

³¹ See E. Ann Carson, Bureau of Justice Statistics, *Prisoners in 2014*, at 11–12 & tbl. 8 (2015), <http://www.bjs.gov/content/pub/pdf/p14.pdf> [<http://perma.cc/G4M5-WGB9>].

³² Brian Lyman, “Prison Reform Goes to Bentley,” *Montgomery Advertiser*, May 8, 2015, at A1 (quoting Katherine Robertson, Vice President, Alabama Policy Institute).

³³ Lockette, *supra* note 19.