

UNSUSTAINABLE



**Alabama's Increasing Trend of
Keeping the Elderly Behind Bars**

Alabama's reliance on life imprisonment for a wide range of offenses has resulted in soaring numbers of older, incarcerated people trapped in prison until death.

The costs are enormous, simultaneously draining state resources and impacting the ability of the Alabama Department of Corrections (ADOC) to effectively manage prisons. The sheer increase in the numbers of older, incarcerated people is stunning: In 1972, there were 181 individuals over the age of 50 in Alabama's prisons (1). That number now exceeds 6,750 (2). Since 2000, the population of prisoners aged 60 and above grew from 85 to 2,393 (3). Older prisoners have quickly shifted from a small group on the fringes to nearly a quarter of Alabama's entire prison population. Entire prison dorms have been turned into crowded, often dilapidated nursing facilities, and infirmaries have been converted into long-term housing for the most frail to protect them from rampant violence in the general population (4).

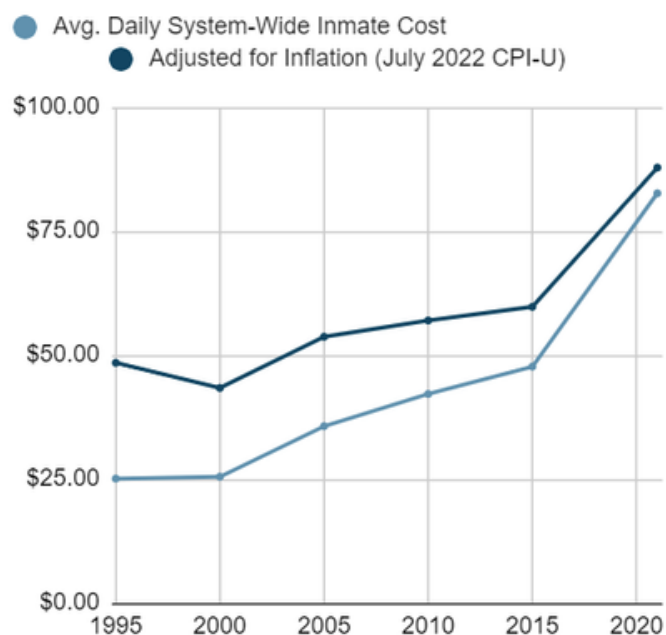
Incarcerating older, often medically fragile individuals, has cost the state dearly. In 2000, Alabama spent an average of \$25.47 to incarcerate someone for a day, or about \$9,300 per year (5). That number stayed relatively stagnant between 1995 and 2003, but the explosion of older individuals in prison sent costs soaring. The average daily system-wide inmate cost now sits at \$82.64, or \$30,163 per year (6).

The graying prison population is not a new concern for Alabama. A decade ago in its 2012 Annual Report, the Alabama Department of Corrections published a Special Report acknowledging that Alabama's prison population was rapidly aging (7). Labeling this as "another significant trend associated with the explosive growth of the prison population," ADOC conceded that this aging population will impact healthcare costs. Despite this recognition, the laws and policies contributing to the elder boom have remained in effect and efforts to provide options such as medical furlough or medical parole have been used in such a limited fashion, they have made little difference (8).

ADOC's Hamilton Aged and Infirm Center opened in 1981, ostensibly to provide specialized care for older prisoners (9). But with a designed capacity of 123 (10), the facility cannot begin to address the crushing need stemming from ADOC's current population of older people, consistently housing more than double the designed capacity (11). Moreover, because the Hamilton Aged and Infirm Center is classified as medium security, people with life without parole sentences cannot be housed there, excluding hundreds of people punished until death from the facility that is most specialized to care for them (12).

Alabama's aging prison population follows a national pattern. The United States Bureau of Justice Statistics reported that the number of individuals aged 55 or older sentenced to more than 1 year in prison increased 400% from 1993 to 2013 (13). Several factors including the nature of life sentences and

Average Daily System-Wide Inmate Cost (1995-2021)



their increasing prevalence contribute to this growth. And while the data, rising costs, and impact on prison infrastructure suggests the need for urgent, sensible responses, policymakers have generally not paid attention or responded with real solutions (14).

Alabama’s situation, however, is much more dire. A 2006 study of 16 southern states found that Alabama held the highest percentage (12.79%) of individuals over 50 in prison (15). Over a 50 year period from 1972 to 2022, there was a 3,640% increase in prisoners aged 50 and above (16). Comparatively, Alabama’s general prison population grew 607% over the same time span (17). Alabama’s elderly prison population rapidly outpaces Alabama’s general prison population and the state population.

This report seeks to determine just how much Alabama’s rapidly aging prison population correlates with increases in the Department of Correction’s financial burdens and systemic strain. Understanding the unsustainable nature of Alabama’s aging prison population—and how the situation has reached a boiling point—exposes the necessity of comprehensive short and long term reform. Without reform, current trends indicate the uncontrollable expense of punishing thousands of people until they die will have severe consequences both for state budgets and prison safety.

Over a 50 year period from 1972 to 2022, there was a 3,640% increase in prisoners aged 50 and above in Alabama.

	1972	2022	% Growth
State Population	3,540,080	5,056,005	43
State Prison Population	3,632	25,694	607
State Elderly (50+) Prison Population	181	6,769	3,640

The Economic Impacts of Incarcerating the Elderly

Increased spending by the Alabama Department of Corrections is directly related to the aging inmate population. The average daily system-wide cost to incarcerate someone in Alabama’s prison system has more than doubled since 2000, even after adjusting for inflation (18). Analyzing the relationship between the average age of ADOC’s population and the Department’s spending records from 2001 to 2021 exposes a strong linear correlation between the two (19). The average age of ADOC’s population has a positive linear relationship ($r=.88$) with spending in the “Medical Services” category. Similarly, there is a positive relationship ($r=.87$) between the average age of ADOC’s population and average daily system-wide inmate cost adjusted for inflation.

That trend can be seen within specific age demographics. Even among individuals aged 51 and above in Alabama’s prisons (the youngest metric of geriatric individuals), there is a moderate positive relationship with average daily system-wide inmate cost adjusted for inflation ($r=0.46$) medical services spending ($r=0.65$). That correlation only becomes stronger as age demographics increase. For individuals aged 60 and above in Alabama’s prisons, there is a stronger relationship with average daily system-wide inmate cost adjusted for inflation ($r=0.63$) and medical services spending ($r=0.72$). These results further solidify how age correlates with cost; older prisoner demographics have a stronger effect on increasing financial burdens.

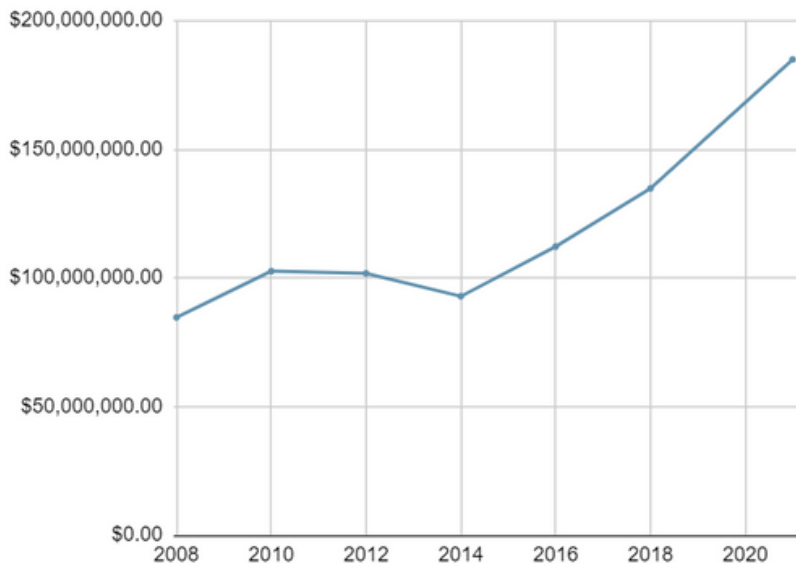
FY Report	Avg. Age of ADOC Population	Age 51+ Prison Population	Medical Services- Professional	Avg. Daily System-Wide Inmate Cost
2021	42	6,432	\$184,885,492.85	\$82.64
2020	Not Listed in Annual Report	6,169	\$153,545,819.69	\$72.28
2019	40	2,059	\$142,535,078.24	\$64.01
2018	40	2,058	\$134,778,987.75	\$60.34
2017	40	5,711	\$114,431,469.20	\$52.07
2016	39	5,998	\$112,163,638.12	\$48.47
2015	39	5,966	\$93,391,949.39	\$47.69
2014	38	5,809	\$92,854,153.73	\$44.09
2013	38	5,681	\$89,270,898.75	\$41.94
2012	Not Listed in Annual Report	5,315	\$101,742,511.62	\$42.54
2011	37	4,951	\$97,499,515.69	\$43.26
2010	37	4,951	\$102,591,229.72	\$42.16
2009	37	4,392	\$89,129,809.24	\$41.42
2008	37	3,863	\$84,628,033.52	\$41.47

The causal factors behind this correlation are just as clear. The National Institute of Corrections has found the cost of keeping individuals over the age of 50 behind bars costs double the amount of an average prisoner (20). Aging is accelerated in the prison environment (21). Because of disadvantages before incarceration combined with shortcomings in prison health care and prison conditions, incarcerated people are considered elderly from the age of 50 (22). The Department of Justice found that elderly prison individuals cost more to incarcerate primarily due to medical needs, coupled with a lack of appropriate staffing and housing (23). The propensity of elderly prisoners experiencing violence, a lack of specialized care, and growing medical needs increases the social and fiscal costs of a graying prison population (24). For years, medical costs have ranked as the second highest expense category in ADOC's budget, behind personnel. Alabama's aging prison population requires increased attention and resources, placing more stress to an already strained prison system.

Using bivariate regression on Annual Statistical Report data from 2001 to 2021 (25), there is a clear image of the future of Alabama's fiscal issues (26). 84.4% of the variation in average daily system-wide inmate cost adjusted for inflation can be explained by the average age of ADOC's population. When the average age of ADOC's population increases by 1, the average daily system-wide inmate cost increases by \$5.06 (27). These results are statistically significant ($p=1.168e^{-07}$) (28). ADOC does not uniformly report other

relevant variables, adding to a national trend that prevents more detailed models (29). Unless Alabama embraces comprehensive, targeted reform, the social and financial burdens will continue to increase with the aging prison population.

ADOC Spending on Medical Services (2008-2021)



84% of the variation in average daily system-wide cost can be explained by the average age of ADOC's population.

The Human Impacts of Incarcerating the Elderly

Alabama's aging prison population has large financial implications, but those effects extend to systemic strain across the Alabama Department of Corrections and leave the elderly among the most vulnerable. This section analyzes the systemic strain that elderly prison populations bring along with the human toll.

An aging prison population brings along increasing financial strains, but that comes in conjunction with larger systemic concerns. In 2014, ADOC's Yearly Statistical Reports began including infirmary data, shedding light on healthcare trends (30). Admissions to on-site infirmaries have somewhat declined, but the number of days housed in those infirmaries slightly increased. Individuals are requiring longer amounts of time to be treated, which is to be expected of an increasingly elderly prison population.

FY Report	On-site Infirmary Admis.	# of days housed	Off-site Infirmary Admis.	# of days treated
2021	4,262	56,670	1,356	6,577
2020	Not Listed in Annual Report	Not Listed in Annual Report	Not Listed in Annual Report	Not Listed in Annual Report
2019	4,393	57,257	1,137	5,176
2018	4,151	49,725	924	4,607
2017	4,563	55,515	944	4,755
2016	4,206	52,780	895	4,321
2015	4,170	53,541	952	3,808
2014	4,854	51,721	851	3,096

As on-site infirmaries are overburdened by longer treatment times, they have had to resort to increasing off-site infirmary admissions. Since 2014, off-site infirmary admissions have risen 53.5%. Those individuals in off-site infirmaries remain longer (31), as the number of days housed increased 73.2% since 2014. An aging prison population requires longer, more attentive care. As such, ADOC's healthcare system will continue to be strained, requiring excessive reliance on off-site infirmary admissions.

While taxpayers foot the bill for aging prison populations, those inside the prison walls bear the brunt of the impact. Most elderly prisoners are only afforded a constitutionally minimal level of care under the Eighth Amendment's prohibition of "cruel and unusual punishments" (32). *Estelle v. Gamble* (1976) established that prisons must only show a lack of "deliberate indifference to serious medical needs" that "may result in pain and suffering which no one suggests would serve any penological purpose" (33).

Despite this low threshold, Alabama's prisons often fail to provide constitutionally adequate care, according to recent federal court findings. "Mentally ill ADOC prisoners, defined here as prisoners with serious mental-health needs, have suffered harm and are subject to a substantial risk of serious harm due to ADOC's inadequate mental-health care," a U.S. District Court determined in *Braggs v. Dunn*, calling the State's provision of mental health care to incarcerated people "horrendously inadequate" (34). Significant numbers of elderly prisoners are also in the class of people with mental illness who are covered in the *Braggs* litigation.





The Court also found ADOC's handling of overcrowding to be "objectively insufficient," noting that the agency "disregarded the harm and risk of harm caused by overcrowding and understaffing" (35). Unquestionably, Alabama's prison system bears systemic strain that prevents adequate healthcare, while breeding a dangerous environment that is conducive to harm.

Since the United States Department of Justice began investigating Alabama's unconstitutional prison conditions in 2016, the situation has not improved. The average age of ADOC's population has increased from 39 in 2016 to 42 in 2021 (36). That is the result of a 15.4% increase in prisoners aged 60 and above and a 7.2% increase in prisoners aged 51 and above (37).

15.4%
increase

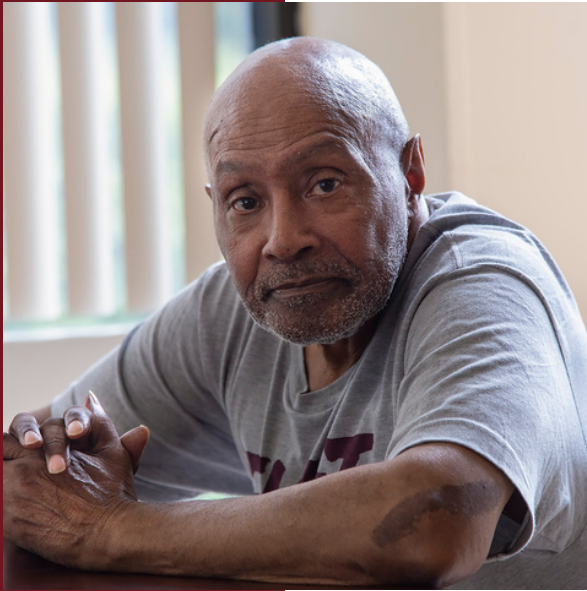
**Number of
ADOC
prisoners
aged 60 and
above
(2016-2021)**

To catch up to minimally adequate healthcare conditions, spending on Medical Services increased 64.8% over that same time period from \$112.2 million to \$184.9 million. Prisons are perilous places to grow old, with scarce specialized resources to address the needs of the frail, the wheelchair bound, and those with dementia or other age-related ailments. The chronic violence, assaults, weapons, illicit drugs, and staff corruption documented by the DOJ mean Alabama's prisons are more cruel and dangerous for elders than most despite the increased costs (38). As Alabama's prisons continue to hold older individuals, the fiscal and social costs will steadily climb.

64.8%
increase

**ADOC
spending on
Medical
Services
(2016-2021)**

Alabama's graying prison population will suffer the fate of their own existence behind prison walls. As elderly prison demographics continue to grow, healthcare spending and systemic strain will become increasingly crippling. The brunt of the impact will be felt by elderly prisoners who rely most on healthcare and special assistance. The systemic and human strain of an aging prison population is unsustainable, exposing the necessity of targeted action and reform.



Robert Cheeks'

life without parole sentence ensured that he was incarcerated in Alabama long after he had paid for his crimes and was no longer a danger to anyone.

Mr. Cheeks, who is 80 years old, spent his last two years of incarceration housed in Donaldson Correctional Facility's infirmary, alongside younger men recovering from beatings and stab wounds from the pervasive violence in the chaotic prison. Too old and frail to be safely housed in the general population, Mr.

Cheeks' condition meant that he was largely confined to the grim, cramped infirmary away from sunlight or fresh air. He so rarely moved about that he did not have proper shoes when he finally walked, ever so slowly, out of Donaldson's gates on July 22. He relied on a walker to make that final exit.

After nearly 38 years in prison, Robert Cheeks is free. But his case exemplifies the unintended consequences of Alabama's overreliance on life imprisonment.

Robert Cheeks was given a mandatory sentence of life without parole after being convicted of a 1984 robbery. He never pulled out a gun. No one was physically harmed. In fact, the victim's response was to chase Mr. Cheeks down the street following the robbery. His priors, non-violent offenses, including 3 forgeries that occurred in 1969, meant the judge had no choice but to impose a death-in-prison sentence pursuant to Alabama's Habitual Felony Offender Act (HFOA).



Robert Cheeks on his release day from Donaldson prison in July, 2022. He relied on a walker and assistance from Ronald McKeithen, Appleseed's reentry coordinator, to walk out of the prison. Mr. McKeithen, 61, and Mr. Cheeks, 80, were incarcerated together for decades.

From the beginning, Mr. Cheeks acknowledged the role drugs and alcohol played in his crimes. His father was sent to prison when he was young. Raised by an impoverished single mother, he fell into alcoholism and drug use, stealing to support his addiction. None of his offenses involved physical harm to another person.

Once incarcerated, even with no hope for release, Mr. Cheeks set about a course of self-improvement. He chose to expand his education by earning his GED. He took classes in accounting, typing, and automotive repair. He realized he loved poetry and became a Walt Whitman fan. He spent 30 years working in Donaldson's kitchen. Only once did he receive a behavior citation, for leaving the kitchen too soon one shift.

Mr. Cheeks stopped working in the kitchen because of his deteriorating health. In June 2020, he was diagnosed with cancer and underwent surgery to remove his prostate gland. His struggles with prostate cancer caused him to be hospitalized at Brookwood Baptist hospital for three months. That same year, Mr. Cheeks was diagnosed with debilitating joint and skeletal pain and inflammation, which confines him to the walker and forces him to walk with a slow, unsteady gait. His condition prevents him from stretching his fingers and causes shooting pain throughout his body and feels of electrical shock in his mid-section. He is unable to stand without aid, especially for long intervals like showering. Twice while housed in the general prison population, he fell in the shower.

Once situated in the infirmary, he became a favorite of medical staff, an affable individual known for imploring the young men surrounding him to be courteous to one another, preventing fussing that so quickly escalates into violent conflicts.

Mr. Cheeks posed no danger. Alabama Appleaseed took on his legal case and determined that under current Alabama law, he would have been eligible for parole in 1994. Given this fact, along with his age and medical condition, Alabama Appleaseed attorneys were successful in getting him re-sentenced to time served and **he was released from Donaldson, amidst cheers from prison staff. They all knew Robert Cheeks did not need to be there.**



Robert Cheeks celebrates his 80th birthday with members of Alabama Appleaseed's staff and other friends (September 2022).

Lessons From the Past

Significant bipartisan sentencing reform in 2006, 2013, and 2015 has reduced the number of younger individuals in Alabama's prisons by half over the last 15 years (39). Those reforms, however, were not retroactively applied (40). People sentenced prior to these reforms serve much longer sentences compared to the mostly younger people sentenced currently. As a result, one in every four of Alabama's prisoners are above the age of 50, many serving life and life without parole sentences (41). The Legislature's decision to forego retroactive application of sentencing reforms is particularly short-sighted given what we now know about aging prisoners— they are both the most expensive to house and the least likely to re-offend (42).

The honor dorms of Alabama's prisons eerily resemble retirement homes as older individuals serve out extreme sentences after decades of incarceration. Many are sentenced to life or life without parole under Alabama's Habitual Felony Offender Act, one of the harshest in the nation. Other Southern states limit the impact of recidivist statutes by only considering violent offenses (43), limiting the use of offenses committed by youth (44), and implementing parole eligibility (45). Alabama's Habitual Felony Offender Act offers none of these options, though it permits life imprisonment for crimes with no physical injury. This creates the perverse reality where someone with minor nonviolent prior offenses who commits a convenience-store hold up serves the same sentence as someone convicted of the murder of a child or a series of violent sexual assaults.

The Path Forward

As Alabama's prisons continue to house older individuals, the fiscal and social costs to all Alabamians will grow. Understanding the unsustainable nature of Alabama's aging prison population and how the situation has reached a critical boiling point exposes the necessity of reform. Short and long term solutions are available that would reduce fiscal and systemic strain, while recognizing the humanity of the elderly individuals behind Alabama's prison walls.

Any adjustments to reduce the elderly prison population will have substantial effects on ADOC's spending. Alabama Appleseed has, to date, successfully freed eight clients who had been sentenced to life without parole. Assuming each of these individuals live only to the age of 70, Alabama Appleseed's seven clients alone save the state over \$2 million (46). This estimation assumes average daily system-wide inmate cost stays constant, meaning this number is likely a lower estimate as costs continue to rise with their increasing age. Released individuals also have the opportunity to seek employment and contribute to the state's economy more broadly.



Appleseed client Alonzo Hurth, age 71, praying upon being released from prison after 27 years. He was sentenced to die in prison for a 1994 robbery with no physical injury. If he had been sentenced under current Alabama sentencing laws, he would have spent 3 to 5 years in prison.

The short term, easy solution is to pass a “second look” bill that would provide a mechanism for judges to review the sentences of people serving life and life without parole under Alabama’s Habitual Felony Offender Act, who have already served decades and have demonstrated rehabilitation. Since previous sentencing reforms were not retroactive, a bill of this nature would both address antiquated sentences while reducing sentencing discrepancies. It would create sentencing fairness for older people who have served the longest amount of time behind bars.

Expanding medical furlough laws to work as intended can also immediately alleviate systemic strain while recognizing the humanity of the individuals in Alabama’s prisons. Allowing those over the age of 60 who pose no danger to the public to use geriatric parole would show compassion for individuals who have proven they are not the same person they were at age 20 or 25. It would also follow states like Arkansas, which allows all life sentences to be parole eligible at age 55, or Oklahoma which more generally allows parole eligibility on all life sentences. This change would prevent Alabama taxpayers from footing the medical bill by shifting its health care costs to national Medicare and Medicaid programs. Because most individuals who have been incarcerated for decades are indigent, they qualify for Medicaid, which can pay for nursing home care for the most infirm (47). Until medical furloughs are used as intended, older individuals will continue to die behind bars when they pose no threat to society.



Michael Schumacher, 61, served 36 years in Alabama prisons for his role in a 1984 robbery in Russell County, standing lookout with a broken pool cue. His original life without parole sentence was based on offenses that occurred when he was 17. Since his release in 2021, Michael has completed job training, earned a certificate as a logistics technician, and gotten married.



Alvin Kennard was released from prison in 2019 at the age of 58, after his life without parole sentence was reduced to time served. For the last three years, he’s been a loyal employee at Town & Country Ford in Bessemer. Rather than costing the state tens of thousands of dollars to incarcerate him until he died, Mr. Kennard contributes to Alabama’s economy.

Endnotes

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27. The lower 95% confidence interval is \$3.91 and the upper 95% confidence interval is \$6.21.
28. When inflation is not considered, the results are stronger. Regression results without inflation can be found here: <https://docs.google.com/spreadsheets/d/1psDodLdAiCqBXWmQD0m8EGwie7P9UPVsZO5TjNjbUwU/edit?usp=sharing>
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42. Inimai Chettiar, Will Bunting, and Geoff Schotter "At America's Expense: The Mass Incarceration of the Elderly," American Civil Liberties Union (2012) p. 12-28. <https://www.aclu.org/report/americas-expense-mass-incarceration-elderly>
43. North Carolina, South Carolina, Tennessee, Texas, and Virginia only consider certain prior offenses to enhance, specifically violent and sex-related offenses separate instances in their Habitual Felony Offender considerations. Carla Crowder and Alex Laganke, "Condemned," Alabama Appleseed Center for Law and Justice (2021) p. 17. <https://www.alabamaappleseed.org/wp-content/uploads/2021/02/Alabama-Appleseed-Condemned-Report-WEB.pdf>
44. Kentucky, North Carolina, and Tennessee limit the ability to consider charges as juveniles under Habitual Felony Offender laws. Carla Crowder and Alex Laganke, "Condemned," Alabama Appleseed Center for Law and Justice (2021) p. 17. <https://www.alabamaappleseed.org/wp-content/uploads/2021/02/Alabama-Appleseed-Condemned-Report-WEB.pdf>
45. Oklahoma provides parole eligibility for all life sentences. Arkansas provides parole eligibility for all life sentences excluding repeat sex offenders and South Carolina provides parole eligibility for all life sentences excluding murder. Carla Crowder and Alex Laganke, "Condemned," Alabama Appleseed Center for Law and Justice (2021) p. 17. <https://www.alabamaappleseed.org/wp-content/uploads/2021/02/Alabama-Appleseed-Condemned-Report-WEB.pdf>
46. This number was found by multiplying the average daily system-wide inmate cost (\$82.64) with the 25,320 total days that would be saved from incarceration if all clients reach the age of 70 from the day they were released. The exact estimate is \$2,092,444.80.
47. Alabama Admin. Code r. 410-2-2-.06 (Last visited Aug. 4, 2022) <https://casetext.com/regulation/alabama-administrative-code/title-410-state-health-planning-and-development-agency-alabama-state-health-plan-2014-2017/chapter-410-2-2-2020-2023-alabama-state-health-plan-health-priorities/section-410-2-2-06-health-care-for-the-medically-indigent>

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