

# Prison construction bill creates complexities for federal case



**Kelsey Davis**, *Montgomery Advertiser* 11:24 p.m. CDT April 17, 2016



*(Photo: Mickey Welsh / Montgomery Advertiser)*

After nearly two years of litigation, a federal lawsuit claiming the Alabama Department of Corrections regularly failed to provide inmates with health care is [nearing a partial settlement](#), which would require ADOC to reconstruct some of its facilities.

Mapping out that reconstruction has grown complicated since February, however, when Gov. Robert Bentley [announced a plan](#) to build four new prisons, and close most existing ones.

The suit was filed nearly two years ago by the Southern Poverty Law Center and the Alabama Disabilities Advocacy Program against ADOC, then-ADOC Commissioner Kim Thomas (current Commissioner Jefferson Dunn has since inherited the suit) and Ruth Naglich, ADOC associate commissioner of health services.

## THE MONTGOMERY ADVERTISER

Partial settlement reached prison suit

# Partial settlement reached prison suit



**Kelsey Davis**, *Montgomery Advertiser* 10:43 a.m. CDT March 18, 2016

A partial agreement has been reached in a federal lawsuit filed on behalf of 25,000 Alabama inmates who attorneys say have been denied medical treatment.

In 2014, the Southern Poverty Law Center and the Alabama Disabilities Advocacy Program filed the 140-page complaint against the Alabama Department of Corrections, then-ADOC Commissioner Kim Thomas (current Commissioner Jefferson Dunn has since inherited the suit) and Ruth Naglich, ADOC associate commissioner of health services.

Forty-two prisoners were named as plaintiffs in the suit, though the suit is still awaiting class action certification.

MHM Correctional Services, Inc. and Corizon Health, Inc, which were contracted by ADOC, are also movants in the suit.

The complaint contains a laundry list of allegations rooted in ADOC's "routine and systematic failure" to provide adequate medical care, which the complaint says has led to the death and severe injury of multiple inmates.

A significant portion of the suit was aimed at ADOC's noncompliance with the Americans with Disabilities Act.

It states that prisoners with disabilities are often housed in facilities that do not accommodate them, and illustrates this by citing an instance when an inmate in a wheelchair had to maneuver deeper into Kilby Correctional Facility during a 2014 fire to access a ramp.

Defendants have denied most of the allegations, stating in a court filing that the plaintiffs' complaint, "reveals inflammatory, self-serving statements that inaccurately characterize inmates' medical and mental health conditions, ... and demonstrate a basic misunderstanding of technical medical or mental health terminology."

The portion of the suit that addresses solely disabled inmates is that part that's initially been settled.

[Mapped out in the settlement](#) is an outline for reform with treatment of disabled inmates - including improved housing, more thorough screening and the implementation of a tracking system.

Full copies of the settlement agreement will be made available to inmates in all ADOC prison libraries, a court document states.

"This agreement is an important commitment by the Alabama Department of Corrections to address the discrimination and hardship these prisoners have faced for far too long," said Maria Morris, SPLC senior supervising attorney in a press release. "Prisoners with disabilities must have an opportunity to serve the sentence they have received – not the sentence they must endure because the state fails to respect their legal rights."

The agreement is awaiting approval by U.S. District Judge Myron Thompson, who will hear oral arguments today for motions filed regarding this suit.

Three of those motions were filed by the plaintiffs. They ask Thompson to compel the defendants and movants to provide "improperly withheld documents" from Corizon, documents relating to Corizon's mortality review and documents about prisoners who were sent to the E.R. or hospital.

The remaining elements of the lawsuit, which claim ADOC's "indifference to the serious medical needs of prisoners in their custody" and "failure to provide mental health care" to inmates, are expected to go to trial Oct. 17.

## Bentley: 'Slam the door' on Tutwiler, men's prisons

**SOUTH UNION STREET**

**Brian Lyman, Montgomery Advertiser** 6 p.m. CST February 2, 2016

Gov. Robert Bentley will call for the closing of the state's prisons – including troubled Julia Tutwiler Prison for Women – and the construction of four replacement facilities in his State of the State address tonight.



Inmates lay on beds in the intake sleeping area at Kilby Corrections Facility in Montgomery, Ala., on Friday, Sept. 4, 2015. The facility is currently at 301 percent of its intended capacity. Kilby is currently housing 1,448 inmates and was designed for 440. (Photo: Albert Cesare / Advertiser)

"We believe with four new modern prisons, we can take care of the vast majority of prisoners in this state," the governor said in an interview Monday. "I believe this will solve the prison issue for the next thirty years."

The ambitious plan could cost between \$700 million and \$800 million, and Bentley will need to convince legislators not only to borrow the money, but allow the closing of facilities in their districts, which could increase travel times for those involved.

But the governor Monday said consolidation could address many of the problems plaguing the state's correctional system, which is at 182 percent capacity and has been scarred by violence in recent years.

The governor said "you absolutely cannot" improve the safety in the system by staying in the old facilities.

"We don't even have locks on some of the doors we should have," he said. "They are unsafe for our guards, they are unsafe for those that are in prison – really, it's unsafe for society."

Consolidation could reduce costs by eliminating duplicated services at the prisons, he said. New architecture and electronic systems could make current staffing levels -- now around 55 percent of authorized needs -- provide greater coverage of the prisons, while reducing overtime.

Above all, said Bentley, the new facilities would be safer than the old ones. Inmates in Tutwiler, [according to a Department of Justice lawsuit the state settled last year](#), were subject to “the high risk and threat of sexual abuse by staff,” including “rape, fondling, voyeurism and sexually explicit verbal abuse.” Under the terms of the settlement, the state must provide adequate staffing and training to corrections officers and ensure the facility is in compliance with the Prison Rape Elimination Act.

Bentley said that the state could renovate Tutwiler, but that he wanted to “slam the door shut” on the troubled facility. Building a new women’s prison, he said, would not save as much money as the men’s project, but it “was the right thing to do.”

“We have dealt with the rape situation, we have dealt with so many problems at Tutwiler,” he said. “We’re making progress, we really are. (But) I just cannot in good conscience talk about building three new modern prisons for the men and not have an adequate, modern prison for the females.”

Violence also infects the men’s prisons. Six inmates were killed at St. Clair Correctional Facility between 2011 and 2014, and [a riot that erupted at the prison last April](#) left one officer and 15 inmates injured. Allegations of physical or sexual violence have been directed at three other men’s prisons, including Elmore County Correctional Facility.

The three new men’s prisons would hold about 4,400 inmates each, the governor said, while the new women’s facility would hold about 1,200. If built, the prisons would have a capacity of 14,400 inmates – more than the 13,318 the system was designed to hold, but less than the 24,400 inmates the system held last October.

The governor last year signed legislation [aimed at reducing the state’s prison overcrowding](#) by making greater investments in parole and probation, and reducing recidivism. The law also attempted to reduce penalties for technical violations of parole and prison time for those convicted of Class C felonies, while requiring supervision upon release. Bentley said Monday he remained committed to those measures and additional investments.

“This is a major issue,” Bentley said. “We are the worst system in the country. We will become the best. And we will become a model for the country after this.”

No sites have been selected, though Bentley indicated he would prefer to keep them near existing prisons to reduce travel time for correctional officers.

Bentley will also seek to let out contracts for the prison using a design-build process that would assign responsibility for design and construction to a single entity. The governor said he envisioned the prisons built almost identically, with the hope of reducing costs, with the women’s prison built first.

“We want to do something before this year is out,” he said. “I want to see the last prison started before I leave office (in 2019).”

Bentley will deliver the State of the State speech at 6:30 p.m.

It contains a laundry list of allegations rooted in ADOC's "routine and systematic failure" to provide inmates adequate medical care, which the complaint says has led to the death and severe injury of multiple inmates.

A narrow sampling of those allegations includes claims that an inmate didn't receive appropriate medical care after he was stabbed, that another has a grapefruit-sized hernia which didn't receive treatment, and that one was persuaded to sign a "Do Not Resuscitate" order - only to later be denied breathing treatments and medications because of it.

Much of the suit was aimed at ADOC's non-compliance with the Americans with Disabilities Act.

#### THE MONTGOMERY ADVERTISER

Judge holds off on approving prison suit partial settlement

## Judge holds off on approving prison suit partial settlement



**Kelsey Davis, Montgomery Advertiser** 12:19 a.m. CDT March 19, 2016

U.S. District Judge Myron Thompson on Thursday did not approve the partial settlement in a suit filed over inadequate medical treatment care of inmates.

A significant portion of the suit alleged sweeping noncompliance from the Alabama Department of Corrections regarding the Americans with Disabilities Act.

This portion of the suit that solely addresses disabled inmates is that part that's initially been settled, pending Thompson's approval.

But Thompson said he sees problems "all the way around" with the [current settlement](#).

In essence, the [settlement](#) lays out broad strokes for reform — including improved housing for disabled prisoners and more thorough screening to determine which inmates have disabilities.

It lacks a detailed plan for exactly how that reform will be carried out.

"If you can't come up with a plan, the whole thing collapses," Thompson said in a hearing.

Attorneys have until April 15 to submit the plan, though other potential hurdles also stand in the way of carrying out the settlement.

"What if (ADOC) doesn't have the money?" Thompson asked. He also asked how possible [prison consolidations](#) could affect the settlement.

Projections for the reform's cost were not discussed at the hearing. Thompson will reconsider approving the settlement once the plan has been submitted.

In 2014, the Southern Poverty Law Center and the Alabama Disabilities Advocacy Program filed the 140-page complaint against ADOC, then-ADOC Commissioner Kim Thomas (current Commissioner Jefferson Dunn has since inherited the suit) and Ruth Naglich, ADOC associate commissioner of health services.

Forty-two prisoners were named as plaintiffs in the suit, though the suit is still awaiting class action certification.

The complaint contains a laundry list of allegations rooted in ADOC's "routine and systematic failure" to provide adequate medical care, which the complaint says has led to the death and severe injury of multiple inmates.

Defendants have denied most of the allegations, stating in a court filing that the plaintiffs' complaint, "reveals inflammatory, self-serving statements that inaccurately characterize inmates' medical and mental health conditions, ... and demonstrate a basic misunderstanding of technical medical or mental health terminology." The defendants have also stated in filings that their willingness to settle does not mean they admit to any wrong doing or law breaking.

Remaining elements of the lawsuit, which claim ADOC's "indifference to the serious medical needs of prisoners in their custody" and "failure to provide mental health care" to inmates, are expected to go to trial Oct. 17.

It states that prisoners with disabilities are often housed in facilities that do not accommodate them, and illustrates this by citing an instance when an inmate in a wheelchair had to maneuver deeper into Kilby Correctional Facility during a 2014 fire to access a ramp.

Defendants have denied most of the allegations, stating in a court filing that the plaintiffs' complaint, "reveals inflammatory, self-serving statements that inaccurately characterize inmates' medical and mental health conditions, ... and demonstrate a basic misunderstanding of technical medical or mental health terminology."

After it was filed, U.S. District Judge Myron Thompson split the case into two phases.

Phase one, which is nearing a settlement, includes claims brought against ADOC for not complying with the ADA and other claims relating to lack of mental health care. Phase two, which is scheduled for trial in Oct., includes all remaining claims, such as ADOC's "indifference to the serious medical needs of prisoners in their custody."

The parties have reached a settlement for phase one, but are still working on a plan that would map out how the settlement is to be implemented.

### **The Proposed Settlement**

As part of the settlement, ADOC said it would provide adequate ADA-compliant cells to house prisoners with disabilities - which will require construction.

This is where difficulties created by the prison construction bill arises.

“The uncertainty of (the prison construction bill) exacerbates the complexity of any settlement plan,” said Bill Van Der Pol, lead counsel for ADAP.

#### THE MONTGOMERY ADVERTISER

Senate committee approves prison bill -- with Link:

caveats<http://www.montgomeryadvertiser.com/story/news/politics/southunionstreet/2016/03/16/senate-committee-approves-prison-bill----caveats/81839954/>

## Senate committee approves prison bill -- with caveats

SOUTH UNION STREET

Brian Lyman, *Montgomery Advertiser* 2:41 p.m. CDT March 16, 2016

Silent Session takes a look at the \$800 million proposal to build four new prisons; the opportunities it could create and the criticisms directed at it. Brian Lyman / Advertiser

A Senate committee Wednesday approved a bill that would allow the state to borrow up to \$800 million to build four new prisons in Alabama.

But many senators hinted the bill would not take another step without assurances Alabama companies would get a chance to build the facilities.



Inmates at the Julia Tutwiler Prison for Women in Wetumpka in 2013. The state of Alabama has entered an agreement with the U.S. Department of Justice aimed at ending sexual abuse and harassment in the prison. (Photo: File)

“I think this committee expects, expects the Alabama contractors to be fully involved in this process,” Sen. Jabo Waggoner, R-Vestavia Hills, told representatives from Gov. Robert Bentley’s office.

Bentley and Alabama Department of Corrections Commissioner Jeff Dunn have proposed building three new prisons for men and one for women while closing all but two of the existing facilities. Both [tout the construction proposal](#) as a way to improve safety in the system and bring accelerating Corrections costs under control.

Members of the Finance and Taxation General Fund Committee supported the concept, and only one member – Sen. Paul Sanford, R-Huntsville – voted against it. At a press conference after the vote Wednesday, Bentley said he hoped to see the Senate pass the bill "in the next week or so."

"We have to do this as quickly as possible in the building process, and we have to save taxpayers as much as we can," he said.

The state's prisons were at 182 percent capacity in December, according to the Department of Corrections. The overcrowding has contributed to violence throughout the system. [Riots broke out at Holman Correctional Facility in Atmore last weekend](#), and other facilities have seen violence. The state last year [settled a lawsuit with the U.S. Department of Justice](#) over sexual abuse at Julia Tutwiler Prison for Women in Wetumpka.

"My thing is, we've got to start somewhere," said Sen. Priscilla Dunn, D-Bessemer. "You've got to do something about it."

But members also expressed concerns with the proposed method of building the prisons. The bill would award the contract for the facilities under a concept called "design-build." Under design-build, a single firm handles design and construction of a project.

Smaller contractors have criticized the proposal, saying traditional methods of bidding on projects would save money and get state firms involved.

Many senators on the committee shared those concerns with Acting Finance Director Bill Newton.

"I do want someone to explain to us how this process will work here, because I did not find anywhere in the bill how we are going to utilize local contractors to create those jobs," said Sen. Linda Coleman-Madison, D-Birmingham, who supports the construction of prisons.

Newton told the committee the governor's office expected the design-build process to save between six and 10 percent of the construction costs, and cut completion time by a year. He said the governor wanted to give "extra points" to Alabama firms that may bid on the proposal.

"The governor was quite clear to Commissioner Dunn and me about the issue of local companies," he said. "That is a priority of his."

Bentley said at the press conference he wanted as many firms in Alabama to participate in the process as possible. He also defended design-build as the best way to save time and money.

"There will be a design that's already been tested in other states," he said.

But other senators made it clear they expected changes to the bill to address the local contractor issue. Sen. Bill Holtzclaw, R-Madison, suggested the governor's office should consider a "Plan B" if the bill failed.

Sen. Billy Beasley, D-Clayton, who has three prisons in his district, said the facilities were a source of employment and expressed concerns about closings.

"It's our Mercedes, it's our jobs, it affects our local towns and counties," he said.

Newton said he expects decisions on the sites for the new prisons "in the second half of the year." Bentley said he expected the prisons to be built on land already owned by the state.

Bentley signed legislation last year that aims to reduce prison overcrowding by making new investments in parole and probation and post-release supervision, while limiting incarceration for certain crimes and parole violations.

Supporters of the proposal say that the new facilities will need fewer corrections officers to secure, which could increase safety for correctional officers and inmates and cut down on overtime paid by the department. Backers also say the new prisons would provide space for more rehabilitative services.

On their own, the new facilities would not solve the state's prison overcrowding crisis, and would bring total capacity between 15,000 and 16,000 beds. In December, Alabama had just over 24,000 inmates in a system designed to hold 13,318. Supporters hope that the construction, combined with ongoing reform efforts, will bring the system's population to a level acceptable to a federal court.

State officials have also expressed concern about the bill using a revenue stream for the Department of Human Resources and the Department of Veterans' Affairs [as a security to lower the interest rate on the bonds](#). The committee approved a Holtzclaw amendment that would require the Legislature to replace the money for the DHR and VA should the revenue streams not come through.

Instead of negotiating just one settlement between 42 named plaintiffs and five defendants (one of which is a state agency), attorneys are juggling three.

One version of the settlement plans for how to move forward if the proposed prison bill fails, and no new prisons are constructed.

A second version details what to do if all four proposed prisons are constructed. The last version outlines what will happen if some new prisons are built, but not all four.

The bill, which has been [approved by the Senate](#), is now awaiting approval from the House of Representatives.

"It (working with three hypothetical settlements) makes things very, very complicated," Van Der Pol said.