SPAC
Illinois Sentencing Policy Advisory Council

March 3, 2017 – SPAC Regular Meeting Materials

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Illinois Sentencing Policy Advisory Council (SPAC)
Regular Meeting

AGENDA

Friday, March 3, 2017
10:30 a.m. – 12:30 p.m.

Adler University
17 N. Dearborn Street, 15th Floor (Community Hall)
Chicago, IL

CALL-IN NUMBER:
650-479-3208
Passcode: 627 856 772
Password: 12345

THERE IS NO VIDEO CONFERENCING FOR THIS MEETING

10:30 – 10:45 **Welcome, Introductions, Agenda Overview, Approval of 2017 Meeting Dates and Approval of 9/2016 Meeting Minutes**
Hon. Gino DiVito, SPAC Chair
Patrick Delfino, ICJIA Vice Chair

10:45 – 12:15 **Illinois State Commission on Criminal Justice & Sentencing Reform Final Report Panel Discussion**

Moderator: John Maki, Executive Director ICJIA

Rodger Heaton, Chair of Governor's Commission on Criminal Justice & Sentencing Reform – The goal and the process.

Dave Olson, Loyola University – The role of data analysis in the process, addressing both levers.

Elena Quintana, Adler University & Kathryn Bocanegra, Institute for Nonviolence Chicago – Empowering the community to respond and help control crime and addressing trauma's role in the cycle of violence.

Megan Alderden, ICJIA & Kathryn Saltmarsh, SPAC – Implementing change, allocating resources & creating the feedback loop.

- *How we pay for public safety*
- *Creating a robust feedback loop*
- *The importance of local design and control*

12:15 – 12:30 **Public Comment & Adjourn**

Illinois Sentencing Policy Advisory Council
Regular Meeting Minutes
September 16th, 2016 10:00AM – 1:30PM

Location: Treatment Alternatives to Safe Communities (TASC)
700 South Clinton Street
Chicago, IL

Members Present – Rich Adkins (for Michael Tardy), Stephen Baker, Kathryn Bocanegra, Jim Chadd (for Michael Pelletier), Gino DiVito (Chairperson), Marcus Evans, Craig Findley, Annie Fitzgerald, Michael Glick, John Maki, Margo McDermond, Stuart Palmer, Kwame Raoul (Vice Chair), Alan Spellberg, Don Stemen, Gladyse Taylor, Warren Wolfson (Vice Chair), and Kristen Ziman.

Members Present by Phone – Jason Barickman, Nicholas Kondelis, and Stewart Umholtz.

Members Absent – Julian Thompson.

Non-Members Present – Sherie Arriazola, Laura Brookes, Peter Coolsen, Mary Ann Dyar, Sav Felix, Yasmine El-Gohary, Michael Elliott, Roger Franklin, Candice Jones, Brian Kenner, Stephanie Kollmann, Era Laudermilk, Korynna Lopez, Janelle Prueter, Sara Orlan, Cesar Orozco, Ben Ruddell, Michael Toomin, Kathy Saltmarsh, Nate Inglis Steinfeld, Paula Wolff, and Ashley Wright.

Non-Members Present by Phone – None.

Welcome and Introductions

Chairperson DiVito called the twenty-fourth regular meeting of the Illinois Sentencing Policy Advisory Council to order at 10:00 a.m. Chairperson DiVito gave the opening remarks, including:

- Introduced Rep. Margo McDermed who is replacing Rep. John Anthony. Rep. McDermed was elected to her seat for a full term in November, 2014. She is a graduate of DePaul University College of Law, and has a varied career including practicing corporate law for 30 years, serving as the Frankfort Township Trustee and Clerk, and as Will County Board Member. We look forward to benefitting from her county government perspective on the administration of criminal justice.
- Provided an overview of the agenda and purpose of the meeting, focusing on three major topics that were generated by the work SPAC did during this past legislative session on several sentencing proposals, as well as the research work it has provided to the Governor's Commission on Criminal Justice and Sentencing Reform. First, TASC will describe a potentially transformative policy change, the State's application for an 1115 waiver for Medicaid. Second, the SPAC research team is working on an update of the general overview of trends in felony sentencing that was first written by Dr. Dave Olson in 2011. Our newest staff member, Yasmine El-Gohary, has been doing the analysis from that report and will present on the more recent data. Third, Nate & Kathy will walk us through their recent analysis of Illinois Three Strikes laws and how repeat gun offenses are sentenced. This research was sparked by a few pieces of legislation filed this year.

Vote: Approval of the meeting minutes from the June 17, 2016 SPAC meeting

Stephen Baker, moved to approve the minutes, seconded by John Maki. The minutes from the June 17, 2016 SPAC meeting were approved by unanimous voice vote.

Illinois' 1115 Medicaid Waiver Proposal Update

Sherie Arriazola, TASC Administrator, Medicaid Policy and Program Development, provided the Council with an update on the State's Behavioral Health Transformation, which includes the filing of the 1115 Waiver Application. A draft of the State's application was released for public comment on August 26, 2016 and later updated on September 2, 2016. The waiver was provided to all Council members. If the waiver is approved, the federal government will waive certain Medicaid requirements to allow for various innovations to occur in Illinois' Medicaid program. Illinois' application focuses specifically on behavioral health, and includes provisions focusing on transitioning individuals from correctional care to community based care upon release from Cook County Jail or the Illinois Department of Corrections (IDOC). This includes the funding of services rendered prior to release, such as assessments, treatment planning, and linkage services, as well as medication-assisted treatment at select facilities. Further, the State is proposing to expand the number of substance use and mental health services available under Medicaid to include substance use case management, screening, brief intervention, and referral to treatment (SBIRT), recovery coaches, clinically managed detox, methadone, and most notably an exception to the IMD exclusion (an Institutions for Mental Diseases (IMD) limit on use of Medicaid financing for residential treatment facilities with more than 16 beds) for both substance use and mental health residential facilities for a period of up to 30 days.

SPAC Trends Analysis Update and Discussion

Yasmine El-Gohary, SPAC Research Analyst, began her presentation by reminding the Council that back in 2011 and 2012, SPAC published two summary reports on key trends in Illinois' felony sentencing. By looking retrospectively, the reports identified some of the forces driving the dramatic increases in probation and prison populations as crime rates decreased in the State. The forces behind the dramatic increases in probation and prison populations are complex and involve multiple levels of government and components of the justice system. SPAC reported, "Changes in correctional populations are driven by changes in the legal classification of crimes and the sentences available for those crimes, crime patterns and arrest practices of the police, prosecutorial charging and plea decisions, judicial sentencing decisions, and correctional supervision and release practices." Either individually or in combination, in Illinois over the past two decades these forces have led to significant increases in probation and prison sentences, and thus correctional populations, requiring substantial expenditures of public funds.

The Crime Reduction Act of 2009 required the use of risk and needs assessment in IDOC and created Adult Redeploy Illinois, a performance-incentive funding program that incentivizes local jurisdictions to divert people from prison. Both statutes focused on the importance of implementing evidence-based practices to produce better outcomes. The question is, have we made progress? If progress has not been made, what must we do to achieve the new goals of safely reducing the prison population by 25% and sustaining that reduction over time?

This briefing returns to the original retrospective and provides an updated review of the sentenced populations and the forces that influence them. In addition to updating past work with more recent data, a summary of the financial trends in the criminal justice system and a baseline population projection of what the population is likely to be if reforms that directly address the drivers of the sentenced population are not enacted are included. These additions demonstrate that current policies and practices, which are shaped by historical practices, have

important implications for improving public safety and for how we budget and plan financially to produce better outcomes in Illinois.

Updates from SPAC Partners

Illinois Criminal Justice Information Authority (ICJIA): Director John Maki reminded everyone that ICJIA is always engaged in supporting ARI, SPAC, and the Illinois State Commission on Criminal Justice and Sentencing Reform. ICJIA has been heavily involved in providing research assistance to aid in the Governor's Commission's work, but in addition to the agency's normal duties, it also will be staffing two newly created task forces: the Law Enforcement Information Task Force *(P.A. 99-0874)* and the Sex Offenses and Sex Offender Registration Task Force *(P.A. 99-0873)*.

Director Maki went on to say that ICJIA is now the State's lead agency in the President's Data-Driven Justice Initiative. In order to break the vicious cycle of incarceration, the current Administration has launched the Data-Driven Justice Initiative with a bipartisan coalition of city, county, and state governments who have committed to using data-driven strategies to divert low-level offenders with mental illness out of the criminal justice system and to change approaches to pre-trial incarceration so that low risk offenders no longer stay in jail simply because they cannot afford a bond. These innovative strategies, which have measurably reduced jail populations in several communities, help stabilize individuals and families, better serve our communities, and, often save money in the process. Director Mary Ann Dyar of ARI is currently working on putting together a conference ICJIA will be hosting in December. The hope is to listen and learn from local and state officials, private sector companies, nonprofits, and community organizations about the new, specific, and measurable steps that they are ready to take to further the development of a smarter, more data-driven criminal justice system.

Adult Redeploy Illinois (ARI): ARI Program Director Mary Ann Dyar provided an update of funding, site statistics, and current site issues. As of the last SPAC meeting, ARI was struggling to survive during the state budget impasse. The good news is that ARI was one of a few programs included in the stopgap budget passed on June 30th, and that from two sources the appropriation is sufficient to cover all sites' SFY16 expenses and SFY17 grant awards for continuing sites. In other words, ARI is fiscally stable through June 30, 2017. However, ARI did not emerge from the impasse unscathed. Three of ARI"s 21 sites (Kane, Kankakee, and McLean) were lost, and several other sites suffered severe cutbacks that will take months from which to recover. Some sites have permanently scaled back their programs. As a result, enrollments last quarter were down 52% from the average of prior quarters. Over the next several months, ARI will be helping with ramp-up efforts, and offering a planning grant opportunity to continue bringing new sites on-board. ARI is continuing to collect information from its sites about the impact of the impasse and what it needs to restore its programs. Additionally, ARI is conducting "exit interviews" with the three sites that have elected not to continue, to find out why they left, what are lasting impacts from ARI investments and what it might take to bring them back into the ARI network.

Several sites noted that multi-year grants are needed, and expressed support for expanding eligibility to all probationable offenses subject to the screening and assessment processes at the local sites rather than limiting participation to non-violent offenders. This eligibility expansion proposal SPAC raised has received support in principle from our Oversight Board. In pursuit of one of our strategic plan goals—"ARI will support community-led justice efforts consistent with ARI principles"—staff is assisting with the implementation of the Governor's Commission recommendation for criminal justice coordinating councils statewide, as well as assisting with the Graduated-Reentry Initiative, community justice pre-investment/reinvestment strategies, data-

driven justice projects focused on "super-utilizers," and the development of a toolkit for community involvement in adult diversion programs featuring case studies from ARI sites.

Last month, ARI staff presented at the American Probation and Parole Association (APPA) national training institute in Cleveland about how an ARI-type program could be replicated in other jurisdictions. Our greatest lesson learned is the importance of our relationship-oriented approach, which sustained us through the budget impasse.

Risk Assets Needs Assessment (RANA): IDOC Assistant Director Gladyse Taylor began with an update on the implementation status of Offender 360 and the Risk and Needs Assessment (RANA) tool. The first part of the Offender 360 process began this past December when IDOC launched Offender 360. To do this task, IDOC converted its 40 year old mainframe to a state-of-the-art cloud-based solution for offender management. Offender 360 will allow IDOC to both receive information from committing counties and other sources, which will better inform the intake and classification processes. This new tool in turn will also help with determining what treatment and programming are best for the offender and will also allow IDOC to send this information back to the counties to which offenders are released from an IDOC facility. In conjunction with Offender 360 implementation, there are three pilot programs in operation to help IDOC and Illinois counties reduce the $50 million in annual intake costs and streamline the sharing of offender information so there is no duplicative work performed. The pilot programs will also look at the link between jails and health care management services in those counties, with a goal of performing evaluations on the local level and not wait until the intake process with IDOC. The pilot projects are funded through a federal grant from the U.S. Department of Justice. Winnebago County's pilot program is nearing completion, Cook County's pilot program is just underway with the hope of completion by June of next year, and the third pilot will be up and running in Lake County beginning early next year. The intention is to utilize the money saved from this process to improve IDOC's current and potential programming options.

RANA is well underway, and the federal funding that came through allowed IDOC to keep the implementation moving forward. Assistant Director Taylor hopes to have the first group of state-funded social workers on staff by November 1, and it is their plan to bring on additional staff every 90 days until the staffing goal is realized. IDOC is now training staff statewide on core correctional practices, which will help to change the culture at IDOC from essentially punitive, to a balance of both treatment and security. Lastly, Assistant directory Taylor relayed that electronic scoring for all offenders has been targeted for April 1, 2017.

SPAC Overview of Illinois' Habitual Offender Laws and Discussion

Nate Inglis Steinfeld, SPAC Research Director, provided the Council with an overview of Illinois' habitual offender laws. Steinfeld determined that many states have some form of "three strikes" laws that increase incarceration terms for offenders with at least two prior convictions. These laws, sometimes called habitual criminal or recidivism laws, are intended to increase public safety by incapacitating for longer periods those convicted of numerous offenses over time. Illinois approaches habitual offender laws through both an offense, Armed Habitual Criminal, *720 ILCS 5/24-1.7*, and through the Habitual Criminal sentence enhancement, *730 ILCS 5/5-4.5-95*. Both laws allow for more punitive sentences after three or more convictions. As we have seen with our statutory definitions of violent crime, there is some overlap in terms. And, within those terms, the people who are eligible for these enhancements may be sentenced under one or the other, but our knowledge of how the overlap actually works is limited.

This year, SPAC undertook an analysis of Illinois' three strikes laws. It began as an analysis Senate Bill 3292, which, among other reforms, offered new limitations for the use of the habitual criminal sentencing provision. Although SPAC was unable to complete the bill's fiscal impact analysis due to data limitations, SPAC continued the analysis for purposes of developing a Research Report on this topic. The primary goal is to describe this current sentencing structure and how it is used in Illinois. Because of data limitations, SPAC estimates which individuals may have been eligible for the Illinois version of the three strikes laws based on Illinois criminal history. The report then describes the offense and criminal history characteristics, sentences, and overlap between these laws. The armed habitual criminal offense is technically unrelated to the habitual criminal sentencing provisions. Despite similar names, the armed habitual criminal is an offense for which individuals may be arrested, charged, and convicted. The armed habitual criminal statute has similarities with the habitual criminal sentence, but neither law specifically references the other.

The SPAC research team will continue working on this report, which will be distributed to SPAC members and posted on our website upon completion.

New Business

Chairperson DiVito reminded members that the next regular SPAC meeting will take place on Friday, November 18.

Adjournment

Gladyse Taylor, moved to adjourn the twenty-fourth regular meeting of the Sentencing Policy Advisory Council, seconded by Kwame Raoul. The twenty-fourth regular meeting of the Sentencing Policy Advisory Council was adjourned at 1:34 p.m. by unanimous voice vote.

Kathryn Saltmarsh
Executive Director
217-558-4749
Kathy.Saltmarsh@Illinois.gov

Proposed 2017 SPAC Regular Meeting Dates

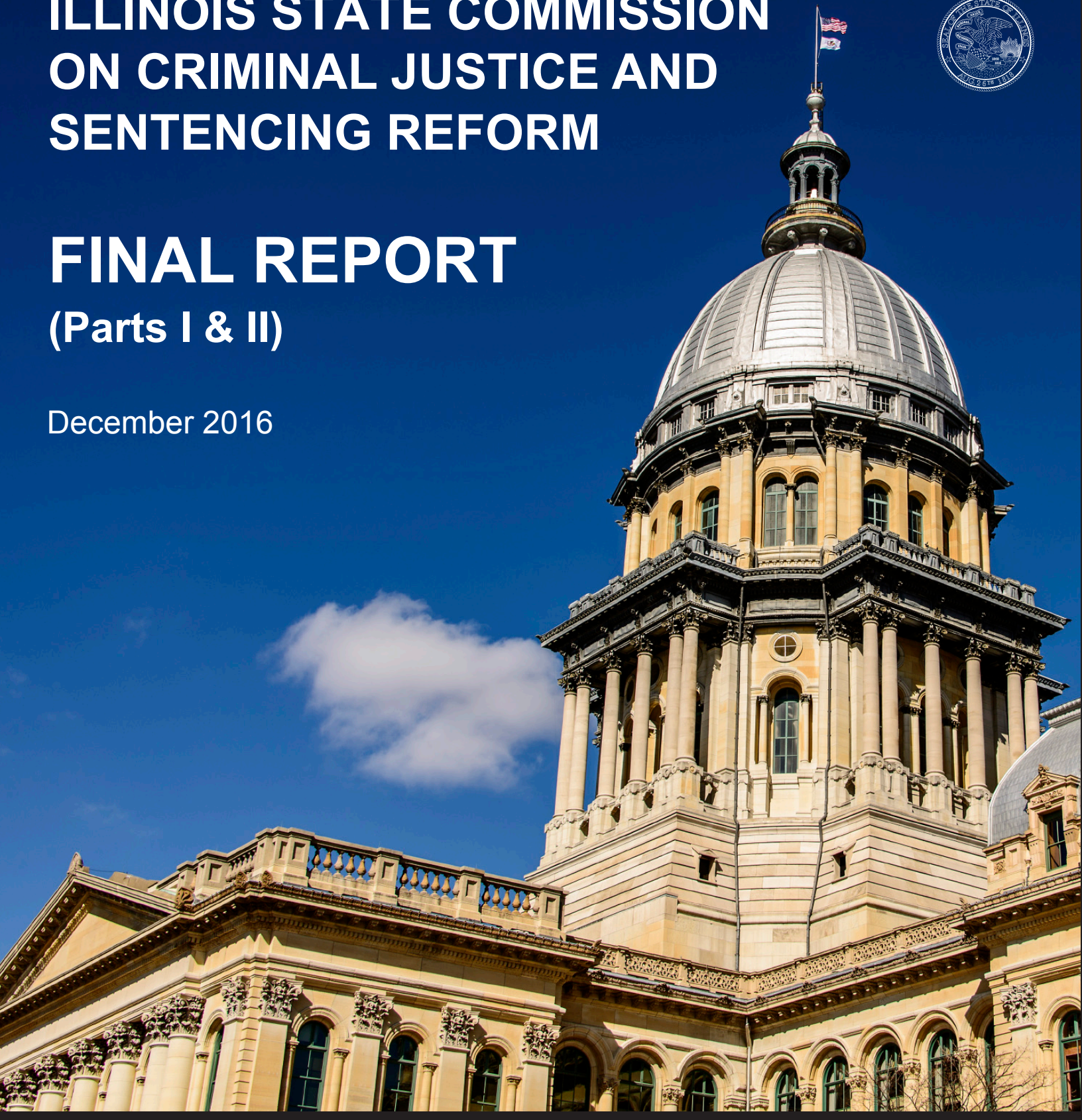
1. Friday, June 16, 2017
2. Friday, September 15, 2017
3. Friday, November 17, 2017

ILLINOIS STATE COMMISSION ON CRIMINAL JUSTICE AND SENTENCING REFORM

FINAL REPORT

(Parts I & II)

December 2016



January 2, 2017

The Honorable Bruce Rauner
Governor, State of Illinois
207 Statehouse
Springfield, Illinois 62706

Re: Commission on Criminal Justice and Sentencing Reform

Dear Governor Rauner:

In response to your Executive Order 15-14, the members of the Commission on Criminal Justice and Sentencing Reform have completed their extensive review of the State's criminal justice and sentencing structure and practices, as well as of community supervision and other alternatives to incarceration. At your direction, the Commission has been evaluating numerous potential reforms to find those that could safely reduce the State's prison population by 25% by 2025.

The 27 reforms presented in the accompanying report can safely reduce the State's overreliance on incarceration and achieve the goal that you set. Prison will certainly continue to play an important role in protecting public safety. However, these recommended reforms, if implemented fully and executed effectively, will help ensure that community-based resources are available to provide effective alternatives to incarceration; that sentences are imposed at levels appropriate for both the offense and the offender; and that offenders receive the treatment and programming they need, both while in prison and afterward, to promote their successful reentry to society.

We are indebted to many non-governmental stakeholders, to municipal, county, and state leaders in the criminal justice system in all three branches of government, and to members of the public, for the many and varied contributions they have made to our work. It is our hope that you will find this report useful to your efforts to ensure that Illinois remains a leader in providing a just, fair, and effective system for protecting all of its citizens.

Respectfully,

Rodger A. Heaton, Chairman
Commission on Criminal Justice and Sentencing Reform

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APPENDICES

Executive Summary

In February 2015, Governor Bruce Rauner created the Illinois State Commission on Criminal Justice and Sentencing Reform. As set forth in Executive Order 15-14, the Commission's charge was to review the State's "current criminal justice and sentencing structure, sentencing practices, community supervision, and the use of alternatives to incarceration," and to "make recommendations for amendments to State law that will reduce the State's current prison population by 25 percent by 2025."[*]

The Governor's action places Illinois in the forefront of a national movement to rethink and reduce the nation's unprecedentedly high rates of incarceration. Echoing national trends, Illinois' rate of incarceration, even when controlling for population growth, has increased more than 500 percent in the last forty years, with a disproportionate impact on the State's poor, mostly minority, citizens. As the Commission began its work, Illinois prisons were operating at 150 percent of design capacity, and, at the beginning of 2015, housed 48,278 inmates, almost half of whom were sentenced for non-violent offenses. Nearly all of these prisoners will eventually return to their communities, and about half will be re-incarcerated within the following three years. While the Illinois Department of Corrections is the State's single greatest investment in reducing offending and victimization, our high rate of incarceration frustrates these goals, creating instead a cycle of crime, imprisonment, and recidivism.

The Governor's Executive Order makes clear that the status quo is neither sustainable nor acceptable. It therefore directed the Commission to propose a series of recommendations that would make significant, long-term changes to the criminal justice system, and that would, in turn, safely and significantly reduce the State's prison population over the next decade.

The Commission completed the first part of its work in December 2015, and in Part I of its Final Report, presented fourteen recommendations. The Commission continued its work in 2016, and now presents an additional thirteen recommendations in Part II of the Report. For the sake of coherence, the current document combines the recommendations of Parts I and Part II, and presents a single Final Report that covers the entirety of the Commission's two-year effort.

As explained in more detail in the body of the Report, the Commission's recommendations are as follows (those recommendations that are new in 2016 are marked with an asterisk):

1. *Increase rehabilitative service and treatment capacity in high-need communities. Give the highest priority to behavioral health/trauma services, housing, and work force development with transportation support.
   a) Establish trauma recovery services in underserved communities that have disproportionate rates of crime and incarceration.
   b) Relax restrictions in State housing programs that prohibit renting to people with criminal records.

[*] Executive Order 15-14 (Feb. 11, 2015) is set forth in Appendix A. A roster of the Commission members is set forth in Appendix B.

   c) Ensure that service providers are sufficiently compensated to allow them to expand their capacity.

2. Expedite the use of risk-and-needs assessment tools by the Illinois Department of Corrections and the Prisoner Review Board. Promote and expedite the use of risk and needs assessment tools by Illinois Circuit Courts in determining sentences in felony cases. IDOC should continue to implement the elements of the Crime Reduction Act of 2009 (730 ILCS 190/15). Support the expanded application of risk and needs assessment within probation departments.
3. Provide incentives and support for the establishment of local Criminal Justice Coordinating Councils to develop strategic plans to address crime and corrections policy.
4. *Implement a Gender-Responsive Approach for Female Offenders.
   a) Implement a gender-responsive risk assessment tool.
   b) Implement the Women Offender Case Management Model or similar evidence based gender-responsive model.
   c) Adopt model disciplinary policies tailored to female inmates.
   d) Implement gender-responsive, trauma-informed treatment programs.
5. *Require periodic training on recognizing implicit racial and ethnic bias for individuals working in the criminal justice system, including but not limited to law enforcement officers, prosecutors, public defenders, probation officers, judges, and correctional staff.
6. Improve and expand data collection, integration, and sharing. Support the establishment of the Illinois Data Exchange Coordinating Council (IDECC) to facilitate an information-sharing environment among State and local units of government.
7. *Collect and report data on race and ethnicity at every point in the criminal justice system to allow a systematic assessment of disproportionate minority impact.
8. Require all State agencies that provide funding for criminal justice programs to evaluate those programs. Agencies should eliminate those programs for which there is insufficient evidence of effectiveness and expand those that are proven effective. Ensure that programming appropriately targets and prioritizes offenders with high risk and needs.
9. Prevent the use of prison for felons with short lengths of stay. IDOC should be authorized and encouraged to use existing alternatives to imprisonment for individuals with projected lengths of stay of less than 12 months. IDOC should be required to report its use of alternatives to imprisonment for these individuals in its Annual Report.
10. *Raise the threshold dollar amounts for theft not from a person and for retail theft from their current levels to $2,000. Limit the automatic enhancement from misdemeanor theft to felony theft to cases where there has been a prior felony theft conviction.

11. Give judges the discretion to determine whether probation may be appropriate for the following offenses:
    a) Residential burglary;
    b) Class 2 felonies (second or subsequent); and
    c) Drug law violations.
12. Before an offender is sentenced to prison for a Class 3 or 4 felony, require that a judge explain at sentencing why incarceration is an appropriate sentence when:
    a) The offender has no prior probation sentences; or
    b) The offender has no prior convictions for a violent crime.
13. *Reduce the minimum sentence authorized for each felony class except for Class 4.
14. *Limit the automatic sentence enhancement for a third or subsequent Class 1 or Class 2 felony conviction to cases where both the current and the two prior convictions involve forcible felonies.
15. *Reduce the sentence classification for felony drug crimes set forth in the Controlled Substances Act, the Methamphetamine Control and Community Protection Act, and the Cannabis Control Act by one class.
16. *Change the mandatory felony classification increase for drug crimes committed near a protected area.
    a) Conviction for delivery, or possession with intent to deliver, certain drugs within 1,000 feet of a school, park, church, or senior-citizen facility results in an automatic increase in the seriousness of the offense by one felony class. Reduce the size of the protected area from 1,000 feet to 500 feet.
    b) Require the prosecutor to establish a nexus – an effect or a likely effect of the crime on the protected area – between the location and the drug offense before that offense is increased by one felony class.
    c) Remove public housing from the current statute as an enhanced punishment area.
17. *Reduce the crime of possession of a stolen motor vehicle from a Class 2 felony to a Class 3 felony. Make a conforming change for conspiracy to possess stolen motor vehicles by lowering the classification from a Class 2 to a Class 3 felony.
18. Expand eligibility for programming credits. All inmates should be eligible to earn programming credits for successfully completing rehabilitative programming.
19. *Allow inmates who are currently required by statute to serve 75%, 85%, or 100% of their sentence to earn programming credit and supplemental sentence credit for good conduct that could reduce their sentence below the currently-required percentage. The amount of programming and supplemental sentence credit available to these inmates should be limited as follows:
    a) Inmates who currently are required to serve 100% of their sentence should be required to serve no less than 90% of their sentence.

b) Inmates who currently are required to serve at least 85% of their sentence should be required to serve no less than 75% of their sentence.
c) Inmates who currently are required to serve 75% of their sentence should be required to serve no less than 60% of their sentence.

Beginning on the date these changes take effect, inmates may begin earning credit on their current sentence for programs successfully completed after that date. Inmates should not be granted credit for programs completed before these changes take effect.

20. Make better use of adult transition centers. Ensure that the use of adult transition centers is informed by the risk-and-needs research and evidence, which shows that residential transitional facilities, paired with appropriate programming, should be primarily reserved for high and medium risk offenders to obtain the greatest public safety benefit.

21. Improve and expand the use of electronic monitoring technology based on risk, need, and responsivity principles.

    a) The Illinois Department of Corrections should increase the use of electronic detention in lieu of imprisonment for both short-term inmates and inmates who are ready to be transitioned out of secure custody.
    b) Allow IDOC to use electronic monitoring for up to 30 days without Prisoner Review Board approval as a graduated sanction for those on Mandatory Supervised Release.
    c) Ensure that Prisoner Review Board orders requiring electronic monitoring are based on risk assessments.
    d) Encourage and support the use of electronic monitoring within local jurisdictions as an alternative to incarceration and pre-trial detention.

22. Develop a protocol to provide for the placement to home confinement or a medical facility for terminally ill or severely incapacitated inmates, excluding those sentenced to natural life. The determination of illness or severe incapacity is to be made by the Illinois Department of Corrections medical director.

23. Enhance rehabilitative programming in IDOC. Implement or expand evidence-based programming that targets criminogenic need, particularly cognitive behavioral therapy and substance abuse treatment. Prioritize access to programming to high-risk offenders. Evaluate promising programs and eliminate ineffective programs.

24. *Limit the maximum term of Mandatory Supervised Release to 18 months for Class X, Class 1, and Class 2 felonies. Require the Prisoner Review Board, based on a risk and needs assessment, to discharge low-risk and low-needs offenders from MSR.

25. *Restore the Halfway Back program as an alternative to incarceration for violations of Mandatory Supervised Release.

26. Remove unnecessary barriers to those convicted of crimes from obtaining professional licenses. Review all licensure restrictions to identify those necessary for public safety.
27. Require the Illinois Department of Corrections and the Secretary of State to ensure inmates have a State identification card upon release at no cost to the inmates, when their release plan contemplates Illinois residence. Require IDOC to disclose in its Annual Report the percentage of offenders released from custody without a valid official State Identification card or some other valid form of identification.

Each recommendation is followed by a brief rationale, as well as implementation steps that would help ensure that the recommendation achieves its goal.

I. Introduction

In February 2015, Governor Bruce Rauner created the Illinois State Commission on Criminal Justice and Sentencing Reform and gave it an ambitious mission. Citing the challenges presented by prison overcrowding, chronically high recidivism rates, and the tremendous economic and social costs of incarceration, Governor Rauner directed the Commission to draft recommendations that, when implemented, would safely reduce the State's prison population by 25 percent by 2025.[1]

The Governor's directive puts Illinois in the forefront of a national coalition whose members include federal and State government officials, policymakers, interest groups, law enforcement personnel, and academics from across the country and across the political spectrum. What unites the group is the conclusion that, while prison plays an important role in protecting public safety, the country's use of prison has gone too far – as a society we incarcerate too many people and often punish people more than is necessary to serve legitimate public goals. Based on a growing body of research and experience, the members of this coalition agree with the conclusion of the National Academy of Sciences that "policy makers should revise current criminal justice policies to significantly reduce the rate of incarceration in the United States."[2]

Since its first meeting in March 2015, the Commission has worked diligently to carry out its mandate. Through almost two years of public hearings, working groups, and countless hours of study and discussion, the Commission has consulted with leading national and local criminal justice experts and practitioners, evaluated the research on the use of prison to promote public safety, and examined the specific data on the Illinois' criminal justice system. To comply with its directive to report to the Governor by the end of 2015, the Commission issued Part I of its Final Report in December 2015. In Part I, the Commission presented fourteen recommendations that focused primarily (although not exclusively) on foundational reforms and changes that are necessary to ensure the success of other recommendations.

The Commission continued its work in 2016. It held additional meetings, heard from additional experts and more members of the public, gathered more data, and received technical assistance through the generous support of the John D. and the Catherine T. MacArthur Foundation.[3] The result is a second set of thirteen additional recommendations that are set forth in this document. For ease of consideration, the recommendations from Part I of this Report are also set reprinted here, creating a single, consolidated Final Report that sets forth all 27 recommendations for reform.

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[1] Executive Order 15-14 (February 11, 2015). The Executive Order is reprinted in Appendix A to this Report.

[2] Jeremy Travis, Bruce Western, & Steve Redburn (eds.), The Growth of Incarceration in the United States: Exploring Causes and Consequences (Washington, DC: The National Academies Press, 2014), at 9, accessed Dec. 23, 2016, http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes.

[3] Information about the Commission's work, including audio recordings of all Commission meetings, presentation materials from those meetings, Commission subcommittee meeting materials, public comments, and an overview of both the State and national prison populations is set forth at http://www.icjia.org/cjreform.2015/

II. Background

Before offering the Commission's recommendations, it is useful to set forth a brief summary of Illinois' and the country's recent use of prison, what research shows about the impact of high incarceration rates on public safety, and the challenges that a 25 percent reduction presents.

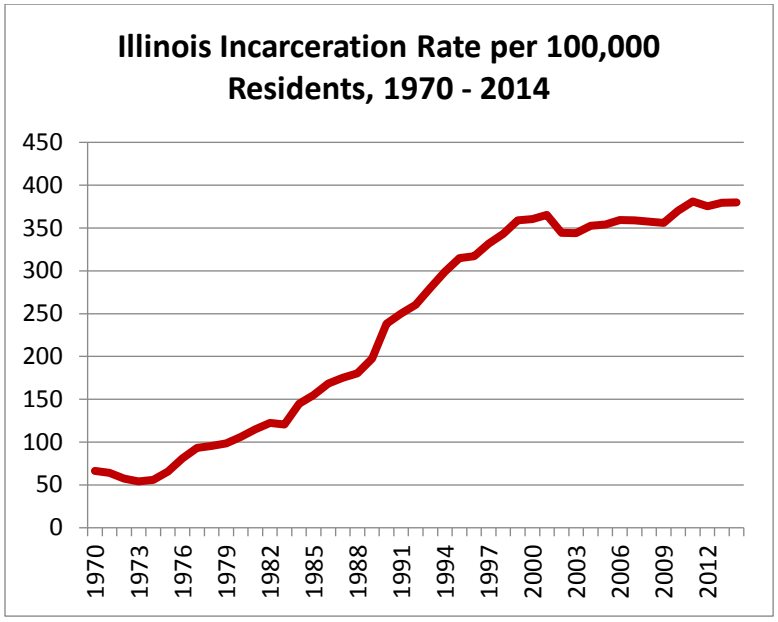
A. The Role of Prisons

In recent years Illinois' prison population has reached a record high of almost 50,000 inmates in a system designed for 32,000 people, making the Illinois Department of Corrections ("IDOC," or "the Department") one of the largest and most crowded prison systems in the United States. This was not always the case. In the late 1960s and early 1970s, Illinois' incarceration rate remained comparatively stable at between 54 and 66 inmates per 100,000 citizens, with its prisons housing fewer than 10,000 people. This changed in the late 1970s, when policymakers responded to spikes in crime by adopting laws and policies that both broadened the number of crimes for which offenders could be imprisoned and increased the length of time prisoners remained behind bars.

This policy shift was supported by an equally profound shift in penal philosophy. For most of the 20th century, Illinois followed national trends in making rehabilitation the central focus of its corrections policy. But by the 1970s there was growing agreement among politicians and opinion leaders that "nothing worked" to rehabilitate offenders, and that the most effective response to crime was increasing the use of prison to incapacitate current offenders and to deter future ones.[4] The result has been that over the last four decades, the Illinois prison population has grown from fewer than 10,000 to a recent high of about 49,000 inmates. More alarmingly, the rate of imprisonment increased more than five-fold, from about 66 inmates per 100,000 citizens in 1975, to almost 380 inmates per 100,000 in 2014.[5]

[4] On the history of the emphasis on rehabilitation in prisons, see David J. Rothman, Conscience and Convenience: The Asylum and its Alternatives in Progressive American, (Boston: Little, Brown, 1980); on the shift in penal policy away from rehabilitation see Robert Martinson, "What Works? Questions and Answers about Prison Reform," *The Public Interest* 35 (1974): 22-54, and Seymore L. Halleck and Anne D. Witte, "Is Rehabilitation Dead?" *Crime and Delinquency* 23 (1977): 372-82. In the 1970s, the movement against the rehabilitative purpose of prison came in part from reformers. For an Illinois example of this trend, see Conrad P. Rutkowski, "A new way of dealing with crime: Fogel and his ideas," *Illinois Issues*, Vol. II, No. 1 (1976), accessed Dec. 23, 2016, http://www.lib.niu.edu/1976/ii760103.html.

[5] Incarceration rate data provided by the Illinois Department of Corrections, Planning and Research.



During this same period, the annual appropriation for the Illinois Department of Corrections increased from about $52 million to more than $1.4 billion.

These changes in Illinois have mirrored national trends. As the National Academy of Sciences recently concluded, "the growth in incarceration rates in the United States over the past 40 years is historically unprecedented and internationally unique." In addition, "[t]he U.S. penal population of 2.2 million adults is the largest in the world. . . . [C]lose to 25 percent of the world's prisoners [are] held in American prisons, although the United States accounts for about 5 percent of the world's population. The U.S. rate of incarceration, with nearly 1 of every 100 adults in prison or jail, is 5 to 10 times higher than rates in Western Europe and other democracies."[6]

While the U.S. leads the world in the number of people it incarcerates, the country's use of prison has a disproportionate impact on the poor and on minorities:

> Of those behind bars in 2011, about 60 percent were minorities (858,000 blacks and 464,000 Hispanics) . . . The largest impact of the prison buildup has been on poor, minority men. African American men born since the late 1960s are more likely to have served time in prison than to have completed college with a 4-year degree . . . African American men under age 35 who failed to finish high school are now more likely to be behind bars than employed in the labor market.[7]

Illinois' prison population shows comparable disparities. In 2016, non-Hispanic whites made up roughly 62 percent of Illinois' total population, but accounted for only 30 percent of the

[6] Travis, *The Growth of Incarceration in the United States*, at 2.

[7] Id. at 13.

State's prison population. In contrast, African Americans made up about 15 percent of the State's population but almost 57 percent of its prison inmates. African Americans are thus incarcerated in Illinois at a rate that is eight times higher than that of non-Hispanic whites. Hispanics made up almost 17 percent of the State's population, 12.6 percent of its prison population, and were incarcerated at almost twice the rate of non-Hispanic whites.[8]

Public discussion of prison often focuses on the number of people who are incarcerated, the conditions of their confinement, and the costs of incarceration. This focus obscures the fact that prison is not simply a place we send offenders; it is also a system that releases offenders, who then must confront the challenges of living on the outside. In Illinois, the vast majority of all prisoners will eventually leave prison – indeed, almost 30,000 inmates are released each year. Those who are released will return to society, but too often with unsuccessful results. Roughly 50 percent will return to prison within three years of their release, either because they committed a new offense or because they violated a condition of their supervised release.

The result is a frustrating, expensive, and inefficient churning of people through the prison system. Most of the people being sent to prison are relatively low level, non-violent offenders.[9] Often these people are sent to prison, not because they are especially dangerous to the community but because they consistently engage in low-level criminal conduct. A great many have lengthy criminal records,[10] and from the perspective of many police, prosecutors, and judges, the only appropriate option is to incarcerate and incapacitate. So offenders are sent to prison, often serve relatively little time (the average length of stay in the IDOC is less than two years[11]), and then are released. They then frequently reoffend, are returned to prison, and the cycle continues.

One reason for this high recidivism rate is that offenders too often have gotten too little help, either in prison or afterward, in addressing the problems that contributed to their criminal behavior. National research shows that on average prisoners have "less than 12 years of schooling; have low levels of functional literacy; score low on cognitive tests; often have histories of drug addiction, mental illness, violence, and/or impulsive behavior; and have little

[8] The prison population figures are for fiscal year 2016. For a national perspective on incarceration rates by race and ethnicity, see Prison Policy Initiative, Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity, accessed Dec. 23, 2016, http://www.prisonpolicy.org/reports/rates.html.

[9] In State fiscal year 2015, for example, there were 21,243 new commitments to the Illinois Department of Corrections. Sixty nine percent (n=14,637) were for non-violent offenses such as drug or property-related crimes.

[10] According to the Illinois Sentencing Policy Advisory Council's average offender profiles, the average property, retail theft, and drug offender has been arrested between 7 to 18 times and has between 1 and 5 previous felony convictions. See SPAC, Joe D.O., accessed Dec. 24, 2016, http://www.icjia.state.il.us/spac/pdf/Joe%20Average%20Final.pdf; SPAC, J.T. accessed Dec. 24, 2016, http://www.icjia.state.il.us/spac/pdf/Joe%20Thief%20Final.pdf. Of the total offenders committed to Illinois prisons for non-violent offenses, about one-third (37%) had a prior violent conviction. Analysis by Illinois Criminal Justice Information Authority of IDOC and Criminal History Information data.

[11] See Illinois Department of Corrections, Fiscal Year 2015 Annual Report, at 82.

work experience prior to incarceration, with at least one-quarter to one-third of inmates being unemployed at the time of their incarceration."[12]

Here again, Illinois follows national trends. A little less than half of Illinois prisoners have a high school education, and most read at a sixth grade level or lower.[13] Roughly twenty-seven percent of inmates are receiving on-going mental health services, and about half of all inmates have been assessed as needing substance abuse treatment.[14] While it was never designed, funded, or adequately staffed for these purposes, Illinois' prison system has become the de facto remedial education, health, and substance abuse treatment system of last resort for some of the State's most disadvantaged citizens.

B. The Impact of High Incarceration

The fact that Illinois makes extensive use of its prisons does not, on its own, compel the conclusion that change is required. Prisons serve a vital role in society – they help hold offenders responsible for their actions, they protect victims and other members of the public, and they provide a concrete way of labeling the offender's conduct as worthy of condemnation.

But the importance of these goals is precisely why the State must reduce its prison population. The problem that Illinois faces is not only that its prisons are crowded and overly expensive, but also that the State *overuses* incarceration in ways that can affirmatively frustrate the system's goals. Stated differently, incarcerating offenders excessively or unnecessarily undermines the IDOC's mission of "promoting positive change in offender behavior, operating successful reentry programs, and reducing victimization."[15]

In the course of the Commission's work, several problems with Illinois' overreliance on incarceration have emerged.

1. An excessive rate of incarceration incapacitates more than public safety requires.

One benefit of imprisonment is that it incapacitates the offender, preventing him or her from committing additional crimes while he or she is behind bars. Over the past 40 years, Illinois has more than quintupled its rate of incarceration, fueled in significant part by its pursuit of this benefit. And while many inmates are imprisoned for reasons other than simply incapacitation (most obviously, to punish because of the great harm inflicted by the crime) the impact of the high levels of incapacitation on the overall crime rate is far from clear. Research shows that the

[12] Travis, *The Growth of Incarceration in the United States*, at 234.

[13] IDOC Presentation to the Commission, April 25, 2015, accessed Dec. 24, 2016, http://www.icjia.org/cjreform2015/pdf/IDOC%20Power%20Point%20Presentation%20(4%20%2024%2015)copy2.pdf. See also SPAC's average offender profiles, accessed Dec. 27, 2016, http://www.icjia.state.il.us/spac/index.cfm?metasection=publications.

[14] Information provided by the IDOC.

[15] Available at http://www.illinois.gov/idoc.

relationship between incarceration rates and crime rates is complex, and that the greater use of prison does not automatically translate into less offending.[16]

One effect of high levels of imprisonment is that we end up incapacitating far more people than is necessary. Research has consistently shown that a small percentage of persistent offenders are responsible for most crime, particularly violent crime,[17] and that other factors (such as increasing age) diminish the likelihood of future criminal behavior regardless of whether the offender is behind bars.[18] In this respect, when the use of imprisonment fails to distinguish between chronic offenders and those who are unlikely to reoffend, it constitutes a poor use of the State's resources, particularly given the availability of more effective community-based alternatives. The result is a problem of diminishing returns: the more Illinois has increased its use of prison, particularly to include low-risk offenders, and the more it has lengthened sentences beyond the point where offenders present a statistical risk to public safety, the more it has needlessly imposed the high costs of imprisonment on the offender and the State.[19]

Incapacitation as a justification for punishment is limited in other ways. Research shows that for "several categories of offenders, an incapacitation strategy of crime prevention can misfire because most or all of those sent to prison are rapidly replaced in the criminal networks in which they participate."[20] Street level drug trafficking are an example of this dynamic. In spite of enforcement strategies dedicated to the arrest and conviction of current drug dealers, experience has consistently shown that the street level drug market continues to thrive as other people take their place. "Similar analyses apply to many members of deviant youth groups and gangs: as members and even leaders are arrested and removed from circulation, others take their place. Arrests and imprisonments of easily replaceable offenders create illicit 'opportunities' for others."[21]

2. Illinois' crowded prisons undermine the justice system's capacity to rehabilitate.

In contrast to the previous views that "nothing works" to rehabilitate offenders, a substantial body of evidence has developed over the past 20 years that now convincingly demonstrates the opposite: Rehabilitative programming can reduce recidivism when it addresses the needs

[16] For a comprehensive overview of research on the relationship between incarceration rates and crime rates, see Travis, *The Growth of Incarceration in the United States*, at 130-156.

[17] See Marvin Wolgang, Robert M. Figlio, and Thornsten Sellin, Delinquency in a Birth Cohort (Chicago: University of Chicago Press, 1972), and David Huizinga, Rolf Loeber, and Terrence Thornberry, "New Findings on Delinquency and Substance Abuse in Urban Areas," Congressional Briefing (Washington D.C.: 1992).

[18] See John Laub, and Robert Sampson, Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70 (Cambridge, MA: Harvard University Press, 2003).

[19] See Johnson, R., and Stephen Raphael, "How Much Crime Reduction Does the Marginal Prisoner Buy?" 55 *Journal of Law and Economics* 275-310 (2012).

[20] Travis, *The Growth of Incarceration in the United States*, at 146.

[21] Id.

offenders have that led them to engage in criminal behavior.[22] This same body of research also shows that prisons, particularly crowded prisons, tend to be criminogenic, which means they tend to make offenders *more* likely to reoffend. This effect happens through housing high-risk with low-risk offenders, combined with reducing the chances of healthy family relationships and of legitimate employment that can dissuade people from criminal behavior.[23] These findings lead to two conclusions: first, that effective prison programming is essential to rehabilitation; and second, that when consistent with public safety, it is preferable – and less expensive – to provide offenders with rehabilitative programming in a community-based setting, rather than in prison.

Excessive incarceration hinders the implementation of both of those conclusions. The personnel, administrative, and housing costs associated with a high number of inmates means that there is little left for programming. In Fiscal Year 2015, for instance, slightly more than three percent of the Illinois Department of Corrections' total budget was dedicated to programming.[24] High numbers of inmates also means that the programming that is offered is frequently insufficient. Even with a large number of inmates being ineligible by rule for receiving sentence credit for programming, there are too many prisoners competing for too few program slots,[25] and as discussed below, most of the programs are not evidence-based, have not been evaluated for effectiveness, and fail to separate the low and high risk offenders. This leads to a grim assessment: Illinois' prisons not only lack the capacity to deliver effective rehabilitative programming, but they also likely increase victimization by making some offenders worse.

Just as importantly, excessive incarceration hampers the ability to deliver rehabilitative services outside of prison. The State's deep investment in prisons has stymied the development of a systemic ability to sanction, supervise, and treat offenders in the community.

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[22] See Mark W. Lipsey and David Wilson, "The Efficacy of Psychological, Educational, and Behavioral Treatment," *American Psychologist* 48 (1993): 1181-1209; Mark W. Lipsey and Francis T. Cullen, "The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews," *Annual Review of Law and Social Science* 3 (2007): 297-320. For a recent example of correctional policies designed around swift, certain, and fair principles of supervision, see Zachary Hamilton, Jacqueline van Wormer, Alex Kigerl, Christopher Campbell, and Brianne Posey, "Evaluation of Washington State Department of Corrections (WADOC) Swift and Certain (SAC) Policy Process, Outcome and Cost-Benefit Evaluation" (Washington: Washington State University, 2015), accessed Dec. 23, 2016, https://wsicj.wsu.edu/wp-content/uploads/sites/436/2015/11/SAC-Final-Report_2015-08-31.pdf

[23] See Daniel S. Nagin, Francis T. Cullen, and C.L. Jonson, "Imprisonment and Reoffending," in Michael Tonry (ed.), Crime and Justice: A Review of Research, 38 (Chicago: University of Chicago Press, 2009): 115-200.

[24] Information provided by IDOC.

[25] There are over 3,000 inmates currently on waitlists for vocational programming alone. Information provided by IDOC. Moreover, of those released from the Illinois Department of Corrections in fiscal year 2007 that were identified as in need of substance abuse treatment, only 16 percent received treatment while incarcerated. See Sneed, E.: Predictors of Prison-Based Drug Treatment in Illinois. Masters Thesis, Loyola University Chicago, December 2015.

3. High levels of incarceration are unlikely to deter future crime sufficiently to offset the high costs.[26]

For years sentencing law and policy has seemed grounded in the belief that harsher sentences would lead directly to a greater deterrent effect, and thus, to lower levels of crime. Sentencing ranges were increased, mandatory prison sentences were required for more crimes, and sentencing credits were reduced, all with the expectation that greater punishment would deter more offenders.

Research and experience has shown that these assumptions are mistaken, at least in part. While criminal punishment generally has a broad deterrent effect, research does not support the assumption that increasing prison sentences is an effective or efficient way to increase deterrence, particularly if sentences are already lengthy.[27] Research also suggests that high rates of incarceration can weaken deterrence by making the experience of incarceration more common. This is particularly problematic for communities that experience both high levels of crime and incarceration. The risk to public safety is that when potential offenders see prison as a normal experience, the threat of incarceration has less power to deter.[28]

4. Because incarceration disproportionally affects poor communities, it risks exacerbating their existing social and economic disadvantages and thus can damage both their ability to reduce crime outside of the justice system and their relationship with the justice system.[29]

High levels of incarceration are not evenly distributed across the population. Instead, incarceration is highly and persistently concentrated in communities that tend to suffer not just from higher levels of crime, but also from other social and economic disadvantages, like high levels of unemployment, poverty, family dysfunction, and racial isolation.[30] When it is effective, incarceration is an important tool for removing and incapacitating dangerous offenders who threaten a community's well-being. But research suggests that incarceration may have a tipping

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[26] The Commission addressed this issue in its June 25, 2015 meeting, featuring presentation by Dr. Megan Alderden, Research Director for the Illinois Criminal Justice Information Authority, and David Kennedy, Director of the National Network for Safe Communities, a project of John Jay College of Criminal Justice, accessed Dec. 13, 2015, http://www.icjia.org/cjreform2015/about/meetings.html.

[27] For an overview of research on incarceration's relationship to deterrence, see Travis, *Growth of Incarceration in the United States*, 134-140. Specifically, the consensus of research shows that deterrence depends more on the certainty, swiftness, and even the fairness of the punishment than it does on its severity. While Illinois has increased the severity of criminal punishment through expanding its use of prison, it has not strengthened the justice system's certainty or swiftness.

[28] See Jeffrey Fagan and Tracey Meares, "Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities," 6 Ohio State Journal of Criminal Law 173 (2008).

[29] The Commission addressed this issue in several meetings, including in David Kennedy's presentation on June 25, 2015 and in its September 8, 2015 meetings, available at http://www.icjia.org/cjreform2015/about/meetings.html.

[30] Robert J. Sampson and Charles Loeffler, "Punishment's Place: The Local Concentration of Mass Incarceration," *Daedalus* 139 (2010): 20–31.

point beyond which its public safety benefits are overwhelmed by harmful, unintended, community-level consequences.[31]

While this tipping-point dynamic plays out across the State, it is particularly clear in Cook County, which is the source of roughly half of Illinois' prison population. Despite the large percentage of people from Cook County in the State's prison system, the overwhelming majority come from, and return to, a small number of impoverished, mostly African American neighborhoods on Chicago's south and west sides.[32] While overall crime has dropped throughout Chicago in the past 20 years, these neighborhoods continue to suffer from persistently high rates of violence, as well as persistently high levels of incarceration among its residents.

Research suggests that these neighborhoods continue to experience high levels of crime in part because the State's overuse of incarceration can aggravate other longstanding concentrations of social and economic disadvantages. For instance, a lack of legitimate economic opportunity, endemic in these high-incarceration neighborhoods, is associated with higher rates of criminal behavior.[33] At the same time, exposure to prison and the collateral consequences that attend a conviction make it difficult for former inmates to find legitimate employment.[34] The lack of employment, in turn, makes it harder for this population to successfully reintegrate into society after prison, and more likely to turn to crime. As most prisoners are parents, this dynamic also increases the likelihood that their children will become involved in crime and be incarcerated.[35]

These negative effects can weaken a community's ability to control crime in two ways. On the one hand, high incarceration rates can cause breakdowns in the informal power all communities have to control crime through shared norms, associations, and practices that influence people's behavior.[36] In addition, an overreliance on formal control can damage the relationship between communities and the justice system. High rates of incarceration can contribute to the lack of trust many residents in the most disadvantaged neighborhoods have in

[31] See Todd Clear and Rose Dina, "Incarceration, Social Capital, and Crime: Implications for Social Disorganization Theory," *Criminology* 36 (1998): 441-479; Fagan & Meares, Punishment, Deterrence and Social Control.

[32] The disparities in incarceration rates are extreme in Chicago's neighborhoods. For example, West Garfield Park, which is a community on the City's west side, has "a rate over forty times higher than the highest-ranked white community on incarceration." Robert J. Sampson, *Great American City: Chicago and the Enduring Neighborhood Effect* (Chicago: University of Chicago Press, 2012): 113.

[33] See Robert Sampson and John Laub, Crime in the Making (Cambridge: Harvard University Press, 1993); Gould, Weinberg, and Mustard, "Crime Rates and Local Labor Market Opportunities in the United States: 1979–1997," *The Review of Economics and Statistics* 84 (2002): 45-61.

[34] See Meda Chesney-Lind and Marc Mauer (eds.), Invisible Punishment: The Collateral Consequences of Mass Imprisonment (New York: The New Press, 2003); Bruce Western, Punishment and Inequality (New York: Russell Sage Foundation, 2007).

[35] See Joseph Murray and David P. Farrington, "Parental Imprisonment: Effects on Boys' Antisocial Behavior and Delinquency through the Life-Course," *Journal of Child Psychology and Psychiatry* 46 (2005): 1269-78.

[36] Robert J. Sampson, "Crime in Cities: The Effects of Formal and Informal Social Control," *Crime and Justice* 8 (1986): 271-311.

the criminal system's legitimacy, which is the belief people have that the system is fair, acts in the community's interest, and has the moral authority to do so. When people don't trust the system's legitimacy, they are less likely to report crimes and cooperate with police, which in turn leads to lower apprehension rates, weaker deterrence, and a greater willingness to resort to self-help. It is thus not surprising that research has found that high levels of legal cynicism are associated with high rates of crime.[37]

C. The Resource Question

On January 1, 2015, the Illinois prison population stood at 48,278; a 25 percent reduction would mean a prison population of 36,209 by the year 2025. There are many obstacles to reaching this goal, but perhaps none is as obvious as the problem of making significant, systemic change in a world of limited resources.

On average, it costs more than $22,000 per year to incarcerate a prisoner in Illinois (more than $37,000 when capital costs, pension contributions, and employee benefits are factored in).[38] It therefore is tempting to assume that reductions in the prison population will quickly translate into cost savings. That assumption is almost certainly wrong, at least in the near term. With prisons currently operating at 150 percent of design capacity, it will take many years of deep reductions in the number of inmates before the IDOC will be able to operate on a smaller, less expensive scale. A large percentage of the Department's costs are fixed, and they will not change quickly or proportionately with the decrease in the number of inmates.

More importantly, long-term savings will stem from the more complicated task of keeping people out of prison. To sustain a reduction in the prison population, Illinois must build the capacity to hold more offenders accountable through alternatives to incarceration, strengthen the role of communities in reducing crime, and reduce recidivism. This will require resources, but more importantly, a change in how the State thinks about its criminal justice system.

The Illinois Department of Corrections is the State's single largest investment in reducing offending and victimization. And yet, Illinois has never funded IDOC based on its ability to affect these goals. Instead, IDOC's funding has always been focused on meeting the demands of its annual inputs and outputs—how many people the State's incarcerates and supervises on Mandatory Supervised Release (sometimes called "parole") in a given year. But even by this measurement, IDOC's budget has struggled in recent years to keep pace with the growing inmate

[37] See David S. Kirk and Mauri Matsuda, "Legal Cynicism, Collective Efficacy, and the Ecology of Arrests," *Criminology* 49 (2011): 443-472. On the importance of moral authority and overall legitimacy, see Tom R. Tyler, Why People Obey the Law (Princeton: Princeton University Press, 2006); Tom R Tyler and Yuen J Huo, Trust in the Law: Encouraging Public Cooperation with the Police and the Courts (New York: Russel Sage Foundation, 2002).

[38] Fiscal year 2014 numbers provided by the Illinois Department of Corrections. See http://www.icjia.org/cjreform2015/pdf/NIS%20Commission%20Presentation%20June%2003.pdf, at Slide 7. See generally Christian Henrichson and Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers* (Vera Institute of Justice: 2012): 10, accessed Dec. 23, 2016, http://www.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf.

population. Since 2005, Illinois' budget for the IDOC has remained relatively flat even as the prison population has increased by nearly 9 percent.[39] As a result, Illinois spends too much on its prisons given the State's fiscal needs, but too little given the number of people it incarcerates.

This points to the real challenge of reducing the prison population. The essential goal for reform is not to find a better way for Illinois to pay for the system it has today. Instead, the goal should be to make the best use of its resources to create and sustain a system that reduces victimizations, improves public safety, and strengthens communities.

When drafting its recommendations the Commission sought to strike a balance – it did not ignore proposals because they were likely to be expensive, but it also tried to be realistic about the foreseeable budget constraints, both now and in future. Ultimately, however, the Commission concluded that the relevant question is not whether reforms will cost little or a lot, but rather: (a) how the costs of change compare to the costs of maintaining the status quo; and (b) does the benefit of reform justify the call for additional resources.

D. Guiding Principles and Operating Assumptions

In crafting its recommendations, the Commission was guided by a set of normative principles and operating assumptions about the nature and types of reforms that are likely to be successful.

Normative Principles[40]

- Proposals should adhere to the two core purposes of criminal punishment articulated in Illinois' State Constitution, Article 1, Section 11: "All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship."
- Proposals should aim to provide a sufficient but not greater amount of punishment than is needed to achieve the goals of the sentencing and criminal justice policy.
- Proposals should strengthen communities' ability to control crime and increase public safety.
- Proposals should respect the needs of crime victims and support victims' rights.

Operating Assumptions

- No recommendation should create an unnecessary or undue risk to public safety, regardless of the effect on the prison population. But it is impossible to reduce the prison population significantly without creating some risk that offenders who might previously have been incarcerated will now commit new offenses.

[39] For an overview of the Illinois prison system, including its growth over time, see http://www.icjia.org/cjreform2015/research/illinois-prison-overview.html.

[40] These principles were informed by the discussion in Travis, *The Growth of Incarceration in United States*, of the fundamental role normative principles should play in rebalancing the country's use of prison. See pp. 320-333.

- Recommendations should be supported by the best available research, and implementation must be monitored to ensure that the reform meets its goal.
- Recommendations should distinguish those who need to be in prison from those who do not, taking into account both the gravity of the crime and the likelihood of recidivism. Not all offenders who commit a certain type of crime are equally at risk for reoffending, and the goal of the recommendations is to reduce the prison population by identifying and separating the lower-risk inmates from the higher-risk ones.
- Reducing the prison population requires the participation and cooperation of local governments. Recommendations should not shift responsibility over a person from the State to local authorities without providing the necessary resources to support the move.
- Safely reducing the prison population is a long-term effort that will exceed the life of the Commission. There must be infrastructure in place to sustain the reform in the future.

III. Recommendations

This section sets forth 27 recommendations for change, grouped into four categories. Each recommendation is followed by a brief explanation, then a series of implementation steps that would be required if the recommendation is to achieve its goal.

Fourteen of these recommendations were previously made in Part I of this Final Report (released in December 2015), although they have been renumbered here. To distinguish those recommendations that are new to Part II of the Final Report from those previously released in December 2015, a border has been placed around the new recommendations.

A. Recommendations to Increase the Effectiveness of Sentencing and Rehabilitative Programming

1. Increase rehabilitative service and treatment capacity in high-need communities. Give the highest priority to behavioral health/trauma services, housing, and work force development with transportation support.

a) **Establish trauma recovery services in underserved communities that have disproportionate rates of crime and incarceration.**
b) **Relax restrictions in State housing programs that prohibit renting to people with criminal records.**
c) **Ensure that service providers are sufficiently compensated to allow them to expand their capacity.**

Rationale

Although the Commissioners brought different backgrounds and perspectives to this process, they uniformly agree that for the recommended reforms to safely and sustainably reduce the prison population, the State must increase the capacity to provide rehabilitative services in high-need and underserved communities. If these communities are to be asked to shoulder more responsibility for administering community-based alternatives to incarceration, investments in treatment and services must be increased as well.

Capacity must be added with attention to the community infrastructure and with respect for local design and control of interventions that address the specific local needs. Counties must be assured that a reasonable, dependable allocation of funds is available to support a higher volume of community supervision. Prosecutors and judges must be assured that the services required to address the criminogenic needs of offenders are in place before these offenders are diverted from prison.[41] Victims generally favor rehabilitation rather than harsher sentences, but only if the rehabilitation the offender receives will be effective. Communities must be assured that the 97 percent of offenders who return home will have access to meaningful levels of services, stable

[41] Survey Research Office, University of Illinois-Springfield, A Report on Four Surveys of Populations Involved in Corrections in Illinois (Springfield, June 6, 2016), accessed Dec. 27, 2016, http://www.icjia.org/cjreform2015/pdf/UIS%20Survey%20Report%20Final.pdf.

housing, and work force development programs so that their risk of reoffending can be managed successfully.

Every type of community supervision — probation and parole, problem solving courts, the Adult Redeploy Illinois program — depends on the availability of service providers who can provide the programming that reduces recidivism. Of particular concern are high-risk, high-need offenders, who, after being released from prison, are often grouped together in high risk communities or in rural parts of the State where there are few services. Focusing resources on making these services available in these areas is the State's best strategy for reducing crime.

Of course, the State's fiscal condition requires a realistic approach to allocating resources. As noted in subsection II(C), above, it is tempting to think that a lower inmate population will free up money that can then be invested in rehabilitation. But as also noted, this way of viewing the issue is unrealistic, as it will take many years of sustained cuts in the prison population before significant amounts of funding can be diverted from IDOC. The Department has for years been over-used and under-funded, and as a result, several facilities now have a crumbling infrastructure; IDOC faces legal challenges to the conditions in which inmates live; and the Department struggles to meet its monthly operational obligations.

The equally important point is the timing of the investment in rehabilitation – there is a critical need for increased community capacity *before* the recommendations outlined in this Report take full effect. Shorter sentences, a greater use of alternatives to prison, and other reforms should lead to better outcomes, but only if those who need the help outside of prison have the means to obtain it. Improving community capacity before implementing sentencing reforms is critical to the State's ability to safely and responsibly reduce the prison population and sustain that reduction over time. Without that advanced investment, the cross-generational cycle of crime and incarceration will continue.

The Commission recommends three priority areas for investment: behavioral health and trauma recovery services; housing; and work force development with transportation support.

BEHAVIORAL HEALTH

Treatment and service capacity for mental health problems is at an all-time low. Behavioral health capacity, which includes both substance abuse and mental health treatment, is critical to every diversion program, alternative to incarceration, and probation and parole supervision. Programs cannot be considered evidence based, and will not help reduce recidivism, if capacity in this area is not significantly increased.

The lack of capacity for mental and behavioral health already has had an effect on existing programs:

Drug & Mental Health courts – they are required by law, but best practices dictate that they should not be implemented in jurisdictions that lack the full range of services and treatment needed by the program participants. Offenders who receive services that are available rather than services that they need will not improve.

Adult Redeploy Illinois (ARI) – while all the ARI sites maintain a commitment to the program, many report that they can no longer provide adequate programming because their partner service providers are either closed or have greatly reduced capacity.

Probation with Intensive Services – probation services have officers trained in risk and needs assessment; they have judges and prosecutors willing to impose conditions based on those assessments; and they are ready to implement the appropriate plans. But they have lost the capacity to treat high-risk, high-need offenders because there is insufficient access to the necessary services.

Re-Entry Services - parolees who have conditions of supervision that require them to get treatment or enroll in programming are in a double bind if there are no providers. They risk getting violated for failure to comply with their conditions, and their likelihood of reoffending remains high if they return to the outside world with no aftercare or support.

Illinois learned a harsh lesson when it deinstitutionalized people with mental illness without building the capacity to treat them effectively in the community. A pipeline from the streets to IDOC developed quickly and is a factor in the high prison population. Policymakers should be clear: it is far cheaper and more effective to redevelop community access to these critical services than it is to deliver these services in prison.[42] The worst possible outcome is a system where the best hope of getting treatment is to be arrested and convicted of a crime.

TRAUMA RECOVERY

Research on the relationship between trauma and crime shows that both acute trauma, such as being a crime victim, and chronic trauma, such as living in an environment with high levels of violence, have a physiological effect on the brain that can lead to a greater propensity to fight rather than flee, a greater propensity to perceive a threat where there is none, and a reduced executive function. The ongoing effects of trauma perpetuate the cycles of violence that have blurred the lines between victims and perpetrators to the point that both groups contain disproportionate and overlapping numbers of young men of color. Equally important is the fact that those who work in the system, particularly law enforcement and corrections officers, also suffer the effects of working in high-risk environments, leading to higher rates of suicide and divorce than in the general population.[43]

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[42] See, e.g., SPAC, "Illinois Results First: A Cost-benefit Tool for Illinois Criminal Justice Policymakers," (Springfield, Summer 2016), accessed Dec. 27, 2016, http://www.icjia.state.il.us/spac/pdf/Illinois_Results_First_Consumer_Reports_072016.pdf.

[43] R.F. Anda, et al., The Enduring Effects of Abuse and Related Adverse Experiences in Childhood: A Convergence of Evidence from Neurobiology and Epidemiology, European Archives of Psychiatry & Clinical Neuroscience, 2006;256(3):174-86; Lisak, D, Beszterczey S. The Cycle of Violence: The Life Histories of 43 Death Row Inmates. Psychology of Men & Masculinity. 2007 8(2): 118-128; Reavis JA, Looman J, Franco KA, Rojas B. Adverse Childhood Experiences and Adult Criminality: How Long Must We Live before We Possess Our Own Lives? The Permanente Journal. 2013;17(2):44-48; Wade R, Shea JA, Rubin, et. al. Adverse Childhood Experiences of Low-Income Urban Youth. Pediatrics 2014: 134 (1): 13-20.

Violent crime victims frequently report feeling re-victimized by their experience with the justice system. Victim services are often linked directly to cooperation with law enforcement and prosecution, and often exclude people with criminal histories,[44] so victims who fear that cooperation will bring greater harm than good, or who are otherwise involved in the system, often do not get support. For those that do cooperate, services can be limited to reimbursement for loss of property that takes months to receive, or a limited amount of counseling, while the effects of the trauma they experienced go untreated. Providing access to trauma recovery services in neighborhoods where the people who need these services live is one strategy for addressing violence at its root.

HOUSING

A criminal record can create a lifetime barrier to housing. Even if the offense is unrelated to being a good tenant, or if it occurred long ago, or even if an arrest did not result in conviction, public housing agencies may prevent participation in the most basic supportive housing programs. One study, for example, found that among offenders recently released from prison, those without adequate housing were more than twice as likely to commit another crime as those with adequate housing. Another study found that homeless individuals with prior convictions were significantly less likely to recidivate if they secured rental housing.[45] With limited housing options, men and women returning to their communities risk becoming trapped in a revolving door between homelessness and incarceration.

The lack of stable housing for newly-released offenders, as well as the destabilization of families who may be evicted if a member is convicted of a crime, contributes to the churning of people through the prison system.[46] Illinois Housing Development Authority, the Illinois Department of Human Services, and the U.S. Department of Housing and Urban Development (HUD) are currently working on outreach to local housing authorities to help relax restrictions on people with criminal records getting access to affordable housing. In November 2015, HUD issued guidance to ensure that people are not excluded from federally subsidized housing simply because of an arrest record and, in April 2016, HUD issued another guidance stating that admission denials, evictions, and other adverse housing decisions based on a person's criminal record may constitute racial discrimination under the Fair Housing Act of 1968.

[44] 740 ILCS 45/6.1.

[45] These studies, and others, are noted in Marie Claire Tran-Leung, "When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing," Sargent Shriver National Center on Poverty Law (Chicago, February 2015), at 2, accessed Dec. 27, 2016, http://povertylaw.org/sites/default/files/images/publications/WDMD-final.pdf.

[46] Bob Palmer, Amy Rynell, and Amy Terpstra, "Not Even a Place in Line: Housing Choice Voucher Capacity and Waiting Lists in Illinois," Social IMPACT Research Center (Chicago, November 4, 2015), accessed Dec. 27, 2016, http://socialimpactresearchcenter.issuelab.org/resource/not_even_a_place_in_line_housing_choice_voucher_capacity_and_waiting_lists_in_illinois_2015.

WORK FORCE DEVELOPMENT AND TRANSPORTATION SUPPORT

Jobs have been the focus of re-entry discussions for years. Yet employment remains a significant challenge for anyone with a criminal record.

Successful work force development programs address both skill training and "soft skills," like interviewing and resume preparation. The Safer Foundation, Lutheran Social Services, Connections for Success, and the North Lawndale Employment Network shared their work force development expertise with the Commission, and explained how their programs address these two areas. These programs guide offenders through the process of becoming productive citizens, but there are far more returning citizens who need these services than there is service capacity.

Transportation was brought up by every organization that serves this population. The large employers who are willing to hire people with records are not located in the neighborhoods where the people live. This issue can be addressed short term by providing transportation support through bus passes, reimbursement to employers, or discounted fares. In the long term, the expenditure of public funds for both housing and transportation should take into consideration the need to locate affordable transportation in areas that have affordable housing.

Finally, successful capacity building requires more than simply payment for services rendered. It also includes the need to allow funding to be used for administrative expenses incurred in hiring, staff training, data collection and management, and program evaluation.

Implementation

- Increase rehabilitative service and treatment capacity in high-need and underserved communities.
- Allow three-year grant terms to community organizations that serve high risk populations, returning citizens, and crime victims. One year grants that operate on fiscal years that do not match the county fiscal years are highly inefficient. These grant terms would be authorized but subject to appropriation.
- Allow grant funds to be used to increase community mental health services, including covering administrative costs of data collection and reporting, rather than limiting reimbursement to services rendered.
- Encourage the public health departments and regional health centers to address criminal justice populations, particularly individuals with the highest levels of risk and need.
- Authorize the Illinois State Police to provide public access to arrest and conviction data by putting a de-identified dataset on the State of Illinois Data Portal. Access to this data can support grant applications from community based organizations.
- Pilot trauma recovery centers in high risk, underserved communities throughout the State.
- Prioritize public safety pre-investment to support evidence-based programs, including programs that can divert people from the system at the point of arrest, such as crisis centers where officers trained in crisis intervention can bring people suffering from mental health problems.

2. Expedite the use of risk-and-needs assessment tools by the Illinois Department of Corrections and the Prisoner Review Board. Promote and expedite the use of risk and needs assessment tools by Illinois Circuit Courts in determining sentences in felony cases. IDOC should continue to implement the elements of the Crime Reduction Act of 2009 (730 ILCS 190/15). Support the expanded application of risk and needs assessment within probation departments.

Rationale

Research and experience from across the country have demonstrated that corrections systems are more effective when they use validated risk and need assessment tools. These tools – computer software used to assist a trained staff member in evaluating an offender – provide an individualized assessment of an offender's risk of reoffending and the needs that must be addressed to change their future behavior. When a corrections system uses a validated risk and needs assessment tool, and as a result more effectively targets and tailors its programming and supervision of offenders, the rate of recidivism is reduced.[47]

Risk and needs assessment tools typically categorizes offenders into four groups: high risk/high need; high risk/low need; low risk/low need; and low risk/high need. "High needs" offenders are often those with acute mental health needs or with substance abuse problems, and thus have a particular need for therapy or treatment. Concluding that an individual "high risk" does not mean that he is especially likely to commit a *violent* crime – it simply means that he is more likely than others to commit some future offense. Many violent criminals are a very low risk for reoffending while many offenders who commit non-violent crimes (retail theft or drug possession, for example) can be at very high risk of reoffending.

Some risk and needs principles have become well-established. For example:

- If low risk offenders are housed with high risk offenders, those in the former group are much more likely to become high risk.
- Poorly designed or misdirected programming can make inmates worse off, and can even increase the likelihood that an inmate will re-offend.
- Programming and services are best targeted to high risk/high need offenders. For years Illinois (and many other states) have focused their programming and services on low risk and low need individuals. This approach is exactly the opposite of what the research supports. Directing resources toward low-risk offenders, who by definition are the least likely to reoffend, fails to make the best use of limited resources and thus fails to achieve the maximum benefit to public safety.

[47] For a discussion of Risk and Needs Assessment, see the PEW Center On the States, *Risk/Needs Assessment 101: Science Reveals New Tools to Manage Offenders* (Sept. 2011), accessed Dec. 23, 2016, http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2011/pewriskassessmentbriefpdf.pdf.

In 2009 the Illinois Legislature passed the Crime Reduction Act (CRA), which recognized:

> [T]o determine appropriate punishment or services which will protect public safety, it is necessary for the State and local jurisdictions to adopt a common assessment tool. Supervision and correctional programs are most effective at reducing future crime when they accurately assess offender risks, assets, and needs, and use these assessment results to assign supervision levels and target programs to criminogenic needs.[48]

Sections 15(b) and (c) of the Act require that the Governor appoint a Task Force to develop a plan for the "adoption, validation, and utilization of such an assessment tool." The CRA further requires that the Department of Corrections, the Parole Division of the IDOC, and the Prisoner Review Board "adopt policies, rules, and regulations that within 3 years … result in the adoption, validation, and utilization of a statewide, standardized risk assessment tool across the Illinois criminal justice system." Although implementation of the CRA is not yet complete, a risk assessment tool has now been acquired[49] and IDOC has begun the implementation process. As of the end of 2016, ten risk and needs assessment specialists are administering assessments in six IDOC facilities.

The Commission recommends that Section 15 of the Crime Reduction Act of 2009 be fully implemented without further delay. It further recommends that steps be taken to expand the use of risk and needs assessment tools to other parts of the criminal justice system. Courts should be encouraged and supported in their efforts to use a risk and needs assessment tool when setting sentences after conviction. Probation departments should be supported in their efforts to use (and in appropriate cases, to expand their use of) these tools as well.

The Commission believes that this recommendation is foundational: it takes an important step in making sure that decisions about how we sentence, sanction, and supervise include consideration of the characteristics of both the offense and the offender. The effectiveness of many of the recommendations that follow depend on the ability to evaluate properly an offender's risk and needs.

Implementation

- The Illinois Department of Corrections should develop a plan to fully implement Section 15 of the Crime Reduction Act of 2009. That plan should include a timeline with major milestones, documentation of the resources needed to carry out that plan, and how the Department will assess and report on its progress toward implementing the plan.

[48] 730 ILCS 190/15(a).

[49] The tool selected was the Service Planning Instrument developed by Orbis Partners. http://orbispartners.com/assessment/adult-assessment-spin/ The Illinois probation system uses a comparable assessment tool (Level of Service Inventory–Revised, https://ecom.mhs.com/(S(fdkzjd45wcmwllfulqtwcv45))/product.aspx?gr=saf&prod=lsi-r&id=overview) to determine the appropriate levels of supervision and appropriate service referrals for probationers.

- The Administrative Office of Illinois Courts and local probation offices should be encouraged to expand the frequency and availability of risk and need assessment information for judges to consider when setting sentences in felony cases. The AOIC should evaluate current risk and needs assessment practices occurring in local probation offices, document the steps that need to be taken to expand these assessments in felony cases, and identify the resources needed to implement this recommendation.
- The Illinois Department of Corrections should work with the Administrative Office of the Illinois Courts and local probation offices to determine how risk and needs assessment information can be shared with the IDOC to reduce redundant efforts.

3. Provide incentives and support for the establishment of local Criminal Justice Coordinating Councils to develop strategic plans to address crime and corrections policy.

Rationale

Historically there has been insufficient coordination and cooperation between the State and local agencies when it comes to criminal justice planning. The State provides funding for local criminal justice issues from a variety of sources directed toward a variety of local entities,[50] but there is no coordinating mechanism that allows the State to learn how this funding fits in with a local jurisdiction's overall criminal justice needs, nor is there a coordinated way for local governments to learn from the experiences and data in the hands of the State. Most crime is local, and the needs of local law enforcement, governments, and the community often vary by region. The result is an insular approach to funding local needs, and as a result, State spending on criminal justice is often misaligned.

To make more effective use of the State's criminal justice resources, local jurisdictions should form Criminal Justice Coordinating Councils (CJCCs). These Councils are strategic planning bodies that bring together representatives from justice system agencies, other governmental bodies, service providers, and the community to create strategic plans to help local jurisdictions address their particular crime problems as well as help reduce their use of prison as a sanction. With technical support from the State, including data analysis and guidance in the strategic planning process, CJCCs can help local jurisdictions target their specific crime problems and learn how the State's resources can best be used to address them.[51]

Implementation

- The Legislature should amend the Crime Reduction Act of 2009 to provide authority for the formulation of Criminal Justice Coordinating Councils, and set forth minimum membership requirements on CJCCs to ensure representation of those outside the criminal justice system, such as service providers and community representatives.
- The Illinois Criminal Justice Information Authority (ICJIA) should assess the various criminal justice councils and advisory boards that currently exist at the local level. This assessment should determine how these existing councils may relate to or already embody the principles of the proposed CJCCs.

[50] For example, while many jurisdictions have multiple strategic planning bodies (Juvenile Redeploy and Adult Redeploy planning committees, juvenile justice councils, family violence coordinating councils, mandatory local probation planning, judicial advisory councils, etc.), there is no centralized way for the State either to learn from or provide information to local jurisdictions about how funding can better address their criminal justice issues.

[51] More information on CJCCs is found at U.S. Department of Justice, National Institute of Corrections, *Guidelines for Developing a Criminal Justice Coordinating Committee* (Jan. 2002), accessed Dec. 23, 2016, http://static.nicic.gov/Library/017232.pdf.

- ICJIA should publish an instructional guide for local jurisdictions on current best practices employed by other coordinating councils across the State. The guide should provide background on establishing and maintaining coordinating councils, and should be accompanied by ICJIA technical assistance on data collection, analysis, and strategies for targeting local crime trends and patterns. The guide should discuss partnerships with other government entities serving the justice-involved population, including physical and mental health, substance abuse, family and child welfare, and housing services.
- ICJIA should publish a plan describing how the State can support the Criminal Justice Coordinating Councils.
- An independent third-party entity should evaluate and report to ICJIA and the legislature on the use and effectiveness of local coordinating councils.

4. Implement a Gender-Responsive Approach for Female Offenders.

a) Implement a gender-responsive risk assessment tool.

b) Implement the Women Offender Case Management Model or similar evidence based gender-responsive model.

c) Adopt model disciplinary policies tailored to female inmates.

d) Implement gender-responsive, trauma-informed treatment programs.

Rationale

Most prison populations are male, and so not surprisingly, most corrections research and most approaches to discipline and rehabilitation focus on men. But there are more than 2,500 female inmates in Illinois prisons, and as a group, they have a different profile than male prisoners, and present distinct challenges and opportunities. Females are more likely to have been convicted of a low-level offense than their male counterparts – 31percent of female inmates were convicted of a Class 3 or Class 4 felony, compared to 20 percent of the males. Females are more likely than males to have been convicted of drug crimes (30 percent vs. 18 percent), and are much less likely to have been convicted of sex crimes (3 percent vs. 13percent). Roughly 80 percent of all females incarcerated within IDOC are mothers, and historically, 65 percent of the inmates' children are minors.[52] Women also have a much lower recidivism rate: on average about 1 in 3 released women will return to prison within 3 years, compared to the recidivism rate for all inmates of roughly 50 percent.

Consistent with the requirements of Illinois law,[53] this Report calls for the use of risk-assessment tools when considering the appropriate treatment of those accused and those convicted of crimes.[54] This Recommendation adds that the risk assessment tools should include gender-specific considerations. Use of a gender-responsive risk assessment tool would increase the opportunities for diversion and electronic detention,[55] and would increase the opportunities for the accelerated release for females that have been committed to IDOC's custody. Without such a tool, women are frequently over-classified, and opportunities to divert or reduce their lengths of stay are missed. Use of a gender responsive risk assessment instrument would thus safely decrease the prison population while better targeting rehabilitative resources toward the offender's specific needs.

[52] As of November 2016, 2,094 of the 2,605 of the female inmates at Logan Correctional Center, Decatur Correctional Center, and Fox Valley Adult Transition Center were mothers. Figures provided by IDOC.

[53] 730 ILCS 190/10 and 15 require the Department of Corrections and the Prison Review Board to adopt and use a "statewide, standardized risk assessment tool."

[54] See Recommendation 2, above.

[55] As of June 30, 2016, there were only 4 female inmates on electronic detention. Figures provided by IDOC

Similarly, the Women Offender Case Management Model (or a similar evidence-based, gender-responsive model) should be used by the IDOC parole staff as well as any case management staff serving parolees. It will require that IDOC parole and community provider staff be trained in evidence-based case management programming that is both gender responsive and trauma informed. Using this Model would help decrease the prison population by decreasing recidivism among female offenders.

In addition, experience has shown that women react differently to prison disciplinary codes than male inmates, and that using the same set of rules for both groups can be counter-productive. Implementing the disciplinary code in a manner that recognizes these differences can help reduce the prison population by reducing the misaligned rules that now lengthen the number of days that women remain behind bars. Directing IDOC to amend its disciplinary code for female inmates to account for gender differences is likely to lead to safer institutions, as well as a reduction in lost sentencing credit by inmates for disciplinary infractions.

IDOC should also implement prison programming that is gender specific and trauma-informed. It should develop programs likes the ones for male inmates at the Sheridan Correctional Center and at the Southwestern Illinois Correctional Center that focus on best practices, but specifically for women needing rehabilitation and reentry support.

Implementation

- At each stage of the process where a risk assessment tool is used, direct or encourage the use of a gender-responsive risk assessment tool.
- Direct the use of the Women Offender Case Management Model, or a similar evidence based gender-responsive model, for female inmates.
- Direct IDOC to review its disciplinary code and practices to account for evidence-based gender differences.
- Instruct IDOC to institute gender-informed, evidence-based staff training and development for cadets and for all staff assigned to IDOC's female facilities.

5. Require periodic training on recognizing implicit racial and ethnic bias for individuals working in the criminal justice system, including but not limited to law enforcement officers, prosecutors, public defenders, probation officers, judges, and correctional staff

Rationale

Implicit bias is the "attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner."[56] Implicit bias can include favorable or unfavorable attitudes about particular groups, can occur without people's knowledge, and is unintentional. All individuals are susceptible to implicit bias, including those who consciously hold tolerant or egalitarian beliefs.

Research shows that implicit bias occurs when individuals use mental shortcuts to help them assess information quickly and then respond to that information. These mental shortcuts, while sometimes useful, can produce generalizations about particular groups that result in disparate decision-making and treatment.[57] In the criminal justice context, implicit bias can result in the unconscious, automatic association of people of color with crime, which can in turn influence decisions affecting the use of force, arrest, prosecution, defense, diversion, conviction, sentencing, and the supervision of those under correctional control.[58]

Although implicit bias occurs unconsciously, research has also found that purposeful actions or "controlled responses" can be used to supersede their automatic associations, and that implicit bias can be counter-acted by training and practice.[59] This training and practice can affect not only thoughts but actions, including a person's decision-making in highly stressful settings. Studies on implicit bias as it relates to police and citizen decisions to shoot armed or unarmed suspects, for instance, indicate that implicit biases can be overridden even during potentially life-threatening events.[60]

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[56] See http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/

[57] Lorie A. Fridell, Racially Biased Policing: The Law Enforcement Response to Implicit Black-Crime Association, in Lynch, Michael J., E. Britt Patterson, and Kristina K. Childs (eds.). *Racial Divide: Racial and Ethnic Bias in the Criminal Justice System* (Criminal Justice Press, 2008) pp.39-59.

[58] See generally Fridell, Racially Based Policing, supra; L. Song Richardson & Phillip Atiba Goff, Implicit Racial Bias In Public Defender Triage, 122 Yale L.J. 2626 (2013); Jennifer L. Eberhardt, et al., Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes, *Psychological Science, 17*(5), 383-386 (2006).

[59] Dasgupta, N., & Greenwald, A. G., On the Malleability of Automatic Attitudes: Combating Automatic Prejudice with Images of Admired and Disliked Individuals. *Journal of Personality and Social Psychology, 81*, 800–814 (2001).

[60] Correll, J., Park, B., Judd, C. M., Wittenbrink, B., Sadler, M. S., & Keesee, T, Across the Thin Blue Line: Police Officers and Racial Bias in the Decision to Shoot. *Journal of Personality and Social Psychology, 92*(6), 1006 (2007).

Given the importance of equal treatment under the law and the significant presence of racial disparities in the justice system, time spent addressing implicit bias is time well spent. Training and practice that encourages individuals to focus on behavioral cues versus stereotypic associations, and that exposes people to counter-stereotypic information hold promise,[61] because mindfulness can provoke individuals to deliberately consider alternative responses that reflect their consciously held beliefs.[62]

The Commission recommends that all individuals working in the criminal justice system be trained on implicit racial and ethnic bias. The recommendation is consistent with efforts throughout the United States at all levels of government to address the impact of bias in the justice system. For example, the Office of Community Oriented Policing Services has funded curriculum development for training of police recruits and first-line supervisors, and programs have now been used by police agencies across the country, including those in Los Angeles, Dallas, and Philadelphia. In addition, in June 2016, the U.S. Department of Justice announced that it would train all its law enforcement personnel and prosecutors on implicit bias.

Implementation

- Direct or encourage the respective agencies or organizations responsible for training, development, and oversight of justice system personnel to implement implicit bias training.
- Direct or encourage these agencies and organizations to document and report on the number of employees who have been trained in recognizing implicit bias.
- Direct the Illinois Criminal Justice Information Authority, in partnership with implementing agencies, to evaluate the effectiveness of implicit bias training.

[61] Plant, E. A., Peruche, B. M., & Butz, D. A., Eliminating automatic racial bias: Making race non-diagnostic for responses to criminal suspects. *Journal of Experimental Social Psychology*, *41*(2), 141-156 (2005).

[62] Fridell, Racially Biased Policing, supra.

6. Improve and expand data collection, integration, and sharing. Support the establishment of the Illinois Data Exchange Coordinating Council (IDECC) to facilitate an information-sharing environment among State and local units of government.

Rationale

Illinois is a national leader in information technology expenditures, but lags far behind in ensuring that information is shared quickly and effectively among agencies and across State and local jurisdictions. Even when data are shared, the use of different platforms and technology can frustrate efforts to provide a single source of information. Data should be gathered and entered once, and then made available to those who need it; currently, data are often entered multiple times by multiple actors with multiple chances for error. The result is that policymakers, researchers, and other actors within the criminal justice system frequently do not have ready access to the information they need to make informed decisions.

The Commission recommends the creation of the Illinois Data Exchange Coordinating Council (IDECC), which would operate under the direction of the Office of the State's Chief Information Officer. The IDECC would establish the platform, authority, and accountability that will allow the creation of a statewide information-sharing environment. In this environment, Illinois criminal justice agencies would:

- Collaborate to make technology, procurement, and integration decisions as a domain, where feasible;
- Embrace a shared computing model, one that consolidates data centers, hosting systems, and applications on common infrastructures;
- Establish the information technology architecture and standards for an integrated justice information environment;
- Provide technical assistance to local governments to ensure that information can be shared vertically as well as horizontally;
- Increase the efficiency of the data collection process, and increase the accuracy of the data; and
- Ensure that sensitive information – law enforcement databases, personnel files, and private data, for example – is not disseminated improperly.

The IDECC should coordinate its criminal justice efforts with other statewide data integration efforts, such as those on health care information, to ensure that the problems of fragmented information are not reproduced among the various areas of State government.

Implementation

- The Governor should establish the Illinois Data Exchange Coordinating Council, which should have the authority to develop the environment described above.

- The IDECC should publish an implementation plan that outlines the major steps and milestones associated with its charge, documents the resources needed to implement the improved information-sharing environment among State and local governments, and how an external evaluation of the system will be conducted.
- The IDECC, in conjunction with the member organizations, should assess current statutory requirements governing the collecting, reporting, quality, and access to data collected by criminal justice system stakeholders, including the production and sharing of data dictionaries and structures currently in use.

7. Collect and report data on race and ethnicity at every point in the criminal justice system to allow a systematic assessment of disproportionate minority impact.

Rationale

It has long been recognized that racial and ethnic minorities, and more specifically African American citizens, are disproportionately affected by the criminal justice system, both in Illinois and nationwide. Minority-race citizens are arrested, prosecuted, convicted, and sentenced to prison at a rate that is greatly disproportionate to their percentage of the population. To take one example, in 2015, African Americans represented 14.6 percent of the State's population but accounted for 49.7percent of all felony arrests and 57.2 percent of all IDOC admissions.

There are many factors that contribute to the huge overrepresentation of racial and ethnic minorities in the justice system. Minority race citizens are disproportionately likely to live in high crime communities, and in areas where there are high concentrations of social and economic disadvantages. The content and application of the criminal law also plays a role, with one specific driver of disproportionate minority contact being the State's drug laws. In 2015, African Americans accounted for 52.3 percent of arrests for violations of the State's Controlled Substances Act and 62.3 percent of admissions to IDOC for these offenses, despite national survey results that show illegal drug use is comparable across racial and ethnic groups.[63] Even greater disparities are noted when isolating particular drug law provisions, such as those that require a significant sentence enhancement for drug law violations occurring within 1,000 feet of schools, parks, public housing, churches, nursing homes, and other protected areas.[64]

Modifying sentencing practices is one important step to addressing the disproportionate numbers, but even this creates a risk of unintended consequences. For example, some of the Commission's recommendations involve providing criminal justice professionals (judges and the Department of Corrections in particular) with more discretion over the disposition of individual offenders, on the theory that additional discretion would allow for the consideration of case-specific features and more individualized treatment. History has shown, however, that such discretion, even if well intended, can also increase rather than decrease existing racial disparities.

Recognizing this reality, the Commission has concluded that the first step to addressing the disparities is to accurately identify them and understand their scope. It recommends that the State take increased steps to collect data that could be used to evaluate criminal justice practices. In particular, the State should work to ensure the following data are collected and made available for systematic assessment:

[63] Center for Behavioral Health Statistics and Quality (2015). *Behavioral health trends in the United States: Racial and ethnic minority populations*, available at: https://www.samhsa.gov/specific-populations/racial-ethnic-minority. For the major racial and ethnic groups in 2014, drug use varied between 9% and 12.4%.

[64] See Recommendation 16, below.

- Incident and arrest data. Police departments should adopt the federally-mandated National Incident Based Reporting System standards, in compliance with the State's I-UCR program. Those standards require police agencies to collect and report detailed information about crime incidents, arrests and clearances, including race and ethnicity information of victims and offenders.
- Bond decision, pre-trial supervision and detention data. Circuit Court Clerks, county jails, and county probation departments should provide data on pretrial bond decisions, supervision, and custody, including the race and ethnicity of those who are the subjects of these decisions.
- Jail data. The IDOC Jail and Detention Standards Unit should collect and publish data on the pending charges, along with the race and ethnicity of those held in county jails pre-trial. The Unit should also collect and publish data on the conviction charges, as well as the race and ethnicity of those serving a jail sentence.
- Charging, court dispositions, and sentencing data. Circuit Court Clerks and State's Attorney Offices should report complete and timely data on all charging, case dispositions, and sentences to Illinois' Criminal History Record Information (CHRI) System as required by law.
- Diversion data. Diversion program administrators, including law enforcement, State's Attorneys, probation departments, TASC, Adult Redeploy Illinois, and other program operators, should collect and publish data on the use of diversion programs by the race and ethnicity of individuals in pre-trial and post-trial programs
- Probation outcomes, including revocation data. Probation Departments should collect and publish data on probation outcomes, including revocations and terminations of by race and ethnicity.
- Admissions and exits to IDOC. IDOC should continue its current practice of collecting and publishing corrections population statistics by race and ethnicity.

The collecting entity should collect race and ethnicity information in compliance with the definitions of Public Act 99-78, which included self-identified categories of (1) American Indian or Alaskan Native, (2) Asian or Pacific Islander, (3) Black or African American, (4) White or Caucasian, or (5) Hispanic or Latino. These categories are the minimum required, but additional distinctions — for example, adding a subcategory of White or Caucasian for Middle Eastern and Northern African — should be encouraged.[65]

These data should be made available to the public whenever possible. Providing that there are adequate protections for private, personally-identifying information, data should be available in digital form through public data portals. When case-level data cannot be safely published, aggregate race and ethnicity reports should be made available at least annually.

[65] *See, e.g.*, U.S. Census Bureau (2013). *2010 Census Planning Memoranda Series: 2010 Census Race and Hispanic Origin Alternative Questionnaire Experiment.* Feb. 28, 2013, No. 211 (2nd Reissue), available at: https://www.census.gov/2010census/pdf/2010_Census_Race_HO_AQE.pdf.

Implementation

- Direct or encourage the respective agencies or organizations to collect, at the individual-level, the applicable information outlined in this recommendation at each relevant decision-point.
- Direct or encourage agencies and organizations to make available the data collected for a system-wide analysis of the racial impact of criminal law and criminal justice practices and policies.
- Direct the Illinois Criminal Justice Information Authority to publish an annual summary of the racial and ethnic characteristics of individuals processed at the various stages of the justice system, one that includes summaries of the information listed above.

8. **Require all State agencies that provide funding for criminal justice programs to evaluate those programs. Agencies should eliminate those programs for which there is insufficient evidence of effectiveness and expand those that are proven effective. Ensure that programming appropriately targets and prioritizes offenders with high risk and needs.**

Rationale

The criminal justice system must use its limited resources efficiently, and no criminal justice program – meaning broadly, a State-funded social service or treatment program that serves those involved in the justice system – should be implemented or maintained without evidence that it is working effectively, and without periodic review. The State should ensure that all currently funded criminal justice programs are evaluated for effectiveness, and discontinue programs where there is insufficient evidence of effectiveness. Those programs that do not currently have sufficient data to support an evaluation should be given a reasonable time to collect data or risk defunding. Promising programs - those that have a strong theoretical basis but have not been sufficiently evaluated - should continue to be studied. Consistent with Recommendation 2, evaluations should include an analysis of whether the program targets high risk and high need offenders.

Implementation

- State agencies should determine whether criminal justice programs that they fund have been evaluated for effectiveness, and if evaluated, publish the findings of those evaluations. Those programs lacking sufficient evidence of effectiveness should be discontinued or evaluated, as appropriate.
- All State agencies that fund criminal justice programs should dedicate a portion of that funding for process and outcome evaluations.
- State agencies should coordinate their evaluation efforts. The Illinois Criminal Justice Information Authority should develop a plan for coordinating these efforts statewide and should, where feasible, make use of existing resources to assist in this process, including the development of relationships with universities and non-profit organizations.
- The Illinois Criminal Justice Information Authority should act as a statewide repository for the evaluation findings.

B. Recommendations to Reduce the Number of Prison Admissions

9. Prevent the use of prison for felons with short lengths of stay. IDOC should be authorized and encouraged to use existing alternatives to imprisonment for individuals with projected lengths of stay of less than 12 months. IDOC should be required to report its use of alternatives to imprisonment for these individuals in its Annual Report.

Rationale

Each year more than 10,000 offenders are sent to prison but spend less than one year there.[66] Many of these short-time inmates had served a significant amount of time in local jails prior to trial, and once they receive credit on their sentence for time already served, the period spent in prison is quite short – in 2014 over 3,000 inmates served less than four months in prison.

Using prison to house short-time inmates is wasteful at best and counter-productive at worst. Transporting inmates is expensive, diverts security personnel, and often makes it difficult for the offenders to remain connected to their family. The intake process is burdensome, and orienting new inmates to a new facility is resource-intensive. Inmates who would stay in prison for only a few months do not have time to participate in programming that will assist with rehabilitation. Worst of all, exposing low-risk offenders to higher risk-inmates can decrease the new inmate's chances of returning to a law-abiding life after prison.

The Commission recommends that the IDOC be authorized and encouraged to find alternatives for those offenders who, at the time of their sentence, are expected to serve less than a year in prison. The IDOC may elect, for example, to make greater use of home detention or electronic monitoring. (See Recommendation 21.) The Department may also conclude that keeping inmates in local jails for the balance of a sentence makes the most sense, provided that the local jurisdiction is compensated for its costs.[67] Or, the Department may conclude, based on its review of the inmate's record, that serving even a short time in prison would benefit public safety, the inmate, or both. Regardless, the Department should be given the authority and the support to make use of better, more cost-effective, options for dealing with short-time offenders.

Implementation

- The Illinois Department of Corrections should develop an implementation plan for using alternatives to imprisonment for offenders with projected lengths of stay of less than 12 months. That plan should include a timeline, documentation of the resources needed to carry out that plan, a description of how the Department will assess and report on its progress toward implementing the plan, and a strategy for external evaluation of the proposed alternatives to prison.

[66] In fiscal year 2015 there were 11,011 new court commitments to IDOC who exited within one year of their admission.

[67] Currently the IDOC may enter into compensation agreements with counties when the local jail is used to incarcerate inmates who have violated the terms of their Mandatory Supervised Release. See 730 ILCS 125/5. An additional grant of authority may be required to cover this additional type of reimbursement.

- The IDOC should collaborate with community agencies, local governments, and other stakeholders while developing these strategies, and communicate with communities regarding the proposed alternatives to imprisonment.
- To the extent the alternatives to prison involve increasing the costs to Illinois counties, the legislature should grant the Department the authority to reimburse the counties for those costs and provide adequate funding to the Department to cover this expense.

10. Raise the threshold dollar amounts for theft not from a person and for retail theft from their current levels to $2,000. Limit the automatic enhancement from misdemeanor theft to felony theft to cases where there has been a prior felony theft conviction.

Rationale

Under current law, a theft where the property was not taken from a person is a felony if any of the following conditions are present:

- Theft of goods worth more than $500 is a Class 3 Felony. If the goods are worth $500 or less the defendant is guilty of a Class 4 felony if he has previously been convicted of any type of theft.[68]
- Theft from a school or a place of worship, or theft of government property, is a Class 2 felony if the value of the items taken is more than $500. If the value of the goods taken from these places is worth less than $500, it is a Class 4 felony.[69]
- Retail theft where the value of the items taken is greater than $300 is a Class 3 felony. If the stolen items are worth $300 or less, the defendant is guilty of a Class 4 felony if he has previously been convicted of any type of theft.[70]

Processing non-violent theft offenders puts a significant strain on the prison system. In 2015, for example, there were 2,630 offenders sentenced to IDOC for the Class 3 or Class 4 felonies of retail theft or theft not from a person.[71] Typically these inmates have short and unproductive terms of incarceration; in 2015, nearly half (49 percent) of those who were sentenced to prison for a Class 3 felony theft received the minimum sentence of two years.[72]

Theft of all types is a serious problem, but treating those who steal relatively small amounts (a single laptop or smartphone, for example) the same as those who steal on a large scale seems disproportionate, and does not make the best use of prison resources. Before theft not from a person becomes a Class 3 felony, the value of property taken should be greater than $2,000. Theft of items worth less than $2,000 should be a Class A misdemeanor. Similarly, before retail theft becomes a Class 3 felony, the value of the property taken should be greater than $2,000. Retail theft of property worth less than this amount should be a Class A misdemeanor.[73]

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[68] 720 ILCS 5/16-1(b)(2), (4).

[69] 720 ILCS 5/16-1(b)(4.1), (1.1). If the value of the items taken from a school or church, or the value of the government property exceeds $10,000, the crime is a Class 1 felony.

[70] 720 ILCS 5/16-25(f)(2), (3).

[71] In fiscal year 2015 there were 1,415 offenders sentenced to prison for Class 4 retail theft, 285 sentenced for Class 4 felony theft, 437 sentenced for Class 3 retail theft, and 490 sentenced for Class 4 felony theft.

[72] Of those convicted of Class 4 theft or retail theft, over 40% received the minimum sentence of 1 year.

[73] Increasing the threshold dollar amount for theft not from a person would exaggerate an existing anomaly in the law. Currently, theft of *any* property from a school or church, or the theft of any government property, is at least a Class 4 felony regardless of the value of the goods. 720 ILCS 5/16-1(b)(1.1). If implemented, this recommendation

In addition, a second conviction for theft, regardless the value of the item stolen, should not automatically raise an offense from a misdemeanor to a felony. Status as a felon and possible imprisonment is not an appropriate sanction for a person who repeatedly steals low-value items, nor is this a prudent use of prison resources. The automatic enhancement of a misdemeanor theft to felony status should require at least one prior *felony* conviction for theft or related crimes.

Implementation

- Amend 720 ILCS 5/16-1(b)(1), the theft not from a person statute, to change the maximum dollar amount for misdemeanor theft from $500 to $2,000. Make conforming changes to the balance of the theft statute.
- Amend 720 ILCS 5/16-1(b)(2) to provide that before a theft not from a person of items worth $2,000 or less becomes a Class 4 felony, the defendant must have been "previously convicted of any type of *felony* theft, robbery, armed robbery…."
- Amend 720 ILCS 5/16-25(f)(1), the retail theft statute, to change the threshold dollar amount from $300 or $150 for motor fuel to $2,000. Make conforming changes to the balance of the retail theft statute.
- Amend 720 ILCS 5/16-25(f)(2) to provide that before retail theft of items worth less than $2,000 becomes a Class 4 felony, the defendant must have been "previously convicted of any type of *felony* theft, robbery, armed robbery…."

would increase the potential disparity between the theft of school, church, or government property versus other types of property. Currently a thief who steals a $400 item has committed a misdemeanor, while a thief who steals a $20 stapler from a State office has committed a felony. The recommendation, if enacted, would mean that a person who stole $1,900 worth of goods would have committed a misdemeanor, while someone who stole a lunch from a school locker had committed a felony. The legislature may wish to address this anomaly should it adopt this recommendation.

11. Give judges the discretion to determine whether probation may be appropriate for the following offenses:

a) Residential burglary;

b) Class 2 felonies (second or subsequent); and

c) Drug law violations.

Rationale

There are more than 30 offenses or types of offenses that require a mandatory prison sentence, meaning that a court may not place the defendant on probation. Often this restriction aligns with societal expectations – a person guilty of murder or criminal sexual assault should not receive probation, regardless of the person's record or the circumstances of the crime.

A blanket policy to make a crime non-probationable, however, reflects a judgment that there is *no* set of circumstances where probation is an appropriate sentence. Eliminating probation eligibility is often a legislative response to a particular crime or series of crimes, but the result is that all such offenses, including the less extreme variations, are now subject to the same restrictions. These mandatory prison terms can therefore tie a judge's hands – the offender is sent to prison, even when a judge believes that incarceration is not the appropriate disposition.[74]

The Commission recommends that probation should be an option for the crimes listed above. Nothing in the recommendation restricts a judge's sentencing authority; courts remain free to impose a prison sentence for these crimes when appropriate. But when the circumstances are such that probation is the appropriate disposition, that choice should be available to the judge as well. And while anytime probation is a statutory option there is a presumption that it is the proper sentence,[75] the Commission believes that as long as prosecutors remain free to argue in favor of imprisonment, there is little chance that offenders who present a significant risk to public safety will be released rather than incarcerated.

The Commission recommends that probation be available for the following offenses:

a) Residential Burglary, 720 ILCS 5/19-3, a Class 1 felony, occurs when a person knowingly and without authority enters or remains in the dwelling of another with the intent to commit a theft or other felony.[76] In fiscal year 2015 there were 704 inmates convicted of residential burglary, each with a projected average length of stay of 2 years.

b) A second Class 2 or greater felony. If a defendant has once been convicted of a Class 2 or greater felony, and within 10 years of that conviction commits a second Class 2 or

[74] Making crimes non-probationable may affect the local jail population as well. The fact that the defendant is charged with such an offense can influence a judge's bail decision, which may well result in a defendant remaining in jail with a high bond amount because he was charged with non-probationable offenses, even if the case is eventually resolved with a guilty plea to a lesser crime and a sentence of probation.

[75] 730 ILCS 5/5-6-1(a).

[76] Residential burglary is a distinct crime from home invasion, 720 ILCS 5/19-6, which remains a non-probationable offense.

greater felony, the offender may not be sentenced to probation for the second offense.[77]

c) Drug law violations. There are a variety of Class X drug offenses that are currently non-probationable. Drug crimes that are not Class X felonies, however, should be eligible for probation. In fiscal year 2015, there were 891 DOC inmates who were convicted of less than a Class X offense but whose offense was non-probationable. The projected average length of stay for these inmates is 2.2 years.

Implementation

- The legislature should amend 730 ILCS 5/5-5-3-(c)(2) to remove the following sections:

  "(D) A violation of Section 401.1 or 407 of the Illinois Controlled Substances Act, or a violation of subdivision (c)(1.5) or (c)(2) of Section 401 of that Act which relates to more than 5 grams of a substance containing cocaine, fentanyl, or an analog thereof.

  (D-5) A violation of subdivision (c)(1) of Section 401 of the Illinois Controlled Substances Act which relates to 3 or more grams of a substance containing heroin or an analog thereof.

  (F) A Class 2 or greater felony if the offender had been convicted of a Class 2 or greater felony, including any state or federal conviction for an offense that contained, at the time it was committed, the same elements as an offense now (the date of the offense committed after the prior Class 2 or greater felony) classified as a Class 2 or greater felony, within 10 years of the date on which the offender committed the offense for which he or she is being sentenced, except as otherwise provided in Section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act.

  (G) Residential burglary, except as otherwise provided in Section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act."

- The Administrative Office of the Illinois Courts should be encouraged to support additional training for judges on risk and needs assessment and promote the use of those assessments to help judges determine whether imprisonment is the most appropriate sentence for offenders convicted of these crimes.

- The Illinois Sentencing Policy Advisory Council (SPAC) should monitor the impact of this recommendation. Three years from the effective date of legislation implementing this recommendation, SPAC should publish a report on the trends in sentencing for these offenses, the impact of the trends on the prison and probation populations, and any changes in the racial composition of the prison and probation populations that can be attributed to these changes. SPAC, the Administrative Office of the Illinois Courts, the Illinois State Police, and other stakeholders should develop a method to collect the data necessary to support this analysis.

[77] 730 ILCS 5/5-5-3(c)(2)(F). The restriction on sentencing a defendant to probation for a second Class 2 or greater felony is subject Section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act, 20 ILCS 301/40-10.

12. Before an offender is sentenced to prison for a Class 3 or 4 felony, require that a judge explain at sentencing why incarceration is an appropriate sentence when:

a) The offender has no prior probation sentences; or

b) The offender has no prior convictions for a violent crime.

Rationale

Incarcerating people who commit a Class 3 or Class 4 felony but who pose only a small risk to public safety is not an effective or appropriate use of prison resources. Not only are Class 3 and Class 4 felonies the less serious of the felony offenses, incarceration is costly, harsh, and in some cases, has a criminogenic effect on individuals, making them more likely to commit future crimes.

The Commission recommends that for certain defendants convicted of a Class 3 or Class 4 felony – those with no prior probation sentence, or those with no prior convictions for a violent crime – judges at sentencing should be required to state on the record why probation is not the appropriate sanction. Currently about 30 percent of Class 3 or 4 prison inmates have not had a probation sentence before being sent to prison. And in fiscal year 2015, 58 percent of new court admissions to prison for Class 3 and Class 4 felonies had no prior convictions for violent crimes.[78]

With the exception of non-probationable crimes, judges already are obligated to consider probation as a possible sentence, and reach a conclusion that probation would not adequately protect the public, would deprecate the seriousness of the offender's conduct, and would be inconsistent with the ends of justice.[79] This recommendation would simply require the judge to articulate why, on the record and on the facts presented, it reached that conclusion. The Commission concluded that for these two classes of defendants, this process is likely to reveal cases where imprisonment is unnecessary.

This recommendation would not change or restrict the court's authority to sentence people to prison. Instead, it is designed to ensure that where defendants as a group are less likely to require imprisonment, courts give proper consideration to the possibility of probation, and to do so in a transparent and consistent manner.

[78] For this purpose, "violent crimes" are defined as set forth in the Rights of Crime Victims and Witnesses Act, 725 ILCS 120/1, et seq.

[79] 730 ILCS 5/5-6-1(a) provides in part:

> Except where specifically prohibited by other provisions of this Code, the court shall impose a sentence of probation or conditional discharge upon an offender unless, having regard to the nature and circumstances of the offense, and to the history, character and condition of the offender, the court is of the opinion that (1) his imprisonment or periodic imprisonment is necessary for the protection of the public; or (2) probation or conditional discharge would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice….

Implementation

- The legislature should amend 730 ILCS 5/5-6-1(a) to require that a judge, before imposing a sentence in a case where probation is a possible sanction and where the defendant has no prior sentence of probation or no prior conviction for a violent crime, state on the record, either orally or as part of the written sentencing order, the court's factual findings supporting its conclusion that probation was not an appropriate sentence.
- The Illinois Sentencing Policy Advisory Council (SPAC) should monitor the impact of this recommendation. Three years from the effective date of legislation implementing this recommendation, SPAC shall publish a report on the trends in sentencing for these offenses, the impact of the trends on the prison and probation populations, and any changes in the racial composition of the prison and probation populations that can be attributed to these changes. SPAC, the AOIC, and other relevant stakeholders shall develop a method to collect the data necessary to support this analysis.

Postscript: This recommendation was made in Part I of the Report, issued December 2015. On August 19, 2016, Governor Rauner signed into law Public Act 99-861 which implements the recommendation. The new law requires that when a defendant convicted of a Class 3 or Class 4 felony has no prior conviction for a violent crime and has not previously been sentenced to probation, the judge must explain on the record why probation is not an appropriate sentence for the current conviction. The change takes effect January 1, 2017.

C. Recommendations to Reduce the Length of Prison Stays

13. Reduce the minimum sentence authorized for each felony class except for Class 4.

Rationale

Current law sets both a minimum and a maximum prison sentence for each felony class. Experience and research have shown that relatively few inmates are sentenced to the maximum allowable term of incarceration, which suggests that the maximum normally covers the most serious types of crime within each class.[80] The same is not true for the minimum sentences. When judges frequently sentence defendants to the lowest allowable prison term within the felony class, this raises an inference that judges in some cases would set sentences lower if they could, but are constrained by the current minimums.

The information gathered by the Commission indicates that this is in fact the case, particularly for those convicted of the least serious felonies. For example, among those sentenced to prison in Illinois for a Class 4, 3 or 2 felony, more than 40 percent received the minimum allowable sentence.[81] Indeed, even for the more serious felony classes, a substantial portion of those sentenced to prison received the minimum.[82] These figures make it reasonable to assume that if the option were available, judges would in some cases sentence offenders to shorter sentences than they do now, when the facts surrounding the particular crime or defendant warrant it.

The Commission recommends that the minimum sentence required for each felony class (except for Class 4) be lowered as set forth below, to avoid imposing a higher sentence than the facts require. The recommendation would *allow* judges to impose the same sentences as they do now, while still *permitting* lower sentences in appropriate cases.

Safely reducing the inmate population requires identifying those inmates who are the least likely to pose a risk to the community when released. Allowing judges, who are in the best position to evaluate the individual and the facts of the case, to impose a lower term of

[80] A relatively small percent of those sentenced to IDOC received either the maximum sentence allowed by the felony class, or in certain cases, sentences higher than the maximum due to sentencing enhancements. For example, 17% of those sentenced to IDOC for a Class 4 felony received the maximum allowable sentence (or higher, with enhancements), and 10% or fewer of those sentenced to IDOC for Class 3, 2, or 1 felonies received the maximum (or higher) sentence within each felony class. Fewer than 5% of those sentenced to IDOC in fiscal year 2015 for a Class X felony received the maximum sentence of 30 years (or higher with enhancements).

[81] Among those sentenced to IDOC in fiscal year 2015 for a Class 4 felony, 43% received a sentence of 1 year; among those sentenced for a Class 3 felony, 47% received a sentence of 2 years (the current minimum); and among those sentenced to IDOC for a Class 2 felony, 45% received a sentence of 3 years (the current minimum).

[82] Among those sentenced to IDOC in fiscal year 2015 for a Class 1 felony, 35% received a sentence of 4 years (the current minimum), and 18% of those sentenced to IDOC for a Class X felony received the current minimum allowable sentence of 6 years. Even among those sentenced to prison for First Degree Murder, which currently carries a minimum sentence of 20 years, 8% of those admitted in fiscal year 2015 received this minimum sentence.

incarceration when they think it appropriate is a step in that direction. This recommendation would not lower the maximum sentence permitted in each felony class, nor would it affect a judge's ability to impose consecutive sentences, and so the most dangerous individuals would continue to receive higher sentences.

Implementation

- Amend the sentencing statutes, 730 ILCS 5/5-4.5-20 to 45, to reduce the minimum sentence for each felony class as follows:

Felony Class	Maximum Sentence	Current Minimum (Years)	**New Minimum (Years)**
Murder	60 or life	20	**15**
Class X	30	6	**4**
Class 1	15	4	**2**
Class 2	7	3	**1**
Class 3	5	2	**1**
Class 4	3	1	**1**

14. Limit the automatic sentence enhancement for a third or subsequent Class 1 or Class 2 felony conviction to cases where both the current and the two prior convictions involve forcible felonies.

Rationale

One of the quickest ways to increase the prison population is to make sentence enhancements automatic, regardless of the circumstances of the case. Current law provides that when adult defendants are convicted of their third Class 1 or Class 2 felony, they are sentenced as if they were a Class X felon.[83] They are then sentenced to a mandatory prison sentence of 6-30 years, rather than a sentence of 3-7 years for a Class 2 conviction or 4-15 years for a Class 1 conviction.

The goals of these "three-strikes" provisions are to deter and to incapacitate. Whether two-time felons are in fact deterred from future crimes by the threat of an enhanced sentence is unclear, as it is difficult to measure how many two-time felons do not commit a third crime because of the threat of an enhanced sentence. But there is a significant body of research which indicates that an increasingly harsh sentence does not have a significant deterrent effect, and that it is instead the risk of getting caught that does much of the deterrent work.[84]

Three-strikes laws also incapacitate repeat offenders, but the sweep of the provision is extremely broad: in an average year, more than 1,400 offenders are eligible to be sentenced under this repeat-offender provision,[85] with little distinction made between the types of underlying offenses. The goal of using prison to incarcerate the most dangerous offenders is not served by treating violent and non-violent offenders equally.

The Commission believes that a better use of prison resources is to restrict the automatic enhancement for a third conviction to cases where the offender has committed three or more *forcible* Class 1 or Class 2 felonies, rather than simply any three Class 1 or Class 2 felonies. It recommends that property crimes, drug crimes, unlawful use of a weapon, and sex offender registry violations be removed from the scope of the enhancement provision, leaving these crimes to be sentenced within the existing range for the individual offenses. This limitation would still target the inmates most in need of incapacitation, but would not automatically sentence non-violent offenders as if they committed a Class X crime.

The impact on the prison population is likely to be significant, although the precise effect is not certain. Nothing in the recommendation prevents a judge from sentencing an offender to the high end of the Class 1 or Class 2 felony range, including an enhanced sentence when the facts warrant it. On the other hand, limiting the enhancement to cases where the three crimes are all

[83] 730 ILCS 5/5-4.5-95(b).

[84] See Daniel S. Nagin, *Deterrence in the 21st Century: A Review of the Evidence*, 2013, available at: http://repository.cmu.edu/cgi/viewcontent.cgi?article=1403&context=heinzworks; Michael Tonry, *The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings*, 38 Crime & Just. 65 (2009).

[85] The Illinois Sentencing Policy Advisory Council (SPAC) has found that over a three-year period, 2013-15, there were an estimated 4,322 convicted offenders who were eligible to be sentenced under 730 ILCS 5/5-4.5-95(b).

forcible felonies could reduce the number of offenders who are eligible for the enhancement by perhaps 1,000 per year.[86]

Implementation

- Amend 730 ILCS 5/5-4.5-95(b) to provide that a person is to be sentenced as a Class X offender only if he or she has currently been convicted of a Class 1 or Class 2 *forcible* felony, after having previously been twice or more convicted of a *forcible* Class 1 or Class 2 felony.

[86] SPAC has estimated that limiting the three-strikes provision to forcible felonies would have reduced the number of offenders who were eligible for the enhancement during the three-year span of 2013-15 from 4,322 to 1,116, for an average annual reduction of 1,068.

15. Reduce the sentence classification for felony drug crimes set forth in the Controlled Substances Act, the Methamphetamine Control and Community Protection Act, and the Cannabis Control Act by one class.

Rationale

Roughly 18 percent of current Illinois prison inmates were convicted of drug crimes.[87] Although illegal drug use remains one of society's most serious and pressing problems, increasingly long prison sentences are not the best way to address it.

For several decades, Illinois has relied on harsh laws and vigorous prosecution as the primary means of reducing drug production and use. Current law, for example, treats the selling of 15 grams (slightly more than ½ ounce) of cocaine as seriously as it treats aggravated criminal sexual assault or aggravated kidnapping.[88] Other states and the federal government have followed a similar course. These efforts have greatly increased the nation's prison population at the cost of many billions of dollars, but as the National Academy of Sciences recently concluded:

> the ultimate objective of both supply- and demand-side enforcement efforts is to reduce the consumption of illicit drugs, and there is little evidence that enforcement efforts have been successful in this regard.[89]

This conclusion is consistent with an earlier finding by the National Research Council, which said "existing research seems to indicate that there is little apparent relationship between severity of sanctions prescribed for drug use and prevalence or frequency of use, and that perceived legal risk explains very little in the variance of individual drug use."[90]

It is not clear what approach will work best to reduce the production and demand of illegal drugs. But we can at least stop doing what has failed to work. Conducting a "war on drugs" – where "the enemy" is fellow citizens and the primary weapon is harsh prison terms – has not provided the hoped-for benefits, but has imposed excessive costs on individuals, their families, and communities.

Enormous legislative efforts have been made to calibrate criminal punishments for drug crimes based on the type of drug, the quantity of drugs, and whether the person possessed, transported, manufactured, or imported the drugs, or conspired to engage in any of these acts. The Commission has neither the expertise nor the desire to re-examine these distinctions.

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[87] As of June 30, 2016, there were 7,407 inmates in Illinois prisons convicted of violating the Controlled Substances Act, which represented 16.5% of all inmates. Another 441 inmates, or 1%, were convicted under the Cannabis Control Act.

[88] A person who delivers or possesses with intent to deliver 15 or more grams of a substance containing cocaine is guilty of a Class X felony. 720 ILCS 570/401(a)(2)(A). Aggravated Criminal Sexual Assault is a Class X felony, 720 ILCS 5/11-1.30, as is Aggravated Kidnapping, 720 ILCS 5/10-2.

[89] Travis, *The Growth of Incarceration in the United States*, at 154.

[90] National Research Council, Informing America's Policy on Illegal Drugs: What We Don't Know Keeps Hurting Us, Charles F. Manski, John V. Pepper, and Carol V. Petrie, eds., at 193 (Washington, DC: 2001).

Instead, it has concluded that the first step in de-escalating the war on drugs is to reduce the length of sentences associated with these non-violent crimes. (Of course, there is often violence associated with drug offenses, but nothing in this, or any other, Commission proposal would restrict the ability of the State to prosecute and fully punish the violence.)

Recognizing that long sentences have not had the desired deterrent effect, but have consequences that can be disproportionate and counter-productive, the Commission recommends that the sentencing scheme for violations of the Controlled Substances Act,[91] the Cannabis Control Act,[92] and the Methamphetamine Control and Community Protection Act[93] be amended to reduce each offense classification by one class. Crimes that are now categorized as a Class X felony would become a Class 1 felony, a Class 1 felony would become a Class 2, a Class 2 felony would be reclassified as a Class 3 felony, a Class 3 would become a Class 4, and a Class 4 felony would become a Class A misdemeanor.

The Commission recognizes that some changes in drug sentencing are already underway. As a result, the Commission excludes from its recommendation offenses that have recently been amended by Public Act 99-697, which has already reduced the classification of offenses in the Cannabis Control Act for possession of under 500 grams.

Drug crimes that are not covered by the Controlled Substances Act, the Methamphetamine Control and Community Protection Act, or the Cannabis Control Act are not addressed by this recommendation.

Implementation

- Amend the Cannabis Control Act, 720 ILCS 550/1 et seq., by lowering the penalty for each listed felony offense by one class. Offenses now punished as a Class X felony should be reclassified as a Class 1 felony, a Class 1 felony reclassified as a Class 2 felony, a Class 2 felony reclassified as a Class 3 felony, a Class 3 felony reclassified as a Class 4, and a Class 4 felony reclassified as a Class A misdemeanor.
- Amend the Illinois Controlled Substances Act, 720 ILCS 570/100 et seq., by lowering the penalty for each listed felony offense by one class.
- Amend the Methamphetamine Control and Community Protection Act, 720 ILCS 646/1 et seq., by lowering the penalty for each listed felony offense by one class.

[91] 720 ILCS 570/100 et seq.

[92] 720 ILCS 550/1 et seq.

[93] 720 ILCS 646/1 et seq.

16. Change the mandatory felony classification increase for drug crimes committed near a protected area.

a) Conviction for delivery, or possession with intent to deliver, certain drugs within 1,000 feet of a school, park, church, or senior-citizen facility results in an automatic increase in the seriousness of the offense by one felony class. Reduce the size of the protected area from 1,000 feet to 500 feet.

b) Require the prosecutor to establish a nexus – an effect or a likely effect of the crime on the protected area – between the location and the drug offense before that offense is increased by one felony class.

c) Remove public housing from the current statute as an enhanced punishment area.

Rationale

Under current law, a person who delivers or possesses with intent to deliver certain levels of a controlled substances within 1,000 feet of a school, public housing, a park, a church, or a senior-citizen facility has the seriousness of the crime increased by one felony class.[94] The goal of the enhancement zone is to deter drug activity near areas with vulnerable populations. Thus a person who is otherwise guilty of a Class 1 felony who delivers the drugs within 1,000 feet of one of the enhancement zones is instead guilty of a Class X felony, while a person otherwise guilty of a Class 2 felony is now guilty of a Class 1 offense.

Similarly, the delivery (or possession with intent to deliver) of cannabis within 1000 feet of a school increases the seriousness of the offense by one class. A person who delivers more than 500 grams (slightly more than 1 pound) of a substance containing cannabis is normally guilty of a Class 2 felony, but is guilty of a Class 1 felony if the delivery occurs on a public way within 1,000 feet of a school.[95] There are similar enhancements for participation in the manufacture of methamphetamine within 1,000 feet of a school or place of worship.[96]

These enhancements sweep broadly. Each year roughly 20 to 25 percent of those admitted to Illinois prison for a Class 1 or Class X drug delivery offense were elevated to that level as a result of the 1,000 foot enhancement. This translates to roughly 750 sentenced inmates serving a sentence under these enhancements. The majority of those serving a sentence enhancement for the 1,000 foot restriction on drug delivery offenses in Illinois are African American.[97]

[94] 720 ILCS 570/407(b).

[95] 720 ILCS 550/5.2.

[96] 720 ILCS 646/15(b)(1)(H).

[97] As of June 30, 2015, roughly 85% of those serving enhanced prison sentences on drug charges that occurred within a protected zone under the Controlled Substances Act or the Cannabis Control Act were African American.

The current legal structure creates several problems. First, in many urban areas, including large parts of Chicago, there are very few places that are *not* located within 1,000 feet of schools, public housing, places of worship, parks, or senior citizen facilities. The purpose of the enhancement is to give defendants an incentive to move their illegal business away from protected areas, but if nearly all areas are protected, the enhancement has little deterrent effect. Moreover, an enhancement that applies to nearly every offender in an urban area creates a high risk of being applied in an uneven or discriminatory manner.

Second, there is often no relationship between the *particular* drug crime and the negative impact on the protected area. A drug sale near an empty church or near a school that is not in session does little to further the goal of the enhancement, but still automatically raises the potential sentence.

Third, if the purpose of the enhancement is to move offenders away from the protected areas, there can be a problem of adequate notice. It is a more serious crime under the Controlled Substances Act to deliver certain drugs within 1,000 feet of the "residential property owned, operated, or managed by a public housing agency or leased by a public housing agency as part of a scattered-site or mixed-income development."[98] This restriction was instituted at a time of concentrated, high-rise, public housing sites, where the lines between protected and unprotected areas were relatively clear. But given the current nature of public housing, with scattered sites and housing choice vouchers, it is nearly impossible to identify what is in fact a protected public housing area. There is thus a high potential for an offender to be within this protected zone and not know it, and without adequate notice the enhancement cannot serve its purpose. The Commission accordingly recommends that the "public housing" portion of the enhancement be removed entirely from the statute.

Protecting vulnerable areas is a worthy goal, but the automatic nature of the enhancement can lead to punishment that is more severe than is necessary to reach that goal. The Commission recommends that most of the enhancement be kept in place but become more focused. The size of the protected zone should be reduced from 1,000 feet to 500 feet. The enhancement also should not be automatic, but rather, should require that the prosecutor establish a nexus between the drug offense and the protected area. Among the factors that may establish the nexus is whether the drug activity in question threatened to disrupt the operations or the safety of the protected area – was school or church in session at the time of the crime, for example – or whether the particular crime was visible in a way that interfered with the peace of mind or security of the protected groups.

Implementation

- Amend the Control Substances Act, 720 ILCS 570/407(b), the Cannabis Control Act, 720 ILCS 550/5.2, and the Methamphetamine Control and Community Protection Act, 720 ILCS 646/15(b)(1)(H), to reduce the size of the protected zone 1,000 to 500 feet.

[98] 720 ILCS 570/407(b)(1)-(6).

- Amend the Controlled Substances Act, the Cannabis Control Act, and the Methamphetamine Control and Community Protection Act to require proof of a nexus between the drug offense and the protected area before the crime is enhanced to a more serious felony class. Require the prosecutor to establish that the offense interfered with the functioning of the protected area or the well being of the groups within the area.
- Amend the Controlled Substances Act to remove the area around public housing property from the list of sentence enhancement zones.

17. Reduce the crime of possession of a stolen motor vehicle from a Class 2 felony to a Class 3 felony. Make a conforming change for conspiracy to possess stolen motor vehicles by lowering the classification from a Class 2 to a Class 3 felony.

Rationale

There are currently more than 550 inmates in the Illinois Department of Corrections who were convicted of motor vehicle theft. Possession of a stolen vehicle is a Class 2 felony,[99] which *requires* a minimum prison sentence of 3 years and a maximum sentence of 7 years. This non-violent crime is treated more severely than, for example, recklessly killing another person while driving a motor vehicle.[100] Possession of a stolen vehicle can include a wide variety of criminal conduct, including relatively non-dangerous offenses such as joyriding, or removing or falsifying a vehicle identification number. Perhaps as a result, roughly half of those convicted of possession of a stolen vehicle are given the minimum three-year prison sentence, while only about 10 percent receive the maximum sentence. The Commission has concluded that the offense should be reclassified to reflect the relative seriousness of the crime.

Not all offenses covered by this statute require mandatory prison time for a second or subsequent offense, as even repeated instances of some behavior does not put the public sufficiently at risk to warrant incarceration. Although prison should remain an option for repeat offenders, judges should have the discretion to sentence repeat offenders to probation in appropriate cases.

Conspiracy to possess a stolen motor vehicle is currently graded at the same level as the offense itself.[101] If possession of a stolen motor vehicle is reclassified as a Class 3 felony, conspiracy to commit that offense should similarly be changed to a Class 3 felony.

Implementation

- Amend 625 ILCS 5/4-103 to make violations of subsections (a), (a-1), and (a-2) of that statute a Class 3 felony rather than a Class 2 felony.
- Make a conforming change to 625 ILCS 5/4-103.1(c), which prohibits conspiring to violate 625 ILCS 5/4-103. Lower the grade of the offense from a Class 2 to a Class 3.

[99] 625 ILCS 5/4-103.

[100] See 720 ILCS 5/9-3(a). Reckless homicide is a Class 3 felony.

[101] Conspiracy is currently punished as a Class 2 felony, as is the underlying offense. 625 ILCS 5/4-103.1(c).

18. Expand eligibility for programming credits. All inmates should be eligible to earn programming credits for successfully completing rehabilitative programming.

Rationale

Safely reducing the inmate population by reducing the time spent in prison requires, in part, identifying those inmates who are in the best position to return to society without reoffending. Giving sentence credit to those who successfully complete prison programing plays an important role in this process. Inmates who have taken steps to address the problems that contributed to their criminal behavior – poor education, substance abuse, mental health issues – are more likely to successfully return to society, which in turn reduces the chances of reoffending.

Allowing inmates to receive sentence credit for successfully completing prison programs has a long history in Illinois, and is a practice followed in a majority of other states. Illinois inmates now receive credit for completing full-time substance abuse programs, correctional industry assignments, educational programs, behavior modification programs, life skills courses, and re-entry planning provided by the Illinois Department of Corrections.[102]

There are, however, some inmates who are categorically ineligible for these credits. Offenders who have committed certain types of offenses, for example, may not receive credit for participating in programming. Inmates who have previously served more than one prison sentence are also ineligible, as are those who have previously received programming credit and were later convicted of a felony.

One of the most significant changes in thinking about corrections over the last two decades is that restrictions like this focus on the wrong issue. Prison programming, and the resulting sentence credit, should be made available based on an individual risk and needs assessment. Preventing inmates from receiving credit because they are repeat offenders or because they have once received programming credit and then committed another crime misses the point – these are precisely the high-risk, high-need inmates that need programming the most. By allowing these offenders to receive this sentence credit, their participation in rehabilitative programming would increase, and as a result of higher rates of program completion, recidivism should be reduced. Simply put, public safety is best served by creating incentives for those who are most in need of rehabilitation to take advantage of their opportunities, without unnecessary restrictions.

This recommendation was presented in December 2015, in Part I of the Final Report. At that time the Commission had not reached a conclusion on the distinct issues raised in giving programming credit to inmates who were sentenced under the Illinois Truth-in-Sentencing laws, and so the recommendation excluded those inmates from its scope.[103] The Commission's views

[102] 730 ILCS 5/3-6-3(a)(4).

[103] The December 2015 Recommendation read: "Expand eligibility for programming credits. All inmates should be eligible to earn programming credits for successfully completing rehabilitative programming., with the exception of credits that would reduce a sentence below Truth-in-Sentencing limits. (Note: the Commission's consideration of whether reforms to Truth-in-Sentencing statutes should be adopted is not yet complete.)"

on allowing Truth-in-Sentencing inmates to receive programming credit is set forth in the next Recommendation.

Implementation

- The legislature should amend the relevant statutes to remove the restrictions on those who are eligible to receive programming credit under 730 ILCS 5/3-6-3(a)(4).

19. Allow inmates who are currently required by statute to serve 75%, 85%, or 100% of their sentence to earn programming credit and supplemental sentence credit for good conduct that could reduce their sentence below the currently-required percentage. The amount of programming and supplemental sentence credit available to these inmates should be limited as follows:

a) Inmates who currently are required to serve 100% of their sentence should be required to serve no less than 90% of their sentence.
b) Inmates who currently are required to serve at least 85% of their sentence should be required to serve no less than 75% of their sentence.
c) Inmates who currently are required to serve 75% of their sentence should be required to serve no less than 60% of their sentence.

Beginning on the date these changes take effect, inmates may begin earning credit on their current sentence for programs successfully completed after that date. Inmates should not be granted credit for programs completed before these changes take effect.

Rationale

Nearly all Illinois inmates receive some type of sentence credit. Most receive day-for-day credit on their sentence, statutory credit that may be lost by the failure to comply with IDOC rules.[104] Most of these same inmates may also receive up to 180 days of Supplemental Sentence Credit for good conduct while in prison.[105] In addition, these inmates may receive programming credit – a reduction in their prison sentence for the successful completion of substance abuse programs, jobs skills assignments, educational programs, behavior modification programs, life skills courses, or re-entry planning. For each day spent successfully completing one of these programs, the inmate's sentence is reduced by one-half day.[106]

These credits reflect the sensible view that time spent in prison can be put to good use. About 97 percent of all inmates will some day be released from prison, and society has a compelling interest in encouraging these inmates to address the problems – lack of job skills, substance abuse, poor education – that increase the chances of recidivism after release. Giving inmates an incentive to participate in these programs through sentence credits is thus one of the best ways to safely reduce the prison population, and through the supplemental sentence credits, to improve the safety of the prisons themselves.

[104] See 730 ILCS 5/3-6-3(a)(2.1), (c). As of June 2015, 69% of IDOC inmates received day-for-day credit. 2015 IDOC Annual Report, at 82.

[105] 730 ILCS 5/3-6-3(a)(3). "Good conduct" in this context "may include, but is not limited to, compliance with the rules and regulations of the Department [of Corrections] service to the Department, service to the community, or service to the State." Id. For some offenses the amount of supplemental sentence credit an inmate can receive is limited to 90 days.

[106] 730 ILCS 5/3-6-3(a)(4).

Currently, however, inmates who were sentenced under the Truth-in-Sentencing laws may not receive sentence credit for taking rehabilitative steps while incarcerated. Inmates convicted of first degree murder or terrorism must serve 100% of the sentenced imposed, those convicted of a large number of other serious crimes must serve at least 85% of their sentence, and those convicted of certain other offenses must serve at least 75% of their sentence.[107] None of these inmates may have their sentence reduced below the statutory percentage by earning programming or supplement sentencing credit,[108] and thus, have little incentive to make productive use of their time in prison.

These restrictions are counterproductive. As is true with other inmates, most of the large group[109] of Truth-in-Sentencing inmates will be released from prison at some future date, and society has an equally compelling interest in these inmates learning the skills and confronting the problems that contributed to their criminal behavior. The Commission therefore recommends that inmates sentenced under the Truth-in-Sentencing laws be eligible for prison programming and sentence credit on comparable terms as other inmates,[110] even if the credit results in the inmate serving less than the current statutorily-required percentage of his sentence.

The Commission recognizes that the Truth-in-Sentencing laws represent a legislative judgment that certain offenders should serve a higher percentage of their sentence than is served by other offenders. Accepting this recommendation would not undermine that judgment. Most crimes that are subject to Truth-in-Sentencing are very serious, and a maximum Supplement Sentence Credit of 180 days, even if granted, would reduce the percentage of time served only modestly. The current lack of resources to provide qualifying programs is another significant limit on the amount of sentence credit that inmates can earn.

Nonetheless, to ensure that the legislative distinctions between types of offenses are respected, the Commission recommends that a limit be placed on the amount of credit a Truth-in-Sentencing inmate can receive. Regardless of the programming or supplemental sentencing credit earned, an inmate now required to serve 100% of his sentence should be required to serve at least 90% of his sentence. An inmate who now must serve 85% of his sentence should still be required to serve at least 75% his sentence regardless of the credit earned, and an inmate who now must serve at least 75% of his sentence should be required to serve at least 60% of that sentence.

Although the Commission is confident that the Department of Corrections will be able to implement the change set forth in this recommendation with a minimum of disruption, to ease

[107] See 730 ILCS 5/3-6-3(a)(2).

[108] 730 ILCS 5/3-6-3(a)(3), (4).

[109] Of those incarcerated in IDOC facilities at the end of fiscal year 2015, 25% where sentenced under the Truth-in-Sentencing provisions and so were not eligible for these sentence credits. See IDOC 2015 Annual Report.

[110] In Recommendation 18, above, the Commission concludes that programming credit should be made available to all inmates on the basis of risk and need, without the current categorical statutory restrictions. When the Commission recommends here that sentence credit be made available to Truth-in-sentencing inmates "on comparable terms as other inmates," it means to include in that description the reforms in Recommendation 18.

the transition the Commission also recommends that the ability to lower a sentence through newly-available credits be applied prospectively only. "Current" Truth-in-Sentencing inmates – that is, those incarcerated as of the effective date of the change – should be permitted to earn programming and supplemental sentence credit, but only for programs completed after the date of the change. Any programs completed before the effective date of the change should not result in sentencing credit.

Implementation

- Amend 730 ILCS 5/3-6-3(a)(3) to allow inmates whose sentences are subject to Truth-in-Sentencing to be eligible for Supplemental Sentence Credit.
- Amend 730 ILCS 5/3-6-3(a)(4) to allow inmates whose sentences are subject to Truth-in-Sentencing to be eligible for programming credit.

20. Make better use of Adult Transition Centers. Ensure that the use of Adult Transition Centers is informed by the risk-and-needs research and evidence, which shows that residential transitional facilities, paired with appropriate programming, should be primarily reserved for high and medium risk offenders to obtain the greatest public safety benefit.

Rationale

Research and experience have shown that releasing an inmate at the end of his sentence without adequate preparation while in prison and without adequate support outside of prison is a recipe for failure. Adult Transition Centers (ATCs) have proven to be an effective way to help offenders adjust from life behind bars to life on the outside. Prior to the completion of their sentence, inmates have the chance to live in a secure facility while learning the money management, educational, and job seeking skills that will help them re-integrate into their community. Inmates in ATCs also can benefit from substance abuse and mental health treatment or referrals.

Despite the success of ATCs, the Commission believes that they can be put to even more effective use. To date, the four ATCs in Illinois have focused on inmates who are already relatively low risk to re-offend. The successful reintegration of any former inmate is valuable, of course, and it is important not to lose the progress being made with lower-risk offenders. But the focus on low-risk inmates leaves those who pose the greater risk of reoffending with less support and assistance. With resources scarce, the money available to ATCs should be primarily focused on medium and high risk offenders.

Changing the focus from lower to higher risk offenders at ATCs may raise concerns in the communities where ATCs now exist. Transparency in making any change will be important, not only to make clear that a shift is occurring but also to make clear the benefits of the change. High risk offenders are already being released back into communities, but now they are doing so without the support and benefits that ATCs provide. Research shows that devoting more evidence-based programming to high-risk offenders will reduce the recidivism rate among those most likely to reoffend, which will in turn make communities safer.

More generally, the Commission favors the expansion of ATCs as the evidence and experience warrant. This would represent a reversal of recent trends: today there are four ATCs in Illinois, a decade ago there were eight.[111] Transition centers that focus on the problems of substance abuse, for example, or mental health needs would allow IDOC to make more effective use of the time being served by inmates.

[111] In fiscal year 2005 the average daily population of ATCs was 1,323. In fiscal year 2015 the average daily population was 896, a 32 percent decline. These numbers are from the 2005 and 2015 IDOC Annual Reports, available at http://www.illinois.gov/idoc/reportsandstatistics/Pages/AnnualReports.aspx.

Implementation

- The Illinois Department of Corrections should document the characteristics and risk levels of offenders currently placed in Adult Transition Centers. The Department should further assess and, as needed, modify existing policies related to the placement of offenders into ATCs and ensure that higher risk offenders are given priority.
- The IDOC should document its progress in implementing this recommendation in its Annual Report.
- The Governor should implement a communication plan for explaining to the communities near Adult Transition Centers the change in focus from lower-risk and lower-need offenders to higher-risk and higher-need offenders. The plan should involve public discussion of the process by which offenders are placed in ATCs, what supervision and services will be available, and how the State will oversee the implementation.

21. Improve and expand the use of electronic monitoring technology based on risk, need, and responsivity principles.

a) The Illinois Department of Corrections should increase the use of electronic detention in lieu of imprisonment for both short-term inmates and inmates who are ready to be transitioned out of secure custody.
b) Allow IDOC to use electronic monitoring for up to 30 days without Prisoner Review Board approval as a graduated sanction for those on Mandatory Supervised Release.
c) Ensure that Prisoner Review Board orders requiring electronic monitoring are based on risk assessments.
d) Encourage and support the use of electronic monitoring within local jurisdictions as an alternative to incarceration and pre-trial detention.

Rationale

The use of electronic monitoring technology[112] holds great promise. It can help transition offenders back into society; it can be used as a sanction for those who violate the terms of their Mandatory Supervised Release; it can help reduce pretrial detention; and, it can be an alternative sanction that can protect the public while reducing the levels of incarceration.

Electronic detention (ED) – confining an inmate to his home, while using electronic devices to alert IDOC if the inmate tries to leave – can, if properly used, help ensure the safety of the community without imposing the high costs of unnecessary imprisonment. As of December 2016, however, there were only 10 inmates on electronic detention under the supervision of the Illinois Department of Corrections.

Better use can be made of the technology. The Electronic Home Detention Law[113] provides that, except for certain excluded offenses,[114] those inmates serving a sentence for a Class 2, 3, or 4 felony may be placed on electronic home detention. While not all of these inmates will be appropriate candidates for ED, the proper use of a risk and needs assessment tool (see Recommendation 2) can identify those inmates who should be placed on ED to serve their sentence, or can be released to ED after serving part of the sentence in prison.[115]

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[112] As used in this recommendation, "electronic monitoring" refers to the use of some electronic device that records or transmits information about an offender's presence or non-presence at a particular place to a supervising authority. See 730 ILCS 5/5-8A-2(A). "Electronic detention" means the use of electronic monitoring to ensure the confinement of a person to his or her residence under the terms established by a supervising authority. See 720 ILCS 5/5-8A-2(C).

[113] 730 ILCS 5/5-8A-1, et seq.

[114] Excluded offenses include first degree murder, escape, certain sex crimes, certain weapons offenses, Super-X drug offenses, and street gang criminal drug conspiracies. 730 ILCS 5/5-8A-2(B).

[115] In its Community Corrections Subcommittee, Commissioners heard from Mark Kleiman, the Director of the Crime and Justice Program at New York University's Marron Institute of Urban Management, and Angela Hawkins, Professor of economics and policy analysis at the School of Public Policy at Pepperdine University, and Director of

This technology can relieve prison crowding in other ways as well. One of the difficulties faced by IDOC parole agents is that there are few swift and certain sanctions available when an offender violates the terms of Mandatory Supervised Release. As a result, parole agents often return the offender to prison because there are no other adequate intermediate sanctions available. But research has shown that an intermediate sanction can be a more effective response to a violation, and if electronic monitoring were available as an option, there is a greater chance of a better outcome for both the offender and the public.

Currently IDOC can use electronic monitoring as an intermediate sanction for a violation, but must first get permission of the Prisoner Review Board. The Commission believes that this unnecessarily slows down the process – sanctions work best when they are both swift and certain. The Commission therefore recommends that IDOC be given the authority to place offenders on electronic monitoring for up to thirty days without the permission of the Prisoner Review Board, as a means of allowing graduated sanctions for violations of supervised release.

The increased use of electronic monitoring is only appropriate, however, if offenders are correctly identified as ones who are both suitable and need the monitoring. As of the middle of 2015, the number of offenders on parole or supervised release who are being electronically monitored was approximately 2,400.[116] This number is in part a result of the Prisoner Review Board's practice of making electronic monitoring a routine condition of Mandatory Supervised Release. The Commission believes that this practice is an inefficient use of resources, and removes the possibility of more-intensive monitoring as a graduated sanction for violations. As with other, comparable decisions, the requirement of electronic monitoring should follow from an individual assessment of offender risks and needs, and should not be imposed as a matter of course.

The Commission has also concluded that electronic monitoring has great potential for helping local governments work with pretrial detainees and lower level offenders, thereby reducing the jail population. The State should provide support to local governments that wish to expand their use of this technology through the local Criminal Justice Coordinating Councils. (See Recommendation 3, above.)

Implementation

- The IDOC should develop a plan to expand the use of electronic detention in compliance with the Electronic Home Detention Law, 730 ILCS 5/5-8A-1, et seq. That plan should

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the Swift, Certain, and Fair Resource Center for the U.S. Department of Justice, on a particularly promising model of electronic detention called graduated reintegration. Under to this proposal, a correctional agency would supervise eligible prisoners in apartment settings, monitoring their behavior through a regime of swift, certain, and fair supervision, enabling them to gradually earn more freedom through good behavior or lose freedom through non-compliance. For an early description of this program, see Mark A.R. Kleiman, Angela Hawken, and Ross Halperin, "We Don't Need to Keep Criminals in Prison to Punish Them," *Vox*, (March 2015), accessed Dec. 24, 2016, http://www.vox.com/2015/3/18/8226957/prison-reform-graduated-reentry.

[116] Approximately 500 additional parolees and those on supervised release were being monitored with GPS technology.

include a timeline for implementation, documentation of the resources needed to carry out that plan, how the Department will assess its progress toward implementing the plan, and a strategy for external evaluation of the use of electronic detention.

- The legislature should amend the relevant statutes to allow IDOC to use electronic monitoring for up to 30 days without Prisoner Review Board approval. Under current law, IDOC parole agents are prohibited from assigning electronic monitoring as an additional instruction. 730 ILCS 5/3-3-7(a)(15). This subsection should be amended to give parole agents and IDOC the power to require electronic detention by instruction when appropriate. Parole agents should be required to complete training on risk and needs assessment.
- Members of the Prisoner Review Board should be required to complete training on risk and needs assessment, and, as required by the Crime Reduction Act, use the assessment in setting conditions for Mandatory Supervised Release thereafter.

22. Develop a protocol to provide for the placement to home confinement or a medical facility for terminally ill or severely incapacitated inmates, excluding those sentenced to natural life. The determination of illness or severe incapacity is to be made by the Illinois Department of Corrections medical director.

Rationale

A large prison population means a large number of inmates with medical needs, some of them quite serious. Most can be handled within prison, but some cannot. This problem is likely to increase in the coming years, as longer prison sentences has led to an aging prison population,[117] and with increasing age comes an increasing number and complexity of medical problems.

Some of these inmates could be transferred from prison at no risk to public safety. Inmates who are terminally ill or severely incapacitated could be transferred to a less secure facility or could be released to home confinement to allow the offender to die or to be cared for during the balance of the sentence without expending significant State resources. Although there are unlikely to be many inmates eligible for such a transfer, addressing those that do qualify would help ensure that prisons are used primarily to punish and rehabilitate, not serve as a hospice or a long-term intensive-care unit of last resort. Inmates would, however remain under the control of IDOC, as they would simply be transferred to a new location, rather than "released" from custody.

Defining who is terminally ill or severely incapacitated is no easy task, and the Commission recognized the difficult line-drawing that would be required. A physically incapacitated inmate might still be dangerous if he or she retains the ability to direct a criminal enterprise, and terminally ill individuals can still pose a risk if the illness is not debilitating. Given the complexity, the Commission has made no effort to provide a definition of the qualifying conditions. Instead, the Commission recommends that a particular process be followed to implement this recommendation.

Through legislation, agency decision making, or otherwise, a protocol should be developed that would define the medical conditions that would render an inmate eligible for transfer. After the protocol is developed, the decision whether an inmate met the conditions would be made by the IDOC medical director, ensuring that the eligibility decision is based on medical, not political, considerations. Then the decision would be left to IDOC to determine where the inmate would be transferred.

The Commission also recognized that offenders who are sentenced to natural life in prison should in fact serve out that term, and thus the recommendation excludes these inmates.

[117] In 2005 there were 278 prison inmates age 65 or older and 100 inmates age 70 or older. In 2015, there were 790 inmates age 65 or older and 304 inmates age 70 or older, an increase of 184% and 204%, respectively. The figures are taken from the IDOC 2005 and 2015 Annual Reports, available at http://www.illinois.gov/idoc/reportsandstatistics/Pages/AnnualReports.aspx.

Implementation

- The Governor should convene a working group to develop a protocol that would specify the conditions under which terminally ill or seriously incapacitated inmates may be placed in home confinement or in a medical facility.
- The working group should consider policy and practices established in other states to address this issue. States to consider include New York, Ohio, Minnesota, and Oregon, all of which have comparable programs.
- Once the protocol is implemented, the IDOC should document in its Annual Report the information about the use of the protocol, including the number of inmates evaluated for placement to home confinement or a medical facility, the number of inmates determined eligible for placement, and the number of inmates placed outside an IDOC facility.

D. Recommendations to Reduce Recidivism by Increasing the Chances of Successful Reentry

23. Enhance rehabilitative programming in IDOC. Implement or expand evidence-based programming that targets criminogenic need, particularly cognitive behavioral therapy and substance abuse treatment. Prioritize access to programming to high-risk offenders. Evaluate promising programs and eliminate ineffective programs.

Rationale

It is now firmly established that evidence-based prison programming that addresses the criminogenic needs of offenders plays an important role in reducing recidivism. If inmates do not have access to educational and vocational training to help them find jobs, and if they do not get assistance with their substance abuse and psychological problems, the chances of successful integration after release drop dramatically.

Current IDOC programming faces a number of challenges. First, although there currently are 320 programs offered across all 28 IDOC facilities, quality programming remains in short supply. Often there are wait lists, and many of the most important programs are not available in all or even most of the facilities. Funding is insufficient, qualified personnel are frequently hard to find and retain, and the physical space inside the prisons is often inadequate. Yet even with these limits, current programming has a dramatic effect on the prison population – a total of 1,394 years of bed space are saved each year through sentence credit that inmates earn for successful program completion.

Second, current programming is often not evidence-based. Too often there is not enough data gathered to determine if a program is working, and even if the information is collected, it often goes unanalyzed. As stated in Recommendation 8, programming should be reviewed and assessed to ensure the resources are being put to their best use.

Third, research has shown that programming that is not evidence-based and has not been validated produces results that are often worse than no programming at all. The Commission therefore recommends that IDOC use a risk and needs assessment tool (see Recommendation 2, above) to ensure that higher-need inmates are given priority over those with a lower need, and to ensure a better fit between needs and benefits.

The evaluation of IDOC programs has begun pursuant to a federal grant under the Second Chance Act.[118] The first phase of the study looks at existing programs to determine which are in fact evidence-based, while the second phase will evaluate the implementation of the programs. This will provide information critical to the administration of IDOC programs and to allocating resources to those programs that are most likely to produce positive results.

Despite the current difficulties, the Commission concluded that, properly implemented, prison programming represents one of the best options for reducing recidivism, and thus, for

[118] PL 110–199, 122 Stat 657 (April 9, 2008).

reducing the prison population over the long term. The Commission also has gathered evidence that programming works best when it is coupled with similar community-based support for offenders after their release, a topic addressed in Recommendation 1, above.

Implementation

- The Illinois Department of Corrections should use the information from the Second Chance grant assessment and evaluation process to develop a plan to increase programming that is the most effective at addressing criminogenic needs. Ineffective programs should be changed or discontinued.
- The Department's plan should include an assessment of available and needed programming space, funding needs, training needs, and how the Department will report on its progress toward implementing this recommendation.
- The Department's plan should ensure inmate access to programming is based on a risk and needs assessment. Until full implementation of a comprehensive risk and needs assessment takes place, the Department should identify existing programming needs via tools currently in use.[119]
- The IDOC should comply with the requirements of 730 ILCS 5/3-6-3(a)(4), and provide an annual evaluation of prison programming to the Governor and General Assembly, including data on recidivism rates for those who participate in programming.[120]

[119] These tools include the Texas Christian University Drug Screen—substance abuse; Beck Depression Inventory, Correctional Mental Health Screen (gender sensitive)—mental health; and TABE assessment—adult educational needs.

[120] 730 ILCS 5/3-6-3(a)(4) provides in part:

> Educational, vocational, substance abuse, behavior modification programs, life skills courses, re-entry planning, and correctional industry programs under which sentence credit may be increased under this paragraph…shall be evaluated by the Department on the basis of documented standards. The Department shall report the results of these evaluations to the Governor and the General Assembly by September 30th of each year. The reports shall include data relating to the recidivism rate among program participants.

24. Limit the maximum term of Mandatory Supervised Release to 18 months for Class X, Class 1, and Class 2 felonies. Require the Prisoner Review Board, based on a risk and needs assessment, to discharge low-risk and low-needs offenders from MSR.

Rationale

Current law requires sentencing judges to set the term of Mandatory Supervised Release (MSR) according to the crime of conviction, rather than according to the risk that the offender will commit a future crime. As a result, (and with some exceptions) a judge must sentence those convicted of a Class X felony to 3 years of MSR, Class 1 or Class 2 felonies to 2 years, and Class 3 or Class 4 felonies to 1 year of MSR.[121]

There are several difficulties with the current structure. Judges have no discretion to sentence individual offenders to a lower term of supervised release if the circumstances of their case show that they present a low risk of reoffending; as a result, the MSR term will at times be more burdensome than necessary. In addition, MSR terms of two and three years are in most cases longer than needed to protect public safety. Research has shown that inmates who re-offend normally do so within the first 12-18 months of release from prison.[122] MSR is expensive, and keeping inmates under supervision unnecessarily is not the best use of corrections resources.

In fact, extended periods of MSR can be harmful to low-risk offenders in two respects. First, requiring offenders to continue to disclose on job, credit, and housing applications that they are *currently* under the supervision of the justice system is surely an impediment to their reintegration efforts. Second, inmates who remain on MSR when they are unlikely to commit a new offense are still subject to a large number of restrictions, some of which can be easily violated without any bad intent or creating any risk to the community. (The offender is required to get consent in advance from the Department of Corrections before leaving the State and before changing their residence or jobs, for example, and must not knowingly associate with anyone else on MSR.[123]) These conditions can be an important tool in supervising offenders and reducing recidivism, but once the offender has past the high-risk period for re-offending, the conditions are more likely to be grounds for a return to prison because of a technical violation of MSR. Each year hundreds of offenders are returned to prison simply because of these technical violations, rather than because the government has proven that the defendant committed a new crime.

[121] 730 ILCS 5/5-8-1(d)(1) - (3).

[122] Of those released from prison in Illinois for a Class X, 1 or 2 felony, 78% of those who were rearrested following their release were rearrested within 18 months of their exit from IDOC. See also Todd R. Clear & James Austin, Reducing Mass Incarceration: Implications of the Iron Law of Prison Populations, 3 Harv. L. & Pol'y Rev. 307 (2009) ("Studies show that the effects of parole supervision on recidivism fade after about a year, and longer supervision periods are not associated with higher success rates.")

[123] 730 ILCS 5/3-3-7(a)(8), (9), (13).

The MSR structure should be more targeted, more flexible, and the supervision should end promptly once the period of significant risk to the public has passed. The maximum MSR term should be 18 months for Class X, Class 1, and Class 2 felonies. The maximum MSR term for Class 3 and Class 4 felonies should remain at one year.[124] Reducing the statutory term should allow resources to be diverted away from the lower risk period of supervision and toward the time frame where more resources are needed.

In addition, MSR terms should not last longer than is necessary to protect the public from the risk of recidivism by the particular offender. As noted in an earlier section of this Report,[125] the IDOC and the Prisoner Review Board are making increased use of a risk-and-needs assessment tool to identify which inmates require intensive supervision after release and which offenders need little or no supervision. Current law provides that the PRB has the authority in all cases to shorten the MSR term "when it determines that [the offender] is likely to remain at liberty without committing another offense."[126] The PRB should make full use of this authority at the earliest practical time to reduce the amount of unnecessary supervision.

Implementation

- Amend 730 ILCS 5/5-8-1(d)(1) and (2) to replace the mandatory 3 year and 2 year periods of MSR for Class X, Class 1, and Class 2 felonies with a period of 18 months of Mandatory Supervised Release.
- Encourage the Prison Review Board to safely but fully exercise its existing authority under 730 ILCS 5/3-3-8(b) to discharge offenders from MSR once it is determined, based on the use of a validated risk-and-needs assessment tool, that the offenders are likely to remain at liberty without committing another offense.

[124] There are certain crimes that carry their own, specific MSR period: predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, aggravated child pornography, manufacture or dissemination of child pornography, a second or subsequent conviction for aggravated criminal sexual abuse or felony criminal sexual abuse if the victim is a minor, felony domestic battery, aggravated domestic battery, stalking, aggravated stalking, and felony violation of an order of protection. See 730 ILCS 5/5-8-1(d)(4) – (6). This recommendation does not address these provisions. This recommendation also does not address the required 3 year MSR period for first degree murder.

[125] See Recommendation 2, above.

[126] Statutory subsection 730 ILCS 5/3-3-8(b) provides in full:

> (b) The Prisoner Review Board may enter an order releasing and discharging one from parole, aftercare release, or mandatory supervised release, and his or her commitment to the Department, when it determines that he or she is likely to remain at liberty without committing another offense.

25. Restore the Halfway Back program as an alternative to incarceration for violations of Mandatory Supervised Release.

Rationale

The goals of supervised release are to promote public safety and to help ensure the offender's successful community reintegration. One effective way to reach these goals is to use graduated sanctions and rewards that are directly responsive and proportional to the behavior of those under supervision. To be successful, a wide range of sanctions and rewards are needed, but one option currently unavailable to IDOC parole officers is temporary, community-based therapeutic facilities for individuals who violate the conditions of their release, have difficulty adjusting back in the community, and are at significant risk for returning to prison.

Community facilities for those who violate the terms of supervised release are not a new concept, either nationally[127] or in Illinois. Previously there were two such facilities in Illinois to address male violators, but were closed around 2010 as a cost-savings measure. Referred to as the Illinois Halfway Back (HWB) program, the program entailed 24/7 staffed, semi-secure facilities for individuals on supervised release who experienced community adjustment problems that resulted in technical MSR violations.[128] The goal of the HWB program was to reduce the rate of return to IDOC for technical violations by providing a highly-structured community residential environment with 90 days of programming to address cognitive, behavioral, social, and other skills. The program consisted of 15 hours a week of services, including assessments, group sessions, individual counseling, GED instruction, and pre-employment training.

The Commission recommends restoring the HWB program as the highest-level sanction on the Supervised Release graduated sanction matrix. Programming that is offered to those in the HWB program should reflect evidence-informed practices that have been shown to reduce reoffending, including Risk-Needs-Responsivity practices and cognitive behavioral treatment.

Implementation

- Direct the Illinois Department of Corrections to work with community-based service providers to re-establish the HWB program.
- Direct the Illinois Department of Corrections to develop performance metrics that can be used to measure the implementation and impact of the HWB program.
- When appropriate, require the HWB program be subjected to an independent evaluation conducted by a qualified third party.

[127] Programs such as the one recommended here exist in Colorado, Tennessee, and New York, for example.

[128] Individuals who entered HWB did so because they received a new arrest, failed to comply with the Prisoner Review Board's orders, had numerous positive drug tests and were not progressing in substance abuse treatment, and/or had accumulated numerous community complaints of non-compliance (e.g., drug use, curfew violations).

26. Remove unnecessary barriers to those convicted of crimes from obtaining professional licenses. Review all licensure restrictions to identify those necessary for public safety.

Rationale

There are dozens of professions in Illinois that require a license,[129] and a large number of these professions are closed by rule or by practice to those who have a prior felony conviction. Often these limits make good sense – those convicted of crimes against children should not be licensed as day-care workers – but others appear to have only a loose connection to the person's ability to carry out the tasks required by the profession. It is less clear, for example, why those with a prior conviction for drug possession should be hampered in their ability to obtain a license to be a barber or nail technician, assuming he or she meets the other qualifications for doing so.

One of the biggest contributors to recidivism is the inability of released inmates to find lawful employment. Some of the licensing restrictions undermine this effort. The removal of this barrier should be done judiciously, and with respect for the integrity of the professions that seek to maintain professional standards. But communities are safer and stronger when former inmates are employed, and a close look at the licensing requirements will almost certainly reveal many instances where more occupations can be made accessible to those with a criminal record without undermining public safety or the professional licensing process.

The Commission recommends that the Governor to direct the Illinois Department of Professional and Financial Regulation (IDPFR) to systematically review the requirements for obtaining professional licenses, identifying those where a prior felony conviction prevents or discourages a former inmate from obtaining a license. The IDPFR should then identify the particular types of crimes for which a prior conviction precludes obtaining specific licenses in the interests of public safety. Prohibitions that are not necessary to protect the public interest, or that sweep too broadly by barring all former felons, should be identified, and appropriate legislative and administrative actions should be taken to ensure that former inmates have the maximum opportunity to pursue productive employment after their release.

Implementation

- The Governor should direct the IDPFR to examine professional licensing restrictions, beginning with those licenses that represent the largest potential employment possibilities. The IDPFR should document the current restrictions, examine the justifications for the current restrictions, and recommend changes to the current licensing policies and practices.

[129] See the Illinois Department of Financial and Professional Regulation website, accessed Dec. 24, 2016, http://www.idfpr.com.

Postscript: In 2016 the Illinois Department of Financial and Professional Regulation took steps to implement this recommendation. It has joined with the Illinois Department of Corrections to streamline the professional licensing process for men and women being released from prison.[130]

[130] See IDFPR, Implements Suggestions Made by Gov. Rauner & The Illinois Criminal Justice Reform Commission, November 2, 2016, accessed Dec. 28, 2016, http://www.idfpr.com/news/2016/11212016IDFPRReducesBarriersAppCriminalConv.asp.

27. Require Illinois Department of Corrections and the Secretary of State to ensure inmates have a State identification card upon release at no cost to the inmates when their release plan contemplates Illinois residence. Require IDOC to disclose in its Annual Report the percentage of offenders released from custody without a valid official State Identification card or some other valid form of identification.

Rationale

For a newly-released inmate trying to reenter society, the importance of having a valid form of identification can hardly be overstated. Job applications, leases, phone service, and credit applications are all part of the re-integration process, and all require proof of identity and address.

Illinois law already recognizes the importance to former inmates of a valid identification: IDOC is required to provide an inmate with an identification card at the time of release, albeit one which notes that the person has been discharged from prison or is subject to supervised release. The person receiving the card then has a maximum of 30 days to present that identification card to the Illinois Secretary of State's Office, which then in turn issues a standard State identification card – one that does not identify the person as a former prison inmate – under the Illinois Identification Card Act.[131] The standard fee for a State Identification Card is $20.[132]

The goal of the current law is admirable, but implementation problems often prevent former inmates from receiving the benefits. Difficulties in exchanging the prison ID for the State ID card, including obtaining proper proof of identity, finding the right office, even paying the exchange fee, leaves too many former inmates without proper identification at the time when having this proof can be critical to their reintegration.

The Commission recommends that the process be streamlined by eliminating the need for issuing two cards. The standard State identification card should be given to offenders at the time of their release from prison, and should be provided by the IDOC upon issuance by the Secretary of State. There is typically enough time prior to release from prison for the Secretary of State to obtain the necessary papers and create the State card, although the Commission recognizes that this would require logistical planning and coordination between the IDOC and the Secretary's Office. But with 30,000 inmates being released from Illinois prisons each year, the benefits of this process should justify the effort. The Commission also recommends that the State ID card be provided at no cost to the inmate, just as is now done for those who are age 65 and older, those who reside in veterans' facilities, and those who are homeless.[133]

The burden would thus be on IDOC to ensure that inmates have a valid State identification card, rather than on the inmate to figure out within 30 days of release where to go and what is needed to obtain a card. Of course, not all released inmates will need or be entitled to a State

[131] 15 ILCS 335/4.

[132] 15 ILCS 335/12.

[133] 15 ILCS 335/12.

card; those who already have such a card, who still have a valid driver's license or passport, or who will not be remaining in the State, may not receive one. But to monitor whether inmates who are entitled to an identification card receive one, the Commission recommends that the IDOC disclose in its Annual Report the number and percentage of inmates who are being released from custody without a valid form of identification.

Implementation

- The Illinois Department of Corrections should be directed to collaborate with the Illinois Secretary of State to develop a plan that will allow inmates released to Illinois communities to leave an IDOC facility with an official State identification card.
- The Illinois Department of Corrections should be required to set forth in its Annual Report the number and percentage of offenders who are released from custody without either a State identification card or some other valid form of identification.

Postscript: On December 15, 2016, Governor Rauner signed into law Public Act 99-907, legislation to ensure that any person being released from the Illinois Department of Corrections or Department of Juvenile Justice has a valid State identification card upon release. The Act takes effect on July 1, 2017.

IV. Conclusion

The recommendations set forth in this Report, if adopted and implemented fully, can safely reduce the State's prison population by 25 percent by 2025. Accomplishing this task will require courage on the part of policymakers in both the executive and legislative branches, who must not only commit the resources to make the changes effective, but also must be willing to stay the course as the changes take effect. Reform also will require discipline and perseverance among Illinois' criminal justice practitioners and judges, as well as moral support and patience by the public. The State's current prison system is the result of 40 years of policymaking, practice, and culture, and lasting change will take time and energy. But in the long term these reforms should reduce the State's overreliance on incarceration, and help ensure that the State complies with its constitutional mandate that punishments enhance the chances of successful reentry of criminal offenders into society after incarceration.

There were many worthy ideas for reform brought to the Commission's attention that are not addressed in this Report. Examples include: allowing an inmate who had reached a certain age and had served a certain number of years to be resentenced; removing or reducing the automatic enhancement for possessing a firearm during any felony crime; modifying the laws relating to expungement and sealing of criminal records; expanding the use of problem-solving courts; and amending the law on criminal responsibility to remove some of the harshest treatment for those who did not actually commit the offense but who have shared accountability for it. The fact that they have not been addressed in this Report should not be seen as an indication that reforms in these areas are not warranted. They were not included for a variety of reasons, but they should perhaps be considered in the near future, because reforming the justice system is a never-ending obligation of effective governments.

The Commission's final recommendation is that the State's leaders from all three branches of government reaffirm their commitment to ensure that criminal justice reform remains a priority, and that Illinois remains a leader in providing a just, fair, and effective system for protecting all of its citizens.

RESPECTFULLY SUBMITTED

THE ILLINOIS STATE COMMISSION ON CRIMINAL JUSTICE AND SENTENCING REFORM
RODGER A. HEATON, CHAIR

APPENDICES

APPENDIX A

Executive Order 14 (2015)

EXECUTIVE ORDER 15-14

EXECUTIVE ORDER ESTABLISHING THE ILLINOIS STATE COMMISSION ON CRIMINAL JUSTICE AND SENTENCING REFORM

WHEREAS, imprisonment is the State's most expensive form of criminal punishment, with taxpayers spending $1.3 billion on the Department of Corrections and $131 million on the Department of Juvenile Justice each year; and

WHEREAS, 97% of all inmates are eventually released from the custody of the Department of Corrections into the state's most vulnerable and impoverished communities; and

WHEREAS, recidivism is dangerously high, with 48% of the adult inmates and 53.5% of juveniles released from incarceration only to return within three years, perpetuating a vicious and costly cycle; and

WHEREAS, the Illinois Sentencing Policy Advisory Council and the Illinois Criminal Justice Information Authority have demonstrated that Illinois' prison population has increased by 700% while Illinois crime rates have fallen by 20% over the last 40 years; and

WHEREAS, the Bureau of Justice Statistics recognizes that Illinois has one of the most crowded prison systems in the country, operating at more than 150% of its design capacity; and

WHEREAS, the John Howard Association and other outside entities have demonstrated that the Department of Corrections is experiencing severe overcrowding, which threatens the safety of inmates and staff and undermines the Department's rehabilitative efforts; and

WHEREAS, the twin goals of sentencing in the State of Illinois, as stated in Article I, Section 11 of Illinois Constitution, are to prescribe penalties commensurate with the seriousness of the offense and to restore offenders to useful citizenship; and

WHEREAS, states across the country have enacted bipartisan, data-driven, and evidence-based reforms that have reduced the use of incarceration and its costs while protecting and improving public safety; and

WHEREAS, the Governor recognizes the necessity of data collection and analysis by state agencies in producing public safety outcomes that will reduce crime, reduce recidivism, and protect the citizens of Illinois; and

WHEREAS, it is in the interest of public safety and public good for the State to examine the current criminal justice and sentencing policies, practices, and resource allocation in Illinois to develop comprehensive, evidence-based strategies to more effectively improve public safety outcomes and reduce Illinois' prison population by 25% by 2025;

THEREFORE, I, Bruce Rauner, Governor of Illinois, by virtue of the executive authority vested in me by Section 8 of Article V of the Constitution of the State of Illinois, do hereby order as follows:

I. CREATION

There is hereby established the Illinois State Commission on Criminal Justice and Sentencing Reform (the "Commission").

II. PURPOSE

The Commission shall conduct a comprehensive review of the State's current criminal justice and sentencing structure, sentencing practices, community supervision, and the use of alternatives to incarceration, including, but not limited to, a review and evaluation of:

1. The existing statutory provisions by which an offender is sentenced to or can be released from incarceration;

2. The existing statutory provisions as to their uniformity, certainty, consistency, and adequacy;

3. The lengths of incarceration and community supervision that result from the current sentencing structure, and the incentives or barriers to the appropriate utilization of alternatives to incarceration;

4. The extent to which education, job training, and re-entry preparation programs can both facilitate the readiness of inmates to transition into the community and reduce recidivism;

5. The impact of existing sentences upon the State's criminal justice system, including state prison capacity, local jail capacity, community supervision resources, judicial operations, and law enforcement responsibilities;

6. The relation that a sentence or other criminal sanction has to public safety and the likelihood of recidivism; and

7. The anticipated future trends in sentencing.

III. DUTIES

The Commission shall make recommendations for amendments to state law that will reduce the State's current prison population by 25% by 2025 through maximizing uniformity, certainty, consistency, and adequacy of the State's criminal sentencing structure. The Commission's recommendations will ensure that (a) the punishment is aligned with the seriousness of the offense, (b) public safety is protected through the deterrent effect of the sentences authorized and the rehabilitation of those that are convicted, and (c) appropriate consideration is accorded to the victims, their families, and the community. Reports of the Commission shall include, but not be limited to, an evaluation of the impact that existing sentences have had on the length of incarceration, the impact of early release, the impact of existing sentences on the length of community supervision, recommended options for the use of alternatives to incarceration, and an analysis of the fiscal impact of the Commission's recommendations.

Each department, agency, board, or authority of the State or any unit of local government shall provide records and other information to the Commission as requested by the Commission to carry out its duties, provided that the Commission and the provider of such information shall make appropriate arrangements to ensure that the provision of information to the Commission does not violate any applicable laws. If the Commission receives a request to inspect any such information pursuant to the Illinois Freedom of Information Act, the Commission shall consult with the provider of the information in determining whether an exemption to public inspection applies and should be asserted.

IV. COMPOSITION

1. The Commission shall consist of members appointed by the Governor after soliciting recommendations from the General Assembly, the Judiciary, victim rights advocates, and other stakeholders. The Governor shall select a chair of the Commission from among the members. A majority of the members of the Commission shall constitute a quorum, and all recommendations of the Commission shall require approval of a majority of the total members of the Commission.

2. The Illinois Criminal Justice Information Authority shall provide administrative support to the Commission as needed, including providing an ethics officer, an Open Meetings Act officer, and a Freedom of Information Act officer.

V. REPORT AND SUNSET

The Commission shall issue an initial report of its findings and recommendations to the Governor by July 1, 2015, and a final report to the Governor and the General Assembly by December 31, 2015. Upon submission of its final report, the Commission shall be dissolved.

VI. TRANSPARENCY

In addition to whatever policies or procedures it may adopt, all operations of the Commission shall be subject to the provisions of the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*) and the Illinois Open Meetings Act (5 ILCS 120/1 *et seq.*). This section shall not be construed so as to preclude other statutes from applying to the Commission and its activities.

VII. SEVERABILITY CLAUSE

If any part of this Executive Order is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

VIII. EFFECTIVE DATE

This Executive Order shall take effect immediately upon filing with the Secretary of State.

Bruce Rauner, Governor

Issued by the Governor: February 11, 2015
Filed with the Secretary of State: February 11, 2015

Appendix B

MEMBERS OF THE ILLINOIS STATE COMMISSION ON CRIMINAL JUSTICE AND SENTENCING REFORM

- **Chairman:** Rodger A. Heaton - Public Safety Director & Homeland Security Advisor, Office of the Governor
- **Vice Chairman:** Dennis Murashko, General Counsel, Office of the Governor
- **Vice Chairman:** Jason Barclay, General Counsel, Office of the Governor
- John R. Baldwin – Director, Illinois Department of Corrections
- Kathryn Bocanegra – Consultant, Institute for Nonviolence Chicago
- Jerry Butler - Vice President of Community Corrections, Safer Foundation
- John Cabello - State Representative
- Michael Connelly - State Senator
- Scott Drury - State Representative
- Brendan Kelly - State's Attorney, St. Clair County
- Andrew D. Leipold - Edwin M. Adams Professor, University of Illinois College of Law
- John Maki - Executive Director, Illinois Criminal Justice Information Authority
- Doug Marlowe - Chief of Science, Law & Policy, Nat'l Assoc. of Drug Court Professionals
- Karen McConnaughay - State Senator
- Michael Noland - State Senator
- David Olson - Professor of Criminal Justice and Criminology, Loyola University
- Michael Pelletier - Illinois Appellate Defender
- Howard Peters III- Former Director, Illinois Department of Corrections
- Elena Quintana - Executive Director, Institute for Public Safety - Adler University
- Kwame Raoul - State Senator
- Elizabeth Robb - (Ret.) Chief Judge, 11th Judicial Circuit
- Pamela Rodriguez - President and CEO, Treatment Alternatives for Safe Communities
- Kathryn Saltmarsh - Executive Director, Illinois Sentencing Policy Advisory Council
- Stephen Sawyer - Circuit Judge (Retired); Director of Problem-Solving Courts, 2nd Judicial Cir.
- Elgie Sims, Jr. - State Representative
- Brian Stewart - State Representative
- Greg Sullivan - Executive Director, Illinois Sheriffs' Association
- Michael Tardy - Director, Administrative Office of the Illinois Courts
- Gladyse C. Taylor – Senior Advisor, Illinois Department of Corrections

Commission Consultants

- Megan Alderden, Research Director, Illinois Criminal Justice Information Authority
- Nathaniel Inglis Steinfeld**,** Research Director, Illinois Sentencing Policy Advisory Council

Staff

- Jennifer Grady-Paswater, Policy Advisor for Public Safety
- Samantha A. Gaddy - Policy Advisor for Public Safety
- Erin Johnson – Associate General Counsel
- Chasity Boyce - Associate General Counsel
- Lisa M. Desai - Assistant to the Director of Public Safety & Homeland Security Advisor

The Illinois Commission on Criminal Justice & Sentencing Reform

www.icjia.state.il.us/cjreform2015

Rep. Jehan Gordon-Booth

Filed: 1/9/2017

AMENDMENT TO SENATE BILL 2872

AMENDMENT NO. _____. Amend Senate Bill 2872 by replacing everything after the enacting clause with the following:

"Section 5. The Illinois Criminal Justice Information Act is amended by changing Section 7 as follows:

(20 ILCS 3930/7) (from Ch. 38, par. 210-7)

Sec. 7. Powers and Duties. The Authority shall have the following powers, duties and responsibilities:

(a) To develop and operate comprehensive information systems for the improvement and coordination of all aspects of law enforcement, prosecution and corrections;

(b) To define, develop, evaluate and correlate State and local programs and projects associated with the improvement of law enforcement and the administration of criminal justice;

(c) To act as a central repository and clearing house

for federal, state and local research studies, plans, projects, proposals and other information relating to all aspects of criminal justice system improvement and to encourage educational programs for citizen support of State and local efforts to make such improvements;

(d) To undertake research studies to aid in accomplishing its purposes;

(e) To monitor the operation of existing criminal justice information systems in order to protect the constitutional rights and privacy of individuals about whom criminal history record information has been collected;

(f) To provide an effective administrative forum for the protection of the rights of individuals concerning criminal history record information;

(g) To issue regulations, guidelines and procedures which ensure the privacy and security of criminal history record information consistent with State and federal laws;

(h) To act as the sole administrative appeal body in the State of Illinois to conduct hearings and make final determinations concerning individual challenges to the completeness and accuracy of criminal history record information;

(i) To act as the sole, official, criminal justice body in the State of Illinois to conduct annual and periodic audits of the procedures, policies, and practices of the

State central repositories for criminal history record information to verify compliance with federal and state laws and regulations governing such information;

(j) To advise the Authority's Statistical Analysis Center;

(k) To apply for, receive, establish priorities for, allocate, disburse and spend grants of funds that are made available by and received on or after January 1, 1983 from private sources or from the United States pursuant to the federal Crime Control Act of 1973, as amended, and similar federal legislation, and to enter into agreements with the United States government to further the purposes of this Act, or as may be required as a condition of obtaining federal funds;

(l) To receive, expend and account for such funds of the State of Illinois as may be made available to further the purposes of this Act;

(m) To enter into contracts and to cooperate with units of general local government or combinations of such units, State agencies, and criminal justice system agencies of other states for the purpose of carrying out the duties of the Authority imposed by this Act or by the federal Crime Control Act of 1973, as amended;

(n) To enter into contracts and cooperate with units of general local government outside of Illinois, other states' agencies, and private organizations outside of

Illinois to provide computer software or design that has been developed for the Illinois criminal justice system, or to participate in the cooperative development or design of new software or systems to be used by the Illinois criminal justice system. Revenues received as a result of such arrangements shall be deposited in the Criminal Justice Information Systems Trust Fund; ~~.~~

(o) To establish general policies concerning criminal justice information systems and to promulgate such rules, regulations and procedures as are necessary to the operation of the Authority and to the uniform consideration of appeals and audits;

(p) To advise and to make recommendations to the Governor and the General Assembly on policies relating to criminal justice information systems;

(q) To direct all other agencies under the jurisdiction of the Governor to provide whatever assistance and information the Authority may lawfully require to carry out its functions;

(r) To exercise any other powers that are reasonable and necessary to fulfill the responsibilities of the Authority under this Act and to comply with the requirements of applicable federal law or regulation;

(s) To exercise the rights, powers and duties which have been vested in the Authority by the "Illinois Uniform Conviction Information Act", enacted by the 85th General

Assembly, as hereafter amended;

(t) To exercise the rights, powers and duties which have been vested in the Authority by the Illinois Motor Vehicle Theft Prevention Act;

(u) To exercise the rights, powers, and duties vested in the Authority by the Illinois Public Safety Agency Network Act; ~~and~~

(v) To provide technical assistance in the form of training to local governmental entities within Illinois requesting such assistance for the purposes of procuring grants for gang intervention and gang prevention programs or other criminal justice programs from the United States Department of Justice; and ~~.~~

(w) To conduct strategic planning and provide technical assistance to implement comprehensive trauma recovery services for violent crime victims in underserved communities with high-levels of violent crime, with the goal of providing a safe, community-based, culturally competent environment in which to access services necessary to facilitate recovery from the effects of chronic and repeat exposure to trauma. Services may include, but are not limited to, behavioral health treatment, financial recovery, family support and relocation assistance, and support in navigating the legal system.

The requirement for reporting to the General Assembly shall

be satisfied by filing copies of the report with the Speaker, the Minority Leader and the Clerk of the House of Representatives and the President, the Minority Leader and the Secretary of the Senate and the Legislative Research Unit, as required by Section 3.1 of "An Act to revise the law in relation to the General Assembly", approved February 25, 1874, as amended, and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act.

(Source: P.A. 97-435, eff. 1-1-12.)

Section 10. The Unified Code of Corrections is amended by changing Sections 3-6-3, 5-4-1, and 5-5-3 as follows:

(730 ILCS 5/3-6-3) (from Ch. 38, par. 1003-6-3)

Sec. 3-6-3. Rules and regulations for sentence credit.

(a)(1) The Department of Corrections shall prescribe rules and regulations for awarding and revoking sentence credit for persons committed to the Department which shall be subject to review by the Prisoner Review Board.

(1.5) As otherwise provided by law, sentence credit may be awarded for the following:

(A) successful completion of programming while in custody of the Department or while in custody prior to sentencing;

(B) compliance with the rules and regulations of the Department; or

(C) service to the institution, service to a community, or service to the State.

(2) The rules and regulations on sentence credit shall provide, with respect to offenses listed in clause (i), (ii), or (iii) of this paragraph (2) committed on or after June 19, 1998 or with respect to the offense listed in clause (iv) of this paragraph (2) committed on or after June 23, 2005 (the effective date of Public Act 94-71) or with respect to offense listed in clause (vi) committed on or after June 1, 2008 (the effective date of Public Act 95-625) or with respect to the offense of being an armed habitual criminal committed on or after August 2, 2005 (the effective date of Public Act 94-398) or with respect to the offenses listed in clause (v) of this paragraph (2) committed on or after August 13, 2007 (the effective date of Public Act 95-134) or with respect to the offense of aggravated domestic battery committed on or after July 23, 2010 (the effective date of Public Act 96-1224) or with respect to the offense of attempt to commit terrorism committed on or after January 1, 2013 (the effective date of Public Act 97-990), the following:

(i) that a prisoner who is serving a term of imprisonment for first degree murder or for the offense of terrorism shall receive no sentence credit and shall serve the entire sentence imposed by the court;

(ii) that a prisoner serving a sentence for attempt to commit terrorism, attempt to commit first degree murder, solicitation of murder, solicitation of murder for hire, intentional homicide of an unborn child, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, aggravated kidnapping, aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05, heinous battery as described in Section 12-4.1 or subdivision (a)(2) of Section 12-3.05, being an armed habitual criminal, aggravated battery of a senior citizen as described in Section 12-4.6 or subdivision (a)(4) of Section 12-3.05, or aggravated battery of a child as described in Section 12-4.3 or subdivision (b)(1) of Section 12-3.05 shall receive no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment;

(iii) that a prisoner serving a sentence for home invasion, armed robbery, aggravated vehicular hijacking, aggravated discharge of a firearm, or armed violence with a category I weapon or category II weapon, when the court has made and entered a finding, pursuant to subsection (c-1) of Section 5-4-1 of this Code, that the conduct leading to conviction for the enumerated offense resulted in great bodily harm to a victim, shall receive no more than 4.5 days of sentence credit for each month of his or her

sentence of imprisonment;

(iv) that a prisoner serving a sentence for aggravated discharge of a firearm, whether or not the conduct leading to conviction for the offense resulted in great bodily harm to the victim, shall receive no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment;

(v) that a person serving a sentence for gunrunning, narcotics racketeering, controlled substance trafficking, methamphetamine trafficking, drug-induced homicide, aggravated methamphetamine-related child endangerment, money laundering pursuant to clause (c) (4) or (5) of Section 29B-1 of the Criminal Code of 1961 or the Criminal Code of 2012, or a Class X felony conviction for delivery of a controlled substance, possession of a controlled substance with intent to manufacture or deliver, calculated criminal drug conspiracy, criminal drug conspiracy, street gang criminal drug conspiracy, participation in methamphetamine manufacturing, aggravated participation in methamphetamine manufacturing, delivery of methamphetamine, possession with intent to deliver methamphetamine, aggravated delivery of methamphetamine, aggravated possession with intent to deliver methamphetamine, methamphetamine conspiracy when the substance containing the controlled substance or methamphetamine is 100 grams or more shall receive no more

than 7.5 days sentence credit for each month of his or her sentence of imprisonment;

(vi) that a prisoner serving a sentence for a second or subsequent offense of luring a minor shall receive no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment; and

(vii) that a prisoner serving a sentence for aggravated domestic battery shall receive no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment.

(2.1) For all offenses, other than those enumerated in subdivision (a)(2)(i), (ii), or (iii) committed on or after June 19, 1998 or subdivision (a)(2)(iv) committed on or after June 23, 2005 (the effective date of Public Act 94-71) or subdivision (a)(2)(v) committed on or after August 13, 2007 (the effective date of Public Act 95-134) or subdivision (a)(2)(vi) committed on or after June 1, 2008 (the effective date of Public Act 95-625) or subdivision (a)(2)(vii) committed on or after July 23, 2010 (the effective date of Public Act 96-1224), and other than the offense of aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof as defined in subparagraph (F) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code, and other than the offense of aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or

compounds, or any combination thereof as defined in subparagraph (C) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code committed on or after January 1, 2011 (the effective date of Public Act 96-1230), the rules and regulations shall provide that a prisoner who is serving a term of imprisonment shall receive one day of sentence credit for each day of his or her sentence of imprisonment or recommitment under Section 3-3-9. Each day of sentence credit shall reduce by one day the prisoner's period of imprisonment or recommitment under Section 3-3-9.

(2.2) A prisoner serving a term of natural life imprisonment or a prisoner who has been sentenced to death shall receive no sentence credit.

(2.3) The rules and regulations on sentence credit shall provide that a prisoner who is serving a sentence for aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof as defined in subparagraph (F) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code, shall receive no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment.

(2.4) The rules and regulations on sentence credit shall provide with respect to the offenses of aggravated battery with a machine gun or a firearm equipped with any device or attachment designed or used for silencing the report of a firearm or aggravated discharge of a machine gun or a firearm

equipped with any device or attachment designed or used for silencing the report of a firearm, committed on or after July 15, 1999 (the effective date of Public Act 91-121), that a prisoner serving a sentence for any of these offenses shall receive no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment.

(2.5) The rules and regulations on sentence credit shall provide that a prisoner who is serving a sentence for aggravated arson committed on or after July 27, 2001 (the effective date of Public Act 92-176) shall receive no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment.

(2.6) The rules and regulations on sentence credit shall provide that a prisoner who is serving a sentence for aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds or any combination thereof as defined in subparagraph (C) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code committed on or after January 1, 2011 (the effective date of Public Act 96-1230) shall receive no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment.

(3) The rules and regulations shall also provide that the Director may award up to 180 days <u>of earned</u> ~~additional~~ sentence credit for good conduct in specific instances as the Director deems proper. The good conduct may include, but is not limited

to, compliance with the rules and regulations of the Department, service to the Department, service to a community, or service to the State. ~~However, the Director shall not award more than 90 days of sentence credit for good conduct to any prisoner who is serving a sentence for conviction of first degree murder, reckless homicide while under the influence of alcohol or any other drug, or aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof as defined in subparagraph (F) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code, aggravated kidnapping, kidnapping, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, deviate sexual assault, aggravated criminal sexual abuse, aggravated indecent liberties with a child, indecent liberties with a child, child pornography, heinous battery as described in Section 12-4.1 or subdivision (a)(2) of Section 12-3.05, aggravated battery of a spouse, aggravated battery of a spouse with a firearm, stalking, aggravated stalking, aggravated battery of a child as described in Section 12-4.3 or subdivision (b)(1) of Section 12-3.05, endangering the life or health of a child, or cruelty to a child. Notwithstanding the foregoing, sentence credit for good conduct shall not be awarded on a sentence of imprisonment imposed for conviction of: (i) one of the offenses enumerated in subdivision (a)(2)(i), (ii), or (iii) when the offense is committed on or~~

~~after June 19, 1998 or subdivision (a)(2)(iv) when the offense is committed on or after June 23, 2005 (the effective date of Public Act 94-71) or subdivision (a)(2)(v) when the offense is committed on or after August 13, 2007 (the effective date of Public Act 95-134) or subdivision (a)(2)(vi) when the offense is committed on or after June 1, 2008 (the effective date of Public Act 95-625) or subdivision (a)(2)(vii) when the offense is committed on or after July 23, 2010 (the effective date of Public Act 96-1224), (ii) aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof as defined in subparagraph (F) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code, (iii) one of the offenses enumerated in subdivision (a)(2.4) when the offense is committed on or after July 15, 1999 (the effective date of Public Act 91-121), (iv) aggravated arson when the offense is committed on or after July 27, 2001 (the effective date of Public Act 92-176), (v) offenses that may subject the offender to commitment under the Sexually Violent Persons Commitment Act, or (vi) aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds or any combination thereof as defined in subparagraph (C) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code committed on or after January 1, 2011 (the effective date of Public Act 96-1230).~~

Eligible inmates for an award of earned sentence credit

under this paragraph (3) may be selected to receive the credit at the Director's or his or her designee's sole discretion. Eligibility for the additional earned sentence credit under this paragraph (3) shall be based on, but is not limited to, the results of any available risk/needs assessment or other relevant assessments or evaluations administered by the Department using a validated instrument, the circumstances of the crime, any history of conviction for a forcible felony enumerated in Section 2-8 of the Criminal Code of 2012, the inmate's behavior and disciplinary history while incarcerated, and the inmate's commitment to rehabilitation, including participation in programming offered by the Department. ~~Consideration may be based on, but not limited to, any available risk assessment analysis on the inmate, any history of conviction for violent crimes as defined by the Rights of Crime Victims and Witnesses Act, facts and circumstances of the inmate's holding offense or offenses, and the potential for rehabilitation.~~

The Director shall not award sentence credit under this paragraph (3) to an inmate unless the inmate has served a minimum of 60 days of the sentence; except nothing in this paragraph shall be construed to permit the Director to extend an inmate's sentence beyond that which was imposed by the court. Prior to awarding credit under this paragraph (3), the Director shall make a written determination that the inmate:

(A) is eligible for the earned sentence credit;

(B) has served a minimum of 60 days, or as close to 60 days as the sentence will allow; ~~and~~

(B-1) has received a risk/needs assessment or other relevant evaluation or assessment administered by the Department using a validated instrument; and

(C) has met the eligibility criteria established under paragraph (4) of this subsection (a) and by rule for earned sentence credit.

The Director shall determine the form and content of the written determination required in this subsection.

(3.5) The Department shall provide annual written reports to the Governor and the General Assembly on the award of earned sentence credit no later than February 1 of each year ~~for good conduct, with the first report due January 1, 2014~~. The Department must publish both reports on its website within 48 hours of transmitting the reports to the Governor and the General Assembly. The reports must include:

(A) the number of inmates awarded earned sentence credit ~~for good conduct~~;

(B) the average amount of earned sentence credit ~~for good conduct~~ awarded;

(C) the holding offenses of inmates awarded earned sentence credit ~~for good conduct~~; and

(D) the number of earned sentence credit ~~for good conduct~~ revocations.

(4) The rules and regulations shall also provide that the

sentence credit accumulated and retained under paragraph (2.1) of subsection (a) of this Section by any inmate during specific periods of time in which such inmate is engaged full-time in substance abuse programs, correctional industry assignments, educational programs, behavior modification programs, life skills courses, or re-entry planning provided by the Department under this paragraph (4) and satisfactorily completes the assigned program as determined by the standards of the Department, shall be multiplied by a factor of 1.25 for program participation before August 11, 1993 and 1.50 for program participation on or after that date. The rules and regulations shall also provide that sentence credit, subject to the same offense limits and multiplier provided in this paragraph, may be provided to an inmate who was held in pre-trial detention prior to his or her current commitment to the Department of Corrections and successfully completed a full-time, 60-day or longer substance abuse program, educational program, behavior modification program, life skills course, or re-entry planning provided by the county department of corrections or county jail. Calculation of this county program credit shall be done at sentencing as provided in Section 5-4.5-100 of this Code and shall be included in the sentencing order. However, no inmate shall be eligible for the additional sentence credit under this paragraph (4) or (4.1) of this subsection (a) while assigned to a boot camp or electronic detention, or if convicted of an offense enumerated in subdivision (a)(2)(i), (ii), or (iii) of

this Section that is committed on or after June 19, 1998 or subdivision (a)(2)(iv) of this Section that is committed on or after June 23, 2005 (the effective date of Public Act 94-71) or subdivision (a)(2)(v) of this Section that is committed on or after August 13, 2007 (the effective date of Public Act 95-134) or subdivision (a)(2)(vi) when the offense is committed on or after June 1, 2008 (the effective date of Public Act 95-625) or subdivision (a)(2)(vii) when the offense is committed on or after July 23, 2010 (the effective date of Public Act 96-1224), or if convicted of aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds or any combination thereof as defined in subparagraph (F) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code, or if convicted of aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds or any combination thereof as defined in subparagraph (C) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code committed on or after January 1, 2011 (the effective date of Public Act 96-1230), or if convicted of an offense enumerated in paragraph (a)(2.4) of this Section that is committed on or after July 15, 1999 (the effective date of Public Act 91-121), or first degree murder, a Class X felony, criminal sexual assault, felony criminal sexual abuse, aggravated criminal sexual abuse, aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of

Section 12-3.05, or any predecessor or successor offenses with the same or substantially the same elements, or any inchoate offenses relating to the foregoing offenses. ~~No inmate shall be eligible for the additional good conduct credit under this paragraph (4) who (i) has previously received increased good conduct credit under this paragraph (4) and has subsequently been convicted of a felony, or (ii) has previously served more than one prior sentence of imprisonment for a felony in an adult correctional facility.~~

Educational, vocational, substance abuse, behavior modification programs, life skills courses, re-entry planning, and correctional industry programs under which sentence credit may be increased under this paragraph (4) and paragraph (4.1) of this subsection (a) shall be evaluated by the Department on the basis of documented standards. The Department shall report the results of these evaluations to the Governor and the General Assembly by September 30th of each year. The reports shall include data relating to the recidivism rate among program participants.

Availability of these programs shall be subject to the limits of fiscal resources appropriated by the General Assembly for these purposes. Eligible inmates who are denied immediate admission shall be placed on a waiting list under criteria established by the Department. The inability of any inmate to become engaged in any such programs by reason of insufficient program resources or for any other reason established under the

rules and regulations of the Department shall not be deemed a cause of action under which the Department or any employee or agent of the Department shall be liable for damages to the inmate.

(4.1) The rules and regulations shall also provide that an additional 90 days of sentence credit shall be awarded to any prisoner who passes high school equivalency testing while the prisoner is committed to the Department of Corrections. The sentence credit awarded under this paragraph (4.1) shall be in addition to, and shall not affect, the award of sentence credit under any other paragraph of this Section, but shall also be pursuant to the guidelines and restrictions set forth in paragraph (4) of subsection (a) of this Section. The sentence credit provided for in this paragraph shall be available only to those prisoners who have not previously earned a high school diploma or a high school equivalency certificate. If, after an award of the high school equivalency testing sentence credit has been made, the Department determines that the prisoner was not eligible, then the award shall be revoked. The Department may also award 90 days of sentence credit to any committed person who passed high school equivalency testing while he or she was held in pre-trial detention prior to the current commitment to the Department of Corrections.

(4.5) The rules and regulations on sentence credit shall also provide that when the court's sentencing order recommends a prisoner for substance abuse treatment and the crime was

committed on or after September 1, 2003 (the effective date of Public Act 93-354), the prisoner shall receive no sentence credit awarded under clause (3) of this subsection (a) unless he or she participates in and completes a substance abuse treatment program. The Director may waive the requirement to participate in or complete a substance abuse treatment program ~~and award the sentence credit~~ in specific instances if the prisoner is not a good candidate for a substance abuse treatment program for medical, programming, or operational reasons. Availability of substance abuse treatment shall be subject to the limits of fiscal resources appropriated by the General Assembly for these purposes. If treatment is not available and the requirement to participate and complete the treatment has not been waived by the Director, the prisoner shall be placed on a waiting list under criteria established by the Department. The Director may allow a prisoner placed on a waiting list to participate in and complete a substance abuse education class or attend substance abuse self-help meetings in lieu of a substance abuse treatment program. A prisoner on a waiting list who is not placed in a substance abuse program prior to release may be eligible for a waiver and receive sentence credit under clause (3) of this subsection (a) at the discretion of the Director.

(4.6) The rules and regulations on sentence credit shall also provide that a prisoner who has been convicted of a sex offense as defined in Section 2 of the Sex Offender

Registration Act shall receive no sentence credit unless he or she either has successfully completed or is participating in sex offender treatment as defined by the Sex Offender Management Board. However, prisoners who are waiting to receive treatment, but who are unable to do so due solely to the lack of resources on the part of the Department, may, at the Director's sole discretion, be awarded sentence credit at a rate as the Director shall determine.

(5) Whenever the Department is to release any inmate earlier than it otherwise would because of a grant of earned sentence credit ~~for good conduct~~ under paragraph (3) of subsection (a) of this Section given at any time during the term, the Department shall give reasonable notice of the impending release not less than 14 days prior to the date of the release to the State's Attorney of the county where the prosecution of the inmate took place, and if applicable, the State's Attorney of the county into which the inmate will be released. The Department must also make identification information and a recent photo of the inmate being released accessible on the Internet by means of a hyperlink labeled "Community Notification of Inmate Early Release" on the Department's World Wide Web homepage. The identification information shall include the inmate's: name, any known alias, date of birth, physical characteristics, commitment offense and county where conviction was imposed. The identification information shall be placed on the website within 3 days of the

inmate's release and the information may not be removed until either: completion of the first year of mandatory supervised release or return of the inmate to custody of the Department.

(b) Whenever a person is or has been committed under several convictions, with separate sentences, the sentences shall be construed under Section 5-8-4 in granting and forfeiting of sentence credit.

(c) The Department shall prescribe rules and regulations for revoking sentence credit, including revoking sentence credit awarded ~~for good conduct~~ under paragraph (3) of subsection (a) of this Section. The Department shall prescribe rules and regulations for suspending or reducing the rate of accumulation of sentence credit for specific rule violations, during imprisonment. These rules and regulations shall provide that no inmate may be penalized more than one year of sentence credit for any one infraction.

When the Department seeks to revoke, suspend or reduce the rate of accumulation of any sentence credits for an alleged infraction of its rules, it shall bring charges therefor against the prisoner sought to be so deprived of sentence credits before the Prisoner Review Board as provided in subparagraph (a)(4) of Section 3-3-2 of this Code, if the amount of credit at issue exceeds 30 days or when during any 12 month period, the cumulative amount of credit revoked exceeds 30 days except where the infraction is committed or discovered within 60 days of scheduled release. In those cases, the

Department of Corrections may revoke up to 30 days of sentence credit. The Board may subsequently approve the revocation of additional sentence credit, if the Department seeks to revoke sentence credit in excess of 30 days. However, the Board shall not be empowered to review the Department's decision with respect to the loss of 30 days of sentence credit within any calendar year for any prisoner or to increase any penalty beyond the length requested by the Department.

The Director of the Department of Corrections, in appropriate cases, may restore up to 30 days of sentence credits which have been revoked, suspended or reduced. Any restoration of sentence credits in excess of 30 days shall be subject to review by the Prisoner Review Board. However, the Board may not restore sentence credit in excess of the amount requested by the Director.

Nothing contained in this Section shall prohibit the Prisoner Review Board from ordering, pursuant to Section 3-3-9(a)(3)(i)(B), that a prisoner serve up to one year of the sentence imposed by the court that was not served due to the accumulation of sentence credit.

(d) If a lawsuit is filed by a prisoner in an Illinois or federal court against the State, the Department of Corrections, or the Prisoner Review Board, or against any of their officers or employees, and the court makes a specific finding that a pleading, motion, or other paper filed by the prisoner is frivolous, the Department of Corrections shall conduct a

hearing to revoke up to 180 days of sentence credit by bringing charges against the prisoner sought to be deprived of the sentence credits before the Prisoner Review Board as provided in subparagraph (a)(8) of Section 3-3-2 of this Code. If the prisoner has not accumulated 180 days of sentence credit at the time of the finding, then the Prisoner Review Board may revoke all sentence credit accumulated by the prisoner.

For purposes of this subsection (d):

(1) "Frivolous" means that a pleading, motion, or other filing which purports to be a legal document filed by a prisoner in his or her lawsuit meets any or all of the following criteria:

(A) it lacks an arguable basis either in law or in fact;

(B) it is being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(C) the claims, defenses, and other legal contentions therein are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(D) the allegations and other factual contentions do not have evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further

investigation or discovery; or

(E) the denials of factual contentions are not warranted on the evidence, or if specifically so identified, are not reasonably based on a lack of information or belief.

(2) "Lawsuit" means a motion pursuant to Section 116-3 of the Code of Criminal Procedure of 1963, a habeas corpus action under Article X of the Code of Civil Procedure or under federal law (28 U.S.C. 2254), a petition for claim under the Court of Claims Act, an action under the federal Civil Rights Act (42 U.S.C. 1983), or a second or subsequent petition for post-conviction relief under Article 122 of the Code of Criminal Procedure of 1963 whether filed with or without leave of court or a second or subsequent petition for relief from judgment under Section 2-1401 of the Code of Civil Procedure.

(e) Nothing in Public Act 90-592 or 90-593 affects the validity of Public Act 89-404.

(f) Whenever the Department is to release any inmate who has been convicted of a violation of an order of protection under Section 12-3.4 or 12-30 of the Criminal Code of 1961 or the Criminal Code of 2012, earlier than it otherwise would because of a grant of sentence credit, the Department, as a condition of release, shall require that the person, upon release, be placed under electronic surveillance as provided in Section 5-8A-7 of this Code.

(Source: P.A. 98-718, eff. 1-1-15; 99-241, eff. 1-1-16; 99-275, eff. 1-1-16; 99-642, eff. 7-28-16.)

(730 ILCS 5/5-4-1) (from Ch. 38, par. 1005-4-1)

Sec. 5-4-1. Sentencing Hearing.

(a) Except when the death penalty is sought under hearing procedures otherwise specified, after a determination of guilt, a hearing shall be held to impose the sentence. However, prior to the imposition of sentence on an individual being sentenced for an offense based upon a charge for a violation of Section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance, the individual must undergo a professional evaluation to determine if an alcohol or other drug abuse problem exists and the extent of such a problem. Programs conducting these evaluations shall be licensed by the Department of Human Services. However, if the individual is not a resident of Illinois, the court may, in its discretion, accept an evaluation from a program in the state of such individual's residence. The court may in its sentencing order approve an eligible defendant for placement in a Department of Corrections impact incarceration program as provided in Section 5-8-1.1 or 5-8-1.3. The court may in its sentencing order recommend a defendant for placement in a Department of Corrections substance abuse treatment program as provided in paragraph (a) of subsection (1) of Section 3-2-2 conditioned upon the defendant being accepted in a program by the

Department of Corrections. At the hearing the court shall:

(1) consider the evidence, if any, received upon the trial;

(2) consider any presentence reports;

(3) consider the financial impact of incarceration based on the financial impact statement filed with the clerk of the court by the Department of Corrections;

(4) consider evidence and information offered by the parties in aggravation and mitigation;

(4.5) consider substance abuse treatment, eligibility screening, and an assessment, if any, of the defendant by an agent designated by the State of Illinois to provide assessment services for the Illinois courts;

(5) hear arguments as to sentencing alternatives;

(6) afford the defendant the opportunity to make a statement in his own behalf;

(7) afford the victim of a violent crime or a violation of Section 11-501 of the Illinois Vehicle Code, or a similar provision of a local ordinance, or a qualified individual affected by: (i) a violation of Section 405, 405.1, 405.2, or 407 of the Illinois Controlled Substances Act or a violation of Section 55 or Section 65 of the Methamphetamine Control and Community Protection Act, or (ii) a Class 4 felony violation of Section 11-14, 11-14.3 except as described in subdivisions (a)(2)(A) and (a)(2)(B), 11-15, 11-17, 11-18, 11-18.1, or 11-19 of the

Criminal Code of 1961 or the Criminal Code of 2012, committed by the defendant the opportunity to make a statement concerning the impact on the victim and to offer evidence in aggravation or mitigation; provided that the statement and evidence offered in aggravation or mitigation must first be prepared in writing in conjunction with the State's Attorney before it may be presented orally at the hearing. Any sworn testimony offered by the victim is subject to the defendant's right to cross-examine. All statements and evidence offered under this paragraph (7) shall become part of the record of the court. For the purpose of this paragraph (7), "qualified individual" means any person who (i) lived or worked within the territorial jurisdiction where the offense took place when the offense took place; and (ii) is familiar with various public places within the territorial jurisdiction where the offense took place when the offense took place. For the purposes of this paragraph (7), "qualified individual" includes any peace officer, or any member of any duly organized State, county, or municipal peace unit assigned to the territorial jurisdiction where the offense took place when the offense took place;

(8) in cases of reckless homicide afford the victim's spouse, guardians, parents or other immediate family members an opportunity to make oral statements;

(9) in cases involving a felony sex offense as defined

under the Sex Offender Management Board Act, consider the results of the sex offender evaluation conducted pursuant to Section 5-3-2 of this Act; and

(10) make a finding of whether a motor vehicle was used in the commission of the offense for which the defendant is being sentenced.

(b) All sentences shall be imposed by the judge based upon his independent assessment of the elements specified above and any agreement as to sentence reached by the parties. The judge who presided at the trial or the judge who accepted the plea of guilty shall impose the sentence unless he is no longer sitting as a judge in that court. Where the judge does not impose sentence at the same time on all defendants who are convicted as a result of being involved in the same offense, the defendant or the State's Attorney may advise the sentencing court of the disposition of any other defendants who have been sentenced.

(b-1) In imposing a sentence of imprisonment or periodic imprisonment for a Class 3 or Class 4 felony for which a sentence of probation or conditional discharge is an available sentence, if the defendant has no prior sentence of probation or conditional discharge and no prior conviction for a violent crime, the defendant shall not be sentenced to imprisonment before review and consideration of a presentence report and determination and explanation of why the particular evidence, information, factor in aggravation, factual finding, or other

reasons support a sentencing determination that one or more of the factors under subsection (a) of Section 5-6-1 of this Code apply and that probation or conditional discharge is not an appropriate sentence.

(c) In imposing a sentence for a violent crime or for an offense of operating or being in physical control of a vehicle while under the influence of alcohol, any other drug or any combination thereof, or a similar provision of a local ordinance, when such offense resulted in the personal injury to someone other than the defendant, the trial judge shall specify on the record the particular evidence, information, factors in mitigation and aggravation or other reasons that led to his sentencing determination. The full verbatim record of the sentencing hearing shall be filed with the clerk of the court and shall be a public record.

(c-1) In imposing a sentence for the offense of aggravated kidnapping for ransom, home invasion, armed robbery, aggravated vehicular hijacking, aggravated discharge of a firearm, or armed violence with a category I weapon or category II weapon, the trial judge shall make a finding as to whether the conduct leading to conviction for the offense resulted in great bodily harm to a victim, and shall enter that finding and the basis for that finding in the record.

(c-2) If the defendant is sentenced to prison, other than when a sentence of natural life imprisonment or a sentence of death is imposed, at the time the sentence is imposed the judge

shall state on the record in open court the approximate period of time the defendant will serve in custody according to the then current statutory rules and regulations for sentence credit found in Section 3-6-3 and other related provisions of this Code. This statement is intended solely to inform the public, has no legal effect on the defendant's actual release, and may not be relied on by the defendant on appeal.

The judge's statement, to be given after pronouncing the sentence, other than when the sentence is imposed for one of the offenses enumerated in paragraph (a)(4) ~~(a)(3)~~ of Section 3-6-3, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, assuming the defendant receives all of his or her sentence credit, the period of estimated actual custody is ... years and ... months, less up to 180 days additional earned sentence credit ~~for good conduct~~. If the defendant, because of his or her own misconduct or failure to comply with the institutional regulations, does not receive those credits, the actual time served in prison will be longer. The defendant may also receive an additional one-half day sentence credit for each day of participation in vocational, industry, substance

abuse, and educational programs as provided for by Illinois statute."

~~When the sentence is imposed for one of the offenses enumerated in paragraph (a)(3) of Section 3-6-3, other than when the sentence is imposed for one of the offenses enumerated in paragraph (a)(2) of Section 3-6-3 committed on or after June 19, 1998, and other than when the sentence is imposed for reckless homicide as defined in subsection (e) of Section 9-3 of the Criminal Code of 1961 or the Criminal Code of 2012 if the offense was committed on or after January 1, 1999, and other than when the sentence is imposed for aggravated arson if the offense was committed on or after July 27, 2001 (the effective date of Public Act 92-176), and other than when the sentence is imposed for aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof as defined in subparagraph (C) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code committed on or after January 1, 2011 (the effective date of Public Act 96-1230), the judge's statement, to be given after pronouncing the sentence, shall include the following:~~

~~"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of~~

~~Corrections and the Illinois Prisoner Review Board. In this case, assuming the defendant receives all of his or her sentence credit, the period of estimated actual custody is ... years and ... months, less up to 90 days additional sentence credit for good conduct. If the defendant, because of his or her own misconduct or failure to comply with the institutional regulations, does not receive those credits, the actual time served in prison will be longer. The defendant may also receive an additional one-half day sentence credit for each day of participation in vocational, industry, substance abuse, and educational programs as provided for by Illinois statute."~~

When the sentence is imposed for one of the offenses enumerated in paragraph (a)(2) of Section 3-6-3, other than first degree murder, and the offense was committed on or after June 19, 1998, and when the sentence is imposed for reckless homicide as defined in subsection (e) of Section 9-3 of the Criminal Code of 1961 or the Criminal Code of 2012 if the offense was committed on or after January 1, 1999, and when the sentence is imposed for aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof as defined in subparagraph (F) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code, and when the sentence is imposed for aggravated arson if the offense was committed on or after July 27, 2001 (the effective date of Public Act 92-176), and when the sentence is imposed for aggravated driving under

the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof as defined in subparagraph (C) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code committed on or after January 1, 2011 (the effective date of Public Act 96-1230), the judge's statement, to be given after pronouncing the sentence, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, the defendant is entitled to no more than 4 1/2 days of sentence credit for each month of his or her sentence of imprisonment. Therefore, this defendant will serve at least 85% of his or her sentence. Assuming the defendant receives 4 1/2 days credit for each month of his or her sentence, the period of estimated actual custody is ... years and ... months. If the defendant, because of his or her own misconduct or failure to comply with the institutional regulations receives lesser credit, the actual time served in prison will be longer."

When a sentence of imprisonment is imposed for first degree murder and the offense was committed on or after June 19, 1998, the judge's statement, to be given after pronouncing the sentence, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, the defendant is not entitled to sentence credit. Therefore, this defendant will serve 100% of his or her sentence."

When the sentencing order recommends placement in a substance abuse program for any offense that results in incarceration in a Department of Corrections facility and the crime was committed on or after September 1, 2003 (the effective date of Public Act 93-354), the judge's statement, in addition to any other judge's statement required under this Section, to be given after pronouncing the sentence, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, the defendant shall receive no earned sentence credit ~~for good conduct~~ under clause (3) of subsection (a) of Section 3-6-3 until he or she participates in and completes a substance

abuse treatment program or receives a waiver from the Director of Corrections pursuant to clause (4.5) of subsection (a) of Section 3-6-3."

(c-4) Before the sentencing hearing and as part of the presentence investigation under Section 5-3-1, the court shall inquire of the defendant whether the defendant is currently serving in or is a veteran of the Armed Forces of the United States. If the defendant is currently serving in the Armed Forces of the United States or is a veteran of the Armed Forces of the United States and has been diagnosed as having a mental illness by a qualified psychiatrist or clinical psychologist or physician, the court may:

(1) order that the officer preparing the presentence report consult with the United States Department of Veterans Affairs, Illinois Department of Veterans' Affairs, or another agency or person with suitable knowledge or experience for the purpose of providing the court with information regarding treatment options available to the defendant, including federal, State, and local programming; and

(2) consider the treatment recommendations of any diagnosing or treating mental health professionals together with the treatment options available to the defendant in imposing sentence.

For the purposes of this subsection (c-4), "qualified psychiatrist" means a reputable physician licensed in Illinois

to practice medicine in all its branches, who has specialized in the diagnosis and treatment of mental and nervous disorders for a period of not less than 5 years.

(c-6) In imposing a sentence, the trial judge shall specify, on the record, the particular evidence and other reasons which led to his or her determination that a motor vehicle was used in the commission of the offense.

(d) When the defendant is committed to the Department of Corrections, the State's Attorney shall and counsel for the defendant may file a statement with the clerk of the court to be transmitted to the department, agency or institution to which the defendant is committed to furnish such department, agency or institution with the facts and circumstances of the offense for which the person was committed together with all other factual information accessible to them in regard to the person prior to his commitment relative to his habits, associates, disposition and reputation and any other facts and circumstances which may aid such department, agency or institution during its custody of such person. The clerk shall within 10 days after receiving any such statements transmit a copy to such department, agency or institution and a copy to the other party, provided, however, that this shall not be cause for delay in conveying the person to the department, agency or institution to which he has been committed.

(e) The clerk of the court shall transmit to the department, agency or institution, if any, to which the

defendant is committed, the following:

(1) the sentence imposed;

(2) any statement by the court of the basis for imposing the sentence;

(3) any presentence reports;

(3.5) any sex offender evaluations;

(3.6) any substance abuse treatment eligibility screening and assessment of the defendant by an agent designated by the State of Illinois to provide assessment services for the Illinois courts;

(4) the number of days, if any, which the defendant has been in custody and for which he is entitled to credit against the sentence, which information shall be provided to the clerk by the sheriff;

(4.1) any finding of great bodily harm made by the court with respect to an offense enumerated in subsection (c-1);

(5) all statements filed under subsection (d) of this Section;

(6) any medical or mental health records or summaries of the defendant;

(7) the municipality where the arrest of the offender or the commission of the offense has occurred, where such municipality has a population of more than 25,000 persons;

(8) all statements made and evidence offered under paragraph (7) of subsection (a) of this Section; and

(9) all additional matters which the court directs the clerk to transmit.

(f) In cases in which the court finds that a motor vehicle was used in the commission of the offense for which the defendant is being sentenced, the clerk of the court shall, within 5 days thereafter, forward a report of such conviction to the Secretary of State.

(Source: P.A. 99-861, eff. 1-1-17.)

(730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

Sec. 5-5-3. Disposition.

(a) (Blank).

(b) (Blank).

(c) (1) (Blank).

(2) A period of probation, a term of periodic imprisonment or conditional discharge shall not be imposed for the following offenses. The court shall sentence the offender to not less than the minimum term of imprisonment set forth in this Code for the following offenses, and may order a fine or restitution or both in conjunction with such term of imprisonment:

(A) First degree murder where the death penalty is not imposed.

(B) Attempted first degree murder.

(C) A Class X felony.

(D) A violation of Section 401.1 or 407 of the Illinois Controlled Substances Act, or a violation of subdivision

(c)(1.5) ~~or (c)(2)~~ of Section 401 of that Act which relates to more than 5 grams of a substance containing ~~cocaine,~~ fentanyl~~,~~ or an analog thereof.

(D-5) A violation of subdivision (c)(1) of Section 401 of the Illinois Controlled Substances Act which relates to 3 or more grams of a substance containing heroin or an analog thereof.

(E) (Blank). ~~A violation of Section 5.1 or 9 of the Cannabis Control Act.~~

(F) A Class 1 ~~2~~ or greater felony if the offender had been convicted of a Class 1 ~~2~~ or greater felony, including any state or federal conviction for an offense that contained, at the time it was committed, the same elements as an offense now (the date of the offense committed after the prior Class 1 ~~2~~ or greater felony) classified as a Class 1 ~~2~~ or greater felony, within 10 years of the date on which the offender committed the offense for which he or she is being sentenced, except as otherwise provided in Section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act.

(F-3) A Class 2 or greater felony sex offense or felony firearm offense if the offender had been convicted of a Class 2 or greater felony, including any state or federal conviction for an offense that contained, at the time it was committed, the same elements as an offense now (the date of the offense committed after the prior Class 2 or

greater felony) classified as a Class 2 or greater felony, within 10 years of the date on which the offender committed the offense for which he or she is being sentenced, except as otherwise provided in Section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act.

(F-5) A violation of Section 24-1, 24-1.1, or 24-1.6 of the Criminal Code of 1961 or the Criminal Code of 2012 for which imprisonment is prescribed in those Sections.

(G) Residential burglary, except as otherwise provided in Section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act.

(H) Criminal sexual assault.

(I) Aggravated battery of a senior citizen as described in Section 12-4.6 or subdivision (a)(4) of Section 12-3.05 of the Criminal Code of 1961 or the Criminal Code of 2012.

(J) A forcible felony if the offense was related to the activities of an organized gang.

Before July 1, 1994, for the purposes of this paragraph, "organized gang" means an association of 5 or more persons, with an established hierarchy, that encourages members of the association to perpetrate crimes or provides support to the members of the association who do commit crimes.

Beginning July 1, 1994, for the purposes of this paragraph, "organized gang" has the meaning ascribed to it in Section 10 of the Illinois Streetgang Terrorism Omnibus

Prevention Act.

(K) Vehicular hijacking.

(L) A second or subsequent conviction for the offense of hate crime when the underlying offense upon which the hate crime is based is felony aggravated assault or felony mob action.

(M) A second or subsequent conviction for the offense of institutional vandalism if the damage to the property exceeds $300.

(N) A Class 3 felony violation of paragraph (1) of subsection (a) of Section 2 of the Firearm Owners Identification Card Act.

(O) A violation of Section 12-6.1 or 12-6.5 of the Criminal Code of 1961 or the Criminal Code of 2012.

(P) A violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) of Section 11-20.1 of the Criminal Code of 1961 or the Criminal Code of 2012.

(Q) A violation of subsection (b) or (b-5) of Section 20-1, Section 20-1.2, or Section 20-1.3 of the Criminal Code of 1961 or the Criminal Code of 2012.

(R) A violation of Section 24-3A of the Criminal Code of 1961 or the Criminal Code of 2012.

(S) (Blank).

(T) (Blank). ~~A second or subsequent violation of the Methamphetamine Control and Community Protection Act.~~

(U) A second or subsequent violation of Section 6-303

of the Illinois Vehicle Code committed while his or her driver's license, permit, or privilege was revoked because of a violation of Section 9-3 of the Criminal Code of 1961 or the Criminal Code of 2012, relating to the offense of reckless homicide, or a similar provision of a law of another state.

(V) A violation of paragraph (4) of subsection (c) of Section 11-20.1B or paragraph (4) of subsection (c) of Section 11-20.3 of the Criminal Code of 1961, or paragraph (6) of subsection (a) of Section 11-20.1 of the Criminal Code of 2012 when the victim is under 13 years of age and the defendant has previously been convicted under the laws of this State or any other state of the offense of child pornography, aggravated child pornography, aggravated criminal sexual abuse, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or any of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, or aggravated indecent liberties with a child where the victim was under the age of 18 years or an offense that is substantially equivalent to those offenses.

(W) A violation of Section 24-3.5 of the Criminal Code of 1961 or the Criminal Code of 2012.

(X) A violation of subsection (a) of Section 31-1a of the Criminal Code of 1961 or the Criminal Code of 2012.

(Y) A conviction for unlawful possession of a firearm

by a street gang member when the firearm was loaded or contained firearm ammunition.

(Z) A Class 1 felony committed while he or she was serving a term of probation or conditional discharge for a felony.

(AA) Theft of property exceeding $500,000 and not exceeding $1,000,000 in value.

(BB) Laundering of criminally derived property of a value exceeding $500,000.

(CC) Knowingly selling, offering for sale, holding for sale, or using 2,000 or more counterfeit items or counterfeit items having a retail value in the aggregate of $500,000 or more.

(DD) A conviction for aggravated assault under paragraph (6) of subsection (c) of Section 12-2 of the Criminal Code of 1961 or the Criminal Code of 2012 if the firearm is aimed toward the person against whom the firearm is being used.

(EE) A conviction for a violation of paragraph (2) of subsection (a) of Section 24-3B of the Criminal Code of 2012.

(3) (Blank).

(4) A minimum term of imprisonment of not less than 10 consecutive days or 30 days of community service shall be imposed for a violation of paragraph (c) of Section 6-303 of the Illinois Vehicle Code.

(4.1) (Blank).

(4.2) Except as provided in paragraphs (4.3) and (4.8) of this subsection (c), a minimum of 100 hours of community service shall be imposed for a second violation of Section 6-303 of the Illinois Vehicle Code.

(4.3) A minimum term of imprisonment of 30 days or 300 hours of community service, as determined by the court, shall be imposed for a second violation of subsection (c) of Section 6-303 of the Illinois Vehicle Code.

(4.4) Except as provided in paragraphs (4.5), (4.6), and (4.9) of this subsection (c), a minimum term of imprisonment of 30 days or 300 hours of community service, as determined by the court, shall be imposed for a third or subsequent violation of Section 6-303 of the Illinois Vehicle Code.

(4.5) A minimum term of imprisonment of 30 days shall be imposed for a third violation of subsection (c) of Section 6-303 of the Illinois Vehicle Code.

(4.6) Except as provided in paragraph (4.10) of this subsection (c), a minimum term of imprisonment of 180 days shall be imposed for a fourth or subsequent violation of subsection (c) of Section 6-303 of the Illinois Vehicle Code.

(4.7) A minimum term of imprisonment of not less than 30 consecutive days, or 300 hours of community service, shall be imposed for a violation of subsection (a-5) of Section 6-303 of the Illinois Vehicle Code, as provided in subsection (b-5) of that Section.

(4.8) A mandatory prison sentence shall be imposed for a second violation of subsection (a-5) of Section 6-303 of the Illinois Vehicle Code, as provided in subsection (c-5) of that Section. The person's driving privileges shall be revoked for a period of not less than 5 years from the date of his or her release from prison.

(4.9) A mandatory prison sentence of not less than 4 and not more than 15 years shall be imposed for a third violation of subsection (a-5) of Section 6-303 of the Illinois Vehicle Code, as provided in subsection (d-2.5) of that Section. The person's driving privileges shall be revoked for the remainder of his or her life.

(4.10) A mandatory prison sentence for a Class 1 felony shall be imposed, and the person shall be eligible for an extended term sentence, for a fourth or subsequent violation of subsection (a-5) of Section 6-303 of the Illinois Vehicle Code, as provided in subsection (d-3.5) of that Section. The person's driving privileges shall be revoked for the remainder of his or her life.

(5) The court may sentence a corporation or unincorporated association convicted of any offense to:

(A) a period of conditional discharge;

(B) a fine;

(C) make restitution to the victim under Section 5-5-6 of this Code.

(5.1) In addition to any other penalties imposed, and

except as provided in paragraph (5.2) or (5.3), a person convicted of violating subsection (c) of Section 11-907 of the Illinois Vehicle Code shall have his or her driver's license, permit, or privileges suspended for at least 90 days but not more than one year, if the violation resulted in damage to the property of another person.

(5.2) In addition to any other penalties imposed, and except as provided in paragraph (5.3), a person convicted of violating subsection (c) of Section 11-907 of the Illinois Vehicle Code shall have his or her driver's license, permit, or privileges suspended for at least 180 days but not more than 2 years, if the violation resulted in injury to another person.

(5.3) In addition to any other penalties imposed, a person convicted of violating subsection (c) of Section 11-907 of the Illinois Vehicle Code shall have his or her driver's license, permit, or privileges suspended for 2 years, if the violation resulted in the death of another person.

(5.4) In addition to any other penalties imposed, a person convicted of violating Section 3-707 of the Illinois Vehicle Code shall have his or her driver's license, permit, or privileges suspended for 3 months and until he or she has paid a reinstatement fee of $100.

(5.5) In addition to any other penalties imposed, a person convicted of violating Section 3-707 of the Illinois Vehicle Code during a period in which his or her driver's license, permit, or privileges were suspended for a previous violation

of that Section shall have his or her driver's license, permit, or privileges suspended for an additional 6 months after the expiration of the original 3-month suspension and until he or she has paid a reinstatement fee of $100.

(6) (Blank).

(7) (Blank).

(8) (Blank).

(9) A defendant convicted of a second or subsequent offense of ritualized abuse of a child may be sentenced to a term of natural life imprisonment.

(10) (Blank).

(11) The court shall impose a minimum fine of $1,000 for a first offense and $2,000 for a second or subsequent offense upon a person convicted of or placed on supervision for battery when the individual harmed was a sports official or coach at any level of competition and the act causing harm to the sports official or coach occurred within an athletic facility or within the immediate vicinity of the athletic facility at which the sports official or coach was an active participant of the athletic contest held at the athletic facility. For the purposes of this paragraph (11), "sports official" means a person at an athletic contest who enforces the rules of the contest, such as an umpire or referee; "athletic facility" means an indoor or outdoor playing field or recreational area where sports activities are conducted; and "coach" means a person recognized as a coach by the sanctioning authority that

conducted the sporting event.

(12) A person may not receive a disposition of court supervision for a violation of Section 5-16 of the Boat Registration and Safety Act if that person has previously received a disposition of court supervision for a violation of that Section.

(13) A person convicted of or placed on court supervision for an assault or aggravated assault when the victim and the offender are family or household members as defined in Section 103 of the Illinois Domestic Violence Act of 1986 or convicted of domestic battery or aggravated domestic battery may be required to attend a Partner Abuse Intervention Program under protocols set forth by the Illinois Department of Human Services under such terms and conditions imposed by the court. The costs of such classes shall be paid by the offender.

(d) In any case in which a sentence originally imposed is vacated, the case shall be remanded to the trial court. The trial court shall hold a hearing under Section 5-4-1 of the Unified Code of Corrections which may include evidence of the defendant's life, moral character and occupation during the time since the original sentence was passed. The trial court shall then impose sentence upon the defendant. The trial court may impose any sentence which could have been imposed at the original trial subject to Section 5-5-4 of the Unified Code of Corrections. If a sentence is vacated on appeal or on collateral attack due to the failure of the trier of fact at

trial to determine beyond a reasonable doubt the existence of a fact (other than a prior conviction) necessary to increase the punishment for the offense beyond the statutory maximum otherwise applicable, either the defendant may be re-sentenced to a term within the range otherwise provided or, if the State files notice of its intention to again seek the extended sentence, the defendant shall be afforded a new trial.

(e) In cases where prosecution for aggravated criminal sexual abuse under Section 11-1.60 or 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012 results in conviction of a defendant who was a family member of the victim at the time of the commission of the offense, the court shall consider the safety and welfare of the victim and may impose a sentence of probation only where:

(1) the court finds (A) or (B) or both are appropriate:

(A) the defendant is willing to undergo a court approved counseling program for a minimum duration of 2 years; or

(B) the defendant is willing to participate in a court approved plan including but not limited to the defendant's:

(i) removal from the household;

(ii) restricted contact with the victim;

(iii) continued financial support of the family;

(iv) restitution for harm done to the victim;

and

(v) compliance with any other measures that the court may deem appropriate; and

(2) the court orders the defendant to pay for the victim's counseling services, to the extent that the court finds, after considering the defendant's income and assets, that the defendant is financially capable of paying for such services, if the victim was under 18 years of age at the time the offense was committed and requires counseling as a result of the offense.

Probation may be revoked or modified pursuant to Section 5-6-4; except where the court determines at the hearing that the defendant violated a condition of his or her probation restricting contact with the victim or other family members or commits another offense with the victim or other family members, the court shall revoke the defendant's probation and impose a term of imprisonment.

For the purposes of this Section, "family member" and "victim" shall have the meanings ascribed to them in Section 11-0.1 of the Criminal Code of 2012.

(f) (Blank).

(g) Whenever a defendant is convicted of an offense under Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-14, 11-14.3, 11-14.4 except for an offense that involves keeping a place of juvenile prostitution, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 12-13, 12-14,

12-14.1, 12-15 or 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012, the defendant shall undergo medical testing to determine whether the defendant has any sexually transmissible disease, including a test for infection with human immunodeficiency virus (HIV) or any other identified causative agent of acquired immunodeficiency syndrome (AIDS). Any such medical test shall be performed only by appropriately licensed medical practitioners and may include an analysis of any bodily fluids as well as an examination of the defendant's person. Except as otherwise provided by law, the results of such test shall be kept strictly confidential by all medical personnel involved in the testing and must be personally delivered in a sealed envelope to the judge of the court in which the conviction was entered for the judge's inspection in camera. Acting in accordance with the best interests of the victim and the public, the judge shall have the discretion to determine to whom, if anyone, the results of the testing may be revealed. The court shall notify the defendant of the test results. The court shall also notify the victim if requested by the victim, and if the victim is under the age of 15 and if requested by the victim's parents or legal guardian, the court shall notify the victim's parents or legal guardian of the test results. The court shall provide information on the availability of HIV testing and counseling at Department of Public Health facilities to all parties to whom the results of the testing are revealed and shall direct the State's Attorney

to provide the information to the victim when possible. A State's Attorney may petition the court to obtain the results of any HIV test administered under this Section, and the court shall grant the disclosure if the State's Attorney shows it is relevant in order to prosecute a charge of criminal transmission of HIV under Section 12-5.01 or 12-16.2 of the Criminal Code of 1961 or the Criminal Code of 2012 against the defendant. The court shall order that the cost of any such test shall be paid by the county and may be taxed as costs against the convicted defendant.

(g-5) When an inmate is tested for an airborne communicable disease, as determined by the Illinois Department of Public Health including but not limited to tuberculosis, the results of the test shall be personally delivered by the warden or his or her designee in a sealed envelope to the judge of the court in which the inmate must appear for the judge's inspection in camera if requested by the judge. Acting in accordance with the best interests of those in the courtroom, the judge shall have the discretion to determine what if any precautions need to be taken to prevent transmission of the disease in the courtroom.

(h) Whenever a defendant is convicted of an offense under Section 1 or 2 of the Hypodermic Syringes and Needles Act, the defendant shall undergo medical testing to determine whether the defendant has been exposed to human immunodeficiency virus (HIV) or any other identified causative agent of acquired immunodeficiency syndrome (AIDS). Except as otherwise provided

by law, the results of such test shall be kept strictly confidential by all medical personnel involved in the testing and must be personally delivered in a sealed envelope to the judge of the court in which the conviction was entered for the judge's inspection in camera. Acting in accordance with the best interests of the public, the judge shall have the discretion to determine to whom, if anyone, the results of the testing may be revealed. The court shall notify the defendant of a positive test showing an infection with the human immunodeficiency virus (HIV). The court shall provide information on the availability of HIV testing and counseling at Department of Public Health facilities to all parties to whom the results of the testing are revealed and shall direct the State's Attorney to provide the information to the victim when possible. A State's Attorney may petition the court to obtain the results of any HIV test administered under this Section, and the court shall grant the disclosure if the State's Attorney shows it is relevant in order to prosecute a charge of criminal transmission of HIV under Section 12-5.01 or 12-16.2 of the Criminal Code of 1961 or the Criminal Code of 2012 against the defendant. The court shall order that the cost of any such test shall be paid by the county and may be taxed as costs against the convicted defendant.

(i) All fines and penalties imposed under this Section for any violation of Chapters 3, 4, 6, and 11 of the Illinois Vehicle Code, or a similar provision of a local ordinance, and

any violation of the Child Passenger Protection Act, or a similar provision of a local ordinance, shall be collected and disbursed by the circuit clerk as provided under Section 27.5 of the Clerks of Courts Act.

(j) In cases when prosecution for any violation of Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6, 11-8, 11-9, 11-11, 11-14, 11-14.3, 11-14.4, 11-15, 11-15.1, 11-16, 11-17, 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 11-21, 11-30, 11-40, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012, any violation of the Illinois Controlled Substances Act, any violation of the Cannabis Control Act, or any violation of the Methamphetamine Control and Community Protection Act results in conviction, a disposition of court supervision, or an order of probation granted under Section 10 of the Cannabis Control Act, Section 410 of the Illinois Controlled Substances Act, or Section 70 of the Methamphetamine Control and Community Protection Act of a defendant, the court shall determine whether the defendant is employed by a facility or center as defined under the Child Care Act of 1969, a public or private elementary or secondary school, or otherwise works with children under 18 years of age on a daily basis. When a defendant is so employed, the court shall order the Clerk of the Court to send a copy of the judgment of conviction or order of supervision or probation to the defendant's employer by certified mail. If the employer of the defendant is a school,

the Clerk of the Court shall direct the mailing of a copy of the judgment of conviction or order of supervision or probation to the appropriate regional superintendent of schools. The regional superintendent of schools shall notify the State Board of Education of any notification under this subsection.

(j-5) A defendant at least 17 years of age who is convicted of a felony and who has not been previously convicted of a misdemeanor or felony and who is sentenced to a term of imprisonment in the Illinois Department of Corrections shall as a condition of his or her sentence be required by the court to attend educational courses designed to prepare the defendant for a high school diploma and to work toward a high school diploma or to work toward passing high school equivalency testing or to work toward completing a vocational training program offered by the Department of Corrections. If a defendant fails to complete the educational training required by his or her sentence during the term of incarceration, the Prisoner Review Board shall, as a condition of mandatory supervised release, require the defendant, at his or her own expense, to pursue a course of study toward a high school diploma or passage of high school equivalency testing. The Prisoner Review Board shall revoke the mandatory supervised release of a defendant who wilfully fails to comply with this subsection (j-5) upon his or her release from confinement in a penal institution while serving a mandatory supervised release term; however, the inability of the defendant after making a

good faith effort to obtain financial aid or pay for the educational training shall not be deemed a wilful failure to comply. The Prisoner Review Board shall recommit the defendant whose mandatory supervised release term has been revoked under this subsection (j-5) as provided in Section 3-3-9. This subsection (j-5) does not apply to a defendant who has a high school diploma or has successfully passed high school equivalency testing. This subsection (j-5) does not apply to a defendant who is determined by the court to be a person with a developmental disability or otherwise mentally incapable of completing the educational or vocational program.

(k) (Blank).

(l) (A) Except as provided in paragraph (C) of subsection (l), whenever a defendant, who is an alien as defined by the Immigration and Nationality Act, is convicted of any felony or misdemeanor offense, the court after sentencing the defendant may, upon motion of the State's Attorney, hold sentence in abeyance and remand the defendant to the custody of the Attorney General of the United States or his or her designated agent to be deported when:

(1) a final order of deportation has been issued against the defendant pursuant to proceedings under the Immigration and Nationality Act, and

(2) the deportation of the defendant would not deprecate the seriousness of the defendant's conduct and would not be inconsistent with the ends of justice.

Otherwise, the defendant shall be sentenced as provided in this Chapter V.

(B) If the defendant has already been sentenced for a felony or misdemeanor offense, or has been placed on probation under Section 10 of the Cannabis Control Act, Section 410 of the Illinois Controlled Substances Act, or Section 70 of the Methamphetamine Control and Community Protection Act, the court may, upon motion of the State's Attorney to suspend the sentence imposed, commit the defendant to the custody of the Attorney General of the United States or his or her designated agent when:

(1) a final order of deportation has been issued against the defendant pursuant to proceedings under the Immigration and Nationality Act, and

(2) the deportation of the defendant would not deprecate the seriousness of the defendant's conduct and would not be inconsistent with the ends of justice.

(C) This subsection (l) does not apply to offenders who are subject to the provisions of paragraph (2) of subsection (a) of Section 3-6-3.

(D) Upon motion of the State's Attorney, if a defendant sentenced under this Section returns to the jurisdiction of the United States, the defendant shall be recommitted to the custody of the county from which he or she was sentenced. Thereafter, the defendant shall be brought before the sentencing court, which may impose any sentence that was

available under Section 5-5-3 at the time of initial sentencing. In addition, the defendant shall not be eligible for additional earned sentence credit ~~for good conduct~~ as provided under Section 3-6-3.

(m) A person convicted of criminal defacement of property under Section 21-1.3 of the Criminal Code of 1961 or the Criminal Code of 2012, in which the property damage exceeds $300 and the property damaged is a school building, shall be ordered to perform community service that may include cleanup, removal, or painting over the defacement.

(n) The court may sentence a person convicted of a violation of Section 12-19, 12-21, 16-1.3, or 17-56, or subsection (a) or (b) of Section 12-4.4a, of the Criminal Code of 1961 or the Criminal Code of 2012 (i) to an impact incarceration program if the person is otherwise eligible for that program under Section 5-8-1.1, (ii) to community service, or (iii) if the person is an addict or alcoholic, as defined in the Alcoholism and Other Drug Abuse and Dependency Act, to a substance or alcohol abuse program licensed under that Act.

(o) Whenever a person is convicted of a sex offense as defined in Section 2 of the Sex Offender Registration Act, the defendant's driver's license or permit shall be subject to renewal on an annual basis in accordance with the provisions of license renewal established by the Secretary of State.

(Source: P.A. 98-718, eff. 1-1-15; 98-756, eff. 7-16-14; 99-143, eff. 7-27-15; 99-885, eff. 8-23-16.)".

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SENATE BILL 2872 – HOUSE FLOOR AMENDMENT 2

INSUFFICIENT DATA TO SUPPORT A FULL FISCAL IMPACT ANALYSIS

The prison population is primarily driven by two levers, admissions and length of stay. House Floor Amendment 2 to Senate Bill 2872 (SB2872), which was passed by both chambers of the General Assembly and sent to the Governor for signature, impacts the length of stay lever by amending the statute governing the awarding of sentence credits and admissions by making several crimes probation eligible. This House Amendment is different than the first floor amendment and so the analysis that follows is different than an early SPAC analysis. The current proposal expands eligibility for credits by eliminating some restrictions based on the crime of conviction and the prohibition on credits to repeat offenders. In addition to these two levers, House Floor Amendment 2 to SB2872 authorizes technical assistance and strategic planning from the Illinois Criminal Justice Information Authority to support implementation of trauma recovery services in underserved communities. The services in the community and allowing more serious offenders access to programming may also have population reduction impact as more people receive and complete evidence-based treatments and the overall crime and recidivism rates decrease.[1]

This analysis sets forth the number of people admitted to prison between 2013 and 2015 who would be affected by these changes and provides some scenarios to illustrate the range of impacts these changes might have had, had they been in effect. Because it is impossible to know how many newly eligible people would get sentence credits or be sentenced to probation instead of prison, or the costs of building sufficient programming capacity in IDOC to serve a greater number of those eligible, it is not possible to reliably calculate the fiscal impact of these provisions. It should be noted however, that small changes to length of stay distributed over a large group of individuals can result in a measureable change in the prison population when coupled with policies that reduce admissions and recidivism.

SPAC analyzed admissions to and exits from the Illinois Department of Corrections (IDOC) from 2013-2015. Data from the Illinois State Police's Criminal History Record Information (CHRI) system was used to review criminal histories and probation sentences. The data sources were used to estimate how many individuals might change eligibility status.

Table 1. Annual Admissions with New Eligibility for Probation or Sentence Credits

	Annual Admissions with New Eligibility Average from FY2013-15	**Notes**
Probation Reforms	2,944	If a high percent of these admissions are instead sentenced to probation, admissions could decrease by as much as 1,523 per year. Under more modest assumptions, admissions could decrease by 937 per year.
Supplemental Sentence Credits	1,887	About 80% of newly eligible offenders are admitted to prison on forcible felonies.
Programming Credits	10,048	The number of inmates awarded programming credit will depend on the programming availability in IDOC.

[1] See SPAC's cost-benefit analysis report on the potential benefits for investing in evidence-based practices. Illinois Results First: A Cost-Benefit Tool for Illinois Criminal Justice Policymakers. Summer 2016. Available at: http://www.icjia.state.il.us/spac/pdf/Illinois_Results_First_Consumer_Reports_072016.pdf.

Probation

The challenge for analyzing changes to probation eligibility is determining how frequently prosecutors, defendants, and judges will utilize the non-prison alternatives. This frequency is not known. Under Illinois sentencing law, probation is the presumptive sentence unless imprisonment is necessary for public safety and probation would undermine the seriousness of the conduct.[2] Trends over the past decade have seen a decrease in the use of probation, although the majority of felony sentences remain probation and supervision rather than prison. However, probation is imposed for more serious crimes less often; SPAC analysis of CHRI data showed that about one third of Class 1 felons received probation.

First, SPAC analyzed how many prison admissions would be made probation-eligible by SB2872 HFA2.

Table 2. Annual Admissions with New Eligibility for Probation by Statutory Subsection

Nonprobationable Offenses 730 ILCS 5/5-5-3(c)(2)	**Action**	**Annual Admissions with New Eligibility** Average from FY2013-15
Total newly probation-eligible:		2,944 per year
(D) drug manufacture, delivery, and trafficking (cocaine)	*Made probation eligible*	704 per year
(E) drug manufacture, delivery, and trafficking (cannabis)	*Made probation eligible*	11 per year
(F) repeat Class 2 or greater felonies	*Changed to repeat Class 1 or greater felonies*	2,106 per year
(F-3) repeat Class 2 or greater weapons or sex offenses	*Repeat Class 2 or higher offenses currently nonprobationable*	*Same as status quo*
(T) second or subsequent methamphetamine conviction	*Made probation eligible*	123 per year

SPAC then modeled several scenarios varying the number of people from the eligible group to estimate a range of annual impacts on admissions. To calculate this estimate, SPAC examined the overall prison/probation rates by class and for similar offenses. Under one scenario where probation is frequently granted, the net annual impact could reach a reduction of 1,523 prison admissions per year. Under a scenario where probation is less frequently granted, the net annual impact could reach a reduction of 937 fewer admissions per year. The probation rates used to calculate these estimates are shown in *Table 3* below.

[2] 730 ILCS 5/5-6-1(a).

Table 3. Estimates of Annual Admissions Reduced by New Probation Eligibility

Nonprobationable Section 730 ILCS 5/5-5-3(c)(2)	Possible Probation Rate	Average Annual Admissions Impact	
		High Estimate	Low Estimate
Net - annual estimate	**60 - 5%**	**1,523**	**937**
(D) drug manufacture, delivery, and trafficking (cocaine and fentanyl)	60 - 33%	422	232
(E) drug manufacture, delivery, and trafficking (cannabis)	60 - 33%	7	4
(F) repeat Class 2 or greater felonies	50 - 33%	1,053	695
(F-3) repeat Class 2 or greater weapons or sex offenses	100%	--	--
(T) second or subsequent methamphetamine conviction	33 - 5%	41	6

These estimates are based on several assumptions:

- The Criminal History Record Information (CHRI) data are sufficiently accurate to use for analysis. The Illinois Criminal Justice Information Authority is currently conducting a data integrity audit of CHRI.
- Arrests, convictions, and sentences to prison are consistent with the pattern established in 2013 through 2015. This assumption does not incorporate reactions by system stakeholders, who may alter practices to adapt to the new sentencing structures.
- The above percentages are reasonable in light of past probation trends, however they are not predictive of how frequently probation will be imposed. In the past, judges have sentenced all of the offenders under these crimes to prison. The change in the law will have an effect, but the size and timing of the effect is based only on reasonable estimates.

In addition to the admissions analysis shown above, SPAC uses its prison population projection to analyze "what if" scenarios on how proposed legislation can change the prison population in the future. The projection includes the impact of increasing probation eligibility and additional probation sentences being awarded, as well as the impact of increasing earned sentence credits awarded within IDOC.

Overall, the SPAC projection finds that the annual reduction could be **between 2,500 and 4,000 fewer inmates in prison**, depending on (1) how many individuals are sentenced to probation rather than prison, (2) how many inmates receive programming credits, and (3) how many inmates receive supplemental sentence credits. This estimate is slightly higher than SB2872 House Floor Amendment 1, which made all Class 2 weapons and sex offenses nonprobationable. House Floor Amendment 2 made repeat Class 2 weapons and sex offenses nonprobationable. A full description of the projection, its assumptions, and the two scenarios is listed at the end of this report.

Sentence Credit

House Floor Amendment 2 to Senate Bill 2872 expands eligibility for two types of sentence credits: supplemental credits for good behavior and programming credits. Sentence credits reduce the amount of time the inmate must spend in prison. As with the probation eligibility, SPAC identified all admissions to prison from the past three years (FY2013-2015) that would be affected. Overall, an average of 11,935 inmates admitted to prison each year would have had different eligibility for sentencing credits had this proposal been in effect. Eligibility does not guarantee that the credits will be awarded as there are a number of variables IDOC can consider when determining how much credit to give. In addition, IDOC can revoke credits for bad behavior. The following calculations represent the estimated scale in changing current sentencing policy. If credits are awarded, this proposal may change the length of stay lever to reduce the prison population.

Programming credits require successful completion of programming offered by IDOC, which depends on programming capacity. Under current law, some offenders are prohibited from receiving programming credit based on their crime of conviction or their status as repeat offenders. House Floor Amendment 2 to SB 2872 removes the latter prohibition, the bar for repeat offenders. The earlier version, House Floor Amendment 1, removed the barrier for programming credits for Class X offenses and some other crimes but also added some restrictions. The analysis presented here focuses HFA2, which passed both chambers.

Supplemental credits can be earned by an inmate by complying with the rules of the institution, and rendering service to the institution, community, or State. Eligibility requirements include, but are not limited to, review of any validated risk assessment or other evaluations, a history of forcible felonies, and the offender's disciplinary history. Under current law, offenders admitted for certain enumerated offenses which involve crimes against people are eligible for 90 days of supplemental credits. The proposal allows up to 180 days of this kind of credit for the offenses currently limited to 90 days (partially newly eligible). An average of 38 inmates admitted to prison would have been eligible for an additional 90 days of supplemental sentence credit.[3] An additional 1,849 admissions each year would be fully newly eligible for the 180 supplemental sentence credits. Of those fully newly eligible, almost 80% are for crimes classified as forcible felonies, a factor that the IDOC Director must consider before awarding credits.

Table 4. Annual Admissions with New Eligibility for Sentence Credits

Annual Admissions with New Eligibility Average from FY2013-15		
	Supplemental Sentence Credits	**Programming Credits**
Newly Eligible	1,849	10,048
Partially Newly Eligible	38	--

Table 5. Credit Eligibility Changes by Crime Type

Supplemental Sentence Credits					**Programming Credits**	
Newly Eligible		Partially Newly Eligible			Newly Eligible	
Crim. Sexual Assault	22%	Stalking	60%		Possession Controlled Substance	21%
Crim. Sex Abuse	14%	Kidnapping	27%		Theft	18%
Murder	13%	Child Endangerment	12%		M/D Controlled Substance	13%
Agg Battery	9%				Burglary	10%
Domestic Battery	8%				Driving Revoked License	7%

[3] IDOC currently reports annually on the amount of credits awarded. The reports are available at: https://www.illinois.gov/idoc/reportsandstatistics/Pages/AnnualReportsforSSC.aspx.

Table 6. Credit Eligibility Changes by Most Severe Felony Class

	Supplemental Sentence Credits			Programming Credits
	Newly Eligible	Partially Eligible		Newly Eligible
First-Degree Murder	13%			--
Class X	44%			--
Class 1	12%			12%
Class 2	25%	26%		19%
Class 3	2%	40%		21%
Class 4	3%	34%		48%

Table 7. Credit Eligibility Average Sentence Imposed

	Supplemental Sentence Credits			Programming Credits
	Newly Eligible	Partially Eligible		Newly Eligible
Average Sentence Imposed	12.7 years	3.7 years		3.3 years
Average Pre-trial Detention Time	1.5 years	0.9 years		0.5 years

Table 8. Credit Eligibility Changes by Race

	Supplemental Sentence Credits			Programming Credits
	Newly Eligible	Partially Eligible		Newly Eligible
White	31%	37%		27%
Black	48%	48%		66%
Other	21%	15%		7%

Table 9. Credit Eligibility Changes by Gender

	Supplemental Sentence Credits			Programming Credits
	Newly Eligible	Partially Eligible		Newly Eligible
Male	95%	90%		91%
Female	5%	10%		9%

Table 10. Credit Eligibility Changes by Age

	Supplemental Sentence Credits			Programming Credits
	Newly Eligible	Partially Eligible		Newly Eligible
Under 20	9%	22%		2%
21 to 25	24%	14%		13%
26 to 30	18%	24%		16%
31 to 35	14%	13%		16%
Over 35	34%	27%		53%

Table 11. Credit Eligibility Changes by Region

	Supplemental Sentence Credits			Programming Credits
	Newly Eligible	Partially Eligible		Newly Eligible
Cook	47%	57%		55%
Collar	21%	25%		11%
Urban	15%	9%		19%
Rural	16%	9%		15%

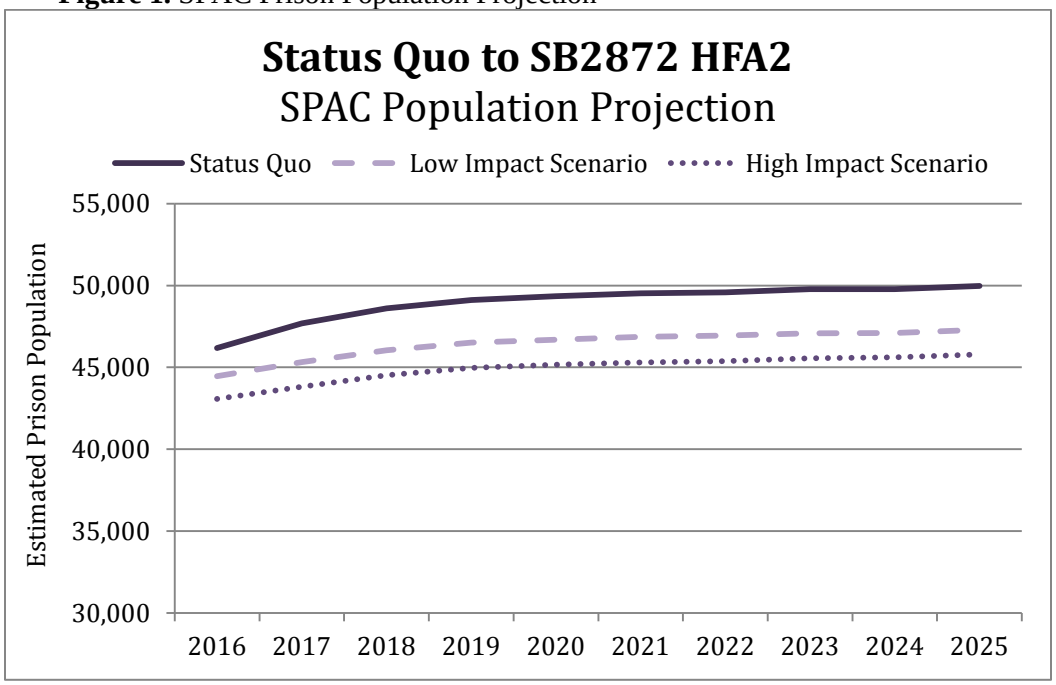
These estimates show the potential the impact of increasing eligibility for earned sentence credits on length of stay in prison. These estimates are based on the following assumptions:

- Arrests, convictions, and sentences to prison are consistent with the pattern established in 2013 through 2015. This assumption does not incorporate reactions by system stakeholders, who may alter practices to adapt to the new sentencing structures.
- The Illinois Department of Corrections determines eligibility based on the most severe offense. Other factors in the determinations, based on risk and needs assessments, behavior in prison, and other fiscal and space constraints may dramatically impact—and limit—how frequently credits are awarded.
- SPAC makes no assumptions about the number of eligible people who would actually receive the credit.

SPAC Prison Population Projection: Comparing Status Quo to SB2872 HFA2

The projection takes past data to create a status quo projection into the future and, using the same calculations and equations, projects alternative scenarios with changes to admissions and offenders' length of stay in prison.[4] The model produces a projection of the cumulative effect of multiple policy changes. The interpretation of the projections should focus on the differences between the two scenarios and the status quo, not on the projected population number.

Figure 1. SPAC Prison Population Projection



The difference between the two scenarios and the status quo is a reduction in the prison population of between 2,500 and 4,000 people. The size of the impact depends on (1) how many individuals are sentenced to probation rather than prison, (2) how many inmates receive programming credits, and (3) how many inmates receive supplemental sentence credits. The above scenarios do not include any reductions that may occur due to changing crime or recidivism rates. Evidence-based programming within prison and in the community, enhanced by these bills, may cause some these rates to change. However, these projections measure only the effects of the changes described above.

[4] A more detailed description of the SPAC prison population projection can be found online, available at: http://ilspac.illinois.gov.

The estimates and assumptions that SPAC uses in these projections are described below. For the purposes of the population projection model, the IDOC admissions data are from FY2013-2015, which are the latest data available. Since the end of FY2015, prison admissions have decreased and the overall population has gone down. Those changes are not reflected in the status quo projection. SPAC made adjustments to the status quo according to the bill's language regarding sentence credit and probation eligibility. The projection was run twice: once with low impact estimates and another with a high estimates. The low and high impact projections are two plausible scenarios based on available information.

For both of the following scenarios, SPAC examined the overall prison/probation rates by class and for similar offenses. Trends over the past decade have seen a decrease in the use of probation, although the majority of felony sentences remain probation and supervision rather than prison. However, probation is imposed for more serious crimes less often; SPAC analysis of CHRI data showed that about one third of Class 1 felons received probation.

Low impact scenario:

- **A smaller percent of eligible admissions are instead sentenced to probation**.
  - For cocaine and cannabis drug offenses subject to 730 ILCS 5/5-5-3(c)(2)(D) and (E), one third of future prison admissions are instead sentenced to probation.
  - For meth drug offenses subject to 730 ILCS 5/5-5-3(c)(2)(T), 5% of future prison admissions are instead sentenced to probation.
  - For repeat Class 2 or greater felonies subject to 730 ILCS 5/5-5-3(c)(2)(F), which under SB2872 is changed to only repeat Class 1 or greater felonies, one third of repeat Class 2 admissions *only with the minimum sentence* are instead sentenced to probation.
- **IDOC increases supplemental sentence credit awards 50% above previous policies.** In the last available SSC report in October 2015, 1,915 inmates received, on average, about 136 days of supplemental sentence credits.[5] Although many more inmates meet statutory criteria for these credits, the low impact scenario analyzes only a 50% increase in IDOC's credit awards (958 inmates).
- **Programming credits double in IDOC for those inmates newly eligible.** SPAC doubled the projection model's parameter that accounts for discretionary credits (*i.e.*, the difference between actual release times and the projected length of stay from the sentence, truth-in-sentencing, and pre-trial jail credits). For offenses thought to have an increase in program credits available, this discretionary estimate was doubled. No change was made to the status quo for those not impacted.
- **Eventually, the prison population would be about 2,500 lower than the status quo.**

High impact scenario:

- **A larger percent of eligible admissions are instead sentenced to probation**. Under this scenario:
  - For cocaine and cannabis drug offenses subject to 730 ILCS 5/5-5-3(c)(2)(D) and (E), 60% of future prison admissions are instead sentenced to probation.
  - For meth drug offenses subject to 730 ILCS 5/5-5-3(c)(2)(T), 5% of future prison admissions are instead sentenced to probation.
  - For repeat Class 2 or greater felonies subject to 730 ILCS 5/5-5-3(c)(2)(F), which under SB2872 is changed to only repeat Class 1 or greater felonies, one half of repeat Class 2 admissions *only with the minimum sentence* are instead sentenced to probation.
- **IDOC doubles the supplemental sentence credit awards above previous policies.** In the last available SSC report in October 2015, 1,915 inmates received, on average, about 136 days of supplemental sentence credits. Although many more inmates meet statutory criteria for these credits, the low impact scenario analyzes a 100% increase in IDOC's credit awards (1,915 inmates).

[5] IDOC currently reports annually on the amount of credits awarded. The reports are available at: https://www.illinois.gov/idoc/reportsandstatistics/Pages/AnnualReportsforSSC.aspx.

- **Programming credits double in IDOC for those inmates newly eligible.** SPAC doubled the projection model's parameter that accounts for discretionary credits (*i.e.*, the difference between actual release times and the projected length of stay from the sentence, truth-in-sentencing, and pre-trial jail credits). For offenses thought to have an increase in program credits available, this discretionary estimate was doubled. No change was made to the status quo for those not impacted.
- **Eventually, the prison population would be about 4,000 lower than the status quo.**

Commission-Related Legislation

99th General Assembly – 2015-16

SB3164 (P.A. 99-0861) – Requires judges to state on the record why incarceration is an appropriate sentence when sentencing Class 3 and 4 felons wo do have not previously been sentenced to probation or who have no prior convictions for violent crimes. (Rec. 12)

SB3368 (P.A. 99-0907) – SOS to provide state IDs for those released from IDOC. (Rec. 27)

SB2872 (Sent to Governor) – Expands probation eligibility for Class 2 repeat offenders and certain drug crimes; expands eligibility for earned sentence credits by eliminating some restrictions based on the crime of conviction and the prohibition on credits to repeat offenders. (Rec. 18 & 11)

HB5973 (P.A. 99-0876) – Removes license barriers for the Illinois Roofing Industry Licensing Act and the Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Tech Acts. (Consistent with Rec. 26)

100th General Assembly – 2017-16

HB3337 – Amends the Criminal Code of 2012. Increases the threshold amount of theft not from the person and retail theft that enhances the offense from a misdemeanor to a felony to $2,000. Provides that an enhancement from a misdemeanor to a felony based on a prior conviction must only be for felony theft. (Rec. 10)

HB3340 – Create the Racial and Ethnic Bias Training Act. Provides that the Illinois Law Enforcement Training Standards Board shall adopt model rules for training for law enforcement officers to recognize implicit racial and ethnic bias and racial sensitivity that may be adopted by law enforcement agencies in this State. Provides that the Department of State Police shall work in consultation with the Board to adopt model rules for training to recognize implicit racial and ethnic bias and racial sensitivity for officers. Provides that training on recognizing implicit racial and ethnic bias and promoting racial sensitivity for individuals who work in the criminal justice system shall be required. (Rec. 5)

HB3355 – Amends the Unified Code of Corrections. Provides that in imposing a sentence for a Class 3 or 4 felony, other than a violent crime as defined in the Rights of Crime Victims and Witnesses Act, the court shall determine and indicate in the sentencing order whether the defendant has 4 or more or fewer than 4 months remaining on his or her sentence accounting for time served. Provides that an offender sentenced to a term of imprisonment for a Class 3 or 4 felony, other than a violent crime as defined in the Rights of Crime Victims and Witnesses Act, in which the sentencing order indicates that the offender has less than 4 months remaining on his or her sentence accounting for time served may not be confined in the penitentiary system of the Department of Corrections but may be assigned to electronic home detention, an adult transition center, or another facility or program within the Department of Corrections. Effective January 1, 2019. **NOTE: the Commission recommendation was for a stay of less than 12 months.** (Rec. 9)

HB2955 – Amends the Unified Code of Corrections. Eliminates provisions that a period of probation, a term of periodic imprisonment or conditional discharge shall not be imposed for: (1)

the manufacture, delivery, or possession with intent to deliver more than 5 grams but less than 15 grams of a substance containing cocaine, fentanyl, or an analog thereof; (2) 3 or more grams but less than 15 grams of a substance containing heroin or an analog thereof; (3) a Class 2 or greater felony if the offender had been convicted of a Class 2 or greater felony, including any state or federal conviction for an offense that contained, at the time it was committed, the same elements as an offense now (the date of the offense committed after the prior Class 2 or greater felony) classified as a Class 2 or greater felony, within 10 years of the date on which the offender committed the offense for which he or she is being sentenced; or (4) residential burglary. (Rec. 11)

HB3341 – Amends the Illinois Criminal Justice Act. Provides that the Illinois Criminal Justice Information Authority shall collect data and information on race and ethnicity at every point within the criminal justice system to allow for a systematic assessment of disproportionate impact on minorities. Provides that the Authority shall report its findings to the General Assembly on an annual basis. (Rec. 7)

HB3856 – Amends the Criminal Code of 2012. Increases the threshold amount that enhances theft and retail theft from a misdemeanor to a felony or to a higher class of felony from $500 for theft and $300 for retail theft, and $150 for motor fuel theft to $2,500 other than for motor fuel theft, and $2,000 for motor fuel theft. Eliminates the offense of theft by emergency exit. Changes the threshold for criminal damage to property from $500 to $2,000. Effective immediately. (Based on Rec. 10)

Bills That Significantly Change Sentencing Policy

These bills do not reflect Commission recommendations.

HB2882 – Reduces TIS levels. 100% goes to 85%; 85% goes to 4.5 days to 8.5 days and those currently incarcerated can begin earning credit after the effective date of the Act. No credit shall be awarded for time served prior to the effective date.

HB3235 – Amends the Cannabis Control Act, the Illinois Controlled Substances Act, the Drug Paraphernalia Control Act, the Methamphetamine Control and Community Protection Act, and the Unified Code of Corrections. Lowers penalties for the manufacture, delivery, possession with intent to manufacture or deliver, and trafficking and possession of cannabis, controlled substances, and methamphetamine. Eliminates mandatory sentences of imprisonment for the manufacture, delivery, possession with intent to manufacture or deliver, and trafficking and possession of these drugs. Eliminates extended term sentences, habitual criminal status, and Class X sentencing for violations of the Cannabis Control Act, the Illinois Controlled Substances Act, and the Methamphetamine Control and Community Protection Act.

HB3710 & **SB1886** – These bills are identical and amend the Unified Code of Corrections. Provides that in the case of a person who is, at the time of the effective date of the amendatory Act, incarcerated for a felony offense under the Cannabis Control Act, the Illinois Controlled Substances Act, or the Methamphetamine Control and Community Protection Act that has been subsequently reclassified as a misdemeanor, the sentencing court, the Director of Corrections, or the incarcerated person may make a motion to recall the original sentence issued and re-sentence the person to a misdemeanor sentence. Create the Justice Reinvestment Fund in the State treasury for: (1) addressing the destabilizing effects that high incarceration rates have had on families and communities; (2) targeting the community conditions that perpetuate the cycle of crime; (3) providing formerly incarcerated persons a better chance to succeed outside of prison; and (4)

providing support to victims. Provides that on or before August 31, 2018, and on or before August 31 of the next 9 fiscal years thereafter, the Comptroller shall transfer from the General Revenue Fund to the Justice Reinvestment Fund 85% of the total savings calculated by the Sentencing Policy Advisory Council from the reduction of the prison population as a result of the reduced sentences provided by the amendatory Act. Amend the State Finance Act to make conforming changes.

HB3815 – Creates the Illinois State Criminal Justice Data, Research, and Implementation Advisory Committee to develop greater capability for data collection and analysis to support evaluation of system outcomes. SPAC will provide administrative support for this Committee.

HB3905 – Expands eligibility for Adult Redeploy to all probationable offenses, eliminating the reference to non-violent. NOTE: this bill will be amended with language approved by the ARI Oversight Board. As drafted it expands eligibility to all offenses, which was not the intent of the sponsor.

HB3882 – Amends the Unified Code of Corrections. Provides that notwithstanding any other provision of law to the contrary, in imposing a sentence for an offense that requires a mandatory minimum sentence of imprisonment, the court may sentence the offender to probation or conditional discharge or other non-imprisonment sentence it deems appropriate instead of to a sentence of imprisonment or to a lesser sentence of imprisonment than the minimum sentence of imprisonment provided for the offense if the court finds that the defendant does not pose a risk to public safety and the interest of justice requires the non-imposition of the mandatory sentence of imprisonment or a lesser sentence of imprisonment. Provides that the court must state on the record its reasons for not imposing the minimum sentence of imprisonment or a lesser sentence of imprisonment.