

## GOVERNOR'S COMMISSION ON CRIMINAL JUSTICE & SENTENCING REFORM

Friday, October 30, 2015  
Chicago, Illinois

### EVALUATING REFORMS

**Attendees:** John Cabello, John Maki, Rodger Heaton, Brendan Kelly, Andy Leipold, Elena Quintana, Kathryn Bocanegra, Jerry Butler, Scott Drury, Karen McConnaughay, Pam Rodriguez, Dave Olson, Mike Pelletier, Howard Peters, Elgie Sims; Greg Sullivan, Michael Tardy, Gladys Taylor, Lisa Desai

**Phone In:** Kathy Saltmarsh, Brian Stewart, Doug Marlowe, John Baldwin, Stephen Sawyer; Chelsea Kline

### Minutes

- *Motion to adopt the minutes from the September 8, 2015 Commission meeting, with correction to include attendance by Commissioner Brendan Kelly.*

*Motion to adopt: Elizabeth Robb*

*Seconded: Andrew Liepold*

*Motion Carried*

### Administrative

Despite substantial effort there is a concern we may not dig as deeply as is necessary before the report is due to the Governor. It is suggested, as a Commission, a request is made to the Governor for an extension. The request would include providing part one of two reports on January 1, 2016. This portion would include foundational reforms that are more administrative in nature and reforms that can be handled within IDOC. The second portion on March or April 1 is more comprehensive with reforms that require statutory changes - legislative packages.

**Jerry Butler:** Supports

**Elena Quintana:** Supports

**John Cabello/Stewart** –3/31 up to May can get things passed

**Scott Drury**-Supports – given scope, introduce in early April

**Elgie Sims**-Supports-It can move effectively when we are doing the right thing. We should not rush. Tasked with this and need to do it right. We are not going to get this opportunity again.

**E. Quintana**-Supports. Additional time allows for additional buy-in from stakeholders, unions, states attorneys

**Greg Sullivan**- Resist adding amendments that are not part of the request

## Commission Discussion of Potential Reforms

- **Reduce Collateral Consequences of Convictions**
  - **Reduce license barriers**
    - Leipold: Instead of Going through each of the barriers and the history of each barrier we should make an overarching recommendation that previous felonies should not bar an individual from getting licensing
    - Heaton: How do we ensure that implementation of this recommendation is put in place?
      - Organizations such as Cabrini Green Legal Aide and the Shriver Center have done substantial work in this area and may be able to assist within the commission.
    - Mike: There are probably a few out of the hundreds of barriers that would actually have a substantial impact on employment.
      - Important to look at ways in which the commission can identify these specific barriers so that they are given priority.
    - Rodriguez: We should work towards making a strong statement against making broad bans on employment licensing based on felony convictions.
      - What recommendation can be made to address this?
    - Cabello: A bill was passed that allowed for felons to seal their felony if they successfully completed probation and some other programs
      - Would this override any rules against obtaining a license based on a conviction?
    - Taylor: There are some jobs, like barber or nail technician, that should be open to all people, conviction or no conviction
      - Heaton: It is possible those barriers are in place in order to protect the customers
        - We are unaware of the history and policy behind these certain barriers.
    - Heaton: Should we push analysis of barriers on those that would actually have a large impact on the population?
      - Many commissioners agree it is important to reduce the list to the most impactful industries and jobs
      - Important to take into account the political push back we will receive by the industries the elimination of the barriers would impact
      - Rodriguez: Safer Foundation, TASC, and Parole will have a lot of information on which professions should be focused on.
    - Saltmarsh: We will be unable to create an accurate financial impact statement for this recommendation.
      - However, an analysis should be done on the relationship between the felony and the person's ability to do the job.
    - Quintana: Creation of a subcommittee would be useful to analyze these barriers and the impact of them.
  - **Expand Expungement and Sealing of Convictions**
  - **Increase Incentives for Employers to Hire Offenders**
  - **Create Civil Liability Protection**
    - **For Employers of Offenders**
    - **For Landlords Who Lease Housing to Offenders**
- **Reclassify Class 4 Felony Possession of Controlled Substance Offenses to Class A Misdemeanors**

- Heaton: What could be some of the unintended consequences of this? How would the States Attorney view this?
- Kelly: Misdemeanors and felonies are very different as felonies include those collateral consequences
  - Collateral consequences are important and necessary in some cases
- Maki: Questioning whether people in this class will benefit at all from prison. Instead we are instead inflicting a lot of harm to the person and increasing their risk and risk of recidivism when we place them in prison.
- Kelly: Placing these people in prison is, as of now, the only way to get these people away from the rest of those in their community, even for a short while.
- Would this recommendation even help to reduce the prison population?
- Olson: We need to look at all drug classifications and possibly move them all down.
  - Especially Class X felonies
- Kelly: We should look at the entire ladder of drug offenses rather than just Class 4 to Class A
- Cabello: We need to provide treatment and resources for the people who actually want to help themselves have the ability to do so.
- Taylor: Some sort of sanction should be put in place for those who have committed multiple of these offenses
  - Community based sanction where DOC would be supervising them in a community setting
- Tardy: There needs to be an assessment to determine whether or not the criminal behavior is solely a result of their addiction.
  - Risk assessment is extremely important
- Quintana: We need to begin thinking about what actually addresses the root of the problem, and at this moment IDOC is not the solution.
- Saltmarsh: The cheapest option would be cognitive behavioral therapy
  - However this is not available in almost any capacity within the prisons or in parole
  - There would be a huge impact on recidivism if this was used
  - This has the greatest ROI as well
- Kelly: Reducing Class 4 to Class A will not guarantee anyone receives cognitive behavioral therapy
  - Saltmarsh: Make this a recommendation for probation offices
- Kelly: There are some within this class who are not addicts, instead they are selling the drugs, not taking them.
- Saltmarsh: It is important to differentiate those addicted and those selling because it is economically viable to do so.
- **Develop Incarceration Alternatives for Special Class Offenders**
  - **Geriatric Release**
    - Recidivism rates drops dramatically once offenders reach 60+ years of age
    - Greg: There are some 50 year olds who are very strong and could definitely still commit heinous crimes
      - Certain crimes also should not warrant early release
      - Important to look at all of the circumstance of the offense and the crime
    - Heaton: Older people who are released may not be able to obtain jobs and may rely on government aide.
      - Some inmates may have learned some skills that could be useful in certain jobs

- Maki: We may need to create some sort of hybrid program where we can continue to supervise these individuals but not spend huge amount of resources on them
  - Taylor: Some should be released to the community, but electronic monitoring as it works right now may not be the best solution for this population
    - Can't see exactly where there are or what they are doing
  - We need to determine the age demographics of crimes committed, especially violent crimes
  - Taylor: When many elderly people are released they do not have appropriate social skills or know how to act in society
  - Leipold: How many elderly people released become homeless, have families to go back to, go into government programs, etc?
- **Terminally Ill or Severely Medically Infirm Inmates**
  - When/if these people are released we would need to ensure they had housing/somewhere to go
  - IDOC currently does not have the authority to automatically release a terminally ill person
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- **Criminal Justice Coordinating Councils**
  - Justice Rob: McLean County first started this council in 2007
  - Successful councils include all stakeholders including law enforcement, county board representation, universities, attorneys, judges, community programs, social service agencies etc.
  - Reason for creating the council was due to overcrowding of jails
    - Also to analyze the evidence based programming that was being offered to offenders
  - Utilized the Stevenson Center to obtain data on mental health, and other information on offenders in order to develop a strategic plan to set standards for how long people should be in the jails.
  - Maki: We need to braid our funding
    - These councils would gather all the different stakeholders and with all these stakeholders working together, a comprehensive plan can be put together and funding can be given to this council instead of a bunch of separate entities.
  - Taylor: We need a state wide system that follows this similar system
  - Bocanegra: There are a few programs that work within the neighborhoods in Chicago, and it is important to develop a model of what this program could look like in Cook County.
  - Maki: This would have to be a volunteer based council, not mandated.
  - Sawyer: It is essential to have a statewide data collection service
  - Maki: We need to make advantage of the current resources that we have in the state like ICIJA
  - Peters: Unsure of how this will help to reduce the prison population
  - McConnaguhay: It is concerning that this council would be voluntary. There is a risk that you will lose continuity if it is voluntary.
  - Maki: State needs to somehow incentivize the different stakeholders to coordinate with each other.
  - Taylor: There is Workforce Development Program being developed now in which federal funds are supporting different entities to work together to create this program
    - This may be used as a model for the commission in creating the councils

- Commissioners agree that the councils first be created in a limited number of jurisdictions and then if successful be expanded
- **Illinois Data Exchange Coordinating Council**
  - Similar to the criminal justice coordinating council
  - This would establish a data sharing network between agencies and then later on between communities in the state
  - Important backbone piece in order to increase efficiency throughout government
  - Maki: Government council and procurement rules have been put in place so far in some counties.
  - Heaton: How will this help to reduce the prison population?
  - Leipold: Many smaller counties do not have the computers or software or infrastructure to support this council.
  - Commissioners agree that the Commission should create a statement that encourages the creation on this
    - However an implementation plan needs to be created and enforced
- **Data Collection**
  - Saltmarsh: We currently have very outdated data collection guidelines
    - Need of new data collection requirements where we stop collecting irrelevant data
    - ICIJIA and SPAC need to have direct access to data files from, for example, Offender 360.
    - Need to ensure that there is a feedback loop put in place for this so that all community organizations involved will be informed.
  - Peters: Commission is not in a position to dictate what the data set should look it
    - Who at the state level has the authority to say which data should be collected or not.
  - Maki: A lot of data being collected now is mandated but is irrelevant for DOC to know
  - Data collection could possibly be a part of the data exchange coordinating council
- **Implementation**
  - Rodriguez: Anything that we do is going to need implementation support
    - If we don't have this support, we will not get anything done
  - Would focus on having SPAC, ICIJIA, and DOC being able to measure outcomes
  - We need to determine the purpose of each sector of the government
    - Ex: ICIJIA is the main research resource
  - Implementation will apply within each of the recommendations
- **Graduated Reentry**
  - **Electronic Detention**
    - Ability DOC has to potentially imprison a person in their home or a facility different than the actual prison
    - Person has set times they must call in or report to a certain station or their residence
      - Officers have little way to know what the person is doing the rest of the day when they person is not checking in
    - How extensively is it used?
    - Taylor: Use of electronic detention should be risk based
    - 35 inmates are currently on ED
    - Peters: Host sites pose an issue as many offenders do not have a home to go to, even if they may be a good candidate for the service
    - In terms of success, EM or ED is somewhat limited

- We need to ensure that there is additional supervision available for these offenders if something is to go wrong
- **Adult Transition Centers**
  - There are currently 4 ATCs, 2 administered by Safer Foundation, 2 by IDOC
  - Many of the low risk people placed in ATCs are not the ones in most need of these services
    - It is likely that medium and high risk offenders would be the ones most likely to benefit from these services
  - Expansion of ATCs
    - Although this is expanding IDOC housing, it provides more transition services for offenders and is much more beneficial for them
    - Peters: We need to look at whether we would like to expand these in the private or public sector
- **Halfway Back**
- **Electronic Monitoring**
- **Training**
- **Mandatory Supervise Release Reform**
- **Supplemental Sentence Credits**
- **Increased use of probation**
  - One of the highest impact categories
  - Rodriguez: This idea is consistent with offender based sentencing
    - Offenders should be looked at on a case by case basis
    - Based on risks and needs assessments and then judges can use their discretion
    - Increase of judicial discretion
  - Mike: This is a doable task but different policies first need to be looked at and we need data sampling in order to do a cost analyst of the impact
    - Probation does also have some overcrowding
    - Could be a resource issue
    - We would need to sit down with local governments as well to get them involved
  - Residential Burglary?
    - Different counties have very differing views on the seriousness of this offense
    - Same with UUWs
  - Kelly: There are many judges that already use discretion based on the individual offense and have ways of reducing the charge.
    - However there are still many other judges who do not do this.
  - We need to make this recommendation as data driven as possible
  - Peters: Make some offenses eligible for probation, and use judicial discretion
    - UUW, controlled substance, and other "big" offenses should be decided on under the judges discretions
  - Kelly: Possibly use language that includes "presumptively non-probationable" with release valve option
  - Kelly: For UUWs possible creation of gun courts, similar to the design of drug courts
  - Judges could also be trained to deal with these specialty circumstances
  - Quintana: It is important to speak on Class X and Class M as well
    - Multiple Class 2 offenses will turn into class X offenses
    - How are people being placed into class X?
    - Many people are still in prison now who were convicted when they were very young and are changed people, yet they cannot get out of prison
  - Majority of commissioners are in favor of moving towards probationable

○ 8-9 not in support

● **Truth-in-sentencing**

- Maki: Many of our assumptions regarding TIS have been incorrect
  - Assumptions: inmates will behave very poorly, inmate sentences will not change at all
- Bocanegra: Families who have lost children to violence want the people who committed the murder to be changed, they do not want them to stay in prison forever and never rehabilitate.
- Saltmarsh: We never got full funding from implementing TIS, because it was never fully implemented and we were not fully compliant
  - Illinois tried to have enough TIS eligible offenses to receive money but overall it was not fully implemented the way the federal government had imagined
- Heaton: We could possibly completely eliminate TIS and would not lose funding
- Maki: We need to figure out why TIS was implemented in the first place, what was the initial intent of the law
- TIS doesn't provide accurate sentencing and does not restore individuals to useful citizenship
- Leipold: TIS was designed to bring public awareness to the amount of time people are serving
- Heaton: Would changing the ranges of TIS even help in reducing the population?
  - Judges may continue to give the higher end of the range scale
- Judges do receive a sentencing book to guide judges of how many years may be appropriate
  - Does not inform them of the average sentence for each offense.
- Kelly: TIS should not be completely abolished
  - It will be very difficult to reach a consensus regarding TIS amongst the state's attorney
  - There are some people who cannot be rehabilitated and need to be in prison
- Many do not believe that justice is being done the same, people in different cities can get hugely different sentences based on their demographics
- Peters: TIS started as a reaction on the federal level, and now we realize that it was a mistake.
  - In order to "go back" substantial education on many different levels is required in order to gain the trust of the public, prosecutors, law enforcement, etc regarding imprisonment
- Heaton: If TIS is eliminated and those in prison go back to get sentenced, how would judges respond to this?
- Leipold: We need to decide whether or not we would make this retroactive
- Kelly: Important to look at how many offenders under TIS were convicted under 25 years of age
- Saltmarsh: There is a huge jump in sentence length that has been happening for the past few years
  - This will end up costing us an additional \$240 million in bed space per year
  - If nothing is done about TIS, the IDOC population will be the same as it is not in 5-6 years
  - We need to think in terms of resource management, good outcomes, and fewer victimizations

## **Public Comment**

### **Elizabeth Clarke, Juvenile Justice Initiative**

- Testimony to augment recommendation that the Commission include replicate juvenile diversion and sentencing options for young adults and/or raising the age of juvenile court to 21 as a means of reducing the jail and prison populations. Research indicates as young adults through late teens and early 20's they experience a period of rapid and profound brain development at which time we may have a significant opportunity to exert a positive influence and reduce criminality through appropriate interventions.
- Discussion of the issue referencing racial disparities. JJI report examined arrest data and concluded that black young adults were 3.44 times more likely to be arrested than white youths and 3.59 times more likely to be arrested statewide.

### **Recommendations from the Justice Coalition for Safety and Fairness**

- Create accountability for prisoner behavior and rehabilitation by returning authority to the IDOC to withhold and to award sentence credit for each day served.
- Establish post sentencing periodic review by a court or parole board for individuals serving lengthy terms of incarceration.
- Restore judicial discretion for offenses involving a fire arm.
- Remove constraints unproven to increase public safety currently placed on individuals convicted of sex offenses, including certain registration and residency restrictions and indefinite detention.
- Raise the age of criminal responsibility to 21 and create a process for young adults under 25 to prevent permanent felony convictions which prohibit them from becoming productive citizens of the community.

### **Scott Main/Attorney Northwestern Law-Testimony on Behalf of Project I-11**

Section of Illinois Constitution that prison sentences should aim to restore the prisoner to useful citizenship as well as to punish.

- Statute form of parole was abolished in the late 1970's due to inconsistency and inadequate methods to improve chances for parole.
- Recommendations and principles for legislation enable a decision making body to hear and rule upon sentence modification from prisoners who have served 15 years of their sentence.
- Decision making body appointed by the Governor. Independent board – Merit selection.
- IDOC would notify prisoners of their rights and ensure they have adequate help to prepare applications
- Decision makers focus on whether the purpose of incarceration would be better served by a modified sentence. What is the likelihood of the prisoner living successfully outside?

Suggesting eligibility of parole for earned release after 15 years served. If a no vote - eligible again in 5 year intervals.

Board bases decisions on risk analysis, standards and procedures

### **Father Tom Carroll – Antonio Magic / Communities United**

In 1982, \$4B annually for Corrections

Today, \$8.5B for Criminal justice.

He encourages justice reinvestment by shifting resources from criminal justice to reinvest in tools, programs and training.

Seventeen year old Antonio suggests more investment in communities and additional strategies that align with education affordable housing and jobs.

**James Nelson** Addressed release and underlying cause of crime are poverty, lack of education and disproportion arrest affecting black males due to police profiling. Please handle from a holistic perspective.

- Invest in education
- Look at the job situation – state sponsored programs
- Ratio disparity – blacks contribute 13% but 74% of arrests

**Arnold Dugan** has served 11 sentences. In the federal system you must be in a halfway house as part of your release. He reiterates the importance of programming before release, living in a halfway house and bringing offenders to the table for discussion. No one affected by these changes are in the room. The felony question on job applications has kept him from obtaining employment. There are times when he feels that “Hey I know how I can earn some money” What else can a person do...

**Meeting Adjourned.** Next Commission meeting to be held on Friday November 20, 2015

9:00 am – 5:00 pm at Adler University 17 N. Dearborne at Washington. There will be call in capability however you will be unable to vote. It is important to attend in person.

It may be necessary to meet in December. With the holidays approaching we hope to schedule around 12/10 or 12/11.