



**ILLINOIS STATE COMMISSION
ON CRIMINAL JUSTICE AND SENTENCING REFORM**

**Regular Meeting Minutes
Thursday, February 18, 2016
1:00 pm to 5:00 pm**

**Chicago: ICJIA
300 West Adams**

Commissioners present: Rodger Heaton (Chairman), John Baldwin, Kathryn Bocanegra, Jerry Butler, Representative Scott Drury, Andy Leipold, John Maki, Dave Olson, Mike Pelletier, Howard Peters, Elena Quintana, Honorable Elizabeth Robb, Pamela Rodriguez, Kathy Saltmarsh, Honorable Stephen Sawyer, Greg Sullivan, Michael Tardy, Gladys Taylor **Staff:** Chasity Boyce, Lisa Desai

Conference Call - Commissioners: Representative John Cabello, Brendan Kelley, Representative Elgie R. Sims Jr.,

Call to Order: Chairman Rodger Heaton called the meeting to order at 1:00 pm and took roll of the commissioners participating via conference call. A quorum was determined to be present as indicated above.

Chairman Heaton Opening Remarks

For many months now we have noted that it would be necessary to address the consequences from and issues surrounding lengthy mandatory sentences. Sometimes from enhanced maximums tied to an offender's criminal history and sometimes from the enhancements tied to location of an offense or certain other relevant sentence factors.

Today is a day where we are going to focus directly on those subjects. We intend to dive into some pretty deep water. Some would say we are going to be diving from the high diving board. We cannot let our fear or anxiety prevent us from even trying. We must discuss these issues.

We know from our prior work that the prison population has swelled over the last 30 years because of increased admissions and from increasing lengths of sentences – many of which are mandatory.

I hope you read the article from the Harvard Law & Policy Review that we distributed to you. We will make it or a link to it available on the Commission's website. In it, the authors Todd Clear and James Austin make 3 points:

- Show why the link B/W incarceration rates and crime rates is NOT as great as many believe or presume. This is important because aggressive or bold steps to reduce the prison population can be taken without a substantial negative effect on Public Safety.

- They describe clearly the iron law of prison populations that the total # of prisoners is the result of two factors:
 - # of people admitted
 - Length of stay

This matters because many policy proposals are potentially good steps to take (better programs, better re-entry prep, e.g.) but don't have the potential to reduce total prison population significantly.

- Propose specific ways to cut correctional population in half and return prison system to an incarceration rate similar to that of 30 years ago.

It's been reported that U.S offenders receive sentences

- 2x that of England
- 3x that of Canada
- 4x – Dutch
- 10x-French

Our sentences were increased dramatically in the 1990's and 2000's at least in part in response to federal funding that was made available to states who opted to enhance the length of sentences by requiring offenders to serve higher %'s of the imposed sentences for Violent offenses.

So day for day was increased to 75, 85 or even 100% of the stated sentence.

Later, we expanded these longer sentences to apply to other offenses – including some C offenses. Net result – 48000 +/- in a system designed for 32-33,000.

We will begin today with a presentation by our Colleague, Dr. David Olson and the Research Directors for ICJIA, Megan Alderden and SPAC, Nate Steinfield. I expect this will help us understand deeply the consequences of the dramatic increase in lengthy mandatory sentences and where we are headed if we don't change our path. Director Baldwin and Assistant Director Taylor of IDOC are here.

After Dr. Olson's presentation we will begin to discuss a number of approaches to change the trajectory and whether it can be done safely.

Presentation- Length of Stay and Impact of Prison Populations

Provided by David Olson

Dr. Olson provided an analysis on how sentencing has changed and the impact it has had on the Illinois Department of Corrections. Despite substantial drops in admissions to prison over the past 10 years, the actual population has not decreased due increasing lengths of stay. Although a change indeterminate to determinate- still individuals are subject to indeterminate sentence enhancements.

The goals of long sentences were:

- Incapacitation - that those charged served an amount of time sufficient to protect the public
- Deterrence- Lengths of stay make the punishment more severe.
*How long does a sentence need to be when it no longer accomplishes the goal.
- Retribution – Provide victims and society with a sense of justice
*Crimes carry a lot of emotion -
- Rehabilitation – potentially impacts access to treatment by increasing time through wait lists.
*Capacity to provide rehab is limited

Truth in Sentencing has had a profound impact on the sustained sentences. Dr. Olson provided information referencing Illinois passing truth in sentencing and the addition of specific offenses. In addition, graphs were provided outlining % from 1989 – preceded enhancements vs. 2014 to illustrate how #s have grown, arrests for violent offenses, any offense and those returned to prison. Most growth is due to longer sentences and length of stay. 1/3 are serving life or projected past their 75th birthday (up from 35 to 45 years). All sentences imposed have increased. Indeterminate in the 1970's for murder was 11 years. Today it is 35 years and serving 100%. Do we also factor in those serving past their 75th year? For consideration - down the road.

Discussion

E. Quintana: Life expectancy has an impact – Beyond 75th birthday is determinate sentence

H. Peters: Discretion is not going to self-correct. There has to be intervention.

S. Drury: Abdication of responsibility by previous Ga's. Those Ga's passed TIS, leaving it to judges to impose lower actual sentences. What is legislatively realistic?

Chairman: What goes into the thought process? Do judges think historically about what's been given?

E. Robb: Personally not a factor. I tried to be consistent. It's an element of fairness. When you have victims and offenders how do you say the math is different now.

S. Sawyer: Statue requires advisement be given. It doesn't play as much of a part in sentencing.

M. Tardy: Pursue systemic training with judges.

D. Olson: Some explained by increased prison sentences crime decreased. Megan added a stronger argument would be if crime decreased then enhancements were in place.

K. Bocanegra: How do we engage public opinion?

A. Liepold: High price to pay for a small number.

K. Saltmarsh: Public opinion shifts. This is a unique moment. We have the opportunity to move toward what is best for society as a whole and a better use of our tax dollars. More feedback on trends and sentencing patterns and make this as evidence based and data driven as we possibly can.

E. Quintana: Day for day is better in itself and provides incentive.

Chairman: These are deep realities in Corrections. What physical & mental effects – TIS

J. Baldwin: Day for day doesn't hold up for all. It's more of an individual approach. Depending on the person, for some individuals, they are high motivators. We should reward those at a level that does have the incentive and motivation.

Peters/Butler: Agree. Depends on individual; some may see what they are faced with so will do what they do well – create havoc, others will better themselves.

Chairman: Motivation?

Peters: Opportunity is everything. Opportunity is crucial. Give IDOC incentives by engaging in the right behavior

G. Taylor: Offenders in the system 15 – 20 years and out in 8 has questioned moving from maximum security to minimum to participate in school programs. Sending a 60 year old home without skills does not do us any good. These offenders could also provide an opportunity to help shape and impart some discipline as well as provide influence on the younger offenders.

If you do not provide an opportunity for them to better themselves, how will we ever get a decrease in population?

S.Drury: The thought process behind TAMS was focused deterrence - Take out those who are causing the most trouble to rehabilitate the rest. TAMS was intended to be implemented with numerous other reforms, not as a standalone solution.

Chairman: Specific ways to move the needle in terms of lengthy stays

J. Maki: We must first create an environment the public can trust. An ACLU report stated people didn't trust what the justice system was doing. Prison was to reduce victimization and reduce crime.

B. Kelly: We must educate and explain as it will be a hard sell to the public. It will come down to specific offenses.

M. Tardy: Shift "offense" based to "offender" based including a risk assessment showing motivation for change. We have to integrate the science. Sanctions-incentives... Sentencing should not simply be driven by "length of time: There is no Magic time.

Prospective Discussion Topics

Chairman Heaton explained the following list of topics is intended to spur conversation and is not a specific set of recommendations.

- Reduce the low end of every sentencing range by x%. Perhaps 5%. Or 10%. (Except for class 4 felonies, which have a 1 year minimum) For example, this would make a two year sentence minimum 22.8 months (or at 10% it would be 21.6 months) instead of 24 months.
- Reduce any sentence currently governed by a truth in sentencing provision by x% -- *e.g.*, 5%, or 10%. For example, a sentence of 20 years subject to 75% TIS limits would require the offender to serve 15 years. This would be reduced to 14 years at 5%, or 13 years at 10%.
- Eliminate the sentencing enhancements that currently double the high end of the sentencing range, based upon the offender's prior criminal history.
 - Reduce these enhancements by 50%. So, a sentencing enhancement that currently changes the maximum from 15 to 30 years, would either stay at 15 years, or would increase only to 22.5 years.
 - Replace them with a lower fixed enhancement cap of x years – *e.g.*, 5 years.
- Make all sentences for multiple count/offense cases presumptively concurrent, and only subject to consecutive sentencing under prescribed circumstances.
- Prohibit natural life sentences for any offense.

Retroactive discussion topics

- Remove the prohibition on an offender receiving programming credit for successfully completing appropriate programming, even if that credit would reduce the sentence below current TIS limits.
- Retroactively reduce all sentences for offenders who are currently incarcerated for more than 20 years by x years – *e.g.*, 1 year/2 years – or x %.
- Allow any offender who has served more than 20 years in prison, and whose age is 50 or more, to petition the sentencing court for a hearing to reduce the sentence.

Systemic Discussion Topic

- Empower the Sentencing Policy Advisory Council (or a similar entity) to function as a Sentencing Commission that creates a sentencing guidelines system to impose presumptive limits on the sentencing range for the various offenses, and guidance to judges regarding what aggravating or mitigating effect various factors should have.

Discussion & Comments

Chairman asks for input of those topics appealing and thoughts on implementation.

J. Maki: Take a multi prong approach. Should not be simply time driven. We should measure risk and criminal thinking; a systemic approach in response beginning at sentencing on. Gauge peoples changes not just a timeline.

K. Saltmarsh: The cost of incarceration is actually about \$38,000 per year. We must take 10,000 bed years out of DOC budget and start shifting resources to create better sanctions and stronger communities. Put \$ into evidence based programs.

- We can recalibrate sentencing low & high -reduce high end where they currently are and reduce low end
- Recalibrate ranges – extended terms – eliminate or lower high end # for extended sentences
- Set # of years
- Six classes – no Super Class X or 1's
- 4 felony class X and murder

Judge Sawyer:

- Low end – Unlikely legislature will pass for fractional years
- Consideration lowering the minimum for Class 2, 3 and 4. Maintain maximum. Judges protect the public.
- Or leave Class 2, 3 and 4 maximum or for the extended reduce the extended terms.
- Class 2, 3 and 4 – 1 year minimum

D. Olson: Lowering the floor would have an impact. High end doesn't have as big of an effect.

Chairman Heaton: Those cases somewhere in the middle doesn't change anything. Impact will not be seen for several years. We need good data to communicate effectively to the public, legislation and Governor's Office.

H. Peters:

- Reduce minimums
- Reduce % of sentence – TIS
- #2 – Reduce to 60% those governed by TIS that are 85 and under
- Rethink all categories under TIS
- Enhanced sentences eliminated after review or at least 50% of them

Judge Robb added if we are fair people should understand our system. Maximum sentence is always high enough.

All agree w/Dot point #4.

J. Baldwin: Iowa was effective w/dot point #2 moves from 85% to 70%. He finds a 60 vote appropriate. Long sentences have no impact on the positive outcome we hope to achieve. States of reference (CT, FL, Illinois, Kansas, LA, Maine and Kentucky)

B. Kelly

- TIS questionable.
- Consecutive concurrent needs reform
- Natural life should not be touched under appropriate sentences
- If at the end of every recommendation there is the required risk assessment, completed programs, etc. Don't just reduce without getting something

A. Liepold: Sentencing credit breaking through the current TIS limit. Do in a way that protects public safety. Some would be too short to have an impact on the person. Consider this with discussion of decreasing Class 2, 3 and 4. They may lose out on the treatment or programming that would reduce the likelihood they would offend again. Sometimes having a thumb on them; i.e. community corrections or programs that can turn them around.

S. Sawyer:

- Class 2 or 3 – realistically will they be in long enough for effective treatment.
- Could irrespective of treatment, being incarcerated be a deterrent.
- Ideally, few sentences decrease reduction of recidivism. Systemic changes
- Need evidence based and court treatment
- Will require implementation through the legislature – statutory changes.

G. Taylor: Good example is a meth addict needs minimum of 18 months of treatment. A 1 year sentence would be problematic.

K. Saltmarsh: So a better sentencing option would be in a facility in the community not in a prison setting.

P. Rodriguez: Going to prison increases the risk of reoffending. Start there but must have follow up in the community. Individual cases have different needs.

J. Maki:

#5 – Natural life is important. The question is what does “long sentences” mean? Certain offenses may need. How little do we do to achieve what we need to achieve.

K. Bocanegra: Question – time lag between TIS reduction to 60% vs length of stay for those in.

D. Olson: Long time to see the impact. Applied to the current population; 5-10 years to see evidence.

E. Quintana:

- #8 is a no risk thing to do
- Minors and/or under age 24 who were tried as adults and served at least 10 years petition for sentence reduction

S. Drury:

- What have other states done? It would be helpful to have this information.
- TIS is not really truth in sentencing because of the various reductions. TIS has become as confusing as the system it was supposed to correct.
- Look up the definition of prison – don’t keep them in prison to help. Switch incarceration to treatment, programs, and resources. Where is the money? What are we building first?

Chairman Heaton asks Craig Findley/ Prison Review Board to give his thoughts. Indeterminate sentencing - look at the model that exists. Look at their entire criminal history; what they have done since incarceration such as education, aspiration. What is their parole plan? Judges can’t know at sentencing what this person will become. Risk assessment and the PRB can look at long term. Indeterminate has value for longer sentences.

#9 – Systemic

That which tries to guide judicial discretion. Ways to change sentencing while protecting public safety

M. Pelletier:

- Excellent idea
- Advise Legislation fiscal impacts etc.
- Expertise to monitor how sentencing is imposed – not necessarily determine but beneficial to all in the process

J. Maki: Agree. Dedicated to make sure more rational and consistent

S. Drury: As someone who worked with the Federal Sentencing Guidelines, it is difficult to understand how a system works without objective guidelines..

Chairman: Presumptive ranges – could you lower the numbers in the system. Unknown if it would increase or decrease.

Factors:

- Severity of Risk
- Age
- Employment Status

How much do sentences vary from community to community?

Agree – Create Sentencing Commission – a permanent group to rethink the whole structure and fix sentencing.

Public Comment: Chairman Heaton called for public comment(s).

- Jean Schneider – Project 1.11 Interest in long term prisoners and earned release. The recommendation would provide an opportunity for earned release for inmates who are 50 years old and have been in continuous custody for 15 years. Included in the recommendation is that PRB be responsible for the program and also determine the rules governing administration of the program. It should not move back to the courts. It's more costly. Jean added the group is very pleased of recommendation #8
- Heather O'Donnell of Thresholds represents several Illinois organizations who advocate for those with mental illness and substance use disorders and the concern of their over representation in the prison system because of the lack of treatment resources and affordable housing in the community. The issues are not addressed in the initial report and it is their hope, the Commission includes two recommendations in the second report.
 - Identify and invest in policies and evidence-based programs to increase community-based treatment services and affordable housing options for the diversion and release of population with significant mental health and substance use conditions.
 - Provide that re-entering men and women have the opportunity to apply for Medicaid at least 45 days prior to release and allow for suspension rather than termination of existing Medicaid coverage during their time served.
- Gina Baker is the Outreach manager for Housing Action Illinois. 79% of survey participants were either ineligible or denied housing because of their criminal background or those of a family member. They ask for consideration of recommendations that expand housing opportunities that will promote successful reentry and decrease recidivism.
 - Remove barriers to state funded housing. Anti-discrimination policy
 - Expand supportive housing and job counseling
 - Initiatives - Emergency Healthcare Systems
- Albert Jackson/TASC was an inmate for 25 years. Focus on C number prisoners in IDOC. Many of these inmates are in their 60's and have made significant progress.
- Ken Berry is a paralegal at Winston & Strahn. Ken was incarcerated for 8 years. His recommendation is incentive based programming. He received his education while incarcerated. Given the opportunity many would take advantage of the education. Incarcerated just want to go home.
- Taneka Jennings/Metropolitan Family Services is community based intervention programs that focus on trauma, substance abuse and mental health. With the current fiscal situation the services to youths are going unfunded. The services to families address the root of destructive behavior, reduce recidivism and improve life outcomes. Invest in solutions that access community services and support funding for community based prevention and intervention strategies.
- Jesse Self- University of Illinois researcher. Many prisoners especially juveniles have let fear compel them to take a sentence they should not have
Look at Kentucky's justice system. Incentive leads to good behavior
- Ivan Adams – Brother is incarcerated (reckless homicide) He has earned 500 certificates since his incarceration. Due to current truth in sentencing, he cannot even go before the parole board.
- Ben Rudell/ACLU recommendations on risk assessment

Announcement

Next meeting will be held Thursday March 10, 2016. The time and location to be determined.

Adjournment

The meeting of the Illinois State Commission on Criminal Justice and Sentencing adjourned at 5:20 pm.