



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

**Regular Meeting Minutes
Thursday, January 14, 2016
9:00 am to 4:00 pm**

**Springfield: Stratton Office Building
401 S. Spring Street, Room 349C**

Commissioners present: **Rodger Heaton (Chairman)**, John Baldwin, Jerry Butler, Representative Scott Drury, Brendan Kelley, Andy Leipold, John Maki, Senator Karen McConaughay, Dave Olson, Howard Peters, Elena Quintana - pm, Honorable Elizabeth Robb, Kathy Saltmarsh, Honorable Stephen Sawyer, Greg Sullivan, Michael Tardy, Gladys Taylor **Staff:** Chasity Boyce, Lisa Desai, Chelsea Kline

Conference Call - Commissioners: Kathryn Bocanegra, Representative John Cabello, Senator Michael Connelly, Mike Pelletier, Elena Quintana - am, Representative Elgie R. Sims Jr., Representative Brian Stewart,

Call to Order: Chairman Rodger Heaton called the meeting to order and took roll of the commissioners participating via conference call.

Chairman discussed the meeting agenda and noted the packet details provided for review. A copy of December 2015 Part 1 of the final report was provided to the Commissioners.

Approval of the Minutes

• *Motion to adopt the October 8, 2015, October 30, 2015 and November 20, 2015.*

*Motion to Adopt: Greg Sullivan
Seconded: John Maki*

Motion carried

Items for Discussion

The following potential reforms for consideration:

1. **Race/Ethnicity:**
2. **Disproportionate Minority Contact:**
3. **Drug Laws:**
4. **Other Offenses –**
Burglary
Possession of a Stolen Motor Vehicle
Sentence Enhancements /Automatic Upgrades
Police Contact with Mentally Ill Persons

Discussion of Race Ethnicity and Disproportionate Minority Contact Data Availability and Quality

Provided by John Maki and Meagan Alderden- ICJIA

Director Alderen provided an introduction related to the topic and has the potential for making significant changes. Minority populations are disproportionately affected within the criminal justice systems.

African Americans make up 14.6% of population in Illinois, but 57.2% of IDOC admissions

- Admissions and arrests are the only two areas in which we have full information in regards to the disproportionate impact on minority populations. Types and characteristics impacted by crime are unknown.
- According to Michael Tardy, there is a tracking system for parole and probation and this system also shows large race disparities. Bias contributes to disparity.
- Recommended to require training for all criminal justice personnel on issues of race and ethnicity
 - Require training of all newly hired prosecutors and public defenders as well as refresher training for all prosecutors and public defenders
 - There are few known trainings such as this outside of the juvenile courts
 - Gladys Taylor explains the importance of this training for not only public defenders, but also for law enforcement
 - Similar training is currently required by statute, subject to the discretion of the training board
 - Brendan Kelly questions if we mandate racial sensitivity training, should we also mandate gender sensitivity training, other types of training. Funding also comes into question. Who controls? Is this mandatory or continuing education?
 - John Maki – We do not want to recommend empty mandates. All bias needs to be addressed however racial bias does need special attention
 - Howard Peters asks the commission to consider whether or not this training will really create the intended results. Is the issue a lack of training or a state of mind? What do we think of as a risk? Who is to be trained? How do we create a training program that will actually change our outcomes? It is imperative that we acknowledge that there is a disproportionate, adverse effect on minority populations, but we cannot create an ineffective solution that does not address the true issue.
- Chairman Heaton – Assume we recommend training.
Things to consider:
 - Frequency
 - Curriculum
 - Testing/Evaluation
 - Oversees
- Mike Tardy – Training has a significant role. It is not the sole solution
- Implementing a training strategy must be supplemented with other programs that will address disproportionate contact among minorities.
 - Gladys Taylor adds this is an opportunity to modify training such as add this as part of law enforcements crisis intervention training
 - E.Quintana – Deserves analysis. What are the discrepancies by area?

- Judge Robb commented that whether intentional or not – it is there. Having gone through the training she believes it altered the way she thinks. She acknowledges it needs to change.
 - How will this programming be implemented, be funded?
 - John Maki offers ICJIA to begin research on best practices
 - Law enforcement and Trainings Board may also be helpful in creating a training system
 - Recommend that this training become a requirement within the CLE, the current ethics training board for prosecutors.
 - May this be included within the training changes mandated within the Police Reform Bill?
 - Above anything else we are needing a *culture* change
 - How can we permeate this throughout the system?
 - A large percentage of individuals within IDOC are from Cook County, whereas the majority of prisons are in downstate Illinois. This creates a substantial disconnect between offenders and prison staff.
- **Data Collection and System Assessment of DMC**
 - Recommend that police departments participate in the National Incident Based Reporting System (NIBRS)
 - Requires police agencies to collect and report detailed information about crime incidents, arrests and clearances, including demographic information of victims and offenders.
 - The state attempted to implement NIBRS twice to no avail. There were hardware, software, and labor issues hindering participation. Rockford is the only department using it. NIBRS cannot be successful and will not produce results if the information is not inputted correctly ex: J. Cabello - information saved, if not put in correctly displayed crime down when actually it was up (crimes coded wrong)
 - Brendan Kelly – Funding received should have requirements. If they do not comply they do not get funding.
 - Scott Drury – What are we going to do - civil penalty?
 - Circuit Clerk – Should they report?
 - All of these changes will require an infrastructure upgrade so that all courts can communicate effectively and consistently
 - Need an analysis of which courts/counties have the most effective forms of communication.
 - M. Tardy – working with the counties & authority. Also some are not required to report.

Chairman Heaton – Need an analysis on the diversion programs currently offered in the state.

- Andy Liepold - Plea Bargain process? What happens in between?
- Brendan Kelly – Diversion programs are looked at as a dismissal once complied with terms

Chairman Heaton introduces Governor Rauner

The Governor speaks on the importance of this work and the impact that the Commission's work has on the entire state of Illinois. "This is a tough set of issues, but to serve the people of Illinois well we must talk about it and not be afraid to talk about it." The Governor will work to make the investments needed across the state to modernize the ways data is collected and fight crime. The Governor wants to ensure that the recommendations made within the first report are implemented. "We've been living from crisis to crisis and unbalanced budgets for decades and we have to change that.

- Brendan Kelly explains the importance of finding funding for implementing these changes
 - The Governor agrees and emphasizes that in order to alleviate these problems, spending may be required upfront.
- Kathy Saltmarsh asks about the Governor's impression when he toured the prisons in Illinois.
 - Governor Rauner – It's an emotional experience. While he understands the prison systems are places for punishment, the state needs to improve them.
- Senator McConaughay thanks the Governor for his leadership

Sentencing & Prison for Drug Law Violators: Broad Structures and Issues to Consider

Presented by David Olson, Ph.D

- Structure of Drug Laws
 - Type and weights are important as well where and to whom it is sold.
 - Weight of drugs involved dictates offense
 - Behavior (possession, delivery, etc) dictates offense
 - Sentence enhancements may be administered depending on location of sale, who is being sold to
- Illinois Law
 - Sale/delivery of 5-<15 grams, Class 1, mandatory IDOC, sentence of 4 to 15 years
 - Sale/delivery 15+ grams, Class X, mandatory IDOC, sentence of 6 to 30 years
 - **Possession** of any amount (besides cannabis) is a felony
 - **Possession** of cocaine or heroin is a Class 4 (<15 g) or Class 1 (15+g); Meth Class 3, 2, 1, or X
 - **Sale/delivery** of cocaine and heroin is a Class 2 (less than 1 gram), 1, or X felony
 - Class 1 is 1 to <15 grams; 5 to <15 grams cocaine mandatory IIDOC; 3 to <15 grams heroin mandatory IDOC
 - Class X is 15 grams or more
 - Methamphetamine-Possession Class 3, 2, 1 and X felonies – sale/delivery, Class 2, 1, or X
 - Commission recommendation #6 in the December 2015 report - do these have probation as an option.
 - Drug sale/delivery offense moves up ONE FELONY class if offense occurs within 1,000 feet of specific location
 - All states gave these types of provisions – 31 states include more than just schools

Overtime with modifications and enhancements, non-violent drug law violations are classified similar to serious, violent offenses.

- Proportionality with other crimes
 - Class X
 - Selling 15 grams or more of cocaine or heroin
 - Aggravated criminal sexual assault, predatory criminal sexual assault of a child, armed robbery, attempted murder
 - Class 1
 - Selling 5-15 grams of cocaine or 3-15 grams of heroin
 - Criminal sexual assault, residential burglary, robbery aggravated robbery
 - Class 2
 - Selling less than 1 gram of cocaine or heroin
 - Aggravated criminal sexual abuse, aggravated UUV by a felon , motor vehicle theft
- The slides indicate drug dealing comparison to violent crimes. The industry CAN be violent – gun involvement – etc.
- One of the only offenses maintained through substitution
 - When we remove a drug dealer from the street, that void is filled relatively quickly because there is still demand, so someone will still be there to sell the drug
- IDOC Court Admissions
 - 70% of Class 4 offenders admitted were Black
- Those sentenced to IDOC for drug offenses are at the lower end of sentencing
- Most of those sentenced to IDOC for drug delivery are in need of drug treatment
- Of the people admitted to IDOC for a drug offense under Class X, 65% were in need of substance abuse treatment.
- Potential Changes
 - Reduce large gaps in felony classes by moving all offenses down 1 class
 - Change 1,000 foot rule to discretionary or aggravating circumstances – Protect the school children
 - Would result in drop of 780 to 1,800 individuals from IDOC

Discussion of Drug Laws and Related Sentencing Provisions

Chairman Heaton – What are your thoughts and concerns of the graduating scale? What unintended consequences do you foresee?

- Leipold: Are most people convicted of drug crimes only guilty of this, or is the drug conviction being used as a way to indict them for other crimes as well.
- Kelly- There is not a fair way to get a metric. There is no cookie cutter answer.
- We don't want to change the law in a way that will compromise law enforcement's ability to charge those in which prison is appropriate.
- John Maki: Prison is not an effective. The need is for treatment in a community based setting.
- Kelly – Delivery –Punishment is getting them off the streets.
- Scott Drury- Must find effective ways to encourage treatment. Punishing the supplier will still replace with another supplier. Must Deal and devote resources to those who want effective treatment.

Do we need to treat heroin differently?

- As of now there is not much difference between how heroin and cocaine are charged.
- Scott Drury: Today the bad drug is heroin, 10 yrs down the road it will be another drug of choice.

There is a need to distinguish between those who use/possess drugs and the dangerous drug dealers who are the real problem. How do you make the determination that they are supporting their habit by dealing?

- Currently 1,800 are in IDOC for straight possession
 - Based on these changes, change the sentencing guidelines
- Revise the state criminal code to provide that a third or subsequent class 2 felony conviction for any controlled substance offense does not automatically become a class X offense
- Make all look-alike drug offenses a class A misdemeanor (as opposed to a felony offense at the level of the transaction had the drugs been real)
 - Not likely to have a large impact on the prison population
 - Andrew Leipold suggests the Commission should not adopt this recommendation, as it does not have a large impact (approx. 40 people)
 - Dr. Quintana recommends that the offender's age be considered in sentencing
- Make 1,000 foot rule an aggravating factor, not a mandatory bump up of offense level
 - People should not be selling drugs at schools, but parks, nursing homes, churches, etc may be unnecessary
 - This is already a law so it will be tough to reel it in or change it
 - Kelly – What is the risk you are trying to deter. Prove as an element of defense ex: School was in session
 - Drury – the intent was to keep violence away from the school. It doesn't have to be a one size fits all. Some may be tolerable some not. Raise the bar – change and prove circumstance. Get at the threat. Identify vulnerability

Dr. Quintana – It is important to address but societies who have decriminalized and emphasized a huge amount on treatment have shown a decrease overall in use, deaths and incarceration. She explains the impact this has had in Portugal.

- Resulted in reduced drug use
- We need to think of this as applied to the United States and the impact it may have

Judge Sawyer: Would like to see the results from the countries of relaxed penalties for purposes of proposed change. What can we learn from the way this has flowed?

Discussion of Potential Reforms to Property Offenses (Burglary; Possession of Stolen Motor Vehicle; Retail Theft; Theft from Person)

Burglary

- Burglary to a vehicle as a class 4
- Reduce burglary to garage to a class 4 when garage is detached
 - Attached garage insinuates a more violent, invasive action, as it is actually inside the home
- Exclude burglary to a vehicle and to a detached garage from the definition of forcible felonies

- Kelly: Would not get a consensus among the State Attorneys. Different counties-Different circumstances.
- Should burglary be considered a forcible felony?
- Kathy Saltmarsh brings up concern about sentencing people based on an assumption of violence that did not actually happen
- 50% of class 2 sentences are receiving the minimum
 - 1,200 admissions in DOC for class 2 burglaries in past year
 - Many of these are substance abusers
- Need to evaluate the definition of forcible felony and how this corresponds with each offense. Five years for stealing a bike – that's what's bad about leaving it to discretion

McConnaughay – This could be very difficult for passage given all the uncertainty in this group alone.

Possession of Stolen Motor Vehicle

- Reduce to a class three felony
- Second or subsequent PSMV offenses committed within 10- year of a prior PSMV offense are currently non-probationable. Revise the code to make such subsequent PSMV offenses probationable.
- Kelly: Prosecutors are happy where its at. Could tighten the 10 year timeframe. (use discretion – joyriding) Move to a 3? Also shortens the length of parole.
- How are offenders notified that a sentence will be enhanced?
- Dr. Quintana stresses the importance of sentencing appropriately based on the severity of the crime committed.
- Make a recommendation changing the level from second or subsequent to third or subsequent
 - Dr. Quintana suggests making this third or subsequent "after the age of 21" Stressing the emerging development youth/adult
 - There are many other offenses where age should be considered

Retail Theft

- Revise the criminal code by raising the dollar values that produce felony status to retail theft offenses. Require retail theft of property greater than \$2,000 in value to qualify as a class 4 felony
 - Currently they offer restitution and diversion programs to these offenders
 - Kelly notes motivated when they are not getting a felony charge. There is a indigent fee – we do not turn away because they cant pay
 - Most of these thefts occur in big box stores like Wal-Mart
- Can we change retail theft without changing the theft statute? Retail & theft – do both
- Any sentencing decision that is made should favor a community corrections option
- M. Tardy: C. Corrections is not enough to bring programs in. Evidence based incorporating the risk assessment piece early on and finding infrastructure and retailers interested in supporting.
- Addiction plays a huge part in prevalence of retail theft

Continuation of Discussion of Reforms including, if time permits, Sentencing Enhancements for Class X offenders and Police Contact with Mentally Ill Persons

Police Contact with Mental Ill Persons

- Require crisis intervention training for police officers by the end of their 3rd year of service, if they are currently serving, within 24 months of this reform
- At a cost of \$500/pp for the 40 hour training. Increase capacity for this training. Gladys suggested perhaps a train the trainer program.
- This program will be much more successful in counties where there is a place to divert these individuals to (like Rosecrane in Rockford)
- The criminal justice coordinating council concept should be involved in this. Collaborate with multiple disciplines
- Need to have a plan that designates which facilities the individuals will be diverted to once they are identified by trained officers.

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

- Albert Jackson/TASC was an inmate for 25 years. 175-200 C number prisoners in IDOC. A significant number of these inmates, like himself, have accepted responsibility for their actions and made are rehabilitated. Some have served 30-50 years. If released the \$25,000 cost can be deferred to their families with a savings of approximately \$1M.
- Ben Rudell/ACLU provided a spreadsheet outlining the table of Illinois drug penalties. ACLU position is to strongly look at all ranges top to bottom as well as all ranges of the sentencing.
- Matt Busch/Communities United. The bottom line is restoring offender to citizenship. Why should any crime be designated by statute as non-probationable? This deprives the opportunity for those who have the potential for useful citizenship. Crimes should be dealt with on a case by case basis – considering the danger of punishing poverty and racial disparities. Retroactive application should be applied to current offenders. We would be remiss if we deny them.
- Section I.II – The goal of the constitution is to carry out laws to restore useful citizenship. Individuals serving lifelong sentences should not be abandoned. Mandatory minimums are very detrimental to many individuals. The proposal would have considerable effect on the 25 % reduction.
- Matt Jones/States Attorney - PRB can be empowered and can make the system work. Need to rely on data, not arbitrary numbers, when it comes to age of offenders - Eligibility at 50 years old for those who have served 20-25 years - someone who may deserve a chance at an early release program. It begins at DOC then PRB review with potential reduction. Need to assess options for non-ambulatory prisoners.
- Margaret Stapleton/Shriver – Encouraged when data is in to make it available to the public.

Announcement

Next meeting will be held Thursday February 18, 2016. Location to be determined.

Adjournment

Chairman called for a motion to adjourn. David Olson moved, seconded by John Maki. The meeting of the Illinois State Commission on Criminal Justice and Sentencing adjourned at 4pm.