

# ILLINOIS STATE COMMISSION ON CRIMINAL JUSTICE AND SENTENCING REFORM FINAL REPORT: PART I

December 2015



## Table of Contents

Executive Summary .....	1
I. Introduction .....	4
II. Background .....	5
A. The Role of Prisons.....	5
B. The Impact of High Incarceration .....	8
C. The Resource Question .....	13
D. Guiding Principles and Operating Assumptions .....	14
III. Recommendations.....	15
A. Recommendations to Ensure the Validity of Sentencing and Programming .....	15
B. Recommendations to Reduce the Number of Prison Admissions.....	21
C. Recommendations to Reduce the Length of Prison Stays.....	25
D. Recommendations to Reduce Recidivism by Increasing the Chances of Successful Reentry.....	32
IV. What’s Next: Part II of the Report.....	37

### Appendices

Appendix A: Executive Order 15-14 (Feb. 11, 2015)

Appendix B: Members of the Illinois State Commission on Criminal Justice and Sentencing Reform

## 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% 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. Today, Illinois prisons are operating at roughly 150 percent of design capacity, and, at the beginning of 2015, housed 48,278 inmates, most 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 has completed the first part of its work, and in this Part I of its Final Report presents a set of fourteen recommendations. In Part I, the Commission has focused primarily (although not exclusively) on foundational reforms that are necessary to ensure the success of other recommendations, regardless of whether the recommendations themselves would reduce the prison population. In the coming months the Commission will complete its task, and will present additional recommendations in a Part II of the Final Report.

The recommendations set forth in Part I are as follows:

1. Expedite the use of risk-and-needs assessment tools by the Illinois Department of Corrections (“IDOC” or “the Department”) and the Prisoner Review Board. Promote and expedite the use of risk and needs assessment tools by 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.

---

\* 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.

2. Provide incentives and support for the establishment of local Criminal Justice Coordinating Councils to develop strategic plans to address crime and corrections policy.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.)
9. Make better use of adult transition centers. Ensure that 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.
10. 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.

11. 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.
12. 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 those programs identified as promising and eliminate ineffective programs.
13. Remove unnecessary barriers to those convicted of crimes from obtaining professional licenses. Review all licensure restrictions to identify those necessary for public safety.
14. Require IDOC 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. IDOC must report 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.

In the coming months, the Commission will address additional topics that may lead to further recommendations, including:

- Truth-in-Sentencing laws;
- The racial impact of sentencing;
- Sentences for drug law violations;
- Sentencing ranges;
- Sentence enhancements;
- Problem solving courts;
- Community corrections, including probation and mandatory supervised release.

## 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.<sup>1</sup>

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.”<sup>2</sup>

Since its first meeting in March 2015, the Commission has worked diligently to carry out its mandate. Through 9 months 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. This process is not yet complete. To ensure that all of its recommendations receive sufficient study, but also comply with its directive to report to the Governor by December 31, 2015, the Commission has divided its recommendations into two parts. In this Part I of its Final Report, the Commission has focused primarily (although not exclusively) on foundational reforms and changes that are necessary to ensure the success of other recommendations, whether or not the recommendations themselves would reduce the prison population. The Commission is scheduled to release the Part II this Report in early spring 2016. The topics that the Commission expects to consider in the next phase of its work are outlined in the final section of this Report, below.<sup>3</sup>

When completed, the Commission’s recommendations will lay the foundation for how Illinois will achieve a more rational and equitable criminal sentencing system, as well as a safe and sustainable 25 percent reduction in its prison population by 2025. At the same time, the

---

<sup>1</sup> Executive Order 15-14 (February 11, 2015). The Executive Order is reprinted in Appendix A to this Report.

<sup>2</sup> Jeremy Travis, Bruce Western, and Steve Redburn (eds.), *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: The National Academies Press, 2014): 9, accessed December 18, 2015, <http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

<sup>3</sup> 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/cjreform2015/>.

Commission recognizes that to realize this goal, the work must extend beyond the Commission's existence and beyond the recommended reforms. The State's current prison system is the result of 40 years of policymaking, practice, and culture, and lasting change will take time. It will demand courage of the State's leaders and a steadfast commitment from stakeholders at all levels not merely to reduce the State's harmful overreliance on incarceration, but also to support a system that reduces victimization and promotes justice for the people of Illinois.

## II. Background

Before offering the first part of the Commission's recommendations, it is useful to set forth a brief history 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 a 25 percent reduction presents.

### A. The Role of Prisons

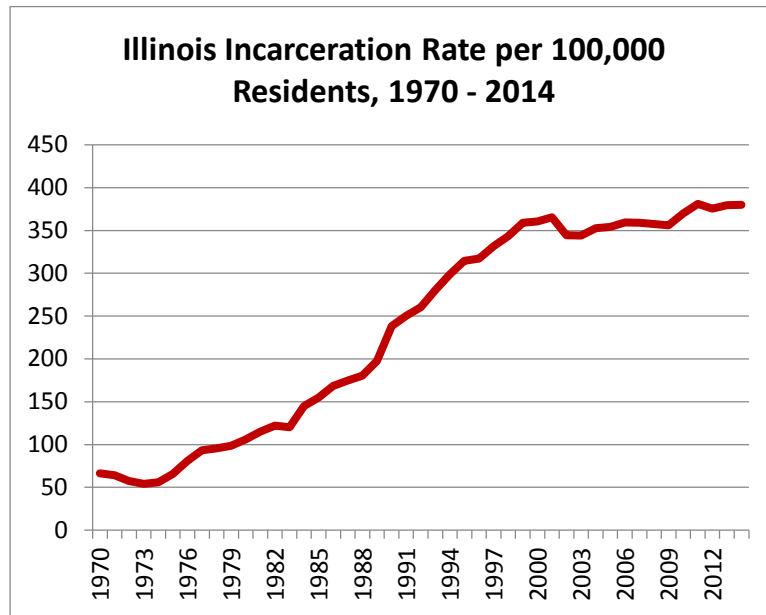
In recent years, Illinois' prison population has reached a record high of almost 50,000 inmates in a system designed for 32,000 people, making the Illinois Department of Corrections ("IDOC," or "the Department") one of the largest and most crowded prison systems in the United States. This was not always the case. In the late 1960s and early 1970s, Illinois' incarceration rate remained fairly 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 broadened the number of crimes for which offenders could be imprisoned and increased the length of time prisoners remained behind bars.

This shift in policy was supported by an equally profound shift in penal philosophy. For most of the 20<sup>th</sup> 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.<sup>4</sup> The result of these 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

---

<sup>4</sup> On the history of the emphasis on rehabilitation in prisons, see David J. Rothman, *Conscience and Convenience: The Asylum and its Alternatives in Progressive America*, (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 December 13, 2015, <http://www.lib.niu.edu/1976/ii760103.html>.

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.<sup>5</sup>



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.” “[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.”<sup>6</sup>

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 poor 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

<sup>5</sup> Incarceration rate data provided by the Illinois Department of Corrections, Planning and Research.

<sup>6</sup> Travis, *The Growth of Incarceration in the United States*, 2.



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.<sup>7</sup>

Illinois' prison population typifies these national disparities. In 2014, non-Hispanic whites made up 63 percent of Illinois' total population, but accounted for only 29 percent of the State's prison population. On the other hand, African Americans made up about 15 percent of the State's population but constituted almost 60 percent of its prison inmates. African Americans were incarcerated in Illinois at a rate that is seven times higher than non-Hispanic whites. Hispanics made up about 17 percent of the State's population, 12 percent of its prison population, and were incarcerated at almost twice the rate of non-Hispanic whites.<sup>8</sup>

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, more than 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.<sup>9</sup>

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.<sup>10</sup> 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,<sup>11</sup> and from the perspective of many police, prosecutors, and

---

<sup>7</sup> Travis, *The Growth of Incarceration in the United States*, 13.

<sup>8</sup> The prison population figures are for FY 2014. For the most recent Illinois demographics, see United State's Census Bureau's State & County Quick Facts, accessed December 13, 2015, <http://quickfacts.census.gov/qfd/states/17000.html>. For the most recent prison data, see Illinois Department of Corrections, *Fiscal Year 2014 Annual Report*, accessed December 13, 2015, <http://www.illinois.gov/idoc/reportsandstatistics/Documents/FY2014%20Annual%20Report.pdf>. For Illinois' most recent 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 December 13, 2015, <http://www.prisonpolicy.org/reports/rates.html>.

<sup>9</sup> For Illinois' most recent recidivism statistics, see Illinois Department of Corrections, *Fiscal Year 2014 Annual Report*, accessed December 13, 2015, <http://www.illinois.gov/idoc/reportsandstatistics/Documents/FY2014%20Annual%20Report.pdf>.

<sup>10</sup> 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.

<sup>11</sup> 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, accessed on December 13, 2015, <http://www.icjia.state.il.us/spac/index.cfm?metasection=publications>. Of the total offenders committed to Illinois prisons for non-violent offenses, about one-third (37 percent) had a prior violent conviction. Analysis by Illinois Criminal Justice Information Authority of IDOC and Criminal History Information data.

judges, the only apparent 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 16 months), and are released. They then frequently reoffend, are returned to prison, and the cycle continues.<sup>12</sup>

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 work experience prior to incarceration, with at least one-quarter to one-third of inmates being unemployed at the time of their incarceration.”<sup>13</sup>

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.<sup>14</sup> Twenty-five percent of inmates are receiving on-going mental health services, and about half of all inmates have been assessed as needing substance abuse treatment.<sup>15</sup> 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 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, on balance, frustrate the system’s goals. Incarcerating offenders excessively or unnecessarily ultimately undermines the IDOC’s mission of “promoting positive change in offender behavior, operating successful reentry programs, and reducing victimization.”<sup>16</sup>

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

---

<sup>12</sup> Illinois Department of Corrections, *Fiscal Year 2014 Annual Report*, 71.

<sup>13</sup> Travis, *The Growth of Incarceration in the United States*, 234.

<sup>14</sup> IDOC Presentation to the Commission, April 25, 2015, accessed December 13, 2015, <http://www.icjia.state.il.us/spac/index.cfm?metasection=publications>.

<sup>15</sup> Information provided by the IDOC.

<sup>16</sup> Available at <http://www.illinois.gov/idoc>.

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

One benefit of imprisonment is that it incapacitates the offender, preventing him from committing additional crimes while he 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 (to punish because of the egregious nature of their crime, for example) the impact of the high levels of incapacitation on the overall crime rate is far from clear. Research shows that the relationship between incarceration rates and crime rates is complex, and that the greater use of prison does not automatically translate into less offending.<sup>17</sup>

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,<sup>18</sup> and that other factors (such as increasing age) diminish the likelihood of future criminal behavior regardless of whether the offender is behind bars.<sup>19</sup> 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 and efficient 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.<sup>20</sup>

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." Street level drug trafficking exemplifies this dynamic. In spite of enforcement strategies dedicated to the arrest and conviction of current drug dealers, research and experience have 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."<sup>21</sup>

<sup>17</sup> 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*, 130-156.

<sup>18</sup> See Marvin Wolfgang, 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).

<sup>19</sup> See John Laub, and Robert Sampson, *Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70* (Cambridge, MA: Harvard University Press, 2003).

<sup>20</sup> See Johnson, R., and Stephen Raphael, "How Much Crime Reduction Does the Marginal Prisoner Buy?" *Journal of Law and Economics* 55 (2012): 275-310.

<sup>21</sup> Travis, *The Growth of Incarceration in the United States*, 146.

## ***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 offenders have that led them to engage in criminal behavior.<sup>22</sup> 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 removing factors like family relationships and legitimate employment that can dissuade people from criminal behavior.<sup>23</sup> These findings lead to two conclusions: first, that effective prison programming is essential to rehabilitation; and second, that when consistent with public safety, it always 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, a little more than three percent of the Illinois Department of Corrections' total budget was dedicated to programming.<sup>24</sup> High numbers of inmates also means that the programming that is offered is often 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,<sup>25</sup> 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.

---

<sup>22</sup> 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 December 13, 2015, [https://wsicj.wsu.edu/wp-content/uploads/sites/436/2015/11/SAC-Final-Report\\_2015-08-31.pdf](https://wsicj.wsu.edu/wp-content/uploads/sites/436/2015/11/SAC-Final-Report_2015-08-31.pdf).

<sup>23</sup> 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.

<sup>24</sup> Information provided by the IDOC.

<sup>25</sup> There are, for examples, over 3,000 inmates currently on waitlists for vocational programming alone. Information supplied by the IDOC.

***3. High levels of incarceration are unlikely to deter future crime sufficiently to offset the high costs.<sup>26</sup>***

For years sentencing law and policy has seemed grounded in the belief that harsher sentences would invariably lead 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 crime.

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.<sup>27</sup> 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.<sup>28</sup>

***4. Because incarceration disproportionately 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.<sup>29</sup>***

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, particularly violent crime, but also from other social and economic disadvantages, like high levels of unemployment, poverty, family dysfunction, and racial isolation.<sup>30</sup> When it is effective, incarceration is an important tool for removing and incapacitating dangerous offenders who threaten a community's well-being. However, research

<sup>26</sup> 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 December 13, 2015, <http://www.icjia.org/cjreform2015/about/meetings.html>.

<sup>27</sup> For an overview of research on incarceration's relationship to deterrence, see *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.

<sup>28</sup> 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* (2008): 173-229, accessed December 13, 2015, [http://moritzlaw.osu.edu/osjcl/Articles/Volume6\\_1/Fagan-Meares-PDF.pdf](http://moritzlaw.osu.edu/osjcl/Articles/Volume6_1/Fagan-Meares-PDF.pdf).

<sup>29</sup> The Commission addressed this issue in several meeting, 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>.

<sup>30</sup> Robert J. Sampson and Charles Loeffler, "Punishment's Place: The Local Concentration of Mass Incarceration," *Daedalus* 139 (2010): 20-31.

suggests that incarceration may have a tipping point beyond which its public safety benefits are overwhelmed by harmful, unintended community-level consequences.<sup>31</sup>

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 that Cook County sends to 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.<sup>32</sup> While 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.<sup>33</sup> 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.<sup>34</sup> The lack of employment, in turn, makes it harder for this population to successfully reintegrate into their neighborhoods 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.<sup>35</sup>

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.<sup>36</sup> In addition, an overreliance on formal control can damage the relationship between communities and the justice system. Research has demonstrated that high rates of incarceration can contribute to the lack of trust many residents in the most disadvantaged

<sup>31</sup> See Todd Clear and Rose Dina, "Incarceration, Social Capital, and Crime: Implications for Social Disorganization Theory," *Criminology* 36 (1998): 441-479; Fagan and Meares, "Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities."

<sup>32</sup> 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.

<sup>33</sup> See Robert Sampson and John Laub, *Crime in the Making* (Cambridge: Harvard University Press, 1993); Gould, Weiberg, 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.

<sup>34</sup> 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).

<sup>35</sup> 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.

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

neighborhoods have in 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.<sup>37</sup>

### 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 \$38,000 when capital costs, pension contributions, and employee benefits are factored in).<sup>38</sup> 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 parole in a given year. But even by this measurement, IDOC's budget has struggled in recent years to keep pace with the growing number and needs of its inmate population. Since 2005, Illinois' budget for the IDOC has remained relatively flat even as the prison population has

---

<sup>37</sup> 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: Russell Sage Foundation, 2002).

<sup>38</sup> See Christian Henrichson and Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers* (Vera Institute of Justice: 2012): 10, accessed December 14, 2015,

<http://www.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf>.

increased by nearly 9 percent. 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 limited resources to create and sustain a system that reduces victimizations, improves public safety, and strengthens communities.

In 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 need for additional resources.

## D. Guiding Principles and Operating Assumptions

In fashioning 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*<sup>39</sup>

- 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.
- Recommendations should be supported by the best available research, and implementation must be monitored to ensure that the reform meets its goal.

---

<sup>39</sup> 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 320-333.



- Recommendations should, to the extent possible, 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 far exceed the life of the Commission. There must be some infrastructure, in place or proposed, to sustain the reform in the future.

### III. Recommendations

This section sets forth 14 recommendations for change. 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.

#### A. Recommendations to Ensure the Validity of Sentencing and Programming

1. **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 the 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.<sup>40</sup>

<sup>40</sup> 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 December 26, 2015, [www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_assets/2011/pewriskassessmentbriefpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2011/pewriskassessmentbriefpdf.pdf).

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:

(a) If low risk offenders are housed with high risk offenders, those in the former group are much more likely to become high risk.

(b) Poorly designed or misdirected programming can make inmates worse off, and can even increase the likelihood that the inmate will re-offend.

(c) 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.

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.<sup>41</sup>

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 DOC, 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 has stalled in recent years, a risk assessment tool has now been acquired,<sup>42</sup> and IDOC has begun the implementation process.

<sup>41</sup> 730 ILCS §190/15(a).

<sup>42</sup> 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\(fdkzjd45wcmwllfulqtwev45\)\)/product.aspx?gr=saf&prod=lsi-r&id=overview](https://ecom.mhs.com/(S(fdkzjd45wcmwllfulqtwev45))/product.aspx?gr=saf&prod=lsi-r&id=overview)) to determine the appropriate levels of supervision and appropriate service referrals for probationers.

The Commission recommends that §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 the terms and conditions of 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 will 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 §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.
- 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 Department to reduce redundant efforts.

## **2. 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,<sup>43</sup> but

---

<sup>43</sup> 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

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.<sup>44</sup>

### ***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.
- 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.

---

provide information to local jurisdictions about how funding can better address their particular criminal justice issues.

<sup>44</sup> 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 December 26, 2015, <http://static.nicic.gov/Library/017232.pdf>.

- An independent third-party entity should evaluate and report to ICJIA and the legislature on the use and effectiveness of local coordinating councils.

**3. 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.

To the extent feasible, 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 and incomplete information is 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 units of government, 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.
- 4. 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 #1, 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, to the extent 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

### 5. 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.<sup>45</sup> 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.

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 the need to orient 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 #11) 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.<sup>46</sup> 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.

<sup>45</sup> In State fiscal year 2015 there were 11,011 new court commitments to IDOC who exited within one year of their admission.

<sup>46</sup> 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.

### *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 alternatives proposed.
  - 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 additional expense.
- 6. 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 provide for a mandatory prison sentence, and thus, 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 be sentenced to probation, regardless of the person’s criminal 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.<sup>47</sup>

The Commission recommends that the option of probation should be restored 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

---

<sup>47</sup> 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 decision when setting bail, 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.



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,<sup>48</sup> the Commission believes that where 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.<sup>49</sup> In FY2015 there were 704 prison inmates convicted of residential burglary, with each inmate having 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 greater felony, the offender may not be sentenced to probation for the second offense.<sup>50</sup> 730 ILCS §5/5-5-3(c)(2)(F).
- c) Drug law violations. There are a variety of drug law offenses that are currently non-probationable. Probation is not authorized for any Class X felonies, and the Commission is not recommending otherwise. Drug crimes that are not Class X felonies, however, should be eligible for probation. In FY 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-(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

<sup>48</sup> 730 ILCS §5/5-6-1(a).

<sup>49</sup> Residential burglary is a distinct crime from home invasion, 720 ILCS §5/19-6, which remains a non-probationable offense.

<sup>50</sup> 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.

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) shall 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 Administrative Office of the Illinois Courts, the Illinois State Police, and other relevant stakeholders shall develop a method to collect the data necessary to support this analysis.

**7. 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 certain 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 FY2015, 58 percent of new court admissions to prison for Class 3 and Class 4 felonies had no prior convictions for violent crimes.<sup>51</sup>

<sup>51</sup> 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.

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.<sup>52</sup> 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 at sentencing give proper consideration to the possibility of probation, and to do so in a transparent and consistent manner.

### *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.

## **C. Recommendations to Reduce the Length of Prison Stays**

- 8. 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.)**

<sup>52</sup> 730 ILCS §5/5-6-1(a) provides in part:

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.

### *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 programming 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 Department of Corrections.<sup>53</sup>

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.<sup>54</sup> 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 -- it is precisely the high-risk, high-need inmates who are most in need of programming. 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.

Effectively barring groups of offenders from these programs is a wasted opportunity, and undermines public safety by failing to address the very factors that will make it more likely that the inmate will reoffend when he is eventually released. Programming should be available to those who need it and those who can benefit from it, without unnecessary restrictions.

Virtually all prison inmates in Illinois will at some point be released and return to society. The Commission has concluded that giving inmates an incentive while in prison to acquire the

---

<sup>53</sup> 730 ILCS §5/3-6-3(a)(4).

<sup>54</sup> Inmates who are barred from receiving programming credit because of the type of crime they committed are typically those whose sentence is subject to the Truth-in-Sentencing laws. See 730 ILCS §5/3-6-3(a)(4). As noted, this recommendation would not apply to that group of offenders.

skills they need after prison strikes an appropriate balance between earlier release and effectively managing the risk of recidivism for those offenders.

Note that the recommendation for expanded eligibility for programming credit does not include cases where the credit would reduce the inmate's sentence below what is required by the Truth-in-Sentencing laws. The topic of Truth in Sentencing generally, and the intersection of sentencing credit and Truth-in-Sentencing requirements in particular, will be addressed by the Commission in a later part of this Report.

### *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), other than those offenders who are precluded from receiving these credits because they committed an offense specified in that subsection.

## **9. Make better use of Adult Transition Centers. Ensure that 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 were 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 higher 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 resources 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.<sup>55</sup> 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.

### *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.

## **10. 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,<sup>56</sup> and with increasing age comes an increasing number and complexity of medical problems.

<sup>55</sup> In FY 2005 the average daily population of ATCs was 1,323. In FY 2014 the average daily population was 899, a 32 percent decline. These numbers are from the 2005 and 2014 IDOC Annual Reports, which are available at <http://www.illinois.gov/idoc/reportsandstatistics/Pages/AnnualReports.aspx>.

<sup>56</sup> In 2005 there were 278 prison inmates age 65 or older and 100 inmates age 70 or older. A decade later, in 2014, there were 703 inmates age 65 or older and 275 inmates age 70 or older, an increase of 153 percent and 175 percent,

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 a high number of 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 was 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.

### *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.

---

respectively. The figures are taken from the IDOC 2005 and 2014 Annual Reports, available at <http://www.illinois.gov/idoc/reportsandstatistics/Pages/AnnualReports.aspx>.

- 11. 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<sup>57</sup> 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 be a means of reducing 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 July 2015, however, there were only 35 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<sup>58</sup> provides that, except for certain excluded offenses,<sup>59</sup> 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 #1) 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.<sup>60</sup>

<sup>57</sup> 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 nonpresence 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 *id.*, §5/5-8A-2(C).

<sup>58</sup> 730 ILCS § 5/5-8A-1, et seq.

<sup>59</sup> 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).

<sup>60</sup> 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 the Swift, Certain, and Fair Resource Center for the U.S. Department of Justice, on a particularly promising model



The use 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.<sup>61</sup> 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 also concluded that electronic monitoring has great potential for assisting local governments in working 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 #2.)

### ***Implementation***

- The IDOC should develop a plan to expand the use of electronic detention in compliance with the Electronic Home Detention Law.<sup>62</sup> That plan should include a timeline for

---

of electronic detention called graduated reintegration. According 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 December 18, 2015, <http://www.vox.com/2015/3/18/8226957/prison-reform-graduated-reentry>.

<sup>61</sup> Approximately 500 additional parolees and those on supervised release were being monitored with GPS technology.

<sup>62</sup> 730 ILCS §5/5-8A-1, et seq.

implementation, documentation of the resources needed to carry out that plan, how the Department will assess and report on 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.

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

##### **12. 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 those programs identified as promising 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 #4, 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 outcomes that are often worse than no programming at all. The Commission therefore recommends that IDOC use a risk and needs assessment tool (Recommendation #1) 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.<sup>63</sup> 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 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 that will be addressed in Part II of the Commission's report.

### ***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 (see Recommendation #1). Until full implementation of a comprehensive risk and needs assessment takes place, the Department should identify existing programming needs via tools currently in use.<sup>64</sup>
- 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.<sup>65</sup>

---

<sup>63</sup> PL 110–199, 122 Stat 657 (April 9, 2008).

<sup>64</sup> 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.

<sup>65</sup> 730 ILCS 5/3-6-3(a)(4) provides in part:

**13. 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,<sup>66</sup> 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 preclude 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.

---

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.

<sup>66</sup> See the Illinois Department of Financial and Professional Regulation website, accessed December 26, 2015, <http://www.idfpr.com>.

**14. Require IDOC 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. IDOC must report 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.<sup>67</sup> The standard fee for a State Identification Card is \$20.<sup>68</sup>

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 rather than one. 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.<sup>69</sup>

---

<sup>67</sup> 15 ILCS §335/4.

<sup>68</sup> 15 ILCS §335/12.

<sup>69</sup> 15 ILCS §335/12.

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 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 ensure that the inmates who want and are entitled to an identification card obtain 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.

## IV. What's Next: Part II of the Report

The Commission has a great deal of work left to do. In coming months, the Commission plans to continue its study of, and potentially offer recommendations on, the following topics:

- Truth in sentencing laws
- The racial impact of sentencing
- Sentences for drug law violations
- Sentencing ranges
- Sentence enhancements
- Problem solving courts
- Community corrections, including probation and mandatory supervised release.

The results of the Commission's deliberations will be the subject of the second part of this Report.

---

**RESPECTFULLY SUBMITTED**

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

# APPENDICES

APPENDIX A: EXECUTIVE ORDER 15-14

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



# 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: Jason Barclay** - General Counsel, Office of the Governor
- John R. Baldwin – Director, Illinois Department of Corrections
- Kathryn Bocanegra - Director of Violence Prevention, Enlace 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 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, National Association 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 Circuit
- 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
- Gladys C. Taylor – Senior Advisor, Illinois Department of Corrections

### Staff

- Samantha A. Gaddy - Policy Advisor for Public Safety
- Chasity Boyce - Associate General Counsel



**The Illinois Commission on Criminal Justice & Sentencing Reform**  
**[www.icjia.state.il.us/cjreform2015](http://www.icjia.state.il.us/cjreform2015)**

---