

Many worthy ideas have been presented by and to Commissioners and we urge their careful consideration. We write separately to urge the Commission to recommend reforms directed at the youngest participants in our state's criminal justice system and those who receive the most punitive sentences and collateral consequences. We expect that reforms focusing on these populations will:

- reduce prison population and recidivism exponentially by impacting system entry and exit;<sup>1</sup>
- increase public safety by incentivizing rehabilitation and restoring more citizens to useful citizenship; and
- reduce racial disproportionality in the criminal justice system.<sup>2</sup>

We therefore urge the Commission to adopt these recommendations:

- **Make every day count: Create accountability for prisoner behavior and rehabilitation by returning authority to the Illinois Department of Corrections to withhold and to award sentence credit for each day served.**
- **Establish post-sentencing periodic review by a court or parole board for individuals who are seriously ill or infirm serving lengthy terms of incarceration.**
- **Restore judicial discretion for offenses involving a firearm.**
- **Remove counterproductive constraints placed inappropriately on individuals convicted of certain non-violent sex offenses, including residency restrictions and registration requirements which will lead to unnecessary incarceration.**
- **Raise the age of criminal responsibility to 21 and create a process for young adults under 25 to prevent permanent felony convictions which prohibit them from becoming productive citizens of the community.**

We believe that sustained, disciplined focus on long or extreme sentences and the future of our young people is not only practical, but necessary to achieve the Commission's goal. Unfortunately, the size and scope of Illinois' problem with swelling prison population due to increased sentence length may not yet be fully realized. The most recently-available IDOC population projection estimates that a substantial decrease in admissions (-4.7%) would yield a population *increase* of 288 inmates over the course of one year.<sup>3</sup> IDOC population projections of more than one year in the future are not publicly available, but there is reason to believe that the effects of substantial increases in time served (commencing with people entering prison circa 1999) are only now just beginning to be felt. If the projected trend were to continue at the same rate, IDOC population could increase 6-10% over ten years – even with continued decreasing or stable admissions.<sup>4</sup> **In that case, reforms aimed at reducing today's prison population by 30-35% would be required in order to meet the goal of a 25% reduction by 2025.**

**I. Make Every Day Count: Restore discretion to IDOC to withhold and award sentence credit for each day served.**

As this Committee's Initial Report recognizes, one of the drivers for increased length of incarceration includes passage of Truth-in-Sentencing (TIS) laws in this state.<sup>5</sup> We begin by noting the misnomer in TIS' title. Illinois is a determinate sentencing state and there has been "truth" and clarity in the length of a defendant's sentence since 1978 – our judges are required to impose a specific sentence, within a sentencing range, dependent on the class of offense committed.<sup>6</sup> Under this determinate sentencing scheme, aside from those sentenced to death or natural life, under the discretion of the Department of Corrections, individuals could earn one day credit against their sentence for every day of their "good conduct" while in custody.<sup>7</sup> Sentencing judges do not ignore the realities of the sentencing laws, and it is well within their purview to consider the practical fact of good-time credit in fashioning a sentence which reflects the seriousness of a defendant's offense and their potential for rehabilitation.<sup>8</sup> The day-for-day good-time credit provisions were enacted to provide felony inmates with incentive to conform their behavior to prison rules once an individual entered into the care and custody of IDOC, and allowance of good-time credit rested with the Director of the Department of Corrections, not the courts.<sup>9</sup>

TIS served to dramatically increase the length of sentence-served (with direct correlation to bed-years<sup>10</sup>) for those affected by the enumerated offenses included in this measure.<sup>11</sup> Approximately 50 offenses running the gamut from money laundering to first degree murder, indiscriminate of the individual offender, are now circumscribed in the amount of sentence credit available.<sup>12</sup> Illinois received \$124 million of federal funding based on its implementation of TIS to expand its prison capacity based on this increased use of incarceration.<sup>13</sup> According to a 2012 Bureau of Justice Assistance report to Congress, Illinois' TIS grant led to the creation of approximately 4,000 beds.<sup>14</sup> Illinois' TIS took effect on June 19, 1998.<sup>15</sup> Over that time, IDOC's population rose from 42,000 to 48,000.<sup>16</sup> The bed-years' of those serving increased over that same period from 150,708 to 228,912.<sup>17</sup> As outlined in Section 1, *supra*, the real impact of this legislation is still being learned, and greater transparency in data will provide more clarity of the true impact of this measure.

In evaluating reform to our TIS statute, the Law Subcommittee repeatedly focuses on the use of risk assessment tools – particularized to the individual – to evaluate rehabilitation and appropriate levels of intervention.<sup>18</sup> Where evidence-based findings are offered to sustain such tools, we do not take issue, but this reform should not be one borne solely on the back of theory – we should be expanding the Department of Corrections' ability to manage the sentence credit of those currently within its care and custody. We should be creating incentives to reform, rehabilitation, and release for those incarcerated.<sup>19</sup> This is the short-sighted failure of the TIS movement. It acts to increase length of sentence, while dis-incentivizing good behavior, employee safety, and rehabilitation efforts.

Illinois should make every day count for those sent to our prisons. We call for a return to all offenders based on any offense – beyond those serving natural life – being entitled to earn one day sentence credit for each day served under the discretion of the Director of the Department of

Corrections.<sup>20</sup> All prisoners should experience the consequences of the daily choices they make about rehabilitative progress by returning authority to those directly responsible for them to withhold and award sentence credit for each day served. Additionally, any change, even incremental change like HB 4123, should be applied to the existing population, and not just for new admittees, in order for the population reduction effect to meet the 10-year goal of Governor and this Commission.<sup>21</sup>

Beyond TIS reform, this Committee has recognized the shortfall of some programming options within the Department, and its failure to prioritize “high risk/high need” individuals.<sup>22</sup> Education/vocational programs should be increased and this Committee should recommend broadening the Department’s ability to reward meaningful participation in programming that have demonstrated reduction in recidivism rates.<sup>23</sup> We believe there should be no bar to eligibility for such programing, given that the nature of the offense is not necessarily predicative of future behavior and we should not be creating any barriers to those who would benefit most from participation. Additionally, this Committee noted that out of over 23,000 sentenced inmates released during SFY 2014, only 308 had received additional program-based sentence credit for pre-trial detention programs.<sup>24</sup> This Committee should call for a greater expansion of educational programing with availability for sentencing credits in the county correctional system.

Given that (1) length of incarceration alone does not have a clear correlative to a reduction in criminal behavior, (2) the overwhelming majority of those admitted into the custody of county facilities pre-trial and correctional facilities upon conviction will ultimately be released from that custody, and (3) our constitutional mandate that “all penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship,”<sup>25</sup> Illinois must address the seriousness of the offense that brings individual’s within the reach of our correctional system but must do so with a concomitant focus on rehabilitation and re-entry – a focus that should begin upon admission and continue past their release date. Repeal of TIS and making every day count would be a necessary step to ultimately achieve the 25% reduction the Governor seeks, but more significantly, it would serve to restore discretion to the Department of Corrections to incentivize good behavior and rehabilitation efforts that serve to reduce recidivism, protect the safety of those working in our facilities, and improve the lives of those working towards a return to our community.

## **II. Establish post-sentencing review by a court or parole board for individuals serving lengthy terms of incarceration.**

This Commission should recommend legislation aimed at establishing post-sentencing review by a court or parole board for individuals serving extreme terms of incarceration. Illinois requires a new approach to prison release in cases of extraordinarily long sentences for two reasons: (1) our prison rate remains unsustainably high despite nearly two decades of falling crime rates, due in part to the exceptional use of long confinement terms that make no allowance for changes in the crime policy environment; and (2) “governments should be especially cautious in the use of their powers when imposing penalties that deprive offenders of their liberty for a substantial portion of their adult lives... A second-look mechanism is meant to ensure that these

sanctions remain intelligible and justifiable at a point in time far distant from their original imposition.”<sup>26</sup>

It is clear that even if admissions are gradually decreasing in Illinois, individuals are serving longer sentences, and experience shows a diminishing return in long-term incapacitation.<sup>27</sup> Research has consistently found that age is one of the most significant predictors of criminality, with criminogenic activity peaking in late adolescence/early adulthood and steadily decreasing as a person ages.<sup>28</sup> Additionally, “studies on parolee recidivism find the probability of parole violations also decreases with age, with older parolees the least likely group to be re-incarcerated.”<sup>29</sup> A 2004 analysis of people sentenced under the federal sentencing guidelines found that within two years of release the recidivism rate among offenders older than 50 was only 9.5 percent compared with a rate of 35.5 percent among offenders younger than 21.<sup>30</sup>

Against that backdrop is the reality that the number of elderly prisoners are growing. Between 1990 and 2013, IDOC saw a 595% increase in inmates over the age of 50.<sup>31</sup> That same period witnessed a 3,053% increase in the number of inmates who had served 25 years or more.<sup>32</sup> Given current sentencing enhancements and TIS, there is no reason to believe those increases will be leveling off in the near future.<sup>33</sup> In addition to this exploding population demographic is the rising cost of health care for a cohort that poses lower, by comparison, recidivism risk.<sup>34</sup>

Change is required. Any effort to target a 25% reduction in prison population also aimed at maintaining public safety must include pathways to reductions of lengthy prison sentences for elderly inmates where the penological justifications are no longer sound.<sup>35</sup> Two mechanisms by which this could be achieved would be judicial sentencing review or hearings by the parole board. Referenced above, the American Law Institute is considering an addition to the Model Penal Code calling for judicial review for prisoners who have served 15 years of any sentence, with periodic right to petition for subsequent modifications at intervals of 10 years.<sup>36</sup> Some commentators have noted that, “For states wishing to promote early release in a manner that is both transparent and publicly accountable, judicial sentencing modification is a promising, and potentially sustainable, new mechanism for sentence reduction.”<sup>37</sup> The second proposal would permit individuals who have reached a certain age to appear before the Prisoner Review Board, and using validated risk assessment tools, permit parole release.<sup>38</sup> Either method would create a means to release individuals who no longer pose a serious danger to society, and ensure that those who still pose a risk, remain in IDOC custody.

### **III. Restore judicial discretion for offenses involving a firearm.**

We call on the Commission to return full judicial consideration of gun possession along with other risk, aggravating, and mitigating factors during robust sentencing hearings, to ensure that punishments can be adequately tailored to behavior and circumstances.

**Make Firearm Enhancements Discretionary.** Illinois mandates substantially longer, non-discretionary firearm enhancements than nearly every state in America. Beginning in 2000, Illinois adopted a mandatory firearm enhancement scheme, a cornerstone proposal of Governor

Ryan's first year in office.<sup>39</sup> Illinois is one of only three states to enact legislation of this kind and extent.<sup>40</sup> Our mandatory enhancement adds 15 years for the possession of a firearm during the commission of one of the ten enumerated offenses,<sup>41</sup> or 20 years if the individual personally discharges a firearm, or 25 years to life if personal discharge of a firearm is the proximately cause of great bodily harm or death.<sup>42</sup>

The mandatory enhancement laws in most states differ from Illinois in four significant ways:

- A vast majority of states impose much lower mandatory enhancements than Illinois. For instance, Michigan law adds two years to a sentence when a firearm is possessed, and New Mexico mandates only a one year enhancement opposed to the mandatory fifteen years Illinois adds for the same act.<sup>43</sup>
- Second, along with lower mandatory enhancement ranges, many states allow for judicial discretion in the process. The courts in Montana may use their discretion to add between 2-10 years to a sentence, and courts in North Carolina may add between 1 year and 6 years.<sup>44</sup>
- Third, some states increase a crime's offense level when a firearm is involved, rather than impose mandatory enhancements. Kentucky uses this approach and increases the offense level of the crime when a firearm is used, but does not automatically tack on additional years to the perpetrator's sentence.<sup>45</sup>
- Fourth, several states completely remove the mandatory element from the enhancement. For instance, in Tennessee, a judge may merely consider the use of a weapon as a factor while determining sentencing but the use of a gun does not carry an automatic sentence.<sup>46</sup>

The General Assembly and the Governor took an important step in rolling back these mandatory enhancements in the most recent legislative session, enacting Public Act 99-0258.<sup>47</sup> This measure permits a judge to exercise discretion and decline to impose these sentencing enhancements.<sup>48</sup> But this only applies to individuals under the age of 18 at the time of the offense.<sup>49</sup> Enhanced sentencing discretion should be expanded to encapsulate all defendants based on an individualized determination of the sentencing judge. Alternatively, this Commission should look to the better reasoned examples of other jurisdictions outlined above that aim for a more proportional response.<sup>50</sup>

**Remove possession from the "armed violence" statute.** While elevated charging and sentencing options should be available when someone brandishes or fires a weapon in order to further another crime, Illinois law currently treats mere possession of a weapon as violent use.<sup>51</sup> Under the "armed violence" statute, mere possession of a handgun while committing a felony elevates even nonviolent crimes to a Class X felony carrying a mandatory minimum term of 15 years.<sup>52</sup> This is true even when the weapon possession is lawful or entirely unrelated to the base felony, such as an off-duty security guard charged with unauthorized use of a debit card. Gun possession should not be punished as though it is the same as gun violence. A system devoted to proportionate penalties and effective sentencing simply cannot afford a criminal code that

explicitly calls nonviolent offenders “violent” and blindly consigns all of them to mandatory minimum sentences, much less for terms lengthier than those for more egregious behavior.

**IV. Remove counterproductive constraints placed on individuals convicted of sex offenses, including registration and residency restrictions and indefinite detention.**

Registry, notification, residency, and civil commitment laws were not developed based on research on sex offending;<sup>53</sup> have been exponentially expanded on an annual basis for decades without regard to whether or not they are working;<sup>54</sup> may cause more harm than good, especially when uniformly applied; and waste funds<sup>55</sup> that could be directed into meaningful sex offense prevention, supports for survivors of sexual crimes,<sup>56</sup> and effective offender supervision. Sex offender registries can even compromise victim confidentiality and interfere with post-trauma treatment for survivors of sexual offenses, especially for those who were abused by a family member,<sup>57</sup> increasing already-high barriers to reporting and prosecuting sexual assault.

It does no justice to victims of crime to let misinformed public sentiment continue to stand in the way of developing more effective criminal justice responses to sexually offending behaviors.

**End mandatory uniform sex offender registry requirements.** Illinois’ sex offender registry is over 23,000 people long and growing.<sup>58</sup> Media reports note that our state “has an increasingly complex matrix of laws restricting sex offenders” and that “[s]ome of those laws may actually make it harder for police to keep track of people convicted of sex crimes.”<sup>59</sup> Being on the registry is not like a specialized probation or parole; it does not provide meaningful community supervision, much less deliver therapy from a licensed sex offender treatment provider. Instead, successfully maintaining registry status is a matter of maintaining a complex set of compliance-related paperwork and paying related fees.

Yet, regardless of the individual risk each poses to society, all people convicted of a designated sex offense in Illinois are required to register for a uniform, mandatory period – either for 10 years or for natural life.<sup>60</sup> They must continue to re-register one or more times per year even after they have successfully completed all of their required criminal sentences, supervision, and treatment. Although registration is notoriously complicated to navigate, failing to abide by any one provision is a Class 3 felony punishable by 2-5 years imprisonment, a 10 year extension of registration, and a mandatory minimum fine of \$500.<sup>61</sup> A second failure is a Class 2 felony punishable by 3-7 years imprisonment, as well as another 10-year extension and \$500 fine.<sup>62</sup>

In short, Illinois’ system of sex offender registration is large, complex, and costly. Yet sex offender management professionals are unclear as to whether there is any benefit: the majority of studies do not show that registries produce any reduction in recidivism<sup>63</sup> and there is insufficient research to know whether or not registry laws may in fact be facilitating even more sex offenses or other public safety risks (especially when registry violations are crimes punishable by incarceration and disruption of community ties, rather than carrying the availability of technical violations with scalable sanctions). The federally-convened Sex

Offender Management Assessment and Planning Initiative (SOMAPI) thus recommended that all future sex offender registration laws be evaluated for effectiveness prior to adoption.<sup>64</sup> Illinois lawmakers should likewise declare a moratorium on approving any new sex offender restrictions without clear empirical evidence of their effectiveness. After thirty years of our state's exponentially-expanding registry, however, a moratorium alone is not enough.

Illinois must realistically assess all of its current sex offender registry and management practices and, in an abundance of caution, cease imposing any registry requirements upon tens of thousands of our residents that do not have an empirically-demonstrable benefit. Likewise, Illinois law and professional training should be carefully structured to incentivize courts, probation, prisons, and law enforcement to stop applying risky, ineffective, and unproven methods of supervision, registration, and notification. Instead, policymakers should ensure that our state focuses on understanding and preventing sexual assault and other harmful sex crimes, supporting survivors of sexual violation, and holding offenders accountable by appropriately supervising them with individualized, effective conditions according to their risk.

**Public notification and residency restrictions should be the first to fall.** While persons on a public registry tend to be arrested more quickly following a report of a sex or non-sex offense,<sup>65</sup> studies have shown no recidivism benefit to public notification laws.<sup>66</sup> Public registry lookup and notification requirements may provide communities with a false sense of security (more than 95% of reported sexual victimization is performed by persons who have never been convicted of a sex offense),<sup>67</sup> endanger victim confidentiality, and disrupt safety-promoting activities (e.g. stable jobs and housing) for thousands of Illinoisans who present no elevated risk to the public.<sup>68</sup> At the same time that public notification does not provide neighbors with any specific protection from a fellow resident on the registry, it can negatively impact the value of their home and prosperity of their community, destabilizing overall community safety and carrying significant “social costs per-year that range from \$10 billion to \$40 billion and present-value costs that range from -\$100 billion to -\$600 billion.”<sup>69</sup>

Geographic residency restrictions are even worse. Illinois bans parolees and persons designated as child sex offenders from living within 500 feet of any schools, parks, daycares, or any other child-serving agencies.<sup>70</sup> The limit forecloses most housing stock in the City of Chicago and many other urban and suburban areas. In Illinois, this means that around 1,000 people who are finished serving their sentence for a sex offense are trapped in IDOC facilities because they cannot be paroled to an eligible address – until they are eventually required to be released anyway, when they serve no parole supervision.<sup>71</sup> Sex offender management professionals point out that geographic restrictions don't prevent child victimization and simply result in “displacement and clustering of sex offenders into other areas, particularly rural areas.”<sup>72</sup> Unsurprisingly, the federally-convened body concluded that “the evidence is fairly clear that residence restrictions are not effective. In fact, the research suggests that residence restrictions may actually increase offender risk by undermining offender stability and the ability of the offender to obtain housing, work, and family support. There is nothing to suggest this policy should be used at this time.”<sup>73</sup>

We call upon the Commission to recommend immediate action to undo actively harmful practices (public notification and residency restrictions) and to recommend that our state develop a specific plan to divest from requirements that are unsupported by specific evidence of effectiveness (e.g. registry), instead investing in adequate and appropriate supervision.

**Eliminate non-therapeutic civil commitments.** Individuals who commit sex offenses should be held responsible for their willful acts. Illinois, through its legislature and its prosecutors, brings to bear its criminal justice system to impose appropriate punishment on such individuals where criminal culpability attaches. What Illinois should not be permitted to do is to evade or subvert this system by setting up an alternative regime broadly authorizing the indefinite locking up of individuals based on risk of future offenses—outside the *parens patriae* tradition of medically justified civil commitment for those suffering severe mental illnesses, and in disregard of the tight limits on permitted preventive detention.

Illinois engages in this practice of civil commitment through the Sexually Dangerous Persons Act [725 ILCS 205/1.01, et seq.], where individuals are held at Big Muddy River Correctional Center and the Sexually Violent Persons Act [725 ILCS 207/1, et seq.] where individuals are committed to the Rushville Treatment and Detention Center, operated by Illinois Department of Human Services.<sup>74</sup> Illinois is one of 20 states, plus the District of Columbia, that allows for civil commitment despite a lack of “adequate empirical study to determine the effectiveness of [civil commitment] in terms of its impact on postrelease offending.”<sup>75</sup>

The indefinite detention of people who have no criminal sentence to serve, for no clear therapeutic purpose, reflects the “politics of fear and overreaction that drive so much of criminal justice policy.”<sup>76</sup> Freedom from government custody, detention, or other forms of physical restraint lies at the heart of the liberty that due process protects.<sup>77</sup> Compelled treatment for sexual behaviors should be risk-responsive, behavior-oriented, and wherever possible, performed in a community-based therapeutic settings and not in correctional or detention facilities. It is particularly troubling, given the dearth of evidence-based conclusions of civil commitment’s efficacy, Illinois continues to expand the bed capacity of its Treatment and Detention Facility.<sup>78</sup>

Abandonment of a good-of-the-patient requirement in favor of a simple protection-of-the-public standard transforms commitment into general and open-ended preventive detention in circumstances where prediction is uncertain.<sup>79</sup> Increasingly courts are finding this practice unconstitutional, and Illinois may soon face a similar challenge.<sup>80</sup> The ability of civil commitment to perform its function depends on doctors making judgments as doctors for the benefit of their patients, with corresponding flexibility in making medical judgments about conditions and length of confinement and treatment.<sup>81</sup> Turning doctors into jailers changes their role, undermining the therapeutic alliance with their patients that is basic to medicine generally and psychiatry in particular.<sup>82</sup> Given the growing body of research that shows the limited efficacy of civil commitment, this State should focus on policies and practices that are community-based, risk responsive, and result oriented.<sup>83</sup>

This Commission should follow the findings of empirical research and call for a sharp reduction in Illinois’ use of costly and largely ineffective process of civil commitment in favor of



alternative programs to offender management including intensive supervision and specialized treatment in the community.<sup>84</sup>

**V. Raise the age of criminal responsibility to 21 and create a pathway for young adults under 25 to prevent permanent felony convictions.**

Modern research is clear that the brains of adolescents and adults operate very differently from each other and that adolescence lasts longer than previously believed. Portions of the brain governing self-control and rational decision making are not fully-developed until well after the age of 18, with psychological maturity occurring near the age of 25.<sup>85</sup> Young adults' reduced ability to make rational decisions in the heat of the moment, particularly in the presence of peers, resembles the ability of younger teens as much or more than those of adults – a reality that affects not only the incidence of offending, but culpability and method of rehabilitation.<sup>86</sup> Because of the connection between developmentally-driven impulsivity and offending, young adults may not be able to be deterred by threats like adult criminal court or lifelong consequences such as felony convictions.<sup>87</sup>

Yet although many young adults engage in risky and impulsive behavior that includes illegal, dangerous, or harmful activities, most offenders aged 18-24 are on the cusp of permanently discontinuing this behavior. This is true regardless of the type of offense; research on behaviors including gang membership, gun carrying, and drug dealing shows that, like property and violent offenses in general, involvement in these activities peaks during late adolescence and early adulthood, but quickly subsides.<sup>88</sup>

Illinois therefore gives criminal records and lengthy sentences to a great many young offenders who were just about to permanently cease offending, erecting enduring obstacles to education, employment, and housing during the very time (transition to adulthood) when these are most determinative of life course trajectory and restoration to useful and successful citizenship. Our state's practice is expensive on the front end and self-defeating to our state's safety, economy, and human capital in the long run.<sup>89</sup>

At a minimum, young people aged 18-20 require individualized, age-appropriate intervention and adjudication modeled on the juvenile system, and young adults aged 21-24 should be eligible for suspended sanctions in criminal court, including deferred prosecution, that can allow them to more easily move past their mistakes while still being held accountable.

**Conclusion:**

The Justice Coalition for Safety and Fairness (see signatories) applauds the commitment of the Governor and this Commission to a more just and efficient criminal justice system. We recognize that true commitment to the public good requires both long-term planning and immediate action and we are thrilled by such a promising vision and vehicle for change.

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<sup>1</sup> A note on data: Enacting the five suggested reforms can reasonably be expected to remove thousands from IDOC custody. Unfortunately, we cannot estimate for the reader how many inmates fall into each broad category of reform, much less provide specific estimates as to the reduction of bed-years that would result from any one policy change. Throughout Illinois' criminal justice system, increased data collection and analysis, as well as timely public sharing, is desperately needed in order to generate more targeted recommendations and reforms and provide meaningful and effective service delivery. Illinois' data impediments currently thwart reform development, program evaluation, and public accountability, as this Committee has experienced firsthand.

Public funding of systems requires public access to information. The critical nature of safety and justice should not be used to restrict access to comprehensive, timely, public data about system functions in those instances where it does exist. The serious implications of the criminal justice system make transparency and accountability more important, not more dispensable. While Illinois' FOIA law is an important tool, it cannot and should not be relied upon as a primary means of public access. Local, county, and state entities in the executive and judicial branches alike can and should be expected not only to respond to public interest in their effective function, but foresee and affirmatively address it.

Additionally, effective management requires analytical capacity. In order for any public agency to successfully manage its operations and evaluate its programs, it must be able to perform real-time, in-house, organized data collection and analysis. Criminal justice entities in both the executive and judicial branches must also be able to request and share data between themselves and with external researchers in order to assess outcomes for the individuals and public they serve. Currently, information technology is only one of many barriers to well-functioning criminal justice system data in Illinois. Systems throughout the state must prioritize hiring and retention of highly-qualified planning and research personnel at appropriate staffing levels, as well as entering cooperative agreements with other agencies and researchers.

We urge the Commission to make a strong statement in favor of better information capabilities, including recommended financial incentives and penalties for all state-funded entities administering criminal justice, to support progress in both analytics and transparency.

<sup>2</sup> Reforms that prioritize the youngest and longest-sentenced offenders are promising tools to reduce racial disparities due to age of first entry into the justice system and the fact that African-American and Latino defendants receive particularly punitive sentences for person-based offenses. See, e.g., Michael J. Lieber, et al, "The Likelihood of a "Youth Discount" in Juvenile Court Sanctions: The Influence of Offender Race, Gender, and Age," *Race and Justice* (2015); Besiki Kutateladze, et al, "Cumulative Disadvantage: Examining Racial and Ethnic Disparity in Prosecution and Sentencing," *52 Criminology* 514 (2014).

<sup>3</sup> Recent population projections by the Department of Corrections (2011-2015) have been reliable through significant changes in admissions and management policies (standard deviation 1.04%). Analysis of IDOC Quarterly Reports (January 1, 2011-October 1, 2015) at <http://www.illinois.gov/idoc/reportsandstatistics/Pages/QuarterlyReports.aspx>.

<sup>4</sup> Population increase despite decreased admission occurs due to the effect of inmates serving longer sentences. See discussion, Sections IV and VI, *infra*.

<sup>5</sup> Noting one consistent conclusion in evaluating past 25 plus years, "those sentenced to prison for all offenses are spending more time incarcerated than they would have in the early 1990s." ISCCJSR, Initial Report at 3, *available at*: <http://www.icjia.state.il.us/cjreform2015/>.

<sup>6</sup> See Ill. Rev. Stat. 1979, ch. 38, §1005-5-1 (categorizing offense into classes of severity); Ill. Rev. Stat. 1979, ch. 38, §1005-8-1 (providing a sentencing range for each class of offense, and requiring judges to impose a specific sentence within that range); now 730 ILCS 5/5-4.5-10, et seq. Previously, defendants

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were sentenced to a range of years (*e.g.*, not less than 10, or more than 30), and parties went before the parole board to gain release after serving a percentage of their sentence.

<sup>7</sup> Ill. Rev. Stat. 1979, ch. 38, §1003-6-3.

<sup>8</sup> *People v. Harvey*, 151 Ill. App. 3d 881, 883 (4th Dist. 1987); *People v. Nussbaum*, 251 Ill. App. 3d 779, 785 (4th Dist. 1993 (considering “the realities of the sentencing law” appropriately falls within the trial court’s wide discretion in pronouncing sentence).

<sup>9</sup> *People v. Burton*, 100 Ill. App. 3d 1021, 1023 (4th Dist. 1981)

<sup>10</sup> Bed-years are the number of years a person sentenced to IDOC will actually spend in prison. See <http://www.icjia.state.il.us/cjreform2015/research/illinois-prison-overview.html>

<sup>11</sup> See 730 ILCS 5/3-6-3 (requiring enumerated offenses to serve 75%, 85% or 100% of imposed sentence).

<sup>12</sup> *Id.*

<sup>13</sup> Sabol, William, et al., “Influences of Truth-in-Sentencing Reforms on Changes in States’ Sentencing Practices and Prison Populations,” July 2002; “Violent Offender Incarceration and Truth-In-Sentencing Incentive Formula Grant Program,” February 2012, <https://www.bja.gov/Publications/VOITIS-Final-Report.pdf>.

<sup>14</sup> <https://www.bja.gov/Publications/VOITIS-Final-Report.pdf> (see pg. 14).

<sup>15</sup> Illinois’ legislature passed an earlier version of the TIS statute that went into effect in August of 1995, but in *People v. Reedy*, 186 Ill.2d 1 (1999), the Illinois Supreme Court struck it down because it violated the single-subject rule.

<sup>16</sup> <http://www.icjia.state.il.us/cjreform2015/research/illinois-prison-overview.html>

<sup>17</sup> *Id.* It’s also worth noting that Illinois’ received the TIS grants from FY 1996 through FY 2001. Over the course of that grant-period, our prison population grew from 38,353 to 45,582.

<sup>18</sup> ISCCJSR Initial Report, *supra* note 5, at 14.

<sup>19</sup> In a July 2014 briefing paper, the Sentencing Project evaluated, *inter alia*, the 26% reduction in prison population in New York from 1999 to 2012 and noted the implementation of a merit time program to earn reductions in prison sentences as well as retroactive repeals of some mandatory minimum sentences. Mauer, Mark, “Fewer Prisoners, Less Crime: A Tale of Three States,” The Sentencing Project, \*6 (July 2014).

<sup>20</sup> While recent proposed legislation would mark a positive step in a reduction of sentence length, it remains problematic as a continuation of the failed policy of TIS. Illinois should maximize efforts to create a safer environment within the prison walls, with a sustained focus on reentry and rewarding rehabilitation efforts.

<sup>21</sup> It is well within the Department’s ability to review eligibility for sentence credit for its current population. With enactment of P.A. 97-697, § 5, eff. June 22, 2012, the Department was able to create an administrative rule and begin awarding credit in less than a year. See Annual Report for Supplemental Sentence Credit. <https://www.illinois.gov/idoc/reportsandstatistics/Pages/AnnualReportsforSSC.aspx>

<sup>22</sup> ISCCJSR, Initial Report at 5.

<sup>23</sup> Davis, Lois M., et al., “Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults.” Santa Monica, CA: RAND Corporation, 2013. [http://www.rand.org/pubs/research\\_reports/RR266](http://www.rand.org/pubs/research_reports/RR266). The RAND study found providing correctional

education can be cost-effective when it comes to reducing recidivism – noting that inmates who participate in correctional education programs had a 43 percent lower odds of recidivating than those who did not. This translates to a reduction in the risk of recidivating of 13 percentage points.

<sup>24</sup> ISCCJSR Initial Report, *supra* note 5, at 19. The Report noted preliminary research by Drs. David Olson and Donald Stemen (Loyola University Chicago) suggesting that those released from IDOC who spend a considerable proportion of their total incarceration time in jail under pre-trial detention have higher recidivism rates than those inmates who spend less of their time incarcerated in pretrial detention, after statistically controlling for other factors that influence recidivism. ISCCJSR, Initial Report at 20.

<sup>25</sup> Ill. Cons. 1970, Art. I, §11.

<sup>26</sup> As described in support of a judicial resentencing proposal to the Model Penal Code. Model Penal Code: Sentencing § 305.6 (T.D. No. 2, 2011), 2009 WL 1844879.

<sup>27</sup> See <http://www.icjia.state.il.us/cjreform2015/research/illinois-prison-overview.html> (ICJIA has noted that while the number of inmates has risen 8% since 2000, the length of time served by inmates exiting IDOC has “continued to increase the total bed-years used by the prison system by 28 percent over the same time period”). Additionally, the Reporter’s Note to the tentative draft of the Model Penal Code suggests: for human accounts of the effects of long-term imprisonment, and changes in inmates over long periods of time, see Ron Wikberg, *The Long-Termers*, in Wilbert Rideau and Ron Wikberg, *Life Sentences: Rage and Survival Behind Bars* (1992), see also Robert Johnson, *Hard Time: Understanding and Reforming the Prison* (2d ed. 1996), ch. 4. On the change in criminal propensity over the life course, see Alfred Blumstein and Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, 47 *Criminology* 327 (2009). On the reemergence of rehabilitative theory under an evidence-based model, and the prospects for deincarceration that would follow, see Lawrence W. Sherman, *Reducing Incarceration Rates: The Promise of Experimental Criminology*, 46 *Crime & Delinq.* 299 (2000). See 2009 WL 1844879, 17.

<sup>28</sup> “It’s About Time: Aging Prisoners, Increasing Costs, and Geriatric Release,” Vera Institute (2010), citing “*Shared Beginnings, Divergent Lives*” (Cambridge, MA: Harvard University Press, 2003), by John H. Laub and Robert J. Sampson; see also *Age and the Distribution of crime*,” *American Journal of Sociology*, 94(4) 803-831 (1989).

<sup>29</sup> Vera Institute report, citing *Growing Older: Challenges of Prison and Reentry for the Aging Population*,” in *Public Health Behind Bars: From Prisons to Communities*,” (New York, NY Springer, 2007).

<sup>30</sup> Vera study, \*5; see also Holman, Barry, “Nursing homes behind bars: The elderly in prison,” 1998 (study found that only 3.2 percent of offenders 55 and older returned to prison within a year of release, compared with 45 percent of offenders 18 to 29 years old).

<sup>31</sup> <http://www.icjia.state.il.us/cjreform2015/pdf/Exhibit%202.pdf>

<sup>32</sup> *Id.* That same data over that time range shows a 3004% increase in individuals over the age of 50, who have served 25+ years.

<sup>33</sup> See, generally, “*At America’s Expense: The Mass Incarceration of the Elderly*,” ACLU, June 2012 (noting, *inter alia*, by the year 2030, experts project that state and federal prisons will house more than 400,000 prisoners age 55 or older: more than one third of the projected total penal population, and up from the 8,853 prisoners of that age in 1981).

<sup>34</sup> According to the ACLU report (at p. 28), using a middle estimate, State and federal prisons spend an estimated \$16 billion taxpayer dollars a year continuing to incarcerate convicts age 50 and older, even though they are “a relatively low-risk population.” See also Anno, B., et al., “*Correctional Health Care:*

Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates,” U.S. Department of Justice, National Institute of Corrections (2004), \*11. Overall, the growing number of elderly inmates with chronic and terminal illnesses affects corrections in this way, among others: “The annual cost of incarcerating this population has risen dramatically to an average of \$60,000 to \$70,000 for each elderly inmate compared with about \$27,000 for others in the general population.”

<sup>35</sup> Judge Posner has recognized the “little additional deterrence” gained by increased length of sentence and noted, “Elderly people tend to be cautious, often indeed timid, and averse to physical danger. Violent crime is far less common among persons over 40, let alone over 60, than among younger persons. [ ] That is another reason to doubt that very long sentences reduce violent crime significantly.” *U.S. v. Presley*, 790 F.3d 699, 701 (7<sup>th</sup> Cir. 2015).

<sup>36</sup> Model Penal Code: Sentencing § 305.6 (T.D. No. 2, 2011) “Modification of Long-Term Prison Sentences.” The proposal’s comments note, “No determinate sentencing system can be absolute, and no purely determinate system has ever existed in American law. All jurisdictions that have abrogated the releasing authority of a parole agency have retained mechanisms such as good-time and earned-time credits, compassionate-release provisions, ad hoc emergency contingencies for prison overcrowding, and the clemency power of the executive. The question is not whether original judicial sentences should ever be subject to change in a determinate structure, but what exceptions should be grafted onto the generally determinate scheme.”

<sup>37</sup> Klingele, Cecelia, “Changing the Sentence without Hiding the Truth: Judicial Sentence Modification as a Promising Method of Early Release,” 52 *Wm. & Mary L. Rev.* 465 (2010).

<sup>38</sup> *See, e.g.*, HB 1310. On July 27, 2015, this Commission heard testimony from Jean Maclean Snyder on behalf of Project I-11, which called for legislation that creates a possibility of earned parole release for long-term offenders based on good behavior. We support the efforts of Project I-11 and join their call for action on behalf of our aging prison population.

<sup>39</sup> P.A. 91-404, §5 (eff. Jan. 1, 2000); *See* Illinois Senate Transcript, 1999 Reg. Sess. No. 47, Senator Dillard, “the message that we want to send from Governor Ryan and the Illinois State Senate is clear: Committing a crime with a gun is going to mean a long, long prison term or the death penalty.”

<sup>40</sup> *See* Illinois Senate Transcript, 1999 Reg. Sess. No. 27, Senator Dillard, “Governor George Ryan campaigned for Governor on a proposal to enact a “15-20 & Life” firearm penalty enhancement law, modeled after a California law.” *See also*, Ann.Cal.Penal Code § 12022.53. Florida is the other state – a pinnacle of Gov. Jeb Bush’s 1998 election campaign. Analysis of Florida’s 10/20/25-life bill showed no correlation to a drop in crime rate to the passage of the bill. Piquero, Alex, “Reliable Information and Rational Policy Decisions: Does Gun Research Fit the Bill,” *Criminology and Public Policy*, 4:4 (2005).

<sup>41</sup> Note that a defendant may receive a 15-year enhancement even in an accountability case where the defendant is not armed and only the co-offender was armed. *People v. Rodriguez*, 229 Ill.2d 285 (2008).

<sup>42</sup> The offenses are armed robbery, intentional homicide of an unborn child, attempt murder, murder, aggravated kidnaping, aggravated vehicular hijacking, home invasion, aggravated criminal sexual assault, aggravated battery of a child, and predatory criminal sexual assault.

<sup>43</sup> *See* Mich. Comp. Laws Ann. § 750.227b; N.M. Stat. Ann. § 31-18-16. It is worth noting that even among the three states that have enacted this form of firearm enhancement, Illinois is an outlier in its adding 15 years for the possession of a firearm, as opposed to 10 years. Compare 730 ILCS 5/5-8-1 with Ann.Cal.Penal Code § 12022.53(b), and West’s F.S.A. § 775.087.

<sup>44</sup> *See* MCA 46-18-221; N.C.G.S.A. § 15A-1340.16A

<sup>45</sup> *See* KRS § 218A.992

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<sup>46</sup> See T. C. A. § 40-35-114

<sup>47</sup> Illinois' Solicitor General has indicated that this law "will have a profound effect on the mandatory minimum sentences applicable to juvenile offenders charged with using a firearm." *People v. Patterson*, No. 14-9438, \*14-15, Brief in Opposition to Petition for Writ of Certiorari, filed in the U.S. Supreme Court.

<sup>48</sup> 730 ILCS 5/5-4.5-105(b) (eff. Jan. 1, 2016).

<sup>49</sup> *Id.*

<sup>50</sup> See, generally, National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, (April 2014), Chapter 5 (compiling research into impact of sentencing enhancements, including firearm enhancements, and noting general consensus of a lack of clear evidence of a deterrent effect).

<sup>51</sup> 720 ILCS 5/33A-2(a).

<sup>52</sup> 720 ILCS 5/33A-3(a).

<sup>53</sup> J. J. Prescott, "Do Sex Offender Registries Make Us Less Safe?" *Regulation*, Cato Institute (Summer 2012), at 48.

<sup>54</sup> "Illinois began requiring registration for sex offenses in 1986 - almost 10 years before federal registry legislation - and has been expanding requirements since." Illinois Juvenile Justice Commission, *Improving Illinois' Response to Sexual Offenses Committed by Youth* (March 2014) at 39.

<sup>55</sup> Alan Greenblatt, "States Struggle to Control Sex Offender Costs," National Public Radio (May 28, 2010). The cost/benefit ratio of the adult sex offender registry is currently unknown; a recent assessment of the juvenile registry conducted by a nonpartisan conservative/libertarian think tank concluded that it cost \$80 to achieve \$1 of potential benefit. Richard B. Belzer, *The Costs and Benefits of Subjecting Juveniles to Sex-Offender Registration and Notification*, R Street Policy Study No. 41 (September 2015).

<sup>56</sup> "Sexual assault victims are at risk for post-traumatic stress disorder, depression, and substance abuse, with the costs of sexual victimization in the United States totaling between \$8 billion and \$26 billion per year." IJJC Report, *supra* note # at 33.

<sup>57</sup> *Id.* at 6, 47, 49, 59-60 "[There is] collateral based damage to having offenders on [the] registry. We forget the collateral damage to victims and family members who live in those homes and the destabilization that occurs." *Id.* at 49.

<sup>58</sup> National Center for Missing & Exploited Children Records and Access Unit, June 1, 2015 [http://www.missingkids.com/en\\_US/documents/Sex\\_Offenders\\_Map.pdf](http://www.missingkids.com/en_US/documents/Sex_Offenders_Map.pdf).

<sup>59</sup> Rob Wildeboer, WBEZ, "Chicago Police Easing Registration for Sex Offenders (June 23, 2014), at <http://www.wbez.org/chicago-police-easing-registration-sex-offenders-110392>.

<sup>60</sup> 730 ILCS 150/7.

<sup>61</sup> 730 ILCS 150/10.

<sup>62</sup> *Id.*

<sup>63</sup> Christopher Lobanov-Rostovsky, U.S. Department of Justice Office of Justice Programs, "Adult Sex Offender Management" *Sex Offender Management Assessment and Planning Initiative Research Brief*, (July 2015).

<sup>64</sup> U.S. Department of Justice Office of Justice Programs, *Sex Offender Management Assessment and Planning Initiative* (SOMAPI), NCJ 247059 (October 2014), at 161.

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<sup>65</sup> Naomi J. Freeman, "The public safety impact of community notification laws: Rearrest of convicted sex offenders." *Crime & Delinquency* (2009).

<sup>66</sup> Jeffrey C. Sandler, et al, "Does a watched pot boil? A time-series analysis of New York State's sex offender registration and notification law." 14 *Psychology, Public Policy, and Law* 284 (2008); Richard G. Zevitz, "Sex offender community notification: Its role in recidivism and offender reintegration." 19 *Criminal Justice Studies* 193 (2006).

<sup>67</sup> Sandler, *supra* note 66.

<sup>68</sup> Zevitz, *supra* note 66.

<sup>69</sup> Belzer, *supra* note 55, at 2.

<sup>70</sup> 730 ILCS 150/8(a).

<sup>71</sup> Steve Mills, "State keeps 1,250 parolees behind bars due to housing shortage," *Chicago Tribune* (January 25, 2015).

<sup>72</sup> Office of Justice Programs (SOMAPI), *supra* note 64, at 163.

<sup>73</sup> *Id.* at 164 (emphasis added).

<sup>74</sup> According to a 2013 John Howard Association report of Big Muddy Correctional Center, the facility housed a population of 173 SDPs with three clinical care staff. Available at: <http://thejha.org/bigmuddy>. That same report noted an expanding SVP population in Illinois of over 500 individuals with 30 clinical care staff. JHA Report at 4. *See also* "Rushville Treatment and Detention Facility targeted for \$13 million expansion," available at [http://journal930.com/rushville-treatment-and-detention-facility-targeted-for-\\$13-million-expansion1360103805.html](http://journal930.com/rushville-treatment-and-detention-facility-targeted-for-$13-million-expansion1360103805.html).

<sup>75</sup> Office of Justice Programs (SOMAPI), *supra* note 64.

<sup>76</sup> New York Times Editorial Board, "Sex Offenders Locked Up on a Hunch," August 15, 2015.

<sup>77</sup> *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (rejecting an approach to civil commitment that would permit the indefinite confinement of any convicted criminal after completion of a prison term).

<sup>78</sup> *See* Emergency Extension Justifications, Project #321-210-002, *available at* [Illinois.gov](http://Illinois.gov) – indicating a Phase 1 expansion of Rushville to accommodate growth of resident population from 379 to 519, adding 100 beds to its 482-bed capacity by August of 2013, and another 200 beds in Phase 2.

<sup>79</sup> After evaluating the limited demonstrated benefit of civil commitment, the extensive SOMAPI Report recommends collaborative community-based programs as critical to a sex offender management strategy and calls for specialized supervision with a rehabilitation orientation.

<sup>80</sup> *See, e.g., Karsjens v. Jesson*, No. CIV. 11-3659 DWF/JJK, 2015 WL 3755870, at \*25 (D. Minn. June 17, 2015) ("By failing to provide the necessary process, Defendants have failed to maintain the [sex offender treatment] program in such a way as to ensure that all Class Members are not unconstitutionally deprived of their right to liberty"); *Van Orden v. Schafer*, 4:09CV00971 AGF, 2015 WL 5315753 (E.D. Mo. Sept. 11, 2015).

<sup>81</sup> Reginald Artis, who served 27 years for an offense committed when she was 23 was civilly committed as she neared the end of her prison sentence. She describes the treatment facility as, "worse than prison. In prison I wasn't happy, but I was content because I knew I had a release date. I knew that as long as I did what I was supposed to do in prison, I was going home. Here, it's 24-hour stress. Because you don't know when these people are gonna decide you're ready to go home, if they ever do. They don't have a time limit on when they gotta let you go. There are people who have been here five or six years, and they've just given up, because they feel like no matter what they do, they're not gonna let them go."

Neyfakh, Leon, Slate, October 9, 2015, available at [http://www.slate.com/articles/news\\_and\\_politics/crime/2015/10/civil\\_commitment\\_laws\\_allow\\_authorities\\_to\\_keep\\_people\\_locked\\_up\\_indefinitely.2.html](http://www.slate.com/articles/news_and_politics/crime/2015/10/civil_commitment_laws_allow_authorities_to_keep_people_locked_up_indefinitely.2.html).

<sup>82</sup> American Psychiatric Association, *Dangerous Sex Offenders: A Task Force Report* 173 (1999) (“[B]y bending civil commitment to serve essentially nonmedical purposes, sexual predator commitment statutes threaten to undermine the legitimacy of the medical model of commitment”).

<sup>83</sup> Ragusa-Salerno and Zgoba, “Taking stock of 20 years of sex offender laws and research: an examination of whether sex offender legislation has helped or hindered our efforts,” *Journal of Crime and Justice*, 35:3, 335-255 (2012) (marshaling prior research and evaluating sample of over 1100 adult male sex offenders over a 20 year period in New Jersey – finding minimal correlation to offense prevention, and noting the few numbers of individuals being released from confinement).

<sup>84</sup> Center for Sex Offender Management, “Legislative Trends in Sex Offender Management,” November 2008 – noting high cost and, beyond incapacitation, undocumented benefit to public safety through civil commitment, and calling for alternative approaches.

<sup>85</sup> Sara B. Johnson, Robert W. Blum, and Jay N. Giedd. "Adolescent maturity and the brain: the promise and pitfalls of neuroscience research in adolescent health policy." *Journal of Adolescent Health* 45.3 (2009): 216-221.

<sup>86</sup> “[T]he psychosocial capacities that undergird the ability to resist peer pressure may continue to develop throughout late adolescence and into early adulthood. . . . [T]he presence of peers makes adolescents and youth, but not adults, more likely to take risks and more likely to make risky decisions.” Margo Gardner & Laurence Steinberg, “Peer Influence on Risk Taking, Risk Preference and Risky Decision-Making in Adolescence and Adulthood: An Experimental Study,” 41 *Developmental Psychology* 625, 634 (2005). See also Karol Silva, et al, “Peers Increase Late Adolescents' Exploratory Behavior and Sensitivity to Positive and Negative Feedback,” *Journal of Research on Adolescence* 25.3 (2015).

<sup>87</sup> Illinois Juvenile Justice Commission, *Raising the Age of Juvenile Court Jurisdiction* (2013) at 24; Jill M. Ward, Deterrence’s Difficulty Magnified: The Importance of Adolescent Development in Assessing Deterrence Value of Transferring Juveniles to Adult Court, 7 *U.C. Davis J. Juv. L. & Pol’y* 253, 267 (2003).

<sup>88</sup> Richard Rosenfeld, et al, “Special Categories of Serious and Violent Offenders: Drug dealers, gang members, homicide offenders, and sex offenders,” in *From Juvenile Delinquency to Adult Crime*, Rolf Loeber and David P. Farrington, eds., 118-149 (2012).

<sup>89</sup> Melissa S. Caulum, “Postadolescent Brain Development: A Disconnect Between Neuroscience, Emerging Adults, and the Corrections System,” 2007 *Wis. L. Rev.* 729 (2007).