



ILLINOIS SENTENCING POLICY ADVISORY COUNCIL

2013 ANNUAL REPORT

Hon. Gino DiVito, Chairman

Hon. Warren Wolfson, Vice Chair

Senator Kwame Raoul, Vice Chair

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ILLINOIS SENTENCING POLICY ADVISORY COUNCIL

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EXECUTIVE SUMMARY

- **Purpose** – The purpose of the Sentencing Policy Advisory Council is to provide policy-makers with sound data and analysis to facilitate evidence-based public safety policy decisions.
- **Meetings** – SPAC held two meetings in 2013.
- **Staffing** – SPAC hired a research director in 2013 and received FY13 funding to hire two research positions. Legislation exempting SPAC from the Personnel Code and allowing the appointment of a sitting judge passed the General Assembly and became effective on July 15, 2013. SPAC was subsequently informed that the Supreme Court has declined to appoint a sitting judge due to concerns over conflicts of interest.
- **2013 Legislative Session Fiscal Impact Analysis** – SPAC analyzed two sentencing and one tax bill during the legislative session. House Bill 2265 proposed mandatory minimum and Truth-in-Sentencing requirements for Unlawful Use of a Weapon (UW) offense. Due to the significant changes proposed in the bills, SPAC looked at their fiscal impact and whether implementing these enhancements would deter gun crimes. As a result, SPAC produced a retrospective analysis of the impact on the prison population if these enhancements had been in effect from 2010 through 2012. The analysis was part of the policy and budget discussions in the General Assembly. It generated a response from the University of Chicago Crime Lab, which in turn fueled more extensive discussion. The bill was also discussed at the April 26 SPAC meeting. The second bill, Senate Bill 1972, eliminated the felony penalty for second or subsequent prostitution offenses. SPAC was unable to do a reliable analysis of the impact due to lack of data on misdemeanor sentencing and the likelihood of an offender being sentenced to probation. SPAC also looked at the potential benefits of expanding the tax credit for hiring offenders, which was proposed in Senate Bill 1659. Though it was not possible to reliably project the likely outcomes of expanding the credit, SPAC provided information on the importance of employment in reducing recidivism. Senate Bill 1659 and Senate Bill 1972 both passed. House Bill 2265 is still under discussion as of the writing of this report.
- **Research** – The need for, and utility of employing, research and analysis to support policy changes was illustrated by House Bill 2265. The bill presented an opportunity to work with the cost-benefit model for fiscal impact analysis and to review the research on the deterrent effects of mandatory minimums. The discussion of this bill also resulted in SPAC's analyzing how previous enhancements to UW sentences affected public safety as measured by incident reports, convictions and recidivism rates, as well as the impact on the prison population. This report will be finalized in 2014.
- **Data collection** - SPAC continued to request data on the costs of probation programs and programs administered by private vendors, finding that many programs did not have the staff or technological resources to track cost information and calculate marginal costs. Studies of cohorts of offenders who were sentenced to probation and prison were completed allowing for more detailed analysis of criminal history and recidivism patterns.

- **The Crime Reduction Act** – pursuant to the Crime Reduction Act, 730 ILCS 190/5 *et seq.*, three entities, Adult Redeploy Illinois (ARI), the Risk, Assets, Needs Assessment Task Force (RANA) and the Prisoner Review Board (PRB) are required to report data to SPAC annually. IDOC has just begun to implement the risk assessment tool, therefore, neither RANA nor the PRB have data to report. ARI is working with SPAC on data collection and reporting and SPAC has access to quarterly data reports from ARI.

Introduction

The concept for the Sentencing Policy Advisory Council (SPAC) was developed by the Criminal Law Edit, Alignment and Reform (CLEAR) Commission. The CLEAR Commissioners made significant legislative recommendations concerning the Criminal Code of 1961 and the Unified Code of Corrections in an effort to reduce redundancy and reorganize sections to make them less confusing and easier for the public and practitioners to understand. CLEAR concluded that there was a need for more substantive analysis of the fiscal and social impact of sentencing policies. SPAC was created to collect, analyze and present data from all relevant sources to more accurately determine the consequences of sentencing policy decisions and to review the effectiveness and efficiency of current sentencing policies and practices. SPAC reports directly to the Governor and the General Assembly. *See* 730 ILCS 5/5-8-8(f), Appendix.

The members of SPAC represent diverse viewpoints. SPAC members include legislators, retired judges, a representative of the Illinois Attorney General, prosecutors, defense attorneys, representatives of the Administrative Office of the Illinois Courts, a victim advocate, law enforcement officials, academics, and a community-based organization. The directors of the Illinois State Police, Department of Corrections, Criminal Justice Information Authority and the Chairman of the Prisoner Review Board serve *ex officio*.

SPAC is chaired by the Honorable Gino DiVito. Honorable Warren Wolfson and Senator Kwame Raoul are vice chairmen.

SPAC is subject to the Open Meetings Act. Meeting agendas and minutes are posted on our website, at:

<http://www.icjia.state.il.us/spac/>

Statement of Purpose

The purpose of SPAC is to review sentencing policies and practices and examine how those policies and practices impact the criminal justice system as a whole in the State of Illinois. In carrying out its duties, SPAC is mindful of and seeks to achieve the purposes of sentencing in Illinois, which are to:

- (1) prescribe sanctions proportionate to the seriousness of the offenses and permit the recognition of differences in rehabilitation possibilities among individual offenders;
- (2) forbid and prevent the commission of offenses;
- (3) prevent arbitrary or oppressive treatment of persons adjudicated offenders or delinquents; and
- (4) restore offenders to useful citizenship.

(*see* 730 ILCS 5/8-8(b); *see also* 730 ILCS 5/1-1-2)

Staffing and Budget

SPAC is staffed by Kathy Saltmarsh, Executive Director; Samantha Gaddy, Senior Policy Advisor; and Nathaniel Inglis Steinfeld who joined the SPAC staff in December 2013 as the Research Director. As of July 15, 2013 SPAC is exempt from the Personnel Code (*see* P.A. 98-0065) which allows for greater flexibility in recruiting and hiring research positions that require advanced training and statistical analysis skills.

SPAC is funded through a lump sum grant of \$668,000 passed through the Department of Corrections budget.

SPAC also receives technical assistance from the Illinois Criminal Justice Information Authority (ICJIA) and administrative support from the Illinois Department of Corrections (IDOC) and Central Management Systems' (CMS) Public Safety Shared Services.

Fiscal Impact Statements

The primary focus of SPAC's work this year has been on developing the methodology with which to produce the fiscal impact statements that SPAC is mandated to provide. The Pew-MacArthur Results First cost-benefit analysis model has been populated with as much Illinois-specific cost data as SPAC could obtain.

While there are still some gaps, SPAC was able to use the cost calculations to analyze three bills during the 2013 legislative session. House Bill 2265 was proposed by the Cook County State's Attorney and the Mayor of Chicago. The bill enhanced the sentences for unlawful use of a weapon offense (UW) and added those offenses to the 85% Truth-in-Sentencing requirement. Using the cost data in the cost-benefit model and data on arrests, convictions and sentences imposed for these offenses, SPAC produced a retrospective analysis of the cost to the Department of Corrections had these changes been in effect for 2010, 2011 and 2012. That analysis is available on SPAC's website: <http://www.icjia.state.il.us/spac/>

The fiscal impact on the Department was significant and the publication of SPAC's analysis coupled with IDOC's projection of the population and cost over the next ten years contributed significantly to a very substantive discussion of the issue of mandatory minimums in the legislative arena and the public domain. The bill did not come up for a vote; however, as of this writing it remains under discussion.

SPAC also reviewed Senate Bill 1972 which eliminated the felony penalty for a second or subsequent prostitution offense. Proponents of the bill made a presentation to SPAC at the January 18th meeting and there was a lively discussion of the unintended consequences of eliminating the penalty relative to accessing services that were currently being provided through a specialty court in Cook County, and removing the motivation of avoiding the felony conviction by successfully completing the ordered programming. SPAC was not able to produce a reliable fiscal impact due to insufficient data on how these offenders would likely be sentenced in the absence of the felony charge. It was noted in the discussion of the bill that county jails and possibly probation would be impacted by this change. This bill passed and is now P.A. 98-0538, effective August 23, 2013.

Senate Bill 1659 was the third bill SPAC became involved with in the 2013 legislative session. This bill expanded the eligibility for and the amount of an existing tax credit for employing ex-offenders who served a prison sentence. Because the pool of employers that claimed the tax credit was very small over the past several years, there was insufficient data to produce a fiscal impact analysis; however SPAC provided some general information on the value of employment in reducing recidivism. This bill passed and is now P.A. 98-0165, effective August 5, 2013.

The fiscal data is just one portion of the model. Cohort studies of offenders sentenced to both probation and incarceration were completed and have been utilized to develop a greater understanding of the criminal histories and recidivism rates for different classes of offenders. Based in part on this data, ICJIA was able to develop a publically accessible criminal history tool that is posted on its website.

Research

House Bill 2265, the bill that increased mandatory minimum penalties for UUI offenses, presented an opportunity to look back at how previous enhancements to UUI sentences effected public safety as measured by incident reports, convictions and recidivism rates. The impact on the prison population was also examined. This report will be finalized in 2014.

The previous research reports on the drivers of the sentenced population were finalized and are now available on SPAC's website.

Data Collection

Software and technical assistance in implementing the cost-benefit model is provided at no cost through the Pew-MacArthur Results First Project. This assistance continues to be critical to SPAC's implementation of the model. In July, SPAC staff, accompanied by IDOC's Chief of Staff and the Public Safety Budget Director from the Governor's Office of Management and Budget, attended a meeting of all the states currently implementing the Pew-MacArthur Results First model. There was a significant benefit to sharing implementation experiences. The lack of reliable evaluations of state programs continues to be the most significant challenge to full implementation of the model.

Collaborative Partnerships

SPAC continues to benefit from collaborative partnerships. In addition to their representation on SPAC, both ICJIA and IDOC have continued to be valuable research partners and to provide administrative support.

SPAC continues to be represented on the Adult Redeploy Illinois (ARI) Oversight Board and the Risk, Assets, Needs Assessment (RANA) Task Force. Both entities are focused on implementation of evidence-based practices in the corrections sector. Their work will provide valuable data for SPAC. ARI continues to add pilot sites and is now planning to complete a process evaluation of their program in the near future. Outcome evaluations of the sites will be completed when sufficient data is available.

Kathy Saltmarsh and Samantha Gaddy attended an all-sites meeting for sites participating in ARI. This provided an opportunity to hear directly from participants about the challenges and successes of their programs. The meeting included a substantive and extensive presentation on risk assessment and program evaluation by Doctor Kimberly Sperber from the University of Cincinnati Corrections Institute.

IDOC is in the process of implementing the risk assessment tool selected by the RANA task force. This tool will provide additional data on offender characteristics and risk factors that will be helpful in evaluating how programs and services affect recidivism.

In August, the National Association of Sentencing Commissions' annual conference was held in Minneapolis, Minnesota. Kathy Saltmarsh and Samantha Gaddy attended presentations on risk assessment, the use of criminal history in sentencing, sentencing reform on the federal level and the practice of returning parole and probation violators to prison without due process. The annual conference provides a valuable opportunity to exchange ideas and experiences with our counterparts in other states.

Chairman DiVito and Kathy Saltmarsh attended a meeting with Justices Garman and Burke of the Illinois Supreme Court. They were joined by ARI Program Coordinator Mary Ann Dyar and IDOC Assistant Director Gladys Taylor, representing the RANA Task Force. The meeting was held to brief the justices on the work that was being done, and open broader lines of communication with the courts. During that conversation the justices suggested that SPAC reach out to the Conference of Chief Judges to present a similar update to that group. Chairman DiVito, Kathy Saltmarsh and Nathaniel Inglis Steinfeld attended the semi-annual meeting of the Conference of Chief Judges and presented on SPAC's work, and gave a brief update on RANA and ARI.

Conclusion

Illinois continues to face fiscal and policy challenges related to the administration of criminal justice in this state, and remains committed to addressing those challenges with evidence based policies and sentencing practices. The progress of SPAC and Adult Redeploy Illinois demonstrates the potential to effectively reform sentencing practices to achieve the goals of reducing costs and improving public safety.

In 2013, SPAC focused on developing the tools to improve data collection and the best analytical procedures to fully support policy makers with reliable, objective, and easily accessible analysis of complex criminal justice issues. The fiscal model progressed significantly and SPAC continued to participate in the greater discussion of cost effective strategies that enhance public safety while deterring criminal conduct. As SPAC moves into the 2014, the focus will be on developing cost-benefit analysis for criminal justice programs and continuing to support the use of data and analysis to support policy makers as they grapple with these challenges.

APPENDIX - THE ENABLING STATUTE - as amended by Public Act 98-0065

(730 ILCS 5/5-8-8)

Sec. 5-8-8. Illinois Sentencing Policy Advisory Council.

(a) Creation. There is created under the jurisdiction of the Governor the Illinois Sentencing Policy Advisory Council, hereinafter referred to as the Council.

(b) Purposes and goals. The purpose of the Council is to review sentencing policies and practices and examine how these policies and practices impact the criminal justice system as a whole in the State of Illinois. In carrying out its duties, the Council shall be mindful of and aim to achieve the purposes of sentencing in Illinois, which are set out in Section 1-1-2 of this Code:

- (1) prescribe sanctions proportionate to the seriousness of the offenses and permit the recognition of differences in rehabilitation possibilities among individual offenders;
- (2) forbid and prevent the commission of offenses;
- (3) prevent arbitrary or oppressive treatment of persons adjudicated offenders or delinquents; and
- (4) restore offenders to useful citizenship.

(c) Council composition.

- (1) The Council shall consist of the following members:
 - (A) the President of the Senate, or his or her designee;
 - (B) the Minority Leader of the Senate, or his or her designee;
 - (C) the Speaker of the House, or his or her designee;
 - (D) the Minority Leader of the House, or his or her designee;
 - (E) the Governor, or his or her designee;
 - (F) the Attorney General, or his or her designee;
 - (G) two retired judges, who may have been circuit, appellate, or supreme court judges; retired judges appointed prior to the effective date of this amendatory Act of the 98th General Assembly shall be selected by the members of the Council designated in clauses (c)(1)(A) through (L), and retired judges appointed on or after the effective date of this amendatory Act of the 98th General Assembly shall be appointed by the Chief Justice of the Illinois Supreme Court;

- (G-5) two sitting judges, who may be circuit, appellate, or supreme court judges, appointed by the Chief Justice of the Supreme Court; one member appointed under this paragraph (G-5) shall be selected from the Circuit Court of Cook County or the First Judicial District, and one member appointed under this paragraph (G-5) shall be selected from a judicial circuit or district other than the Circuit Court of Cook County or the First Judicial District;
- (H) the Cook County State's Attorney, or his or her designee;
- (I) the Cook County Public Defender, or his or her designee;
- (J) a State's Attorney not from Cook County, appointed by the State's Attorney's Appellate Prosecutor;
- (K) the State Appellate Defender, or his or her designee;
- (L) the Director of the Administrative Office of the Illinois Courts, or his or her designee;
- (M) a victim of a violent felony or a representative of a crime victims' organization, selected by the members of the Council designated in clauses (c)(1)(A) through (L);
- (N) a representative of a community-based organization, selected by the members of the Council designated in clauses (c)(1)(A) through (L);
- (O) a criminal justice academic researcher, to be selected by the members of the Council designated in clauses (c)(1)(A) through (L);
- (P) a representative of law enforcement from a unit of local government to be selected by the members of the Council designated in clauses (c)(1)(A) through (L);
- (Q) a sheriff selected by the members of the Council designated in clauses (c)(1)(A) through (L); and
- (R) ex-officio members shall include:
 - (i) the Director of Corrections, or his or her designee;
 - (ii) the Chair of the Prisoner Review Board, or his or her designee;
 - (iii) the Director of the Illinois State Police, or his or her designee; and
 - (iv) the Director of the Illinois Criminal Justice Information Authority, or his or her designee.

(1.5) The Chair and Vice Chair shall be elected from among its members by a majority of the members of the Council.

- (2) Members of the Council who serve because of their public office or position, or those who are designated as members by such officials, shall serve only as long as they hold such office or position.
 - (3) Council members shall serve without compensation but shall be reimbursed for travel and per diem expenses incurred in their work for the Council.
 - (4) The Council may exercise any power, perform any function, take any action, or do anything in furtherance of its purposes and goals upon the appointment of a quorum of its members. The term of office of each member of the Council ends on the date of repeal of this amendatory Act of the 96th General Assembly.
- (d) Duties. The Council shall perform, as resources permit, duties including:
- (1) Collect and analyze information including sentencing data, crime trends, and existing correctional resources to support legislative and executive action affecting the use of correctional resources on the State and local levels.
 - (2) Prepare criminal justice population projections annually, including correctional and community-based supervision populations.
 - (3) Analyze data relevant to proposed sentencing legislation and its effect on current policies or practices, and provide information to support evidence-based sentencing.
 - (4) Ensure that adequate resources and facilities are available for carrying out sentences imposed on offenders and that rational priorities are established for the use of those resources. To do so, the Council shall prepare criminal justice resource statements, identifying the fiscal and practical effects of proposed criminal sentencing legislation, including, but not limited to, the correctional population, court processes, and county or local government resources.
 - (5) Perform such other studies or tasks pertaining to sentencing policies as may be requested by the Governor or the Illinois General Assembly.
 - (6) Perform such other functions as may be required by law or as are necessary to carry out the purposes and goals of the Council prescribed in subsection (b).
- (e) Authority.
- (1) The Council shall have the power to perform the functions necessary to carry out its duties, purposes and goals under this Act. In so doing, the Council shall utilize information and analysis developed by the Illinois Criminal Justice Information Authority, the Administrative Office of the Illinois Courts, and the Illinois Department of Corrections.

- (2) Upon request from the Council, each executive agency and department of State and local government shall provide information and records to the Council in the execution of its duties.
- (f) Report. The Council shall report in writing annually to the General Assembly, the Illinois Supreme Court, and the Governor.
- (g) This Section is repealed on December 31, 2015.
(Source: P.A. 97-775, eff. 7-13-12; 98-65, eff. 7-15-13.)