



ILLINOIS SENTENCING POLICY ADVISORY COUNCIL

2017 ANNUAL REPORT

Hon. Gino DiVito, Chairman

Hon. Warren Wolfson, Vice Chair

Senator Kwame Raoul, Vice Chair

<http://ilspac.illinois.gov>

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ILLINOIS SENTENCING POLICY ADVISORY COUNCIL

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EXECUTIVE SUMMARY

- **Purpose** - The Sentencing Policy Advisory Council's purpose is to provide policy-makers with sound data and analysis to inform evidence-based public safety policy decisions.
- **Meetings & Membership** - SPAC had three regular meetings in June, September and November, and an additional joint meeting with the Illinois Criminal Justice Information Authority. The joint meeting was held in March and consisted of a discussion of the work and recommendations of the Governor's Commission on Criminal Justice & Sentencing Reform, upon which a number of SPAC members served. There were no changes in council membership in 2017.
- **Staffing** - In 2017 SPAC was staffed by Kathy Saltmarsh, Executive Director; Michael Elliott, Intergovernmental Affairs and Communications Advisor; Nathaniel Inglis Steinfeld, Research Director, Mark Powers, Research Analyst, Roger Franklin, Data Manager, and Yasmine El-Gohary, Research Analyst. For FY18, which began July 1, 2017, SPAC received a moderate increase over previous budgets. Yasmine El-Gohary left the SPAC staff in September to join the staff at the Chicago branch of the Federal Reserve Bank.
- **2017 Legislative Session Fiscal Impact Analysis** - SPAC produced fiscal impact analyses of the following bills, none of which have passed the General Assembly by years end:

HB 3355 HA1 - Sentencing Reform:

HB 3355 HA1 provides that in imposing a sentence for a Class 3 or 4 felony, other than a violent crime as defined in the Rights of Crime Victims and Witnesses Act, the court shall determine and indicate in the sentencing order whether the defendant has 4 or more or fewer than 4 months remaining on his or her sentence accounting for time served. Provides that an offender sentenced to a term of imprisonment for a Class 3 or 4 felony, other than a violent crime as defined in the Rights of Crime Victims and Witnesses Act, in which the sentencing order indicates that the offender has less than 4 months remaining on his or her sentence accounting for time served may not be confined in the penitentiary system of the Department of Corrections but may be assigned to electronic home detention, an adult transition center, or another facility or program within the Department of Corrections. Effective January 1, 2019. **NOTE: the Commission recommendation was for a stay of less than 12 months.**

HB 2353 HA1 & SB 316 SA1 - Cannabis Regulation & Taxation:

HB2353 HA1 and SB316 SA1 create the Cannabis Regulation and Taxation Act and amend the Cannabis Control Act. The proposal legalizes possession of less than 28 grams of cannabis by Illinois residents; possession of fewer than 14 grams for nonresidents; possession of five or fewer cannabis plants; and possession of cannabis paraphernalia. Other penalties, including for manufacture and delivery, remain the same unless the manufacturer or seller complies with the new regulations. This fiscal analysis focuses solely on the changes to the Cannabis Control Act. Additional impacts from legalization of cannabis on public health and traffic safety, as well as the illegal drug markets are uncertain and not included at this time.

HB 2882 - Changes to TIS & Good-Time Sentence Credit Restrictions:

HB2882 reduces TIS levels. 100% goes to 85%; 85% goes to 4.5 days to 8.5 days and those currently incarcerated can begin earning credit after the effective date of the Act. No credit shall be awarded for time served prior to the effective date.

HB 3337 - Changes to Theft, Retail Theft, and Criminal Damage to Property:

HB 3337 increases the threshold amount of theft not from the person and retail theft that enhances the offense from a misdemeanor to a felony to \$2,000. Provides that an enhancement from a misdemeanor to a felony based on a prior conviction must only be for felony theft.

HB 3856 - Changes to Theft, Retail Theft, and Criminal Damage to Property:

HB 3856 increases the threshold amount that enhances theft and retail theft from a misdemeanor to a felony or to a higher class of felony from \$500 for theft and \$300 for retail theft, and \$150 for motor fuel theft to \$2,500 other than for motor fuel theft, and \$2,000 for motor fuel theft. Eliminates the offense of theft by emergency exit. Changes the threshold for criminal damage to property from \$500 to \$2,000.

HB 2515 HA1 & SB 2073 - Early Release Eligibility Pool Calculation:

HB 2515 HA1 and SB2073 adjust the length of stay for some inmates in two ways: (1) inmates who were under 21 at the time of their offense can apply for early release once they serve at least 10 years for non-homicide sentences and at least 20 for homicide sentences and (2) inmates serving natural life who were under 18 at the time of their offense can apply for resentencing provided they have not been resentenced for the current offense after January 1, 2012. To implement the first component, eligible inmates apply to the Prisoner Review Board (PRB) three years before serving 10 or 20 years to begin the process of early release. For the second mechanism, eligible inmates apply to the original sentencing court for resentencing.

SB 2872 HFA2 - Changes to Probation Eligibility and Sentence Credits:

SB 2872 HFA2 expands probation eligibility for Class 2 repeat offenders and certain drug crimes; expands eligibility for earned sentence credits by eliminating some restrictions based on the crime of conviction and the prohibition on credits to repeat offenders. Additionally, it authorizes technical assistance and strategic planning from the Illinois Criminal Justice Information Authority to support implementation of trauma recovery services in underserved communities. The services in the community and allowing more serious offenders access to programming may also have population reduction impact as more people receive and complete evidence-based treatments and the overall crime and recidivism rates decrease.

SB 1722 SA3 - Safe Neighborhoods Reform Act:

SB 1722 SA3 changes UUW Presumptive Minimums: higher presumptive minimum prison sentence for those offenders convicted of UUW by a Felon or Aggravated UUW when the offender has a prior qualifying predicate conviction. Burglary: lowers the felony class for some burglary offenses. Programming Credits for TIS Offenders: expands eligibility for programming credits to those serving under 75% TIS. Protected Zone Reforms: reduces the penalty enhancement zone from 1,000 to 500 feet and adds a requirement that the people who are supposed to be protected are in the zone at the time

of the offense. Note: estimate above assumes 50% of those admitted to prison on these offenses would instead be convicted of standard manufacture/delivery drug crimes. Mandatory Supervised Release: permits, but does not mandate, the Prisoner Review Board to discharge low-risk/low-need offenders from supervision. Earlier versions of SB1722 mandated discharge of these offenders. Habitual Criminal Enhancements: excludes theft offenses as counting towards three strike sentencing enhancement. Earlier versions of SB1722 also excluded drug offenses. Specialty Probation Reforms: expands eligibility for alternatives to prison for offenders who are addicted to drugs.

SPAC also developed a new methodology for calculating marginal costs based on its work on budget issues for the Governor's Commission on Criminal Justice & Sentencing Reform. SPAC began using this methodology in its fiscal impact analysis and published a supplement, "Dynamic Marginal Costs in Bill Fiscal Impact Analyses," explaining the process for developing the methodology and for calculating dynamic marginal costs which can be accessed here:

http://www.icjia.state.il.us/spac/pdf/Dynamic_Marginal_Costs.pdf

- **Cost-Benefit Analysis** – the Results First Initiative Cost-Benefit Analysis model was officially adopted by the Budgeting for Results Commission (BFR), which is housed in the Governor's Office of Management & Budget which will facilitate expansion of cost-benefit analysis into other policy areas. SPAC worked with BFR to facilitate the first CBA report on IDOC educational programs. SPAC also updated its report on the High Cost of Recidivism.
- **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 made progress implementing the risk assessment tool with the hiring of a small number of RANA specialists, however at this point there is not sufficient risk assessment data to report. SPAC is currently learning the Offender 360 system, which could facilitate access to risk assessment data. The PRB does not have data to report. ARI is working with SPAC on data collection and reporting, and SPAC has access to quarterly data reports from ARI.
- **The SPAC authorizing statute** – The statute creating SPAC, 730 ILCS 5/5-8-8, was specifically amended to require SPAC to report on the impact of SB1722 (P.A. 100-003) which created a new mandatory minimum for repeat gun offenders with a history of gun or serious crime and also a "safety valve" which allows judges to depart from that minimum based on factors enumerated in the statute. The bill further requires sentencing citations to be reported into the Criminal History Reporting Information system, which will significantly improve SPAC's ability to analyze the sentencing impacts of new policies.

Introduction

The concept for the Sentencing Policy Advisory Council (SPAC) was developed by the Criminal Law Edit, Alignment and Reform (CLEAR) Commission. Based on successful sentencing commissions nationally, 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 is also mandated to do system-wide fiscal impact analysis so that the impacts on local jurisdictions can be considered. SPAC reports directly to the Governor, the General Assembly and the Illinois Supreme Court. *See* 730 ILCS 5/5-8-8(f), Appendix.

The members of SPAC represent diverse viewpoints. SPAC members include legislators, retired judges, and 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. The Honorable Warren Wolfson and Senator Kwame Raoul are Vice-chairpersons.

SPAC is subject to the Open Meetings Act. Meeting agendas and minutes are posted on our website: <http://www.icjia.state.il.us/spac/index.cfm?metasection=meetings>.

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

In 2017 SPAC was staffed by Kathy Saltmarsh, Executive Director; Michael R. Elliott, Intergovernmental Affairs and Communications Advisor; Advisor; Nathaniel Inglis Steinfeld, Research Director, Mark Powers, Research Analyst, Roger Franklin, Data Manager, and Yasmine El-Gohary, Research Analyst. For FY18, which began July 1, 2017, SPAC received a moderate increase over previous budgets. Yasmine El-Gohary left the SPAC staff in September to join the staff at the Chicago branch of the Federal Reserve Bank.

Cost-Benefit Analysis¹

SPAC presented on its experience using the Results First Initiative cost-benefit analysis model to the Budgeting for Results Commission, statutorily created commission tasked with developing a system linking appropriations to outcomes. 15 ILCS 20/50-25. BFR is staffed by budget analysts from the Office of Management and Budget. BFR officially joined the Results First Initiative in the Spring and has hired a full-time economist to spearhead implementation of the model. OMB has the skill and capacity to expand use of the model into other policy areas, building on the work already done by BFR to develop a comprehensive list of the programs funded through general revenue fund appropriations. SPAC worked with BFR on its first report, which analyzed three education programs in the Illinois Department of Corrections. SPAC will continue to support BFR's implementation of the model for state funded programs as well as pursuing its own priority of gathering more data on locally funded programs that impact criminal justice system outcomes. Though housed in OMB, the goal is to have the model populated by Illinois specific data and results made accessible to budget staff from all four legislative caucuses and within individual agencies.

Fiscal Impact Analysis

As noted above, SPAC is mandated to do system-wide fiscal impact analysis for sentencing policy proposals. As practitioners know, annual budgets do not change quickly to reflect changes in the number of people flowing through the system. Through its work on the Budget and Capacity committee for the Governor's Commission on Criminal Justice & Sentencing Reform, SPAC contacted the fiscal officers of a small but diverse sample of counties as well as state agencies involved in the criminal justice system to work through how public safety funds are utilized and when measureable changes occur. Using publically available fiscal data, SPAC developed the concept of a dynamic marginal cost, where the expected cost-per person varies depending on the change in the number of people. The dynamic marginal cost accounts for the realities of budgeting in Illinois: budgets do not change quickly in response to changes in the level of services provided. Instead, budgets "step" up or down only when the level of services changes significantly. The costs-per-person are dynamically larger or smaller depending on the magnitude of the proposed policy's impact on services. SPAC calculated the steps for both criminal justice population and fiscal changes which were then used for the fiscal impact analyses.

Research and Analysis

One issue that emerged after the publication of the Governor's Commission report was tracking implementation of the recommendations. For its June 2017 meeting, SPAC developed a simple infographic based on a traffic light that listed which recommendations had resulted in some legislative or implementation action (green); which had been partially implemented (yellow); and which had no action taken (red). That graphic is posted on the SPAC website and updated periodically as a quick reference for all interested parties.

¹ Software and technical assistance in implementing cost-benefit analysis continues to be provided at no cost through the Pew-MacArthur Results First Initiative.

SPAC also analyzed the underlying factors that lead to the steady decrease in the prison population over the past three years. By the end of fiscal year 2017, the prison population had declined by close to 7,000 people. Recently enacted reforms had not been in effect for long enough to cause a measureable decline in the prison population as it normally takes two to three years for policy changes to result in measureable outcomes. Looking at the system as a whole illustrated the effect of front-end decisions on the back-end prison system. A statewide analysis of arrest and conviction rates showed a steady decline across the board in arrests and arrests resulting in convictions, which measurably impacted the prison system by significantly reducing admissions for a sufficient period to reduce the average daily population. This decline notably did not result in any change in the IDOC budget, which has been drastically under-resourced for so long that a fiscal hole of billions of dollars resulting from litigation costs and consent decrees, delayed maintenance of physical facilities, and operational deficits due to the two year budget impasse will linger for many years.

Population Projection Model

Population projections were incorporated into SPAC fiscal analyses in 2017 using the statistical model developed by SPAC research staff. The model was vetted with a number of researchers, including a professor of actuarial science at the University of Illinois and a Northwestern University faculty member with expertise in criminal justice statistics and population forecasting. The model's results were then tested against real population numbers reported by the Illinois Department of Corrections to assure its reliability.

The model uses three years of data and assumes that historical patterns of admissions, exits and length of stay will continue. If more recent trends deviate sufficiently from the historical patterns adjustments in the model's formulas can be made. While SPAC will include these projections in future fiscal impact analyses, fiscal projections are not paired with the population numbers because the projection is intended for mid- to long-term estimates, not short-term forecasts. The three year averages allows SPAC to assume the recent trends will continue but that the most recent year may not hold indefinitely into the future. SPAC fiscal analyses will continue to use a retrospective approach based on real costs and population numbers and calculating fiscal impact of a proposed policy had it been in effect for the past three years.

Conclusion

The finalization of the prison population projection model was an important step in meeting SPAC's statutory mandates. Beginning in 2018, annual prison population projections will be a regular feature of SPAC's work. These projections are also another tool with which to estimate when and how the population will change in response to reforms. The work done for the Budget & Capacity Committee of the Governor's Commission on Criminal Justice & Sentencing Reform also strengthens SPAC's ability to produce system wide analysis that accurately reflects the local government fiscal impacts of new state policies.

Going forward, SPAC will continue to work to produce user-friendly, understandable and relevant research and analysis to the executive and legislative decision making processes, always with the goal of improving the outcomes produced by the criminal justice system.

APPENDIX - THE ENABLING STATUTE

(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 shall be selected by the members of the Council designated in clauses (c)(1)(A) through (L);
 - (G-5) (blank)
 - (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.
 - (4.5) Study and conduct a thorough analysis of sentencing under Section 5-4.5-110 of this Code. The Sentencing Policy Advisory Council shall provide annual reports to the Governor and General Assembly, including the total number of persons sentenced under Section 5-4.5-110 of this Code, the total number of departures from sentences under Section 5-4.5-110 of this Code, and an analysis of trends in sentencing and departures. On or before December 31, 2022, the Sentencing Policy Advisory Council shall provide a report to the Governor and General Assembly on the effectiveness of sentencing under Section 5-4.5-110 of this Code, including recommendations on whether sentencing under Section 5-4.5-110 of this Code should be adjusted or continued.
 - (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).
 - (7) Publish a report on the trends in sentencing for offenders described in subsection (b-1) of Section 5-4-1 of this Code, 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 the changes made by adding subsection (b-1) of Section 5-4-1 to this Code by Public Act 99-861.
- (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, 2020.

(Source: P.A. 99-101, eff. 7-22-15; 99-533, eff. 7-8-16; 99-861, eff. 1-1-17; 100-3, eff. 1-1-18; 100-201, eff. 8-18-17.)
