



# ILLINOIS SENTENCING POLICY ADVISORY COUNCIL

## 2016 ANNUAL REPORT

Hon. Gino DiVito, Chairman

Hon. Warren Wolfson, Vice Chair

Senator Kwame Raoul, Vice Chair

<http://ilspac.illinois.gov>

## TABLE OF CONTENTS

|   |    |
|---|----|
| Members .....   | 3  |
| Executive Summary .....   | 4  |
| Introduction .....  | 6  |
| Statement of Purpose .....  | 6  |
| Staffing and Budget .....   | 6  |
| Fiscal and Cost-Benefit Analysis.....                               | 7  |
| Population Projection Model .....                                   | 8  |
| Governor’s Commission on Criminal Justice & Sentencing Reform ..... | 8  |
| Collaborative Partnerships .....                                    | 9  |
| Conclusion .....  | 10 |
| Appendix .....  | 11 |

## ILLINOIS SENTENCING POLICY ADVISORY COUNCIL

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| <p><b>Hon. Gino DiVito, Chairperson</b><br/>Tabet DiVito &amp; Rothstein, Chicago</p> <p><b>Hon. Warren Wolfson, Vice-Chairperson</b><br/>DePaul School of Law</p> <p><b>Sen. Kwame Raoul, Vice-Chairperson</b><br/>Illinois State Senate</p> <p><b>Rep. Margo McDermed</b><br/>Illinois House of Representatives</p> <p><b>Steve Baker</b><br/>Office of the Cook County Public Defender</p> <p><b>Sen. Jason Barickman</b><br/>Illinois State Senate</p> <p><b>Kathryn Bocanegra</b><br/>Institute for Nonviolence Chicago</p> <p><b>Rep. Marcus Evans</b><br/>Illinois House of Representatives</p> <p><b>Craig Findley</b><br/>Prisoner Review Board</p> <p><b>Anne Fitzgerald</b><br/>Office of the Cook County Sheriff</p> <p><b>Michael M. Glick</b><br/>Office of the Attorney General</p> | <p><b>Nicholas Kondelis</b><br/>Illinois State Police</p> <p><b>John Maki</b><br/>Illinois Criminal Justice Information Authority</p> <p><b>Hon. Stuart Palmer (Ret.)</b><br/>First District Appellate Court</p> <p><b>Michael Pelletier</b><br/>Office of the State Appellate Defender</p> <p><b>Alan Spellberg</b><br/>Cook County State's Attorney's Office</p> <p><b>Michael Tardy</b><br/>Administrative Office of the Illinois Courts</p> <p><b>Gladyse Taylor</b><br/>Department of Corrections</p> <p><b>Julian Thompson</b><br/>Violent Crime Victim Representative</p> <p><b>Stewart Umholtz</b><br/>Tazewell County State's Attorney</p> <p><b>Don Stemen</b><br/>Loyola University Chicago</p> <p><b>Kristen Ziman</b><br/>Chief of Police, Aurora Illinois</p> |
|--|---|

**Kathy Saltmarsh**  
Executive Director  
401 S. Spring, Room 617  
Springfield, IL 62706  
217-558-4749  
[Kathy.saltmarsh@illinois.gov](mailto:Kathy.saltmarsh@illinois.gov)

**Michael R. Elliott**  
Intergovernmental Affairs  
401 S. Spring, Room 617  
Springfield, IL 62706  
217-558-4748  
[Michael.elliott@illinois.gov](mailto:Michael.elliott@illinois.gov)

**Mark Powers**  
Senior Research Analyst  
300 West Adams, Ste. 200  
Chicago, IL 60606  
312-793-0472  
[Mark.powers@illinois.gov](mailto:Mark.powers@illinois.gov)

**Nathaniel Inglis Steinfeld**  
Research Director  
300 West Adams, Ste. 200  
Chicago, IL 60606  
312-814-5964  
[Nate.steinfeld@illinois.gov](mailto:Nate.steinfeld@illinois.gov)

**Roger Franklin**  
Data Manager  
300 West Adams, Ste. 200  
Chicago, IL 60606  
312-814-8247  
[Roger.franklin@illinois.gov](mailto:Roger.franklin@illinois.gov)

**Yasmine El-Gohary**  
Research Analyst  
300 West Adams, Ste. 200  
Chicago, IL 60606  
312-793-4341  
[Yasmine.el-gohary@illinois.gov](mailto:Yasmine.el-gohary@illinois.gov)

## 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 installed four new members at its June, 2016 meeting: Aurora Police Chief Kristine Ziman filled the vacancy for a law enforcement representative; Julian Thompson filled the vacancy for a victim of a violent felony; Stuart Palmer filled the vacancy for a retired judge; and Dr. Don Stemen filled the vacancy for a criminal justice academic researcher. Additionally, SPAC welcomed Rep. Margo McDermed who replaced Rep. John Anthony as House Minority Leader Rep. Jim Durkin's designee, at the September 16, 2016 meeting.

Two meetings were held, and one meeting was cancelled due to lack of quorum. The June meeting focused on internal administrative matters including reviewing two bills that directly impacted SPAC, and an update on SPAC's work with the Governor's Commission on Criminal Justice and Sentencing Reform. The September meeting took a detailed look at enhancements for repeat offenders, including habitual criminal sentence enhancements and the crime of armed habitual criminal, and the recidivism rate for those offenders. SPAC found that repeat offenders in these categories had a higher likelihood of committing a crime against another person after release than offenders without these offenses in their criminal history. Nonetheless, the vast majority of recidivism offenses across the board are drug and property offenses. In addition, Yasmine El-Gohary presented an update of the trends in crime and sentencing analysis that was last updated in March of 2012.

- **Staffing** - In 2016 SPAC was staffed by Kathy Saltmarsh, Executive Director; Michael R. Elliott, Intergovernmental Affairs and Communications Advisor; Nathaniel Inglis Steinfeld, Research Director; Mark Powers, Senior Research Analyst; Roger Franklin, Data Manager; and Yasmine El-Gohary, Research Analyst. SPAC was funded through a lump sum grant of \$668,000 passed through the Department of Corrections budget. While no budget was passed for FY16, SPAC continued to operate at a level consistent with FY15, as did all state agencies.
- **2016 Legislative Session Fiscal Impact Analysis** - With the help of intern Robbie Minton, an economics major at the University of Chicago, SPAC began developing a population projection model for the Illinois prison population. Providing annual projections is one of SPAC's statutory mandates. Once the model is finalized, population projections will be included in fiscal impact analyses. SPAC produced fiscal impact analyses of the following bills:

**HB 6595** Changes to Penalties for Drug Crimes

**HB 5666** Revising Sentencing for Non-Violent Offenders with Less Than Four Months Stay

**HB 6193** Sentence Enhancements for Unlawful Use of a Weapon (UW) Offenses

**SB 2295** Justice Reinvestment Fund; Changes to the Criminal Code (Partial Analysis Due to Data Limitations)

**HB 4357/** Sentence Reductions for Possession of Cannabis under 500 Grams  
**SB 2228**

**House Proposal** Changes to Truth-In-Sentencing Good-Time and Sentencing Credit Restrictions  
The sponsor chose not to file this legislation but did release the SPAC analysis to generate public discussion of the issue.

- **Governor’s Commission on Criminal Justice & Sentencing Reform** - The Commission continued to meet throughout 2016. To help illustrate the intersection of multiple variables on the fiscal and population impact of changes to policies that govern length of stay (LOS), SPAC staff developed a length of stay calculator that allowed users to change the values for minimum and maximum terms, truth in sentencing percentages, and extended term sentences. The user could also choose whether to apply a policy change retroactively or prospectively. The calculator provided a way to see how long sentences would continue to feed the sentenced population for decades if changes targeting length of stay were prospective only. Nate Inglis-Steinfeld used the calculator during the Commission’s March 18, 2016 meeting to run various scenarios in which the Commissioners were interested.

Dr. Natalie Davila, an economist and former research director for the Illinois Department of Revenue, consulted with SPAC on the analysis of county budgets for public safety services. She standardized the data from the sample counties and helped with the analysis. Based on the information provided and interviews with the fiscal officers in the various counties, a dynamic marginal cost was developed that more accurately tracked the changes in marginal costs based on the magnitude of service changes generated by a new policy. Staffing costs must change significantly in order to realize savings because personnel costs are the bulk of public safety expenditures for both state and local units of government.

- **Cost-Benefit Analysis** - SPAC published its first cost-benefit report on specific programs in the Illinois Department of Corrections (IDOC), as well as a sample of problem solving courts: “Illinois Results First: A Cost-Benefit Tool for Illinois Criminal Justice Policymakers.” A copy of the report and supplement are available at:

<http://www.icjia.state.il.us/spac/index.cfm?metasection=publications>

- **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.

- **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 SB2164 (P.A. 099-0861), which requires a presentence report to be done before a Class 3 or 4 felon, who has no history of violent crime or a previous sentence to probation, can be sentenced to IDOC. This will require SPAC to access data maintained by the courts, either the Clerk’s docket system or data collected by the AOIC, to assess who falls into the limited category and then to analyze sentences to IDOC.

## 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, a representative of the Illinois Attorney General, prosecutors, defense attorneys, a representative of the Administrative Office of the Illinois Courts, a victim advocate, law enforcement officials, academics, and a representative of 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

Mystik Miller left SPAC in April and was replaced by Mark Powers, who came to SPAC from the Illinois Criminal Justice Information Authority; Michael R. Elliott's role was expanded to include both legislative affairs and communications; and Yasmine El-Gohary joined the staff as a research analyst in June, after graduating from the Indiana University School of Public & Environmental Affairs. While there was no budget passed for FY16 or FY17, SPAC received sufficient funding in the stop gap budget to cover operational expenses. Personnel costs

continued to be covered at FY16 levels pursuant to a court order authorizing state employees to be paid in the absence of an appropriation.

### Fiscal and Cost-Benefit Analysis<sup>1</sup>

SPAC published its second cost-benefit analysis report, “Illinois Results First: A Cost-Benefit Tool for Illinois Criminal Justice Policymakers.” This report analyzed the expected return on investment (ROI) for six programs in IDOC, two types of specialty courts, and one re-entry program that were consistent with those in the Results First model. SPAC chose nine programs that were consistent with the programs included in the model and obtained cost data for them. Because program evaluations are lacking for most programs, it was made clear in the report that the outcomes expected would be realized only if the Illinois programs adhered to the core concepts of the programs in the model. If those core concepts were not present in the Illinois programs, the return on investment (ROI) would not be as expected.

| Adult Programs   | Total Costs per Participant          | Total Benefits per Participant <sup>1</sup> | Net: Benefits minus Costs | Benefit to Cost ratio (benefits for every \$1 of costs) | Percent of Scenarios with Positive Return |
|--|--------------------------------------|---|---------------------------|---|---|
| <b>Preventing One Conviction<sup>2</sup></b>             | --                                   | <b>\$118,746</b>                            | <b>\$118,746</b>          | --  | --  |
| <b>Drug Courts</b><br>(100% prison-bound) <sup>3,4</sup> | \$19,425<br><i>\$11,941 per year</i> | \$45,767                                    | <b>\$26,342</b>           | \$2.36  | 100%                                      |
| <b>Adult Transition Centers<sup>3</sup></b>              | \$18,924                             | \$32,805                                    | <b>\$13,881</b>           | \$1.73  | 100%                                      |
| <b>Correctional Education in Prison</b>                  | \$3,514                              | \$15,312                                    | <b>\$11,798</b>           | \$4.36  | 100%                                      |
| <b>Vocational Education in Prison</b>                    | \$4,546                              | \$13,312                                    | <b>\$8,766</b>            | \$2.93  | 100%                                      |
| <b>Drug Courts</b><br>(50% prison-bound) <sup>3,4</sup>  | \$19,425<br><i>\$11,941 per year</i> | \$26,623                                    | <b>\$7,198</b>            | \$1.37  | 100%                                      |
| <b>Cognitive Behavioral Therapy</b>                      | \$422                                | \$7,381                                     | <b>\$6,959</b>            | \$17.49   | 100%                                      |
| <b>Therapeutic Communities in Prison<sup>3</sup></b>     | \$8,009                              | \$13,694                                    | <b>\$5,685</b>            | \$1.71  | 99%                                       |
| <b>Employment Training/Job Assistance in Community</b>   | \$220                                | \$4,458                                     | <b>\$4,238</b>            | \$20.26   | 99%                                       |
| <b>Illinois Correctional Industries</b>                  | \$3,498                              | \$3,781                                     | <b>\$283</b>              | \$1.08  | 55%                                       |
| <b>Mental Health Courts<sup>3,4</sup></b>                | \$30,013<br><i>\$17,626 per year</i> | \$25,087                                    | <b>-\$4,927</b>           | \$0.69  | 18%                                       |

<sup>1</sup> Appendix B divides the benefits by three recipient types: taxpayer, victim, and economy beneficiaries.

<sup>2</sup> The estimated total benefits of preventing one average conviction are \$118,746. See, SPAC, “Illinois Results First: The High Cost of Recidivism” at [http://www.icjia.state.il.us/spac/pdf/Illinois\\_Results\\_First\\_1015.pdf](http://www.icjia.state.il.us/spac/pdf/Illinois_Results_First_1015.pdf).

<sup>3</sup> Any criminal justice costs that would have occurred without the program are benefits because they are avoided government expenses.

<sup>4</sup> Specialty courts produce some of the largest benefits but, due to the long duration of the program and high intensity services, cost more than other programs. The net effect depends on who the participant diverts and the comparison costs, as well as the duration and costs of each state’s particular

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

| Adult Programs   | Total Costs per Participant | Total Benefits per Participant <sup>1</sup> | Net: Benefits minus Costs | Benefit to Cost ratio<br>(benefits for every \$1 of costs) | Percent of Scenarios with Positive Return |
|--|-----------------------------|---|---------------------------|--|---|
| program. For example, if only half of the drug court participants were diverted from prison and the other half would have received probation, the benefits (avoided taxpayer costs) are significantly lower. |                             |   |                           |  |   |

In order to get results consistent with those produced by the programs in the model, the Illinois programs would have to be implemented with fidelity to core concepts of the tested curriculums or models. Evaluations of these programs would also be necessary to measure the recidivism reduction effects of the programs. Evaluations of programs in Illinois are very rare, a weakness that needs to be addressed in order to facilitate performance based budgeting and help program administrators to track outcomes and identify issues with implementation that could undermine program outcomes.

The report explained the importance of identifying what benefit a policy, or group of policymakers, sought to measure:

1. The greatest social good (maximize net benefits),
2. The biggest bang-for-the-buck (highest benefit-to- cost ratio), or
3. The least risky investment (focus on percent of simulations with a positive return).

Specialty courts are expensive because they are resource intensive and people remain in them for a long time. But when they succeed in disrupting the cycle of addiction and crime, the benefits are significant. Research has established that cognitive behavioral therapy is both inexpensive and successful in changing how people who are involved in crime think and react to factors that are criminogenic, but we don't yet have it in our prison system because it requires qualified staff to administer the program. Using cost-benefit analysis can help prioritize programs for both policy makers and those who are responsible for administering the criminal justice system so that money is spent on the strategies that work, not the strategies that are are easiest.

SPAC continued to work with staff at the Pew-MacArthur Results First Initiative to develop a wider audience for the Results First model in state government. In response to this report, Nate Inglis-Steinfeld was invited to meet with the performance measurement and fiscal officers at the Illinois Department of Human Services, where there was interest in implementing the model for that agency.

### **Population Projection Model**

With the help of intern Robbie Minton, an economics major at the University of Chicago, SPAC began developing a population projection model for the Illinois prison population.

Providing annual projections is one of SPAC's statutory mandates. Once the model is finalized, population projections will be included in fiscal impact analyses.

### **Governor's Commission on Criminal Justice & Sentencing Reform Research Support**

After publishing Part One of its report, the Commission asked for and received authorization to continue meeting in order to address more specifically the two levers that drive the prison



population: admissions and length of stay. As with many other states, the focus of sentencing reform in Illinois has been on diverting “low level, non-violent” offenders, which addresses the admissions lever. While there is no dispute that the churning of people with convictions for Class 4 felonies is a significant factor in the number of admissions per year, most of the long term prison population is Class 2 through X and murder offenders. Their lengths of stay have grown increasingly longer over the last several decades and the length of stay impact can keep the prison population high even if admissions decrease over time.

To help illustrate the intersection of multiple variables on the fiscal and population impact of changes to policies that govern length of stay (LOS), SPAC staff developed a length of stay calculator that allowed users to change the values for minimum and maximum terms; truth in sentencing percentages; and extended term sentences. The calculator produced graphs that showed both population and fiscal impacts as well as the time frame in which the impacts would be realized. The calculator clearly illustrated that for both population and fiscal impact there were distinct points, or steps, at which an impact would occur rather than a linear progression. These graphs also illustrated how the magnitude of the impact changed over time, with both a delay of impact immediately after a policy change and a leveling off of its effect after a certain amount of time passed. The calculator also allowed the user to choose whether the policy would be applied retroactively or prospectively. This feature illustrated that real impact from changing very long sentences would not be realized for decades if applied prospectively as the length of stay for those currently in prison would not be affected. Retroactive application, such as allowing those serving under truth in sentencing (TIS) restrictions to earn credit for completing programming as of the effective date of the new policy, impacted the long term population more quickly but also raised concerns that the certainty TIS provides to crime victims would be undermined by that approach. Nate Inglis-Steinfeld used the calculator during the Commission’s March 18, 2016 meeting to run various scenarios the Commissioners were interested in.

Dr. Natalie Davila, an economist and former research director for the Illinois Department of Revenue, consulted with SPAC on the analysis of county budgets for public safety services. She standardized the data from the sample counties and helped with the analysis. Based on the information provided and interviews with the fiscal officers in the counties, a dynamic marginal cost was developed that more accurately tracked the changes in marginal costs based on the magnitude of service changes generated by a new policy. On both the state and local levels, staffing costs must change significantly in order to realize savings because, personnel costs are the bulk of public safety expenditures for both levels of government.

The dynamic marginal cost methodology was vetted with the counties’ fiscal officers and their feedback on the approach was very helpful. SPAC will start utilizing dynamic marginal costs in its fiscal analysis for the 2017-2018 legislative session.

Part Two of the Commission’s report was published in December 2016 and was consolidated with Part One. The Commission made 27 recommendations, not all of which required legislative action. For example, after the denial of barber licenses to people with felony records was discussed by the Commission, further investigation revealed that the licenses were not formally denied, the applicants just never got a decision on their applications. The Rauner Administration ordered the Illinois Department of Financial and Professional Regulation to stop the practice of not issuing these licenses. On the other hand, the recommendations having to do

with easing restrictions on sentence credit could not be implemented without legislative action to change the law. The full report is available at:

<http://www.icjia.state.il.us/cjreform2015/pdf/CJSR%20Final%20Report%20Part%20I%201-4-2016.pdf>

Legislation based on, or consistent with, the recommendations included:

**[SB3164](#)** (P.A. 99-0861) – Requires judges to state on the record why incarceration is an appropriate sentence when sentencing Class 3 and 4 felons who do have not previously been sentenced to probation or who have no prior convictions for violent crimes. (Rec. 12)

**[SB3368](#)** (P.A. 99-0907) – SOS to provide state IDs for those released from IDOC. (Rec. 27)

**[SB2872](#)** (P.A. 99-0938) – 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. (Rec. 18 & 11)

**[HB5973](#)** (P.A. 99-0876) – Removes license barriers for the Illinois Roofing Industry Licensing Act and the Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Tech Acts. (Consistent with Rec. 26)

## **Conclusion**

The finalization of the population projection model for the prison population was an important step in meeting SPAC's statutory mandates. Beginning in January, 2017, 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 refine its approach to bringing 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.
  - (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 this amendatory Act of the 99th General Assembly.
- (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.)

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