

**Illinois Sentencing Policy Advisory Council**  
Friday, April 13, 2012 Regular Meeting Minutes

**Meeting Location**  
JRTC – Room 2-025, Chicago

**Members Present:** Gino DiVito (Chair), Kwame Raoul (Vice-Chair), Warren Wolfson ( Vice-Chair), Robert Berlin, Shauna Bolliker (for Alan Spellberg), Jack Cutrone, Margie Groot (for Mike Tardy), Jeff Howard, Nick Kondelis, Michael Pelletier, Dennis Reboletti, Gladyse Taylor, Patricia Watkins, Karen Yarbrough, Dave Yellen

**Members Present by Phone:** Tom Callum, Ken Tupy (for Adam Monreal)

**Non-Members Present:** Brianna Baker-Carvell, Peter Baroni, Khadene Bennett, Chris Bernard, John Blakey, Lindsay Bostwick, Natalie Davila, Christine Devitt –Westley, MaryAnn Dyar, Esther Franco-Payne, Samantha Gaddy, Steve Karr, Jeremy LaMarche, John Maki, Adam Mendelson, Bernie Murray, Mark Myrent, Dominique Nong, Dave Olson, Mark Powers, Ben Rudell, Kathy Saltmarsh, Jenny Scheck, Tobin Shelton, Sharon Shipinski, Gail Smith, Don Stemen, Lisa Stephens, Gwen Troyer, Rick Veenstra, Paula Wolff, Jeanne Wrenn, Michael Zalewski

**Welcome, Introductions, and Agenda Overview**

Chair DiVito called the tenth meeting of the Sentencing Policy Advisory Council to order at 9:05 a.m. He opened the meeting by making introductory announcements, including:

Welcome to the newest members of SPAC, Robert Berlin and Dennis Reboletti. Mr. Berlin, DuPage County State’s Attorney, replaces State’s Attorney Mike Waller. Representative Reboletti replaces Representative Jim Durkin, Republican member of the House of Representatives.

Congratulations to Patricia Watkins who will be joining the state Senate next year.

Congratulations to Lindsay Bostwick, SPAC’s ICJIA researcher who has been accepted into the PhD program at Carnegie-Mellon University. Ms. Bostwick will be leaving in August.

The Chair also gave a brief overview of the agenda, including:

- Update from the Executive Director
- Approval of minutes from September 30<sup>th</sup> meeting.
- A presentation by Dave Olson on his ongoing drivers of the sentenced population analysis research
- A discussion of SB2621, a prison population management bill, with John Maki
- A discussion of HB1907, a bill concerning Racketeering Influence and Corrupt Organizations with the staff from the Cook County State’s Attorney’s Office.

**Update and Progress Report from the Executive Director**

Ms. Saltmarsh gave an update of SPAC’s research and a few bills of interest that are currently before the General Assembly.

HB4031 – which extends SPAC’s sunset to December 15, 2015 passed the House of Representatives. The bill was sponsored by Representative Yarbrough, and Senators Raoul and Millner have sponsorship in the Senate. We do not anticipate that there will be any problems getting the bill passed and signed by the Governor.

SPAC is receiving significant amounts of data from the circuit clerk offices pursuant to SPAC’s data requests to the counties that feed the population of the Department of Corrections. The data will be used for the fiscal model cohort studies and may also be useful for the drivers analysis that Dave Olson is working on.

Dr. Olson continues his analysis of the drivers of the sentenced population. This is the research that provides the basis for a well-informed discussion of ways to reduce our reliance on mass incarceration, reduce recidivism, and use our resources more wisely. It is the first step in the Justice Reinvestment process that has led to the passage of reform bills in more than a dozen other states.

A question that SPAC should consider is whether a broader reform discussion will take place under SPAC’s auspices or whether SPAC will be one representative in a different group. One thought is to include in any group discussion of this type of reform representatives from the counties that have undertaken implementation of evidence-based practices in the absence of any state mandate to do so. They know what works and what doesn’t from a practical implementation level.

Kathy and Samantha accompanied MaryAnn Dyar to the legislature to meet with members of the General Assembly about Adult Redeploy Illinois (ARI) and advocate for inclusion of ARI in the state budget. In addition to her day in the legislature, MaryAnn and Kathy met with Representative Greg Harris and Senator Dan Kotowski, key legislators for public safety budget issues. Senator Kotowski was very interested in the use of cost-benefit analysis in evaluations of ARI programs and suggested that SPAC and ARI address the Democratic caucus and the Budgeting for Results Commission, which he chairs.

Kathy reported that the RANA Request for Proposal (RFP) has been posted and IDOC is hopeful that the risk assessment tool will be procured in a few months.

#### **Approval of Minutes from the December 1, 2011 Meeting**

Upon a motion by Jack Cutrone, seconded by Jeff Howard, the minutes of the December 1, 2011 meeting were unanimously approved.

#### **Parole Analysis Presentation, Dr. Dave Olson**

Dr. Olson gave an update of his continued work on the drivers of the sentenced population analysis and his final findings on parole violators who are returned to the Department of Corrections. He discussed the way that Mandatory Supervised Release (MSR) works in Illinois and the lack of risk assessment involved. We know that MSR terms in Illinois are set by statute and based upon the class of the offense. However, research is showing that the seriousness of the offense (i.e. the class of the crime) has little if anything to do with risk of reoffending. In fact, research often shows the opposite. People who commit low-level crimes are not necessarily at any less of a risk for reoffending than those who commit higher class offenses.

Looking at offenders who were released from prison onto MSR, those who were held on class X and class 1 offenses were returned to the Department of Corrections more often for technical violations. Those convicted of class 3 and class 4 felonies tend to be returned more often for new sentences in a three to four year time span.

For MSR violators who are resentenced to prison for new offenses, most are coming back off of MSR for lower class felonies. Of those returned with a new sentence, 70 percent were resentenced for a new class 3 or 4 felony.

#### **Discussion of Senate Bill 2621**

John Maki of the John Howard Association gave a presentation on the provisions in SB2621, a bill to authorize sentence credits for good behavior, successful completion of programming while incarcerated, and meritorious service to the state, the institution, or the community. The John Howard Association has visited numerous correctional facilities in Illinois and documented the conditions there. Mr. Maki believes that this piece of legislation is necessary, in part, due to the conditions of the medium and minimum security facilities. Conditions, like those at Vienna – the most overcrowded facility, can be dangerous to both inmates and staff. The bill includes the following provisions:

1. Replaces Meritorious Good Time (MGT) with a “Sentencing Credit Program” that allows inmates to participate in programs that have been shown to reduce recidivism, comply with the rules and regulations of the Department of Corrections, and participate in service activities to receive credit toward their sentence.
2. A program that supports the reunification of moms and babies, similar to that of the Mom’s and Babies Program in the Decatur facility.
3. Ability for inmates to receive credit for programming completed in county jail. Historically, inmates have waited until they entered the state Department of Corrections to participate in programs because they otherwise would not receive credit for completion of the same programs at the county level. As a result, there has been a great deal of back-log and waiting-lists for program participation in state facilities.

Members held a short discussion and the Executive Director was given the authority to actively engage in discussion of the bill in the General Assembly, but SPAC will not endorse or oppose any bill.

#### **Discussion of House Bill 1907**

Ms. Saltmarsh summarized the process that SPAC used to analyze HB1907, the proposed state RICO bill, after Senator Raoul requested a SPAC analysis. SPAC’s priority was to determine the impact that the legislation would have on sentencing. A number of steps were completed prior to SPAC making a determination that the bill would have minimal sentencing impact. The impact would be minimal because a significant number of convictions were unlikely due to the fact that RICO cases are very complex and time consuming to prepare and prosecute.

SPAC looked at the materials produced by both opponents and proponents, researched RICO statutes in other states, and reached out to other sentencing commissions to get information on how RICO statutes operate in other states.

ICJIA researchers looked at the current IDOC and probation populations to determine if it was possible to accurately project impact based on the number of convictions and sentences. Because we do not have the ability to identify how many offenders in the current population have gang or criminal enterprise affiliations, and because it is impossible to determine how many offenders would commit a second predicate crime after the effective date of the statute, SPAC was not able to produce a complete fiscal impact statement for this bill.

We also looked at whether the bill was duplicative of existing statutes. Though Illinois has a provision for civil forfeiture of the proceeds of a criminal enterprise, it is rarely used and the provisions are significantly different from those of HB1907.

We did a chart of the predicates and compared the sentences of the underlying predicates to the sentences imposed if convicted of RICO. While it is true that commission of a second predicate act could result in being charged under RICO instead of for the predicate, and thus would result in a higher sentence for that conviction, the sentence for the predicate does not change. The question is one of implementation; would the person be charged with the underlying offense or the RICO charge?

Information from other states, included in the bill triage form indicates that there has not been an explosion of prosecutions under state RICO statutes. That is borne out on the federal level as well.

#### QUESTIONS THAT REMAIN:

- What effect have other states seen on gang crime since passage of these bills?
- How much revenue has been generated through the forfeiture of assets?

About half the states have language that is more narrowly drawn as to the relationship between the predicate acts and the criminal enterprise; about half of the states have language that is consistent with HB1907.

#### QUESTIONS RAISED THROUGH THE SPAC REVIEW PROCESS

1. Pretrial detention may be costly if defendants are in jail for a year or more awaiting trial and if life sentences are imposed there are greater costs to DOC so a division of proceeds should be considered.
2. Given the issues with RICO on the federal level is there a less complex approach to depriving gangs of their economic power?
3. Should the statute be more narrowly drawn to specifically target gang activity or is there something that could be done with the STOP Act to make it more useful and negate any potential sentencing impact?
4. Can we do data collection and analysis to determine if there is a large proportion of low level offenders who will be caught in this net without the desired outcome of convicting gang leaders and seizing the assets of the criminal enterprise.

John Blakey, Chief of the Special Prosecution's Bureau and author of the statute, led presentation and discussion on the bill. Mr. Blakey discussed the need for this legislation as a tool to knock out gang enterprises. There is a short-fall in the statutes because "conspiracy" is the only tool currently available for prosecution; "conspiracy" is a common law concept of one day and one crime. This language will criminalize a pattern of conduct instead of isolated incidents allowed under conspiracy. This bill is not about sending more people to jail, but rather sending the right people to jail and those are the management and leadership of the criminal enterprise. With conspiracy, it is nearly impossible to get at the enterprise leaders.

Several questions and concerns about the implementation of the bill arose from members during the discussion, including but not limited to:

1. There was some concern that the language of the bill is so broadly drafted and includes so many predicate offenses that the possibility for abuse is great and impossible to predict. Although the proponents said that there was no track record of abuse, some members feel that does not eliminate the possibility for abuses. There has not been a great deal of prosecutions using RICO statutes in other states. This legislation could be used more as a tool to obtain pleas, as the death penalty was, and also used to catch the small fish in hopes they provide information on leaders when threatened with a RICO charge.
2. There is a plethora of case law that goes in several directions depending upon the state and the circuit where the opinion was written. This can make interpretation very confusing.
3. Why is this bill any different from conspiracy, which can go far beyond an isolated incident?
4. Why can we not use the STOP Act instead?
5. Why is the Illinois State Bar Association opposed to this bill; they slipped in opposition and some of the members are curious as to their objections.
6. The civil forfeiture provision of the bill gives judges tremendous power to “just take away” before or without the requirement of a criminal conviction, without standards or any requirement of a jury trial.
7. Among the predicate offenses listed were gambling and running a loan business with usurious loan rates in a different state. Illinois does not have a usury statute, so if it’s usurious in Ohio, it becomes a crime in Illinois to deal with that business. This could not have been intended. Also, there is a provision mentioning court pleadings in cases that refer to the defendant but are not necessarily the defendant’s pleadings. These things seem to be inviting a lot of hearsay and sixth amendment issues.
8. Various members were also concerned about the broad definition of “enterprise.” There is no specificity as to a “gang” enterprise and could therefore include corporations, labor organizations, etc. A few labor organizations have voiced their concerns about the broadness of the definition to Senator Raoul.

Mr. Blakey was willing to continue discussions and consider modifications to the bill to address the concerns raised by SPAC members. Representative Michael Zalewski, the House sponsor of the bill also participated in the discussion and shared Mr. Blakey’s willingness to continue working on the substance of the bill.

#### **Other Business and Next Step**

Ms. Saltmarsh will be emailing members for their availability in order to set a date for the next meeting when more research findings become available.

#### **Adjournment**

A motion to adjourn was made by Jack Cutrone and seconded by Gladys Taylor. The tenth meeting of the Illinois Sentencing Policy Advisory Council adjourned at 12:03 p.m.