

Illinois Sentencing Policy Advisory Council
Regular Meeting Minutes
October 9th, 2015 10:00AM – 1:30PM

Location: Illinois State Bar Association
20 S. Clark St., Suite 900
Chicago, IL

Members Present – Gino DiVito (Chairperson), Warren Wolfson (Vice-Chair), Kwame Raoul (Vice-Chair), Megan Alderden (for John Maki), Anne Fitzgerald (for Tom Dart), Kathryn Bocanegra, Michael Glick, Stephen Baker, Gladyse Taylor, Jim Chadd (for Michael Pelletier), Alan Spellberg, Margaret Groot (for Michael Tardy), Marcus Evans, and David Yellen.

Members Present by Phone – Nicholas Kondelis and Stewart Umholtz.

Members Absent – John Anthony, Jason Barickman, and Craig Findley.

Non-Members Present – Kathy Saltmarsh, Michael Elliott, Mystik Miller, Nathaniel Inglis Steinfeld, Roger Franklin, Sara Orlan, Mary Ann Dyar, Ben Ruddell, Rick Veenstra, Dave Olson, Patrick Moriarty, Sophia Atcherson, Matt Jones, Joseph G. Kazmierski, Jr., Peter Coolsen, Rebecca Frale, John Baldwin, Patrick Griffin, Laurie Jo Reynolds, John Paul Carroll, Peter Baroni, Paula Wolff, Jennifer Green, and Era Laudermilk.

Non-Members Present by Phone – None.

Welcome and Introductions

Chairperson DiVito called the twenty-first regular meeting of the Illinois Sentencing Policy Advisory Council to order at 10:10 a.m. Chairperson DiVito gave the opening remarks, including:

- Introduced new SPAC staff, Data Manager, Roger J. Franklin. Roger will be responsible for building SPAC's technology and data infrastructure, and we anticipate that he will also be a regular contributor to data-related projects with our partners ICJIA and IDOC.
- Welcome to Margaret Groot from the Administrative Office of the Illinois Courts who has been designated by letter to act as Michael Tardy's representative for this meeting.
- Welcome to Megan Alderden from the Illinois Criminal Justice Information Authority who has been designated by letter to act as John Maki's representative for this meeting.
- Welcome to Jim Chadd from the Office of the State Appellate Defender who has been designated by letter to act as Mike Pelletier's representative for this meeting.
- Welcome to new Illinois Department of Corrections Director, John Baldwin. Director Baldwin brings more than 35 years of overall experience to the position. He introduced himself to SPAC members and stated he looks forward to attending future meetings.
- An overview of the agenda and purpose of the meeting, focusing on the definitions of violent crime and how a history of violent crime impacts sentencing.

Vote: Approval of the meeting minutes from the August 7th, 2015 SPAC meeting

Vice-Chairperson Warren Wolfson moved to approve the minutes, seconded by Michael Glick. The minutes from the August 7th, 2015 SPAC meeting, were approved by unanimous voice vote.

Definitions of Violence in Illinois: Differences in Definitions & Research Implications

Nathaniel Inglis Steinfeld, SPAC Research Director, and Mystik Miller, SPAC Research Analyst, gave a PowerPoint presentation summarizing, as researchers, how they have been looking at the violent/non-violent classifications. They highlighted several inconsistencies in the definitions and explained how those definitions affect SPAC analyses and research. They found statutory classifications of specific offenses sometimes conflict between the Crime Victims Compensation Act (740 ILCS 45) and the Rights of Crime Victims and Witnesses Act (725 ILCS 120). There are also inconsistencies in the way data are aggregated by different research agencies which can lead to ambiguity for readers. Further, in the real world, an arrest or conviction for a violent crime can exclude an offender from certain programs and alternatives to incarceration. The definitions in practice are defined by practitioners that may use a more common understanding of violent/nonviolent, rather than precise statutory interpretation. The discussion concluded with the determination that the Council's input on how SPAC should approach analysis and reporting would be beneficial to any future SPAC analyses.

Panel: The Real World View of How Arrests & Convictions for Violent Crimes Effect Sentencing

Members heard from a panel of experts representing perspectives from judges, prosecutors, and defense attorneys' views of the real world impact of a violent crime in an offender's history:

Moderator: Kathy Saltmarsh, Executive Director, SPAC – Director Saltmarsh led the panel discussion by laying out two basic concepts to the panelists: (1) SPAC focuses on the outcomes the system produces and our mandate is to facilitate using research and analysis in the policy discussion; and (2) There are legitimate reasons in practice for distinguishing between violent and non-violent crimes and categorizing them differently. Director Saltmarsh then asked the panelists to address the utility and the weaknesses of how we distinguish between violent and non-violent crimes.

Judge Joseph G. Kazmierski, Jr., Acting Presiding Judge, Cook County Criminal Division – Judge Kazmierski began with a brief historical perspective of where he comes from on the issues regarding policy and sentencing. In the 42 years he has been practicing as an attorney, the Illinois Criminal Law and Procedure book has grown from a very thin book, to the thick book that we have now. When he looks at how certain crimes are defined, he is impacted by the mandatory sentencing provisions, various factors considered in sentencing, and the limited discretion allowed. He does use the court assessment tool (part of the Court Tools project), and it is something he finds helpful when considering bond. In looking at the SPAC classification list, Judge Kazmierski does agree there are certain crimes that appear to him as non-violent, but he does not know enough of the legislative history surrounding those crimes, which led to the policy decision to classify them as such.

Sophia Atcherson, Chief of the Legal Resources Division, Cook County Public Defender – Chief Atcherson's focus is always client centered and she would love to see more of an effort to not only look at the offense but also at the individual charged with the offense. She believes it is hard to use the assessment tool for every offense, because the context of the offense is going to be different every time depending on the offender. Mandatory sentencing is extremely frustrating for her. When she is in front of a judge who she believes would like to consider her client's specific situation but cannot due to the law. Thus, how does she advocate for someone when your advocacy makes no difference in the sentencing? She would like to see more of a balance that considers the offender and their situation when charged, not solely the victims' rights. Additionally, she would like the defendant's side to be more involved in the construction of tools, risk assessments, presentence investigations (PSI's), and to be included in the drafting of the case letters to IDOC to double check for possible errors. She believes having this additional check will ensure that

offenders have the best opportunities to prepare themselves for entry back into their respective communities after time served by not being excluded from programming due to the offense or conviction. Atcherson would like to see a definition that takes that perspective into account.

Matt Jones, Associate Director, Illinois State's Attorney Appellate Prosecutor – Director Jones began by showing us how we got to this point: these statutes define violent within two acts that were created to serve different purposes. As a drafter of legislation for many years, Jones explained that most of the ideas behind our laws arise due a particular event and the definitions are almost always shorthanded. Drafters usually start off with a template, which shapes future templates, and are constantly modified as legislation moves forward, because nobody wants to reinvent the wheel. Jones believes this is what led to the differences between the two acts (Crime Victims Compensation Act and the Rights of Crime Victims and Witnesses Act), because most legislation is a result of an individual legislator proposing a modification due to a specific incident or request by a constituent. As staffers, legislators, and policy makers try to find an example from which they can borrow, they use what already exists and has worked. Neither of these two acts are really designed to provide a sentencing definition, they are more of a collateral remedy, like allowing the victims to have additional rights to be involved in the process. Jones believes it is very important to understand that the legislative process is layered, it builds upon past context, and it is rarely comprehensively reviewed.

From the prosecutors' point of view, Jones suggests the definition of violent should begin with looking at what is a forcible felony and go from there. Lastly, for purposes of sentencing options of where SPAC should go, Jones thinks there needs to be a reevaluation of why are we relying on the two acts rather than a definition in the criminal code that is focused on an inherently violent type of crime: forcible felony. Jones thinks this is a better starting point. The fact that IDOC is relying upon a definition from a misapplied statute seems to be the issue that needs to be addressed rather than which crimes are in and which ones are out.

Moderator: Kathy Saltmarsh, Executive Director, SPAC – Director Saltmarsh asked if the focus shifted to the definition of forcible felony, should that change the access and eligibility to programming. Currently, the Governor's Commission on Criminal Justice and Sentencing Reform is talking about the possible negative consequences of the blanket exclusion of violent offenders from many diversion programs, despite the science indicating many of these offenders could be the best served and have the most significant change in criminal behavior after treatment. She then talked briefly about how the classification effects the sentencing options and programming options, as well as the utility of that distinction. Director Saltmarsh emphasized that we should remain focused on the idea that everyone wants fewer victimizations and better outcomes for the system.

Judge Joseph G. Kazmierski, Jr., Acting Presiding Judge, Cook County Criminal Division – Everybody wants to get it right and, from his perspective, of utmost importance is having the most reliable statistical information available on the past history of a particular type of offender and how that information should relate to offenders in particular crimes. He does not have a "crystal ball", so the more validated statistical information made available to judges, such as the trends analyses and average offender profiles, the more SPAC will help in crafting judicial sentencing determinations.

Sophia Atcherson, Chief of the Legal Resources Division, Cook County Public Defender – Again, she would like to see more focus on the individual. She does not know how helpful statistics are going to be

when the statistics will be based on people (violent offenders) who did not have access to programming when they were initially incarcerated. Lack of treatment likely results in higher levels of recidivism among this population. She hopes they could come up with programming for violent offenders that includes physiological and developmental evaluations in addition to the other tools available. Again, Achterson would love to see more of a balance between the offense and the individual. Using this balance—along with research into how our current programming supports and helps certain offenders rehabilitate and what programming does not work for that certain type of offender—will support better outcomes across the system.

Matt Jones, Associate Director, Illinois State's Attorney Appellate Prosecutor – Director Jones believes that prosecutors do not have as much information as they would like, especially if they are planning to deviate from their usual prosecutorial matrix, which is based on the severity of the offense and prior criminal history. Good prosecutors will view the offender's prior criminal history in context. Finding a way to balance the offender's criminal history with the past context depends on private counsel or a public defender that has the time to provide this information to the prosecutor. The balance would get a better result, but, in large volume courtrooms, the time simply does not exist. This is why sentencing decisions will likely come back to balancing out the severity of offense with the length of criminal history, if there is any, and adjust it.

Chairperson DiVito – Concluded the panel with his perspective that all three panelists would like to see more discretion within the criminal justice system. He referenced recent legislation that deals with the automatic transfers of juvenile offenders. Judges are now allowed to use discretion if these youth are charged with a firearm sentence enhancement, which is currently an automatic enhancement for adults. He believes we should use this as a model moving forward for the adults charged with firearm sentencing enhancements and encourages the defense and prosecutorial communities to continue to meet and work on fixes to our criminal justice system.

Updates from SPAC Partners

Risk Assets Needs Assessment (RANA): Illinois Department of Corrections (IDOC) Senior Policy Advisor Gladys Taylor gave a brief update on implementing the RANA tool. Ms. Taylor relayed that IDOC is still facing funding challenges that are a result of the FY16 budget stalemate, which may or may not affect the hiring of the 120 approved positions for RANA staff. The RANA Specialist job postings have closed and candidates are being scored but she does not know how many individuals applied. She was also informed that IDOC does not have federal appropriation spending authority, so the Southern Illinois University program assessment is on hold. Senior Policy Advisor Taylor plans to reach out to all members of the General Assembly's Public Safety Appropriations committees. She is hopeful IDOC's needs can be addressed promptly. IDOC will also be convening its quarterly Adult Advisory Board Meeting later this month on October 19th.

Adult Redeploy Illinois (ARI): ARI Program Director Mary Ann Dyar provided a brief update of funding, site statistics, and current site issues. Director Dyar proceeded with a brief summary of ARI's presentation on the timely topic of sustainability to the Illinois Association of Problem-Solving Court conference, which is taking place in Springfield on October 8 and 9. ARI staff has been checking in regularly with their sites to assess the impact of the budget crisis on local programs. The impact is significant. Several sites are laying off staff and stopping referrals into the program. There are also widespread service cutbacks that have an immediate impact on the well-being of the clients and a longer-term effect on recidivism. Upon request, her staff submitted a memo to the Governor's Office and presented to the Budget Committee of the ICJIA Board about the impact on

sites and the program overall. ARI Staff estimates that \$15 million of costs could result if ARI has to shut down. As reported at the last SPAC meeting, ARI is concerned about the immediate and long-term impacts of the fiscal uncertainty and these cuts to evidence-based practices, particularly in light of the fact that the Illinois Commission on Criminal Justice and Sentencing Reform has identified Adult Redeploy Illinois as an important component of the strategy to reduce the state prison population by 25% by 2025.

Director Dyar concluded her update by recapping ARI's experience at the first annual Smart Decarceration Initiative Conference in St. Louis, Missouri, hosted by the Washington University Brown School of Social Work, "From Mass Incarceration to Effective and Sustainable Decarceration," in September. Approximately 150 people participated in the national event including several Illinois stakeholders such as representatives from the Office of the Chief Judge in Cook County, the Parole Division of the Illinois Department of Corrections, SPAC, Illinois treatment providers, and the MacArthur Foundation.

Illinois Criminal Justice Information Authority (ICJIA): Research Director Dr. Megan Alderden provided a brief overview of what the research department at ICJIA has been working on. ICJIA is going to be hosting a conference entitled "Illinois Partnerships and Strategies to Reduce Violent Crime" in Peoria on November 4 and 5. The conference will be geared towards local governments and discuss their innovative approaches to serious crimes and high levels of gun violence. Participating jurisdictions are encouraged to bring a multidisciplinary team to learn from national and local experts. They are also incentivizing participation at the conference with the potential for local jurisdictions to be eligible to receive funding and technical assistance to develop and implement the focused and collaborative strategies that will be discussed. The conference will be sponsored by the Illinois Criminal Justice Information Authority, the City of Peoria, the U.S. Attorney's Office of the Central District of Illinois, the John D. and Catherine T. MacArthur Foundation, and the Joyce Foundation. Dr. Alderden concluded her update by reminding everyone that ICJIA is always engaged in supporting ARI, SPAC, and the Illinois State Commission on Criminal Justice and Sentencing Reform.

Discussion: Assumptions, Uses, and Impact on Sentencing

SPAC members discussed their thoughts and gave feedback on what they heard from the earlier presentation and panel discussion. SPAC staff asked the members for some guidance on how they should define violent crime for our research purposes when there is a conflict between statutes and data reporting criteria. Chairperson DiVito then suggested staff come up with a "dream" statute that would take the place of the conflicting statutes and prosecutorial view of violent offenders. However, there was no clear consensus of how to guide SPAC staff towards this "dream" statute. For now, SPAC staff will keep using previous practices, examine the forcible felony statute, and keep researching this topic which will be revisited at a future meeting.

New Business

Chairperson DiVito confirmed the next 2015 meeting date of Friday, December 18th, with members. The meeting location will be forthcoming.

Adjournment

Michael Glick moved to adjourn the twenty-first regular meeting of the Sentencing Policy Advisory Council, seconded by Stephen Baker. The twenty-first regular meeting of the Sentencing Policy Advisory Council was adjourned at 1:33 p.m. by unanimous voice vote.