

Illinois Sentencing Policy Advisory Council
Regular Meeting Minutes
April 26th, 2013 10:00AM – 1:30PM

Location: Michael Bilandic Building
160 N. LaSalle, Rm. N502
Chicago, IL

Members Present – Gino DiVito (Chairman), Warren Wolfson (Vice-Chair), Kwame Raoul (Vice-Chair), Robert Berlin, Christine Devitt -Westly (for Jack Cutrone), Marcus Evans, Jr., Lester Finkle (for Jeff Howard), Michael Glick, Nicholas Kondelis, Adam Monreal, Dennis Reboletti, Alan Spellberg, Michael Tardy, Gladys Taylor, Pat Unsinn (for Mike Pelletier), Dave Yellen

Members Absent – William Clay III, Margaret Egan, Ronald Holt

Non-Members Present – Peter Baroni, Khadine Bennett, Jordan Boulger, Laura Brooks, John Carroll, MaryAnn Dyar, Esther Franco –Payne, Samantha Gaddy, Monica-Kaye Gamble, Margie Groot, Toni Irving, Daryl Jones, Steve Karr, Era Laudermilk, Lindsey LaPointe, Dominique Nong, Dave Olson, Ben Ruddell, Kathy Saltmarsh, Sharon Shipinski, Don Stemen, Mike Toomin, Rob Wildeboer

Welcome and Introductions

Chairman DiVito called the thirteenth regular meeting of the Illinois Sentencing Policy Advisory Council to order at 10:20a.m. The Chairman gave opening remarks, including:

- Welcome to new member Marcus Evans, Jr. who replaces Karen Yarbrough for the House Democratic Caucus and is joining us for his first meeting.
- Welcome to new member Senator Jason Barackman who replaces John Millner from the Senate Republican Caucus. Senator Barackman is an attorney and is interested in sentencing policy. Unfortunately he was unable to attend today's meeting.
- Patricia Van-Pelt Watkins has submitted her resignation from SPAC in light of her new position in the Illinois Senate. SPAC greatly appreciates her contributions to the Council. She was serving on SPAC as a representative of a community organization, a position appointed by SPAC members. A list of potential community service candidates will be forthcoming.
- Chairman DiVito recognized and thanked Michael Toomin, presiding judge and head of the Juvenile Division in Cook County for joining today's meeting.
- Welcome to special guest Rob Wildeboer of WBEZ radio – who just completed a story on HB2265, a bill concerning penalty enhancements for unlawful use of a weapon convictions, and has done several stories on prison overcrowding.

Agenda Overview

Chairman DiVito provided an overview of the agenda as follows:

- In lieu of an oral report, Ms. Saltmarsh has provided the members with a written Executive Director's Report.
- The focus of the agenda for this meeting is on the subject of mandatory minimums and the proposal to increase mandatory minimums for UUW offenses this legislative session. Dave Olson and Don Stemen from Loyola will give a presentation on mandatory penalties and Truth-in-Sentencing, and we will hear from Steve Karr on aging prisoners and the unintended consequences of increasing sentence length
- There will also be some discussion of a post-conviction bill that if passed as written, may affect the capacity of the courts to resolve cases.

Vote: Approval of the meeting minutes from the January 18th, 2013 meeting

Warren Wolfson moved to approve the minutes, seconded by Alan Spellberg. The minutes from the January 18th SPAC meeting were approved by unanimous voice vote.

Presentation & Discussion: Mandatory Minimums & Truth and Sentencing

Don Stemen and Dave Olson from Loyola University's Criminal Justice Department gave an overview of the research on Mandatory Minimums and Truth-in-Sentencing. Their overview included insight into what we really get when we implement those sentencing strategies, and a discussion of HB2265/SB1003.

Mandatory sentencing laws used over the last 40 years in this country may affect the disposition and/or duration of the sentence imposed.

- *Intent:* Mandatory sentencing laws were intended to ensure some uniformity and transparency in the way and the number of sentences that are handed down and to increase the average length of prison sentences imposed. The penal impact goals of mandatory sentencing laws were to incapacitate, deter, and punish.
- *What the research shows:* Courtroom actors are fairly consistent in how they react to mandatory sentencing laws by shifting charging practices and shifting discretion through plea offers and increases in "charge bargaining." Research has also shown that the probability of a prison sentence is often unchanged for those arrested or originally charged with a target offense. The length of prison sentences generally increases for those convicted of targeted offenses, however the length of the sentence often remains flat for those arrested or originally charged with the target offense. Due to minimal changes in the probability of prison, mandatory sentencing laws are considered to have minimal, if any deterrent effect. Given increases in lengths of sentences imposed for those sentenced under the law, mandatory sentencing laws increase punishment and incapacitation for some.
- *Potential Unintended consequences:* Research shows that young black men are more likely to be subject to mandatory sentences as well as other disparities in the application of mandatory penalties. There has also been an increase in trial rates for those seeking to avoid an increased mandatory incarceration period.
- *Conclusion:* Research indicates that mandatory sentencing laws have little deterrent effect on targeted behaviors, and are ineffective at changing sentencing outcomes for targeted behaviors, but do work to increase punishment and incapacitation of those sentenced under the mandatory minimum laws.

Illinois adopted Truth-in-Sentencing (TIS) in 1995 largely due to a federal Truth-in-Sentencing grant program established the prior year. This change in sentencing structure requires those convicted of First Degree Murder to serve 100% of their sentence. Other specific offenses are subject to either an 85% or 75% requirement. After its enactment in Illinois in 1998, more offenses have been made subject to TIS's 75% requirement.

- *Intent:* The intent of Truth-in-Sentencing was to 1) Incapacitate: ensure that those charged with specific crimes serve a substantial portion of their sentence for a longer period of incapacitation, and 2) deter crime and punish offenders more harshly. Rehabilitation is not an expressed goal of TIS, but TIS can impact the ability to rehabilitate by increasing the amount of time required to serve and removing the ability to earn good conduct credits through programming and positive behavior.
- *Potential Unintended Consequences:* more trials, longer periods of time before dispositions, increases in pre-trial detention times due to fewer plea bargains, and an increase in prison misconduct as a result of taking away good conduct credit incentives.
- *Impact of time served on recidivism:* Based on Dr. Olson's analysis of Illinois data, it appears that the longer the period of incarceration, the lower the recidivism rate after statistically controlling for other factors. For every year of incarceration, the odds of re-arrest for a violent crime decreased by 14%, though it is important to distinguish *odds* from *probability*. However, those who access drug treatment in prison have a lower recidivism rate where the odds for re-arrest, based on Illinois data, decreased by 15%.

- Although longer lengths of incarceration were related to lower recidivism rates, the increases in time have to be relatively large, incapacitating individuals past the ages that they are most likely to reoffend.
- Age was brought up as a variable effecting recidivism. The older an offender is at exit, the less likely the person is to recidivate. The largest reduction is seen after offenders reach the mid-thirties. Longer sentences make offenders older when they get out, but there is a point where incarcerating an aging offender more has no benefit. The recidivism effect of one released at 50 and one at 60 is minimally different.
- Age and prior history are the two strongest predictors of recidivism, however the cost of incarcerating older prisoners is higher.
- *Conclusions:* Because statutory sentencing ranges and practices were unchanged when TIS was adopted, offenders are now serving more of their sentences which has resulted in increased lengths of incarceration in Illinois. The time that offenders are required to serve for some sentences is now beyond what would have ever occurred without the passage of TIS.

Members held a discussion on HB2265, a bill to increase the mandatory minimum penalty for a person convicted for unlawful use of a weapon (UW) offenses and subject those offenders to the 85% TIS provision.

- Ms. Saltmarsh explained the differences between the SPAC analysis and the IDOC analysis and the cost figures were discussed.
- Accepting that a policy response to gun violence is appropriate but the cost is prohibitive, is there something more SPAC should say about spending dollars in a way that would have more of an impact on gun violence. Cost should be a political issue, and SPAC needs to put costs right up front.
- Are astronomical figures reliable if we know the system will make adjustments in response to mandatory minimums as Olson and Stemen discussed? Length of stay will make the cost go up as people are sentenced to the higher minimums, though some offenders will benefit from the system adjustments.
- The legislature wants to act to remove judicial discretion on a broad scale when trigger events occur, we need to figure out how to educate legislators about the exercise of discretion. Individual judges are not perfect predictors of future behavior, and there will always be another bad incident.
- Prosecutors must exercise their discretion in the face of mandatory minimums. The prosecutors who don't do that are the problem. Olson's presentation indicates prosecutors do exercise their discretion appropriately, recognizing that every case is unique.
- The point was made that the General Assembly reacts by limiting judicial discretion when violent crimes are committed. So frequently the discussion is about the worst case even though worst cases already get severe treatment. What does not get discussed is the less culpable case, and what is too severe in those circumstances. When the reaction is to impose more mandatory minimums we end up with a sentence more appropriate to the worst cases which leads to the mandatory minimum being circumvented in the most common cases.
- Mandatory minimums generally do not work and many mandatory minimums get scaled back because of cost or changed values. Even sentencing guidelines that are purely advisory have a huge impact channeling judicial discretion to get to the collectively recognized "right result."
- A very good cost-benefit analysis needs to be done. Increased incarceration costs and recidivism should not be the only outcome measure. The economic value of avoided victimization costs through incapacitation need to be considered also. Those costs and costs avoided will be included in future analyses when the SPAC cost-benefit analysis model is fully implemented.
- Bond is an issue as well – if low bond is set on these cases UW offenders get out too easily. With a higher mandatory minimum a low bond is not as likely so people won't be right back on the street. The judge who is setting bond should have appropriate information about the offender; the legislature should not get into the business of bonds.
- Repetitive Class 4 offenders with substance abuse factors need to be treated in the community rather than continuously granting probation without treatment and then repeated incarceration. Keeping them

out of DOC would free money for incarcerating the violent offenders. Sometimes however a violent offender who is released will reoffend at a low level at which point they should go back to DOC.

- There are a lot of diversionary programs for Class 4 violators so most of them don't end up in DOC until they've offended over and over again and many don't want to go through programming.
- There should be some mechanism for a judge to avoid an unjust mandatory minimum sentence if certain factors are present, in the event a prosecutor does not appropriately reduce a charge. The legislature would have to spell out what those factors are.

Working Lunch: Updates from Risk Assets Needs Assessment (RANA) and Adult Redeploy Illinois (ARI)

Gladyse Taylor provided an update of RANA. The DOC assessment group is in the process of going over the important static factors and determining at which points in the process assessment is needed. It is planned that assessment will be done at the Reception and Classification Centers, in the 6 month period prior to release, and while an offender is on Mandatory Supervised Release.

MaryAnn Dyar provided an update on ARI. The money utilized by ARI sites is used for evidence-based practices. These practices include programs to work on criminal thinking, cognitive behavioral therapy, and drug treatment. There are now 12 ARI sites that diverted about 900 offenders since the program started. ARI also had an all-sites meeting last month that included training in "What Works" in offender behavior and rehabilitation from the University of Cincinnati Corrections Institute.

Discussion: HB2961 Changes to Post-Conviction Proceedings

Due to the possible effect on the courts, members discussed the possible pros and cons of HB2961, a bill that expands access to post-conviction review by making the remedy available to juveniles and those who are no longer detained under the control of the Department of Corrections or local government agencies. The Senate sponsor was in attendance at the meeting and able to receive feedback from the members.

Presentation and Discussion: Mandatory Minimums: What do they really cost?

Due to running over on time Steve Karr's presentation will be rescheduled for the next SPAC meeting.

Other Business and Next Steps

The next meeting will be set via e-mail when the fiscal model is ready to be previewed.

Adjournment

Alan Spellberg made a motion to adjourn, seconded by Warren Wolfson. The Thirteenth annual meeting of the Sentencing Policy Advisory Council was adjourned at 1:40PM.