

Testimony of Benjamin Ruddell, Criminal Justice Policy Attorney, ACLU of Illinois
Before the Illinois State Commission on Criminal Justice and Sentencing Reform
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The ACLU of Illinois was overjoyed when Governor Rauner proclaimed his goal of safely reducing incarceration in Illinois by 25%. We wholeheartedly believe that goal is attainable, and we want to do everything we can to assist you, the Governor, and the General Assembly in making it a reality.

We are encouraged that the Commission's Interim Report indicates your willingness to consider—as you must—bold solutions in order to meet the difficult challenge at hand. I'd like to offer some comments on behalf of my organization as to what we'd like to see you recommend in your final report.

Real Sentencing Reform: Drugs and Beyond

We have been living in the world of “tough on crime” for so long in Illinois that for decades now, our criminal laws have virtually moved in only one direction: toward longer sentences and more restrictive and punitive supervision. Only relatively recently has the flow of new laws increasing penalties and creating additional offenses begun to abated to some degree.

Part of our task now is to use the hard data at our disposal, and the benefit of hindsight, to begin to actually dismantle policies that have proven ineffective or even counter-productive. Past experience tells us that every single change that will be necessary to succeed in achieving the Governor's goal will also be politically difficult. The good news is, not everything will be equally difficult, and there are small changes that can make a big difference.

● **Reclassify Low-Level Drug Offenses as Misdemeanors**

More today than ever, a public consensus has coalesced around the proposition that we incarcerate too many of our fellow citizens for too long for using or selling drugs. In order to begin to take control of this problem, we need to actually reduce the statutory penalties for drug offenses. It will not be sufficient to accept prosecutors' assurances that they will divert more people charged with low-level drug offenses to treatment, although we applaud their efforts to do that. Rather, we must in some cases restrain the vast discretion that prosecutors have to seek disproportionately harsh penalties for drug offenses.

At the Commission's last meeting on Thursday, Cook County Public Defender Amy Campanelli gave a remarkable presentation in which she straightforwardly outlined perhaps 8-10 proposals to safely reduce incarceration. If you did not hear her testimony, I'd encourage you to seek it out and take it to heart. One of Ms. Campanelli's suggestions was that Illinois should reclassify all Class 4 felony drug offenses as misdemeanors.

While 15 other states currently classify low-level drug possession as a misdemeanor, under Illinois law, simple possession of any quantity of cocaine or heroin, from residue up to 15 grams, is a Class 4 felony. Because of the public outcry surrounding methamphetamine several years ago when the State was experiencing a spike in meth issues, penalties are even higher for possessing that drug. If Illinois was to take the very modest step of making possession of very small amounts of drugs—1 gram or less—a misdemeanor rather than a felony, we would see a very significant impact on the prison rolls. This is a policy change that has been proposed before in Illinois, most recently by the Mayor of Chicago about a

year ago, and which is also strongly supported by the Cook County Board President. It is time everyone gave it a closer look.

Although there are some encouraging signs that we are starting to do better, in Illinois we still send far too many people to prison for possession of small amounts of drugs: in 2013, there were 3,575 persons admitted to DOC for Class 4 PCS, and those individuals spent an average of .61 years in DOC custody. Methamphetamine possession of under 5 grams (a Class 3 felony) accounts for approximately 116 additional admissions, and those offenders spend an average of 1.01 years in DOC custody. SPAC estimates that in excess of 60% of Class 4 PCS offenders and over 70% of Class 3 meth offenders were convicted of possessing quantities of 1 gram or less.

Last year, the ACLU of Illinois prepared draft legislation that would reclassify 1 gram or less of controlled substances or methamphetamine as a Class A misdemeanor, and asked the Sentencing Policy Advisory Council (SPAC) to prepare a cost-benefit analysis of that bill. That analysis, which is attached to my written testimony, estimates that, had this proposal been law from 2011 through 2013, the State of Illinois would have saved over \$57.6 million in incarceration costs. Extrapolating from SPAC's data, we believe that enacting this proposal into law would reduce the number of new admissions to DOC annually by 1,800-1,900. While there would be a rise in costs to local jails, that figure--\$8.7 million over three years—constitutes a fraction of the amount saved, and is based on the assumption that one third of misdemeanor offenders would still receive a jail sentence. We are hopeful that even fewer will go to jail, especially if we follow through and invest in expanding diversion programs and treatment capacity on a broad scale, as we all know we should.

In addition to reducing admissions to prison, reclassifying possession of small amounts of drugs as a misdemeanor would give us an opportunity to provide a greater continuity of supervision and services for criminal justice-involved persons with substance abuse issues, whether in the community or in jails, and would help eliminate the pointless practice of sending people to DOC for periods of 4 months or less, during which time they receive no meaningful services of any kind.

- **Reclassify Class X Felony Drug Offenses as Class 1 Felonies**

While almost everyone agrees that we should reduce the number of small-time drug offenders who go to prison, this Commission has seen the data showing that length of stay is an even more significant driver of the prison population than the number of admissions. We cannot succeed in reaching the Governor's goal without addressing long sentences.

In his presentation, Commissioner Dr. David Olson discussed the impact of reclassifying Class X felony drug offenses as Class 1's (still subject to prison terms ranging from 4 to 15 years). As Dr. Olson wrote, these offenses are classified the same as attempted murder, aggravated criminal sexual assault, and armed robbery. If we reclassified these offenses as Class 1's, which still allows a 15-year prison sentence, we would reduce the DOC population by 600 inmates annually.

- **Repeal Mandatory Minimums for Nonviolent Offenses**

Amy Campanelli and others have suggested repealing mandatory minimums for such nonviolent offenses as residential burglary and driving on a suspended license as a result of a DUI, and for second or subsequent drug convictions. The ACLU of Illinois supports those proposals.

Alleviate Extreme Sentences

We must acknowledge that we cannot reach the Governor's goal if we ignore the persons upon whom we spend the most to incarcerate for the longest periods of time. By and large, these are people who have been convicted of violent or sexual offenses. These individuals are given little incentive to participate in those few non-evidence-based programs that may be available to them in DOC, or even to behave particularly well while in custody, because whatever remorse they may feel, whatever efforts they might make to improve their own lives, they will never receive a parole hearing, and their ability to earn any time off their sentences is severely limited.

While it might make us think we are making prospective criminals think twice when we increase the length of the sentence for any particular crime by one year or ten years, the numbers show that lengthening sentences produces no real benefit at all in deterring criminal conduct. Long sentences do incapacitate, and they certainly punish; however, they have not been shown to deliver any benefit whatsoever when it comes to preventing recidivism. We are throwing money away along with human lives, and as our incarcerated population continues to grow older and sicker, and the difficulty and expense of meeting their basic needs continues to rise, the problem will grow worse.

We are hopeful and optimistic that this Commission can put aside the fear-based politics of the past and bring about a smarter approach. Even those who lack compassion for persons who have committed violent crimes must surely care about public safety. We must acknowledge that almost every individual we incarcerate will one day rejoin our society, and what we do with them while they are confined in our prisons will have an impact, for better or worse, on what kind of people they are when they leave the Department of Corrections.

● Post-Sentence Review of Incarcerated Individuals

The ACLU of Illinois supports the principle that an incarcerated person should receive a meaningful periodic post-sentence review by the Prisoner Review Board or some other entity as to whether that individual needs to remain in prison or can be safely released. While the current system offers some degree of predictability with regard to release dates, it cruelly denies an incarcerated person even the possibility that his or her efforts to grow and improve as a human being will ever be recognized or rewarded. Virtually everything we have heard at the public meetings of this Commission tells us that reducing recidivism requires us to look not only at a convicted person's criminal history, but also the degree to which that person is actually dangerous and what needs they have that are within our power to address, factors that may change significantly over the period of time that a person is incarcerated.

● Expand Availability of Sentence Credit for Participation in Programming

As you are aware, parole hearings were effectively abolished in Illinois in the late 1970's. Under the current statutory paradigm, outside of executive clemency, the only discretion that exists to reduce the convicted person's time in prison lies with the Department of Corrections, in the awarding of sentence credit. Whether or not you seriously consider recommending the creation of a new parole system or other post-sentence review process, you must at least recommend expanding the eligibility for incarcerated persons to earn sentence credit.

This Commission should recommend that every person in DOC who is not sentenced to natural life should be eligible to earn sentence credit by participating in programs. Of course, we know that we also

need to expand program capacity, and improve the quality of the programs in DOC. But it makes no sense to exclude the persons who are there for the longest time from any incentives to engage in productive pursuits that have been demonstrated to increase one's odds of successful reentry.

- **Roll Back Limitations on Sentence Credit for Good Behavior**

Illinois' so-called "truth-in-sentencing" laws, enacted in 1995, must be repealed or rolled back. I dislike even using that terminology, because it suggests that these laws somehow promote truthfulness or transparency, when in reality they do nothing of the sort. What they do is set up a rigid system of arbitrary limits, based on nothing else besides the offense for which the person is incarcerated, upon the amount of time that he can earn off his sentence, irrespective of how exemplary his behavior or how genuine his remorse. A person convicted of first degree murder can never earn any time off his sentence, even though the relatively low recidivism rate of convicted murderers suggests that we are seeing little or no public safety benefit for the additional years or decades of imprisonment that we impose on persons serving sentences for that offense. Most others serving time for serious violent or sexual offenses are required to serve 85% of their sentences, and those convicted of Class X felony drug possession with intent to distribute must serve 75% of their sentences. Others are eligible to earn day-for-day sentence credit. It bears mentioning that the awarding of sentence credit is not automatic, and a prisoner who commits infractions in the institution may be denied sentence credit at the discretion of the Department.

The ACLU has drafted a proposal to modestly increase the amount of sentence credit that convicted persons can earn through good behavior as follows: those convicted of murder would be required to serve at least 75%, rather than 100%, of their sentences; those currently required to serve 85% would instead be required to serve at least 75% of their sentences; and drug offenders would no longer be subject to special limitations on the amount of sentence credit they could earn.

We wanted to find out whether relatively small reductions to long sentences would in the aggregate have a significant impact on incarceration. SPAC prepared a cost-benefit analysis of that proposal, which has been submitted as part of my written testimony. In short, SPAC determined that if this proposal had been the law from 2011-2013, with regard to all persons admitted to DOC during that 3-year period, it would reduce by a figure of over 13,000 the number of bed-years that DOC will use to incarcerate these individuals. The savings to the Department would be something on the order of \$77 million (marginal cost), or up to \$293 million (per capita cost).

Even figuring in through a statistical formula the societal costs of potential new crime that might occur because of the reduction in the time individuals would be incapacitated, SPAC found that on balance the proposal would have a total net benefit in the range of \$39 million (using DOC marginal cost figures) to \$256 million (using per capita cost figures).

Address Sex Offender Issues

At present, we have close to 1,000 individuals in our prisons who by law ought to be free on mandatory supervised release. Most of these persons were convicted of sex offenses, and have not been released only because they are unable to find housing that complies with the maze of restrictions that applies to this class of convicted persons. I would encourage the Commission not to overlook this difficult but important set of issues.

Examine Illinois' Use of Solitary Confinement

Finally, one issue I would strongly urge the Commission to consider as you compile the final report is the conditions in which we confine prisoners in general, and in particular the use of solitary confinement in our prisons and jails. A large and growing body of research demonstrates that the prolonged isolation of prisoners without meaningful interpersonal interaction is extremely detrimental to their long-term well-being, and can have serious negative public safety consequences when people are released directly from solitary to the streets. I hope you will heed the admonitions of Justice Anthony Kennedy, President Barack Obama, and everyone else who has spoken out about the moral imperative to alleviate the suffering being borne by so many who endure the horror of long-term isolation. I hope you will include in your recommendations a thorough and independent review of the extent and impact of the use of solitary confinement in the State of Illinois, and how we might better care for those confined in our prisons to ensure their safety and that of the public at large.