

**Joint Hearing of Illinois Senate Criminal Law Committee and Senate Special Committee on Public Safety**

**Subject Matter On: Sentencing Reform In The Following Areas: 1) Truth-In- Sentencing 2) Mandatory Minimums 3) Three Strikes Enhancements 4) Resentencing After Decriminalization.**

**Tuesday, September 15 1:00pm**

**Sentencing Reform Testimony**

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**Introduction**

Good morning. My name is Ben Ruddell. I'm the Director of Criminal Justice Policy at the ACLU of Illinois. Thank you for the opportunity to testify today.

Illinois' overuse of jails and prisons presents a crossroads for our state. The United States holds the dubious distinction of leading the world in incarcerating its own people. We cannot close our eyes to the harm incarceration inflicts, not just on individuals and their families, but also on entire communities and future generations. We cannot ignore the stark racial inequities in who is targeted for arrest, who is convicted, who goes to prison, and for how long. While Black Illinoisans make up 14.5% of the State's population, they comprise more than half of our prison population. Black people are imprisoned at 8.8 times the rate of whites. This disparity is one of the worst in any state across the nation.

No longer can we abide the mischaracterization that public safety requires this level of mass incarceration. Despite occasional spikes in crime, overall crime rates have been on the decline for decades in Illinois. As crime has declined, expenditures for IDOC have increased by approximately 22% over the past ten years. Despite huge investments in prisons, recidivism rates remain high. It turns out that while prisons are good at inflicting punishment, they do a lousy job of rehabilitation.

These conditions did not just appear overnight. Rather, the explosion in incarceration has been the direct results of choices. While some of those choices have been made by police officers, prosecutors, and judges, the most significant drivers of over-incarceration in Illinois have been choices made in the legislature to enact increasingly punitive sentencing policies, several of which are the subjects of this hearing.

**Truth in Sentencing**

The single policy change that has had the greatest impact on increasing incarceration in Illinois was the adoption of so-called "truth in sentencing" laws, which place arbitrary restrictions on incarcerated people's ability to earn sentence credit.

Allowing incarcerated people to receive sentence credit for following rules and successfully completing prison programs is a longstanding practice in Illinois and most other states. But in the late 1990's, Illinois enacted new laws severely curtailing the amount of sentence credit that many people could earn. Under the new laws, people convicted of first degree murder are required to serve 100% of the sentence imposed, those convicted of many other serious crimes must serve at least 85% of their sentences, and those convicted of certain other offenses must serve at least 75% of their sentence.

Following the enactment of truth in sentencing, the sentences imposed by judges did not substantially change. However, the length of time that people were required to remain in prison for the same crimes almost doubled, fueling the spike in the IDOC population.

The racial breakdown of incarcerated people subject to truth in sentencing laws is approximately comparable to that of the broader IDOC population: 54% serving these lengthy sentences are Black, and 20% are Hispanic.

**Proposed reforms to truth in sentencing laws:**

1. The bipartisan [Illinois Criminal Justice and Sentencing Reform Commission](#) appointed by Governor Rauner recommended the enactment of legislation to allow people currently required by statute to serve 75%, 85%, or 100% of their sentence to earn programming credit and supplemental sentence credit for good conduct that could reduce their sentence below the currently-required percentage:
  - (a) People currently required to serve 100% of their sentence would be required to serve no less than 90% of their sentence.
  - (b) People currently required to serve at least 85% of their sentence would be required to serve no less than 75% of their sentence.
  - (c) People currently required to serve 75% of their sentence would be required to serve no less than 60% of their sentence.
  
2. The ACLU recommends deeper rollbacks of truth in sentencing to reduce the length of excessive prison stays:
  - (a) People currently required to serve 100% of their sentences would be eligible to receive credit resulting in a length of stay of 75% of the sentence.
  - (b) Those currently required to serve 85% would be eligible to reduce length of stay to 72%.
  - (c) Those required to serve 75% would be eligible to reduce length of stay to 50% (the same as non-TIS prisoners).

SPAC projects that these reforms would reduce Illinois' prison population by 1,900 people annually.

**"Three strikes"**

Illinois has two different "3 strikes" laws under the so-called "habitual criminal" provisions of the Code of Corrections:

1. Mandatory natural life imprisonment for third conviction for first degree murder, criminal sexual assault, aggravated kidnapping, or any Class X felony.
2. Class X felony (mandatory 6-30 years in IDOC) sentence for any combination of 3 convictions for Class 1 or 2 felonies (except general theft).

According to SPAC, of the people admitted to prison over three years who were eligible for habitual criminal sentencing, 70% were Black. For all but 27% of these individuals, at least one of their three convictions was for a non-forcible felony.

**Proposed reforms to "three strikes" laws:**

1. The Illinois Criminal Justice and Sentencing Reform Commission recommended limiting the automatic sentence enhancement for a third or subsequent Class 1 or Class 2 felony conviction to cases where both the current and the two prior convictions involve forcible felonies.

SPAC estimates that this reform would reduce the prison population annually by 190 people.

2. The ACLU also recommends additional rollbacks of the “habitual offender” law to ensure that no person is sentenced to natural life imprisonment as a result of being convicted of a crime classified as a Class X felony, with limited exceptions (aggravated criminal sexual assault and predatory criminal sexual assault of a child).

### **Mandatory minimums**

What do we mean by “mandatory minimums”? In Illinois, they take several forms: There are mandatory minimums defined by felony class, which include dozens of crimes classified as Class X felonies, all of which carry mandatory prison sentences of at least 6 years, and first degree murder, which carries a minimum sentence of 20 years. But there are also other crimes like residential burglary and controlled substance delivery for which the law specifically mandates imprisonment and prohibits the use of probation or any other alternative to incarceration.

Judges, not the legislature, should be responsible for determining sentences for people convicted of crimes. Mandatory minimums rob judges of discretion in two ways: by forcing them to sentence people to prison rather than probation, and by forcing them to incarcerate people for unnecessarily long terms.

The Illinois Criminal Justice and Sentencing Reform Commission found that “[w]hen judges frequently sentence defendants to the lowest allowable prison term within the felony class, this raises an inference that judges in some cases would set sentences lower if they could, but are constrained by the current minimums. . . . [T]his is in fact the case, particularly for those convicted of the least serious felonies.”

### **Proposed reforms to mandatory minimums:**

1. The Illinois Criminal Justice and Sentencing Reform Commission recommended giving judges the discretion to determine whether probation may be appropriate for residential burglary, Class 2 felonies (second or subsequent), and certain drug law violations.

According to SPAC, over 2,400 people who were sentenced to prison over three years would have been eligible for probation had this proposal been enacted into law.

2. Roll back mandatory sentencing enhancements that require judges to add 15, 20, or 25 years to a person’s sentence if they possessed or discharged a firearm during the crime. The severity and rigidity of these draconian sentencing enhancements make Illinois an extreme outlier compared to other states.
3. Allow judges more flexibility to determine the length of prison sentences by reducing the minimum sentence for most classes of offenses. (For instance, the minimum prison sentence for a Class 1 felony would be reduced from 4 years to 2 years, the 15-year maximum would stay the same). This reform has also been recommended by the Illinois Criminal Justice and Sentencing Reform Commission.

We at the ACLU of Illinois stand ready to work with you to make the long-awaited changes we need to put Illinois on a new trajectory, and leave the era of mass incarceration in the past.