

## HOUSE RESOLUTION

(for the creation of a)

### TRUTH-IN-SENTENCING REVIEW TASK FORCE

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WHEREAS, over two decades after enactment of Illinois' Truth-In-Sentencing law, not a single comprehensive study of the costs and benefits (if any) has yet to be undertaken<sup>1</sup>;

WHEREAS, one of the deciding factors in Illinois' enactment of Truth-In-Sentencing law was the federal grant program that provided monetary incentives to the states that passed laws guaranteeing that "violent offenders" serve at least 85% of their sentences<sup>2</sup>, but Illinois was seemingly only awarded less than \$125 million in total for the six year period of 1996-2001<sup>3</sup>;

WHEREAS, at least one preliminary study found that enactment of Truth-in-Sentencing adds at least a quarter of a billion dollars to Illinois' liabilities every year<sup>4</sup> (double

1 Prior to passage, a cursory guess as to the costs over the first ten years was made by the Illinois Department of Corrections (IDOC), and many years later, one report on Truth-In-Sentencing (TIS) would make a glancing estimate of how much TIS increased the cost of a single murder-sentence. See respectively: Gregory H. O'Reilly, *Truth-In-Sentencing; Illinois Adds Yet Another Layer of Reform to Its Complicated Code of Corrections*, 27 Loy. U.Chi.L.J. 985,987-88 (1996), citing Gary Marx, *Edgar Signs Stricter Truth-In-Sentencing Law*, Chi. Trib., Aug. 21, 1995, & 2, at 1 (O'Reilly noted that "the IDOC estimated that the current truth-in-sentencing law will cost the state \$320 million and add 3,774 inmates to Illinois' prisons in its first decade." Not only did history prove this a wildly optimistic estimate, but the first decade after enactment was also before the vast majority of people's TIS portion of their sentences would kick in.); and Olson, David E. Ph.D., Seng, Magnus, Ph.D., Bowger, Jordan, and McClure, Mellissa, *The Impact of Illinois' Truth-In-Sentencing Law on Sentence Lengths, Time to Serve and Disciplinary Incidents of Convicted Murderers and Sex Offenders*, Loyola University of Chicago, prepared for the Illinois Criminal Justice Information Authority, June 2009, p.34 (using the most basic of calculations, Olson, et al. found that the average cost to the State to carry out a sentence for murder doubled from \$400,409 before TIS to \$816,600 after enactment of TIS. However, Dole (see note 4 below) also using an extremely conservative estimate that ignored inflation, the increased healthcare cost etc., showed that it was actually, at a minimum, closer to \$432,897 before TIS, and the \$983,857 after enactment of TIS).

2 LaVigne, Nancy G. Mammalian, Cynthia A., with Travis, Jeremy, and Visher Christy, *A Portrait of Prisoner Reentry in Illinois*. The Urban Institute, Justice Policy Center, April 2003, p..9.

3 United States Dept. of Justice, *Report to Congress: Violent Offender Incarceration and Truth-In-Sentencing Incentive Formula Grant Program*, Office of Justice Programs, Bureau of Justice Statistics, Washington, D.C. Feb. 2005, p.5.

4 Dole, Joseph Rodney II, *Preliminary Findings Concerning the Financial Costs of Implementing Illinois' Truth-In-Sentencing Laws (2002-2004)*, Jan. 11, 2011, p.16.

the total amount received over six years from the Federal government as an award for enactment);

WHEREAS, since 1982, “Illinois taxpayers spent \$83 billion more on criminal justice than we would have if we had simply kept our already-high rates of incarceration level”<sup>5</sup>;

WHEREAS, “[b]etween fiscal years 1995 and 2003, total appropriations for IDOC increased 35 percent (as adjusted for inflation), rising from \$755,369,300 to \$1.2 billion”,<sup>6</sup> and since 2003 appropriations for the IDOC have grown to \$1.45 billion<sup>7</sup>;

WHEREAS, the Illinois State Commission On Criminal Justice And Sentencing Reform, while lacking adequate information concerning the costs and benefits (if any) of maintaining Truth-In-Sentencing, nevertheless recommended “reduc[ing] the length of prison stays”<sup>8</sup> and found that the Truth-In-Sentencing mandates which prohibit incarcerated people from earning sentence credit that would reduce their sentences below the Truth-In-Sentencing percentages (100%, 85%, and 75% respectively) “are counterproductive....[and that the] Commission therefore recommends that inmates sentenced under Truth-In-Sentencing laws be eligible for prison programming and sentence credit on comparable terms as other inmates, even if the credit results in the inmate serving less than the current statutorily-required percentage of his sentence;”<sup>9</sup> --clear evidence supporting critics’ arguments that Truth-In-Sentencing was misguided, unnecessary, and unsustainable;

WHEREAS, in acknowledgement of the above point, the Illinois General Assembly has already passed legislation reducing the 75% provision of Truth-In-Sentencing to 60% for many of the qualifying criminal charges<sup>10</sup>;

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5 *Building a Safe Chicago: Calling for a Comprehensive Plan* (hereinafter “Building”) Nov. 3, 2016 (48 organizations as signatories), p.15, citing both Communities United, et al. *The \$3.4 Trillion Mistake: The Cost of Mass Incarceration and Criminalization and How Justice Reinvestment Can Build a Better Future for All*, Oct. 17, 2016; and Illinois state fact sheet.

6 LaVigne, et al. *supra* note 2, p 9.

7 IDOC Adult Advisory Board Minutes, Monday, Oct.16, 2017.

8 *Illinois State Commission On Criminal Justice And Sentencing Reform: Final Report (Parts 1 & 2)* Dec. 2016, p.46.

9 *Ibid.*,p.59.

10 730 ILCS 5/3-6-3 (a)(4.7)(ii)(2018) Public Act 100-3, & 35, eff. Jan. 1, 2018.

WHEREAS, mandatory sentencing laws like Truth-In Sentencing, combined with:

a) prosecutorial discretion determining charges; b) the fact that 90% of convictions result from guilty pleas<sup>11</sup>; and c) the implicit bias of prosecutors<sup>12</sup> (95% of whom are white<sup>13</sup>)-- result in racially disparate sentencing<sup>14</sup>;

WHEREAS, in Illinois two-thirds of people sentenced to die in prison are African-American<sup>15</sup>, yet less than one fifth of the state's population is African-American;

WHEREAS, the Illinois prison system is the most overcrowded in the country at 150% of capacity<sup>16</sup>;

WHEREAS, “[i]n recent years, our state has increased penalties for firearm possession six times, instituting new mandatory minimum sentences.<sup>17</sup> As a result, the number of Illinoisans incarcerated for possessing a weapon in violation of licensing laws tripled, while arrests remained flat”<sup>18</sup>;

WHEREAS, “[c]onsistent with research showing that sentence severity is unlikely to deter violent crime<sup>19</sup>, homicide rates fell no faster [in Illinois] than they did in states which had not increased such sentences - and seem to have increased at a faster pace”<sup>20</sup>;

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11 Hernandez, Danny, “Death penalty costly, ineffective,” *New Mexico Daily Lobo*, Jan. 31, 2011.

12 Pfaff, John, *Locked In: The True Causes of Mass Incarceration And How to Achieve Real Reform* (Basic Books, New York, NY) 2017, p.146.

13 Watson, Joe, “Study: 95% of Elected Prosecutors are White”, *Prison Legal News*, Feb. 2017, p.44.

14 Gottschalk, Marie, *Caught: The Prison State and the Lockdown of American Politics* (Princeton Univ. Press, Princeton, NJ) 2015, p.267, citing Sonja B. Starr and M. Marit Rehavi, “Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker,” *Yale Law Journal* 123.1 (2018), p.28.

15 Nellis, Ashey, Ph.D, *Still Life: America’s Increasing Use of Life and Long-Term Sentences*, The Sentencing Project, 2017, p.14.

16 Jackson-Green Bryant, “Illinois leads nation in overcrowded prisons”, Illinois Policy Institute, Oct. 13, 2015, citing Bureau of Justice Statistic study.

17 “Building” *supra* note 5, at p.2.

18 Ibid.

19 Ibid.

20 Ibid.

WHEREAS, “[I]ively policy discussions [on the issue of gun violence] in the Illinois General Assembly in 2013 revealed that our state’s long standing practice of lengthening prison terms piecemeal and in isolation as a rash response to crime has contributed to debilitating, overcrowded, and counterproductive levels of incarceration”<sup>21</sup>;

WHEREAS, sentences for murder and Class X crimes increased with the abolishment of parole, then again with the extension of sentencing ranges, then again with extended terms, then again with the mandatory gun enhancements, and the amount of time served for such sentences doubled (or more) with the enactment of Truth-In-Sentencing<sup>22</sup>;

WHEREAS, this caused average time served in prison for murder to increase from about 11 years when there was still parole (pre-1978)<sup>23</sup>, to around 17 ½ years after parole was abolished and people served, on average of 44% of their sentence (1978-1998)<sup>24</sup> to about 40 years after the enactment of Truth-In-Sentencing (1998-present)<sup>25</sup>;

WHEREAS, every year the state imposes several hundred sentences for murder, and imposes hundreds additional lengthy or *de facto* life sentences for other violent crimes;

WHEREAS, “Illinois’ sentencing system, built up by the unsystematic accretion of sentencing policies and enhancements, has become so complicated and confusing that few lawyers - not to mention the public or the accused - can understand what specific legal consequences flow from specific criminal conduct. Rather than clarifying the Code [as it was supposed to], ‘truth’ add[ed] yet another layer to this system. This multi-layered system has obscured the debate

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21 Ibid.

22 Dole *supra* note 4, at p. 2-4.

23 O'Reilly *supra* note 1, at p.991.

24 Olson, et al, *supra* note 1, at p.34.

25 Illinois Department of Corrections, *Statistical Presentation 2004*, Springfield, IL, Oct. 7, 2005, p.88 (It is probably even higher now due to the application of gun enhancements becoming so commonplace.)

over how to spend the state's limited amount of money to best incapacitate - or rehabilitate - offenders”<sup>26</sup>;

WHEREAS, the vast majority of people age out of crime<sup>27</sup>, and the crime that someone is incarcerated for is a poor predictor of what, if any, crime someone may commit upon release,<sup>28</sup> making labels like “violent offender” and “non-violent offender” meaningless when considering risk of violence upon release;

WHEREAS, the increase in average time served “has been sharpest among people convicted of violent offenses”<sup>29</sup>, and people convicted of violent offenses have markedly lower rates of committing crimes in general post-release than people convicted of “non-violent” offenses<sup>30</sup>;

WHEREAS, it is increasingly acknowledged that the only way to meaningfully reduce prison populations and address mass incarceration is by rethinking sentencing for people who commit violent or other serious crimes and those who are serving long prison terms<sup>31</sup>;

WHEREAS, Article 1, Section 11 of the Illinois Constitution requires proportionate sentencing in that “all penalties shall be determined both according to the seriousness of the offense *and with the objective of restoring the offender to useful citizenship*”<sup>32</sup>;

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26 O'Reilly *supra* note 1, at 1022 (written in 1996, the State continued thereafter to add more layers making matters worse. Illinois would also then expand TIS to four categories making five altogether (50%, 60%, 75%, 85%, 100%) instead of the single 50% that all sentences used to fall under).

27 Nellis *supra* note 15, at p.24; *One in 31: The Long Reach of American Corrections*, Pew Center on the States, The Pew Charitable Trusts, March 2009, p.19.

28 Mauer, Mark, “A 20-Year Maximum for Prison Sentences”, *Democracy Journal*, Winter 2016, No.39 (Research by leading criminologists Alfred Burnstein and Kiminori Nakamura demonstrates that an 18- year-old arrested for robbery is no more likely to be arrested for this crime by the age of 26 than anyone in the general population.”)

29 Courtney, Leigh, Sarah Eppler-Epstein, Elizabeth Pelletier, and Ryan King, *A Matter of Time: The Causes and Consequences of Rising Time Served in America’s Prisons*, The Urban Institute, July 2017, p.6.

30 Illinois Dept of Corrections *supra* note 25, at p.47.

31 Courtney *supra* note 29, p.9; Pfaff *supra* note 12, at p.11; and Gottschalk *supra* note 14, at p.167.

32 (emphasis added) Illinois Constitution of 1970, Article I, Section II.

WHEREAS, over 5,000 Illinoisans are currently serving sentences which require them to die in Illinois prisons<sup>33</sup>;

WHEREAS, “[n]early 40 percent of people serving the longest prison terms were incarcerated before age 25”<sup>34</sup>;

WHEREAS, “[m]odern research is clear that the brains of adolescents and adults operate very differently from each other and that adolescence lasts longer than previously believed [; and p]ortions of the brain governing self-control and rational decision making are not fully developed until well after the age of 18, with psychological maturity occurring near the age of 25”<sup>35</sup>;

WHEREAS, “[y]oung adults’ reduced ability to make rational decisions in the heat of the moment, particularly in the presence of peers, resembles the ability of younger teens as much or more than those of adults - a reality that affects not only the incidence of offending, but culpability and method of rehabilitation”<sup>36</sup>;

WHEREAS, “[b]ecause of the connection between developmentally-driven impulsivity and offending, young adults may not be able to be deterred by threats like adult criminal court or lifelong consequences such as felony convictions”<sup>37</sup>;

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33 Nellis *supra* note 15, at p.10, Table 2 (which shows that, as of 2016, Illinois had 1,609 people serving a Life-Without-Parole (LWOP) sentence and 3,478 people serving *de facto* LWOP sentences of 50 years or more.

34 Courtney, et al. *supra* note 29, at p.11.

35 “Building” *supra* note 5, at p.10, citing Sarah B. Johnson, Robert W. Blum, and Jay N. Giedd, *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. Adolescent Health, 216-221 (2009).

36 “Building” *supra* note 5, at p.10, citing Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference and Risky Decision-Making in Adolescence and Adulthood: An Experimental Study*, 41 Dev. Psych. 625,634 (2005), and Karol Silva, et al *Peers Increase Late Adolescents’ Exploratory Behavior and Sensitivity to Positive and Negative Feedback*, J. Research on Adolescence 25.3 (2015).

37 “Building” *supra* note 5, at p.10, citing Illinois Juvenile Justice Commission, *Raising the Age of Juvenile Court Jurisdiction: The Future of 17-Year-Olds in Illinois’ Justice System* (2013) at 24, and Jill M. Ward, *Deterrence’s Difficulty Magnified; The Importance of Adolescent Development in Assessing Deterrence Value of Transferring Juveniles to Adult Court*, 7 U.C. Davis J. Juv. L. & Pol'y 253, 267 (2003).

WHEREAS, “although many young adults engage in risky and impulsive behavior that includes illegal, dangerous, or harmful activities, most offenders aged 18-24 are right on the cusp of permanently discontinuing this behavior [; and t]his is true regardless of the type of offense, research on behaviours including gang membership, gun carrying, and drug dealing shows that, like property and violent offenses in general, involvement in these activities peaks during late adolescence and early adulthood, but quickly subsides”<sup>38</sup>:

WHEREAS, Illinois continues to charge and sentence juveniles as adults where they are being subjected to Truth-In-Sentencing;

WHEREAS, at least one Illinois Appellate Court Justice has opined that Truth-In-Sentencing is unconstitutional for people under the age of 18 because of that same brain science<sup>39</sup>, and the same argument may be just as valid for those under the age of 25;

WHEREAS, that same Justice, “urge[s] the legislature to reconsider the Truth-In-Sentencing Act as it applies to juvenile offenders”<sup>40</sup>;

WHEREAS, some states such as Mississippi were able to successfully adjust sentences implemented after enacting Truth-In-Sentencing so that the average time served on a sentence remained similar both before and after enactment so that Truth-In-Sentencing didn’t increase the costs to the state, Illinois completely failed to adjust,<sup>41</sup> and instead, exacerbated the situation by actually increasing sentences handed down<sup>42</sup>;

WHEREAS, the failure of judges and prosecutors to adjust sentences in Illinois after enactment of Truth-In-Sentencing, and the possibility that due to so many mandatory sentencing statutes, that it quite likely meant judges, at least, were largely restricted from being able to adjust, the courts either can’t or don’t follow State law requiring them to “consider the financial impact of incarceration “ when de-

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38 “Building” *supra* note 5, at p.10, citing Richard Rosenfeld, et al., *Special Categories of Serious and Violent Offenders: Drug dealers, gang members, homicide offenders, and sex offenders*, in From Juvenile Delinquency To Adult Crime, Rolf Loeber and David P. Farrington, eds. 118-149 (2012).

39 Justice Pucinski in his concurring opinion in *People v. Buffer*, 2017 IL App (1st) 142931, ¶¶ 74-83.

40 *People v. Buffer*, *supra* note 39, at ¶ 83.

41 Olson, et al. *supra* note 1, at pp. 6 and 19.

42 Dole *supra* note 4, at pp. 10-13.

termining a person's prison sentence<sup>43</sup>;

WHEREAS, prior to passage of Illinois' Truth-In-Sentencing law, the Illinois Department of Corrections was skeptical that Illinois would adjust sentences, and was thus concerned about "the fiscal impact if the law resulted in inmates actually serving longer sentences"<sup>44</sup>;

WHEREAS, "the Truth-In-Sentencing commission [that recommended adopting the law was] composed largely of political appointees and law enforcement officials"<sup>45</sup>;

WHEREAS, "[b]y pursuing incarceration-based responses to public safety challenges, Illinois made existing social problems significantly worse"<sup>46</sup>;

WHEREAS, as all of the above demonstrates, Illinois is incurring drastic financial and human costs due to implementing Truth-In-Sentencing, seemingly received only negligible corresponding aid from the federal government, and the State, twenty years after implementation *still* doesn't know the full extent of these costs, nor is there any benefit other than increased retribution; be it

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED AND FIRST GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that there is created the Truth-In-Sentencing Review Task Force consisting of five (5) members appointed as follows: three (3) members of the House of Representatives appointed by the Speaker of the House, and two (2) members of the House of Representatives appointed by the Minority Leader of the House of Representatives, all of whom shall serve without compensation but shall be reimbursed for their reasonable and necessary expenses from the funds appropriated for that purpose; and be it further

RESOLVED, that the Task Force shall study the various issues relating to the enactment of Illinois' Truth-In-Sentencing law, and the costs and benefits (if any) of Illinois' Truth-In-Sentencing law, and whether it serves the state's interest to amend or abolish it; in addition, the Task Force shall examine, among any other

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43 730 ILCS 5/5-4-1(a)(3).

44 Olson, et al. *supra* note 1, at p.3.

45 O'Reilly *supra* note 1, at p.1019, citing Ill. Comp. Stat. Ann. ch. 730 \*\*section symbol 5/3-6-3.1 (a) (West Supp. 1996).

46 "Building" *supra* note 5, at p.15.

issues it chooses to investigate with respect to Truth-In-Sentencing, the following issues:

- 1) What were the political motivations behind the enactment of Truth-In-Sentencing, and what were the potential biases, if any, of the members of the Truth-In-Sentencing Commission?;
- 2) Why Illinois' judges, prosecutors, and others have failed to adjust sentences handed down like Mississippi was able to?;
- 3) What percentage of sentences handed down went from simply being "lengthy" to being *de facto* life sentences after the enactment of Illinois' Truth-In-Sentencing law?;
- 4) How many people are currently serving *de facto* life-without-parole sentences (i.e. sentences that exceed life expectancy rates for incarcerated people of a similar race) in Illinois' prisons, and how many more (on average) receive such sentences annually?;
- 5) Would the reductions to Truth-In-Sentencing proposed by Governor Rauner's Commision on Criminal Justice and Sentencing Reform significantly reduce the number of people serving, and/or sentenced to, *de facto* life-without-parole sentences?;
- 6) How much money (both to date and per year) has Illinois received from the federal government as a result of enacting Illinois' Truth-In-Sentencing law?;
- 7) How much is Illinois' Truth-In-Sentencing law costing the State each year in additional liabilities?;
- 8) How much of the doubling of the IDOC's budget in the past two decades can be attributed to the enactment of Illinois' Truth-In-Sentencing law?;
- 9) How much of the skyrocketing of healthcare costs for incarcerated people, as well as the dramatic increase of settlements and jury awards in lawsuits over the denial of adequate care are attributable to enacting Illinois' Truth-In-sentencing law?; and
- 10) Should Illinois abolish Truth-In-Sentencing, and if it did, what would be the costs/benefits of doing so?; and be it further

RESOLVED, that the Task Force shall receive the assistance of legislative staff, the Illinois Criminal Justice Information Authority, the Sentencing Policy Advisory Council, and staff from the Illinois Department of Corrections; may employ skilled experts with the approval of the Speaker of the House; and shall report its findings to the General Assembly on or before December 1, 2019.

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