

January 24, 2022

Illinois Resentencing Task Force
c/o Illinois Sentencing Policy Advisory Council
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To the Members of the Resentencing Task Force:

The undersigned coalition of organizations attaches for your consideration our **Guiding Principles for Earned Release Sentencing Reform in Illinois**. These principles are a suggested framework for the Task Force’s deliberations and its final written report.

The Chicago Appleseed Center for Fair Courts and Chicago Council of Lawyers began a collaborative process of developing principles for Earned Release sentencing reform legislation in 2019, along with many of the other undersigned organizations. These Guiding Principles are based on two years of discussions and research into best practices in other states and the federal criminal system, as well as academic research on topics including recidivism and the harmful impacts of overly long sentences on communities of color, women, and other underrepresented groups. We provide the results of our collaboration to assist the Task Force with its work.

Established by P.L. 102-0099, the Task Force will “study innovative ways to reduce the prison population in Illinois...,” according to its statutory mandate. We suggest that the best way to reduce the state’s population of currently incarcerated people – particularly those serving very long sentences – is to provide multiple opportunities for Earned Release. Some of these potential pathways, set out in Principle #4, include:

- Administrative avenues inside and outside the Illinois Department of Corrections;
- Review by the Prisoner Review Board;
- Clemency by the Governor;
- Re-sentencing by the original judge or a new judge on a motion by the defendant;
- Re-sentencing by the original judge or a new judge on a motion by the State’s Attorney;
- Re-sentencing by the original judge on the judge’s own motion;
- Creation of a new sentencing review court that automatically and regularly reviews the terms of individuals incarcerated over a certain length of time; and/or
- Medical and geriatric release based on health-related circumstances or age.

There may be other pathways that our coalition has not listed, but that merit the Task Force’s consideration. Our goal is to encourage the Task Force to study, evaluate and recommend to the Legislature and the Governor the creation or expansion of numerous mechanisms by which incarcerated people can earn their release from prison. Some of these avenues, such as clemency, already exist but are in need of significant reform to be more widely available and useful. We hope the Task Force will evaluate such systems according to the principles in our document, and

recommend improvements that will allow more incarcerated people to apply and be granted early release through those procedures.

Other potential mechanisms for Earned Release listed in Principle #4 do not yet exist, and the remaining principles listed in our document provide standards that the Task Force may recommend to govern the creation of these new pathways. They include the following:

- The decision process should consider the applicant’s rehabilitation and current risk (or lack of risk) to society, not the circumstances of the original conviction (Principle #1)
- Resentencing decisions should be based on evidence (Principle #2) and free from discrimination (Principle #5), and the decision-makers should be appropriately educated and trained, as well as selected for diversity of background (Principle #6).
- New mechanisms for Earned Release should be available to all people regardless of their crime of conviction (Principle #3), and should be available retroactively to those currently in prison (Principle #7).
- Any Earned Release process – whether through the courts or through an existing or new administrative body – should provide due process, a clear explanation of the decision-maker’s reasoning if the application is denied, and the opportunity to apply again after a set period of time or after accomplishing concrete tasks that are clearly set forth in the denial (Principles #8-9).
- Incarcerated people should be able to navigate the Earned Release process themselves, without needing to hire an attorney, but should have counsel if they so choose (Principle #10).

Finally, while not expressly within the Task Force’s statutory mandate, we encourage you to make clear in the final report that the availability of one or more re-sentencing mechanisms does not and should not preclude or substitute for reforms that decrease the length of sentences imposed overall (Principles #11-12). A system that continues to sentence individuals to decades behind bars and then trims some of those sentences at the end is simply adding bureaucracy to an unjust process. The best way to reduce the population of Illinoisians serving extremely long sentences is to stop imposing those sentences in the first place.

Our organizations are pleased to offer our research, technical assistance, and viewpoints to the Task Force. We hope to be invited to address the Task Force at a public hearing and to be updated about the Task Force’s work. Please do not hesitate to contact Sarah Staudt, at Chicago Appleseed Center for Fair Courts (sarahstaudt@chicagoappleseed.org) or Alexandra Block at Miller Shakman Levine & Feldman LLP (ablock@millershakman.com) to continue this conversation.



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Guiding Principles for Earned Release Sentencing Reform in Illinois

Principle #1. The criteria for Earned Release should focus on the person's rehabilitation since sentencing and current risk (or lack of risk) to public safety, and should not use the nature or seriousness of the underlying offense as the primary factor in determining eligibility for release.

The underlying offense already factors into the length of the original sentence. A hearing/adjudication on Earned Release should not be a re-sentencing with regard to the initial offense. Instead, it should focus on whether and how the person has rehabilitated since being incarcerated, the person's risk of committing new violent crimes, and on any other relevant changes in the person's health, education, family circumstances, employment and housing prospects, and other current factors. As a result of this principle, although victims should be given the opportunity to express their viewpoints, decision-making should focus on the whether release of the individual is likely to result in a risk to public safety at the present time, and not on retribution for the underlying offense.

Principle #2: Earned Release laws should be based on evidence and research about rehabilitation, likelihood of recidivism, and the limited value of long sentences in deterring crime.

Since Illinois abolished its parole system in 1978, we have learned that many of the justifications of extremely long sentences are not based in evidence. In particular, extremely long sentences and the unavailability of parole have not created significant decreases in specific crimes, and the likelihood of recidivism for people charged with serious crimes is much lower than once believed. As we move forward, we must base our sentencing policy on facts, not intuitions, about crime and punishment. This includes the use of evidence-based risk assessment tools that are designed specifically for incarcerated people returning to society.

Principle #3: Earned Release should be available to everyone regardless of their underlying offense or criminal background.

Every person has the capacity to change over time, improve themselves, and become a safe and valuable member of their communities. At sentencing, we cannot reliably predict how any person will change or rehabilitate during a period of incarceration. What is relevant at the time of a decision on Earned Release is a person's current risk to public safety. Even though not all incarcerated people will receive Earned Release during their sentences, all must be given the opportunity to make their case regardless of the crime of conviction.

Principle #4: Multiple avenues for release should be available.

An individual should not be limited to a single forum in seeking Earned Release or release from incarceration on another basis. Various pathways, with varying criteria, should be available depending upon a person's circumstances. The fact that an individual has applied for release through one avenue should not preclude consideration of release via another avenue. Examples of these various mechanisms include:

- Administrative avenues inside and outside the Illinois Department of Corrections;
- Review by the Prisoner Review Board;
- Clemency by the Governor;
- Re-sentencing by the original judge or a new judge on a motion by the defendant;
- Re-sentencing by the original judge or a new judge on a motion by the State's Attorney;
- Re-sentencing by the original judge on the judge's own motion;
- Creation of a new sentencing review court that automatically and regularly reviews the terms of prisoners incarcerated over a certain length of time;
- Medical release based on health-related circumstances; and/or
- Geriatric release based on age.

Principle #5: An Earned Release system should ensure decisions are not influenced by discriminatory factors.

Every available pathway for Earned Release should prohibit decision-making influenced by an applicant's race, national origin, gender, sexual orientation, gender identity, disability or any other immutable personal characteristic. Further, there should be bias training for decisionmakers; data collection and analysis; and other periodic review to ensure fair treatment of all applicants.

Principle #6: The decision-making authority should be subject to independent merit selection, diversity of background, and ongoing subject matter training.

Individuals who serve as decision-makers for Early Discretionary Release, whether they are judicial or executive in nature, should be selected based upon merit and not upon political considerations. There should be diversity of professional and personal backgrounds such that the panel or pool of decisionmakers is representative of the community at large. Upon selection, they should be trained in best practices, including utilization of risk assessment tools and the purposes of Early Discretionary Release. They should be subject to ongoing continuing education requirements in relevant subjects.

Principle #7: Earned Release reforms should be available retroactively to people already in prison at the time reforms go into effect.

It is manifestly unjust to provide a possibility of release for people in the future without granting that same opportunity to people sentenced before reforms took place. Reforms must allow currently incarcerated people to access Earned Release.

Principle #8: Earned Release should be available within a reasonable period after sentencing. Opportunities to reapply after a denial should be available.

The purpose of Earned Release is to allow incarcerated people to be restored to their families and communities, including becoming gainfully employed and participating in family life. Earned Release should not be reserved only for the very old or the very sick. Those denied Earned Release after a first application should have multiple opportunities to re-apply, either after a certain time period or upon attaining rehabilitative goals set out by the decision-making authority. Earned Release pathways through the courts should be accompanied by court rules allowing multiple or successive petitions, either after expiration of a certain period of time or after accomplishment of certain benchmarks by the applicant.

Principle #9: People denied Earned Release should be given clear explanations of the factors that led to the denial and be given resources to remedy those negative factors.

Incarcerated people must be given clear, written reasons why they are deemed insufficiently rehabilitated for Earned Release, and should be given access to resources within the prison system to improve or change those factors. Earned Release should not be conditioned on participating in programs or attaining credentials that are not available to or provided to all incarcerated individuals.

Principle #10: The process for Earned Release should be simple, and incarcerated people should have a right to counsel.

There should be a streamlined, accessible process that incarcerated people with limited resources and education are able to participate in on their own behalf. The relevant authority should provide, free of charge, assistance from caseworkers to assist the incarcerated person through the process. The Administrative Office of the Illinois Courts should develop statewide forms that can be completed by individuals who are representing themselves, and clerks of court should be trained to assist incarcerated people with petitions through the courts. The incarcerated individual also should have a right to be represented by counsel.

Principle #11: All incarcerated people, even those denied Earned Release, should be given a reasonable, fixed maximum sentence after which release for a given offense is guaranteed. Earned Release should not replace determinate sentencing or “good time” credit, and should not cause an increase in the sentence for any crime or category of crimes.

Creating an early release system in Illinois should not be used as a reason to up-end our existing determinate sentencing system. Earned Release should be available in addition to, not instead of, the current sentencing system. This principle does not exclude working toward other sentencing reforms (see Principle #12).

Principle #12: Earned Release reforms must be combined with reforms to sentence lengths, prison programming and conditions, and the ability to earn credit on a sentence in order to fully address the harms of mass incarceration in Illinois.

In order to further reduce Illinois' prison population, Earned Release must work hand in hand with reforms focused on decreasing the total length of sentences overall, and making our prisons more conducive to rehabilitation. Providing a mid-sentence review system should not be seen as a replacement for reforming the underlying excessive sentences and sentence enhancements that have caused Illinois' prison population to more than triple in the past 40 years.

Principle #13: A person's incarceration should end upon being granted Earned Release. Any post-release supervision should be risk-based and as minimally restrictive as possible.

Earned Release differs from pre-1978 parole, which extended until the end of the original maximum sentence. Earned Release ends the term of incarceration, subject only to mandatory supervised release on the least restrictive terms necessary to protect public safety.