

RTF REPORT TABLE OF CONTENTS

I.	Letter from Chair Salone.....
II.	Members.....
III.	Executive Summary.....
IV.	Process.....
V.	Interests of Justice
VI.	SPAC Analysis of Prison Population.....
VII.	Recommendations
VIII.	Opposition to Resentencing.....
IX.	Conclusion.....
X.	Appendix.....
	a. Authorizing Statute
	b. Principles
	c. Factual Background
	d. Member Bios

LETTER FROM CHAIR SALONE

House Bill 3587, effective July 15, 2021, created the Resentencing Task Force (RTF) to study the issue of how resentencing motions could be used to reduce the prison population. The RTF was tasked with developing recommendations to guide the development of a new legal process to address the inequities produced by our current system. The bill specifically identified expanding the authority to seek resentencing beyond state's attorneys. The RTF had to work with awareness of the biases of our system, changing social norms, and a willingness to look beyond the constraints of the past.

RTF members represent the wide variety of perspectives that must be considered in crafting a resentencing process. Even as our prison population declines, the proportion of people in prison who cannot access the currently available early release mechanisms, such as programming credits, grows steadily. Most of these people have been convicted of serious offenses. So, the RTF was charged with studying and recommending ways to create a path to early release that cannot exclude those convicted of serious offenses.

Input was not limited to meetings and members. The RTF received a wealth of letters and emails from individuals who are incarcerated and their family members. Our thanks to the editors of Kewanee Horizons, a newsletter published by a group at Kewanee Life Skills Re-Entry Center, for telling people who are incarcerated how to contact the task force. Their voices made it impossible to ignore the human costs mass of incarceration that have rippled across generations. Their perceptions of the system's fairness were influenced by the lack of second chances for people who have grown and been rehabilitated.

Victims of violent crimes and those who served decades for committing them both spoke of the potential for change and the importance of the system allowing a second look at someone who committed a horrible crime. These voices also brought insight into actual conditions in our prisons, where there is not enough programming to serve the whole population, and building community among the incarcerated people can be viewed with suspicion by staff focused on security. But redemption persists. Throughout this report their words are shared as the task force heard, or read, them.

Sixteen recommendations that were adopted by a majority vote of RTF members are presented here. They do not resolve all issues around sentencing motions. This report provides the foundational building blocks for legislative action to create a new path to early release for those who currently have none. It is also important to recognize what these recommendations do not do. They do not address the consequences of the continued use of extreme sentences. If the flow of people into the prison system with sentences of twenty years or more continues on pace, the proportion of people staying in prison for extended periods will continue to grow and the social justice questions around mass incarceration will persist.

It is not possible to describe the work that goes into managing a task force. The RTF benefitted from the planning team that developed the schedule, agendas, and report drafting: Kathy Saltmarsh, Executive Director of the Sentencing Policy Advisory Council (SPAC); Mark Powers, SPAC Research Director; Michael Elliott, SPAC Legislative Affairs and Communications Advisor; Lindsey Hammond, Restore Justice; William Nissen, Sidley & Austin, Ret.; Kiera Eckhardt, ISU Stevenson Center Fellow with SPAC; and facilitators Susan Lloyd and Lisa Schneider-Fabes. I was honored to be included on the Friday morning planning calls and the debriefs after every meeting.

The members of the RTF are due a debt of gratitude. They served with a commitment to the mission and to addressing the complex issues resentencing motions raise. More importantly, they served with respect for the differing viewpoints of their peers and an acknowledgment that we are all capable of change. The shared hope is that this report will help the General Assembly develop a resentencing system that is fair and capable of meeting every challenge.

Hon. Marcus Salone, 1st District Appellate Court, Ret.
Chairman

The members of the Task Force were appointed as follows: one each by the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President of the Senate, and the Minority Leader of the Senate; three retired judges by the Governor, each from a different judicial circuit or judicial district; one state's attorney who is elected to a county of under one million people; one from a statewide agency that represents state's attorneys; one from the Office of the State Appellate Defender; one from an organization that advocates for victims' rights; one from an organization that advocates for sentencing reform; one from the Illinois Sentencing Policy Advisory Council; one member of law enforcement appointed by an association representing law enforcement; one member representing the private criminal defense bar.

MEMBERS

Sen. Darren Bailey (R-55)

Bob Berlin, DuPage County State's Attorney

Rep. Kelly Cassidy (D-14)

Jobi Cates, Restore Justice

Lisa Daniels, Darren B. Easterling Foundation

Mitchell Davis, Chief, Hazelcrest Police Department

Yaacov Delaney, Office of the Lieutenant Governor

Latoya Hughes, Illinois Department of Corrections

Hon. Cheyrl Ingram, Cook County Circuit Court, Ret.

Arienne (Ari) Jones, Cook County State's Attorney's Office

Shobha Mahadev, Northwestern Pritzker School of Law Children and Family Justice Center

Scott Main, Office of the State Appellate Defender

Sharone Mitchell, Cook County Public Defender

Sen. Robert Peters (D-13)

Hon. Marcus Salone, 1st District Appellate Court, Ret.

Hon. Steven Sawyer, 2d Judicial Circuit, Ret.

Rep. Ryan Spain (R-73)

EXECUTIVE SUMMARY

The RTF met for eleven months and adopted sixteen recommendations for resentencing in Illinois. The recommendations were adopted by a majority vote. Each member brought to the table their expertise and professional experience, as well as their sense of justice.

SPAC presented a basic analysis of the prison population as of June 30, 2021. The analysis established that people serving long sentences for serious offenses now make up a larger proportion of the population than at any time in the past. Reducing the prison population could not be accomplished without including them in the resentencing process.

The RTF made sixteen recommendations for resentencing in Illinois. Each recommendation below is addressed individually in this report and is followed by a brief rationale.

1. **The Task Force recommends the Illinois General Assembly pass legislation to create prospective and retroactive resentencing opportunities.** The General Assembly has the authority to create new pathways to judicial review long after a final result is reached. A resentencing system that allows both prospective and retroactive application will have the greatest impact on the prison population and address the disparate impact of mass incarceration. The legislative intent for the resentencing law to be applied prospectively and retroactively should be clearly stated.
2. **The General Assembly shall recommend parties who may initiate a petition for resentencing including but not limited to the prosecuting attorney, the incarcerated individual, or defense counsel.** The RTF was directed to study potential pathways for people to file petitions. The RTF concluded that several stakeholders, including the person who is incarcerated, state's attorney, and defense counsel, should be allowed to file a resentencing petition.
3. **The General Assembly should establish eligibility criteria for sentence modification, including but not limited to:**
 - (1) **The petitioner is serving a sentence for any criminal offense for which the statutory penalty has been subsequently reduced or altered; or**
 - (2) **The petitioner makes a showing that their sentence no longer advances the interest of justice or the promotion of public safety.**

The legislature should establish the specific criteria for a sentence modification petition. Eligibility should include but not be limited to retroactive statutory changes, fairness concerns to reflect changes in policy or scientific knowledge, and extreme sentences that do not reflect the interests of justice.

4. **The General Assembly shall determine a process by which individuals eligible under #3, including those serving extreme sentences, can petition the court for a resentencing.** People who are serving long sentences for serious crimes should be eligible for resentencing. Age is the strongest predictor of the likelihood of reoffending, thus the term “aging out” of crime. People who committed serious crimes decades ago are not at high risk of doing so again and are less likely to recidivate at all. The legislature should create the process for resentencing petitions to be filed in court.
5. **Resentencing petitions shall be dismissed if they do not meet the eligibility criteria; such dismissal shall be a final, appealable order. The court shall set forth, either in open court or in writing, the reasons for its decision.** Allowing the eligibility determination to be appealed mirrors the procedures available under the Post-Conviction Hearing Act. Appellate review guards against inconsistent approaches among various jurisdictions as well as arbitrary or capricious dismissals based on meeting the eligibility criteria.

6. **Any procedure adopted by the General Assembly shall provide adequate notice requirements. The Department of Corrections shall provide notice and adequate materials to inform individuals who are incarcerated of their rights.** IDOC should provide general notification to people who are incarcerated of their rights to file a resentencing petition, including information on the process and how to initiate a petition.
7. **All statutory and constitutional rights of victims, including but not limited to the right to notice and to be heard, shall apply to the entire resentencing procedure. The victim shall be notified of any restorative justice programs available at the time the petition is filed.** The interests and rights of victims should be represented during the resentencing process. Restorative justice programs aim to engage all parties and stakeholders in repairing harm and conflict. Victims should have the option to participate in restorative justice programs if they are available.
8. **A petitioner who is unable to afford counsel is entitled to have counsel appointed, at no cost to the defendant, to represent the defendant for the resentencing petition and proceedings.** Requiring counsel for individuals who submit a resentencing petition should ensure full and fair consideration of the case. It also contributes to a record for the appellate court that supports meaningful review.
9. **A defendant who files a pro se petition and subsequently retains or is appointed counsel shall be entitled to amend such petition with the assistance of counsel.** Requiring that counsel be allowed to amend the pro se petition ensures that the right to counsel is meaningful at the earliest point in the proceedings.
10. **Upon a determination of eligibility, the court shall conduct a resentencing hearing.** Petitioners who meet the eligibility criteria should be entitled to a resentencing hearing.
11. **The sentencing court shall consider, but not be limited to, the following factors:**
 - (1) **The age of the petitioner at the time of the offense and the age of the petitioner at the time of the sentence modification petition.**
 - (2) **The nature and circumstances of the offense.**
 - (3) **The history and characteristics of the petitioner at the time of the petition for a reduction in sentence, including rehabilitation and maturity demonstrated by the petitioner.**
 - (4) **The petitioner's family and community circumstances, including any history of physical, emotional, or sexual abuse; substance abuse; trauma; or involvement in the child welfare system.**
 - (5) **Any report from a physical, mental, or psychiatric examination of the defendant conducted by a licensed health care professional; validated risk assessment; and**
 - (6) **Any changes to the law governing criminal convictions, dispositions, or length of stay since the time of sentencing.**
 - (7) **Any other information the court determines is relevant to the decision of the court, including any statement by a victim of an offense or family member of the victim or the recommendation received from the State's Attorney.**

These mitigating factors require an individualized consideration of the circumstances and characteristics that may have been foundational to their criminal offense, such as age, trauma, substance abuse, and medical history. Every person has the capacity to change over time. The primary question

in considering a sentence modification should be whether continued incarceration is necessary for the interests of justice.

12. **The court should be authorized by the General Assembly to depart downward from any mandatory minimum or mandatory sentence enhancement.** Since the sentence imposed pursuant to resentencing review must be authorized in statute, resentencing legislation should state the authority of the court to depart from any mandatory minimum or mandatory sentence enhancement. If the authority to depart from mandatory penalties is not included, the legislature would be creating a process that, by definition, could not reduce the prison population and address the interests of justice.
13. **In calculating the new term to be served by the petitioner, the court shall credit the petitioner for any jail time served toward the subject conviction as well as any period of incarceration credited toward the sentence originally imposed.** Calculating credit for time served either prior to disposition or for an original sentence at the time of resentencing is institutionalized in Illinois and U.S. Supreme Court case law.
14. **The petitioner may appeal a final order from a resentencing proceeding.** A standard review process should be established for final orders in resentencing cases. Appellate review is generally seen as a safeguard against arbitrary and disparate decisions in the lower court.
15. **Where a petition for a reduction in a sentence has been denied, the petitioner shall be permitted to file a successive petition for resentencing within a time period to be designated by the General Assembly.** The process for filing subsequent petitions should fairly balance the interests of the individual; the societal value of releasing people who are no longer a public safety risk; and avoiding excessive, repetitive petitions overwhelming the courts. Limitations on successive petitions should balance judicial resources and the interests of justice in allowing people who are no longer a threat to public safety access to meaningful review.
16. **Appropriate data must be collected and reported.** The most important consideration is collecting the data that helps answer the relevant questions, such as questions of equity, demographics; notice to victims and an opportunity to be heard; and ultimately recidivism patterns of those who get resentencing relief. Policymakers will undoubtedly ask broader questions in the future about whether resentencing made communities more or less safe; if allowing a second chance resentencing improved rehabilitated perceptions of system fairness in alienated communities; and what the costs and benefits were of developing this avenue of early release.

While on the path to adopting these recommendations, a recurring theme was the reality that the resentencing process is a limited tool that creates new jurisdiction for the courts to *consider* resentencing petitions. Resentencing is not a vehicle to “reform” sentencing laws such as mandatory minimums and truth-in-sentencing. Reforming the Code of Corrections to moderate some of the extremes of the past is needed. Without sentencing reform writ large, people with very long sentences will continue to come into prison, have very limited access to programming, and very little hope of returning to society in enough time to be restored to useful citizenship.

All materials and presentations are available on the Resentencing Task Force link of the Sentencing Policy Advisory Council website: <https://spac.illinois.gov>. A bibliography of the materials provided for each meeting is included in the appendix, along with the authorizing statute and short bios for each member.

THE TASK FORCE PROCESS

This report results from a one-year process of intensive study and analysis of resentencing and possible expansion of the process. The goal of the RTF is to aid the state in its continuing efforts to address the unintended consequences of mass incarceration and as a path towards a more equitable Illinois. It should be noted that the RTF was not charged with reviewing individual cases of those citizens currently held in Illinois Department of Corrections (IDOC) facilities. The Illinois Sentencing Policy Advisory Council (SPAC) provided administrative and technical support for the 17-member task force. The Hon. Marcus Salome served as Chair of the Task Force.

The RTF began meeting in February 2022. Early on it was evident that more time was needed to complete the work of the task force, especially given the challenges of the ongoing pandemic and dynamic General Assembly calendar. The RTF voted to hold more meetings than the four required in the enabling legislation and extend their report deadline to January 1, 2023. Members of the public were welcome to all meetings in accordance with the Open Meetings Act.

As the RTF began meeting, emails and letters from friends, family, and incarcerated individuals started arriving, most of which requested that the RTF recommend resentencing of, or give a new sentence to, a currently incarcerated individual. As a result of receiving these requests, which were not within the scope of the RTF's authority, RTF staff were curious about how state's attorneys, who now have authority to file resentencing petitions, were responding if they received these requests. SPAC staff contacted a sample of 17 state's attorneys from counties with the highest numbers of admissions for extreme sentences to see if they had established any resentencing procedures. Responses varied. The state's attorneys in Cook and Kane counties published guidelines on their websites and assigned attorneys in their offices to review petitions. Other responses ranged from not being aware of the new authority to not having considered establishing a formal process. In one county there were no published guidelines, but if a request for resentencing was received, the elected state's attorney reviewed the case. This information was shared when discussing allowing incarcerated individuals to file petitions.

The RTF held eight public meetings and one public hearing, all of which were held virtually to ensure everyone from across the state could attend. Though members were unaware of it at the time of the hearing, people in IDOC who had access to tablets were able to watch the proceedings, a first in Illinois history. All meeting recordings, materials, principles to guide the RTF's work, and recommendations were posted on the RTF website for consumption. The RTF's work concluded with its final report and recommendations for proposed legislation to the General Assembly and the Governor's Office.

SPAC ANALYSIS OF THE PRISON POPULATION

To accomplish the RTF's mission of studying innovative ways to reduce the prison population through resentencing petitions, the members had to understand the characteristics of that population. SPAC Research Director Mark Powers presented an overview of the long-term and elderly cohorts that were the initial focus of the RTF's work.

As of June 30, 2021, 3,235 (12%) of the prison population had already served 20 years; approximately 5,200 more currently incarcerated people are projected to serve over 20 years but have not yet done so. Truth-in-sentencing has essentially doubled the length of stay for people serving time for the most severe crimes, though the sentences imposed have not significantly increased.

The disparate racial impact of mass incarceration is clear in these numbers as well. The two tables below break out offense and demographic characteristics of the population:

Table 1: Offense and Prison Characteristics, June 30, 2021

		Total Population		Served ≥ 10 Years		Served ≥ 20 Years	
		Number	Percent	Number	Percent	Number	Percent
Offense Type	Murder or Homicide	7,933	29%	5,756	67%	2,627	81%
	Violent Sex Offense	4,310	16%	1,475	17%	348	11%
	Other Violent	5,943	22%	948	11%	152	5%
	Other	9,227	34%	409	5%	108	3%
Offense Class	Class M	6,357	23%	5,108	59%	2,470	76%
	Class X	10,019	37%	3,028	35%	653	20%
	Class 1-2	7,952	29%	315	4%	36	1%
	Class 3-4	2,927	11%	22	0%	8	0%
	Other	158	1%	115	1%	68	2%
Life Sentence or Truth-in-Sentencing	Life	1,555	6%	1,332	16%	977	30%
	75 or 85%	8,738	32%	2,547	30%	359	11%
	100%	4,136	15%	3,091	36%	749	23%
	None	12,984	47%	1,618	19%	1,150	36%
TOTAL		27,413	100%	8,558	100%	3,235	100%
Length of Stay (years)	Average Served	9.1		14.5		26.9	
	Average Until Release/Age 75	8.8		14.7		13.3	

Table 2: Demographics, June 30, 2021

		Total Population		Served ≥ 10 Years		Served ≥ 20 Years	
		Number	Percent	Number	Percent	Number	Percent
Sex	Male	26,157	95%	8,254	96%	3,125	97%
	Female	1,256	5%	334	4%	110	3%
Race / Ethnicity	Black	14,815	54%	5,344	62%	2,125	66%
	Hispanic	3,641	13%	1,273	15%	345	11%
	White/Other	8,957	33%	1,971	23%	765	24%
Age	<50	21,170	77%	5,322	62%	1,396	43%
	50-59	4,051	15%	1,962	23%	1,025	32%
	60-69	1,747	6%	1,028	12%	643	20%
	70+	445	2%	276	3%	171	5%
Average Age on 6/30/2021:		40.2		47.0		52.7	
Average Age at Admission:		33.1		30.3		28.3	
County	Cook	11,871	43%	5,134	60%	2,111	65%
	Collar	3,053	11%	925	11%	279	9%
	Urban	6,607	24%	1,604	19%	516	16%
	Rural	5,833	21%	919	11%	325	10%
	Other/Unknown	49	0%	6	0%	4	0%
TOTAL		27,413	100%	8,558	100%	3,235	100%

The proportion of elderly people in the population has quadrupled since 2000, rising from approximately 5% to 23% in 2021. The premise that people “age out” of crime is commonly accepted, as it has been proven by significant research over time. Nonetheless, some of the more draconian sentencing policies disregard the diminished public safety impact of incarcerating this cohort in favor of the retributive value of these sentences.¹

¹ Committee on Law and Justice, Division of Behavioral and Social Sciences and Education, J. Travis, B. Western, and S. Redburn, Editors, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Committee on Causes and Consequences of High Rates of Incarceration (Washington, DC: The National Academies Press, 2014)

Figure X: Age 50+ Prison Population, Count and Percent



INTERESTS OF JUSTICE

The concept of resentencing petitions accepts the premise that in appropriate circumstances sentences should be revisited as policies, social norms, and objective knowledge change. The equity lens that the RTF applied to its work asserts that allowing a second look at long sentences can help address the disparate impact of mass incarceration. A second look at sentences that can extend across decades and generations acknowledges that progress made by society and by the individual over time can render a sentence unjust, disproportionate, or no longer necessary to protect public safety. As currently structured, the chances for reconsideration of sentences are embodied in the appeal and post-conviction processes, neither of which encompasses the range of reasons resentencing might be appropriate. These reasons include changes in knowledge or recognition that an historic policy has produced unintended and now unacceptable social consequences.

Members of the RTF brought their diverse professional perspectives to the question of what “interests of justice” means in the context of a resentencing structure. According equal importance to the experiences of all touched by the criminal legal system, the RTF identified the following interests that were weighed in developing its recommendations:

- Community interest in public safety
- The victims’ and survivors’ interest in subjective justice for their individual case
- Community standards around punishment – retribution/rehabilitation, fairness
- The interests of the families and communities of the incarcerated, which link back to public safety, restorative justice values, and economic impacts
- Rehabilitation
- The system’s need to both resolve cases efficiently and produce positive outcomes

The RTF specifically recognized the humanity of all concerned, recognizing that often people who commit crimes are victims of trauma and survivors of violence. Following IDOC’s lead, which recently adopted a policy to eliminate terms like “offender” and “inmate” that dehumanize people, the RTF committed to avoiding such language as well.

Victims were front and center in the discussion of the interests of justice, along with the recognition that they are not a monolithic group. Traditionally, the victim’s viewpoint was presented as purely retributive, but as the effects of mass incarceration became more evident, many victims’ advocates argued for effective, not harsh sentences. In addition, when many of these older policies were adopted, there was no understanding of the frequency with which people who committed violent crimes had been the victims of such crimes. This does not excuse that behavior, but the victim/perpetrator, or us/them paradigm, is no longer tenable. Finally, as restorative justice practices have become more common, our understanding of the value of healing embodied in the opportunity to demonstrate remorse or rehabilitation as opposed to the retributive value of extreme sentences has evolved.

The interests of justice can also be implicated as scientific knowledge and social norms evolve. Meetings two and three included presenters who shared their expertise on how people age out of criminal behavior; how trauma impacts the way people make decisions and react to situations that can lead to criminal involvement; and how we now understand substance use disorders and the intersection of mental illness and criminality. In all these fields, the underlying foundations of some of our harshest sentencing policies have been significantly undermined by more current knowledge- Relatively recent research connects being the victim of violence, whether on the streets or within a family unit, with becoming a perpetrator of violence and sets the prior us/them paradigm on its head.² Understanding now that certain controlled

² *Id.*

substances are more criminogenic than others and that addiction is a physiological disease debunks the previous certainty that addiction was a moral choice. The abject failure to provide quality mental health care in our communities has resulted in prisons becoming the biggest mental health treatment provider in the state. Recent litigation highlights how impossible it is for the prison system to do that adequately.

At the end of the RTF meeting schedule, a virtual public hearing was held that raised new perspectives on individual and community perceptions of the interests of justice. Witnesses who had served sentences of 20 years or more shared their views on why resentencing pathways are needed and what a meaningful opportunity for early release should mean in terms of restoration to productive citizenship. For several witnesses who had gone to prison in their teens, it was important to recognize that a meaningful opportunity needs to be available at an age when a person is able to restore themselves. Family members of incarcerated people also spoke about the price they paid through losing their loved ones to extreme terms of incarceration. The families' interest was allowing their loved ones to file resentencing petitions and have a chance of early release after years without this possibility.

The theme of hope also ran through the stories we received from incarcerated men and women. The writers found hope in the mere existence of a government task force mandated to talk about resentencing. Their family members found hope in getting a response to their inquiries.

Joseph Moore, released after serving 26 years, testified at the public hearing:

As it relates to long-term incarceration, there are no winners in most cases. The victims and perpetrators hail from the same disadvantaged communities. They are struggling against the same forces of discrimination and oppression, and the pressure of that struggle is intensified by the protracted absence of family members. Their absence contributes to the disintegration of the family structure, which leads to the disintegration of the community structure, which creates environments that foster crime. If we truly wish to aid in breaking the cycle of crime and incarceration, we have to create fair and just sentencing guidelines that give people the opportunity to earn their release sooner than later.

These reactions provide some insight into how our reliance on removing people from their families and communities has moved the system further away from serving the interests of justice.

RECOMMENDATIONS

RETROACTIVITY

This issue was resolved at the outset as recommendations for a process that was not retroactive would differ substantively in some important respects from one that was.

1. The Task Force recommends the Illinois General Assembly pass legislation to create prospective and retroactive resentencing opportunities.

Rationale: The prison population is at an historic low, due in part to the slowed admissions during Covid and in part to the consistent downward trend in arrests and convictions over approximately five years. As more people convicted of Class 3 and 4 non-violent felonies were released than admitted, the characteristics of the prison population changed. The proportion of the prison population serving long sentences that are subject to limits on sentence credits is steadily growing and aging. Traditionally Illinois has specifically excluded this group from reform efforts, leaving few avenues for early release.

A resentencing system that allows both prospective and retroactive application will have the greatest impact on the prison population. Limiting resentencing to prospective application would delay any population impact until the minimum period to establish eligibility is served. For example, if resentencing eligibility

required serving 20 years or more of the sentence imposed, there would be no population impact until 2042. Retroactive application of the resentencing process could reduce the population in the near term depending on how many people get relief resulting in early release.

Retroactive application gives an opportunity to address equity issues. One of the areas in which knowledge has developed over time is the harm caused by mass incarceration on communities of color. The National Research Council's 2014 report, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, is the most comprehensive analysis available of the relationship between incarceration and crime. The multi-disciplinary committee found no clear evidence that greater reliance on imprisonment substantially reduced crime. It further noted that the rise in incarceration may have had a wide range of unwanted consequences for society, communities, families, and individuals.³ Those unwanted consequences are the foundation of the equity concerns raised in several meetings of the RTF. If the disparate impact of mass incarceration is to be addressed successfully, those who are currently incarcerated must be able to access the process for early release.

Retroactivity also raises technical legal issues that must be addressed in developing and drafting resentencing legislation. The intent for the law to be applied retroactively must be clearly stated. Illinois and U.S. Supreme Court case law establishes that where the legislature clearly states the intent for retroactive application, that intent shall be given full force and effect. *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27 (Ill. 2001), cites *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), as follows: "Under the Landgraf test, if the legislature has clearly indicated what the temporal reach of an amended statute should be, then, absent a constitutional prohibition, that expression of legislative intent must be given effect." Equally true is that retroactivity may lead to constitutional issues that must be avoided in drafting the specific legislative language. For example, if the new resentencing structure impinged on the Governor's clemency power or an individual's due process rights, the law could be found unconstitutional quite apart from the issue of retroactivity. Similarly, a retroactive law would be an unconstitutional ex post facto law if it were disadvantageous to the defendant. See *People v. LeRoy*, 357 Ill. App.3d 530 (5th Dist. 2005). The task force was not tasked with, nor realistically able to address, drafting legislative language, a job better left to the legislature and the expert draftsmen it employs.

The legislature has the authority to create new pathways to judicial review long after a final result is reached. For example:

- Post-conviction innocence claims can be filed at any time per the Post-Conviction Act.
- Those who suffered from post-partum depression or were victims of gender-based violence and were sentenced without that evidence being presented can be resentenced. See 730 ILCS 5/5-5-3.1(15), effective 1/1/16.
- The Joe Coleman Medical Release Act, a fully retroactive bill, permits the Prisoner Review Board to grant compassionate release from prison as an act of executive and legislative grace. See 730 ILCS 5/3-3-14, effective 1/1/22.

"Resentencing is not an automatic pathway home. It is a second look to see who that person has become."

-Preston Shipp, National Campaign for the Fair Sentencing of Youth

"My belief is that many people make bad choices, wrong choices, and even accidents; but it solely doesn't define us. I am a firm believer that everyone should have to accept their consequences, if you commit a crime, But the majority of these sentences do not reflect restoring a person back to useful citizenship."

-MC, sentenced 35 years; 11 years to go

³ *Id.*

- Most recently, state's attorneys have been vested with the authority to file resentencing petitions in the interests of justice.

In June of this year, the US Supreme Court decided *Concepcion v. United States*, 142 S.Ct. 2389 (2022), which addressed the retroactive applicability of federal sentencing guideline changes addressing the disparities between crack and powder cocaine. The disparities were addressed in the Fair Sentencing Act of 2010 and made retroactive in the First Step Act in 2018. The majority opinion held that finality concerns are expressly overcome in evaluating a "statute whose very purpose is to reopen final judgments." *Id.* at 2399, fn 3. More significantly, the Court held that when resentencing a defendant under the First Step Act, and in the absence of an express limitation set by Congress on what factors may be considered, a district court judge may consider not only changes in the law contained in the First Step Act itself, but other changes in the law, and changes in the life of the defendant. *Id.* at 2400-03.

Public Hearing Testimony: For those with loved ones in prison and those who were sentenced to extremely long terms, retroactivity was at the center of fairness. Several witnesses had experienced the power of the retroactive application of *Miller v. Alabama*, 567 U.S. 460 (2012), in which the United States Supreme Court found that mandatory life without parole sentences for juveniles were unconstitutional. The Illinois Supreme Court then ruled that *Miller* applied retroactively, requiring resentencing for a number of people in prison. *People v. Davis*, 2014 IL 115595. This has resulted in some men who were incarcerated as young teenagers coming home.

Retroactivity in many of those cases did not equal release. James Swansey, now working with Restore Justice, testified that he was resentenced to 80 years but was released when his clemency petition was granted. The sister of a man who was sentenced to prison at 15 shared that he got relief pursuant to *Miller* but has remained in prison for several more years, with a release date in 2024.

Retroactivity gives the opportunity for resentencing to the greatest number of incarcerated people, but it does not guarantee relief or early release. The review process allows full consideration in individual cases of evidence on all relevant issues: risk to public safety, victim impact, rehabilitation, new research, and policy changes that support or oppose resentencing. Those not appropriate for early release would be denied relief.

THE PROCESS

Developing recommendations addressing how the process would work included applying bedrock principles of our system, such as notice, right to counsel, the right of victims to be heard, and appellate review, to a new process. It also involved thinking through the factors that should govern the granting or denial of relief.

2. The General Assembly shall recommend parties who may initiate a petition for resentencing, including but not limited to the prosecuting attorney, the incarcerated individual, or defense counsel.

Rationale: The task force was created to study the question of authorizing more types of people to file petitions. Under current law, only state's attorneys may file resentencing petitions "in the interests of justice." There is no requirement for review or statutory guidance such as eligibility factors. The sponsors of that bill and the RTF bill recognized the disparity of access to relief for those convicted in jurisdictions where the state's attorney does not support resentencing.

"The reason why I believe in resentencing measures do not come from a sense of entitlement to any such relief, but only through the merits of one's own actions over the course of twenty-two years-redemption. I ask for mercy and favor knowing that I'm not deserving of such--but having conducted myself in a manner with hopes to obtain a second chance."

"Unless the imposition of a seventy-five (75) year sentence reasonably contributes to both penological goals of retribution and deterrence, while striking a balance with respect towards rehabilitation, it is nothing more than the imposition of pain and suffering, void of fundamental fairness,"

-DH, sentenced to 75 years; 53 years to go

"I need to show society that what was the past is not living in my future."

-GA, sentenced to 30 years; 6 years to go

SPAC drew a sample of 17 state's attorneys from counties with the highest numbers of admissions for extreme sentences and called to find out if they had established any resentencing procedures. The state's attorneys in Cook and Kane counties not only published guidelines on their websites but had also assigned attorneys in their offices to review petitions. Other responses ranged from not being aware of the new authority to not having considered establishing a formal process. In one county there were no published guidelines but if a request for resentencing was received the elected state's attorney reviewed the case.

The RTF also considered the question of whether a judge or IDOC could be authorized to file a resentencing petition. It was agreed that a sitting judge was not an appropriate person to initiate a resentencing process given their role as a neutral decision maker. A retired judge could file a petition as the concern over conflicts and an appearance of impropriety would not apply.

IDOC voiced its objection to being responsible for determining if a person was eligible for resentencing or taking an active role in filing petitions, functions it could not realistically perform. Acknowledging that at the point a petition would be filed IDOC would be in possession of a significant amount of evidence, the Department had no objection to providing any relevant documentary evidence within its control during the course of the proceedings. As discussed below, the Department was also amenable to providing general information about resentencing to residents of all of its facilities by posting notice in common areas. **Public Hearing Testimony:** Family members of people serving time reported at the public hearing that they reached out to the state's attorneys in the counties where their loved ones were convicted. Most frequently they received no response, or a rejection of their request for review. To date, the Cook County State's Attorney has filed two resentencing petitions.

ELIGIBILITY

Eligibility arose in three contexts: criteria for modification, allowing petitions from those serving extreme sentences, and screening out those that do not meet statutory filing requirements.

3. The General Assembly should establish eligibility criteria for sentence modification, including but not limited to:

- (1) The petitioner is serving a sentence for any criminal offense for which the statutory penalty has been subsequently reduced or altered; or**
- (2) The petitioner makes a showing their sentence no longer advances the interest of justice or the promotion of public safety.**

Rationale: The specific eligibility criteria for filing a petition will be developed by the legislature, but the RTF considered both eligibilities based on extreme sentences and the interests of justice implicated by policy changes and rehabilitation. The eligibility lens grew wider midway through the meeting schedule to focus on addressing more unintended injustices of prospective-only application of policy changes. Traditionally there has been no avenue for reconsideration if the law changes as to the sentence or elements of a crime. For example, prostitution was defelonized in 2015, 720 ILCS 5/11-14, but those serving prison terms for prostitution had no way to have their cases reviewed. Eligibility for filing based on fairness concerns, such as changes in policy or scientific knowledge, would not rely on the numeric parameters that address long term sentencing issues. The interests of justice rather than the specific term and length of time served is the benchmark for eligibility with this approach.

4. The General Assembly shall determine a process by which individuals eligible under #3, including those serving extreme sentences, can petition the court for a resentencing.

Rationale: The RTF initially focused on those serving sentences of over 20 years, a group that is now the majority of the prison population. This group has been intentionally excluded from past reform efforts based on their crime of conviction. If resentencing targeted this group, eligibility could be based on the

length of the sentence imposed and how much time had to be served before a petition could be filed, as recommended by many of the organizations that support resentencing. These numeric criteria would also allow for the prompt dismissal of petitions that did not meet them. This recommendation is intended to clarify that people serving extreme sentences for violent crimes should be eligible for resentencing. By not specifying their eligibility in the first eligibility recommendation, there was a risk that they would be excluded.

The American Law Institute (ALI) noted that “American criminal-justice systems make heavy use of lengthy prison terms—dramatically more so than other Western democracies—and the nation’s reliance on these severe penalties has greatly increased in the last 40 years...The fact that American prison rates remain high after nearly two decades of falling crime rates is due in part to the nation’s exceptional use of long confinement terms that make no allowance for changes in the crime policy environment.”⁴ They went on to note their belief that penalties that will reach a generation into the future or longer should be used cautiously. Resentencing that is focused on who the individual is when the petition is filed, along with the societal and scientific developments addressed above, is one way to ensure that “these sanctions remain intelligible and justifiable at a point in time far distant from their original imposition.”⁵

The intended public safety impact of long periods of incarceration falls into three categories: (1) general deterrence – sentencing A to a long-term sentence deters B from committing a crime; (2) specific deterrence – A’s long sentence will deter A from committing a crime in the future; and (3) incapacitation – A can’t commit crimes in the community while in prison. Significant research over decades debunks the theory that harsh sentences are an effective general deterrent. Crime rates do not change based on sentencing policies; i.e., they don’t fall when sentences are made harsher and they don’t rise when sentences are made less harsh. Many states have seen crime rates fall as their use of incarceration decreases through successful reform efforts that focus on addressing criminogenic factors in individuals and fostering healthy communities. One of the most challenging aspects of long periods of incapacitation is that it can be criminogenic, i.e., the person who comes out of prison is more likely to commit crimes in the future than they were before being incarcerated.⁶

Prison is most effective at incapacitating people, but those who are serving long prison sentences are the least likely to have access to rehabilitative programming. While recidivism is the most frequently used measure of sentencing success, age is the strongest predictor of the likelihood of reoffending, thus the term “aging out.” People who committed violent crimes decades ago are not at high risk of doing so again and are less likely to recidivate at all. The recidivism rates of people over the age of 45, regardless of their crime of conviction, are the lowest among the different age groups.⁷ This raises questions about the utility of incarcerating people far into old age in the name of retribution. But the research on age and recidivism is uncontroverted that even without programming targeting their needs people mature out of criminal behavior with age.

Public Hearing Testimony: Father David Kelley of Precious Blood Ministry of Reconciliation (PBMR) spoke of the public safety benefit of returning adults to their communities. They are effective violence interrupters and mentors for youth, providing understanding and acceptance rather than judgment. People who had been released after decades in prison also talked about their commitment to improving the communities they return to, and for those involved with restorative justice programs, addressing harm and

⁴ American Law Institute, *Model Penal Code*, Section 305.6, p. 3.

⁵ *Id.*

⁶ Committee on Law and Justice, Division of Behavioral and Social Sciences and Education, J. Travis, B. Western, and S. Redburn, Editors, *The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration* (Washington, DC: The National Academies Press, 2014)

⁷ The Sentencing Project, N. Ghandooosh, *A Second Look at Injustice*, 2021; <https://www.sentencingproject.org/reports/a-second-look-at-injustice>

promoting healing beyond the limits of punishment. Importantly, those witnesses stressed that they were not the exception in the facilities where they were imprisoned. That theme was also dominant in the letters received from incarcerated people.

5. Resentencing petitions shall be dismissed if they do not meet the eligibility criteria; such dismissal shall be a final, appealable order. The court shall set forth, either in open court or in writing, the reasons for its decision.

Rationale: Providing for dismissal pursuant to an initial screening was considered important for managing court resources. Allowing the eligibility determination to be appealed mirrors the procedures available under the Post-Conviction Hearing Act. Appellate review guards against inconsistent approaches among various jurisdictions as well as arbitrary or capricious dismissals based on meeting eligibility criteria.

NOTICE

The concept of notice to opposing parties and victims is a foundation of our legal system. The resentencing process requires notice to those who are in prison and may be eligible to seek relief.

6. Any procedure adopted by the General Assembly shall provide adequate notice requirements. The Department of Corrections shall provide notice and adequate materials to inform individuals who are incarcerated of their rights.

Rationale: Effectively communicating information on the implementation of resentencing to the people who are already incarcerated is different than the requirement to give notice to victims or prosecutors. While the IDOC is the only entity suited to publicizing the process to those who are currently incarcerated, it was not contemplated that IDOC would play a role in notifying individuals that they were eligible to file a petition for resentencing. While some of the materials provided to task force members stated that corrections departments could do so without significant investment, that is not the case in Illinois and is not recommended.

IDOC should provide general notification of the eligibility for a resentencing process by posting written information in all IDOC facilities. The information that should be included in the general notification of the process could be set forth in statute, but the department should have flexibility in the method in which this information is delivered to its population so that it is reasonable and able to be implemented across all facilities.

“Holding myself accountable made me change, because I did not like how what I did and was doing made me feel, and more importantly how it made others feel. I became more aware of my empathy for his family and their loss. . . One day I happened to be reading through my sentencing transcripts and realized that during the victim impact statements that his family never had one angry or hateful word directed toward me. All his mother wanted was her son back, that is the last thing she said. To say it has stuck with me is an understatement.”

-RA, sentenced to 30 years, 13 years to go

7. All statutory and constitutional rights of victims, including but not limited to the right to notice and to be heard, shall apply to the entire resentencing procedure. The victim shall be notified of any restorative justice programs available at the time the petition is filed.

Rationale: Although resentencing would be a new process focused on the rehabilitation of the petitioner, the interests of victims must be represented, and all state constitutional and statutory rights honored. Notifying victims of restorative justice (RJ) programs addresses the emotional harm that can linger long after the original sentence is imposed. Voluntary participation is a bedrock principle of restorative justice so requiring participation in an RJ program is not part of the recommendation.

Restorative justice aims to repair harm and conflict by engaging all parties and stakeholders, including members of the larger community where appropriate. Trained practitioners facilitate a process with the goal of coming to agreement on how best to repair the harm caused. An accountability process is approached through a process where the people harmed share their experience and the person who committed the crime accepts responsibility and answers questions about what happened. Members of the community may join in a peace circle, sharing how they were impacted by the crime, demonstrating the ripple effect of the harm caused. A joint resolution is reached, which may or may not involve the formalities of the criminal justice system.

The adversarial structure of the criminal justice system focuses on accountability through punishment. The process offers no opportunity for direct communication and acceptance of responsibility, or forgiveness and reconciliation. During a court case, the accused is often told not to engage, or even look at the survivors in the courtroom. The respective families sit on opposite sides, sharing the painful experience in silence. The sentence is meted out on behalf of the people of the State of Illinois and the individual harmed may have little satisfaction in the outcome of their case. Alternatively, they may take great comfort in knowing that the convicted person will spend a very, very long time in prison.

Members of this Task Force recognized that resentencing could disturb that comfort decades after the original sentence was imposed, triggering trauma for the survivors. They also recognized that the passage of time can diminish the impulse for retribution while the need for reconciliation and healing can persist decades after that original sentence.⁸ Jeanne Bishop noted in her public hearing testimony that her initial support for life in prison for the teenager who murdered her pregnant sister and brother-in-law changed as she matured and had children of her own. The decision to reach out to the now grown man and hear his apology allowed her to recover from the trauma of the crime. Ms. Bishop supported the concept of resentencing as an avenue to accountability and forgiveness for others, and as a recognition that people change and can become worthy of redemption. Assuring that victims have the opportunity to engage in restorative justice is one way to support them through the resentencing process.

Restorative justice could be made available in one of two ways. The first is through the Healing Beyond Harm two-phase restorative justice pilot being implemented in IDOC. Phase one is an Apology Letter Bank that will be jointly implemented with the Prisoner Review Board (PRB), community partners and other state agencies. The incarcerated people who wish to participate will complete restorative justice training in personal accountability before writing a letter to the survivors of their crimes. The PRB will maintain the letters and manage access for the survivors who wish to engage in this process. The second phase will be a facilitated dialogue with both parties and a trained harm dialogue facilitator from outside IDOC. The pilot is based on a program that has been fully operational in the California prison system and 12 other states.

⁸ J. Murray, S. Hecker, M. Skocpol, and M. Elkins, *Second Look = Second Chance: Turning The Tide Through NACDL's Model Second Look Legislation*, (National Association of Criminal Defense Lawyers 2021), pp. 15-16; by N. Ghandnoosh, *A Second Look at Injustice* (The Sentencing Project 2021), p. 34 (recommending that restorative services to support crime survivors be included in a resentencing process.)

The initial funding for the Healing Beyond Harm pilot is through a grant from the Illinois Criminal Justice Information Authority.

The second way restorative justice could play a role in resentencing is through offering survivors access to a local or community restorative justice program when a petition for resentencing is filed. Father David Kelly of PBMR, a member of the Restorative Justice Hub network in Chicago, described the restorative justice services they provide. At PBMR, those who have committed crimes and those who have been harmed by them sit together in peace circles. Many families have the dual experience of being crime victims and having incarcerated loved ones. In the circle they share the experience of loss whether through victimization or incarceration and are allowed the space in which healing can begin.

The Task Force specifically discussed the importance of allowing time to complete the process before the court rules on the petition. It should be noted that statements made in the restorative justice process are privileged under the Code of Civil Procedure,^{735 ILCS 5/804.5}, so the court would not be privy to the details of the communication between the parties. The law allows a court to consider a report limited to the fact that a practice has taken place, an opinion regarding the success of the practice, and whether further restorative justice practices are expected.

As has been noted in numerous contexts, victims are not a monolithic group, and there will be many who oppose resentencing in individual cases and will choose not to pursue a restorative process. That is the point at which the individual interest and the societal interest may conflict with the inquiry of “whether the purposes of sentencing embodied in the Illinois Constitution and the state would be better served by a modified sentence than the individual’s completion of the original sentence based on the current circumstances of the individual and the crime victim, as well as changes in law, policy, and scientific knowledge.” American Law Institute, Principle 1.

RIGHT TO COUNSEL

Attorneys are essential to successfully navigating the legal system. One member of the RTF noted that in post-conviction cases petitioners who are represented by counsel succeed in getting relief more often than those who are not represented. Allowing for appointed counsel also cuts down on the volume of frivolous petitions.

8. A petitioner who is unable to afford counsel is entitled to have counsel appointed, at no cost to the defendant, to represent the defendant for the resentencing petition and proceedings.

9. A defendant who files a pro se petition and subsequently retains or is appointed counsel shall be entitled to amend such petition with the assistance of counsel.

Rationale: These recommendations establish a statutory right to counsel, distinct from the Fifth and Sixth Amendment right to counsel in the U.S. Constitution, and a right to amend a pro se petition. While the RTF recommends allowing incarcerated people to file petitions for resentencing, requiring counsel is one way to ensure full and fair consideration of the case. Requiring that counsel be allowed to amend the pro se petition ensures that the right to counsel is meaningful at the earliest point in the proceedings. Legal expertise is critical to presenting all meritorious issues and providing a competent presentation of evidence. That in turn contributes to a record for the appellate court that supports meaningful review. Amendment by right also eliminates a procedural step, a motion for leave to amend the petition, which helps conserve court resources. It was also noted that the administrative issues that were caused by repetitive post-conviction petitions consuming court resources may be mitigated by appointing attorneys, who are barred from filing frivolous petitions, assigned to these cases.

HEARINGS

10. Upon a determination of eligibility, the court shall conduct a resentencing hearing.

11. The sentencing court shall consider, but not be limited to, the following factors:

- (1) The age of the petitioner at the time of the offense and the age of the petitioner at the time of the sentence modification petition.**
- (2) The nature and circumstances of the offense.**
- (3) The history and characteristics of the petitioner at the time of the petition for a reduction in sentence, including rehabilitation and maturity demonstrated by the petitioner.**
- (4) The petitioner's family and community circumstances, including any history of physical, emotional, or sexual abuse; substance abuse; trauma; or involvement in the child welfare system.**
- (5) Any report from a physical, mental, or psychiatric examination of the defendant conducted by a licensed health care professional; validated risk assessment; and**
- (6) Any changes to the law governing criminal convictions, dispositions, or length of stay since the time of sentencing.**
- (7) Any other information the court determines is relevant to the decision of the court, including any statement by a victim of an offense or family member of the victim or the recommendation received from the State's Attorney.**

Rationale: These factors require consideration of the characteristics of the petitioner and the circumstances that may have been foundational to their criminal conduct, such as brain development in youth, trauma, and medical conditions. In its commentary on the principles that should guide the design of resentencing procedures, the ALI noted that “[t]he inquiry shall be whether the purposes of sentencing . . . would better be served by a modified sentence than the prisoner’s completion of the original sentence.”⁹ The commentary further noted that governments should be especially cautious when imposing penalties that deprive offenders of their liberty for a substantial portion of their adult lives. A second-look mechanism is meant to ensure that these sanctions remain intelligible and justifiable at a point in time far distant from their original imposition.

As noted in the factual background section of this report, knowledge of how trauma, mental illness, and substance use disorders contribute to, or interact with, criminal conduct has significantly evolved. The task force heard from three experts in these areas who explained that both chronic exposure to trauma and drug use literally changes the physiological functioning of the human brain. Research has even shown that some controlled substances are more criminogenic than others. Aspects of addiction and trauma response that in the past were thought of as poor moral choices are now scientifically explained and can be effectively treated. Perhaps most importantly, research has shown a path to more effectively addressing the anti-social behaviors that can develop from exposure to these factors.

"I was raised in a dysfunctional (sic) household where I was exposed to the negative culture that comes with being raised in a violent environment. I am one of 17 siblings, all of which played no positive, nor healthy roles in my life. My biological father played no significant role either, and unfortunately my mother was involved with numerous men in unhealthy relationships, which left little to no time at all to attend to me. Therefore, I gravitated to the streets at age 11, which exposed me even more to gangs. And by age 12 I was recruited to join a gang under immense pressure. Pressure that came at the hands of even many of my own family members. Influences that led to a lift of senseless and unnecessary criminal activities. My life was directed down the wrong path before I even had a chance at accomplishing anything worthwhile."

-EV Jr., sentenced to 75 years; 34 to years to go

⁹ *Model Penal Code*, Section 305.6 p. 3

Public Hearing Testimony & Letters from Incarcerated People:

Formerly incarcerated men testified about their experiences coming to terms with the reality of their crimes as they served their sentences. They differed in terms of timing, but common factors were identified in that when they faced the harm caused by their actions, true accountability followed.

In the hundreds of letters received from incarcerated men and women, common themes were personal accountability, grief over the harm they had caused, and hope in the possibility that resentencing could become a reality. Many offered their own recommendations about what the system should look like with the caveat that one would have to earn a new sentence.

12. The court should be authorized by the General Assembly to depart downward from any mandatory minimum or mandatory sentence enhancement.

Rationale: Mandatory minimums and mandatory sentence enhancements are one of the dominant drivers of the long-term prison population. They eliminate the option of probation and set the minimum prison term, transferring determination of the appropriate sentence from the judge on the case to the legislative determination that prison is the appropriate sanction. Mandatory sentence enhancements can result in a prison term that exceeds the maximum term for the offense class. Both eliminate consideration of the personal characteristics or circumstances of the convicted individual. Finally, they severely limit access to programming in prison, which is justifiably targeted to preparing those who are close to release for re-entry to their communities.

Contrary to the arguments made in favor of mandatory minimums, they did not lead to greater consistency or certainty. Courtroom actors changed their behavior to avoid what they felt were unjust outcomes. In its seminal report, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, the National Research Council stated:

Mandatory minimum sentence and three strikes laws have little or no effect on crime rates, shift sentencing power from judges to prosecutors, often result in the imposition of sentences that practitioners believe to be unjustly severe, and for those reasons foster widespread circumvention.¹⁰

In her testimony at the public hearing, Madeline Behr of Chicago Alliance Against Sexual Exploitation noted that sexual assault cases are less likely to be charged, or offenses are charged that are less serious than the facts support, when system actors feel the penalties are too severe. In her words, the options for sexual assault survivors are long sentences for some or no accountability. Real accountability is missing.

Recent reforms on the state and federal level have included “safety valves,” factors that a judge can consider in departing from mandatory minimums. The Safe Neighborhood Reform Act established a higher mandatory minimum for repeat offenders charged with gun crimes who had certain violent offenses in their

"I am not the only long term/lifer giving back to society from behind bars. The greatest pastors, musicians, authors, and role models for change are men and women who are serving life sentences (or de facto life sentences)... It is the people that we have touched since our incarceration that make us feel worthy of a second chance, or a commutation of severe sentences."

-JM, sentenced to life

"If we can see that a sentence was wrong today, that means it was wrong yesterday. That is why we should have second looks in Illinois."

-AA, 15-year-old brother was sent to prison for life; He was resentenced pursuant to *Miller* and will be released in 2024.
Public Hearing 9/29

¹⁰ *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, p. 83.

criminal histories. 730 ILCS 5/5-4.5-110(c). It also provided a safety valve, allowing judges to depart downward based on a number of specified factors. 730 ILCS 5/5-4.5-110(d).

There is a more general safety valve at 730 ILCS 5/5-4-1(c-1.5), effective January 1, 2013, that provides authority for the court to sentence probation, conditional discharge, or a lesser term of imprisonment for non-probationable crimes when (1) the offense involves drug use or possession, retail theft, or driving on a revoked license due to financial obligations, (2) there is no public safety risk, and (3) the interest of justice requires it.

The federal First Step Act also contained a provision that expanded the already existing safety valve in the federal sentencing structure to people with slightly more serious criminal histories convicted of drug trafficking offenses.

The American Law Institute principles applied in the model legislation drafted by the National Association of Criminal Defense Lawyers state that resentencing authority shall not be limited by any mandatory minimum term of imprisonment and note that downward departures are a relatively common feature of existing compassionate-release statutes.

The question for the RTF was how to address mandatory minimums in the context of resentencing. The majority view of the members of the task force was in favor of allowing departure, but prosecutors raised two concerns: (1) the incursion on the value of finality for the survivors of violent crimes; and (2) using the jurisdictional vehicle of resentencing to rewrite sentencing law rather than facing head on the issue of amending the Code of Corrections. In their view, allowing downward departures effectively repealed mandatory minimums and sentence enhancements. In addition, the two state's attorneys with published policies on resentencing, Cook and Kane counties, do not review cases with mandatory minimums or enhancements.

It should be noted that if the authority to depart from mandatory penalties is not included, the legislature would be creating a process that, by definition, could not reduce the prison population. In the initial presentation on the prison population, SPAC analyzed the current population by offense type:

		Total Population		Served >=10 Years		Served >=20 Years	
		Number	Percent	Number	Percent	Number	Percent
Offense Type	Murder or Homicide	7,933	29%	5,756	67%	2,627	81%
	Violent Sex Offense	4,310	16%	1,475	17%	348	11%
	Other Violent	5,943	22%	948	11%	152	5%
	Other	9,227	34%	409	5%	108	3%
Offense Class	Class M	6,357	23%	5,108	59%	2,470	76%
	Class X	10,019	37%	3,028	35%	653	20%
	Class 1-2	7,952	29%	315	4%	36	1%
	Class 3-4	2,927	11%	22	0%	8	0%
	Other	158	1%	115	1%	68	2%
Life Sentence or Truth-in-Sentencing	Life	1,555	6%	1,332	16%	977	30%
	75 or 85%	8,738	32%	2,547	30%	359	11%
	100%	4,136	15%	3,091	36%	749	23%
	None	12,984	47%	1,618	19%	1,150	36%
TOTAL		27,413	100%	8,558	100%	3,235	100%
Length of Stay (years)	Average Served	9.1		14.5		26.9	
	Average Until Release/Age 75	8.8		14.7		13.3	

The total population columns establish that no less than 60% of the population are serving sentences for murder and Class X felonies, which are subject to the highest mandatory minimums. Many Class 1 and 2 felonies are statutorily ineligible for probation, resulting in a mandatory minimum sentence. Carving out cases involving mandatory minimums and requiring adherence to these provisions significantly limits the utility of resentencing as a strategy for reducing the prison population as well as addressing the interests of justice.

The sentence imposed pursuant to resentencing review must be authorized in statute. Therefore, if the General Assembly supports downward departures, it is imperative that resentencing legislation clearly state the authority to do so.

13. In calculating the new term to be served by the petitioner, the court shall credit the petitioner for any jail time served toward the subject conviction as well as any period of incarceration credited toward the sentence originally imposed.

Rationale: Calculating credit for time served either prior to disposition or for an original sentence at the time of resentencing is institutionalized in Illinois and U.S. Supreme Court case law. There was no objection to this recommendation, nor would there be a legal basis for not awarding this credit.

14. The petitioner may appeal a final order from a resentencing proceeding.

Rationale: This recommendation provides the standard review process for final orders in resentencing cases. Appellate review is generally seen as a safeguard against arbitrary and disparate decisions in the lower court. Appellate review also promotes transparency, which is consistently viewed as lacking in the exercise of the Governor's clemency power and the decisions of the Prisoner Review Board. Finally, appellate review is the way our system develops case law that can resolve confusion over statutory interpretation or inconsistencies between circuits in resentencing decisions.

SUCCESSIVE PETITIONS

15. Where a petition for a reduction in a sentence has been denied, the petitioner shall be permitted to file a successive petition for resentencing within a time period to be designated by the General Assembly.

Rationale: The process for filing subsequent petitions must fairly balance the interests of the individual; the societal value of releasing people who are no longer a public safety risk; and avoiding excessive, repetitive petitions overwhelming the courts. Specifying the timeframe in which a person denied relief can file successive petitions addresses these concerns.

There was no suggestion that successive petitions should be prohibited, however, several important points on limiting successive petitions were made:

1. Requiring more time between petitions allowed for new evidence of rehabilitation to develop.
2. A shorter period between petitions assured that if policy changes supported a new petition, a person could file more promptly.
3. The specified time frame should control the risk of repetitive frivolous petitions.

Illinois law address successive petitions in two contexts: (1) the Post-Conviction Act, 725 ILCS 5/122-1(f), and (2) the youthful offender parole process, 730 ILCS 5/5-4.5-110(m). The Post-Conviction Act is limited to the review of properly preserved constitutional claims, such as ineffective assistance of counsel, which is a very high standard. To control successive, frivolous petitions, the law requires leave of court to file a second petition. Leave may be granted only if a petitioner demonstrates good cause for failing to bring the claim in the initial post-conviction proceedings and prejudice results from that failure. Resentencing would require a less onerous evidentiary burden, and a broader context in which a petition could be brought. In that sense, resentencing could alleviate some post-conviction pressures on the court by taking petitions that cannot meet the parameters of a constitutional issue out of the post-conviction process.

The youthful offender parole review statute specifies two time limits on subsequent petitions for parole which are filed with the Prisoner Review Board (PRB). People who are convicted of crimes other than first degree murder or sexual assault can re-petition the PRB after five years and are subject to a lifetime limit of three petitions. People who are convicted of first-degree murder or sexual assault can petition again after 10 years and have a lifetime limit of two petitions.

Limitations on successive petitions must also balance the interests of justice in allowing people who are no longer a threat to public safety access to meaningful review. Both NACDL and ALI set parameters for the number of years between filings and a lifetime limit on the number of petitions that one person can bring. The Sentencing Project recommends automatic review after a person has served ten years, with a subsequent review every two years.

A lifetime limit is seen as a guard against frivolous petitions. Some members of the RTF were concerned that a lifetime limit would unjustly exclude some people if a significant policy change was made subsequent to their last allowable petition. But, as the ALI noted, resentencing involves judicial resources which must be managed to meet the needs of all who require judicial resolutions. A reasonable limit on successive petitions would serve both interests.

“Having a sentence of life without parole hinders you in prison. All of the programs, vocational and college courses only let people in them based off your release date. Since I don’t have one, I’m not allowed to better myself and get some form of rehabilitation.”

-TB, sentenced to life

“The IL Supreme Court says that in order for a juvenile to be resentenced we have to have a natural life or a de facto life sentence (over forty years to serve), because I have a sentence of eighty years at 50%, exactly forty years to serve, one day short, I can’t be given a second chance.”

-TP, sentenced to 40 years, 13 years to go

CREATING A FEEDBACK LOOP

16. Appropriate data must be collected and reported.

Rationale: The issue of tracking what is happening on the ground with resentencing was first raised at the second meeting of the RTF. Though state's attorneys can file petitions, there is no obligation to report how many cases were reviewed, petitions filed, or the outcomes of those petitions. In the final meeting, the general recommendation was passed with a commitment by the Sentencing Policy Advisory Council to develop data collection criteria that would support real analysis of the system, not just report administrative numbers.

The most important consideration is collecting the data that helps answer the relevant questions. The overall discussions through seven meetings identified questions of equity, demographics, notice to victims and an opportunity for them to be heard, and ultimately recidivism patterns of those who get resentencing relief. Policymakers will undoubtedly ask broader questions in the future about whether resentencing made communities more or less safe, whether allowing resentencing improved perceptions of system fairness in alienated communities, and what the costs and benefits were of developing this avenue of early release. Researchers can bring their expertise to bear on making sure that the data needed to analyze these questions is collected and avoiding an undue administrative burden of asking for too much, or the wrong data.

Finally, there is no power in data collection without skilled analysts to work with it, translating it into usable and understandable information. Unlike many states, Illinois has a robust statistical analysis center in the Illinois Criminal Justice Information Authority. The Sentencing Policy Advisory Council is a sentencing commission that actively brings research and analysis to the policy arena. And a dedicated community of academic researchers at the University of Illinois Chicago, Loyola University, and DePaul University, among others.

OPPOSITION TO RESENTENCING

There were a number of objections to the establishment of a resentencing process that arose in the course of the Task Force's work. To the extent that the objections were based on legal considerations, the majority voted to proceed notwithstanding the objections. To the extent that the objections were based on policy considerations, the Task Force determined that there were overriding policy considerations that support establishing a resentencing process.

The opposition arguments were:

1. Resentencing diminishes the harm caused by limiting the weight given to the crime of conviction. In the materials noted above, primary consideration is given to what has changed since the original sentence was imposed. Rehabilitation of the petitioner, changing social norms and values, evolving scientific or forensic standards are emphasized over the crime of conviction. These considerations are likely to have played no role in the original sentence if mandatory minimums and enhancements limited judicial discretion. Opponents to resentencing objected to this shift, arguing that the crime of conviction should be the primary factor in the resentencing as well.

2. Retroactivity was at issue in terms of reducing the prison population as well as addressing the equity issues involved in tough on crime policies that have produced disparate impacts. Opposition to retroactivity centered on three points: (1) finality; (2) contract principles applicable to fully negotiated pleas; and (3) potential constitutional issues that could result from infringing on the Governor's clemency power or the due process rights of individuals. Finality stands for the proposition that once the litigation is over the result is final and the court loses jurisdiction to disturb the result. Finality is also frequently argued in the context of protecting victims from reliving the trauma associated with the criminal case. The Illinois Supreme Court commented in *People v. Bailey*, 2014 IL 115459, "while we acknowledge the important

role that finality plays in our criminal justice system, we note that at times that role must take a backseat to other fundamental considerations.”

3. The proposed resentencing process is unconstitutional as a violation of the separation of powers.

This objection to resentencing is based on the argument that the executive branch, i.e., the Governor, has the exclusive power to alter sentences, i.e., the power to grant clemency, and that the legislative branch has the exclusive power to prescribe sentences. Therefore, the judicial branch cannot, as provided in the resentencing process, alter a sentence that has already been imposed in accordance with the standards prescribed by the legislature.

The Task Force does not accept this argument as precluding the proposed resentencing process. The legislature has the power to prescribe a process by which the judiciary has jurisdiction to revisit a sentence at a later date. In addition, because this process would be subject to standards set by the legislature, it is separate and distinct from the Governor’s clemency power which is subject solely to the Governor’s discretion.

A variation of this argument is that any resentencing must adhere to the mandatory minimum sentences and mandatory enhancements that applied at the time of the original sentencing and cannot take into account post-sentencing conduct by the defendant. The Task Force does not agree with this restriction. A law may be applied retroactively if it is the legislature’s expressed intent that it apply retroactively and if it does not harm the defendant. In the case of the proposed resentencing process, it is the Task Force’s recommendation that the resentencing legislation include clear legislative intent to apply retroactively. The resentencing process would not harm the defendant, because it would be optional and would provide an opportunity for a lower sentence without the risk of a higher sentence. Therefore, the ability to depart from mandatory minimums and mandatory enhancements at resentencing if applied retroactively, would become part of the sentencing structure and, therefore, legally permissible.

4. A plea agreement is a contract, and for sentences that were the result of plea agreements, the proposed resentencing process would unlawfully breach the plea agreement.

Criminal cases are often resolved by plea agreements in which the parties to the agreement are the State and the defendant. The law generally treats these plea agreements as subject to contract law principles. The argument has been made that a resentencing process that permits resentencing inconsistent with a plea agreement is a breach of contract, and that a defendant who enters into a plea agreement is bound by the agreement under contract law principles and may not be relieved of the duty to comply with that agreement.

The application of contract principles to resentencing centers on the parties to a plea agreement getting the benefit of their bargain. But as one RTF member and the ALI principles noted, the power differential in the plea-bargaining process is such that innocent people may plead guilty to avoid the risk of draconian punishment, and more culpable co-defendants can get sentences less severe than those less culpable if they “flip” and provide helpful evidence. It should be noted that though victims are consulted by the prosecution in the course of plea bargaining, they are not a party to the agreement.

Contract principles are based on the parties to the contract getting the benefit of the bargain and are at issue in cases resolved by pleas. There are three types of plea bargains: (1) fully negotiated; (2) partially negotiated; and (3) blind or open pleas. The application of contract principles is most directly applicable to fully negotiated pleas where the State has agreed to drop charges in exchange for a plea and/or the defendant, and the State have agreed to a specific sentence in exchange for the plea. Those types of pleas can also require the defendant to waive future rights to seek sentencing relief, such as the right to appeal. Contract law has the least applicability to blind or open pleas where there is no agreement as to the sentence. But contrary to a contract between two legally competent individuals who are bound by their agreement, the judge in a criminal case has the authority to reject the agreement if it does not comply with the law or is inconsistent with the facts of the case.

The point was raised that resentencing should not be available in cases resolved by plea. That approach would exclude over 90% of the criminal convictions as pleas are the most common resolution of criminal cases. Resentencing that excludes plea-bargained cases would not reduce the prison population in any measurable way.

The Task Force does not accept this argument as precluding the proposed resentencing process. Under legal authority permitting the legislature to enact laws with retroactive effect when the intent to do so is clearly expressed, the Task Force believes that the legislature may lawfully provide for a sentence imposed in accordance with a plea agreement to be changed by resentencing at a later date, as long as it does not permit the defendant to receive a harsher sentence upon resentencing. The prosecutor can raise the objection that resentencing is inconsistent with the plea in their response or opposition to the petition. Alternatively, if both parties agree that resentencing is appropriate, the court may impose a sentence lesser than that provided for in the plea agreement.

A variation on this agreement is that the crime victim, or the victim's representative, while technically not a party to the plea agreement, has an interest in the plea agreement similar to that of a beneficiary of a contract, and that as a policy matter, the plea agreement should not be violated by a resentencing process, in order to protect the interest of the victim of the crime. The Task Force does not accept this policy argument as precluding the proposed resentencing process. A victim or victim's representative will have the right to be heard in any resentencing proceeding in which the victim has an interest, and the Task Force believes that this right to be heard is the appropriate way to take the victim's views into consideration.

5. The proposed resentencing process would be harmful to the community where the crime occurred.

The argument has been made that resentencing is harmful to the community where the crime occurred, because it upsets the community expectations embedded in the original sentence. When a sentence is initially imposed, it should have a beneficial effect on the community where the crime occurred, by removing the wrongdoer from the community and thereby preventing the wrongdoer from committing additional harm, and by deterring others in the community from engaging in similar wrongful conduct. The sentence that was imposed would have taken these interests of the community into account to the extent provided by law. When a sentence is altered based on conduct occurring after the sentence was imposed, the community's original expectations are no longer being served.

Changing community standards, and recognition that communities have been harmed by mass incarceration are also a basis supporting resentencing. People released from prison who return to high crime communities can be influential in efforts to prevent violence and mentor younger people who may be going down a path to conviction. Communities that have suffered the mass removal of adult men from their families are less stable and the generational cycles of criminal conduct more pronounced than communities in which incarceration, particularly long sentences, are less frequently used.

When a court resolves a resentencing case, it should take the community's interests and expectations into account, just as it did in imposing the original sentence. However, as provided in the resentencing process, the court should decide what current conditions require rather than focusing on conditions at the time of the original sentencing. The conduct of the defendant after a sentence is imposed is relevant to this determination. The new sentence should take into consideration any changes in circumstances since the original sentence was imposed.

A related argument is that the existence of a resentencing process may itself harm law enforcement by discouraging witnesses from coming forward. For example, if a potential witness knows that a defendant, if convicted and sentenced in accordance with a mandatory minimum sentence, will nevertheless be able to leave prison earlier based on a resentencing, the witness may decline to come forward or to cooperate with law enforcement for fear of reprisals when the defendant is released back into the community at an earlier date than the original sentence required.

The Task Force does not accept this argument as a reason not to adopt resentencing. The argument is based on a hypothetical assumption. Moreover, under the proposed process, there is no right to be resentenced, only the opportunity to seek resentencing. A court may decide that resentencing is not appropriate. If the court decides that relief is appropriate based on the standards in the resentencing law, that new sentence should reflect the court's consideration of the interests of the community, including witnesses, as well as new evidence of rehabilitation, current scientific knowledge and evolving social standards.

6. The resentencing process would overburden the court system.

All members of the RTF had some concern about how the court system could handle this new responsibility. As things stand now, the courts are often subject to repeated requests for post-conviction relief. By creating another avenue for relief, the resentencing process could overburden the court system with yet more repetitive or frivolous filings by incarcerated people. While the Task Force recognizes this danger, the Task Force nevertheless believes that the resentencing process can be designed to address this issue with appropriate procedures, such as limiting the frequency of successive resentencing or providing for a "gatekeeper" to restrict those petitions that will receive full consideration to those that have sufficient merit to pass the standards of preliminary review.

CONCLUSION

The RTF used the information provided by experts in the field as well as their own experience and expertise to develop these recommendations for a resentencing process that addresses both the interests of justice and the need to reduce the prison population. It is unique in bringing together current research, experts in sentencing policy, and practitioners with years of experience and a range of perspectives. When the legislature acts, it will have a solid foundation to develop a system that will accomplish its goals.

As with all policy areas, there is more to be done. While on the path to adopting these recommendations, a recurring theme was the reality that the resentencing process is a limited tool that creates new jurisdiction for the courts to *consider* resentencing petitions. Resentencing is not a vehicle to "reform" sentencing laws such as mandatory minimums and truth-in-sentencing. Reforming the Code of Corrections to moderate some of the extremes of the past is needed. Without sentencing reform writ large, people with very long sentences will continue to come into prison, have very limited access to programming, and very little hope of returning to society in enough time to be restored to useful citizenship. That is an outcome that is contrary to the goals of sentencing and to the goal of protecting public safety.

APPENDIX

AUTHORIZING STATUTE

(20 ILCS 4100/1)

Sec. 1. Short title. This Act may be cited as the Resentencing Task Force Act.
(Source: P.A. 102-99, eff. 7-15-21.)

(20 ILCS 4100/5)

Sec. 5. Purpose; findings. The State is committed to ensuring that sentences of imprisonment continue to advance the interest of justice and promote public safety. The task force is created by recognizing that in this State, once a person is sentenced, there are few meaningful opportunities for release.
(Source: P.A. 102-99, eff. 7-15-21.)

(20 ILCS 4100/10)

Sec. 10. Resentencing Task Force; creation. There is created the Resentencing Task Force. The task force shall study innovative ways to reduce the prison population in Illinois from initiations of resentencing motions filed by incarcerated individuals, State's Attorneys, the Illinois Department of Corrections and the judicial branch.
(Source: P.A. 102-99, eff. 7-15-21.)

(20 ILCS 4100/15)

Sec. 15. Task Force Members.

(a) The Resentencing Task Force shall consist of the following members:

- (1) a member of the House of Representatives appointed by the Speaker of the House;
- (2) a member of the House of Representatives appointed by the Minority Leader of the House;
- (3) a member of the Senate appointed by the President of the Senate;
- (4) a member of the Senate appointed by the Minority Leader of the Senate;
- (5) a member appointed by a statewide agency that represents State's Attorneys and is elected to a county of under one million people or his or her designee;
- (6) a member appointed by a statewide agency that represents State's Attorneys;
- (7) a member appointed by the Office of the State Appellate Defender;
- (8) a member appointed by an organization that advocates for victims' rights;
- (9) a member appointed by an organization that advocates for sentencing reform;
- (10) a member appointed by the Illinois Sentencing Policy Advisory Council;
- (11) 3 retired judges appointed by the Governor, each from a different judicial circuit or judicial district;
- (12) a member of law enforcement appointed by an

association representing law enforcement;

(13) a member representing the private criminal defense bar;

(14) a member appointed by the Public Defender's Association; and

(15) a member appointed by the Department of Corrections.

(b) The task force shall meet no less than 4 times and shall provide recommendations for legislation to the General Assembly and the Governor's Office on or before July 1, 2022.

(c) The members of the task force shall serve without compensation.

(d) The Illinois Sentencing Policy Advisory Council shall provide administrative and technical support for the task force and are responsible for appointing a chairperson and ensuring the requirements of the task force are met.

(Source: P.A. 102-99, eff. 7-15-21.)

(20 ILCS 4100/99)

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 102-99, eff. 7-15-21.)

FACTUAL BACKGROUND – PRESENTATIONS & MEETING MATERIALS

PRESENTATIONS

Two meetings of the task force augmented the expertise of task force members with experts on the concept of resentencing and experts in three areas that are significant for individuals and the system: trauma, mental illness, and addiction. In addition, the planning team curated meeting materials, including articles and reports written by several presenters, to provide additional information important to developing recommendations. The goal was to develop a shared understanding of current knowledge in these areas.

April 29, 2022 Meeting

At this meeting three experts in resentencing made presentations to the Task Force. Dr. Nazgol Ghandnoosh, Senior Research Analyst, The Sentencing Project, shared her research on second looks; JaneAnne Murray, Professor at the University of Minnesota Law School and Co-Chair, National Association of Criminal Defense Lawyers Second Look Task Force, discussed the model resentencing legislation drafted by the organization; and James Zeigler, Founder & Executive Director, Second Look Project, Washington, D.C., shared the implementation experience for the juvenile resentencing process adopted by the District.

The Sentencing Project

The Sentencing Project is a national organization that advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice. In *A Second Look at Injustice*, resentencing was examined and recommendations offered.

Key takeaways:

- The overuse of incarceration in the United States is unique among Western nations. Starting with fewer than 200,000 persons imprisoned for violent offenses in 1980, there were approximately 700,000 in 2019. In 2019 there were between 200,000 and 300,000 imprisoned for drug offenses and approximately 200,000 imprisoned for property offenses. However, these numbers of persons imprisoned for drug and property offenses had by 2019 declined 34% and 29%, respectively, from their peaks, whereas by 2019 the prison population of those imprisoned for violent offenses had declined only 2% from its peak.
- Ten years is a meaningful time period for several reasons: (1) the duration of criminal careers is commonly 10 years, and it is well established that people age out of crime and that long sentences have a limited deterrent effect. Supporters of resentencing frequently link eligibility for resentencing to having served at least ten years in prison.
- Long sentences divert resources from effective investments that address the root causes of crime including poverty, lack of access to education, lack of safe housing, institutional racism, and other systemic biases.
- There is support for resentencing in the prosecutorial community, as evidenced by the following statement issued by Fair and Just Prosecution, an organization that brings together elected local prosecutors for information and resource sharing: “We urge our state legislatures and the federal government to adopt measures permitting prosecutors and judges to review and reduce extreme prison sentences imposed decades ago and in cases where returning the individual to the community is consistent with public safety and the interests of justice.”

National Association of Criminal Defense Lawyers (NACDL) Model Second Look Legislation

The model legislation was more expansive in its approach than that taken by the RTF, however considering the model bill’s parameters was helpful. Professor JaneAnne Murray, Chair of NACDL’s Second Look Task Force explained the NACDL’s approach. Key components of this model legislation are:

- A judicial “second look” for everyone after 10 years served,
- review at no more than 5-year intervals thereafter,
- the right to appointed counsel for a petitioner,
- participation by victims
- the right to appellate review
- there should be no categorical exclusions from the right to petition for resentencing based on the nature of the offense; that would be a consideration in the decision to grant relief.

Professor Murray noted the value of providing judicial review:

- judges are best situated to conduct an individualized assessment of the petitioner and the judicial process is transparent, unlike clemency or parole hearings.
- resentencing can have educational value for judges who are applying current information and mores, which in turn could positively impact future sentencing decisions.

The Experience of Resentencing in Washington D.C.

Implementing a new resentencing process brings many challenges. James Zeigler shared the lessons learned by his organization, the Second Look Project, which provides advocacy and legal support for individuals seeking relief from extreme sentences in the District of Columbia. Sentence reductions are governed by D.C.’s Incarceration Reduction Amendment Act (IRAA). The IRAA was passed in January

2021 and took effect in April 2021. Under the IRAA, incarcerated persons who committed an offense before they were 25 years old may seek resentencing after 15 years of imprisonment.

Mr. Zeigler explained that under the IRAA, the court must make two findings to grant relief: the person is not a danger to the safety of the community or any person, and the interests of justice warrant relief. The court must consider 11 factors in making these determinations:

1. The defendant's age at the time of the offense
2. The defendant's history and characteristics
3. The defendant's conduct and completion of programs while incarcerated
4. Any report or recommendation from the U.S. Attorney
5. The defendant's maturity, rehabilitation and fitness to re-enter society
6. Any statement by a victim or victim's family member
7. Reports of physical, mental or psychiatric examinations
8. The defendant's family and community circumstances at the time of the offense
9. The defendant's role in the offense
10. The diminished culpability of juveniles and persons under age 25
11. Any other information the court deems relevant

Mr. Zeigler also addressed the resources needed to provide counsel in these proceedings, noting that his organization screened many more cases than they could take on.

June 10, 2022 Meeting

At this meeting the RTF members heard from three speakers with expertise in behavioral health. The three speakers were Danielle Sered, Jac A. Charlier, and Dr. Daniel Yohanna. They addressed behavioral health issues that are relevant in a resentencing context.

Understanding the Effects of Trauma

Danielle Sered, Executive Director of Common Justice, a restorative justice program in New York City, presented on how trauma affects most people who are survivors of violent crime and perpetrators of such crimes. In the past, victims and perpetrators of crime were clearly delineated. Now, the overlap between victims and perpetrators of violence is widely accepted. It is very common for someone who has committed a violent crime to have a history of victimization. Post-traumatic stress disorder (PTSD), a long-term physiological response to trauma, is experienced by people on both sides of a crime. In addition, prison is a traumatic environment that can require a person to be violent in order to establish his place in the social structure. Ms. Sered noted that a person who successfully refrains from violence in prison will most likely remain non-violent upon release. Key takeaways:

- Punishment is not the best way to promote healing from trauma.
- Research establishes that longer sentences are not effective deterrents.
- Resentencing should focus on developments that have occurred since the original sentence was imposed.

Substance Use Disorder

Jac A. Charlier, MPA, Executive Director, TASC Center for Health and Justice, is a national expert in crime reduction and pre-arrest diversion. He specializes in practical solutions that bring together justice system partners, behavioral health service providers, and community leaders in common aims of creating safer, healthier communities.

Research has significantly changed our understanding of the relationship between drug addiction and crime as well as the distinction between addiction and drug use. Key takeaways:

- Addicts have a need for drugs that causes them to lie, cheat, and steal to feed their need for drugs; drug users can control their consumption and do not engage in criminal conduct to support their habit.
- different drugs have different criminogenic effects. For example, heroin is more criminogenic than powder cocaine.
- Neuroscience has shown through medical imaging how addiction changes the brain. Effective treatments, such as cognitive behavioral therapy paired with medication rewire the brain and allow people who are addicted to drugs to recover from the addiction.
- Medication does not treat addiction per se, but rather stabilizes the person and stops the craving for drugs to allow productive engagement in treatment.
- Relapses are expected and should not be punished. Treatment must be individualized and delivered over time, multiple times if necessary.
- The risk of overdose upon release from prison is very high because the need for drugs can come back immediately and the person will use at the same level as pre-incarceration not realizing that their body's tolerance has changed.
- Immediate connection to case management services mitigates the risk of overdose.

Mental Illness

Dr. Daniel Yohanna is Associate Professor of Psychiatry and Behavioral Neuroscience Interim Chair of the University of Chicago's Department of Psychiatry and Behavioral Neuroscience. He currently directs a forensic psychiatry program for people recently released from prison. Dr. Yohanna addressed the intersection of mental illness and crime. Key takeaways:

- Only 5% of prisoners are actively psychotic, but prison has become a state hospital for the seriously mentally ill.
- One feature of a serious mental illness is that individuals do not perceive that they are ill, making treatment difficult to maintain consistently.
- The forensic psychiatry program Dr. Yohanna runs uses monthly injections of medication eliminating the need for daily pills and therefore reducing the likelihood of medication interruptions.
- People with mental illness must be prepared for release through enrollment in Medicaid and connection to qualified case managers before discharge.
- The forensic population requires specific services with forensically trained clinicians. New technologies embraced during the pandemic can help meet demand in underserved areas.

MEETING MATERIALS

In addition to Dr. Ghandoosh's report and Prof. Murray's article, other written materials were provided throughout the process. Recordings of Resentencing Task Force Meetings and links to meeting materials are at <https://spac.illinois.gov/tags/resentencing-task-force>.

American Bar Association Resolution

In its August 2022 Annual Meeting the American Bar Association (ABA) adopted Resolution 502 which stated, "That the American Bar Association urges federal, state, local, territorial, and tribal governments to authorize judicial decision-makers to hear petitions for de novo "second look" resentencing brought by any incarcerated person who has served at least ten continuous years of a custodial sentence." In the report accompanying the resolution, the ABA noted that there had been a wide range of front-end responses to the mass incarceration crisis, but the core of the problem could only be addressed through reforms targeting "the present living embodiment of the crisis -- all the people currently experiencing incarceration." That is the foundational premise of resentencing.

The report addressed several specific issues:

- **Lengthy sentences:** the ABA noted that the use of extreme sentences is disproportionately high in the United States when compared to other Western nations.
- **Aging population:** as has been widely discussed in a variety of contexts, the aging population presents unique challenges and costs as health issues increase, and also represents the lowest recidivism rates as people age out of crime.
- **People convicted of violent crimes:** "one objection to "second looks" for all incarcerated people is the belief that people convicted of violent crime present a unique threat to public safety. The evidence belies that notion." People convicted of violent crimes are generally older upon release and long into the group that has aged out of criminal conduct. Consequently, they have very low recidivism rates.
- **People sentenced when they were young:** resentencing was initially required in juvenile cases pursuant to the US Supreme Court cases overturning draconian mandatory sentences for youth, specifically citing the "distinctive attributes of youth, including immaturity, underdeveloped sense of responsibility, vulnerability to negative influences, and limited control of their environment." The ABA specifically noted that only 2 of the 174 people who had been resentenced and released had new convictions, adding to the evidence that people convicted of violent crime, and who had already served substantial prison terms, were unlikely to reoffend.
- **Significant racial disparities in sentencing:** Serious racial disparities in sentencing are overwhelmingly clear when it comes to life or long-term sentences. Second look processes can address these disparities, particularly for people serving life and long-term sentences.
- **Financial costs of incarceration:** the resolution specifically cited the increased costs of incarcerating aging and infirm individuals.
- **Parole and clemency:** these back-end processes have atrophied so they are not effective in addressing impacts of mass incarceration.

American Law Institute Principles for Resentencing

The American Law Institute (ALI) is a legal think tank that continuously studies the interaction between law, policy and practice. With legal experts of every political and academic perspective, its mission is to identify, incorporate, and build upon best practices that have proven themselves in operation. ALI is most commonly known for drafting the Model Penal Code which reflects that work. More recently, ALI

published a *Model Penal Code: Sentencing* after studying the way sentencing works, or fails to, in determinant, indeterminant, and guideline systems. That code is based on fifteen years of study. In addition to producing model codes based on practices proven in operation, ALI will also weigh in on problems in current law that are serious and neglected in the policy arena. Resentencing falls into that category.

The ALI principles addressed not only process questions such as who should be able to file a petition for resentencing, but also touched on the equity issues caused by over incarceration, and extreme sentences that are disproportionately imposed on people of color. Resentencing allows those who are currently serving a sentence that is not equitable, or no longer equitable, an opportunity for review long after appellate and post-conviction options are exhausted. The ALI specifically noted that sentences that reach across generations and are frozen in the knowledge base of the past are most susceptible to becoming unfair and unjustified as knowledge, social norms, and policies change.

The RTF started with the ALI principles and modified them based on meeting discussion and the members' expertise. The RTF's adopted principles were intended to guide the development of the recommendations presented, but not every principle was incorporated into the recommendations.

The appendix to this report includes the complete list of ALI principles. There is a link to the ALI full report in the materials bibliography, also included in the appendix.

Michael Tonry, "Doing Justice in Sentencing," *Crime & Justice*, September 2021

Crime & Justice, published by the University of Chicago, is one of the top academic journals addressing sentencing issues. Prof. Tonry, recently retired from the University of Minnesota Robina Institute, laid out the historical progression of sentencing theories and sentencing policies. Initially, sentencing focused on individualized punishment and rehabilitation, before progressing to the familiar tough on crime policies of mandatory minimums, truth-in-sentencing, and three strikes laws. Tonry summarized the concepts and principles that characterize just punishment systems:

- **Justice as Proportionality:** Offenders should never be punished more severely than can be justified by their blameworthiness in relation to the severity of punishments justly imposed on others for the same and different offenses.
- **Justice as Fairness:** Processes for responding to crimes should be publicly known, implemented in good faith, and applied evenhandedly.
- **Justice as Equal Treatment:** Defendants and offenders should be treated as equals; their circumstances and interests should be accorded equal respect and concern when decisions affecting them are made.
- **Justice as Parsimony:** Offenders should never be punished more severely than can be justified by appropriate, valid, normative purposes.

When the most severe punishments are applied to less severe crimes, the legal system can undermine rather than reinforce important social values and norms, such as fairness and equal treatment in the eyes of the law. Tonry concluded that "[p]revailing norms are systematically undermined in our time when minor drug and property offenders receive harsher punishments than many violent and white-collar offenders." (Citations omitted.)

As noted above, these materials were offered with the goal of developing a shared understanding of current knowledge relevant to developing the new tool of resentencing.

Resentencing Task Force Member Biographies

Senator Darren Bailey (55th Senate District): Sen. Bailey was born and raised in Louisville, Illinois. He attended North Clay Unit #25 schools and earned an A.A.S. in Agricultural Production from Lake Land College in Mattoon. He is the Owner/Operator of a family farm in Clay and surrounding counties growing corn, soybeans, and wheat. Sen. Bailey previously served one term in the Illinois House as the Representative for the 109th District. He resides in rural Louisville and has 4 children and 10 grandchildren.

Bob Berlin (DuPage County State's Attorney): Mr. Berlin has been a career prosecutor for 34 years. He began his career in 1987 as an Assistant State's Attorney in Cook County. In 2001, Mr. Berlin was the First Assistant State's Attorney for the Kane County State's Attorney's Office. Then, in 2004, he began working for the DuPage County State's Attorney's Office as Deputy Chief of the Office's Juvenile Division. During the next several years, Mr. Berlin was promoted to Deputy Chief of the Felony Trial Division and Chief of the Criminal Bureau. He was appointed DuPage County State's Attorney in December 2010 and was elected to a full four-year term in 2012, 2016, and again in 2020. In his 34-year career as a prosecutor, Mr. Berlin has tried 87 felony jury trials, 58 of which involved first degree murder. Mr. Berlin has also tried hundreds of felony bench trials, including more than 50 homicide cases. Mr. Berlin has earned numerous awards and accolades throughout his career, including the Illinois State Crime Commission's State's Attorney of the Year Award in 2013, the Education Center's "Making a Difference Award" in 2011, the Association of Government Attorneys in Capital Litigation Board of Directors' Trial Award in 2003 and the Kane County Outstanding Prosecutor Award in 2004. He is also a frequent lecturer on a variety of criminal justice issues. Mr. Berlin has also testified before the Illinois Senate Criminal Law Committee and Illinois House Judiciary Committee on numerous criminal justice bills.

Representative Kelly M. Cassidy (14th House District): Rep. Cassidy is an LGBT rights activist and organizer, a former legislative director for the National Organization for Women, and a former legislative aide to state Sen. John Cullerton. She is the former Deputy Director of Intergovernmental Affairs and Director of Programs and Development in the Cook County State's Attorney's Office and is the only openly gay female legislator serving in the General Assembly. Rep. Cassidy has three children.

Jobi Cates (Restore Justice Foundation): Jobi Cates is Executive Director and Founder of Restore Justice, a statewide criminal legal system reform organization focused on long-term incarceration and its impact on individuals, families, and communities. From 2008 through 2014, Ms. Cates was the Senior Director of the Chicago and Midwest Regional Office of Human Rights Watch (HRW). In her role there, she led the legislative and communications efforts of a broad-based coalition to end the practice of sentencing children who commit serious crimes to "life without parole." Ms. Cates has extensive non-profit leadership experience over more than 25 years, including roles as Executive Director of the Illinois Caucus for Adolescent Health and Executive Director of the Mayer and Morris Kaplan Family Foundation. She has served in government twice, leading initiatives for Mayor Richard M. Daley and Chicago Public Schools CEO Arne Duncan. As a consultant, Jobi has managed projects for the Bill and Melinda Gates Foundation, the Fund for a Safer Future, the Asset Funders Network, the Chicago Community Trust, and Americares. She is a graduate of Northwestern University, the mother of two children, and an avid crafter. Ms. Cates was recently confirmed as a member of the Illinois Youth Budget Commission by Governor JB Pritzker.

Lisa Daniels (Founder of Darren B. Easterling Center for Restorative Practices): Lisa D. Daniels is an advocate, leader, and speaker in the field of restorative justice who helps individuals and families find healing in the aftermath of violence and crime. She is the founder of the Darren B. Easterling Center for Restorative Practices (The Center), a nonprofit organization that seeks to transform the effects of violent crime and mass incarceration on communities of color by providing trauma-informed therapeutic support to those who have been directly impacted. After the untimely death of her son Darren in 2012 due to street violence, Ms. Daniels took on the task of telling his story in a way that reshaped the narrative about who he was and the legacy he left behind. Sharing Darren's story ignited her commitment to be a voice for other young men like him and their families. Through The Center, she oversees initiatives that provide those affected by gun violence with the tools, resources, and support they need to heal and erase the residue of trauma on their lives. In 2018, Ms. Daniels was appointed by the Governor of Illinois to serve as a member

of the Illinois Prisoner Review Board, a quasi-judicial body that makes decisions regarding parole, conduct, and executive clemency of incarcerated individuals. She has spoken on issues surrounding restorative justice in the media and at events, including WBEZ radio, NBC News Chicago, the University of Chicago's School of Social Service Administration, and the Illinois Criminal Justice Information Authority.

Chief Mitchell Davis (Police Chief Village of Hazel Crest): Chief Mitchell R. Davis is Chief of Police for the Hazel Crest Police Department and was installed as the 73rd ILACP president on April 30, 2021. He started his law enforcement career with the Park Forest Police Department in 1991. In Park Forest, he served in many capacities, such as investigator, evidence technician, juvenile officer, SWAT officer, DARE instructor, EDGE instructor, and others. He was selected as the 1996 Police Officer of the Year for his work as a detective in the department. He was also part of the first group of detectives that made up the South Suburban Major Crimes Task Force. In 2001, he left the Park Forest Police Department and took his first Chief of Police position with the Dixmoor Police Department. He later became Chief of Police for the Robbins Police Department, before going to Hazel Crest. Chief Davis is pursuing his PhD in Organizational Leadership at Concordia University of Chicago and holds a Master of Science Degree in Criminal Justice from the University of Cincinnati and a Bachelor of Arts Degree from Governors State University. He is also a graduate of Northwestern University's School of Police Staff and Command, class #182. Chief Davis was recognized as the 2018 Police Chief of the Year by the Illinois State Crime Commission and is the 2018 recipient of the Ed Van Ley Community Service Award from the District 205 Academic Enrichment Foundation.

Yaacov Delaney (Director of the Justice, Equity & Opportunity Initiative, Office of Lt. Gov. Julian Stratton): While he was incarcerated, Mr. Delaney observed countless men being released back into their communities only to return to prison, some in disturbingly short periods of time. He vowed not to fall victim to that cycle, using his 22 years in the Illinois prison system to obtain a GED, paralegal certificate, associate degree, and various vocational certificates. He also began advocating for prisoner rights and strategically researched solutions to remove systemic collateral consequences that were hindering formerly incarcerated people from becoming productive citizens. Following his release in February 2014, Mr. Delaney spent nearly four years as a paralegal advocate for the Ohio Justice & Policy Center, assisting people with criminal records to remove legal barriers that restricted employment and state-issued licensing. After relocating back to the Chicagoland area in late 2017, he worked as the Restoring Rights and Justice Reform organizer at Community Renewal Society, lobbying Illinois legislatures to pass criminal justice reform policies. In March 2019, he spearheaded CRS's first youth delegation to the organization's biggest annual lobby day (Day of Faith at the Capitol). In May 2019, he provided compelling testimony to the House and Senate Judiciary-Civil Committees that helped pass an amendment to the Illinois Human Rights statute to protect people with records from discrimination when seeking housing in the state of Illinois. Mr. Delaney is also the founder of Breaking Cycles, a holistic and trauma-informed support group model for justice system-impacted people, as well as a founding member of People's Liberty Project, a group of justice system-impacted people who use restorative justice mechanisms to build collective power.

Latoya Hughes (Chief of Staff, IDOC): For the past two years, Ms. Hughes has served the Department as Chief Inspector. Prior to joining the Department, Ms. Hughes spent 15 years at the Cook County State's Attorney's Office serving within the Community Justice Center, Felony Trial Division, and Felony Review Units. Ms. Hughes has a Juris Doctor and Bachelor's Degrees in Sociology and Political Science.

Hon. Cheyrl Ingram (Retired): Judge Ingram earned undergraduate degrees in History and Political Science from the University of Wisconsin-Madison, going on to earn her J.D. from John Marshall Law School. She has also taken several courses at the National Judicial College and the American Academy of Judicial Education. She became a Certified Mediator in 2006 and received a Diploma of Judicial Skills in 2007. In 2009, she became a Certified Divorce and Custody Mediator. Judge Ingram was elected County-wide in 1992. She served in Domestic Relations from 1992-1994. She served in the Fourth Municipal District from 1994-2021. She was concurrently assigned to Law Division from 1996-2021 and was Presiding Judge of the Fourth Municipal District from 2010 until her retirement in 2021. She founded "Strong Boys, Strong Men." a program for the male students from Proviso East and Proviso West. She was

appointed by the Supreme Court to the Trial Court Administrator's Committee and served from 2017 until her retirement in 2021. She is a former chair of Illinois Judicial Council and other committees. She is a former board member of IJC Foundation and IJA and has been a board member of Rush Oak Park Hospital since 2017. She was appointed to Governor Pritzker's Resentencing Task Force, March 2022. Prior to her election to the bench, she was an Assistant Public Defender from 1979-1992.

Arienne (Ari) Jones (Senior Policy Advisor at the Cook County State's Attorney's Office): As the CCSAO's Senior Policy Advisor, Ms. Jones served as principal drafter of 725 ILCS 5/122-9, Illinois's prosecutor-initiated resentencing law, and 20 ILCS 2630/5.2(j), which allows for the expungement of felony prostitution convictions. Prior to her role at the CCSAO, Ms. Jones served as a federal judicial law clerk, investigated housing discrimination claims, and worked on children's rights issues. Ms. Jones, a graduate of Spelman College and Tulane University Law School, was also a Fulbright Scholar to Spain. She is licensed to practice law in Illinois, Alabama, and Florida.

Shobha Mahadev (Northwestern University Clinical Professor of Law at the Children and Family Justice Center): Shobha L. Mahadev is a Clinical Professor of Law at the Children and Family Justice Center (CFJC), housed in the Bluhm Legal Clinic at Northwestern Pritzker School of Law. In that capacity, Ms. Mahadev represents adolescents, as well as adults facing trial or convicted for offenses that occurred in their youth, on appeal and in post-conviction and clemency proceedings, and supervises students working on those cases. Ms. Mahadev also serves as the project director for the Illinois Coalition for the Fair Sentencing of Children, overseeing policy and litigation strategy with respect to advocating for fair sentencing laws for youth and young adults. The Coalition's work and Ms. Mahadev's expertise have contributed to significant reforms of sentencing laws in Illinois and across the country. She has co-authored numerous amicus curiae briefs submitted to the U.S. Supreme Court, state supreme courts, and other courts of review. Ms. Mahadev was also the primary author of The Illinois Juvenile Defender Practice Notebook, a training manual for attorneys representing youth in court. Prior to joining the CFJC, Ms. Mahadev was a litigation associate at a Chicago-based law firm and an Assistant Defender with the Office of the State Appellate Defender, First Judicial District, where she represented indigent clients convicted of criminal offenses on appeal.

Scott Main (Office of the State Appellate Defender): Scott Main is the Assistant Director of the Illinois Juvenile Defender Resource Center, a division of the Office of the State Appellate Defender (OSAD), focused on promoting excellence in youth defense and fairness for all youth in conflict with the law. Mr. Main was an Assistant Appellate Defender in OSAD's First District Office for over ten years. From 2012 through 2019, he was a Clinical Fellow in the Children and Family Justice Center, Northwestern Pritzker School of Law focusing on policy and litigation strategy for youth in adult court facing or serving lengthy sentences. He has taught legal writing and the Criminal Appeals Clinic at DePaul University College of Law and teaches the Criminal Law Practicum at Northwestern Pritzker School of Law. Mr. Main holds an A.B. from the University of Chicago and a J.D. from Loyola University Chicago.

Sharone Mitchell, Jr. (Cook County Public Defender): Sharone Mitchell, Jr. is the Cook County Public Defender, serving a six-year team that began on April 1st, 2021. The Cook County Public Defender is one of the largest unified public defender offices in the nation with nearly 700 employees, a budget of approximately \$80 million, and 23 divisions and units. In 2016, Mr. Mitchell joined the Illinois Justice Project (ILJP), a policy reform organization dedicated to supporting people, programs, and policies that can reduce inappropriate incarceration, improve community safety outcomes, and increase justice in the legal system. Mr. Mitchell became Director of ILJP in 2019 and solidified its reputation as one of the state's leading criminal justice reform non-profits. During his tenure as Director, ILJP helped lead the Coalition to End Money Bond's successful effort to outlaw wealth-based pretrial incarceration in Illinois. ILJP also worked with coalition partners to convince state leaders to direct 25 percent of cannabis tax revenues towards treating the root causes of community harm. Mr. Mitchell has a bachelor's degree from the University of Illinois at Urbana-Champaign and law degree from DePaul University. A lifelong resident of Chicago, he grew up in and resides on the south side of Chicago.

Senator Robert Peters (13th Senate District): Sen. Peters began his career in community advocacy as an organizer, where he successfully fought to require Cook County judges to set affordable bail amounts for all defendants, leading to a substantial reduction in the Cook County Jail population since it took effect in July 2017. As a state senator, Peters plans to continue advocating for public safety for all. He has helped pass several key pieces of public safety legislation including the Reimagine Public Safety Act as well as authoring the component of a larger package that ended the system of wealth-based detention in Illinois. Peters currently serves as the Chair of the Public Safety Committee. He also serves as a member of the Criminal Law, Environment and Conservation, Health, Human Rights, Labor, and Revenue Committees.

Hon. Marcus Salone, RTF Chairperson (Retired): Justice Salone currently serves on the Cook County Board of Ethics and is a retired Presiding Justice of the Illinois Appellate Court, First District, and 3rd Division. Prior to that, Justice Salone served 10 years as a Chicago Police Officer before he began his legal career as a Cook County Assistant State's Attorney. He has also served as an Associate Judge of the Circuit Court of Cook County and a Judge in the Criminal Division of the Circuit Court. During his time as a Judge in the Criminal Division of the Circuit Court from 1993 until March 2011, Justice Salone presided over criminal matters ranging from felony theft to death penalty cases. On March 8, 2011 the Illinois Supreme Court appointed Justice Salone to the Illinois Appellate Court. Civically, Justice Salone has served on a number of boards as a director, including the Cook County Board of Ethics, The John Marshall Law School Alumni Board of Directors, the John Howard Association, and the Ancona School. He has also participated in the Chicago Public School's "Principal For A Day" program since its inception and is a mentor in the "We Care" mentoring program coordinated by the Chicago Police Department, in conjunction with the Chicago Public Schools. Recipient of numerous honors and accolades, Justice Salone received the 2018 Presidential Award from the National Bar Association. He attended the University of Illinois at Chicago where he graduated with a Bachelor of Arts degree in Liberal Arts and Sciences in 1974. Justice Salone's formal education was interrupted by a stint in the United States Army, which included a tour in the Republic of Viet Nam. In 1978, Justice Salone enrolled at The John Marshall Law School and passed the Illinois State Bar examination in 1981. Two years later, he and his wife, Valée, formed The Law Offices of Salone and Salone.

Hon. Steve Sawyer (Retired): A Mount Carmel native, Judge Sawyer earned his Juris Doctor from the University of Illinois in 1979. After law school, Judge Sawyer went into private practice and also served as Assistant State's Attorney. He was elected State's Attorney in 1980, and was reelected to this position in both 1984 and 1998. In 1998, Judge Sawyer was appointed to the position of Associate Judge. After serving his appointment, he was elected as Circuit Judge of the 2nd Judicial Circuit. In 2011, Judge Sawyer was elected by his fellow Judges to the position of Chief Judge of the 2nd Judicial Circuit. He retired from the bench in 2013. Since retiring, Judge Sawyer has spent most of his time working for various state programs. He relentlessly works to help both children and underserved populations. Judge Sawyer had to step down from the RTF after several meetings.

Representative Ryan Spain (73rd House District): A lifelong Peorian, Rep. Spain attended District 150 schools and is a Richwoods High School alumnus. He graduated from the University of Illinois at Urbana-Champaign with a double degree in Political Science and Speech Communication and Bronze Tablet Honors. He also holds an MBA from Bradley University. In April 2007, Rep. Spain was elected to the City Council as the youngest at-large member in Peoria history, a seat he held until Fall of 2016. He is currently employed at OSF Healthcare System as the Vice President of Economic Development. Rep. Spain's service to his community has not gone without recognition, as he was honored as an inductee into 40 Leaders Under Forty by InterBusiness Issues Magazine in 2007, was nominated and served as an Edgar Fellow in 2014, was Co-Chair of the 2013 All-America City effort by Peoria, is a Co-Founder and Board member of Peoria Downtown Development Corporation, served as Chairman of the Peoria City/County Shared Services Committee, and served on the Boys & Girls Club of Greater Peoria's Advisory Board.

PRINCIPLES FOR RESENTENCING

Resentencing is a new concept. To help focus and guide the RTF's work, the American Law Institute principles were presented as a roadmap to what resentencing should include or address. To help focus discussions and ensure a thorough approach, principles were adopted to give a framework to the RTF's work. They were adopted before work on the recommendations began, but not all principles were included in the recommendations. The guiding principles are:

1. Provide for judicial determination of whether the purposes of sentencing embodied in the Illinois Constitution and the state would be better served by a modified sentence than the individual's completion of the original sentence based on the current circumstances of the individual and the crime victim, as well as changes in law, policy, and scientific knowledge.
2. Authorize a fair, consistent, and proportionate mechanism for judicial review, and specify the criteria for eligibility and identify the people or entities that can file petitions for resentencing.
3. Specify the parameters under which the right to reapply after initial eligibility shall recur.
4. Specify how individuals who are incarcerated shall be notified of the right to file petitions.
5. Provide for screening and dismissal of applications that lack merit on their face.
6. Provide authority to the judicial decisionmaker to modify any aspect of the original sentence. The time to be served pursuant to the modified sentence cannot exceed the unserved remainder of the original sentence.
7. Victims shall be notified of the resentencing proceeding. Authorize the judicial decisionmaker to consider any victim impact evidence offered in the original sentencing, afford the victims an opportunity to submit supplemental impact statements, limited to changed circumstances since the original sentencing. The victims shall also be informed of any restorative justice process that can be made available to them.
8. The prosecuting authority shall be properly served with the petition for resentencing and be given a reasonable time in which to respond.
9. An adequate record of the proceedings shall be maintained, and the judicial decisionmaker shall be required to state the reasons for its decision in the orders granting or denying relief.
10. Provide a fair mechanism for the review of resentencing decisions.
11. The prospective or retroactive application of the resentencing procedure should be clearly resolved in legislative language.
12. A process should be established for the collection and reporting of data to support analysis of the process and outcomes of the resentencing process, including providing copies of the court's orders to the Sentencing Policy Advisory Council.

Resentencing Task Force Meetings and Materials (<https://spac.illinois.gov/tags/resentencing-task-force>)

February 4, 2022 – Meeting 1

- Agenda
- SPAC Research Team Presentation – Prison Population: Long Term and Elderly Population
- Legislative Research Unit – Penalties for Crimes in Illinois
- Resentencing Task Force Member List
- Resentencing Task Force Rules of Procedure
- ABA Article – *Prosecutors are working towards the release of the longest serving inmates*
- HB3587/Public Act 102-0099 Fact Sheet (Measure that created the Resentencing Task Force)
- Meeting #1 Approved Minutes

April 29, 2022 – Meeting 2

- Agenda
- Presenters Biographies
- Report – *Second Look = Second Chance: Turning the tide through NACDL's model second look legislation*, By The National Association of criminal Defense Lawyers
- Report – *Doing Justice in Sentencing*, by Michael Tonry
- Nazgol Ghandnoosh Presentation Slides
- JaneAnne Murray Presentation Slides
- James Zeigler Presentation Slides
- Meeting #2 Approved Minutes

June 10, 2022 – Meeting 3

- Agenda
- Open Letter to the RTF – *Guiding Principles for Earned Release Sentencing Reform in Illinois*
- Speaker Biographies
- RTF Draft Principles for Legislation
- Fact Sheet on Incarceration and Mental Health
- Model Penal Code 2nd Look Principles
- Model Penal Code Section 1.02
- National Institute on Drug Abuse – Principles of Drug Abuse Treatment for Criminal Justice Populations
- Meeting #3 Approved Minutes

July 15, 2022 – Meeting 4

- Agenda
- Nazgol Ghandnoosh Presentation Slides
- RTF Eligibility Draft
- Workplan Memo to RTF Members
- Resentencing Models Chart
- RTF Revised Principles for Voting On
- Meeting #4 Approved Minutes

August 26, 2022 – Meeting 5

- Agenda
- RTF Remaining Principles and Principles Previously Voted On
- American Bar Association Report – *Criminal Justice Section on Civil rights and Social Justice Commission on Youth at Risk*
- Zoom Rules
- Meeting #5 Approved Minutes

September 9, 2022 – Meeting 6

- Agenda
- RTF Adopted Recommendations
- RTF Public Hearing Notice
- Zoom Rules
- Meeting #6 Approved Minutes

September 29, 2022 – Public Hearing

- Agenda
- RTF Public Hearing Notice
- RTF Adopted Recommendations
- RTF Adopted Principles
- Zoom Rules

September 30, 2022 – Meeting 7

- Agenda
- Zoom Rules
- Meeting #7 Approved Minutes

December 9, 2022 – Meeting 8

- Agenda
- RTF Final Report
- Zoom Rules
- Meeting #8 Approved Minutes

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