

ILLINOIS

Disproportionate Justice Impact Study Commission

Final Report Appendices

Submitted to the
Illinois General Assembly

December 2010



ILLINOIS

**Disproportionate Justice
Impact Study Commission**

**FINAL REPORT
Appendix A**

- Enabling Legislation
- Extension Legislation

AN ACT concerning State government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Commission to Study Disproportionate Justice Impact Act.

Section 5. Purpose. There is created a Commission to Study Disproportionate Justice Impact. The Commission shall:

(1) study the nature and extent of the harm caused to minority communities through the practical application of the violation and sentencing provisions of the Illinois Vehicle Code, the Criminal Code of 1961, the Cannabis Control Act, the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, and the Unified Code of Corrections;

(2) develop specific findings on the nature and extent of the harm caused to minority communities; and

(3) offer recommendations for legislation and policy changes to address the disproportionate impact that even facially neutral laws can have on minority communities.

Section 10. Composition. The Commission shall be composed of the following members:

(a) Two members of the Senate appointed by the Senate

President, one of whom the President shall designate to serve as co-chair, and two members of the Senate appointed by the Minority Leader of the Senate.

(b) Two members of the House of Representatives appointed by the Speaker of the House of Representatives, one of whom the Speaker shall designate to serve as co-chair, and two members of the House of Representatives appointed by the Minority Leader of the House of Representatives.

(c) The following persons or their designees:

- (1) the Attorney General,
- (2) the Chief Judge of the Circuit Court of Cook County,
- (3) the Director of State Police,
- (4) the Superintendent of the Chicago Police Department,
- (5) the sheriff of Cook County,
- (6) the State Appellate Defender,
- (7) the Cook County Public Defender,
- (8) the Director of the Office of the State's Attorneys Appellate Prosecutor,
- (9) the Cook County State's Attorney,
- (10) the Executive Director of the Criminal Justice Information Authority,
- (11) the Director of Corrections,
- (12) the Director of Juvenile Justice, and

(13) the Executive Director of the Illinois African-American Family Commission.

(d) The co-chairs may name up to 8 persons, representing minority communities within Illinois, groups involved in the improvement of the administration of justice, behavioral health, criminal justice, law enforcement, and the rehabilitation of former inmates, community groups, and other interested parties.

Section 15. Compensation; support. The members of the Commission shall serve without compensation, but may be reimbursed for reasonable expenses incurred as a result of their duties as members of the Commission from funds appropriated by the General Assembly for that purpose. The Center for Excellence in Criminal Justice at the Great Lakes Addiction Technology Transfer Center at Jane Addams College of Social Work at the University of Illinois at Chicago shall provide staff and administrative support services to the Commission.

Section 20. Meetings; report. The Commission shall hold one or more public hearings, at which public testimony shall be heard. The Commission shall report its findings and recommendations to the General Assembly on or before December 31, 2009, after which the Commission shall dissolve.

AN ACT concerning State government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

(20 ILCS 1305/10-9 rep.)

(20 ILCS 1305/10-10 rep.)

(20 ILCS 1305/10-12 rep.)

Section 5. The Department of Human Services Act is amended by repealing Sections 10-9, 10-10, and 10-12.

Section 10. The Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois is amended by adding Sections 2310-642 and 2310-643 as follows:

(20 ILCS 2310/2310-642 new)

Sec. 2310-642. Diabetes; transfer of functions from Department of Human Services.

(a) Diabetes Research Checkoff Fund; grants. The Diabetes Research Checkoff Fund is a special fund in the State treasury. On and after July 1, 2010, from appropriations to the Department from that Fund, the Department shall make grants to recognized public or private entities in Illinois for the purpose of funding research concerning the disease of diabetes. At least 50% of the grants made from the Fund by the Department shall be made to entities that conduct research for juvenile

diabetes. For purposes of this subsection, the term "research" includes, without limitation, expenditures to develop and advance the understanding, techniques, and modalities effective in the detection, prevention, screening, management, and treatment of diabetes and may include clinical trials in Illinois. Moneys received for the purposes of this subsection, including, without limitation, income tax checkoff receipts and gifts, grants, and awards from any public or private person or entity, shall be deposited into the Fund. Any interest earned on moneys in the Fund must be deposited into the Fund.

(b) Diabetes information. On and after July 1, 2010, the Department shall include within its public health promotion programs and materials information to be directed toward population groups in Illinois that are considered at high risk of developing diabetes, asthma, and pulmonary disorders, such as Hispanics, people of African descent, the elderly, obese individuals, persons with high blood sugar content, and persons with a family history of diabetes. The information shall inform members of such high risk groups about the causes and prevention of diabetes, asthma, and pulmonary disorders, the types of treatment for these diseases, and how treatment may be obtained. By February 15, 2011, and each February 15 thereafter, the Department shall file a report with the General Assembly concerning its activities and accomplishments under this subsection during the previous calendar year.

(c) Transfer of functions from Department of Human

Services.

(1) Transfer. On the effective date of this amendatory Act of the 96th General Assembly, all functions performed by the Department of Human Services in connection with Sections 10-9 and 10-10 of the Department of Human Services Act (now repealed, and replaced by subsections (a) and (b), respectively, of this Section), together with all of the powers, duties, rights, and responsibilities of the Department of Human Services relating to those functions, are transferred from the Department of Human Services to the Department of Public Health.

The Department of Human Services and the Department of Public Health shall cooperate to ensure that the transfer of functions is completed as soon as practical.

(2) Effect of transfer. Neither the functions transferred under this subsection, nor any powers, duties, rights, and responsibilities relating to those functions, are affected by this amendatory Act of the 96th General Assembly, except that all such functions, powers, duties, rights, and responsibilities shall be performed or exercised by the Department of Public Health on and after the effective date of this amendatory Act of the 96th General Assembly.

(3) The staff of the Department of Human Services engaged in the performance of the functions transferred under this subsection may be transferred to the Department

of Public Health. The status and rights of those employees under the Personnel Code shall not be affected by the transfers. The rights of the employees, the State of Illinois, and its agencies under the Personnel Code and applicable collective bargaining agreements, or under any pension, retirement, or annuity plan, shall not be affected by this amendatory Act of the 96th General Assembly.

(4) Books and records transferred. All books, records, papers, documents, contracts, and pending business pertaining to the functions transferred under this subsection, including but not limited to material in electronic or magnetic format, shall be transferred to the Department of Public Health. The transfer of that information shall not, however, violate any applicable confidentiality constraints.

(5) Unexpended moneys transferred. All unexpended appropriation balances and other funds otherwise available to the Department of Human Services for use in connection with the functions transferred under this subsection shall be transferred and made available to the Department of Public Health for use in connection with the functions transferred under this subsection. Unexpended balances so transferred shall be expended only for the purpose for which the appropriations were originally made.

(6) Exercise of transferred powers; savings provisions. The powers, duties, rights, and

responsibilities relating to the functions transferred under this subsection are vested in and shall be exercised by the Department of Public Health. Each act done in exercise of those powers, duties, rights, and responsibilities shall have the same legal effect as if done by the Department of Human Services or its divisions, officers, or employees.

(7) Persons subject to penalties. Every officer, employee, or agent of the Department of Public Health shall, for any offense, be subject to the same penalty or penalties, civil or criminal, as are prescribed by existing laws for the same offense by any officer, employee, or agent whose powers or duties were transferred under this subsection.

(8) Reports or notices. Whenever reports or notices are now required to be made or given or papers or documents furnished or served by any person to or upon the Department of Human Services in connection with any of the functions transferred under this subsection, the same shall be made, given, furnished, or served in the same manner to or upon the Department of Public Health.

(9) This subsection shall not affect any act done, ratified, or canceled, or any right occurring or established, or any action or proceeding had or commenced in an administrative, civil, or criminal case, regarding the functions of the Department of Human Services before

this amendatory Act of the 96th General Assembly takes effect; such actions may be prosecuted, defended, or continued by the Department of Public Health.

(10) Rules. Any rules of the Department of Human Services that relate to the functions transferred under this subsection that are in full force on the effective date of this amendatory Act of the 96th General Assembly, and that have been duly adopted by the Department of Human Services, shall become the rules of the Department of Public Health. This subsection shall not affect the legality of any such rules in the Illinois Administrative Code. Any proposed rules filed with the Secretary of State by the Department of Human Services that are pending in the rulemaking process on the effective date of this amendatory Act of the 96th General Assembly, and that pertain to the functions transferred, shall be deemed to have been filed by the Department of Public Health. As soon as practicable after the effective date of this amendatory Act of the 96th General Assembly, the Department of Public Health shall revise and clarify the rules transferred to it under this subsection to reflect the reorganization of powers, duties, rights, and responsibilities affected by this subsection, using the procedures for recodification of rules available under the Illinois Administrative Procedure Act, except that existing title, part, and section numbering for the affected rules may be retained.

The Department of Public Health, consistent with the Department of Human Services' authority to do so, may propose and adopt, under the Illinois Administrative Procedure Act, such other rules of the Department of Human Services that will now be administered by the Department of Public Health.

To the extent that, prior to the effective date of the transfer of functions under this subsection, the Secretary of Human Services had been empowered to prescribe regulations or had other authority with respect to the transferred functions, such duties shall be exercised from and after the effective date of the transfer by the Director of Public Health.

(11) Successor Agency Act. For the purposes of the Successor Agency Act, the Department of Public Health is declared to be the successor agency of the Department of Human Services, but only with respect to the functions that are transferred to the Department of Public Health under this subsection.

(12) Statutory references. Whenever a provision of law refers to the Department of Human Services in connection with its performance of a function that is transferred to the Department of Public Health under this subsection, that provision shall be deemed to refer to the Department of Public Health on and after the effective date of this amendatory Act of the 96th General Assembly.

(20 ILCS 2310/2310-643 new)

Sec. 2310-643. Illinois State Diabetes Commission.

(a) Commission established. The Illinois State Diabetes Commission is established within the Department of Public Health. The Commission shall consist of members that are residents of this State and shall include an Executive Committee appointed by the Director. The members of the Commission shall be appointed by the Director as follows:

(1) The Director or the Director's designee, who shall serve as chairperson of the Commission.

(2) Physicians who are board certified in endocrinology, with at least one physician with expertise and experience in the treatment of childhood diabetes and at least one physician with expertise and experience in the treatment of adult onset diabetes.

(3) Health care professionals with expertise and experience in the prevention, treatment, and control of diabetes.

(4) Representatives of organizations or groups that advocate on behalf of persons suffering from diabetes.

(5) Representatives of voluntary health organizations or advocacy groups with an interest in the prevention, treatment, and control of diabetes.

(6) Members of the public who have been diagnosed with diabetes.

The Director may appoint additional members deemed necessary and appropriate by the Director.

Members of the Commission shall be appointed by June 1, 2010. A member shall continue to serve until his or her successor is duly appointed and qualified.

(b) Meetings. Meetings shall be held 3 times per year or at the call of the Commission chairperson.

(c) Reimbursement. Members shall serve without compensation but shall, subject to appropriation, be reimbursed for reasonable and necessary expenses actually incurred in the performance of the member's official duties.

(d) Department support. The Department shall provide administrative support and current staff as necessary for the effective operation of the Commission.

(e) Duties. The Commission shall perform all of the following duties:

(1) Hold public hearings to gather information from the general public on issues pertaining to the prevention, treatment, and control of diabetes.

(2) Develop a strategy for the prevention, treatment, and control of diabetes in this State.

(3) Examine the needs of adults, children, racial and ethnic minorities, and medically underserved populations who have diabetes.

(4) Prepare and make available an annual report on the activities of the Commission to the Director, the Speaker

of the House of Representatives, the Minority Leader of the House of Representatives, the President of the Senate, the Minority Leader of the Senate, and the Governor by June 30 of each year, beginning on June 30, 2011.

(f) Funding. The Department may accept on behalf of the Commission any federal funds or gifts and donations from individuals, private organizations, and foundations and any other funds that may become available.

(g) Rules. The Director may adopt rules to implement and administer this Section.

Section 15. The Commission to Study Disproportionate Justice Impact Act is amended by changing Section 20 as follows:

(20 ILCS 4085/20)

Sec. 20. Meetings; report. The Commission shall hold one or more public hearings, at which public testimony shall be heard. The Commission shall report its findings and recommendations to the General Assembly on or before December 31, 2010 ~~2009~~, after which the Commission shall dissolve.

(Source: P.A. 95-995, eff. 6-1-09.)

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

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Appendix B

- Schedule of Commission Meetings, Advisory Groups, and Public Hearings

Illinois Disproportionate Justice Impact Study Commission

Appendix B: Schedule of Commission Meetings, Advisory Groups, and Public Hearings

Commission Meetings

1. September 21, 2009
2. September 21, 2010
3. December 9, 2010

Advisory Group Meetings

1. February 10, 2009 – Research Advisory Group
2. May 13, 2009 – Research Advisory Group
3. May 28, 2009 – Policy Advisory Group
4. September 16, 2009 – Research Advisory Group
5. October 14, 2009 – Policy Advisory Group
6. February 2, 2010 – Policy Advisory Group
7. February 18, 2010 – Research Advisory Group
8. July 8, 2010 – Joint Research & Policy Advisory Group

Public Hearings

1. February 22, 2010 – Chicago
2. March 8, 2010 – Joliet
3. April 12, 2010 – East St. Louis

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Appendix C

- Public Hearing Witness Lists, Transcripts, Testimony

Disproportionate Justice Impact Study Commission
February 22, 2010
Public Hearing: Chicago, IL

Commission Members in Attendance:

Sen. Mattie Hunter (co-chair)
Rep. Art Turner (co-chair)
Chief Williams on behalf of Jody Weis, Superintendent Chicago Police Department
Mercedes Luque-Rosales on behalf of Cook County State's Attorney Anita Alvarez
Brenetta Howell Barret, President/CEO Pathfinders Prevention Education Fund
Rep. Paul Froehlich
Mike Rodriguez, Director of Violence Prevention Enlace Chicago
Terry Solomon, Executive Director Illinois African American Family Coalition
Marian Perkins, President Cook County Bar Association
Tony Godinez, Executive Director, Cook County Department of Corrections
Dave Neal, Illinois Office of State's Attorneys Appellate Prosecutor
Bruce Banks, Illinois State Police
Neli Vazquez-Rowland, A Safe Haven
Dr. Byron Brazier, Apostolic Church of God

Sen. Hunter: Welcome and overview of background and goals of DJIS Commission.

WITNESSES:

Kathleen Kane-Willis

Director/Founder of Illinois Consortium on Drug Policy at Roosevelt University

(Written testimony attached. Additional handouts attached.)

Question & Answer

Rep. Paul Froehlich: Can you talk a about cost of treatment versus incarceration?

A: Conservative estimates show that every \$1 returns \$8 in cost savings to the public...a significant portion of that savings is related to criminal justice savings.

Mike Rodriguez: Curious how the lack of data on Latinos (where many are counted as Whites) would impact the current numbers. Could it be possible that the disproportionality is even greater?

A: It's true many Latinos are recorded as Whites. This population is difficult to accurately identify with the data sources that we currently have. We absolutely need to improve this to get as accurate a recording as possible.

Terry Solomon: Based on your experience, where along the criminal justice continuum is the most critical point of impact?

A: This should be happening at multiple points...it's important to consider impact all along the continuum. Must look at how individuals get into the system from the time of arrest through all the points thereafter. Drug school and other prosecutorial diversion are examples of approaches to prevent further penetration into the criminal justice system for first time or low level offenders.

Brenetta Howell Barrett: What kind of role can prevention play?

A: Prevention is important, but it's not what we're doing in this country...we need to weave drug and alcohol prevention as part of overall health and nutrition education as a truly holistic approach with the resources to support it.

Hon. Earlean Collins, Cook County Commissioner

(Oral testimony only.)

Summary of Oral Testimony

I have worked on this issue for past 6-7years. Currently chair of the Cook County Board of Commissioner's Criminal Justice Committee. There are many layers to the problem. Key to solutions is how we react to crime at the first levels of contact with the criminal justice system.

Seeing promise in: jail diversion programs; balanced and restorative justice efforts (although challenges in African-American communities due to lack of resources); progress made in reversing sentencing disparities between powder and crack cocaine.

Addiction is a health issue. Individuals committing non-violent, drug-involved crimes should not be in prison. Need for funding and expansion of mental health and other services to address this public health concern. Our jails and prisons are filled with individuals with a multitude of mental and emotional problems.

Sen. Hunter: (comment) Thank you for testimony and your work related to this issue. Will ensure that a copy of the Commission's findings will be sent to Commissioner Collins as Chair of the Cook County Board of Commissioner's Criminal Justice Committee.

Arthur J. Lurigio, PhD;

Associate Dean for Faculty in the College of Arts and Sciences and Professor of Criminal Justice and Psychology at Loyola University Chicago

(Oral testimony only. Additional documents attached.)

Summary of Oral Testimony

Drug use is a public health concern. Addiction is a brain disorder that often requires professional intervention. It affects not only the user's health, but the health and well-being of families and communities. Criminal justice responses are only one part of the solution, and can cause unintended collateral damage.

Admissions to prisons have increased steadily since the 1980's. African Americans comprise the fastest growing group of individuals incarcerated in Illinois and across the country.

In an Illinois state sample of criminal histories for over 40,000 individuals arrested on felony drug charges in 2005...classified white or non-white. Preliminary findings show:

- The least serious felony drug offense (possession of a small amount of a controlled substance) accounts for 68% of felony drug arrests in Illinois; of those charged 66% were nonwhite.
- Second most common crime is the manufacture/delivery of a controlled substance; of these 90% of arrestees were nonwhite.
- Other charges with a high percentage of nonwhite arrestees included cannabis sales on or near school property (90% nonwhite).

In 5,000 randomly selected cases adjudicated in Cook County Courts in 2005, preliminary findings show:

- More than 70% of those entering the Cook County court system for drug offenses in 2005 were African American (almost 3 times their representation in the population). More than 70% of these drug arrestees were charged with lowest level possession offense.
- After adjusting for charge, prior convictions, and other factors: African Americans were 2 times more likely to be prosecuted.

- Of those convicted: African Americans were 2 times more likely to be sentenced to prison
Defendants unable to afford a private attorney were 1.4 times more likely to be sentenced to prison than those with a private attorney.
- sOf those arrested: African Americans were 3 times more likely than whites to be sent to prison for low- level drug possession.

Question & Answer

Terry Solomon: How do you explain the differences?

A: At this point, we can describe the disparities...must drill down for the “why.” The first step is to collect the data and describe what it is showing us. Second step is to drill down to explain why what we’re seeing is happening. Poverty and how this affects resources or how someone is treated are two possibilities. What’s clear is the system needs to be changed...this may include changing drug laws. There may be multiple explanations for why we’re seeing what we’re seeing. Certainly need to look into the communities, look at where people are living, and what happens to people following sentencing, and the rules of sentencing and how that manifests in the community.

Brenetta Howell Barrett: What affects have you seen in organizations that provide legal or quasi-legal assistance?

A: With assistance of organizations such as TASC...individuals are less likely to return to the system. This and diversion should be expanded. Participating in the system can be harmful. There is a wealth of data that shows that treatment works and is less expensive. People on probation that get treatment are less likely to use when on probation. Doing nothing keeps the revolving door of prison spinning.

Rep. Turner: In looking at the data around schools...are you seeing similarities with churches and public housing?

A: Enhanced penalties for activity within around schools and churches are two possible explanations why African Americans are disproportionately represented. It’s hard to find a city block that doesn’t fall into this zone. Public housing would be lead to a federal conviction, so that data wouldn’t be included in the data sets that we’re examining.

Rep. Froehlich: Drug use rates are similar across the board, yet African Americans are even less likely to use marijuana than Whites?

A: That lets us know that our first perception is not correct. The perception that if there is a greater percent in the criminal justice system, they must be using more. No data show that.

Rep. Froehlich: Doesn’t this confirm our drug laws clearly have unexpected consequences of racial disparity?

A: It underscores the importance of the Commission’s work...and the findings are based on data not any political affiliation. Our data are objective. Data speak for themselves.

Marian Perkins: Do you have more data on cohorts and African Americans studied regarding the number of high school drop outs and the number who had been in contact with DCFS?

A: The data we’re looking at may not include that level of detail...there is a need to further characterize individuals in the system. What we know generally is that African Americans in the criminal justice system are overwhelmingly poor, undereducated, and in environments with criminal influences (in families and/or communities). In the 30 years I’ve been working and doing research in the County Jail it has not been unusual for me to see Grandpa, Dad, and Son come through...3 generations. Many in the criminal justice system have histories of trauma (PTSD), on top of substance abuse disorders, on top of lack of education. People coming into the system for drug violations have multiple problems...if we don’t address these multiple problems, they will keep coming back.

Marian Perkins: Are the laws off the books regarding enhanced penalties with 1,000 feet of schools/church?

A: [from Commissioners and Dr. Lurigio] No.

Marian Perkins: There may be an equal protection argument under the 14th Amendment. (E.g., geographical differences between urban communities and the suburbs don't meet same standards...those arrested in cities may be at an unfair disadvantage.)

Mercedes Luque-Rosales: The 1,000 feet laws and enhanced penalties were put in place with the purpose of protecting areas around schools and places of worship. Isn't it important to have these areas protected? And, if these laws are gone the individuals committing crime in these areas are still arrested, yes?

A: The result of these laws is that sentencing is based more on where a person lives...not what they do. It is tough to avoid these areas if there is a church or school on every block. This is not the case in the suburbs.

Sen. Hunter: [comment] And, in revising these laws individuals are still arrested, yes, but charged with a lesser offense.

Marian Perkins: [comment] Laws must not be based on where you live.

Mike Rodriguez: Data regarding the availability of private counsel shows its affect on sentencing. And, depending on where you live you...sentencing is harsher for the same type of crime?

A: Yes. And, what's important to recognize is that the more encounters an individual has with the criminal justice system the greater the likelihood of additional penetration into the system in the future. If we can prevent unnecessary penetration...if individuals can be diverted and kept out of the system we could do much to reduce the detrimental effects that even brief exposure to the system can cause.

Simply being detained in jail...employment and/or education can be lost or disrupted. There is harm in being processed through the system even once.

Now, I'm not suggesting that people should not be arrested and/or held responsible for what they do. The playing field, however, should be equal. The sentence should be about what they do, not about who they are or where they live. "Color should be irrelevant, and it is not."

Don Stemen, PhD

Assistant Professor in the Department of Criminal Justice at Loyola University Chicago

(Written testimony attached.)

Question & Answer

Tony Godinez: In my 37 years in criminal justice, I have seen guys in their 50's, who I remember working with when they were thirteen. My question is about admissions and use [of CJ system?]...it seems as admissions to county jail go down (used example of 2003) use seemed to go down. In 2003 Cook County Jail population was at 10,000, today it is at 8,000...are we doing something right?

A: I would say the decrease in jail population seems to reflect a similar decrease in arrests.

Tony Godinez: [referring to Art Lurigio] Dean, can we break data into first offenders? What are we seeing so far?

A: [Art Lurigio responding] That's an excellent suggestion. As we continue to look at the data it would be very important to see what happens to people charged with their first offense versus the others.

Tony Godinez: [referring to Art Lurigio] Do we know whether if as arrests have decreased so has disproportionality?

A: [Art Lurigio responding] My intuition is that disproportionality hasn't similarly decreased and jail and arrest numbers have decreased. My confident guess is: no.

Rep. Froehlich: Do we know how many arrests in designated drug free zones occurred during the hours when churches and schools are in session?

A: [Dr. Byron Brazier responding] Let me tell you there are 7 churches on our block, and 90% of the time there is no activity occurring.

A: [Art Lurigio responding] Would need to collect geo-coded arrest data showing drug arrests based on time and location.

A: [Dr. Byron Brazier responding] Based on that kind of coding, we could also see if this activity has shifted from other areas.

Rep. Froehlich: Then we could shift and concentrate police presence in these areas instead of just arbitrarily increasing penalties.

Brenetta Howell Barret: I wonder if re-zoning would make a difference? If so, we should keep this in mind when the Commission makes our recommendations.

A: [Dr. Byron Brazier responding] The real question is "how do you get 7 churches in a block?" You see, some churches aren't technically zoned as churches, but rather as permits to assemble. A lot has to do with how prosecutions are interpreted.

Christine Devitt Westley

Senior Research Analyst for the Illinois Criminal Justice Information Authority

(Written testimony included.)

Question & Answer

Mike Rodriguez: Through the ICJIA data are you able to determine how Latinos factor in terms of disproportionate contact?

A: Ethnicity data is not currently collected for arrests...in the statewide data available currently identification is limited to White or Non-White.

Mike Rodriguez: This reinforces my point from earlier...I think if we had access to the data we would find an over-representation of Latinos in the White numbers.

Jerry Siegel

Founder/President Midway Moving and Storage, Inc.

(Written talking points attached. Additional documents attached.)

Summary of Oral Testimony

I am the founder and president of Midway Moving and Storage. I have had over 23 years of success in hiring former offenders. When I first founded my business I had two missions: to serve my customer and to serve my community. Today we are the largest moving company in Illinois, serving individual clients as well as contracting with organizations such as the Chicago Bulls, the Chicago Housing Authority, the Chicago Public Schools, and the Cook County Sheriff's Department.

I hire former offenders because it is the right thing to do. Many CEOs do not see the value in hiring former offenders.

I believe there is a disconnect between the social services in our state and the actual businesses in the state. Most businesses have no willingness to provide marketable training and employment

opportunities to individuals coming from or involved in social service systems in our state. I believe this is a serious flaw. Need to find a way to train and employ people who have received social services

Tracy Siska, MA

Executive Director of the Chicago Justice Project and Academic at UIC Chicago

(Oral testimony only.)

Summary of Oral Testimony

What was learned as part of the Chicago Justice Project is that there is a lot of discretion that is not recorded, with no data available...for example, what goes on at the Cook County State's Attorney's Office and how decisions are made at that level.

More information is needed about how decisions are made at key points of discretion (e.g., at arrest and at prosecution)...in terms of deciding which cases proceed and which do not. Everything could be fine, but without data we do not know.

There is court data available, police data available (Chicago Police Department has detailed information on criminal activity and arrests that is easily available to the public)...however, repeated requests to get similar data from State's Attorney's Office have been dead ends...it was explained that non-participation was due to the protection of victims' rights. With today's technology, it is easy to strip identifying information from this data. (Note: SA's representative refuted these charges re: lack of participation, illustrating as example information provided to Chicago Council of Lawyers.)

Need to know what is going on in prosecution offices across the state.

Milton Davis

Community Male Empowerment Project

(Oral testimony only. Additional documents attached.)

Summary of Oral Testimony

Speaking as a representative of Community Male Empowerment Project and as a formerly incarcerated individual.

Described his past experience in criminal justice system, arrested and incarcerated for selling drugs.

Today works for the Community Male Empowerment Project a nonprofit that reaches out to at risk youth in communities so they can go a different path.

Rev. Dora Wright

Trinity United Church of Christ

(No written testimony submitted.)

Summary of Oral Testimony

Concerned with legal alcohol. My brother recently turned 50 in Cook County Jail. He had been a successful business professional for 30 years, he put his children through college, and he was successful. He became involved in the criminal justice system in 2005, when he received his first DUI. After that he lost his business...he lost everything.

Thankfully he was mandated to TASC and treatment. Without that, things would have been much worse.

"The profile is a little different, but the pain is the same." Learned that when trouble like this happens the families often distance themselves...my brother's children don't want anything to do with him. They

do not know or understand addiction or the criminal justice system. This is frightening and confusing. And, as a result, the incarcerated individual is too frequently left to face his predicament alone.

Fortunately, his children have turned back to some extent. But we're all wondering: "When he is released...how are we going to help him? We are suffering while the alcohol industry is thriving. How do we hold them accountable?"

People are being incarcerated who should be in mental health institutions, who should be in treatment. Addiction is a disease.

We learned that if you do not have an attorney, you will be incarcerated. We need more programs like TASC...we need training and education, and information about where to go for help.

"But for the grace of God go you and I – it may be me today; it may be you tomorrow."

Antoine Day

representing Howard Area Community Center, Community Male Empowerment Project, and National Alliance to Support Rights of Formerly Incarcerated

(Oral testimony only.)

Summary of Oral Testimony

Formerly incarcerated. Case where he was wrongfully charged was overturned (by Supreme Court) on appeal. Received training from Male Empowerment upon returning to the community. Today is putting three children through college, is fully employed and mentors youth.

We're focusing on the drug not the solution. It's not just the drugs, it's the communities. "Our parks are closed, but our liquor stores are open. Our youth centers are struggling to keep the lights on, but drug dealers are still on the corners."

"I helped destroy it [community]. I did. Now I'm helping to fix it."

People need help coming out of jail. In California when someone is released from prison they get \$800/month housing voucher. In Illinois we give them a Link card and that's about it. Family don't want them living with them - often that will jeopardize their housing or benefits.

The need is extremely great. When people come out of the county lock-up the sentence doesn't end there. That's why so many end up going back. How do we avoid getting caught in the system?

Illinois Disproportionate Justice Impact Study Commission

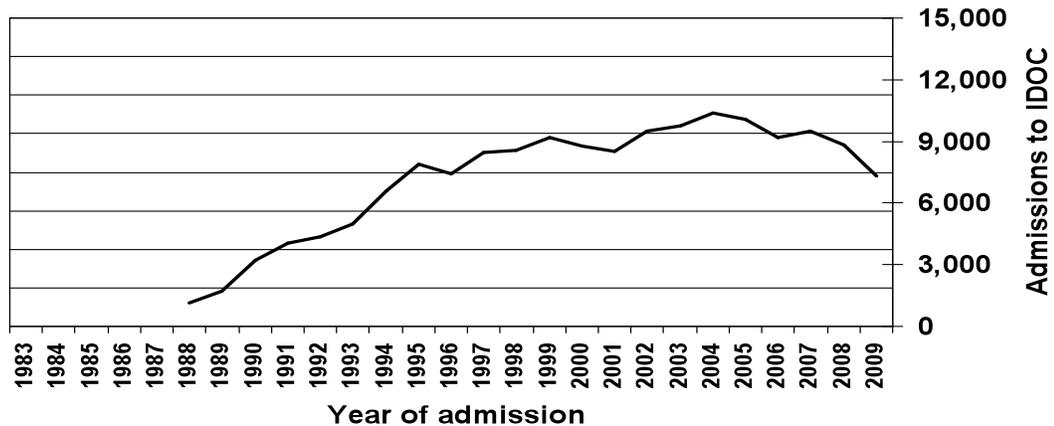
Project Overview

- Below are preliminary findings from the Commission’s research on the disproportional impact of the drug laws.
- The Commission’s research includes representative samples of Illinois residents who have been arrested, prosecuted, and convicted of drug-law violations and examines the legal decision points at which the disparate treatment of nonwhites might be occurring.
- The purpose of this research is to help the Commission formulate evidence-based recommendations for remedying this injustice while preserving public safety.

Drug use is a public health problem.

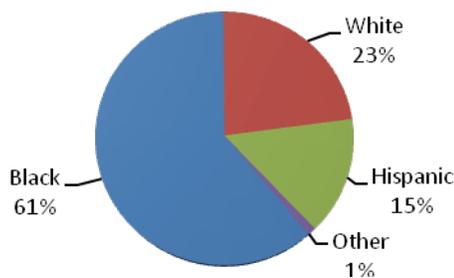
- Addiction is a brain disorder that often requires professional intervention.
- Addiction affects not only the user’s health but the well-being of families and communities.
- Criminal justice responses are only part of the solution, and can cause collateral damage.

Admissions to prison for drug-law violations have risen since the early 1990s.

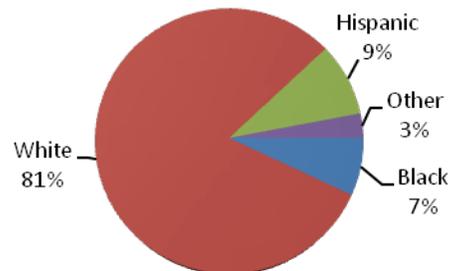


Racially disproportionate imprisonment is not explained by differential drug use.

Illinois Department of Corrections
Admissions for Drug Offenses,
FY09



Past Year Users of Illicit Drugs
Other Than Marijuana, 2003



Illinois Disproportionate Justice Impact Study Commission

I. Illinois State Sample

- Nearly 42,000 individuals arrested on felony drug charges in 2005
- Complete criminal histories for each arrestee
- Coded nonwhite/white

Preliminary Findings

- The least serious felony drug offense (possession of a small amount of a controlled substance) accounts for 68% of felony drug arrests in Illinois; of those charged 66% were nonwhite.
- Second most common crime is the manufacture/delivery of a controlled substance; of these 90% of arrestees were nonwhite.
- Other charges with a high percentage of nonwhite arrestees included cannabis sales on or near school property (90% nonwhite).
- Nonwhites are arrested at a higher rate throughout Illinois. Preliminary data showed disproportionality in drug arrests in 70 of the 102 counties in Illinois.

II. Cook County Courts Sample

- A total of 5,000 randomly selected cases adjudicated in 2005, including information on criminal history; charges; conviction status; sentencing; whether defendant was in custody and whether a public defender was appointed (for prosecuted only).

Preliminary Findings

- More than 70% of those entering the Cook County court system for drug offenses in 2005 were African American, **almost 3 times their representation in the population.**
- More than 70% of these drug arrestees were charged with low level possession.
- After adjusting for charge, prior convictions, and other factors:
 - African Americans arrested for drug offenses are **1.8 times more likely than whites** to be prosecuted in felony court.
 - Of those convicted:
 - African Americans are **1.7 times more likely than whites** to be sentenced to prison.
 - Defendants held in custody are **2.4 times more likely than those on bond** to be sentenced to prison.
 - Defendants unable to afford a private attorney are **1.4 times more likely than those with a private attorney** to be sentenced to prison.
- Cumulative effect of these disparities, from arrest stage to sentencing stage
 - Of those arrested, African Americans were 3 times more likely than whites to be sent to prison for low- level drug possession.

Testimony-Kathleen Kane-Willis, Roosevelt University Illinois Consortium on Drug Policy

Good morning Committee members, ladies and gentleman. My name is Kathie Kane-Willis. I am the director and founder of the Illinois Consortium on Drug Policy at Roosevelt University. I am a public policy researcher and a professor. I am also a former heroin addict.

I was in college when I first used heroin. Within 6 months I had dropped out of school. Within a year I had become addicted. My drug use sent me on a downward spiral that left me homeless, squatting in an abandoned building, and involved with the criminal justice system.

When people think of drug addiction, most people don't think of someone like me. They imagine a violence-prone black man from the inner city. This is partly because of the images we, as a society, have of drug users. This image is embedded so deeply in our consciousness that it's very difficult to erase. At the turn of the 20th Century, we experienced one of our nation's first drug scares-- that of the cocaine crazed Negro, who could supposedly withstand a .22 caliber bullet and keep on coming. This image was the basis for our nation's first drug law, which made opiates and cocaine illegal. This image was as wrong then as it is today. A decade into the 21st Century, how much has changed? Whites, blacks and Latinos use drugs the same rates. But when we look to who fills our jails and prisons, it isn't people like me.

One might imagine that in my home state of Illinois - the land of Lincoln - that disproportionate incarceration would not be a problem. But according to the latest national data, Illinois ranks first in the nation for the disproportionate incarceration of African Americans for drug offenses. First! In the Nation! We might think that this disproportionate incarceration has only to do with selling drugs, but this is not the case. When we look at those who went to prison for possessing drugs, more than six thousand African Americans entered prison compared to just over one thousand whites. In a state where African Americans make up just 15 percent of the population, this is a sobering dissimilarity. In terms of racial disparity for drug possession, Illinois ranked *second in the nation* behind Tennessee. For every 1 white person admitted to prison for drug possession, more than 5 African Americans joined them behind bars.

As I stated earlier, the images of threatening black men and their drugs remain ever present. But we have the power to erase that image. With the knowledge and help of the scholars and researchers, we will be shown how this disproportionality is created and how it might be ended. With this commission, we will now have the political will to shatter that image, to change that picture—to *ensure* that justice is equitable and fair in Illinois, in our land of Lincoln. Thank you.

**WRITTEN TESTIMONY OF DON STEMEN, PH.D.,
ASSISTANT PROFESSOR IN THE DEPARTMENT OF CRIMINAL JUSTICE AT
LOYOLA UNIVERSITY CHICAGO,
BEFORE THE ILLINOIS DISPROPORTIONATE JUSTICE IMPACT STUDY
COMMISSION**

FEBRUARY 22, 2010

I would like to thank the Illinois Disproportionate Justice Impact Study (DJIS) Commission for the opportunity to testify today.

My name is Don Stemen and I am an Assistant Professor in the Department of Criminal Justice at Loyola University Chicago. For the past several years, I have worked with the Prosecution and Racial Justice Program (PRJ) at the Vera Institute of Justice to examine racial disparity in prosecutorial decision making in several county prosecutors' offices in the United States.¹ I hope that my experiences working with PRJ in Milwaukee County, Wisconsin, and the recent state-wide efforts in Wisconsin to address racial disparity in the criminal justice system can assist the DJIS Commission in understanding and responding to similar disparities in Illinois.

PRJ was created when the chief prosecutors in Milwaukee County, Wisconsin and Mecklenburg County (Charlotte), North Carolina, approached the Vera Institute with a common concern about racial disparity in the criminal justice system. PRJ has partnered with these two chief prosecutors, and the chief prosecutor in San Diego County, California, to pilot an internal assessment and management procedure to assist chief prosecutors in identifying evidence of possible racial or ethnic disparity in case outcomes. By developing a series of performance indicators that focus on four key discretion points in the prosecutorial process – initial case screening, charging, plea offers, and final disposition – PRJ seeks to document instances of racial disparity in outcomes at each discretion point and encourages chief prosecutors to consider policy changes that address any imbalances that have been identified.

Milwaukee County District Attorney John Chisholm has fully embraced the project and has used PRJ's findings to adjust practices in his office. For example, data revealed that Milwaukee prosecutors chose to prosecute 59 percent of white defendants arrested with possession of drug paraphernalia compared to 73 percent of non-white defendants arrested for the same crime. Responding to this finding, District Attorney Chisholm encouraged staff to view possession of paraphernalia, including both marijuana and crack cocaine paraphernalia, less as a criminal matter than as evidence that the arrested individual had a problem with drug use. A new policy directed staff to decline these cases whenever it was reasonable to do so and to refer the arrested individuals to drug treatment; prosecutors who still seek to press charges must obtain a supervisor's approval. Although these policy changes do not directly focus on racial issues, soon after they were implemented the racial disparity in drug paraphernalia prosecutions disappeared.

¹ See www.vera.org for an overview of the Prosecution and Racial Justice Program and the Vera Institute Justice.

PRJ's work in Milwaukee County coincided with a state-wide effort in Wisconsin to examine racial disparity across the state's justice system. Reports in 2007 by the National Council on Crime and Delinquency and the Wisconsin Sentencing Commission placed Wisconsin among the states with the highest levels of racial disparity in both the juvenile and adult prison systems and found high levels of racial disparity in sentencing outcomes.² In response, Wisconsin Governor Jim Doyle issued Executive Order 189 in March 2007 creating the Commission on Reducing Racial Disparities in the Wisconsin Justice System.³ The Commission was tasked with examining racial disparity at all phases of the criminal justice system, from traffic stops and arrests through parole. Based on independent study and information gleaned from public hearings, the Commission developed sixty-one recommendations for addressing racial disparity.⁴ Overall, the recommendations addressed all phases of the criminal justice process from law enforcement through corrections and ranged from the creation of more after school activities for youth to creating guidelines for prosecutors in how to process cases.

A common theme, however, ran through all of the recommendations – addressing racial disparity required a local focus with state support.⁵ This required, in the first instance, ensuring the availability of valid and reliable data. As the Commission noted, “Local jurisdictions need to have data so they have an understanding of what is happening in their communities and can begin the discussion [of racial disparity] locally.”⁶ The Commission recommended that the state provide technical assistance to help local jurisdictions develop data collection tools and mechanisms for sharing data across different agencies.⁷ A local focus also required local leadership to ensure that discussions about racial disparity occurred and that responses to racial disparities were implemented. As such, the Commission recommended the creation of local community criminal justice councils that would include members from all local criminal justice

² National Council on Crime and Delinquency, *And Justice for Some: Differential Treatment of Youth of Color in the Justice System*, National Council on Crime and Delinquency (2007); Brenda R. Mayrack, *Race and Sentencing in Wisconsin: Sentence and Offender Characteristics Across Five Criminal Offense Areas*, Wisconsin Sentencing Commission (August 2007); Lisa Mueller, Michael Connelly, and Jim Pingel, *Race and Sentencing in Wisconsin: A Monograph Series*, Wisconsin Sentencing Commission, (2004).

³ Wis. Exec. Order No. 189 (March 21, 2007), http://www.wisgov.state.wi.us/journal_media_detail.asp?locid=19&prid=2573

⁴ Commission on Reducing Racial Disparities in the Wisconsin Justice System, *Final Report*, Wisconsin Office of Justice Assistance (2008).

⁵ As the Commission noted, “Discussions of racial disparity are best focused at the local level.” Commission on Reducing Racial Disparities in the Wisconsin Justice System, *Final Report*, Wisconsin Office of Justice Assistance (2008: at 5).

⁶ Commission on Reducing Racial Disparities in the Wisconsin Justice System, *Final Report*, Wisconsin Office of Justice Assistance (2008: at 5).

⁷ This recommendation echoed recommendations from previous efforts in the state to examine racial disparity. See Brenda R. Mayrack, *Race and Sentencing in Wisconsin: Sentence and Offender Characteristics Across Five Criminal Offense Areas*, Wisconsin Sentencing Commission (August 2007), “To fully understand the issue of disproportionate minority representation in Wisconsin’s criminal justice system, . . . the procedure for collecting data on offender race and ethnicity must be improved, with consistent racial-ethnic categories used across the state . . . and . . . the State must examine the likelihood that disparate treatment occurs throughout the criminal justice process, including calls for police service, arrest, prosecution *and* sentencing, and collect data at each of these points” (at 43).

agencies; these councils would monitor racial disparity and develop strategies for reducing disparities if they existed. Finally, such a local focus required assistance from the state. The Commission recommended that state funds be provided to local jurisdictions to improve data collection, to create local community criminal justice councils, and to create alternatives to incarceration. Moreover, the Commission recommended the creation of an agency to monitor racial disparity in the state.

In May 2008, Governor Doyle implemented the Commission's recommendations with Executive Order 251.⁸ The order created the Racial Disparities Oversight Commission to ensure that the recommendations were implemented and to "exercise oversight and advocacy concerning programs and policies to reduce disparate treatment of people of color across the spectrum of the criminal justice system."⁹ Maintaining the tenor of the original recommendations, the Oversight Commission was filled with four representatives from local criminal justice agencies: Madison Police Chief Noble Wray, Milwaukee County District Attorney John Chisholm, Dane County Circuit Court Judge James Martin, and Jennifer Bias, Affirmative Action Officer for the Office of the Wisconsin State Public Defender. While directed to meet at least twice per year, the Oversight Commission has met roughly six times per year since its inception and has begun to address the issues of data sharing and local-level buy-in.

The Wisconsin experience is illustrative for several reasons. First, the state addressed the problem of racial disparity in the criminal justice system after reports documented disparities in juvenile detention and adult incarceration rates. The state's response, however, was to take an holistic approach to the problem and started from the premise that racial disparity in incarceration was the result of a multitude of decisions by actors throughout the criminal justice system – from arrest through release. Second, the state considered racial disparity as a local phenomenon that had state-wide implications. Thus, the state's response was to empower local jurisdictions to collect data, share data, and develop mechanisms for addressing racial disparity in their own communities. Third, the state realized that the state-wide implications of racial disparity required a state-wide response as well. As such, the state created an Oversight Commission composed of local representatives to monitor racial disparity at both the state and local levels.

The DJIS Commission is addressing an important issue currently faced by most states and local jurisdictions. Since the 1980s, the number of people involved in the criminal justice system has increased dramatically. Between 1980 and 2008, the number of people under correctional supervision – on probation, incarcerated in jail or prison, or on parole – increased 296 percent,

⁸ Wis. Exec. Order No. 251 (May 13, 2008), http://www.wisgov.state.wi.us/journal_media_detail.asp?locid=19&prid=3360.

⁹ For a description of the Oversight Commission see http://oja.wi.gov/section_detail.asp?linkcatid=2533&linkid=1344&locid=97&sname=Racial%20Disparities.

from 1.8 million people to 7.3 million people.¹⁰ The impact of this increase has been felt primarily by African American men. Incarceration rates for African American men historically have been above those of Whites, but they have increased much faster than those of Whites in the last three decades. In 1980, 8.9 percent of African American men had ever been incarcerated, compared to 1.5 percent of White men; by 2001, the percentage of African American men who had ever been incarcerated increased to 18.6 percent, while the percentage of White men who had ever been incarcerated increased to just 2.5 percent.¹¹ Based on 2001 rates of incarceration, federal authorities estimate that roughly 33 percent of all African American men will eventually be incarcerated in their lifetimes, compared to 5.9 percent of White men.¹² Understanding the magnitude, nature, and causes of those disparities at the local level is the first step toward crafting appropriate and effective responses to racial disparity in the criminal justice system at the state level.

¹⁰ Bureau of Justice Statistics, *Prisoners 1925-1985*. U.S. Department of Justice, Office of Justice Programs (1986); William J. Sabol, Heather C. West, Matthew Cooper, *Prisoners in 2008*, U.S. Department of Justice, Office of Justice Programs (2009).

¹¹ Thomas P. Bonczar, *Prevalence of Imprisonment in the U.S. Population, 1974-2001*, U.S. Department of Justice, Office of Justice Programs (2003).

¹² Thomas P. Bonczar, *Prevalence of Imprisonment in the U.S. Population, 1974-2001*, U.S. Department of Justice, Office of Justice Programs (2003).

Testimony of
Christine Devitt Westley
Senior Research Analyst
Illinois Criminal Justice Information Authority

Before the
Illinois Disproportionate Justice Impact (DJIS) Commission

February 22, 2010

Good morning, distinguished members of the Committee. I would like to thank you for the opportunity to speak at this important hearing. My name is Christine Devitt Westley, and I am a Senior Research Analyst with the Illinois Criminal Justice Information Authority. The Authority is the state agency charged with the coordination of criminal justice information in the state, among other duties. I am the manager of the Authority's Data Clearinghouse, which houses most of the publicly available data on Illinois crime and associated risk factors. We make these data available to researchers, policy makers, grant applicants and citizens. The Authority has also partnered with Loyola University and TASC, Inc. on a series of publications regarding the impact of Illinois drug laws on minorities (summary is attached). I am here today to speak about a serious gap in state-wide arrest data that creates a barrier to investigating the causes of disproportionate justice impact.

Not to oversimplify, but the most important piece of information needed to investigate the phenomenon of disproportionate justice impact is, of course, the race and ethnicity of the individuals involved, at each decision point in the criminal justice system. In Illinois, the only place that we can know this with certainty, on a state-wide basis, is for those incarcerated in our state prisons. This is essentially the back-end of the system. It is undisputed that African-Americans are disproportionately admitted to prison for drug offenses, compared to their overall population in the state. But in order to determine *why* this is happening, we need to know the race and ethnicity of everyone brought into the front-end of the system, at arrest. Unfortunately, that is impossible information to obtain currently through the official state-wide arrest reporting system, the Uniform Crime Reporting (UCR) program.

Illinois has instituted only the most basic version of this system for the last quarter century – that is, the over 1,000 police departments in the state are only required to report the number of arrests they have made in a few major crime categories, and nothing at all about those arrested. So today, we cannot determine how many of the drug arrests reported in UCR are juveniles or adults, males or females, African-Americans, whites, or other races. The data are simply not reported.

Ironically, Illinois once had a robust state-wide arrest reporting system, through the 1980's and early 1990's. During that time it was possible to analyze all that information and more, for all those arrested in the state, across more than 200 types of crimes. Unfortunately, the state as a whole could not successfully transition to the National

Incident-Based Reporting System (NIBRS) instituted by the FBI in the mid-1990's, and eventually abandoned its earlier detailed reporting system in the process. Today, every other state contiguous to Illinois – Michigan, Wisconsin, Iowa, Missouri, Kentucky - every Midwest state except Indiana, reports at least basic age, race, and sex information on those arrested in their annual crime reports, for all to access and use. Illinois has clearly lost ground on this issue.

That is not to say that the necessary race information is not available at the local level in some form. Police and prosecutors across the state collect as much incident-level information as necessary to support the administration of justice. It is just that there is no mechanism currently to report that data out to the public in a consistent manner and format across the state. The Chicago Police Department, as an example, presents much detailed arrest information in its annual reports, but most of the other large municipalities do not publish their data in any consistent manner, if at all.

In an effort to remedy this problem for *research* purposes, the Authority has entered into a data sharing agreement with the Illinois State Police, by which state criminal history information (commonly known as rap sheets) is made available electronically. While the individual records are kept in strictest confidence, we are able to extract statistical information that is lacking elsewhere. Most notably, we are able to extract the race, age and sex of arrested individuals, along with the charges for which they were arrested. This was the starting point for the research conducted on behalf of the Commission, as presented by Dr. Lurigio of Loyola University.

While this confidential source of criminal history data is a unique opportunity to fill in a crippling gap in Illinois arrest data, we must be aware that it is not a satisfactory substitute for a consistent, transparent, state-wide incident-based reporting system. Basic racial, age and gender information needs to be available for those involved at every point of the criminal justice system, but most especially at arrest. Not only will such data allow local officials and citizens alike to track trends in minority involvement in the system, it would provide a consistent starting point across the state for determining the impact of legislation as we move forward with reforms.

MIDWAY MOVING AND STORAGE, INC.

Chicago's #1 Source For Commercial and Residential Relocation

Illinois Disproportionate Justice Impact Study Commission

Jerry Siegel - Talking Points

About Midway:

- I founded Midway Moving & Storage 23 years ago with two missions: to serve my customers and to serve my community. We've since grown into the largest moving company in Illinois, serving individual clients as well as high-profile entities such as the Chicago Bulls, the Chicago Housing Authority, Chicago Board of Elections, Chicago Public Schools and the Cook County Sheriff's Department.
- We started with two men and one truck. But as the company grew and we needed more employees, it became clear that the only way to maintain our high standard was to implement a mover training program.
- Our training program could give useful, valuable job skills to anyone with a strong back and the desire to work. It could turn an unskilled person into a highly skilled mover or licensed commercial driver.
- Ex-offenders for the most part have few marketable job skills. Unfortunately, there are a limited number of jobs they can do.
- But ex-offenders need jobs. And Midway's training program and can-do philosophy was a great fit for highly motivated ex-offenders who wanted a fresh start.
- As the company and the training program grew, Midway began to actively recruit ex-offenders, for two reasons:
 - 1) We believe everyone deserves a second chance. And
 - 2) Giving an ex-offender a job contributes to the overall well-being of the community.
- In my twenty-some years of working with ex-offenders, I've become very familiar with the challenges facing them.

Ex-Offender Challenges:

- Overcrowding in prisons leads to further violence
- The possibility of early release makes consequences seem less substantial and can actually increase recidivism
- Recidivists return to the communities with more negative influences than positive, productive alternatives.
 - Drug abuse – 2 out of 3 probationers have used drugs
 - Violence & gang activity: Culture of violence leads ex-offender to accept it as the norm.
 - Lack of education or training opportunities: 60% of inmates are functionally illiterate; 70% have dropped out of high school
 - Housing Issues: Housing was identified as the leading re-entry barrier for ex-offenders
- Recidivists with no alternative way to make a living feel they have little choice but to return to a life of crime.



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Ex-Offender Solutions:

- Drug Treatment programs and Housing would give ex-offenders a good start.
- But Training and Jobs are essential.
- Unemployment rates among ex-offenders are as high as 40%.
- Parolees placed in jobs within three months after release are significantly less likely to
 - Have their parole revoked
 - Be convicted of a felony
 - Be re-incarcerated
- But no matter how well-trained the ex-offenders are, the fact remains: **employers don't want to hire ex-offenders.**
 - Some former prisoners reported filling out as many as 30 applications without being offered a single interview.
 - 17% of white job applicants with criminal records received callbacks compared to 34% of white job applicants without records
 - For African Americans, just 5% with criminal records got callbacks compared to 14% of black job applicants with no records
- And why should they? With a near record high unemployment rate, there are plenty of individuals without records who need jobs.
 - But we need to make special allowances for ex-offenders because if we can eliminate the amount of money we spend confining them, we can allocate that money elsewhere.
- **We must give employers incentives to hire ex-offenders.**
 - We need to establish a CBE (Community Business Enterprise) certification program that will operate in a way similar to WBEs and MBEs.
 - Businesses who train ex-offenders and whose payroll has a specific percentage of ex-offenders can apply for certification.
 - A percentage of government contracts will be appropriated specifically for CBEs.
 - This will help to generate jobs specifically for ex-offenders and will encourage businesses to invest in the training and hiring of ex-offenders.
 - Ex-offenders may remain with their CBE employers, or use them as a resume-builder and stepping stone to move on to other careers.

What does Midway need now?

- A CBE certification program is something to work toward, but the need is urgent. We need solutions right now.
- Two solutions that would help Midway to continue providing opportunities for ex-offenders:
 - **Training Dollars**
 - **Government Contracts**
- **Training Dollars** help Midway to operate our Mover Training Center. We need funds to staff the center, to recruit ex-offenders, to provide further support to trainees who wish to earn their CDL.

MIDWAY MOVING AND STORAGE, INC.

Chicago's #1 Source For Commercial and Residential Relocation

- Ex-offenders who complete Midway's training program gain jobs skills that can be used in a variety of industries not just moving. These include customer service, computer skills, driving skills and logistics training.
- Training makes ex-offenders more marketable to employers; Midway as a proven track record of training ex-offenders and other unskilled individuals.
- **Government contracts** are essential to helping Midway create jobs for graduates of our training program and to sustain employment for our current ex-offenders on staff.
- The housing market is experiencing a significant decline – there simply aren't enough residential moves to keep all our skilled movers employed.
- Midway formed Midway Document Destruction, a full-service shredding and record storage provider, in order to reach new customers and hopefully maintain our current employee roster.
- Government moving, storage, relocation and document destruction projects can make up for the loss of residential moving jobs.
- Midway has successfully completed thousands of projects for government entities.
- For the last several years, Midway has provided delivery of thousands of voting machines for the Chicago Board of Elections. The Board of Elections has come to rely on Tim Pearson to organize this massive project.
- But despite our excellent track record with the Chicago Board of Elections, several other government organizations have failed to contract with Midway.
 - Cook County Board of Election
 - City Colleges of Chicago
 - Chicago Public Schools, for record retention project
 - State of Illinois – Department of Child and Family Services
- It is unfortunate that a company like Midway, whose ex-offender recruitment program has saved the government millions of dollars in recidivism costs, has been shut out of working with the very government entities it strives to help.
- By awarding contracts to companies that hire ex-offenders, the government essentially kills two birds with one stone. They not only provide jobs to people who desperately need them but also save on the costs of confining ex-offenders who might have otherwise ended up back in prison.

Disproportionate Justice Impact Study Commission
March 8, 2010
Public Hearing: Joliet, IL

Commission Members in Attendance:

Sen. Mattie Hunter (co-chair)
Paul Froelich (acting co-chair for Rep. Art Turner)
Mercedes Luque-Rosales on behalf of Cook County State's Attorney Anita Alvarez
Dave Neal, Illinois Office of State's Attorneys Appellate Prosecutor
Bruce Banks, on behalf of Jonathon E. Monken, Acting Director of Illinois State Police
Neli Vazquez-Rowland, A Safe Haven
Terry Solomon, Executive Director Illinois African American Family Coalition
Rep. Dennis Reboletti
Walter Boyd, Director Ex-Offender Opportunity Program, Protestants for the Common Good

Sen. Hunter: Welcome and overview of background and goals of DJIS Commission.

Welcome by Larry Walsh – Will County Executive

WITNESSES:

John Carnevale

President/CEO of Carnevale and Associates

(Written testimony attached.)

Question & Answer

Mattie Hunter: Thank you for coming here. I appreciate your testimony here today because we've been working, as you know, with TASC, trying to fix this problem here, nationally, but we know that we need to start right here in Illinois first. And as you indicated, hopefully, we can use this ... what we're trying to compare as a model.

After the end of our testimony ... at the end of us writing up the report and submitting it to the general assembly with findings and recommendations, what's the next step? What do you think? What direction should we head in? Because we know that this is a medical issue, but many of our policy-makers are not there yet.

A: I absolutely agree with that. The current folks running the Office of National Drug Control Policy ... There's one person in there, an individual named Dr. Tom McLellan, is very famous in the area of treatment research and has worked with the National Institute of Drug Abuse. And I know from conversations with him that he's really promoting aggressively changes to the treatment system and that includes the notion that we do not need to be locking people up, so that we need to have diversion up front as early as possible. And I think having ... First of all, when the findings of this report come out, it's my hope, and I feel it's my responsibility working with TASC, to take this report and take these results and help Illinois present them to folks in Washington who need to, I think, start thinking more nationally about what's going on with the issue of disproportionate sentencing and so on. And so I think that's what has to happen as one of the steps.

Now in the State of Illinois, of course, you can take action to resolve some of the problems that will be identified by this commission, but there have been a few other states, not many, that

have looked at this problem and, I suspect, are going to have or have found that there is disproportionality in how we apply these drug laws. And I think when we take their work with yours, I think we can start to make a national case that it's time for change.

And, finally, I really am for the first time ... I've been doing this for almost 30 years. I started as a budget examiner at the Office of Management and Budget way, way back, what seems to be a hundred years ago now, but the world then focused on drug and addictions, stopping drugs from coming into the country; the U.S. Customs Service had the leading drug policy. We viewed ... I remember I worked for one person who said that drug addicts are nothing but victims of the drug war; there's not much we can do about them. Things have changed a lot, and this current drug czar, at least the current administration, is really working very hard to say that this is no longer a war on drugs; this is a public health problem. And I think to the extent that every one of us can repeat those words and say them over and over again, eventually the public will start to understand better that the approach we've taken for the past 25 years, especially in the '80s when a lot of these drug laws were passed nationally—three different crime control acts, by the way—that those actions were just simply incorrect and need to be fixed.

Mattie Hunter: I totally agree with you. Thank you very much. Now I was just personally wondering, how do you feel about ... you know, many states now are legalizing marijuana for medical reasons. Do you think that is going to have an impact on the work that we're trying to do here today?

A: There's two trends going on with marijuana, I think, in the states, and they're all state-based or grassroots-level efforts. One is the issue of medical pot—I'll call it that—because does marijuana have any medical benefits. In my mind, that's an issue for the National Institute of Drug Abuse and for the FDA to really think about. In terms of drug policy, the issue has always been about illicit drug use; people having problems because of their drug use. So when it comes to the issues of medical benefits from this drug, my view is let the scientists explore this and come up with a conclusion. The concern should be about whether or not people are using this drug in a way that causes problems for their lives, for their families and children, and so forth. And there is quite a bit of research from NIDA that says clearly that there is serious damage that can be associated with extensive use of marijuana.

The second issue with marijuana is decriminalization that's going on, as I call it. In the '70s there were about 30 states in this country that had decriminalized marijuana. This was when cocaine was just taking off, and there was a sense that the courts were being overcrowded with small cases with people with small amounts of marijuana. And so it wasn't done for reasons that people were accepting the use of marijuana; it was done for reasons to alleviate the court dockets and so on.

I'm wondering as I'm looking at what's going on with, I think, about 12 or 13 states that are just pushing this policy ... I think that what's driving it is the idea that the courts, the criminal justice system, can't afford to manage these cases. Now the President and the drug czar have come out clearly against decriminalization and I think they will continue to push that agenda. But I do think it does present problems in the public's mind, at least when you take one drug and you say it may have medical benefits and that we may be putting too many people into jail inappropriately, especially inappropriately like we have been for small quantities and so on. I think that will have some impact. It might bring clarity to this very topic, in terms of what we're seeing in terms of who's being incarcerated and for what drug use.

Mattie Hunter: I know that personally ... We did pass that here in Illinois and I know personally I spoke out against that bill because the sponsors of the bill could not show me how they could manage and control the situation. I saw that there's a law enforcement issue in terms of ... Many police and state troopers came to me and indicated that they're having problems already trying to control people in the

rural areas and in the areas outside of the large urban areas, in terms of them growing it. And they can't control that because they don't have the manpower to do so. I just saw it as a problem because of the way they were explaining it to me in terms of distribution of the medical marijuana. I thought it would be easy access to other family members that were in the home, you know what I mean?

A: Right.

Mattie Hunter: As well as a number of problems with it, with that entire deal. And I think I was the only legislator that voted against it, not because I was against it for medical purposes, but how do you monitor it?

A: You're absolutely right, and I agree with you. And the issue of access ... I mean, one of the big exploding drugs in this country generally is prescription drug abuse, and it's our medicine cabinets, not Internet or anything where kids are getting access to that. If someone has medical pot in their medicine cabinet, it may, obviously, be available to others in that family. So there's all kinds of issues in terms of potential abuse that we should be very worried about.

Reboletti: I have a question. One of the things I saw that I think is interesting to me ... We talked about in this disproportionality these unintended consequences of the actions of different people in the system, and something I picked up in the written testimony, I would like to talk about for a minute, is how law enforcement's focus can be to unintentionally impact a certain part of society; for instance, by focusing on methamphetamine versus crack cocaine, heroin versus oxycontin. Especially with your budget, people can only do so much. As people prioritize what they think the threat is, it can lead to disproportionate impact, I believe.

A: Yes, that's absolutely correct. One of the sort of interesting things that we noticed in the national data on disproportionality is lately a lot of whites are being locked up at much higher rates than other populations. And the theory behind that is ... it's mostly in rural areas and that's because it's mostly the white population that's using methamphetamine. And law enforcement is really focusing its efforts, or at least it was, on meth labs and meth users and issues of drug-endangered kids and so on. But over the years there's been, at least on the national level ... when I first started with the drug czar's office, Bill Bennett became the first drug czar for about 18 months, and the whole focus of that first drug strategy was on cocaine—powder cocaine and then crack cocaine. Over the years it then sort of expanded and got into other drugs as other drugs emerged or appeared to be emerging.

In this decade, we're looking now, at prescription drug abuse. And there are a bunch of us who are warning the drug czar that issues around medical pot and decriminalization are sending a mixed message to kids, especially kids that you're going to see ... you know, their attitudes about the dangers of that drug in terms of their health and well-being soften and use goes up and so on. And so there may be now a focus where law enforcement may say we need to now switch back to that drug. But, yes, over time law enforcement does switch, based on what we perceive to be national trends. I will add that when it comes to drug policy and demand-reduction and treatment and prevention, in my mind the biggest supporters and allies that we've always had on a national level, certainly, for more treatment and prevention has always been that the local chief of police. They say, We get tired of arresting people with drug problems who need to be treated. And they're probably some of our strongest advocates in the community.

Vazquez-Rowland: A recent study came out by Columbia University that showed that as a nation we spend 95.6 cents of every dollar shoveling up the wreckage and only 1.9 cents on prevention and treatment. The type of things that you're talking about are health care. How much of a percentage increase can we expect to see in terms of funding going from supply reduction to demand reduction? I

mean, there's clearly a lack of funds that are available for treatment. And what types of protocols are we looking at that are leading the national trends?

A: That study, the CASA study, I think made a valuable contribution to drawing attention to the fact that we spend way too much money on what we know doesn't work, which is programs in source countries and monies on addiction, which is simply targeting drugs in transit to the United States at a time when most drug use is really around marijuana, prescription drug abuse, huffing of various things. The previous administration did some work on this. Since I'm a budget person, this is the only administration to ever cut funding for prevention, and it cut it by almost 25 percent over eight years. The current administration, when they took office, cut \$300 million out of the prevention budget for safe and drug-free schools. That upset the prevention community. A lot of people didn't think that program worked, but as a budget person, I told them the drug czar way too late, you should have kept the \$300 million in your pocket and changed the program. And they're trying to do that now.

In terms of the supply and demand split at least on a national level, the budget just was released by the administration, and I have to say at least everybody in my world who looks at budget was quite disappointed that there weren't big cuts on the supply side. This is not focusing on domestic law enforcement where again it's the interdiction and Swiss countryside. The largest percentage increase was prevention. It increased by \$200 million, but they had a \$300 million hold from last year. The second biggest increase was for treatment, but there's also a lot of emphasis now on trying to integrate treatment, which is mostly publically funded through a single block grant. About 60 percent of money per treatment come out of one block grant out of Health and Human Services. But they want to integrate that money more into the health care reform movement that's going on, so Medicaid issues, for example, and other funding sources become bigger players in the future of treatment.

But in terms of the budget, to be honest, the President has said we're going to have a freeze on domestic spending for the next three years, for reasons that we all understand with the recession and the deficit. I used to work at the Office of Management and Budgets, and the wording over there would be, if you want to add more money for demand side, then you're going to have to provide an off-set. And the off-set in my mind is to go after some of these Swiss country programs where we do manual eradication of crops; and that can save us a few hundred million dollars a year that could be put into demand-reduction programs. At least in terms of my personal effort and background, that's where I'm going to be pushing. But I hope that's where the administration does go. But the big increases that we're all praying for, or were praying for, didn't really happen, in my mind, on the demand side. And the big decreases that we were all sort of praying for, those of us with, I guess, with my background on a national level, were really praying for, didn't occur as well. In fact, it was slight increases, which I find quite disappointing.

Vazquez-Rowland: Based on the current budget, what's the split for demand versus high reduction?

A: It's about 66 percent for supply reduction, and that includes domestic law enforcement, by the way. And the rest, of course, is for prevention and treatment. And that includes research that's funded out of the National Institute of Drug Abuse. There was an accounting change, and I'm sorry for the geek part of this discussion, but I study budgets and helped in the '80s invent the drug budget accounting that we use at the federal level; and the previous administration changed it in such a way that a lot of money that used to be scored as source country and interdiction money was basically tossed out of the budget. That was \$5 billion worth of money. If you would add that money back in, the ratio is getting closer to 80 percent for supply reduction. And I testified before Congress about this last year, and they have passed a law asking ONDCP to restore the original accounting so we can get a better assessment of how we're spending the money.

The hope was that by doing so, we'd see that we had wandered down a wrong path in terms of where we were spending money in the past eight years. We had at least 100 percent increase in Swiss Country spending and 98 percent increase in interdiction spending. And again a 25 percent decrease in prevention and only a 25 percent—I can't quite remember the number—increase in treatment. We were hoping by cleaning up the accounting we could draw attention to the fact that we're wasting a lot of money on programs that research for 20 years has shown is ineffective.

Again, as someone who works on the national scene, I'm going to be doing my best to try to help the drug czar to persuade OMB and Congress and in the backrooms, of course—that's where I belong—in how to fix some of this problem and, again, put more money into demand reduction.

Froelich: The fact that that 100:1 ratio for crack versus hard cocaine, that that's still the law ... I know there's attempts to change that, but doesn't that suggest that public policy can be remarkably resistant to ... whether it's scientific evidence or evidence of huge disproportionate impact, that politics may trump anything else when it comes to making public policy.

A: I loved your line 'remarkably resistant.' It really is remarkable when back in the late '90s we have an Institute of Medicine study – excuse me, the Sentencing Commission, kind of come out with a report saying this has got to be fixed. Back in the '90s General Barry McCaffrey at this point was the drug czar and we all agreed that this was bad policy that needed to be fixed, but the issue was political will. No one dares to go and say we need to fix this, because at least back then, the view was to say anything like that ... I know Congressman Sauder at that point was running the oversight committee on the House side for the drug czar; he'd be the first to say that, you know, we're going soft on crime here. But that's changed. That's what I'm trying to say today. I'm sensing—and I don't mean to single out Senator Webb from Virginia, but he on his own has emerged as a real leader in terms of talking about these issues. And he's very intelligent in how he talks about it and he's getting everybody's attention and he's now saying ... Smart-on-crime kind of lines are being used, which is ... Changing the rhetoric is important to get the nation eventually to move to change policies, and I think he's done a remarkable job for that.

So I think with the current administration, the current drug czar ... I know for a fact that they are going to be talking about fixing this 100:1 ratio and making sentencing more equitable, which to me takes courage. And it may just be the time that after 25 years we finally figured out we have the courage to do it. And, again, I hope this year this happens. This commission's findings, I think, can help draw a lot of attention to a lot of laws that were passed in 1984, in 1986, in 1987, and in 1988 Crime Act. There was a series of Crime Control Acts passed by the federal government where we got very punitive in how we administer justice in drug policy and lock people up. And there needs to be a review of all those laws. I think we're now ready to do that, through the efforts of the executive branch, through the drug czar's office, and the Congress, through, hopefully, the Senate. I hope that we finally bring science to bear on this topic and fix these problems.

Froelich: I'd like to ask my question. I'm sorry that I wasn't able to get here sooner. Crack cocaine is more addictive than pot or cocaine—is that fair to say? I think the science is with that as far as the addictive nature. Would you agree with me on that?

A: Yes, I do. I mean, you get addicted quicker. The time to addiction is shorter with crack cocaine than with powder, but the science isn't as strong in terms of that statement. I want to make the point that back in the '80s when we passed this law that really made the use of crack cocaine punitive, there really was a view that it was highly addictive, much more than powder. And there was concern that the way to discourage demand for this drug in certain communities—and it was

the African American community that was being targeted with this drug—was simply to be very tough on crime and say if you use this drug, you're going to be treated harshly. And, of course, we all know the consequence of that was an unintended one, I believe, which was we ended up locking up a lot of African American males.

Reboletti: With respect to that, I used to prosecute in Will County, right here, right down the street. And it had to be fair to say that there are probably more white people that are suing crack cocaine than there are African Americans. That's what I had seen. And the state law is much different than the federal law. We have 410 probation. We have TASC probation. We have drug corps. We have drug school. So I don't think it's fair to say that everything we've done so far has been punitive in the criminal justice system with respect at least to Illinois code. I mean, we err on the side of trying to help those who are addicted. I think the General Assembly has realized that as a policy, as the people down the street try to protect the people of this county every day, that there's no victory in locking up somebody in prison for using drugs, unless they violated probation, and usually it's numerous times. Because I tell people you have to work just as hard to go to prison as you do to do treatment, to qualify, and to work programs.

So some of this stuff ... I don't know what the federal government's doing, and I can appreciate their concern back in the '80s. I just think the State of Illinois has taken a much different approach than they have, and that the war still continues to be on the street level and above dealers and the gang members that make large profits from the people of all the communities, not just one color. We see, obviously, addiction across the color spectrum and across the income spectrum. It affects everybody. I think we'd all be hard-pressed to find somebody that we haven't seen a family that hasn't been touched by alcoholism or drug addiction.

So again, I think, part of the issue is talking about being smart on crime; but at the same time, we can't walk away from locking up those that poison the communities, that make profit off the communities, because there's a lot of money to be made in drug sales. Otherwise, people wouldn't do it. And we've seen that right here in Joliet. We've seen that in the surrounding communities. We've seen the scourge of heroin even more pronounced in the collar counties; as we've seen downstate, methamphetamines; as we've seen crack cocaine elsewhere. I think we need to be mindful of trying to balance that out, of helping the addicts and drying up the supply demand, at the same time taking those people off the streets that bring violence into the communities. And sometimes I think that's underemphasized.

A: I fully agree. First of all, I wish there were more counties in the country that took your approach with these drugs: instead of locking them up, said we need to help deal with their addiction. And that's the first point. Second, in regard to law enforcement, I think that every cop I've talked to, every chief of police I've talked to, says we get sick of picking up these people who have addiction problems and picking them up again in another three months, in another year, and in five years. They are for Demand Reduction programs, so they can actually devote their energies to what many would call real crime.

Reboletti: But they do commit property crimes while they're using, and we can't forget that part either.

A: That's absolutely right. The third part is I think we now as a nation have understood that there's going to be supply ... As long as there's demand, there's going to be a supply. There's going to be groups out there that are going to distribute drugs for profit. They traffic in drugs. They bring them in from all over the world. They manufacture them here in rural areas, in terms of methamphetamine. And so the focus should be on, if you reduce demand, then you reduce the burden to law enforcement in terms of reducing the amount of drugs they have to stop from getting into the streets. And, obviously, their role in terms of going after drug trafficking organization has to continue to be a key one.

Reboletti: And I think that they try to do that, especially here in Will County where you see I-80, I-57, I-55 travel through. You're seeing a lot of drugs come through here. And I can tell you, having worked with task forces from the local level all the way up to the federal government and everybody in-between, that because we're a transportation hub, it only makes sense that a lot of drugs come through this area. And we have to be mindful of that. And I just think that sometimes we lose sight of that there is going to be demand. The problem is, the people who are seeking the demand, to help them they have to want to be helped first. And I don't think there's any treatment provider here that can say that even if we lock you up, that means that you're going to take treatment, that you're going to stay in-patient, that you're going to try to work the 12 Steps. I think we can't make people do that; that's why we find people relapsing. Some people don't want to get help. I think we have to recognize that part, too, as we look here at what we should be doing.

A: One thing that's sort of always fascinated people is the biggest source of referral to drug treatment is the criminal justice system. And programs like TASC are very successful because they then manage these people that come into their programs. Drug courts are very successful. And a lot of treatment programs that take clients on do so, and these people have prior criminal histories. We've also learned from research that there's no such thing as a single treatment event. Odds are someone's going to be in treatment for many years. They will go in and out of treatment programs. That's part of the recovery process. When I first started in drug policy, there were people who viewed treatment as a failure because if I went into a treatment program and dropped out in 30 days, treatment failed. Now maybe I've learned something in that event, and six months I go back into a treatment program, and I continue this cycle. As one head of the National Institute of Drug Abuse said way back ... he said, We know that there are multiple episodes of treatment that people need till eventually they can reach recovery. Our job is to shorten the time between those treatment events so that they're not out on the street committing crimes and creating other problems for the community and their families and stuff.

Reboletti: I understand that relapse happens; I don't think relapse is necessarily part of recovery. But I know that people ... it might be one time, it might be six times, it may be never. But the other part of it is that we have to take a look at making sure that when we get people treatment that there is also the mental health issues that are being taken care of. We can send somebody to a 28-day program, but if we're not addressing the mental health issues that brought them into drug use, then we as a state aren't really using our resources the best that we can. So there's a lot of other things we need to take a look at.

Scott Washington

University of St. Francis, Lawyer and Professor of social and criminal justice

(Written testimony attached.)

Question & Answer

Reboletti: Again we go back to, what about the communities that are victimized by those who are drug dealers, who profit? And what about the families that suffer in silence from the addicts—the children that aren't being cared for; families that are afraid to have their loved ones come over because they steal from them? You know, we talk about locking people up – and I hear on the House floor all the time that people on the other side of the aisle, that I've had a debate recently with regarding heroin, didn't even want to admit that gang violence has to do with narcotics trafficking and distribution.

So two are hand-in-hand. What is the opposite? What do we do with people that are on probation—we offer probation here in the State of Illinois—when they don't want to follow probation? Because as I've explained to defendants, right down the street here when I was a prosecutor, that probation is an alternative to incarceration. So what is it then we do for those folks that don't want to get drug

treatment? That don't want to follow the terms and conditions of probation? Do we not lock them up? Do we not send them to prison? What is the message that we send then on the opposite side? Assuming we went and we didn't make it mandatory prison in a lot of these cases for drug dealing, what is the solution on the other side?

A: If an individual hits someone over the head and steals their purse, that person should be locked up for that crime. If a person is arrested for simply being a drug addict, that person should not go to prison or jail. If an individual is caught selling drugs, we need to look at all the factors involved in the case. If that person is selling drugs on the basis of a drug addiction, we need to deal with the drug addiction. And when you look at the statistics and the facts that I've been studying for ten years, the vast majority of drug dealers in the United States are drug addicts as well. So we need to deal with the addiction. And if we deal with the addiction, the likelihood is that we will deal with the collateral issues to addiction, which are often property crimes and drug-dealing in the same process.

Reboletti: I'm just saying, or that it's a larger amount, it's a higher proportion ... because there are people, a lot of people, that sell drugs purely for the profit and don't use their own supply. And I can tell you, as somebody who was a narcotics prosecutor, that we try to identify those that have the addiction. And I think every prosecutor on the street has done that and continues to do that. And I can only speak for the people that I've worked with, that continue to work down the street here in Joliet. You know, I'm from DuPage County. And I think that people take the time to review the files to do that. That's how people end up in TASC probation.

But at some point, when you're selling a lot of drugs, we have to make a determination as to what is the best solution for you. When you're driving a truckload of cocaine up here – which I've dealt with those types of cases – we can't pretend that that person should get probation; we should find out if they have a drug problem. At the same time, if there's somebody that has an addiction, we can try to work with them on that side. But you have to still have that ability to lock people up.

Sometimes, and I will tell you, is that we're the first line of defense where somebody ever told these people 'no.' Be it the addict, be it the drug dealer, you name it, because they haven't followed any instruction. They may not have had a lot of guidance, and I can agree with you on that, but at some point somebody has to say no, you can't go out and use, you can't go out and sell. You have two choices: one is incarceration or the other one is trying to turn your life around. And I think we really try to get to that point. But simply not locking people up, I think, can't be the answer either. And I don't know what your thoughts are on that. There has to be some type of hammer on one side to try to take the carrot and the stick to get the people to get on the right track.

A: And I'll just say that I worked as a staff attorney for five years in a felony court in Montgomery County, Ohio, so I've seen numerous cases come through the court. And as a staff attorney, my duty was to analyze those cases and report to the judge what my opinion and my interpretation of the law in terms of its application in that particular case. And the overwhelming majority of drug dealers to come through any criminal court are low-level street dealers; and having been a low-level street dealer and a crack cocaine addict, I can tell you that the vast majority of those folks, when they tell you they don't use drugs, are often times not being completely honest.

The bottom line, when you look at the folks that are targeted in the drug war of this country, what you're going to find is that it's at the street level and those folks are drug dealers. If a person is coming into the state with a truckload of cocaine or methamphetamine, I have no problem locking that person up, if that's a crime. And whatever the sentencing guidelines would suggest, that's what that person should receive. But we need to really evaluate our processes here in terms of how we approach arresting and convicting and incarcerating folks that are involved in the drug world.

Reboletti: And I understand that and I appreciate that; however, we do know that where drug dealers are, violence usually isn't that far behind. Again, I don't think the average citizen wants drug dealers on their street corner. And there is trouble that comes by. I mean, there are times here where I've dealt with cases where a drug dealer doesn't even sell drugs to somebody; they sell a look-alike substance. People can get pretty mad about that and come back and then violence can break out. There are fights over drug debts and all that that go with it, so we have to keep our eyes open on both sides. And I think what you're saying is you have to analyze the situation case-by-case.

A: Absolutely. And our current policy doesn't go to case-by-case evaluation. We tend to use these guidelines, in terms of the 100:1 crack cocaine disparity, and the prodigy of those laws to make our decisions. And so it's not a case-by-case basis; it's typically driven by policy that goes to guidelines that are determinant these days in terms of sentencing.

Reboletti: I don't like that ... What the federal government does, obviously, is much different than what we've done. And I know that that crack cocaine argument comes up all the time. But it's not like that in the State of Illinois as far ...

A: And it's not in most state systems. It differs in most state systems than the federal system. But as we know, states typically tend to follow the lead of the federal government, so if we can impact this issue at the federal level, I think what we will see in terms of a rippling effect as states start to look at their policies and how they are similar to those policies and see how we can make change there.

I'm one who's not totally convinced that the attack should go entirely at the policy level. I think that there are other methods that we could use to address this issue, which would lower the number of minorities going into the system. And those who are already in the system, it would have a tremendous impact on those coming out.

For instance, I worked as a staff attorney in Montgomery County for five years. Let me just say this: Also, I joined the Crips at 13 years old and for the next 12 years, as I mentioned, was totally committed to those streets. So I have a broad view of the criminal justice system and how it operates. I've been a defendant. I've been a probationer. I've been in what would be considered a drug court. I was on probation for 12 years. So I understand the system very well and how it operates. I think that to get politicians to really look at these laws and say, okay, I'm going to stand up and say let's repeal this drug law—we know is almost political suicide. But what we can do is address these issues on the front end through restorative justice processes and on the tail end through re-entry.

And what we're doing at the University of St. Francis is addressing both of those issues. I'm the program chair for the Criminal and Social Justice Program at the University of St. Francis. I've been there for six months. They brought me in specifically because of my alternative views as to the criminal justice process. We're not going to get very far trying to get a politician to say let's repeal some laws. It's just not going to happen, especially when it's a criminal law. But what we can do is support efforts such as efforts that are going on all over the country in terms of re-entry and restorative justice.

Hunter: But, Attorney Washington, restorative justice—those are all politics decisions ...

A: Yes.

Hunter: ... so you can get away with politics.

A: Yes, but ...

Hunter: Because they're the ones that make the decision as to what kind of programming that you're going to have and where the dollars are going to come from.

A: Yeah, but restorative justice isn't a policy, it's a philosophy.

Hunter: I know. I know. But in order to put the dollars for restorative programs, that's a politician ...

A: Absolutely. That's why I'm here.

Hunter: ... or a policy person ...

A: That's why I'm here. Yeah, I agree.

Hunter: ... to make that shift, so don't say that it's not a policy.

A: Well, if I said that, I misspoke.

Hunter: Yeah, I understand what you were saying; I was just trying to correct.

A: Okay. And I appreciate that, your honor.

Solomon: Have you looked at the relationship between the length of probation and the length of parole and how that may contribute to recidivism or ...

A: Well, the longer someone's on paper, the more likely is there could be a violation, a technical violation that doesn't necessarily go to a new crime being committed or even deviant behavior. So if you have somebody on parole or probation for an extended period of time, there's a more likelihood that person will re-enter the system on the basis of a technical violation.

Solomon: Has it been your experience that when people are offered the choice of probation or doing a year or two at the most, five years on probation ... What's been your experience in terms of ...

A: My experience is the people who are more experienced with the system understand probation and its drawbacks and, oftentimes, depending on what the plea bargain is, will waive that in terms of their decision.

Solomon: Well, the reason because ... I had to go to court for a traffic violation; and even though it's just traffic, they have the option of doing SWAP or 30 days. And the young man, he selected 30 days. And I asked, Why would you do 30 days? And he said, Well, it's easier for me to get it done. I don't have to worry about coming back and forth, so in his mind, it made better sense for him to accept that kind than to be out. And so I wonder, in terms of a plea, if it's – I guess this is for some people, it makes sense in their mind to ...

A: Logically, as well.

Solomon: ... let me do my year or two, because I know if I'm back on the street, they're going to come to me. You know, there's no escape. Police know me; everybody knows me. It's going to be a different experience. And so I just wanted to kind of get that out into the record.

A: Because of the dynamics of our criminal justice system, oftentimes taking a year or two of prison makes more sense than spending five years on probation, because an individual can live in a community where, when he walks down the street, he's going to be ... If he walks down the street and stops in front of the store to talk with somebody who may or may not be a felon, if there happens to be a drug raid or something in that community due to over-enforcement of laws in that community, that person may be swept up in that raid and end up violating that five-year probation and end up doing that time.

Reboletti: What do you mean by a swept-up over? What do you mean by that? Because, see, I used to prosecute narcotics cases right here, right down the street. And I'm new here, and our paths would not have crossed.

A: But I do quite a bit about the criminal justice system.

Reboletti: And I've prosecuted from the smallest percentages, a gram, all the way up to truckloads of cocaine coming through this county. And I think we have to look at part of what you were talking about, which is this five that you're on probation. The people that are in the game, so to speak, they know the numbers already. They can tell you that they'll take a year in prison or less time versus probation versus treatment versus other alternatives, because to them it's just easier. It's part of a cost of doing business. They'd rather do 61 days in prison on a Class 4 felony here than do drug treatment and follow-ups and all types of other drug drops and continuing Alcoholics Anonymous or NA meetings, because it's just easier for them to take the easy way out.

And the people that I used to work with right down the street here spent a lot of time trying to help those that wanted to be helped. And you can't always help everybody. Not everybody wants help. Not every addict wants treatment. Not everybody wants necessarily to change their ways. But we spent a lot of time trying to find those people that we could. I was a narcotics prosecutor, at the same time working with drug court. And know that that part works, if people choose to work the program. We can't make people want to work the 12 Step program.

A: And the 12 Step program is not the end-all/be-all treatment.

Reboletti: Didn't say it was the end-all/be-all, but at some point somebody has to accept some responsibility for their addiction and then try to change their life. If the 12 Step program, if it's AA, if it's NA. It's whatever works. But they have to accept some responsibility that that behavior not only affects them; it affects their family, it affects their community. So we kind of forget about that part. While we're looking at people who deal drugs and what we should do for them, what about the families that are impacted by the acts? What happens to those families and how they live? What happens to them? I don't want to get caught up in the technical violations and what that is.

A: No. I can speak directly to the family issues. Drug addiction in families isn't solely contained within folks who have been in the criminal justice system. See, there're folks who have never been in the criminal justice system that are drug addicts. Fact, there are probably more of them than there are folks that are in the criminal justice system. So drug addiction in families is a problem and is prevalent all over the country. And kids and children suffer as a result of their parents' addictions whether or not they're in the criminal justice system. Now when you compound that with the fact an individual is in the criminal justice system, the effect on those children can be extremely detrimental.

For instance, you talked about all the requirements that a court may impose upon an individual who may have an addiction or may not have an addiction, but was arrested and convicted for some drug abuse of that source and drug dealing of things. Well, when you talk about the AA

meetings, when you talk about the drug testing, when you talk about meeting the probation officer, when you talk about all of this ... And then, on that, you require this individual to have a job, there's not many employers that I could go to every week and say, I need to go to my drug treatment class today at three o'clock during the busiest part of our day. So the dynamics of these issues are just ... They're huge.

(question indecipherable for transcription)

A: Absolutely. Mandatory minimum sentences are unfortunate. It takes the discretion away from the judge, so the judge in the criminal case, in the drug case, is bound by the law and cannot look at the various factors of the particular case. The judge can't look at whether or not the person comes from a good family. The judge can't look at whether or not the person's educated. The judge can't look at all of the factors involved in the case. It's simply driven by the guidelines. So I think mandatory minimum sentences has done tremendous damage in terms of disproportionate minority confinement. And I think that's a place to attack the issue, but it's going to be very difficult to get any politician to stand up and say repeal the drug law, because they're going to be tagged as soft on crime. And in the next campaign, his or her opponent is going to throw that up all over the media. So it's an unfortunate circumstance.

There are solution-oriented processes, though, that we can engage in to address that. If we can engage in restorative practices, if we can provide quality re-entry programs – because the vast majority of people who go into prison are repeat offenders – so if we can provide mechanisms for individuals to escape or maneuver their way out of the system, we ought to be doing that.

Moderator: Thank you, Mr. Washington.

Richard Jackson

VP of External Relations, Acting Director of Services for Habilitative Systems, Inc.

(Oral testimony only.)

Jackson: Good morning, everyone. First of all, thanks for having me here this morning, bright and early on Monday. My name is Richard Jackson and I'm the vice-president of External Relations and the acting clinical director of behavioral health services for an agency called Habilitative Systems Inc. We've been operating in Chicago west side for about 30 years and we provide comprehensive services that basically span the whole spectrum of human services needs. And one of the primary services that we provide is mental health services, as well as substance abuse services.

Now I've been in the field of substance abuse for 35 years this month—no, wait a minute, I'm sorry, 1972. I actually entered into the field haphazardly as a counselor's assistant in one of the very first alcoholism treatment programs that was operating 28-day programs, operating in the country at Mercy Hospital. I had no idea that that was going to be a link to a career; I thought it was just a way to earn some money and get a job and maybe get a car out of it. But the reality was that as I began spending time with the clients, if you will, or the patients, I began to recognize that there was something to this that I don't think a whole lot of people understood. And that kind of spoke to the person that was trapped inside the bottle of the illness.

And dealing with the perspective of where they were, of all the things that they were doing, all the things that were happening in their lives and how little control they seemed to have over it. As that process went on, we began to do a lot of study and research. And very early in the game, in the mid-'70s, research began to show up relative to the disease concept of alcoholism, the disease concept of substance abuse.

And those of us that studied it and worked with it and then began to implement it in our treatment processes began to realize that this actually does make sense. It does make a difference.

See, most addicts, from the time that they have been involved in the process, have come to believe that there is something wrong with them, that there is something about them that is socially inadequate, psychologically ineffective, whatever the case may be. And the stigma weighs heavy on the people and it impacts their ability to actually respond to treatment, if you will.

Now the one thing that I've seen consistently throughout my years in the field is the reluctance of people outside of its structure to recognize and to accept that it's a disease. People basically look at substance abuse from their own perspective, how they feel it and how they experience it. Oftentimes, that is very contrary to what the actual research actually indicates. And it is in that where I feel that much of what we're dealing with today has its basis.

I believe that the fact that so many people cannot acknowledge that it is a disease, look at from the perspective of what is the impact that it has on our society: what are these people doing? They should be able to make the changes. They should be able to respond to the resources that we put out there for them. Why aren't they getting better?

Well, the reality is that in the early years of treatment, we made some very dramatic mistakes relative to how we did our work. We worked with people. We were effective with people. People bounced in and out of treatment usually an average of three times before they really began to acknowledge the illness and began to be able to grasp onto some of the realities of what they had to do to change their life and to use the tools. However, during that period of time, the shroud, if you will, of them having the disease, them having a problem that they're not doing anything about – bottom line – would not allow them to just acknowledge the fact that there was help and that they could, in fact, avail themselves of it.

Now we move through the process and we're here now dealing with the fact that the denial of the disease in the general population ... And the mistake that we made was that we didn't really draw upon them. We didn't ask them to come back and speak to what would have been your successes in your recovery; what have been the things that have worked in your life. We told them, go forth and be anonymous; and they pretty much did that.

We reached the point then where suddenly people started saying, Where's all our money going? Okay, we've been spending all this money on drugs and alcohol treatment for all these years; we want to see something concrete. And we hadn't done a whole lot to justify that people were, in fact, getting well. The money began to get tighter and the bottom line is that the pie began to get smaller. And the reality was that people began to clamor for different ways to address this problem, because it didn't appear as if treatment were working.

And then you had the criminal activities that took place. And then you had laws that followed. And then you had the reality of the problems that the laws and the prison sentences, in fact, created. Now I'm at the bottom end of the other side of this. I'm a treatment person and always have been. You know, I have some awareness and involvement with policy, but first and foremost, I'm a treatment person. And I see the impact of individuals who need treatment. I see what treatment can do. And I also see what happens when treatment is not available and the resources are not available. We have a program here, we have a program there, and we offer an olive branch to them and we do a drug court and things like that. But then we're surprised and amazed when a person can't really take advantage of that.

Addiction doesn't live in a vacuum. Addiction has to do with all of the parameters of a person's life that are sewed up in whatever it is that's going on with them. The bottom line is that there's sociological factors, there's economic factors, there's psychological factors, physiological factors, so on and so forth. So just to look at the addiction as being, well, we want you to treat that and address that, but none of

these other things ... are we going to provide the comprehensive resources for you to access. How then do we expect you to do better? We expect you to get well. Well, it doesn't happen that way.

There used to be a time in prison where rehabilitation was cheap; a very important integral part of the process. Unfortunately, as the dollars began to diminish and as the numbers continued to grow, rehabilitation is really no longer a real concern. It's really about, let's just lock them up and get them off the street for a period of time. And the reality of it is that given all the elements of gangs and access to drugs and alcohol in prison ... Bottom line is that somebody can be in prison for a lot of years and they don't even have to stay drug and alcohol free while they're in prison. Why then would it be expected that once they got out?

We have a number of different programs. We deal with the collateral aspects. We have programs for children of incarcerated parents. We have mental health court programs. And we have a variety of different programs, but the reality of it is we don't have nearly enough to deal with the volume of people that come out every day and call our programs for treatment; it's just overwhelming. The volume of those individuals that are minority is even that much more overwhelming. And the volume of those that are minority males, black males; it's just incredible. They come out of programs ...

Now let me also mention, there are a few programs in the prison systems that are specific for this, although there are far too many. You have the Sheridan program, which is a program primarily for drug and alcohol, primarily drug offenders. It's a great program, and it does have a great impact. But it still has in many respects some of the same outcomes. They come out of there, and even though they have TASC and our support, they don't have a whole lot more going for them. And as we know, once you're a convicted felon, your capacity to find a job or to even access entitlement benefits is little to nothing. So they show up at our doorstep and they would like to come into our programs. Where we can avail them into our outpatient program, but that doesn't address to where they're going to live or how they're going to get clothes, how they're going to eat, any of that stuff. They have to have some support that really speaks to that.

We have a halfway house that houses individuals that are recovering from chemical dependency, for four months. However, if we allow people to come straight out of prison into the halfway house, we would be a prison halfway house and so, therefore, we're unable to really address that. But yet we see them. We get the calls. We recognize the desperation. A guy will get out of jail. They'll give him enough money to make it to a bus station in Chicago and maybe a couple of bucks in his pocket. And then that's pretty much all that they've gotten. So where do they go from there?

Well, they go back to the neighborhood; they go back to the 'hood. Now a variety of different things happen when they get in the 'hood. Obviously, they've always said while they're in jail, gee, we want to do better; I'm going to change my life. But then the reality of what's going on in their lives really starts to hit them. And the ultimate bottom line is that they re-engage with the same crowd, they re-engage with the same. Because all of this stuff is part of all that they really know how to do. And end result being that they re-offend; they get back in trouble again and they go right back through the cycle.

Question & Answer

Froelich: Can I interrupt? What do you think needs to be done to reduce the problem that we see? Is it more resources for treatment?

A: Absolutely. More resources for treatment. More resources that are available while they're in prison. More prevention opportunities prior to the experience of prison. And, yeah, absolutely, more resources once they come out of prison. I mean, it goes without doubt.

Froelich: Does it matter whether somebody goes into a treatment program voluntarily or whether they're ordered into one, as far as the ultimate outcome?

A: No, it doesn't. My experience is that people who are ordered in, people who, so to speak, get a nudge from the judge, they tend to go into treatment with a little bit more incentive, if you will, than somebody who just decides they might want to go into treatment. So I've always found that working with someone that had that behind him gave me a little bit more leverage to work with them while they're in treatment. So I think that. And then you have that person who has just come to a realization ... which is actually kind of rare: a person just wakes up and says, I'm an addict; I'm going to go get help today. Usually there's pressure from somewhere in their lives to get into treatment.

Luque-Rosales: Mr. Jackson, could you please address the issue of whether spending more money or having more resources towards juvenile programs would have an effect as to deterring any type of adult conduct.

A: I believe that if the illness and the issues associated with the illness ... Remember we talked about not being in a vacuum. If those things are addressed, identified and addressed early, I believe it has the capacity to have a very profound impact. The sooner the person is exposed to the learning and understanding and begins to start to open their eyes to what's going on in their lives that's not working, rather than being in kind of that confused state and not knowing any way to deal with it except possibly alcohol and/or drugs ... So, yeah, I think it's absolutely crucial. The prevention program, the gentleman spoke earlier. They then reduce significantly service across the board and then reduce significantly ... So the bottom line is, yeah, absolutely. Absolutely.

Vazquez-Rowland: Mr. Jackson, if you had a choice to ... You mentioned something very interesting about how the networks have a lot to do with the individual continuing in the recovery programs. A lot of times those networks are the family. So I would say, or would you agree, that maybe juveniles may have a head of household in their family that's also abusing, and if so, would it be more effective to maybe work with the head of household to really make a difference in that juvenile's life long-term?

A: I think we've always recognized that there is that biological and even that genetic and that predisposition factor that speaks to it moving from one generation to the next. And there's also the reality that if there is a family intact, it is a family illness, it is a family disease. And we recognize that when there's a family involved, the treatment has to basically address all issues within the family. And, absolutely, if you have an addictive parent or a using parent and a kid's involved in the process, you take him out of that and you try to provide him with services, and then you put him back into the same situation again, the reality of it is that nothing really is going to change.

It is one of the reasons that we have been working with programs for children of incarcerated parents, because we've come to recognize that their chances of being able to survive, given the circumstances of the parent being in prison, are significantly limited unless they are, in fact, allowed an opportunity to get some help and work through the issues. And it's been a very successful program. We do see the programs that we are implementing are working. There are just not enough of them.

Froelich: You talked about recognizing addiction as a disease. Do you think society is more willing to do that when it comes to alcoholism than addiction to illicit drugs, where we tend to view people as criminals rather than as people with a disease?

A: I think from a public opinion perspective, that may be somewhat. But the bottom line, even if you look at alcoholism ... When alcoholism causes an impact, a social impact, i.e. drunk driving, people get totally up in arms about that. I mean, the bottom line is that, yeah, he's an alcoholic and yeah, he may have a disease, but he killed three people; he's got to be punished. And that flips over to the drug side, too. I think that when people kind of experience it from an innocuous standpoint, they'd be more willing to see it as a disease, particularly if you can sit down and talk with them when they're in a non-excited state. Because the research is there and it's pretty clear, it's pretty concise. But when it comes down to the associated criminal behavior of the addiction, then we're talking about a totally different thing.

Froelicj: Although one area of the law where maybe we don't take it the same way: reckless homicide. You know, this drunk driver you're talking about, convicted of reckless homicide, can get probation under our law. And it does happen where they get probation. Whereas we have drug possession laws with mandatory minimums. And class act felonies and so on. Even where nobody's been killed. So it does seem to me our law even treats the effects of the addiction a little differently in that, yeah, the reckless homicide person may be a middle class white suburbanite just as well as an inner city poor minority driver.

A: I think the laws basically are applied according to the social pecking order, to a certain degree. But the laws are so varied from location to location to location. There's oftentimes no rhyme nor reason. But I do speak clearly on the fact that, I guess to me, it's always been amazing the disproportionate laws for the possession of crack cocaine and powder cocaine, because the only difference between the two is about ten minutes in the kitchen. I want to be real clear about that. That's the only difference between the two. It's powder here; they take it into the kitchen; they cook it; it's crack cocaine over here. So it's just always amazed me that that has been such a force and, of course, the impacts are pretty obvious of that.

Solomon: If we said to you: Mr. Jackson, you have a blank check that you can apply to whatever type of services you want to apply to address substance addiction issues, what would be your three priorities?

A: Man, I could really get busy with that kind of a wish. That goes right along there with winning the PowerBall, right? But, of course, you can't win if you don't play.

Solomon: We'll give you a hundred million.

A: A hundred million dollars. I think that fundamentally I would establish both an educational and a service entity. Something that was big; something that was comprehensive. I would bring all the key disciplines in. I would bring in all the key folks that have done all the research. And I'd bring in the policy people. Because we'd now have enough money to really come together and take a look, without being under the pressure of being in competition for these small amounts of dollars, to really establish and begin to deal with some best practices opportunities.

And then we would make those available. That, of course, would involve, you know, from A to Z; I mean, you can't just have all this think-tank stuff and not have the actual programs as they're implemented, the services in the communities, the support services in the medical community, and all of those things that are necessary to comprehensively treat not only the whole person, but the whole family, and then the whole community. It would be fun.

Boyd: It was interesting listening to the dialogue when the discussion was alcohol and DUI's and understood realization that a person could be in a car accident while driving under-the-influence and three people could be killed and they could be relatively treated lightly by the courts. Just for opinion purposes, what do you think about ... you know, in the State of Illinois we have a law, felony murderer,

where if you're committing a crime and in the process another person dies as a result of your actions, you're as responsible for that person's death as if you killed that person yourself. Now how do you feel that applies, like, to our 9-1-1 law, where two people are using drugs together – primarily I would imagine this would be a scenario with heroin addicts – one person, it would be, succumbs; and the other person that calls 9-1-1 gets arrested and charged. What's your opinion about that?

A: Well, it's interesting, because as we stop and think about the fact that we know the jails and the system is completely overwhelmed by the addiction process, and typically non-violent addiction offenses, it just amazes me that we create more laws that are going to, basically, just find more ways to get more people into the predicament which creates even that much more of a problem. I'm a social worker, but I'm not a bleeding heart social worker. I believe that while people may not be the cause of their diseases, they are responsible for the behaviors that happen as a result of that. So while I believe that somebody under the influence truly needs to be held accountable for the crimes that they commit, I also am aware of the fact that holding them accountable is just that one part of this, that you've got to pay your debt to society part, but the other side of that is this person has a disease and the disease needs to be treated. Just like if he had cancer, there is a treatment that basically should be made available.

So I look at it that they take the laws and sometimes they just expand them. The most recent one, a couple of weeks ago, when the guy broke the window in the store down in Chicago, and while one of the police officers responding to the call had a car accident and died – and say, well, we're going to charge the guy with murder. Well, at a certain point, you're far removed upon that. And where accountability for the given actions and where a drug action takes you – I believe there's a limit to that, absolutely.

Hunter: Let me just kind of clarify, and I will have you then clarify: I think last week there was a hearing on legislation in Springfield that said if someone is overdosing and you're with that person and if you call 9-1-1 that you know the person was overdosing should be charged with drug possession.

A: Again, I think that's absolutely insane. I think it's absolutely insane. I mean, fundamentally, if you're not the person that is somehow sticking the needle in the person's arm or you're not somehow determined to be directly responsible for their episode of using, then I don't feel there's any way that you could be held responsible for that. And not to mention the fact that it's a heck of a way to convince people when they're with somebody that looks like they're have an overdose to not call 9-1-1 and just kind of pack up their stuff and walk away and leave the person to die.

Moderator: Mr. Jackson. Thank you for your testimony. Appreciate your coming.

Pam Rodriguez

President TASC, Inc. (Treatment Alternatives for Safe Communities)

(Oral testimony only.)

Rodriguez: Thank you. First of all, in answer to Senator Hunter's question about early on, what happens when this commission submits its report and goes away? What I would like to say to you is that from our perspective as support to this commission, TASC is very committed to doing follow-up implementation, tracking of policy changes, etc., because as we know, even some very-well-intended changes could have some unintended consequences. So part of our commitment to this process is to continue the work past the conclusion of the commission.

I'm actually here, not just as the president of TASC today, but to talk to you as a member of the Illinois Juvenile Justice Commission and as a member of the National Coordinating Council for the Office of

Juvenile Justice and Delinquency Prevention. OJJDP funds much of the juvenile justice work in Illinois and a condition of their funding has, for many years, been that the juvenile justice system in Illinois has to address issues of disproportionality. And so, what I wanted to do today was share with you some of the stuff that's going on in the juvenile justice system with regard to disproportionality so that as we think about making plans for recommendations from this commission, we have some models that we can look at right here in our own state.

The juvenile justice system responses to DMC in Illinois can be categorized, in my view, by four main approaches: changing policies and practices; providing expanded and comprehensive services; community education and engagements; and, through conditions of funding.

In changing policies and practices: In Peoria, the DMC work focuses on student/teacher conflict in schools. That seems to be concentrated in minority communities. By changing zero tolerance policies in the school, but still ensuring public safety, minority use of missions to detention have been reduced. In the adult system, this might translate to changes in the school zone laws, perhaps limiting the law to application during school days when children are present. While the original intent of enhanced penalties was commendable, the unintended consequence of the law has been to disproportionately penalize minority communities where churches, public housing, and schools are densely clustered.

To guard against repeating such unintended consequences, we recommend requiring that a racial impact note be prepared whenever a new drug law is proposed. The newly-formed Sentencing Policy Committee meeting, I believe, today could make a racial impact note a routine part of any analysis that they do with regard to making recommendations affecting sentencing policy in the State of Illinois.

Another category of intervention: the juvenile justice system is providing expanded and comprehensive services. In poor minority communities, law enforcement is often the first response to adolescent and adult drug use. That's not the usual case in better-resourced and often white communities, where education, treatment, and counseling are often alternatives turned to first. It is well understood that access to substance abuse prevention and treatment, as well as employment services, will reduce drug use, increase self-sufficiency, and reduce crime. In every location where juvenile DMC efforts are happening, throughout Illinois, increased access to these kinds of services is central to the strategy. Those services are provided to youth as a diversion strategy, as well as a justice intervention strategy.

So for us in the adult system, ensuring access to services, treatment, and employment-related services at every point in the criminal justice system process is cheaper than incarceration and more effective in reducing drug use and crime, as well as stopping the revolving door of addiction, crime, and incarceration. This can't be done alone—just changing practices and increasing services; you also need to increase community engagement and participation in this process and these changes.

So in the south suburbs of Chicago and Cook County, home to some of the poorest communities in the country and perhaps the largest single courtroom dealing with juveniles in the country, twenty or more communities are organized to address DMC throughout that region. The community was engaged to collect data about the problem of disproportionality. They were educated about strategies in addition to arrest and incarceration as a means to increase public safety. And they were mobilized to advocate for more services to prevent involvement in the justice system.

Police, mayors, schools, community leaders all work closely with the courts to ensure fair and effective processes. Changing police and justice system practices requires community support and participation. We're all aware that communities are concerned with their safety. Any strategy that would change policing practices or other criminal justice alternatives must include community input and community support.

Today there is recognition that 95 percent of people who are sent to prison return to communities. To stop that cycle requires more than a law enforcement response. Based on an advisory referendum in Cook County two years ago, the public voted overwhelmingly in favor of treatment on demand in lieu of criminal justice system response to addiction. So the public is ready for changes in practices and policies related to dealing with drug crimes in their community.

Finally, another very effective way of dealing with disproportionality is to include it as a requirement in funding. The federal funding for juvenile justice has a requirement that states address and remediate DMC. If states do nothing, the federal government withholds 20 percent of that funding. DHS here in Illinois has also made the same requirement of other initiatives that they fund in the juvenile system: juvenile redeploy has to address issues related to DMC; juvenile detention alternatives programming deals with DMC; and other programs like that funded by DHS.

This strategy could certainly be employed in the adult system, whether it's related to the new adult redeploy initiative that is being planned and implemented as we speak, or existing funds supporting probation, parole, treatment services, and employment support. They all target adults in the justice system and funding could include a requirement that people report on track and address the issues of disproportionality as a measure of performance in those programs.

There's evidence in the juvenile system of a willingness to address the issue. We can and must do so in the adult system as well. And many of the same strategies can be employed here: change laws, policies and practices; increase service access; engage communities in solving the problem; and make it a condition of funding of the courts, corrections, and community-based services.

Thank you.

Question & Answer

Luque-Rosales: Pam, thank you so much for your statement. You started out with changing the laws. Which ones?

A: Actually, they've changed policies in Peoria. They have not changed any laws in the State of Illinois with regard to DMC.

Luque-Rosales: Is there any particular laws that you see problematic, that increase DMC in Illinois?

A: One of the things that we're doing more research on and that we're going to report on at a different hearing and so I'd be a little bit premature to talk about it right now, has to do with the school zones and enhanced penalties in school zones, etc. Not at churches, bus stops, nursing homes, things like that. So we will give you some analysis, some data, at the next hearing.

Luque-Rosales: I know that one of the thing that you and I have discussed in increased funding for juvenile programs. Specifically in Cook County, we were talking about having a program involving a drug court. Can you give us any comments regarding programs like that.

A: All of the research with regard to community corrections, early intervention and treatment—but not just treatment interventions; early interventions in the justice system—indicate that if you divert people as soon as possible from the justice system, most do not come back. I know in the adult system, the state attorney's program in Cook County has like a 90 percent completion rate and about 85 percent of those folks are not arrested for drug crimes again three years out. So it's very effective. And other community corrections research indicates the same thing, that

early diversion of first-time and young offenders is very effective in preventing further penetration in the justice system.

Froelich: You said that treatment is both less expensive and more effective in reducing drug violations than incarceration. Could you expand on that a little bit—the costs, the relative costs that we're dealing with there?

A: I can talk about the relative costs. It ranges. You can get very expensive treatment and you can spend very little for treatment, but the average cost for publically-funded treatment in the State of Illinois for people who are diverted from the justice system is around \$5,000. The average cost of a year in prison in Illinois is about \$23,000. The impact on recidivism of treatment and diversion is much more positive than is the recidivism rate as it relates to incarceration. Fifty percent or more people recidivate when they're released from prison, and the numbers are less than that when you get treatment and employment support in the community.

Froelich: And when you're looking at outcomes from treatment, do you see a big difference as far as how the person got into treatment; in other words, whether the person said, You know, I know I have a problem and I'm going to voluntarily enter treatment; or whether the judge says, Treatment is what I'm sentencing you to as a condition of probation?

A: Yes. Length of stay in treatment is positively associated with positive outcomes. People who are mandated by the court tend to stay in treatment longer and, therefore, have a better opportunity to get benefits from the treatment that they're provided. The big difference ... I think the real value of the criminal justice referral to treatment is that people tend to be compliant longer and, therefore, give treatment the opportunity to really engage the individual and work on the individual's motivation. Ultimately, the person has to internalize some of that and achieve recovery and sustainable recovery on their own, but the justice system enables a whole team of folks to keep them there long enough for treatment to do its work. And so, outcomes for people who are mandated to treatment are very positive.

Froelich: It sounds like you're saying something that would sound counter-intuitive to people who aren't professionals in the treatment area, that you get a better outcome when people ... they're reluctant to go in initially; they only went in because of that nudge from the judge, as opposed to people that say, Well, I've hit bottom, I realized my life is a mess, and so I'm coming to you for help.

A: There is a perspective that suggests that the individual has to hit bottom. That isn't always the case. And somebody said earlier, most people don't just wake up one day and say, I think I'm going to try a little treatment today. And even if they do, if it gets a little hard for them, they're more likely to walk out as a self-referral than is a person who's referred by the court who will have a consequence for them if they decide to leave prematurely. And that gives, again, the person and the treatment program time to work together in order to really enhance the outcome and the commitment to recovery.

Froelich: One more question from me. You suggested what we need is a racial impact note when, say, there are legislative changes proposed to drug laws. How would that work? How would you see that and who would do it? Would it be ...

A: I would suggest probably someone like the Criminal Justice Information Authority might do that. They could do some analyses. When it has been entertained in one or two other states, the strategy is simply to do an analysis of what the anticipated impact on minority communities might be of a particular change in a drug law. It does not suggest that for matters of public safety that you would decide not to do it because it had a disproportionate impact. It would just be that

you would be entertaining more information with regard to making decisions about any particular change in drug policy. If public safety is the overriding concern, then public safety is the overriding concern and the legislature would make decisions accordingly. But it would be doing so with more information available to it than simply a proposal that came to them from a constituency group or something like that.

Reboletti: You and I have had numerous discussions about treatment, and you and I both agree that treatment works. And I think part of it is one, you intervene with somebody; part of it has to be them being ready for treatment. That's part of it. And then trying to determine as a prosecutor, for instance, we're the first person, I would say, to tell people 'no.' Because families have tried to intervene and they're not being responsive to the families, whoever is part of their family. Sometimes we have to be the first line to say 'no,' and here's what your alternatives are, and here's your opportunities for treatment. But sometimes you have to have the hammer on the other side, too. That when people start thinking about straying that you have prison over here.

Let me speak for the people I used to work with; many of them are still down the street – is that people still look for an opportunity to give somebody the chance to show that they can succeed if they choose treatment. Because you have to want to be in treatment first. Is that a fair assessment—not everybody takes to treatment because we mandate it and that means they're going to be successful at it?

A: If your question is, do they have to want treatment, what I would say is, I think in drug courts, TASC, and others, people volunteer—quote/unquote “volunteer”—in the justice system. They are given the opportunity to say 'no' and to select a prison sentence instead, and some people do that; they make a calculated judgment as to where they want to spend their time. Do they want to spend it in DOC for 62 days or even 180, or do they want to be under the surveillance of probation ...

Reboletti: I've talked about that because some of these folks know that math, what I call the DOC math, where they look at two years of probation or four years or five years of being on your probation with an opportunity to get that conviction off the record versus going to Statesville for 75 days now, which is what we changed the law to be, to process back out. I think that's part of it.

What levels of success do you see in TASC throughout the state as far as people who are placed under TASC who successfully complete TASC probation? What do you see statewide?

A: When a person comes to TASC and substance abuse treatment and you compare that person to someone who is referred by the courts or the criminal justice system without TASC, our clients do twice as good as other clients. So other clients referred to treatment complete it, across the state, numbers, averaged out throughout the entire population, about 35 percent of the time. And ours complete about 65 percent of the time. Arrests for our folks over two years are reduced by 72 percent. As you can see, some fail and some continue to get arrested, but about two-thirds of the folks do very, very well.

Reboletti: Where do you see the most success at? Besides the terms of probation, is it the level of treatment? I know, obviously, treatment can be 14 days, 28 days, 90 days, six months, you name it, depending on how hard-core the addiction is. Where do you see the most success at? Is there a certain drug? Is there a certain age group? I guess I did put you on the spot.

A: And I'm not sure I can answer that. It's individual. It's varied. It depends on the quality of services available in communities. It depends on whether or not people get a job after they enter recovery and whether they can get a job. There are a lot of criteria, and I honestly would just be telling a story, as opposed to really relying on data to answer that. I'm sorry.

Reboletti: What are the numbers of people who complete TASC successfully statewide? I know they're different. I know there's five years, there's two years, at the beginning Do you see different levels of success based on the amount of probationary time—where people satisfactorily terminate their sentence and at the end sometimes they're able to vacate that conviction? Do you have those numbers?

A: I don't have them right now, but I could get them.

Reboletti: If you could get those, I'd appreciate it.

Neal: I'm a former assistant state's attorney here in Will County and I've always been curious as to what works. The one question I always want answered is what works. You did kind of spark just something, while I have you here, when you were talking about there's a broad range in the cost of drug treatment programs. Is there any study that you're aware of that shows that the expensive private programs work better?

A: I don't have evidence that says they work better.

Vazquez-Rowland: I have a question. Can you describe for me the landscape for the juvenile system in terms of available services to the community, specifically the disproportionate community before they have to come to a justice program? Are there any programs out there that a family can go to that they can finance out of their own pocket, assuming they don't have health insurance and things like that, or private capital? Is there a continuum that is available for the juvenile population that helps achieve what you achieve through the re-entry programs or ...?

A: It is not as well-developed or as well-funded at all. The numbers of youth in the justice system or the numbers of youth in the juvenile justice system are proportionately smaller than that in the adult system. And there are examples of very good programs and more comprehensive systems of intervention, but it is not available statewide either before they get involved in the justice system and definitely not in leaving the Department of Juvenile Justice on re-entry. There is almost nothing at this point in time that DJJ has to rely on in the community.

In the work that the Juvenile Justice Commission supports and in the work that's going on with juvenile re-employ ... Those communities that have funding to do these services have build very creative and very locally-responsive types of programming. So, for example, what works in the southern 20 counties of Illinois is not like what is going to work in Peoria or what's going to work in Joliet or Winnebago County or something like that. And so the nice thing about that funding is that it enables counties and communities to develop and fill gaps in services in those various communities. What happens right now is that a lot of youth are served in the child welfare system through the CCBYS programs and other kinds of foster care, etc. And that tends to be where adolescent services are provided most.

Vazquez-Rowland: Yeah. So basically if you're not in a foster care system or in a re-entry juvenile justice program, it's very difficult for an individual family on their own to seek help?

A: There are not a lot of adolescent treatment programs out there. There are counselors that you can find, but those are all individually identified and sought out.

Solomon: I have some questions. One is that, who's more likely to get services, faster services or be seen and taken into a program: a person who's referred from court or a person who's a STEP referral?

A: I tend to think it depends on who's paying for the services. If it's a program that has both individual, let's say, insurance pay as well as county funding, state funding, and court funding, there's often capacity in one funding stream and not in another. So if you are referred by the court and there is public funding available in that program, you'll probably get in line just like everybody else—first come, first served—for those publically-funded beds. If you are being referred to a program where the court pays for services, you may have access and jump to the head of the line, because there's a funding stream attached to you. But, honestly, it tends to be driven by funding and capacity in a program.

Solomon: So if you don't have money, you are more likely to wait longer to get services and some say that you are more likely to relapse, if you will.

A: That you haven't even stopped using yet until you went to the program; so yes, absolutely. If you are relying on public funding, you'll be waiting in line.

Solomon: So the person woke up this morning desiring, I want to straighten out my life – and tries to call and get services, changes are there will be a waiting list of what length of time to ...

A: Really good news would be if you could get in within two weeks. That would be really good news. Far more likely, three months.

Solomon: The other question that I have, because I heard implied that people who are court-mandated, they are more likely to be successful in treatment programs because they have the force of the law there's a whole network of people saying, You need to finish this. And on the plus side for people who are not court-involved and do not have those services, they are more likely to not successfully complete the program. Can you talk a little about the Recovery Coach Program, because I think TASC worked with the Department of Children and Family Services. Can you talk a little about that program and how that model may be helpful for the population?

A: The program that Dr. Solomon is referring to is funded by the federal government and DCFS, and it works with parents who have lost custody of their children because of substance abuse. It may be that they delivered a substance-exposed infant, and/or more of their children were taken temporarily away from them while the individual agrees to work and participate in substance-abuse treatment. The TASC part of that program is to work with the parents on getting into and completing substance abuse treatment and then work with the Child Welfare Agency to reunify and stabilize a family post-treatment and into recovery in order to sustain that family and keep the kids at home and not have to move them permanently into foster care, etc.

We're involved with those families for at least two years, sometimes three or four, depending on how many stops and starts people have in their treatment process. It is proven to be more effective than current practice in the Department of Children and Family Services with regard to reunification, etc. It has saved the state on an average of about a million dollars a year that it's been operating; and that counts the cost of the service delivery, so it's not only cost-neutral, but it actually has been demonstrated to save money.

Solomon: (Audio inaudible). Do you think that we can also save the Department of Corrections some funding?

A: Absolutely. Yes. In that case, it is an earlier intervention. It improves family outcomes so that not only are the parents in recovery, but then they're better prepared to raise their children and not have their children follow in the same footsteps. As you know, many of these families have a number of kids, and so while we may get involved because of one substance-exposed infant, our

goal, ultimately, is to bring as many of those kids back into the family as possible. That doesn't always happen, because some of them are older. But that is a part of it, as well. So anything that looks like earlier intervention, whether it's in the juvenile justice system or in the school system or in the child welfare system with families, to prevent people from progressing in their addiction and then finding themselves at the deepest, most costly end of our state-funded system, is helpful.

Boyd: I was just curious, when you talked about the juvenile redeploy. When the counties or the jurisdictions participate in...when they sought to enhance or divert more individuals, did they choose the same individuals that could have been diverted by current criteria for like drug courts or whatnot, or did they look beyond that group for people who would not otherwise been appropriately placed in the current diversion programs? And if they did so, can you give us a few of the ideas that various counties might have used to increase the number of people that could be diverted by using juvenile redeploy.

A: Very good question. They had to pick people who they normally would have sent to Department of Juvenile Justice. And so the statute itself defines who they have to reach out to. So it's not just providing more services to the same kids who would have gotten funding and gotten diverted anyway in a county. In the juvenile justice system, there's a group of young people who go to the Department of Juvenile Justice for court evaluations; and so, that was, in the statute, the group of people who was particularly targeted for diversion and for services in the community. And, honestly, once they identify the target populations, and those are all basically non-violent young people ... Once they target those folks, the array of services goes everywhere from developing entrepreneurial businesses in Macon County to implementing evidence-based practices like multi-systemic family therapy and functional family therapy and aggression replacement therapy services in East St. Louis and southern Illinois.

So, again, they pick evidence-based practices and they're all very locally specific. But the group of people targeted were people who would otherwise have gone to the Department of Juvenile Justice, and that was by statute. And that will ultimately be in adult redeploy the same requirement, that people who would otherwise have gone to the Department of Corrections were it not for these redeploy services.

And in my comments, by suggesting that people integrate this issue of disproportionality into their planning and their thinking about that, just simply tracking it and identifying the proportion of people who should be served and the racial and ethnic breakdown, and then seeing who actual gets services and tracking that racial and ethnic breakdown, and see if there's a difference. And then who succeeds in those services. And determine whether or not there's a difference who's being helped and who's struggling in programs. And if any of that shows disproportionately negative impact on minority communities, then the programming should address that and the selection of target populations should tend to look at whether or not they can address that even at the front door, so that they're attracting more folks rather than allowing, again, that disproportionality. And just keep ratcheting up each step of the system.

Moderator: Thank you very much for you testimony.

Closing by Senator Hunter.

Testimony of John Carnevale, PhD
Public Hearing on Drug-Law Related Disproportionate Minority Contact
with the Criminal Justice System

March 8, 2010

Opening and Introduction

Good morning. Thank you for giving me the opportunity to testify before you today on this vital issue. My name is John Carnevale. I am currently the President and CEO of Carnevale Associates, LLC and former Director of the Office of Planning, Budget, and Evaluation in the White House Office of National Drug Control Policy (ONDCP). I have been involved in national policy, program, and budget formulation related to national drug control policy in a career spanning three administrations. I worked directly for four "drug czars" during my tenure at ONDCP. This year marks my 25th year working on national and international drug policy as it pertains to illicit drug use and illegal or underage use of alcohol and tobacco. I am currently working under contract to TASC to provide policy guidance and support on the Illinois Disproportionate Justice Impact Study.

Each year, the ONDCP publishes or reports on its goals and objectives for the national drug control strategy. There are five principal ingredients of a national drug control strategy: prevention; treatment; domestic law enforcement targeting drug trafficking organizations that distribute drugs to our nation's citizens; interdiction programs designed to stop drugs from entering the United States; and programs designed to assist source or producer nations in cultivating or manufacturing illicit drugs.

One other ingredient that is often overlooked in our nation's drug policy are the drug laws that are in place designed to discourage or eliminate availability or access to illicit drugs. One famous example of such a law is the penalty for using crack cocaine. I recall the congressional debate in the 1980s that was supported by most everyone in congress that a tough law targeting crack cocaine was essential to curbing demand. Well, as we now know, that law had the serious and profound unintended consequence of targeting African Americans males and locking them up at extraordinarily higher rates than for other populations, particularly white Americans.

Scope of the Problem

Of course, disproportionate sentencing is not just confined to cocaine. As this Commission is learning from its investigation into the application of drug laws, disproportionate sentencing is a serious phenomenon for all illicit drugs. Other witnesses here today will discuss this point in much more detail. I would like to focus my remarks on national trends. To be clear, it is my view that times are now changing and quickly. We now have a national drug czar who has declared the "war on drugs" over; simply put, it makes no sense to declare a war on our own citizens. Instead, national drug policy is now adopting a public health approach. We no longer talk about being tough on crime. I am now hearing our nation's leaders discussing drug policy in terms of being "smart on crime" which translates into bringing fairness and equity into the application of our drug laws, treating addicts rather than incarcerating them, and stopping drug use before it starts. There is also interest in reviewing and hopefully reforming our national policies that have contributed to making this nation a leader in rates of worldwide incarceration. I will talk more about this later in my remarks.

As someone still involved in national and international drug policy, I want to thank this Commission for its leadership in holding public hearings on the disproportionate minority contact with the criminal justice system associated with this state's drug laws. As Commission members are aware, other states have investigated disproportionate sentencing related to their drug laws. For instance, a study in Maryland by the Justice Policy Institute found that in 2003, African Americans represented 28 percent of the total state population, yet were 68 percent of all drug arrests and 90 percent of all incarcerated for drug offenses. Wisconsin has found similar disparities, where in Milwaukee, 300 per 100,000 prison admissions for drug offenses were African Americans and only 10 per 100,000 were Whites. These state studies have received national attention, where Washington is finally starting to take action. The Commission's work is vital to promoting understanding of disproportionate sentencing. Once completed, I expect your findings will be similar to those in other states and will become a clarion call for reform of and a more equitable application of national and state-level drug laws.

Crack/Powder Cocaine

Simply put, in terms of national drug control policy, racially disproportionate sentencing is best exemplified by the fact that mandatory minimums are overly punitive for crack cocaine. At the time laws to combat cocaine were developed, it was widely believed that crack was more addictive than powder cocaine and its trade was associated with higher rates of violence. These assumptions were never found to be true or false. Although these laws had good intentions and were meant to punish high-level cocaine traffickers, they are now referred to as the “100-to-1 sentencing disparity.” Federal law dictates that an individual found guilty of possession of five grams of crack cocaine (between 10 and 50 ^S _Λ doses) receives a mandatory five-year sentence. However, to receive the same sentence for powder cocaine, an offender must be found guilty of being in possession of 500 grams (2,500 to 5,000 doses). Thus, instead of protecting the public from violent drug traffickers, these laws incarcerated thousands of low-level dealers and users.

This disproportionate effect has long been known. On the federal level, a 2000 report by the Drug Policy Litigation Project found that African Americans made up 35 percent of those arrested for drug possession, 55 percent convicted, and 74 percent incarcerated. Further, a 2000 report by the U.S. Sentencing Commission found that in 1998, the more punitive the penalty, the larger the racial disparity. African Americans made up 30 percent of cases associated with five-year mandatory minimums, but 40 percent of cases subject to ten year minimums, 60 percent subject to 20 year mandatory minimums, and 80 percent of cases subject to a mandatory life sentence. Bear in mind that African Americans do not have substantially higher rates of illicit drug use compared to whites. According to the most recent National Survey on Drug Use and Health, 10.3 percent of African Americans 18 and older used illicit drugs in the past thirty days compared to 8.1 percent of whites. The disproportionate racial differences in sentencing for drug offenses has led to much distrust of the criminal justice system among minorities, where there is no “justice” system but a “biased” system.

The Current National Landscape

The drug policy rhetoric is now emphasizing treatment. The national policy debate is now more centered on how to divert drug addicts from incarceration to treatment. Drug courts are a prime example of how jurisdictions are seeking alternatives to traditional incarceration for drug

offenses that have left their court systems overburdened and their prisons and jails overcrowded. There are also noticeable differences in the number of individuals that are being sentenced for drug offenses. Since 1980, there has been an 1100 percent increase in the number of individuals incarcerated for drug offenses. However, between 1999 and 2005, there was only been a 1 percent increase, suggesting a major slowdown in incarcerations of this type. The Sentencing Project reports that there has even been a decline in the number of African Americans sentenced for drug offenses in state prisons. From 1999 to 2005, the number of African Americans sentenced for drug offenses in state prisons decreased 21.6 percent, while the number of whites incarcerated increased 42.6 percent. It is believed that this shift has resulted from a legal emphasis on methamphetamine, a drug more associated with use among whites. Despite the fact the number of African American incarcerations is decreasing, the disparities resulting from the 1980s and 1990s were so vast that they are still alarming today.

The current ONDCP drug czar ^h ~~has~~ stated that federal mandatory minimums for drug offenses (primarily crack cocaine) have had a disproportionate racial impact that “undermines the trust in the criminal justice system.” This realization is why one of their action steps is to “Foster Equitable Drug Sentencing.” I expect his National Drug Control Strategy to be released later this month to commit to working with Congress to promote equity for cocaine-related crimes while retaining the tools needed by law enforcement to protect our communities from the violence associated with drug trafficking. These proposed actions imply that it is time to fix the mistakes of the past and use laws to protect the public from those the laws were originally intended to punish.

Prison Reform

On the legislative side, Senator Jim Webb introduced the National Criminal Justice Commission Act of 2009. This bi-partisan bill intends to “establish an organized and proactive approach to studying and advancing programs and policies that promote public safety, while overhauling those practices that are found to be fundamentally flawed.” The bill passed the Senate Judiciary Committee on January 21, 2010 and is now being reviewed for final vote on the Senate floor. On January 28, 2010, Senator Webb cosponsored the “Fair Sentencing Act” to eliminate the sentencing disparities between crack and powder cocaine. This Act proposes increased penalties for violent drug trafficking and removal of mandatory minimums for crack cocaine possession.

Webb stated that these actions are a matter of “fundamental fairness.” He was also quoted in a 2008 Join Together article about drug policy as saying “The time has come to stop locking up people for mere possession and use of marijuana ... Drug addiction is not in and of itself a criminal act. It is a medical condition, indeed a disease, just as alcoholism is, and we don’t lock up people for being alcoholics.” So it seems that, finally, Washington is willing to take action to right the wrongs of the past.

Summary

To summarize what is happening with our nation’s national drug control policy, there is growing evidence that significant changes will be proposed by the nation’s drug czar. Racial disparities among sentencing for drug offenses have long been documented at the federal and state levels. While there has been a historical reluctance to rectify problems with disproportionate sentencing, the situation now seems to be changing. As was previously stated, drug use and misuse is being rightfully thought of as more of a health issue rather than a legal issue. The current administration in Washington, DC has made it clear that it intends to propose a national drug control strategy that allocates unprecedented funding for treatment and reinvigorates and expands drug courts and other criminal justice innovations designed to treat drug addicted individuals. At the same time, it intends to be smart on crime by proposing programs to strengthen law enforcement efforts to rid our streets of the drug dealers who infect our communities.

The latest rhetoric coming out of Washington, DC presents an opportunity for this Commission’s work to eventually lead a national effort to bring fairness and equity to the nature and extent of our drug laws and their equitable application.

Is Prison Culture is Killing Our Children?

By: A. Scott Washington, J.D.

Twenty-five Chicago Public School students have been murdered this year. As shocking as that number is, there is another figure that's very disturbing as well: the number of students who have been shot in a 16-month period is enough to fill an elementary school - 508 students, according to school officials (Reported by CBS 2 Chief Correspondent Jay Levine).

A factor that cannot be ignored when discussing urban violence is over reliance on incarceration in this country. To ignore the causal connection between contemporary criminal justice policy and the rise in youthful urban violence is turning a blind-eye to factors that are rotting the foundation of contemporary urban society.

There are nearly 2.4 million persons incarcerated in state or federal prisons in this country. Half of those persons are African Americans. Obviously, identifiable behavior patterns are associated with African Americans being disproportionately incarcerated. On the other hand, the intersection of public policy and poverty has collided with the forces of history, race, economic theory and human vulnerability to create a social pathology like none seen before in this country. As a result, "prison culture" is now firmly embedded in inner city America.

Following 35 years of tough on crime policy, the affect of generational incarceration and recidivism has created an environment ripe for this new subculture within the inner city. This subculture is fueled by the extremely violent and brutal customs and values that were born within the concrete walls of this country's correctional institutions.

Prison culture, which is now abundantly present in the inner city, is directly connected to the extreme and pervasive violence we are experiencing in the African American community. These conditions grow exponentially, parallel to the prison population in this country. This phenomenon is cyclical and, as the statistics suggest, actually increase violent criminal activity in both the inner city and suburban communities. Therefore, community safety is significantly compromised by the tough on crime mentality associated with contemporary criminal justice policy; particularly, this country's drug control efforts that have become the fundamental premise of our national crime policy.

Our children have become the collateral damage of contemporary American criminal justice policy. For many inner city residents and African American children in particular, criminal justice policy and poverty have contributed to a blurring of cultural, as well as social values. During the welfare reform era we spoke about children raising children. What prison culture has resulted in today is children raising themselves. A significant proportion of our inner city youth today are the children of prisoners that inhabit this nation's prisons. When these children reach adolescence they are typically raising themselves in the bowels of contemporary urban America.

What criminal justice policy and poverty have perpetuated in this country is the social disenfranchisement of African American children. The forces of public policy, poverty, and human vulnerability have conspired to create this new and peculiar universe within the inner city. The apparent evolving nature of this new inner city subculture and its intersection with poverty and social pathology has created an environment ripe for youthful urban violence to flourish.

The questions that must be raised here are: 1) what are we going to do with the massive numbers of unskilled, undereducated, and often, recalcitrant felons that will be returning to our communities over

the next several decades (98% of the 2.4 million prisoners in this country will be released)? 2) When will policy be implemented to deal with the flaws and inadequacies in current drug control policy? 3) When are our lawmakers going to present concrete solutions for problems that cannot be conquered by locking up millions of Americans?

*A. Scott Washington, J.D. is a formerly incarcerated person who has earned a Bachelors Degree in Urban Studies with an emphasis on contemporary urban problems and a Juris Doctor Degree from the University Of Dayton School Of Law. Also, he is Assistant Professor of Criminal and Social Justice at the University of St. Francis in Joliet, Illinois and is the Executive Coordinator of the **LAW AND JUSTICE SUMMIT** scheduled for March 19 and 20, 2010 at the University of St. Francis in Joliet, Illinois. The Law and Justice Summit explores Restorative Justice in an attempt to illustrate its usefulness in contemporary criminal justice.*

Disproportionate Justice Impact Study Commission

Testimony

Pamela F. Rodriguez, TASC

2/22/10

Good morning. I am Pam Rodriguez, President of TASC, and also a member of the Illinois Juvenile Justice Commission and the national Office of Juvenile Justice and Delinquency Prevention Coordinating Council. OJJDP funds juvenile justice in IL and a condition of that award is that the state address issues related to Disproportionate Minority Contact (DMC). Today I am here to let you know about what is going on throughout the state with regard to DMC in the juvenile justice system and to highlight its relevance to our work in the adult system.

The Juvenile Justice System responses to DMC in Illinois can be categorized by four main approaches: changing policies and practices, providing expanded and comprehensive services, community education and engagement, and through conditions of funding.

Changing policies and practices: In Peoria, the DMC work focuses on student-teacher conflict in schools that seems to be concentrated in minority communities. By changing zero tolerance policies in the school, but still ensuring school safety, minority youth admissions to detention have been reduced. *In the adult system, this might translate to changes in the school zone laws—perhaps limiting the law to application during school days and when children are present. While the original intent of enhanced penalties was commendable, the unintended consequence of these laws has been to disproportionately penalize minority communities where churches, public housing, and schools are densely clustered. To guard against repeating such unintended consequences, we recommend requiring that a racial impact note be prepared whenever a new drug law is proposed. The newly formed Sentencing Policy Committee could make such an analysis a routine element in their deliberations.*

Providing expanded and comprehensive services: In poor and minority communities, law enforcement is often the first response to adolescent and adult drug use. That is not the usual case in better resourced and often white communities, where education, treatment and counseling are often alternatives. It is well-understood that access to substance abuse prevention and treatment, as well as employment services will reduce drug use, increase self-sufficiency, and reduce crime. In every location where juvenile DMC efforts are happening, increased access to these services is central to the strategy. Those services are provided to youth as a diversion strategy as well as a justice intervention strategy. *Ensuring access to services, treatment and employment related, at every point in the criminal justice process, is cheaper than incarceration, and reduces drug use and crime, as well as stopping the revolving door of addiction, crime and incarceration.*

Increasing Community Engagement: In the south suburbs of Chicago, home to some of the poorest communities in the country, and perhaps the largest single courtroom dealing with juveniles, 20 or more communities are organized to address DMC throughout the region. The community was engaged to collect data about the problem, educated about strategies in addition to arrest and incarceration as a

means to increase public safety, and mobilized to advocate for more services to prevent involvement in the justice. Police, mayors, schools, community leaders work closely with the courts to ensure fair and effective processes. *Changing police and justice system practices requires community support and participation. We are all aware that communities are concerned with their safety. **Any strategy that would change policing practices or other criminal justice alternatives must include community input, and community support.** Today, there is recognition that 95% of people who are sent to prison return to communities. To stop that cycle requires more than a law enforcement response. Based on an advisory referendum in Cook County 2 years ago, the public voted overwhelmingly in favor of treatment on demand, in lieu of a criminal justice system response to addiction.*

As a condition of funding: The federal funding for juvenile justice has a requirement that states address and remediate DMC. If states do nothing, their funding allocation is reduced by 20%. DHS has also made that same requirement of other initiatives they fund related to juvenile justice: Juvenile Redeploy, JDAI, and the like. ***This strategy could certainly be employed in the adult system, whether it is related to the new Adult Redeploy initiative, or existing funds supporting probation, parole, treatment services, and employment support—all targeting adults in the justice system.***

There is evidence in the juvenile system of a willingness to address the issue. We can and must do so in the adult system as well. And many of the same strategies can be employed here: change laws, policies and practices of the justice system; increase service access; engage communities in solving the problem; and make it a condition of future funding of the courts, corrections, and community based services.

Thank you.

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Disproportionate Justice Impact Study Commission
April 12, 2010
Public Hearing: East St. Louis, IL

Commission Members in Attendance:

Sen. Mattie Hunter (co-chair)
Bruce Banks, on behalf of Jonathon E. Monken, Acting Director of Illinois State Police
Terry Solomon, Executive Director Illinois African American Family Coalition
Timothy Evans, Chief Judge, Circuit Court of Cook County

Sen. Hunter: Welcome and overview of background and goals of DJIS Commission.

WITNESSES:

Judge Milton S. Wharton
Circuit Court Judge, St. Clair County
(Written testimony attached.)

Question & Answer

Hunter: I would like a copy of your testimony, because you have so much data and so much quality information here that my mind is just burning all over the place right now. I think that your testimony is going to allow us—me and the representative from the General Assembly—to come up with a number of things; for example, the data bank for serious STD's. And I need you to give me some more information. How ...

Wharton: We know in our Department of Corrections, for instance, that ... Even in our county ... Let me tell you this. Okay, let me go back. We many times aren't aware of the health risk that comes with incarcerating, particularly lots of young men together in a tight space. We had a serious outbreak of staph in our local gym. Now, luckily, it was contained. Can you imagine the effect that poor people who have been in this environment that are released out in the community, what they could have done as far as spreading something like this? In a situation where people are poor and they don't have the access many times to medical care. We know that many AIDS patients are in isolation in penitentiaries, but we also know that, really I think there's no requirement, that there be testing of individuals that are in the Department of Corrections like we have with people who are initially convicted of crimes—you have to do the DNA database. But probably the people who have the STD's are more dangerous probably than most of those who are in the DNA database.

So, again, I want to be careful to be as plain as I can about this. I'm not advocating a posting of everyone in the Department of Corrections who has an STD or who has AIDS. But I do believe that's unfair. I have a daughter. I have to entertain the possibility, God forbid, that she's going to be sexually active one day. I would hate for her to go out there and have to play Russian roulette. I would hate for any woman, recognizing the plain statistics that we have about it being a major killer of our women, 25 to 44; that's stunning. And nothing's being done about it. That you ought to be able to call if you suspect someone has been released from the Department of Corrections might have it. Or if you just want to be safe, you ought to be able to call and find out, not who else is on the list, but whether or not this person is on the list. I think that would go a long toward establishing maybe some degree of accountability and give women some safety.

Hunter: Yeah. I don't know how that's going to be done, because seems like if someone is able to call to inquire about an individual, that's in violation, I know, of federal confidentiality and also HIPAA. So somebody is going to have to figure out how that can happen.

Wharton: What I'm saying is I believe that if it reaches a point where AIDS transmission is a major killer of white females, 25 to 44, you're going to do something.

Hunter: That's right. I agree. You're right. You're right. And that's something that I need to take a look at and I'll have staff when I get back to research it.

Greene: I'm Marilyn Green, regional health officer, St. Clair County's one of my counties. I have about 44 counties. Thanks so much for allowing me to speak at this time. I was listening to the judge talk about that and some of the issues that you brought up about HIPAA and the confidentiality. It's certainly something that I would like to take back to Dr. Arnold, who is my director, and my assistant director, in reference to what he's talking about here, because we do have a problem with STD's throughout the State of Illinois. So I'm really listening to that, and I took notes; and I'm going to move that, you know, you're going to be doing what you can and I can do what I can for it. That's something that's an issue as far as when they do re-enter out back into the community, we need to know. But it still steps on the HIPAA and the confidentiality and all that.

Hunter: What you might want to do, Miss Green, is to not only talk to Professor Arnold about it, but get together with your governmental relations people to see if they can draft legislation. If you all cannot figure out a way of getting around the HIPAA laws in order to address this issue, then let me know and we'll, from a legislative perspective, will work with you to get it done. And I'll be more than happy to carry that legislation once it's crafted. But we have to make sure that we get around the HIPAA laws, because that's the first thing that my colleagues, once it's presented ... that's the first issue.

Hunter: Another thing, Judge, is I'm interested in ... You mentioned the Illinois Supreme Court should establish a forfeiture statute and all, and I don't know how that works.

Wharton: The Forfeiture statute, as I indicated, is included in the Illinois compile of statutes. It basically sets out the parameters and the guidelines for forfeitures. Basically, you have law enforcement which is given the authority, of course, to make arrests; but with the Forfeiture Law, they're also given the authority to forfeit property that's related to any criminal activity. And I'll tell you this as an aside: I spoke to one of our top—top—law enforcement officials. They informed me that there was a place in our area here where there was high drug activity. Also, as a result of that, there was high police presence. And he said, We can stop this problem, we can stop it, by publicizing the fact that law enforcement is concentrating on this place. Then people will go other places.

The response of the law enforcement officer was, No, we don't want to do that. He said, We want to get their stuff; we want to get their property. So you have a situation where on the one hand, you're allowed to make arrests; and on the other hand, you are allowed to have the benefit of getting possession of the property—seized, which I think is a conflict of interests.

Hunter: So you're saying that there's more value in some property as a whole? Is that why they want to seize the property?

Wharton: Well, I'll leave you to put the interpretation on it. I'm just saying ... Well, they're more interested in getting the going to arrest than they are in arrest. Because they basically could have publicized the fact that they were going to concentrate on this place, and then the people

would not have been at the place. You would have ran them away. If that's the purpose of law enforcement is to keep things safe.

Hunter: But if law enforcement is more interested in ...

Wharton: I not saying all law enforcement now; some people.

Hunter: I know, I know, I know. But what I'm saying is, if during an arrest, law enforcement is more interested in seizing property versus arresting individuals, there has to be a reason why they're more interested in seizing property. So because of the financial value of it; what is it?

Wharton: Well, the money. The money is seized. Any cash that they may have is usually related to activity, and you can have large amounts. Weapons are seized. Vehicles are seized. All these items that an individual has, if he's caught with drugs on him, chances are they might be subject to seizure. So it's pretty lucrative.

Solomon: Let me just ask you a question if I may. Let's just say it's a million dollars in this budget, if you will. And would that money go directly to the police, to addiction? I mean, after the trial, would that money, that million dollars, go directly to the police?

Wharton: First of all, it probably would be seized as evidence. After everything is over, the state's attorney of the county is then basically authorized to make distributions of that seized property. But it's set out there in the statute as to what the parameters of this are. But, again, I think that we should be focusing on what the money should be used for, not necessarily what's happening. We need things for young people in our community.

Solomon: Right. So how much money could we possibly be talking about that comes into this ... I'm sure there's a fund. So how much money ... Can you just give me an example of that amount in St. Clair County? I'm sure you can't tell me.

Wharton: I can't say because ...

Solomon: Well, I thought you may know.

Wharton: No, that's Cook County.

Evans: Cook County would be a different situation. But what he describes is a statewide problem. And I believe the judge's point is not so much how much money is being confiscated, but the fact that it's not going into rehabilitation purposes. But instead it's going for law enforcement. And I think he has a very good point. Irrespective of what the total value is, it should go first to help the very people who are the subject of the arrest, to stop the recidivism that he's talking about.

Solomon: I know, but it would help me as a legislator if I knew what kind of monies are we talking about.

Wharton: I'll tell you what I'll do.

Hunter: Because, see, if I were to put some legislation out there to possibly divert some of these funds, I would have a big, huge fight on my hands. And so I want to know, if I decide to do something like this, I want to know what I'm getting ready to get into.

Wharton: I'll tell you what I'll do. I'll make a personal commitment to contact our state's attorney to see if he maintains statistics in St. Clair County.

I don't know if this will be any indication of how much money is involved, because this is a different thing – we're comparing apples and oranges – but one time I got curious. You know, you ... To show the extent of exposure to ... let's just say, your car is being searched ... On days when we have general traffic dockets in St. Clair County, it startles you to walk into the first floor and see all these black people. And we're only 20 percent of the county here. And you have to consider that each one of these stops was a potential opportunity for someone to be searched.

I got curious about bond monies, how much money actually comes into the country as far as bonds. And I checked and I seen that actually over a period of years, millions of dollars have come in. Now this is primarily as a result of drug issues. And what's interesting to me: of these millions of dollars over the years, none of it goes back to the defendant. He puts the money up; his lawyer is going to get a portion; the rest of it's going to go for court costs and fees. While the money is there, it amounts to a no-interest loan to the county. And as I said earlier, this money is then deposited into banks, away from the community where it was taken, and they use that as collateral to increase the wealth of their community.

So if you can look and say, well, millions of dollars just in bond money as a result of primarily drug offenses have been over the years accumulated by the county, then that might have been an indication of how much is being taken as far as forfeitures.

Hunter: Okay. Thank you. Bruce, do you have any idea what kind of dollars we're talking about?

Banks: I don't know. By statute its restricted, and you do have money for rehabilitation, but I can tell you the federal Byrne funding, which generally goes to help fund drug enforcement, is way down. So those monies are key, relative to how we enforce a drug in respective communities, which, in fact, state police run the task force that cover most of the state.

Hunter: So the law enforcement has really incorporated these dollars into their budget ...

Banks: It's mandatory that any drug seizure money goes for drug enforcement. So, for instance, we can't buy regular patrol-function cars out of that 1505 drug seizure money. It has to go towards drug enforcement only.

Hunter: Is that the name of fund: 1505?

Banks: I can get that information for you. And the total seizure amount, I will get it.

Solomon: I just have a question: Is this federal lobbying that we would have to change if we want it directed to, let's say, prevention, education, drug ...

Banks: But keep in mind, sometimes you have DEA, ATF, FBI—they also have a seizure mechanism that is probably set by statute how they get their money, but you also have state collecting ... you have the state

...

Wharton: Another tragedy dealing with that issue of bond money, as I find ... It would be humorous if it wasn't so tragic. A large percentage of people charged with drug offenses, who post a bond and deposit it, are ultimately having their cases dismissed. Now these people are afraid to come up and ask for their money back, because they feel that if they do that, charges will be reinstated against them. So the monies hang there for a period of time. And then by statute, they revert to the general accounting fund. So then they become funds that are used

generally for whatever purpose. Funds that could be directed back toward the community that's in need for those programs that I talked about.

Hunter: So have individuals gone back? Do you know of cases where individuals have gone back to claim their bond monies, and the additional charge actually ...

Wharton: No, I don't know of anything like that. It's just a fear. It's just a misplaced fear that that's going to happen.

Hunter: One last piece regarding the IDOC. You were saying how such a large industry, and you were talking about service contracts ... Can you give me an idea of what kind of service contracts are you referring to?

Wharton: Yeah. We have any number of schools in East St. Louis that are closed down, as a result of the decline in population. These schools all have cafeterias. We have an institution, the Southwest Illinois Correctional Facility. I can see no reason why we can't have—we know our women can cook—a contract to supply food to the county jail, to that facility there. We have women who can sew. I can't see why we can't have, with the assistance of our colleges that might manage a program initially, opportunities for us to make those jumpsuits for people in the penitentiary. And I'm sure that if we looked hard enough, there are many other opportunities that could be used to employ ex-convicts to make sure that they don't come back here and again wind up unemployed and back in the drug business and then further statistics.

Hunter: Thank you. Are there any further questions from the panel.

Evans: I want to share in congratulating you. What you presented to us was very important information. I was interested in the approach that you said the military used when they decided to provide some additional help to minority students in their system—as you said, I think, properly so. They didn't view it as a black problem; they viewed it as a larger military problem. Do you know what they did to bring these young people up to the standards? Was it just tutors? Or what did they do?

Wharton: Well, let me say one thing. In my remarks concerning the gap, I mentioned that all the high schools in St. Clair County, except for one, have at least 60 percent of the kids scoring below average. The one school where they're above average is Mascoutah High School, which is a military-supervised high school.

Evans: What's the name of it again?

Wharton: Mascoutah.

Hunter: Can you spell that?

Wharton: M-A-S-C-O-U-T-A-H, Mascoutah. Let me start at this, probably from the back of it. When the recommendations came out and when they found that they had been successful, the military said, we believe that there are certain components of this that can be adopted by public education. Public education said, well, wait a minute, we don't have the benefit that you have. You have discipline, which is a major problem within our inner-city schools. The military said, well, don't dismiss us; think about this. The majority of the parents of the children that are in our military schools would qualify for food stamps if they were living off-base. And like inner-city children, our kids move around. One of the first things they did was to standardize all education to guarantee that if you were at Scott Air Force Base here in St. Clair County and you got

transferred to San Antonio, Texas, your children would encounter the exact same materials, the exact same lesson plan—so there'd be no break in their education.

Further, the military decided that a child's education is paramount. So if you're faced with a deployment somewhere and there's a determination that this would adversely affect the child's education, you don't go; you stay here. They made it the most important thing in a service person's life, in that if you—I don't care what you're doing—if there's a notice that you should come immediately to school, your commanding officer is expected to let you go, because nothing is more important than that.

They came up with a 12-point plan and I can send you, Judge Evans, the actual components of the 12-point plan that led to the success that you were seeing. But, overall, I think the biggest one was to communicate that this is not a black problem; this is a military issue where everyone is expected to have an input—which is what I believe we have to do with our situation with the gap in education. We have to make sure that everyone knows that this is affecting our gross national product; this is affecting our region as far as desirability for people moving in; and also it's affecting many high schools.

Can you believe that we have Southern Illinois University, our premier educational facility in this region, and right at its doorstep is Edwardsville High School, and the majority of the black kids at Edwardsville High School in the last-reported Priority State Achievement Exam fell below average? And this is not a poor community, necessarily. This is a stable community. Most black people that have been there have been there forever. And yet we still have that disparity as far as achievement between black and whites.

I was so happy to read about the two kids in England—two black kids, age 8. They're the youngest kids to pass the Cambridge Mathematics Examination. And they are going to high school at age 8. This is phenomenal. They have them listed as Britain's brainiest children. The parents said these kids are not geniuses. They said all black kids are capable of achieving and achieving greatly. And they pointed to Tiger Woods and the Williams sisters. He said that this is something that is nurtured. He said, yes, our kids are the youngest to pass this examination, but we've been giving them our own examinations as long as they could read and write. So look that up on the web; it's a phenomenal story about these two black kids, age 8—are going to high school. They're twins. And they're the brainiest kids listed in Great Britain.

So, we have the capability. Our children have the capability. We have many issues. The issues are complex. We can't just treat the drug problem as an isolated thing. It's a part of poverty. It's a part of the legislative situation. It's a part of the court system. And all of these things have to be taken into account. And that's why I think the university, with its broad spectrum of resources, could be an ideal source just, you know ... analyze this thing. Let's look at all of these components that are going into this: the educational situation, the poverty situation, the drug situation, the situation in prison, the health situation; and come up with something that's strategic, like the military plan with the goals and time tables. And if we can convince the public that this is something that interests everyone, not just African Americans, then maybe we'll have the same success that the military had.

Evans: At your job, you've been dealing with these matters for 33 years, and I am impressed by your therapeutic approach to problem-solving, rather than the punishment end of it. What is your experience in terms of how much rehabilitation the average young person might need to prevent that person from recidivating? For example, they have therapeutic programs, 30 days, six weeks—what's your experience? What's your timeframe that that's helping young people who appear before you.

Wharton: There's an interesting book; it's called *Freakonomics*. In *Freakonomics* there's a chapter on, if drug dealers make so much money, why do they steal that with their mommas. There was a research assistant from Northwestern University who studied the drug industry on the street. He went around and he followed dealers at all levels. And his assessment was that most of these kids are making less than what they'd make by working at McDonald's; and they're taking all these risks. So, obviously, as far as the possibility of someone being rehabilitated, actually out there being clean, it has to be being able to get a job, being able to get a paycheck and not dependent upon trying to sell drugs on the side.

Like I said, a majority of the kids that I get in court, they're 11th grade dropouts. And what they're doing is they say, Well, I'm not doing anything in school; I'll drop out. I'm staying at home. I can sell a little drugs on the side, get spending money, maybe even get a car. These are the people that wind up in my court. Luckily, we have things like TASC, where if we can get them back on track, they can avoid a felony conviction.

There's a glitch, though, and I'd like for you legislators to take this up. I can have an individual come before me who's charged with residential burglary, which is non-probationable. I have to send them to the penitentiary. If the individual has a verifiable drug issue, I can send them to election of treatment, which allows him to go, instead of being sent to the Department of Corrections, and be treated for the drug addiction. And if he successfully completes that, I can dismiss charges against him.

If an individual comes before me, charged with a minor felony—and there's no such thing as a minor felony, because all employers see is felony conviction. Let's just say a shoplifting. I have no power to give this person a type of supervision or probation, which will ultimately result in this person not being sentenced to some form of probation and also having a felony conviction.

So drug people do encounter some benefits within the system. So I can have two people: one a drug user and one a non-drug user, charged with residential burglary. The non-drug user, I'll have to send to the Department of Corrections. The drug user, I can allow to elect treatment and avoid going to the Department of Corrections and also avoid a felony conviction. This is unfair because we have many kids that come up who have made mistakes, first-time offenders who, if given an opportunity, would prove that they're aware of their mistake and they're not going to make another mistake again. But I can't avoid sentencing them to some form of probation, with the felony conviction. That's not fair.

Hunter: Thank you very much. We appreciate your ... Do we know how to reach you? Because I'm thinking, Judge, that ... Judge Evans, I know you all have a number of issues that you're overseeing and I'm thinking that maybe we could work together with you to help put together maybe a pilot to help us address those issues in Cook County. And maybe you could do a pilot down here.

Wharton: I think I got off-track and I know other people want to talk, but ...

Hunter: I'm sorry that I'm spending so much time, but ...

Wharton: I'd like for you to pay close attention to the comments of someone who I have a great deal of respect for, who has worked in the rehabilitation program of drug offenders as to what works. I would defer, respectfully, to Mr. Young here, who has a great deal of experience. And I have called upon him to come into court and to give me insight to various offenders I have questions about. I've tried to come up with creative programs. Instead of sending people to the Department of Corrections, I have sentenced them to periodic imprisonment and ordered them to seek a job. And once you get the job, if you show that you're working and you're really honest

about it, I might suspend the rest of the sentence rather than send them to the Department of Corrections.

And I found something: We have reached a point where our young people don't have two assets that we had as a result of coming up in a segregated time. And I hope that no one misinterprets what I said. Number one, we had older people who taught us how to look for a job. You look for a job just like you go to work. You get up in the morning, you take your lunch, you go out, and you hunt all day until you find something. You never tell anyone that you can't do something. If they ask you can you do it, you say yeah and you hope that you can learn before they get rid of you.

And here's what I want to be cautious about, that no one misinterprets this. The people that we grew up under were primarily Southern people from Mississippi that came north. In the South, their life depended upon knowing white folks, knowing who was going to hurt you and who was going to help you. And many times the situation, as far as on the surface presented, was totally different than the possibility. Many times the person that might let that 'N' word slide out was the very person that might help you. And the person that on the surface was a good Christian person, was the person that was going to hurt you.

Our kids have been taught to have a general approach to whites. So I see it every day where you might have a minor traffic stop. As a result of the attitudes of our kids, it becomes something very major. I see that difficulty in them searching for jobs, when they come back and tell me the things that they have encountered and how I would have handled it, based on the training that I received from the older people. But, unfortunately, we don't have that anymore. We don't have that guidance.

Now can we have a program that might try to instill those little things that are so important? I can look at things that happened in my life; and because of the training of these older people, I knew how to handle it. I knew immediately. I knew the first time I went to work in a domestic capacity that they were going to leave money out to test me. I knew that. They told me that that was going to happen. So I knew to leave it alone. There's just so many things that we were taught that these kids don't have the benefit of. Thank you very much.

Maurice Young

Adult Supervisor, TASC

(Oral Q & A only.)

Question & Answer

Hunter: Mr. Young, can you identify yourself and tell us who you are and where you're from and what you do, please.

Young: My name is Maurice Young. I'm adult supervisor at TASC, Inc. in Bellville; it's Area 7 in TASC. I'm a resident of East St. Louis. I was born and raised here. I'm also a former TASC client.

Hunter: Good. Thank you. So can you share with us some of your insights and experiences as to what Judge Wharton was referring to that can help us take your testimony and help the system?

Young: I don't believe that I can speak as eloquently as Judge Wharton, and maybe he was too kind ... but this glowing endorsement that he gave me, but I've had opportunity to work with Judge Wharton for the last 13 years.

Hunter: What do you do for TASC?

Young: I'm the adult supervisor at TASC. That means that we manage five counties down in this area. And we do assessments and case management for the criminal justice system. I basically deal with people that's on probation and commit probationable offences, pre-sentence and post-sentence. I supervise a staff of four, which isn't enough, but we do the best we can. And what Judge Wharton was basically talking about is how the court is overloaded and, disproportionately, we have East St. Louis people in the court system. I can identify exactly what he's talking about. We are understaffed, too, at TASC. We deal with a real large case load in this area.

Hunter: So other than the staffing shortage, are there any recommendations you'd like to share with us in terms of how to improve the system and as related to case management assessments or pre- and post-sentencing. Anything that you think that the law prohibits you all from doing. Do you think we can change the law that would help make not only your life easier, but help get services to the offenders?

Young: I was struck when he was talking about the appropriation of the forfeiture funds, because I see that as a major problem impeding the lesson of recidivism in East St. Louis. You know, he was talking about how there is no recreation activities, for example, and no afterschool programs. Recently, even the Jackie Joyner Kersee Center in East St. Louis was closed due to mismanagement and no funding.

And really what I see ... and I was thinking about a specific example that he might have overlooked. One of the examples happened maybe a week ago. A guy in East St. Louis was sentenced to life in prison by the federal authorities. But when he was initially arrested, they confiscated almost \$400,000 in cash. And he had all of this property in East St. Louis. All that money went back into law enforcement. But what if some of that money had went back to the community? I mean, that was enough money to fund Jackie Joyner Kersee Center for a year. Even a portion of that money. Even a portion of that money would have helped.

My basic concern now is ... See, I'm a TASC employee. I'm a former TASC client. I have a passion about what I do because I'm a product of TASC. I really believe in the concept. I mean, if you believe what you've see, you know it works. Because I'm sitting here today, and I haven't had a case in 15 years. Thank God. And I haven't used any drugs in 16 years.

Hunter: Congratulations.

Evans: What changed you, Mr. Young?

Young: What changed me is one day I came to TASC. And eventually they got me in residential treatment. I had a suspended seven-year sentence, the last case that I had, trying to sell drugs. Eventually, what happened ... And my felonies are still on my record because they can't ... the deliveries stay on there. But what they did is they sent me to Chicago to residential treatment. It was much easier, and treatment was more available. You almost could get treatment-on-demand at that time in 1994. And we had access to treatment facilities all over the state; TASC did, anyway. So what they did, they sent me to Chicago. This is exactly what happened.

Hunter: What agency were you entering?

Young: I was at HRDI on 111 and State. All men's treatment center. I was there three months. But each month a TASC representative came to see me. Now I think this is important, this is an important thing. You see, now is a staffing problem at TASC, even in my area. I mean, just that contact and reporting to the criminal justice system down in this area where I came from. These people came to see me; asking if I had any problems. They managed my case while I was in Chicago.

Hunter: It was court-mandated; that's why TASC had to come and visit, because ... Is it still the same way now?

Rodriguez: Talk about the services that you got—sort of answering Judge Evans' question about how long the services and what kind of services people need in order to get in recovery like you have.

Young: What happened was they managed my case when I was in Chicago. I came back home, and once I came back home, I had a case manager in Bellville at that time. He was a guy that was in recovery, so he emphasized me going to meetings. That was the first thing I started doing. I went to a lot of meetings. He also encouraged me to get back in school. I already had a degree; but when I looked at myself and when I looked at my record, I saw that I was going to have to find me something else to do that I could do with these felonies on my record. So I never wanted to be a substance-abuse counselor; that's not something that I did because ... something I wanted to do. This was almost one of the few options that I had to make some legal money, because I had made a decision that I really wasn't good at selling drugs. So I needed to find me something else to do. That's just the way it is.

So this is one of the areas that he helped me with in case management. He helped me to find a school to get into. And I went back to school. I had me another degree in Addiction Counseling. Also he referred me to this first doctor that I had when I got out of treatment. I hadn't had a physical examination probably in 20 years. So I got a physical examination. I re-enrolled in school. He was encouraging me to do all of these things.

Hunter: How long were you in treatment there?

Young: At TASC?

Hunter: AT HRDI.

Young: Three months.

Hunter: See, back then, like in the '80s, you could stay in treatment for literally a whole year.

Young: Well, actually, I was mandated for six months to a year, but I'm a fast learner, you know what I mean?

Hunter: At the end of the '90s, they came up with a whole lot of different rules that came out. They knocked it down to six months, or it's always been three months. So now it's like, what, 30 days? Twenty eight days now. So that's one of the problems, because the clients that come through treatment today, they're hard-core, high-risk, got all kind of problems and it takes more than the normal 28 days for treatment. They need a good year to really get their act together, wholeistically, you know. And that's the problem today with treatment. One of the problems today with treatment.

Can you begin to wrap up? I'm sorry.

Young: I'm through.

Evans: I have one question for Brother Young. Having been a beneficiary of TASC's treatment of you, what do you do now, given the limited resources. And Senator just indicated that now you don't have access to three months, but just 28 days. What seems to work for the people you come in contact with now?

Young: Well, that's not necessarily true in this area. I mean, we have access to residential treatment facilities that will keep a client 90 days. Sometimes over the 90 days, up to 120 days. But what they do is ... We have an agreement. We advocate for our clients. TASC case managers advocate for their clients. We staff these cases with the treatment providers, and if we decide that the client needs 'x' amount of days, more than 30 days in treatment, usually we can get that done. Usually we can get that done with the cooperation of the treatment provider.

That's the other thing that I was saying. We have a large case load. I think that more money should be put into treatment, in access to treatment. And case management services. We really had a budget crisis last year. I'll give you an example. Last year in June I was laid off for two weeks. First time I've ever been laid off at TASC during my time there. And we had to administratively close in my area probably 170 clients—administratively close clients that were getting services from TASC, in the middle of them receiving services. I think that was real criminal. I wasn't so much concerned about me missing work for two weeks because I really ain't got no money problems, but ...

Hunter: You're one of the few people who don't have money problems.

Young: I mean, you know, I work for the right people. I mean, TASC is okay, but I really know who I work for. For real. But that was criminal to me. And then when we came back to work, we had to resume with a laid-off ... I mean, I lost a case manager. And we're trying to re-engage all of these clients and getting them back. And we're just now recovering from that, really.

Evans: With case management, you have the clients do drops and things of that kind?

Young: Yes. If that's appropriate. I mean, in case management, we refer clients to ancillary services. Not only treatment. We're not just concerned with substance abuse treatment. I think TASC is moving more now towards social work. Probably 30 or 40 percent of our clients have mental health problems. So we refer them to mental health treatment. Sometimes they need housing. And all these things are components of case management. Whatever they need, that's what we try to address.

Evans: And that's what we need to hear, these specifics. The day-to-day routine that you describe, I believe our colleagues will be able to benefit and help get more resources when they hear the kind of testimony that you and our colleagues from TASC can provide. The general term 'case management,' you just broke it down for us. That helps. It may seem routine to you, but it really does help for our legislators to know exactly what works.

Hunter: It also helps for all of you in the room who work for TASC. Anytime you have budget cuts, I know I see Pam and George down in Springfield on a regular basis, but it really helps because I see that some of you all are from Edwardsville, Belleville, Easton, East Alton. It would help if you all could touch bases with the state rep and the state senator in the areas in which you work and tell them the impact that the budget cuts are having on your programs and you personally.

Rodriguez: Every month, every year, we do battle.

Hunter: Well, you need to keep on doing that. Well, thank you, Mr. Young, for your testimony.

Craig Cooper
Director of Operations, TASC

Linda Van Dyke
Chief Probation Officer, Madison County

(Oral testimony only.)

Hunter: Can you all talk to us about what you do, what you see, and what it is that you think we need to know.

Craig Cooper: I'm Craig Cooper, director of operations for TASC for the areas outside of Cook Country, so all of the 101 areas outside of Cook. The operational component of that for service delivery for clients involved in the criminal justice system is part of my oversight. I'm a native from the area. I've been in the Metro East area since the age of 3; growing up here; being part of the communities; raised with family, friends, and from the grassroots up.

My earliest involvement with the criminal justice system after going through college was being a correctional officer in Madison County. The first question I got, obviously from my mother, who was most concerned about my career path and choice and concern for in a work environment was, What was that experience like? What was that first day like? And I can remember that earliest conversation being my experience to express to her was the individuals that were incarcerated in that facility weren't like me. It was a proportion that I had never seen in any school, any grade school, high school, college. And the question that was really in my mind was, why? It was surprising to her to hear that because she was not subjected to that either. No one else in the family had had that kind of an inside-out kind of report. So that was the very beginnings, and that was many years ago, in the '80s.

Since then, for my involvement with coming to work with tASC, in and out of many, many incarcerated settings, most jail settings throughout the state and the county lock-ups, as well as state institutions—that was also part of my experience.

That same experience occurred over and over again. It didn't really matter which community, which county, which lock-up facility, or which court system. It was a stark contrast in terms of the proportion of what should be the general population—what I would be experienced to with percentage of white individuals compared to minority, African American individuals. It was just off-the-chart different. You walk into court hearings, you see the folks coming in, shackled for their court appearances; and they were virtually all minority, coming from a community that should not have been. Instead of ten folks coming, eight being of the minority, African American, there should have only been one—in terms of the demographics for that area. And I've experienced that today, even looking at who from this Metro East area, it's roughly double what you should expect as far as TASC involvement. Roughly double from what the general population should be for that minority make-up coming through the court system.

And I want to just express, in terms of keeping in mind, that those are also the individuals that have legal representation that gets them to the TASC door. All those individuals that are not as fortunate enough to have that, we don't even get to see. They're the ones that actually get sent

on to the Department of Corrections or other forms of disposition. So even at that rate, we're seeing roughly doubling effective of what the general population should see in terms of demographics between minority population and a white population in this area.

Hunter: (too muted to hear clearly)

Linda Van Dyke: My name is Linda Van Dyke. I'm a chief probation officer for Madison County. I am head of our East Alton satellite office, where we have both adult and juvenile officers—although a lot less than we used to have before the budget cuts. I've been in this business 30 years, and I'm a previous president of the Illinois Probation and Court Services Association. We had a lovely convention in your city some years ago when I was still president.

But ... I just have a few observations, building off of what Judge Wharton said. I think the problem of disproportionate minority participation in the community justice system starts a whole lot earlier than we think of. When we get children into our probation office, whether they're 13 or 14 years old, it doesn't make any difference. The problems that have been developing in that young life developed a long time ago, and didn't just start the day before. And they're not going to be solved overnight.

Many of our young people, many of our adults, it becomes obvious that a lot of the foundational pieces of growing up that you and I counted on, that Judge Wharton counted on, did not happen. And it's hard to go back and fill in the gaps later. Family expectation, community expectation, makes a big, big difference in children's lives. If you expect that your child is going to do well in school and can do well in school, more often than not the child does do well in school. We have a lot of families where no one in the extended family has ever graduated from high school, so there's no model for those children to understand what having a high school education means, let alone understanding that in our world today, a high school education is barely going to get you employment. Just wanted to say that as a basic thing.

In terms of services being available to us to work with probationers, every year it's a new legislative budget year, as we all know. It goes up; it goes down; it goes up; it goes down. Last year was an absolute nightmare. We had no TASC people; then we did have TASC people. Then they had to open everybody's case all over again. Those who had a drug problem were now months behind in getting the services that they needed months ago. Human services got cut. We had people who could go to the mental health clinic and get services and medication; and then we had nowhere to send them for services and medication, unless they had a medical card.

We have people who have drug problems, plus they have mental illness problems, so the budget process for all of us that work in community corrections, work in related services such as TASC or the mental health services—every year it's a question mark for us because we never know what's going to come. We don't know if we're going to have money for services. We don't know if we're going to be able to send children to services. So every year is a lobbying effort on all our parts.

I think one of you mentioned earlier that the Department of Corrections has about a billion dollar budget. Last year, probation had a \$52 million budget. Now you think what you can do with \$52 million in the community, and we already know that it's cheaper to work with people in the community unless they're violent – compared to the billion dollars for the Department of Corrections where they're ...

Question & Answer

Hunter: Let me stop you right now. That's the problem with my colleagues in Springfield. They think that the solution is locking people up and throwing away the key. But I have to say, I know that I am a

legislator, but I've also been a provider of services. And it's been so difficult for me to explain to my colleagues and get them to understand that prevention works, community services work. But because so many people ... You know, this is an institution ... Corrections is an institution; it's a business, and a lot of folks are making a whole lot of money off of the offender—just what the judge indicated earlier. And so I just think that as providers, you all need to speak louder. I know you've been complaining, but you need to speak louder.

Van Dyke: We lobby every year. Every year I've been in this business, we go to Springfield. We talk to our legislators. We testify at the Financial Committee. It is a problem, people understanding that everyone that everyone who goes to prison comes back out, unless they're a heinous murderer or something like that. But everybody else comes back out.

I want to say quickly that in the juvenile area, the redeploy money is a godsend. It's a wonderful program. Redeploy provides money to keep kids from going to DoC. It gives them enough resources to get whatever services that child needs: mental health, substance abuse treatment, you name it, psychological services. That can be provided. So Redeploy is really a good program; it's a godsend. We use things like drug courts. Excellent programs. It mentors the people through the process of drug treatment. Those kinds of things. And certainly appreciate your support this year on probations budget.

Lastly, I'd like to say that, in terms of the drug enforcement in the community, society ... Apparently a lot of people still think you bug these people, you get the drug dealers off the street, you send them to prison. But those of us who have been watching this for the last 30/40 years see that that is just a circular thing. There's always another drug dealer to replace the other one. And it always does seem like these little, low-level people are the ones that get arrested. Any amount of substance is a Class 4 felony at least. Next step is maybe misdemeanor cannabis. Other things, it's automatically a felony, no matter what the amount it.

And the complaints come from the community: There's drug activity in the community at certain houses. They complain to the police. Multi-agency task forces sweep in. Yeah, they arrest a lot of people and they prosecute a lot of people, but they don't get at the root of the problem, which the higher-level dealers ... It just perpetuates a system. But those young men, God bless them, that may be destined for being in and out of prison their entire lives, they're visible. So you've got the visible compared to the non-visible. The high-level dealers are not so visible, and so the young men get caught up in this.

Hunter: Thank you for your testimony. Are there any questions from ...

Solomon: What about if we could reclassify some of the drugs, if we made some of the non-felony, take them off of the Class 4 felony list?

Van Dyke: I think it's a valid thing to look at, because once they get a Class 4, it's a felony. The Class 4 is still a felony. And it becomes difficult for them to go forward from there. Also, some of your things like retail theft. If you have a prior misdemeanor retail theft and you go and shoplift a pack of cigarettes, that's a second subsequent, it's automatic a felony. So some of these things are pretty severe, I think, in terms of the proportionality to what was committed.

Evans: Let me ask you, Cooper and Miss Van Dyke, in your experiences ... I know you've encountered police officers and you've encountered prosecutors. There's something called prosecutorial discretion and there's something about which communities become the subject of the taskforce police department. What's your experience with that? Have you ever inquired of the arresting officers or the prosecutorial people why they go after certain communities and not other communities?

Van Dyke: I think a lot of it is community complaint. If there are shots being fired in the neighborhood on a regular basis, the good people who are trying to live there and raise their kids and grandkids complain. And so it brings attention to that particular community.

Evans: One of the things that Judge Wharton alluded to was that there's very little relationship between the amount of use of drugs and the arrests for the amount of use. And that's what I'm getting at. How is it in your experience that you don't find more people who use it getting arrested, as opposed to those who are being arrested not being the biggest users?

Van Dyke: Some of the dealers do not use at all. They're making a few bucks. Kind of lost my train of thought there.

Cooper: I will add that at least some of the law enforcement in the area will talk about issues of targeted areas, a specific area, for its end result: to get the most arrests, get the most ... And really the approach isn't the same as like what I would look it or what folks in the human service end would look at in terms of getting at the root of the problem, getting at the fix. It's more as the public perception of number of arrests, number of folks that actually get convicted. So it goes hand-in-hand, but doesn't really solve the problem.

Evans: Well, in Cook County, for example, we have something called station adjustments. And what happens there is people from certain communities get called down to the station if their loved one has been brought in. The fear of God is placed on the one brought in. But those young people leave in the custody of their parents, and they get treatment. And in some other communities, they leave in the custody of the authorities and they get thrown into detention. I hope it doesn't happen down here. But I'm just curious, do you have station adjustment or whatever you might call it down here?

Van Dyke: Not nearly as much as we used to. I think some of that is a function of the philosophy of the prosecutor in that particular county. In our juvenile court here, very few kids get station adjusted anymore. The police department sends all the reports to the prosecutor, and the prosecutor decides how to proceed, whether informally or with an official juvenile petition. So I think that has something to do with it—philosophy.

Julie Chambers

Area Administrator, TASC

Anthony Gonzalez

Area Administrator, TASC

(Oral testimony only.)

Chambers: My name is Julie Chambers, and I've been working with TASC in St. Clair County for approximately 14 years. Started actually with an office in East St. Louis. And what I've observed over those 15 years is that although 80 percent of the population is white residents, probably at least over 50 percent of the population we're serving is African American, coming from the court services and probation. We haven't in St. Clair County worked on DMC issues prior to the past three years; really it focused more on youth. At that time it was disproportionate minority confinement, and we worked on tools to keep them out of detention. I think we made some strides with that, keeping them out of detention, yet probation was still something that usually would fall upon them.

Many of the services that these children have to receive are in the white communities, whether it's substance abuse ... We try and do open gym nights so the youth have access to recreational activities. They usually happen in white churches in white communities. There is a community that is a poor

community in St. Clair County. Large population of the residents are minorities. And it's an ordinance violation to walk on the street. Yet there's no sidewalks, which allows the police department to randomly stop anyone that they see fit that's walking down the street. You give them a reason to harass them really. That's not a violation that you would see in a white, affluent community.

Hunter: Who implemented such a policy like that? The police department?

Chambers: It's an ordinance violation. I don't know if that would be the police or the city. I would think the city.

Hunter: This is in East St. Louis?

Chambers: That Cahokia, which falls within St. Clair County. So outside of other things that have been said, those are just some of the things I wanted to add. And, one other thing, I do believe the vast majority of the clients we're seeing—I won't say all—it's a possession charge. Possession of a controlled substance. That's a mental health issue. That's not, to me, a criminal ... And looking at possession charges as felonies is something that I would see as unnecessary. And I also see the delivery charges—you know, if you have powder cocaine versus crack cocaine; there's a vast difference in the charges we see of people with delivery come in with crack cocaine over powder cocaine.

Evans: I'm interested in hearing what Mr. Gonzalez has to say. You and I've been speaking on behalf of some of the additional minority communities in this general area.

Gonzalez: My name is Tony Gonzalez, a TASC administrator for Area 9; cover 12 counties all together. Mom and Dad came here from Mexico. Two brothers came here from Mexico. First generation Mexican. When we were growing up, we couldn't eat in a local store; we had to eat on the sidewalk. When I went to grade school, I was one of two minorities. When I went to high school, I was one of four minorities. I've been working 36 years with kids and adults over the years. Started with Mr. Cooper at the detention home. Worked there. Twelve years as a juvenile probation officer. And 20 years with TASC.

When I was a probation officer, I had a very large caseload. It was the most troublesome caseload. My kids were always getting in trouble. I was always filing violation reports on them. This other officer had another caseload and she was always being honored as the best probation officer in our division. Then it came to light that my whole caseload was the projects. I had every black kid. And her caseload was like Edwardsville and Wood River. At that time, very influential neighborhoods. And it made me realize at that time how it just wasn't right. It's never been right in the United States. It was luckily when I was growing up I had a church that helped me through school, or I never would have gone to a college or never would have gone to a private school. I was first person in my family of seven brothers and one sister to graduate from high school. Everybody always had to quit and work to help the family. And luckily my nephews and nieces since then have gone on to college and graduated from college. And they all have good jobs now.

I was born and raised in Alton area. We have kind assimilated into the culture; however, other minorities haven't. They're still singled out. I still see it. Like Mr. Cooper said, double the amount of minorities in Madison County are black; and they're charged with the most crimes. I see it when they come in our office. I think the media has sold the black community a stereotype of themselves, which I find very offensive. I used to tell my kids, we have enough rappers, we have enough criminals, we have enough drug

dealers, but we don't have enough black lawyers, not enough black teachers, not enough black anything. And I would encourage them always to go to school and to complete school.

I think society as a whole has singled out the black community to sell them a stereotype of themselves, and it's just not right because it's not true. It's just not true. If my family can do it, anybody can do it. I'm honored to be here and to testify among you folks.

Evans: Let me ask you, Mr. Gonzalez and Miss Chambers, if you could change the system to try to avoid the disproportionality that this commission is charged with looking into, how would you change the system?

Gonzalez: I would definitely have more money and on the front end, with the juvenile system, offer them more services, offer parenting classes. We don't have family units anymore. And that's part of the problem. There are no more family units. There are no more jobs; that's another problem. We have lost the concept of family in the United States. Everybody takes care of themselves, where in the Mexican community, the family always helps one another. And we need to go back to that.

Evans: How about you, Miss Chambers?

Chambers: I would look at the drug laws and look how they affect different communities. Look at the possession charges that are Class 4 and higher, and how they're affecting poor communities. I would look at laws in general that ... I don't know if it's something that can happen statewide, but how can one city have an ordinance violation that prohibits you to walk on the street, and another community ... so that, you know, laws in Illinois should be consistent from city to city and town to town.

Hunter: What about looking at some of the cultural diversity training and racism training? What are your thoughts about that?

Gonzalez: I think we should have it.

Chambers: I think it should be offered to , maybe, law enforcement: the Illinois State Police, the local police, judges. Also looking at public defenders; if there's money to expand public defenders in the system, because if you're poor and you're black, you're going to have a public defender. And we talk about caseloads; their caseloads are unreal. And you're getting adequate service if you have a public defender in St. Clair; not in St. Clair now.

Gonzalez: I agree with that. The public defenders' caseloads are huge. And where somebody's working, they can go out and hire an attorney. You walk in and things can be settled in a few minutes. Where if you have a public defender, it can drag on and on. And you might not get quite the sweet deal you would get if you had a paid attorney.

George Williams
Director of Community Partnerships, TASC

(Oral testimony only.)

Williams: Just a couple of observations I want to make that speaks to the issue of impact. My name is George Williams, and I am vice president of community and government affairs for TASC. I had a couple of

observations kind of motivated by the judge's comments. When he talked about having some kind of system that could allow someone to be contacted if someone had contracted or was impacted by STD's, HIV and AIDS, it triggered something else in terms of the impact of the criminal justice system as I see it, particularly in Chicago. And the last couple of days since I've been down here in the Metro East area, I've been riding around East St. Louis, and just sitting in my car and watching and making observations. I think that the Department of Corrections and the criminal justice system has had the same type of impact on our community in that there is a permeation that exists at an acceptable level because of the influx of so many men and women coming back to the community that it has not become abnormal, to some extent. It is no longer abnormal for men and women to be in jail or prison; it's like a norm. And I think that that has had a psychological, a philosophical, and a sociological impact on the community—disproportionately, to see that as a norm: men and women coming back under those conditions.

And so as he spoke about that, I thought about that, because in conversations that I have every day in my community, they talk about jail and prisons. And it's not like it's a bad thing; it's like, well, you know, man – it's a good thing. That kind of And it's starting at the very young level. Sometimes I stand outside ... I sit not too far from a public school, and I watch the kids come past and I listen to the conversations sometimes. And they have conversations about jail: So and so just got out; or this business and that. And they talk about it in such a very normal way. And I think that that is a serious disproportionate impact. And it's starting there. And it's engrained. And so if it becomes normal and normalized, then they don't see themselves being on the other side of the law; they see themselves then engrained within their social structure. And I think that that's a serious impact, that that has as serious impact as someone coming back impacted. They come back impacted with that experience, and that impacts our community and affects our community, disproportionately.

And, you know, it raises a question for me as to at what point in time do a man and woman person stop serving time. They never stop serving time, because we are re-punished and re-punished by not having access to jobs and employment. And as a child ... When the judge talked about seeing the young white kids with their normal kinds of behavior and seeing the young black kids in the yellow and orange jackets ... It creates a psychological and a philosophical and a sociological impact when young men and women visualize themselves going to prisons and jails. And that becomes normal because they have these kinds of conversations. They see it in the music world, through the whole rappers going to jail for weapons charges and violence charges and shooting charges. So I think that the criminal justice system now is so embedded in our community that it is really being normalized. And it's very dangerous. And that for me has a very disproportionate impact as it relates to that.

And so as this commission thinks about this process, I think as you think about that being a normal condition, then that puts us in a very serious disadvantage, because it almost wipes out any thoughts of being anything else to some extent, get blurred by that reality of jail and prisons. And I have a serious ... I have quite a few nephews and all of them are going to jail and coming out of prison. They're either on their way in; they're either in; or they're on their way out. And I talk to one since I was here. He came up missing and we thought he was in jail. I was waiting for the collect call. Do you know what that is? He's in jail. And so he called and he's not in jail. He found his way back home. So that creates this condition. And it is a serious condition that I think we need to think about as we deliberate about how this could be impacted legislatively. But at the community level and at the judicial level as well, Judge. And at the state police level.

I was coming down to Springfield a couple of weeks ago. And I got stopped right outside of Bloomington. I was doing 55. And the guy came in behind me and followed me for about three or four miles, then he turned his lights and stuff on and he pulled me over. And he came to my car. I rolled my window down. And I'm not going to do the crazy stuff; I'm just going to sit here and be quiet and be responsive. He said, Can I see your ID, please? I handed him my ID. He said, Where you going? I said, I'm going to Springfield. He said, Why you going to Springfield? I said, Well, I'm going down there to do some work that I do to fight about the budget and so forth. He said, Well, what do you do? I said, Well, I work for TASC and also

I'm a registered lobbyist. And I handed him my lobbying ID. He looked at the ID and he said, Oh, all right, then go ahead on.

I thought, had I not done that, I would have been on the other side of that, gotten a ticket and so forth. And so he sat there and so forth and so ... That's another hole of disproportionate impact to some extent, so that whereas you are constantly barraged by the thoughts of jail and prison within your respective communities, stagnating the growth of the young folks and becoming normalized within the community to where it's just another way that you go through life. And you might make it out and you might be okay, and, if not, well so be it. And I hear those kinds of conversations all the time. So from that perspective, that disproportionality is very powerful and very dangerous. And I think as this commission thinks about the process, it would be a good thing to think about.

When the judge talked about the whole prison piece and the notification piece ... I used to be president of African American AIDS Network, and we looked at that. Now there's two ways that one can get tested – if these options haven't changed. One is through the confidentiality process and one is through the anonymous process. On the confidentiality, nurses went out and knocked on doors and went and told someone or looked for someone. If the tests came back the way they was and so forth. I think that's a serious issue. I think we have to be very delicate in terms of how we respond to it, so that doesn't become another disproportionate thing and stigmatizing thing, as well as trying to respond to a public health issue and to concerns that we need to take a look at so that it can be balanced in terms of the response and equitable and somewhat dignified how that may be shaped out some extent. And so those were my observations.

And, Judge Evans, the book that Pam talked about earlier by Michelle Alexander, *The New Jim Crow* – I think lays a foundation, and she talks about the disproportionate impact of African Americans that's in the criminal justice system. She lays the foundation that's looking at the system from the state level, the federal level, the laws, the practices, the administrative process, and even some constitutional implications that allow for certain things to happen to convicted felons under the Constitution. But I think that everybody should take a look at that book because it can help you shape some ... lay some foundation in your deliberations and so forth. And so those are my comments.

Evans: I thank you very much for that. I know he's expecting me to ask him some questions. You certainly described a system that many of us have encountered, and I won't belabor that 'driving while black.' You were doing 55, you weren't speeding. But you got stopped anyway. And I imagine it wasn't because of the car you were driving; I suspect it was driving while black.

Williams: The guy looked me in my face as I passed him by. I mean, I looked at him; he looked me dead in my face as he pulled in behind me.

Evans: I won't belabor that. I think our committee has heard some testimony along that line. You touched upon something that's very interesting to me. You talked about the psychological syndrome that permeates throughout our community, about people seeing others come back from jail and thinking, well, that's the norm. A little over a year ago, we had a fellow who was elected President of the United States. And he looks a lot like some of the people you saw over this last weekend, Saturday and Sunday. He doesn't wear his pants below his behind, if I may put it that way. He wears a suit and a tie. He went to school; he got his education. He's on television every day, on the radio every day. Why is he not the role model? Why is it that our community residents embrace another image of the rapper or the hip-hop artist who's on radio or on television? Why aren't they embracing the Barack Obama image?

Williams: Yes, sir. That's a very good question. You know, it's not enough Barack Obamas that's in the respective communities, so the dress does not matter and carry on in that way. There was that book that was written years ago called *The Pedagogy of the Oppressed*. It internalized

oppression to some extent, how we began to internalize the images and the behaviors and the characteristics that become more popularized in the other ways. And for black men, in particular, that was not a very glorified way to be like, in suits and ties, to some extent. That wasn't necessarily my role model either when I came up—the person in suit and tie. It was the other guys. It was the guys that was riding around in the shiny cars and had the women and had the so-called other kinds of clothes, you know what I mean?

See, I came up under the Super Fly syndrome. You see what I'm saying? And that was a glorification kind of thing, having the lean and the white walls and so forth. But I think that that needs to start to be reinstitutionalized: the President Obama effect. I have discussions about this all the time. And I listen to how some men just turn that whole piece off: Oh, man, everybody can't be like that. You're right, everybody can't be like that. Stop saying that. Well, oh, man, you know, he's the exception. He may be an exception, but he can be the rule. So I think that if we work toward that, Judge, then we can maybe help to make that the acceptable reality and images with our respective communities as well.

Evans: I hope you won't become discouraged. I hope that you will continue to do just what you are trying to do. I think it is possible for people to see that there is another way. I'm not trying to pretend that discrimination doesn't exist; we know it does. Some people will be biased and it's difficult for cultural changes along those lines. But I agree with you that the educational model—that's the way to escape. That's the way one becomes a Barack Obama. Getting those opportunities. And I hope the work by this commission will enable us to not just deal with the bias end, the negative end, but also the positive end—getting resources for the colleagues who came to testify before us. That's something that breaks that cycle. I wish we could see people get the experience that Brother Young here got. They didn't throw him away. Somebody said this is a way for him to be a contributing member of society. I think he's a good role model. You're a good role model. And I heard what Brother Gonzalez said back there about his community. I think that has to be a part of this. We're not going to give up on these communities. I believe that we can aim toward Barack-ism.

Williams: Yes, sir. And normalize that. And, Mr. Banks, just for your knowledge: it wasn't the state police; it was a guy. If it was a police, he was in a local kind of a car. So it wasn't a state police; it was a local guy. And I was trying to figure out, what the hell is he out here anyway stopping me. He was in a local police car with a star and all on top of it. But it wasn't state police.

Banks: It is clear that you have some statistical data alone that there's a disproportionate amount of African Americans being stopped and searched versus their different counterparts. It is a problem. It's something that we need to address both internally and probably from the legislative perspective. It's a problem. We do our best in hiring. People have bias. Something was mentioned about the media portrayal of minorities, which actually kind of perpetuates that kind of bias type of policing. Although we do have a training program that has efforts to prohibit that from happening. But, as you know, we can't stop it 100 percent.

Hunter: We do have ... the black legislators, we do have legislation in place to conduct this study, and we've been collecting data through state police. And every two years they have to give us a report on stopping African Americans while driving black in Illinois. So that's just another case, and it's still going on. I don't know what the solutions are. We keep coming up with all this legislation and it seems as though it's not working.

Banks: It's education from both sides. Education of police officers and the public, to let them know what their rights are.

Hunter: The public knows, Bruce.

Banks: And it's not a matter of the stop; it's what occurs after the stop. It is the fact that it's not uncommon oftentimes for people to search an African American. You're more likely to be searched as an African American than you are as a white American. But the down side when it occurs is that it really finds less paraphernalia on the African American than they do on the white counterpart, relative to the stoppage.

Rodriguez: That's information that doesn't get out there. It's that piece that proves people wrong.

Banks: You're exactly right.

Rodriguez: It's knowing that piece because I'm wasting my effort and I'm looking in the wrong place. But it's closing the loop on that information because it breaks down some people's perceptions.

Banks: It's an accountability piece, too. I mean, make no mistake about it, it's going to occur unless we hold people accountable. The study in and of itself is nothing but a lead-in to it; it's not the solution. The solution is holding people accountable. That's what they have to do. You can't just put the study out there and say, What do you want to do with this information and the results. And then don't do anything for it. It's a lot to it.

Hunter: Thank you, George.

Solomon: One other thing, and I've said this before in one of our sub-committee meetings, and that is that we can have the education, we can show the numbers, but until we're ready to dabble into some reparations, these problems are going to continue. And that is not a conversation that people are willing to have. And so as we talk about that we need more cultural training and we need to work with police officers, but we have to understand there is a system in place and a structure in place within our criminal justice system, within our court system, and with our court personnel, to arrest, prosecute, and incarcerate African Americans and people of color. And until we have serious conversations and training in understanding the role of institutional and structure racism in our public institutions, we are going to have African Americans who are disproportionately confined and has disproportionate outcomes.

And so I think this is a recommendation that I would really like to see part of this report. Because we really need to understand things don't change because the systems are set up to feed people of color into systems to keep an economic engine going in different communities.

Sonja Foster

Legislative Liaison, Illinois African American Family Commission

(Oral testimony only.)

Foster: My name is Sonja Foster, and I'm legislative liaison with Illinois African American Family Commission. Quickly, I just want to touch on two areas that I think would be important regarding this issue that I didn't necessarily hear mentioned today. I know we talked a lot about how ... I've heard discussion about how families are affected by those who are incarcerated for drug offenses, and in terms of rehabilitation and education, to help reduce recidivism and stop the cycle. What I would like to see done: more informational, more resources, contributed to our resources for children of incarcerated parents while their parents are incarcerated. In terms of the Department of Corrections, when children come to visit their parents, the climate or the environment that they go into when they come visit their

parents – and I understand that the purpose of facilities are to house individuals who have committed offenses and you can't necessarily make it family-friendly or child-friendly, but I think there should be some consideration taken into account when you're dealing with children who come to see their parents.

A lot of times, obviously, children are afraid when they come to the system because they're searched and they go through the same process. And I think it's important that facilities take into consideration that even though this is an inmate, this is still a person's mother or a person's father. And so there needs to be allowances where children, unless there's some situation where the parent shouldn't be with the child, that they should be able to have maybe a little more visiting time or in a certain section that's sort of separate from their overall general visiting facility where they can talk and do things, just sort of continue with their bond, because research has shown that even though a person may be incarcerated, the amount of activity or contact that they have with their child can also affect their ability to do well while they're incarcerated and help them to maybe get out of prison faster or reduce recidivism rate because they have that sense of hope and that sense of connectedness.

And also with the child, there's still a sense of identity that goes along with the fact that, even though my parent's incarcerated, I still have access to them and I still feel like they love me/I love them. So I think that's important not to forget that aspect that even though the person is incarcerated, they still need to have that contact with the child or with the family while they're in there. And along with that, the resources for families to go and visit or have contact, whether it's video-conferencing ... I know there was a law that helped deal with video-conferencing for families. But also even the ability to go see them, because a lot of times where the person is placed, they're hours away from where the family is. And there's a lot of financial strain and stress already on the family. So I think those are important aspects that I would like to see in the study as well.

Second, in terms of higher education ... I know that was touched on briefly. One thing that I would like reiterate what the judge said is the training of students in school, not just social work programs, but other related programs on how to deal with disadvantaged populations, disproportionate populations. A lot of times in your predominantly white institutions like the one where I went to, they gave some overall education and training, but they didn't focus a lot on how different social ills disproportionately affect communities of colors. So when they go out into the job, the workplace, and they are faced with more of the practical experiences than what they've been taught, they don't know how to necessarily deal with it, because they haven't been taught about how certain communities are disproportionately affected more so from these problems.

And along with that, the cultural sensitivity aspect of it as well: learning how to work with diverse populations. So you have students coming in with their own views and thoughts and sort of portraying that off on the population that they serve, and that contributes to the disproportionality and the cycle of sometimes disparate treatment for people of color.

Another area that I would like to see and something that I think could be damaging to disproportionate, especially African American males, is the number of drug use on college campuses and arrests of individuals, especially for marijuana and different types of drugs. And a lot of times they are African American males. And sometimes they don't understand that when you get arrested, this can affect your ability not only to get your education, but financial aid and things like that. And a lot of times the media and the way they were taught that they brought from the community there, attitudes they bring into college campuses, and so a lot of times they end up getting arrested for this and that. And so I think as a potential to even disproportionately affect African American male students even more, because a lot of the campuses already have small minority populations. And so if you're having people arrested for drug offenses and they have to go to jail or go to prison, then to me that would further reduce the minority population of students on campus. And so then that perpetuates the smaller graduation rates, the smaller retention rates. So I think higher ed is an area that needs to be focused on as well, because you have a different population of students that are coming in. And higher ed is being infiltrated with issues from the

community and human services, and a lot of times they don't know how to effectively handle that because they've dealt mainly with academics. And so I think it's important that higher ed is brought into the system as well. Discussion at the table as to better serve the population of students, especially minority students.

Hunter: Thank you very much.

Solomon: Thank you for the observations. They're quite cogent and, you're right, we hadn't dealt with this aspect of it before. I appreciate the observations that you made.

Closing by Senator Hunter.

DISPARATE JUSTICE

by Judge Milton S. Wharton

It would be difficult to design system more racially discriminatory in effect than drug enforcement in our criminal justice system, if you intended to do so.

My court chambers are so situated that I can sit at my desk and simultaneously observe White children joyfully playing in a school yard out of my right eye, and out of my left eye see young Black prisoners handcuffed and manacled on their way to court. Yet it is that White playground, or playgrounds like it which produce the overwhelming majority of illicit drug use, and not Black school playgrounds which produce the majority of drug related convicts. I have often wondered what would be the reaction if the situation were reversed. I guarantee that there would not only be demands that something be done, something would be done!

We as African-Americans constitute only fourteen percent of the Illinois population, yet from the ranks primarily of our young men, as a result of primarily drug or drug related convictions, we account for over sixty percent of those incarcerated in the DOC.

This is a phenomenal number, for if you include the number of convicts on mandatory supervised release, Illinois has more African- Africans in its prison system that the populations of seventy of our one-hundred-two counties. It is a population larger than the enrollment at the University of Illinois, our largest institution of higher learning. This is only the tip of the ice berg because most persons convicted of a felony offense receive a sentence of some form of probation. As a result, enormous burdens are placed on every aspect of life in the African- American community.

This area is an epicenter for STD's and AIDS transmission. Much of this infection is incubated in our prisons. Instead of deploring and attempting to eradicate this killer, we praise programs like Scared Straight where convicts attempt to scare youth with a fear of sexual attack. AIDS is the number one killer of Black women 25-44 years of age. There is a DNA data base for everyone convicted of a felony offense, even shoplifting. Yet there is no effort to establish a data base of infected persons for the protection of unknowing partners. I am certain you will act when it becomes the number one killer of White women 25-44.

AIDS is not the only disease which this group transmits. Upon release from incarceration, our children are exposed to aggressive and self- destroying attitudes which plague our schools destroying discipline. They are taught that kindness is weakness, and to get over on and take advantage of anyone you can.

Women are fearful of accepting even the most menial favor from a man; like in prison this constitutes a contract for sexual favors.

Many millions of dollars are drained from poor communities in attorney fees, court costs and fees, bail bond deposits, and forfeitures. This money will be deposited in financial institutions and used to develop better-off communities. This money is usually scraped up from grandmother or other relatives, or is the proceeds of other criminal activity. Ironically, because of the lack of banks, the people of the Black

community are forced to borrow from predatory loan companies and do their personal banking at convenience stores, at high interest rates.

Studies have shown the disparate effect of a conviction between Blacks and Whites. This results in, as a result of employment difficulties, an individual more likely, rather than less likely, to recidivate when returned to the Black community after release from prison. Unfairly, the convicts will be counted as residents of the community, in which they are imprisoned, increasing their state contributions of tax revenues based upon population.

Insurance companies aggravate the effect of drug crime, further destabilizing neighborhoods by treating good neighborhoods just like crime-ridden ones by assessing their rates based upon zip codes rather than actual risk of loss.

Nothing is more graphic than the disparity of the treatment of powder cocaine and methamphetamine as opposed to crack.

White adults use powder cocaine, and White youth use ecstasy and meth, with little fear of police pressure. Contrary to the White youth experience, Black youth are routinely subject to "consensual" search of their vehicles for even the most minor of traffic violations.

Many Affluent communities treat teenage drug use a phase of experimentation which will pass. Police pressure is directed at meth labs and not on users or minor sellers. On the surface this might seem perfectly reasonable. Admittedly, they don't have the crime associated with inner-city drug use. They avoid the negative crime statistics, and having their future citizens saddled with criminal convictions. However, I suspect that the dreaded crack cocaine problem is a lucrative side business of the powder distributors, and giving them a pass facilitates crack misery in our poorer communities.

Ironically, many of the same officers who exercise tolerance in their communities aggressively pursue the arrest of inner-city youth when employed in drug enforcement details.

Put Whites under the same law enforcement pressure and a lot will be revealed. I know this because White parents have complained about the proliferation of drugs among their children.

Recommendations:

Our Illinois Supreme Court should establish a select committee to investigate the disparate effect of illicit drugs convictions on African Americans, similar to what the Legislature has done with the work of this Commission.

The Legislative Declaration in the Illinois Drug Forfeiture Act includes the statement:

"The General Assembly further finds that the federal narcotics civil forfeiture statute upon which this Act is based has been very successful in deterring the use and distribution of controlled substances within this State and throughout the country."

A little over a year ago, we watched the inauguration of President Obama. Most impressive was the crowd of spectators which stretched as far as the eye could see. That crowd was approximately the size of the number of Americans incarcerated in jails and prisons in the United States. Most imprisoned for drug related crime. It is clear that forfeiture laws have had little, if any, effect on drug distribution.

There should be an amendment to forfeiture laws in which all property and cash to go to the arresting police agency or other law enforcement agency. This is a conflict of interest. Forfeited property and cash should go toward real crime prevention, which is providing positive outlets for youth, and drug rehab efforts such as TASC which have been responsible for giving many minor drug offenders an opportunity to avoid a conviction or even prison. After the 1917 East St. Louis Race Riot the national YMCA was critical of the fact that there was no YMCA, today there is no YMCA. In fact today, there are few recreational outlets for our young adults, except night-clubs.

Moneys deposited by defendants should be placed in institutions which make efforts to meet the needs of the communities from which they come. Poor communities are in dire need of constructive recreational activities for young adults. Or in the alternative, these funds could be used to establish State supervised currency exchanges.

The DOC budget is approaching two billion dollars. The DOC is the second largest employer in Southern Illinois. This is an enormous industry largely dependent on Black bodies. Yet, in thirty three years on the bench, I have never met any black person with a DOC services supply contract. There should be a review of all DOC service contracts and a designation of those which could provide jobs for released convicts. Making clothing and food service are likely options. There should be a requirement that those with prison service contracts hire/employ former convicts in a significant percentage of their work force.

The undercover drug agents and drug task forces are focused on the Black community. We want the same quality not quantity law enforcement effort for targeting the top offenders rather than the bottom. Most of the 11th grade Black drop-outs incarcerated can't launder money, have no sophisticated supply routes, have no idea where Columbia is, and are less than minimum wage workers.

The drug trade is fueled by many poor Blacks living in a destitute situation, filled with stress, tension and high anxiety. They have little access to therapeutic medications. Getting high provides a brief and dangerous respite. The Church was the once the outlet, but many of our youth do not attend.

This is a complex problem with multiple components, such as poverty. The disparity of income is prevalent in our poorer black communities. Many of our children live in single parent households with \$0 incomes. They receive food stamps and a medical card. The attraction to selling drugs is almost irresistible.

The shameful disparity in educational achievement between Black and White children labeled the GAP causes many to drop out and is in many instances a precursor to drug related criminal activity.

The disparity of recreation outlets results in young people falsifying their ages and running to clubs and the drug- money culture.

I call on you to challenge all of our institutions of higher learning to employ their resources toward formulating a strategic plan with goals and timetables addressing the problems of African—Americans.

ILLINOIS

**Disproportionate Justice
Impact Study Commission**

FINAL REPORT

Appendix D

- Selected Relevant Publications

Illinois Disproportionate Justice Impact Study Commission Selected Relevant Publications

Applied Research Center. (2008). Facing Race: 2007-2008 Legislative Report Card on Racial Equity, Illinois. Chicago, IL: Author. Retrieved June 23, 2008, from www.arc.org/content/view/553/29/.

Summary: Provides a description of bills addressed by Illinois' 95th General Assembly and a "report card" that grades State Senators and State Representatives based on their voting records and leadership on 56 bills deemed to have positive or negative impacts on racial equity.

Austin, J., Clear, T., Duster, T., Greenberg, D. F., Irwin, J., McCoy, C., Mobley, A., Owen, B., and Page, J. (2007). Unlocking America: Why and how to reduce America's Prison Population. JFA Associates. Washington, DC: JFA Institute. Retrieved June 23, 2008, from www.jfa-associates.com/publications/srs/UnlockingAmerica.pdf.

Abstract: The imprisonment binge in the USA has produced the highest per capita incarceration rate, by far, of all nations. We have written a policy paper explaining this development and advocating a principled policy response to it. Our goal is to reduce the prison population to what it was in the 1970s, before the binge began. First, we describe the precipitous rise in the use of incarceration over the past three decades and explain three "myths" that drove it. Then we outline a plan of action for reversing it. The guiding principle is desert-based sentencing – in general, only violent offenders should go to prison. Non-violent offenders would serve sentences in the community, and consensual acts currently regarded as criminal should instead be subject to non-criminal regulation. We believe that prison-based rehabilitation and treatment programs cannot be relied on to reduce prison populations or prevent recidivism, and instead embrace in-community sanctioning. Finally, we explain the cost savings and public safety results of decarceration. Copies of this report will be available and professors may take several copies for their classes.

Beatty, P., Petteruti, A., and Ziedenberg, J. (2007). The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties. Justice Policy Institute. Retrieved October 29, 2008, from http://www.justicepolicy.org/images/upload/07-12_REP_Vortex_AC-DP.pdf.

Summary: The Justice Policy Institute recently released a comprehensive study on the issues of race, poverty, unemployment, and selective prosecution within the context of the so-called war on drugs. "The Vortex" is the first study to examine the relationships between these sociodemographic structures and the specific annual rate at which people are admitted to prison for drug offenses and the first to localize the racially disparate impact of drug imprisonment at the county level. The report found that counties with higher poverty rates, larger African-American populations and larger police or judicial budgets imprison people for drug offenses at higher rates than counties without these characteristics. These relationships were found to be independent of whether the county actually had a higher rate of crime. African-Americans in Cook County were imprisoned for drug offenses at 58 times the rate of white people -- the seventh-worst racial disparity among large counties nationwide. The report's conclusion was blunt: "The drug war is primarily being waged against African American citizens of our local jurisdictions, despite solid evidence that they are no more likely than their white counterparts to be engaged in drug use or drug delivery behaviors."

Bewley-Taylor, D., Trace, M. and Stevens, A. (2005). Incarceration of drug offenders: Costs and impacts. Briefing Paper Seven. The Beckley Foundation Drug Policy Programme, UK. Retrieved November 7, 2008, from <http://www.internationaldrugpolicy.net/publications.htm>.

Summary: This paper looks at the pros and cons of pursuing a policy of large-scale arrest and incarceration of drug users. Taking the USA as the main example of this approach, the authors examine the costs of incarceration in terms of public expenditure, and consequential impacts on health and social cohesion, and the impact on drug use prevalence and markets through incapacitation of users, access to treatment, and deterrence. The paper concludes that, while harsh penalties can have a marginal impact on the number of drug users, this is likely to be outweighed by the costs involved.

Commonwealth of Virginia. Children of Incarcerated Parents. Virginia Commission on Youth. (2002). Richmond, VA: author. Retrieved November 10, 2008, from <http://coy.state.va.us/docs/Incarcerated%20Parents.pdf>.

Summary: In Virginia, 31% of children between 12 and 18 visiting their parents in prison had been involved with the police. Additionally, 38% of children committed to juvenile justice had one or more parents incarcerated at the time.

The 2009 Criminal Justice Transition Coalition. (2008). Smart on Crime: Recommendations for the Next Administration and Congress. Washington, DC: The Constitution Project. Retrieved November 10, 2008, from <http://www.2009transition.org/criminaljustice/>.

Summary: The 2009 Criminal Justice Transition Coalition's collaborative report identifying critical needs for federal policy reform for President-elect Barack Obama's agenda. Leaders and experts from all aspects of the criminal justice community spent months collaboratively identifying key issues and gathering policy advice into one comprehensive set of recommendations for the new administration and Congress. Included among the recommendations to overcome these challenges are: 1) Eliminate the crack cocaine sentencing disparity; 2) Expand alternatives to incarceration; 3) Fund prisoner reentry through the Second Chance Act; 4) Extend federal voting rights to people released from prison; 5) Restore welfare and food stamp eligibility to individuals with drug felony convictions; and 6) Analyze and reduce unwarranted racial and ethnic disparity in the federal judicial system.

Eddy, J.M., Reid, J.B. (2002). The Antisocial Behavior of the Adolescent Children of Incarcerated Parents: A Developmental Perspective. Washington, DC: Urban Institute. Retrieved November 10, 2008, from http://www.urban.org/Uploadedpdf/410631_AntisocialBehavior.pdf.

Summary: Children with mothers in prison are particularly affected. Mothers in prison tend to be visited less often than fathers, since when fathers are in prison the mothers of their children will make an effort to bring them to visit, whereas caretakers are often unable or unwilling to bring the children to visit their mothers. This is particularly critical since 85% of these mothers will be returning home to care for school-aged children with their parental rights in place.

Ex-Offender Employability Task Force. (2004) The Ex-Offender Employability Task Force report to the Illinois Workforce Investment Board. Illinois Workforce Investment Board, Springfield, IL.

Summary: An increasing number of ex-offenders in Illinois are facing employment barriers that contribute to high recidivism rates and the deterioration of many low-income communities. Ex-offenders' personal employment impediments include limited work histories; poor job skills; low education levels; unstable family situations; physical and mental health issues; and histories of substance, physical, and sexual abuse. In addition to these personal barriers to employment, ex-offenders also face significant systemic employment barriers. These include prohibitions against full access to public financial and housing assistance, release without documents needed to access services and employment, mandates to fulfill child-support requirements shortly after release, and employer bias against ex-offenders. This report presents the North Lawndale Employment Network's Ex-Offender Employment Service Network (EESN) as a model for an ex-offender employment program because it incorporates most recommended best practices. Features of this program are described, followed by recommendations on the State's role in building community capacity to develop and maintain networks similar to EESN. The Task Force's advocacy agenda focuses on recommendations for specific legislative action that will enhance ex-offender employment preparation and opportunities. 11 references and a Task Force member's list.

Fellner, J. (2000). Punishment and prejudice: racial disparities in the war on drugs. Human Rights Watch. Retrieved October 31, 2008, from <http://www.hrw.org/reports/2000/usa/>.

Summary: Attention is drawn to facts such as black men are incarcerated on drug charges 13.4 times more than whites even though there are five times more white drug users than black. Contents include: summary and recommendations; the extent of U.S. incarceration; incarceration and race, the role of violent crime in U.S. incarceration rates; the impact of the war on drugs on U.S. incarceration; racially disproportionate incarceration of drug offenders; racially disproportionate drug arrests; women, race, drugs, and imprisonment; and conclusion.

Freeman, R. B. (1996). Why do so many young American men commit crimes and what might we do about it. *Journal of Economic Perspectives*, 10 (1). 25-42.

Summary: Presents evidence showing that labor market incentives influence the level of crime and argue that depressed labor market for less skilled men in the 1980s and 1990s has contributed to the rise in criminal activity by less skilled men.

Gabel, S. (1992). 'Children of Incarcerated and Criminal Parents: Adjustment, Behavior and Prognosis.' *Bulletin of American Academic Psychiatry Law*, 20: 33-45.

Summary: Children with incarcerated parents manifest a variety of behavioral and psychiatric disorders due to the trauma of separation from their parent, stigma, and disruption of their environment. They are far more likely to experience emotional and behavioral disturbance, negative self-image, withdrawal from family and friends, eating and sleeping disorders, anxiety and hyperarousal, developmental regression, and antisocial behavior.

Gibbons, J. J. and Katzenbach, N. B. (2006). Confronting Confinement: A Report of the commission on safety and abuse in America's prisons. The Vera Institute of Justice.

Retrieved June 23, 2008, from
www.prisoncommission.org/pdfs/Confronting_Confinement.pdf.

Summary: A report on violence and abuse in U.S. jails and prisons, the broad impact of those problems on public safety and public health, and how correctional facilities nationwide can become safer and more effective. The report covers four areas: dangerous conditions of confinement – violence, poor health care, and inappropriate segregation – that can also endanger corrections officers and the public; the challenges facing labor and management; weak oversight of correctional facilities; and serious flaws in the available data about violence and abuse. In response to these problems, the Commission offers 30 pragmatic recommendations for reform – many of them based on good practices and exemplary leadership in particular correctional facilities around the country.

Golembeski, C. and Fullilove, R. (2005). Criminal (in)justice in the city and its associated health consequences. *American Journal of Public Health*, 95(1) p. 1701.

Summary: Rate of HIV infection among prisoners was 13 times that of the population and confirmed AIDS cases were 3.5 times the general population. Most prisoners with HIV and hepatitis are released without knowing their status. Prisons are venues of transmission to other prisoners and to the community.

Greene, J., Pranis, K., and Ziedenberg, J. (2006). Disparity by Design: How drug-free zone laws impact racial disparity – and fail to protect youth. Justice Policy Institute. Retrieved October 31, 2008, from www.drugpolicy.org/docUploads/SchoolZonesReport06.pdf.

Summary: This report finds that drug-free zones fail to protect youth from drug activity, while creating high levels of racial disparity in the criminal justice system. It looks at drug-free zone laws across the country, including in Connecticut and New Jersey, where the Drug Policy Institute is working to reform drug-free zone laws.

Hairston, C. F. (1998). The Forgotten Parent: Understanding the Forces that Influence Incarcerated Fathers' Relationships with Their Children. *Child Welfare*, Vol. 77, No. 5.

Summary: Fathers who are in prisons and jails are not just convicts — they are parents as well. The family roles and responsibilities of incarcerated fathers, however, are seldom the focus of institutional policies, scholarly research, or child welfare services. This article examines the issues that must be addressed in designing policies and providing services that promote the maintenance of parent-child bonds and responsible parenting when fathers are incarcerated.

Holzer, H. J. and Raphael, S. (2006). Perceived criminality, criminal background checks, and the racial hiring practices of employers. *The Journal of Law & Economics*, Vol. 46, p. 451.

Abstract: In this paper, we analyze the effect of employer-initiated criminal background checks on the likelihood that employers hire African Americans. We find that employers who check criminal backgrounds are more likely to hire African American workers, especially men. This effect is stronger among those employers who report an aversion to hiring those with criminal records than among those who do not. We also find similar effects of employer aversion to ex-offenders and their tendency to check backgrounds on

their willingness to hire other stigmatized workers, such as those with gaps in their employment history. These results suggest that, in the absence of criminal background checks, some employers discriminate statistically against black men and/or those with weak employment records. Such discrimination appears to contribute substantially to observed employment and earnings gaps between white and black young men.

Hsia, H. M., Bridges, G. S., and McHale, R. (2004). Disproportionate Minority Confinement 2002 Update. NCJ 201240. Washington, DC: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Dept. of Justice. Retrieved November 12, 2008, from <http://www.ojjdp.ncjrs.gov/publications/PubAbstract.asp?pubi=201240>.

Summary: Describes developments in addressing disproportionate minority confinement (DMC) at the national, state, and local levels. This OJJDP Summary begins with a brief review of the most recent data, followed by an outline of national efforts by OJJDP and others during the past 5 years to address the challenge of DMC. It then presents an update of state activities, including a status report on state compliance with the DMC core requirement, highlights from state DMC assessment research and intervention initiatives, and an outline of remaining challenges. The Summary concludes with a look at the implications of the Juvenile Justice and Delinquency Prevention Act's broadening of DMC to encompass disproportionate minority contact.

Human Rights Watch. (2008). Targeting Blacks: Drug law enforcement and race in the U.S. Retrieved June 23, 2008, from www.hrw.org/reports/2008/us0508/us0508web.pdf.

Summary: Human Rights Watch documents with detailed new statistics persistent racial disparities among drug offenders sent to prison in 34 states. All of these states send black drug offenders to prison at much higher rates than whites. Ostensibly color-blind, the US "war on drugs" disproportionately targets urban minority neighborhoods. Although whites commit more drug offenses, African Americans are arrested and imprisoned on drug charges at much higher rates.

Kane-Willis, K., Janichek, J., and Clark, D. (2006). Intersecting Voices: Impacts of Illinois' Drug Policies. The Illinois Consortium on Drug Policy, The Institute for Metropolitan Affairs, Roosevelt University. Retrieved December 22, 2010, from <http://legacy.roosevelt.edu/ima/pdfs/intersectingVoices.pdf>.

Summary: This report aims to demonstrate how Illinois drug policy affects residents in a wide variety of ways. Drug policies impact housing, treatment, law enforcement, education, jobs, and the economy. Because of the pervasiveness of drug use, the issue touches people of every race, age, and gender living in every part of the state. To tell this story, the project presents the cases of several Illinois residents from a variety of walks of life whose lives have been affected by drug use. It is the hope of the authors that these stories, and the policy research that they used to contextualize them, will help readers to better understand the importance of effective drug policies for everyone

Kane-Willis, K., Greenman, G., and Schmitz, S. (2009). New Directions for Illinois Drug Policy: An Update on Incarceration for Drug Offenses in Illinois. The Illinois Consortium on Drug Policy, The Institute for Metropolitan Affairs, Roosevelt University. Retrieved December 22, 2010, from <http://legacy.roosevelt.edu/ima/pdfs/NewDirectionsforIllinoisDrugPolicy0609%20.pdf>.

Summary: Provides data on drug-use patterns of offenders, drug offenders incarcerated in Illinois, and costs associated with incarceration of drug offenders, and offers policy recommendations.

Kane-Willis, K., Janichek, J., Cooley, T., Grimmer, A., Enoch, K, and Schmitz, S. (2007). Through a Different Lens: Shifting the Focus on Illinois Drug Policy. An examination of states' solutions and applicability to Illinois. The Illinois Consortium on Drug Policy, The Institute for Metropolitan Affairs, Roosevelt University. Retrieved December 22, 2010, <http://legacy.roosevelt.edu/pdfs/07DifferentLens.pdf>.

Summary: Presents the historical evolution of drug policy, both nationally and within Illinois, details the implications of Illinois drug policy, examines changes in the racial composition of drug offenders, demonstrates the impact of drug policies on different regions throughout the state, and examines whether increased penalties have effectively reduced the availability of drugs in Illinois. It investigates the impact of a felony conviction, recidivism, costs of incarceration, costs of untreated substance use disorders, as well as the cost effectiveness of treatment, and presents a summary of Illinois' current diversion infrastructure for drug-involved offenders, as well as other large-scale diversion initiatives across the country. A comparison of successes and challenges in other states' implementation processes help to inform policy recommendations.

King, R. (2008). Disparity by Geography: The War on Drugs In America's Cities. U.S. Sentencing Project. Retrieved September 14, 2010. Http://www.sentencingproject.org/doc/publications/dp_drugarrestreport.pdf

Summary: Documents the growth in drug arrests at the city-level between 1980 and 2003 and the role of the "war on drugs" in expanding racial disparity in the criminal justice system. The extreme variations in arrest rates among cities raise critical questions about the effect of local policy decisions, not overall drug use rates, in driving law enforcement patterns.

Lane et al. (2004.) Marriage promotion and missing men: African American women in a demographic double bind. *Medical Anthropology Quarterly*, 18(4) 405-428.

Summary: Incarceration leads to missing fathers, a shortage of marriageable men (e.g., with steady employment) and barriers to couples' ability to marry. At the same time, policies promoting marriage place these men and women in a 'double bind.' Incarceration leads to single mothers and poor outcomes for children.

LaVigne, N., Visher, C., and Castro, J. (2004). Chicago prisoners' experiences returning home. Washington, DC: Urban Institute. Retrieved November 10, 2008, from <http://www.urban.org/publications/311115.html>.

Summary: Neighborhoods that receive returning prisoners are unable to deal with them. Nearly half of those returning to prison within one year of release returned on parole violations having to do with drug use. Prisoners returning to neighborhoods that are more disorganized and have more drug use are more likely to violate parole.

Lurigio, A. J. (2007). A Primer on Drug Addiction, Crime, and Treatment, Part 4 of 4 in the Series on Disproportionate Incarceration of Minorities for Drug Crimes. Chicago, IL:

Illinois Criminal Justice Information Authority. Retrieved November 12, 2008, from <http://www.nicic.org/Library/023086>.

Summary: The fourth in a series of four reports, this report addresses issues related to the disproportionate impact on African Americans by drug laws in Illinois. Sections of this report include: drug abuse and dependence; drugs and crime; drug treatment – types, effectiveness, and principles; the No-Entry Strategy (NES) and its principles; and summary.

Lurigio, A. J., Harkenrider, M., and Loose, P. (2005). *The Disproportionate Incarceration of African Americans for Drug Crimes: The Illinois Perspective*. Chicago, IL: Illinois Criminal Justice Information Authority. Retrieved November 12, 2008, from <http://www.nicic.org/Library/021255>.

Summary: The third report in a series of four, this report investigates racial disproportionality in the sentencing of individuals for drug crimes committed in Illinois. Sections of this report include: Illinois statistics; explanations for racially disparate sentencing – outdoor drug sales, sentencing enhancements, racial differences in sentencing, analysis of charges, and perceptions of sentencing severity and treatment; and summary and conclusions. Disproportionality is largely due to the large number of arrests and prison admissions from Chicago.

Lurigio, A. J. and TASC, Inc. (2004). *Disproportionate incarceration of African Americans for drug offenses in the U.S. Research Bulletin, Vol. 2, No. 10*. Chicago, IL: Illinois Criminal Justice Information Authority. Retrieved November 12, 2008, from www.icjia.state.il.us/public/pdf/bulletins/disprop.pdf.

Summary: “[N]ational trends in arrests and incarcerations for drug offenses and . . . the unstinting growth in the country’s prison population attributable mainly to increases in the number of persons sentenced to prison for drug offenses” are covered (p. 2). This bulletin discusses: the growth in the prison population; prison admissions for drug and other offenses; prison admissions and race; prison admissions, race, and drug offenses; race and prison admission rates for drug offenses in select states; concentrated drug enforcement in lower-income communities; consequences of concentrated drug enforcement; and social costs.

Lynch, J. P., and Sabol, W. J. (2001). *Prisoner Reentry in Perspective. Crime Policy Report, Vol. 3*. Urban Institute, Justice Policy Center. Retrieved June 23, 2008, from www.urban.org/UploadedPDF/410213_reentry.PDF.

Summary: This paper shows that the size of the returning prisoner and parole populations has increased, but that funding for supervision has not kept pace. It shows that there have been marginal changes in the composition of the population of reentering inmates that can make reentry more difficult than it has been, but at the same time, we have yet to observe in the aggregate data many of the adverse consequences predicted. So while inmates reentering society now are more likely (1) to have failed at parole previously; (2) not to have participated in educational and vocational programs in prison; and (3) to have served longer sentences, which attenuates ties to families, it may also be the case that large numbers of persons who enter prison for the first time in their lives do not return to prison. And, while returns from prison are concentrated in a comparatively small number of urban communities, these communities may be fairly diverse and include both areas of concentrated poverty as well as working-class communities. Finally, within the metropolitan areas to which ex-prisoners are returning, access to jobs and competition with welfare leavers for skill-

appropriate jobs may impose further constraints on the capacity of communities to reintegrate ex-prisoners.

Massoglia, M. (2008). Incarceration, Health, and Racial Disparities in Health. *Law and Society Review*, Vol. 42, No. 2, p. 274.

Summary: Using the National Longitudinal Survey of Youth, author finds that incarceration accounts for racial differences in men's health at age 40. Incarceration affects health by lowering marriage, employment and educational prospects.

Matthews, S. D. (2002) A review of the state of Illinois professional and occupational licensure policies as related to access to employment for ex-offenders. Policy Paper 4. Chicago, IL: Safer Foundation.

Summary: A Review of public policies that impact the employability of individuals with criminal records.

Matthews, S. D. and Casarjian, A. (2002) Government personnel policies impacting the hiring of ex-offenders. Policy Paper 3. Chicago, IL: Safer Foundation.

Summary: With the number of ex-offenders soaring to new heights, it becomes clear that employment policies that restrict the hiring of individuals with criminal records can potentially have severe consequences for mass numbers of American citizens. "There is no federal or state law that prohibits employers from asking job applicants if they have ever been convicted of an offense, and employers may legally consider an applicant's conviction(s) in making hiring decisions." Many employers now conduct criminal background checks routinely as part of the application review process. Such information is readily available for a fee from agencies that provide credit reports. "When an employer requests an applicant's criminal history record, the employer will receive conviction and sentencing history, but no arrest information. The one exception is for an employer that is a criminal justice agency. In limited circumstances, an employer may also receive information about an individual's juvenile criminal history" (Legal Action Center, 2002).

Mauer, M. (2009). The Changing Racial Dynamics of the War on Drugs. U. S. Sentencing Project. Retrieved September 14, 2010.

[Http://www.sentencingproject.org/doc/dp_raceand drugs.pdf](http://www.sentencingproject.org/doc/dp_raceand drugs.pdf)

Summary: This report examines shifting dynamics in the context of the criminal justice system – including a significant shift in the racial composition of people incarcerated for a drug offenses – to explore possible explanations for changes and then assess the implications of changes for both substance abuse policy and considerations of racial justice.

Mauer, Marc. (2009). The Impact of Mandatory Sentencing Policies In The United States. Prepared for the Standing Committee on Legal and Constitutional Affairs, Canada. Testimony of the Executive Director, The Sentencing Project. Retrieved September 14, 2010,

[http://www.sentencingproject.org/doc/publications/sl_mandatory sentencing canadatestimony](http://www.sentencingproject.org/doc/publications/sl_mandatory sentencing_canadatestimony).

Summary: Testimony to the Canadian Parliament contends that mandatory sentencing has failed to enhance public safety, has produced excessive punishments, and has transferred, but not eliminated discretion.

Mauer, M. (2007). *Racial Impact Statements as a Means of Reducing Unwarranted Sentencing Disparities*. *Ohio State Journal of Criminal Law*. Vol. 5, No. 19. Retrieved May 27, 2008, from <http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=602>.

Summary: Proposes the adoption of racial impact statements to project the potential racial impact of proposed legislation prior to enactment. Such a policy would provide a means of anticipating any unwarranted racial disparities and enable policymakers to consider alternative policies to accomplish the goals of the legislation without causing undue racial effects.

Mauer, M. (2009). *Racial Impact Statements: Changing Policies to Address Disparities*. *Criminal Justice*, Vol. 23, No. 4. Washington, DC: American Bar Association. Retrieved January 7, 2009, from http://sentencingproject.org/Admin/Documents/publications/rd_abaarticle.pdf.

Summary: Momentum is growing for improving racial justice in the criminal justice system. In an article in the current issue of the American Bar Association magazine, *Criminal Justice*, Marc Mauer describes changes taking place across the country. “Racial Impact Statements: Changing Policies to Address Disparities” examines policy initiatives designed to make state and federal justice systems more fair and equitable, including: 1) Iowa and Connecticut – In 2008 these states became the first to adopt policies requiring racial and ethnic impact statements for proposed sentencing legislation. Similar to fiscal impact statements, they enable legislators to project the effects of new policies before they are adopted, rather than after the fact; 2) Minnesota – The Sentencing Guidelines Commission has begun to produce assessments of the potential racial impact of proposed legislative changes; 3) Wisconsin – Governor Jim Doyle has issued an executive order creating an oversight commission charged with advocating for policies to reduce racial disparities; and 4) Federal – Senator Joseph Biden’s Justice Integrity Act of 2008, expected to be re-introduced in the 111th Congress, calls for establishing task forces to assess whether unwarranted racial/ethnic disparities are present in prosecutorial practices, and to recommend policies to address any such disparities.

Mauer, Marc. (2009). *Racial Disparities in the Criminal Justice System*. Prepared for the House Judiciary Subcommittee On Crime, Terrorism, and Homeland Security. Testimony of the Executive Director, The Sentencing Project. Retrieved September 14, 2010, http://www.sentencingproject.org/doc/publications/rd_mmhousetestimonyonRD.pdf

Summary: Presents an overview of the factors that contribute to racial disparity in the justice system, and then recommends changes in policy and practice that could reduce these disparities without compromising public safety.

Mauer, M. and Huling, T. (1995). *Young Black Americans and the Criminal Justice System: Five Years Later*. Washington, DC: The Sentencing Project. Retrieved November 10, 2008, from <http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=503>.

Summary: Follow-up to a 1990 study that found that one in four African-American males in the age group 20-29 was under some form of criminal justice supervision-either in prison or jail, or on probation or parole. New finding: One in three young black men in the age group 20-29 is under supervision of the criminal justice system.

Mauer, M. & King, R. S. (2007). A 25-year quagmire: The war on drugs and its impact on American society. The Sentencing Project. Retrieved September 24, 2007, from http://www.sentencingproject.org/Admin/Documents/publications/dp_25yearquagmire.pdf.

Summary: Analysis, based on an analysis of 25 years of government data regarding drugs and the criminal justice system, finds that the “war on drugs” has increasingly targeted low-level offenders for arrest and incarceration, and is largely failing to provide adequate treatment in prison.

Mauer, M. & King, R. S. (2007). Uneven justice: State rates of incarceration by race and ethnicity. The Sentencing Project. Retrieved September 21, 2007, from http://www.sentencingproject.org/Admin/Documents/publications/rd_stateratesofinbyraceandethnicity.pdf.

Summary: Examines racial and ethnic disparities by state, and finds substantial variation in the degree of black-to-white incarceration. The report finds that African Americans are incarcerated at nearly 6 times the rate of whites and Latinos at nearly double the rate. Five states, located in the Northeast and Midwest, incarcerate blacks at more than ten times the rate of whites. Recommended reforms include: addressing disparities through changes in drug policy, mandatory sentencing laws, reconsideration of “race neutral” policies, and changes in resource allocation.

Office of Governor Jim Doyle. (2008). Final Report: Commission on Reducing Racial Disparities in the Wisconsin Justice System. Wisconsin Office of Justice Assistance. Retrieved February 9, 2009, from <http://oja.wi.gov/docview.asp?docid=13615&locid=97>.

Summary: Presents a summary of the Commission’s meetings and public hearings, findings, and policy recommendations.

Nagin, D. and Waldfoegel, J. (1998) The effect of conviction on income through the life cycle. *International Review of Law and Economics*, Vol. 18, pages 18-40.

Abstract: Existing studies of the impact of conviction on income and employment do not consider life cycle issues. We postulate that conviction reduces access to career jobs offering stable, long-term employment. Instead, conviction relegates offenders to spot market jobs, which may have higher pay at the outset of the career but do not offer stable employment or rapidly rising wages. Thus, first-time conviction may increase the wages of young workers while decreasing the wages of older workers. We test our theory with data on federal offenders and find that first-time conviction has a *positive* and significant effect on income for offenders under age 25 and an increasingly *negative* and significant impact for offenders over age 30. These results imply that the present value of income lost as a result of conviction varies over the life cycle, reaching a maximum in the middle of the career. We find that the gains sought by these offenders follow similar profiles, suggesting that prospective offenders may be deterred by the possibility of lost future income. Because the discounted loss in future

income facing young offenders may be small, our results may provide part of an explanation of youth crime.

Ostrom, B. J., Ostrom, C. W., Hanson, R. A., and Kleiman, M. (2008). Assessing Consistency and Fairness in Sentencing: A Comparative Study in Three States. National Center for State Courts. Washington, D: The Pew Charitable Trust's Center on the States. Retrieved November 10, 2008, from http://www.pewcenteronthestates.org/news_room_detail.aspx?id=39634.

Summary: Reports findings that states that employ sentencing guidelines, a reform effort that encourages judges to take specific legally relevant elements into account during the sentencing process, are found to have more predictability, reduced discrimination, and increased transparency in sentencing.

Pager, D. (2003). The mark of a criminal record. *The American Journal of Sociology*, 108 (5), 937-975.

Abstract: With over 2 million individuals currently incarcerated, and over half a million prisoners released each year, the large and growing number of men being processed through the criminal justice system raises important questions about the consequences of this massive institutional intervention. This article focuses on the consequences of incarceration for the employment outcomes of black and white job seekers. The present study adopts an experimental audit approach-in which matched pairs of individuals applied for real entry-level jobs-to formally test the degree to which a criminal record affects subsequent employment opportunities. The findings of this study reveal an important, and much underrecognized, mechanism of stratification. A criminal record presents a major barrier to employment, with important implications for racial disparities.

Pager, D. and Quillian, L. (2005). Walking the talk? What employers say versus what they do. *American Sociological Review*, 70, 355-380.

Abstract: This article considers the relationship between employers' attitudes toward hiring ex-offenders and their actual hiring behavior. Using data from an experimental audit study of entry-level jobs matched with a telephone survey of the same employers, the authors compare employers' willingness to hire black and white ex-offenders, as represented both by their self-reports and by their decisions in actual hiring situations. Employers who indicated a greater likelihood of hiring ex-offenders in the survey were no more likely to hire an ex-offender in practice. Furthermore, although the survey results indicated no difference in the likelihood of hiring black versus white ex-offenders, audit results show large differences by race. These comparisons suggest that employer surveys – even those using an experimental design to control for social desirability bias – may be insufficient for drawing conclusions about the actual level of hiring discrimination against stigmatized groups.

Petersilia J. (1990). When probation becomes more dreaded than prison. *Federal Probation*, 54(1), p. 23, 1990.

Summary: Mass imprisonment reduces the deterrent effect of prison. Up to one third of persons sentenced to probation preferred prison.

The Pew Center on the States. (2008). The Impact of Incarceration on Crime: Two National Experts Weigh In. Expert Q & A, No. 5. Public Safety Performance Project. Retrieved June 23, 2008, from http://www.pewcenteronthestates.org/report_detail.aspx?id=37390.

Summary: ‘The Impact of Incarceration on Crime: Two National Experts Weigh In’ features Dr. Alfred Blumstein and Dr. James Q. Wilson, two of the nation’s most respected experts on incarceration and crime. Professors Blumstein and Wilson spoke recently with the Public Safety Performance Project, an initiative of the Pew Center on the States (PCS), about the degree to which increased incarceration deserves credit for the drop in crime across the nation, the likely outcomes of continued prison expansion, and some policies and programs that offer better public safety results for taxpayer dollars.

Pew Center on the States. (2008). One in 100: Behind Bars in America 2008. Washington, DC: Pew Charitable Trusts. Retrieved May 29, 2008, from http://www.pewcenteronthestates.org/report_detail.aspx?id=35904.

Summary: For the first time in history more than one in every 100 adults in America are in jail or prison – a fact that significantly impacts state budgets without delivering a clear return on public safety. According to a new report released today by the Pew Center on the States’ Public Safety Performance Project, at the start of 2008, 2,319,258 adults were held in American prisons or jails, or one in every 99.1 men and women, according to the study. During 2007, the prison population rose by more than 25,000 inmates. In addition to detailing state and regional prison growth rates, Pew’s report, One in 100: Behind Bars in America 2008, identifies how corrections spending compares to other state investments, why it has increased, and what some states are doing to limit growth in both prison populations and costs while maintaining public safety.

The Pew Charitable Trusts. (2007). Public Safety, Public Spending. Forecasting America’s Prison Population 2007-2011. Public Safety Performance, a Project of the Pew Charitable Trusts. Washington, DC: author. Retrieved June 23, 2008, from http://www.pewcenteronthestates.org/report_detail.aspx?id=32076.

Summary: This report is the first known attempt to determine the future growth of the nation’s state and federal prison systems as a whole, along with the projected cost of that growth. Its findings show that America’s prison population will continue its extraordinary growth in the coming years, with more than 192,000 prisoners added by 2011. This growth will carry a heavy fiscal burden, estimated at up to \$12.5 billion in new prison construction and \$15 billion in operations costs.

Reentry Policy Council. (2005). Report of the Reentry Policy Council: Charting the safe and successful return of prisoners to the community. Washington, DC: The Justice Center, the Council of State Governments. Retrieved June 23, 2008, from <http://www.nicic.org/Library/020211>.

Summary: This report is the first known attempt to determine the future growth of the nation’s state and federal prison systems as a whole, along with the projected cost of that growth. Its findings show that America’s prison population will continue its extraordinary growth in the coming years, with more than 192,000 prisoners added by 2011. This growth will carry a heavy fiscal burden, estimated at up to \$12.5 billion in new prison construction and \$15 billion in operations costs.

Reuter, P. & Caulkins, J. (2006). Testimony to the U.S. Sentencing Commission on the disparity between crack and powder cocaine sentences. Washington, DC: United States Sentencing Commission. Retrieved September 21, 2007, from http://www.ussc.gov/hearings/11_15_06/Reuter-testimony.pdf.

Summary: The social consequences associated with a drug are determined in part by the characteristics of the user population. If crack cocaine appeals to a population that has lower self-control and more capacity for violence as compared to the population that uses cocaine powder, then any inherent differences in harms between the two forms of the drug will be exacerbated. Should sentencing decisions “control” for user characteristics or should they reflect simply the harm that is caused, without such controls? I believe that given changes over time in who uses a drug, there is a strong argument for controlling for user differences in deciding on sentencing levels.

Rose, D. R., Clear, T. R. (1998). Incarceration, social capital, and crime: implications for social disorganization theory. *Criminology*, Vol. 36, No. 3, pp. 441-480.

Abstract: This study is a theoretical exploration of the impact of public social control on the functioning of local social controls. Set within the framework of social disorganization and systemic theory, the study argues that an over-reliance on incarceration as a formal control may hinder the ability of some communities to foster other forms of control because they weaken family and community structures. At the ecological level, the side effects of policies intended to fight crime by controlling individual behavior may exacerbate the problems they are intended to address. Thus, these communities may experience more, not less, social disorganization.

Rose, D. R., Clear, T. R. (2004). Who doesn't know someone in jail? The impact of exposure to prison on attitudes toward formal and informal social controls. *Prison Journal*, Vol. 84, No. 2, pp. 228-247, 2004.

Abstract: This paper examines how experience with the criminal justice system contextualizes the relationship between people's attitudes toward informal and formal social controls. In a survey of residents of Leon County, Florida, we asked respondents whether or not they knew someone who had been incarcerated. We also asked about their assessment of informal controls in their neighborhoods and about public control with questions about police, judges, and the criminal justice system as a whole. We find that knowing someone who has been incarcerated makes people with a low assessment of formal control also have a low opinion of informal control. Blacks are more likely than nonblacks to have a low opinion of informal social control only if they have not been exposed to incarceration. Knowing someone who has been incarcerated makes blacks and nonblacks just as likely to hold a negative assessment of informal social control.

Saltzburg, S. (2004). Res. 121B: Recommendation on Racial Disparity in the Criminal Justice System. Washington, DC: American Bar Association Justice Kennedy Commission. Retrieved November 10, 2008, from <http://www.abanet.org/media/jkcrecs.html>.

Summary: The commission formed shortly after a speech by U.S. Supreme Court Justice Anthony Kennedy at the ABA's annual meeting in 2003 in which he highlighted significant failings of the modern criminal justice system, including the record-high number of people in prison, the disproportionate impact of incarceration on minorities and the lack of judicial

discretion in sentencing. Kennedy challenged ABA members to study and address these issues. On August 9, 2004, the ABA adopted the recommendations of the Justice Kennedy Commission outlined in its final report. On sentencing, the commission recommended that the ABA lobby state and federal lawmakers to: a) Repeal mandatory minimum sentences; b) Require sentencing courts to state the reason for increasing or reducing a sentence and allow appellate review of such sentences; c) Consider diversion programs for less serious offenses; d) Give greater authority and resources to an agency responsible for monitoring the sentencing system; and, e) Develop graduated sanctions for violations of probation and parole.

The Sentencing Project. (2008). Do More Prisoners Equal Less Crime? A Response to George Will. Washington, DC: author. Retrieved November 10, 2008, from <http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=619>.

Source: Provides an assessment of, and refutes key arguments raised in syndicated commentator George Will's June 22, 2008 column, "More Prisoners, Less Crime."

The Sentencing Project. (2007). Federal crack cocaine sentencing. Washington, DC: author. Retrieved September 21, 2007, from http://www.sentencingproject.org/tmp/File/dp_cracksentencing.pdf.

After two decades of contentious debate regarding the federal sentencing disparities between crack cocaine and powder cocaine, new momentum to reform current policy has emerged. In 2007, the United States Sentencing Commission (Commission) issued recommendations that call on Congress to address the lengthy sentences for low-level crack offenses. Congress has responded with at least two bipartisan crack sentencing reform bills and a new Senate bill that would equalize penalties for crack and powder cocaine offenses without increasing mandatory sentences. Over the last year, newspapers from Alabama to California have published commentary highlighting the bias associated with federal crack penalties and the federal government's concentrated prosecution of street-level dealers of crack, instead of drug kingpins and importers. This briefing paper provides background on the cocaine sentencing debate, explores the racial impact of the crack sentencing disparity, clarifies the misperceptions regarding crack addiction, and offers recommendations for eliminating unfairness in crack cocaine sentencing.

The Sentencing Project. (2008). Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers. Washington, DC: author. Retrieved November 10, 2008, from <http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=626>.

Summary: A comprehensive guide to analyzing and responding to racial disparities in the criminal justice system. Provides strategies for addressing disparities at each stage of the system, as well as 17 "best practices" illustrating practitioner approaches for enhancing fairness.

The Sentencing Project and National Association of Criminal Defense Lawyers. (2008). Racial Disparity in Criminal Court Processing in the United States. Submitted to the United Nations Committee on the Elimination of Racial Discrimination. Washington, DC: The Sentencing Project. Retrieved November 10, 2008, from <http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=607>.

Summary: Racial Disparities in Criminal Court Processing in the United States offers input regarding the nation's compliance, and need to reform current criminal justice practices and was submitted to the United Nations' Committee on the Elimination of Racial Discrimination.

Stemen, D. (2007). Reconsidering Incarceration: New Directions for Reducing Crime. New York, NY: Vera Institute of Justice. Retrieved November 11, 2008, from <http://www.vera.org/csc/csc-pubs.html>.

Summary: Little empirical study had been done to confirm or refute the effectiveness of incarceration in reducing crime rates when America began its historic reliance on prisons in the 1970s. Today, conversely, policymakers are faced with a large, complex, and sometimes contradictory body of research. This paper seeks to help officials make sense of this information and offers an up-to-date understanding of what works best. It also examines research on several of the other factors that might be developed as part of an expanded notion of public safety. Informed by this more inclusive understanding of current research, it suggests that effective public safety strategies should move away from an exclusive focus on incarceration to embrace other factors associated with low crime rates in a more comprehensive policy framework for safeguarding citizens.

Thornton, M. (2004). Prohibition vs. Legalization: Do economists reach a conclusion on drug policy? *Economics Journal Watch*, Vol. 1, No. 1, pp. 82-105.

Abstract: Economists have been newsworthy critics of the policy of drug prohibition. This paper seeks to determine if these instances of criticism represent a consensus of professional opinion. A random survey of professional economists suggests that the majority supports reform of drug policy in the direction of decriminalization. A survey of professional economists who have published on the subject of drug prohibition and expressed a policy judgment indicates an even greater consensus which is critical of prohibition and supportive of policy reforms in the direction of decriminalization, and to a lesser extent, legalization.

U.S. Conference of Mayors. (2007). Adopted resolutions. Retrieved September 21, 2007, from http://usmayors.org/75thAnnualMeeting/resolutions_full.pdf.

Highlight: WHEREAS, blacks, Latinos and other minorities use drugs at rates comparable to whites, yet face disproportionate rates of arrest and incarceration for drug law violations.... NOW, THEREFORE, BE IT RESOLVED that the United States Conference of Mayors believes the war on drugs has failed and calls for a New Bottom Line in U.S. drug policy, a public health approach that concentrates more fully on reducing the negative consequences associated with drug abuse, while ensuring that our policies do not exacerbate these problems or create new social problems of their own; establishes quantifiable, short- and long-term objectives for drug policy; saves taxpayer money; and holds state and federal agencies accountable;

U.S. Sentencing Commission. (2008). Preliminary Crack Cocaine Retroactivity Data Report. Washington, DC: author. Retrieved November 10, 2008, from <http://www.ussc.gov/>.

Summary: In 2007, the U.S. Sentencing Commission recommended reductions in the disparity of sentences for crack offenses vs. powder cocaine offenses, and later voted to make

these changes retroactive. This report provides information on all cases reported to the Commission in which the court considered a motion to reduce a sentence.

U.S. Sentencing Commission. (2007). Report to the Congress: Cocaine and federal sentencing policy. Retrieved September 21, 2007, from http://www.ussc.gov/r_congress/cocaine2007.pdf.

Summary: This is the fourth report to Congress regarding federal cocaine sentencing policy by the U.S. Sentencing Commission. Six chapters comprise this publication: overview; analysis of federal sentencing data; forms of cocaine, methods of use, effects, dependency, prenatal effects, and prevalence; trends in drug trafficking patterns, price, and use; state sentencing policy and possible effect on federal prosecutorial decisions; and case law developments.

Weiman, D. F. (2007). Barriers to prisoners' reentry into the labor market and the social costs of recidivism. *Social Research*, 74 (2), 575-611.

Summary: Examines the "prison effect" on individuals employment trajectories. Spending time in prison disrupts the normal trajectory, where younger individuals pass through numerous jobs, finally finding a "good job", and then begin to experience increased wages over time. The prison effect derails this process and locks individuals in low wage and less stable jobs.

Western B. (2007). Mass imprisonment and economic inequality. *Social Research*, 74(2), 509-532.

Summary: Incarceration is associated with high turnover in jobs and little potential for lifetime earnings growth. The formerly incarcerated are confined to the "secondary job market" – short term, low skill jobs with little earnings growth. Data were collected from the National Longitudinal Survey of Youth

Western, B. and Pettit, B. (2005). Black white wage inequality, employment rates, and incarceration. *American Journal of Sociology*, 111(2), 553.

Summary: Black men are removed from the workforce, not counted in economic statistics. Apparent improvement in the economic position of young black men is an artifact of incarceration.

Whitney, T. and Heaps, M. M. (2005). Disproportionate Sentencing of Minority Drug Offenders in Illinois, Report on Changes in Drug Laws 1985-2002. Chicago, IL: Illinois Criminal Justice Information Authority. Retrieved November 12, 2008, from www.icjia.state.il.us/public/pdf/ResearchReports/Disproportionate%20Sentencing%20Report.pdf.

Summary: The second in a series of reports, this report is designed to promote a basic understanding of the structure and content of Illinois' drug laws. It discusses the major components of those laws as originally drafted as well as additions and enhancements to those laws that were enacted from 1985 to 2002. Explaining the effects of race on arrests, prosecutions and sentencing practices is a complex proposition, and the information presented in this bulletin is not intended to infer any direct causal relationship between the laws themselves and any resulting racial disparities in sentencing. A more detailed statistical

analysis of the race of individuals prosecuted and sentenced for each type of drug offense is clearly warranted. The history of drug law enhancements presented here is intended to illuminate the changing landscape of drug-law sentencing in Illinois as a foundation for future policy and legislative discussions that are aimed at reducing racial disparities.

Guidelines for Collecting and Recording the Race and Ethnicity of Youth in Illinois' Juvenile Justice System

by Illinois Juvenile Justice Commission

ModelsforChange
Systems Reform in Juvenile Justice

This booklet was adapted, with permission, from the original document developed for the Pennsylvania Juvenile Court Judges' Commission by Torbet, P., Hurst, Jr., H., and Soler, M. (October 2006, (c) National Center for Juvenile Justice) with funding from the John D. and Catherine T. MacArthur Foundation. The original document, "Guidelines for Collecting and Recording the Race and Ethnicity of Juveniles in Conjunction with Juvenile Delinquency Disposition Reporting to the Juvenile Court Judges' Commission," is available online at: <http://www.modelsforchange.net/pdfs>.

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Fall 2008

Models for Change

Models for Change is an effort to create successful and replicable models of juvenile justice reform through targeted investments in key states, with core support from the John D. and Catherine T. MacArthur Foundation. Models for Change seeks to accelerate progress toward a more effective, fair, and developmentally sound juvenile justice system that holds young people accountable for their actions, provides for their rehabilitation, protects them from harm, increases their life chances, and manages the risk they pose to themselves and to the public. The initiative is underway in Illinois, Pennsylvania, Louisiana, and Washington, and through action networks focusing on key issues, in California, Colorado, Connecticut, Florida, Kansas, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, Texas, and Wisconsin.

Dear Juvenile Justice Stakeholder,

The Illinois Juvenile Justice Commission and the Illinois Models for Change Initiative are pleased to present these Guidelines for Collecting and Recording the Race and Ethnicity of Youth in Illinois' Juvenile Justice System. Enhancing the accuracy and reliability of juvenile justice data has been a consistent focus of the Commission for many years. Similarly, encouraging data-driven decision-making is a key element of the Illinois Models for Change Initiative, which is supported by the John D. and Catherine T. MacArthur Foundation.

The Commission and Models for Change recognize that complete, accurate and reliable data are fundamental to improving juvenile justice policy and practice and fostering positive outcomes for youth, families and communities. This document, by providing guidelines for collecting and recording the race and ethnicity of youth in Illinois' juvenile justice system, serves as a tool for improving Illinois' statewide and local data. The process described in this guide is consistent with federal policy and is intended to encourage the collection of information uniformly throughout the state and across justice system agencies and entities.

Why is the accurate recording of a juvenile's race and ethnicity important? Among other benefits, this information helps state and local stakeholders to understand *whom* the system is serving and better identify the needs of those in the system, to more accurately identify *how* decisions are made throughout the process, to ensure fairness and objectivity, to know *what* services or resources are needed, and to *monitor* and examine system response to youth of color. Consistency in data categories across communities and agencies allows system leaders to appropriately share information with other stakeholders and the community, and to design effective strategies to reduce the disproportionate impact of the justice system on youth of color.

The Illinois Juvenile Justice Commission and the Illinois Models for Change Initiative strongly encourage agencies, organizations and practitioners at all stages of the juvenile justice system to adopt and implement these Guidelines for accurately recording race and ethnicity of youth in the juvenile justice system. Ultimately, we hope that this guide serves as a tool to support your efforts to improve outcomes for youth, families and the communities we serve.

C. Gary Leofanti, Chairperson
Illinois Juvenile Justice Commission

Diane Geraghty, Lead Entity Representative
Illinois Models for Change Initiative

Instructions and Guidelines for Collecting and Recording Race and Ethnicity

This booklet provides instruction and guidance to juvenile justice practitioners, including members of state and local law enforcement, juvenile courts, probation departments, and correctional agencies, on accurate racial coding of juveniles involved in Illinois' juvenile justice system.¹

Why accurate information matters:

Meeting the Mandates of the JJDP Act and Ensuring Fundamental Fairness

Compelling reasons exist for accurate coding, not the least of which is to ensure the fundamental fairness principle that all aspects of the juvenile justice system must be carried out in a fair and unbiased manner.² Both the U.S. and Illinois constitutions guarantee rights and privileges to all citizens, regardless of race, color, creed, gender, or national origin.

In addition, the Federal Juvenile Justice and Delinquency Prevention (JJDP) Act, which governs Illinois' receipt of federal juvenile justice funding, requires states to assess the extent of Disproportionate Minority Contact (DMC) of youth of color at all stages of the juvenile justice system and to take steps to address any disproportionality

1 PLEASE NOTE: "Racial coding" and "racial data" are used interchangeably throughout this booklet to refer to the set of questions aimed at distinguishing a juvenile's Hispanic/Latino origin, race, and identification with any other population group or subgroups.

2 See "Juvenile Justice in Pennsylvania: Mission-Driven, Performance-Based, Outcome-Focused" available from JCJC at <http://www.jcjc.state.pa.us/jcjc/lib/jcjc/barj/monograph.pdf>.

(or over-representation).³ Compliance with this standard, however, is complicated by the manner in which race and ethnicity data are collected in Illinois and in many other states.

For example, significant inconsistencies persist in the terminology and categories used to record race and ethnicity by various juvenile justice agencies across the state. In some cases, for example, “Hispanic” is considered and coded as a racial category, while in other agencies or communities it may be considered an ethnicity. These inconsistencies cause considerable confusion when trying to determine the extent to which different groups are represented in the Illinois juvenile justice system, and they create obstacles to crafting effective policies and practices. Ultimately, because consistent definitions are not being used, policymakers and practitioners are hampered in their efforts to precisely and accurately address the factors giving rise to minority over-representation in the system.

The goal of this publication is to recommend a uniform approach to collecting and reporting these data and to provide guidance on analyzing the use of race and ethnicity data to monitor practice and share information with other stakeholders.

Illinois’ DMC Efforts

Although reducing disproportionality has been a goal for juvenile justice leaders across the state for many years, Illinois began allocating federal juvenile justice funds for targeted DMC reduction activities in 2002. The Illinois Juvenile Justice Commission (IJJC) oversees Illinois’ federal juvenile justice funding as the State Advisory Group designated pursuant to the JJDP Act. In this role, the IJJC identified 19 counties/communities in Illinois with the highest rates of disproportionality, based on detention numbers and other DMC indicators.

From that group of communities, four areas demonstrated an interest in and commitment to reducing DMC and were allocated funding: St Clair County, Peoria County, South Suburban Cook County, and the Chicago community area of Lawndale. The commission provided each community with funds to function as pilot sites for Illinois’ DMC reduction initiative. Each site is using the DMC reduction model developed by the W. Haywood Burns Institute and, in accordance with federal regulations established by OJJDP in 2005, is collecting data across the nine decision points of the juvenile justice system. Based

³ The original amendment referred to *Disproportionate Minority Confinement* but the mandate was subsequently expanded to any *Contact* from arrest through confinement.

on further “sites readiness” assessments conducted by the Burns Institute and the IJJC, three additional sites have since been funded for targeted DMC efforts, including Macon County, the Englewood Community Area in the City of Chicago, and Sauk Village.

In addition to this targeted and intensive DMC effort, reducing disproportionality and ensuring fundamental fairness is a key goal of each of the other juvenile justice reform initiatives underway in Illinois. These include Redeploy Illinois, the Juvenile Detention Alternatives Initiative, Balanced and Restorative Justice projects, and Models for Change.

The success of Illinois’ DMC efforts will be measured primarily by the extent to which policy and practice changes reduce the number of youth of color involved at various stages in the juvenile justice system, including detention. Regardless of long-term outcomes, these juvenile justice reform efforts across the state have brought to light immediate lessons: Having accurate data is critical to informed decision-making regarding individual youth and to analyzing how the system functions and how well it meets its charge to address juvenile delinquency effectively, fairly, and efficiently.

This booklet is one resource provided by the Illinois Juvenile Justice Commission and the support of the John D. and Catherine T. MacArthur Foundation, to practitioners and communities seeking to ensure that our juvenile justice system meets its charge of enhancing public safety, operating with fundamental fairness for all those involved, and achieving positive outcomes for the youth, families, and communities it serves.

Why it’s important to describe a juvenile’s race and ethnicity accurately

Why is the accurate recording of a juvenile’s race important to juvenile justice system representatives? What’s the point beyond statewide reporting or some distant compliance report to the Federal Government? Among other benefits, this information helps state and local officials:

- Know *whom* the system is serving and better identify the needs of those in the system;
- More accurately identify *how* decisions are made throughout the process;
- Know *what* services or resources are needed to respond to the youth and families the system is serving. Specifically, there may be a need for cultural competency

training for juvenile court staff, culturally appropriate programs and services for youth and their families, translators and interpreters, Spanish-language documents and materials, and bilingual and bicultural staff;

- Monitor and examine system response to youth of color; and
- Share this information with stakeholders and in annual reports to the community.

The benefit for administrators following this guide is the ability to report information in accordance with federal policy while preserving the flexibility to understand and describe the ethnic diversity of juveniles referred to the local juvenile justice system.

Why it isn't easy

For many people, their identification with a particular race or ethnic group is a deeply personal and sensitive issue. For government officials, statisticians, and others concerned about it, race classification is a substantively complex issue. It is also an imprecise cultural construct that changes over time. For example, the Census 2000 questionnaire offered 15 choices for coding

Census 2000 Race Categories	Federal Minimum Race Categories
White	American Indian or Alaska Native
Black, African Am., or Negro	Asian
American Indian or Alaska Native, print tribe	Black or African American
Asian Indian	Native Hawaiian or Other Pacific Islander
Japanese	White
Native Hawaiian	
Chinese	
Korean	
Guamanian or Chamorro	
Filipino	
Vietnamese	
Samoan	
Other Pacific Islander	
Other Asian, print	
Some other race, print	

a respondent's race even though the 1997 federal standards, promulgated by the White House Office of Budget and Management (OMB), set the minimum race categories at five.

OMB also places special emphasis on identifying the Hispanic or Latino population group. Unlike "African American," which is a race, "Hispanic/Latino" is an ethnicity, not a race. Accordingly, federal guidelines recommend asking two separate and distinct questions and the order in which they should be asked, the first asking respondents to indicate their Hispanic or Latino ethnicity and the second asking for respondents' race. (See the sidebar for more information on the federal standards.)

Best Practices

This publication recommends that the collection and recording of racial data is best achieved by asking three questions or variables, with the first two limited to fixed responses:

1. Hispanic/Latino? (Yes, No)
2. Race (5 categories)
 - American Indian or Alaska Native
 - Asian
 - Black or African-American
 - Native Hawaiian or Other Pacific Islander
 - White
3. National Origin, Ancestry or Tribal Affiliation (any population group or subgroups not included in the first two questions)

This question format, order of questions asked, and the fixed coding structure for the first two questions comply with federal standards. The optional third question provides flexibility to counties that wish to accommodate local preferences for capturing affiliations with other population groups not included in the first two variables, while ensuring that the Federal Government's standards for minimum race categories are met.

Agencies and organizations that interact with delinquency-involved youth are encouraged to assess their data collection forms and methods and implement this approach to seeking, capturing, coding, and reporting race and ethnicity data. First and foremost, it is hoped that these changes will make it easier to code racial data, thereby reducing the

instances of unknown or missing data. Second, implementing these recommendations will improve accuracy and consistency of the racial data collected by juvenile systems across the state.

Racial Coding Instructions

Information Sources:

There are three possible information sources for capturing racial data:

1. *Self-identification* on the basis of an interview with the youth/parent/guardian;
2. *Observer-identification* when the youth/parent/guardian fails to answer the question and the observer infers the answer; and
3. *Some other source* on the basis of a report, face sheet, or complaint filed with the court.

Categories and Definitions

WHITE: a person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

BLACK OR AFRICAN AMERICAN: a person having origins in any of the black racial groups of Africa. Terms such as “Haitian” or “Negro” can be used in addition to “Black or African American.”

HISPANIC OR LATINO: a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

ASIAN: a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

AMERICAN INDIAN OR ALASKA NATIVE: a person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER: a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(Source: Federal Register Vol. 62, No. 210, Thursday, October 30, 1997.)

Self-identification is the preferred source of information for collecting racial data. The guidelines in the next section provide advice for coding racial data depending on the source of the information.

What has changed? Coders are now asked to indicate whether answers to the Hispanic/Latino and race questions were self-reported by the juvenile/parent/guardian, recording “yes” (Y) for self-identification or “no” (N) for identification by the observer or some other source.

Question Order, Format, and Acceptable Answers:

ORDER OF QUESTIONS: The coder should ask the questions in the order specified:

1. Hispanic/Latino question
2. Race question
3. Optional, open-ended question about identification with other population groups not listed in the first two questions.

FYI: The first two questions force a rubric to accommodate current federal policy on racial coding. The third question is open-ended and can accommodate any self-identity. The ordering helps to reduce confusion introduced by the multi-question format.

PROMPT TO SELF-IDENTIFY: Begin the series of questions with a prompt: “I am now going to ask you some questions about how you prefer to describe yourself.” This prompt links the questions and encourages the juvenile to self-identify.

FIRST QUESTION: Are you Hispanic or Latino?”

Acceptable answers:

- Yes, Hispanic or Latino
- No, Not Hispanic or Latino
- Unknown (limited use)

What has changed? The ordering of the questions now puts the “ethnicity” question before the race question. The variable label of “Ethnicity” has been eliminated in favor of the label: Hispanic/Latino? The question, “What is your ethnicity?” has been replaced with the new question, “Are you Hispanic or Latino?”

The biggest change, however, is that the new question/variable will have fixed “yes” or “no” answers. The coding of other ethnicities will be accommodated by an optional third question. Identification with any of the other subgroups that federal policy characterizes as Hispanic or Latino (e.g., Cuban) can also be accommodated in the third question. “Unknown” should be limited to situations in which the youth is not seen and the information is not provided by the referral source.

FYI: The label “Hispanic or Latino” takes into consideration regional differences in the usage of the terms, supposedly between the eastern and western United States. “Spanish” was added to the label by Census 2000, but is not required by federal policy.

SECOND QUESTION: “What is your race?” At this point in the questioning, hand youth a printed/laminated card with the five race categories. This will assist them in answering the question since reading the list out loud to them may be confusing. Prompt the youth by asking, “Please tell me which race you consider yourself to be. You may select more than one.”

Acceptable answers:

- American Indian or Alaska Native
- Asian
- Black or African-American
- Native Hawaiian or Other Pacific Islander
- White
- Unknown (limited use)

What has changed? The previous reporting of racial data permitted the coding of “other” race. This category has been eliminated and is not an acceptable answer. Identities outside the five minimum race categories will be accommodated in the next question.

The biggest change, however, is the application of a new rule. Because many youth are multiracial, youth may identify with more than one race. The prompt for them to choose more than one race will facilitate the application of this new rule. The interviewer should follow the “mark any that apply” rule based upon the youth’s self-identification of multiple races or by the observer’s identification. The use of “Unknown” should be limited to situations in which the youth is not seen and the information is not provided by

the referral source, or in situations in which a youth specifically requests that “unknown” be checked in addition to another race.⁴

THIRD QUESTION: (Optional) “Do you identify primarily with a particular country of origin, ancestry or, if you are Native American, a particular tribe?”

What has changed? A new question with the variable label “National Origin, Ancestry or Tribal Affiliation” has been added. Previously, counties were permitted to record other origins or ethnicities in the “Ethnicity” variable. Counties now have the option of asking a separate question that collects information on population subgroups not listed in the first two questions. Counties can configure their own code list. Youth may choose from a listing of county-specified selections or to write in a response on a data collection form.

Racial Coding Guidelines

1. Self-identification is the preferred method for collecting racial data, best accomplished by an in-person interview with the youth.

The need for accurate juvenile justice system data spans the entire system, from earliest police contacts and arrest through aftercare or reentry from corrections facilities. Thus, the point at which accurate delinquency collection should begin is upon a complaint being received by an arresting or other justice officer, school official, or child welfare agency.

In situations when it is not feasible to interview the youth in person and the arresting officer makes a decision based upon a review of the complaint, the officer should code Hispanic/Latino origin and race based upon what was reported by the referral source. The question that asks whether the answer was self-reported should be answered “no.” If the referral source did not provide racial information, the officer/coder may use the “unknown” category for either question. If the case is accepted for any kind of action by the court, the probation officer or state’s attorney should attempt to correct errors or gaps in racial coding that may have occurred when the original record was created.

⁴ For example, a youth may prefer to indicate “unknown” in conjunction with the selection of another race when the race of the biological parent is not known.

2. Interviewers should rely on the youth's self-identification when coding racial data, whenever possible.

The goal for the coding activity is to be able to document as accurately as possible the racial characteristics of youth involved in the juvenile justice system. Thus, interviewers should allow a youth to self-identify race and ethnicity whenever possible.

3. If the youth does not answer the Hispanic/Latino question, the interviewer may repeat the question and response options. If the youth still fails to respond to the question, the interviewer must infer a response (based upon observation or information provided by another source).

While a youth's failure or inability to answer the questions erodes the reliability of the information (thus limiting its utility for research into overrepresentation), interviewers should, as a last resort, infer Hispanic/Latino origin and race from the information available. In other words, if a youth cannot self-identify, the risk of miscoding an individual juvenile is outweighed by the desire to describe, monitor, and report this information in the aggregate.

In instances where the interviewer infers a response, the question that asks the coder whether the answer was self-reported by the juvenile/parent/guardian should be marked "no" (N).

4. If the youth has difficulty answering the race question, interviewers should encourage the youth to select a response that falls within one of the five race categories.

Interviewers may experience difficulty with youth who identify as Hispanic or Latino in the first question, but who are unable to answer the subsequent question regarding their race. In these instances, the interviewer should simply repeat the five race categories.

Interviewers should not ask prompting questions such as "*In addition to being Hispanic, can you describe yourself as [repeat race categories]?*" or "*Hispanic or Latino is generally considered an ethnicity rather than a race. Hispanic or Latino persons can be of any race.*" Such questions have been found to be offensive to some people as

well as ineffective. If the question is confusing to youth or they refuse to answer the question, apply the next guideline.

FYI: This problem was well documented in the testing of the two-question format in the 2000 Census where many respondents who answered “yes” to the Hispanic/Latino question did not respond to the race question or indicated “other race.”

5. If the youth is unable or unwilling to select among the race categories, the interviewer must infer the youth’s race (based upon observation or information provided by another source).

In instances where the interviewer infers a response, the question that asks the coder whether the answer was self-reported by the juvenile/parent/guardian should be marked “no” (N).

6. If the youth does not respond to the third (optional) question, interviewers should not infer an answer.

Federal Standards for the Classification of Racial Data

The background of the 1997 revisions to the Federal OMB standards and the principles that governed the review process provide an important backdrop to the instructions and guidelines presented in this booklet. Background: For more than 20 years, the standards provided a common language to promote uniformity and comparability for data on race and ethnicity for the specified population groups. They were developed in cooperation with federal agencies to provide consistent data on race and ethnicity throughout the Federal Government. Development of the data standards stemmed in large measure from new responsibilities to enforce civil rights laws. Data were needed to monitor equal access in housing, education, employment, and other areas for populations that historically had experienced discrimination and differential treatment because of their race or ethnicity. The standards are used not only in the decennial census (which provides the data for the “denominator” for many measures), but also in household surveys, on administrative forms (e.g., school registration and mortgage lending applications), and in medical and other research. The categories represent a social-political construct designed for collecting data on the race and ethnicity of broad population groups in this country, and they are not anthropologically or scientifically based.

Some of the more relevant principles that governed the review process include:

1. The racial and ethnic categories should not be interpreted as being primarily biological or genetic in reference. Race and ethnicity may be thought of in terms of social and cultural characteristics as well as ancestry.
2. Respect for individual dignity should guide the processes and methods for collecting data; ideally respondent self-identification should be facilitated to the greatest extent possible, recognizing that in some data collection systems observer identification is more practical.
3. To the extent practicable, the concepts and terminology should reflect clear and generally understood definitions that can achieve broad public acceptance....
4. The categories should be comprehensive in coverage and produce compatible, nonduplicative, exchangeable data across federal agencies.
5. Foremost consideration should be given to data aggregations by race and ethnicity that are useful for statistical analysis and program administration and assessment....
6. The standards should be developed to meet, at a minimum, federal legislative and programmatic requirements. Consideration should also be given to needs at the state and local government levels....as well as to general societal needs for these data.
7. The categories should set forth a minimum standard; additional categories should be permitted provided they can be aggregated to the standard categories. The number of standard categories should be kept to a manageable size, determined by statistical concerns and data needs.

The main objective of the review was “to enhance the accuracy of the demographic information collected by the Federal Government by having categories for data on race and ethnicity that will enable the capture of information about the increasing diversity of our Nation’s population while at the same time respecting each individual’s dignity.”

Source: Federal Register (Thursday October 30, 1997 (page 58781) Part II Office of Management and Budget Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity; Notices), <http://www.gpoaccess.gov/fr/search.html>.

Models for Change

The Models for Change initiative is an effort to create successful and replicable models of juvenile justice system reform through targeted investments in key states. With long-term funding and support from the John D. and Catherine T. MacArthur Foundation, Models for Change seeks to accelerate progress toward a more rational, fair, effective, and developmentally appropriate juvenile justice system. Models for Change in Illinois is focusing on bringing about change in three areas: (1) right-sizing the juvenile court's jurisdiction, (2) expanding community-based alternatives to the confinement and formal processing of juveniles, and (3) addressing disproportionate minority contact with the juvenile justice system. While the work in all these areas is being carried out statewide, five local demonstration projects are currently working with Models for Change to expand their array of alternatives to confinement.

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Illinois Juvenile Justice Commission

The Illinois Juvenile Justice Commission, which has partnered with the Illinois Models for Change Initiative in issuing this guide, serves as the federally mandated State Advisory Group to the Governor, the General Assembly and the Illinois Department of Human Services. The Commission develops, reviews and approves the State's juvenile justice plan for the expenditure of funds granted to Illinois by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP). The Commission is also responsible for ensuring the State's compliance with the Federal Juvenile Justice Delinquency Prevention Act. The Commission also has a statutory responsibility to submit an annual report to the Governor and General Assembly that highlights the State's accomplishments, its most urgent challenges relative to juvenile justice in Illinois and its recommendations for addressing those issues.

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ModelsforChange
Systems Reform in Juvenile Justice

www.modelsforchange.net

An initiative supported by the John D.
and Catherine T. MacArthur Foundation
www.macfound.org

ILLINOIS
**Disproportionate Justice
Impact Study Commission**

FINAL REPORT
Appendix E

- Minority Report



MINORITY REPORT OF THE DISPROPORTIONATE JUSTICE IMPACT STUDY COMMISSION

Drafted by: The Cook County State's Attorney's Office
Hon. Anita Alvarez, Cook County State's Attorney

The following adhere to the contents of this Minority Report:
Hon. Dennis Reboletti, 46th District
Hon. Chapin Rose, 110th District

This minority of commissioners on the Illinois Disproportionate Justice Impact Study Commission file this report to voice concern over certain recommendations that the majority report makes and to highlight potentially erroneous conclusions. These erroneous conclusions are the result of the majority basing their conclusions on the limited statistical studies which were available.

The statistics that the majority report cites show that members of minority groups charged with felony drug cases are more likely to become repeat offenders and, as the number of arrests and convictions accumulates, the chances that these individuals will be sentenced to the Illinois Department of Corrections (IDOC) increases. The majority report draws conclusions about cause and effect that the data does not support.

In this regard, the majority report mistakenly concludes that a history of drug arrests is the cause for disproportionate application of drug laws on minorities. Instead of trying to identify what factors are unique to minority drug offenders (as opposed to non-minority offenders) that contribute to their increased likelihood of committing subsequent drug offenses, the majority recommends changes designed to simply remove the history of arrests/convictions regardless of the race/ethnicity of the offender.

1. Automatic Expungement/Sealing

The majority recommends automatic expungement for offenders who successfully complete specialty courts, first offender probation, and TASC probation.¹ The problem with this recommendation is that simply providing for the automatic expungement of prior convictions of drug offenders who complete these programs does nothing to address the underlying issues, *i.e.* the causes which make it more likely for minority drug offenders to re-commit offenses. Moreover, this recommendation creates a needless but very real obstacle for the judiciary and others in the legal community who craft appropriate sentences for repeat offenders. An unintended consequence of the majority's recommendation may be a judiciary which is not able to provide drug treatment to an offender when appropriate.

The majority advocates that automatic expungement/sealing is needed to address the disproportionate number of minorities who are charged with drug offenses. Yet, this argument is based on the assumption that an offender's background impacts the decision to arrest. No evidence or data supports such an assumption. The fact that more minorities are accumulating criminal histories for drug offenses is a reflection of how drugs are sold in urban settings; it is, however, not the cause of those arrests. In practice, officers generally do not know an offender's criminal background until after the arrest. An individual's criminal history is obtained when the charging paperwork is being prepared at the police station. Nevertheless, the majority uses the faulty assumption that a lengthy criminal history contributes to subsequent arrests to make several findings and recommendations designed at expunging or sealing criminal histories.

Simply denying the judiciary and law enforcement knowledge of an individual's criminal history does not address the underlying problem which is an increased rate of recidivism for drug offenses by minorities which may lead to incarceration. A 2005 study conducted by the Illinois Criminal Justice Authority (only possible because a record of criminal convictions was preserved) indicates that individuals are only sentenced to the IDOC for Class 4 offenses *after* numerous encounters with the criminal justice system.

The ICJA 2005 study of all Class 4 felons committed to the Illinois Department of Corrections during the previous year revealed that 52% of these commitments were for a violation of the Possession of a Controlled Substance statute.¹ The study found that,

Class 4 felons sentenced to the IDOC averaged 15 prior arrests, and possessed a 13-year arrest history. This group's most common prior arrests were for property offenses, with an average six previous arrests; *and drug offenses, with an average of five previous arrests.* In addition, Class 4 felons averaged three prior periods of incarceration. Results of this study confirm that Class 4 offenders typically have lengthy criminal backgrounds and relatively short prison stays. ... The average age of first conviction for Class 4 felons committed to IDOC in SFY04 was 24 years old. This group averaged five previous convictions, and all of them had at least one conviction prior to the one that led to their incarceration. Most (73 percent) had between one and five convictions prior to the one for which they were incarcerated. (emphasis added)

The ICJA 2005 study determined that "first-time Class 4 felony offenders are not sent to prison." The study also found that the demographic characteristics of Class 4 felony commitments were consistent with overall prison admissions for other classifications of offenses suggesting that there is nothing unique

¹ Illinois already allows an individual without a felony conviction to expunge first offender drug probation, (commonly known as 710 and 1410) and TASC probation as well as to expunge all narcotic charges that did not result in a criminal conviction (SOL, Not Guilty, Supervision, Finding of No Probable Cause, and *Nolle Pros*).

about the criminal statutes for Class 4 offenses as opposed to higher classified offenses in how they are enforced.

2. Statistical Problems

The Illinois State Police and the Cook County studies that the majority relies upon represent only a small sample of cases. And, equally importantly, the data for each of the studies is incomplete. For example, in the Illinois State Police study, individuals were marked as white or black, so the majority concluded that “presumably, both white and nonwhite categories contained unknowable percentages of people of Latino or other ethnic origin.” Additionally, the charging information on 23% percent of 2,575 first time arrestees was missing and the highest percentage of missing information (31.7%) was from nonwhite first offenders. Therefore, given the small sample and the missing data on which the majority report based its conclusions, those conclusions should be viewed with caution. However, these statistical problems do illustrate the need for better record keeping as the majority report recommends.

Yet, when the information that was available was reviewed, the data showed that whites were less likely to have their cases dismissed (40.9%) compared to non-whites (45%). Because whites were less likely to have their cases dismissed outright, it is not surprising that whites would receive sentences of supervision and probation in a greater percentage (both with and without treatment) than non-whites even without taking into account that nearly 1/3 of the information about what happened to first time non-white offenders was missing from the study.

3. Drug Possession Versus Drug Sales

The majority points out that “African Americans represented an average of 80 percent of all persons admitted to Illinois’ prisons for drug offenses.” This statistic includes individuals who have been convicted of selling drugs or possessing drugs with the intent to deliver. The higher number of minorities sentenced to imprisonment reflects the tragic reality that more African Americans are engaged in the sales of drugs in urban settings. “African American and Hispanic street gangs such as Gangster Disciples, Vice Lords, and Latin Kings dominate the retail distribution of cocaine, heroin, and marijuana in the (Chicago) HIDTA region. These street gangs are prevalent in urban areas and are becoming more active in suburban Chicago communities.”ⁱⁱⁱ These conclusions are corroborated by the findings from the Illinois State Police study of 2005 arrestees which revealed that 90% of those arrested for manufacture/delivery of a controlled substance were non-white.

The majority highlights the fact that the disproportionate incarceration of minorities for possession of drugs cannot be explained by differences in drug usage among different racial and ethnic groups. The majority equates arrests or convictions for possession of a controlled substance only with drug use. This ignores the reality of the criminal justice system in that it does not explore how a possession charge is often linked to more serious charges of delivery or possession with intent to deliver a controlled substance or the possibilities of plea bargaining.

The reality is that law enforcement officers sometimes charge a person with possession of a controlled substance only to have those charges upgraded to possession with intent to deliver by the prosecution. Likewise, the majority report does not consider that charges of delivery or possession with intent to deliver are often dismissed during plea negotiations in exchange for a guilty plea to simple possession. It is, therefore, not surprising that individuals who were charged with higher classified offenses like delivery or possession with intent to deliver (including “safe-zone” offenses) would be more likely to receive a period of imprisonment on a reduced charge of possession. Because street gang members dominate the retail distribution of cocaine, heroin, and marijuana in the Chicago region and since 90% of the individuals charged with delivery or possession with intent to deliver were non-white, it

is not surprising that a greater percentage of non-whites were sentenced to the IDOC for possession when one considers the plea bargaining process described above.

Any further studies on the disproportionate number of arrests/convictions of minorities for Class 4 possession of a controlled substance needs to consider how interconnected possession charges are to delivery and possession with intent to deliver charges.

4. The Impact of Gang Membership on Drug Offenses

The impact of street gangs on the sale and distribution of narcotics in the United States is profound. Yet, the majority report fails to address the impact that gang membership has on the issue of disproportionate arrests/sentences of minorities for drug crimes. In the Chicago metropolitan area alone, gang membership is estimated to be between 70,000 and 125,000.ⁱⁱⁱ According to a national law enforcement survey, the ethnicity of gang members is 48 percent African-American, 43 percent Hispanic, 5 percent white, and 4 percent Asian^{iv}.

In 2004, a study by the Illinois Criminal Justice Information Authority found that gang members were more likely than non-gang members to get rearrested, were rearrested more quickly following release from prison, were rearrested more frequently, and were more likely to be arrested for violent and drug offenses than non-gang members.^v In a two year period following release from incarceration, 75% of gang members were rearrested and 40% rearrested for a drug offense. This is compared to 63% and 29% for non-gang members, respectively. The study found that 88% of gang members were non-white.

When prior arrest charges were classified, the study revealed that gang members were arrested, on average, more often than non-gang members for drug law violations (3.6 and 2.9 prior charges, respectively) and that “gang members were more likely to be identified as having a history of substance abuse.”

5. Attachment of Racial & Ethnic Impact Statements to Legislation

The majority recommends that legislators should be able to request the attachment of a Racial and Ethnic Impact Statement to bills or appropriation measures that impact criminal offenses, penalties, sentencing, probation, or parole policies. Many times it will be difficult, if not impossible to determine the racial and ethnic impact of new legislation before that legislation is enacted. And, the majority ignores that fact that this safeguard is already embedded in the Illinois and United States’ constitutions (*i.e.*, in accordance with the Illinois and United States Constitutions, criminal laws cannot discriminate on the basis of race or ethnicity.) Moreover, the attachment of the racial and ethnic impact statement that the majority recommends may itself raise constitutional problems with resulting legislation.

The mere fact that a greater percentage of persons within a specific racial or ethnic group may violate a criminal statute does not mean that the legislature cannot prohibit the illegal activity that the statute bars. For example, new laws with more severe sentences were enacted several years ago in response to a growing concern regarding methamphetamine use and manufacturing. If a Racial and Impact Statement was attached to this new law it would have shown that the vast majority of people charged with these offenses are white. Likewise, when the legislature increased penalties for the delivery of ecstasy they did so to address the dangers associated with the drug’s use even though white persons primarily abused ecstasy. It is the illegal activity that the Legislature prohibits, not the racial or ethnic group.

6. Review of 1,000 Feet “drug-free zone laws”

The majority recommends a review of the “drug free zone laws.” First, Illinois is not unique in its enactment of “safe-zone” laws to enhance penalties for the sale of drugs near certain locations. Children and law-abiding citizens should not have to sacrifice their access to schools, churches and public parks simply because there are more safe-zone locations in urban settings. Second, these “safe-zones” only increase the penalties for those *selling drugs* and do not apply to the possession of drugs. Any change in these laws designed to lessen either the sentences or the applicability of the safe-zone laws is, quite simply, surrendering some protections designed to protect law-abiding citizens and rewarding individuals that are selling poison on our streets with a lesser sentence.

7. Felony Review for All Charges

It is unclear how this recommendation of the majority is designed to address a disproportionate number of minorities being arrested/sentenced with drug offenses. None of the majority’s findings suggest that law enforcement officers are making improper arrests based on racial/ethnic reasons. The mere fact that a large number of drug cases in the Cook County study were dismissed does not indicate a need for felony review as prosecutors are already ethically and legally bound not to pursue case that are not supported by the evidence. Additionally, Cook County prosecutors annually dismiss over 4,000 drug cases if defendants successfully complete the Cook County State’s Attorney’s Office’s Drug School program and not due to a lack of evidence.

There are two additional problems with this proposal. First, this recommendation is an unfunded mandate that will further strain the resources of States Attorney Offices throughout the State. The Cook County State’s Attorney’s Office’s already dedicates 53 Assistants to the Felony Review Unit which is staffed 24 hours a day, seven days a week. Last year the Cook County Felony Review Unit reviewed approximately 30,000 cases. According to the Illinois State Police Uniform Crime Report, Cook County reported 64,172 drug arrests in 2007. The costs associated with providing the necessary staffing for Felony Review of all drug cases just in Cook County would amount to an additional six million dollars in salaries.

Second, the Legislature cannot direct any State’s Attorney to have a felony review program for all felonies, including narcotics offenses. Where the duties of a constitutional officer such as the State’s Attorney are definitively stated, the legislature cannot strip the State’s Attorney of his powers or transfer them to others. *People ex rel. Kunstman v. Nagano*, 389 Ill. 231, 249 (1945); *County of Cook ex rel. Rifkin v. Bear Stearns & Co.*, 215 Ill. 2d 466 (2005). Nor may the State’s Attorney’s duties be reduced either by the County Board of Commissioners, *Wilson v. County of Marshall*, 257 Ill. App. 220, 224 (2nd Dist. 1930) or by the courts. *Cf. People ex rel. Elliott v. Covelli*, 415 Ill. 79, 88-89 (1953). To do so would violate the separation of powers doctrine. *See, e.g.*, Ill. Const. Art. II, § 1 (1970). *See also People ex rel. Daley v. Moran*, 94 Ill. 2d 41, 46 (1983) (holding that circuit courts cannot, consistent with the principle of separation of powers, assume the role of prosecutor and direct the State’s Attorney to prosecute a particular charge against a criminal defendant.) Similarly, the Legislature cannot direct Illinois State’s Attorneys to have felony review for all charges. That decision lies within the discretion of the 102 State’s Attorneys in Illinois.

8. Prohibiting Drug-Related Arrests in Criminal Histories

Even if this recommendation were implemented, its impact would be limited because arrest information would still be available through federal and other private databases. Public court records would also still be a source for arrest information unless they were sealed.²

9. Community Enterprises/Tax Incentives

The majority's recommendation to give tax incentives to companies that convicted felons own or who employ convicted felons is overbroad. The majority's recommendation would apply to all felons and as such, it does not specifically address the disproportionate impact of drug laws on minorities which was and is the mandate for this Commission. In essence, the majority is pursuing an agenda beyond the scope of what it was asked to address.

ⁱ Illinois Criminal Justice Information Authority, *A Profile of Class 4 Felony Offenders Sentenced to Prison in Illinois*, December 2005.

ⁱⁱ National Drug Intelligence Center, *Chicago High Intensity Drug Trafficking Area Drug Market Analysis*, May 2007.

ⁱⁱⁱ Chicago Crime Commission, *Gang Book*, 2006.

^{iv} Curry, G.D., *National youth gang surveys: A review of methods and findings*. Report prepared for the National Youth Gang Center, 1996.

^v Illinois Criminal Justice Information Authority, *The Relationship Between Gang Membership and Inmate Recidivism*, May, 2004.

² It is well established in Illinois that sealing judicial records is an extraordinary remedy and should not be done absent some highly compelling reason. See *A.P. v. M.E.E.*, 354 Ill. App. 3d 989, 997 (1st Dist. 2004). In *A.P.*, the Appellate Court recognized that “[b]ecause litigation is a public enterprise and consumes public resources, it follows that in all but the most extraordinary cases (like weighty national security matters) complaints must be public.” *Id.*, citing *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214, 236-237 (2000).