

ILLINOIS

Disproportionate Justice Impact Study Commission

Final Report

Submitted to the
Illinois General Assembly

December 2010



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The Illinois Disproportionate Justice Impact Study Commission

Hon. Mattie Hunter, Co-Chair • Hon. Arthur L. Turner, Co-Chair

Dear Honorable Members of the Illinois State General Assembly:

We are pleased to present this final report from The Illinois Disproportionate Justice Impact Study Commission. The Commission was established in October 2008 through state statute (Public Act 095-0995, which passed unanimously through the General Assembly before being signed by the Governor) in response to alarming evidence of disproportionately high rates of drug-related arrests, sentences, and incarceration among minority communities—and especially African-American populations—in Illinois.

The Commission was charged to study the nature and extent of the harm caused to minority communities through the practical application of state drug laws and offer recommendations to address the disproportionate impact that even seemingly neutral laws can have on minority communities.

The Commission conducted original research with data from the Illinois State Police and the Office of the Clerk of Cook County, reviewed state drug laws, reviewed the literature on the consequences of high rates of incarceration, and received public testimony of facts and experiences from a variety of stakeholders during hearings held around the state in the spring of 2010. Based on the findings of this work, which are presented in this report, the Commission has articulated recommendations intended to increase fairness and equality in the dispensation of justice relative to drug-related offenses and to mitigate the impact of disproportionate involvement in the criminal justice system among minority communities.

It is our hope that these recommendations will guide the state in enacting policies and ensuring oversight of practices that promise equal justice for all populations.

A handwritten signature in black ink that reads "Mattie Hunter".

Mattie Hunter
Illinois State Senator, 3rd District

A handwritten signature in black ink that reads "Arthur L. Turner".

Arthur L. Turner
Illinois State Representative, 9th District
Deputy Majority Leader

Commission Appointees, Participants, and Staff

APPOINTED MEMBERS

Hon. Mattie Hunter (*CO-CHAIR*) – Illinois Senate, 3rd District
Hon. Arthur L. Turner (*CO-CHAIR*) – Illinois House of Representatives, 9th District (*through November 2010*)
Hon. Arthur Turner II (*CO-CHAIR*) – Illinois House of Representatives, 9th District (*beginning November 2010*)
Hon. Anita Alvarez – Cook County State’s Attorney
Brenetta Howell Barrett – Pathfinders Prevention Education Fund
Arthur Bishop – Illinois Department of Juvenile Justice (*beginning July 2010*)
Hon. Tim Bivins – Illinois Senate, 45th District
Walter Boyd – Protestants for the Common Good
Rev. Byron T. Brazier – Apostolic Church of God
Hon. Abishi C. Cunningham, Jr. – Cook County Public Defender
Jack Cutrone – Illinois Criminal Justice Information Authority
Hon. Thomas J. Dart – Sheriff of Cook County
Patrick Delfino – Illinois Office of the State’s Attorney Appellate Prosecutor
Hon. William Delgado – Illinois Senate, 2nd District
Hon. Timothy C. Evans – Chief Judge, Circuit Court of Cook County
Kurt Friedenauer – Illinois Department of Juvenile Justice (*through July 2010*)
Hon. Paul D. Froehlich – Illinois House of Representatives, 56th District
Marco Jacome – Healthcare Alternative Systems
Hon. Lisa Madigan – Illinois Attorney General
Jonathon E. Monken – Illinois State Police
Michael J. Pelletier – Illinois State Appellate Defender
Marian E. Perkins – Cook County Bar Association
Michael Randle – Illinois Department of Corrections (*through September 2010*)
Hon. Dennis M. Reboletti – Illinois House of Representatives, 46th District
Hon. Dale A. Righter – Illinois Senate, 55th District
Michael Rodriguez – Enlace Chicago
Hon. Chapin Rose – Illinois House of Representatives, 110th District
Terry Solomon – Illinois African-American Family Commission
Gladyse Taylor – Illinois Department of Corrections (*beginning September 2010*)
Neli Vazquez-Rowland – A Safe Haven Foundation
Jody P. Weis – Chicago Police Department
Standish E. Willis – Law Office of Standish E. Willis Ltd.

PARTICIPATING REPRESENTATIVES OF APPOINTEES

Bruce Banks – Illinois State Police
Luis Carrizales – Enlace Chicago
Pat Coughlin – Cook County State’s Attorney’s Office
Salvador Tony Godinez – Cook County Sheriff’s Office, Cook County Department of Corrections
James Jackson – Chicago Police Department
Mercedes Luque-Rosales – Cook County State’s Attorney’s Office
Rob Moon – Cook County Sheriff’s Office
Dave Neal – Illinois Office of the State’s Attorney Appellate Prosecutor
Patrick Reardon – Office of the Cook County Public Defender
Cara Smith – Office of the Illinois Attorney General
Sara Sullivan – Illinois Department of Corrections
Patrushka Thigpen – Illinois African-American Family Commission
Eugene Williams – Chicago Police Department
Jeanne Wrenn – Cook County State’s Attorney’s Office

RESEARCH ADVISORY GROUP

Creasia Finney Hairston, Ph.D. – Jane Addams College of Social Work, University of Illinois at Chicago
Erica Hughes – Illinois Criminal Justice Information Authority
Kathleen Kane-Willis – Illinois Consortium on Drug Policy, Roosevelt University
Steve Karr – Illinois Department of Corrections
David Olson, Ph.D. – Loyola University Chicago
Mikaela Rabinowitz – Northwestern University Student
Stephanie Schmitz-Bechteler – Illinois Consortium on Drug Policy, Roosevelt University
Anne Smith – Clerk’s Office of the Circuit Court of Cook County
Donald Stemen, Ph.D. – Loyola University Chicago
Joseph Strickland, Ph.D. – Jane Addams College of Social Work, University of Illinois at Chicago
Christine Devitt Westley – Illinois Criminal Justice Information Authority

POLICY ADVISORY GROUP

Walter Boyd – Protestants for the Common Good
Mary Ann Dyar – Chicago Metropolis 2020, Adult Redeploy Illinois
Roger Ehmen – Westside Health Authority
Salvador Tony Godinez – Cook County Sheriff’s Office, Cook County Department of Corrections
Creasia Finney Hairston, Ph.D. – Jane Addams College of Social Work, University of Illinois at Chicago
Kathleen Kane-Willis – Illinois Consortium on Drug Policy, Roosevelt University
Terence Mitchell – Illinois Department of Human Services
Malcolm Rich – Chicago Appleseed Fund for Justice
Gwendolyn Rowan – Cook County Bar Association
Stephanie Schmitz-Bechteler – Illinois Consortium on Drug Policy, Roosevelt University
Tracy Siska – Chicago Justice Project
Terry Solomon – Illinois African-American Family Commission
Patrushka Thigpen – Illinois African-American Family Commission
Phillip Thomas – Chicago Community Trust
Chyvette Williams, Ph.D. – University of Illinois at Chicago
Jeanne Wrenn – Cook County State’s Attorney’s Office

CENTER FOR HEALTH AND JUSTICE AT TASC (STAFF TO THE COMMISSION)

Pamela F. Rodriguez
Daphne Baille
Laura Brookes
John Carnevale, Ph.D., Carnevale Associates (consultant)
Amelia de Landa
Kanu Iheukumere (consultant)
Ian Jantz
Arthur J. Lurigio, Ph.D., Loyola University Chicago (consultant)
Thomas Lyons, Ph.D., Chicago State University (consultant)
Lorena Roque
Sharon Sheridan
Terry Walker
Tim Whitney, J.D. (consultant)
George Williams

Executive Summary

In October of 2008, Senate Bill 2476 became law in Illinois. Passed unanimously by the Illinois General Assembly and signed by the Governor, Public Act 095-0995 established the Illinois Disproportionate Justice Impact Study (DJIS) Commission, a non-partisan, multi-disciplinary group of policymakers, agency leaders, and justice professionals charged with examining the impact of Illinois drug laws on racial and ethnic groups and the resulting over-representation of racial and ethnic minority groups in the Illinois criminal justice system. The Commission was tasked with making recommendations to mitigate or eliminate that disproportionality. This report reflects the outcome of that effort in accordance with the law.

The legislation that became PA 095-0995 was premised on the observation that although rates of drug use among racial and ethnic groups are similar (Substance Abuse and Mental Health Services Administration, 2005; 2009), African Americans and Latinos are arrested, convicted, and incarcerated for drug crimes far more frequently than whites. National surveys consistently show that African Americans, whites, and Latinos are equally likely to use drugs relative to their representation in the general population, but the criminal justice consequences for drug involvement disproportionately affect minorities—particularly young, African-American men in poor, urban communities (The Sentencing Project, 1999). With both anecdotal and statistical evidence demonstrating that Illinois reflected these national trends, the General Assembly sought to better understand the scope and nature of disproportionality in Illinois, to identify potential causes of that disproportionality, and ultimately to offer solutions on opportunities to eliminate it.

Under the co-chairmanship of State Senator Mattie Hunter (D-Chicago) and State Representative Arthur L. Turner (D-Chicago), and with members named specifically by the law or appointed by State Senate and House leaders, the Illinois DJIS Commission pursued four primary courses of activity:

- Conducting a meta-review of the national and Illinois context for disproportionate minority contact with the justice system.
- Conducting independent research examining data on the arrest, prosecution, and sentencing of different racial and ethnic groups for drug law violations in Illinois.
- Convening a Research Advisory Group and a Policy Advisory Group to review the research and analysis and provide access to additional data and insight.
- Conducting three public hearings in the spring of 2010 in Chicago, Joliet, and East St. Louis, Illinois.

National and Illinois Context

Extensive reviews of national and state research reveal that mass incarceration has been driven largely by drug control policies that emphasize enforcement over substance abuse prevention and treatment strategies, and that overuse prison as punishment for drug-law violations. These policies have especially and adversely affected African Americans throughout the United States. The collateral consequences of imprisonment for drug crimes are varied and significant, harming individuals, families, and communities.

In Illinois, the rate of imprisonment for drug offenses is substantially higher for African Americans than for whites—a finding that has been replicated in several studies. Throughout the 1990s, African Americans represented an average of 80 percent of all persons admitted to Illinois prisons for drug offenses. The disproportionate incarceration of minorities for drug possession cannot be explained by differential drug use among people of different racial backgrounds; drug use rates among whites, African Americans, and Latinos are comparable.

Commission Findings from Independent Research

Beyond the large body of national and state literature reviewed, under the auspices of the Illinois DJIS Commission, independent research was conducted to examine data on the arrest, prosecution, and sentencing of different racial and ethnic groups for drug law violations. To identify the factors related to disproportionality, two large data sets were analyzed: the first consisted of statewide criminal history records from Illinois, and the second consisted of countywide court records from Cook County, which encompasses Chicago. The data sets are from 2005, the most recent year for which this comprehensive information was available. Input from Policy and Research Advisory Groups of the Commission also was included in the findings.

The Commission's independent research revealed the following:

Racial Disparities in Enforcement

Nonwhites were arrested at a higher rate than whites relative to their representation in the general population throughout Illinois. Arrest data indicated that disproportionality in drug arrests occurred in 62 of the 102 counties in Illinois, including urban, suburban, and rural areas. Racial disparities for drug arrests varied widely by county but tended to be greater in jurisdictions with smaller populations of nonwhite residents.

In terms of the sheer number of people affected, most of the disproportionality in Illinois drug laws was related to drug possession charges, which accounted for nearly three-fourths of felony drug arrests across the state. Any attempt to address the disproportionate incarceration of minorities must first focus on how Class 4 possession laws (the least severe of felony charges) are enforced.

A smaller example of where disproportionality at arrest is apparent is in the enforcement of the Controlled Substances Act and the Cannabis Control Act, or drug-free zones law, which accounted for 3 percent of drug arrests in 2005. Nearly 70 percent of these arrests took place in Cook County, and 89 percent involved nonwhite arrestees.

Increased Racial Disparities with Accumulation of a Criminal Record

The majority of those arrested for the first time on felony drug charges in 2005 were white; however, for subsequent arrests, the opposite was true—that is, most subsequent arrestees were nonwhite. Whites and nonwhites without criminal records were arrested at rates that more closely correspond to their representation in the general population, while minorities with criminal records were more likely than whites to have subsequent arrests.

Overall, the proportion of nonwhites arrested for Class 4 drug possession (66 percent) was more than double their representation in Illinois' general population (27 percent) (United States Census Bureau, 2010). Therefore, racial disproportionality for arrests for low-level drug possession increases with the accumulation of a criminal record, suggesting that racial disparities are attributable, in part, to the lengthier criminal histories of nonwhite arrestees. Increased access to diversion programs or alternatives to incarceration, coupled with simple and timely processes for expungement and sealing, can mitigate future involvement in the criminal justice system. Without such access, criminal histories begin to accumulate.

Disproportionate Prosecution of African Americans

In Cook County in 2005, almost 80 percent of those entering the felony court system were African-American, followed by 13 percent Latino, and 8 percent white. As

evidence that the Cook County criminal courts are inundated with low-level drug cases, 72 percent of the sample had a drug charge (sometimes among others), and 70 percent of them were charged with Class 4 possession. More than 60 percent of drug defendants in the Cook County sample were charged with Class 4 possession only and had no other charge(s).

An analysis of the decisions to either prosecute in felony court or to drop/dismiss charges showed that, after controlling for other variables, including criminal history, African Americans were approximately 1.8 times more likely than whites, and Latinos were approximately 1.4 times more likely than whites, to be prosecuted for any crime.

Disparate Sentences of Whites to Court Supervision or Probation

Most Class 4 drug possession cases were dismissed or charges were dropped in all racial/ethnic groups, and cases were dismissed or dropped among nonwhites (45 percent) more than among whites (41 percent). Of the cases that were continued, however, African-American defendants (39 percent) were more likely than white (31 percent) and Latino (23 percent) defendants to be transferred to criminal court. Among first-time arrestees for Class 4 possession, whites (36 percent) were more likely than nonwhites (19 percent) to be sentenced to court supervision or probation.

Disparate Sentences of African Americans to Prison

In Cook County, among defendants with a Class 4 possession charge, African Americans were sentenced to prison at a rate almost five times greater than whites: 19 percent of African-American defendants compared with 4 percent of white defendants. When the sample was restricted to defendants with fewer than two previous convictions (i.e., roughly equal criminal histories), African Americans entering the court system were sentenced to prison at a rate three times that of whites for a conviction for a Class 4 possession offense (10 percent versus 3 percent).

Class 4 possession arrestees constituted the majority of those arrested; however, relatively few were sentenced to prison for Class 4 possession only (i.e., without other charges). Nevertheless, the Cook County data showed that in 2005, African Americans who were arrested only for that charge were eight times more likely than whites to be sentenced to prison (16 percent versus 2 percent). For all criminal charges, African Americans in Cook County were nearly two times more likely to go to prison than whites.

Alternative Sentencing and Rehabilitation

Early contact with the criminal justice system provides an opportunity for rehabilitation programming and diversion from the justice system. The availability of substance abuse treatment services through the criminal justice system appeared to differ for white and nonwhite first-time arrestees. A limited analysis suggested that whites are

more likely than nonwhites to participate in court diversion or probation programs. Racial differences in access to community-based programs might vary substantially by jurisdiction. Therefore, more research is needed to explore whether race/ethnicity affects access to diversionary options and, if so, the nature and extent of the effect. To address the disparity, the criminal justice system ought to take steps to intentionally and assertively direct minority populations into sentencing alternative programming for which they are eligible before resorting to prison sentences.

Limitations of the Data

The findings above were drawn from two large data sets that were limited in terms of the depth and breadth of information available on the processing and outcomes of the cases. For example, in some instances, no disposition data were available (e.g., sentences to probation). Most important, the data sets did not contain reliable information about the race/ethnicity of people of Latino origin. Without this information, conclusions cannot be drawn about the effects of drug laws on Latinos and recommendations cannot be made about the appropriate policy and programmatic changes needed to reduce sentencing disparities within these groups. Notwithstanding these limitations, the study offers useful information to encourage evidence-based policy making in Illinois' criminal justice system.

Commission Findings from Public Hearings

In the spring of 2010, the Illinois DJIS Commission held public hearings where Commission members had the opportunity to hear the opinions and recommendations of citizens from across the state, including elected officials, researchers, service providers, national policy experts, and formerly incarcerated persons.

Researchers and policymakers testified about: drug laws and enforcement practices, which are potentially problematic in terms of their affect on disproportionate minority confinement; lessons learned from disparity-reduction efforts in Wisconsin; the cumulative and insidious effects of justice involvement on minorities; trends in national drug policy as well as current “hot button” issues, such as medical marijuana and the crack cocaine/powder cocaine sentencing disparity; and the shortcomings in current data collection mechanisms.

From a court perspective, speakers representing the judiciary and local probation services spoke of: the breadth of social, economic, medical and other factors contributing to recidivism; the need to address all these issues in attempting to respond to the problem of disproportionality; the need to invest a portion of drug forfeitures into developing community programs; and the gap between the need for social and behavioral healthcare services and the availability of such services.

Community members, including people with previous criminal justice system involvement and their family members, highlighted: both the challenges and the abilities of formerly incarcerated people to return successfully to their communities; the effectiveness of community treatment programs in restoring lives; the role of family as a support mechanism; higher education programs as a vehicle for teaching about addiction and criminal justice involvement; and the capacity of those with past criminal justice experiences to educate at-risk populations about the problems associated with justice involvement. Also representing the greater community, a local business owner recommended the creation of a special class of contracting provisions, similar to current minority- and women-owned business provisions, for employers who hire formerly incarcerated people.

Service providers testified about: disproportionality in different parts of the state, including its impact on Latino communities; the role of substance abuse in criminal behavior and the need to address holistically the problem of addiction and criminal involvement; the effectiveness of community treatment programs in restoring lives; the use of restorative justice models in repairing the social fabric damaged by criminal justice system involvement; steps being taken by the juvenile justice community to mitigate the problems of disproportionality; and personal experiences as case managers and as people with past criminal justice involvement.

The testimony from the public hearings, together with the Commission's independent research findings and the state and national context, serve as the inputs shaping the Commission's recommendations to address disproportionality in the justice system.

Commission Recommendations

In response to the quantitative and qualitative analysis of the current state of disproportionate minority contact with the criminal justice system in Illinois, and in consideration of the expertise from practitioners and policymakers, the Commission developed the following ten recommendations to begin to mitigate the harmful effects of disproportionality and lay a foundation for ongoing analysis and progress.

STATE-LEVEL POLICY

Recommendation 1: As a matter of process, legislators should be able to request the attachment of a Racial & Ethnic Impact Statement to bills or appropriation measures that impact criminal offenses, penalties, sentencing, probation, or parole policies. The Racial & Ethnic Impact Statement should be drafted by the existing Sentencing Policy Advisory Council, which would also initiate the analysis necessary to understand the impact of the legislation, either through its own effort, or in collaboration with the Illinois Criminal Justice Information Authority, the Racial & Ethnic Impact Research Task Force (described below), or other research entities.

Recommendation 2: The State of Illinois should establish a Racial & Ethnic Impact Research Task Force to ensure the standardized collection and analysis of data on the racial and ethnic identity of arrestees. The charge of the Task Force would be to develop a framework for data collection at decision points along the criminal justice system continuum with a goal of standardized information management in the Illinois justice system and all of the state and local components of that system. This information would be used to meaningfully analyze and understand disproportionality that may occur across the justice process, as well as any other benefits such a standardized system would afford. The Task Force would operate under the guidance of, and potentially the auspices of, the Sentencing Policy Advisory Council or the Illinois Criminal Justice Information Authority.

STATUTORY AND PRACTICE CHANGES

Recommendation 3: The State of Illinois should establish a Task Force to review Section 407 of the Illinois Controlled Substances Act (720 ILCS 570/407), commonly referred to as the “drug-free zone laws.” The purpose of this Task Force would be to commission and analyze research evaluating: 1) the effectiveness of the laws at achieving their protective intent (e.g. shielding children from drug sales); and 2) the potential unintended consequences of the laws beyond their protective intent. Based on this research, the Task Force would recommend amendments to the provisions 720 ILCS 570/407 to preserve their protective intent while mitigating their disproportionate impact on minority communities.

Recommendation 4: The State of Illinois and local governments should support jurisdictions in maximizing their use of diversionary programs and sentencing alternatives, including day reporting centers, drug schools, drug courts and other specialty courts, first offender probation, and designated program supervision. This recommendation encourages a multi-faceted approach, including:

- 1) Establishing local justice system planning commissions, included within or dovetailing with Adult Redeploy Illinois (730 ILCS 190/20).
- 2) Providing training opportunities for prosecuting attorneys, as well as public and private defense attorneys, on the scope of available alternatives. Such training opportunities could be accredited for continuing legal education credit by the Minimum Continuing Legal Education Board of the Supreme Court.
- 3) Clarifying the array of available alternatives by combining them into a single statute, consistent with the alignment and clarification goals of the CLEAR Commission.
- 4) Assuring appropriation of funding suitable for full utilization of the above-mentioned alternatives (see Recommendations 9 and 10).

Recommendation 5: Each local state’s attorney’s office, not local law enforcement, should conduct felony review for filing of charges in new cases. Recognizing the practical and logistical realities of this requirement, the General Assembly should establish a benchmark for population of a county above which this requirement is mandated. Additionally, each county should establish its own benchmark for disproportionality of its justice population compared to its general population that would trigger a mandate of felony review by the state’s attorney’s office.

MITIGATION OF LONG-TERM HARM

Recommendation 6: The State of Illinois should prohibit the inclusion of drug-related arrests that do not result in conviction in criminal histories collected for employment-related purposes. County clerk offices and third-party background search firms should be held liable for unauthorized release of such information through civil penalties.

Recommendation 7: The State of Illinois should establish automatic expungement and sealing procedures for Class 4 felony possession charges or convictions that result in one or more of the following:

- Successful participation in a drug court or other specialty court
- Successful completion of first offender probation
- Successful completion of probation under the supervision of the designated program

Recommendation 8: The State of Illinois should develop and promote a classification of business known as a “community enterprise,” making such businesses eligible to receive state, county, and local monies and tax incentives as a result of training and/or hiring individuals who were formerly criminally involved and/or incarcerated. Similar to current minority-owned and woman-owned business enterprise standards, the community enterprise status would establish standards for application and certification, which would allow designated organizations to compete for contracts with state, county, and local governments.

FUNDING

Recommendation 9: In support of Recommendation 4, jurisdictions should define a fixed portion, or criteria that would trigger the allocation of a portion, of existing drug asset forfeiture funds to support treatment and diversion programs in addition to enforcement and prosecution activities.

Recommendation 10: In support of Recommendation 4, the State of Illinois should establish budget policy and priorities to promote full utilization of existing diversion programs or alternatives to incarceration, as well as the accompanying planning processes and training as supported by Adult Redeploy Illinois.

Introduction & Overview

In October of 2008, Senate Bill 2476 became law in Illinois. Passed unanimously by the Illinois General Assembly and signed by the Governor, Public Act 095-0995 established the Illinois Disproportionate Justice Impact Study (DJIS) Commission, a non-partisan, multi-disciplinary group of policymakers, agency leaders, and justice professionals charged with examining the impact of Illinois drug laws on racial and ethnic groups and the resulting over-representation of racial and ethnic minority groups in the Illinois criminal justice system. The Commission was tasked with making recommendations to mitigate or eliminate that disproportionality. This report reflects the outcome of that effort in accordance with the law.¹

The legislation that became PA 095-0995 was premised on the observation that although rates of drug use among racial and ethnic groups are similar (Substance Abuse and Mental Health Services Administration, 2005; 2009), African Americans and Latinos are arrested, convicted, and incarcerated for drug crimes far more frequently than whites. National surveys consistently show that African Americans, whites, and Latinos are equally likely to use drugs relative to their representation in the general population, but the criminal justice consequences for drug involvement disproportionately affect minorities—particularly young, African-American men in poor, urban communities (The Sentencing Project, 1999). With both anecdotal and statistical evidence demonstrating that Illinois reflected these national trends, the General Assembly sought to better understand the scope and nature of disproportionality in Illinois, to identify potential causes of that disproportionality, and ultimately to offer solutions on opportunities to eliminate it.

Illinois is not alone in its attention to disproportionate minority contact with the justice system. In light of a growing body of evidence and acknowledgement of disparities, other jurisdictions have recently engaged in activities of a similar or related nature. A few examples include: Iowa and Connecticut, both of which passed

¹ PA 095-0995 prescribed an end date for the Commission's work of December 31, 2009. In early 2010, Commission Co-chairs proposed a one-year extension via SB 3780, which was approved by the General Assembly and the Governor.

laws requiring racial impact statements on certain types of proposed legislation; Minnesota’s Sentencing Guidelines Commission, which has been providing racial impact statements on proposed sentencing policies without a law requiring it; and related research, policy, and practice efforts forged by the federal government and in other states and localities, including but not limited to Delaware; Bloomington, Indiana; Mecklenberg County (Charlotte), North Carolina; Milwaukee, Wisconsin; New Mexico; New York; Oregon; San Diego, California; and Wisconsin (Mauer, 2009; Drug Policy Alliance, 2010).

Commission Structure and Process

Under the co-chairmanship of State Senator Mattie Hunter (D-Chicago) and State Representative Arthur L. Turner (D-Chicago), and with members named specifically by law or appointed by State Senate and House leaders, the Illinois DJIS Commission pursued four primary courses of activity:

- 1. National and Illinois Context.** The Commission enlisted the expertise of the Center for Health and Justice at TASC, which received support from the Bureau of Justice Assistance (BJA), to conduct a meta-review of both the national and Illinois context on the relationship between drug laws and racial or ethnic disproportionate representation in the justice system. This meta-review considered national statistics on the issue and examined Illinois’ existing drug laws and work done to-date on assessing and addressing disproportionate impact in Illinois.
- 2. Independent Research.** Also with support from BJA, the Center for Health and Justice at TASC conducted independent research, examining data on the arrest, prosecution, and sentencing of different racial and ethnic groups for drug law violations.
- 3. Advisory Groups.** The Commission convened both a Research Advisory Group and a Policy Advisory Group. Hosted by the Jane Addams College of Social Work at the University of Illinois at Chicago, these advisory groups reviewed the research and analysis described above, and provided access to additional data and insight to inform the process.
- 4. Public Hearings.** The Commission convened three public hearings in the spring of 2010 in Chicago, Joliet, and East St. Louis, soliciting the testimony and perspective of policymakers, justice practitioners, service providers, and community stakeholders to share research findings and input on various strategies to reduce racial and ethnic disproportionality.

As a result of the activities previously described, the Commission developed ten recommendations for policy and practice changes to begin to address the issue of disproportionality in the criminal justice system and lay a foundation for ongoing analysis and progress on this critical social and financial issue.

Organization of the Report

This report is divided into four sections. The first section provides a broad context for racial and ethnic disproportionality as it relates to trends in crime- and drug-control policies in the United States since the 1980s. This context includes an examination of the collateral consequences of mass incarceration and disparities in drug law enforcement, along with a brief analysis of the comparative costs associated with incarceration and its alternatives. This context also includes a review of Illinois' drug laws and existing justice-based programs which have the potential to exacerbate or alleviate the problem of disproportionality in Illinois.

The second section presents the results of the independent research conducted under the auspices of the Illinois DJIS Commission, describing the principal findings of that research. The input of the Policy and Research Advisory Groups are included in both of the first two sections.

The third section summarizes the Commission's public hearings.

The fourth section enumerates ten recommendations that are based on the study's findings, as well as the findings of other investigations and the dialogue that was held with a broad range of stakeholders, including researchers, state and local policymakers, government officials, and community representatives.

The report also includes appendices with additional details and resources relating to the work of the Commission and disproportionality generally.

COMMISSION FINDINGS

SECTION 1

National and Illinois Context

The Prison Explosion

The ongoing expansion of America’s prison population has been characterized as “mass incarceration,” which has two defining features (Garland, 2001a, b). The first is the “sheer numbers” of inmates and the second is the incarceration rate (Garland, 2001a, p. 1). By either measure, America’s penal system dwarfs all others worldwide. The prison population in the United States quadrupled from 1980 to 2000 and has exceeded the one million mark every year since 1995. At the end of 2001, more than 1.3 million adults were incarcerated in state and federal prisons in the United States (Bureau of Justice Statistics, 2002c). On any given day in 2005, more than seven million Americans were under correctional supervision—more than two million of them incarcerated in prison or jail (Bureau of Justice Statistics, 2007). By midyear 2005, the number of incarcerated adults had grown to 1.5 million (Harrison & Beck, 2006a). In 2007, the prison population in the United States increased by more than 25,000 inmates. At the start of 2008, more than 2.3 million adults were behind bars. The second largest prison population in terms of sheer numbers is in China, which incarcerates an estimated 1.5 million people (Walmsley, 2005).

In terms of the second defining feature of mass incarceration, with approximately 750 people incarcerated per 100,000, the rate of imprisonment in the United States far exceeds that of most other countries and is more than five times higher than it is in other industrial democracies and eight times the incarceration rate in Germany (Walmsley, 2006). The rate of incarceration per 100,000 Americans climbed from 139 in 1980 to 478 in 2000—a 243 percent increase (Bureau of Justice Statistics, 2002a). Among 20- to 40-year olds, the age category at greatest risk for incarceration, the increase in the imprisonment rate was even higher than it was in the general population (Mauer, 1999). Throughout the 1980s and 1990s, the United States ranked among the top three industrialized nations with regard to incarceration rate. For example, in 1995, among 59 nations in Europe, Asia, and North America, the United States’ incarceration rate of 600 per 100,000 persons was second only to Russia’s rate of 690

per 100,000 (Mauer, 1997). In its 2008 report, revealing that for the first time in the nation's history one out every 100 adults in the United States was incarcerated, the Pew Charitable Trust (2008) stated: "America...is the global leader in the rate at which it incarcerates its citizenry, outpacing nations like South Africa and Iran" (The Pew Center on the States, 2008).

The single most important cause of the explosive rise in the nation's prison population is the burgeoning number of people convicted of drug offenses (Tonry, 1995). In 1980, 19,000 inmates, or 6 percent of all inmates, were imprisoned for drug offenses; in 1999, 251,200 inmates, or 20 percent of all inmates, were sent to prison for drug offenses—an astounding increase of 1,222 percent. From 1980 to 1999, the number of people with drug offenses who were admitted to prison rose ten-fold, from 15 to 150 inmates per 100,000 Americans. The largest one-year increase in the number of people incarcerated with drug offenses (52 percent) occurred from 1988 to 1989, after the passage of the Anti-Drug Abuse Act of 1988, which intensified the current war on drugs (Bureau of Justice Statistics, 2002b). The United States now has 100,000 more prisoners incarcerated just for drug offenses than the European Union has incarcerated for *all* offenses (Harrison & Beck 2006b; Walmsley, 2006). Drug control policies and their attendant enforcement of drug laws play a major role in disproportionate minority confinement (Mauer & King, 2007). According to the Sentencing Project (1998):

While the number of people incarcerated in a given state is in part a reflection of crime rates, it is also related to a variety of policy decisions both within and outside the criminal justice system...many of these decisions have implications for the racial and ethnic composition of a state's prisons and jails. Within the criminal justice system sentencing policy choices have a significant effect on these outcomes.

Drug Law Enforcement and Racial Impact

Racial disparities in the legal processing of drug crimes stem from several factors. Specially, race-based differences are grounded partly in the way drugs are sold in urban neighborhoods, where drugs are more likely to be sold on the street and in other public places with high visibility, facilitating law enforcement's ability to make arrests. In impoverished communities that lack adequate health and social resources, the justice system is often the first responder to the problems associated with addiction. Drug laws themselves also play a role in the disproportionate impact of the drug war on minorities. For example, as discussed below, Illinois law identifies certain "drug free zones" that surround schools, churches, and public parks. A conviction for a drug delivery offense in one of these zones results in enhanced penalties. Urban areas have a much higher concentration of such zones; hence, people convicted of a delivery crime in those communities are much more likely to receive a more serious sentence

than people convicted in a suburban or rural community.

Changes in the drug laws in the late 1980s led to longer sentences for drug convictions, adding to the prison overcrowding crisis and disrupting the lives of families and communities. Between 1986 and 1991, for example, the number of African Americans incarcerated for drug crimes rose four times as fast as the number of whites. In 1994, one out of every three African-American men between the ages of 20 and 29 was under criminal justice supervision. Nationally, the disparity widened during the late 1980s and 1990s in the federal and many of the state court systems, with a long-standing sentencing disparity for the possession of crack cocaine versus powder cocaine (U.S. Sentencing Commission, 1998). As discussed below, policies that regard drug addiction as a crime problem rather than a public health problem have disproportionately affected African-American men by foreclosing employment prospects and disenfranchising millions of such individuals (The Sentencing Project, 1998).

Disproportionate Justice Impact in Illinois

The proportion of African Americans arrested for drug offenses in Illinois increased steadily from 1983 to 1992, from 46 percent to 82 percent of those arrested for such crimes. The proportions of whites arrested decreased steadily during those years, from 41 percent to 11 percent (Lurigio, 2005). From 1990 to 2000, the number of African Americans admitted to prison in Illinois for drug offenses grew six-fold, from 1,421 to 9,088. In contrast, the number of whites admitted to prison for drug offenses remained relatively stable (Lurigio, 2005). From 1994 to 2003, the drug arrest rate in Cook County increased 26 percent and the drug arrest rate outside of Cook County more than doubled (Illinois Criminal Justice Information Authority, 2004). From 1992 to 2004, the number of state prison sentences imposed in Illinois for drug crimes increased 82 percent. During that time, the state's overall adult prison population grew 39 percent but the number of people with drug offenses grew by 89 percent (Illinois Department of Corrections, 2005).

In 2001, research demonstrated that three factors predicted a sentence to prison for a drug law violation in Illinois: nature of the current offense (possession versus sales), history of imprisonment, *and race* (Olson, 2001). As noted previously, disproportionality is not explained by rates of illicit drug use, which vary little by race or ethnicity. Past-month illicit drug use rates among persons 12 or older in Illinois are 10.1 percent among African Americans, 8.2 percent among whites, and 6.2 percent among Latinos (Substance Abuse and Mental Health Services Administration, 2005; 2009).

In updating its investigation into racial disparities among people sentenced to prison for drug-law violations, Human Rights Watch (2008) concluded that disproportionality in 2003 was less severe than it had been in 1996 but was still dramatic and widespread. For example, the prison admission rate for drug offenses remained ten times

higher for African Americans than for whites. Among larger states, HRW (2008) reported that rates of disproportionality in sentences for drug-law violations had increased from 1996 to 2003. In 2003, nearly 40 percent of African Americans admitted to prison were convicted of a drug crime compared with 25 percent of whites. In Illinois, the number of African Americans entering prison that year for a drug crime (8,052) was four times greater than the number of whites (1,982). Controlling for their representation in the state's general population, African Americans in 2003 were 24 times more likely than whites to be incarcerated for a drug offense. African Americans constituted 75 percent of those admitted to prison in Illinois for a drug crime that year; whites constituted only 18 percent.

In Illinois, in 2005, whites constituted 66 percent of the general population, African Americans 15 percent. That same year, whites constituted only 28 percent of the Illinois prison population, but African Americans comprised 61 percent (Illinois Department of Corrections, 2005; U.S. Census Bureau, 2006). In 2005, African Americans were 9.1 times more likely to be incarcerated in prison or jail in Illinois than whites, ranking 14th among the worst states in the nation on black-white disparities in incarceration and well above the national average of a 5.6-fold differential in black-white confinement (Mauer & King, 2007). In Illinois, where drug laws do not differentiate between powder and crack cocaine, the state still experienced a stark increase in the numbers of minorities arrested, prosecuted, sentenced, and incarcerated for drug offenses.

Collateral Consequences of Mass and Disproportionate Incarceration

Racial disproportionality in the criminal justice system undermines the fundamental principles of a just society, including the ability of people to have a voice in government, to hold a decent job, to safely raise and support a family, and to participate fully in the citizenship of our country. The disenfranchisement of those convicted of drug crimes leads to undemocratic outcomes that affect all members of society. Further, the expense of disproportionate incarceration is a burden to every taxpayer in this country. Public policies must consider the implications of current drug laws, policies, and enforcement strategies that perpetuate racial disparities in criminal justice processing and harm individuals, families, and communities.

Impact on Crime

Incarceration can increase crime in communities. A person who knows someone who is incarcerated is more likely to have a lower opinion of the police, courts, and the criminal justice system as a whole. Neighborhoods with high levels of incarceration have weaker informal social control mechanisms than neighborhoods with low levels of incarceration (e.g., willingness of neighbors to call police) (Rose & Clear,

1998). Communities with greater numbers of incarcerated residents are more socially disorganized than communities with fewer numbers of incarcerated residents (Rose & Clear, 2004). Mass imprisonment weakens the deterrent effect of prison. In one study, one-third of persons sentenced to probation elected to go to prison rather than be sentenced to community supervision with conditions, which exposes them to the criminogenic and stigmatizing effects of incarceration (Petersilia, 1990).

Impact on Families

Incarceration leads to absent fathers, a shortage of marriageable men (i.e., those with steady employment), and erects barriers to couples' ability to marry (Bureau of Justice Statistics, 2000; Hairston, 2001; Lane, 2004; Phillips, & Bloom, 1998). Children with an incarcerated parent are more likely than other children to engage in antisocial behavior as well as to experience emotional and behavioral disturbances, a negative self-image, estrangement from family and friends, eating and sleeping disorders, high levels of anxiety, and developmental and cognitive deficits (Gabel, 1992). They are also more likely to have contact with the police and juvenile justice system (Commonwealth of Virginia, 2002). Children with incarcerated mothers are especially negatively affected. A large majority of incarcerated mothers (85 percent) retain their parental rights when they return home to care for their school-aged children. However, lengthy periods of separation create adjustment problems for both mothers and children (Bloom & Steinhart, 1993; Dressel & Barnholl, 1994; Eddy & Reid, 2002; Murray & Farrington, 2005).

Incarceration also has a devastating impact on the family (The Sentencing Project, 1997). Since 1991, the number of minors with a parent in state or federal prison rose from more than 500,000 to more than 1.5 million. Of these children, nearly half are African American. Most children with one or more parents in jail or prison are shuffled between relatives or informal placements, or they become entrenched in the child welfare system. They are often separated from their siblings and reside with caregivers who lack the social supports and resources to meet the children's needs.

The disruptive effects of parental incarceration are likely to continue after a formerly incarcerated person is released into the community. Even if reunification with children is an option, the stigma of incarceration creates legal and social barriers in addition to a number of other difficulties for newly released parents. In turn, their children have a high propensity for psychosocial difficulties, such as conduct disorders, delinquency, learning problems in school, and teen pregnancy and parenthood. Adjustment problems are likely to follow these children as they enter adulthood.

Impact on Employment and Economic Well-Being

A criminal conviction has a cumulative, negative impact on income over the lifespan, particularly for older individuals (Harris & Keller, 2005; Nagin & Waldfogel, 1998). A criminal record creates a major barrier to employment (Pager 2003). Business owners

who claim to be non-discriminatory in their employment practices rarely hire applicants with criminal records, and especially if the job seekers are African-American (Pager & Quillian, 2005). People in emerging adulthood experience numerous episodes of employment before finding a “good job.” During this period, their wages increase and their resumes develop. Imprisonment derails this process and locks individuals into low-wage, unstable jobs (Weiman, 2007).

One study estimates that 40 percent of African-American men will temporarily or permanently lose their right to vote as the result of a felony conviction (The Sentencing Project, 1998). (In Illinois, individuals with a felony conviction regain their voting rights upon release from incarceration.) In addition, state legislators have recently expanded the authority of non-criminal justice agencies and groups to access criminal histories for purposes of employment screening, occupational licensing, and certifications, which often legally compel employers to exclude those with criminal backgrounds (Harris & Keller, 2005).

Impact on Criminal Justice Costs

The disproportionate involvement of African Americans in the justice system exacerbates the systemic and fiscal burden of people with drug offenses on Illinois’ counties and municipalities. Illinois spends one out of every 20 dollars of revenue on corrections. Illinois spends 51 cents on corrections for every dollar spent on higher education. During only the first eight months of 2010, federal and state governments have spent more than \$35 billion on the war on drugs, mostly on supply-reduction efforts (Drug Sense, 2010). The concentration of law enforcement resources spent on drug crimes has had several harmful byproducts. Research suggests that significant increases in drug enforcement initiatives have siphoned resources away from other law enforcement efforts. For example, an investigation in Florida found that increases in the state’s arrests for drug offenses during the 1980s were associated with decreases in the state’s arrests for property crimes (Benson & Rasmussen, 1991). Similarly, in Illinois, from 1984 to 1989, increases in arrests for drug offenses coincided with decreases in arrests for driving while intoxicated (Benson & Rasmussen, 1996).

An over-reliance on costly imprisonment for drug-crime convictions has resulted in fewer funds being available for community-based correctional alternatives. Probation and parole populations have been growing at the same rate as prison populations, but funding for probation and parole agencies has lagged far behind that of prisons, leading to heavier caseloads for probation and parole officers and more probation and parole violations (Mauer, 1999). Even more disturbing are the findings of a study of the effects of imprisonment on California’s budget, which suggested that prison construction and maintenance drained dollars from the state’s higher education and healthcare budgets (Greenwood et al., 1994).

Impact on Social Costs

Mass incarceration has had a fundamentally pernicious effect on American society (James, 2002; Pattillo, Weinman, & Western, 2004). The bloated penal system is not only the product of an underlying imbalance of social power but it also affects the distribution of wealth and opportunities for social mobility. Specifically, mass imprisonment creates inequality by restricting the economic prospects and disrupting the employment trajectories of former prisoners (Western et al. 2001). Further, by causing family strain and increasing social and economic hardship, mass incarceration has triggered a process of “intergenerational detainment,” which compounds disadvantage and increases the risk of homelessness, inadequate healthcare coverage, and disenfranchisement among the children of incarcerated people (Foster & Hagan, 2007). Sweeping incarcerations for drug offenses have also rendered imprisonment a more common experience in certain minority neighborhoods, thereby undermining law enforcement’s deterrent effects and diminishing residents’ respect for the criminal justice system (Garland, 2001b).

Impact on Health

The poorer health of African-American men at age 40 compared with white men of the same age can be explained partially by incarceration. Periods of imprisonment lower the prospects of marriage, employment, and education, all of which contribute generally to declines in health (Massoglia, 2008). The rate of HIV infection among prisoners is up to 13 times higher than that of the general population, and the rate of AIDS cases is more than triple that of the general population. Most prisoners with HIV and hepatitis are released without knowing their seropositive status. Hence, prisons can be vectors of viral transmission to other prisoners and to the community (Golembeski & Fullilove, 2005).

Illinois Laws and Programs

General Statutory Construction in Illinois

Criminal offenses in Illinois are categorized as misdemeanors or felonies, with multiple classes in each category that account for differences in crime severity and other legal considerations. The distinction between misdemeanors and felonies is in terms of the amount of incarcerative time to be served and the nature of supervision for those convicted of crimes. Misdemeanors carry a sentence of fewer than 365 days of incarceration, which is generally served in a county jail facility and rarely in an Illinois state prison because of the less severe nature of the crimes and the limits on prison capacity. Felonies carry a sentence of a year or more of either incarceration or probation supervision. Incarceration for felony offenses is generally served in an Illinois Department of Corrections facility (i.e., prison).

Felonies are classified as Class 4, which is the least severe, Class 3, Class 2, Class 1, Class X, and first-degree murder, which is its own class. Except for the most severe

crimes (i.e., Class X felonies or first-degree murder) or those that involve people with repeat offenses, Illinois law does not generally mandate prison sentences based on felony classification or offense type, thereby allowing for judicial discretion in determining the most appropriate level of supervision and restitution. However, this is not the case with Illinois' drug law violations, many of which have mandatory minimum penalties attached to them, and for which history has seen a progressive ratcheting up of the severity of those penalties.

As in many states, the framework for drug laws in Illinois was erected in the early 1970s, in response to the increases in drug use and drug-related crime that emerged during the Vietnam era. During the past 40 years, the structure of Illinois drug laws has remained essentially unchanged, and many laws still appear as they were originally written. The statute contains four major types of drug laws: the Illinois Controlled Substance Act (720 ILCS 570), the Cannabis Control Act (720 ILCS 550), the Methamphetamine Control and Community Protection Act (720 ILCS 646), and the Drug Paraphernalia Control Act (720 ILCS 600). The provisions of these laws, particularly as they relate to criminal violations, closely mirror one another in structure. However, the Controlled Substances Act is much broader in its scope than the others and includes laws related to all types of narcotics and medications, both legal and illegal.

Illinois Controlled Substances Act (720 ILCS 570)

The bulk of Illinois Controlled Substance Act (ICSA) violations fall into two categories: possession offenses, more commonly known as 'simple possession,' and the manufacture, delivery, or possession with intent to manufacture or deliver offenses (MDPI). MDPI offenses are those commonly referred to as 'drug manufacture' or 'drug selling' offenses. All three classifications—manufacture, delivery, and possession with intent to deliver—are treated identically for sentencing purposes. Other types of drug offenses do not specifically fit into these two categories or represent enhancements to the severity of these categories.

Possession Offenses

For possession offenses, the felony classification of the crime and the resulting options for punishment are determined by the weight of the drugs when seized, measured in grams. One gram of drugs is roughly equivalent to one packet of artificial sweetener. The purity of the drug has no bearing on the determination of its weight. For example, one gram of a substance which is 60 percent pure contains more of the actual narcotic than one gram of a substance which is 20 percent pure, but both are treated as one gram for the purposes of prosecution and sentencing. From the earliest days of the passage of Illinois' drug laws, possession offenses have fallen into one of two felony classes, distinguished by the statutorily defined weight of the drugs. At or above this threshold weight, the crime is categorized as a Class 1 felony. Any amount below the threshold weight results in a Class 4 felony; however, there are no Class 2, 3, or X felony possession offenses.

Historical Changes to Possession Laws

In the early 1970s, the weight that distinguished Class 4 possession offenses from Class 1 offenses was 30 grams for both cocaine and heroin, and 200 grams for methamphetamines; however, in 1988, the threshold weight for cocaine and heroin was reduced from 30 to 15 grams, and a graduated system of mandatory minimum sentences and extended maximum sentences was established for amounts of 100 grams or more. Under this new system, a person convicted of possessing 100 grams of cocaine would be guilty of a Class 1 felony, and if sentenced to prison, would be subject to a mandatory minimum of six years in prison and a maximum of 30 years, which is the equivalent of a Class X sentence and double the statutorily prescribed length of imprisonment for other Class 1 felonies. As the weight of drugs seized increases, so do both the mandatory minimum sentences and the possible maximum sentences. For possession of less than 100 grams, sentences are handed down at the discretion of the judge.

In 1995, a provision was added to the possession laws requiring each controlled substance found in a person's possession to be treated as a "single and separate" violation for purposes of prosecution and sentencing. In 2000, methamphetamines were distinguished from amphetamines, and the weight distinguishing a Class 4 from a Class 1 offense was reduced from 200 to 15 grams. Thus, possession of 100 grams (roughly a quarter-pound) of cocaine, heroin, or methamphetamine carries the same potential sentence as aggravated criminal sexual assault.

Convictions for Class 4 drug possession send more people to Illinois prisons than convictions for any other crime. For example, in 2002, nearly 20 percent of total sentences to IDOC resulted from Class 4 possession convictions, resulting in 5,500 new prison admissions. The next most prevalent offense—burglary—accounted for 7 percent of new prison admissions. Class 1 possession was responsible for one percent of new admissions.

Manufacture, Delivery, and Possession with Intent (MDPI) Offenses

As with possession crimes, MDPI offenses characterized as manufacture, delivery, or possession with the intent to manufacture or deliver are based on a schedule of weights, in grams, that distinguish different levels of offenses and their attendant sanctions.

MDPI offenses for heroin, cocaine, and morphine involve mandatory prison sentences of six to 30 years of incarceration for 15 to 100 grams; nine to 40 years of incarceration for 101 to 400 grams; 12 to 50 years of incarceration for 401 to 900 grams; and 15 to 60 years for more than 900 grams.

Mandatory prison sentences for MDPI offenses also apply to specified amounts of LSD, amphetamine, barbiturates, Ecstasy, and other club drugs. MDPI offenses that involve heroin, cocaine, and morphine in amounts greater than one gram but less than 15 grams trigger a Class 1 felony.

In 1988, the weights that differentiated felony classes for cocaine were significantly reduced. The distinction between Class 2 and Class 1 offenses was reduced from ten to one gram, and the distinction between Class 1 and Class X offenses was reduced from 30 to 15 grams. For Class X mandatory prison sentences, a graduated schedule of elevated lengths of incarceration was imposed for greater quantities of drugs. Also in 1988, the rules for determining what offenses were subject to probation as an alternative to incarceration were amended such that any person convicted of an MDPI offense involving more than five grams of cocaine was ineligible for probation and, therefore, subject to mandatory incarceration. In 1995, the “single and separate” provision was added to MDPI offenses.

In 2000, methamphetamine was distinguished from other amphetamines and the schedule of weights was adjusted for methamphetamine alone. Under the new laws, the distinction between Class 2 and Class 1 offenses was reduced from 50 to five grams, and the distinction between Class 1 and Class X offenses was reduced from 200 to 15 grams. In 2002, the weight distinguishing Class 2 and Class 1 offenses for heroin crimes was reduced from ten to one gram. Further, as with cocaine in 1988, incarceration was mandated as a sentence for anyone convicted of an MDPI offense involving more than five grams of heroin. Thus, the manufacture or delivery of five grams (roughly 1/100 of a pound) of cocaine or heroin carries a mandatory prison sentence of four years.

Special Sentencing Enhancements and Provisions (720 ILCS 570/407)

The Controlled Substances Act also contains provisions for special circumstance and enhanced penalties. Since their initial passage, these provisions have included two related to youth. The first doubles the length of sentences and amount of fines for any people over 18 who deliver a controlled substance to anyone under 18. The second enhances the penalty for anyone delivering a controlled substance within 1,000 feet of a school, school bus stop, or mode of transporting children to school. The penalty is enhanced by automatically treating any delivery under these conditions as a felony of one class higher. Thus, any delivery of more than one gram of cocaine within 1,000 feet of a school or school grounds, for example, is treated as a Class X felony, subject to mandatory prison time.

In the 1990s, the number and types of special circumstances were broadened, and the resulting array of geography-based penalties came to be known as “drug-free zones.” In 1990, delivery within 1,000 feet of public housing property and public parks re-

sulted in an automatic elevation of felony class. In 1993, double penalties and double fines were added for second MDPI offenses committed within 1,000 feet of a truck stop or safety rest area. In 1997, an automatic felony class elevation was added for delivery within 1,000 feet of any church, synagogue, or building used primarily for worship. In 1998, an automatic felony class elevation was added for delivery within 1,000 feet of nursing homes, assisted living centers, and other complexes for the care of the elderly.

In 2000, the provision related to public housing was expanded to include any residential property owned or leased in part by a public housing agency, including mixed-income developments. Since then, the only other major penalty enhancement to the Illinois drug law structure is a provision subjecting people with second and subsequent offenses, for any offense described above, to possible double lengths of incarceration and double fines, to be handed down at the discretion of the sentencing judge.

Drug-free zones are not unique to Illinois, nor are the statistics surrounding Illinois drug-free zones the most egregious in terms of disproportionate impact. Nationwide, however, drug-free zone laws are consistently identified in literature as a source of disproportionality in the demographics of justice populations due to their high density and overlapping nature in urban—and predominantly minority—communities.

Across the United States, appeals of drug-free zone convictions or penalty enhancements have generally been upheld under the premise that a legitimate public purpose—the protection of certain classes of people—outweighs the alleged disproportionate result. The legitimacy of the public purpose is being called into question by some policy and research entities, asking whether or not the protected class was even present at the time of arrest (e.g. predominance of arrests in school-based drug-free zones outside of normal school hours), and citing the lack of evidence of any deterrent effect (Greene, Pranis & Ziedenberg, 2006).

Illinois faced a challenge to its drug-free zone provisions in 2005. At the time, law required the automatic transfer of violations of the school drug-free zone laws by 15 and 16-year olds to adult court, along with all of the attendant side effects of a felony conviction. Policy advocates decried the law as “the most racially biased youth drug law in the nation.” Data demonstrating that 99 percent of all youth transferred were African American or Hispanic prompted legislation requiring juvenile drug cases to begin in juvenile court (*ibid.*).

Advocates of fairer drug-free zone laws cite the need for a nuanced approach to the writing and application of these laws, including factors such as the time of day the offense occurred and the presence of the protected class. Some states have pursued this more deliberate approach, and some have taken a further step of reducing the size of the drug-free zones (*ibid.*).

Other Provisions of the Controlled Substances Act

Knowingly bringing, or causing to be brought, into the state a controlled substance for the purpose of manufacture or delivery, or with the intent to manufacture or deliver, constitutes drug trafficking. The penalty for drug trafficking is a prison term of at least twice but not more than the maximum for a manufacture crime of the equivalent amount. The use of a cell phone in furtherance of drug trafficking is a Class 2 felony and possession of lesser amounts of illegal substances (e.g., less than 15 grams of heroin) constitutes a Class 4 felony.

The ICOSA also specifies three types of drug conspiracies: calculated, criminal, and street gang criminal. A calculated drug conspiracy is a Class X felony that involves the commission of a Class 1 or Class X manufacture or delivery or Class 1 possession committed with the assistance of two or more other people, and with a gain of more than \$500. A criminal drug conspiracy is the commission of a manufacture, delivery, or possession crime with at least one other person, and any act that is taken in furtherance of the crime. The penalties for such a conspiracy are the same as if the crime had been committed. A street gang criminal drug conspiracy is a Class X felony with a mandatory prison sentence that involves the commission of a Class 1 or Class X manufacture or delivery crime with at least two other people as part of gang-related activity.

Cannabis Control Act (720 ILCS 550)

The possession of less than 2.5 grams of marijuana is a Class C misdemeanor. The possession of more than 2.5 grams but less than ten grams of marijuana is a Class B misdemeanor. The possession of more than ten grams but less than 30 grams of marijuana is a Class A misdemeanor. The possession of more than 30 grams but less than 500 grams of marijuana is a Class 4 felony. The possession of more than 500 grams but less than 2,000 grams of marijuana is a Class 3 felony. The possession of more than 2,000 grams but less than 5,000 grams of marijuana is a Class 2 felony. The possession of more than 5,000 grams of marijuana is a Class 1 felony. A conviction for a similar offense in the past could result in more serious charges and penalties. Illinois drug laws impose harsher penalties for the manufacture or delivery of marijuana than for the possession of marijuana. For example, the manufacture or delivery of as little as ten grams of marijuana is a Class 4 felony.

Methamphetamine Control and Community Protection Act (720 ILCS 646)

Methamphetamine manufacturing laws prohibit the production of methamphetamine or methamphetamine-containing substances. The severity of the crimes range from a Class 1 felony with the possibility of a prison sentence for the production of less than 15 grams to a Class X felony for the production of 15 or more grams with prison sentences ranging from six to 35 years for the production of up to 100 grams and 15 to 60 years for the production of more than 900 grams.

Aggravated participation in methamphetamine manufacturing, which carries more severe penalties for lesser amounts than those specified in the simple manufacturing laws, involves the production of methamphetamine in a multi-unit dwelling, structure, or vehicle where any of the following people are present or endangered by the manufacture of methamphetamine: a child under the age of 18, a person with a disability, a pregnant woman, or a person 60 years of age or older who is incapable of adequately providing for his or her own health and personal care. Aggravation is also present when the production of methamphetamine is in a vehicle or structure protected by firearms or surveillance systems or has contributed to death, serious bodily injury, or property destruction. Finally, aggravation is present when the production is the result of knowingly organizing, directing, or financing the methamphetamine manufacturing or any activities that support methamphetamine manufacturing.

The statute dictates that it is unlawful to possess, procure, transport, store, or deliver any methamphetamine precursor, or substance containing any methamphetamine precursor, in standard dosage form with the intent that it be used to manufacture methamphetamine or a substance containing methamphetamine. Further, criminal penalties are enumerated for the use of property in manufacturing methamphetamine, protecting methamphetamine manufacture, and methamphetamine-related child endangerment, all of which are Class 2 felonies. Methamphetamine delivery ranges from a Class 2 felony with a possible prison sentence for less than 15 grams to a Class X felony with a mandatory prison sentence of 15 to 60 years for the delivery of more than 900 grams. Finally, the possession of methamphetamine or a substance containing methamphetamine is a Class 3 felony for under five grams, a Class 2 felony for any amount from five to 15 grams, a Class 1 felony for any amount from 15 and 100 grams, and a Class X felony for any amount of more than 100 grams. The possession of more than 900 grams triggers a prison sentence of ten to 50 years.

Drug Paraphernalia Control Act (720 ILCS 600)

Drug paraphernalia is equipment, products, and materials—other than methamphetamine manufacturing materials as defined in the Methamphetamine Control and Community Protection Act—that are intended to be used unlawfully in cultivating, growing, harvesting, manufacturing, compounding, packaging, repackaging, storing, containing, converting, producing, propagating, processing, preparing, planting, testing, analyzing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body cannabis or a controlled substance in violation of the Cannabis Control Act, the Illinois Controlled Substances Act, or the Methamphetamine Control and Community Protection Act.

Violations of the Drug Paraphernalia Control Act include manufacturing, compounding, converting, producing, processing, or preparing cannabis or a controlled substance; the possession of kits intended to be used unlawfully in testing the strength or purity of an unlawful substance; diluents and adulterates for cutting illegal substances;

objects used for ingesting, inhaling, or introducing into the human body a controlled substance or cannabis, such as water pipes, bong, ice pipes, or cocaine spoons or vials. Any person who keeps for sale, offers for sale, sells, or delivers for profit any item of drug paraphernalia commits a Class 4 felony with a minimum fine of \$1,000 for each such item. Any person 18 years of age or older who sells or delivers for profit any item of drug paraphernalia to a person under 18 years of age is guilty of a Class 3 felony. Any person who sells or delivers for profit any item of drug paraphernalia to a pregnant woman is guilty of a Class 2 felony. A person who knowingly possesses an item of drug paraphernalia with the intent to use it in ingesting, inhaling, or otherwise introducing into the human body cannabis or a controlled substance, or in preparing cannabis or a controlled substance for that use, is guilty of a Class A misdemeanor with a minimum fine of \$750 and any other penalty prescribed for a Class A misdemeanor.

Alcoholism and Other Drug Abuse/Dependency Act

In 1987, Illinois institutionalized a systemic approach for dealing with people with substance-related offenses with the passage of the Alcoholism and Other Drug Abuse/Dependency Act (AODADA), codified as Chapter 20 of the Illinois Compiled Statutes, Act 301. The placement of these provisions into Chapter 20 is significant. Major provisions for the treatment for justice clients have always been the purview of the Department of Human Services, unlike other criminal justice provisions, which are generally written into the Illinois code relating to criminal offenses, sentencing, or corrections. In its passage of AODADA, the legislature clearly intended that these services be provided and monitored by a state agency with oversight over both substance abuse treatment and the justice system.

The Designated Program

The AODADA describes the eligibility and options for criminal justice interventions in Section 40, commonly referred to as the “TASC statute.” This section mandates the availability of treatment alternatives for people with substance-related offenses under the supervision of a “designated program.” The option for treatment under the supervision of the designated program was intended by the legislature to target those who would otherwise be incarcerated in the absence of the designated program. The legislature viewed this option as necessary to achieve its stated purpose—namely, to provide individuals in the criminal justice system an opportunity “to lead healthy and drug-free lives and become productive citizens in the community.”

To ensure quality and control over designated program services, the AODADA required the Illinois Department of Human Services to develop licensure criteria for the clinical case management of criminal justice clients. This mandate resulted in the designated program licensure provisions specified in Illinois Administrative Rule 2060.507. Among the key distinctions of this rule is the provision that the designated program be a single organization providing uniform services statewide, with account-

ability between and among the designated program, the courts, and the community-based treatment network.

Since 1987, TASC has been the sole holder of the designated program license and has provided clinical assessment and a standardized range of clinical and treatment referral services for the criminal court system throughout the state. Those found eligible for this program are sentenced to probation with supervision by the designated program and frequent communications with the court, which are the only mandatory conditions of the sentence. Eligibility for this diversion option is generally limited to people with non-violent offenses who do not have histories of Class 2 or greater felony convictions. The pool of eligible offenders who receive services under this statute can reach several thousand statewide in any given year.

Diversions Programs

For the past four decades, Illinois has also had several statutorily mandated diversion options for certain classes of eligible drug offenses or drug-involved offenses. Those with first-time offenses who plead guilty to, or are found guilty of, a Class 4 possession drug offense are eligible for a specialized form of probation. This specialized supervision contains a number of mandatory conditions, including participation in drug testing and treatment, and if successfully completed, results in a dismissal of the conviction. This dismissal is intended to keep one's criminal history from disqualifying him or her for employment or housing.

Cost Analysis of Drug Laws and their Alternatives

A macro-economic analysis of disproportionate justice involvement must be inherently broad in order to encompass all of the personal, social, legal, and clinical factors that are necessary for understanding and solving the problem. In many discussions about disparities in sentencing, a number of economic considerations (costs and benefits) have been raised in an attempt to explain decisions at various steps in the criminal justice process, from arrest to prosecution to sentencing. Such an analysis could be a valuable tool in the DJIS. However, the Commission advisory groups determined that the expansiveness and complexity of a valid and comprehensive economic analysis would be beyond the scope of the current project. Instead, this report presents state and national cost-comparison data, most of which was gathered from secondary sources. The difficulties in obtaining, interpreting, and integrating phase-by-phase justice system data (documented elsewhere in this report) precluded the possibility of performing a cost analysis specific to this project; nonetheless, research conducted elsewhere proved to be highly relevant to the present discussion.

National Cost Analysis

An April 2009 report by the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration of cost savings analyses in California, New York, and Washington confirmed a long-stated statistic that every dollar spent on treatment results in at least seven dollars saved, primarily through reduced cost of crime and increased employer earnings (Center for Substance Abuse Treatment, 2009).

Illinois Cost Analysis

A number of independent analyses of treatment vs. other justice alternatives exist for Illinois. The National Center on Addiction and Substance Abuse (CASA) at Columbia University estimated that in 2005, Illinois spent \$4.85 billion on the impact of drug use, or roughly 15 percent of its budget. Specific to justice issues, roughly \$929 million was spent on adult corrections because of substance abuse, representing over 80 percent of the total correctional budget. Similarly, over \$143 million was spent on court and other associated costs, over 83 percent of the annual budget for those activities. CASA further estimated that of every dollar spent on substance abuse in Illinois, only four cents is spent on treatment while almost 96 cents are spent on the consequences of untreated or inadequately treated substance use disorders. Criminal justice activities shoulder 25 percent of the total burden to the state from substance abuse (CASA, 2009).

More germane to this project, a 2007 analysis conducted by the Center for Health and Justice at TASC estimated that roughly 10,000 individuals (25 percent) enter the Illinois Department of Corrections each year with diagnosable substance abuse or dependence. The annual cost of incarceration of these individuals totals \$226 million per year, while the cost to provide probation, community-based treatment, and clinical case management would only have been \$59 million, representing a potential savings of \$167 million.

Summary

Mass incarceration in the United States has been driven largely by drug control policies that emphasize enforcement over substance abuse prevention and treatment strategies, and that overuse prison as punishment for drug-law violations. These policies have especially and adversely affected African Americans throughout the United States. In Illinois, the rate of imprisonment for drug offenses is substantially higher for African Americans than for whites—a finding that has been replicated in several studies. The collateral consequences of imprisonment for drug crimes are varied and significant, harming individuals, families, and communities.

COMMISSION FINDINGS

SECTION 2

Independent Research Findings

The current section presents the major empirical findings from the DJIS. The project's research team, composed of investigators from the Center for Health and Justice at TASC and Loyola University Chicago, with guidance from the Commission's Research Advisory Group housed at the Jane Addams College of Social Work at the University of Illinois at Chicago, conducted exploratory analyses to investigate the disproportionate racial/ethnic impact of drug laws in Illinois. Data were collected to determine whether any racial disproportionality occurred at arrest, prosecution, or sentencing for drug crimes. To identify the factors related to disproportionality, two large data sets were analyzed: the first consisted of statewide criminal history records from Illinois, and the second consisted of countywide court records from Cook County (Chicago).

Statewide Data

Trends in Incarceration for Drug Offenses

Admissions to Illinois prisons for drug-law violations more than tripled between 1989 and 2009. Figure 1 displays data on prison admissions for violations of Illinois' Controlled Substance Act since the late 1980s, excluding admissions for parole violations. The largest single category of offenses for which people in Illinois were admitted to prison each year consisted of Class 4 drug possession—codified in the Illinois Controlled Substances Act (see Section One)—which accounted for 22 percent of all prison admissions in 2003 (Illinois Department of Corrections, 2005). Nonwhites have been consistently more likely than whites to be sentenced to prison for drug offenses. Specifically, throughout the 1990s, African Americans represented an average of 80 percent of all persons admitted to Illinois prisons for drug offenses. In the state's largest county (Cook), among all those admitted to Illinois prisons for drug offenses from 1990 to 2000, the proportion of African Americans and Latinos varied from 82 to 91 percent (Lurigio, 2006).

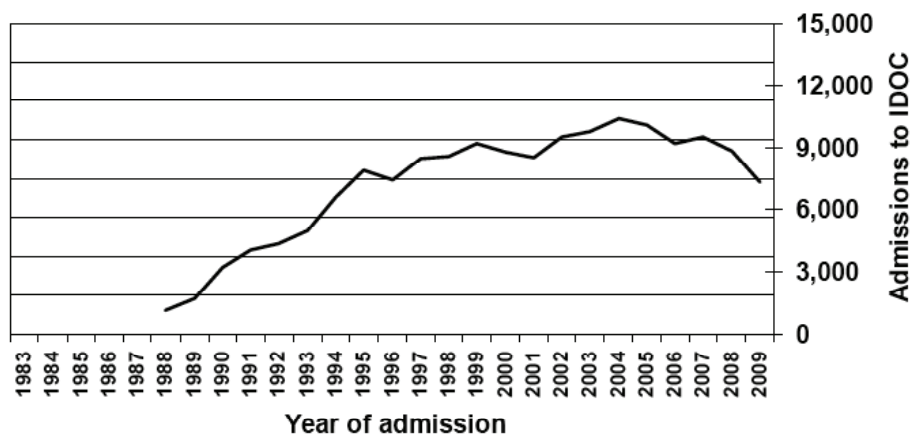


Figure 1
Admissions to Prison for Violations of the Illinois Controlled Substance Act, 1989-2009 (excluding parole violations)

Drug Use and Disproportionality

The disproportionate incarceration of minorities for drug possession cannot be explained by differential drug use among people of different backgrounds. According to the Illinois Household Survey, when grouped into racial/ethnic categories (i.e., white, African American, Latino), the percentages of the state’s past-year users of illicit drugs, other than marijuana, correspond roughly to the representation of those groups in the state’s general population (Cho, Johnson, & Pickup, 2000). Further, within racial/ethnic categories, the percentages of illicit drug use in the past year are highly comparable for whites, African Americans, and Latinos in Illinois: 2 percent, 1 percent, and 1 percent, respectively (illicit drugs without marijuana) and 4 percent, 5 percent, and 2 percent, respectively (illicit drugs with marijuana) (Johnson & Cho, 2004).

Types of Drug Arrests and Race

The first data set for the current study was obtained from the Illinois State Police and contained information on all individuals arrested for felony drug crimes in 2005 (N = 42,297). Criminal histories were obtained for each arrestee, including charges, dispositions, and sentences. Approximately 99 percent of the records were coded “B” or “W” (i.e., black or white) at the time of arrest (less than 1 percent had other codes). This designation is standard in Illinois criminal records, which lacked detailed information regarding ethnicity or race. Therefore, in the present analyses, arrestees were categorized as “white” or “nonwhite.” Presumably, both the white and nonwhite categories each comprised unknowable percentages of people of Latino or other ethnic origin.

The majority (77 percent) of drug arrestees in 2005 were arrested for possession charges under the Controlled Substances or Cannabis Control Acts (Table 1). Class 4 possession of a controlled substance (up to 15 grams) accounted for 68 percent of felony drug arrests in Illinois. Of those arrested for a Class 4 drug offense, 66

percent were nonwhite. The second most common arrest (6 percent of all arrestees) was for the manufacture/delivery of a controlled substance; 90 percent of these arrestees were nonwhite. Other charges with a high percentage of nonwhite arrestees included cannabis sales on or near school property; 90 percent of these arrestees were nonwhite. (Individuals charged under the methamphetamine laws were predominately white, but these laws were new in 2005 and few people were arrested for such offenses.)

Race	
Nonwhite	66%
White	32%
Other code	<1%
Gender	
Male	83%
Female	17%
Age at arrest	
19 and under	1%
20-29	32%
30-39	25%
40-49	23%
50 and older	18%
Type of Drug Arrest	
Possession	77%
Mfg/Delivery	23%
Location of Arrest	
Chicago	67%
Suburban Cook	10%
Non-Cook Urban	15%
Non-Cook Rural	8%

Table 1
Illinois Statewide
Drug Charge Arrestee
Characteristics, 2005
(N=42,297)

Nonwhites were arrested at a higher rate than whites relative to their representation in the general population in counties throughout Illinois (United States Census Bureau, 2009). Arrest data indicated that disproportionality in drug arrests occurred in 62 of the 102 counties in Illinois, including urban, suburban, and rural areas. Racial disparities for drug arrests varied widely by county but tended to be greater in jurisdictions with smaller populations of nonwhite residents (Table 2).

	County Population (2008)		Arrestees on Drug Charges (2005)		
	Total Pop. 2008	% nonwhite	Total Arrests	% nonwhite	Ratio of proportions
Rural					
Iroquois	30,017	5%	61	36%	7.2
Stephenson	46,821	11%	69	65%	5.7
Adams	66,892	6%	167	31%	5.6
Livingston	37,965	8%	41	41%	5.4
Effingham	34,329	2%	94	13%	5.3
Whiteside	59,059	7%	63	37%	5.0
Suburban					
McHenry	312,946	9%	402	22%	2.5
Will	664,361	22%	438	42%	1.9
Lake	702,558	22%	613	38%	1.8
DuPage	925,530	19%	656	20%	1.1
Urban					
Tazewell	130,789	3%	127	12%	3.5
Madison	266,886	11%	602	36%	3.2
Winnebago	295,803	18%	769	52%	2.8
Sangamon	194,049	14%	581	42%	3.0
Cook	5,257,001	46%	32,489	76%	1.7
St. Clair	261,268	33%	292	55%	1.7

Table 2
Racial/Ethnic Disproportionality of Drug Arrests (2005) Compared to Population (2008), Selected Illinois Counties

Race, First Arrests, and Criminal Histories

The statewide data included criminal justice histories from first arrest up until April 2009, when the data were collected. The police in Illinois routinely check suspects' criminal histories at the time of arrest; therefore, the decision to arrest might be affected by the presence of a criminal history. For the purpose of testing the effects of race while controlling for the effects of criminal history, a subsample of first-time arrestees in 2005 was selected. This sample included only people whose most serious charge at their first arrest was for a Class 4 felony (n = 2,575). People with only misdemeanor arrests were excluded from the sample. First-time arrestees constituted 6 percent of all felony arrestees in 2005. Statewide, 64 percent of all first-time felony arrestees for Class 4 possession were white, compared with Class 4 drug arrestees with previous arrests, of whom 66 percent were nonwhite.

The proportion of nonwhites (African American and Latino) arrested for the first time for Class 4 possession (36 percent) is much closer to the proportion of nonwhites in Illinois' general population (approximately 27 percent). In sharp contrast, the proportion of nonwhites arrested for Class 4 possession, overall, was more than double their representation in Illinois' general population (66 percent versus 27 percent) (United States Census Bureau, 2010). Therefore, racial disproportionality for arrests for low-level drug possession increases with the accumulation of a criminal record, suggesting that racial disparities are attributable in part, to the lengthier criminal histories of nonwhite arrestees. Increased access to diversion programs or alterna-

tives to incarceration, coupled with simple and timely processes for expungement and sealing, can mitigate future involvement in the criminal justice system. Without such access, criminal histories begin to accumulate.

Diversions Programming

Early contact with the criminal justice system provides an opportunity for diversion and rehabilitation programming. Instant offense, charge, and sentencing data among first-time arrestees could be used to determine whether whites and nonwhites have the same access to treatment and other interventions. The question of racial barriers to diversion was difficult to answer in the current study because charge and sentencing information in the Illinois State Police data set were missing. Approximately 23 percent of the 2,575 first-time arrestees either were not charged or their charges were not logged into the record—a distinction that was impossible to ascertain from the data. Of the remaining cases, a notable proportion had their charges dropped or dismissed (42 percent), whereas 30 percent were sentenced to court supervision or probation, and thus had the opportunity for rehabilitation services. Of the latter, nearly two-thirds were sentenced to conditional probation (called “710” or “1410” probation in Illinois), and one-third to standard probation. The former are given the option to participate in drug treatment, and if successful, can have their charges dropped. Table 3 presents these outcomes by race. Among first-time arrestees for Class 4 possession, whites (36 percent) were more likely than nonwhites (19 percent) to be sentenced to court supervision or probation.

Table 3
Criminal Justice
Outcomes for First-
time Class 4 Drug
Offenders, Statewide
Data, by Race, 2005

Race	Not charged/missing	Dismissed/dropped	Supervision, 710 or 1410 probation	Guilty and probation	Other
Nonwhite (n = 863)	31.7%	45.0%	12.7%	6.4%	3.5%
White (n = 1,655)	18.1%	40.9%	23.7%	11.8%	5.8%
Total (n = 2,575)	22.7%	42.4%	19.9%	10.0%	5.5%

In the statewide data set, of those who had a first-time drug offense, 61 percent were arrested in Cook County. The data on sentencing outcomes suggested that people with first-time offenses were less likely to receive probation or court supervision in Cook County (16 percent) than those arrested outside of Cook County (50 percent); nonwhite offenders in Cook County were also less likely to be sentenced to probation or court supervision than nonwhite offenders elsewhere in the state.

Drug-free Zones

Statewide, only 3 percent of drug arrests in 2005 involved violations of the drug-free zone provisions of the Controlled Substances Act and the Cannabis Control Act. Nearly 70 percent of these arrests took place in Cook County, and 89 percent involved nonwhite arrestees.

Cook County Court Data

Data and Analyses

To examine more closely the specific variables that are related to disproportionality, data were obtained from a randomly selected sample of 5,000 drug and nondrug criminal cases adjudicated in the Cook County Courts in 2005. Cook County was selected because the majority of statewide arrests for drug crimes and the majority of people with drug offenses admitted to state prisons come from the county. Of the original 5,000 cases, 4,322 had race/ethnicity and adjudication data and were therefore used for the analyses.

For each defendant, the following data were collected: demographic characteristics, such as age, gender, race/ethnicity (African American, Latino, white); and criminal record variables, such as number of previous convictions, felony charge class and type, disposition, and sentence. For defendants whose cases proceeded to felony court, the data set also contained information about whether the defendant was held in custody or released on bond, and whether a public defender or private attorney was appointed to the case.

Multivariate analyses explored the effects of race on key decision points (i.e., prosecution, conviction, and sentencing) in the criminal justice process after controlling for other factors. The variables that affect whether a defendant is held in custody could not be tested with these data. The inclusion of charge class and type allowed conclusions to be drawn about all defendants in the sample.

A selection bias occurs between the stages of criminal justice processing. Simply put, defendants who move from arrest to prosecution to sentencing are different cohorts of people because of the winnowing effects of criminal justice processing. Those who move to the preliminary hearing stage are more likely to be indicted than they were at the arrest stage, and those who are indicted are more likely to be convicted than they were at the preliminary hearing stage. This bias was accounted for in the multivariate analyses by including, in the statistical models, the predicted value, for each variable in each stage, based on the values of each of those variables in the preceding stage (Roncek, 1991).

Felony Review

The possible outcomes of the preliminary hearing stage of the adjudication process were examined; these include dismissal of charges by the judge, or the decision by the state's attorney to drop charges (i.e., *nolle prosequi*) or transfer the case to criminal court for prosecution. In the Cook County sample, 40 percent of the defendants charged with Class 4 drug possession were transferred to criminal court, whereas 60 percent had all charges either dropped by the state's attorney or dismissed by the judge and thus lacked access to diversionary programming and remained at greater risk for in-

creased sentences upon future justice system involvement. Despite the fact that most cases were eventually dropped or dismissed, defendants spent an average of three weeks after their arrest awaiting a preliminary hearing. An unknown but large number of them were detained in jail before being processed and released. Although most Class 4 drug possession cases were dismissed or charges were dropped in all racial/ethnic groups, African-American defendants (39 percent) were more likely than white (31 percent) and Latino (23 percent) defendants to be transferred to criminal court. These disparities are examined in detail below.

Race and Criminal Justice Outcomes

Table 4 presents the characteristics of the Cook County sample. Almost 80 percent of those entering the Cook County Court System were African-American, followed by 13 percent Latino, and 8 percent white. The vast majority (84 percent) were men, and nearly half (45 percent) were 30 years old or younger. As evidence that the Cook County Court System is inundated with low-level drug cases, 72 percent of the sample had a drug charge (sometimes among others), and 70 percent of them were charged with Class 4 possession. More than 60 percent of drug defendants in the Cook County sample were charged with Class 4 possession only and had no other charge(s).

Race	#	%
African American	3,388	78%
Hispanic	579	13%
White	355	8%
Gender		
Male	3,630	84%
Female	692	16%
Age		
30 and Under	1,942	45%
31-39	1,018	24%
40 and older	1,358	31%
Highest Felony Charge		
Class 4	2,551	59%
Class 3	263	6%
Class 2	551	13%
Class 1	303	7%
Class X	196	4%
UUW/Felon*	70	2%
Unspecified Class	388	9%
Drug Charge		
Yes	3,106	72%
No	1,216	28%

Table 4
 Characteristics of
 Sample of Cook
 County Drug and Non-
 drug Felony Cases,
 2005 (n = 4,322)

*Unlawful use of a weapon by a felon

The model for the decision to prosecute in felony court or to drop/dismiss charges is presented in Table 5. This analysis showed that, after controlling for other variables, including criminal history, African Americans were approximately 1.8 times more likely than whites, and Latinos were approximately 1.4 times more likely than whites, to be prosecuted for any crime.

		p value	O.R.
Age	<= 29	--	1.000
	30-39	0.00	0.594
	40+	0.00	0.372
Sex	Male	--	1.000
	Female	0.55	0.938
Race	White	--	1.000
	Black/AA	0.00	1.841
	Hispanic	0.04	1.436
Prior Convictions	None	--	1.000
	1-3	0.00	1.402
	4-6	0.00	1.796
	7+	0.00	1.542
	R2 of model = 0.313		

Table 5
Conditional Logistic Regression Model for Decision to Prosecute in Felony Court, Cook County 2005 (N = 4,021)*

**Model also includes felony charge class (Class 4-1 and Class X/murder) and charge type (property, drug, violent, other offense).*

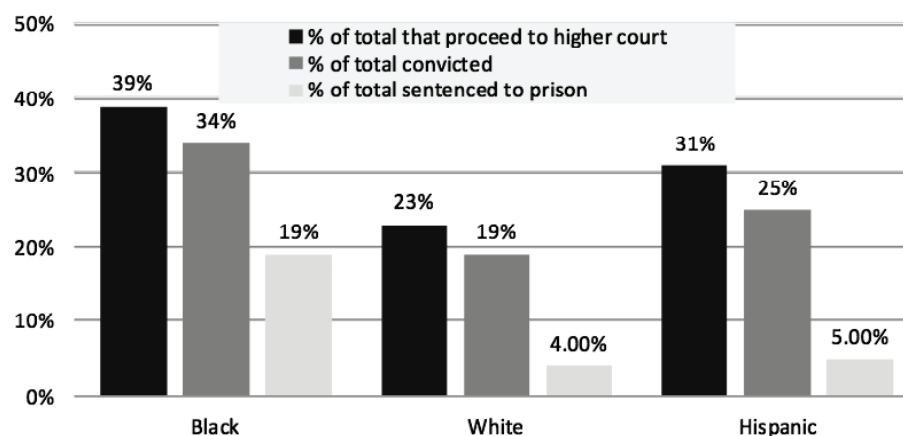
The high volume of drug cases in the county contributes to most cases being dismissed or dropped—an outcome that could be perceived as preferable to a conviction. However, in Cook County, these defendants spend an average of 21 days awaiting the disposition of their cases; during this time, typically, they are in custody. Moreover, many are likely to return to the criminal justice system after their initial cases are dropped. Specifically, of those arrested for a first-time offense in Cook County in 2005, more than half were rearrested within four years. Further, as reported below, previous arrests can increase the likelihood of future arrests, especially among nonwhites.

Models for conviction and sentencing produced similar results as the model for the decision to prosecute. For example, the model for sentencing demonstrated that, after controlling for charge type, charge class, and number of previous convictions, the defendants who were most likely to be sentenced to prison were African-American, held in custody, and represented by a public defender. More specifically, African Americans were 1.7 times more likely than whites to be sentenced to prison; defendants jailed throughout the adjudication process were 2.4 times more likely than those on bond to be sentenced to prison; and defendants without a private attorney were 1.4 times more likely than those with a private attorney to be sentenced to prison.

Cumulative Effects of Criminal Justice Processing

The cumulative effect of disparities is illustrated in Figure 2, which shows the proportion of cases initially charged with Class 4 possession that penetrate further into the criminal justice system and highlight the cumulative effect of disparities at each stage. Because of the incompleteness of the data, these results are merely suggestive (e.g., it was impossible to measure custody status and attorney representation before the prosecution stage). Among defendants with a Class 4 possession charge, African Americans were sentenced to prison at a rate almost five times greater than whites: 19 percent of African-American defendants compared with 4 percent of white defendants. When the sample is restricted to defendants with fewer than two previous convictions (i.e., roughly equal criminal histories), African Americans entering the court system were sentenced to prison at a rate three times that of whites for a conviction for a Class 4 possession offense (10 percent versus 3 percent). These data included defendants who also were charged with other offenses in addition to a Class 4 drug possession. Among African-American defendants with only a Class 4 drug possession charge, 16 percent were sentenced to prison compared with 2 percent of white defendants with only a Class 4 drug possession charge.

Figure 2
Criminal Justice System
Process Penetration
Among Class 4 Drug
Possession Defendants,
Cook County Sample
2005, by Race



Any analysis of racial or ethnic disparities in criminal justice processing must recognize the paramountcy of such disparities at arrest, which is the first step in the concatenation of events that involve a disproportionate number of nonwhites. Specifically, at arrest, the proportions of African Americans were three times greater than their representation in the general population for all charges, all drug charges, and Class 4 drug possession charges. At each stage, for each charge, African Americans constituted 80 percent or more of those processed through the Cook County Criminal Justice System; nonwhites constituted 90 percent or more of those processed for only Class 4 drug possession charges.

The disproportionate odds of nonwhites moving from the arrest stage to later stages in the process (specifically, prosecuting and sentencing to prison) are only partially explained by the racial imbalances at arrest and remain after statistically accounting for the selection bias at each stage. These unequal outcomes in the court system

compound the disparities at arrest in a vicious cycle inasmuch as the probability of arrest increases with the presence of a criminal record, as noted above. Racial/ethnic minority populations are not accessing the full range of diversionary programming options that currently exist. To account fully for the nature of these disparities, further research is needed with better data on custody status, bond, and attorney type.

Drug-free Zones

In Cook County, only 15 percent of the drug defendants had one or more drug-free zone charges. Of these, 70 percent of the drug-free zone charges were eventually dropped or dismissed. Nonetheless, defendants who had originally faced a drug-free zone charge received a more severe final sentence than those who did not. Approximately 58 percent of the Cook County defendants originally charged with a drug-free zone violation that was later dropped received a prison sentence, compared with 41 percent of other drug defendants, suggesting that drug-free zone charges were being used in plea bargaining arrangements and that judges' sentencing decisions were often based on the original charge rather than the lesser, plea-bargained charge.

Summary

In Illinois, drug arrestees in 2005 were disproportionately nonwhite for the most common drug charges, not just in urban counties but in a majority of the state's counties. Hence, racial or ethnic disparities were evident across the state, in rural and urban areas alike. Therefore, policing practices in larger cities accounted only partially for the racial disparity. In addition, population surveys consistently demonstrate that disparities in arrests for possession cannot be explained at all by differential patterns of drug use among people of different racial backgrounds.

Only two types of drug crimes, Class 4 drug possession and Class 2 drug manufacturing/delivery under the Controlled Substances Act, accounted for most of the arrests and most of the racial disproportionality in arrests, which accounted for most of the disparities in later stages of the criminal justice process. Approximately nine of every ten people arrested in Illinois for the manufacture and delivery of a controlled substance or for cannabis sales on or near school property were African-American. Nonetheless, most of the disproportionality in Illinois drug laws, in terms of the sheer number of people affected, was related to drug possession charges, which accounted for nearly three-fourths of felony drug arrests across the state in 2005. Any attempt to address the disproportionate incarceration of minorities must first focus on the enforcement of Class 4 possession laws.

Class 4 possession arrestees constituted the majority of those arrested in Cook County; a substantial number of these individuals were admitted to prison. However, relatively few were sentenced to prison for Class 4 possession only (i.e., without other charges). Nevertheless, the Cook County data showed that in 2005, African Ameri-

cans who were arrested only for that charge were eight times more likely than whites to be sentenced to prison and many of them spent considerable time in jail, which often reduced the length of their actual prison terms. For all criminal charges, African Americans in Cook County were nearly two times more likely to go to prison than whites.

The majority of those arrested for the first time on felony drug charges in 2005 were white; however, for subsequent arrests, the opposite was true—that is, most subsequent arrestees were nonwhite. Whites and nonwhites without criminal records were arrested at rates that more closely correspond to their representation in the general population; minorities with criminal records were more likely than whites to have subsequent arrests. Thus, criminal history plays an important role in creating disparities. The existence of diversion alternatives without ramped-up penalties and felony review at early stages of system involvement may address these concerns.

The availability of treatment services through the criminal justice system appeared to differ for white and nonwhite first-time arrestees. A limited analysis suggested that whites are more likely than nonwhites to participate in court diversion or probation programs. Racial differences in access to community-based programs might vary substantially by jurisdiction. Therefore, more research is needed to explore whether race/ethnicity affects access to diversionary options and, if so, the nature and extent of the effect. To address the disparity, the criminal justice system ought to take steps to intentionally and assertively direct minority populations into sentencing alternative programming for which they are eligible before resorting to prison sentences.

Limitations of the Data

The findings above were drawn from two large data sets that were limited in terms of the depth and breadth of information available on the processing and outcomes of the cases. For example, in some instances, no disposition data were available (e.g., sentences to probation). Most important, the data sets did not contain reliable information about the race/ethnicity of people of Latino origin. Without this information, conclusions cannot be drawn about the effects of drug laws on Latinos and recommendations cannot be made about the appropriate policy and programmatic changes needed to reduce sentencing disparities within these groups. Notwithstanding these limitations, the study offers useful information to encourage evidence-based policy making in Illinois' criminal justice system.

COMMISSION FINDINGS

SECTION 3

Public Hearings

As part of its information-gathering and -sharing efforts, the Illinois DJIS Commission held a series of public hearings throughout the state. At these hearings, Commission members had the opportunity to hear the opinions and recommendations of citizens from across the state, including elected officials, researchers, service providers, national policy experts, and formerly incarcerated persons. Summaries of these hearing are presented below. Witness lists, transcripts, and copies of individual testimonies are provided in the appendices.

February 22, 2010 – Chicago, IL

The first public hearing was held in Chicago and gathered the testimony of ten individuals. A significant portion of the hearing was devoted to the testimony of five speakers from the research community, all of whom had special expertise in criminal justice research in general and were familiar with investigations into disproportionate minority contact with the criminal justice system in particular. The content of their remarks included the following: the preliminary findings of the research on the racial/ethnic impact of drug laws in Illinois, conducted under the auspices of the Illinois DJIS Commission; drug laws and enforcement practices, which are potentially problematic in terms of their affect on disproportionate minority confinement; lessons learned from disparity-reduction efforts in Wisconsin; the cumulative and insidious effects of justice involvement on minorities; and the shortcomings in current data collection mechanisms, such as failure to note Latino heritage in arrest records and to codify decisions at the plea bargaining stage.

The Commission also heard from a local business owner committed to hiring formerly incarcerated people. He recommended the creation of a special class of community-oriented business. This class would be recognized in state and local contracts, in a manner that is similar to current minority- and women-owned business provisions. The hearing concluded with the testimony of three citizens who are participating in programs for formerly incarcerated people—two were people with previous criminal

justice system involvement, and one was a family member of an individual with previous criminal justice involvement. These citizens highlighted the ability of formerly incarcerated people to return successfully to their communities and spoke of their capacity to educate at-risk populations about the problems associated with justice involvement.

March 8, 2010 – Joliet, IL

The second public hearing was held in Joliet, Illinois, a large and economically depressed suburban municipality roughly 50 miles west of Chicago. Commission members heard testimony from four individuals there. The first speaker was a national policy expert with many decades of experience in drug policy formulation and implementation under several White House administrations. He testified about trends in national drug policy as well as current “hot button” issues, such as medical marijuana and the crack cocaine/powder cocaine sentencing disparity. He also spoke about how disproportionality is being addressed at the national and state levels. The second speaker was a local attorney, professor, and person formerly involved in the criminal justice system who spoke about the challenges facing those coming out of the system and the role of restorative justice models in repairing the social fabric damaged by system involvement.

The third speaker was a community treatment provider with more than three decades of experience in providing substance abuse treatment to criminal justice populations. He testified about the role of substance abuse, among many other social and economic factors, in contributing to criminal behavior as well as the need to address holistically the problem of addiction and criminal involvement.

The fourth speaker represented a statewide case management enterprise and the Illinois Juvenile Justice Commission. She spoke about steps being taken by the juvenile justice community to mitigate the problems of disproportionality, including the following: changing policies and practices related to the enforcement of drug laws; providing expanded and comprehensive social services; engaging and educating communities about delinquency, crime, and juvenile justice system involvement; and enhancing funding for services geared toward at-risk juveniles.

April 12, 2010 – East St. Louis, IL

The third and final public hearing of the study was held in East St. Louis, an urban community in the St. Louis metropolitan area, on the Illinois side of the Mississippi River. The commission heard testimony from eight individuals there. The first speaker was a local judge with decades of experience dealing with defendants with repeat offenses and the social and economic issues facing local communities. He spoke about the breadth of social, economic, medical and other factors contributing to recidivism and the need to address them all in attempts to respond to the problem of disproportion-

ate minority contact with the criminal justice system. He also spoke about forfeiture statutes and the need to invest a portion of the seized funds into efforts to develop community programs.

Five of the speakers represented a statewide case management agency from different regional and client perspectives. They spoke about their personal experiences as case managers—and in some cases, as people with histories of criminal involvement—and they underscored the effectiveness of community treatment programs in restoring lives. In addition, they spoke about disproportionality in different parts of the state, including its impact on Latino communities. Finally, they described how, in minority communities, a culture of criminality is often pervasive, deeply ingrained, intergenerational, and difficult to overcome.

Another speaker represented local probation services and spoke about the gap between the need for social and behavioral healthcare services and the availability of such services, especially in light of the state's budget crisis. The final speaker, representing the Illinois African-American Family Commission, spoke about the role of family as a support mechanism and of higher education programs as a vehicle for teaching about addiction and criminal justice involvement.

SECTION 4

Commission Recommendations

In response to the qualitative and quantitative analysis of the current state of disproportionate minority contact with the criminal justice system in Illinois, and in consideration of the expertise from practitioners and policymakers, the Illinois Disproportionate Justice Impact Study Commission offers the following recommendations for mitigating the harmful effects of disproportionate minority contact with the justice system on individuals, families, and communities across Illinois, and the resulting burden on state and local public systems charged with responding to those effects.

These recommendations are not intended to be fully proscriptive. Rather, they present opportunities for meaningfully addressing disproportionate minority contact in four broad categories of activity: 1) state level policy; 2) statutory and practice changes; 3) mitigating long-term harm; and 4) funding. Mechanisms for accomplishing the recommendations are presented for consideration, with the details of implementation left to the General Assembly, the relevant state and local agencies and practitioners, and the communities they serve.

STATE-LEVEL POLICY

The Illinois DJIS Commission recommends the following:

Recommendation 1:

As a matter of process, legislators should be able to request the attachment of a Racial & Ethnic Impact Statement to bills or appropriation measures that impact criminal offenses, penalties, sentencing, probation, or parole policies. The Racial & Ethnic Impact Statement should be drafted by the existing Sentencing Policy Advisory Council, which would also initiate the analysis necessary to understand the impact of the legislation, either through its own effort, or in collaboration with the Illinois Criminal Justice Information Authority, the Racial & Ethnic Impact Research Task Force (described below), or other research entities. Several states have considered proposals to require racial impact statements, and Iowa and Connecticut passed

laws in 2008 requiring such statements in certain instances. Minnesota's Sentencing Guidelines Commission has been drafting racial impact statements for the state legislature for several years.

Recommendation 2:

The State of Illinois should establish a Racial & Ethnic Impact Research Task Force to ensure the standardized collection and analysis of data on the racial and ethnic identity of arrestees. The charge of the Task Force would be to develop a framework for data collection at decision points along the criminal justice system continuum with a goal of standardized information management in the Illinois justice system and all of the state and local components of that system. This information would be used to meaningfully analyze and understand disproportionality that may occur across the justice process, as well as any other benefits such a standardized system would afford. The Task Force would operate under the guidance of, and potentially the auspices of, the Sentencing Policy Advisory Council or the Illinois Criminal Justice Information Authority.

Justification

Through its independent research efforts, the Commission consistently found gaps in relevant data that would allow for a comprehensive statistical analysis of the impact of drug laws on disproportionality. In some cases the data was simply not collected. In others, lack of standardized coding resulted in assumptions being made or sets of data disqualified from analysis. In others, data collected at different stages of justice involvement was not collected in a uniform manner, meaning data sets from different justice entities did not adequately integrate to afford a holistic view of the entire process. As an example of data gaps, 99 percent of Illinois State Police arrestees currently are classified as either Black or white, with unknown percentages of people of Latino or other ethnic origins. Uniform collection of data would:

- Assist stakeholders in understanding who the criminal justice system is serving;
- Identify what decisions are made at particular points along the criminal justice continuum and, in turn, ensure more fairness and objectivity;
- Determine what services are needed to address the issue of disproportionality;
- Inform allocation of resources; and,
- Assist in examining and monitoring system response.

More complete data could be analyzed and used to promote policies and practices that minimize disproportionality. As an example, the Models for Change initiative, currently active in Illinois and other states, is developing resources for improved data collection in its efforts to reduce racial and ethnic disparities in the juvenile justice system (see Appendix D).

STATUTORY AND PRACTICE CHANGES

The Illinois DJIS Commission recommends the following:

Recommendation 3:

The State of Illinois should establish a Task Force to review Section 407 of the Illinois Controlled Substances Act (720 ILCS 570/407), commonly referred to as the “drug-free zone laws.” The purpose of this Task Force would be to commission and analyze research evaluating: 1) the effectiveness of the laws at achieving their protective intent (e.g. shielding children from drug sales); and 2) the potential unintended consequences of the laws beyond their protective intent. Based on this research, the Task Force would recommend amendments to the provisions 720 ILCS 570/407 to preserve their protective intent while mitigating their disproportionate impact on minority communities.

Recommendation 4:

The State of Illinois and local governments should support jurisdictions in maximizing their use of diversionary programs and sentencing alternatives, including day reporting centers, drug schools, drug courts and other specialty courts, first offender probation, and designated program supervision. This recommendation encourages a multi-faceted approach, including:

- 1) Establishing local justice system planning commissions, included within or dovetailing with Adult Redeploy Illinois (730 ILCS 190/20).
- 2) Providing training opportunities for prosecuting attorneys, as well as public and private defense attorneys, on the scope of available alternatives. Such training opportunities could be accredited for continuing legal education credit by the Minimum Continuing Legal Education Board of the Supreme Court.
- 3) Clarifying the array of available alternatives by combining them into a single statute, consistent with the alignment and clarification goals of the CLEAR Commission.
- 4) Assuring appropriation of funding suitable for full utilization of the above-mentioned alternatives (see Recommendations 9 and 10).

Recommendation 5:

Each local state’s attorney’s office, not local law enforcement, should conduct felony review for filing of charges in new cases. Recognizing the practical and logistical realities of this requirement, the General Assembly should establish a benchmark for population of a county above which this requirement is mandated. Additionally, each county should establish its own benchmark for disproportionality of its justice population compared to its general population that would trigger a mandate of felony review by the state’s attorney’s office.

Justification

The recommendations presented above respond to three specific findings of the Commission's research.

First were the cumulative findings of the disproportionate impact of the so-called "drug-free zone" penalty enhancements. While the overall number of arrests and individuals sent to prison in Illinois because of these laws is relatively low, their potential for disproportionate impact is high. Four findings contribute to this conclusion: 1) the concentration of these zones in urban areas and particularly communities of color suggests that delivery crimes committed in urban areas are significantly more likely to be violations of these laws and subject to enhanced penalties; 2) nearly 90 percent of arrestees for drug-free zone violations involved non-white arrestees; 3) Cook County defendants originally charged with a drug-free zone violation that was later dropped were sentenced to prison at a higher rate than other drug defendants, and 4) the movement by many states to acknowledge the disproportionate impact of drug-free zone laws on their minority communities, and to adopt a more deliberate approach to how the statutes are drafted, enforced, and prosecuted.

Second was the finding that whites are nearly twice as likely to be sentenced to specialized drug probation and supervision as non-whites, coupled with the finding that defendants jailed throughout the adjudication process as well as those without a private attorney (both suggesting lower-income defendants) were more likely to be sentenced to prison. These findings suggest that sentencing alternatives are not fully utilized for low-income populations, and a combination of planning, education, clarification, and funding could increase utilization. These activities coincide with work already being done by the Adult Redeploy Illinois program and the CLEAR Commission.

Third was the finding that 60 percent of Class 4 felony possession charges were dropped or dismissed prior to trial. This gap in processing of the facts of each case was magnified by an average of three weeks following arrest that defendants awaited preliminary hearing, many of whom were detained in jail. The short-term and long-term disruptive effects of the arrest and potential detention on the lives of defendants cannot be overstated. The recommendation is intended to emphasize the importance of state's attorney involvement in felony review.

MITIGATION OF LONG-TERM HARM

The Illinois DJIS Commission recommends the following:

Recommendation 6:

The State of Illinois should prohibit the inclusion of drug-related arrests that do not result in conviction in criminal histories collected for employment-related purposes. County clerk offices and third-party background search firms should be held liable for unauthorized release of such information through civil penalties.

Recommendation 7:

The State of Illinois should establish automatic expungement and sealing procedures for Class 4 felony possession charges or convictions that result in one or more of the following:

- Successful participation in a drug court or other specialty court
- Successful completion of first offender probation
- Successful completion of probation under the supervision of the designated program

Recommendation 8:

The State of Illinois should develop and promote a classification of business known as a “community enterprise,” making such businesses eligible to receive state, county, and local monies and tax incentives as a result of training and/or hiring individuals who were formerly criminally involved and/or incarcerated. Similar to current minority-owned and woman-owned business enterprise standards, the community enterprise status would establish standards for application and certification, which would allow designated organizations to compete for contracts with state, county, and local governments.

Justification

Recommendations 6-8 reflect an attempt to reduce the barriers often encountered by people with criminal records as they attempt to re-engage in their communities in a productive manner, primarily through securing and maintaining gainful employment. It has been well documented that having a way to support oneself honestly is critical in avoiding re-involvement in criminal behaviors and the criminal justice system. Public policies like those permitting employers to ask for criminal history information or restricting individuals from certain types of work, along with the stigma associated with former incarceration, work against the efforts of the formerly incarcerated who seek to leave their earlier behaviors and lifestyles behind after their debt to society has been paid. Mass imprisonment among minority populations has created vast inequality by restricting the economic prospects and disrupting the employment trajectories of former prisoners, hampering the fair distribution of wealth and opportunities for social mobility.

Recommendations 6-8 address these barriers in three specific ways. Recommendation 6 ensures that individuals who were arrested but had their charges dropped could not have that fact used against them by potential employers. State legislation proposing a similar measure (HB 765) was introduced in 2009 but failed to gain traction in the General Assembly. Recommendation 7 more broadly addresses the lengthy and confusing process of having criminal records expunged or sealed by defining certain circumstances under which that process happens automatically. Recommendation 8 encourages local businesses to train and hire the formerly incarcerated through incentives and contracting advantages.

FUNDING

The Illinois DJIS Commission recommends the following:

Recommendation 9:

In support of Recommendation 4, jurisdictions should define a fixed portion, or criteria that would trigger the allocation of a portion, of existing drug asset forfeiture funds to support treatment and diversion programs in addition to enforcement and prosecution activities.

Recommendation 10:

In support of Recommendation 4, the State of Illinois should establish budget policy and priorities to promote full utilization of existing diversion programs or alternatives to incarceration, as well as the accompanying planning processes and training as supported by Adult Redeploy Illinois.

Justification

Recommendations 9 and 10 were prompted by 1) Illinois' current fiscal situation, 2) the under-participation in diversion and alternatives to incarceration by minority populations, and 3) recent and historical cost studies, both in Illinois and around the United States, that consistently demonstrate the overwhelming burden to state budgets and public agencies of untreated substance use, of which justice-related activities represent 25 percent in Illinois. Recommendation 10 reflects a philosophical shift *toward* prioritizing limited state resources to addressing the causes of criminal behavior and the attendant disproportionate impacts on minority communities, and *away from* paying for the results of *not* addressing that behavior. This shift has been adopted by 14 states currently pursuing a strategy known as Justice Reinvestment, wherein external consultants work closely with state policymakers to advance fiscally sound, data-driven criminal justice policies to break the cycle of recidivism, avert prison expenditures, and make communities safer. Recommendation 9 is a practical example of a current, definable set of funds that could be allocated according to this philosophy.

Appendices

Complete appendices to this report are available for download at www.centerforhealthandjustice.org.

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