

**Testimony of the John Howard Association to the Senate Criminal Law  
Committee of the 101st Illinois General Assembly, Criminal Justice Reform  
Subject Matter Hearing, October 13, 2020.**

**Correctional experience and expertise:** John Howard Association (JHA): JHA is the only independent citizen correctional oversight organization that goes into Illinois' prisons to directly observe conditions and speak with staff, administrators and prisoners. I, Phillip Whittington, a criminologist and subject matter expert on corrections employed by JHA come before you today to discuss two subjects, prison conditions and Mandatory Supervised Release.

**I. Prison Conditions:** JHA presents the following testimony regarding prison conditions in Illinois. First, I will discuss the Illinois Department of Corrections (IDOC) capacity to rehabilitate prisoners. Second, I will address the need for IDOC to be transparent regarding deaths of prisoners while they are in the Department's custody. Finally, I will discuss the link between a well-trained, professional correctional staff and a safe, humane, and rehabilitative correctional system.

**A. Rehabilitation:**

IDOC is now as it was when the Crime Reduction Act of 2009 (CRA) was crafted for the most part. The majority of prisoners in IDOC continue to be temporarily warehoused in aging, dilapidated prisons unable to access the evidence-based programming required for their rehabilitation. Additionally, many prisoners are subjected to substandard living conditions resulting from decades of deferred maintenance, and the State's failure to objectively assess IDOC's infrastructure and formulate a plan to modernize the department, let alone effectively implement such a plan that would result in an IDOC fit to operate in the current era.

The 96th General Assembly of Illinois declared in 2009 that, "it is the policy of Illinois to preserve public safety, reduce crime, and make the most effective use of correctional resources," finding that. "[c]urrently, the Illinois correctional system overwhelmingly incarcerates people whose time in prison does not result in improved behavior and who return to Illinois communities in less than one year."

In response, the CRA of 2009 was created in order to "...create an infrastructure to provide effective resources and services to incarcerated individuals and individuals

supervised in the locality; to hold offenders accountable; to successfully rehabilitate offenders to prevent future involvement with the criminal justice system; to measure the overall effectiveness of the criminal justice system in achieving this policy; and to create the Adult Redeploy Illinois program” (730 ILCS 190/5)

I refer to the CRA at length above because the critical reforms the Legislature intended to usher in by enacting the CRA remain mostly unrealized over a decade after it was signed into law. Although the Adult Redeploy program is widely regarded to be effective at diverting people convicted of low-level criminal offenses from prison, the state has fallen far short of achieving the goals outlined within the Act for incarcerated individuals.

Over eleven years after the CRA became law, IDOC has barely gotten off the ground where the CRA is concerned. IDOC is currently attempting to implement a validated risk-needs assessment instrument even though such tools were available and widely used in 2009 by correctional agencies across the globe. And, even if IDOC is successful in implementing the Ohio Risk Assessment System (ORAS), it is far from certain that the Agency will be able to facilitate the programming and services prisoners require for IDOC to truly become a department of corrections rather than a decrepit colossal warehouse with a revolving door.

While JHA commends IDOC’s current leadership for recognizing that the Offender 360 project and the unnecessarily complex and unimplementable risk-needs assessment process they inherited needed to be evaluated, improved, and in the case of the assessment, replaced, we question whether the Department is able to implement the systemwide overhaul required to make a risk-needs-responsivity correctional model work. Knowing what a prisoner needs to be rehabilitated will not amount to much if IDOC has no chance of fulfilling such needs.

## **B. Health, Safety, and Transparency:**

The public being fully informed as to what transpires behind prison walls is essential if we are to have an informed discourse regarding correctional policies and practices. While the need for transparency in corrections is constant, the COVID-19 crisis has elevated this need given that health in prisons is a facet of the public health system that affects us all. We should not view COVID-19 in prisons as an isolated subject, but, rather, we need to recognize that prison settings are connected to and embedded within the greater statewide community. Thus, failure to protect prisoners from COVID-19 may have disastrous consequences for vulnerable populations both in and outside of prisons.

Timely and accurate information concerning COVID-19 infections, and resulting hospitalizations and deaths is essential to mitigate the risks stemming from this public health crisis. As things stand, IDOC reports the number of staff and prisoners who were tested and found to be positive on the IDOC website. IDOC also lists the number of staff and prisoners who recovered. No details are provided, however, about those who did not recover at the time the data was disseminated. At Jacksonville Correctional Center for example, IDOC stated that 30 of 33 staff and 214 of 233 prisoners tested positive for

COVID-19 and recovered (according to IDOC website on 10/12/20). This infers that 22 staff and prisoners combined have not recovered. What this means is uncertain, but we should know the condition of these people.

In comparison, the Pennsylvania Department of Corrections has a comprehensive data dashboard on the Agency's website that provides detailed information. From this data dashboard, stakeholders in Pennsylvania are contemporaneously informed as to where staff and prisoners are being tested, why they are tested, and what results from these tests.

As noted above, the COVID-19 crisis has accentuated the need for increased transparency for IDOC. To be clear, however, this is a need that existed prior to COVID-19 and will remain after this public health crisis has subsided until the legislature mandates robust public reporting requirements by law.

To further this end, JHA requests that State of Illinois enact the Death In Custody Reporting Act, modeled after the Federal Death In Custody Reporting Act of 2013. Additionally, Illinois should follow the lead of the State of Texas, where reporting on deaths that occur while a person is in the custody of any law enforcement entity is comprehensive, and promulgated in a timely manner on the Texas Attorney General's website.

Illinois current reporting of deaths that occur in IDOC custody is far from adequate. IDOC reports deaths that occur in its' custody in the "OMRs" (monthly Operations and Management Reports) which are posted on the Department's website. The report that is posted is an aggregated, abbreviated (every facility completes a more detailed, individual, monthly OMR) report. In the publicly available OMRs, information about which facility the death occurred in is available and also included is a categorization of each death as either "Expected" or "Unexpected" (definitions of these terms are not provided or publicly available).

A comparison of the 2018 ISP Custodial/Arrest Related Deaths Report (most current annual report available) to information taken from just four months of 2018 IDOC OMRs (May, June, July and August) reveals discrepant numbers. ISP reported a total of 18 deaths in Illinois prisons in 2018, only one of which was categorized as a suicide. For just the months of May, June, July and August of 2018, IDOC OMRs reported 27 deaths, with nine listed as "Unexpected". It is worth noting that aside from inconsistent total numbers of deaths of people who were incarcerated in 2018, ISP reported one suicide while IDOC reported nine "Unexpected Deaths" for part of the same period of time. This is relevant because it is likely that suicide would be listed in the "Unexpected" category. This lack of transparency and availability of accurate information is deeply concerning.

### **C. IDOC Staff Training and Accountability:**

The term "prison conditions" is not limited to the physical state of IDOC's buildings. This term also encompasses the manner in which prisoners are treated by the staff of IDOC.

It is long overdue for Illinois to formally recognize that IDOC line staff are integral members of the law enforcement profession and therefore should be held to the highest of professional standards, thereby affording correctional officers the same respect as their law enforcement counterparts in the community. As such, it is critical that correctional officers be included in deliberations concerning the licensing, professional oversight, and enhanced training requirements for law enforcement officers who operate outside of prisons.

This is not a radical concept. Correctional officer is recognized as a law enforcement profession in jurisdictions operating prisons that serve as models of secure, humane, and rehabilitative carceral settings. In Germany for example, correctional officers are required to complete two years of class room and practical training prior to working in a prison. After being awarded their professional certification as a correctional officer, officers receive continuous training in order to maintain this status. The curriculum for correctional officers includes the subjects of safety & security, psychology, and law—especially in regards to legal rights of prisoners. Additionally, correctional officers must pass physical and psychological fitness exams to become and remain certified as correctional professionals.

It should be noted that prisons in Germany are not as crowded as Illinois' prisons and they are very well maintained (unlike Illinois' prisons). As a result, the settings in which correctional officers work in Germany enables their correctional professionals to better operate secure, humane, and rehabilitative prisons.

We in the state of Illinois are capable of producing a justice system that is a model to be followed by others. Public safety and justice for all are not mutually exclusive concepts. On the contrary, one cannot be fully realized separate from the other. There is no reason whatsoever we cannot provide for public safety while respecting the dignity and safeguarding the rights of all people in our state.

**II. Mandatory Supervised Release:** Every person sentenced to prison in Illinois is required to serve a term of Mandatory Supervised Release (MSR) in the community after they complete their term of imprisonment.

**A. The Legal Basis of Current MSR terms (730 ILCS 5/5-8-1):**

The length of MSR terms are currently dictated by a 40-year old statute rather than modern evidence-based best practices. MSR terms are automatically imposed by law, not a court or IDOC. An MSR term, which ranges from one year to three years to life, is automatically determined by criminal offense, irrespective of an individual prisoner's circumstances. A validated risk-needs assessment is not used to determine whether a person is placed on MSR upon release, or the length of MSR terms.

## B. Figures Concerning People Currently Subject to MSR:

<b>Composition of MSR Population as of 6-30-2020 (n = 23,140)*</b>		
Offense Class	Count	Percentage of MSR Population***
Class M (Murder)	543	2.3%
Class X	3,840	16.6%
Class 1	3,814	16.5%
Class 2	6,748	29.2%
Class 3	3,158	13.6%
Class 4	5,020	21.7%
Unclassified**	17	0.1%

\* Figures based on an analysis of the IDOC parole population data set for 6-30-2020; any variance from figures produced by IDOC may result from methodology employed by JHA for such analyses. A detailed description of JHA's methodology is available upon request.

\*\* 16 of the 17 prisoners who are listed as unclassified are Sexually Dangerous Persons (SDP); SDP's were civilly committed to the custody of IDOC by a court, and are held in an IDOC prison until the committing court orders them released. Upon release, an SDP is subject to post release supervision by IDOC's Parole Division and are therefore counted amongst the MSR population even though they are not serving an MSR term (725 ILCS 205/et. seq.).

\*\*\* The values in this column total to 100%

<b>Racial Composition* of MSR Population by Offense Class (n = 22,912)**</b>				
Offense Class***	Black (n=12,586)	White (n=7,346)	Hispanic (n=2,980)	Percentage of MSR Population
Class M	69.6%	15.0%	15.4%	2.4%
Class X	58.8%	20.3%	20.9%	16.7%
Class 1	54.5%	30.0%	15.5%	16.5%
Class 2	55.4%	33.4%	11.2%	29.1%
Class 3	47.2%	44.9%	7.8%	13.6%
Class 4	54.8%	34.6%	10.6%	21.7%
Totals****	54.9%	32.1%	13.0%	100%

\* Racial identity as listed in the IDOC data set, as determined by IDOC

\*\* In this instance, the Offense Class "unclassified" (0.1% of population) and Race "other" (0.9% of MSR population) were removed for the sake of brevity; there was only 1 person with the racial identity of "other" whose Offense Class was "unclassified."

\*\*\* For each Offense Class row, the percentages for the three racial categories listed total to 100%

\*\*\*\* In this instance, the percentages for each racial category in the row titled "Totals" reflect the respective racial category's share of the MSR population represented within this table

<b>Geographic Distribution* of MSR Population by Offense Class (n = 23,123)**</b>							
Offense Class***	Cook (n=11,174)	Chicago Collar (n=2,527)	St. Louis Suburbs (n=1,024)	North IL (n=2,114)	Central IL (n=4,864)	South IL (n=1,420)	Percentage of MSR Population
Class M	66.1%	8.3%	4.2%	6.1%	13.1%	2.2%	2.3%
Class X	55.2%	10.9%	4.2%	8.3%	17.9%	3.5%	16.6%
Class 1	45.4%	12.7%	4.7%	9.4%	22.8%	4.9%	16.5%
Class 2	48.8%	10.3%	3.6%	8.7%	22.5%	6.1%	29.2%
Class 3	40.0%	9.2%	5.9%	9.0%	24.2%	11.7%	13.7%
Class 4	47.9%	11.9%	4.6%	10.5%	19.0%	6.1%	21.7%
Totals****	48.3%	10.9%	4.4%	9.1%	21.0%	6.1%	100%

\* Region listed is based upon the county IDOC lists as an offender's "County of Residence," i.e. county in which an offender's host site is located. See below for description of geographic regions

\*\* In this instance the 211 (0.9%) of offenders on MSR with an IDOC racial ID of "Other" are included, but the 17 offenders whose Offense Class is "Unclassified" are not.

\*\*\* For each Offense Class row, the percentages for the six regional categories listed total to 100%

\*\*\*\* In this instance, the percentages for each racial category in the row titled "Totals" reflect a respective regional category's share of the MSR population represented within this table

Regions: Cook; Chicago Collar Counties (DuPage, Kane, Lake, McHenry, Will); St. Louis Suburbs (Madison, St. Clair); North IL (all counties north of I-80 other than Cook and Chicago Suburbs); Central IL (all counties between I-80 and I-70 other than St. Louis Suburbs); South IL (all counties south of I-70)

## **C. Efficacy of MSR:**

### **1. Desired Outcome—Recidivism Reduction Alone?**

When MSR is discussed or studied, whether or not a person recidivates while on MSR seems to be the lone official indicator of successful reentry. However, a person not being violated by IDOC for noncompliance with one of the many conditions of MSR or not being arrested and convicted for a new offense within a year or two of leaving prison does not indicate success in and of itself. A person on MSR refraining from engaging in criminal activity is obviously a good thing, but we need to look beyond the recidivism indicator to determine if a person successfully reenters society. A person who has been released from prison learning a trade, obtaining stable employment that provides for their needs, and engaging in prosocial activities is a true success story. There are many people who make it through MSR without officially recidivating, but are homeless, unemployed, and have a bleak outlook regarding their future when MSR ends. This is not a successful reentry for the formerly incarcerated person or their community, despite the fact that official records will indicate otherwise due to a flawed, limited definition of success.

Why is recidivism the standard measure of success? One, we do not want people released from prison to engage in further criminal activity. Two, recidivism is the easiest thing for IDOC and researchers to measure. Developing a metric for successful reentry that goes beyond recidivism is necessary and long overdue.

IDOC should be able to articulate the outcomes associated with genuine successful reentry. A person's parole agent should know if a person on their case load has obtained identification documents, details on gainful employment, participation in programs, amongst other things. IDOC should be capturing such information and making it available. Until this happens, we will be lacking an accurate indicator of successful reentry.

### **2. Efficacy of MSR—Reentry:**

Proponents of MSR may claim that post release supervision pushes a person to get a job, engage in programming, etc., and this may be true in some cases. Information we have gathered from numerous people on MSR, however, suggests that IDOC does little to assist them with education, employment, or their basic human needs upon release from prison. In fact, they often say that IDOC hinders their reentry efforts by restricting movement, being unnecessarily intrusive, and that the stigma of being under correctional supervision hampers their efforts to improve the quality of their life.

### **3. Efficacy of MSR—Supervision:**

JHA does not believe that MSR is an effective mechanism of deterring people from reoffending or compelling them to comply with post release terms. If a

person commits a crime after being released from prison, this will more likely than not be detected by the police rather than IDOC, and IDOC will merely be notified after the fact. It is not as if a person who is discharged from MSR is not supervised. They are supervised by frontend law enforcement, as we all are.

There is one component that makes MSR a useful tool for law enforcement, IDOC is permitted by law to search a person on MSR, their property, and enter their residence without a warrant (730 ILCS 5/3-3-7(a)(10)). This provision of the MSR conditions statute is used by local-level law enforcement to partner with IDOC for what are called compliance checks. IDOC should be able to provide data on how often these compliance checks occur and what results from them. We believe that a person outside of prison should be subjected to search and seizure only if the government has established probable cause that a crime has occurred, regardless of whether they are on MSR. The fundamental constitutional rights of people in the United States should never be waived by a legislature for the sake of convenience. Law enforcement is very capable of both protecting the public and operating in accordance with the Constitution.

#### **D. Parole Officers:**

JHA does not supervise parole officers, so I do not have the information required to make a statement regarding the overall job performance of those who work in the Parole Division. IDOC, however, is obligated to effectively manage their staff. This starts with knowing what your staff is doing. How long does it take an officer to reply to a request for movement? How much information has an officer logged for people on their caseload? Going off of anecdotes, I can say there are parole officers who seem to care about their job and this shows in their actions. Conversely, however, there are some officers who reportedly clock in, check the required boxes throughout the day, and then clock out and go home, doing little or nothing to help people on their case load or supervise them. Anecdotes alone should not be acceptable to this committee though. IDOC should be able to clearly articulate to you how parole officers are performing using objective performance measures.

#### **E. Conclusion:**

There is no doubt that MSR needs to be overhauled. It is not clear what public good is served by this costly policy. It is a once sized fits all approach that is incapable of meeting the needs of individuals.

Illinois' approach to supervising people released from prison is antiquated, expensive, and ineffective as IDOC is forced to waste scarce resources unnecessarily supervising low-risk offenders, supervision often counterproductive to a person's successful reentry after release from prison. Because limited resources are expended to supervise low-risk offenders, high-risk/high-needs offenders DO NOT receive the support they require for successfully reentry to our communities after release from prison.

Respectfully submitted,

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