

Changing Directions

A Roadmap for Reforming Illinois' Prison System

JOHN HOWARD ASSOCIATION OF ILLINOIS

Promoting Community Safety Through Cost-Effective Prison Reform

The John Howard Association of Illinois (JHA)

Founded in 1901, JHA is Illinois' only non-partisan prison watchdog and justice reform advocate. Our mission is to achieve a fair, humane, and cost-effective criminal justice system by promoting adult and juvenile prison reform, leading to successful re-integration and enhanced community safety.

Through our longstanding monitoring projects, JHA staff and trained volunteers regularly tour all facilities in the Illinois Department of Corrections and the Illinois Department of Juvenile Justice. During these tours, monitors are able to observe the challenges faced by both inmates and correctional staff and ensure that policies are implemented in a way that promotes public safety.

Following our visits, JHA issues a written report that focuses on critical matters such as education, medical and mental health care, disciplinary procedures for youth and adults, and the physical condition of the facilities. These widely disseminated reports are read by everyone from lawyers to legislators, wardens to reformers, members of the Governor's office to members of the public at large; they provide essential transparency and oversight to an otherwise overlooked institution and drive safe and cost-effective criminal justice reform.

To read JHA's prison reports and learn more about our work, please visit at our website at <http://www.thejha.org>.

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Changing Direction: A Roadmap for Reforming Illinois' Prison System

After decades of using incarceration as the country's primary response to crime, leading Republicans and Democrats are embracing safe, fair, and cost-effective prison reform.

Founded in 1901, the **John Howard Association (JHA)** is Illinois' only non-partisan prison watchdog and criminal justice reform advocate. In this paper, JHA lays out a road map that Illinois' next governor could use to drive safe, fair, and cost-effective reform of Illinois' prison system.

While JHA never supports a political candidate or party, we believe informed policymakers and voters are essential pieces of an effective, fair, and humane criminal justice system.

As Illinois prepares to elect its next governor, voters should ask the candidates where they stand on this issue and what their vision and goals are for the state's crowded and under-resourced \$1.3 billion prison system.

Like all states, Illinois' prison population has grown exponentially

over the past 40 years, going from around 6,000 inmates in 1974 to 49,000 today, despite the fact that the system was designed to hold only 32,000.

Two policy trends, promoted by both political parties, drove this dramatic increase. Throughout the 1980s and 90s, policymakers expanded the number of offenses for which a person could be sent to prison, particularly low-level offenses, and they also increased the length of time offenders serve for more serious crimes.

While policymakers hoped this increased use of prison would improve public safety outcomes, a growing consensus of research and experience has found that overusing incarceration produces a host of harmful, unintended consequences.

Though prison can effectively incapacitate people who pose risks to public safety, research has shown that it transforms low-risk offenders into high-risk offenders and makes it difficult for all prisoners to re-integrate back into society when they are released.

Prison is also the state's most expensive form of punishment. Illinois spends about \$22,000 to house an inmate for one fiscal year. That amount is about four times the average cost of diversion programs for low-level non-violent offenders that are funded through Adult Redeploy Illinois, the state's most successful and effective alternative-to-incarceration program.

The only way for Illinois to get a handle on its prison system is to safely reduce its overreliance on incarceration. This needed change can come in one of two ways.

The first is the predicament in which California now finds itself. After failing to reduce its prison population and address conditions that endangered inmates and staff, the Supreme Court of the United States ordered California in 2011 to reduce its prison population by more than 30,000 people. Three years and several hundred million dollars later, California is still struggling to fulfill the Court's mandate.

The second option is to follow the example of states like Georgia, Kentucky, Texas, and New York that have used reforms in law and policy to safely decrease their prison populations and the crippling costs of incarceration.

Although Illinois' prison overcrowding hovers around California-like levels, it is not too late for the state to implement needed changes and avoid the path of litigation-driven reform. Indeed, the state has recently taken some concrete steps in the right direction. In recent years, Illinois has reduced unnecessary and unfair barriers to re-entry; it has safely right sized its juvenile correctional system, taking it from a population of 1,400 incarcerated youth in 2005 to fewer than 750 today; and it has created a capacity for safe and effective alternatives to incarceration for non-violent offenders in two model programs, Juvenile Redeploy and Adult Redeploy Illinois.

Alongside these reforms, Illinois has also made an essential investment in thoughtful criminal justice policymaking in the Sentencing Policy Advisory Council (SPAC). Created by statute in 2009, SPAC is a bi-partisan commission of criminal justice stakeholders, academics, and community representatives dedicated to using cost-benefit analysis, evidence-based practices, research, and data to evaluate sentencing and correctional policy. Since it was formed, SPAC has helped inform policymaking, engendering an environment for rigorous discussion of criminal justice policy.

This includes the formation of the Joint Commission on Criminal Justice Reform, a bicameral, bipartisan group of legislators tasked in 2014 with searching for comprehensive approaches to gun violence and the state's use of prison.

Whether Illinois continues on this path to smart criminal justice reform depends largely on the leadership of the state's next governor. In the sections below, the John Howard Association, Illinois' only non-partisan

prison watchdog and justice reform advocate, describes foundational achievements in criminal justice reform that were accomplished over the last four years, suggests a framework for crafting principled and outcome-based reforms, and provides a list of recommendations that we believe the next governor should use to change the direction of Illinois' prison system so that it does a better job of protecting public safety by making wiser use of incarceration.

A Model for Reform

While this paper focuses primarily on Illinois' adult prison system, there is a lot that could be learned from its juvenile system. As IDOC faces historic overcrowding, the Illinois Department of Juvenile Justice's population is near an all-time low, shrinking from more than 1,400 youth in 2005 to fewer than 750 today. This remarkable reduction has occurred through partnerships between state and local government officials, who share a growing commitment to use programs like Redeploy Illinois that divert low-risk juvenile delinquents into local alternatives to incarceration, which are more effective at reducing recidivism and far less expensive than state custody. This success led the National Juvenile Justice Network and the Texas Policy Foundation to name Illinois as a national model for reform in their 2013 report, "The Comeback States: Reducing Youth Incarceration in the United States."

I. Foundation For Future Criminal Justice Reform, Achievements From 2010-14

While Illinois' prison system struggles with historic overcrowding and a critical lack of resources, the past four years have seen some significant and effective criminal justice reforms:

- Revived Illinois Juvenile Justice Commission by appointing 19 new board members – January 2010
- Enacted House Bill 4583 adding a juvenile court option for youth who send explicit sexual photos via text or email, giving prosecutors the option of charging youth with a less serious offense than felony child pornography, which requires sex offender registration – July 19, 2010
- Enacted Senate Bill 3539 abolishing the death penalty – March 9, 2011
- Enacted House Bill 3360 requiring the Department of Employment Security to act in cooperation with the Department of Corrections to provide increased employment opportunities to prisoners upon release – July 15, 2011
- Enacted House Bill 2590 prohibiting private county and municipal jails – August 15, 2011
- Enacted House Bill 83 requiring juvenile courts to make a finding that secure confinement, rather than community-based treatment, is the least restrictive appropriate sanction prior to committing a juvenile to the Illinois Department of Juvenile Justice – August 15, 2011
- Enacted Senate Bill 2621 implementing a new sentence-credit program for non-violent prisoners – June 23, 2012
- Enacted House Bill 4031 extending the sunset for the Illinois Sentencing Policy Advisory Council (SPAC), the commission that collects data and conducts comprehensive analyses to help the governor and General Assembly make informed decisions about criminal justice, from December 2012 to December 2015 – July 13, 2012
- Enacted House Bill 821 streamlining the process for persons who have been granted a certificate of actual innocence to have their criminal records expunged – August 2, 2013
- Enacted House Bill 4926 making it easier for criminal courts to identify veterans with mental health and substance abuse issues to provide them with treatment at sentencing – August 12, 2012
- Closed Tamms “Supermax” Correctional Facility which housed prisoners in extreme isolation long term at a cost \$65,000 per year, the highest of any state prison – January 2013
- Closed Murphysboro and Joliet juvenile prisons after dramatically reducing the number of youth committed to IDJJ custody – February, 2013

- Enacted House Bill 2404 raising the age of juvenile court jurisdiction to 18 so that 17-year-olds charged with misdemeanors and nonviolent felonies will be tried and sentenced in juvenile court rather than adult court – July 7, 2013
- Enacted House Bill 2401 expanding the scope of Redeploy Illinois to incentivize the diversion of more youth to community-based treatment programs in place of confinement – July 8, 2013
- Enacted Senate Bill 1659, House Bill 3010, and House Bill 2470, which increase tax credits for employers who hire ex-offenders, allow non-violent offenders the opportunity to clear convictions upon successfully completing two years probation, and expedite the process for expunging and sealing criminal records – August 3, 2013
- Issued Executive Order requiring state agencies to evaluate job applicants' skills and abilities before asking about criminal history – October 3, 2013
- Enacted Senate Bill 978 which provides that a juvenile's arrest records will be automatically expunged on a youth's 18th birthday if that arrest did not result in criminal charges and if there were no subsequent arrests or delinquency petitions – June 7, 2014
- Enacted House Bill 5701 which prohibits private employers from inquiring into a job applicant's criminal history until after the applicant has been found qualified and selected for an interview—July 19, 2014

II. Framework for Principled and Outcome-Based Reform

JHA recommends that the next governor drive policies that are grounded in principle and outcome-based.

In *The Growth of Incarceration in the United States* (2014), a study commissioned by The National Academies of

Recommendation: Given the minimal impact of long prison sentences on crime prevention and the negative social consequences and burdensome financial costs of U.S. incarceration rates, which have more than quadrupled in the last four decades, the nation should revise current criminal justice policies to significantly reduce imprisonment rates.

--*The Growth of Incarceration in the United States*, a 2014 report by the National Academies of Science

Sciences to assess the country's use of prison, the authors recommend that policymakers consider four principles listed below, along with the need to hold offenders accountable and protect victims, to define a more balanced use of incarceration. JHA recommends the next governor use these principles to craft and evaluate his agenda for the state's criminal justice system.

- Proportionality: Criminal offenses should be sentenced in proportion to their seriousness.
- Parsimony: The period of confinement should be sufficient but not greater than necessary to achieve the goals of sentencing policy.
- Citizenship: The conditions and consequences of imprisonment should not be so severe or

lasting as to violate one's fundamental status as a member of society.

- Social justice: Prisons should be instruments of justice, and as such their collective effect should be to promote and not undermine society's aspirations for a fair distribution of rights, resources, and opportunities.¹

Indeed, many of these principles are already embedded in the Illinois Constitution: "All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." (Article I, Sec. 11)

Along with grounding proposals in balanced principles, it is critical that policymakers in the next four years focus efforts around achieving clear, measurable, and realizable outcomes. Given the state's finances and its crowded prison system, JHA recommends that the next governor gear his reform efforts around proposals designed to reduce spending by safely decreasing the state's prison population.

III. Proposals to Reduce Costs of Incarceration Through Safe and Effective Criminal Justice Reform

There are two principal ways in which Illinois' next governor can safely cut prison spending through reducing the prison population: Decrease the number of people admitted to prison and reduce inmates' length of stay in IDOC. Similarly, there are only a small handful of basic actions that could accomplish these two things:

Decrease prison admissions

- Limit felonies that require prison sentences.
- Reduce the number of parolees who are admitted to IDOC for violating the conditions of their mandatory supervised release ("parole").
- Mandate programs proven to reduce recidivism and ensure these programs are implemented with fidelity.

Success Story: Texas

In recent years, Texas has strengthened alternatives to incarceration for adults and juveniles, achieving significant reductions in crime while avoiding more than \$2 billion in taxpayer costs that would have been incurred had Texas simply constructed more than 17,000 prison beds that a 2007 projection indicated would be needed. Similarly, juvenile crime has markedly declined at the same time Texas has reduced the number of youths in state institutions by 52.9 percent.

--Source: *Right on Crime, A Project of the Texas Public Policy Foundation*

Decrease prisoners' length of stays

- Expand ways in which inmates can earn time off their sentences, and/or expand eligibility for earned good time.
- Decrease the length of prison sentences.

¹ National Research Council. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, DC: The National Academies Press, 2014, p. 8. Available at www.nap.edu/catalog.php?record_id=18613.

If the next governor chooses to reduce the state's prison population through principled and outcome-based reform, he will be in good company. Several states have found themselves in the precise situation that Illinois now finds itself in: with a need to reduce state spending coupled with a bloated prison population that it can no longer afford. States have used innovative and effective ways to address these two problems, including many states that have well-deserved reputations for being tough on crime, like Texas, Kentucky, and Mississippi.²

SYSTEMIC REFORMS: These reforms are focused on building a system that uses evaluation of programs, best practices, and governmental oversight to ensure that Illinois is making wise use of its limited resources to control crime and promote community safety while it reduce the costs of incarceration.

1. **Ensure that Illinois' prison system uses practices and policies that are proven to reduce recidivism, particularly risk assessment, which was mandated by the Illinois Crime Reduction Act of 2009.** Examples: Mississippi (2009); Kentucky (2011); Ohio (2011).
 - a. Establish a Correctional Policy Oversight Committee to monitor the prison system's implementation and use of evidence-based practices and policies.
2. **Require more comprehensive data collection and dissemination.** Example: South Carolina (2011).
3. **Build capacity to more effectively manage the state's justice-involved population outside of prison.**
 - a. Form an ad-hoc interdisciplinary working group composed of key staff from IDOC, SPAC, the Office of Management and Budget, the Department of Human Services, and other relevant agencies to determine what resources will be needed to create a stronger capacity across the state to divert low-risk offenders from prison into alternatives to incarceration.
 - b. Invest a portion of prison savings into community-based alternatives to incarceration for divertable populations and services, including resources for IDOC's Parole Division. To cut overall state spending, the next governor cannot focus merely on getting prisoners out of prison. He must equally focus on more effectively managing the state's justice-involved population. While many prisoners do not pose such a threat to public safety that they need to be incarcerated, most prisoners are generally high-risk and high-need individuals who come from and return to some of Illinois' most vulnerable communities. Without this investment, Illinois will divert or release people from IDOC only to see many of them return to prison, exacerbating an already vicious and expensive cycle.
 - c. Use Medicaid expansion to fund treatment services to divert eligible offenders from IDOC.
4. **Create a strategic plan in order to determine how reforms could be realized over a specific number of fiscal years.**
 - a. Formulate a plan that recognizes two core principles of prison reform: 1) there is no

² This list adapts a broad range of strategies and recommendations from *Smart Reform is Possible: States Reducing Incarcerations Rates and Costs While Protecting Communities*, a 2011 report by the ACLU that surveys ways in which states have safely reduced their use of incarceration. The full report is available at <https://www.aclu.org/files/assets/smartreformispossible.pdf>.

practical way to significantly cut prison spending over a short period of time, like one fiscal year; and 2) to safely reduce prison spending, IDOC needs to decrease its need for annualized prison beds and maintain safe and adequate staffing levels. To accomplish this, policymakers should look for lessons learned from states like Michigan, New York, and Texas that have all gone through similar processes in recent years.

FRONT-END REFORMS: These reforms focus on making sure Illinois is using prison solely to incapacitate offenders who pose a violent risk to public safety, that is people who we should be scared of, not people we should merely be mad at.

1. Reduce penalties for drug offenses. Examples: Kansas (2003); Texas (2003, 2007); Mississippi (2009); South Carolina (2010); Kentucky (2011); Ohio (2011).

- a. De-felonize drug possession, particularly for low-level amounts. According to IDOC's most recent published statistics, Illinois incarcerated 7,284 people convicted of drug offenses on June 30, 2012 (prisoners convicted of offenses under the Cannabis Control Act or the Controlled Substance Act). Assuming that all of the prisoners were in custody for that full fiscal year, they would necessitate at least \$157,334,400 in prison spending.
- b. Provide non-prison sanctions for drug and low-level offenses. This is essentially Adult Redeploy Illinois (ARI), a state program that funds counties to hold low-level offenders accountable in their jurisdiction, rather than sending them to state custody. While ARI is only operating in 18 counties, it has diverted 1,376 non-violent offenders from prison from January 2011 through the end of 2013. This has resulted in over \$27.2 million in correctional cost savings.

2. Eliminate/reduce mandatory minimum sentences and sentence enhancements. South Carolina (2010); Ohio (2011).

- a. Replace mandatory minimums with presumptive minimums. An overwhelming body of research and experience has demonstrated that while the intent behind mandatory minimum sentences is to provide order and consistency, it has the opposite effect. Replacing mandatory with presumptive minimums will give judges the limited authority to impose a different sentence from the prescribed minimum in the interests of justice. If judges depart from the presumptive minimum, the decision would be made on the record and be reviewable.
- b. Require six-year sunsets be placed on all sentence enhancements and new felonies, mandating SPAC to analyze their impact on recidivism five years after they are enacted and report their results to the Legislature.

Success Story: Georgia

In 2012, Georgia implemented significant changes to its criminal sentencing. In 2014, the state announced that these changes had already saved Georgia taxpayers \$20 million.

-- *Source: Politifact, "Georgia has saved \$20 million through changes in criminal sentencing"*

3. Eliminate/reduce non-violent offenses for which a person could be sentenced to prison. South Carolina (2010); Ohio (2011); Georgia (2012); Illinois (2013).

- a. Reclassify low-level felonies to misdemeanors. In its July 2012 Quarterly Report, IDOC reported that on May 31, 2014, there were about 5,000 inmates convicted of Class 4

offenses, the lowest class of all criminal offenses. Assuming that these offenders will spend an average of seven months in IDOC custody, that would mean that taxpayers would spend an estimated \$75,600,000 to house them for that year.

- b. Eliminate/reduce prison-eligible offenses that stem from second or subsequent misdemeanors convictions. In Illinois' law, a person's criminal history can aggravate lower-level predicate offenses and effectively transform them into more serious offenses for the purposes of sentencing. This is not based in good policy and simply lengthens the time a person spends in prison for offenses that may be relatively minor.
- c. Reserve prison for felonies that are violent, serious, or require offenders to register as a sex-offender. This is the approach that California has taken to reduce prison overcrowding, mandating that individuals sentenced to non-serious, non-violent or non-sex offenses will serve their sentences in county jails instead of state prison.

BACK-END REFORMS: These reforms aim to improve the effectiveness of prison sentences, prison programs, and community corrections to reduce recidivism.

1. Safely reduce the length of sentences. Example: Mississippi (2008).

- a. Eliminate/reduce "Truth-In-Sentencing" laws. Truth-In-Sentencing is the primary vehicle by which policymakers have increased length of stay in IDOC. It removes the ability for people convicted of specified offenses to earn time off through day-for-day credit and earned-good-time programs, requiring them to serve between 85% to 100% of their sentences. As research has shown that increasing sentence length is not an effective deterrent and that the risk of reoffending decreases as a person ages, Truth-In-Sentencing fails to reduce crime and succeeds only in increasing prison expenses.

2. Create more ways for inmates to earn time off their sentences. Examples: Mississippi (2004, 2009, 2010); Kansas (2007); South Carolina (2010); Texas (2011); Kentucky (2011); Ohio (2011); Louisiana (2011); Illinois (2012).

- a. Grant/expand earned good time for the correctional population. Good time programs through which inmates can earn time off their sentences are the most effective way to reduce spending behind prison walls. It also can incentivize participation in rehabilitative programming and encourage good behavior. (Note: While Illinois has two statutory-based earned good-time programs, earned good conduct credit and sentence credits, these programs could be made more effective by expanding eligibility and increasing the amount of time inmates can earn off their sentence.)

3. Recommendation: Address Illinois' growing number of elderly and terminally-ill inmates.

- a. Form an Elderly Prisoner Task Force to study the ways in which Illinois can safely and effectively manage IDOC's growing number of infirm inmates who pose no public safety threat, including release and alternative prison settings.
- b. Create a compassionate release program that would establish an expedited process where IDOC could evaluate whether eligible, terminally-ill inmates could be safely put on supervised release to die outside of prison.

4. Recommendation: Decrease the number of parolees who return to prison for parole

violations. Examples: Texas (2007); Kansas (2007, 2011); Ohio (2011); California (2011); Louisiana (2011)

- a. Use non-prison alternatives for technical parole violations. Every year, a significant portion of IDOC's prison population consists of parolees who have been re-incarcerated not because they were convicted of a new crime, but because they were either arrested for a new crime or they violated some other condition of their release. Oftentimes these new arrests are thrown out of court or the charges are dropped. The amount of time individual violators spend back in IDOC is relatively brief, resulting in no access to rehabilitative programs, and often result in them being released from prison with no supervision or support whatsoever. However, because there are so many parole violators returned to IDOC, the fiscal impact is significant. In FY 2011, for instance, IDOC released 10,404 inmates who were incarcerated for technical violations of their Mandatory Supervised Release. Together these parole violators served 1.93 million days or 5,296 years in Illinois' prison system. This cost Illinois taxpayers more than \$116 million or about 10% of IDOC's total budget.³
- b. Increase Transparency, Oversight, and Training of the Prisoner Review Board (PRB), the executive agency that, among other things, is responsible for determining parole revocations, setting orders of release, and will therefore be instrumental in the implementation of risk assessment in IDOC.

³ Analysis provided by Dr. David Olson David, Professor in the Criminal Justice and Criminology Department at Loyola University Chicago and Director of the Graduate Program in Criminal Justice and Criminology.