



# John Howard Association of Illinois

**2015 recipient of MacArthur Award for Creative and Effective Institutions**

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John Howard Association  
Public Comment  
Proposed Rule Changes by the Illinois Department of Corrections  
October 17, 2018  
20 Ill. Adm. Code 107; 40 Ill. Reg. 16574

For over 100 years, the John Howard Association of Illinois (JHA) has providing crucial independent oversight of the correctional policies and practices employed in Illinois. Illinois must implement laws that will bring about needed reform to our state's carceral system in an effective and timely manner. State agencies are compelled to craft administrative rules that honor the spirit of the law upon which proposed administrative rules are based. To further these ends, JHA calls for the following modifications to be made to the Illinois Department of Corrections (IDOC) proposed rule changes for 20 Ill. Adm. Code 107.

- IDOC must utilize the statute titled “Rules and regulations for sentence credit,” 730 ILCS 5/3-6-3, that is currently in effect following the enactment of 100-0575, effective January 8, 2018, when revising the administrative rules related to sentencing credits. IDOC should not use PA 99-0938 as the statutory basis for proposed rule changes to section 107, as PA 99-0938 was superseded by PA-100-0575.
- Section 107.210(a)(2) must be stricken from the proposed rules so that section 107.210 comports with the law. Pursuant to 730 ILCS 5/3-6-3(a)(3), IDOC should not automatically preclude an offender<sup>1</sup> from being considered for an award of Earned Discretionary Sentence Credit (EDSC) if an offender is required to serve 85% of his or her sentence, or 60% for offenders required to serve 75% of their sentence [proposed rule change, section 107.210(a)(2)].
- An offender should not be automatically rendered ineligible to be considered for EDSC as the result of being found guilty of a 100-Level rule violation [section 107.210(d)(3)].
- IDOC should provide more information to the legislature and the public concerning offenders that received an EDSC award than is mandated by 730 ILCS 5/3-6-3(a)(4.5) [proposed rule change, section 107.190]. IDOC should disclose the number of offenders that exited IDOC during the annual reporting period and the number of these offenders who were eligible to be considered for an EDSC award, in addition to reporting on demographic characteristics of offenders whom received an EDSC award, such as gender, age, and race.
- IDOC should not bar an offender from filing a grievance concerning a decision by IDOC to not award the offender Earned Program Sentence Credit (EPSC) or High School Equivalency Credit [proposed rule change, section 107.560(g)].

Justification for each of JHA's recommended modifications of IDOC's proposed rules changes for 20 Ill. Adm. Code 107 is provided below.

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<sup>1</sup> JHA does not typically use the word “offender” in our work, we refer to people who are incarcerated or in prison as just that because everyone is a person first. We use the word “offender” in this Public Comment because it is in response to statutes and existing Administrative Code sections that use this word. For purposes of clarity and consistency, JHA adopted the language of the statutes and code sections referenced in this document.

**IDOC must utilize the statute titled “Rules and regulations for sentence credit,” 730 ILCS 5/3-6-3, that is currently in effect following the enactment of 100-0575, effective January 8, 2018, when revising the administrative rules related to sentencing credits. IDOC should not use PA 99-0938 as the statutory basis for proposed rule changes to section 107, as this PA was superseded by PA-100-0575.**

IDOC refers to PA 99-0938 as the statutory basis of the proposed rule changes to section 107 promulgated by the Department. This is not the relevant or accurate statutory basis on which IDOC should base rule changes. PA 99-0938 was amended by PA 100-0003, which went into effect January 1, 2018. Both of these public acts were superseded by PA 100-0575, which went into effect January 8, 2018. Thus, the current version of 730 ILCS 5/3-6-3 is the product of PA 100-0575. In order to be relevant and accurate, IDOC’s proposed rules must be based on the law currently in effect. This is highly relevant to IDOC’s proposed rules related to EDSC.

**Section 107.210(a)(2) must be stricken from the proposed rules so that section 107.210 comports with the law. Pursuant to 730 ILCS 5/3-6-3(a)(3), IDOC should not automatically preclude an offender from being considered for an award of Earned Discretionary Sentence Credit (EDSC) if an offender is required to serve 85% of his or her sentence, or 60% for offenders required to serve 75% of their sentence [proposed rule change, section 107.210(a)(2)].**

One of the recommendations put forth by in the final report issued by the Illinois State Commission on Criminal Justice and Sentencing Reform in December 2016 was to “Amend 730 ILCS 5/3-6-3(a)(3) to allow inmates whose sentences are subject to Truth-in-Sentencing to be eligible for Supplemental Sentence Credit.”<sup>2</sup> Illinois’ lawmakers converted this recommendation into policy when they revisited the issue of discretionary sentencing credits in the 100<sup>th</sup> legislative session and modified the statute by enacting PA 100-0575, expanding the number of offenders eligible to be considered by IDOC to receive an award of EDSC. Upon doing so, Illinois’ Governor and lawmakers made clear that purpose of the new law was to expand, rather than restrict, the use of discretionary sentencing credit so that, in Governor Rauner’s words, “[m]ore inmates [have] the opportunity to strive to return sooner to a productive life...”<sup>3</sup>

There is a key difference between 730 ILCS 5/3-6-3(a)(3) as it was amended by PA 99-0938/PA 100-0003 and 730 ILCS 5/3-6-3(a)(3) subsequent to the enactment of PA 100-0575. The first sentence of 730 ILCS 5/3-6-3(a)(3) was modified by PA 100-0575 to rectify a flaw in the language contained within PA 99-0938/PA 100-0003 in order to further the Legislature’s goal of expanding the number of offenders eligible to be considered by IDOC for discretionary sentence credit by including many offenders subject to Truth-in-Sentencing who currently are required to serve at least 85% their sentences. After PA 100-0575 was enacted, the section of the statute governing discretionary sentence credits reads as follows: “In addition to the sentence credits earned under paragraphs (2.1), (4), (4.1), and (4.7) of this subsection (a), the rules and regulations shall also provide that the Director may award up to 180 days of earned sentence credit for good conduct in specific instances as the Director deems proper.”<sup>4</sup> Whereas, paragraph 3 of the statute in question as amended by PA 99-0938/100-0003 did not begin with the language “In addition to the sentence credits earned under paragraphs (2.1), (4), (4.1), and (4.7)...”

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<sup>2</sup> Illinois State Commission on Criminal Justice and Sentencing Reform: Final Report (Parts I & II). Recommendation 19, pg. 60. [http://www.icjia.org/cjreform2015/pdf/CJSR\\_Final\\_Report\\_Dec\\_2016.pdf](http://www.icjia.org/cjreform2015/pdf/CJSR_Final_Report_Dec_2016.pdf)

<sup>3</sup> Illinois Senate Republican Caucus Webpage, “Governor signs Senate Bill 1607 to expand earned prison sentence-credit eligibility,” (January 9, 2018), <http://senategop.state.il.us/News/5118/Governor-signs-Senate-Bill-1607-to-expand-earned-prison-sentencecredit-eligibility/news-detail/>.

<sup>4</sup> See <http://www.ilga.gov/legislation/ilcs/documents/073000050K3-6-3.htm>

By inserting “In addition to the sentence credits earned under paragraphs (2.1), (4), (4.1), and (4.7)...”, the Legislature enabled IDOC to also award EDSC to an offender required to serve 85% of their sentence or required to serve 75% their sentence if an offender has already reduced the 75% to 60% by accumulating programming sentencing credit, provided that the offender meet other eligibility criteria. Thus, IDOC’s assertion that most offenders subject to Truth-in-Sentencing are not eligible to be considered for EDSC is false. This would be true if PA 99-0938 was the final legislation enacted affecting 730 ILCS 5/3-6-3(a)(3), but this is not the case. As discussed above, the current iteration of 730 ILCS 5/3-6-3 is the product of PA 100-0575. Therefore, Section 107.210(a)(2) must be stricken from the proposed rules so that Section 107.210 comports with the law.

**An offender should not be automatically rendered ineligible to be considered for EDSC as the result of being found guilty of a 100-Level rule violation [section 107.210(d)(3)].**

It is unnecessary to automatically render an offender ineligible to be considered for EDSC as a result of being found guilty of a 100-Level rule infraction, as defined in DR504. Pursuant to 730 ILCS 5/3-6-3(a)(3) IDOC may consider disciplinary history when determining whether or not to award EDSC. Individual case by case determinations as to whether or not a 100-Level rule violation should result in the denial of EDSC awards should be made, rather than automatically preclude an offender from receiving an EDSC award. For example, if an offender commits a 100-Level rule violation shortly after being committed to the custody of the Department and then exhibits exemplary behavior for the years that follow, the Department should retain the option to consider this offender for EDSC. JHA recognizes that 100-Level rule infractions are serious matters and should be treated as such. However, JHA also recognizes that some offenders may not adjust well to prison life initially, but have the potential for rehabilitation. Permanently removing the incentive of EDSC due to a single 100-Level rule infraction, irrespective of the timing and circumstances surrounding the incident may be counterproductive to IDOC’s efforts to manage behavior.

**IDOC should provide more information to the legislature and the public concerning offenders that received an EDSC award than is mandated by 730 ILCS 5/3-6-3(a)(4.5) [proposed rule change, section 107.190]. IDOC should disclose the number of offenders that exited IDOC during the annual reporting period and the number of these offenders who were eligible to be considered for an EDSC award, in addition to reporting on demographic characteristics of offenders whom received an EDSC award, such as gender, age, and race.**

The law sets a minimum requirement for information that must be disclosed to the public concerning offenders that receive EDSC each year. It is important to stress that the law, 730 ILCS 5/3-6-3(a)(4.5), merely sets a legal floor for data reporting and by no means prevents IDOC from disclosing additional information relevant to EDSC awards. IDOC can and should provide more information related to EDSC so that stakeholders may better assess the impact of the recent changes in the law, better evaluate IDOC’s implementation of EDSC, and become alerted to any unforeseen consequences or impacts of the revised EDSC award process. Reporting on the data listed within the statute alone is of little use if stakeholders are unable to contextualize this information. To ensure that this information gap is filled, IDOC should include additional reporting requirements to section 107.190 of the proposed rules, including but not limited to the following: the number of offenders that exited IDOC during the annual reporting period and the number of these offenders who were eligible to be considered for an EDSC award, in addition to reporting on demographic characteristics of offenders whom received an EDSC award, such as gender, age, and race.

**IDOC should not bar an offender from filing a grievance concerning a decision by IDOC to not award the offender Earned Program Sentence Credit (EPSC) or High School Equivalency Credit [proposed rule change, section 107.560(g)].**

IDOC's grievance procedure is the only formal process available to offenders that allows them to challenge the Department's policies and individual exercises of discretionary authority. If an offender is eligible per statute and section 107.520 to receive EPSC or High School Equivalency credit, but is denied either form of sentence credit, the offender should be afforded the opportunity to formally challenge IDOC's decision through the grievance process under 20 Ill. Adm. Code 504. Subpart F. JHA strongly believes that offenders should retain the ability to utilize the Department's grievance procedure to challenge any IDOC policy or individual exercise of discretionary authority, and that subject matter based barriers such as the proposed rule change of 107.560 should never be codified.