

## Earned Discretionary Release

Since 1978, when Illinois abolished its parole system and the state began its incarceration binge, we have learned that many of the rationales used to justify the imposition of extremely long sentences are not based in evidence. Over-sentencing and wrongful convictions have decimated communities and severely affected thousands of families. Where once no one was sentenced to grow old and die in prison in Illinois, today many thousands are.

### The Crisis of Extreme-Sentencing

- Currently, Illinois has no early release mechanism to periodically assess whether the thousands of people sentenced to death-by-incarceration need to remain incarcerated for public safety.
- This is a humanitarian crisis. Connie de la Vega and colleagues note that “[s]entence severity in the United States has reached an extreme that contradicts its stated human rights obligation to direct its prison system towards the primary goals of reformation and social rehabilitation, as set forth in the International Covenant on Civil and Political Rights (ICCPR), which it ratified in 1992.”<sup>i</sup>
- This is a fiscal crisis as well. The IDOC’s budget has ballooned from less than \$50 million in 1970 to \$1.5 billion today.

### EDR Can Be a Major Piece of the Puzzle in Transforming Our Justice System.

- There is now widespread acknowledgement that “[w]e can’t tackle mass incarceration without addressing long prison terms.”<sup>ii</sup>
- EDR acknowledges the fact that every person has the capacity to change over time, improve themselves, and become a safe and valuable member of their community.
- EDR looks at who people are today; whether their continued incarceration serves any penological purpose; and whether they still pose an actual threat to society. It allows deserving individuals the ability to return to their families and communities.
- EDR can help shift the focus of the IDOC from warehousing to rehabilitating people by giving them hope to replace despair.
- EDR serves as a safety valve for those wrongfully convicted and for those convicted/sentenced unfairly under the state’s accountability, felony murder, and habitual criminal laws.
- EDR helps to mitigate the effects of the ill-conceived and overly-punitive sentencing laws passed over the last five decades.
- EDR relieves the graying of Illinois prisons. In IDOC today, 20% of people are elderly. This population already has doubled since 2010 and will surge to 30% by 2030. Because of their significant medical needs, the elderly cost 2 to 5 times more to incarcerate than average.<sup>iii</sup>
- New York has been transforming their prison and parole systems and drastically reducing prison populations by, among other things: using a risk-assessment instrument as the primary criterion in determining parole; focusing on who people are today rather than who they were on the day of sentencing or on the nature of the crime; and transforming the make-up of their parole board.

Implementation of an Earned Discretionary Release system in Illinois would finally bring the state in compliance with both our international obligations under the ICCPR and our own state constitutional mandate to restore people “to useful citizenship”<sup>iv</sup>; all while maintaining public safety, saving state resources, healing families and communities, being more humane, and helping to address the ills of mass incarceration.

- Provides the state a mechanism to review whether it is really necessary that thousands of people are forced to grow old and die in prison.
- Provides an avenue for deserving people who have been oversentenced to return to useful citizenship.
- Requires a risk assessment instrument be used to set goals for release, and that the source code of such risk assessment instrument be periodically reviewed for bias.
- Shifts the focus of the IDOC back to rehabilitation and returning people to useful citizenship.
- Grants the Prisoner Review Board authority to award additional good time credit to incarcerated, honorably-discharged veterans and service members.
- Requires the IDOC to evaluate how well it facilitates relationships between incarcerated persons and their loved ones.
- Provides incarcerated people a means to challenge inaccurate information in their master file.

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<sup>i</sup> Connie de la Vega, et. al., *supra* note 25, at p. 15; citing International Covenant on Civil and Political Rights, December 16, 1966. S. Treaty Doc. No. 95-20 (1992), art. 10 (3), 999 U.N.T.S. 171.

<sup>ii</sup> A Matter of Time: The Causes and Consequences of Rising Times Served in Americas' Prisons." Urban Institute, July 2017, p. 9; see also Pfaff, *supra* note 1 at p. 185-187; and Gottschalk, *supra* note 2 at p. 11-12. See also Nazgol Ghandnoosh, "Policy Brief: Can We Wait 75 Years to Cut the Prison Population in Half?" The Sentencing Project (March 2018), p.4.

<sup>iii</sup> Releasing people who already have served historically long periods of incarceration and already have aged out of crime and been rehabilitated would save the state hundreds of millions of dollars per year. See, for instance, "The Rising Costs of Incarcerating Elderly Inmates," *The Crime Report*, May 7, 2018.

<sup>iv</sup> Illinois Constitution of 1970, Article 1, Section 11.

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