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Criminal and Sentencing Law Review Commissions: Detached, Contemplative Decision Making on Matters of Criminal Justice Reform, 41 J. Marshall L. Rev. 777 (2008)

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CRIMINAL AND SENTENCING LAW REVIEW COMMISSIONS: DETACHED, CONTEMPLATIVE DECISION MAKING ON MATTERS OF CRIMINAL JUSTICE SYSTEM REFORM

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INTRODUCTION

In 2004, the Criminal Law Edit, Alignment and Reform (CLEAR) Commission was created.⁶ The purpose of the Commission was to create a process for review and reform of Illinois criminal and sentencing laws in order to make these laws more readable, understandable, and just.⁷ One of the more important concepts adopted by CLEAR was the creation of a permanent, on-going oversight body charged with the review of criminal and sentencing laws.

The creation of a Criminal Law Review Commission and a Sentencing Law Review Commission would address the need for a de-politicized, holistic approach to criminal and sentencing law change and reform. Moreover, the proposed criminal and sentencing commission is formatted consistently with other existing Illinois review commissions such as the Commission on Government Forecasting and Accountability or the Compensation Review Board.⁸ The proposed criminal law commission also incorporates components of commissions in other states charged with substantive revisions of existing law.⁹ California, Connecticut, and Oregon have law review commissions to ensure that their state statutes are understandable and free of defects.¹⁰ Likewise, the Illinois sentencing commission proposal includes elements of independent sentencing commissions in other states.¹¹ Alabama, Kansas, Minnesota, Missouri, and Pennsylvania have

6. CLEAR Initiative, <http://www.clearinitiative.org> (last visited Nov. 21, 2007).

7. *Id.*

8. See 25 ILL. COMP. STAT. 130/3A-1 (2007) (Illinois Commission on Government Forecasting and Accountability); 25 ILL. COMP. STAT. 120/1 (2007) (Illinois Compensation Review Board).

9. California Law Review Commission, <http://www.clrc.ca.gov> (last visited Nov. 21, 2007); Connecticut Law Review Commission, <http://www.cga.ct.gov/lrc> (last visited Nov. 21, 2007); Oregon Law Commission, <http://www.willamette.edu/wucl/olc> (last visited Nov. 21, 2007).

10. *Id.*

11. Minnesota Sentencing Guidelines Commission, <http://www.msgc.state.mn.us> (last visited Nov. 21, 2007); Missouri Sentencing Advisory Commission, <http://www.mosac.mo.gov/index.htm> (last visited Nov. 21, 2007); Kansas Sentencing Commission, <http://www.accesskansas.org/ksc> (last visited Nov. 21, 2007); Alabama Sentencing Commission, <http://sentencingcommission.alacourt.gov> (last visited Nov. 21, 2007); The Pennsylvania Commission on Sentencing, <http://pcs.la.psu.edu> (last visited Nov. 21, 2007).

established sentencing review commissions to allow for autonomous deliberation concerning sentencing reform.¹²

I. THE NEED FOR CRIMINAL AND SENTENCING LAW REVIEW COMMISSIONS

To ensure that Illinois criminal and sentencing laws remain consistent and understandable, a Criminal Law Review Commission and a Sentencing Law Review Commission should be enacted to serve as an on-going process to review, update, and revise Illinois criminal and sentencing laws. Both of these commissions address needs that arise in the Illinois criminal justice system.¹³

The commissions would establish a holistic approach to criminal and sentencing law reform. Unlike all other laws, criminal and sentencing laws deal with one's freedom and the taking of one's life, liberty, and pursuit of happiness.¹⁴ The need for these commissions arises from the obligation to equally apply criminal justice law and policies assuring Constitutional protections embodied in the Bill of Rights are afforded to all citizens.¹⁵ The taking of Constitutional freedoms triggers the need for a greater degree of objective, detached, and de-politicized review and revision of existing criminal laws.¹⁶ These independent commissions would ensure that laws are not enacted without deep consideration in an effort to avoid knee-jerk reactions to anecdotal problems or "crimes of the week."¹⁷

Both commissions would also serve the purposes of the Criminal Code and the Code of Corrections.¹⁸ A Criminal Law

12. *Id.*

13. See Vera Institute of Justice and Pew Charitable Trusts Multi-State Meeting, *Recent National Trends: What Drives Sentencing Reform?* (Nov. 4-6, 2007) (noting a 335 percent increase in nationwide incarcerated population from 1980 to 2005 and an 871 percent increase in nationwide corrections spending from 1980 to 2005).

14. U.S. CONST. amend. V.

15. U.S. CONST. amends. I-X.

16. See, e.g., *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) (ruling that a law that criminalizes sexual intimacy between same-sex couples violated a person's right to liberty under Due Process Clause of the Fourteenth Amendment); *Texas v. Johnson*, 491 U.S. 397 (1989) (ruling that a flag desecration statute infringes on First Amendment freedoms of expression).

17. Richard S. Frase, *Is Guided Discretion Sufficient? Overview of State Sentencing Guidelines*, 44 ST. LOUIS U. L.J. 425, 432 (2000) ("By setting sentencing policy for all crimes (or at least, all felonies), guidelines systems could . . . avoid piecemeal reforms in response to the current 'crime of the week'").

18. See 720 ILL. COMP. STAT. 5/1-2 (2007):

The provisions of this Code shall be construed in accordance with the

Review Commission would be charged with collecting data and reviewing current law to “prescribe penalties which are proportionate to the seriousness of offenses.”¹⁹ Members of the Criminal Law Review Commission would have the experience and expertise necessary to “prevent arbitrary or oppressive treatment of persons accused or convicted of offenses,”²⁰ which pervades the current enacting process. Moreover, because Constitutional freedoms are at stake, a criminal law commission would ensure that laws adequately define “the act and mental state that constitute the offense.”²¹ Thus, a criminal commission would modify or eliminate statutes that are unconstitutionally vague or fail to give sufficient notice to the public as to what acts are prohibited.²² In addition to ensuring that laws are understandable, a criminal commission would modify or eliminate laws that are constitutionally overbroad, infringe on basic freedoms, or are redundant.²³

Likewise, a Sentencing Law Review Commission would be dedicated to collecting and analyzing data that reflects the current

general purposes hereof, to: (a) Forbid and prevent the commission of offenses; (b) Define adequately the act and mental state which constitute each offense, and limit the condemnation of conduct as criminal when it is without fault; (c) Prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders; (d) Prevent arbitrary or oppressive treatment of persons accused or convicted of offenses;

See 730 ILL. COMP. STAT. 5/1-1-2:

The purposes of this Code of Corrections are to: (a) prescribe sanctions proportionate to the seriousness of the offenses and permit the recognition of differences in rehabilitation possibilities among individual offenders; (b) forbid and prevent the commission of offenses; (c) prevent arbitrary or oppressive treatment of persons adjudicated offenders or delinquents; and (d) restore offenders to useful citizenship.

19. 720 ILL. COMP. STAT. 5/1-2.

20. *Id.*

21. *Id.*

22. See, e.g., *Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (providing that a statute that required citizens to provide “credible and reliable” identification when requested by a peace officer was void-for-vagueness because statute failed to set forth a standard for determining “credible and reliable”); *Schwartzmiller v. Gardner*, 752 F.2d 1341, 1345 (9th Cir. 1984) (holding that “[a] statute is void for vagueness if it fails to give adequate notice to people of ordinary intelligence concerning the conduct it proscribes”); see also John F. Decker, *Addressing Vagueness, Ambiguity and Other Uncertainty in American Criminal Law*, 801 DENVER U. L. REV. 241-344 (2002).

23. See, e.g., *Lawrence*, 539 U.S. at 578 (holding that a law that criminalizes sexual intimacy between same-sex couples violated a person’s right to liberty under Due Process Clause of the Fourteenth Amendment); *Johnson*, 491 U.S. at 420 (holding that flag desecration statute infringes on First Amendment freedoms of expression). See generally John F. Decker, *Overbreadth Outside the First Amendment*, 34 N.M. L. REV. 53-107 (2004) (discussing the overbreadth doctrine).

status of the Illinois sentencing system to fulfill the prescription that sentencing laws are “proportionate to the seriousness of the offenses and permit the recognition of differences in rehabilitation possibilities among individual offenders.”²⁴ In addition to barring cruel and unusual punishment, the Illinois Constitution states that “[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.”²⁵ To ensure proportionate sanctions and to prevent oppressive treatment, Illinois appellate courts have struck down sentences found to be excessive²⁶ or disproportionate.²⁷ To address these problems, a Sentencing Law Review Commission would set forth sentencing guidelines that would prevent disputes from arising and reduce the need for expending unnecessary judicial resources from an already taxed criminal justice system.²⁸ Thus, a Sentencing Law Review Commission would allow for a systematic data-driven approach towards sentencing laws to “prevent arbitrary or oppressive treatment of persons adjudicated offenders or delinquents,” and to “restore offenders to useful citizenship.”²⁹

24. 730 ILL. COMP. STAT. 5/1-1-2.

25. ILL CONST. art. I, § 11.

26. See, e.g., *People v. Brown*, 243 Ill. App. 3d 170, 176 612 N.E.2d 14, 19 (1st Dist. 1993) (holding that a statutory 45-year sentence was excessive, the Court reduced sentence to 30 years because at time of the offense defendant was 20 years old and lacked any prior criminal history. . .); *People v. Short*, 66 Ill. App. 3d 172, 176-77, 383 N.E.2d 723, 727 (5th Dist. 1978) (holding that the trial court abused its discretion by imposing incarceration because of defendants’ inability to make immediate financial restitution to victims).

27. See, e.g., *People v. Guevara*, 216 Ill. 2d 533, 837 N.E.2d 901 (2005) (holding that “a sentence violates the proportionate penalties clause if it is so cruel, degrading, or disproportionate to the offense that the sentence shocks the moral sense of the community” or if the sentence “is greater than the sentence for an offense with identical elements”).

28. Stanford Criminal Justice Center, THE CRIMINAL RECORD Spring 2007 Newsletter, 1, available at http://www.law.stanford.edu/publications/programs/scjc/newsletter/07/crimlaw_fall2007.pdf. As of June 2006 there were over 2.2 millions Americans incarcerated in the nation’s prisons and jails. This constitutes a 500% increase in the number of people incarcerated in the United States since 1972. *Id.*

29. 730 ILL. COMP. STAT. 5/1-1-2.

II. EXISTING ILLINOIS REVIEW COMMISSIONS

To investigate and address current and future statutory problems, the Illinois legislature created several other review commissions such as the Compensation Review Board, the Commission on Government Forecasting and Accountability, and a Violent Crimes Advisory Commission.³⁰ Because these commissions deal with laws that may be susceptible to political pressures, their creation allows for a de-politicized decision making process involving objective analysis and review.³¹

The Compensation Review Act created the Compensation Review Board ("Board").³² The Board consists of twelve members³³ and is charged with determining compensation for members of the "General Assembly, judges, . . . state's attorneys, . . . elected constitutional officers of State government, and certain appointed officers of State government."³⁴ The Board looks at several objective factors ranging from the position's skill and time requirements, opportunities for other earned income, cost of living, the value of the service performed in comparable states, and the level of public interest in the service.³⁵ A report of the Board's

30. See, e.g., 25 ILL. COMP. STAT. 120/2 (2007) (Illinois Compensation Review Board); 25 ILL. COMP. STAT. 130/3A-1 (Illinois Commission on Government Forecasting and Accountability); 725 ILL. COMP. STAT. 240/5 (Illinois Violent Crimes Advisory Commission).

31. See 2002 Report Of The Compensation Review Board, <http://www.prairienet.org/ija/comprev.htm> (last visited Nov. 21, 2007) (stating that

[i]n past Reports . . . we proposed that the General Assembly amend the Compensation Review Act to require our reports to be filed in odd-numbered years instead of even-numbered years. We made this request because in even-numbered years our Reports are filed just months before statewide elections. This unfortunate timing injects politics into the process and prevents the dispassionate, objective and nonpartisan review of salary recommendations that was intended by the [Compensation Review] Act.)

32. 25 ILL. COMP. STAT. 120/1.

33. 25 ILL. COMP. STAT. 120/2. The Compensation Review Board consists of: three members appointed by the President of the Senate, three members appointed by the Minority Leader of the Senate, three members appointed by the Speaker of the House of Representatives, and three members appointed by the Minority Leader of the House of Representatives.

34. 25 ILL. COMP. STAT. 120/4 (2007).

35. *Id.*

In determining the compensation for each office, the Compensation Review Board shall consider the following factors:

- (a) the skill required,
- (b) the time required,
- (c) the opportunity for other earned income,
- (d) the value of public services as performed in comparable states,
- (e) the value of such services as performed in the private sector in

findings and recommendations is made public and public hearings are then conducted.³⁶ Once the Board files its report with the General Assembly, the General Assembly may “disapprove the report of the Board in whole, or reduce it in whole proportionately, within 30 session days after each house of the legislature next convenes after the report is filed.”³⁷

Like the Compensation Review Act, the Legislative Commission Reorganization Act of 1984 created the Commission on Government Forecasting and Accountability (“CGFA”).³⁸ The CGFA consists of 12 members³⁹ and is charged with the “continuing study of the laws and practices pertaining to pensions and related retirement and disability benefits,” to “evaluate existing laws and practices,” and to “review and make recommendations on proposed changes to those laws and practices.”⁴⁰ Moreover, the CGFA provides impact notes showing how proposed legislation would affect the public pension system.⁴¹

Because issues of compensation and pension benefits are so politically loaded, these commissions allow for a depoliticized decision making process as a result of objective analysis and review.⁴² Ultimately, recommendations for changes are made outside the traditional political process allowing for reasoned and contemplative decision making based on objective criteria.⁴³

In addition to investigating pension laws, the legislature created the Violent Crimes Advisory Commission to study the

Illinois and comparable states based on the responsibility and discretion required in the office,

- (f) the average consumer prices commonly known as the cost of living,
- (g) the overall compensation presently received by the public officials and all other benefits received,
- (h) the interests and welfare of the public and the financial ability of the State to meet those costs, and
- (i) such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of such compensation.

Id.

36. *Id.*

37. 25 ILL. COMP. STAT. 120/5(b) (2007).

38. 25 ILL. COMP. STAT. 130/3A-1.

39. 25 ILL. COMP. STAT. 130/1-5 (2007). The CGFA consists of 12 members: three members appointed by the President of the Senate, three members appointed by the Minority Leader of the Senate, three members appointed by the Speaker of the House of Representatives, and three members appointed by the Minority Leader of the House of Representatives. *Id.*

40. 25 ILL. COMP. STAT. 130/3A-1(b).

41. 25 ILL. COMP. STAT. 130/3A-1(c).

42. *Supra* note 32.

43. *Id.*; see also Frase, *supra* note 18, at 432 (offering that “the use of an independent, appointed commission [is] designed to insulate sentencing policy decisions from short-term political pressures”).

laws, practices, agencies, and organizations that affect violent crime victims.⁴⁴ Under the Violent Crime Victims Assistance Act, the Commission has the following responsibilities:

[t]o promote and conduct studies, research, analysis and investigation of matters affecting the interests of crime victims;. . . [t]o . . . recommend legislation to develop and improve policies which promote the recognition of the legitimate rights, needs and interests of crime victims;. . . [t]o . . . serve as a clearinghouse for public information relating to crime victims' problems and programs;. . . [t]o . . . coordinate, monitor and evaluate the activities of programs operating under this Act;. . . [t]o . . . make any necessary outreach efforts to encourage the development and maintenance of services throughout the State, with special attention to the regions and neighborhoods with the greatest need for victim assistance services;. . . [t]o . . . perform other activities, in cooperation with the Attorney General, which the Advisory Commission considers useful to the furtherance of the stated legislative intent;. . . [. . . and] make an annual report to the General Assembly.⁴⁵

The commission consists of 18 members and includes representatives of the Illinois legislature, agencies that assist victims of violent crime, and members of the public that have experience and expertise in dealing with the victims of violent crime.⁴⁶

A criminal law and sentencing law commission would be analogous to existing Illinois review commissions in several ways. Review commissions ensure that commission members have the expertise and experience to make informed recommendations.⁴⁷

44. 725 ILL. COMP. STAT. 240/5.

45. 725 ILL. COMP. STAT. 240/5(a).

46. 725 ILL. COMP. STAT. 240/4 (2007).

[T]he Attorney General, or his or her designee who shall serve as Chairperson; the Illinois Secretary of State or his or her designee; the Chief Justice of the Court of Claims or his or her designee; the Director of Children and Family Services; 2 members of the House of Representatives, 1 to be appointed by the Speaker of the House and 1 to be appointed by the Minority Leader of the House; 2 members of the Senate, 1 to be appointed by the President of the Senate and 1 to be appointed by the Minority Leader of the Senate; and the following to be appointed by the Attorney General: 1 police officer; 1 State's Attorney from a county in Illinois; 1 health services professional possessing experience and expertise in dealing with the victims of violent crime; one person who is employed as an administrator at a public or private institution of higher education; one person who is enrolled as a student at a public or private institution of higher education; and 5 members of the public, one of whom shall be a senior citizen age 60 or over, possessing experience and expertise in dealing with victims of violent crime, including experience with victims of domestic and sexual violence.

Id.

47. See *supra* note 44 and accompanying text.

For example, members of the Violent Crimes Advisory Commission, who have worked with victims of violent crimes, are able to make recommendations that effectively address victims' needs.⁴⁸ Likewise, a criminal commission and a sentencing commission would consist of members that represent a broad cross-section of participants in the criminal system. Moreover, because so many different parties have different conflicting interests as to how the Illinois criminal justice system should be run, a criminal law and sentencing law commission would conduct independent and objective review of Illinois criminal law.⁴⁹ Thus, the decision making process would be driven by members with expertise in the criminal justice system instead of a process driven by outside political pressures.⁵⁰

48. Letter from Jennifer Kuhn, Chair, Violent Crime Advisory Commission, 2006 Letter to the Illinois Legislature (Nov. 2006), available at http://www.illinoisattorneygeneral.gov/victims/2006_letter_to_legislature.pdf.

The Violent Crime Advisory Commission recommends funding for state non-profit agencies that provide one or more of the following services: "[c]oordinate volunteers to work with criminal justice agencies to provide direct victim services or to establish community support; Provide assistance to victims of violent crime and their families in obtaining assistance through other official or community resources; Provide elderly victims of crime with services appropriate to their special needs; Provide transportation and/or household assistance to those victims participating in the criminal justice process; Provide victims of domestic and sexual violence and sexual harassment with services appropriate to their special needs; Provide courthouse reception and guidance, including explanation of unfamiliar procedures and bilingual information; Provide in-person or telephone hot-line assistance to victims; Provide special counseling facilities and rehabilitation services to victims; Provide other services as the Commission shall deem appropriate to further the purposes of this Act; Provide public education on crime and crime victims; Provide training and sensitization for persons who work with victims of crime, and Provide special counseling facilities and rehabilitation services for child victims of sex offenses.

Id.

49. See generally, American Bar Association, Criminal Justice Section Standards: Sentencing Standard 18-4.1(a) Basic responsibilities of the agency performing the intermediate function, http://www.abanet.org/crimjust/standards/sentencing_toc.html (last visited Nov. 21, 2007). The section provides that the sentencing commission:

should be the information center for all elements of the criminal justice system. The agency should collect, analyze and disseminate information on the nature and effects of sentences imposed and carried out. The agency should develop means to monitor, evaluate, and predict patterns of sentencing, including levels of severity of sentences imposed and relative use of each type of sanction. Information gathered by the agency is necessary to the legislature's performance of the legislative function, to the agency's performance of the intermediate function, and to the courts' performance of the judicial function.

Id.

50. See generally, American Bar Association, Criminal Justice Section Standards: Sentencing Standard 18-4.2(a) Establishment of sentencing

Illinois review commissions are also responsible for collecting data and conducting objective analysis.⁵¹ For example, laws that affect compensation and benefits are especially susceptible to political influence.⁵² Thus, by objectively reviewing data relating to increases in the cost of living, Illinois' financial ability to compensate public officials, and how Illinois compares to other states in compensating public officials, the Compensation Review Board can determine the best course of action on compensation laws.⁵³ Likewise, criminal and sentencing laws require a depoliticized approach. A sentencing commission would gather data such as the length of stay for varying offenses, the number and types of sentences imposed, as well as data showing how sentencing laws impact prison populations.⁵⁴ By analyzing data, a sentencing commission can make objectively informed decisions about the current state of sentencing as well as identify trends or patterns in order to make predictions about the future of sentencing.⁵⁵ An analysis of criminal law data would allow a criminal law commission to identify inconsistencies in substantive offenses, statutory language that is redundant or difficult to understand, and laws that are inappropriately placed within the

commission, http://www.abanet.org/crimjust/standards/sentencing_toc.html (last visited Nov. 21, 2007).

The legislature should provide that the commission be composed of lay persons and persons with varying perspectives and experience within the criminal justice system and with sentencing processes, including at least one representative of the judiciary, prosecuting authorities, defense bar, and correctional and probation agencies. In composing the commission, consideration should be given to the community's ethnic and gender diversity.

Id.

51. 25 ILL. COMP. STAT. 120/2 (Illinois Compensation Review Board); 25 ILL. COMP. STAT. 130/3A-1 (Illinois Commission on Government Forecasting and Accountability); 725 ILL. COMP. STAT. 240/5 (Illinois Violent Crimes Advisory Commission).

52. 2002 Report Of The Compensation Review Board, *supra* note 32.

53. 25 ILL. COMP. STAT. 120/4.

54. *See, e.g.*, Kansas Sentencing Commission, *supra* note 12, at Goals and Objectives (providing the Commission receives reports "for all persons who are sentenced for felony crimes"). Reports are maintained in a computer database "from which the Commission staff can then monitor, evaluate, and analyze sentences imposed pursuant to the sentencing guidelines." Based on this data, the Commission can also "[d]etermine the number of guidelines sentences imposed, the characteristics of offenders and the offenses committed, the number and types of departure sentences, and the overall conformity of sentences to the sentencing guidelines . . ." as well as "[a]nalyze the overall distribution of guidelines sentences by race, ethnic origin, gender, age, education level and geographic location to determine whether the sentencing guidelines have reduced or eliminated the biases which were found to be inherent in the pre-guidelines sentencing system.").

55. *Id.*

Illinois Criminal Code.⁵⁶

In addition to gathering and analyzing data, Illinois review commissions also recommend changes to the legislature.⁵⁷ For example, the Commission on Government Forecasting and Accountability (“CGFA”) informs the legislature about pension laws that are causing confusion, the problems that have resulted from particular laws, and proposed modifications to existing law that may resolve problems.⁵⁸ Likewise, a criminal law commission would inform the legislature of potential unconstitutional or inconsistent statutes as well as statutes that are duplicative or difficult to understand.⁵⁹ A sentencing law commission would report to the legislature the commission’s projections as to correctional resource needs and whether the current or recommended provisions were furthering the purposes of the Code of Corrections and Criminal Code.⁶⁰ Moreover, like the CGFA,

56. CLEAR Initiative, Benefits of Less Complex Illinois Criminal Code, <http://www.clearinitiative.org> (last visited Nov. 21, 2007).

The Code will be more accessible to laypeople trying to obey the law. Judges and lawyers will find the Code easier to understand and apply. The reform will eliminate disputes over interpretation of the Code that can reduce costly retrials, court delays and mistakes. The size of the Code will be reduced significantly, and indexing will be improved. Policy makers will more easily understand the implications of amendments proposed in the future. The new Code will limit the opportunity for lengthy and expensive appeals due to confusion with the existing Code.

Id.

57. 25 ILL. COMP. STAT. 130/3A-1; *see also* Commission on Government Forecasting and Accountability, Commission Profile, <http://www.ilga.gov/commission/cgfa2006/CommissionProfile.aspx> (last visited Nov. 21, 2007) (stating “[t]he Commission evaluates existing laws and practices and makes recommendations on proposed changes to the Illinois Pension Code and annually issues a Report on the Financial Condition of Illinois Public Pension Systems” to the Illinois General Assembly).

58. 25 ILL. COMP. STAT. 130/3A-1; Commission on Government Forecasting and Accountability, Commission Profile, *supra* note 58.

59. CLEAR Initiative, Senate Bill 150 Fact Sheet, <http://www.clearinitiative.org/documents/SB150factsheet.pdf> (last visited Nov. 21, 2007).

Criminal Law Review Commission will review legislation that proposes changes to Illinois criminal laws. For each proposed statute the Commission will ask: Is the statute constitutional? Is the statute duplicative of or inconsistent with existing law? Does the statute include a mental state? Is the statute placed in an appropriate place within the state statutes.

Id.

60. *See* American Bar Association, Criminal Justice Section Standards: Sentencing Standard 18-4.2 Establishment of sentencing commission, *supra* note 51 (noting the sentencing commission should be responsible for “periodic reports to be [sic] legislature and the public regarding the commission’s data gathering and research, and reports responsive to any particular queries posed by the legislature to the commission;” as well as “periodic recommendations to

which is charged with submitting impact statements related to proposed legislation affecting pension laws, a criminal and sentencing law commission would submit impact statements showing how proposed legislation would affect criminal and sentencing systems.⁶¹

III. ILLINOIS CRIMINAL LAW REVIEW COMMISSION

A. *Purpose of a Criminal Law Review Commission*

After an 18-month study of Illinois' Criminal Code, the CLEAR Commission identified and remedied various problems that were a result of a countless number of changes to the Criminal Code.⁶² To ensure that future changes to the Criminal Code are incorporated in a consistent and efficient manner, the CLEAR Commission also recommended the creation of an on-going permanent Criminal Law Review Commission.⁶³ To preserve the CLEAR Commission's changes and maintain a useful, accessible, and comprehensible Criminal Code, a Criminal Law Review Commission would conduct an ongoing review of proposed criminal legislation.⁶⁴ The Criminal Law Review Commission would be an independent commission and would act as a gate-keeping body so that proposed changes to the Criminal Code go through a depoliticized and thorough review process.⁶⁵ After review of proposed legislation, the criminal law commission would submit recommendations to the General Assembly.⁶⁶ This added level of review ensures that the legislature makes informed decisions and that the Criminal Code remains uniform and adheres to fundamental drafting principles.⁶⁷

the legislature regarding changes in the criminal code or to the rule making authority regarding changes in the rules of criminal procedure").

61. See, e.g., 25 ILL. COMP. STAT. 55/2 (2007) (noting that "[t]he Commission on Government Forecasting and Accountability . . . shall prepare a written pension system impact note in relation to any bill introduced in either house of the General Assembly which proposes to amend, revise, or add to any provision of the Illinois Pension Code or the State Pension Funds Continuing Appropriation Act").

62. CLEAR Initiative, Senate Bill 150 Fact Sheet, *supra* note 60.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

B. Law Review Commissions in Other States

Other states have created law review commissions to ensure that substantive laws remain consistent, understandable, and constitutional.⁶⁸ For example, Connecticut, Oregon, and California have created independent commissions to review substantive law in order to discover defects and to discover laws that may be outdated.⁶⁹ These commissions generally consist of members appointed by the General Assembly and the governor.⁷⁰ Moreover, these commissions are charged with receiving and considering suggestions from a variety of sources, such as the American Law Institute, bar associations, judges, lawyers, public officials, and members of the public.⁷¹ To ensure that a thoughtful reform process takes place, each commission identifies the defects with the law, gathers data regarding the law at issue, proposes the best possible reform solution, and provides the legislature with a thorough report detailing the commission's assessment and recommendation.⁷²

68. California Law Review Commission, <http://www.clrc.ca.gov> (last visited May 22, 2008); Connecticut Law Review Commission, <http://www.cga.ct.gov/lrc> (last visited May 22, 2008); Oregon Law Commission, <http://www.willamette.edu/wucl/olc> (last visited May 22, 2008).

69. See *supra* note 69 and accompanying text.

70. Connecticut Law Revision Commission, Commissioners, <http://www.cga.ct.gov/lrc/commissioners.htm> (last visited May 22, 2008); Oregon Law Commission, Commission Members, <http://www.willamette.edu/wucl/olc/staff> (last visited May 22, 2008); California Law Revision Commission, Personnel of the Law Revision Commission, <http://www.clrc.ca.gov/Mbg-personnel.html> (last visited May 22, 2008); D.C. Sentencing and Criminal Code Revision Commission <http://sentencing.dc.gov> (follow "commission members" hyperlink) (last visited May 22, 2008).

71. See, e.g., CONN. GEN. STAT. ANN. § 2-87(1) (West 2007) (quoting the statute "Receive, consider and prepare comments and recommendations on proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations, judges, lawyers, public officials, or other learned bodies or qualified individuals"); OR. REV. STAT. ANN. § 173.338(1)(a),(b) (West 2007) (stating "[t]he specific subject areas to be part of the law revision program of the Oregon Law Commission include . . . [p]roposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies"); CAL. GOV'T CODE § 8289(b) (West 2007) (stating "[t]he commission shall . . . (b) Receive and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies").

72. See, e.g., CONN. GEN. STAT. § 2-87(2)(7) (stating "[t]he commission shall . . . (2) Recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state, civil and criminal, into harmony with modern conditions; . . . (7) Submit an annual report to the general assembly."). See, e.g., OR. REV. STAT. ANN. § 173.342(1) (explaining that "[t]he Oregon Law Commission shall file a report at each regular session of the Legislative

The Connecticut Law Review Commission was created under Connecticut's Legislative Department.⁷³ The Connecticut commission consists of 15 members⁷⁴ and is responsible for receiving, considering and preparing recommendations on proposed legislation.⁷⁵ To identify laws that need review, the commission looks at recommendations made by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations, judges, lawyers, public officials, or other qualified individuals.⁷⁶ The commission recommends changes to current law in order to eliminate "antiquated and inequitable" laws and to bring the current law into "harmony with modern conditions."⁷⁷ For example, the Connecticut legislature asked the Connecticut commission to review current Connecticut laws concerning the right to a jury trial for misdemeanors.⁷⁸ In its analysis, the Connecticut commission reviewed Federal and State Constitutional provisions guaranteeing the right to a jury trial as well as decisions of the Connecticut Superior Court.⁷⁹ By reviewing and analyzing the issue, the commission was able to ensure that accurate information was gathered to better inform the legislature on the best course of action.⁸⁰ Thus, the Connecticut legislature was in a position to make a well-informed

Assembly that shall contain recommendations for statutory and administrative changes and a calendar of topics selected by the commission for study"); CAL. GOV'T CODE Ann. § 8289(a) (explaining that "[t]he commission shall . . . (a) Examine the common law and statutes of the state and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms").

73. CONN. GEN. STAT. ANN. § 2-85 (West 2007).

74. CONN. GEN. STAT. ANN. § 2-86 (West 2007). The first six members are as follows: the president pro tempore of the Senate; the minority leader of the Senate; the speaker of the House of Representatives or his or her designee; the minority leader of the House of Representatives or his or her designee; the co-chairperson of the joint standing committee on judiciary or his or her designee; and a ranking member of the joint standing committee on judiciary or his or her designee. The following is a list of the remaining nine members: two members appointed by the president pro tempore; two members appointed by the speaker of the house; and five members appointed by the governor. Three of the governor's appointees must be members of the Connecticut bar, one must be a superior or supreme court judge, and one must be a law school faculty member.; *see also* Connecticut Law Revision Commission, Commissioners, <http://www.cga.ct.gov/lrc/commissioners.htm>. (including a list of the commissioners).

75. CONN. GEN. STAT. ANN. § 2-87(1).

76. *Id.*

77. CONN. GEN. STAT. ANN. § 2-87(2).

78. Connecticut Law Revision Commission, Report on Connecticut Right to a Jury Trial for Misdemeanors, Jan. 20, 1998, <http://www.cga.ct.gov/lrc/recommendations/1999RecommendationsJuryTrialRpt.htm>.

79. *Id.*

80. *Id.*

decision based on an objective analysis by an independent expert commission.⁸¹

Like the Connecticut Law Review Commission, the Oregon Law Commission was created in 1997 to conduct a “continuous substantive law revision program.”⁸² The Oregon commission consists of thirteen commissioners.⁸³ The commission enabling law designated “specific “subject areas” that are part of the commission’s law revision program.⁸⁴ Thus, the Oregon commission looks at the common law, statutes, and recent judicial decisions in order to discover “defects and anachronisms” in the law that are in need of reform.⁸⁵ Like the Connecticut commission, the Oregon commission also looks at proposed changes submitted by various legal bodies such as the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and bar associations.⁸⁶ The Oregon commission is also notified of experiences where a judge or lawyer has had difficulty in applying the law or when a member of the general public has had difficulty in seeking a legal remedy.⁸⁷ For example, the commission’s website provides the commission’s contact information and directs visitors to contact the commission regarding an issue.⁸⁸ The commission reviews the issue and the relevant laws that should be studied and gives priority to “private law issues that affect large numbers of Oregonians and public law issues that are within the scope of an existing state agency.”⁸⁹ The commission also considers the “resource demands of a particular issue, [t]he length of time required for study and development of proposed legislation, [a]nd the probability of approval of the proposed legislation by the

81. *Id.*

82. OR. REV. STAT. ANN. § 173.315(1).

83. OR. REV. STAT. ANN. § 173.315(2)(a)-(g) (The Oregon commission consists of two members appointed by the President of the Senate, with at least one being a Senator at the time of appointment; two members appointed by the Speaker of the House, with at least one being a Representative at the time of appointment; deans of Oregon’s accredited law schools or their designee; three members appointed by the Board of Governors of the Oregon State Bar; the Attorney General or his or her designee; the Chief Justice of the Supreme Court or the Chief Justice’s designee; and one person appointed by the Governor); *see also* Oregon Law Commission, Commission Members <http://www.willamette.edu/wucl/olc/staff> (last visited Mar. 10, 2007) (listing the commissioners and staff).

84. OR. REV. STAT. ANN. § 173.338(1).

85. OR. REV. STAT. ANN. § 173.338(1)(a).

86. OR. REV. STAT. ANN. § 173.338(1)(b).

87. Oregon Law Commission, Law Reform Process, Sources of Law Reform Projects, <http://www.willamette.edu/wucl/olc/process> (last visited Mar. 10, 2007).

88. *Id.*

89. Oregon Law Commission, Law Reform Process, The Program Committee, <http://www.willamette.edu/wucl/olc/process> (last visited Mar. 10, 2007).

legislature and the governor.”⁹⁰

Once the commission selects a law in need of reform, a work group is formed to identify defects in the law.⁹¹ The work group prepares a report discussing the issue and how the proposed legislation addresses the identified problem.⁹² The report is then communicated to the public, allowing interested citizens to communicate their ideas and concerns relating to the proposed legislation.⁹³ The work group’s report is also submitted to the full commission for review and approval.⁹⁴ If the commission approves the proposed legislation, the report is submitted to the legislature.⁹⁵ At this point, “[b]ecause the Commission’s law reform process includes thoughtfully choosing law reform projects, carefully drafting proposed legislation and communicating with and educating stakeholders, the expectation is that bills recommended by the Commission will be viewed favorably by legislators and ultimately passed into law.”⁹⁶ By taking these steps, the commission ensures a holistic approach is taken before the legislature considers proposed bills.⁹⁷ Moreover, because the commission works independently, its assessment is shielded from political pressures and allows for an unbiased source of information.⁹⁸

Like Connecticut and Oregon, California created the California Law Review Commission in 1953 in order to serve as a continuing substantive review of California’s common law and statutes.⁹⁹ The Commission consists of nine members¹⁰⁰ and is

90. *Id.*

91. Oregon Law Commission, Law Reform Process, Formation of Work Group, <http://www.willamette.edu/wucl/olc/process> (last visited Mar. 10, 2007).

92. Oregon Law Commission, Law Reform Process, Formation of Work Group – Approaching the Issue, <http://www.willamette.edu/wucl/olc/process> (last visited Mar. 10, 2007).

93. Oregon Law Commission, Law Reform Process, Communication and Education, <http://www.willamette.edu/wucl/olc/process> (last visited Nov. 21, 2007).

94. *Id.*

95. *Id.*

96. Oregon Law Commission, Law Reform Process, The Legislature, <http://www.willamette.edu/wucl/olc/process> (last visited Nov. 21, 2007).

97. *Id.*

98. *Id.*

99. CAL. GOV’T CODE § 8280 (West 2007); *see also* California Law Revision Commission, History and Purpose, <http://www.clrc.ca.gov/Mbg-history.html> (last visited Nov. 21, 2007).

100. *See* CAL. GOV’T CODE § 8281 (West 2007) (stating that the commission consists of one member of the Senate appointed by the Committee on Rules, one member of the Assembly appointed by the Speaker, and seven members appointed by the Governor with the advice and consent of the Senate.); *see also* California Law Revision Commission, Personnel of the Law Revision Commission, <http://www.clrc.ca.gov/Mbg-personnel.html> (last visited Mar. 10, 2008) (including a list of commission members and officers).

charged with (1) examining common law and statutes in order to discover “defects and anachronisms”¹⁰¹ in the laws; (2) receive and consider proposed changes from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations;¹⁰² and (3) receive and consider suggestions from judges, lawyers, public officials, and members of the public.¹⁰³

The California commission is also charged with making recommendations in order to “modify or eliminate antiquated and inequitable rules of law.”¹⁰⁴ For example, in 2005, the California commission was directed by the legislature to conduct a study and recommend proposed legislation to reorganize statutes relating to the control of deadly weapons.¹⁰⁵ The directive was a response to the Governor’s statement that “a reorganization of the current [firearm] laws should be undertaken to ensure that statutes that impose criminal penalties are easily understandable.”¹⁰⁶ To achieve this goal, the commission had several objectives: (1) reduce the length and complexity of current sections,¹⁰⁷ (2) eliminate unnecessary cross-references to other sections of the statute,¹⁰⁸ make use of common definitions,¹⁰⁹ (3) organize provisions so that similar provisions are in close proximity of each other,¹¹⁰ and (4) eliminate duplicative provisions.¹¹¹ Thus, by setting forth and adhering to these objectives, proposed changes to California laws are driven by objective, detached analysis and not anecdotal evidence and reactionary politics.¹¹² Rather, the California commission ensures that laws remain uniform, constitutional, and

101. CAL. GOV’T CODE § 8289(a).

102. CAL. GOV’T CODE § 8289(b).

103. CAL. GOV’T CODE § 8289(c).

104. CAL. GOV’T CODE § 8289(d).

105. California Law Revision Commission, Memorandum 2007-5, Nonsubstantive Reorganization of Deadly Weapon Statutes: Scope and Methodology of Study 1 (Jan. 18, 2007), available at <http://www.clrc.ca.gov/pub/2007/MM07-05.pdf>.

106. *Id.* at 2.

107. *Id.* at 5.

108. *Id.* at 6.

109. *Id.* at 7.

110. *Id.*

111. *Id.*

112. California Law Revision Commission, History and Purpose, <http://www.clrc.ca.gov/Mbg-history.html> (last visited Nov. 21, 2007).

The Commission studies the law in order to discover defects and anachronisms and recommends legislation to make needed reforms. The Commission assists the Legislature in keeping the law up to date by: [i]ntensively studying complex and sometimes controversial subjects, [i]dentifying major policy questions for legislative attention, [g]athering the views of interested persons and organizations, [and] [d]rafting recommended legislation for legislative consideration.

Id.

adherent to sound drafting principles.¹¹³

In 2006 the District of Columbia, established the Sentencing and Criminal Code Revision Commission, authorizing its existing sentencing commission to analyze and review criminal laws in addition to sentencing laws.¹¹⁴ The commission consists of 15 voting members and 5 non-voting members.¹¹⁵ In reviewing sentencing laws, the commission is charged with analyzing data

113. *Id.*

114. D.C. CODE § 3-101.01 (2007).

115. D.C. CODE § 3-102(a) (2007).

(1) The voting members of the Commission shall consist of the following:

(A) Three judges of the Superior Court of the District of Columbia, appointed by the Chief Judge of the Superior Court;

(B) Repealed;

(C) The United States Attorney for the District of Columbia or his or her designee;

(D) The Director of the D.C. Public Defender Service or his or her designee;

(E) The Corporation Counsel for the District of Columbia or his or her designee;

(F) The Director of the District of Columbia Offender Supervision, Defender and Court Services Agency or his or her designee, or, until that agency is certified and assumes its duties, the Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee or his or her designee;

(G) Two members of the District of Columbia Bar, one who specializes in the private practice of criminal defense in the District of Columbia, and one who does not specialize in the practice of criminal law, appointed by the Chief Judge of the Superior Court in consultation with the President of the District of Columbia Bar;

(H) A professional from an established organization devoted to research and analysis of sentencing issues and policies, appointed by the Chief Judge of the Superior Court of the District of Columbia;

(I) Two citizens of the District of Columbia who are not attorneys, one of whom is nominated by the Mayor subject to confirmation by the Council, and the other who is appointed by the Council; and

(J) Three professionals from established organizations, to include institutions of higher education, devoted to the research and analysis of criminal justice issues, appointed by the Council.

(2) The non-voting members of the Commission shall consist of the following:

(A) The Director of the District of Columbia Department of Corrections or his or her designee;

(B) The Chief of the Metropolitan Police Department or his or her designee;

(C) The Director of the United States Bureau of Prisons or his or her designee;

(D) The Chairperson of the United States Parole Commission or his or her designee; and

(E) One member of the Council, appointed by the Chairman of the Council.

Id.; see also D.C. Sentencing and Criminal Code Revision Commission, available at <http://sentencing.dc.gov> (follow "commission members" hyperlink) (last visited Nov. 21, 2007).

and making recommendations in order to establish a “fair and rational sentencing system.”¹¹⁶ Moreover, the commission ensures that sentences shall: “reflect the seriousness of the offense and the criminal history of the offender; provide for just punishment; afford adequate deterrence to potential future criminal conduct of the offender and others; provide the offender with needed educational or vocational training, medical care, and other correctional treatment; and provide for use of intermediate sanctions in appropriate cases.”¹¹⁷

In its review of the sentencing system, the commission found disparities in sentences attributable to legitimate sentencing factors as well as differences in sentencing philosophies amongst the courts.¹¹⁸ To address disparity problems the commission sought to establish a “normative method” of creating prison ranges and sentencing options based on historical data.¹¹⁹ Thus, the commission created a set of sentencing guidelines so that “similarly situated offenders . . . receive similar sentences for committing the same crime in essentially the same way and that offenders receive different sentences where either the nature of the offense or the history of the offender is different.”¹²⁰ By adhering to basic fairness principles, the sentencing guidelines help prevent sentencing laws that result from knee-jerk reactions to societal problems.¹²¹

To address problems within the criminal justice system, the commission is also charged with:

- (1) revis[ing] the language of criminal statutes to be clear and consistent;
- (2) . . . organiz[ing] existing criminal statutes in a logical order;
- (3) assess[ing] whether criminal penalties (including fines) for felonies are proportionate to the seriousness of the offense, and, as necessary, revise the penalties so they are proportionate;
- (4) propos[ing] a rational system for classifying misdemeanor criminal statutes, determin[ing] appropriate levels of penalties for such classes; and classify[ing] misdemeanor criminal statutes in the appropriate classes;
- (5) identify[ing] any crimes defined in common law that should be codified, and propos[ing] recommended language for codification, as appropriate;
- (6) identify[ing] criminal statutes

116. D.C. Sentencing and Criminal Code Revision Commission, <http://sentencing.dc.gov> (follow “About SDDC” link) (last visited Nov. 21, 2007).

117. D.C. CODE § 3-101.01(b).

118. D.C. SENTENCING AND CRIMINAL CODE REVISION COMMISSION, 2006 PRACTICE MANUAL, THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA VOLUNTARY SENTENCING GUIDELINES FOR PLEAS AND VERDICTS ENTERED ON AND AFTER JUNE 14, 2004, at 1-1, available at http://sentencing.dc.gov/acs/frames.asp?doc=/acs/lib/acs/2006_practice_manual.pdf.

119. *Id.*

120. *Id.*

121. *Id.*

that have been held to be unconstitutional; [and] (7) propos[ing] such other amendments as the Commission believes are necessary[.]¹²²

*C. Illinois Criminal Law Review Commission:
Purpose, Members, and Function*

The purpose of the Criminal Law Review Commission would be to make the criminal laws of Illinois easier to understand, access, apply, and interpret.¹²³ The law review commission would consist of twelve members: three members appointed by the President of the Senate, three members appointed by the Minority Leader of the Senate, three members appointed by the Speaker of the House of Representatives, and three members appointed by the Minority Leader of the House of Representatives.¹²⁴ Moreover, the law review commission would promote obedience to the rule of law as well as reduce the cost and increase the efficiency of the criminal justice system by eliminating disputes relating to criminal laws that result in retrials, delays, and mistakes in the process.¹²⁵ The law review commission would be charged with reviewing and evaluating all proposed legislation filed in the Illinois General Assembly relating to criminal offenses.¹²⁶ To meet this charge, the criminal law commission would determine: whether the legislative proposal was constitutional, duplicative, or inconsistent with existing law.¹²⁷ The criminal commission would also ensure that the legislative proposal contains an appropriate mental state and is placed in the correct location within the Illinois Criminal Code.¹²⁸ The criminal law commission would report to the legislature annually or when the commission finds it necessary to submit results of a completed analysis.¹²⁹

122. D.C. CODE § 3-101.01(a).

123. CLEAR Initiative, Senate Bill 150 Fact Sheet, *supra* note 60.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

IV. ILLINOIS SENTENCING LAW REVIEW COMMISSION

A. Purpose of having a Sentencing Law Review Commission

Since the establishment of the Illinois Code of Corrections (“Code”) in 1973, an untold number of changes have been made over the ensuing years.¹³⁰ As a result, organizational issues, inconsistencies, and redundancies within the Code have developed.¹³¹ Countless judicial, prosecutorial, and defense hours and resources have been wasted resolving disputes arising from conflicts in Illinois sentencing laws.¹³²

To maintain sentencing laws that are understandable and consistent, the CLEAR Commission suggested a process to review, update, and revise sentencing laws. This process would be incorporated into an Illinois Sentencing Law Review Commission. A sentencing commission that reviews sentencing laws ensures that the analysis will be conducted by examiners familiar with and experienced in the Illinois criminal justice system.¹³³ A sentencing commission’s core function would be to gather sentencing system data.¹³⁴ Based on empirical data, a sentencing commission could then analyze causes of sentencing disparity, develop projections on the impact of changes to sentencing and the corrections process, and submit its findings and recommendations to the legislature.¹³⁵ Further, a sentencing commission also ensures that consistent standards of objective review and analysis are followed. Because of the inherent difficulties in developing and monitoring a sentencing review process and the need for detached, objective

130. CLEAR Initiative, Senate Bill 100 Fact Sheet, available at <http://www.clearinitiative.org/documents/SB100FactSheet052207.pdf> (last visited Nov. 21, 2007).

131. *Id.*

132. *Id.*

133. American Bar Association, Criminal Justice Section Standards: Sentencing, *supra* note 51.

134. See generally, American Bar Association, Criminal Justice Section Standards: Sentencing: Standard 18-4.2(b) Establishment of sentencing commission, http://www.abanet.org/crimjust/standards/sentencing_toc.html (last visited Nov. 21, 2007) (stating “[t]he legislature should designate the commission’s responsibilities to include . . . ongoing data gathering and research relating to sentencing policies and practices, including studies regarding compliance with the provisions promulgated by the commission, rates of disparities in sentencing, and the past and projected impact of the provisions promulgated by the commission”).

135. *Id.*

The legislature should designate the commission’s responsibilities to include . . . periodic reports to the legislature and the public regarding the commission’s data gathering and research, and reports responsive to any particular queries posed by the legislature to the commission . . . [and] periodic recommendations to the legislature regarding changes in the criminal code or to the rule making authority regarding changes in the rules of criminal procedure.

analysis of sentencing laws, a sentencing commission should be established.¹³⁶

An Illinois sentencing commission could help resolve many of the sentencing issues facing Illinois today, and could protect against such issues in the future.¹³⁷ Many of the problems facing sentencing in Illinois and throughout the country derive from the “tough on crime” policies of the 1980s and 1990s, which included rigid mandatory minimum sentences, three-strikes legislation, and truth-in-sentencing laws.¹³⁸ These were passed in state and federal jurisdictions without information on the long-term impact on criminal justice systems.¹³⁹

136. Stanford Criminal Justice Center, *Contemporary Sentencing Reform in California: A Report to the Little Hoover Commission* 1 (Aug. 4, 2006).

It is sound policy to create an independent agency, drawing on professional policy expertise as well as the perspectives of representatives from various parts of state government, whose mandate is to collect and analyze sentencing and corrections data, to develop statewide sentencing and corrections policies, and to distribute sentencing discretion appropriately and evenly throughout the criminal justice system. All of the relevant parties have their own, often conflicting, ideas on how best to resolve California's sentencing and corrections crisis. The only sensible solution is to delegate the responsibility of conducting an objective analysis of these issues to an independent expert agency capable of addressing them.

Id.

137. CLEAR Initiative, Senate Bill 100 Fact Sheet, *supra* note 131.

138. David H. Norris & Thomas Peters, *Fiscal Responsibility and Criminal Sentencing in Illinois: The Time for Change is Now*, 26 J. MARSHALL L. REV. 317, 331 (Winter 1993).

The new “tough-on-crime” law was a mixture of the House and Senate proposals. Public Act 80-1099 contained most of the structural changes advanced in H.B. 1500, including (1) determinate sentencing for all felonies; (2) abolition of early release parole; (3) day-for-day good time credits; (4) controls on judicial discretion at sentencing; and, (5) controls on corrections' discretion in determining release. It also included some Class X proposals advanced by the Senate, such as: (1) the creation of a new category, Class X, and its mandatory penitentiary sentence; (2) an increase in the number of felonies with a mandatory penitentiary sentence; (3) the implementation of longer sentences for most felonies; and, (4) the imposition of various other techniques aimed at increasing penitentiary sentences.

139. Vera Institute of Justice and Pew Charitable Trusts Multi-State Meeting, *supra* note 14 and accompanying text; see Stanford Criminal Justice Center, *supra* note 137, at 1.

There is now growing agreement among practitioners, policymakers, and academics that California's post-1976 sentencing structure has contributed to serious problems that no one anticipated in 1976 – a correctional system plagued by egregious overcrowding, unsafe conditions for officers and inmates, racial imbalances in prison populations, high recidivism, a troubled parole revocation system, increasing expenditures, a lack of systematic data collection, and an incoherent sentencing structure. This new consensus now recognizes that it is good public policy for California to create a sentencing data

Because of the costs of incarceration and the thousands of people recidivating each year, many states are taking another look at their sentencing policies and practices to determine their intent and effectiveness by analyzing the public safety outcomes and costs versus benefits of current sentencing structures.¹⁴⁰ One of the ways this is being done is through the empanelling of sentencing commissions.¹⁴¹ Ultimately, the work of sentencing commissions can lead to more equitable sentencing practices that reduce gender and racial disparities in the system, and can help insure that good policy and better public safety preempts political expedience.¹⁴²

To effectively address sentencing law issues, several responsibilities should be assigned to an Illinois sentencing commission.¹⁴³ According to the American Bar Association, a sentencing commission should be charged with the “promulgation and periodic revision of presumptive sentences and other provisions to guide sentencing discretion.”¹⁴⁴ To make knowledgeable recommendations, the sentencing commission should also maintain an ongoing process of gathering objective data and research into sentencing laws.¹⁴⁵ As part of this process, the sentencing commission should determine whether commission

and policy commission as a new independent agency, drawing on professional policy expertise as well as the perspectives of representatives from various parts of state government.

Id.

140. See Vera Institute of Justice and Pew Charitable Trusts Multi-State Meeting, *supra* note 14, (noting a 871% increase in nationwide corrections spending from 1980 to 2005).

141. *E.g.*, Stanford Criminal Justice Center, *supra* note 137, at 6.

The experience of many states has shown that sentencing commissions are emerging as the most successful modern governmental institution to prevent or cure the kind of correctional crisis that California now faces. A majority of states adopting the commission model did so as a direct response to the problems associated with purely discretionary and indeterminate sentencing and parole systems.

Id.

142. Minnesota Sentencing Guidelines Commission, <http://www.msgc.state.mn.us/msgc5/faqs.htm> (last visited Nov. 21, 2007).

The sentencing guidelines embody the goals of the criminal justice system as determined by the citizens of the state through their elected representatives. This system promotes uniform and proportional sentences for convicted felons and helps to ensure that sentencing decisions are not influenced by factors such as race, gender, or the exercise of constitutional rights by the defendant. The guidelines serve as a model for the criminal justice system as a whole to aspire to, as well as provide a standard to measure how well the system is working.

Id.

143. American Bar Association, Criminal Justice Section Standards, *supra* note 61.

144. *Id.*

145. *Id.*

recommended laws are followed, the current and projected impact of the commission's recommended laws, and the levels of disparity among criminal sentences.¹⁴⁶ Moreover, the sentencing commission should periodically report to the legislature regarding its findings as well as address any legislative questions.¹⁴⁷

B. Sentencing Commissions in Other States

Sentencing commissions have been put into place in as many as twenty-six other states.¹⁴⁸ The CLEAR Sentencing Commission proposal is a result, in part of an analysis of these other commissions.¹⁴⁹ Despite some variation, each commission adheres to several core principles: (1) having members with the requisite expertise in order to collect sentencing data, evaluate sentencing structures, and recommend sentencing policies; (2) having a sentencing guidelines structure that is either mandatory or voluntary; (3) making projections to correctional resource needs; and (4) establishing a review process that is outside of traditional political processes.¹⁵⁰ According to the Stanford Criminal Justice Center, sentencing commissions "do not embrace any particular political agenda" nor are they "typically affiliated with a particular political party or philosophy."¹⁵¹ Moreover, sentencing commissions do not make decisions in individual cases, but rather they "help states make intelligent decisions about who should go to prison, and for how long," and who should be diverted from prison.¹⁵² Commissions should do so "on the basis of empirical analysis, not political ideology."¹⁵³

146. *Id.*

147. American Bar Association, Criminal Justice Section Standards: Sentencing, *supra* note 61.

148. See Barb Tombs, Presentation at the Vera Institute of Justice and Pew Charitable Trusts Multi-State Meeting, *Strategies for Creating a Sentencing Framework* (Nov. 4-6 2007) (noting that the states with sentencing commissions are: Alabama, Alaska, Colorado, Connecticut, Delaware, Florida, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Utah, Vermont, Virginia, and Washington).

149. Minnesota Sentencing Guidelines Commission, <http://www.msgc.state.mn.us> (last visited Nov. 21, 2007); Missouri Sentencing Advisory Commission, <http://www.mosac.mo.gov/index.htm> (last visited Nov. 21, 2007); Kansas Sentencing Commission, <http://www.accesskansas.org/ksc> (last visited Nov. 21, 2007); Alabama Sentencing Commission, <http://sentencingcommission.alacourt.gov> (last visited Nov. 21, 2007).

150. Stanford Criminal Justice Center, *supra* note 137, at 6.

151. Stanford Criminal Justice Center, THE CRIMINAL RECORD Spring 2007 Newsletter, at 7. (http://www.law.stanford.edu/publications/programs/scjc/newsletter/07/crimlaw_spring2007.pdf (last visited Nov. 21, 2007)).

152. *Id.*

153. *Id.*

The Minnesota Sentencing Guidelines Commission was created by the legislature in 1978¹⁵⁴ and consists of eleven members.¹⁵⁵ The goals of the commission are to “assure public safety,” “promote uniformity in sentencing,” “promote proportionality in sentencing,” “provide truth and certainty in sentencing,” and to “coordinate sentencing practices with correctional resources.”¹⁵⁶ To meet these goals, the commission established “Sentencing Guidelines,” a system intended to “promote uniform and proportional sentences for convicted felons” and “to ensure that sentencing decisions are not influenced by factors such as race, gender, or the exercise of constitutional rights by the defendant.”¹⁵⁷ The Sentencing Guidelines are presented in “Sentencing Guideline Grids,” where the vertical axis represents the severity of the offense and the horizontal axis represents the offender’s criminal history.¹⁵⁸ For felonies, the offense severity is classified into eleven levels ranging from “severity level I” (lowest) to “severity level XI” (highest).¹⁵⁹ A separate grid exists for sex offenses and classifies the offense severity into eight levels, ranging from “A” (lowest) to “H” (highest).¹⁶⁰ Criminal history is represented by a computed index value that is determined by: “(1) prior felony record; (2) custody status at the time of the offense; (3) prior misdemeanor and gross misdemeanor record; and (4) prior juvenile record for young adult felons.”¹⁶¹ The presumptive

154. Minnesota Sentencing Guidelines Commission, *supra* note 143.

155. MINN. STAT. § 244.09 (2007).

The Sentencing Guidelines Commission shall consist of the following: (1) the chief justice of the Supreme Court or a designee; (2) one judge of the Court of Appeals, appointed by the chief justice of the Supreme Court; (3) one district court judge appointed by the chief justice of the Supreme Court; (4) one public defender appointed by the governor upon recommendation of the state public defender; (5) one county attorney appointed by the governor upon recommendation of the board of directors of the Minnesota County Attorneys Association; (6) the commissioner of corrections or a designee; (7) one peace officer as defined in section 626.84 appointed by the governor; (8) one probation officer or parole officer appointed by the governor; and (9) three public members appointed by the governor, one of whom shall be a victim of a crime defined as a felony.

Minnesota Sentencing Guidelines Commission, Commission Members and Staff, <http://www.msgc.state.mn.us/msgc5/commission.htm> (last visited Nov. 21, 2007).

156. Minnesota Sentencing Guidelines Commission Practitioner Supplement, at 4, <http://www.msgc.state.mn.us/msgc5/training.htm> (last visited Nov. 21, 2007).

157. *Id.*

158. *Id.* at 5.

159. *Id.* at 3.

160. *Id.*

161. *Id.* at 4.

sentence is found at the intersection where the offense severity row intersects with the criminal history column.¹⁶² The court still maintains discretion over the sentencing period and may depart from the Sentencing Guideline recommendation if substantial and compelling factors exist.¹⁶³ If a court departs from the recommended sentence, the court must then state its basis for the departure.¹⁶⁴

The Minnesota commission also monitors sentencing practices by maintaining data on all offenders sentenced under the guidelines as well as all departures from the presumed sentence.¹⁶⁵ Sentencing guidelines worksheets are submitted by probation officers and contain the offender's demographic information, a description of the offense, the offender's criminal history, and the presumptive sentence.¹⁶⁶ The collection of this data assists the legislature in making informed decisions when amending sentencing laws.¹⁶⁷ For example, the commission's 2007 drug report informed the legislature of (1) the number of drug offenders imprisoned, (2) that Minnesota's drug laws were harsher than those of neighboring states, (3) that there was a high departure rate from the presumptive sentence, and (4) that Minnesota courts considered the presumptive sentences for drug offenses as too severe.¹⁶⁸ Moreover, the report provided recommendations for proposed changes to the drug-crime sentencing structure, namely, the re-ranking of first-degree and second-degree drug offenses and the expansion of drug courts.¹⁶⁹ As a result of Minnesota's review process, changes to sentencing laws are ultimately based on empirical analysis rather than

162. *Id.* at 20.

163. See Minnesota Sentencing Guidelines Commission, Frequently Asked Questions, <http://www.msgc.state.mn.us/msgc5/faqs.htm> (last visited Nov. 21, 2007) (defining "departure").

164. *Id.*

165. Minnesota Sentencing Guidelines Commission, Sentencing Practices, Annual Summary Statistics for Felony Offenders Sentenced in 2005, at 3, available at http://www.msgc.state.mn.us/data_reports/rep05.DOC (last visited Nov. 21, 2007).

166. *Id.*

167. Minnesota Sentencing Guidelines Commission, Report to the Legislature, Jan., 1999, at 1, http://www.msgc.state.mn.us/data_reports/leg1999.pdf.

168. See Minnesota Sentencing Guidelines Commission, Updated Report on Drug Offender Sentencing Issues, Jan. 31, 2007, at 1, http://www.msgc.state.mn.us/data_reports/msgc_drug_update07.doc (last visited Nov. 21, 2007) (stating that "[a] sentencing guidelines system provides the legislation with a structure for determining and maintaining a rational sentencing policy. Through the development of the sentencing guidelines, the legislature determines what will be the goals and purposes of the state's sentencing system").

169. *Id.* at 18-19.

anecdotal evidence or knee-jerk reactions.¹⁷⁰

Similar to Minnesota's legislative initiative, the Missouri legislature created the Missouri Sentencing Advisory Commission in 1994.¹⁷¹ This commission was dormant between 1998 and 2003.¹⁷² In 2004, the commission published a system of recommended sentences that was enacted in 2005.¹⁷³ The Missouri commission consists of eleven members¹⁷⁴ and its goals are to "promote public safety, fairness and efficiency in sentencing and corrections and to promote the wisest use of the state's resources."¹⁷⁵ To meet its charge of establishing a "system of recommended sentences,"¹⁷⁶ the commission created a set of "Sentencing Recommendations."¹⁷⁷ The recommended sentence is based on four factors:

"(a) the nature and severity of each offense; (b) the record of prior offenses by the offender; (c) the data gathered by the commission showing the duration and nature of sentences imposed for each crime; and (d) the resources of the department of corrections and other authorities to carry out the punishments that are imposed."¹⁷⁸

Like Minnesota, the Sentencing Recommendations are in the form of a grid where the vertical axis represents the offense's severity and the horizontal axis represents the offender's prior criminal history.¹⁷⁹ The presumptive recommended sentence is defined where the offense's severity and the offender's prior

170. *Id.* at 1.

171. MO. REV. STAT § 558.019 (2007).

172. Missouri Sentencing Advisory Commission, Purpose and Goals, <http://www.mosac.mo.gov/purposegoals.htm> (last visited Nov. 21, 2007).

173. Missouri Sentencing Advisory Commission, Report on Recommended Sentencing 2005, at 4, <http://www.mosac.mo.gov/Documents/finalreport21June2005.pdf> (last visited Nov. 21, 2007).

174. MO. REV. STAT § 558.019(6)(1). The speaker of the house, the president pro tem of the senate, and the director of the department of corrections each appoint one member. Six members are appointed by the governor and are chosen from the following groups: the public defender commission, private citizens, private members of the Missouri Bar, the board of probation and parole, and a prosecutor. The Missouri Supreme Court also appoints two members, one from a metropolitan area and one from a rural area. Missouri Sentencing Advisory Commission, Missouri Sentencing Advisory Commission Members and Staff, http://www.mosac.mo.gov/members_staff.htm (last visited Nov. 21, 2007).

175. Missouri Sentencing Advisory Commission, Report on Recommended Sentencing 2005, *supra* note 174 at 4.

176. MO. REV. STAT § 558.019(6)(3).

177. Missouri Sentencing Advisory Commission, Report on Recommended Sentencing 2005, *supra* note 174 at 11, <http://www.mosac.mo.gov/reportsstudies.htm> (last visited Nov. 21, 2007).

178. MO. REV. STAT § 558.019(6)(3)(a)-(d).

179. Missouri Sentencing Advisory Commission, Report on Recommended Sentencing 2005, *supra* note 174, at 22.

criminal history intersect.¹⁸⁰ The Sentencing Recommendations are only advisory, thus the court still retains discretion to lower or to exceed the sentence recommended set forth by the commission.¹⁸¹ Moreover, the commission requires probation officers to give courts and attorneys Sentencing Assessment Reports.¹⁸² These reports analyze the offender's risk factors, suggests alternative community-based sanctions or prison-based programs, and recommends sentences for the offender.¹⁸³

According to an October 2007 commission report, Missouri's use of recommended sentences had reduced prison population, putting a stop to an on-going increase in prison population.¹⁸⁴ Since 2005, in which recommended sentences were implemented state-wide, 82% of sentences imposed were within the range of recommended sentences.¹⁸⁵ In October 2005, the prison population was at an all-time high of 30,650.¹⁸⁶ As of July 2007, the population had decreased to 29,960.¹⁸⁷ According to Michael A. Wolff, Supreme Court judge and chair of the Sentencing Advisory Commission, "[t]he study confirms statistically what we intuitively believed – that public safety is enhanced when judges statewide follow the recommended sentences" and that cooperative efforts from various state agencies "are creating an effective and coherent system of sentencing"¹⁸⁸

Kansas' sentencing commission was established in 1989 to implement and enforce the Kansas Sentencing Guidelines.¹⁸⁹ The Kansas Sentencing Commission is comprised of 17 members.¹⁹⁰

180. *Id.*

181. MO. REV. STAT. § 558.019(7).

182. Sentencing Advisory Commission, News Release: Report Shows Missouri's Use of Recommended Sentences Reduces Recidivism Rates, Prison Population, <http://www.mosac.mo.gov/Documents/recommended%20sentences%20lead%20to%20dropping%20prison%20populations-recidivism%2010-15-07%20c.pdf> (last visited Nov. 21, 2007).

183. *Id.*

184. Missouri Sentencing Commission, Recommended Sentencing, Biennial Report 2007, *supra* note 174, at 2

185. *Id.* at 7.

186. *Id.* at 2.

187. *Id.*

188. Sentencing Advisory Commission, News Release: Report Shows Missouri's Use of Recommended Sentences Reduces Recidivism Rates, Prison Population, *supra* note 183.

189. KAN. STAT. ANN. § 74-9101 (2007).

190. KAN. STAT. ANN. § 74-9102 (2007).

The Kansas sentencing commission shall consist of 17 members, as follows:

- (1) The chief justice of the supreme court or the chief justice's designee;
- (2) two district court judges appointed by the chief justice of the supreme court;
- (3) the attorney general or the attorney general's designee;

The commission is charged with developing a sentencing model that shall provide a “mechanism for linking justice and corrections policies” and will reduce sentence disparity.¹⁹¹ The commission is also responsible for training judges, states attorneys, and other personnel involved in the sentencing system.¹⁹² In addition, the commission produces inmate population projections, analyzes problems in the criminal justice system, and makes recommendations for improvements in criminal law.¹⁹³

To monitor Kansas’ sentencing system the commission maintains a database that contains presentence investigation reports (PSI) for all persons who are given felony sentences.¹⁹⁴ The commission uses the database to determine (1) the number of times a court has imposed a guideline sentence, (2) the offender’s characteristics and offense committed, and (3) the number of times courts have departed from a recommended sentence and reasons for departure.¹⁹⁵ The commission is also able to assess the effectiveness of the guidelines in reducing disparity based on race, ethnic origin, gender, age, education level, and geographic

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- (4) one public defender appointed by the governor;
 - (5) one private defense counsel appointed by the governor;
 - (6) one county attorney or district attorney appointed by the governor;
 - (7) the secretary of corrections or the secretary’s designee;
 - (8) the chairperson of the Kansas parole board or such chairperson’s designee;
 - (9) two members of the general public, at least one of whom shall be a member of a racial minority group, appointed by the governor;
 - (10) a director of a community corrections program appointed by the governor; and
 - (11) a court services officer appointed by the chief justice of the supreme court. Not more than three members of the commission appointed by the governor shall be of the same political party.
- (b) In addition to the members appointed pursuant to subsection (a), four members of the legislature shall serve as voting members of the commission. Such members shall be appointed as follows: One shall be appointed by the president of the senate, one shall be appointed by the minority leader of the senate, one shall be appointed by the speaker of the house of representatives and one shall be appointed by the minority leader of the house of representatives.
- (c) The governor shall appoint a chairperson from the two district court judges appointed by the chief justice of the supreme court or the chief justice of the supreme court. The members of the commission appointed pursuant to subsection (a) shall elect any additional officers from among its members necessary to discharge its duties.

Id. See also Kansas Sentencing Commission, Commission Members, <http://www.accesskansas.org/ksc/commission.shtml> (last visited Nov. 21, 2007) (providing details about the commission).

191. KAN. STAT. ANN. § 74-9101(b).

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

location.¹⁹⁶ By collecting this data, the commission is able to make an objective and reasoned analysis about Kansas' sentencing system.¹⁹⁷ Thus, sentencing changes are derived and supported by collected data that accurately reflect the state of the sentencing system.¹⁹⁸

Additionally, in order to project prison populations and the impact of proposed legislation on those populations, the commission utilizes a software modeling system that mimics the flow of offenders through Kansas' prison and parole populations.¹⁹⁹ A result of accurate data gathering and the utilization of advanced technology, the commission is able to promptly submit fiscal impact and correctional resource statements to the legislature.²⁰⁰ Moreover, to achieve its goal of educating and training those that have an active role in the sentencing system, the commission conducts training seminars and publishes a Sentencing Guidelines Desk Reference Manual.²⁰¹ Together, the seminars and manual help promote consistency in criminal sentencing thereby reducing sentencing disparities.²⁰²

In 2000, the Alabama Sentencing Commission was created.²⁰³ According to the commission:

The history of Alabama's struggle with jail and prison overcrowding problems and its reluctance to change unless forced to comply with court orders, demonstrate the fact that our State's criminal justice system is one that has evolved based on short-term political expediency rather than one based on strategic planning with an awareness of long-term consequences. For two decades, jails and prison officials have been operating by crisis management, with little or no help from other participants in the criminal justice arena. . . . By establishing a permanent State Sentencing Commission, the Alabama Legislature has recognized that our criminal justice system deserves continuous evaluation, planning and management from arrest, through prosecution, sentencing, punishment and the reintegration of offenders after the completion of their sentence.²⁰⁴

The purpose of the commission is to "review existing sentence structure, including laws, policies, and practices, and to determine

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. ALA. CODE § 12-25-1 (2007).

204. Alabama Sentencing Commission, History of the Alabama Sentencing Commission and Timeline of Events Leading to Its Creation, Creation of the Alabama Sentencing Commission, <http://sentencingcommission.alacourt.gov/history.html> (last visited Nov. 21, 2007).

and recommend to the Legislature and Supreme Court changes regarding the criminal code, criminal procedures, and other aspects of sentencing policies.”²⁰⁵ The commission consists of 16 members²⁰⁶ and is responsible for securing the public safety by providing “a swift and sure response to the commission of a crime,” establishing a sentencing system that is fair and efficient, promoting truth in sentencing, preventing prison overcrowding, providing judges with flexible sentencing options, and limiting the discretion of district attorneys in determining the charge or crime.²⁰⁷ In 2006, the commission implemented the Initial Voluntary Sentencing Standards to eliminate disparity in sentencing by weighting sentencing factors evenly.²⁰⁸ The sentencing standards are “voluntary, non-appealable, historically

205. ALA. CODE § 12-25-2(a) (2007).

206. ALA. CODE § 12-25-3(a) (2007).

The commission shall consist of the following voting members:

(1) The Chief Justice of the Supreme Court, or at his or her designation, a sitting or retired judge, who shall serve as chair, or at his or her designation another member of the commission shall serve as chair.

(2) The Governor, or his or her designee.

(3) The Attorney General, or his or her designee.

(4) A district attorney appointed by the President of the Alabama District Attorneys' Association.

(5) Two circuit judges, active or retired, appointed by the President of the Alabama Association of Circuit Court Judges.

(6) A district judge, active or retired, appointed by the President of the Alabama Association of District Court Judges.

(7) A victim of a violent felony or a person whose immediate family member was a victim of a violent felony, appointed by the Governor.

(8) The Chair of the House Judiciary Committee, or his or her designee who is a member of the House Judiciary Committee.

(9) The Chair of the Senate Judiciary Committee, or his or her designee who is a member of the Senate Judiciary Committee.

(10) A private attorney specializing in criminal defense appointed by the President of the Alabama Criminal Defense Lawyers' Association.

(11) A private attorney specializing in criminal law appointed by the President of the Alabama Lawyer's Association.

(12) A county commissioner appointed by the Governor.

(13) The Commissioner of the Department of Corrections, or his or her designee.

(14) The Chair of the Alabama Board of Pardons and Parole, or his or her designee.

(15) A member of the academic community with a background in criminal justice or corrections policy appointed by the Chief Justice.

Id. See also Alabama Sentencing Commission, Members of the Commission, <http://sentencingcommission.alacourt.gov/members.html> (last visited Nov. 21, 2007) (naming the members of the commission).

207. ALA. CODE § 12-25-2(a).

208. Alabama Sentencing Commission, 2007 Report, Collaborative Success: Alabama Implements Sentencing Standards, at I, http://sentencingcommission.alacourt.gov/Publications/ASC_2007_Final_Report.pdf (last visited Nov. 21, 2007).

based, time imposed sentencing recommendations developed for 26 felony offenses, representing 87% of all felony convictions imposed in Alabama over a five year period from October 1, 1998 through May 31, 2003.”²⁰⁹ Also, the commission has established a felony offender database and a simulation model to project the impact of changes to sentencing laws on department of corrections.²¹⁰

In 1978, the Pennsylvania Commission on Sentencing was created to adopt “guidelines that promote fairer and more uniform sentencing throughout the Commonwealth” and to provide “every judge with a common reference point for sentencing similar offenders convicted of similar crimes.”²¹¹ The commission consists of 11 members²¹² and is charged with creating a “consistent and rational statewide sentencing policy that would increase sentencing severity for serious crimes and promote fairer and more uniform sentencing practices.”²¹³ The commission is also responsible for establishing sentencing guidelines that “(1) [s]pecify the range of sentences applicable to crimes of a given degree of gravity, (2) [s]pecify a range of sentences of increased severity for defendants previously convicted of or adjudicated delinquent for one or more misdemeanor or felony offenses committed prior to the current offense. . . (3) [s]pecify a range of sentences of increased severity for defendants who possessed a deadly weapon during the commission of the current conviction offense, [and] (4) [p]rescribe variations from the range of sentences applicable on account of aggravating or mitigating circumstances.”²¹⁴

Since 1982, the Pennsylvania commission has also served as an information clearinghouse by collecting information on actual

209. *Id.* at 11.

210. *Id.* at 9.

211. The Pennsylvania Commission on Sentencing, 2006 Annual Report, at 2, <http://pcs.la.psu.edu/2006AR.pdf> (last visited Nov. 21, 2007).

212. 42 PA. CONS. STAT. §§ 2151.2-2152 (2007).

The Pennsylvania Commission on Sentencing hall consist of:

(1) Two members of the House of Representatives selected by the Speaker of the House of Representatives, no more than one of whom shall be of the same political party.

(2) Two members of the Senate of Pennsylvania selected by the President pro tempore of the Senate, no more than one of whom shall be of the same political party.

(3) Four judges of courts of record selected by the Chief Justice of Pennsylvania.

(4) Three persons appointed by the Governor, who shall be, respectively:

(i) A district attorney.

(ii) A defense attorney.

(iii) Either a professor of law or a criminologist.

Id.

213. The Pennsylvania Commission on Sentencing, Mission Statement, http://pcs.la.psu.edu/mission_statement.html (last visited Nov. 21, 2007).

214. 42 PA. CONS. STAT. § 2154(a) (2007).

sentences imposed and the effectiveness of sentences.²¹⁵ In 2002, the commission implemented the Sentencing Guideline Software (SGS Web) system, a website application that allows on-line entry of sentencing information.²¹⁶ Replacing paper-based Guideline Sentence Forms, SGS Web serves as the central collection and repository of sentencing data.²¹⁷ As of July 2005, counties were required to use SGS Web to submit sentencing data²¹⁸ that includes: “offender information and court case identification; offense of conviction; record of previous convictions; sentence recommendations, including applicable sentencing enhancements and/or mandatory provisions; type of disposition; and the sentence imposed, including any reasons provided.”²¹⁹ Collected data is analyzed and used to “determine compliance; to project impacts from changes in law, policy, or practice; to assess the impact of guidelines and mandatory sentences; to monitor sentencing trends; and to project the impact of policy changes on prison and jail populations.”²²⁰ In 2006, more than 134,000 offenses were sentenced and reported to the commission.²²¹

Based on the collection and analysis of sentencing data, the commission also provides research and information to the legislature and the public.²²² In 2006, the commission received more than 120 requests for sentencing data from state government, researchers, and the public.²²³ Some examples include: (1) cost comparisons between incarceration and restrictive intermediate punishment for drug and alcohol related offenses; (2) drug violation arrests, sentences, and treatment over time; (3) sentences imposed for firearm offenses; (4) sentences imposed for assaults upon victims younger than age 12; (5) sentences related to Three Strikes; (6) minimum incarceration sentence distributions; and (7) sentences for DUI.²²⁴ The commission also informs the legislature as to the impact of proposed changes to sentencing laws.²²⁵ Like the Alabama and Kansas commissions, Pennsylvania has used advanced technology to implement a sentencing simulation model and a correctional population projections

215. The Pennsylvania Commission on Sentencing, Mission Statement, *supra* note 214, at 33.

216. *Id.* at 10.

217. *Id.*

218. *Id.*

219. The Pennsylvania Commission on Sentencing, *supra* note 212, at 33.

220. *Id.* at 10.

221. *Id.* at 36.

222. *See id.* at 18 (detailing how the commission provides information to various people and entities).

223. *Id.* at 18.

224. *Id.* at 18.

225. *Id.*

model.²²⁶ By gathering sentencing data and using advanced technology, the commission's "analysis of the impact of legislative proposals is a proactive effort to assist in the creation of solid policy."²²⁷

*C. Illinois Sentencing Law Review Commission:
Purpose, Members, and Function*

An Illinois Sentencing Law Review Commission recommended by CLEAR would be analogous to other Illinois review commissions and other states' sentencing law commissions.²²⁸ An Illinois sentencing commission would compile data regarding incarceration and provide a data-driven, rational and comprehensive approach to changing patterns and practices in Illinois' sentencing system. Furthermore, an Illinois sentencing commission would insulate decisions that affect one's freedoms from immediate pressures created by a sensational crime or a narrow, short-term agenda of a reactionary individual or group. Members or the staff of the sentencing commission would be respected experts in criminal law with the capacity to analyze data and make projections on how changes to sentencing laws would impact prison populations and budgets. Thus, a Sentencing Law Review Commission would ensure that Illinois' sentencing system is both consistent and rational.

The Sentencing Law Review Commission would consist of 13 members: three members appointed by the President of the Senate, three members appointed by the Minority Leader of the Senate, three members appointed by the Speaker of the House of Representatives, three members appointed by the Minority Leader of the House of Representatives, and one member appointed by the Governor. These members would represent a broad cross-section of participants in the criminal justice system. The purpose of the Commission would be to analyze Illinois law in order to protect the public, promote obedience to the law, prescribe sentences that are proportional to the seriousness of the offense, "forbid and prevent the commission of offenses . . . [and to] prevent arbitrary or oppressive treatment of offenders, and restore offenders to useful

226. *Id.*

227. *Id.*

228. *See, e.g.,* Minnesota Sentencing Guidelines Commission, <http://www.msgc.state.mn.us>; Missouri Sentencing Advisory Commission, <http://www.mosac.mo.gov/index.htm>; Kansas Sentencing Commission, <http://www.accesskansas.org/ksc>; Alabama Sentencing Commission, <http://sentencingcommission.alacourt.gov> (identifying these four states' sentencing law commissions, after which Illinois would model its sentencing law review commission)

citizenship.”²²⁹ As part of the review process, the Commission would conduct data collection on recidivism and the success of rehabilitation-minded programs. The Commission would also conduct an on-going study, review, and evaluation of existing sentencing laws; as well as review and evaluate all proposed sentencing-law legislation filed in the Illinois General Assembly. In addition, an Illinois sentencing commission could conduct empirically based offender risk assessments.²³⁰ The goal of conducting risk assessments would be “to divert low-risk offenders, who are recommended for incarceration to an alternative sanction other than prison.”²³¹

By estimating an offender’s likelihood of repeat criminal behavior, a sentencing commission may classify the offender based on their relative risk of such behavior.²³²

For example, in 2002, the Virginia Criminal Sentencing Commission implemented a non-violent offender risk assessment instrument “to select 25% of the lowest risk, incarceration-bound, drug and property offenders for placement in alternative (non-prison) sanctions.”²³³ To estimate recidivism, the commission looks at eleven factors: (1) offender gender, (2) offender age, (3) offender marital status, (4) offender employment status, (5) whether offender acted alone when committing the crime, (6) whether there were additional offenses at conviction, (7) whether the offender had been arrested or confined within the past 12 months, (8) offender’s prior criminal record, (9) whether the offender had prior drug felony convictions, (10) whether the offender had been incarcerated as an adult, and (11) whether the offender had been incarcerated as a juvenile.²³⁴ These factors are calculated to assess the offender’s risk to public safety and to determine whether an alternative sanction is appropriate.²³⁵ Judges still retain discretion on sentencing because the risk assessment

229. 730 ILL. COMP. STAT. 5/1-1-2.

230. See, e.g., Virginia Sentencing Commission, 2004 Annual Report, at 35, <http://www.vcsc.virginia.gov/2004FULLAnnualReport.pdf> (last visited Nov. 21, 2007).

231. *Id.* at 36.

232. Rick Kern, Director, Virginia Criminal Sentencing Commission, Presentation at the Vera Institute of Justice and Pew Charitable Trusts Multi-State Meeting, *Integrating Risk Assessment into Sentencing Practices* (Nov. 4-6, 2007).

233. Virginia Sentencing Commission, 2004 Annual Report, at 35 <http://www.vcsc.virginia.gov/2004FULLAnnualReport.pdf> (last visited Nov. 21, 2007).

234. The National Center for State Courts and the Virginia Criminal Sentencing Commission, *Offender Risk Assessment in Virginia, A Three-Stage Evaluation: Process of Sentencing Reform, Empirical Study of Diversion and Recidivism; Benefit-Cost Analysis*, at 27, http://www.vcsc.virginia.gov/risk_off_rpt.pdf (last visited Nov. 21, 2007).

235. *Id.* at 4.

instrument provides recommendations for alternative sanction.²³⁶ In Fiscal Year 2006, among the 6,413 non-violent risk assessment cases received by the Virginia commission, 49% were considered “low risk” and recommended to an alternative sanction by the non-violent offender risk assessment.²³⁷ As a result, judges sentenced 21% of offenders found as “low risk” to an alternative sanction.²³⁸

Like the Virginia commission, an Illinois sentencing commission could use a risk assessment instrument to divert drug and alcohol involved offenders from prison sentences to community-based treatment.²³⁹ According to a March 2007 study by the Vera Institute of Justice, persons admitted into Illinois prisons for lower-level felonies are more frequently identified as drug or alcohol involved.²⁴⁰ In Fiscal Year 2006, among the 16,889 persons admitted to prison for a Class 3 or Class 4 offense, 5,254 (31.1%) were drug involved and 4,338 (25.7%) were alcohol involved.²⁴¹ Thus, a risk assessment instrument could be fashioned to consider drug- or alcohol-involved offenders to divert low-risk offenders to alternative sanctions.²⁴² By diverting drug-involved offenders to community-based treatment, more than \$19 million in costs could be avoided annually.²⁴³ Likewise, by placing alcohol-involved offenders into community-based treatment instead of prison, more than \$14 million in costs could be saved.²⁴⁴

CONCLUSION

The CLEAR Commission proposed a Criminal Law Review Commission and a Sentencing Law Review Commission to address the need for a de-politicized, holistic approach to criminal and sentencing law development. Moreover, the criminal and sentencing commission is based on other existing Illinois review commissions such as the Commission on Government Forecasting and Accountability and the Compensation Review Board.²⁴⁵ In addition to the current Illinois review commissions, the criminal

236. Virginia Sentencing Commission, 2006 Annual Report, at 31, <http://www.vcsc.virginia.gov/2006VCSCReport.pdf> (last visited Nov. 21, 2007).

237. *Id.*

238. *Id.*

239. Memorandum from Jon Wool & Don Stemen, Vera Institute of Justice, Memo to CLEAR Commission, Diversion for Substance-Involved Persons (March 28, 2007).

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. *See, e.g.*, 25 ILL. COMP. STAT. 130/3A-1 (Illinois Commission on Government Forecasting and Accountability); 25 ILL. COMP. STAT. 120/1 (Illinois Compensation Review Board) (providing examples of other Illinois review commissions).

law commission proposal is also modeled, in part, on other states that have review commissions to revise substantive laws.²⁴⁶ States such as California, Connecticut, and Oregon have created law review commissions to ensure that their state's laws are understandable and free of defects.²⁴⁷ States such as Alabama, Kansas, Minnesota, Missouri, and Pennsylvania have established effective sentencing review commissions to establish a system of reasoned, effectual sentencing laws.²⁴⁸ Perhaps Illinois should follow suit.

246. California Law Review Commission, <http://www.clrc.ca.gov> (last visited Nov. 21, 2007); Connecticut Law Review Commission, <http://www.cga.ct.gov/lrc> (last visited Nov. 21, 2007); Oregon Law Commission, *supra* note 10 (providing potential guidelines for the Illinois Sentencing Commission to use).

247. *Id.*

248. *Id.*

