

Alternatives to Incarceration in Illinois

Overview

This paper discusses the importance of alternatives to incarceration to improving public safety and the existing treatment alternatives available to offenders with addiction and mental health issues, as well as options for strengthening the existing treatment infrastructure in the state. The policy goal is to increase public safety through the most effective use of public resources by identifying alternatives, either existing or proposed, that divert those in need of treatment away from the criminal justice system, including expensive incarceration, and into effective and less expensive treatment programs, necessarily making the treatment options more widely available.

Specifically, this paper describes: (1) implementing a model for financial incentives for community-based treatment; (2) incorporating risk assessment practices; (3) expanding the drug school model, now successfully implemented in Cook County, to a statewide program; (4) increasing resources to support existing drug courts and allow drug courts to be established in more jurisdictions; and (5) permitting counties to establish mental health courts based upon the drug court model. To determine what is most effective to increase public safety, it also recommends ongoing, in-depth analysis of sentencing data to support ongoing assessment of alternatives to incarceration so that policy decisions can be based on facts.

I. Background

Over the past 40 years, violent crime in Illinois has gone down while the prison population has increased dramatically. Studies indicate that incarceration policies can account for about 25 percent of the reduction in crime.¹ The number of people entering and leaving Illinois prisons is nearly 40,000 annually, including a growing number of low-level, nonviolent, drug-addicted offenders.

The Illinois prison population has grown by more than 500 percent since 1970, driving up the costs to taxpayers of operating the state's prison system. From 1970 to 2005, the budget for the Illinois Department of Corrections (IDOC), which is in charge of the state's 27 adult prisons and the parole program, has increased from \$65 million to \$1.3 billion. Even when these numbers are adjusted for inflation, the IDOC budget more than quadrupled over this period. IDOC reports it costs taxpayers \$21,278 per year to incarcerate an offender, as of June 30, 2007. The public dollars spent annually to incarcerate nonviolent drug offenders in Illinois is estimated at just over \$240 million.²

Between 1983 and 2005, the number of drug offenders in Illinois prisons rose from 547 to 11,179, a 20-fold increase.³ There are approximately 30,000 individuals who are admitted to the Illinois Department of Corrections for property or drug crime convictions (new crimes and parole violations) each year. National estimates confirm that over half of all non-

¹ Spelman, W. (2000). "The Limited Importance of Prison Expansion," In Blumstein, A. & Wallman, J. (Eds.), *The Crime Drop in America*. Cambridge, UK: Cambridge University Press. (pp. 97-129).

² Chicago Metropolitan 2020. (2006) *2006 Crime and Justice Index*. Chicago: Chicago Metropolitan 2020.

³ *Id.*

violent felony offenders (e.g., property and public order offenses) meet the diagnostic criteria for substance abuse or dependence, about 15,000 in Illinois.⁴

More than half (51.8 percent) of those released from Illinois prisons return within three years; of those returned to prison in 2005, 60.7 percent were for technical violations of parole.⁵ The recidivism rates by offense type are highest for property offenders; the second highest category is drug offenders. IDOC data on the recidivism rate of offenders released after serving time for drug offenses shows that, of the 13,067 drug offense exits in 2001, 54.5 percent returned to prison within three years.⁶ The data is not specific as to how many of those inmates were released after serving sentences for Class 4 drug offenses. Nor does the data reflect the recidivism of substance abusers who were incarcerated for non-drug offenses. The data establishes that, without treatment, more than half of the inmates with substance abuse issues will be repeatedly recycled through the system. The Sheridan prison model, on the other hand, which includes treatment, produced a 44 percent reduction in recidivism in its first two years of operation.⁷

Treatment and supervision of drug offenders in lieu of incarceration results in cost savings: \$5,925 per year for probation, case management and drug treatment⁸ vs. \$22,278 for one year in prison followed by one year on parole (at a cost of approximately \$1,000 per year). The objective of increasing public safety is better met through effective treatment because treated addicts re-offend far less than those who are incarcerated without treatment, with some studies documenting a 30 percent reduction.⁹ In a 2003 study of California treatment programs, UCLA found that the value of the benefits of substance abuse treatment is seven times greater than its costs, primarily due to resulting reductions in crime and increases in employment.¹⁰

Treatment issues also exist for criminal offenders with identifiable mental health disorders. More than half of those in state prisons and in jails have a mental health problem. Approximately 15 percent of prison inmates and 24 percent of jail inmates have psychotic disorders. The estimated numbers of seriously mentally ill people in Illinois prisons and jails is more than 12,500.¹¹

⁴ Information provided by TASC, 2/15/07.

⁵ Information provided upon request from Illinois Department of Corrections, 8/31/06.

⁶ Illinois Department of Corrections. (2005, October). *Statistical Presentation 2004*. Springfield: Illinois Department of Corrections. (p. 47) (Retrieved 3/6/07 at http://www.idoc.state.il.us/subsections/reports/statistical_presentation_2004/part2.shtml#28).

⁷ Olson, D., Rapp, J., Powers, M., & Karr, S. (2006, May). *Sheridan Correction Center Therapeutic Community: Year 2: Program Evaluation*. Chicago: Illinois Criminal Justice Information Authority. (Retrieved 2/21/07 at <http://www.icjia.state.il.us/public/pdf/ProgEvalSummary/Sheridan.pdf>).

⁸ Using figures supplied by TASC, the cost of TASC probation is estimated at \$5,925 (\$1,500 for probation supervision and monitoring, \$3,500 for treatment and approximately \$925 for TASC case management services).

⁹ Gornik, M. (2001). *Moving from Correctional Program to Correctional Strategy: Using Proven Practices to Change Criminal Behavior*. Washington, DC: National Institute of Corrections, Federal Bureau of Prisons, U.S. Department of Justice; Drake, E. (2006, December). *Washington's Drug Offender Sentencing Alternative: An Update on Recidivism Findings*. Olympia, WA: Washington State Institute for Public Policy.

¹⁰ Hser, Y. et al. (2003, January 31). "The California Treatment Outcome Project (CalTOP) Final Report" submitted to The California Department of Alcohol and Drug Programs (ADP). Los Angeles: UCLA.

¹¹ James, D. J. & Glaze, L. E. (2006, September). *Mental Health Problems of Prison and Jail Inmates*. (NCJ 213600). Washington, DC: Bureau of Justice Statistics.

II. Incentive Funding: Redeploy Illinois

Incentive funding legislation is generally aimed at encouraging counties to send fewer people to state facilities and thus reducing costs for the state. The two main areas in which this has been done are 1) juvenile justice, and 2) community corrections. In the juvenile justice arena, some states have passed legislation that encourages counties to sentence youth who are adjudicated delinquent to local options rather than sentencing them to state secure detention. In the field of community corrections, states are attempting to reduce the number of people on supervision returned to state prison for technical violations by providing performance incentive funds to counties that lower their revocation rates.

Illinois has adopted incentive funding with the Redeploy Illinois program, created in 2004. Redeploy Illinois is modeled on a similar program called RECLAIM Ohio and provides fiscal incentives to counties that provide services to youth within their home communities, thereby reducing the county's commitments to the Illinois Department of Juvenile Justice (IDJJ). Under the initiative, counties agree to reduce the number of youth they send to state juvenile prisons by 25% from the average of the previous three years and in return the state reimburses the counties for the funds they spend managing the adjudicated youth locally.

Early results from the pilot sites are positive. The 2008 annual report indicates that the four Redeploy Illinois pilot sites have reduced the number of their commitments to IDJJ by over 50%, with potential cost savings of almost \$19 million.

Based on this success, Illinois should explore ways to establish an adult Redeploy Illinois model as part of a strategic/community corrections program. There are a number of examples of similar initiatives in other jurisdictions. Most states have some form of state-local community corrections partnership, whereby states provide local agencies with funds to develop or expand local sanctions/programs for people on community supervision. The goal of these partnerships is to save more money on prisons than they provide to local governments.¹² Some states link the distribution of funds to the number of offenders placed in the community rather than sentenced to prison.

In Michigan, for example, the state sentencing guidelines identify a group of people who can be sentenced to either prison or local sanctions; counties are awarded additional funding for keeping people who fall into this group in the community. The incentive seems to have worked and the percentage of felony dispositions that resulted in a prison sentence dropped from 35% to 22% between 1989 when the program started and 2007.

Recently, Kansas and Arizona have expanded their community corrections partnerships to encourage counties to handle technical parole or probation violators in the community rather than returning them to prison.

¹² Pew Center on the States' Public Safety Performance Project, *Getting in Sync: State-Local Fiscal Partnerships for Public Safety* (Washington, D.C.: The Pew Charitable Trusts, July 2008).

III. Assessment

Nationally, the expansion of treatment alternatives to incarceration has been halting due to concerns by policy makers of appearing “soft on crime” and inappropriately diverting offenders from prison who may become public safety hazards. Evidence shows that a well-constructed community corrections program increases public safety while controlling corrections costs and reserving expensive prison space for the most serious offenders.

Risk assessment and classification are critical components to determining which offenders are appropriate for treatment alternatives. Assessments usually include information on individual offender behavior, criminal background, as well as his or her needs, skills and aptitude. Ideally, case-specific information begins to be collected at the pre-trial stage, and then follows the individual, and is added to, during the sentencing phase and throughout the period of correctional custody.

Illinois is working at different levels in the criminal justice system to coordinate risk and needs assessment information. In Cook County, the Chicago Appleseed Fund for Justice is working with the Cook County courts to re-institute the Pre-trial Services Division. Simultaneously, the Administrative Office of the Illinois Courts (AOIC) is developing a standardized pre-sentence investigation (PSI) instrument to be rolled out statewide. These efforts should be coordinated with the assessment tools used by the Illinois Department of Corrections (IDOC) and the Prisoner Review Board (PRB).

To support effective expansion, Illinois needs tested and mutually support assessment tools that are shared among all players in the criminal justice system. This is a priority to be able to provide data to figure out whom to divert for treatment first. The information on the outcomes of alternative services should also be analyzed, compared to risk assessment data and shared among criminal justice policy makers and administrators.

IV. Drug Treatment in Illinois

The drug treatment infrastructure currently in place in Illinois reaches offenders at every stage of contact with the criminal justice system. From drug schools, which divert entirely from the system, to parole-based programs, Illinois has the mechanisms to divert non-violent offenders into treatment alternatives through pre-dispositional programs, specialized problem-solving courts, or general docket criminal courtrooms that have access to specialized probationary programs.

Increasing access to treatment rather than imposing prison sentences on nonviolent drug offenders reserves costly incarceration for the most serious and violent offenders; and more effectively and cost-efficiently protects public safety and improves public health outcomes. For example, evaluations of California’s Substance Abuse and Crime Prevention Act, (“SAPCA”), more popularly know as Proposition 36, have consistently shown over the years that \$2 to \$4 is saved for every \$1 invested in the program.¹³ As noted in the following sec-

¹³ Evaluation of Proposition 36: The Substance Abuse and Crime Prevention Act of 2000, 2008 Report. University of California Los Angeles, Integrated Substance Abuse Programs. Also see Longshore, D., Hawken, A., Urada, D., & Anglin, M.D. (2006, March). *Evaluation of the Substance Abuse and Crime Prevention Act: SACPA Cost-Analysis Report (First and Second years)*. Los Angeles: University of California Los Angeles.

tions, the recidivism rate for those who successfully complete treatment is far lower than that of offenders who are incarcerated and receive no treatment.

In order to successfully utilize the existing framework, both criminal justice professionals and offenders need to be presented with sound data to demonstrate that treatment options are effective and to indicate who will benefit from the various types of intervention. Also, those who work in the system must be properly trained to provide assessment and individualized case management to those in need. There must be adequate funding of existing programs to ensure that current treatment options along the continuum of care in Illinois are effective and available for those who can benefit from them.

A. Alternatives Currently Available to Criminal Offenders in Illinois

1. Drug Schools

Drug school, a complete diversion from the criminal justice system, is a voluntary treatment option. Drug schools are designed to divert those who are minimally involved with drugs and the criminal justice system, and prevent them from going deeper into either realm. Drug schools do not provide treatment; however, referrals are provided for those who exhibit dependence.

The Cook County State's Attorney Drug Abuse Program, ("SADAP"), started in 1972. It provides diversion and drug education to low-level, nonviolent drug offenders. People charged with simple possession (a Class 4 felony), who have a limited criminal history (for first or second offenses only), no evidence of drug dealing, and no history of violence or gun crimes are eligible for drug school. The cost to the county is less than \$200 per drug school participant, compared to \$750 to process drug offenders via traditional court channels. The drug school is estimated to save the county \$2 million annually in prosecution costs.¹⁴

Drug school is a pre-dispositional program which provides ten hours of educational classes addressing the negative aspects of using drugs and the impact of having a drug conviction on one's record. Classes are currently held at four sites: two in Chicago and two in the suburbs. The curriculum can be tailored to specific groups, such as young adults and women, and is also offered in Spanish.

Charges are dismissed upon successful completion of drug school, and offenders may apply for immediate expungement. Of those who register for drug school, 90 percent complete the program. Drug school graduates have three-year recidivism rates of 15 percent, compared to overall recidivism rates for Illinois of 51.8 percent.

The continued success of the drug school in Cook County becomes at risk during each annual county budgeting process. For example, in 2007, there was a proposed cut in the program's budget from \$700,000 to \$200,000 because of deficit pressures. The budget was restored, but the program is not able to serve nearly the number of people who are eligible for and could benefit from the program. After serving 4,000 people per year from 2001 to 2005, the number of people going through drug school has declined in recent years due to funding

¹⁴ Information provided by the Office of the Cook County State's Attorney, 1/9/09.

cuts. Last year (fiscal year 2008), 3,541 people went through the program, compared to 3,348 in fiscal year 2007¹⁵ and about 3,200 in fiscal year 2006.¹⁶ This program has a meaningful success rate, is far cheaper than incarceration, but is more vulnerable to funding cuts than incarceration programs. The situation in Cook County illustrates the need to allocate resources differently and to provide state funding support for local solutions.

2. Drug “First Offender” Probation

Within the Controlled Substances Act, the Cannabis Control Act, and the Methamphetamine Control and Community Protection Act, the legislature included options for treatment for first offenders. This “first offender probation” (Sections 570/410, 550/710 and 646/70) is generally available to offenders who have not been previously convicted of any drug law violations and for whom the current charge is the lowest level of simple possession.¹⁷ An offender is sentenced to probation for 24 months under each section, with mandatory conditions attached including drug testing and treatment, if necessary. Upon successful completion of probation, the person is discharged and the proceedings are dismissed.¹⁸

3. Drug Courts

a. Structure

The 2002 Drug Court Treatment Act enables the Chief Judge of any circuit in the state to establish a drug court program and provides for the structure for operating the court.¹⁹ The Act authorizes drug court for a variety of offenses, not just drug offenses. Offenders are voluntarily admitted into drug courts if all parties agree to the suggested treatment plan and disposition upon successful completion of the program. Normally, upon completing treatment, the state either dismisses or mitigates the charges or the sentence that would have been imposed had the offender not completed drug court. This legislation is permissive, and does not provide additional judgeships for the added drug courts, nor have funds been appropriated to support drug courts.²⁰

Illinois defines a drug court as:

[a]n immediate and highly structured judicial intervention process for substance abuse treatment of eligible defendants that brings together substance abuse professionals, local social programs, and intensive judicial monitoring in accordance with the nationally recommended 10 key components of drug courts.²¹

¹⁵ *Id.*

¹⁶ Clarke, O. (2007, January 4). “Criminal Justice System Overwhelmed with Drug Cases [electronic version].” *Chicago Lawyer*, 10050.

¹⁷ See 720 ILCS 570/410; 720 ILCS 550/710; 720 ILCS 646/70.

¹⁸ Attempts to locate reliable completion rate data and recidivism rates for this program have been unsuccessful.

¹⁹ 730 ILCS 166/1 et. seq.

²⁰ Illinois currently has operational drug courts in Champaign, Coles, Cook, DeKalb, DuPage, Effingham, Jersey, Grundy, Kane, Kankakee, Lake, Lee, Macon, Madison, Morgan, Peoria, Pike, Rock Island, Saline, and Winnebago counties. (www.IADCP.org, retrieved 1/19/07). Cook, Kane, Peoria, and Will counties also offer specialized juvenile drug courts, pursuant to the Juvenile Treatment Drug Court Act, 705 ILCS 410/1 et. seq. The juvenile act is virtually identical to the main act in Chapter 730.

²¹ 730 ILCS 166/10.

Generally, those that go through drug court are more drug-involved and have lengthier criminal records than drug school participants; therefore, more intensive treatment and monitoring are required. Before entry into a drug court program in Illinois, an offender must be screened and evaluated by a treatment professional. Eligibility in Illinois is codified in Section 20 of the Act.²² Offenders charged with crimes of violence, those who deny use or addiction, those unwilling to participate, those previously discharged or who have completed a drug court program, and those with certain enumerated violent crime convictions within 10 years, are ineligible.

The program itself must include a regimen of graduated incentives, rewards, and sanctions.²³ How the program is staffed, the regularity of case reviews and, the assignment of court personnel, including the judge who presides, are left to the individual circuits. Procedurally, an offender enters into a contract, or written agreement, regarding the terms of his or her participation in the program. Failure to follow those conditions may result in the imposition of sanctions, or ultimately, discharge from the program.²⁴

Violations of program rules are handled by the drug court judge according to a graduated set of sanctions. Ultimately, offenders can be expelled from the program for repeated violations. Drug courts differ greatly as to how the sentence is determined upon expulsion from the program. Some programs require that offenders agree in advance to the sentence that will be imposed if they do not complete the program. Other drug courts simply return the defendant to his or her pre-disposition status, as if the drug court contract had not occurred.

Upon successful completion of the terms and conditions of the program, the court may dismiss the original charges against the defendant or successfully terminate the defendant's sentence or otherwise discharge him or her from any further proceedings against him or her in the original prosecution.²⁵ Whether a court dismisses a charge depends upon how the drug court entry agreement was structured.

b. Efficacy of Drug Courts

According to a study released in 2003 by the National Institute of Justice (NIJ) from a sample of 17,000 drug court graduates nationwide, within one year of program graduation, only 16.4 percent had been rearrested and charged with a felony offense.²⁶ In an analysis of the Madison County Assessment and Treatment Alternative Court by the Illinois Criminal Justice Information Authority from March 1996 to May 1998, drug charge recidivism among drug court graduates decreased nearly 94 percent and overall criminal arrests among drug court graduates decreased 92 percent.²⁷

²² 730 ILCS 166/20.

²³ 730 ILCS 166/25.

²⁴ *Id.*

²⁵ 730 ILCS 166/35.

²⁶ Roman, J., Townsend, W., & Bhati, A. (2003, July). *National estimates of drug court recidivism*. Washington, DC: National Institute of Justice, U.S. Department of Justice.

²⁷ Illinois Criminal Justice Authority. (1999, August). *Drug court provides treatment alternative to incarceration*. Chicago: Illinois Criminal Justice Information Authority.

Positive results have also been realized in the Cook County drug court program. Recidivism data was collected for both the one year and three year periods after successful completing of the drug court program. For the one year review, the graduating classes from October 1999 through November 2007, consisting of 503 people, demonstrated that felony arrests decreased by 92 percent and that total arrests decreased by 83 percent. The three year review for the 410 graduates from October 1999 through November of 2005 showed a reduction in felony arrests by 84 percent and a 73 percent reduction in total arrests. Data show that 79 percent of graduates had no felony convictions in the three years after drug court participation.²⁸ One year reviews from the 2007 graduates of Cook County's Rehabilitative Alternative to Probation program (RAP) indicate a felony arrest reduction by 92 percent and that 91 percent had not been re-convicted of a felony.²⁹

Drug courts are an effective treatment alternative because they concentrate intensive court resources upon a small number of cases. For drug courts to be successful, dedicated teams comprised of a judge, state's attorney, defense attorney, treatment professional, probation officer, and often a drug court administrator must work closely together on an ongoing basis to provide the necessary monitoring, evaluation and personal feedback to each participant. The drug court model requires a non-traditional effort on behalf of criminal justice professionals accustomed to traditionally adversarial roles in the courtroom. It also carries a threat of heavier sanctions than some of the other diversion alternatives, and often yields greater completion rates than, for example, probation.

Drug court cost estimates range from \$2,500 to \$5,000 per participant per year, which is substantially less than incarceration costs.³⁰ In a 2003 study of New York drug courts, the State Court System estimated that \$254 million in incarceration costs were saved by diverting 18,000 nonviolent drug offenders into treatment.³¹

4. Treatment in Lieu of Incarceration; TASC Probation

Illinois has had statutory diversion alternatives available for drug-involved offenders for decades, although not in the sections of the Criminal Code relating to criminal offenses. The 1987 Alcoholism and Other Drug Abuse and Dependency Act, ("AODADA"), Article 301 of Chapter 20 of the Illinois Compiled Statutes, describes eligibility and process for criminal justice treatment interventions and mandates the availability of treatment alternatives to drug-involved offenders under the supervision of a "designated program."³² That program in Illinois is TASC, Treatment Alternatives for Safe Communities, and it is the only agency designated by the Secretary of the Department of Human Services to provide substance abuse assessments and recommendations for the Illinois courts. For each client, TASC conducts a comprehensive, strengths-based assessment; develops an individualized service plan; and monitors progress to report back to the court. TASC also employs drug use screening as

²⁸ Information provided by the Office of the Cook County State's Attorney, 12/31/08.

²⁹ Information provided by the Office of the Cook County State's Attorney, 12/31/08.

³⁰ National estimates of cost to implement and maintain a comprehensive drug court program are \$2,500 per participant according to the Office of National Drug Control Policy, March 2003. Using figures supplied by TASC and the Cook County State's Attorney's Office, Illinois drug court costs can be estimated at \$4,250 per participant (\$3,500 for treatment and \$750 for prosecution costs).

³¹ www.ndci.org (citing Rempel, M., Fox-Kralstein, D., Cissner, A., Cohen, R., Labriola, M., Farole, D., Bader, A., & Magnani, M. (2003). *The New York State adult drug court evaluation: Policies, participants and impacts*. New York, NY: Center for Court Innovation).

³² 20 ILCS 301/40.

needed to aid in assessment, treatment matching, and monitoring of clients' compliance with court mandates. In fiscal year 2008, TASC served nearly 26,000 clients at various stages of criminal justice involvement, including more than 16,600 through Adult Court and Probation Services.³³

Any drug-involved offender charged with or convicted of a probationable crime may elect treatment under the supervision of the "designated program," which is TASC in Illinois. There are eligibility exceptions including crimes of violence, limits on the amount of drugs involved, multiple previous attempts at treatment, and other cases or issues pending that would hamper the treatment process. TASC probation is available only to felony offenders in Illinois. In fiscal year 2008, 9,781 offenders received TASC probation in lieu of incarceration.³⁴ First time felony offenders may be eligible to have their judgments vacated upon successful completion. In 2006, the average TASC probationer had 11 prior arrests and four prior convictions on his/her record.³⁵

Generally, a defendant must elect treatment, although it may be mandated if the judge determines that it is the best course of action. TASC must also accept the offender based on an assessment that determines the extent of the drug dependence or addiction and the relationship between the drug use and the criminal activity. If the offender elects and is accepted, he or she is sentenced to TASC probation with supervision in the form of intensive treatment planning and clinical case management. Failure to comply with the terms of the treatment plan is treated as a probation violation. An overview of the designated agent statute is attached to this memorandum as Appendix A.

5. Intensive Drug Probation

Counties across the state, including Cook and St. Clair counties, operate successful intensive drug probation programs. These programs are post-dispositional models and use intensive supervision, drug testing and treatment, as well as other requirements such as curfew, community service, employment or school to curb drug use and offending behavior. Generally, to be eligible, offenders must have a history of substance abuse. Probation officers assigned to monitor these probationers have special training and expertise which enables them to work effectively with addicted offenders, who, in addition to addiction, often suffer from a number of associated problems. Placement on intensive probation often substitutes for jail or prison sentences.

From the inception of the Cook County program in 1991 through 2006, approximately 1,000 probationers have been awarded completion certificates. In St. Clair County, there were more than 175 adults on intensive probation at the end of 2005, with a successful completion rate of 58 percent.³⁶

6. Drug Prisons

When diversion alternatives earlier in the justice process have been exhausted, drug prisons provide a treatment option for high-risk offenders. In January 2004, the Illinois De-

³³ www.TASC.org.

³⁴ Information provided upon request by TASC, 2/9/09.

³⁵ Information provided upon request by TASC, 2/22/07.

³⁶ Information provided by TASC, 2/15/07.

partment of Corrections reopened the Sheridan prison facility as a drug prison.³⁷ Sheridan moves drug-involved offenders through an intensive drug treatment, cognitive skills development, vocational and job preparation program. The program begins in the prison setting and follows through reentry and back into communities under an extensive case management program with heightened supervision.

Sheridan prison inmates have an average of 17 prior arrests, 1.6 prior prison sentences, and several failed attempts at treatment when they enter Sheridan. Sheridan often represents the last chance to receive treatment in a rehabilitative setting. The cost per Sheridan inmate of \$46,012 in Fiscal Year 2007³⁸ more than twice the average inmate cost of \$21,278; however, the expectation is for long-term savings in terms of reduced recidivism. Early evaluation results from Sheridan after two years in operation are promising: Sheridan graduates have been found to be 21 percent less likely to be rearrested, and 44 percent less likely to return to prison.³⁹ Additionally, Sheridan program participants are more likely to be employed and maintain employment, compared to other parolees.⁴⁰

In fiscal year 2007, the Meth Prison and Reentry Program was established at the Southwestern Illinois Correctional Center (SWICC) in East St. Louis to address the crisis posed by methamphetamine abuse in many communities in Central and Southern Illinois. The number of prison admissions for Meth crimes rose from six in fiscal year 1999 to 421 in fiscal year 2004. There are currently more than 800 Meth offenders in the Illinois prison population. The Southwestern facility created a 200-bed Meth Unit in fiscal year 2007 and is scheduled to become a fully-dedicated drug prison and reentry program in the model of Sheridan prison program.⁴¹

There are plans to expand the Sheridan facility from 950 offenders to its full capacity of 1,300 offenders. Two-hundred (200) of those spaces will be used for a Meth unit. As with the current Sheridan model, inmates in both programs will access intensive prison-based drug treatment programs, vocational training, job preparation and mental health services.⁴²

7. Reentry Treatment Planning

As the designated agent, TASC works with the Department of Corrections to provide reentry services, including substance abuse assessment and counseling for those inmates re-entering society, including Sheridan and SWICC graduates. For the Illinois Department of Corrections, TASC's clinical reentry case management provides a full range of supportive services necessary to assist the formerly incarcerated in their transition back into their communities, from pre-release substance abuse assessments and drug education to post-release

³⁷ www.idoc.state.il.us.com.

³⁸ Illinois Department of Corrections. (2007). *Annual Report – Fiscal Year 2007*. (Retrieved 1/21/09 at http://www.idoc.state.il.us/subsections/annual_report/FY07%20IDOC%20Annual%20Rpt.pdf).

³⁹ Olson, D., Rapp, J., Powers, M., & Karr, S. (2006, May). *Sheridan Correction Center Therapeutic Community: Year 2: Program Evaluation*. Chicago: Illinois Criminal Justice Information Authority. (Retrieved 2/21/07 at <http://www.icjia.state.il.us/public/pdf/ProgEvalSummary/Sheridan.pdf>).

⁴⁰ www.idoc.state.il.us.com.

⁴¹ Illinois Department of Corrections. (2007). *Annual Report – Fiscal Year 2007*. (Retrieved 1/21/09 at http://www.idoc.state.il.us/subsections/annual_report/FY07%20IDOC%20Annual%20Rpt.pdf).

⁴² www.idoc.state.il.us.com.

clinical case management.⁴³ In total, more than 3,000 parolees receive TASC services annually.⁴⁴

TASC provides linkages to community-based substance abuse treatment, mental health services support, housing support, education, job training, emergency shelter, emergency food, primary healthcare, and transportation. Post-release clinical case management services are designed to reduce recidivism, support recovery, and facilitate client movement toward self-sufficiency.

B. Drug Treatment Reform in Other States

1. California

On November 7, 2000, California enacted the Substance Abuse and Crime Prevention Act, (“SACPA”), or Proposition 36. This Act provides community-based substance abuse treatment programs for nonviolent defendants, probationers and parolees charged with simple drug possession or drug use offenses and is limited to offenders charged with drug use or drug possession crimes. (Illinois uses broader criteria for eligibility, recognizing that substance abuse is implicated in many property crimes. If a nonviolent offender charged with a property offense is assessed with a substance abuse problem, (s)he is eligible for treatment alternatives to incarceration in Illinois.)

Under Proposition 36, an offender may petition the court to dismiss the drug charges. If the offender meets all probation conditions, the charges may be dismissed, and the offender will be obliged to disclose his/her arrest only in certain specified circumstances.⁴⁵

There are two kinds of violations of Proposition 36 probation – drug-related and non-drug-related. For non-drug-related violations, probation can be revoked and the offender can be sent to prison for 1 to 3 years. For drug-related violations, there are graduated sanctions until the third violation after which the offender may be incarcerated for 1 to 3 years. An offender may opt out of treatment, but then will be subject to prosecution under existing law.⁴⁶

The California legislature approved an appropriation of approximately \$60 million to start the program and \$120 million/year for five years, which ended in 2005. Funds are provided to counties for treatment. By July 2006, funding had decreased. The California Legislature approved \$145 million in total for Proposition 36-related programs for 2006; \$120 million through the initiative’s trust fund and \$25 million in grants through a new Offender Treatment program. The governor proposes \$120 million in total funding for 2007-08, a 17 percent cut from 2006, and at least \$90 million less than was projected to be necessary in an analysis by treatment and probation associations. Working under funding constraints, California has been able to maintain the program by relying heavily on outpatient treatment referrals, which are provided to 84.1 percent of those served under Proposition 36. Though less expensive, outpatient treatment is often not the most effective response to the needs of heavier drug users who have better outcomes from residential treatment programs.

⁴³ www.TASC.org.

⁴⁴ Information provided upon request by TASC, 2/9/09.

⁴⁵ <http://www.prop36.org/faq.html>.

⁴⁶ *Id.*

Proposition 36 has proven to be an effective tool to assist criminal offenders in treatment as well reducing taxpayer dollars spent on incarceration. California completion rates are reported to be approximately 32 percent. A recent report released by UCLA shows that \$2 is saved for every \$1 spent on the program. Those who complete the program have even lower recidivism rates, saving the state \$4 for every \$1 spent.⁴⁷

California also has a drug court system. An analysis of results from Proposition 36 compared with California's drug courts showed similar success rates, but Proposition 36 programs dealt with 10 times the number of people processed through drug courts, which averaged between 3,000 and 4,000 annually before 2001. Proposition 36 enrolls approximately 30,000 offenders in treatment, and 10,000 on average complete treatment annually.⁴⁸

2. Washington

The state of Washington has taken a different approach to its treatment vs. incarceration program. In 2002, the Washington legislature passed a law reducing sentences for various nonviolent drug offenses, and using the savings – estimated at \$8.25 million a year – to fund drug treatment programs, both in the community (including drug courts) and within the prison system. Prison terms for low-level heroin or cocaine drug sellers were reduced from a mid-range of 24 to 18 months; and the money that would have been spent on prison expenses was invested in drug treatment programs. Adjustments were also made to the sentencing framework for drug offenses, eliminating triple and double scoring for the purpose of calculating an offender's sentence for many drug offenses. The unadjusted sentences often resulted in chronically addicted, nonviolent individuals receiving substantially longer sentences than many violent offenders.

In 2002, the Washington legislature created the Criminal Justice Treatment Account in the state treasury, directing that moneys be expended solely for: (a) substance abuse treatment and treatment support services for offenders with an addiction or a substance abuse problem that, if not treated, would result in addiction, against whom charges are filed by a prosecuting attorney in Washington state; and (b) the provision of drug and alcohol treatment services and treatment support services for nonviolent offenders within a drug court program.⁴⁹ This account provides the funding for all substance abuse treatment in the state, whether mandatory or through a voluntary drug court program.

A report on the three-year recidivism results and cost-benefit analysis of Washington's community-based treatment alternative for drug offenders has not yet been released. However, a study of outcomes from the prison-based treatment program – Drug Offender Sentencing Alternative (DOSA), which reduces the length of the prison stay if the offender agrees to participate in and complete a drug treatment course – shows that the program significantly lowered recidivism rates for drug offenders (from 40.5 percent to 30.3 percent,

⁴⁷ Evaluation of Proposition 36: The Substance Abuse and Crime Prevention Act of 2000, 2008 Report. University of California Los Angeles, Integrated Substance Abuse Programs.

⁴⁸ Evaluation of Proposition 36: The Substance Abuse and Crime Prevention Act of 2000, 2008 Report. University of California Los Angeles, Integrated Substance Abuse Programs.

⁴⁹ Wash Rev. Code § 70.96A.350.

which is statistically significant) and for property drug offenders (from 60.4 percent to 54.2 percent, which is not statistically significant).⁵⁰

3. New Jersey

In 2004, the New Jersey legislature implemented a statewide drug court program that provides access to a drug court regardless of where the offender lives. Appropriations within the enabling legislation authorized \$2.04 million for new judges; \$2.7 million for staff and operations, and \$10 million for treatment services.⁵¹ The implementation plan was in three phases from 2001-2004, bringing 15 drug courts operational to cover the entire state. The program serves approximately 1,500 people each year.⁵² As of 2007, just 4 percent of graduates of the program had been convicted of a new crime, and 2 percent of graduates of the program have been resentenced to a new term of imprisonment.⁵³

In 2007, the New Jersey Supreme Court expanded eligibility for drug courts by ruling that judges may allow individuals with more than one prior non-violent conviction to enter drug court.

4. Kansas

In 2003, Kansas passed legislation (Senate Bill 123) to provide mandatory community supervision and drug treatment to first time non-violent drug possessors. The average number of those on probation revoked and sent to prison dropped 12 percent in the three years after the implementation of SB123. Eighteen-month recidivism rates are lower for those using a modality of SB123 treatment than for the overall prison population – 21 percent SB123 treatment compared to 24.5 percent in prison.⁵⁴ The program is estimated to save the state close to \$10,000,000 per year by saving space in prisons for more violent repeat offenders.⁵⁵

V. Statewide Mental Health Court

A. Mentally ill offenders in Illinois

Mental illness among jail and prison populations is prevalent and costly. According to the Bureau of Justice Statistics, at mid-year 2005, 56 percent of state prisoners and 64 percent of jail inmates have a mental health problem as defined by the Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM-IV). At mid-year 2005, approximately 15 percent of state prisoners and 24 percent of jail inmates reported at least one symptom of a psychotic disorder.⁵⁶ The Criminal Justice/Mental Health Consensus Project, coordinated by the Council of State Governments, reports that the rate of mental illness in state prisons and jails in the United States (16 percent) is at least three times the rate in the general popula-

⁵⁰ Washington State Institute for Public Policy. (2006, December). *Washington's Drug Offender Sentencing Alternative: An Update on Recidivism Findings*. Olympia, WA: Washington State Institute for Public Policy.

⁵¹ 2001 NJ Sess. Law Serv. Ch 243 (Senate 2227 and 1245)(West).

⁵² <http://www.judiciary.state.nj.us/criminal/crdrgct.htm>.

⁵³ http://www.sentencing.nj.gov/downloads/special_probation_report_April_2007.pdf

⁵⁴ <http://www.accesskansas.org/ksc/sb123/SB123TopekaUpdateConf120408.pdf>

⁵⁵ <http://www.accesskansas.org/ksc/documents/2009%20Report%20to%20the%20Legislature.pdf>

⁵⁶ James, D. J. & Glaze, L. E. (2006, September). *Mental Health Problems of Prison and Jail Inmates*. (NCJ 213600). Washington, DC: Bureau of Justice Statistics.

tion.⁵⁷ The numbers of seriously mentally ill people in Illinois prisons is approximately 6,900 with another 5,600 in Illinois jails.

The number of mentally ill people in the criminal justice system has risen with the deinstitutionalization of public mental health services. As psychiatric hospitals were closed in the 1980s without a corresponding increase in the community mental health programs and supports, jails and prisons became the largest mental health providers in the state, a job for which they are ill-equipped.⁵⁸

1. Mental Health Courts

Mental health courts provide a means to divert the mentally ill from the criminal justice system and connect them to community-based treatment and support services. Mental health courts, designed to provide the same type of assisted treatment as drug courts, are a relatively new phenomenon of rehabilitative justice. They are effective because, like drug courts, they provide intensive monitoring and access to mental health treatment resources. The courtroom setting allows a judge to employ a system of sanctions and rewards not available in the traditional clinical setting.

According to the Bureau of Justice Assistance, (BJA), these courts generally deal with nonviolent offenders who have been diagnosed with mental illness or co-occurring mental health and substance abuse disorders.⁵⁹ The BJA reports that over 150 such courts exist nationwide, and more are in the planning stage. Although several Illinois jurisdictions have implemented mental health courts, there is no enabling legislation or specific appropriations made for these courts.

Like drug courts, mental health courts require collaboration between practitioners in both the criminal justice and mental health fields. Mental health courts typically involve judges, prosecutors, defense attorneys, and other court personnel who have expressed an interest in or possess particular mental health expertise.

In Illinois, there are mental health courts in the following counties: Cook, DuPage, Kane, Lake, Madison, McHenry, Rock Island and Winnebago. The Cook County program was launched in April of 2004. The goal of the program is to increase successful probation and community reentry for felony probationers living with chronic mental illness, many of whom have co-occurring substance abuse issues. The Cook County Mental Health Court goes beyond traditional mental health courts in that its goal is to establish system-wide interventions for felony offenders with mental illness.

Data from the Cook County Mental Health Court indicates that, as of January 2008, 167 people have been enrolled in the program. In the year prior to admission to the program, for purposes of cost comparison, the 167 enrollees spent a total of 19,036 days in Cook County custody, at a cost of approximately \$\$2,455,644 (\$14,704 per participant).

The 96 participants who have been in the program for at least one year have shown a decrease in total arrests in the first year in the program (compared to the year preceding ad-

⁵⁷ www.consensusproject.org.

⁵⁸ www.mentalhealthworld.org.

⁵⁹ www.ojp.usdoj.gov.

mission) from 310 to 45 (85 percent), and an 86 percent decrease in convictions from 132 to 18. Even the 49 participants who were terminated from the program showed a decrease in total arrests from 211 to 74 in the year they spent in the program compared to the prior year.⁶⁰ A similar analysis by TASC showed cost savings of \$6,860 per person in the Cook County Mental Health Court program due to reductions in arrest rates pre- to post-participation.⁶¹

RAND Corporation released a report in 2007 on the fiscal impact of mental health courts. The findings from an analysis of the Allegheny County Mental Health Court in Pennsylvania show that entry into a mental health court program increases the use of mental health services and decreases jail stays. The additional costs of providing mental health services to participants are mostly offset in the first year by savings in jail costs. However, for those in the program a second year, reduced jail costs more than offset treatment costs, suggesting greater savings to taxpayers over time.⁶²

2. Thresholds Jail Program

To deal with the large numbers of mentally ill inmates in the county jail, Cook County works in partnership with Thresholds, one of the largest non-profit providers of mental health services in the country. The Threshold Jail Program has proven to be effective at diverting people from jail, reducing rearrest rates for participants and reducing costs.

The Thresholds Jail Program is funded by the Illinois Office of Mental Health and works in conjunction with the courts. The program involves chronic nonviolent detainees who have severe and persistent mental illnesses. The average client in the program has been hospitalized in a psychiatric facility an average of 12 times and arrested an average of 35 times.⁶³ Eligible detainees are transferred from the jail to a Thresholds site where, using the assertive community treatment (ACT) approach, they receive access to the following services: independent living assistance (housing, money management, transportation, shopping); job training, placement, and support; crisis intervention; physical health and dental care; psychiatric care; court and legal system assistance; and report to courts and probation (if mandated).

The program costs about \$26 a day per person, compared with about \$70 a day to keep the same person incarcerated, or \$400 daily to keep that person in a public mental hospital. Reports over two years indicate that the cost savings for the 30 participants in the Thresholds program was approximately \$18,873 in both jail and hospital costs. In the first year after release from the program, there was an 82.2 percent reduction in jail days; a 51.5 percent reduction in arrests; an 85.5 percent reduction in hospital days; and an 82.6 percent reduction in incidents of re-hospitalization, compared to the same people a year previous to the study.⁶⁴

⁶⁰ Information provided by the Office of the Cook County State's Attorney, 1/09/09.

⁶¹ TASC. (2006). *Cook County Mental Health Court – Early Outcomes*. Chicago: TASC, Inc. (Retrieved 3/6/07 at <http://www.tasc.org/preview/2006-09%20-%20CCMHC%20-%20Early%20Outcomes.pdf>).

⁶² Ridgely, M.S., Engberg, J., Greenberg, M., Turner, S., DeMartini, C., & Dembosky, J. (2007). *Justice, Treatment, and Cost: An Evaluation of the Fiscal Impact of Allegheny County Mental Health Court*. Santa Monica, CA: RAND Corporation.

⁶³ Solomon, A., Waul, M., Van Ness, A., & Travis, J. (2004). *Outside the Walls: A National Snapshot of Community-Based Prisoner Reentry Program*. Washington, DC: Urban Institute. (Retrieved 3/2/07 at http://www.reentrymediaoutreach.org/pdfs/health_ex.pdf).

⁶⁴ www.consensusproject.org; www.thresholds.org.

3. Cook County Frequent Users of Jail and Mental Health

The Corporation for Supportive Housing (CSH) is working with Cermak Hospital, Cook County Jail, and the Division of Mental Health to identify the most frequent users of both the Cook County Jail and the State Mental Health System. Frequent users will be divided into experimental and control groups by data-matching software. The experimental group will receive comprehensive mental health treatment and support services from one of four providers; Thresholds, Community Mental Health Council, Trilogy, Inc., or Heartland Health Outreach. At least 120 subsidized housing units will be used to house initiative participants and landlords of units are encouraged to work with service providers. The Urban Institute will evaluate program outcomes as part of a National Institute of Justice Study.⁶⁵

B. Mental Health Court Treatment Act

In conjunction with mental health professionals in Illinois, the Mental Health Court Treatment Act was passed into law by the 95th General Assembly (Public Act 95-606). The Act, effective June 1, 2008, authorizes creation of mental health courts in Illinois and was modeled directly after the Drug Court Treatment Act in Illinois. No appropriations were made, however, to support the creation of mental health courts. The Act provides definitions, eligibility requirements, procedural rules, and includes a provision for co-occurring mental health and substance abuse evaluation and treatment.

C. Funding Mental Health Courts in Illinois and Other States

Although the legislature has made no specific appropriations to support mental health courts, two Illinois statutes provide potential funding and procedural provisions for these courts. First, Section 5-1101 of the Counties Code, referenced above, authorizes use of a \$10 fee paid by the defendant on a judgment of guilty or a grant of supervision under Section 5-9-1 of the Unified Code of Corrections to finance the county mental health court as well as the county drug court.⁶⁶ The fund is collected by each county and designated for use solely by that county's mental health court, if in existence.

Second, 405 ILCS 5/2-115 provides that the Department of Human Services, "subject to appropriations," must establish pilot programs to provide the clinical services necessary to serve participants in mental health courts that have been established in any judicial circuit in this State. Chapter 405 is the Mental Health and Developmental Disabilities Code.

The Bureau of Justice Assistance (BJA) administers the Mental Health Courts Program, in coordination with the Substance Abuse and Mental Health Services Administration (SAMHSA). Through this program, the BJA has funded 37 mental health courts around the country (none of which is in Illinois). Technical assistance is also provided by the Council of State Governments through the Criminal Justice/Mental Health Consensus Project. Currently, funding is provided through the Justice and Mental Health Collaboration Program, which had a FY08 appropriation of \$6.5 million. The deadline for FY09 funds is March 12,

⁶⁵ Corporation for Supportive Housing's Returning Home Initiative Release, September 2008

⁶⁶ 55 ILCS 5/5-1101.

2009. Applications must come from a partnership between a unit of government and a mental health agency. Grant periods for Planning and Implementation grants cover three years and have a matching fund requirement of 20 percent in the first two years, and 40 percent in the third year. Approximately 25-30 grants are expected to be awarded.

VI. Conclusion

Illinois has been a leader in acknowledging the treatment needs of drug-involved people in the criminal justice system. The state already has elements in place for the type of response that is needed to address the use of our prisons for low-level drug offenders. In addition, there have been a number of recent legislative proposals meant to buttress the current treatment system in Illinois in various ways, which have had some success, including the passage of the Drug School Act (formerly the SMART Act, Substance Abuse Management Addressing Recidivism Through Treatment Act). One challenge is bringing these various interventions to scale to meet current law enforcement and public safety needs. If Illinois is to effectively use treatment rather than incarceration for appropriate populations, there must be resources to support these programs.

The goal of statewide legislation to design and fund programs to address the needs of nonviolent, drug-involved offenders is to provide accurate assessment and a continuum of interventions at each stage of the justice system with the goal of appropriately diverting people from prison to community based drug treatment programs. The existing interventions, including drug school, the Designated Agent Statute (Chapter 20, TASC) and drug courts reflect a cooperative effort among court personnel and a voluntary commitment by an offender to participate in the programs. Successful participants in both programs are rewarded for their participation by dismissal or reduction of charges. The state as a whole benefits substantially from providing an avenue for willing participants to overcome their addiction, thereby reducing the cost of placing addicted offenders in the prison system, and, in many instances, reducing the recidivism rate. The next step is to define the treatment demand and create resources to meet it while reducing expensive inappropriate incarceration.

Illinois might derive benefits from enabling legislation, coupled with appropriations, allowing for the creation of mental health courts in Illinois. The costs and functions of such courts would have to be analyzed in more detail.

Appendix A
Designated Agent Provision
20 ILCS 301/40

20 ILCS 301/40

Overview of the Statute.

This statute provides eligibility and process rules for providing drug-involved individuals in the criminal court system with access to substance abuse intervention and treatment services. The statute was written in response to the exploding numbers of drug-involved men and women entering the criminal justice system in the late 1970s and early 1980s. It provides a mechanism for these individuals to avoid incarceration and have access to drug treatment services, while still under the supervision of the court, probation, and an independent clinical case management agent. As it is currently applied throughout the state, 20 ILCS 301/40 is generally seen as a “last chance” for individuals charged with felonies with extended criminal histories, who are heavily drug-involved, and if not for a final chance at community-based intervention and treatment would likely be sentenced to incarceration.

Eligibility Requirements.

Any drug-involved individual charged with or convicted of a crime may elect treatment under the supervision of the “designated program,” a unique category of license under the Department of Human Services. That license is held by TASC, Inc. Generally, supervised treatment is available to all offenders charged with or convicted of a probationable crime. However, several exceptions to the rule exist, including, but not limited to:

- > The crime *cannot* be a crime of violence (as defined in the law).
- > The crime *cannot* be manufacture or delivery of more than 5 grams of cocaine or heroin, or manufacture or delivery of less than 5 grams of cocaine or heroin if they have a prior Class 2 or greater conviction.
- > The crime *cannot* be possession of more than 15 grams of cocaine or heroin.
- > The crime *cannot* be related to methamphetamines.
- > The crime *cannot* involve more than 30 grams of cannabis.
- > The defendant has a record of 2 or more crimes of violence
- > The defendant has other criminal proceedings pending against them.
- > The defendant is already on probation or parole and their officer doesn’t agree to treatment.
- > The defendant has already tried TASC supervision twice within a two-year period.

Process:

If any of the court professionals believe a defendant is drug-involved, and the defendant meets the eligibility criteria, the judge must notify the defendant that TASC supervision is an option. Generally, the defendant must elect treatment, although the court may mandate it if the judge determines that is the best course of action. TASC must also accept the defendant based on an assessment that determines the extent of their drug dependence or addiction and the relationship between their drug use and their criminal activity. If a defendant elects TASC supervision and is accepted by TASC, they are sentenced to probation. While under TASC supervision, TASC reports regularly to the judge and the probation officer as to the offender's progress. TASC also makes recommendations on either elevating or lessening the amount and type of treatment. Failure to comply with the terms of the TASC treatment plan is treated as a probation violation.

Successful Completion:

If the offender has no prior felony convictions, and they successfully complete the TASC treatment plan, the offender can file a motion to have the conviction vacated and the criminal proceedings dismissed. If the motion for vacation of judgment is granted, and the crime was Class 4 felony drug possession, the individual can petition the County Clerk to have their record immediately expunged. If the individual successfully completes TASC supervision, but does not file the motion for vacation of judgment, they may petition to have their record expunged after five years, provided they have no prior convictions, *and* the crime was Class 4 felony possession, *and* no new charges are pending. Additionally, if an individual completes TASC and has no prior convictions, they may petition to have their records sealed after 3 years, provided they have no other criminal proceedings pending. Generally, individuals with prior convictions are not eligible for sealing or expungement. Sealing is the closing of records to the general public, but not law enforcement. Expungement is the destruction of the records.