

*Responsible Sentencing and Illinois Residential Burglary Mandatory Incarceration Law*

Remarks for public comment at July 7, 2016 meeting of the  
Illinois State Commission on Criminal Justice and Sentencing Reform

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Thank you, commissioners, for this opportunity to offer some brief remarks on rolling back mass incarceration. I am Douglas Thomson, professor of criminal justice and sociology at Chicago State University and founder of Justice Not Prisons, and for decades I have worked to understand and to end such gross overuse of incarceration. Hence, I appreciate the commitment and efforts of this commission and have been following your work with great interest. I hope that you find my comments helpful in pursuing your modest, yet difficult, objective of reducing Illinois prison population 25% by 2025.

To turn from hyper-incarceration, we most need to commit to responsible sentencing. That would feature: thoughtful consideration of the lived reality of any particular sentence, including incarceration; realistic assessment of its likely impacts; and justice, all things considered for each case, as the ultimate requirement. Despite the good faith efforts of many prosecutors, defense attorneys, probation officers, and judges over the past four decades to exercise responsibility in the daunting task of sentencing, the overall trend in the USA and in Illinois has been toward sentencing that is excessive, incomplete, and counterproductive.

Numerous forces have contributed to this reality, some that have been highlighted repeatedly and others that have received inadequate attention. The latter include insularity of criminal courtrooms and courthouses, and the dynamics of their workgroups, sponsoring organizations, and political and task environments. I hope at a subsequent meeting to elaborate on the centrality of responsible sentencing in the context of such organizational and institutional challenges.

But today I direct my remarks to a major impediment to responsible sentencing: mandatory incarceration laws. In particular, we may have much to learn from a case study of Illinois law regarding residential burglary. This sad tale highlights persistent obstacles to policy advocacy to dismantle the prison state. But it also suggests a ready opportunity for tangible action.

In the 1970s, Illinois featured a presumption of probation in felony sentencing as fundamental to its criminal law. Over the decades, accumulating modifications have whittled it away, fueling the state's imprisonment binge. The 1981 residential burglary law still stands as a troubling exemplar of this process and a reminder of the Herculean effort required to correct excessive sentencing penalties once enacted.

Residential burglary is a serious felony that we must deal with accordingly. But law and practice in Illinois and elsewhere teaches that we can do so through discretionary sentencing and the frequent, appropriate use of probation. Yet the Illinois General Assembly in 1981 required that, with the exception of those found drug addicted, anyone convicted of residential burglary must be sentenced to a minimum of four years in prison. Apparently, this legislative change had an idiosyncratic foundation. Several out-of-town legislators had had their Springfield area domiciles violated by residential burglary. In a classic case of overreach, this served as impetus for a mandatory sentencing law that presumably has resulted over the decades in prison sentences for hundreds, perhaps thousands, of convicted offenders who should have been more justly sentenced to probation.

Advocates for responsible sentencing objected at the time. Then, shortly after implementation, a 1987 article (Thomson & Ragona) in the journal *Crime & Delinquency* reported the results of an Illinois Poll survey that found solid majorities of respondents preferring a probation sentence as the most just option in hypothetical cases of residential burglary. Yet despite such policy advocacy and such supportive research evidence, the law remained on the books and untold numbers of Illinois citizens thus were inappropriately imprisoned. It was one more instance illustrating how mass incarceration festered.

Finally, in 2011, a state representative introduced a bill (HB 1205) to make residential burglary probation-eligible again. Having requested this action, I provided a background report in support. It included evidence of over 21,000 new court admissions to Illinois prisons for residential burglary from 1984 through 2009, a subject requiring further analysis. Law school professors and their students provided more support, notably in detailing the legislative history of the 1981 law. But the 2011 bill never made it to the floor of the General Assembly for a vote.

In the most recent session of the General Assembly, Representative Kelly Cassidy introduced HB 5974 that, in addition to addressing three drug offenses, would make residential burglary probation-eligible once again. Unfortunately, this bill also did not come to the floor for a vote.

Hence, thirty-five years after the passage of its infamous residential burglary mandatory incarceration law, and now with the emergence of a broad consensus against mass incarceration, and amidst a public commitment to significantly reduce its prison population, Illinois still mandates a minimum of four years in prison for those convicted of residential burglary, unless they can demonstrate drug addiction. If this is not low hanging fruit, what is?

Beyond returning to a genuine presumption of probation in felony sentencing in Illinois, beginning by correcting the gross error in residential burglary law, we need to take much more expansive measures. These include inter-related strategies of responsible sentencing,

community-grounded policing, public presence, and integrated policy advocacy. But finally facing down the 1981 residential burglary mandatory sentencing law would be a small, but promising, step. Perhaps the General Assembly will finally take it. Perhaps this commission can offer some encouragement. Thanks.

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