

RESENTENCING TASK FORCE FINAL REPORT

EXECUTIVE SUMMARY

January, 2023

The RTF met for eleven months and adopted sixteen recommendations for resentencing in Illinois. The recommendations were adopted by a majority vote. Each member brought to the table their expertise and professional experience, as well as their sense of justice.

SPAC presented a basic analysis of the prison population as of June 30, 2021. The analysis established that people serving long sentences for serious offenses now make up a larger proportion of the population than at any time in the past. Reducing the prison population could not be accomplished without including them in the resentencing process.

The RTF made sixteen recommendations for resentencing in Illinois. Each recommendation below is addressed individually in this report and is followed by a brief rationale.

1. **The Task Force recommends the Illinois General Assembly pass legislation to create prospective and retroactive resentencing opportunities.** The General Assembly has the authority to create new pathways to judicial review long after a final result is reached. A resentencing system that allows both prospective and retroactive application will have the greatest impact on the prison population and address the disparate impact of mass incarceration. The legislative intent for the resentencing law to be applied prospectively and retroactively should be clearly stated.
2. **The General Assembly shall recommend parties who may initiate a petition for resentencing including but not limited to the prosecuting attorney, the incarcerated individual, or defense counsel.** The RTF was directed to study potential pathways for people to file petitions. The RTF concluded that several stakeholders, including the person who is incarcerated, state's attorney, and defense counsel, should be allowed to file a resentencing petition.
3. **The General Assembly should establish eligibility criteria for sentence modification, including but not limited to:**
 - (1) **The petitioner is serving a sentence for any criminal offense for which the statutory penalty has been subsequently reduced or altered; or**
 - (2) **The petitioner makes a showing that their sentence no longer advances the interest of justice or the promotion of public safety.**

The legislature should establish the specific criteria for a sentence modification petition. Eligibility should include but not be limited to retroactive statutory changes, fairness concerns to reflect changes in policy or scientific knowledge, and extreme sentences that do not reflect the interests of justice.

4. **The General Assembly shall determine a process by which individuals eligible under #3, including those serving extreme sentences, can petition the court for a resentencing.** People who are serving long sentences for serious crimes should be eligible for resentencing. Age is the strongest predictor of the likelihood of reoffending, thus the term "aging out" of crime. People who committed serious crimes decades ago are not at high risk of doing so again and are less likely to recidivate at all. The legislature should create the process for resentencing petitions to be filed in court.
5. **Resentencing petitions shall be dismissed if they do not meet the eligibility criteria; such dismissal shall be a final, appealable order. The court shall set forth, either in open court or in writing, the reasons for its decision.** Allowing the eligibility determination to be appealed mirrors the procedures available under the Post-Conviction Hearing Act. Appellate review guards against inconsistent approaches among various jurisdictions as well as arbitrary or capricious dismissals based on meeting the eligibility criteria.
6. **Any procedure adopted by the General Assembly shall provide adequate notice requirements. The Department of Corrections shall provide notice and adequate materials to inform individuals who are incarcerated of their rights.** IDOC should provide general notification to people who are incarcerated of their rights to file a resentencing petition, including information on the process and how to initiate a petition.

7. **All statutory and constitutional rights of victims, including but not limited to the right to notice and to be heard, shall apply to the entire resentencing procedure. The victim shall be notified of any restorative justice programs available at the time the petition is filed.** The interests and rights of victims should be represented during the resentencing process. Restorative justice programs aim to engage all parties and stakeholders in repairing harm and conflict. Victims should have the option to participate in restorative justice programs if they are available.
8. **A petitioner who is unable to afford counsel is entitled to have counsel appointed, at no cost to the defendant, to represent the defendant for the resentencing petition and proceedings.** Requiring counsel for individuals who submit a resentencing petition should ensure full and fair consideration of the case. It also contributes to a record for the appellate court that supports meaningful review.
9. **A defendant who files a pro se petition and subsequently retains or is appointed counsel shall be entitled to amend such petition with the assistance of counsel.** Requiring that counsel be allowed to amend the pro se petition ensures that the right to counsel is meaningful at the earliest point in the proceedings.
10. **Upon a determination of eligibility, the court shall conduct a resentencing hearing.** Petitioners who meet the eligibility criteria should be entitled to a resentencing hearing.
11. **The sentencing court shall consider, but not be limited to, the following factors:**
 - (1) **The age of the petitioner at the time of the offense and the age of the petitioner at the time of the sentence modification petition.**
 - (2) **The nature and circumstances of the offense.**
 - (3) **The history and characteristics of the petitioner at the time of the petition for a reduction in sentence, including rehabilitation and maturity demonstrated by the petitioner.**
 - (4) **The petitioner's family and community circumstances, including any history of physical, emotional, or sexual abuse; substance abuse; trauma; or involvement in the child welfare system.**
 - (5) **Any report from a physical, mental, or psychiatric examination of the defendant conducted by a licensed health care professional; validated risk assessment; and**
 - (6) **Any changes to the law governing criminal convictions, dispositions, or length of stay since the time of sentencing.**
 - (7) **Any other information the court determines is relevant to the decision of the court, including any statement by a victim of an offense or family member of the victim or the recommendation received from the State's Attorney.**

These mitigating factors require an individualized consideration of the circumstances and characteristics that may have been foundational to their criminal offense, such as age, trauma, substance abuse, and medical history. Every person has the capacity to change over time. The primary question in considering a sentence modification should be whether continued incarceration is necessary for the interests of justice.

12. **The court should be authorized by the General Assembly to depart downward from any mandatory minimum or mandatory sentence enhancement.** Since the sentence imposed pursuant to resentencing review must be authorized in statute, resentencing legislation should state the authority of the court to depart from any mandatory minimum or mandatory sentence enhancement. If the authority to depart from mandatory penalties is not included, the legislature would be creating a process that, by definition, could not reduce the prison population and address the interests of justice.
13. **In calculating the new term to be served by the petitioner, the court shall credit the petitioner for any jail time served toward the subject conviction as well as any period of incarceration credited toward the sentence originally imposed.** Calculating credit for time served either prior to disposition or for an original sentence at the time of resentencing is institutionalized in Illinois and U.S. Supreme Court case law.

14. **The petitioner may appeal a final order from a resentencing proceeding.** A standard review process should be established for final orders in resentencing cases. Appellate review is generally seen as a safeguard against arbitrary and disparate decisions in the lower court.
15. **Where a petition for a reduction in a sentence has been denied, the petitioner shall be permitted to file a successive petition for resentencing within a time period to be designated by the General Assembly.** The process for filing subsequent petitions should fairly balance the interests of the individual; the societal value of releasing people who are no longer a public safety risk; and avoiding excessive, repetitive petitions overwhelming the courts. Limitations on successive petitions should balance judicial resources and the interests of justice in allowing people who are no longer a threat to public safety access to meaningful review.
16. **Appropriate data must be collected and reported.** The most important consideration is collecting the data that helps answer the relevant questions, such as questions of equity, demographics; notice to victims and an opportunity to be heard; and ultimately recidivism patterns of those who get resentencing relief. Policymakers will undoubtedly ask broader questions in the future about whether resentencing made communities more or less safe; if allowing a second chance resentencing improved rehabilitated perceptions of system fairness in alienated communities; and what the costs and benefits were of developing this avenue of early release.

While on the path to adopting these recommendations, a recurring theme was the reality that the resentencing process is a limited tool that creates new jurisdiction for the courts to *consider* resentencing petitions. Resentencing is not a vehicle to “reform” sentencing laws such as mandatory minimums and truth-in-sentencing. Reforming the Code of Corrections to moderate some of the extremes of the past is needed. Without amending the laws that required extreme sentences, people with very long sentences will continue to come into prison, have very limited access to programming, and very little hope of returning to society in enough time to be restored to useful citizenship.

All materials and presentations are available on the Resentencing Task Force link of the Sentencing Policy Advisory Council website: <https://spac.illinois.gov>. A bibliography of the materials provided for each meeting is included in the appendix, along with the authorizing statute and short bios for each member.