CHAPTER THREE: PUNISHMENT AND SENTENCING

INTRODUCTION

In the last decade the United States has experienced a shift from indeterminate to determinate. This has resulted in many states strengthening their stance on the death penalty. Government official and advocates in Illinois, however, began to question the effectiveness of the death penalty. In January, 2000, Ryan declared a moratorium on executions, saying it will be in effect until he can be morally certain that no innocent person will face execution in Illinois. (See Case Study). In 2003, Governor George Ryan commuted all 156 death row inmates' sentences to life imprisonment. Ryan argued that the death penalty in Illinois is arbitrary and capricious - and therefore immoral."

PUNISHMENT

In order to be a crime in Illinois, there must be the combination of legislated or statutory language clearly prohibiting or restricting the behavior and some form of punishment or sanction attached to it. Because there is a restraint placed on one's liberty, the legal umbrella of the Fourth Amendment covers this issue:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

In this context, a detention, arrest, or imprisonment is a restriction on one's personal liberty to move about freely. At the end of calendar year 2004, the adult prison population was 35.1% over rated capacity, totaling 44,054 inmates in a correctional system with a rated capacity of 32,609. Another 33,089 offenders were on Mandatory Supervised Release (MSR). The prison population has grown from 37,658 in 1995, an increase of 17.0%.

PURPOSE OF PUNISHMENT

Punishment is intended to accomplish various goals, including retribution, deterrence, rehabilitation, incapacitation, and restoration. Judges seek to accomplish the purposes of punishment through penalties ranging from imprisonment, fines, probation, and intermediate sanctions to capital punishment..

Inmates convicted of Murder and Class X offenses, particularly for crimes against a person and sex offenses, have served the longest periods of incarceration. However, as more offenders are being released from prison with Class 4 offenses, with fewer releases for inmates with Class X and Class 1 felonies, average time served has been decreasing.

Over the last ten years, the awarding of supplemental meritorious good time (SMGT), educational good conduct credits, and other earned time credits has contributed to reducing length of incarceration, especially in the past few years. For the most part, inmates qualified for these types of good conduct credit have been convicted of the lower Class 2, Class 3, and Class 4 non-violent offenses. There has also been a substantial increase in the number of admissions for Possession of a Controlled Substance and other Class 4 offenses in recent years; with a relatively short prison stay (4.4 months), the number of exits will escalate each year as well.

Additionally, time served was reduced for 1,123 inmates who graduated from the two Impact Incarceration Program (IIP) facilities during 2004. On average, their time served was more than five months shorter than similar inmates who did not complete the boot camp program.
The recidivism rate for inmates who exited prison in 2001 was 54.6%. Recidivism is defined as the rate at which inmates return to prison within three years of release.

Length of Stay in Years for Inmates Released
Length of stay is measured in two ways. Prison stay accounts for the time an inmate is in IDOC, from the date admitted to IDOC until the date of release. Total time served includes prison stay plus credit for time spent in jail, in a juvenile facility, in another state or federal jurisdiction, on probation and periodic imprisonment, etc. Inmates leaving prison after serving time for a technical violation are not included in the length of stay data.

It is important to understand that length of stay data are determined from inmates who exit prison and the data should be interpreted carefully. A majority of the exits, particularly cases with serious offenses, generally reflect those offenders who received the shortest sentences. Relatively few released inmates have served long periods of time; these cases have a minimal impact on the mean lengths of stay presented in this report. Therefore, average length of stay data may understate the anticipated time served for all inmates sentenced to prison.

After an 11.6% increase in the volume of prison exits from 2001 to 2002, exits fell 2.2% during 2003. However, the number of exits reached its highest annual level in 2004. The overall growth in the amount of exits since 1995 (36.1%), a trend that actually began before 1989, has been a result of increases in prison admissions for Class 4 offenses with 1 to 3-year sentences, and more recent increases in good time awards.

The average total time served (1.6 years) and the average prison stay (1.2 years) has fallen slightly over the past three years after remaining relatively consistent throughout the previous seven years. Lengths of stay continue to be lower that they were prior to 1990; this decline has been associated with the awarding of SMGT, educational good conduct credits, and earned time, as well as shorter stays for an increasing number of lower class drug offenders (Further information may be found at:
http://www.idoc.state.il.us/subsections/reports/statistical_presentation_2004/part2.shtml#18).

As some offenders are released from prison, public there is an increase in public scrutiny and fear. These fears are especially true in relation to sexual offenders or pedophiles, and therefore have augmented child predator acts such as Megan's Law.
Megan's Law in Illinois
Section 8.1 CRIME VICTIM'S RIGHTS
(a) Crime victims, as defined by law, shall have the following rights as provided by law:
(1) The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.
(2) The right to notification of court proceedings.
(3) The right to confer with the prosecution.
(4) The right to make a statement to the court at sentencing.
(5) The right to information about the conviction, sentence, imprisonment, and release of the accused.
(6) The right to timely disposition of the case following the arrest of the accused;
(7) The right to be reasonably protected from the accused throughout the criminal justice process.
(8) The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would

be materially affected if the victim hears other testimony at the trial.
(9) The right to have present at all court proceedings, subject to the rules of evidence, an advocate or other support person of the victim's choice.
(10) The right to restitution.
(b) The General Assembly may provide by law for the enforcement of this Section.
(c) The General Assembly may provide for an assessment against convicted defendants to pay for crime victims' rights.
(d) Nothing in this Section or in any law enacted under this Section shall be construed as creating a basis for vacating a conviction or a ground for appellate relief in any criminal case.

Offenders Required to Register: Any adult or juvenile found guilty of any of the following crimes: Indecent Solicitation of a child; Sexual Exploitation of a child; Soliciting for a Juvenile Prostitute; Keeping a place of Juvenile Prostitution; Patronizing a Juvenile Prostitute; Juvenile Pimping; Exploitation of a Child; Child Pornography; Criminal Sexual Assault; Aggravated Criminal Sexual Assault; Predatory Crimial Sexual Assault of a Child; Criminal Sexual Abuse, when a felony; Aggravated Criminal Sexual Abuse; Ritualized Abuse of a Child; Forcible Detention, if the victim is under 18 years of age; Indecent Solicitation of an Adult; Soliciting for a Prostitute, if the victim is under 18 years of age; Pandering, if the victim is under 18 years of age; Patronizing, if the victim is under 18 years of age; Pimping, if the victim is under 18 years of age; Kidnapping; Aggravated Kidnapping; Unlawful Restraint Aggravated Unlawful Restraint; First Degree Murder of a Child; Child Abduction; and Attempts to commit these offenses.
(For more information, go to: http://www.megans-law.net/Illinois-Megans-Law.asp)

HABITUAL SEX OFFENDERS

The total number of habitual child sex offenders and child sex offenders in Illinois prisons has been decreasing since 1995. This population grew after the Habitual Child Sex Offender Registration Act became effective in August 1986, reaching its maximum level at 1,029 in the prison population at the end of 1995. This Act stipulated that a person could be certified as a child sex offender only upon his or her second or subsequent conviction of a sex crime against a victim less than 18 years of age. However, the Child Sex Offender Registration Act, enacted in January 1993, required that these offenders be designated a Child Sex Offender (CSO) on the first offense. As a result, the number of child sex offenders in prison jumped from 99 in 1992 to 1,029 in 1995.

However, the volume of these child sex offenders in the prison population began to fall during 1996. The decline in the number of CSOs in the prison population is attributed to the fact that, since 1995, States Attorneys have been providing better victim data, and, consequently, Record Office staff are able to identify only those inmates who meet the criteria under the Child Sex Offender Registration Act. The number of child sex offenders in the prison population fell to 214 during 2004 from 253 at the end of 2003.

SENTENCING

Increased Penalties for use of Firearm During Commission of Offense:

1. **Use of firearm during commission of offense: 15 years added to sentence imposed**
2. **Discharge of firearm during commission of offense: 20 years added to sentence imposed**
3. **Discharge of firearm causing death or injury: 25 years or up to natural life added to sentence imposed**

MISDEMEANORS 730 ILCS 5/5-9-1 & 5/5-8-3	**Class A:** Up to $2500 Fine &/or Up to 1 Year in Jail. **Class B:** Up to $1500 Fine &/or Up to 6 Months in Jail. **Class C**: Up to $1500 Fine &/or Up to 30 Days in Jail.
FELONY CONVICTION 730 ILCS 5/5-8-1 & 5/5-9-1	**Class X Felony** Up to $25,000 Fine &/or 6 to 30 Years in Pen. **Class 1 Felony** Up to $25,000 Fine &/or 4 to 15 Years in Pen. **Class 2 Felony** Up to $25,000 Fine &/or 3 to 7 Years in Pen. **Class 3 Felony** Up to $25,000 Fine &/or 2 to 5 Years in Pen. **Class 4 Felony** Up to $25,000 Fine &/or 1 to 3 Years in Pen.

SENTENCING GUIDELINES
(730 ILCS 5/) Unified Code of Corrections.
Article 4. Sentencing

(730 ILCS 5/5-4-1) (from Ch. 38, par. 1005-4-1)
(Text of Section from P.A. 94-156)
Sec. 5-4-1. Sentencing Hearing.

(a) Except when the death penalty is sought under hearing procedures otherwise specified, after a determination of guilt, a hearing shall be held to impose the sentence. However, prior to the imposition of sentence on an individual being sentenced for an offense based upon a charge for a violation of Section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance, the individual must undergo a professional evaluation to determine if an alcohol or other drug abuse problem exists and the extent of such a problem. Programs conducting these evaluations shall be licensed by the Department of Human Services. However, if the individual is not a resident of Illinois, the court may, in its discretion, accept an evaluation from a program in the state of such individual's residence. The court may in its sentencing order approve an eligible defendant for placement in a Department of Corrections impact incarceration program as provided in Section 5-8-1.1 or 5-8-1.3. The court may in its sentencing order recommend a defendant for placement in a Department of Corrections substance abuse treatment program as provided in paragraph (a) of subsection (1) of Section 3-2-2 conditioned upon the defendant being accepted in a program by the Department of Corrections. At the hearing the court shall:

(1) consider the evidence, if any, received upon the trial;

(2) consider any presentence reports;

(3) consider the financial impact of incarceration based on the financial impact statement filed with the clerk of the court by the Department of Corrections;

(4) consider evidence and information offered by the

parties in aggravation and mitigation;

(4.5) consider substance abuse treatment, eligibility screening, and an assessment, if any, of the defendant by an agent designated by the State of Illinois to provide assessment services for the Illinois courts;

(5) hear arguments as to sentencing alternatives;

(6) afford the defendant the opportunity to make a statement in his own behalf;

(7) afford the victim of a violent crime or a violation of Section 11-501 of the Illinois Vehicle Code, or a similar provision of a local ordinance, or a qualified individual affected by: (i) a violation of Section 405, 405.1, 405.2, or 407 of the Illinois Controlled Substances Act, or (ii) a Class 4 felony violation of Section 11-14, 11-15, 11-17, 11-18, 11-18.1, or 11-19 of the Criminal Code of 1961, committed by the defendant the opportunity to make a statement concerning the impact on the victim and to offer evidence in aggravation or mitigation; provided that the statement and evidence offered in aggravation or mitigation must first be prepared in writing in conjunction with the State's Attorney before it may be presented orally at the hearing. Any sworn testimony offered by the victim is subject to the defendant's right to cross-examine. All statements and evidence offered under this paragraph (7) shall become part of the record of the court. For the purpose of this paragraph (7), "qualified individual" means any person who (i) lived or worked within the territorial jurisdiction where the offense took place when the offense took place; and (ii) is familiar with various public places within the territorial jurisdiction where the offense took place when the offense took place. For the purposes of this paragraph (7), "qualified individual" includes any peace officer, or any member of any duly organized State, county, or municipal peace unit assigned to the territorial jurisdiction where the offense took place when the offense took place;

(8) in cases of reckless homicide afford the victim's spouse, guardians, parents or other immediate family members an opportunity to make oral statements; and

(9) in cases involving a felony sex offense as defined under the Sex Offender Management Board Act, consider the results of the sex offender evaluation conducted pursuant to Section 5-3-2 of this Act.

(b) All sentences shall be imposed by the judge based upon his independent assessment of the elements specified above and any agreement as to sentence reached by the parties. The judge who presided at the trial or the judge who accepted the plea of guilty shall impose the sentence unless he is no longer sitting as a judge in that court. Where the judge does not impose sentence at the same time on all defendants who are convicted as a result of being involved in the same offense, the defendant or the State's Attorney may advise the sentencing court of the disposition of any other defendants who have been sentenced.

(c) In imposing a sentence for a violent crime or for an offense of operating or being in physical control of a vehicle while under the influence of alcohol, any other drug or any combination thereof, or a similar provision of a local ordinance, when such offense resulted in the personal injury to someone other than the defendant, the trial judge shall specify on the record the particular evidence, information, factors in mitigation and aggravation or other reasons that led to his sentencing determination. The full verbatim record of the sentencing hearing shall be filed with the clerk of the court and shall be a public record.

(c-1) In imposing a sentence for the offense of aggravated kidnapping for ransom, home invasion, armed robbery, aggravated vehicular hijacking, aggravated discharge

of a firearm, or armed violence with a category I weapon or category II weapon, the trial judge shall make a finding as to whether the conduct leading to conviction for the offense resulted in great bodily harm to a victim, and shall enter that finding and the basis for that finding in the record.

(c-2) If the defendant is sentenced to prison, other than when a sentence of natural life imprisonment or a sentence of death is imposed, at the time the sentence is imposed the judge shall state on the record in open court the approximate period of time the defendant will serve in custody according to the then current statutory rules and regulations for early release found in Section 3-6-3 and other related provisions of this Code. This statement is intended solely to inform the public, has no legal effect on the defendant's actual release, and may not be relied on by the defendant on appeal.

The judge's statement, to be given after pronouncing the sentence, other than when the sentence is imposed for one of the offenses enumerated in paragraph (a)(3) of Section 3-6-3, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, assuming the defendant receives all of his or her good conduct credit, the period of estimated actual custody is ... years and ... months, less up to 180 days additional good conduct credit for meritorious service. If the defendant, because of his or her own misconduct or failure to comply with the institutional regulations, does not receive those credits, the actual time served in prison will be longer. The defendant may also receive an additional one-half day good conduct credit for each day of participation in vocational, industry, substance abuse, and educational programs as provided for by Illinois statute."

When the sentence is imposed for one of the offenses enumerated in paragraph (a)(3) of Section 3-6-3, other than when the sentence is imposed for one of the offenses enumerated in paragraph (a)(2) of Section 3-6-3 committed on or after June 19, 1998, and other than when the sentence is imposed for reckless homicide as defined in subsection (e) of Section 9-3 of the Criminal Code of 1961 if the offense was committed on or after January 1, 1999, and other than when the sentence is imposed for aggravated arson if the offense was committed on or after July 27, 2001 (the effective date of Public Act 92-176), the judge's statement, to be given after pronouncing the sentence, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, assuming the defendant receives all of his or her good conduct credit, the period of estimated actual custody is ... years and ... months, less up to 90 days additional good conduct credit for meritorious service. If the defendant, because of his or her own misconduct or failure to comply with the institutional regulations, does not receive those credits, the actual time served in prison will be longer. The defendant may also receive an additional one-half day good conduct credit for each day of participation in vocational, industry, substance abuse, and educational programs as provided for by Illinois statute."

When the sentence is imposed for one of the offenses enumerated in paragraph (a)(2) of Section 3-6-3, other than first degree murder, and the offense was committed on or after June 19, 1998, and when the sentence is imposed for reckless

homicide as defined in subsection (e) of Section 9-3 of the Criminal Code of 1961 if the offense was committed on or after January 1, 1999, and when the sentence is imposed for aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof as defined in subparagraph (F) of paragraph (1) of subsection (d) of Section 11-501 of the Illinois Vehicle Code, and when the sentence is imposed for aggravated arson if the offense was committed on or after July 27, 2001 (the effective date of Public Act 92-176), the judge's statement, to be given after pronouncing the sentence, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, the defendant is entitled to no more than 4 1/2 days of good conduct credit for each month of his or her sentence of imprisonment. Therefore, this defendant will serve at least 85% of his or her sentence. Assuming the defendant receives 4 1/2 days credit for each month of his or her sentence, the period of estimated actual custody is ... years and ... months. If the defendant, because of his or her own misconduct or failure to comply with the institutional regulations receives lesser credit, the actual time served in prison will be longer."

When a sentence of imprisonment is imposed for first degree murder and the offense was committed on or after June 19, 1998, the judge's statement, to be given after pronouncing the sentence, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, the defendant is not entitled to good conduct credit. Therefore, this defendant will serve 100% of his or her sentence."

When the sentencing order recommends placement in a substance abuse program for any offense that results in incarceration in a Department of Corrections facility and the crime was committed on or after September 1, 2003 (the effective date of Public Act 93-354), the judge's statement, in addition to any other judge's statement required under this Section, to be given after pronouncing the sentence, shall include the following:

"The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in prison as a result of this sentence. The actual period of prison time served is determined by the statutes of Illinois as applied to this sentence by the Illinois Department of Corrections and the Illinois Prisoner Review Board. In this case, the defendant shall receive no good conduct credit under clause (3) of subsection (a) of Section 3-6-3 until he or she participates in and completes a substance abuse treatment program or receives a waiver from the Director of Corrections pursuant to clause (4.5) of subsection (a) of Section 3-6-3."

(d) When the defendant is committed to the Department of Corrections, the State's Attorney shall and counsel for the defendant may file a statement with the clerk of the court to be transmitted to the department, agency or institution to which the defendant is committed to furnish such department, agency or institution with the facts and circumstances of the offense for which the person was committed together with all other factual information accessible to them in regard to the person prior to his commitment relative to his habits, associates, disposition and reputation and any other facts and circumstances which may aid such department, agency or institution

during its custody of such person. The clerk shall within 10 days after receiving any such statements transmit a copy to such department, agency or institution and a copy to the other party, provided, however, that this shall not be cause for delay in conveying the person to the department, agency or institution to which he has been committed.

(e) The clerk of the court shall transmit to the department, agency or institution, if any, to which the defendant is committed, the following:

(1) the sentence imposed;

(2) any statement by the court of the basis for imposing the sentence;

(3) any presentence reports;

(3.5) any sex offender evaluations;

(3.6) any substance abuse treatment eligibility screening and assessment of the defendant by an agent designated by the State of Illinois to provide assessment services for the Illinois courts;

(4) the number of days, if any, which the defendant has been in custody and for which he is entitled to credit against the sentence, which information shall be provided to the clerk by the sheriff;

(4.1) any finding of great bodily harm made by the court with respect to an offense enumerated in subsection (c-1);

(5) all statements filed under subsection (d) of this Section;

(6) any medical or mental health records or summaries of the defendant;

(7) the municipality where the arrest of the offender or the commission of the offense has occurred, where such municipality has a population of more than 25,000 persons;

(8) all statements made and evidence offered under paragraph (7) of subsection (a) of this Section; and

(9) all additional matters which the court directs the clerk to transmit.

(Source: P.A. 93-213, eff. 7-18-03; 93-317, eff. 1-1-04; 93-354, eff. 9-1-03; 93-616, eff. 1-1-04; 94-156, eff. 7-8-05.)

TRUTH IN SENTENCING

In August 1995, Truth in Sentencing legislation was enacted (730 ILCS 5/3-6-3(a)(2)) under Public Act 89-404. However, this law was declared unconstitutional by the Illinois Supreme Court on January 22, 1999. Anticipating this decision, Public Act 90-593 became effective on June 19, 1998, reenacting the original Truth in Sentencing provisions.

According to this statute, offenders who commit First Degree Murder or the offense of terrorism must serve 100% of the sentence imposed by the court. A second provision lists twelve serious violent offenses that require inmates to serve 85% of their sentences. A third category of five violent offenses where the enumerated offense resulted in great bodily harm to a victim also requires inmates to serve 85% of their sentences. In three additional categories, i.e., where the circumstances of Reckless Homicide while under the Influence of Alcohol or any Other Drugs, Aggravated Battery or Aggravated Discharge of a Machine Gun or a Firearm Equipped with a Device used for Silencing the Report of a Firearm, and Aggravated Arson, inmates may be required to serve 85% of their sentences.

Beginning in late 1998, IDOC began to admit offenders sentenced under this new legislation. The end-of-year 2004 prison population included 4,957 inmates sentenced under the Truth in Sentencing statute. Of these inmates, 1,311 committed First Degree Murder and will serve 100% of their sentences. The majority of inmates sentenced under Truth in Sentencing have been sentenced under the mandatory 85% statute, with 3,202 inmates having been admitted to prison. Most of the inmates sentenced under this section of the statute were admitted for sexually assaultive offenses (Class X Predatory Criminal Sexual Assault of a Child, Class X Aggravated Criminal Sexual Assault, and Class 1 Criminal Sexual Assault). Attempted First Degree Murder and aggravated battery offenses were also prevalent.
A
nother 244 inmates committed an offense for which the sentencing judge determined that great bodily harm was inflicted upon the victim. Most of these were the Class X offenses of Home Invasion and Armed Robbery. These inmates are also required to serve 85% of their sentences. In addition, 162 inmates have committed Reckless Homicide and 38 inmates have committed Aggravated Arson for which the sentencing judge determined that the circumstances warranted the inmates serve 85% of their sentences.

The majority of inmates admitted to prison under Truth in Sentencing have been admitted since 2000. A total of 720 inmates were admitted during 2000, another 945 in 2001, 1,033 in 2002, 1,135 during 2003, and 1,171 in 2004. Only 426 Truth in Sentencing cases have been released through 2004, most for Class 1 Criminal Sexual Assault and Class 2 Reckless Homicide. Consequently, the population impact of Public Act 90-593 will not be felt until there are a sufficient number of cases available for Truth in Sentencing inmates whose time served can be compared to those who served the customary determinate sentence (Information found at: http://www.idoc.state.il.us/subsections/reports/statistical_presentation_2004/part1.shtml#17)

VICTIMS' RIGHTS

Crime victims in Illinois have the following rights as provided by law:

- The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.
- The right to notification of court proceedings.
- The right to confer with the prosecution.
- The right to make a statement to the court at sentencing.
- The right to information about the conviction, sentence, imprisonment, and release of the accused.
- The right to timely disposition of the case following the arrest of the accused;
- The right to be reasonably protected from the accused throughout the criminal justice process.
- The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.
- The right to have present at all court proceedings, subject to the rules of evidence, an advocate or other support person of the victim's choice.
- The right to restitution.

DEATH PENALTY

July 2, 2006 will mark the 30th anniversary of the landmark *Gregg v. Georgia* ruling by the U.S. Supreme Court, which upheld newly revised death penalty statutes after having called this punishment "arbitrary, capricious and discriminatory" just four years earlier. Executions resumed in 1977, and since then more than 1,000 condemned prisoners have been executed, while about 3,400 sit on death rows throughout the United States.
As of April 1, 2006, Illinois has had 12 executions since the reinstatement of the death penalty in 1976. Currently there are nine men on death row, and zero women. The number is low because of Governor Ryan's landmark decision to commute all death sentences in 2003. According to the Illinois law, a defendant may receive the death penalty for a felony even if he/she was not responsible for the murder. Since 1976, 18 individuals have been freed from death row as a result of innocence. The method of execution in Illinois is lethal injection and electrocution.

EQUAL PROTECTION

According to the Illinois Constitution Bill of Rights, Section 2, No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

CASE STUDIES
Innocence on death row in Illinois

1987: After two mistrials because of hung juries, Perry Cobb and Darby Williams were convicted and sentenced to death for the first degree robbery and murder of two white men in 1977. In 1983, the State Supreme Court reversed the convictions, and after several retrials where an assistant state attorney testified that the government's key witness, Phyllis Santini, had told him it was her boyfriend actually committed the murders, Cobb and Williams were acquitted and released. (People v. Cobb, 455 N.E.2d 31 (Ill. 1983) and Chicago Tribune, 1/21/87).

1994: No physical evidence linked Joseph Burrows to the murder of William Dulin. The prosecution's two chief witnesses recanted their testimony against Mr. Burrows, and one of them confessed to the murder for which Burrows had been sent to death row. One of the witnesses said he had been coerced by prosecutors and police. Burrows was released in September, 1994, and the Illinois appellate courts have upheld the overturning of his conviction. (People v. Burrows, 665 N.E.2d 1319 (Ill. 1996) and New York Times, 9/12/94).

1995: Ronaldo Cruz was sentenced to death for the murder of 10-year-old Jeanine Nicarico. Another man, Brian Dugan, who had already pled guilty to two rapes and murders, including that of an 8-year-old girl, authorized his lawyer to tell the prosecutors that he killed Nicarico. Cruz was convicted at a second trial in 1990, at which Dugan did not testify. In July, 1994, the state Supreme Court overturned Cruz's second conviction. (People v. Cruz, 643 N.E.2d 636 (1994). An assistant state attorney general resigned because she thought the evidence showed Cruz was innocent and thought it wrong to pursue the prosecution. Other law enforcement officials also protested the continued efforts to prosecute Cruz. Cruz was finally acquitted at his retrial in November, 1995. The judge did not even wait for the defense to put on its case before entering a directed verdict of not guilty. (People v. Cruz, 88 CF 2230). Three prosecutors and four law enforcement officers involved with the prosecution of Cruz and his co-defendant (see below) have been indicted for obstruction of justice in this case. (The American Lawyer, 3/98 and National Law Journal 11/20/95).

1995: Alejandro Hernandez was sentenced to death along with Rolando Cruz for the murder of Jeanine Nicarico in 1983. Hernandez was re-tried in 1990, but the trial ended in a hung jury. A third trial in 1991 resulted in a conviction and an 80 year prison sentence. The conviction was overturned by the Illinois Supreme Court in January, 1995. Only his own indirect statements, not any direct physical evidence, linked Hernandez, who is borderline retarded, to the killing. He was released on bond, and charges were subsequently dropped on Dec. 8, 1995. The man who has confessed to the murder of Jeanine Nicarico, and whose DNA has been linked to the crime, has not been charged in the case. The U.S. Dept. of Justice is considering an investigation into civil rights violations in this case. (People v. Hernandez, 521 N.E.2d 25 (Ill. 1988), Associated Press, 12/8/95, and The National Law Journal, 1/1/96).

1996: Verneal Jimerson was sentenced to death in 1985 for a murder which occurred in 1978. The chief witness against him was Paula Gray, who has an IQ of 57. In her original story to the police, she did not mention Jimerson. Then she added his name to her account, along with three other names, including Dennis Williams (see #67). She later recanted her entire testimony, saying the police had forced her to lie. The original charges against Jimerson were dismissed, but they were resurrected seven years later when the police offered to drop some charges against Gray if she would implicate Jimerson. Gray's 50 year sentence was converted to 2 years probation. In 1995, the Illinois Supreme Court unanimously reversed Jimerson's conviction, because Gray had been allowed to testify falsely about her bargain. (People v. Jimerson, 652 N.E.2d 278 (Ill. 1995)). Jimerson was released on bond in early 1996, and charges against him were subsequently dropped. (New York Times, 7/3/96)

1996: Dennis Williams was convicted, along with three others (including Verneal Jimerson, above), for the murder of a young couple in 1978. After spending 18 years in prison, Williams was released on June 14, 1996 because new evidence pointed to the fact that all four men were wrongly convicted. Much of the investigative work which led to the defendants' release was done by three journalism students. Recent DNA tests indicate that none of the four men were involved in the crime, and another man has confessed to the murder. Charges against Williams, and two others who received lesser sentences in the same case, were dropped on July 2, 1996. Cook County State's Attorney Jack O'Malley apologized to the four wrongly convicted defendants, including Verneal Jimerson, who had also been on death row. (David Protess and Rob Warden, *A Promise of Justice* (Hyperion 1998) and New York Times, 7/3/96).

1996: Gary Gauger was convicted of killing his parents in April, 1993. In September 1994, the trial court judge reduced Gauger's sentence to life imprisonment. In March, 1996, the U.S. District Court overturned his conviction, ruling that authorities never had probable cause to even arrest Gauger or to subject him to 21 hours of intensive questioning. He was released in October, 1996 by the same judge that had sentenced him to die by lethal injection. The prosecution did not challenge his release. (US News and World Report, 11/9/98).

1996: Carl Lawson was convicted of killing Terrence Jones in a family dispute. He was tried three times. The first trial resulted in a conviction and death sentence, but that conviction was overturned in part because Lawson's public defender had been an assistant State's Attorney when Lawson was arrested. (Illinois v. Lawson, 644 N.E.2d 1172 (1994). The second trial resulted in a hung jury, reportedly 11-1 for acquittal. Nevertheless, the prosecutors tried Lawson again and again sought the death penalty. This last trial produced an acquittal and Lawson was freed on December 12, 1996. On August 1, 2002, Illinois Governor George Ryan issued a pardon to Lawson based on innocence. (St. Louis Dispatch, 4/12/98 and Chicago Tribune, 8/1/02).

1999: Anthony Porter was released in February, 1999 on the motion of the State's Attorney after another man confessed on videotape to the double 1982 murder that sent Porter to death row.

Charges were filed against the other man, who claimed he killed in self-defense. The case was broken by investigator Paul Ciolino working with Prof. David Protess and journalism students from Northwestern University. Their investigation also found that another witness had been pressured by police to testify against Porter. Porter came within 2 days of execution in 1998 and was only spared because the Court wanted to look into his mental competency. Porter has an IQ of 51. His conviction was officially reversed on March 11, 1999. (New York Times, 2/6/99 and 3/12/99).

1999: Steven Smith's conviction was overturned by the Illinois Supreme Court in 1999 because it was based on unreliable evidence. As a result, he is not subject to re-trial. Smith had been convicted of a murder outside of a Chicago tavern in 1985. The man killed was the assistant warden of the Pontiac Correctional Center. The Court said, "When the state cannot meet its burden of proof, the defendant must go free." On August 1, 2002, Illinois Governor George Ryan issued a pardon to Smith based on innocence. Smith is the 11th death row inmate to be freed in Illinois since the death penalty was reinstated and the 9th since 1994. (Illinois v. Smith, 708 N.E.2d 365 (1999) and Chicago Sun-Times, 2/20/99 and 8/2/02).

1999: Ronald Jones was a homeless man when he was convicted of the rape and murder of a Chicago woman. After a lengthy interrogation in which Jones says he was beaten by police, he signed a confession. Prosecutors at his conviction described him as a "cold brutal rapist" who "should never see the light of day." (NY Times 5/19/99). Recent DNA testing revealed that Jones was not the rapist and there was no evidence of any accomplice to the murder. The Cook County state's attorney filed a motion asking the Illinois Supreme Court to vacate Jones's conviction in 1997. In May, 1999, the state dropped all charges against Jones. He is being temporarily detained pending another matter in a different state. (Associated Press, 5/18/99 and Chicago Tribune, 5/18/99).

2000: Steve Steve Manning became the 13th inmate exonerated in Illinois, when prosecutors announced that they are dropping charges and no longer plan to retry Manning for the 1990 slaying of trucking company owner Jimmy Pellegrino. Manning was convicted and sentenced to death on the word of informant Tommy Dye, who testified that Manning twice confessed to him when they shared a jail cell. However, secret tape recordings of the two men's conversations, made at the request of the FBI, revealed no such confession, and Manning vehemently denied confessing. In exchange for his testimony, Dye received an 8-year reduction on his prison sentence on theft and firearms charges. Manning remains in prison on unrelated charges. (Illinois v. Manning (695 N.E.2d 423 (1998) and Chicago Tribune, 1/19/00).

2003: Aaron Patterson spent 17 years on death row and always maintained his innocence in the stabbing deaths of an elderly couple in 1986. (Chicago Tribune, January 10, 2003). During his pre-trial interrogation, Patterson etched the following words on an interrogation room bench:
I lied about murders police threatened me with violence slapped and suffocated me with plastic - no phone - no dad signed false statement to murders (Tonto) Aaron. (State v. Patterson, 735 N.E.2d 616, 627-28 (Ill. 2000)).
In addition, photographs of the interrogation room revealed the phrase "Aaron lied" etched in the door of the room. (Id.). There was no physical evidence tying Patterson to the crime, and fingerprints recovered from the scene did not belong to him. In addition, Patterson's former girlfriend testified that she was with Patterson on the night the of the murders. In 2000, the Illinois Supreme Court granted Patterson an evidentiary hearing to determine whether his attorney was ineffective for failing to present evidence that the confession was coerced. The Court stated: "Evidence identifying defendant as perpetrator consisted of (1) the oft-changing testimony of a teenager [Marva Hall] whose cousin had been a suspect in the crime; and (2) the testimony from

the police officers and assistant State's Attorney concerning defendant's confession." (Id. at 633). After Patterson's conviction, Marva Hall swore in an affidavit that prosecutors pressured her into implicating Patterson. "It was like I was reading a script," she said of her testimony. Hall told Northwestern University journalism students who were investigating the case: "I helped send [an] innocent man to jail." (Newsweek, May 31, 1999).

2003: Madison Hobley was convicted of setting fire to an apartment building in 1987 that claimed the lives of seven tenants, including his wife and child. Hobley maintained his innocence, claiming that his confession was the product of police torture. At trial, the evidence against Hobley consisted of the testimony of Andre Council, a suspected arsonist who claimed to have seen Hobley buying gasoline before the fire, and a gas station attendant who could not identify Hobley in a lineup and could only state that Hobley "favored" the man who purchased the gasoline.

Hobley's trial was marred by prosecutiorial and juror misconduct. The Illinois Supreme Court concluded that "despite [Hobley's] pretrial requests for production, the State failed to disclose to him the evidence of two pieces of exculpatory evidence: (1) a report that defendant's fingerprints were not on the gasoline can introduced against him at trial, and (2) a second gasoline can found at the fire scene." (State v. Hobley, 696 N.E.2d 313, 331 (Ill. 1998) (emphasis in original)). Records also showed that police destroyed the second gasoline can after the defense issued a subpoena for it, a move the Illinois Supreme Court said supported a finding that the destruction was "motivated by bad faith." (Id.).

In addition, post-conviction affidavits of jurors stated that some jurors were intimidated by non-jurors while they were sequestered at a hotel, and that they were prejudiced by the acts of the jury foreperson, a police-officer who believed Hobley was guilty. The affidavits also stated that jurors brought newspapers with articles about the case into the jury room and that they repeatedly violated the trial court's sequestration order. (Id. at 338). The Court remanded the case for an evidentiary hearing on the issue of whether prosecutors violated Hobley's constitutional rights by withholding evidence, and on the issue of whether the jurors were intimidated during deliberations. (Id. at 345). In remanding the case, the Court stated: "we stress that we are deeply troubled by the nature of the allegations in this case." (Id. at 338).

2003: Leroy Orange spent 19 years on death row before he was pardoned by Governor Ryan. Orange was arrested and questioned about the murders of four persons, and he subsequently confessed. Orange later stated that his confession was obtained by police torture and that he was innocent. At Orange's trial, his half-brother, Leonard Kidd, testified that, although Orange was at the victims' apartment earlier in the evening, he left before the murders and took no part in the crime. Kidd testified that he was solely responsible for the murders. Shirely Evans, a friend of Orange, testified that Orange was with her the night of the murders. (State v. Orange, 521 N.E.2d 69, 72 (Ill. 1988)).

At trial, Orange was represented by attorney Earl Washington, who was paid only $400 to represent Orange and who had three Attorney Registration and Disciplinary Commission (ARDC) charges pending at the time of Orange's trial. (State v. Orange, 659 N.E.2d 935, 947 (Ill. 1995)). The Chicago Tribune singled out Washington for his ineptitude, noting that the state filed new disciplinary charges against him. Those charges alleged that Washington's representation of Orange and others "amounted to professional misconduct." (Chicago Tribune, November 15, 1999).

2003: Stanley Howard was convicted in 1987 for the murder of Oliver Ridgell. (Chicago Tribune, January 10, 2003). At trial, one of the main pieces of evidence against Howard was his statement to the police. Howard, however, always maintained that his confession was obtained through the use of police torture. Testimony at his trial contradicted information in Howard's "confession."

The other evidence used against Howard was the testimony of Tecora Mullen, the passenger who was in the car when Ridgell was shot. Mullen admitted that it was dark and raining outside at the time of the shooting. In addition, Mullen's husband was originally a suspect in the murder. (State v. Howard, 588 N.E.2d 1044 (Ill. 1991)). Howard remains incarcerated for an unrelated offense. (Chicago Tribune, January 10, 2003).

2004: Gordon "Randy" Steidl was freed from an Illinois prison May 28, 2004, 17 years after he was wrongly convicted and sentenced to die for the 1986 murders of Dyke and Karen Rhoads. An Illinois State Police investigation in 2000 found that local police had severely botched their investigation, resulting in the wrongful conviction of Steidl and his co-defendant Herbert Whitlock. Due to the poor representation Steidl received at trial, a new sentencing hearing was granted in 1999, resulting in a sentence of life without parole. In 2003, federal judge Michael McCuskey overturned Steidl's conviction and ordered a new trial for Steidl (267 F. Supp. 2d 919 (C.D. Ill 2003)), stating that if all the evidence that should have been investigated had been presented at trial, it was "reasonably probable" that Steidl would have been acquitted by the jury. The state reinvestigated the case, testing DNA evidence, and found no link to Steidl. State Attorney General Lisa Madigan decided not to appeal the ruling and Edgar County prosecutors decided they would not retry the case. (Chicago Tribune, May 27, 2004)

(To read other cases of innocence throughout the United States, go to: http://www.deathpenaltyinfo.org/article.php?scid=6&did=109)

QUESTIONS FOR REVIEW

1. What year did Governor Ryan declare a moratorium on executions in Illinois?
A. 1999
B. 2000
C. 2003
D. 1976

Answer: B

2. Why has there been a decline in the length of stay for prison terms?
A. Supplemental meritorious good time
B. Educational good conduct credits
C. Earned time
D. All of the above

Answer: D

3. True or False? The total number of habitual child sex offenders and child sex offenders in Illinois prisons has been increasing since 1995.

Answer: False

4. True or False? According to the truth in sentencing statute, offenders who commit First Degree Murder or the offense of terrorism must serve 100% of the sentence imposed by the court.

Answer: True

5. What is/are the method/s of execution in Illinois?
A. Electrocution
B. Lethal Injection
C. Both A and B
D. Illinois has abolished the death penalty

Answer: C

WEB RESOURCES

- http://www.truthinjustice.org/dphistory-IL.htm
- http://www.idoc.state.il.us/subsections/reports/statistical_presentation_2004/default.shtml
- http://www.ilga.gov/legislation/ilcs/ilcs.asp
- http://crime.about.com/od/victims/qt/victims_il.htm
- www.deathpenaltyinfo.org
- www.aiusa.org/abolish
- http://www.ilga.gov/commission/lrb/con1.htm