CRIMINAL SENTENCING COMMISSION

Annual Report

1979

CRIMINAL SENTENCING COMMISSION

OFFICERS

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Harold A. Katz, Secretary	Representative, Illinois House of Representatives

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Richard F. Scholz, Jr.	Chief Judge, Eighth Judicial Circuit
Gary L. Starkman	Counsel to the Governor

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Gayle Franzen, Executive Director	Director, Illinois Department of Corrections

STATUTORY AUTHORITY

The Criminal Sentencing Commission, was created by Public Act 80-1099, now codified in Ill. Rev. Stat. Ch. 38 § 1005-10-1 & 2 (Supp. 1977). The composition of the Commission and its powers and duties are set forth in the law as follows:

Sec. 5-10-1. Criminal Sentencing Commission. There shall be a Criminal Sentencing Commission consisting of 12 members to be appointed as follows:

(1) 3 members shall be appointed by the Governor;

(2) 3 members shall be members of the Senate, 2 of whom shall be appointed by the President of the Senate and one by the Senate Minority Leader;

(3) 3 members shall be members of the House of Representatives, 2 of whom shall be appointed by the Speaker of the House and one by the House Minority Leader; and

(4) 3 members shall be circuit judges who preside at trials of criminal cases appointed by the Supreme Court.

Vacancies. Vacancies shall be filled by the officer (or his successor) who appointed the original member. Members shall receive no compensation, but shall be reimbursed for expenses incurred in the actual performance of their duties.

Chairman. The members of the Commission shall designate one member to serve as Chairman. The Director of the Department of Corrections shall serve as Executive Director of the Commission, and staff and support services shall be provided by the Department of Corrections.

Sec. 5-10-2. Powers and Duties of Commission. The Criminal Sentencing Commission has the following responsibilities:

(1) To monitor the fiscal impact and effect upon prison populations caused by the use of determinate sentences.

(2) To determine the overall desirability and feasibility of determinate sentencing and reclassification of felonies.

(3) To review the Criminal Code and Code of Corrections and make recommendations on the best methods available for sentencing those convicted of criminal offenses.

(4) To ascertain the number and percentage of commitments to the Department of Corrections compared to the number and percentage of alternative dispositions imposed by the courts, by offense.

(5) To develop standardized sentencing guidelines designed to provide for greater uniformity in the imposition of criminal sentences.

(6) To make such other recommendations as the Commission deems necessary to promote certainty and fairness in the sentencing process.

The Commission shall make an interim report to the Governor and General Assembly by September 15, 1978, and shall report annually to the Governor and General Assembly beginning on March 1, 1979 and on or before March 1 of each succeeding year.

I. INTRODUCTION

In the first Special Session of November, 1977, House Bill 1500, embodying the most comprehensive reform in the Illinois criminal justice system in 15 years, was enacted. The bill was signed into law on December 28, 1977, and became effective, by its own terms, on February 1, 1978.

Among many other things, the bill creates a new category of nonprobationable felonies--Class X offenses--which carry mandatory six year minimum sentences; it requires determinate sentences, abolishes parole, provides for enhanced sentencing for repeat offenders, establishes sentencing ranges, sets forth aggravating and mitigating factors, compels judges to articulate their reasons for imposing a particular sentence, and subjects sentences to appellate review. The bill also creates a Criminal Sentencing Commission to assess the impact of these changes and provide recommendations for continuing reform.

Because of the monumental nature of the change, this Commission was created to assure that the state would have an ongoing mechanism for reviewing the implementation of determinate sentencing, for assessing its fiscal impact, and for making suggestions for both legislative and policy changes which may serve to strengthen our criminal justice system.

This Commission has been in existence for shortly in excess of one year. During that period, subcommittees have been established in the following areas: fiscal impact of determinate sentencing; reclassification of felonies; sentencing alternatives; and sentencing guidelines. The

work of each subcommittee is, in large part, dependant upon the development of a meaningful statistical base from which empirical conclusions can be drawn.

The Department of Corrections Information System is equipped to provide the essential data. However, for two significant reasons, it is premature to attempt to glean an accurate statistical portrait from existing information.

First, defendants whose crimes were committed before the effective date of the new act--February 1, 1978--were allowed to choose whether they wanted to be sentenced under the new determinate or the old indeterminate sentencing system. Court data indicates that, toward the end of the year, as many as 50% of all defendants sentenced in Cook County were still receiving a sentencing election. Because of the large number of "elections" in the data base, any analysis of the material would be skewed.

Second, because the number of individuals who received determinate sentences is relatively small, extreme cases in which a sentence was unusually severe or lenient would result in misleading average sentence by offense information.

Because the reliability of any statistical analysis is critically dependant upon the quantity of available information, the Commission has concluded that it would be inappropriate to develop an empirical presentation at this juncture. Instead, the Commission has focused in its deliberations on a number of criminal justice issues which, in the view of a majority of Commission members, require legislative scrutiny. Most of the issues deal directly with various aspects of criminal sentencing;

some, however, were deemed sufficiently important to justify comment even though they cannot be identified as pure sentencing issues.

Accordingly, in this Report, the Commission has set forth its initial program for legislative changes in the criminal justice system. 1/ As statistical data is developed, as practical implementation of the determinate sentencing law proceeds, and as the Commission continues to draw on the expertise of the criminal justice community, it is anticipated that each succeeding report will contain further proposals for legislative action.

1/ The release of this Report, due by statute on March 1, 1979 was delayed to permit the Commission to deliberate on the merits of a great number of criminal justice bills introduced in the General Assembly's current session.

II. SENTENCING PROPOSALS

A. Attempt (HB 274). Section 8-4 of the Criminal Code establishes the sentences that the court may impose for an attempted--but uncompleted--offense. The sentences currently provided for attempted offenses are confusing because they appear to provide two maximums but no minimum for each class of felonies under the Code.

Accordingly, the courts have held that the minimum sentence which may be imposed in all attempt cases is one year: the minimum permitted for any felony. 2/ And this has led to the anonymous result that attempted murder is an offense for which probation may be granted. 3/

There are two reasonable methods for eliminating the existing uncertainty. First, the sentence for attempt can parallel the sentence for the offense as if completed. Second, the sentence can be set at a lower classification with clear limits. A number of variations on these themes or a combination of them with articulated sentencing presumptions present other options.

2/ See, e.g., People v. Moore, 69 Ill. 2d 520, 372, N.E. 2d 666 (1978) (Because statute does not set out minimum, court was under mistaken impression that four year sentence was required for attempted murder, and remand for resentencing necessary)

3/ See People v. MacRae, 47 Ill. App. 3d 353, 361 N.E. 2d 685 (1977).

The Commission believes that an attempt to commit an offense should generally be classified, for sentencing purposes, one class lower than for the offense if completed. Because of the critical distinction between felonies and misdemeanors--and the respective collateral consequences which attach to each--the sentence for attempt to commit a Class 4 felony should be equal to the penalty for the completed offense. To assure that judges have sufficient discretion in extreme cases, the statute should specifically authorize application of the extended term provisions of the Unified Code of Corrections when imposing a sentence for attempt to commit an offense. 4/

By establishing the penalty for attempt at one class lower than that recognized for the completed crime, public policy will reflect the relative severity of the different types of behavior to be punished. At the same time, judges will have sufficient discretion to impose "double" sentences under the extended term provision in extreme cases. While extended term sentencing should be available without specific reference to it in the attempt statute, its inclusion is intended to avoid any confusion in the statute's interpretation and avoid potential delay which could be caused by the need to await the decision of a reviewing court.

4/ Ill. Rev. Stat., ch.38, § 1005-8-2 (1978 Supp) allows a double sentence for certain repeat offenders and those whose crimes include heinous behavior or brutality indicative of wanton cruelty.

B. Habitual Offender (SB 73; HB 300). In the sweeping revisions accompanying the determinate sentencing law, the General Assembly recognized that there is a small group of offenders who will continue to commit violent crimes whenever they are not incarcerated. Because there is a limit to society's level of tolerance, a mandatory life sentence was established for those convicted for three separate instances of murder, treason, rape, deviate sexual assault, armed robbery, aggravated arson or aggravated kidnapping for ransom. 5/

As the law now stands, the provision is so restrictive as to be almost inoperable. All three convictions must occur in Illinois, and each must successively follow after February 1, 1978. Thus, we are not only providing violent criminals with clean slates and ignoring their histories of lawlessness, but we are also failing to take cognizance of the nationwide mobility of these types of offenders.

"It is well settled in this State that the legislature has the power to prohibit particular acts as crimes, fix the punishment for the commission of such crimes and determine the manner of executing such punishment." 6/ This legislative power has been held to include the ability to create habitual offender classifications in order to punish

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5/ Ill. Rev. Stat., ch. 38, § 33B-1 (1978 Supp.)

6/ People v. Williams, 66 Ill. 2d 179, 361 N.E. 2d 110 (1977); see also People ex. rel. Kubala v. Kinney, 25 Ill. 2d 491, 185 N.E. 2d 337 (1962); People v. Smith, 14 Ill. 2d 95, 150 N.E. 2d 815 (1958).

recidivists more severely than one-time offenders. 7/ Given the scope of legislative power, in this area, it would not be inappropriate for the existing statute to be modified to include convictions for offenses of equal severity in other jurisdictions and to operate in a limited retrospective fashion.

It is unseemly to suggest that the Illinois criminal justice system should be bound to disregard convictions for murder or crimes which fall within our most serious penalty classification simply because they were secured in another jurisdiction. Offenses of this nature tend to be committed by individuals without stable ties to a community who drift from one state to another. The state's interest in protecting against crimes of violence within Illinois would be furthered by permitting convictions obtained in other jurisdictions to trigger the habitual offender provision so long as the offenses contained the same elements of proof as we require for capital and Class X offenses.

That one state can take cognizance of the convictions of other jurisdictions for habitual offender purposes is beyond dispute. In People v. Poppe, 394 Ill. 216, 68 N.E. 2d 254 (1946), defendant, found guilty of burglary and larceny, was sentenced to natural life under the then existing Illinois habitual criminal act on the basis of a previous burglary conviction in Ohio. He challenged the sentence on the ground that the Ohio conviction should not have been utilized to make him a habitual criminal in Illinois. Rejecting this argument, the Court held:

7/ See, e.g., People v. Manning, 397 Ill. 358, 74 N.E. 2d 494 (1948); People v. Bellamy, 12 Ill. App. 3d 576, 299 N.E. 2d 585 (1973).

> Other states with statutes similar to our own have held that convictions in other jurisdictions are to be regarded as within the statute....[T]he purpose of the Habitual Criminal Act is to punish people who have committed prior felonies more serious than those who are guilty of a first offense. If [defendant's] contention were correct, it could result in penalizing more heavily those who have previously been convicted of offenses in this state and not penalizing as severely persons who have committed the same crimes in other states, regardless of how many times they have been convicted in other jurisdictions.

68 N.E. 2d at 256. 8/

Nor can the proposed modification of the habitual offender statute be challenged as an ex post facto law because it takes into account convictions secured before the act's passage. Retrospective reliance upon a conviction does not violate the constitutional prohibition against subjecting one to prosecution for conduct committed before the statute proscribing that conduct was enacted. In this situation, the legislature would be establishing a more severe penalty for an offense committed after the new penalty became law.

8/ See also People v. Hamlett, 408 Ill. 171, 96 N.E. 2d 547 (1951) (prior Missouri conviction can be used to authorize habitual offender sentencing). The rationale for this conclusion was best articulated in Cross v. State, 96 Fla. 768, 119 So. 380 (1928):

> For the purpose of punishing the accused as an habitual criminal, it is within the discretion of the legislature to treat former convictions in another state or country as having like effects as convictions for similar offense in this state. To do so is not a punishment for a crime committed in another state. It is a classification for the purpose of punishing crime committed in this state according to the criminal depravity of the accused as demonstrated by prior convictions, for the purpose of which classification those convictions occuring in other states or countries may be taken into consideration, as well as those occuring in this state.

In Gryger v. Burke, 334 U.S. 728, 732 (1943), the United States Supreme Court rejected an ex post facto contention with respect to a similar Pennsylvania habitual offender law:

> The sentence of a fourth offender as a habitual criminal is not to be viewed as either a new jeopardy or additional penalty for the earlier crimes. It is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one.

Upon a consistent rationale, other states have likewise rejected an ex post facto challenge to the use of prior convictions, obtained before the statute's enactment, to trigger the imposition of an habitual offender sentence. 9/

While this Report is not intended to be a legal brief, designed to refute every potential argument, it is fair to indicate that the statutory changes being advocated for the habitual offender statute do not create new law. Indeed, the issues in this jurisprudential area are so well-settled that the United States Supreme Court, in Spencer v. Texas, 385 U.S. 554 (1967), introduced its affirmance of three mandatory life sentences secured under the Texas habitual offender act by stating:

> Such statutes and other enhanced sentence laws, and procedures designed to implement their underlying policies, have been enacted in all the States, and by the Federal Government as well. Such statutes...have been sustained in this Court on several occasions against contentions that they violate constitutional strictures dealing with double jeopardy, ex post facto laws, cruel and unusual punishment, due process, equal protection, and privileges and immunities.

385 U.S. at 559 (citations omitted).

9/ See, e.g., Cross v. State, 46 Fla. 768, 119 So. 380 (1928); People v. Palm, 245 Mich. 396, 223 N.W. 67 (1929); State v. Zywicki, 175 Minn. 508, 221 N.W. 900 (1928).

A more recent sampling of the federal case law indicates that the Constitution does not operate as a barrier to the application of habitual offender laws similar to that being proposed. 10/

Because the suggested statute requires the commission of three of the most serious and violent offenses recognized by our criminal laws--and because all three crimes must be committed within a limited period exclusive of time spent in jail--there is no reason to believe that its constitutionality would be suspect. Accordingly, if Illinois is to have an habitual offender statute intended to protect its citizens from those with no respect for the law and no concern for the physical security of others, it should have a law with meaning, substance, and serious potential application.

C. Expungement of Arrest Record (SB 764). Under current law, one who successfully completes a period of supervision may move for the expungement of his or her arrest record immediately upon discharge and dismissal. 11/

10/ See, e.g., United States v. Bowdach, 561 F. 2d 1160 (5th Cir. 1977) (Federal Recidivist statute upheld); Woodard v. Beto, 447 F. 2d 103 (5th Cir. 1971) (Texas habitual offender statute does not violate Double Jeopardy Clause); Davis v. Bennett, 400 F. 2d 279 (8th Cir. 1968) (Iowa habitual offender statute upheld); Anderson v. Wilson, 397 F. 2d 255 (9th Cir. 1968) (California recidivist provision sustained).

The only cases which have invalidated the application of a life sentence under a habitual offender statute are grounded on the theory that such a sentence, when applied to a relatively minimal, non-violent series of offenses, is cruel and unusual punishment. E.g., Rummel v. Estelle, 568 F. 2d 1193 (5th Cir. 1978); Hart v. Coiner, 483 F. 2d 136 (4th Cir. 1963).

11/ Ill. Rev. Stat., ch. 38, § 1005-6-3.1(G) (1978 Supp.).

This provision is the result of a recent change in the law which removed a three year waiting period before an expungement motion could be made. 12/

The elimination of the three year waiting period has not worked well in practice. Immediate expungement prohibits the courts from making an informed sentencing decision upon a subsequent conviction. As a result, a repeat offender may receive supervision simply because the court is unaware that a different judge may have imposed a period of supervision for a previous offense.

The rationale for the removal of the waiting period was to protect the defendant from adverse collateral consequences which may flow from an arrest record for a relatively minor offense. However, as a practical matter, individuals are otherwise protected from inquiries into their arrest records. 13/

Given this protection, the Commission believes that the potential adverse consequences are so minimal as to be outweighed, on balance, by the court's need for information at the time of sentencing. Accordingly, we recommend that the three year period between discharge and the time to file an expungement motion be re-established in the law.

12/ Ill. Rev. Stat., ch. 38, § 1005-6-3.1(g) (1977).

13/ See, e.g., Ill. Rev. Stat., ch. 48, § 853(e) (unfair employment practice for employer to inquire of job applicant's arrest record). The Armed Services are similarly prohibited from such inquiries on applications for induction.

D. Imprisonment as a Condition of Probation (HB 1850). Probation is a valuable sentencing alternative when a nonviolent offender recognizes the seriousness of his conduct and desires to alter his behavior patterns. Imposed when imprisonment is unnecessary to protect the public and the seriousness of the offense would not be deprecated if the offender were released, probation serves to keep families together and, in many cases, allows offenders to maintain their employment status.

In order to maintain essential flexibility in the imposition of criminal sentences, the Code of Corrections allows the court to attach a number of different conditions to a sentence of probation. This is essential to assure that the offender undergoes a supervised period in which total rehabilitation is an objective capable of achievement.

There are some cases, however, in which periodic imprisonment serves the rehabilitative goals of a probationary sentence. A brief term of incarceration, served, perhaps, on evenings or weekends, may be necessary to make the offender aware of the seriousness of his conduct or otherwise hasten his process on the path toward rehabilitation.

The problem with our current statute is that the permissible term of imprisonment permitted as a condition of probation, three months, is too short. 14/ Confronted with a choice between sentencing the offender to a minimum term of imprisonment or probation with only three months of imprisonment, the court may decide that imprisonment represents the better alternative. This limitation on the court's

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14/ Ill. Rev. Stat., ch. 38, § 1005-6-3(d).

discretion reflects adversely on the policies underlying the use of probation in Illinois.

To assure that the courts have adequate discretion in this important area, we recommend that the period of incarceration that may be imposed as a condition of probation be increased from three to six months.

E. Aggravated Kidnapping (SB 751). The offense of kidnapping becomes "aggravated", and thus subject to an increased penalty, when any of five factors is present: (1) ransom is sought; (2) a child under the age of 13 is the victim; (3) great bodily harm is inflicted or another felony is committed upon the victim; (4) the offender's identity was concealed; or (5) a dangerous weapon was used to commit the offense. When ransom is sought, aggravated kidnapping is a Class X felony; otherwise it is a Class 1 felony. 15/

With the exception of the situation in which the offender conceals his identity, forms of behavior that make a kidnapping aggravated represent the most serious and threatening type of conduct. Since the need to isolate and severely punish this type of conduct was the rationale behind the creation of a Class X felony category, we recommend that aggravated kidnapping be raised to a Class X offense.

While the offender's decision to conceal his identity is threatening, it does not present the same kind of potential danger as the other

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15/ Ill. Rev. Stat., ch. 38 § 10-2.

statutory criteria. Thus, it can be removed from the aggravated kidnapping classification and remain punishable under the regular kidnapping provision.

III. NON-SENTENCING PROVISIONS

A. Substitution of Judge (SB 72). Illinois law provides the accused with an absolute and unequivocal right to remove two judges from presiding over his trial. The right is automatic, not subject to challenge, and not provided to the prosecution. 16/ The defendant need not demonstrate prejudice or prior dealings with the judge in seeking substitution. As construed, the statute is given a liberal interpretation to permit rather than deny substitution. 17/

As it currently exists, the scope of the right afforded by the statute is too broad. Because a defendant may always proceed on the basis of evidence of prejudice, 18/ the unfettered right to remove two judges provides more lattitude for manipulation than is necessary.

The type of forum shopping permitted by the provision is obnoxious to the law. Moreover, in smaller jurisdictions, the statute can seriously affect court calendars and precipitate delay.

Accordingly, we recommend that the number of judges who can automatically be removed from a case be reduced from two to one. In this manner, a harmonious balance can be struck between the defendant's right to change judges and the court's need to control its docket.

16/ Ill. Rev. Stat., ch. 38, § 114-5(a); see People v. Davis, 10 Ill. 2d, 140 N.E. 2d 675 (1957).

17/ See People v. Flowers, 47 Ill. App. 3d 809, 365 N.E. 2d 506 (1977); People v. Harson, 23 Ill. App. 3d 804, 310 N.E. 2d 652 (1974).

18/ See Ill. Rev. Stat., ch. 38, § 114-5(c).

B. Peremptory Challenges (SB 1024). In criminal cases, all states and the federal government permit counsel for all parties to prevent prospective jurors from being seated in a case for two reasons. Challenges for cause are unlimited; they permit the rejection of a juror on specified, provable and legally cognizable grounds which affect partiality. Peremptory challenges, on the other hand, are limited by statute; they are based on sudden impressions and unaccountable reactions which bear no relation to the legal process, and no reason need be given for excusing a juror on the basis of a peremptory challenge.

The modern conception of peremptory challenges was best stated in United States v. Lewin, 467 F. 2d 1132, 1137 (7th Cir. 1972):

> While trial lawyers devote much cogitation and intra-professional discussion to the matter of selecting a proper jury--propriety presumably being equated with fairness and disinterestedness--nevertheless, because of the uncertainty of human reactions to often unknown or unanticipated motivating factors, the entire voir dire procedure is fraught with precariousness as to whether the desired resultant jury will be realized. Character qualities derivable from interrogation are often elusive and the answers to questions may frequently be illusory as a firm basis for any type of challenge.
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> Prejudice and bias are deep running streams more often than not concealed by the calm surface stemming from an awareness of societal distaste for their existence. Extended and trial-delaying interrogation may not pierce the veil, yet a few specific associational questions as a maieutic process may indicate the dormant seeds of prejudice, preconceived and unalterable concepts or other nonfairness disqualifications. The result may not reach the stage of being a basis for cause challenge but could well, because of an abundance of counsel caution, bring about a peremptory challenge which an omniscient eye would have known should have been exercised.
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> We are told that the British courts quickly secure their juries, and criticism is directed at timeconsuming trials within trials in this country when prospective members of the jury may wonder, as their lives are being probed, who is being tried. We think the criticism of too extended voir dire is

> justified but we are not ready to say that the person who has his liberty or, indeed, his property, at stake must be compelled to accept a jury on a strictly cursory, generality interrogation basis.

While peremptory challenges are, thus, well-recognized in American law, there is no uniformity of thought on how valuable they are in the context of a given case or how many of them should be granted. Illinois law now provides each side with 20 peremptories in a capital case, 10 when a felony is at issue, and 5 in all other single-defendant cases. In multiple defendant cases, 12 peremptories are allowed in a capital case, 6 for a felony, and 3 in all other cases.

In practice, jurors are examined in panels of four by the court and counsel. Thus, in the normal, single defendant felony case, where each side has 10 peremptories, it is possible to repeat the inquiries five different times without selecting a single juror.

The delay occasioned by this process is obvious. The costs are staggering. Cook County alone calls 2900 prospective jurors each week, and, as a result of juror fees and transportation expenses, budgets in excess of $5.5 million annually for juror expenses.

If Illinois were consistent with the majority of states in the number of peremptory challenges provided by law, the delay and cost involved would be an essential part of the price of our criminal justice system. However, because 39 states and the federal courts permit fewer peremptories than Illinois in felony cases, there is room for improvement.

Because of the limited number of genuine capital cases in Illinois, no substantial benefit would be gained by reducing the 20 challenges

now permitted per side in death penalty cases. However, the statute should be amended to limit that number to cases in which the death penalty is sought as opposed to "capital" cases which can be interpreted to include any murder case.

In single defendant felony cases, only three states permit more peremptory challenges than Illinois and seven others allow the same number. 19/ More states permit 6 challenges than any other number; and 22 states permit fewer than 6. Accordingly, because 36 states and the federal courts permit 6 challenges or less, it would appear that Illinois could legitimately provide 6 challenges. 20/ In corresponding fashion, the number of peremptory challenges permitted in a multi-defendant felony trial should be reduced from 6 to 4 for each individual defendant.

In misdemeanor cases, 11 states permit more than the five peremptories allowed by Illinois law, and 4 states provide for the same number. Thirty-seven states and the federal courts permit 4 or fewer challenges, with the majority permitting 3. We recommend that Illinois

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19/ The states which permit the same number as Illinois are: Colorado; Indiana; Maryland (20 for the defense); New Jersey; North Dakota; South Dakota; and Texas. The only states which permit more are: Louisiana (12); California (13); and New York (15).

20/ The 14 states in which 6 peremptories are permitted in felony cases are: Alaska (10 for the defense); Arizona; Arkansas (8 for the defense); Connecticut, Delaware, Florida, Georgia (12 for the defense); Idaho; Kansas; Mississippi; Montana; Nebraska; Vermont; and Washington.

reduce the number of peremptory challenges in misdemeanor cases from 5 to 3. 21/

By removing Illinois from its current extreme position and placing it in the mainstream of states with respect to the number of peremptory challenges permitted, we can expedite trials, reduce judicial backlogs, and effect substantial cost savings. It is a rare instance in which accomplishments of this magnitude can be attained without diminishing individual rights. We, therefore, heartily endorse a reduction of the number of peremptory challenges permitted from 10 to 6 in single defendant felony cases, from 6 to 4 in multi-defendant felony cases, and from 5 to 3 in misdemeanor cases.

C. Threats to Public Officials (SB 763). The issues involving threats to public officials do not often surface in the legislative forum. In this instance, representatives of the United States Secret Service and the Executive Security Detail of the Illinois Department of Law Enforcement have expressed concern over the limitations placed upon them by the Mental Health and Developmental Disabilities Confidentiality Act which became effective in early 1979.

21/ The 20 states in which 3 peremptories are permitted in misdemeanor cases are: Alaska; Arkansas; Colorado; Connecticut; Florida; Hawaii; Indiana; Kentucky; Minnesota (5 for the defense); Missouri (in cities under 200,000); Nebraska; New Hampshire; New Mexico (5 for the defense); Oklahoma; Oregon (6 for the defense); South Dakota; Tennessee; Utah; Virginia; and Washington.

As a result of the confidentiality provisions attendant to the new Mental Health Code, the Secret Service, upon learning that a person who has threatened the life of someone under its protection is, or has been, in a facility of the Department of Mental Health and Developmental Disabilities, cannot obtain sufficient information to do its job. DMHDD is prevented by law from providing any information other than the person's name, address, age, and the date of his or her admission to or discharge from a Department facility. 22/

The existing statute has three major flaws: it fails to recognize the protection duties of the state Department of Law Enforcement; it prohibits the flow of any information in the absence of a threat to one's life as opposed to a threat of bodily harm; and it so limits the nature of that information as to restrict the ability of law enforcement personnel to provide the requisite level of protection.

In order to permit protective services to guage the severity of a particular threat, they must be provided with any available information which would indicate whether a person has a history of violence or poses a danger of actual violence. Information of this nature is essential to permit a meaningful determination of the degree of resources to commit to a case and to develop a responsible course of protective services. The individual's privacy interest is insufficient to prevent the flow of information when he or she has communicated a serious threat.

22/ Ill. Rev. Stat., ch. 91½, § 812 (Ill. Legis. Service 1978).

A review of the state law on this subject indicates that Illinois has no existing prohibition on random threats to public officials. While the intimidation statute prevents threats to obtain action or inaction by public officials, 23/ nothing prohibits threats in the absence of a specific request for action. Because the history of this nation sadly proves that public officials and candidates for office are unique targets for random violence, we recommend the enactment of a law which makes it a Class 3 felony to communicate a written threat to the life or limb of a public official.

Federal law protects those in the line of presidential succession; 24/ and a state law can be similarly crafted to protect all state officials, candidates for office, and the immediate families of both. The requirement that the threat be in writing will serve to limit the class of those covered to individuals who have taken a step indicative of its seriousness.

While laws are rarely proposed in the hope that they will never be used, this is one area in which we must not await a tragic event before creating a means for avoiding that event.

23/ Ill. Rev. Stat., ch. 38, § 12-6(a)(6).

24/ 18 U.S.C. § 871.

IV. CONCLUSION

The proposals set forth in this Report should enhance our ability to deal with crime. As meaningful statistical data is developed, we will begin to ascertain the impact of determinate sentencing in Illinois and determine which areas of our current law are in need of reform.

It is the intention of the Commission to catalog developments in the criminal law, conduct hearings to obtain expert input into the need for changes in our criminal justice system, and evaluate empirical information to determine whether we are proceeding on the correct course.

The people of Illinois have plainly indicated their desire to live under the best criminal justice system possible, and the Commission intends to fulfill its role in assuring that the best possible system exists.

Senator Sangmeister, Representative Getty, and Representative Katz have requested that this Report indicate clearly that their position on the merits of specific Bills is reserved pending the consideration of the Bills before their respective committees. Representative Getty and Representative Katz also except to the discussion appearing in this report relating to the constitutionality under ex post facto principles of retroactive application of habitual criminal statutes.