Campaign for Corrective Clemency
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Parole Illinois (PI) is a non-profit organization comprised of people inside and outside of prison who are working toward more humane legal and prison systems. PI publishes reports, research, articles, and campaign materials that promote and enrich public discussion and understanding of the issues surrounding the prison system and criminal legal system in Illinois.

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Forward

The Campaign for Corrective Clemency (CCC) is a Parole Illinois project that seeks to unite as many people and organizations as possible in pursuit of convincing Illinois' Governor to take bold action to rectify the humanitarian crisis that is mass incarceration.

This booklet was designed with people in Illinois prisons in mind. Parole Illinois builds campaigns from the inside of prisons outward. We feel that this model is most effective in mobilizing impacted people and for building the types of movements necessary for true change.

This booklet is constructed as an educational tool/toolkit for people interested in mobilizing themselves, their peers, their loved ones, and sympathetic organizations towards accomplishing the goals of the Campaign for Corrective Clemency.

The following are some frequently asked questions answered to give you a quick overview of the CCC. More information, literature, links, and updates on the campaign can be found at www.correctiveclemency.org.
What is the Campaign for Corrective Clemency (CCC)?

The Campaign for Corrective Clemency seeks to convince Illinois Governor J.B. Pritzker to exercise his executive clemency powers in a much more expansive manner to address the historical harms and injustices associated with mass incarceration, and thereby bring the state one step closer to being the "beacon of humanity" he said he seeks to turn Illinois into. In Illinois, the Governor possesses an "essentially unreviewable power" to grant clemency that is checked only by his own conscience. This gives him the ability to grant clemency to large groups of people, even if they haven't formally applied for clemency via the normal Illinois Prisoner Review Board process.

What, specifically, are we asking the Governor to do?

Two things. First, grant everyone currently serving a Life-Without-Parole (LWOP) sentence or de facto LWOP sentence (of 40 years or more), parole eligibility after serving 15 or 20 years in prison; and second, grant everyone currently serving a number of years subject to the Truth-In-Sentencing (TIS) provisions a partial pardon on that aspect of their sentence and order the Illinois Department of Corrections (IDOC) to recalculate all such sentences under the 50% (day-for-day) standard, effectively abolishing TIS for anyone currently in prison.
What about for someone, for example, who is sentenced to serve 100 years at 100% under TIS?

Ideally, if the Governor granted blanket clemency in both manners, then that person would receive both a partial pardon on the TIS aspect of their sentence, reducing their time to be served to 50 years, and they would also become eligible for consideration for parole after serving 15 or 20 years in prison.

How likely is it that Governor Pritzker would grant blanket clemency?

That depends on how effective we are at: A) convincing him that it is justified (that the current system and historical harms, not to mention legislative inaction, demand bold action on his part); and B) making enough noise so that this is constantly something on his radar.

The most likely time for him to act would be right after the election or right before he leaves office. This is when most Governors are boldest in exercising their executive clemency powers, and have less fear (politically) of letting people out of prison.

Around the world, leaders grant mass clemencies or mass pardons for much less justification. Governor Pritzker would not be the first Illinois governor to grant blanket clemency to cure an injustice. Governor Ryan granted blanket clemency in the form of commuting all death sentences to LWOP.

The two most successful campaigns to challenge aspects of Illinois' criminal/carceral system were the
campaigns to abolish the death penalty and close Tamms Supermax Prison. In the beginning of each campaign, advocates were criticized as being unrealistically optimistic, and it was assumed the campaigns would take many decades to succeed. Both saw success much quicker than anyone foresaw.

Probably the most significant turning point in each campaign was when advocates succeeded in convincing Governors Ryan and Quinn of the inhumanity of the death penalty system and conditions in Tamms respectively. Finally, Governor Pritzker's personal views and concerns about the unfairness of Illinois' criminal "justice" system make him more amenable to acting boldly to correct these injustices than probably any other governor over the past 50 years.

Nevertheless, it is not likely that this campaign will be quick and easy. It will take all of us working hard over a sustained period of time. Therefore, the quicker we get started, the better.

_Are there other objectives that can be achieved by pushing the CCC?_

Yes, definitely. Obviously, the primary objective is to convince the Governor to grant blanket clemency in the manner described above, thereby obtaining relief for as large a group of people currently in prison as possible.

There are, however, several secondary objectives that the CCC may succeed in achieving. First, we hope that pressuring the Governor will cause him to urge the Illinois
General Assembly to pass the Earned Reentry Bill (SB2333/HB2399), to repeal Illinois' TIS law, and enact more bold, retroactive, criminal justice reforms without delay.

Second, all of the messaging around the CCC pointing out the historical injustices and inhumanity of the current system also helps to educate the public and supports all of Parole Illinois' present and future campaigns for less punitive sentencing laws.

Third, we hope it will encourage the Governor and his team to be more active in granting the individual clemencies that come across his desk, and as people adopt some of the individual reasons for granting blanket clemency and incorporate them into their petitions, it will have a choral effect, drastically increasing the number of times these arguments are put in front of him.

Why focus on Death-By-Incarceration (DBI) and Truth-In-Sentencing (TIS)?

First, focusing on DBI coincides with Parole Illinois' campaign to pass the Earned Reentry bill (SB2333/HB2399) (see below). Second, focusing on TIS helps get the messaging out to set the stage for a campaign to repeal Illinois' TIS law in the General Assembly. Third, as we have seen with the Earned Reentry campaign, there is strength in numbers. Including TIS effectively doubles the number of people who would obtain relief if the CCC is successful. Therefore, it drastically increases the number of men and women in prison and their friends and family
members who have a vested interest in the success of the CCC and will hopefully get involved.

Finally, nearly everyone serving a long-term prison sentence is suffering from one or both of these (DBI and/or TIS), in addition to a variety of other injustices listed in this booklet. So, even if they were young adults or are also victims of the accountability or felony murder laws, or victims of Brady violations, crooked cops, etc., they will still receive some relief.

Why push the CCC now, instead of waiting until after we get the Earned Reentry bill (SB2333/HB2399) passed?

The CCC was originally conceptualized during the final months of the Rauner Administration, but with little time to launch a full-scale campaign at that time, and little chance that Governor Rauner would have been receptive to the idea of blanket clemency, Parole Illinois postponed rolling out the CCC. Unfortunately, dealing with COVID-19, limited resources, etc. meant the CCC kept getting put on the back burner.

Parole Illinois now feels this is an opportune time to fully roll out the CCC for several reasons. First, it gives us, at the very least, a full year to convince Governor Pritzker to act if (on the off chance) he does leave office in 2023. If he doesn't leave office we will have even more time to convince him.

Second, we hope putting pressure on him to act will prompt him to pressure the General Assembly to pass the Earned Reentry bill (SB2333/HB2399) and other bolder
reforms to take the pressure off himself. On the other hand, if Governor Pritzker did grant blanket clemency in the form of parole eligibility after 15 or 20 years, that would make it even easier to pass the Earned Reentry bill as it would make retroactivity a non-issue. (In other words, whether the Earned Reentry bill was passed retroactively or prospectively only wouldn't matter as much if everyone currently in prison was already eligible for parole).

Therefore, rather than take away from the push for Earned Reentry, the Campaign for Corrective Clemency will actually do several things to help boost the chances that ER can eventually pass.

Why should other organizations commit time and resources to pushing the CCC?

1) Because it is feasible.
2) Because it is the right (humane) thing to do. If you believe these laws are unjust, that mass incarceration is the civil rights issue of our era, and/or believe in social and racial justice, you should support this campaign.
3) Because it will not negatively affect any organization's 501(c)(3) status. Since we will only be advocating for the Governor to use his executive clemency power, it does not constitute lobbying or even grassroots lobbying.
4) It is another social justice activity that a participating organization can add to their grant application.
How can I help mobilize for the CCC from in prison?

First, study this booklet cover-to-cover to educate yourself on all aspects of the Governor's executive clemency powers and the plethora of reasons justifying blanket clemency for "lifers" and "long-termers." Then do as many of the activities listed in the "Steps To Take Action" section near the end of this booklet, that you have the time, resources, and capability of doing.
Part 1: Executive Clemency Powers

In the United States, the president and every state governor possess some form of executive clemency powers. The power to grant someone clemency has always been grounded in an executive's unfettered ability to be merciful and see that justice and humanity prevail.

Associate Professor Andrew Novak from the School of Criminology, Law & Society at George Mason University, notes that the "clemency power descends from the royal prerogative of mercy dating approximately to the early common law period."\(^4\) Alexander Hamilton said the clemency power exists for humanity and is good policy.\(^5\) Similarly, former Illinois Governor Thompson said it existed to right a wrong or give someone a second chance.\(^6\) Ashley Nellis of the Sentencing Project in Washington, DC explains that "clemency ensures a method of checks and balances on the other branches of government. In any prison sentence, the executive reserves the power to correct or mitigate the effects of an overly harsh law or judicial

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\(^6\) "An Open Letter To Governor Rod R. Blagojevich," Coalition For Answers Regarding Executive Clemency, n.d.
decision."\(^7\)

In Illinois, the Governor's executive clemency power derives from Article V, Section 12 of the Illinois Constitution of 1970 which provides that: "The Governor may grant reprieves, commutations and pardons, after conviction, for all offenses on such terms as he thinks proper."

**Pardons:** "[A] pardon may be full or partial, absolute or conditional. A pardon is full when it freely and unconditionally absolves the person from all the legal consequences of a crime and of the person's conviction, direct or collateral, including the punishment, whether of imprisonment, pecuniary penalty, or whatever else the law has provided; it is partial where it remits only a portion of the punishment or absolves from only a portion of the legal consequences of the crime. A pardon is absolute where it frees the criminal without any condition whatsoever; and it is conditional where it does not become operative until the grantee has performed some specific act, or where it becomes void when some specified event transpires."\(^7\)

The Illinois Supreme Court has said that "the Governor's clemency powers granted by the Constitution 'cannot be controlled by either the courts or the legislature. His acts in the exercise of the power can be controlled only by his conscience and his sense of public duty.'"\(^8\) Thus, his

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power is "essentially unreviewable."\(^9\)

So, what does this mean in practice? It means that the Governor can grant pardons or commutations if he has concerns about the fairness of the trial or sentence, or even an entire system.

For instance, in 1893, Illinois' Governor granted 8 pardons to defendants convicted of the 1886 Haymarket Square Riot.\(^10\) Similarly, in 2003, concern over the fairness of the death penalty system prompted then-Governor Ryan to commute the sentences of all 167 people on Illinois' death row.\(^11\)

Some of them didn't even request a commutation of their sentences.\(^12\) The Illinois Supreme Court ruled that it didn't matter, because, while the legislature can "regulate the process for applying for executive clemency," it cannot "regulate the Governor's authority to grant clemency."\(^13\)

About the only thing Illinois' Governor cannot do is change someone's conviction from one crime to another crime even if it is a lesser one.\(^14\) That's because the person has not been lawfully convicted of the other crime and an executive-imposed conviction would violate the person's constitutional rights to due process, a fair trial, etc.

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\(^10\) Novak, supra note 1, at p. 850.


\(^12\) *People Ex Rel. Madigan v. Donald N. Snyder, Jr.*, 281 Ill. Dec. 581 (Sept. 19, 2003).

\(^13\) Ibid., at p.587.

\(^14\) *People v. Mata*, 217 Ill. 2d 535, 541-42 (Jan. 23, 2006).
Illinois' Governor can, however, reduce a person's sentence from Life-Without-Parole to a parole-eligible life sentence even when Illinois law at the time of the crime had no such sentence available that would apply to that person at the time of conviction or commutation. Just as significantly, Illinois' Governor can grant "blanket clemency" to entire groups of people.

This booklet will focus on these latter powers, and argue that Illinois' Governor J.B. Pritzker should use his executive clemency powers to grant blanket clemency to correct historical injustices that contribute to, and result from, mass incarceration. Governor Pritzker's conscience should guide him to use his powers to cure some of the inhumane excesses of Illinois' criminal legal system.

15 Governor Bruce Rauner pioneered this with the commutation of Sherman Morissette's LWOP sentence for a 1984 conviction of armed robbery to "Natural Life With Possibility Of Parole" on January 11, 2019; Governor Pritzker has similarly commuted numerous LWOP sentences to Life With Parole.

Part 2: Injustices In Need Of Correcting

Mass incarceration was made possible by: A) the systemic dehumanization of anyone accused of committing a crime (both innocent and guilty); B) the massive violation of people's constitutional, civil, and human rights; C) turning a blind eye to official corruption and crimes committed by police officers and other state actors; D) the political self-interests of politicians; and E) the passage of hundreds of poorly thought-out sentencing laws.

Each prison sentence handed down was thus the result of numerous systemic injustices and unjust sentencing laws that are inextricably intertwined with each other. No one currently serving a life, or long-term prison sentence has escaped unscathed from all of these injustices. In fact, each person in prison is actually a victim of several injustices.

We are finally at a point where all of the following are widely acknowledged: 1) that mass incarceration is the civil rights issue of our era; 17 2) that, not only was it brought about by mass injustices, but also creates further mass injustices for people caught up in the criminal legal system and their families; and 3) that we cannot eradicate mass incarceration without addressing long sentences, especially for violent crimes. 18

This will take many years going forward. The victims of mass incarceration, however, are suffering from overly

18 Peter Wagner, Prison Policy Initiative (June 5, 2018).
punitive laws and dying in prison today, which demands action now.

The following is a non-exhaustive catalogue of some of the known, wide-spread injustices effecting people currently serving life or long-term prison sentences in Illinois. Each one individually justifies blanket clemency for dozens, hundreds, or thousands of people, but collectively they justify blanket clemency for everyone serving such sentences in Illinois today.
A) Racial Injustices

At this point, basically everyone in prison is serving additional time simply due to the fact that we live in a historically racist society. The Sentencing Project notes that "[r]acial and ethnic disparities plague the entire criminal justice system from arrest to conviction and is even more pronounced among those serving life sentences."\(^{19}\)

Illinois has been one of the worst offenders in that regard. Whether it was the racist Parole Board of the 1970s, racist cops framing innocent Blacks and Latinos, the Cook County State's Attorney's Office's "Niggers-By-The-Pound" contest,\(^{20}\) or racial disparities at bail, plea bargaining, or sentencing hearings, racial injustice infests every corner of Illinois' criminal legal proceedings.\(^{21}\) This is proven by every metric. While black people comprise less than 15% of all Illinoisans,\(^{22}\) they make up 58% of Illinois' prison population.\(^{23}\)

\(^{19}\) Ashley Nellis, Ph.D., No End In Sight: America's Enduring Reliance On Life Imprisonment, The Sentencing Project (2021), p.5.


\(^{23}\) Ibid.
They also make up 68% of the people serving Life-Without-Parole and de facto life sentences.\(^\text{24}\) Thus, it should come as no surprise that "Illinois has one of the highest incarceration rates of African American emerging adults [18-24-year-olds] in the country: 3 times higher than New York and 2.5 times higher than California."\(^\text{25}\) That rate is also nearly 10 times higher than it is for Whites in Illinois.\(^\text{26}\)

Overall, there are many reasons for racial disparities in sentences handed down. For instance, black people are both more likely to be charged with more serious offenses than Whites for the same acts, and less likely to have competent counsel capable of getting those charges reduced. Which means they are both less likely to get a reduced charge or plea offer, and more likely to be convicted of a more serious offense.\(^\text{27}\) Additionally, Blacks are three and a half times as likely as Whites to be wrongfully convicted of a sex offense.\(^\text{28}\)

So, obviously Blacks - who make up the majority of Illinois' prison population - are serving too much time in prison simply because of the color of their skin, and not due to any true penological purpose. This fact is pretty much accepted as common knowledge at this point.

\(^{24}\) Nellis, supra note 4, at pp.9-10.


\(^{26}\) Ibid., at p.7 (2,477 per 100,000 black emerging adults compared to 261 per 100,000 white emerging adults in Illinois).

\(^{27}\) See e.g., Metcalfe, supra note 21, at pp. 12 and 14.

What is also a fact, but less well known is that Whites and Latinx people are also serving additional time in prison due to society's racial bias against Blacks. While the above-mentioned racial disparities grew out of several systemic problems, they have also been facilitated by media portrayals of the "common criminal" being a young black male, and the related racist dehumanization of "criminals" in general.

This was essential to increasing sentences across the board for all "criminals." That's because it is much easier to pass extremely punitive and inhumane sentencing laws if the majority of Illinois voters (who are white) don't believe they will ever personally fall victim to those laws. Once enacted, however, Whites and Latinx people also find themselves victims of oversentencing when they commit a crime or are wrongfully convicted (even if not always to the extent that Blacks do), and everyone is on the hook for higher taxes to bankroll those inhumane sentences.

\[\text{29 Metcalfe, supra note 21; e.g., racial bias of prosecutors (95% of whom are white. See Joe Watson, "Study: 95% of Elected Prosecutors Are White," Prison Legal News (Feb. 2017), p.44); overpoliced communities which increases arrests and criminal backgrounds of minority defendants, etc.}\]
B) Political Injustices

The overwhelming reason Illinois has so many people serving prison sentences that require them to grow old and die in prison has little to do with public safety, and everything to do with politics and the self-interests of politicians.

We need to recognize that politics play an enormous role in sentencing people to excessively long prison terms; that at a certain point most people no longer need to be incarcerated; and that their continued incarceration is both purely political and counterproductive from a public safety standpoint. For people who find their prison sentences unnecessarily harsh due to incarceration politics, this is a political injustice.

Abbie Smith notes that "[i]mprisonment is wrongful if the person is serving a sentence disproportionate to the circumstances of the crime or who the person is or has become." Virtually everyone currently in Illinois prisons for serious or violent crimes is, or will be, wrongfully imprisoned for a portion of their incarceration due to the fact that their sentence has been increased, not out of any true penological purpose, but rather to benefit the political careers of people running for or holding office.

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i) The "Tough-On-Crime"/Deterrence Myth

Illinois politicians have used "tough-on-crime" rhetoric to get elected for decades. They falsely claimed that harsher prison sentences were the only way to deter crime, and increased sentences over and over again. This facilitated abolishing parole, enacting juvenile transfer laws, the Habitual Criminal Act, firearm enhancements, LWOP sentences, and increased sentencing ranges for nearly every crime imaginable. Moreover, they still make these same baseless claims today, which prevents significant reforms from occurring. Additionally, Illinois legislators authorized judges to increase an individual's sentence if the judge BELIEVES it will deter others (See Section N Below). This is the only aggravating factor that isn't based on any fact, such as location of crime, personal characteristics of the victim(s), or actions of defendant.

31 See e.g., People v. Rodriguez, 2018 IL App (1st) 141379-B, ¶80, citing People v. Butler, 2013 IL App (1st) 120923, ¶36; Michael Tonry, Sentencing Matters (Oxford Univ. Press, 1996),p.3 ("every state since 1980 has enacted laws mandating minimum prison sentences based on the premise that harsher penalties will reduce crime"); Walter S. DeKeseredy and Martin D. Schwartz, Contemporary Criminology (Wadsworth Publishing Co., 1996),p.268 ("One nice thing about claiming that the system is not harsh enough is that, no matter how harsh it becomes, there is no way of proving that it isn't harsh "enough." If getting harsher does not seem to have any important effect on crime there is always room for people to argue that we need to get harsher still."); and "Building A Safer Chicago, 'Calling For A Comprehensive Plan,'" (Nov. 3, 2016), p.2 (Since 2000, Illinois has "increased penalties for firearm possession six times, instituting new mandatory minimum sentences." This seemingly had little deterrent effect as "arrests remained flat.").

32 730 ILCS 5/5-5-3.2(a)(7) (Thompson West, 2003 ed.).
Nearly every reputable study shows that this type of punitive deterrence is largely a myth.33 The Sentencing Project recently explained that "[a] sentence of 40 years will not deter a person any more so than a sentence of 20 years, especially if the individual does not believe he or she will even be caught."34

This has been known for decades by social scientists, criminologists, and politicians. However, tough-on-crime soundbites about deterring crime were/are an easy way for politicians to gain public favor when "criminals" are racialized and demonized, and no one will really take the time to distinguish fact from fiction. Those knowledgeable about the facts understand what former Illinois Prisoner Review Board Chairman Craig Findley has learned after interviewing over 25,000 incarcerated men and women, "that long sentences are not a deterrent to crime."35

What is never mentioned when arguing for more severe sentences to deter crime is the inhumanity of the practice itself. Each person who had or has their prison sentence increased (and their life, and the lives of their

34 Nellis, supra note 19.
35 Remarks at Subject Matter Only Hearing On Parole, Nov. 8, 2018, at James R. Thompson Center, Chicago, IL (Transcript).
families, increasingly destroyed) to allegedly deter others, is irrationally being held responsible for whether others will or won't commit a crime.

For the State to increase the pain and suffering of one individual to coerce the behavior of another is morally repugnant. It is also a political injustice where the people who run afoul of the law have essentially been pre-exploited by yesterday's politicians whose aim was not public safety but rather political longevity.

There are thousands of Illinoisans that remain oversentenced in prison today solely due to these political injustices. It is now recognized that the main driver of mass incarceration is the oversentencing of people for serious and violent crimes. However, while most people also agree that mass incarceration is a humanitarian crisis, what largely goes unsaid is that the buildup was a political phenomenon rather than a public health necessity. The politicians are never held accountable.

Nor is it just legislators. Prosecutors eyeing future political office charge defendants excessively to increase both their conviction rates and the amount of prison time defendants will accept during the plea-bargaining process. They do so to establish their "tough-on-crime" bonafides.

Judges likewise oversentence people to prove they are "tough," and, as mentioned, often do so under the guise that such sentences will deter others. In reality, they are doing so to increase their chances for reelection. For the same reason, judges, more often than not, also refuse to reduce sentences during resentencing hearings.

Former United States Supreme Court Justice Anthony Kennedy admonished both that "our punishments [are] too severe, [and] our sentences too long," and that while "[c]ourts may conclude the legislature is permitted to choose long sentences,... that does not mean long sentences are wise or just."37

Governors too are responsible for this political injustice. "During the era of mass incarceration, most governors have strayed from the tradition of using executive clemency powers to correct injustices."38 Governors denied, and continue to deny, people clemency, not out of any deficiency of the applicant, but rather out of political calculations, and fear of the "Willie Horton effect" -- the possibility, however slight, that if they let someone out of prison who then goes on to commit a heinous crime it may damage their chances of getting reelected or running for the presidency.

Former Governor Mike Huckabee of Arkansas, a devout Christian who believes in forgiveness and second chances, noted that when a governor shows an

38 Ghandoosh, supra note 11, at p.18.
unwillingness to use his or her clemency powers, it amounts to "playing politics with people's lives." Former Illinois Governor Rod Blagojevich famously claimed he did not believe in clemency while governor, but then begged President Trump for years to grant him clemency when he (Blagojevich) was in federal prison.

ii) Nonretroactive Ameliorative Legislation

Over the past couple of years, Governor Pritzker has signed several pieces of ameliorative (corrective) legislation which either reduce culpability for crimes, reduce punishments for crimes, or provide an avenue for early release for those who commit crimes in the future while in their youth. Unfortunately, while the "tough-on-crime" rhetoric has died down some, the "Willie Horton effect" seems to still have some legs in the General Assembly, as none of those ameliorative laws are retroactive. That means they failed to provide any relief to any of the people in prison who are victims of the prior unjust laws the legislature was correcting. This is yet another political injustice.

This is especially unjust, because, as Danielle Sered, author of the book "Until We Reckon: Violence, Mass Incarceration, And A Road To Repair," explains, "there is arguably no one more entitled to that [societal] repair than someone who has paid - and is continuing to pay - the price for our misjudgment and mistakes [in sentencing.

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40 See Sections II(C), II(D), and II(F) of this booklet.
Democratic Primary Candidate Corey Booker noted that when ameliorative legislation is passed, but not made retroactive, you "could literally point to the people who are in jail unjustly right now," and encouraged his running mates to promise to use his or her executive clemency powers to grant retroactive application of the ameliorative drug legislation.\textsuperscript{42}

\textsuperscript{41} Danielle Sered, \textit{Until We Reckon: Violence, Mass Incarceration, And A Road To Repair} (The New Press, 2019), p.162.
C) Constitutional Injustices

People serving long prison sentences are often incarcerated despite their convictions being the result of serious constitutional violations. Unfortunately, due to: 1) a long history of anti-"criminal" legislation that put up innumerable procedural roadblocks\(^{43}\); 2) judges making ever greater assumptions about what would or would not have affected a jury's judgment and ever greater leaps in mental gymnastics to justify misconduct by police and prosecutors; and 3) an insurmountable societal credibility imbalance about who is trustworthy (i.e. police/prosecutors vs. "criminals") -- these constitutional violations were often ignored in order to maintain a conviction at all costs. This has resulted in many innocent people being wrongfully convicted and sentenced to death-by-incarceration.

Moreover, many others received unconstitutional sentencing hearings and yet the sentence was allowed to stand. For instance, the United States Supreme Court acknowledged that many extended term sentences and

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\(^{43}\) Illinois Post Conviction Hearing Act, 725 ILCS5/122-1 et seq. (strict time limits and limitation on petitions to one petition unless extenuating circumstances exist); Frivolous Lawsuits Statute, 735 ILCS 5/22-105 ("lawsuits" includes challenges to convictions, and imposes disciplinary segregation on incarcerated people for filing pleadings, motions, or other filings that a court construes as frivolous); Relief From Judgments Statute, 735 ILCS 5/2-1401 (strict time limits to file even if the State fraudulently conceals evidence); Antiterrorism and Effective Death Penalty Act ("AEDPA") of 1996 (bars a federal court from granting habeas relief unless the state court's decision "was contrary to, or involved an unreasonable application of clearly established federal law" or "was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." Winston v. Kelly, 592 F.3d 535 (4th Cir. 2010) (quoting 28 U.S.C. § 2254(d))).
sentencing enhancements were unconstitutional in the case of *Apprendi v. New Jersey*,\textsuperscript{44} but the courts decided that this ruling would not be applied retroactively,\textsuperscript{45} thereby denying relief to hundreds of men and women in Illinois prisons serving unconstitutionally enhanced or extended sentences.

The list of constitutional violations is never-ending. Some of them will be addressed in the following pages, but whether it was secreted "street files" containing exonerating evidence, unconstitutional arrests from "investigative alerts,” crooked cops (Burge, Guevara, Watts, Bartik, etc.) torturing, coercing, and/or framing people, unscrupulous prosecutors withholding favorable or exonerating evidence, etc., there are thousands of people currently in prison that have suffered constitutional injustices which the courts later excused as harmless, or refused to address due to procedural roadblocks, in order to uphold convictions and sentences.

In Chicago especially, the State's modus operandi has been to get a conviction at all costs in the above manner. These are all constitutional injustices perpetrated on the defendants -- both innocent and guilty alike -- denying them a fair trial and due process.

In order to truly fully address these various constitutional violations fairly, police and prosecutors would need to be disciplined, defendants would need to be identified, convictions and sentences would need to be

\textsuperscript{44} *Apprendi v. New Jersey*, 530 U.S. 466 (2000).
\textsuperscript{45} *People v. De La Paz*, 204 Ill. 2d 426 (2003).
overturned, and new trials and sentencing hearings would need to be conducted.

As we have seen, our criminal legal system is neither designed to make, nor interested in making, those corrections. Instead, mass incarceration has resulted in a court system that routinely justifies the violation of people's constitutional rights as a way to manage the courts' overwhelmed dockets. For instance, ruling *Apprendi v. New Jersey* retroactive would have meant performing hundreds if not thousands of new sentencing hearings.
D) The Injustice Of Death-By-Incarceration (DBI)

The State of Illinois is experiencing an unacknowledged and little-known humanitarian crisis where thousands of people are oversentenced to death-by-incarceration (DBI). This includes both sentences of Life-Without-Parole (LWOP) and de facto life sentences where people have so much time to serve that they are unable to live long enough to see their release date. These DBI sentences destroy thousands of lives for no legitimate penological purpose, are an historical anomaly in Illinois and around the world, and are completely unnecessary for public safety.

Fifty years ago, there were zero DBI sentences in Illinois. A sentence of "life," or any significant number of years in prison in Illinois, carried with it an opportunity for parole after eleven years and three months.46 While Illinois had the death penalty until 2011, it was only handed out about a dozen times per year statewide.47 At the height of the death penalty in Illinois -- when many innocent people sat awaiting execution -- death row never held more than 200 people.48 Today, Illinois sentences more than 200 people to death-by-incarceration every year.49 This transition from viewing a dozen people per year as

48 Ibid., at p.38.
irredeemable to hundreds was not only unjustified, but has resulted in the steady growth of Illinois' "slow-death row."

By September 2018, Illinois had 1,594 people sentenced to LWOP, 2,473 people sentenced to serve more than 40 actual years in prison, and hundreds of others sentenced to slightly lesser terms of imprisonment that they won't outlive. Nearly 2,000 of them (1,940) were sentenced to DBI for crimes that occurred when they were younger than twenty-six years old, meaning they had a greater capacity for rehabilitation (See Section F below). Hundreds were found guilty under the felony murder rule or a theory of accountability (See Sections G and H below). Others were sentenced to DBI for being labeled a "habitual criminal" (See Section I below).

How did we get to the point where we sentence hundreds of men and women every year to spend decades in prison until they die there? We arrived at the current humanitarian crisis via emotional hyperbole, racism, political gamesmanship, the abandonment of rehabilitation as an ideal, and the mass demonization and dehumanization of "criminals."

First, Illinois abolished parole in 1978, then systematically increased every sentencing range and made people serve a greater percentage of their sentence in

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prison, and started adding additional time in prison for using a gun during the commission of a crime.\textsuperscript{53} Second, unlike most other states, Illinois lacked both medical and geriatric release policies.\textsuperscript{54} Thus, Illinois has lots of ways to get a DBI sentence, but only clemency to get people released even if they no longer pose any threat to society. (A recently enacted compassionate release law requires one to be terminally ill to be considered for release).

Illinois Representative Rita Mayfield (D-Waukegan), noted in 2018 that "we've had ... one enhancement after another. Longer and longer sentencing, we're taking these positions, we're going to be tough on crime, we're locking everybody up for life, and it's just not right."\textsuperscript{55}

The year before that, in 2017, the European Court of Human Rights ruled that denying someone an opportunity for parole constitutes "inhumane and degrading treatment."\textsuperscript{56} The year before that, in 2016, Pope Francis told the United States Congress that "a just and necessary punishment must never exclude the dimension of hope and the goal of rehabilitation."\textsuperscript{57}

In Illinois, these DBI sentences are especially egregious because too many of the people serving them are actually innocent. The cavalcade of recently exonerated

\textsuperscript{53} 730 ILCS 5/5-8-1(d)(i)-(iii).
\textsuperscript{54} Nellis, supra note 19, at p. 29.
\textsuperscript{55} Ill. Rep. Rita Mayfield (D. Waukegan), remarks at Subject Matter Only Hearing On Parole, Nov. 8, 2018, at the James R. Thompson Center, Chicago, IL (Transcript).
\textsuperscript{56} Ben Miller and Daniel S. Harawa, "Democrats Should Stop Saying Some People Should Die In Prison," slate.com, Jan. 22, 2020: 12:08PM.
lifers demonstrates this fact. Unfortunately, not everyone who is innocent and sentenced to DBI has the resources or support necessary to take on the State and prove their innocence. As a result, innocent people will die in prison if nothing is done.

In 2003, Governor Ryan cleared Illinois' death row because he felt the State's death penalty system was broken.\textsuperscript{58} Unfortunately, he and many others misdiagnosed the problem. It wasn't simply the death penalty system. Rather, the State's entire criminal legal system is broken. The death penalty system was just the canary in the coal mine.

The canary showed us that more people on death row were innocent than were executed over the nearly three decades after Illinois reinstated the death penalty.\textsuperscript{59} (What is still unknown is how many of the executed were also innocent.) This should have alerted everyone to problems affecting the entire criminal legal system.\textsuperscript{60} However, the only reason all of those wrongful convictions came to light was because a death sentence (by execution) provides heightened due process. During appellate and post-conviction proceedings there is often intense scrutiny over

\textsuperscript{59} Historic Illinois Hearings Address Innocence And The Death Penalty, Death Penalty Information Center (Sept. 15, 1999); See also Warden, supra note 47, at p.382 ("Stunningly, for each defendant executed in Illinois, 9.5 death sentences had been overturned.").
\textsuperscript{60} See e.g., Ashley Nellis, Point: A Death By Any Other Name, Inside Sources (Dec. 27, 2019) ("The well-documented deficiencies of the death penalty process should have raised serious concerns about sentences of life imprisonment, sentences that receive substandard critical review.").
the fairness of the trial and sentencing hearing, and there are more resources provided to capital defendants, and more procedural opportunities to raise challenges.

Thousands of men and women go through the same broken system, with all of its police and prosecutorial misconduct, ineffective lawyers and overworked public defenders, and politicized and biased judges. However, those who aren't sentenced to be executed are denied that heightened scrutiny and additional resources and opportunities to prove their innocence solely because they were not deemed "evil" enough to require executing.

For the wrongfully convicted, the chance that their wrongful conviction is overturned is much greater if they were sentenced to be executed by the State rather than sentenced to grow old and die in prison (i.e. DBI). As one former federal Circuit Court judge noted, innocent people sentenced to be executed are better off because they receive a "whole panoply of rights of appeal and review that you don't get in other cases."  

This fact is borne out by statistics. Seventy-three percent of people on death row have their convictions overturned due to serious, reversible error, but only seven

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percent of lifers have their convictions overturned.\textsuperscript{62} Therefore, one could estimate that over half of "lifers" had serious, reversible errors in their trials that went unacknowledged by the courts, and many imprisoned people in Illinois are actually innocent.

Illinois has thus far failed to heed the canary's true message and reform the State's criminal legal system. Instead, all it did was kill the canary -- the death penalty. Illinois' criminal justice coal mine is still as lethal and unjust as it ever was. Thousands of people, a disproportionate number of whom are black, and many who are innocent, are sentenced to suffer for decades in prison until they die there.

Any serious examination of death-by-incarceration sentences reveals the inherent injustices of DBI. First, as noted above, the sentences themselves are historical anomalies. They are unnecessary and serve no true penological purpose. We never needed them before, and we don't need them now -- they do not deter crime and instead over-incapacitate to the point that significant State resources\textsuperscript{63} (resources that could be used to actually prevent

\textsuperscript{62}A Matter Of Life And Death, 119 Harv. L. Rev. 1838 (2006) (In Illinois, "[a] landmark study found that forty-three percent of Illinois death penalty cases had been reversed on direct appeal or at the post-conviction stage as of 1995. Of the cases that graduated to the federal habeas corpus stage, the study found forty percent had been remanded for retrial or re-sentencing."); see also Warden, supra note 47, at pp. 381-82, citing James Lieberman, Jeffrey Fagan & Valerie West, A Broken System: Error Rates In Capital Cases, 1973-1995, Colum. Law School, Public Law Research Paper No. 15, 61 tbl. 7 (2000).

\textsuperscript{63}See e.g., Defining Violence: Reducing Incarceration By Rethinking America's Approach To Violence, Justice Policy Institute (Aug. 2016), p.20 (According to the National Conference on State Legislation, Illinois currently
crime) are diverted solely to satiate society's appetite for revenge and sanctimony.

Moreover, DBI sentences are inhumane. In 1992, the United States ratified the International Covenant on Civil and Political Rights (ICCPR).\(^6^4\) Connie de la Vega and colleagues at the University of San Francisco's School of Law, note that "[s]entence severity in the United States has reached an extreme that contradicts its stated human rights obligation to direct its prison system towards the primary goals of reformation and social rehabilitation, as set forth in the [ICCPR]."\(^6^5\)

Neither judges nor legislators possess crystal balls that forecast whether someone will continue to pose a threat to society for the rest of a person's life; their hubris only makes them think they do. That is why we are now in the predicament we are in with DBI sentences.

Most people who study the problem have come to the same conclusion, recommending nearly identical fixes: 1) abolish the practice of sentencing people to DBI; 2) implement a fair and inclusive parole system, giving everyone the opportunity to prove that they deserve release.
after 15 or 20 years of incarceration, or cap all sentences at 20 or 30 years; and 3) expand the use of executive clemency.\textsuperscript{66}

Despite these recommendations, and despite all of the above-mentioned facts, evidence, and history, as well as the clear need for reforms, the Illinois legislature has failed to address this humanitarian crisis in any way, leaving people to die in prison on a weekly basis. (Due to COVID-19, the number of people who died in prison last year likely doubled to around 200). Even with COVID-19 under control, people will continue to die in prison -- as they have for decades -- due to the trifecta of oversentencing, harsh prison conditions, and inadequate medical care.

E) The Injustice Of "Truth-In-Sentencing"

Truth-In-Sentencing laws are an injustice not only to the people sentenced under them, but to taxpayers as well. Prior to the late 1990s, people serving time in prison for any offense were granted day-for-day goodtime; meaning they only had to serve half of their imposed sentence. In reality, due to the award of additional goodtime credits, the average person only served 44% of their sentence. In the late 1990s, however, Illinois enacted its own "Truth-In-Sentencing" (TIS) law, which requires anyone convicted of a violent crime or murder to serve 85% or 100% of their time, respectively.

Many other states had already adopted a TIS law by that time, but Illinois resisted doing so during the 1980s and early 1990s, and instead chose to increase sentencing ranges for most crimes. When Illinois finally decided to implement its own TIS law, it was largely because of the financial aid the federal government was offering states in

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67 See e.g., People v. Dorsey, 2021 IL 123010, 51-52.
Some states, such as Mississippi, successfully adjusted after implementing its TIS law. Mississippi’s judges, prosecutors, and defense lawyers worked together to reduce average sentences handed out by half, so that the amount of time someone spent in prison for a crime remained roughly the same before and after TIS was implemented. This also meant the costs of incarceration remained steady.

The IDOC was skeptical that this would be the case in Illinois, and was concerned about "the fiscal impact if the law resulted in inmates actually serving longer sentences." The IDOC was right to worry, because unlike in Mississippi, in Illinois the "length of court-imposed sentences changed very little as a result" of TIS and subsequently the time to be served "increased dramatically."

So too did the cost to house the increasing (and increasingly aging) prison population due to people staying longer in prison, often until death. In 1995, IDOC appropriations were $755 million, and by 2017, they had risen to $1.45 billion. Coincidentally (or not), the National Conference on State Legislation found that Illinois spends over $800 million per year incarcerating people for

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72 Olsen supra note 69, at pp.6 and 19.
73 Olsen supra note 69, at p.3.
74 Olsen supra note 69, at p.6.
75 LaVigne supra note 71, at p.9.
76 IDOC Adult Advisory Board Minutes, Oct. 16, 2017.
violent offenses. That is in large part because, by enacting its TIS law, Illinois legislated itself into an annual minimum of $250 million in added liabilities.

One might think those federal funds would have helped Illinois cover those costs, but alas no. The federal aid was both short-lived and meager, totaling less than $125 million over less than a decade. Thus, the total federal aid didn't cover a single year's worth of added liabilities.

The human costs have been much greater. TIS alone doubled the percentage of people sentenced to de facto life sentences for murder convictions and added many years of imprisonment to thousands of people's sentences.

Once again politics, rather than public safety, was at the heart of implementing Illinois' TIS law. Not only are these additional years being served after the person poses little to no threat to public safety, but the Truth-In-Sentencing Commission that recommended adopting the law was "composed largely of political appointees and law enforcement officials."

In addition to the fallacy of "deterrence," politicians sold TIS to the public with two additional arguments ---

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78 Dole supra note 70, at pp.16 and 18.
80 From 15% before TIS, to 30% after TIS was enacted. See Olsen supra note 69, at p.4.
81 O'Reilly supra note 46, at p.1019; citing 730 ILCS 5/3-6-3.1(a).
incapacitation and simplifying the sentencing code.\textsuperscript{82} Doubling the incapacitation of people, however, ignores the fact that most people age out of crime,\textsuperscript{83} and "[r]ather than clarifying the Code [TIS] add[ed] yet another layer to [an already complicated] system."\textsuperscript{84}

Legislators then complicated things further. TIS originally only increased time served in prison for murder and some violent crimes requiring people to serve 100\% or 85\% of their sentences respectively. Since 1998, however, "the legislature has added addition[al] offenses ... subject to the 85 percent requirement."\textsuperscript{85}

Interestingly, by 2014, even though Mississippi had been much more responsible in its implementation of TIS than Illinois, Mississippi nevertheless decided TIS was largely a mistake and reduced the portion of time that even people "with certain violent offenses" have to serve before becoming eligible for parole from 85\% to 50\%.\textsuperscript{86}

In contrast, in Illinois, little has been done to roll back TIS despite the fact that it has contributed greatly to mass incarceration, exacerbated the State's budget crises, and unquestionably wasted taxpayer money.

By 2016, the Illinois State Commission on Criminal Justice and Sentencing Reform recommended "[r]educing

\textsuperscript{82} O'Reilly supra note 46, at p. 986.
\textsuperscript{83} Nellis supra note 4, at p. 24; and One In 31: The Long Reach Of American Corrections, Pew Center on the States, The Pew Charitable Trusts (March 2019), p.19.
\textsuperscript{84} O'Reilly supra note 46, at p.1022.
the length of prison stays," and found TIS mandates "counterproductive." Unfortunately, the commission failed to call for the only sensible fix --a complete repeal of Illinois' TIS law. Instead, all it recommended was a negligible reduction for each category (100% to 90%, 85% to 75%, and 75% to 60%).

Unsurprisingly, Illinois' legislature has largely failed to act on even these pathetic recommendations. (In 2017, it made a tiny adjustment to TIS by reducing the percentage for some drug crimes from 75% to 60%). For many people in prison, however, these minor recommended reductions, even if they passed into law, would be meaningless. For instance, a 50-year sentence at 100% or 90% would still mean dying in prison. At the pre-1998, non-TIS rate, however, that same person would be released after 23-25 years; and would have been eligible for parole consideration after 11 years and 3 months if sentenced for a crime occurring prior to 1978.

Denying people the opportunity to earn goodtime or early release runs counter to the alleged rehabilitative mission of the Illinois Department of Corrections. Moreover, for the 40% of people who commit violent crimes when they are juveniles or young adults (18-24 years old) this may also violate Illinois' Constitution.

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87 Ghandoosh supra note 11, at p.5.
89 Ibid., at p.59.
90 Ibid., at p.59.
91 730 ILCS 5/3-6-3(a)(4.7)(ii); Public Act 100-3, & 35 eff. Jan. 1, 2018.
One Illinois Appellate Court Justice (Aurelia Pucinski) has opined that TIS may be unconstitutional for juveniles, and "urge[d] the legislature to reconsider the Truth-In-Sentencing Act as it applies to juvenile offenders." That was in 2017. The Justice's urging seems to have fallen on deaf ears.

Justice Pucinski's argument about the unconstitutionality of TIS applied to juveniles would seem to apply equally to young adults age 18-24, as the same brain science her argument rests upon shows that a person's frontal lobe does not finish maturing until age 25. (See Section F below).

Serving more time in prison than necessary to achieve legitimate penological objectives (retribution, incapacitation, and rehabilitation) is an injustice to those serving the sentences. Moreover, it is also an injustice to taxpayers whose money is being wasted to foot the bill.

Truth-In-Sentencing has been an unmitigated disaster. It pushed the prison system in Illinois over capacity, contributes nothing (possibly a net negative) to public safety, and wastes billions of dollars that could be redirected towards programs and services that actually help to prevent crime.

If sentence lengths imposed prior to the implementation of TIS were sufficient to carry out

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92 "To serve justice in Illinois and increase public safety by promoting positive change in offender behavior, operating successful reentry programs, and reducing victimizations."

93 Justice Pucinski in the concurring opinion of People v. Buffer, 2017 IL App (1st) 142931, ¶¶74-83.

94 Ibid., at ¶83.
penological objectives when people only had to serve 50% or less of that time, then relieving people of having to serve out the TIS part of their sentences would not negatively impact public safety, but could result in a more responsible use of taxpayer money, and would be the more humane thing to do.
F) The Injustice Of Labeling Juveniles And Young Adults As Disposable

One hundred and twenty-three years ago, Illinois pioneered the first juvenile justice system.\(^{95}\) It was founded on the idea that, since juveniles were less mature than adults, they were both less culpable for their crimes and more amenable to change. Collectively, society at that time understood this to be true simply from everyday observations of juveniles and common sense. Thus, the juvenile justice system was created to deal with juveniles outside of the adult criminal legal system, and to treat them less harshly than adults.

For the next 80 years, this was the status quo. In the 1980s, however, the United States was well on its way towards a "tough-on-crime" mindset, and this collective knowledge was basically forgotten or ignored.\(^{96}\) Marc Morjé Howard explains in his book "Unusually Cruel: Prisons, Punishment, And The Real American Exceptionalism" that "the very purpose of prison shifted overwhelmingly in the direction of punishment, and the principles of rehabilitation and correction became empty


slogans of another era." This bled into the area of juvenile justice as well.

Once again, politics trumped common sense, and that collective knowledge was replaced, or drowned out, by hyperbole about how people who commit crimes were "born evil," could never change, and should be permanently incarcerated to protect society.

By the 1990s, Hillary Clinton and others were labeling juveniles "superpredators," and many states began passing automatic transfer laws to try, convict, and sentence children as if they were adults.

In the 2000s, however, there began a reckoning. Advances in brain imaging techniques, particularly the use of functional magnetic resonance imaging (fMRI) allowed neuroscientists to better understand how the brain matures. They discovered that, on average, people's brains don't fully mature until we hit our mid-twenties.

Neuroscientists also learned that, because the prefrontal cortex is one of the last areas to develop, and

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97 Howard supra note 51, at pp.86-87.
because that area is responsible for executive functions like assessing risks versus rewards, engaging in long-term planning, and calculating consequences -- that the original wisdom about juveniles was correct. Moreover, these brain images also provide convincing evidence that that same logic about reduced culpability and increased susceptibility to rehabilitation is equally applicable to 18-24 year-olds. Thus, neither juveniles nor young adults should be labeled as permanently incorrigible or beyond redemption.

This fact is not only supported by recent studies of the brain maturation process, but also by crime statistics that show that most people "age-out" of crime, and crime rates are much lower for people over the age of 25.\textsuperscript{100} As Marc Mauer notes, "an 18-year-old arrested for robbery is no more likely to be arrested for this crime by the age of 26 than anyone in the general population."\textsuperscript{101}

The combination of all this evidence should have finally put the nail in the coffin of the "born evil" and "permanently incorrigible" myths. Not surprisingly it has in some states, just not in Illinois.

At least 20 states have abolished LWOP for juveniles.\textsuperscript{102} Additionally, several states and the District of Columbia have begun offering increased parole eligibility or early release for people who committed crimes as young

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\textsuperscript{100} Scott supra note 99, at p.7.
\textsuperscript{101} Marc Mauer, "A 20-Year Maximum For Prison Sentences" (Winter 2016, No. 39-6 Min. Read).
\textsuperscript{102} U.S.S.Ct. Justice Sonya Sotomayor, in dissenting opinion of Jones \textit{v.} Mississippi, 141 S.Ct. 1307, 1328 (2021) ("Today, the Court guts Miller \textit{v.} Alabama... and Montgomery \textit{v.} Louisiana...").
adults. For instance, "[i]n 2020, the Council of the District of Columbia passed legislation that provides people who were under 25 at the time of their offense and sentenced to a long term, the chance to petition the court for resentencing and early release after 15 years." 

Even in red state South Dakota, former judge and current Republican State Senator Arthur Rusch proposed a bill with bipartisan support that would grant parole eligibility at age 50 for anyone who committed a crime when under 25 years old. This is much more progressive and humane than anything Illinois has been able to pass thus far.

While the Illinois General Assembly grudgingly raised the age of the automatic transfer statute to 16 and reduced the number of qualifying crimes, way too many juveniles still find themselves magically proclaimed adults by the State in order to treat them more punitively. Moreover, while the General Assembly also passed legislation in 2019 to give SOME juveniles and SOME young adults (18-20 year-olds) parole eligibility for SOME crimes after serving at least 10-20 years in prison, they refused to make the law retroactive.

This means that hundreds of juveniles and young adults currently in Illinois prisons for those crimes must

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103 Ghandoosh supra note 11, at p. 5 ("In 2018, California built on this precedent by directing individuals convicted under the age 26 to 'Youth Offender Parole Hearings'.").
104 Nellis supra note 19, at p.5.
105 South Dakota Senate Bill 146 (2021).
107 Illinois House Bill 531 (100th General Assembly).
still serve out their entire sentences.\textsuperscript{108} Justice Pucinski has noted that this legislation will leave an estimated 170 currently incarcerated juveniles and untold young adults in "legal limbo" created by the legislature; and called the lack of an opportunity for parole "the fundamental flaw in our current system of justice for emerging adults."\textsuperscript{109}

In 2020, First District Appellate Court Justice Carl A. Walker joined calls to end LWOP sentences for juveniles,\textsuperscript{110} and asked "the courts and the legislature to consider possible changes to the law applicable to juvenile offenders."\textsuperscript{111} Instead, the Illinois Supreme Court has begun to roll back some protections for juveniles sentenced to death by incarceration (DBI).\textsuperscript{112}

The General Assembly similarly seems to be of little help in abolishing DBI for juveniles and young adults. A recent piece of legislation sponsored by Rep. Rita Mayfield (D. Waukegan) and illogically supported by Restore Justice would replace one DBI sentence (LWOP) with another (de facto life; a requirement that those 20 and under who are sentenced to LWOP serve 40 years before they get the first of two opportunities for release).\textsuperscript{113} As usual in Illinois, the legislation has numerous nonsensical and politically


\textsuperscript{109} \textit{People v. Braboy}, 2020 IL App (1st) 181568, ¶¶67-70 (dissenting opinion of Justice Pucinski).

\textsuperscript{110} \textit{People v. Wyma}, 2020 IL App (1st) 170786, ¶30.

\textsuperscript{111} Ibid., at ¶31.

\textsuperscript{112} \textit{People v. Lusby}, 2020 IL 124046.

\textsuperscript{113} Illinois House Bill 1064 (102nd General Assembly).
motivated categorical carveouts and isn't retroactive to people currently in prison.

Thus, in the face of all the science and repeated calls for the legislature to address the oversentencing of juveniles and young adults, they failed to take any action to grant relief to thousands of people already sentenced to DBI. So the reckoning continues to arrive at a snail's pace in Illinois, and people in prison continue to die in vain watching the snail's progress.

The United States is the only country "in the world today that continues to sentence child offenders to LWOP." As of September 2018, nearly 2,000 people were serving DBI sentences for crimes committed when they were juveniles or young adults. Many of them were additionally found guilty under a theory of accountability or the felony murder rule, meaning they personally may not have harmed anyone. (See Sections G and H below).

In 2019, prior to leaving office, Colorado Governor John Hickenlooper granted parole eligibility to a dozen juveniles and young adults who had been convicted of murder and sentenced to DBI. Likewise, before he left office, California Governor Jerry Brown granted parole eligibility to numerous juveniles and young adults who had

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114 See also People v. Decatur, 2015 IL App (1st) 130231, ¶18; People v. Cavazos, 2015 IL App (2d) 120171, ¶101; People v. Branch, 2018 IL App (1st) 150026, ¶43; and People v. Pearson, 2018 IL App (1st) 142819, ¶45.
116 IDOC Data Sets.
117 Ghandoosh supra note 11, at p.18.
been sentenced to LWOP for murder.\textsuperscript{118} He stated that "[t]heir crimes were severe, [but] [i]t's our belief that young offenders who have grown into exemplary individuals, and who have clearly learned from their mistakes, should be considered for a second chance."\textsuperscript{119}

If society now acknowledges the fact that juveniles and young adults are more amenable to rehabilitation and less culpable for committing crimes than fully mature adults; then maintaining sentences that ignore those facts and requiring juveniles and young adults to die in prison without any review for release is inhumane. It is therefore also an injustice every time ameliorative legislation is passed for juveniles and young adults that does not apply retroactively to all incarcerated individuals who were under 25 years old when the crime occurred.

\textsuperscript{118} Ghandoosh supra note 11, at p.17.
G) The Injustice Of Illinois' Accountability Law

Illinois law states that anyone who aids or abets the principal actor of a crime before or during the commission of that crime is "accountable" for it and will be convicted and sentenced as if he or she had committed the crime themself.120

Illinois law also claims that accountability is not an element of the crime, but simply a "mechanism for," or "theory of," conviction.121 This means that accountability need not be in the indictment, does not require a separate jury instruction, nor need a unanimous jury finding concerning whether the person is accountable for the crime or is the actual perpetrator of it.122

Defendants have argued for decades (to no avail) that: 1) by accountability not being in the indictment, it is a violation of their constitutional right to adequate notice of the charges and accusations against them123; and 2) by not requiring a separate jury instruction or specific finding of accountability-vs-principal actor, it violates their constitutional right to a unanimous jury verdict124 (because half the jury could find the person guilty of being the actual perpetrator, but the other half could believe there was

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122 See e.g. People v. Krouse, 30 Ill. App. 3d 446 (1975); and People v. Ruscitti, 27 Ill. 2d 545 (1963).
123 See e.g. People v. Cooper 194 Ill. 2d 419 (Nov. 22, 2000).
124 See e.g. the Post-Conviction Petition filed in People v. Done, No. 98 CR 14769 (2005).
reasonable doubt he or she committed the crime, but had aided or abetted someone who did).

Illinois courts have illogically found that someone can even be held accountable for a crime another jury found never occurred; that you can be found accountable for someone else's crime even when that someone was found not guilty\textsuperscript{125}; and has even found both that you can be found accountable for a first degree murder, even though the principal who admitted to the crime was only found guilty of second degree murder by a jury (i.e. self defense), and that it is okay to sentence you to nearly twice the sentence that the principal received (55 years-vs-30 years).\textsuperscript{126}

This has allowed Illinois to deny defendants a fair trial in thousands of cases over the past half century. By keeping accountability out of the indictment and indicting people as the actual principal, a defendant prepares for trial in a completely different manner than if he or she was put on

\textsuperscript{125} See e.g. 720 ILCS 5/5-3; People v. Walker, 392 Ill. App. 3d 277, 291-92 (2009); People v. Cooper, 194 Ill. 2d 419, 435 (2000).

\textsuperscript{126} For instance, in Will County, Corzell Cole was found guilty under a theory of accountability for a shooting perpetrated by his codefendant Travaris Guy, whom a jury only convicted of second degree murder due to fearing for his life. Corzell, the driver when the spontaneous incident occurred, was sentenced to 35 years at 100\% for first-degree murder under the accountability theory. While Travis Guy, the shooter, was only sentenced to 30 years at 50\% for second-degree murder for the same death. Meaning Cole was sentenced to serve more than twice as long in prison under a theory of accountability for a first-degree murder that another jury ruled never occurred. This was repeatedly upheld by the courts until the prosecutor took it upon himself to agree to revest the circuit court with jurisdiction and allow Cole to plead "guilty" to second-degree murder and basically receive time considered served after spending nearly 15 years in prison. Whether one can actually be guilty of a second-degree murder under an accountability theory in such circumstances is a whole other issue.
notice of the specific theory of how they are allegedly accountable for someone else's actions. For instance, a defendant may prepare for trial by lining up witnesses to establish they weren't at the scene of the crime and thus could not have committed the crime, only to then have the State argue last minute that he or she ordered someone else to commit the crime or aided and abetted that person in some way prior to the crime occurring. This type of prosecutorial sleight of hand has denied many people the ability to adequately prepare for their trial.

Illinois' accountability laws also allow prosecutors to misuse them as a street sweeper; to charge and convict numerous people for a single person's actions, or due to a single person's false accusations, and then sentence them all to death by incarceration.

Recently, several cases have come to light where unscrupulous prosecutors knowingly used a single lying "witness" to wrongly convict numerous defendants of murder and sentence them all to LWOP.127 It took decades for the truth to come out and for them to be exonerated. No one knows how many other people sit in prison today due to the combination of the accountability statute and false testimony.

U.S. Supreme Court Justice Steven Breyer, in a concurring opinion in Miller v. Alabama, noted that

defendant in that case had "twice diminished culpability" due to: 1) being a juvenile at the time of the crime; and 2) the fact that he was not the actual perpetrator of the crime, but rather convicted under a theory of accountability for being the lookout.\(^{128}\)

In Illinois, however, our accountability laws, are based on equal culpability, meaning you are equally culpable and face the same sentencing ranges whether you actually commit the crime or not. Justice Breyer's acknowledgment that people who only aid and abet the principal are less culpable demonstrates the severe injustice of Illinois' equally culpable standard.

Recently, Illinois Senator John Connor proposed legislation to rectify many of these problems by making accountability its own charge/offense (which would require it to be in the indictment) with its own elements.\(^{129}\) This legislation also recognizes the reduced culpability of people found guilty by accountability by significantly reducing the sentencing ranges compared to people found guilty as the principals.\(^ {130}\)

Unfortunately, yet again, politics trumps humanity and common sense, as the bill was not retroactive. Therefore, even if it passed, it would not afford any relief to the hundreds, if not thousands, of people currently imprisoned (many for life) under a theory of accountability, but sentenced as if they were equally culpable as the principals.

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\(^{129}\) Illinois Senate Bill 2363 (102nd Gen. Ass., 2021 and 2022).

\(^{130}\) Ibid.
To acknowledge that people who are convicted under a theory of accountability are less culpable, but force them to continue suffering from overly harsh sentences based on an erroneous "equally culpable" standard is both inhumane and unjust.
H) The Injustice Of Illinois' Felony Murder Law

For decades, Illinois has also been an outlier among states, due to its more extreme version of the felony murder rule.\textsuperscript{131} (It's also worth noting that England abolished the felony murder rule over 60 years ago).\textsuperscript{132} Illinois' felony murder statute allows the State to convict and sentence people for murder if a death occurs in the course of committing a felony,\textsuperscript{133} even if they never personally harmed, nor intended to harm, anyone.

A person can be found guilty of "felony murder" if his or her codefendant alone commits a murder after they leave, or even if his or her accomplice in the underlying felony was killed by someone else.\textsuperscript{134} For example, if five young adults robbed a store with a gun containing no bullets, and a trigger-happy shop owner killed one of the youth, five lives could have been lost. First, the life of the youth shot and killed by the owner, and then the lives of his or her four friends who could have all been charged with "felony murder" (and likely sentenced to DBI), because their friend's death occurred during the course of committing a felony - "armed" robbery.

As if that is not bad enough, the courts have ruled that you can be found guilty of felony murder even if you are

\textsuperscript{132} Ibid.
\textsuperscript{133} 720 ILCS 5/9-1(a)(3).
\textsuperscript{134} See e.g. \textit{Restore Justice} (2021), "Felony-Murder in Illinois", http://restorejustice.org/learn/felony-murder/.
only accountable for the underlying felony and not the actual principal; and even if the one who killed your friend is a responding officer or the entire situation was set up as a sting by the police.\textsuperscript{135}

A small fix to the felony murder statute was included in the recently passed Black Caucus Omnibus Bill.\textsuperscript{136} It prevents people from being charged with their accomplice's death if the death occurred in the course of the underlying felony. Yet again, this small fix is not retroactive, meaning dozens of people (if not hundreds) will remain in prison (many until death) due to the fact that their friend died while they were committing a felony.

Again, it is inhumane to acknowledge a law is unjust, but then continue to force people to serve many years, decades, or their entire life in prison for convictions and sentences based on that unjust law.

\textsuperscript{136} The SAFE-T Act, HB3653, SA1 passed Jan. 13, 2021.
I) The Injustice Of Illinois' Habitual Criminal Act

Illinois' Habitual Criminal Act, which was enacted in 1978, requires that anyone who has twice been convicted of a Class X (or greater) felony that contains the same elements of a third Class X (or greater) felony is determined to be an "habitual criminal,"\textsuperscript{137} and shall be sentenced to LWOP.

The normal sentencing range for someone convicted of a Class X felony is 6-30 years.\textsuperscript{138} Therefore, for the third Class X felony conviction the minimum sentence went from being six years to LWOP. It does not matter if the person was only found guilty of all three felonies under a theory of accountability.

Nor did it matter that all three felonies could have been committed as a juvenile or young adult when science tells us people's brains are not yet developed enough to determine whether someone is actually an "habitual criminal" (or "permanently incorrigible"). (See Section F above). Many of these "habitual criminals" committed all three crimes before they could even purchase alcohol or rent a car.

This particular injustice has recently prompted the General Assembly to amend the Habitual Criminal Act to

\textsuperscript{137} 730 ILCS 5/5-4.5-95(1)("Every person who has been twice convicted in any state court or federal court of an offense that contains the same elements as an offense now (the date of the offense committed after the 2 prior convictions) classified in Illinois as a Class X felony, criminal sexual assault, aggravated kidnapping, or first degree murder, and who is thereafter convicted of a Class X felony, criminal sexual assault, or first degree murder, committed after the 2 prior convictions, shall be adjudged an habitual criminal."

\textsuperscript{138} 730 ILCS 5/5-4.5-25 (2020).
only apply if "the first offense was committed when the person was 21 years of age or older."\textsuperscript{139} Once again, it is not retroactive, meaning the current victims of the prior overly punitive version of the Act will find no relief from that amendment and will likely die in prison as a result, if nothing is done.

Governor Pritzker has already commuted the sentences of a handful of people serving LWOP due to the Habitual Criminal Act,\textsuperscript{140} but he has denied many more. If the legislature decided the law was unjust for people who commit crimes in the future, it is equally unjust for people already sentenced to die in prison under that same law.

\textsuperscript{139} Public Act 10-281 (eff. July 1, 2021) amending 730 ILCS 5/5-4.5-95(a)(4)(E) and (b)(4).
\textsuperscript{140} Illinois Prison Project, data on clemency petitions from Jennifer Soble sent to Parole Illinois.
J) The Injustice Of Illinois' Firearm Enhancements (I.E. Gun Add-Ons)

Firearm enhancements, also known as gun add-ons, are mandatory additional sentences for anyone who possessed or used a firearm while committing the felony they are convicted of. The person must first serve the sentence for the actual felony (anything from armed robbery to first degree murder) and then serve an additional extreme sentence of: 15 years in prison if they simply possessed, but never fired a gun during the commission of the crime; 20 years in prison if they fired a gun during the crime (but didn't seriously injure anyone); or 25 years to life if they shot someone and cause a death or other serious injury.

Additionally, due to Illinois' Truth-In-Sentencing Act, they must serve 85% or 100% of both the original sentence and the sentence imposed for the gun add-on. Firearm enhancements therefore contributed greatly to the increase in the number of people sentenced to die in prison. For example, in the late 1980s, someone convicted of murder using a firearm would have been sentenced to 20-60 years in prison, and even if they received the maximum (60 years) would serve 30 years (or less depending on how much good time they received); but today, even if they received the minimum (20 years) they would still have to serve 45 years in prison (due to the mandatory 25 year add-

141 730 ILCS 5/5-8-1(d)(i)-(iii) (2020).
142 Ibid.
on). Such a sentence is not survivable for 90% of people who receive it. This type of sentence, or even more severe ones, are handed out dozens, if not hundreds, of times per year.

Illinois' gun add-ons are more extreme than any other state in the Union. In the majority of other states, the same gun enhancements range from 1-5 years. Some states like Florida, began with a harsh firearm enhancement law and then rolled it back significantly.

Victoria Law, author of the book "Prisons Make Us Safer": And 20 Other Myths About Mass Incarceration" explains that "[i]n 1999, Florida passed and enacted its 10-20-Life law, which allowed prosecutors to add a sentencing enhancement to any conviction that involved firearms. This meant a mandatory ten-year sentence if a person displayed a gun, a mandatory twenty years if a gun was fired (even if it was fired as a warning shot and not at an individual), and twenty-five years if someone was wounded. The law did not allow the judge to consider mitigating circumstances or exceptions. The law was repealed in 2016, but during its seventeen years in effect, more than fifteen thousand people had been sentenced under the enhancement."  

145 E.g., Wisconsin does not have a mandatory firearm enhancement (Wisc. Stat. § 939.63), Michigan adds 2 years (Mich. Comp. L. § 750.227b), etc.
146 Victoria Law, "Prisons Make Us Safer": And 20 Other Myths About Mass Incarceration (Beacon Press, 2021), p.120; citing "Good Riddance To Bad Law: 10-20-LIFE," editorial Miami Herald, n.d.
After Florida repealed its law, the Miami Herald ran an editorial titled "Good Riddance To Bad Law: 10-20-Life." Florida's gun add-ons were "bad law," but not nearly as extreme as Illinois' law. Thus, Illinois' gun add-ons are not only bad law, but are actually worse, and thousands of Illinoisans are currently suffering from them.

Like all punitive measures, gun add-ons were enacted under the fallacy that they would deter people from committing crimes, or at least deter people from using a firearm when they commit certain felonies. And, like always, increasing sentence severity has had no deterrent effect.

Nearly two decades ago, Cook County Circuit Court Judge Leo E. Holt, Jr. noted to one defendant that, "I don't understand what I or society gains by putting you in prison for possession of a weapon. If I thought it was going to deter you or anybody else, it might make sense. But I'm fully aware that what I do to you is going to have zero effect on anyone else out there carrying a weapon." The same logic applies to people using a gun to commit a felony. Unfortunately, with gun add-ons mandated by

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147 "Good Riddance To Bad Law: 10-20-LIFE," editorial, Miami Herald, n.d.
statute, even judges who know better still have to apply them.

In 2016, 48 organizations released a report titled "Building A Safer Chicago: Calling For A Comprehensive Plan," which highlighted the fact that increasing sentences for firearm possession did nothing to deter firearm possession. The report noted, "[i]n recent years our state has increased penalties for firearm possession six times, instituting new mandatory minimum sentences. As a result, the number of Illinoisans incarcerated for possessing a weapon in violation of licensing laws tripled, while arrests remained flat." Anyone watching the news in 2021 or 2022 knows that these gun add-ons have done nothing to deter the constantly increasing number of shootings in Chicago.

Gun add-ons are also extremely expensive because they force hundreds to thousands of people to spend additional decades in prison after they have likely already aged-out of crime, and when the State must provide medical care for their elderly infirmities. Even ignoring heightened costs for medical care when elderly, rudimentary math shows that even the shortest gun add-on (15 years) costs taxpayers $600,000 each time it is imposed ($40,000 per year × 15 years = $600,000).

150 Building supra note 31, at p. 2.
152 This is a conservative estimate as SPAC found that the annual cost of housing a person in prison is actually $44,704; see Illinois Sentencing Policy Advisory Council 2018 & 2019 Combined Annual Report, p.14.
Firearm enhancements are therefore not only inhumane and useless in a deterrent sense, but also an injustice to taxpayers and useless in incapacitating those in prison, because it is highly unlikely that they would have gone on to commit further crimes had they been released after serving the sentence imposed for the original felony.
K) The Injustice Of Denying The Rehabilitated Any Opportunity For Release

As author Marc Morjé Howard noted, "the principles of rehabilitation and correction became empty slogans of another era." With the 1994 rescission of PELL Grant eligibility for people in prison and the change in social milieu from favoring rehabilitation to demanding punitiveness, the Illinois Department of Corrections (IDOC) largely abandoned college and vocational programs in the late 1990s, and turned to warehousing people in increasingly inhumane conditions.

Despite all that, many people in the IDOC took it upon themselves to self-rehabilitate. They did so by overcoming the numerous hurdles placed in their way by the IDOC. Many of these people did so even though they have no outdate or avenue of release other than executive clemency (a nearly nonexistent remedy for decades).

Today, society and the IDOC have acknowledged that abandoning rehabilitation was a mistake. The U.S. Congress has reinstated PELL Grant eligibility for people in prison, and vocational and college programs are flooding back into the IDOC. The IDOC is now refocusing all prisons to: A) increase educational and vocational programming; and B) increase the amount of goodtime credit people can earn in the future.

153 Howard supra note 51, p.87.
Unfortunately, all of the people who, for decades, overcame the IDOC's hindrances to rehabilitation, and spent untold time, money, and effort to rehabilitate themselves will largely be denied any benefit from their herculean efforts.

That's because: A) most of the legislation being passed to increase good time for rehabilitative efforts is not retroactive\textsuperscript{154}; and/or B) many of those same people have a DBI sentence. Therefore, the only way that their efforts to self-rehabilitate can be rewarded is still through an act of executive clemency by the Governor.

It is an injustice to acknowledge that it was a mistake to abandon the goal of rehabilitation, and simultaneously deny any opportunity for early release for all those in prison who rehabilitated themselves despite all the hindrances put in their way by the State and IDOC.

\textsuperscript{154} For instance, HB94, (effective January 1, 2020) and HB3653 (The SAFE-T Act, effective July 1, 2021) bar people sentenced after 1998 and those with certain convictions from earning sentence credit with few exceptions.
The Dual Injustices Of Torturing People And Then Not Crediting Their Sentence For Enduring That Additional Punishment

Numerous people have been subjected to torture by the State of Illinois over the past several decades. Many of whom remain in prison to this day. Whether it was in the form of physical or mental torture, it should be considered punishment and credited toward their prison sentences, regardless of guilt or innocence.

One definition of torture is "to punish by inflicting severe pain." When the State tortures someone, whether it is done to obtain a confession/conviction, or for alleged "institutional security," it is nonetheless also a punishment. While the State may, in some circumstances, compensate the person monetarily for enduring that extralegal punishment (either via civil judgment, settlement, or reparations), it never acknowledges that the torturEE's punishment for committing a crime (if in fact guilty) has been unjustly increased.

Fundamental fairness requires that anyone who has been tortured by the State be given some type of credit towards their prison sentence as compensation.

The following are just two examples of groups of people who were tortured by the State or State actors who deserve clemency in recognition of enduring that torture.

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i) Burge Victims

The most famous example of mass torture perpetrated in Illinois is that committed by Chicago Police Department Commander Jon Burge and his underlings. They tortured 110 men in the 1970s and 1980s.\(^{156}\) It was done to obtain confessions (both true and false) to secure criminal convictions (often knowingly wrongful ones) in murder or rape cases. Burge's gang physically beat, burned, suffocated, and/or electrocuted these men.\(^{157}\)

While some of the men who were tortured have since been exonerated, many others remain in prison decades later either because they are guilty or because they lack the resources to prove their innocence.\(^{158}\) Figuring out which are which is an effort in futility as the investigations were irrevocably infested from day one, and the court proceedings have been a circus of a decades-long cover-up.

While the majority of those Burge victims have received monetary reparations for the torture, very few have received clemency in acknowledgment of the extrajudicial punishment meted out by Burge and his crew. Governor Ryan did grant some of them a very insignificant amount of clemency when he commuted some Burge victims' death sentences to death-by-incarceration.


\(^{157}\) Ibid.

\(^{158}\) Ibid.
More recently, however, Governor Pritzker commuted Gerald Reed's LWOP sentence to time considered served, releasing him to his family after spending decades in prison. (Gerald Reed was tortured by one of Burge's underlings). While the Governor did not pardon Mr. Reed, and made no ruling on his claims of innocence, he recognized that he had already served enough time in prison regardless.

The Campaign to Free Incarcerated Survivors of Police Torture requests that Gov. Pritzker pardon anyone who has a credible claim of torture reported by the Illinois Torture Inquiry and Relief Commission. Parole Illinois echoes that call.

Anyone who was physically beaten or tortured by police during the investigation of the crime they are currently incarcerated for should likewise have their sentence commuted regardless of the identity of the police officer doing the torturing.

To deny someone who has been tortured clemency not only condones the torture, but also condones disparate sentencing. Think of it like this, if two similarly situated men both commit the same crime, have the same criminal history, have the same potential for rehabilitation, and both receive a 30-year prison sentence, but one was tortured to obtain a confession, the tortured person actually received a disparate amount of punishment for committing the same crime. The fact that society used to punish people with

159 Zinya Salfiti, Chicago Sun-Times, Tuesday, April 6, 2021, p.6.
160 Ibid.
physical beatings (e.g. five lashes, etc.) is indisputable evidence that this counts as a punishment.

ii) Tamms Victims

The United Nations considers long-term isolation (more than 15 days) to constitute torture. Here in Illinois, the IDOC has held men and women in isolation for months, years, and even decades.

One of the most notorious examples of this was Tamms Supermax Prison. Men spent years in isolation there enduring psychological torture. Some spent a total of more than 14 years there, from the day it opened in 1998 until it closed in 2013.

Governor Pat Quinn finally acknowledged the humanitarian disaster that was Tamms and closed the prison despite strong opposition from the American Federation of State, County, and Municipal Employees (AFSCME), the guards' union.

None of the men who are still incarcerated who endured torture in Tamms have received any monetary

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162 Westefer v. Snyder, 725 F. Supp. 2d 735, 744-60 (July 20, 2010).
163 Ibid., at p.744.
compensation for that torture. This despite court rulings that the conditions there constituted an "atypical and significant hardship."\textsuperscript{166}

To deny people credit towards their sentences for punishment they have already endured is both inhumane and unjust.

\textsuperscript{166} See e.g., \textit{Westefer v. Snyder}, 725 F. Supp. 2d 735 (July 20, 2010).
M) The Injustice Of Being Denied Due Process And A Fair Trial Due To Official Misconduct

Thousands of people in Illinois have been denied a fair trial and denied their right to due process, etc. by rampant police and prosecutorial misconduct. Many of whom are still in prison today and are serving lengthy or life-long prison terms. Some of which were imposed by corrupt judges. Most of these constitutional or statutory violations were only discovered after they were already convicted.

Unfortunately, our current appellate and collateral review systems are designed to uphold convictions at all costs.\textsuperscript{167} They either excuse those violations as harmless errors,\textsuperscript{168} or procedurally bar defendants from raising them in the first place.\textsuperscript{169} The result is that people are unjustly denied any form of relief for the violation of their rights to due process, a fair trial, and more.

Writing in The Appeal, Gabe Newland explained that "[e]very day the doctrine of 'harmless error' allows police and prosecutors to act with impunity, and it steals life and liberty from people inside our prisons."\textsuperscript{170} He concludes by

\textsuperscript{167} See e.g. supra note 43 above, and \textit{Taylor v. Maddox}, 366 F.3d 992, 1000 (9th Cir. 2004)(Surmounting AEDPA deference is "daunting", which is by design and is "satisfied in relatively few cases"); and \textit{Socha v. Richardson}, No. 16-2540 (7th Cir. 2017)(Chief Judge Wood)("[S]ince the enactment of the [AEDPA] in 1996, state prisoners seeking federal habeas corpus relief have been required to overcome a set of rules that, in the aggregate, require every benefit of the doubt to be given to the states").


\textsuperscript{169} See e.g. supra note 167 above.

\textsuperscript{170} Newland supra note 168, at p.22.
saying that one way that we can push back against these injustices is to have state governors "use their clemency powers to grant relief to anyone whose constitutional rights were violated on the way to a state prison cell.”171 Below are just a handful of the plethora of examples (in addition to those mentioned above) of extensive police, prosecutorial, and judicial misconduct that resulted in unfair trials and unfair sentences in Illinois.

i) Other Crooked Cops

Jon Burge is far from being the only cop or crew that habitually violated people's constitutional rights to obtain convictions (many of which were wrongful convictions), and denied people fair trials in Illinois. He is just the tip of an enormous iceberg. Here are some others worth noting:

a) Detective Reynaldo Guevara

Like Burge, Det. Guevara made his career out of police misconduct and framing innocent people for murder. He intimidated and physically abused witnesses to make false identifications, mistranslated statements of people who could not speak English, suppressed evidence, falsified police reports, and more.172 When asked about his

171 Ibid.
misconduct under oath, he has repeatedly invoked his Fifth Amendment Right against self-incrimination.\footnote{\textit{People v. Almodovar}, 2013 IL App (1st) 101476, ¶75; and \textit{People v. Serrano}, 2016 IL App (1st) 133493.} \footnote{Crepau and Segura notes 172.}

So far, more than a dozen people have been exonerated for murder charges after spending decades in prison for crimes they didn't commit, and there are over 50 known cases where Det. Guevara is accused of framing people.\footnote{Melissa Segura, "Another Man Who Accused A Retired Cop Of Framing Him Has Been Exonerated," \textit{Buzzfeed News}, Jan. 16, 2019; Andy Grimm, "Another man cleared in murder case tainted by former CPD Det. Reynaldo Guevara," \textit{Chicago Sun-Times}, Jan 16, 2019; and Anne Branigin, "Chicago Man Becomes the 19th to Have His Murder Conviction Overturned After Accusing Detective Of Framing Him," \textit{The Root}, Jan. 17, 2019.} \footnote{Segura supra note 174.}

Many of whom remain in prison decades later.\footnote{Segura supra note 172.}

The reason is that our legal system is designed to uphold convictions not provide legitimate reviews. Nearly all of the Guevara-related convictions overturned thus far were overturned primarily due to the "witnesses" finally admitting that they were coerced by Guevara and were lying at trial.\footnote{People v. Martinez, 2021 IL App (1st) 190490-U, ¶64.} But what about the men still incarcerated because the witnesses are too scared or embarrassed to admit they committed perjury and cost someone decades of their life in prison? They may never get out.

The First District Appellate Court of Illinois has called Guevara "a malignant blight on the Chicago Police Department and the judicial system."\footnote{Segura supra note 177.} He is also a malignant blight on the lives of the dozens of wrongfully
convicted men who are victims of his misconduct, crimes, and abuse of police powers.

Innocent Demand Justice is an organization founded by those Guevara victims and their friends and family members. They have been faithfully demanding the release and exoneration of Guevara's victims for years. Their demands fell on deaf ears for far too long, and even today their hope for justice is often inhumanely and arbitrarily delayed.

b) Sergeant Ronald Watts

Sergeant Watts and his tactical team terrorized the residents of the Ida B. Wells housing projects for nearly two decades (1990s-2012). Their modus operandi was to shake down drug dealers and extort innocent people by demanding $1,000. Those who refused to pay were arrested under the false charges of drug possession after Watts and crew planted drugs on them.

Dozens of such convictions have been overturned so far, and potentially hundreds of other wrongful convictions remain to be addressed or uncovered. While the

179 Ibid.
181 Ibid.
182 The National Registry Of Exonerations, Meisner, and Schmadeke supra notes 180.
vast majority of the people framed for drug possession and wrongfully convicted have already served their time and been released from prison (as they mostly received sentences of 15 years or less),\textsuperscript{183} the Watts saga is a prime example of why criminal investigations and arrests coming out of the Chicago Police Department should be viewed with extreme suspicion.

The Watts saga establishes beyond a shadow of a doubt that the CPD is morally corrupt at the highest levels, and has been for decades. It is now indisputable that the CPD has knowingly been habitually violating people's constitutional rights for decades. While the Burge saga may have been the tip of the iceberg, and the Guevara saga adds clear evidence, the Watts saga puts the nail in the coffin of the City's ad nauseam claim that it is just a "few bad apples."

The higher-ups at the CPD were well aware of what Watts and crew were up to.\textsuperscript{184} Rather than crack down on them and uphold the law, they chose to cover it up and allow it to continue.\textsuperscript{185} The DEA and FBI began investigating after receiving repeated complaints about Watts and crew framing and extorting Ida B. Wells homes residents.\textsuperscript{186}

Known as Operation Brass Tax, the investigation would last a decade, and only result in one minor conviction against Watts and a single crew member after

\textsuperscript{183} The National Registry Of Exonerations supra note 180.
\textsuperscript{184} The Intercept supra note 180.
\textsuperscript{185} Ibid.
\textsuperscript{186} Ibid.
Watts tried to shake down an undercover FBI agent he thought was a drug courier.\textsuperscript{187} Like Guevara, Watts has invoked his Fifth Amendment Right when asked under oath about the extortion and framing of innocent people.\textsuperscript{188}

The federal investigation was repeatedly frustrated by both the CPD's Blue Code of Silence, and the fact that CPD brass were not only uncooperative, but actively impeding their efforts.\textsuperscript{189} The Watts saga showed unequivocally that the Blue Code of Silence among officers and higher-ups was official (if unwritten) policy.\textsuperscript{190} If the CPD is this determined and effective at keeping misconduct secret, imagine all of the misconduct occurring that never comes to light.

The feds tried enlisting two CPD officers to work undercover to try and build a case against Watts.\textsuperscript{191} CPD brass quickly retaliated by exposing them as "rats," endangering their safety, and additionally worked to derail both of their careers within the department.\textsuperscript{192} The City of Chicago would later settle with the two officer-informants for $2 million after they filed suit.\textsuperscript{193} While the whistleblowers were run out of the CPD, several members of Watts' crew remain on the force.\textsuperscript{194}

\textsuperscript{187} The Intercept and Schmadeke supra notes 180.
\textsuperscript{188} Meisner supra note 180.
\textsuperscript{189} The Intercept supra note 180.
\textsuperscript{190} Ibid.
\textsuperscript{191} The Intercept and Schmadeke supra notes 180.
\textsuperscript{192} Ibid.
\textsuperscript{193} Ibid.
\textsuperscript{194} The Intercept supra note 180.
While many of the people framed by Watts and crew are no longer in prison, some still do remain. More importantly, many more people are probably in prison today for cases in which Watts, a crew member, or one of the higher-ups involved in the cover-up, were involved in the arrest, investigation, and/or conviction. All of these cases should be reviewed due to the fact that all of those officers lack credibility; and therefore all of those convictions should be viewed as suspicious.

In 2018, Cook County State's Attorney Kim Foxx barred 10 Chicago cops who were part of Watts' crew from testifying in future cases due to this lack of credibility. What about all the cases in which they already testified and in which people remain incarcerated for? While the Cook County State's Attorney's Office is reviewing cases in which Watts likely framed people for drug possession in the Ida B. Wells homes, there seems to be no effort to review all convictions involving any of the Watts crew or CPD higher-ups.

c) Polygraph Examiner Robert Bartik

Robert Bartik was one of several polygraph examiners employed by the CPD. What set him apart, however, was the fact that everyone seemed to confess to him, or implicate others, before the exam ever began, or after he

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195 Schmadeke supra note 180.
196 Meisner supra note 180.
claimed they had failed the exam.197 Bartik claimed that people voluntarily confessed to him 100 or 200 times.198 The head of the American Polygraph Institute said such a claim was not credible.199 Especially considering the fact that polygraph examiners are not supposed to interrogate anyone,200 and the whole reason someone agrees to take a polygraph is either because they are innocent, or don't want to admit guilt and think they can "beat the box," and therefore have no incentive to confess prior to taking the polygraph exam.201

In reality, Bartik was either fabricating confessions, or using the polygraph to coerce false accusations or false confessions.202 That was not the full extent of his misconduct, however. He also testified falsely under oath to help secure convictions (some of which were wrongful convictions).203

So far a handful of convictions have been overturned and several lawsuits have been filed by people exonerated in Bartik cases.204 Bartik was involved in hundreds of

198 Ibid., at p.10.
199 Ibid., at p.10.
200 Ibid., at p.10.
201 Ibid., at p.11.
202 Ibid., at p.1; and Duaa Eldeib, " Use of Chicago Police Polygraphs Down In Face Of False Confessions," Chicago Tribune, Nov. 29, 2013.
cases, however, including those where defendants are still in prison serving life or other lengthy prison terms.

Thus far, no government agency has offered to review these cases, and thus many innocent defendants are a long ways away from obtaining any relief.

d) Detectives Michael Kill And Kenneth Boudreau

Numerous investigations by the Torture Inquiry and Relief Commission have found credible claims that CPD Detectives Kill and Boudreau not only coerced witnesses and suppressed evidence of alternate suspects, but also physically assaulted suspects and even threatened to have Latin Kings kill one suspect's family members, in order to coerce a false confession from the suspects.205 Sometimes other detectives like William Foley or John Holloran were also involved.206

Numerous men have been wrongfully convicted due to the misconduct of these detectives. While a few of the wrongly convicted have been exonerated, there are likely many others who remain in prison fighting for their freedom.

Any conviction based in part on any of these detectives' testimony or investigations should be viewed with suspicion. A just legal system would automatically review each one with a fine-toothed comb. Unfortunately, we do not have a just legal system in Illinois.

205 People v. Plummer, 2021 IL App (1st) 200299.
206 Ibid.
ii) "Street Files"

For decades, the CPD had a habit of keeping a secret set of files known as "street files" in which they kept investigative records that they didn't want disclosed to the defense.\(^{207}\) This means that thousands of defendants went to trial without all of the evidence and information necessary to prepare their defense.

The CPD had claimed it ceased keeping "street files" in 1986, and that all records were now open to subpoena.\(^{208}\) Obviously that was not true.

Additional "street files" first came to light in the wrongful conviction case of Nathson Fields.\(^{209}\) Nathson Fields' lawyer discovered that the CPD had 23 cabinets full of files tucked away in the basement of Area 1 Police Headquarters at 51st and Wentworth.\(^{210}\)

Those cabinets contained files from 2,700 criminal investigations.\(^{211}\) Fields' lawyer was allowed to examine 466 of the homicide files dating from 1979-2006.\(^{212}\) She took a sample of 60 of the case files, and then obtained the discovery files that the State turned over to the defense prior to trial.\(^{213}\)

\(^{208}\) Meisner supra note 207.
\(^{209}\) Ibid.
\(^{210}\) Ibid.
\(^{211}\) Ibid.
\(^{212}\) Ibid.
\(^{213}\) Ibid.
Once she compared the two sets of documents in each case, she found that 90% of the basement/"street" files contained undisclosed material, including, but not limited to, "names and accounts of eyewitnesses that apparently were never disclosed, statements in detectives' notes that contradict later versions of typed reports and lineup cards that were missing or different from what the defense eventually saw."  

As one CPD officer put it during a deposition some years ago, if the police station at 51st and Wentworth had secret files tucked away in the basement, they all probably did. Not surprisingly, it was soon discovered that there were similar cabinets of "street files" in the boiler room of Area 5 Police Headquarters at Grand and Central.  

The denial of relevant information or evidence before trial has serious consequences for any defense, especially when that information or evidence is exonerating or otherwise favorable to the defense. Such withholding may deny a defendant material to impeach the State's witnesses, uncover alternate suspects, leads to investigate, and more.

What's worse is that, if denied access to this evidence or information until after trial, when a defendant does discover it, they now have an almost insurmountable task of convincing a court that it is "material" to their case. If they can't convince the court, their conviction will stand despite the misconduct of the police and prosecution. This

214 Ibid.
215 Jason Meisner, "Attorneys want to take part in review of old homicide files," *Chicago Tribune*. 
is a routine occurrence in our court system because the majority of judges are former prosecutors, and, in general, judges want to maintain convictions rather than overturn them. Moreover, no one is ever punished for this misconduct, and the violations of defendants' right to a fair trial are swept under the rug. This ensures that favorable evidence and information will continue to be withheld from the accused in future cases, ensuring our legal system remains unjust.

iii) "Investigative Alerts"

For decades the Chicago Police Department has been making unconstitutional arrests based on "investigative alerts."

Article I, Section 6 of the Illinois Constitution contains what is known as the "warrant clause," which states that: "[n]o warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized." It thus requires, that an arrest be made upon facts presented in a sworn affidavit to a neutral magistrate.\(^{216}\) For decades, the CPD has been flouting this requirement and violating people's constitutional rights by arresting them on warrantless "investigative alerts" that were not only NOT based on sworn affidavits, but never taken before a judge, and rather were simply issued by the CPD. Not surprisingly, the CPD

\(^{216}\) *People v. Bass*, 2019 IL App (1st) 160640.
was and is the only police department in the state to make arrests based on "investigative alerts."

The Illinois Appellate Court ruled that the use of investigative alerts to make warrantless arrests violates the Illinois Constitution. The Illinois Supreme Court, however, vacated that part of the opinion in order to avoid the issue, which Illinois Supreme Court Justice Neville noted, "allows this allegedly unconstitutional conduct to continue."

This unconstitutional conduct has serious consequences for the thousands of people arrested by investigative alerts. They not only may have had their arrests thrown out, but may have had evidence that was unconstitutionally obtained suppressed, increasing their chances of getting reduced charges or sentences during the plea bargaining stage or after trial. All of them were therefore denied their rights to due process and a fair trial.

iv) "Q" Witness Quarters Benefits

In the early 1990s, a huge scandal erupted related to the federal prosecution of nearly 50 El Rukn gang members. Dozens of convictions were overturned when

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217 Ibid., at ¶1.
219 Ibid., at ¶62.
it was learned that the U.S. government's main witnesses (incarcerated former El Rukn gang members themselves) had received various undisclosed benefits while housed in the protective custody quarters of the federal MCC in Chicago.\textsuperscript{221} Those benefits included things like clothes, material goods, cigarettes, free phone calls, federal authorities turning a blind eye to drug use by witnesses, and allowing conjugal visits in federal offices, among other things.\textsuperscript{222}

One would think that the magnitude of such a scandal that overturned dozens of convictions and numerous life sentences in the federal courthouse in Chicago, would have put the Cook County State's Attorney's Office (CCSAO) on notice that providing such benefits to their incarcerated witnesses and failing to disclose that fact to the defense is inappropriate and a violation of the defendants' constitutional rights to due process and a fair trial.

The CCSAO ignored this warning however. They had been doing much the same thing with their incarcerated witnesses, and still do so to this day. Since at least the 1970s, the CCSAO has had their own private set of bribery suites within the Cook County Jail known as the "Q" Witness Quarters, or more formally known as the "Inmate Witness Protection Program Living Unit" (IWPPLU).\textsuperscript{223}


\textsuperscript{222} Ibid.

\textsuperscript{223} "Cook County State's Attorney's Office Cook County Department of Corrections Inmate Witness Protection Program" (manual), Introduction, p.1.
The undisclosed benefits provided to witnesses in the "Q" are just recently coming to light after several witnesses have testified to the fact under oath during wrongful conviction hearings in several different cases.\textsuperscript{224} The benefits included free weekly commissary, better food, cigarettes, Nike jumpsuits and other clothes, extra yard/gym, extra visits, even conjugal visits in some instances, free phone calls, jewelry, and turning a blind eye to possessing/using drugs and alcohol while in the "Q," among other things.\textsuperscript{225} Witnesses in the "Q" also had a direct line to the CCSAO.\textsuperscript{226}

The CCSAO has not refuted these claims and at least one prosecutor admitted under oath that the witnesses in the "Q" were repeatedly asking for, and being provided with, material goods such as a Walkman, clothes, shoes, etc.\textsuperscript{227} Moreover, the CCSAO's own manual for the "Q" verifies that the witnesses in the "Q" receive $35 worth of free commissary every week.\textsuperscript{228}


\textsuperscript{225} Ibid.


\textsuperscript{227} Ibid., at pp. 121-24, 235-36, and 289.

\textsuperscript{228} Manual supra note 223, at Section 3, p.16.
These are essentially weekly cash payments to their witnesses. If a defendant was caught paying a witness it would be considered bribery; and when a defense attorney was caught giving a witness $50 to pay for a cab to get to the courthouse to testify, he was suspended from practicing law for a year and a half.\textsuperscript{229}

While such benefits may seem trivial at first glance, they aren't. Incentivized witnesses are the leading cause of wrongful convictions.\textsuperscript{230} "When you dangle extra rewards, furloughs, money, their own clothes, stereos, in front of people in overcrowded jails, then you have an unacceptable temptation to commit perjury."\textsuperscript{231} The 10th Circuit United States Court of Appeals explained that the "judicial process is tainted and justice is cheapened when factual testimony is purchased, whether with leniency or money."\textsuperscript{232}

For those reasons, prosecutors have an obligation to disclose any benefits a witness receives.\textsuperscript{233} They also have a duty to correct any false testimony of their witnesses.\textsuperscript{234}

Nonetheless, the witnesses housed in the "Q" often deny that they receive any special privileges in the "Q," and

\textsuperscript{231} Covey supra note 230.
\textsuperscript{232} \textit{United States v. Singleton}, 144 F. 3d 1343, 1347, rev'd en banc 165 F. 3d 1297 (10th Cir. 1999).
\textsuperscript{233} \textit{Brady v. Maryland}, 373 U.S 83 (1963); \textit{Giglio v. United States}, 405 U.S. 150 (1972); \textit{U.S. v. Sedaghany}, 728 F. 3d 885 (9th Cir. 2013); \textit{Napue v. Illinois}, 360 U.S. 264 (1959); \textit{Mataya v. Knigston}, 371 F. 3d 353, 356 (7th Cir. 2004); and supra notes 221, 229, and 230.
falsely claim under oath that conditions are the same as the general population units of the Cook County Jail. False claims that the CCSAO then fails to correct.

The differences cannot be more stark. Not only do "Q" witnesses usually have their own private cells, and all of the above-mentioned benefits and privileges, they also have access to a washer, dryer, iron, microwave, and pay per view cable (paid for by the CCSAO). They are also in a safer environment. In general population, gangs control the living units, and people are often extorted, robbed, beaten, raped, or killed.

If a "Q" witness decides to stop cooperating with the State, he is choosing to give up the lap of luxury in exchange for hellish conditions. Conditions in general population are so bad that they routinely cause innocent people to plead guilty just to escape them.

For "Q" witnesses who are lying for the State, the coercive power of maintaining their own safety by continuing with the lie cannot be overstated. The threat of general population is the proverbial stick, while the plush conditions of the "Q" are the proverbial carrots. Both are used by the CCSAO to ensure "Q" witnesses testify in the manner the State wants them to.

- Thus far, at least seven people in Cook County have had their convictions overturned after "Q"

235 E.g., trial testimony of "Q" witness George Hernandez in People v. Dorado, No. 98-CR-12993, Cook County Circuit Court, Judge Toomin (Dec. 9, 1999).
236 See e.g. manual supra notes 223 and 228; and Complaint in Robert Bouto v. Reynaldo Guevara, ET AL., No. 1:19-cv-02441, Document #1 (filed 4/11/19) (U.S.D.C. N. D. Ill.).
witnesses admitted to lying to garner favor from the CCSAO in their own cases.\textsuperscript{237} Each "Q" witness admitted to receiving undisclosed benefits and privileges.\textsuperscript{238} In each case the wrongfully convicted spent decades in prison waiting for the "Q" witness to finally tell the truth. One of the "Q" witnesses even admitted to falsely testifying in two more Guevara-related cases out of fear of being labeled a "rat" and sent back to general population, a threat Guevara personally made to him.\textsuperscript{239} How many other "Q" witnesses lied to get a deal and live in luxury, but will never tell the truth? How many other people are dying in prison because of this CCSAO policy? Probably many more.

Two other factors make the undisclosed benefits/privileges relevant to a denial of defendants' right to a fair trial. First, the fact that "Q" witnesses have a direct line to the CCSAO, has serious implications concerning the State's ability to coach the "Q" witnesses on their testimony. Defense lawyers routinely question incarcerated State witnesses at trial about the number of times they visited the CCSAO to prepare their testimony. None of that matters if they can be coached daily on a secure telephone line.

\textsuperscript{237} \textit{supra} note 224 above.
\textsuperscript{238} Ibid.
\textsuperscript{239} "Q" Witness Francisco Vicente testified falsely in 3 different Guevara cases, helping to wrongfully convict five men. See Melissa Segura, "Another Man Who Accused A Retired Cop Of Framing Him Has Been Exonerated," \textit{Buzzfeed News}, Jan. 16, 2019.
Second, not only do these benefits constitute evidence that the defense could have used to impeach the "Q" witness if it had been disclosed prior to trial; but other common sources of impeachment material are the witnesses' criminal history and disciplinary history while in custody. These were also denied to defendants because the CCSAO had a pattern and practice of not disciplining guys in the "Q" for rules infractions and turning a blind eye to illegal activity of their witnesses.240

Whether the CCSAO did so just to keep their informants placated, or to intentionally deny the defense evidence that could be used to impeach their witnesses, the result is the same -- the further suppression of evidence favorable to the defense, and the denial of defendants' right to a fair trial. For all of the above reasons, anyone who was convicted based in part on the testimony of a witness who was housed in the "Q," and where the prosecution failed to disclose all of the additional benefits/privileges provided to the witness(es) had their rights to due process and a fair trial violated by the CCSAO.

v) Other Brady Violations

Former Ninth Circuit Court of Appeals Chief Justice Alex Kozinski noted that "[t]here is an epidemic of Brady

violations abroad in the land.” Suppression of "street files" and "Q" Witness Quarters benefits are just two (albeit massive) examples of Brady violations. Brady violations are notoriously difficult to uncover, however, so the true extent of favorable evidence being withheld from defendants in criminal trials is assuredly much greater. Especially considering the fact that some judges sitting on the bench made their careers as prosecutors by routinely committing Brady violations, and are now in charge of ruling on discovery matters in criminal trials. Despite the difficulty of discovering Brady violations, they are routinely being raised in appeals and other collateral attacks on convictions. Unfortunately, the courts largely deny relief because of biased hindsight and an arbitrary claim that the defendant would have been found guilty anyway. Thus, once again the violation of defendants' right to a fair trial is swept under the rug.

Justice Kozinski claimed that "[o]nly judges can put a stop to it" (Brady violations). That may or may not be true, but Governors can surely correct injustices brought about by Brady violations that the courts have arbitrarily excused as harmless or immaterial by granting the defendants clemency.

241 U.S. v. Olsen, 737 F. 3d 625, 626 (9th Cir. 2013).
244 Olsen supra note 241.
vi) Crooked Judges

Illinois also has a history of corrupt judges which resulted in the violation of people's rights, some of whom remain in prison today.

During the 1980s and 1990s, an undercover investigation known as Operation Greylord uncovered the fact that several Cook County Circuit Court judges were corrupt and accepting bribes. While this is pretty well-known, what is less well-known is the fact that "taking bribes for acquittals had a sinister flip side," according to the Appellate Court. The flip side was that judges like Thomas Maloney were handing down exceptionally harsh sentences to both camouflage their misconduct or deflect suspicion, and encourage bigger bribes.

More recently someone sitting on the bench was never truly a judge. Nevertheless, he ruled on cases and sent numerous people to prison. Many of whom remain there. "Judge" Golniewicz lied about his place of residence in order to get "elected as a judge, meaning he never had legitimate authority to rule on any case or impose any sentence.

As has been shown throughout this section (M), and throughout this booklet in general, police, prosecutorial, and judicial misconduct pervade Illinois' criminal legal system. This has resulted in the pervasive denial of

245 Gacho v. Willis, 986 F. 3d 1067, 1069 (7th Cir. 2021).
246 See e.g. Ibid.; and Bracy v. Schomig, 286 F. 3d 406 (7th Cir. 2002).
247 People v. Kelly, 977 N.E. 2d 858, 867 (Sept. 5, 2012).
defendants' rights to due process, fair trials, and fair sentences. This fact and the fact that most defendants will remain unaware that favorable evidence was withheld in their case, adds weight to the argument for blanket clemency to all lifers and long-termers as a humane act to correct for the historical injustices inherent in Illinois' criminal legal system.
N) The Injustice Of Increasing Someone's Sentence Under The Fallacy That It Will Deter Others From Committing The Same Crime

As mentioned above, "tough-on-crime" rhetoric and the false belief that harsher sentences will deter crime has been instrumental in increasing sentencing ranges for crimes across the board, as well as instigated the invention of extended terms, gun add-ons, and more.

What's even more heinous, however, is the fact that Illinois law permits judges to routinely increase individuals' sentences within those already extended ranges in a vain attempt to scare other people in the community from committing the same crime.

Illinois' statute regarding aggravating factors to consider when imposing a sentence includes: "(a)(7) the sentence is necessary to deter others from committing the same crime." This is the only aggravating factor that isn't based on any fact, such as the location of the crime, the personal characteristics of the victim(s), or the actions of defendant. Instead, it is based on a myth, and whether someone receives an increased sentence based on that myth is determined by whether a judge believes the myth or not.

Unfortunately, the vast majority of our judges seem to believe the myth. One judge, Anna Helen Demacopolous, has even called the deterrent factor "the biggest factor in the court's decision" to sentence an 18-year-old to 40 years

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248 730 ILCS 5/5-5-3.2(a)(7).
in prison at 100%. Therefore, judges use this myth as justification for increasing sentences hundreds of times per year.

This means that not only are ill-informed judges over-sentencing people on a daily basis under a fallacy, but people are being wrongfully incarcerated for those additional years, and are being held accountable not for their own actions, but rather for society's inability to prevent people in the future from committing a crime.

Even if it weren't a myth, and it did deter someone else, the over-sentenced person would not receive any benefit for their part in preventing any crime. They would only receive the added punishment. In truth though, no one will be deterred and they will still be on the hook for the judge's ignorance as to the invalidity of this type of deterrence.

Deterrence here literally inflicts more punishment than is penologically justifiable in the false hope that it will be so terrible it will scare others out of committing that crime. Increasing the pain and suffering of one individual to try to coerce the behavior of another person is morally repugnant. Nonetheless, we currently have thousands of people in Illinois prisons suffering from this injustice as well.

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249 People v. Branch, 2018 IL App (1st) 150026, ¶¶ 21, and 43.
Part 3: The Asks

The Campaign for Corrective Clemency (CCC) asks that Governor Pritzker exercise his executive clemency powers to grant blanket clemency to two, somewhat overlapping, groups of people currently incarcerated in the Illinois Department of Corrections (IDOC) -- those serving a sentence of death-by-incarceration (LWOP or de facto life), and anyone sentenced under the provisions of the Truth-In-Sentencing (TIS) Act.

By far the biggest legislative follies that continue to contribute to mass incarceration in Illinois, were the 1978 abolishment of discretionary parole, and the 1998 enactment of the Truth-In-Sentencing law. Nearly everyone currently incarcerated in Illinois prisons serving life or long sentences are victims of one or both of these changes, and additionally victims of several of the other injustices discussed in this booklet.

Therefore, in acknowledgment of all of these historical harms and injustices, the CCC asks Governor Pritzker to: A) commute the sentences of anyone currently serving a sentence of 40 years or more, including LWOP, to a sentence of parole eligibility after they serve 15 or 20 years of their sentence; and B) grant a partial pardon to anyone currently serving a sentence subject to any TIS provision, on that aspect (TIS) of their sentence, thereby ordering the IDOC to recalculate all sentences at the 50% (day-for-day) rate.
Why parole eligibility after 15 or 20 years? Because he will only be granting parole ELIGIBILITY at that point, and no one should have to wait longer than that to have an initial hearing to determine if they can be safely "returned to useful citizenship" as Illinois' Constitution indicates should be the goal.\(^{251}\) It is also worth noting that 15 or 20 years is extremely conservative, as it is nearly 1½ to 2 times as long as people had to wait when Illinois had a discretionary parole system for everyone in the 1970s.\(^{252}\)

Numerous national organizations and experts have made similar recommendations of 15 or 20 years. For instance, the Model Penal Code of the American Law Institute recommends a "second look" for everyone after 15 years.\(^{253}\) The Prison Policy Initiative recommends universal parole eligibility after 15 years.\(^{254}\) As does the organization Families Against Mandatory Minimums (FAMM). The Sentencing Project in Washington, DC recommends capping all sentences at 20 year like some European countries do.\(^{255}\)

Even in the international community, LWOP and other DBI sentences in general are rarely ever used.\(^{256}\) For

\(^{251}\) Illinois Constitution of 1970, Article I, Section 11.

\(^{252}\) O'Reilly supra note 46 (noting that with goodtime even those convicted of murder saw the Parole Board after 11 years and 3 months).


\(^{254}\) Cure International Newsletter, " The Prison Policy Initiative recommends the following in regard to life sentences" (Fall 2019).


\(^{256}\) Univ. of San Francisco Ctr. for Law and Global Justice, Cruel And Unusual Punishment: U.S. Sentencing Practices In A Global Context (May 2012).
instance, over 100 countries have signed the Rome Statute, which both prohibits LWOP and requires a review of all "life" sentences after 25 years.\textsuperscript{257}

Governor Rauner actually pioneered the first type of clemency requested herein when he commuted the LWOP sentence of Sherman Morissette to parole eligibility on January 11, 2019.\textsuperscript{258} Governor Pritzker has done the same for numerous individuals in 2020 and 2021.\textsuperscript{259}

Finally, "Truth-In-Sentencing" was always overkill, and has devastated thousands of people's lives. If sentence lengths being served were long enough to serve the ends of justice before TIS, then reverting back to the prior lengths would still serve the ends of justice now. Today, sentences being served are two to three times as long as they were, solely because of TIS. Thus, they actually serve as an injustice to those being forced to serve them, their families, and taxpayers.

TIS is thus recognized as an expensive, counterproductive, and inhumane mistake. So too was the abolishment of discretionary parole. Blanket clemency in the above-mentioned manners to address both is therefore more than justified, especially considering it would also go a long ways to address the dozens of other injustices people confined to the IDOC have suffered from.

\textsuperscript{257} Ibid., at p.23.
\textsuperscript{258} Mitchell Amentrout, "Rauner grants 30 clemency requests before leaving office," \textit{Chicago Sun-Times}, Jan. 11, 2019, 8:50pm CST (See table included therein).
\textsuperscript{259} See e.g. Erin Heffernan, " Pritzker grants parole eligibility to Paula Sims, convicted of killing daughters in 1980s", stltoday.com, Mar. 12, 2021.
Part 4: Steps To Take Action
(What You Can Do)

Thank you for taking the time to read this booklet. We hope that you will volunteer some of your time and energy to help push the Campaign for Corrective Clemency (CCC). We are immensely grateful for your support and willingness to advocate for common sense solutions to the historical harms and injustices inherent in Illinois' criminal legal system. We hope that this booklet/toolkit will empower you to reach out to the Governor, your friends, family, colleagues, neighbors, acquaintances, and even strangers to raise awareness and activism in support of the CCC and related issues.

As noted earlier, Parole Illinois believes the most effective way to mobilize people in support of decarceration campaigns is to first educate and mobilize the people in prison. To that end, this booklet/toolkit provides an overview of the issues, arguments in favor of blanket clemency, samples of a GTL message, letter to the Governor, social media posts, talking points, etc., to use in your advocacy. Additionally, we set up a separate website (www.correctiveclemency.org) to provide easily accessible flyers, educational materials, and other information that people can download to share.

The following is a list of various steps you can take in support of the CCC:
1) *Educate Yourself.* Reading this booklet was a good start. Study the arguments justifying blanket clemency that are catalogued herein, and the bullet points/talking points listed in Appendix B. The more familiar you become with these arguments and talking points, the more comfortable you will be speaking to others about them, and thus, the more effective an advocate you will be for the CCC.

2) *Spread The Word And Educate Others.* We need as many people as possible to become advocates for the CCC to increase our chances of success. You can advocate for the CCC and help spread the word by doing any or all of the following:

   A) Engage In One-On-Ones. Identify everyone in your vicinity, neighborhood, circle, or community who would benefit from the Governor granting blanket clemency in the manner sought by the CCC (i.e. anyone who is sentenced, or who has a loved-one sentenced, under any of the Truth-In-Sentencing provisions and/or anyone serving a de facto life sentence (40+years) or a Life-Without-Parole (LWOP) sentence), and those rare selfless individuals who wouldn't benefit, but who are willing to help those who would benefit. Explain to them the concept of the CCC, the justifications for the Governor to grant blanket clemency, and try to enlist them in the campaign. Encourage them to read this booklet or visit the website, and do as many of the activities in support of the campaign that they have the time, resources, and willingness to complete.
B) Spread The Word On Social Media. Many of us in prison have our own social media accounts (Facebook, Twitter, Instagram, etc.) with dozens, hundreds, or even thousands of followers. Use your social media accounts to help spread the word about the Campaign for Corrective Clemency. Post a link to the website (www.correctiveclemency.org) and ask everyone to check it out and sign on in support.

In the back of this booklet (Appendix B) are dozens of talking points short enough to be posted even on Twitter. Post one or more of them on a regular basis on all of your social media accounts, and ask others to repost them. Also comment on current news stories about systemic injustices in Illinois' criminal legal system and/or corrupt cops, prosecutors, and/or judges in Illinois by linking the issues. For instance, if Detective Reynaldo Guevara is in the news, post a link to that story with the following comment "another reason why we need Governor Pritzker to use his executive clemency powers much more expansively to address these injustices. #correctiveclemency."

C) Use GTL To Spread The Word. An easy way to spread the word about the campaign from in prison is through the GTL messaging system on your tablet or at the kiosk. Send a message to all of your friends and family members, especially those in Illinois, asking them to get involved. On the next page is a sample message that can be used:
"Dear _______________,

I am sending this message to let you know about the Campaign for Corrective Clemency (CCC). If successful, this campaign would allow me to come home a lot earlier. The CCC asks Governor Pritzker to use his executive clemency powers to grant blanket clemency to give everyone currently serving extreme prison sentences parole eligibility and/or a sentence reduction to address the historical harms and injustices inherent in Illinois' criminal legal system.

I would greatly appreciate it if you would take the time to learn more about this campaign by going to www.correctiveclemency.org and reading the available materials; and then doing one or more of the following activities while on the website: a) provide your contact information under "Get Involved" to receive alerts about the CCC; b) leave a message in support of the CCC; c) write a letter or email to (or call) Governor Pritzker and urge him to act as outlined by the CCC; and d) click on the link to the CCC's Change.org petition and "sign" it.

D) Use Radio, Podcasts, Publications, Etc. To Spread The Word. Many of us in prison or our supporters on the street have a podcast, or appear on them or on radio programs to speak on issues related to criminal justice reforms or prison conditions. Plug the CCC on air, in op-eds, newsletters, or however you can.
3) **Assist With Our Letter Writing Campaign To The Governor.** If you, or a loved one would benefit from Governor Pritzker granting blanket clemency in the manner requested by the CCC, please help with the letter writing campaign to Governor Pritzker by:

   A) Writing your own letter to Gov. Pritzker asking him to use his executive clemency powers in a much more expansive manner to address historical harms by providing everyone currently serving extreme sentences parole eligibility after 15 or 20 years, and relief from the Truth-In-Sentencing provisions.

   In the back of this booklet (Appendix C) you will find a sample letter to Governor Pritzker. By no means do you have to follow this template, but we provide it as an example of how one can be formulated. The main things that are needed for an effective letter are to: 1) be respectful; 2) keep it short; 3) include some of the injustices (described in this booklet) that you've encountered in your own case (some possibilities/examples are: "I'm currently serving a sentence under the Truth-In-Sentencing provisions which the Rauner Administration acknowledged as being extreme and counterproductive."; "I went through the same system that Governor Ryan found to be so unjust that he put a moratorium on the death penalty, but I was denied the same heightened due process that those on death row received solely because I was not sentenced to be executed."; "I was convicted under a theory of accountability, and received a greater sentence than the
person who actually committed the crime received."); 4) provide the website (www.correctiveclemency.org) so he can find additional information; 5) explain what it would mean to you and your family if he were to grant blanket clemency in this manner; and 6) end it with a plea for him to act now.

B) Encourage, or help, others to write letters or emails to, and/or call, the Governor in support of the Campaign for Corrective Clemency. If you possess good writing skills, please help those around you who may need help, to write compelling letters to the Governor.

4) "Sign" The change.org Petition. If you have a normal email account in the free world, have someone use it to "sign" our change.org petition. Also, ask all your friends and family members to likewise "sign" the change.org petition. A link to it can be found at www.correctiveclemency.org. The text can also be found in the back of this booklet at Appendix A.

5) Help Us Sign Up Other Organizations And Businesses To Support The CCC. Many of us in prison have contacts with, or connections to, organizations and businesses. It may be a family member, friend, a business associate, or even someone you've never met, but who you have heard speak favorably about decarceration that you can reach out to. The organization can be anything from a non-profit to a church, synagogue, or mosque, to a law firm or even a political party. If you can convince an organization,
business, church, etc. to officially support the Campaign for Corrective Clemency, ask them to sign on as a supporting organization or business at [www.correctiveclemency.org](http://www.correctiveclemency.org).

For selling points, see the answer to the question "Why should other organizations commit time and resources to pushing the CCC?" in the Frequently Asked Questions section in the front of this booklet.

6) *Help Us Get Celebrity Endorsements.* Do you know anyone who is a celebrity or who is well-known and well-respected? Maybe a famous actor, musician, writer, etc.? If so, try to get them to support the Campaign for Corrective Clemency by publicly stating their support on social media with the #correctiveclemency.

7) *Help Us Collect Data.* Convincing the Governor to act will require collecting data on how many people in prison serving extreme sentences are victims of the injustices catalogued in this booklet, and broadcasting those facts to educate both him and the general public about how widespread these injustices really are.

Some injustices may only affect dozens of people. Others, like oversentencing based on the fallacy of deterrence effect everyone. The goal is to acquire accurate data to demonstrate that each incarcerated person is a victim of several injustices; thereby justifying blanket clemency for everyone.

A second objective of this data collection is to have data readily available for other campaigns, articles,
podcasts, etc., concerning the individual issues or injustices.

Here's an example. Because accountability is not an actual charge, offense, or even element of an offense, there is little data on how many people were convicted under a theory of accountability. If we can compile data on accountability, we can then make better arguments not only for the Campaign for Corrective Clemency, but also use that data to argue for legislative changes to the accountability statutes. We can also help locate people in prison effected by the accountability laws if lawyers, law firms, or other organizations are working on accountability cases, or if new precedent comes out in the courts that can help people in their cases.

In the back of this booklet (Appendix D) you will find "Parole Illinois' Injustice Survey." Copies of this survey can also be downloaded at www.correctiveclemency.org. You can help us collect data from people impacted by extreme prison sentences to help advocate for the CCC, the Earned Reentry bill (SB2333), repealing Truth-In-Sentencing, etc., by doing the following:

A) Either tear out the copy attached as Appendix D, hand copy it legibly onto regular sized paper, or have someone download you a copy (or copies) from the website and send it (them) to you.

B) Make copies of the blank survey.
C) Fill out one copy yourself if you were sentenced to serve 10 years or more in prison. Please fill out as much of the survey as possible, answering all questions truthfully. If you don't know an answer to a question just write "I don't know." When finished, mail in the survey to the address provided on the survey. The more accurate data we can compile, the more useful it will be.

D) Locate others in your vicinity who were sentenced to serve 10 years or more and encourage them to fill out one of the copies of the survey and mail it in. If you are knowledgeable about these issues, also try to assist people who might need help filling out the survey.

8) *Report Back*. Please report back (via GTL) and keep us informed of your efforts, successes, contacts, etc. Put "CCC: Reporting Back" in the subject line of the message, and then tell us what action you took and when, and the result if any. For instance: "On (date), I contacted (organization) and spoke with (name) and succeeded in convincing them to officially support the Campaign for Corrective Clemency."
Part 5: Conclusion

Peter Wagner of the Prison Policy Initiative, rightly admonishes that "[i]ncremental declines can't erase mass incarceration...[i]t grew at breakneck speed, year after year. Our reforms need to be equally ambitious."²⁶⁰ Moreover, the Urban Institute concluded that "[w]e can't tackle mass incarceration without addressing long prison terms."²⁶¹ That includes those handed down in the past as well as the sentences handed down in the future.

The Governor's power to issue blanket clemency to correct historical harms, and deliver a serious blow to mass incarceration in Illinois is unparalleled. This is especially true where the legislature has refused to pass a single piece of retroactive ameliorative legislation.

Marie Gottschalk writes that "state governors have enormous discretion to grant executive clemency. So far, they have been largely unwilling to wield these powers to start righting the wrongs of the carceral state and to make a statement about how the time is long overdue to declare that the war on drugs and the war on crime are over."²⁶² The Sentencing Project asks governors to "return to the tradition of using executive clemency powers to correct past injustices. Only bold leadership like this will end mass incarceration within our lifetime."²⁶³

²⁶¹ Courtney supra note 36.
²⁶² Gottschalk supra note 36, p.264.
²⁶³ Ghandoosh supra note 11, p.40.
Likewise, the Prison Policy Initiative encourages governors to "[u]se commutation in a broad, sweeping manner to remedy some of the extremes of the punitive policies that have led to mass incarceration."\textsuperscript{264} Governor Pritzker claims to want to make Illinois a "beacon of humanity." The first step in doing so should have been to address the inhumane prison sentences handed down over the past four and a half decades. He has the power to address the racial, political, and constitutional injustices described herein by showing mercy and respect for incarcerated men and women's desire to be "returned to useful citizenship" (as our State Constitution indicates should be the goal of incarceration).\textsuperscript{265}

He could, with the swipe of his pen, grant parole eligibility after 15 or 20 years of incarceration to everyone currently incarcerated for life; and grant everyone serving time under the Truth-In-Sentencing provisions, a partial pardon or commutation on that aspect of their sentence. This would make Illinois a more humane state, and is the easiest way to secure justice for today's victims of yesterday's overly punitive sentencing laws. Moreover, it would be an example of bold leadership for others to follow, hopefully encouraging the General Assembly to then pass more humane ameliorative legislation thereafter.

Parole Illinois hereby calls on the Governor to provide the bold leadership the moment requires; implores the

\textsuperscript{264} Cure International Newsletter supra note 254.
\textsuperscript{265} Illinois Constitution of 1970, Article I, Section 11.
Governor not to play politics with people's lives; and to put his words into action by exercising his executive clemency powers in sweeping strokes to grant desperately needed relief to thousands of over-sentenced people filling Illinois' prisons. Moreover, we call on other criminal justice organizations to echo these calls.

Let's give the Governor the push he needs to do the humane thing --- exercise his power to grant blanket clemency to mitigate some of the historical harms and injustices related to mass incarceration in Illinois.
Acknowledgments

Special thanks go to the numerous people and organizations who helped make this campaign happen.

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Second, thanks to the following organizations for providing financial and/or staffing support, without which the CCC would have never gotten off the ground: The Sentencing Project, The Illinois Humanities Council, and The Human Rights Lab.

Part 6: Appendices
Appendix A: change.org Petition

Title: Campaign for Corrective Clemency

Petition Target: Illinois Governor J.B. Pritzker

Description: The Campaign for Corrective Clemency seeks to convince Illinois Governor J.B. Pritzker to exercise his executive clemency powers in an expansive manner to address the historical harms and injustices of mass incarceration, and thereby bring the State one step closer to being the beacon of humanity he said he seeks to turn Illinois into. With thousands of men and women in Illinois currently sentenced to death-by-incarceration, it's time for Governor Pritzker to use his powers to rectify the past injustices that thousands of people continue to suffer from. In Illinois, the Governor possesses an essentially unreviewable power to grant clemency that is checked only by his own conscience. This gives him the ability to grant clemency to large groups of people, even if they haven't formally applied for clemency via the normal Illinois Prisoner Review Board process. We are calling on the Governor to use that power to do two things:

1. Grant everyone currently serving a sentence of Life-Without-Parole (LWOP) or de facto LWOP (40 years or more) parole eligibility after serving 15 or 20 years in prison; and

2. Grant everyone currently serving a number of years subject to the Truth-In-Sentencing (TIS) provisions a partial commutation/pardon on that portion of their sentence and order the Illinois Department of Corrections (IDOC) to recalculate all such sentences under the 50% (day-for-day good time) standard, effectively abolishing TIS for anyone currently in prison.
The Governor would be more than justified in doing so. Mass incarceration in Illinois is both a product and producer of countless historical harms and injustices inflicted upon people who come into contact with Illinois' criminal legal system. A legal system rife with racial, political, and constitutional injustices which feed a prison system full of people whose continued incarceration serves no penological objective once they cease to pose any threat to society and have already served a significant amount of time in prison.

The sheer amount of systemic injustices and historical harms means no one currently in prison serving a long sentence has escaped unscathed. (Details of these harms/injustices can be found at www.correctiveclemency.org). Unfortunately, Illinois' General Assembly has failed to act to address the vast majority of these injustices, and even when it does, it refuses to pass retroactive legislation; meaning legislators will acknowledge the injustice, and protect people who commit crimes in the future, but refuse to provide any relief to the victims of the prior unjust law or policy. They do so solely for political reasons, thereby playing politics with people's lives.

We hereby call on Gov. Pritzker to use his power to bring relief to the over-incarcerated.

Gov. Pritzker would not be the first Illinois governor to use blanket clemency to cure an injustice. For example, Gov. Ryan commuted the sentences of all 167 people on death row due to the injustices inherent in the implementation of the death penalty. Just as Gov. Ryan cleared Illinois' former death row, Gov. Pritzker should clear Illinois' "slow-death row".

Blanket clemency was the humane thing to do then and it is the humane thing to do now.
Appendix B: Bullet Points/ Talking Points

The following is a list of bullet points or talking points that can be used for Twitter, or other social media posts, and can be incorporated into your letters, arguments, etc.

- Support the Campaign for Corrective Clemency to help address the historical harms of mass incarceration by going to www.correctiveclemency.org. #correctiveclemency
- Mass incarceration in Illinois is both a product and producer of numerous injustices. Gov. Pritzker has the power to alleviate the excessive suffering of the victims of those injustices. #correctiveclemency
- Life-Without-Parole sentences and Truth-In-Sentencing are the lifeblood of mass incarceration in Illinois. #correctiveclemency
- There's a lot more Gov. Pritzker can do to address the historical harms and injustices inherent in Illinois' judicial system. #correctiveclemency
- Gov. Pritzker, grant parole eligibility to everyone serving a Life-Without-Parole sentence. #correctiveclemency
- Sentence severity in Illinois has reached an extreme that contradicts the United States' stated human rights obligation under the ICCPR to direct its prison systems towards social rehabilitation and reformation. #correctiveclemency
- Sentencing hundreds of people each year to die in prison violates the Illinois Constitutional objective of returning people to "useful citizenship". #correctiveclemency
- Our punishments are too severe; our sentences too long; and while courts may conclude the legislature is
permitted to choose long sentences, that does not mean long sentences are wise or just (paraphrase of former U.S.S.Ct. Justice Kennedy).

• Mass incarceration is the civil rights issue of our era, has brought about mass injustices, and has decimated thousands of people's lives in Illinois.

• Gov. Pritzker, clear Illinois' "slow-death row".

• "People are serving savagely long sentences for violent offenses even though they no longer pose serious threats to public safety" (Marie Gottschalk).

• "A just and necessary punishment must never exclude the dimension of hope and the goal of rehabilitation" (Pope Francis).

• The Prison Policy Initiative recommends universal parole eligibility after 15 years.

• The Sentencing Project recommends capping all prison sentences at 20 years.

• Families Against Mandatory Minimums (FAMM) recommends parole consideration for everyone after 15 years in prison.

• The Model Penal Code of the American Law Institute recommends a "second look" at long sentences after 15 years in prison.

• Parole Illinois asks Governor Pritzker to commute all life sentences to parole eligible sentences after serving 15 or 20 years.

• Parole Illinois' SB2333 would give everyone an opportunity to be considered for parole after serving 20 years in prison; the General Assembly needs to
pass it immediately. If they don't, Gov. Pritzker should take bold action. #correctiveclemency

- People on Illinois' "slow-death row" went through the same corrupt system but were denied the added due process protections afforded to those on death row. #correctiveclemency

- The two biggest follies in Illinois' sentencing code? Truth-In-Sentencing laws and Life-Without-Parole sentences. #correctiveclemency

- Truth-In-Sentencing is overkill and devastates thousands of people's lives for no public benefit. #correctiveclemency

- Truth-In-Sentencing is recognized as an expensive, counter-productive, and inhumane mistake. If the General Assembly won't repeal it immediately, Gov. Pritzker must take bold action. #correctiveclemency

- Gov. Pritzker, grant everyone serving a sentence under any of the Truth-In-Sentencing provisions a partial pardon/commutation of that portion of their sentence reverting back to day-for-day good time. #correctiveclemency


- Anyone who has been tortured by the State deserves clemency. #correctiveclemency

- If all sentencing ranges were increased on the theory of punitive deterrence, and punitive deterrence was/is a myth, then why do those overly punitive sentences and sentencing ranges remain? #correctiveclemency

- If thousands of prison sentences were increased by judges who claimed they were needed to "deter
others", and those sentences never deterred anyone else, then why are people still forced to serve them? #correctiveclemency

- If punitive deterrence has repeatedly been shown to be a myth, why do judges still increase sentences based on that myth? #correctiveclemency
- Corrective Clemency is a small form of reparations for mass incarceration. #correctiveclemency
- Illinois' General Assembly has refused to do anything other than tinker around the edges of what is needed to address the ills of mass incarceration. #correctiveclemency
- Parole Illinois, FAMM, the Sentencing Project, and Prison Policy Initiative call on governors to use their executive clemency powers in a broad sweeping manner to correct past injustices. #correctiveclemency
- If Gov. Pritzker followed the science regarding COVID-19, why is he ignoring the science about the maturing brains of 18-25-year-olds who commit crimes? #correctiveclemency
- Hundreds to thousands of people in prison had favorable or exonerating evidence hidden from them in "street files" by police, or suppressed by prosecutors prior to trial denying them a fair trial. #correctiveclemency
- Corrective Clemency would help reduce the amount of time victims of constitutional, racial, and/or political injustices spend in prison. #correctiveclemency
- Thousands of juveniles and young adults are oversentenced in Illinois and deserve parole opportunities or a sentence reduction. #correctiveclemency
• None of the ameliorative legislation passed to address Illinois' felony murder law, habitual criminal law, or lack of parole for juveniles is retroactive. THAT is a travesty of justice. #correctiveclemency
• Gov. Pritzker should grant blanket clemency to people who are oversentenced, convicted under unjust theories of conviction, or had their constitutional rights violated by the State in order to obtain their conviction. #correctiveclemency
• Blanket clemency as suggested by the Campaign for Corrective Clemency would save Illinois billions of dollars in liabilities incurred over the past several decades. #correctiveclemency
• CPD Polygraph Examiner Robert Bartik claimed over 100 people voluntarily confessed to him before, during, or after their polygraph exam -- something a former head of the American Polygraph Association called unheard of and not to be believed. #correctiveclemency
• For decades, the Cook County State's Attorneys' Office has been providing undisclosed benefits to their incarcerated witnesses, several of whom have admitted they were lying and cost defendants decades of their lives (and cost taxpayers millions of dollars). #correctiveclemency
• While there have been a few reforms to sentencing laws passed recently, they leave much to be desired and leave thousands of people victimized by the unjust laws of yesterday and today. #correctiveclemency
• Every dollar wasted on incarcerating people who no longer pose any threat to society is a dollar that could be spent actually increasing public safety by funding crime prevention programs, schools, fire departments, healthcare, and more. #correctiveclemency
• Illinois has the most extreme and inhumane firearm enhancement laws in the country (15, 20, 25-Life). More extreme than even Florida's prior law which was acknowledged as a "costly mistake" and greatly reduced when amended. #correctiveclemency

• Justice requires ameliorative actions that address those currently suffering under unjust sentencing laws. The General Assembly has thus far refused to act. Gov. Pritzker must act if he truly believes in justice. #correctiveclemency

• "It's not all that difficult, folks, to be compassionate when you've been the beneficiary of compassion in your lowest moments"(Joe Biden) #correctiveclemency

• Blanket clemency in the manner suggested by the Campaign for Corrective Clemency would go a long way toward mitigating some of the racial injustices inherent in Illinois' sentencing regime. #correctiveclemency

• The COVID-19 pandemic exposed IDOC's inability to keep people in its custody safe. Dozens of incarcerated men and women died as a result. Two years later IDOC is still incapable of implementing an effective strategy to prevent deaths during future pandemics. #correctiveclemency
Appendix C: Sample Letters to the Governor

The following two letters are just to give you an idea of how such letters can be constructed. They are not to be copied word for word, but rather to serve as somewhat of templates that you should change to your personal circumstances. The first one is an example of how a letter by someone who is incarcerated with LWOP and was convicted by a theory of accountability might construct their letter. The second one is an example of how a family member of someone sentenced to death-by-incarceration due to Truth-in-Sentencing might construct a letter.

Take your time in crafting your letter to the Governor utilizing the arguments made in this booklet that apply to your personal circumstances.
Dear Gov. Pritzker,

I am writing to you today to implore you to use your executive clemency powers in a much more expansive manner and grant blanket clemency to help ameliorate some of the historical harms and injustices related to mass incarceration in Illinois.*

Mass incarceration is now recognized as the civil rights issue of our era. We now understand that over the past 4 or 5 decades we have over-sentenced thousands of people to death-by-incarceration or other unnecessarily extreme prison sentences. Not only did those sentences fail to reduce crime, but they continue to waste unconscionable sums of taxpayer money that could have been, and could be, better spent on programs and community assistance that actually prevent crime.

Unfortunately, while the General Assembly will acknowledge these facts, legislators have thus far refused to do anything rather than tinker around the edges of what is needed to correct for these decades-long injustices; and have refused to do anything to bring relief to the thousands of over-sentenced men and women filling our prisons (such as pass the Earned Reentry Bill—SB2333—or retroactively repeal the Truth-in-Sentencing laws).

I have been sentenced to die in prison after my first felony conviction based on the theory of accountability. Both the accountability statute and mandatory minimum LWOP statute were enacted based on the false theory that they would deter crime.
I was also denied a fair trial where the state knowingly allowed perjured testimony from a state witness, and concealed evidence favorable to my defense/innocence.

However, due to our court system being geared towards excusing constitutional violations in the interests of “finality,” and procedural bars that work to deny justice; I, like thousands of others, am left with only one option for regaining any chance of freedom and becoming a productive member of society—your grace.

That is why I am writing to you today to ask you to seriously consider granting blanket clemency to give everyone serving a sentence of death-by-incarceration (LWOP or de facto LWOP) parole eligibility after serving 15 or 20 years. This way you can correct for decades of over-sentencing people to die in prison unnecessarily and give people an opportunity to prove they can be safely returned to useful citizenship, as our state constitution claims should be the objective.

As part of the Campaign for Corrective Clemency, I also encourage you to grant blanket clemency in the form of a partial pardon/commutation to anyone serving a sentence subject to the Truth-in-Sentencing (TIS) provisions, forgiving that (TIS) part of their sentence, and order the IDOC to recalculate their sentence under the 50% (day-for-day good time) standard.

If 50% was sufficient to protect society and achieve all penological objectives prior to TIS, and Illinois: A) never reduced sentences handed down; and B) now recognizes TIS was/is counterproductive, and a costly mistake—then such blanket clemency will not only save the state billions of dollars at no risk to public safety, but will also bring Illinois one step closer to being the “beacon of humanity” you say you desire it to be.

Prior to A) the abolition of Illinois’ parole system;
B) extending all sentencing ranges; C) enacting TIS; and D) passing the country’s strictest firearm enhancements—Illinois only considered about a dozen people per year to be completely irredeemable (those sentenced to be executed). Today, however, Illinois labels hundreds of men and women irredeemable every year, requiring them to die in prison.

We do so not out of any true public safety or penological purpose, but rather due to politics. These politics have serious consequences for thousands of people, their loved ones, and Illinois communities. As others have noted, it will take bold leadership to fully address the ills of mass incarceration. I call on you today to demonstrate that bold leadership and grant blanket clemency in the manner requested by the Campaign for Corrective Clemency.

Respectfully submitted,

/S/ Signature

From: (Name) (ID#)  
(Prison)  
(P.O. Box or Street Address)  
(City/Town) (IL) (Zip Code)

*A non-exhaustive list of the historical harms and injustices related to mass incarceration that need correcting can be found at www.correctiveclemency.org.
Dear Gov. Pritzker,

I am writing to you today as both a mother and a concerned citizen, to ask that you show the bold leadership necessary to address the lingering ills of mass incarceration.

Mass incarceration is both a product and a producer of innumerable historical harms and injustices.* While most people will now acknowledge that sentencing thousands of people to die in prison was/is a costly mistake, contributes little to public safety, and destroys families and communities, Illinois’ General Assembly has refused to act. Instead, we see more political gamesmanship.

My son was sentenced to 48 years in prison for a crime that occurred in August of 1998. Due to the Truth-in-Sentencing (TIS) law, which became effective in June of 1998, he must serve all 48 years, which amounts to a de facto life sentence.

Had the crime occurred a mere two months before it did, my son would have had to serve about half that—around 24 years. That is a severe sentence, but today he would be returning to his family to become a contributing member of society. Instead, TIS means he will most likely die in prison.

In fact, the TIS law alone doubled the percentage of people serving de facto life sentences in Illinois. Several years ago, your Republican predecessor established the Illinois State Commission on Criminal Justice and
Sentencing Reform, which concluded that Illinois’ law is counterproductive. Others have noted that TIS costs Illinois hundreds of millions of dollars per year.

If serving 50% of a sentence was sufficient to achieve all penological goals prior to enacting TIS, then it still is today. Even the Commission’s minimalist suggestion to reduce TIS provisions by 10%-15% largely fell on deaf ears, because the General Assembly lacks the political will to do what’s right. In reality, all of our current sentencing laws are excessive, and the TIS provisions need to be completely and retroactively repealed.

While the legislative branch refuses to act, you have the power to correct their mistakes for thousands of people, including my son, by granting blanket clemency in the manner requested by the Campaign for Corrective Clemency—ie. use your executive clemency powers to: 1) grant everyone serving a sentence subject to any of the TIS provisions a partial pardon/commutation on the TIS part of the sentence and order the IDOC to recalculate all sentences at the 50% (day-for-day good time) rate; and 2) grant everyone serving a LWOP or de facto life sentence parole eligibility after serving 15 or 20 years of their sentence.

By doing so you wouldn’t be letting anyone off the hook scot-free, but you would be: bringing relief to thousands of people sentenced to unnecessarily extreme prison sentences and their families; saving Illinois hundreds of millions of dollars per year in incarceration costs that could be invested in preventing crimes and keeping communities safer; and bringing Illinois one step closer to being a beacon of humanity.

I understand that people must pay a price for their crimes, but laws like TIS and sentences like LWOP and de facto life sentences ensure that people will overpay, and we
are all a lot poorer for it. Moreover, people are only overpaying because politicians passed one extremely punitive law after another: 1) based on the fallacy that each would deter crime; 2) out of political self-interest; and 3) without ever considering the consequences those laws would have on individuals, families, or communities.

For all of the above reasons and more, I humbly ask that you seriously consider using your executive clemency powers to grant blanket clemency to address the historical harms and injustices of extreme sentences in Illinois.

Thank you for your time and consideration,

Sincerely,
/S/ Signature

From: (Name)  
(Address)  

* A non-exhaustive list of the historical harms and injustices related to mass incarceration that need correcting can be found at www.correctiveclemency.org.
Appendix D: Parole Illinois’ Injustice Survey

Parole Illinois’ Injustice Survey seeks to compile data from all individuals serving extreme prison sentences (10+ years) in Illinois.

Mass incarceration in Illinois is both a product and producer of numerous injustices and can only be eradicated by addressing extreme prison sentences. Unfortunately, due to the Blue Code of Silence and a court system that prioritizes convictions at the expense of constitutional rights, fairness, innocence, etc., connecting the dots and understanding the extent or reach of the various injustices is difficult. This survey (we hope) will help us connect some more of those dots and expose the extent of some of those injustices.

Data from this survey will be collated and used to educate the public, lawyers, politicians, and organizations about: A) the various injustices of Illinois' "justice" system; and B) how far reaching and ingrained they are. The data will also be used to advocate for: A) changes to laws and policies; B) overturning sentences and/or convictions; C) other avenues of early release from prison; and D) a more just and humane legal system going forward.

The more accurate data we have, the more effectively we can advocate for all of that. Therefore, we ask everyone to answer the following questions as honestly and completely as possible. If you don’t know an answer, just write “don’t know” in the space provided.

Once completed, please mail this survey to the address below and encourage others to complete one as well. Blank survey forms can be downloaded at www.paroleillinois.org and at www.correctiveclemency.org.

Parole Illinois
601 S. California Ave.
Chicago, IL 60612

(*If you experience any difficulty understanding any of the questions or terms used in this survey, or need assistance filling out this survey, try to seek out a trusted law clerk, paralegal, or jailhouse lawyer at your facility and ask them if they would be willing to assist you.)
Parole Illinois’ Injustice Survey

- Name: ____________________________________________
  (First) (Middle) (Last)

- Prison ID #: __________

- Address: __________________________________________
  (Prison)

  ______________________________________________
  (Street Address or P.O. Box)
  ______________________________________________
  (City) (State) (Zip Code)

- What date did the crime that you are currently incarcerated for occur on? __________________________
  (Month) (Day) (Year)

- How old were you when that crime occurred? _____

- How old are you today? _____

- How long have you been incarcerated? _____

- If you were a juvenile when that crime occurred, was your case automatically transferred to the (adult) criminal court from the juvenile court? _____, _____;
  (Yes) (No)
  or did you have a transfer hearing? _____, _____
  (Yes) (No)

- What is your court case number? ________________

- What county was your case in? ________________

- Who was your trial judge? ________________

- Who was the prosecutor in your case? ________________

- Did you have a jury trial ___, bench trial ___, or plead guilty ____?

- What charges/offenses were you convicted of?

  __________________________________________

- What is your current release date? ________________
- What was your original total sentence?
  ______________________

Was your sentence ever reduced by the court or Governor? _____, _____.
(Yes) (No)
If yes, please explain how: ________________________________

- What is your current sentence? (This may be the same as the original sentence if never reduced.)
  ______________________

- Have you already served at least 50% of your sentence? (Ignore this question if you are serving a Life-Without-Parole sentence.)
  _____, _____.
  (Yes) (No)

- Does any part of your sentence fall under any of the Truth-in-Sentencing provisions, requiring you to serve 60%, 75%, 85%, or 100% of it?
  _____, _____.
  (Yes) (No)
If yes, please fill in all of the following that apply:

  ___ 60%
  __________________________________________
  (# of years that must be served at 60%, and crime).

  ___ 75%
  __________________________________________
  (# of years that must be served at 75%, and crime).

  ___ 85%
  __________________________________________
  (# of years that must be served at 85%, and crime).

  ___ 100%
  __________________________________________
  (# of years that must be served at 100%, and crime).

- Is this your first prison bit? ________ If no, how many times have you served prison terms? _______________
Concerning your current case, did the prosecutor argue during your sentencing hearing that a long sentence was needed to “deter others?”

(Yes)  (No)

If yes, and you have access to your sentencing transcripts, please write down the exact quote below, or attach a copy of them to this survey when you mail it in. (Do not attach your only copy as we cannot ensure legal documents will be returned.)

Did your judge justify giving you a long sentence by claiming it was necessary to “deter others,” or refer to aggravating factor number 7 (730 ILCS 5/5-5-3.2(a)(7))? 

(Yes)  (No)

If yes, and you have access to your sentencing transcripts, please write down the exact quote below, or attach a copy of them to this survey when you mail it in. (Do not attach your only copy as we cannot ensure legal documents will be returned.)

Were you offered a plea deal that you turned down prior to trial, and then received a longer sentence after taking the case to trial? 

(Yes)  (No)

If yes, please give details of offer below:

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During your sentencing hearing, did your judge comment on his/her belief that you were probably also less guilty of other charges that were dismissed, nolle prosequied, or that you were found not guilty of? 

_____ ,  _____. If yes, please give details or quote the judge:

______________________________________

______________________________________

Has there been a nonretroactive change in law that you could have benefited from if it had been enacted retroactively? (For instance, Illinois’ Youthful Offender Parole Act, or Illinois’ recent amendments to the Habitual Criminal Act, or felony murder rule.)

_____ ,  _____. If yes, please explain:

________________________________________________________________________

________________________________________________________________________

Were you convicted of felony murder (720 ILCS 5/9-1(a)(3))?  ____ ,  _____.

(Yes)   (No)

If yes, please explain: A) what the underlying felony was; B) who the victim was in relation to you (stranger, friend, accomplice, etc.); and C) how the victim allegedly died:

________________________________________________________________________

________________________________________________________________________

Were you convicted under the theory of accountability (720 ILCS 5/5-1 thru 5/5-3)?  ____ ,  _____.

(Yes)   (No)
If yes: A) was the principal identified at your trial?

________, _______;  
(Yes)  (No)

B) was the accountability theory explained in your indictment, charging instrument, or bill of particulars?

________, _______;  
(Yes)  (No)

C) was the accountability language incorporated into your jury instructions for each individual offense?

________, _______;  
(Yes)  (No)

D) did the state identify the principal? ________, _______.  
(Yes)  (No)

If yes, was the principal convicted? ________, _______.  
(Yes)  (No)

If yes, what sentence did the principal receive?

__________________________________________________________

- Did the police claim that you made an oral statement that you never actually made? ________, _______.  
(Yes)  (No)

If yes, please explain the gist of the fabricated statement, how it was used in your trial, and give the name of the police officer who alleged you made the statement: ________________________________

__________________________________________________________

__________________________________________________________

- Were you ever housed in the Cook County State’s Attorney’s Offices (CCSAO) “Q” Witness Quarters (also known as the Inmate Witness Protection Program Living Unit (IWPPLU)) in Cook County Jail?

________, ________. If yes, please state what months/years

(Yes)  (No)
you were housed there, and what division the “Q”/IWPPLU was located in during your stay:

____________________________________

- Did any of your codefendants or witnesses who were housed in the CCSAO’s “Q” Witness Quarters or IWPPLU (this is different than protective custody) testify in your trial? _______. If yes, did they testify (Yes/No) the special benefits/privileges they received in the “Q”/IWPPLU? _______. Or did they deny that there (Yes/No) were any differences between living conditions in the “Q”/IWPPLU and living conditions in the general living quarters of the Cook County Jail? _______.

(Yes/No)

If your answer was yes to any of the above three questions, please write down the name(s) of that/those testifying codefendant(s) and/or witness(es) and note whether or not you are in possession of the transcripts of that testimony:

____________________________________

____________________________________

____________________________________

- Does your case involve undisclosed “street files” that were secreted in the boiler room or basement of a Chicago Police Department Area Headquarters? (For instance, did you receive a letter from attorney Candace Gorman or others stating that files relating to your case were found in either of those locations?)

______, ______. If yes, please give details about (Yes) (No)
when/how you learned of the “street file,” and if you have been able to obtain a copy of it yet:

________________________________________
________________________________________
________________________________________

- Were any of the following disgraced CPD officers or detectives significantly involved in the investigation of your case and/or testify at your trial? (Check all that apply and place and “I” if they were involved in the investigation, a “T” if they testified, or a “B” for both.)

_____ Cmdr. Jon Burge
_____ Det. Kenneth Boudreau
_____ Det. Reynaldo Guevara
_____ Polygraph Examiner Robert Bartick
_____ Sgt. Ronald Watts
_____ Det. David Fidyk
_____ Det. Michael McDermott
_____ Sgt/Lt. Anthony Wojcik
_____ Det. Michael Kill
_____ Det. Demosthenes “Jimmy” Balodimas
_____ Det. John Hollaran
_____ Det. Tracy Fanning

List any others w/significant histories of misconduct who were involved in your case: _______________

________________________________________
________________________________________
________________________________________

- List all the members of any police force and any prosecutors who testified in your case:

________________________________________
________________________________________
________________________________________

________________________________________
- Were you or any of the witnesses in your case subjected to a polygraph test? _____, _____.
  **(Yes) (No)**

Were you subjected to any additional sentences due to firearm enhancements (i.e. “gun add-ons,” 15, 20, 25-Life)? _____, _____.
  **(Yes) (No)**

If yes, which one(s), how many, and were they run consecutively (wild), or concurrently (together) to your other sentence(s)?

- Were you arrested based on a: _____ warrant; _____ investigative alert; _____ other (explain)

  (for instance arrested at a crime scene, or based on probable cause)

- Prior to your incarceration, had you ever experienced a traumatic brain injury (TBI) (defined as a head injury severe enough to cause you to lose vision or have amnesia)? ______.
  **(Yes/No)**

If yes, how many times, at what ages, and please give details of the location on your head of each injury and how it was caused:

- Were you a victim of domestic abuse/violence, and later
- convicted of violence against your abuser, or convicted under a theory of accountability where your abuser was the principal? ______. If yes, please explain:
  (Yes/No)

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

- During your incarceration were you ever subjected to long-term isolation/solitary confinement of more than 15 days straight (such as in Tamms Supermax Prison or Administrative Detention in any other facility)?
  ______, ______.
  (Yes) (No)
If so, please explain when (how long) and where:

________________________________________________________________________
________________________________________________________________________

- Are you suffering from any medical ailments/infirmities that were caused in whole or in part due to the negligence of the IDOC or Wexford Health Sources? ______, ______. If yes, please explain:
  (Yes) (No)
________________________________________________________________________
________________________________________________________________________

- Have you earned/obtained any of the following during your incarceration:
  ___ High School Diploma ____________________________________
  (When) (Where)
  ___ General Equivalency Diploma (GED)
  ____________________________
  (When) (Where)
____ Associate’s Degree ____________________________________________________________
    (In What)  (When)  (Where)
____ Bachelor’s Degree ____________________________________________________________
    (In What)  (When)  (Where)
____ Master’s Degree ____________________________________________________________
    (In What)  (When)  (Where)
____ Ph.D. ____________________________________________________________
    (In What)  (When)  (Where)
____ Other ____________________________________________________________
    (For instance, a paralegal certification, barber license, etc.)

- Do you have a friend or family member on the streets who would be willing to advocate on your behalf?
  _____,       ______.
    (Yes)  (No)
If yes, please provide their name and contact information: ________________________________

- Finally, feel free to use the lines below to write down any injustice you encountered during proceedings in Illinois’ criminal legal system that were not covered by the questions above, such as if you were denied an interpreter, DNA testing, etc: ________________________________
  __________________________________________
  __________________________________________
  __________________________________________
  __________________________________________