

MEMO

To: The Long Term Prisoner Study Committee of the Illinois General Assembly

From: Jennifer Bishop-Jenkins

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Re: PART ONE: Victims' issues to consider when studying long-term prisoner issues

PART TWO: Restorative Justice: A Proposal

I. VICTIMS ISSUES TO CONSIDER IN THIS STUDY

A. Introduction:

I am a family member of a triple murder case in Illinois and the offender is currently serving three LWOP sentences in the Illinois Department of Corrections. The offender was almost 17 and was tried as an adult. This trauma completely altered the direction of my life. Since my family members' deaths at the offenders' hand, I have devoted my time to and have become a recognized leader in diverse aspects of the fields of human rights and violence prevention. I have worked for gun violence prevention, against the death penalty with organizations such as Murder Victims Families for Human Rights (www.mvfh.org), for restorative justice, for crime prevention programs (especially for juveniles), in advocacy for prisoners, for human rights, and for victims and victims' rights. I have made many visits to prisoners incarcerated in Illinois and I have been a leader nationally on many areas of interest to the work of this committee. For the purposes of Part One of this memo, it is worth noting that I serve on the board of directors of the National Coalition of Victims in Action, and several other victim organizations, and for Part Two of this memo, it is worthwhile to note that I serve on the international board of directors of a Restorative Justice organization. My husband, Bill Jenkins, also a victim, serves on this Long Term Prisoner Study Committee.

For the purpose of this memo, I will use the term "victim" to refer to both primary and secondary victims of any crime that falls under the scope of this study. Primary victims are the persons upon whom the actual criminal act was imposed. Secondary victims are those directly and indirectly affected by the crime, such as family members and those who are hurt in a variety of ways by the original criminal act.

It also must be acknowledged that no memo, nor any study for that matter, can possibly address the range and scope of the problems that our society faces because of the criminal acts of offenders, their victims, the criminal justice system, and the larger impact on society as a whole. This is not a comprehensive proposal or analysis, by any means, but does begin to hint at some areas of concern for this study.

B. The Problem

This committee's area of study was conceived of by prison reform advocates who have the best of intentions and who, quite rightly, care deeply about issues of the incarcerated. But these same advocates chose to use an "under the radar strategy" to pass HJR 80 because of concerns that they knew would be raised in opposition by the general public that tends to be unsympathetic, sadly, to the many issues that prisoners face. Though the political thinking behind this strategy was understandable, significant problems arise when undertaking an effort this complex without having all the "stakeholders" at the table in the discussion. In this memo, I will focus on the problems experienced by victims of the crimes of the offenders being studied.

The very fact that this study exists has been re-traumatizing to some crime victims in Illinois who have grounded their entire life-rebuilding effort based on a set understanding of what was to happen to the offender. To even talk about changing that in any way opens up the broadest range of problems for victims imaginable. This was not a contingency that was foreseen or thought through by those who began this effort.

But it is hard to comprehend how any one who cares about the issues affecting criminal offenders would not also care deeply about, and feel responsible for, the issues affecting the victims of those criminals. If in fact someone were to care only about the offenders in this large social and political conversation taking place, that person would be exhibiting the most unhealthy aspects of what is sometimes called the "Lima Syndrome" (the theoretical opposite of the Helsinki Syndrome) in which captors become submissive to the needs of those they hold captive.

Based on numbers presented to this committee, there are approximately 6500 long-term prisoners in IDOC. Each of those represents a crime with potentially multiple primary and secondary victims. Just in my case alone, the one offender's act resulted in the deaths of an immediate family member of 12 people. So potential numbers of victims affected by the scope of this study are in the tens of thousands.

Also, because of the fact that prisoners serving longer term sentences are those convicted of the most serious offenses possible (as opposed to, for example, non-violent offenses with much shorter sentences attached to them), the intensity of impact, trauma, and concerns about the consequences of the original crimes is far more significant.

C. The Study

Since we are not aware of any such studies with regards to shorter term prison sentences, one question that has arisen in public discussions of the work of this committee has been: Why are the most violent offenders and the most serious crimes in Illinois being undertaken as the first ones to seek reform on?

While the entire criminal justice system is demonstrably in need of comprehensive and serious reform, it is also a valid perspective to consider that perhaps the more important matter for the Illinois General Assembly to be studying would be those of shorter term offenders, whose numbers in IDOC are far greater.

Of course, the most important study of all that could be conducted would be one that focused on preventing these crimes in the first place.

Once the committee chairs agreed, thankfully, to take any consideration of the incredibly problematic issue of retroactive sentence reduction entirely off the table in this study, the potential re-traumatization of any victims was greatly lessened. But various kinds of potential early releases (geriatric, medical, etc.) are being still being discussed by the committee, as are possible changes in the treatment of the indeterminate sentences that pre-date the changes in Illinois law in 1978.

D. Victims' Rights

Victims' Rights are well articulated in the Illinois Constitution, and in the Constitutions or statutes of all fifty United States. Many governmental and non-profit organizations exist around the field of victims' rights and significant resources are available to anyone who wishes to learn more about what rights victims should have and what problems they face in the entire scope of the criminal justice experience.

Unless there is a question of factual innocence (which is a serious matter that should be addressed in another forum), each offender serving a long-term sentence in Illinois has committed crimes where victims were significantly hurt, through no fault of their own, because of the choices of the offender. Of course we recognize the varying degrees of culpability in any act given mental health issues, mitigating circumstances, etc.

But even the most elemental understanding of victimology shows that the well being of victims/families is most often profoundly tied to the fate of the offender. It is a horrible reality, trust me, and I deeply wish it were not so. But even at the neurological level, there is no way to change this. It is a relationship created by the offender that can never be changed.

As long as the Illinois General Assembly is only studying sentencing changes that are prospective, and not retroactive, then "Victims' Rights" is not really an issue. All victims going forward would be grounded in the new paradigm. But since, for example, the indeterminately sentenced offenders in Illinois from crimes before 1978 are still "on the table," the victims of those crimes who have been living under one paradigm all these years have a right to know that may change and have a right to be part of that conversation.

Further, and most significantly, the Illinois Constitution speaks loud and clear with regards to the rights of victims to be notified of all matters affecting their cases. This committee will receive copies of studies done by national legal clinics with expertise in victims' rights and criminal law regarding the mandates of the Illinois Constitution in this matter.

The Illinois General Assembly, in setting up this study, has committed significant resources in time, talent, and taxpayer dollars, to studying issues of long-term prisoners. Victims of these offenders' crimes are asking: Where are the resources and plans that are going to address the issues in their lives created by the offenders and that are created by the ramifications of this study?

E. Victims and Issues of Health Care and Programs in the Prisons

As long as this committee studies issues of health care inside the Department of Corrections, and programs designed to make better the care of prisoners, so as to benefit the entire public and promote human rights, there is little that will trouble most victims and their families in this study. An exception may be the few families who, in unhealthy post-traumatic vengefulness, might wish ill for the offender. Of course, victims are not monolithic – they represent the widest possible range of reactions and circumstances. I personally do not believe that the State of Illinois should be in the business of exacting vengeance in that manner and it is my experience that many of the healthiest victims share this view.

F. Victims and Sentencing

The sentence of the offender, however, is of profound concern to victims and no discussion of anything to do with sentences of offenders incarcerated in Illinois can rightly, constitutionally, morally, or practically proceed without victims as fully engaged in the process as possible.

I personally had no early objection to keeping the indeterminately sentenced prisoner “issue” on the table of the discussion, though I of course cannot speak for all victims in Illinois, because I know the current process of yearly parole reviews by the Prisoner Review Board (PRB) to be a highly traumatizing one for victims families. Many of us would strongly support some sort of one-time review that would end, once and for all, the continual re-opening of scars for families that indeterminately sentenced offenders’ victims experience regularly.

I have made myself intimately acquainted with what those families go through. Everyone considering reforms to this system should do the same. It is not describable in any mere words in a memo.

G. The IDOC Mission

The Illinois Department of Corrections exists “to protect the public from criminal offenders through a system of incarceration and supervision which securely segregates offenders from society, assures offenders of their constitutional rights and maintains programs to enhance the success of offenders' reentry into society.” Public safety and punishment are recognized primary reasons as to why we have prisons. Furthermore, re-entry is a reality in most prisoners and victims’ cases and most prisoners return to society someday.

So, another problem is that not a single program of the IDOC, that we are aware of, is geared towards addressing a most important aspect of offender re-entry – that is, the relationship of the offender to the primary and secondary victims of their offense.

H. Re-Thinking This Study and the IDOC Mission

In part two of this memo, I will propose an entirely different approach to the issue of offenders and their victims – that of Restorative Justice.

But first, this study is in a position to recommend a wide variety of things that will then be considered by the Illinois General Assembly. It is the strong hope of many that we work with all across the state that this committee will now begin to take seriously the issues of victims while examining the area of indeterminate sentencing that this committee is now studying.

Resources should be devoted to gathering information about the best way to handle “victims’ issues”. We stand ready to help however we can, and there are many competent professionals in this state and nationally who stand ready to do the same.

But first this committee must recognize its obligations with regards to the most fundamental issues for victims, such as their right, in the case of the indeterminately sentenced, for example, to be *notified* that this conversation is even taking place.

Once notified, they would also be absolutely entitled to reasonable resources of support for the inevitable re-traumatization that will result. And they would also be clearly entitled to resources that would empower them to be a part of this conversation if they so desired.

The Illinois General Assembly created this committee with the mandate of protecting the public interest, as do all aspects of their work. To do less than notifying and empowering victims voices in this dialogue would be a failure to serve that very mandate. To do less would quite simply be a violation of the public trust, as well as an immoral re-victimization of many innocent and injured members of our community.

The family members of the indeterminately sentenced offenders’ victims are a relatively small number of people (around 300 cases) who could realistically and, for the most part, relatively easily, be found, informed and empowered to be a part of this study, if this committee so desired to continue to study the issue of indeterminate sentencing.

I. Conclusion to Part One

The committee chairs and members of the Long Term Prisoner Study Committee should seek resources and expand the timeline of this study in order to find, inform, empower and support the indeterminately sentenced offenders’ victims’ families wherever possible. They can, of course, choose if they wish to participate in the work of this committee. But they have a right to make that choice for themselves.

Since they are a relatively small and finite group, this is a highly realizable goal that this committee can successfully accomplish, if it so desired.

Obviously, if the scope of the sentencing study were larger than the indeterminately sentenced, then the numbers of victims deserving this information and support would grow dramatically and the legal complexities would grow exponentially. But thankfully, the committee chairs have limited the range of things that can be discussed with a narrow focus on the 300 or so indeterminately sentenced. Issues of geriatric release and juvenile LWOP and other issues that were mentioned by some advocates at the last meeting of this committee are not allowed under the scope of this study. Other venues exist in the state and nationally to examine those issues.

I urge the members of this committee to adopt a policy of notification and empowered support of the victims' families of the indeterminately sentenced.

II. RESTORATIVE JUSTICE: A SOLUTION?

A. Introduction

There is no treatment of the philosophy of Restorative Justice, hereafter referred to as RJ, that could be reasonably done in this forum. It is a wholly different way of thinking about community and society, crime and punishment, victims and offenders, with complex manifestations, applications, and aspects. There are entire degree programs devoted to it all over the world at major universities. Sizable conferences and courses are held on it all over the nation and the world each year. Books have been written on it by the hundreds, etc. Among the most prominent names in the USA currently, and the man credited with giving it this name is Dr. Howard Zehr of Eastern Mennonite University in Harrisonburg, Virginia and someone with whom I have had the honor of speaking and presenting with at major conferences on this topic.

B. Brief History

Historically, in severe brevity and over-simplification, the RJ philosophy, though not yet so named, arose in tribal societies, primarily that of the Maori of New Zealand, and other aboriginal cultures. It was the coming together of the community to address the problem of wrong-doing. A crime brought together a whole circle of people – the primary and secondary victims, the offender, families of both, and leaders of the community from a number of areas, all sitting down together to treat each crime like a problem that needed to be solved. All were treated as valued and dignified members of the circle. All had rights that needed to be supported. The offender absolutely had to acknowledge wrong-doing (hard to replicate in our current adversarial system of justice) and make restitution to the victim in any way possible. Sometimes extensive preparatory work needed to be done with both offenders and victims to be able to even bring them to the table. And it was an on-going process that placed healing the violation above almost all other considerations. The relationship between the offender and the victim was primary, and the focus was on repairing the rift if at all possible, with the recognition that this was often a very long and sometimes impossible process. It was not an “alternative to punishment,” it was and is an entirely different worldview about what criminal justice looks like.

C. What models are there possible now?

Re-making our entire philosophy about the nature of criminal justice is simply not going to happen any time soon in the United States, much as some of us would like for it to be so. We must instead content ourselves with what *is* possible – applying RJ principles to programs where possible.

RJ programs in the USA tend to function within several key parameters:

1. Usually RJ programs are used in the USA only in cases of property crime and non-violent offenses. Rarely is it applied to more serious offenses, and then only as an add-on to “traditional” justice, not in place of.
2. RJ programs exist most commonly in juvenile criminal justice systems.
3. RJ programs are difficult if not impossible in murder cases, in which cases what has been “lost” cannot be “restored”. Some prefer in these scenarios a model called “Transformative Justice,” if it is attempted at all. This “transformation” often results in the offenders change of heart and mindset and for the victim often there is a mental shift as well regarding the offender and the crime. The victims can express their intense feelings towards the one who is the cause of their pain and the offender must receive that as part of the process, finally coming to understand the full impact of his or her actions. For many victims, this is also a valuable process when they are able to find out information about their loved ones’ last moments of life and answer nagging questions that no one can answer but the offender.
4. RJ programs generally involve some version of one or more of these three models:
 - a. Victim Offender Facilitated Dialogue (often wrongly called a Victim-Offender “mediation” – this term is wrong because the victim and the offender are not on “par” with each other, trying to mediate something as if between two equals)
 - b. RJ Circles – these most closely resemble the original historical version of tribal cultures with the largest possible community representation
 - c. Family/Group Conferences – the victim and their families, and the offender and their families come together under guided leadership.
5. RJ programs in the USA by and large are *not in place of prison sentences and other “punishments”* but are an “add-on” program available when all parties are willing and able. They heal the soul, but rarely shorten the sentence in any way. RJ in juvenile crimes more often can be in place of the normal criminal justice process as a diversion program proven to reduce recidivism and continued criminal association.
6. Where the actual victims of crimes are not willing or able, “surrogate” victims can be used to facilitate a process that will help the offender to become a more responsible citizen and capable member of the community. In this model, victims of crime not related to the offense at hand represent the interests of the victims and can act as a “buffer” between offender and victims’ families, if desired. They know what questions interest the victims and they can also hold the offender accountable for the crime in ways that other representatives may not be able to.

D. CAVEATS

1. RJ cannot be thought of as a “ticket out” for offenders. Those who support RJ from this agenda do not understand how difficult a process this may be for the offenders they are advocating for. If this were the case, the offender’s participation in the process would be completely distorted and their motives suspect. In fact, taking responsibility for the full consequences of the crime often means a willingness to do whatever it takes to keep the

community safe and preserve the victims/families well-being as much as possible, including possibly accepting the sentence given as just punishment for the crime. Indeed, since RJ involves the offender literally confessing to the crime in question, it often results in a loss of all appeals on the basis of innocence. *We simply must accept the fact that a life sentence is often a fully appropriate outcome of an extremely serious murder, or series of murders, when we examine, case by case, the individual circumstances of each offender and their offense.* Offenders themselves often arrive at that same understanding through RJ processes, or their own personal growth. Though early release may be a possible outcome of this process, often it may not be part of the deal. Many good things still can come for all concerned in society when incarcerated offenders go through this process, even if incarceration remains unchanged.

2. RJ cannot work where the offender is not mentally or psychologically capable.

3. Many models of RJ cannot work if there is not a willing “victim” participating. To contemplate, much less meet with, the offender in many victims’ post-traumatic worlds is simply incomprehensible and severely re-traumatizing.

4. Extensive preparation of both the victims and the offender is generally necessary before any joint process can be undertaken. This is not a “quick fix.” It often means that extensive counseling must be part of the victims’ preparation in order to move them beyond revenge, and the offender must be brought to the often very difficult place of freely admitting guilt and the pain caused to the victim and working, sometimes for the rest of their lives, to do what they can to make amends.

There are many other caveats but this begins the list, at least for now.

E. A Proposal for the Illinois General Assembly, The PRB, and the IDOC

With regards to the indeterminately sentenced prisoners left in Illinois’ Department of Corrections (we are not talking about any other category of prisoner, for reasons made clear above) we propose the following:

1. That a comprehensive case-by-case review be undertaken of each of the 300 or so cases left. This review would include prosecutors, defense attorneys, the PRB, the IDOC, all of the notified victims families that wish to participate, and other experts.

2. That review would determine which of the 300 or so cases realistically might reasonably some day meet PRB guidelines for some sort of parole. *Factored into that determination would have to be a serious review of what the sentence would be for a comparable crime by today’s standards.* If a multiple capital case, for example, odds are that sentence would receive death or LWOP. Current PRB members report that the number of cases that would surface after such a review will likely be very small compared to the whole group of 300 or so. The rest would serve out their time.

3. Create a RJ department somewhere in IDOC or the PRB with trained staff that would professionally handle those few cases where restorative justice could be used and that have a realistic chance of re-entry someday.

4. Begin a thorough, multi-year if necessary, RJ process between victims and offenders in each possible case guided by professionals. Specific resources would have to be provided to make it happen, but one could easily argue that it would be more cost effective compared to the current model. Use victim surrogates where original victims are not willing or able to participate. In the course of that thorough and lengthy process, solutions to the question of what the sentence should be served by that offender will become clearer and decisions can be made accordingly. Several possible scenarios exist for how that decision could then be arrived at, by whom, or how it can be implemented.

5. End the annual parole review process currently practiced by the PRB – it is horribly re-traumatizing for victims’ families and is not working well for victims and for the general community in a host of ways.

F. The Rationale

There are so many problems with the way that the PRB currently has to handle the indeterminately sentenced; we hardly know where to begin to list them. In fact, this study would not exist if that were not widely recognized. But here are a few observations.

1. Illinois has been releasing inmates as “remorseful” that claim to be innocent. Those two are a non sequitur and cannot both be true. True remorse can only be determined through a thorough Restorative Justice process. Claims of innocence must be established in court. The one cannot be used to compensate for the other.

2. The current model for handling parole of the indeterminately sentenced barely involves the victims’ families at all. And in those ways that it does intersect with victims, it does so in ways that are often experienced as re-traumatizing. There are so many reasons why this is deplorable it scarcely needs further elucidation. Without the victims’ families involved fully, if they so wish, nothing has changed, nothing has healed, nothing has gotten better. This is just one more fundamental failing of our current adversarial system.

3. A thorough Restorative Justice process for all realistically potentially releasable indeterminately sentenced offenders and their victims families would do a great deal to help heal a lot of people in a lot of pain, and would place Illinois once again in the forefront of some of the nation’s best practices when it comes to solving social problems.

4. A thorough RJ process would be a better predictor of life after release than the current system that only takes the most cursory look into the life and mind of the offender and all involved. The current model for offender evaluation and release is wholly inadequate and superficial. Nothing has changed in the mindset of the offender, the victims, and the public, and the prison time has only served to warehouse someone while they age. In fact, this is in violation of the stated purposes of the Illinois Department of Corrections which is supposed to prepare prisoners for re-entry to society as productive individuals.

5. A process that respects victims' losses as primary is the only moral and sound approach to dealing with complex social problems like these. Any system that undercuts their importance or their role in the system cannot possibly succeed or have any credibility with the community at large. We see evidence of that all around us now with recidivism, anger, fear, and expanding cycles of violence which translate into calls for more severe sentences and longer terms for offenders and their accomplices.

G. Conclusion

This Long Term Prisoner Study Committee has a unique opportunity to model in itself the very principles of Restorative Justice. Proposals that come out of this committee could transform and at least partially "solve" this problem we are facing in this patchwork system that has been created over the years. Short of a full and comprehensive review of the entire criminal justice system in Illinois to revise and reform, simplify, clarify, and make fairer the laws in our state, the proposals herein contained make a very good start at some impressive reforms.

Already a similar study underway in New York State, with our intervention, has entirely stopped its forward going motion in order to re-evaluate the impact of its work on the families of victims, and has committed itself to a thoroughly inclusive and positive approach dedicated to the notification of and support of murder victims family members.

Illinois can be just as inspirational in the way it addresses systemic problems and its wounded citizens.

Thank you for listening to and considering this proposal.

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