

Disproportionate Sentencing of Minority Drug Offenders in Illinois

Report on Changes in Drug Laws 1985-2002

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INTRODUCTION

Increases in the severity of drug laws and the enforcement of those laws have been the driving forces behind the explosive growth of the criminal justice system over the last two decades. Some changes to the laws occurred in the seventies and early eighties, but drug offenders constituted a comparatively small proportion of the total justice population in Illinois until the mid- to late eighties. Since the mid-1980s, arrests for drug crimes have climbed steadily, from approximately 10,000 in 1985 to approximately 50,000 in 2000 (Olson, 2003). In each year of the early 1980s, approximately 1,000 or fewer inmates were admitted to the Illinois Department of Corrections for drug-law violations. In 1983, for example, 1,045 offenders were sentenced to prison in Illinois for drug crimes.ⁱ By 2002, that number had risen to more than 15,000 offenders, becoming 14 times greater in less than two decades.ⁱⁱ Drug offenses now account for over 40 percent of the annual admissions to the Illinois Department of Corrections (IDOC)ⁱⁱⁱ, and most of the persons admitted to IDOC for drug-law violations are minorities.^{iv}

Racial disproportionality in prison admissions for drug crimes in Illinois prompted the Authority to commission a more in-depth analysis of the problem. The products of the analysis were slated to appear in four complementary reports examining the disproportionate confinement of minority drug offenders. The first discussed racial disparities in criminal justice processing for drug crimes at the national level and provided the background for the Authority-commissioned analysis (Lurigio, 2004). The current report, which is the second in the series, is designed to promote a basic understanding of the structure and content of Illinois' drug laws. It discusses the major components of those laws as originally drafted as well as additions and enhancements to those laws that were enacted from 1985 to 2002.

Explaining the effects of race on arrests, prosecutions and sentencing practices is a complex proposition, and the information presented in this bulletin is not intended to infer any direct causal relationship between the laws themselves and any resulting racial disparities in sentencing. A more detailed statistical analysis of the race of individuals prosecuted and sentenced for each type of drug offense is clearly warranted. The history of drug law enhancements presented here is intended to illuminate the changing landscape of drug-law sentencing in Illinois as a foundation for future policy and legislative discussions that are aimed at reducing racial disparities. The next bulletin in the series will explore the relationships between race and arrests and prison sentences in different locations in Illinois.

HISTORY OF DRUG LAWS IN ILLINOIS

As in many states, the framework of drug laws in Illinois was erected in the early 1970s, primarily as a response to increases in drug use and drug-related crime that emerged during the Vietnam era. Over the last 30 years, the structure of the laws relating to illicit drugs in Illinois has remained essentially unchanged, and, in fact, many laws still appear as originally written. Laws and restrictions related to marijuana are found in the Cannabis Control Act^v, and laws and restrictions related to all other drugs are found in the Controlled Substances Act^{vi}. The provisions of these two bodies of law, particularly as they relate to criminal violations, closely mirror each other in structure. However, the Controlled Substances Act is much broader in its scope, including laws related to all types of narcotics and medications, both legal and illegal. Laws and restrictions related to drug paraphernalia are found in the Hypodermic Syringes and Needles Act^{vii} and the Drug Paraphernalia Control Act.^{viii}

For the purposes of simplicity, this report focuses on the three most common violations of the Controlled Substances Act: possession, manufacture and delivery. Its scope is further limited to the three substances currently considered the most prevalent and dangerous in Illinois – heroin,

cocaine (both powder and crack), and methamphetamines. Although marijuana use is highly prevalent among offenders, the number of incarcerations for cannabis offenses is relatively small. As a result, cannabis offenses are not part of this discussion. Likewise, the number of incarcerations for violations of the Hypodermic Syringes and Needles Act and the Drug Paraphernalia Control Act are insignificant for the purposes of this paper.

GENERAL STATUTORY CONSTRUCTION IN ILLINOIS

All criminal offenses in Illinois are categorized as either misdemeanors or felonies, with multiple classes in each category to account for differences in crime severity and other considerations. The distinction between misdemeanors and felonies is the amount of time to be served and nature of supervision. Misdemeanors are crimes for which a sentence of less than 365 days of incarceration is legally allowable,^{ix} and incarceration for misdemeanor offenses – when levied by the court – is generally carried out in a county jail facility. Because of the nature of the crimes and limits on prison capacity, misdemeanants are rarely sentenced to serve time in Illinois state prisons, and thus are also excluded from this discussion. Felonies are those crimes resulting most often in a sentence of a year or more of incarceration or probation.^x (Adams & Olson, 2001). Incarceration for felony offenses is generally served in Illinois Department of Corrections institutions. These crimes are the focus of this discussion.

Felonies are classified as Class 4, the least severe, Class 3, Class 2, Class 1, Class X and first degree murder, as its own class.^{xi} Class 4 felonies are crimes such as stalking^{xii} and unlawful possession of a firearm,^{xiii} and carry the possibility of a 1 to 3 year prison term.^{xiv} Incarceration is only one of a number of sentencing options available, including probation and other forms of supervision. When incarceration is deemed the most appropriate sentence, the judge usually has some discretion about the actual length of sentence, the upper and lower limits of which are established by state statute.^{xv} Class 3 felonies carry the possibility of a 2 to 5 year prison

sentence,^{xvi} and include crimes such as involuntary manslaughter,^{xvii} forgery^{xviii} and perjury.^{xix} Class 2 felonies such as kidnapping,^{xx} robbery^{xxi} and arson^{xxii} carry a possible 3 to 7 year prison sentence.^{xxiii} Class 1 felonies include crimes such as second degree murder,^{xxiv} child pornography^{xxv} and sexual assault^{xxvi} and carry the possibility of a 4 to 15 year prison sentence.^{xxvii} Class X felonies are generally the most intentional and violent crimes, including armed robbery^{xxviii} and aggravated criminal sexual assault,^{xxix} and carry a *mandatory* 6 to 30 year prison sentence.^{xxx} First degree murder carries a mandatory 20 to 60 year prison sentence.^{xxxi} Probation is not an option for Class X offenders or those found guilty of first degree murder.^{xxxii}

Except for the most severe of crimes (Class X felonies or first degree murder) or those that involve repeat offenders, Illinois law does not *generally* mandate prison sentences based on felony classification or offense type – drug-related or otherwise. The absence of mandatory sentences allows judicial discretion in determining the most appropriate course of supervision and restitution. There are, of course, exceptions to this rule. The general absence of mandatory sentences is an important consideration when studying changes in Illinois drug laws over the last two decades. As will be seen below, certain categories of drug offenses have had mandatory minimum penalties since their drafting into law, suggesting that these categories of offenses have been treated differently than any other crimes, save the most serious.

In terms of numbers of offenders arrested, charged and sentenced, the bulk of Controlled Substance Act violations fall into one of two categories. First are possession offenses, more commonly known as simple possession. Second are manufacture, delivery or possession with intent to manufacture or deliver offenses (hereinafter referred to as MDPI). MDPI offenses are those commonly referred to as drug manufacture or drug selling offenses, and all three classifications – manufacture, delivery and possession with intent – are treated identically for purposes of sentencing. Other types of offenses that do not specifically fit into these two

categories, or that represent enhancements to the severity of these categories, are described in more detail following the discussion of possession and MDPI offenses.

POSSESSION OFFENSES

For possession offenses, the felony classification of the crime and thus the resulting options for punishment are determined by the weight of the drugs when seized, measured in grams. For the sake of comparison, one gram of drugs is roughly equivalent to one packet of artificial sweetener. It should also be noted that purity of the drug is not a consideration in determining the weight (e.g. 1 gram of a substance which is 60% pure contains more of the actual narcotic than 1 gram of a substance which is 20% pure, but both are treated as 1 gram for the purposes of prosecution and sentencing).

From the earliest days of Illinois' drug law system, possession offenses have fallen into one of two felony classes, distinguished by a statutorily defined weight of drugs. At or above this threshold weight, the crime is categorized as a Class 1 felony. Any amount below the threshold weight results in a Class 4 felony. There are no Class 2, 3 or X felony possession offenses.^{xxxiii}

HISTORICAL CHANGES TO POSSESSION LAWS

At the inception of Illinois' current drug laws in the early 1970s, the weight that distinguished Class 4 possession offenses from Class 1 offenses was 30 grams for both cocaine and heroin, and 200 grams for methamphetamines. Since that time, the following amendments have been enacted:

- In 1988, the threshold weight for cocaine^{xxxiv} and heroin was reduced from 30 to 15 grams, and a graduated system of mandatory minimum sentences and extended maximum sentences was established for amounts of 100 grams or more.^{xxxv} Under this new system, an offender convicted of possessing 100 grams of cocaine would be guilty of a Class 1 felony, and if

sentenced to prison would be subject to a mandatory minimum of 6 years in prison and a maximum of 30 years, essentially a Class X sentence. This sentence is *double* the statutorily prescribed length of imprisonment for other Class 1 felonies. As the weight of drugs seized increases, both the mandatory minimum sentences and the possible maximum sentences also increase. Less than 100 grams, sentences are handed down at the discretion of the judge.

- In 1995, a provision was added to the possession laws requiring that each controlled substance found in an offender's possession be treated as a "single and separate" violation for purposes of prosecution and sentencing.^{xxxvi}
- In 2000, methamphetamines were distinguished from amphetamines and the weight distinguishing a Class 4 from a Class 1 offense was reduced from 200 grams to 15 grams.^{xxxvii}

Thus as the laws currently stand, possession of 100 grams, roughly a quarter-pound, of cocaine, heroin or methamphetamine carries the same potential sentence as aggravated criminal sexual assault.

Impact on the Department of Corrections. Convictions for Class 4 drug possession send more individuals to Illinois prisons than convictions for any other crime. In state fiscal year 2002, 19.5 percent of total sentences to IDOC resulted from Class 4 possession convictions, resulting in 5,500 admissions.^{xxxviii} By comparison, the next most prevalent offense, burglary, accounts for 6.7 percent of new admissions.^{xxxix} Class 1 possession is responsible for one percent of new admissions.^{xl}

MDPI OFFENSES

As with possession crimes, offenses characterized as manufacture, delivery or possession with the intent to manufacture or deliver are based on a schedule of weights, in grams, that distinguish different levels of offenses and their attendant consequences.

HISTORICAL CHANGES TO MDPI LAWS

As originally implemented, the schedule of weights and felony classes was as follows:

	Felony Class		
	2	1	X (mandatory prison time)
Cocaine	<10 g	10-30 g	30+ g
Heroin	<10 g	10-15 g	15+ g
Meth.	<50 g	50-200 g	200+ g

This schedule is particularly relevant to discussions of incarceration, as the amounts distinguishing Class 1 offenses and Class X offenses may be the difference between probation and mandatory prison time. The following changes in MDPI statutes have occurred since 1988:

- In 1988, the weights that differentiated felony classes for cocaine were significantly reduced. The distinction between Class 2 and Class 1 offenses was reduced from 10 grams to 1 gram,^{xli} and the distinction between Class 1 and Class X offenses was reduced from 30 grams to 15 grams. For the Class X mandatory prison sentences, a graduated schedule of elevated lengths of incarceration was imposed for greater quantities of drugs.^{xlii}
- Also in 1988, the rules for determining what offenses were subject to probation as an alternative to incarceration were amended such that any offender convicted of an MDPI

offense involving more than 5 grams of cocaine was *not* eligible for probation, meaning mandatory incarceration.^{xliii}

- In 1995, the “single and separate” provision was added to MDPI offenses.^{xliv}
- In 2000, methamphetamine was distinguished from other amphetamines and the schedule of weights was adjusted for meth alone. Under the new laws, the distinction between Class 2 and Class 1 offenses was reduced from 50 grams to 5 grams,^{xlv} and the distinction between Class 1 and Class X offenses was reduced from 200 grams to 15 grams.^{xlvi}
- In 2002, the weight distinguishing Class 2 and Class 1 offenses for heroin crimes was reduced from 10 grams to 1 gram.^{xlvii} Additionally, as with cocaine in 1988, incarceration was mandated as a sentence for anyone convicted of an MDPI offense involving more than 5 grams of heroin.^{xlviii}

The current schedule of weights and felony classes is as follows:

	Felony Class			
	Probationable		Mandatory Prison Time	
	2	1	1	X
Cocaine	<1 g	1-5 g	5-15 g	15+g
Heroin	<1 g	1-5 g	5-15 g	15+ g
Meth.	<5 g	5-15 g	--	15+ g

Thus as the laws currently stands, manufacture or delivery of 5 grams, roughly 1/100 of a pound, of cocaine or heroin carries a mandatory 4-year prison sentence.

Impact on the Department of Corrections. In 2002, Class 2 MDPI offenses resulted in the third highest number of individuals sentenced to the Illinois Department of Corrections, but the second

highest number of admissions at 1,626. Class 1 MDPI offenses resulted in the seventh highest number of sentences to IDOC, but the fifth highest number of admissions at 1,020. Class X MDPI offenses were responsible for 1.1 percent of new IDOC sentences in 2002. In total, MDPI convictions were responsible for 3,051 new admissions to IDOC in 2002.^{xlix}

OTHER CONTROLLED SUBSTANCES OFFENSES

Currently there are a handful of other Controlled Substance Act offenses, including trafficking^l (delivery across state lines) and conspiracy^{li} (involving two or more individuals). With few exceptions, these offenses result in comparatively insignificant numbers of annual incarcerations. The most notable of those exceptions are offenses related to delivery of controlled substances in specific settings or to specific persons.^{lii} In 2002, Class 1 felony violations of these crimes were responsible for 2.3 percent of new sentences to IDOC, resulting in 599 admissions.^{liii}

Since their initial passage, these “special circumstances” laws contained two provisions related to youth. The first doubles the length of sentences and amount of fines for anyone over 18 who delivers a controlled substance to anyone under 18.^{liv} The second enhances the penalty for anyone conducting a delivery within 1000 feet of a school, school bus stop or mode of transporting children to school. The penalty is enhanced by automatically treating any delivery under these conditions as one felony class higher.^{lv} Thus, any delivery of more than one gram of cocaine within 1000 feet of a school or school grounds is treated as a Class X felony, subject to mandatory prison time.

In the 1990s, the number and type of special circumstances were added to, as follows:

- In 1990, delivery within 1000 feet of public housing property and public parks resulted in an automatic elevation of felony class.^{lvi}

- In 1993, double penalties and double fines were added for second MDPI offenses committed within 1000 feet of a truck stop or safety rest area.^{lvii}
- In 1997, automatic felony class elevation was added for delivery within 1000 feet of any church, synagogue or building used primarily for worship.^{lviii}
- In 1998, automatic felony class elevation was added for delivery within 1000 feet of nursing homes, assisted living centers, and other complexes for the care of the elderly.^{lix}
- In 2000, the provision related to public housing was expanded to include any residential property owned or leased in part by a public housing agency, including mixed income developments.^{lx}

OTHER ENHANCEMENTS AND PROVISIONS

The only other major penalty enhancement to the Illinois drug law structure is a provision subjecting second-time and subsequent offenders, for any offense described above, to possible double lengths of incarceration stays and double fines, to be handed down at the discretion of the sentencing judge.

For the past two decades, Illinois has also had several statutorily mandated diversion options for certain classes of eligible drug offenders or drug-involved offenders. First-time offenders pleading guilty to or found guilty of a Class 4 possession drug offense are eligible for a specialized form of probation.^{lxi} This specialized supervision contains a number of mandatory conditions, including participation in drug testing and treatment, and if successfully completed, results in a dismissal of the conviction. This dismissal is intended to keep offenders from being

disqualified from applications for employment or housing, which often exclude people with criminal histories from eligibility.

For drug-*involved* offenders as well as drug law violators, Illinois has a treatment alternative via a “designated program” that provides clinical assessment and treatment referral services for the criminal court system.^{lxii} The designated program is licensed by the Illinois Department of Human Services, Division of Alcoholism and Substance Abuse, specifically to provide a standardized range of clinical services to courts throughout the state.^{lxiii} An offender found eligible for this program is sentenced to probation with supervision by the designated program and frequent communications with the court, which are the only mandatory conditions of the sentence.^{lxiv} Eligibility for this diversion option is generally limited to non-violent offenders without histories of multiple Class 2 or greater felony convictions.^{lxv} The total pool of eligible offenders who receive services under this statute can reach several thousand statewide in any given year.

CONCLUSION

As this preliminary discussion demonstrates, Illinois, like most states, has enacted increasingly more punitive drug laws during the past 20 years. Clearly, the enactment, enforcement and prosecution of these laws have resulted in the imprisonment of ever-increasing numbers of drug offenders. Simply put, as drug laws and enforcement practices have become more numerous and stringent, more people have been arrested for drug crimes, and they are more likely to serve time in prison, if convicted. What is not immediately clear, however, and what this report leaves for future analysis, is the impact – unintended or otherwise - of these laws on the individuals and communities where drug use and drug crime are aspects of daily life and police presence is greatest. These communities are more likely to be poor and occupied by large percentages of racial minorities. The next bulletin in the series will describe analyses of Illinois data on the racial

distributions of arrests and prison admissions for drug crimes and will suggest a few hypotheses to explain racial disparities in these outcomes.

ⁱ Olson, D.E. *Prison sentences for drug offenses*. Chicago, Illinois: Illinois Criminal Justice Information Authority, Trends and Issues, May 2000.

ⁱⁱ Olson, D.E., *The justice system's response to drug offenses and substance abuse*. Chicago, Illinois: Illinois Criminal Justice Information Authority, Research Bulletin, August 2003.

ⁱⁱⁱ Olson, D.E., Juergens, R., & Karr, S.: *Impetus and implementation of the Sheridan Correctional Center Therapeutic Community*. Chicago, Illinois: Illinois Criminal Justice Information Authority, 2004.

^{iv} Dighton, D.: *Minority overrepresentation in the criminal and juvenile justice systems*. Chicago, Illinois: Illinois Criminal Justice Information Authority, 2003.

^v 720 ILCS 550/1 et. seq.

^{vi} 720 ILCS 570/401 et. seq.

^{vii} 720 ILCS 635/0.01, et seq.

^{viii} 720 ILCS 600/1, et seq.

^{ix} 730 ILCS 5/5-5-2(b)

^x 730 ILCS 5/5-5-2(a)

^{xi} 730 ILCS 5/5-5-1(b)

^{xii} See 720 ILCS 5/12-7.3

^{xiii} See 720 ILCS 5/24-3.1

^{xiv} 730 ILCS 5/5-8-1(a)(7)

^{xv} 730 ILCS 5/5-8-1(a)

^{xvi} 730 ILCS 5/5-8-1(a)(6)

^{xvii} See 720 ILCS 5/9-3

^{xviii} See 720 ILCS 5/17-3

^{xix} See 720 ILCS 5/32-2

^{xx} See 720 ILCS 5/10-1

^{xxi} See 720 ILCS 5/18-1

^{xxii} See 720 ILCS 5/20-1

^{xxiii} 730 ILCS 5/5-8-1 (a)(5)

^{xxiv} See 720 ILCS 5/9-2

^{xxv} See 720 ILCS 5/11-20.1

^{xxvi} See 720 ILCS 5/12-13

^{xxvii} 730 ILCS 5/5-8-1(a)(4)

^{xxviii} See 720 ILCS 5/18-2

^{xxix} See 720 ILCS 5/12-14

^{xxx} 730 ILCS 5/5-8-1(a)(3)

^{xxxi} 730 ILCS 5/5-8-1(a)(1)

^{xxxii} 730 ILCS 5/5-5-3(c)(2)(a) and (c)

^{xxxiii} See generally 720 ILCS 570/402

^{xxxiv} Note: Illinois law does not distinguish between crack cocaine and powder cocaine, as do some other jurisdictions, as well as the federal prosecution and court system.

^{xxxv} Currently codified in 720 ILCS 570/402(a)(1) and (a)(2)

^{xxxvi} Currently codified in 720 ILCS 570/402 introduction

^{xxxvii} 720 ILCS 570/402(a)(6.5)

^{xxxviii} 2002 *Statistical Presentation*, Illinois Department of Corrections, August 2003, p. 85.

^{xxxix} *Ibid*

^{xl} *Ibid*

^{xli} Currently codified in 720 ILCS 570/401(c)(2)

^{xlii} Currently codified in 720 ILCS 570/401(a)(2)(A) et seq.

^{xliii} Currently codified in 730 ILCS 5/5-5-3(c)(2)(D)

^{xliv} Currently codified in 720 ILCS 570/401 introduction

^{xlv} Currently codified in 720 ILCS 570/401(c)(6.5)

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- xlvi Currently codified in 720 ILCS 570/401(a)(6.5)
xlvii Currently codified in 720 ILCS 570/401(c)(1)
xlviii Currently codified in 730 ILCS 5/5-5-3(c)(2)(D)
xlix Illinois Department of Corrections, supra note 39.
¹ See 720 ILCS 570/401.1
li See 720 ILCS 570/405
lii 730 ILCS 570/407
liii Illinois Department of Corrections, supra note 39.
liv 720 ILCS 570/407(a)
lv 720 ILCS 570/407(b)
lvi Ibid
lvii 720 ILCS 570/407(a)(2)
lviii 720 ILCS 570/407(b)
lix Ibid
lx Ibid
lxi 720 ILCS 570/410
lxii 20 ILCS 301/40
lxiii Illinois Administrative Code, Chapter 77, Title X, subchapter (d), Section 2060.507
lxiv 20 ILCS 301/40-10
lxv 20 ILCS 301/40-5