

ILLINOIS SENTENCING POLICY ADVISORY COUNCIL



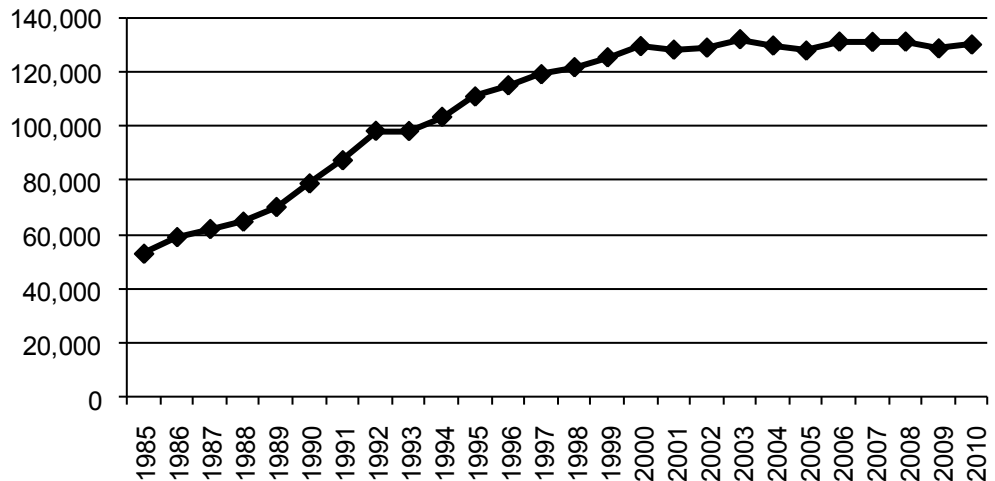
RESEARCH BRIEFING UPDATE

ILLINOIS FELONY SENTENCING: A RETROSPECTIVE

Council Members

- Hon. Gino DiVito**, Chair
- Hon. Warren Wolfson**, Vice-Chair
- Sen. Kwame Raoul**, Vice-Chair
- Rep. Karen Yarbrough**
Illinois House of Representatives
- Rep. Dennis Reboletti**
Illinois House of Representatives
- Sen. John Millner**
Illinois State Senate
- Bob Berlin**
DuPage County State's Attorney
- Hon. Thomas Callum**, Retired,
Second District Appellate Court
- Colonel William G. Clay, III**
Belleville Police Department
- Jack Cutrone**
Illinois Criminal Justice
Information Authority
- Hon. Thomas Dart**
Cook County Sheriff
- Ronald Holt**
Purpose Over Pain
- Michael J. Hood**
Office of the Attorney General
- Jeff Howard**
Office of the Cook County Public Defender
- Nicholas Kondelis**
Illinois State Police
- Adam Monreal**
Prisoner Review Board
- Michael Pelletier**
Office of the State Appellate Defender
- Alan Spellberg**
Cook County State's Attorneys Office
- Michael Tardy**
Administrative Office of the Illinois Courts
- Gladys Taylor**
Illinois Department of Corrections
- Dr. Patricia Watkins**
TARGET Area Development Corp.
- Dean David Yellen**
Loyola University Chicago School of Law

Figure 1: Felons under correctional supervision in Illinois



In 2010, more than 130,000 adults were under a form of correctional supervision, including probation, prison, or mandatory supervised release, for a felony conviction in Illinois, almost double the number recorded in 1989.

Key Findings

Despite dramatic reductions in reported crime in Illinois from the early 1990s through 2009, correctional populations—including probationers, prison inmates and those on mandatory supervised release—increased from fewer than 60,000 in 1985 to more than 120,000 since 1998 (Figure 1). This dramatic growth in the state's correctional population can be attributed to a number of significant changes, including:

- A dramatic increase in the number of arrests for felony-level drug offenses, with arrests for violations of Illinois' Controlled Substances Act climbing from 20,000 per year in the mid-1980s to nearly 60,000 in 1998 (pages 3-4), before decreasing to fewer than 30,000 in 2009;
- A doubling in the *number* of felony cases filed, convicted and sentenced between the 1980s and 2000s (pages 4-5);
- A slow, but steady increase in the *proportion* of convicted felons sentenced to prison, with fewer than 42 percent of felons sentenced to prison in the 1980s to 50 percent in 2010 (pages 5-6);
- An increasing number of crimes that carry mandatory prison sentences, but a growing proportion of prison admissions accounted for by probationable offenses. In 1990, 45 percent of those sentenced to prison were eligible for probation, compared to 55 percent in 2009 (page 6);
- Longer lengths of stay in prison for more serious felony class offenses (pages 9-10); and,
- An increasing number of crimes that were misdemeanors that are now felony-level offenses (pages 11-12).

Kathy Saltmarsh
Executive Director
Sentencing Policy Advisory Council
217-558-4749
Kathy.Saltmarsh@illinois.gov

March 2012

Introduction

The forces behind the dramatic increases in probation and prison populations are complex and involve multiple levels of government and components of the justice system. Changes in correctional populations are driven by changes in the legal classification of crimes and the sentences available for those crimes, crime patterns, arrest practices of the police, prosecutorial charging and plea decisions, judicial sentencing decisions, and correctional supervision and release practices. Either individually or in combination, these forces have led to significant increases in probation and prison sentences, and thus correctional populations, in Illinois over the past two decades and have resulted in the expenditure of substantial amounts of public funds.

In response to this growth of the state's correctional populations, and to ensure that sentencing policy is effective and efficient, Illinois created the Sentencing Policy Advisory Council (SPAC) and passed the Crime Reduction Act of 2009. Through its enabling legislation, SPAC is mandated to conduct research and analysis regarding sentencing policy and practices in Illinois, and to examine how these impact correctional populations in the state. In recognition of the complexity of the justice system and the processes by which offenders come to be sentenced and supervised, the appointed members of SPAC represent state and local units of government, community groups and citizens, and each of the components of the justice system.

The purpose of this briefing is to provide an overview of the sentenced populations and the forces that influence the size and type of the sentenced population, how criminal justice

practices have changed in Illinois over the past 20 years, with a specific emphasis on changes in sentencing practices. When examining criminal justice data for Illinois it must be kept in mind that the state's justice system is comprised of more than 900 independent, local law enforcement agencies, 102 individually elected county State's Attorneys, more than ninety public defender offices, and twenty-one judicial circuits that cover the state's 102 counties. Of these 102 counties, the fifteen largest (in terms of felony cases filed during the last ten years) accounted for more than 70 percent of all the felony court filings in the state. Thus, trends in crime and sentencing in Illinois as a whole are primarily influenced by what occurs in these fifteen counties, and each of Illinois' 102 counties may experience somewhat different crime and sentencing trends and patterns.

Definitions of Crimes Provide the Framework

Chapters 720, 725, and 730 of the Illinois Compiled Statutes provide the framework for definitions of criminal offenses in Illinois, the procedures law enforcement and the courts must adhere to in responding to such offenses, the sanctions available following conviction for a criminal offense, and the procedures for supervising criminal offenders. Chapter 730, The Unified Code of Corrections, defines penalties for criminal offenses, and explicitly states the purposes of the Code: to prescribe sanctions proportionate to the seriousness of the offenses and permit the recognition of differences in rehabilitation possibilities among individual offenders; to forbid and prevent the commission of offenses; to prevent arbitrary or oppressive treatment of persons adjudicated offenders or delinquents; and to restore offenders to useful citizenship.

Table 1: Statutory sentencing ranges by offense class

	Statutory Probation Sentencing Range	Statutory Prison Sentencing Range	Allowable Maximum Prison Sentence with Aggravating Circumstances	Mandatory Supervised Release (MSR)
<i>Felonies</i>				
Murder	Not allowable	20-60 years	Beyond 60 years to natural life	3 years
Class X	Not allowable	6-30 years	60 years	3 years
Class 1	Up to 4 years	4-15 years	30 years	2 years
Class 2	Up to 4 years	3-7 years	14 years	2 years
Class 3	Up to 2 ½ years	2-5 years	10 years	1 year
Class 4	Up to 2 ½ years	1-3 years	6 years	1 year
<i>Misdemeanors</i>				
Class A	Up to 1 year	Up to 1 year	--	--
Class B	Up to 6 months	Up to 6 months	--	--
Class C	Up to 1 month	Up to 1 month	--	--

Illinois law classifies criminal offenses into three misdemeanor classes – Class A, B, and C; and five felony classes – Class X, 1, 2, 3, and 4. First degree murder is treated separately as its own class (Table 1). The authorized sentence terms and lengths of post-prison mandatory supervised release (MSR) are determined by the classification of the offense, and any enhancements or aggravating factors that may apply. Class C misdemeanors, which include offenses such as simple assault and possession of less than 2.5 grams of marijuana, are the least serious misdemeanors; Class 4 felonies, which include offenses such as aggravated assault and possession of less than 15 grams of cocaine, are the least serious felonies. In turn, Class X felonies, which include armed robbery and aggravated criminal sexual assault, are the most serious felonies (other than first degree murder).

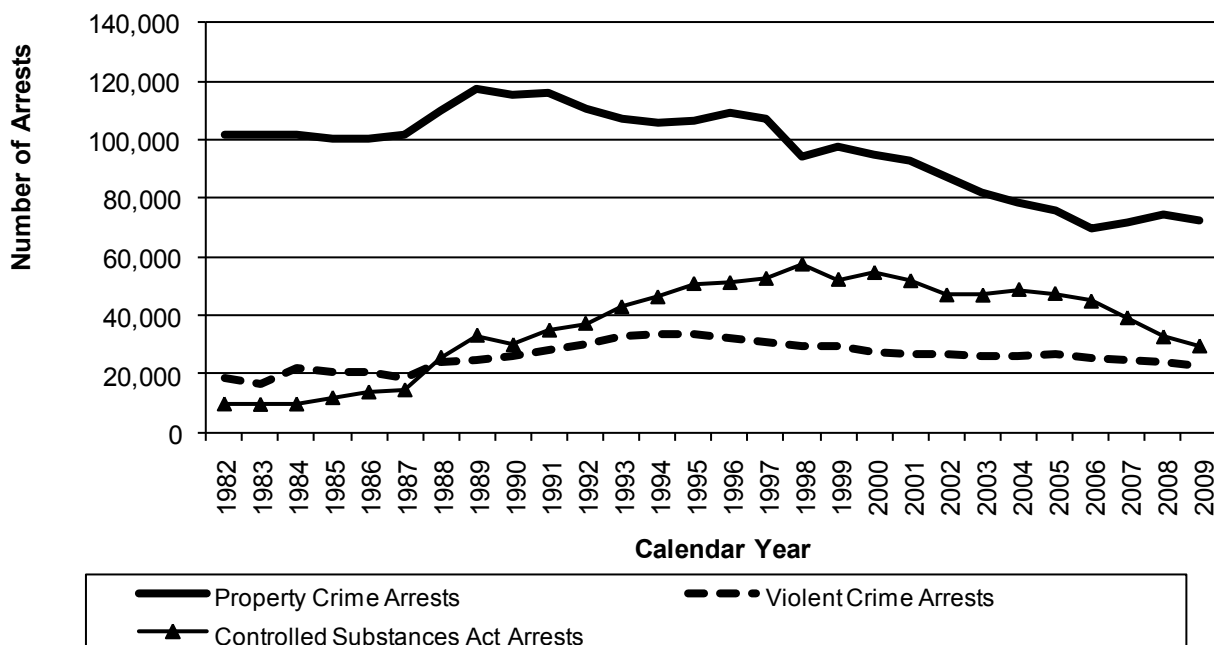
The Criminal Justice System Is Mobilized with Crimes Reported and Arrests

To fully understand sentencing outcomes in Illinois it is important to understand the extent and nature of crime. Before any sentence can be imposed, a crime must be reported to, or detected by, police; an arrest made; and a prosecution to a verdict or plea of guilt. Violent and property crime in Illinois increased from 1987 to 1992, with violent crime jumping more than 20 percent and property crime climbing by 2 percent. However, despite public perception, crime in Illinois decreased dramatically between 1992 and 2009. Specifically, the total number of violent crimes-- murder, criminal sexual assault, aggravated assault/battery, and robbery –

reported to the police decreased 28 percent between 1992 and 2000, and fell 20 percent between 2000 and 2009. Similarly, total property crimes – burglary, larceny/theft, motor vehicle theft, and arson – reported to the police fell by 17 percent between 1992 and 2000 and decreased 21 percent between 2000 and 2009. Overall, property crimes outnumber violent crimes by more than 5 to 1 in Illinois in 2009. Finally, arrests for violent and property crimes followed similar patterns (Figure 2), with arrests for both violent and property crimes increasing from 1987 to 1992, before decreasing through 2009. These crime trends in Illinois are consistent with what has been seen nationally through both crimes reported to the police as well as crime victimization surveys conducted by the U.S. Department of Justice. When crime trends in the fifteen largest counties were examined individually, the majority experienced trends similar to these statewide indicators: an increase in crime reported and arrests for violent and property crimes from 1987 to 1992, and then decreases during the periods from 1992 to 2000 and 2000 to 2009.

In addition to property and violent crimes, which usually come to the attention of the police through reports by crime victims, there are a number of other crimes often only detected by the police, such as drunk driving, drug sales and possession, illegal possession of firearms, and prostitution. These offenses are only “counted” once an arrest is made. Similar to trends for violent and property crimes, arrests for violations of Illinois’ Controlled Substances Act (i.e., the illegal possession and sale/delivery/manufacture of drugs other than marijuana, like cocaine and heroin) also

Figure 2: Statewide arrest trends in Illinois



increased from 1987 to 1992. However, the increase in Controlled Substance Act arrests was more dramatic than the rise in arrests for violent and property crimes, jumping more than 150 percent from 1987 to 1992 (Figure 2), despite research indicating that the use of illegal drugs by the general public was decreasing. However, unlike reported violent and property crime in Illinois, which *decreased* substantially between 1992 and 2000, Controlled Substances Act arrests *increased* more than 40 percent between 1992 and 2000, before *decreasing* 46 percent between 2000 and 2010 to their lowest level in two decades (Figure 2). Illinois Criminal Justice Information Authority analyses of Illinois State Police Criminal History Record Information revealed that between 2005 and 2010, the number of *felony* DUI arrests in Illinois increased dramatically (more than doubling), while *misdemeanor* DUI arrests decreased.

When Controlled Substance Act arrest trends in the fifteen largest counties in Illinois were examined individually, four of the fifteen saw increased arrests in each of the time periods examined (1987-1992, 1992-2000, and 2000 to 2009), whereas six counties experienced trends similar to those seen at the statewide-level; increased arrests from 1987 to 1992 as well as 1992 to 2000, before decreasing from 2000 to 2009. The remaining five counties experienced patterns other than these during the time periods examined.

The Charging Decision

The prosecutor has a great deal of discretion in determining whether to file, and what type of charge to file. Trends in the number of criminal charges filed will be influenced primarily by trends in crime and arrests made by the police. The long-term trends in felony cases filed in Illinois reveals a dramatic statewide increase in felony filings beginning in the late 1980s and reaching a peak in the early 2000s. Between 1987 and 1992, felony filings in Illinois increased 61 percent, a trend consistent with the dramatic increases in crime and arrest trends for violent and property crimes, as well as arrests for violations of Illinois' Controlled Substances Act (Figure 2). Thus, during the late 1980s and early 1990s, increases in arrests for most types of crimes drove increases in felony filings. However, the 23 percent increase in felony filings during the period from 1992 to 2000 was during a period when arrests for violent and property crimes were decreasing, but arrests for violations of Illinois' Controlled Substances Act continued to climb. Since 2000, there has been a *decrease* in the number of felony cases filed in Illinois' courts – dropping 8 percent between 2000 and 2010 – driven by fewer arrests for violent and property crimes as well as Controlled Substances Act violations. Across the fifteen largest counties in Illinois, trends in felony filings revealed that five of the fifteen saw increased felony filings in each of the time periods examined (1987-1992, 1992-2000, and 2000 to 2010), whereas the other ten counties experienced trends similar to those seen at the statewide-level; increased filings from 1987 to 1992 as well as 1992 to 2000, before decreasing between 2000 and 2010.

Court Dispositions

In 2010, more than 80 percent of felony cases disposed of in the Circuit Courts of Illinois were resolved through the defendant pleading guilty. Although trials are relatively rare, it does appear that the use of both jury and bench trials in felony cases has increased slightly in Illinois. For example, between 1990 and 2000 the proportion of felony convictions as a result of a trial increased from 10 percent to more than 16 percent, before falling slightly to 15 percent in 2010. However, there is not much variation across Illinois' counties in the degree to which felony convictions result from trials or guilty pleas. For example, during the period from 2000 to 2010, trials accounted for less than 5 percent of felony convictions in eighty-two of Illinois' 102 counties; looked at the other way, guilty pleas accounted for 95 percent or more of felony convictions in eighty-two of Illinois' 102 counties. Research has generally found that cases disposed of through trials are more likely to result in prison sentences, or longer sentences, than those disposed of through guilty pleas.

Sentencing

In Illinois, those convicted of felony offenses can be sentenced to prison, probation, or in some jurisdictions an alternative sanction (jail, community service, fines, etc.). The exception is those offenses that have a term of mandatory incarceration, eliminating other sentencing options.

Through 1977, Illinois operated under an indeterminate sentencing system with discretionary parole release for all offenses, in which a parole board had discretion to release offenders from prison prior to the expiration of their imposed sentences. In 1978, the state abolished discretionary parole release and enacted what is commonly known as a determinate sentencing system. Under the current system, the sentencing judge imposes a fixed term of imprisonment from anywhere within the statutory sentence range for the offense and the offender is automatically released from prison after serving the sentence imposed; the sentence may be reduced only through some form of sentence reduction credits (good time, earned time, or meritorious good time) or credit for time served in jail prior to conviction.

As noted on pages 2 and 3, Illinois law classifies misdemeanors into three classes (Class A, B, and C) and felonies into six classes (First Degree Murder, Class X, and Class 1, 2, 3, and 4). Statutory sentence ranges for probation and prison vary by offense class (Table 1); the state also defines a set of aggravating factors that can justify imposing an extended term of imprisonment beyond the statutory sentence range for felonies. Class X felonies and First Degree Murder are non-probationable offenses – in other words, a mandatory prison sentence is required following conviction. When the determinate sentencing structure was introduced in 1978, these offenses were intended to include *all* crimes for which a sentence to probation was not allowable. Since

1978, however, a number of non-Class X felony offenses have been designated as non-probationable offenses, including crimes such as residential burglary (a Class 1 felony) and delivery/possession with intent to deliver 5 to 15 grams of cocaine (also a Class 1 felony). Finally, those released from prison are required to be on mandatory supervised release for a period of 1, 2, or 3 years, depending on the felony class of the crime for which they were convicted.

Generally, trends in the *number* of felons convicted and sentenced in Illinois follow trends in the *number* of arrests and felony filings. In looking at the sentences imposed on convicted felons, there are a number of critical dimensions that need to be considered: 1) what is the *sheer number* of felons given different types of sentences (i.e., probation, prison or some other type of sentence), 2) what *proportion* of felons are given different types of sentences, 3) what are the *characteristics* of sentences imposed (i.e., sentence lengths, additional sentencing conditions), and 4) *how much* of the imposed sentence will convicted felons serve.

What is the Sheer Number of Felons Given Different Sentences?

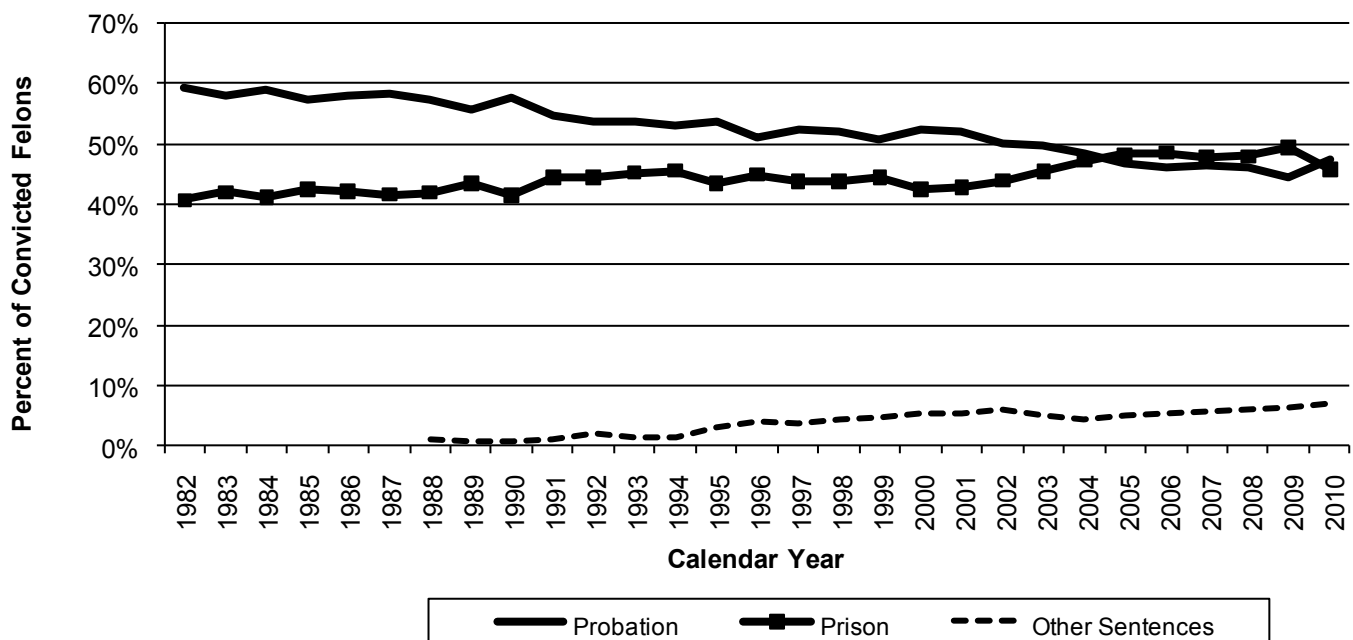
In 2010, there were a total of 52,601 felons convicted in the Circuit Courts throughout Illinois, and 44,728 (or 85% of these) were the result of a guilty plea. Of all the felons convicted, 24,070 received a sentence to prison, 24,937 received a probation sentence, and 3,594 received some other type of sentence (i.e., conditional discharge, jail, day reporting, etc). Between 1987 and 1992, the number of both probation and prison sentences imposed on convicted

felons *increased* more than 50 percent, and continued to rise, albeit at a much slower pace between 1992 and 2000. However, between 2000 and 2010, the number of prison sentences statewide remained relatively stable, while probation sentences in Illinois decreased during that same period.

What Proportion of Felons Are Sentenced to Probation, Prison & Other Sentences?

In 2010, the proportion of convicted felons sentenced to prison in Illinois fell to 46 percent from the 50 percent experienced in 2009, which was the highest proportion of convicted felons sentenced to prison in Illinois since data have been collected (Figure 3). During the 1980s the proportion of convicted felons sentenced to prison in Illinois was below 42 percent, but during the 2005 to 2010 period that proportion was 48 percent. Although a 6 percentage point change over the last twenty years may not appear dramatic, when applied to the 50,000 to 60,000 felons convicted each year during the 2005-2010 period, it translates to roughly 3,300 *more prison sentences per year*. Conversely, the proportion of felons sentenced to probation in Illinois has decreased. During the 1980s through 2003, probation was the sentence imposed on the *majority* of convicted felons in the state; but by 2010, less than one-half of all felons were sentenced to probation. Part of the reduction in the likelihood of a probation sentence can be explained by the increased use of prison, but it can also be attributed in part to an increased use of “other sentences” imposed on convicted felons. Since the 1980s, the use of other sanctions (jail, day reporting, electronic monitoring, community service, etc.) increased steadily; between 1988 (the first year for which data are

Figure 3: Felony probation, prison & other sentences



available) and 2010, the percentage of convicted felons sentenced to sanctions other than prison or probation increased from just 1 percent to roughly 7 percent of all convicted felons. Combining probation and these other sanctions shows that the probability of receiving a non-prison sanction in Illinois decreased from roughly 59 percent in 1982 to 54 percent in 2010 (Figure 3).

Are Most People Sentenced to Prison for Non-Probationable Offenses?

Based on analyses by the Illinois Criminal Justice Information Authority, the increase in the number of prison sentences imposed in Illinois was not due exclusively to mandatory sentencing policies. Over time, mandatory prison sentences accounted for a *decreasing* percentage of all prison sentences imposed. In 1990, for example, roughly 55 percent of prison sentences imposed were for offenses with a mandatory prison sentence (i.e., were non-probationable); by 2004, just 38 percent of prison sentences involved non-probationable offenses, and in 2009, roughly 45 percent of prison sentences imposed were mandatory. Looked at the other way, 55 percent of prison sentences imposed in 2009 were for crimes that were eligible for probation. This *reduction* in the proportion of non-probationable crimes resulting in prison sentences coincides with the *dramatic increase* in the number of Class 4 felony drug-law violators sentenced to prison from the mid-1990s through 2004.

However, while the growth in *admissions* to prison has not been due to mandatory sentences, much of the growth in the prison *population* is due to mandatory prison sentences. Since mandatory sentences require relatively long lengths of stay in prison, these offenders tend to build up more in the population. Thus, while mandatory prison sentences accounted for less than 45 percent of all court *admissions* to prison in 2009, these offenses accounted for 80 percent of the sentenced prison *population* at the end of 2009.

How Does Sentencing Vary Across Illinois?

Across the state there is considerable variation in the proportion of convicted felons sentenced to prison and probation. This fact is important to recognize, since sentencing practices at the local level are often influenced by differences in the extent and nature of crime, differences in the availability of non-custodial sentencing options, and differences in local legal cultures. For example, during the period from 2000 to 2010 the proportion of convicted felons sentenced to prison ranged from 33 percent to 54 percent across the twenty-one judicial Circuits in Illinois. Looked at even more specifically, across Illinois' 102 counties the proportion of convicted felons sentenced to prison ranged from 23 percent to 60 percent between 2000 and 2010.

Although the state as a whole experienced an overall increase in the use of prison and decrease in the use of probation since the early 1980s, patterns and trends in individual counties are often quite different. For example, during the

period of 2006-2010, the probability of receiving a prison sentence ranged from 29 percent to 57 percent among the fifteen largest counties. The fifteen largest counties also individually experienced different trends in their use of prison. Overall, the probability of receiving a prison sentence increased 5 percentage points between 1982 and 2010. Among the fifteen largest counties in the state, six counties experienced *decreases* in the probability of a prison sentence between 1982 and 2010, and in three counties the probability of a prison sentence in 2010 was nearly identical to that in 1982. The remaining six large counties all saw increases in the probability of a prison sentence.

Several counties have also significantly increased their use of sanctions other than prison or probation. By the period of 2006-2010, two of the largest fifteen counties imposed sentences involving sanctions other than prison or probation in more than 20 percent of felony convictions. Moreover, those counties that use prison the most, rely on these other sanctions the least; conversely, those counties that use prison the least, rely on these other sanctions the most. Thus, some of the variation in the use of prison across Illinois may be due to the availability and use of these other sanctions.

How Does Sentencing Vary for Different Felony Classes?

In addition to variation in the proportion of convicted felons sentenced to prison or probation over time, and across counties and judicial circuits in Illinois, there are also differences in the proportion of convicted felons sentenced to prison or probation across different felony classes. Based on analyses of data from the Administrative Office of the Illinois Courts and the Illinois Department of Corrections, as would be expected given the differences in the severity of offenses within the felony classes, those convicted of more serious-level felonies (i.e., Class 1 and 2) were more likely to be sentenced to prison than those convicted of Class 3 and 4 felonies. For example, 60 percent of those convicted of a Class 1 felony in Illinois in 2009 were sentenced to prison, compared to 44 percent of those convicted of a Class 4 felony. Further, a larger proportion of offenses defined as Class 1 felonies are non-probationable than among Class 4 felonies.

What Felony Classes Account for Admissions to Prison and Probation?

Although the previous analyses revealed how those convicted of higher-level felony classes (i.e., Class X and Class 1) were more likely to be sentenced to prison than those convicted of less serious felony classes (i.e., Class 3 and 4), since 2000, Class 3 and 4 felonies combined have accounted for more than one-half of prison sentences in Illinois, driven primarily by an increase in court admissions for Class 4 felonies (Figure 4). For example, in 1989, Class 4 felonies accounted for fewer than 1,400 of the nearly 11,000 court admissions to prison (or roughly 12 percent of admissions), but by 2004, Class 4 felonies accounted for

more than 12,000 of the nearly 27,000 court admissions (or roughly 44 percent of admissions). Among those felons sentenced to *probation* between 2000 and 2009, Class 3 and 4 felonies combined account for 63 percent of probation admissions, and Class 4 felonies also accounted for the largest single category—47 percent—of probation admissions.

Analyses of prison admissions by felony class reveal three distinct periods of admission trends, consistent with the periods described previously in terms of crime and arrest trends. From the late 1980s to the mid-1990s, admissions to prison in Illinois increased for *all* felony classes—a period when arrests for violent, property and Controlled Substances Act offenses all increased as well. From the mid-1990s to 2004, however, admissions to prison for Class 4 felonies increased dramatically—from roughly 4,000 per year to more 12,000 per year—while admissions for Class 1 and 3 felonies remained stable and admissions for Class X and 2 felonies, and first degree murder actually decreased. Finally, during the period from 2005 to 2011, admissions for Class 4 felonies decreased 36 percent, while admissions for all other felony classes remained stable. Again, this is consistent with the stable trends in arrests for violent and property crimes, and the decrease in arrests for Controlled Substances Act violations since the late 1990s.

What Crime Types Account for Admissions to Probation & Prison?

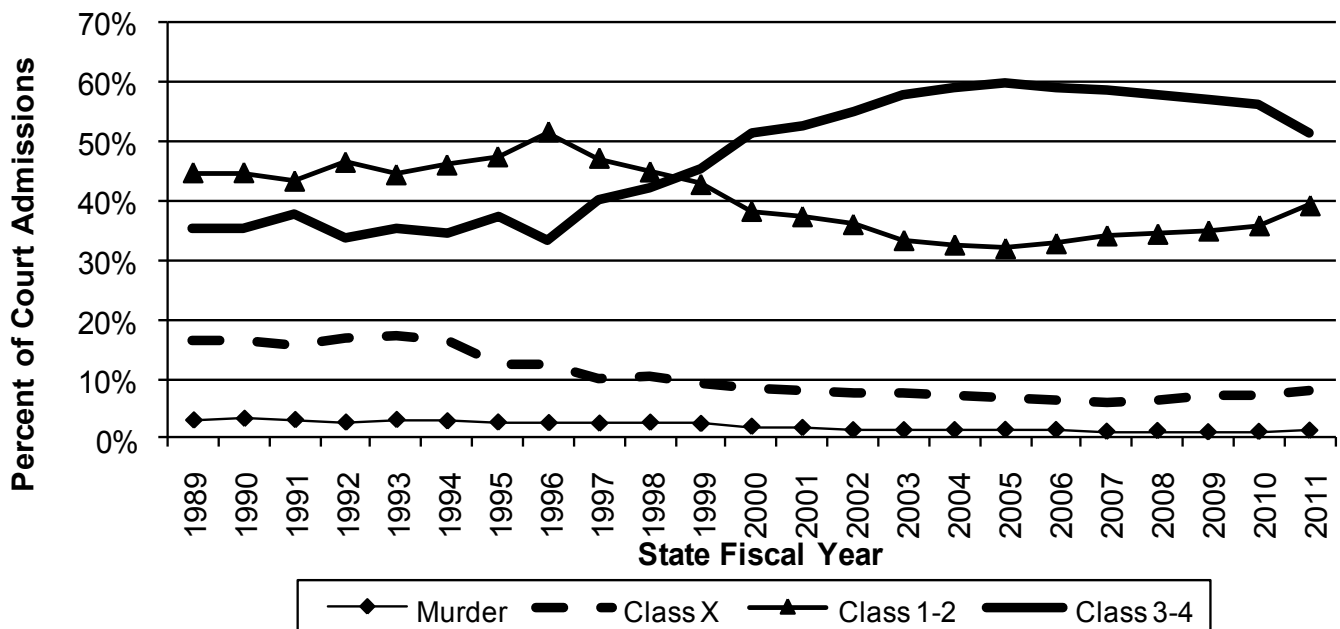
When admissions to both prison and probation by crime type are examined, the largest single crime category of admis-

sions to both was drug-law violations. Again, felony-level drug-law violations exclude most offenses involving marijuana and are primarily for substances such as cocaine, heroin, and methamphetamine. Based on available probation data, 43 percent of felony probationers in 2000 were convicted of a drug-law violation. Similarly, during the period from SFY 1999 to 2008 over 40 percent of court admissions to prison were for drug law violations. As with the analyses of prison sentences by felony class, analyses of prison admissions by *crime type* reveal three distinct trends. First, during the period from the late 1980s to the mid-1990s, admissions to prison for drug-law violations, violent crimes and property crimes all increased. During the period from the mid-1990s to 2000, statewide admissions to prison for drug-law violations continued to increase dramatically, while admissions for violent crimes and property offenses increased slightly/ remained stable. Finally, during the period from 2001 to 2011, admissions to prison for violent and property offenses remained relatively stable, whereas admissions for drug-law violations increased until 2007, before decreasing 38 percent between 2007 and 2011.

What are the Characteristics of Probation & Prison Sentences in Illinois?

In addition to determining whether or not to impose a probation or prison sentence, courts have the ability to impose a wide range of additional conditions on the sentences they impose, including fees, fines, restitution, community service, and treatment, to name just a few. Among convicted felons sentenced to probation in 2000, the majority also had additional conditions imposed beyond the

Figure 4: Prison sentence percentages by felony class



supervision and reporting requirements of probation. The most frequently imposed conditions of probation were financial in nature, with supervision fees being ordered in 62 percent of all felony probation cases, court costs being ordered in 48 percent of all felony probation cases, and fines being ordered in 37 percent of all felony probation cases. All told, 75 percent of felony probationers in 2000 had at least one financial condition included as part of their probation sentence. In addition to financial conditions, 34 percent of felony probationers in 2000 were also ordered by the court to participate in substance abuse treatment, and, overall, 45 percent had some type of treatment ordered (i.e., substance abuse, mental health, sex offender, domestic violence, etc). As with the proportion of convicted felons sentenced to prison or probation, there was considerable variation across the regions of Illinois when the imposition of these additional conditions on felony probation cases was examined.

What are the Lengths of Probation and Prison Sentences?

As noted above, Illinois law provides boundaries within which probation or prison sentence lengths must fall; however, judges have great latitude to impose sentences within those ranges. The lengths of prison sentences imposed on convicted felons in Illinois have not changed considerably over the past twenty years, although there have been some variations for specific offenses. For example, among those sentenced to prison for a Class 4 felony, the sentence imposed averaged 1.6 years or more from 1989 to 1998, before decreasing to an average of 1.4 years from 2004 to 2010. A similar trend was evident among those sentenced to prison for a Class 3 felony, with sentences averaging roughly 2.8 years from 1989 to 1996, before decreasing to an average of 2.6 years from 2004 through 2011. On the other hand, average sentences imposed on Class 1 felons sentenced to prison *increased* from 5.2 years during the early 1990s to an average of almost 6 years from 2004 to 2011.

Although data are not readily available to look at the long-term trends in probation sentence lengths in Illinois, from data that are available it appears that there is less variation in probation sentence lengths across felony classes than with prison sentences. Indeed, part of this is due to the fact that statutory sentence ranges for prison are much longer (i.e., up to a 7 year prison sentence for a Class 2 felony versus 4 years for a Class 2 felony probation sentence), and oftentimes wider (i.e., 4 to 15 for a Class 1 prison sentence versus up to 4 years for a Class 1 probation sentence), than those for probation. The average probation sentence length in Illinois for all felons discharged in 2000 was 2 $\frac{3}{4}$ years (27 months), and did not vary dramatically across the felony classes. For example, the average probation sentence imposed on Class 4 felons statewide was roughly 2 years (24 months), while the average probation sentence imposed on Class 2 felons averaged approximately 2 $\frac{1}{2}$ years (30 months). By comparison, during the same period, the

average prison sentence length imposed on Class 4 felons was 1.5 years (18 months) compared to 4.3 years (51 months) for Class 2 felons.

What is the Average Time Served on Probation and in Prison?

The sentence *length* imposed by the judge does not always reflect the time *actually served* on probation or in prison. For those individuals sentenced to probation, an individual can be discharged early (i.e., before the end of their sentence) if they satisfactorily complete all of the requirements and conditions of the sentence. Among felons discharged from probation in 2000, 8 percent were discharged early due to satisfactory completion of all the requirements of the sentence. Similarly, probationers can be discharged early due to unsatisfactory performance on probation, have their probation sentence revoked, and be resentenced to either a longer period of probation or another sanction (i.e., prison or jail). Among felons discharged from probation in 2000, 19 percent had their probation sentence revoked, and of these, 68 percent were then sentenced to prison and an additional 17 percent were sentenced to jail. Among those felons who were satisfactorily discharged from probation, the average length of time on probation was 26 months, compared to an average length of time on probation of 20 months for those who had their probation sentence revoked.

For those felons sentenced to prison, the actual amount of time spent in prison is generally shorter than the court-imposed sentence, largely due to credit for time spent in jail prior to conviction and credits for good conduct while incarcerated. For example, among those admitted to prison in 2011, almost everyone received some credit for time served in jail, with half of those sentenced to prison receiving 115 days or more of credit for jail time served. The average credit for time served in jail among those sentenced to prison in 2011 was 185 days. Obviously, for those charged with more serious crimes, many of whom may be denied bail during their trial, or for those with complex cases that take longer to resolve, the amount of time spent in jail, and therefore credited towards their prison sentence, will be longer. For example, offenders sentenced to prison in 2011 for a Class 4 felony received an average 107 days jail credit for time served in jail prior to case disposition; in contrast, those sentenced for a Class X felony received an average of 439 days and offenders convicted of first degree murder received an average of 1,050 days (nearly 3 years). These jail credits are applied to the court-imposed sentence and reduce the time actually spent in prison, and have increased across each of the felony classes during the past 20 years.

In addition, individuals sentenced to prison are also generally eligible for good conduct credit, which reduces the prison sentence one day for every day the inmate is in prison. In addition to the day-for-day good conduct credit, most inmates sentenced to prison are also eligible to receive meritorious good time (MGT) credit and supplemental meritorious

good time (SMGT) credit, each of which reduced an inmate's prison sentence by an additional 90 days. During 2010, the Illinois Department of Corrections stopped awarding MGT and SMGT credit, and as a result, those inmates who had previously been eligible to receive this credit are serving up to an additional 180 days (6 months) in prison. In the mid-1990s, a number of states, including Illinois, passed legislation – referred to a Truth-in-Sentencing (TIS) – that limits the amount of good conduct credit and other credits that reduce time served for those convicted and sentenced to prison for specific violent crimes. Under TIS in Illinois, those convicted of first degree murder cannot receive good conduct credits of any type, and must serve 100 percent of their court imposed sentence. Those convicted of aggravated criminal sexual assault and other specific violent crimes where there is a court finding of great bodily harm must serve 85 percent of their court imposed sentence. Since the passage of the original TIS legislation in 1999, the legislature has added additional offenses to the list of crimes subject to the 85 percent time-to-serve requirement.

The actual amount of total time served behind bars has gone down slightly over the past twenty years for those sentenced to prison for the least serious felonies; however, it has increased for those sentenced for the most serious felonies. For example, for those released from prison after serving a sentence for a Class 3 felony, the time served in prison fell from an average of roughly 0.8 years (9.8 months) during the 1990s to an average of 0.7 years (8.2 months) since 2004. In contrast, the time served for those released after serving a sentence for a Class X felony increased from an average of 3.5 years in the early 1990s to an average of 5.4 years in SFY 2011. Even more dramatic an increase, and one that will continue to grow, is the time served by those sentenced for murder. As part of the state's Truth-in-Sentencing Law, the state now requires all First Degree Murderers convicted after 1999 to serve 100 percent of the court imposed sentence. For murderers released prior to 1996, the average time served was less than 11 years; for those released in 2011 the average time served was more than 15 years, and only a small number (20 of the 290) exits in 2011 for first degree murder were subject to TIS. As a result of TIS, the *projected* time served for those convicted of first degree murder after 1999 now averages 40 years (excluding sentences of natural life). Although many expected the sentences imposed on those subject to TIS to change in light of the larger proportion of the sentence that must be served, an evaluation of this found that sentence lengths did not change, and as a result, the actual length of time that will be served by those subject to TIS increased.

What Happens When a Person Completes a Prison Sentence?

Once a person completes the prison sentence imposed by the court, he or she must serve a period of time on mandatory supervised release (MSR) under the supervision of the

Illinois Department of Corrections' parole agents and subject to the conditions imposed by the Illinois Prisoner Review Board (PRB). The length of time an offender must spend on MSR is determined by statute based on the felony class of the conviction offense (Table 1). Once an inmate is released from prison onto MSR, the Prisoner Review Board (PRB) can require released inmates to participate in treatment, be on electronic monitoring, submit to urinalysis, etc. If an individual fails to comply with any of the conditions of their MSR during the period of supervision, or they are rearrested for a new crime, they can be returned to prison as a technical violator and be required to serve up to the remaining amount of their MSR period in prison. In 2011, more than 10,000 prison releasees were returned to prison as a result of a technical violation of their MSR, and accounted for almost one-third of all prison admissions that year. As a result of changes in parole staffing levels and parole policy, the proportion of total admissions to prison accounted for by technical parole violators ranged from less than 5 percent to more than 30 percent during the SFY 1989 and 2011 period.

What Is the Total Time a Person Spends Under Correctional Supervision/Custody?

Given that those sentenced to probation or prison may serve time in jail awaiting the disposition of their case, and for those released from prison, serve a period of time on MSR, it is important to consider the total amount of time a felon is under correctional supervision to fully understand the implications of the sentences imposed. For example, the average Class 4 felon sentenced to prison spends almost 3 months in jail before being convicted and sentenced, 6 months in prison, and then an additional 12 months on MSR, for a total of 21 months under correctional custody/supervision. By comparison, the typical Class 4 felon sentenced to probation spends roughly 1 month in jail before being convicted and sentenced, and then an average of almost 25 months on probation, for a total of 26 months under correctional supervision. Thus, for Class 4 felons, those sentenced to probation are subject to a longer period of supervision than those sentenced to prison. A similar pattern is evident for Class 3 felons as well—those sentenced to probation are under the supervision of the justice system for a longer period of time than those sentenced to prison. On the other hand, among those sentenced for Class 1 and 2 felonies, those sentenced to prison are subject to longer periods of custody and supervision than probationers.

How Does Legislative Action Impact Sentencing Outcomes?

Three types of legislative action can measurably impact sentencing outcomes:

- 1) Making an offense for which most offenders historically got probation a non-probationable offense;

- 2) Moving an offense up in felony classification, or from a misdemeanor to a felony, leading to longer permissible prison and probation sentences, and in the case of misdemeanors becoming felonies, increasing the potential imposition of prison sentences; and
- 3) Limiting the methods by which the Illinois Department of Corrections can manage its population through the awarding of good conduct credit, resulting in longer periods of time served even when the sentence range or sentences imposed do not change.

For example, in 2000 a law was passed that reclassified a second conviction for prostitution from a Class A misdemeanor to a Class 4 felony. Prior to the passage of that law, fewer than 100 women per year were admitted to prison for prostitution. By SFY 2005 that number increased to more than 500, before falling back to fewer than 100 by 2011. It appears that much of this increase can be attributed to more prostitution arrests being felonies due to the new felony-level prostitution offense.

Another example involves sentences imposed following conviction of a felony-level DUI offense. During much of the period from 2000 through 2011, there was an increase in the number of DUI offenses that were categorized as felony-level offenses by the legislature. Prior to 2000, fewer than 400 adults were admitted to prison each year for a DUI-offense. By SFY 2010 this number had peaked at more than 1,800, before falling slightly to 1,492 in 2011. Similarly, during that period, there was a dramatic increase in the number of felony DUI offenders sentenced to probation. Both of these trends can be explained in part by changes in arrest practices, but more so by the increased number of circumstances under which DUI is classified as a felony, including instances where it is a non-probationable felony.

Drug-law violations provide another example of how complex these changes can be. During the period from the late 1980s through 2004, there were increases in prison admissions for drug-law violations, some of which can be explained by an increase in the number of arrests made by police and cases processed through the courts, and some of which can be attributed to changes in the amounts of drugs associated with Class X (i.e., non-probationable) sale/delivery offenses, and the legislative change making Class 1 felony drug possession offenses non-probationable as well.

At the other extreme—both in terms of seriousness of the offense and the origin of change in the sentencing outcome—are the sentences imposed on those convicted of first degree murder. Specifically, as a result of Truth-in-Sentencing, the length of prison terms imposed on convicted murderers has not changed significantly, but these offenders now remain incarcerated twice as long. None of this change is attributed to arrest or sentencing practices. This increase in the length of time to be served is attributed exclusively to the legislative decision to eliminate the potential to earn good conduct credits for these offenders.

Conclusions

From the analyses presented here, a number of general and broad conclusions regarding sentencing practices and policy over the past twenty years can be made. First is that a considerable amount of the variation in the number of felony cases filed in Illinois' Circuit Courts, and the number of probation and prison sentences imposed, can be traced to changes in the volume of crime in Illinois, and policies and practices regarding arrests of drug-law violators in the state. Since the early 1990s, violent and property crime in Illinois, and arrests for those crimes, fell dramatically in Illinois, however, arrests for violations of the Controlled Substances Act increased even more dramatically from the late 1980s through 1999, before falling. As a result, more felony defendants were processed through the Circuit Courts of Illinois, with the number of felony cases filed increasing until 2002, when they finally began to decrease as a result of fewer arrests for felony drug offenses, as well as fewer violent and property crime arrests.

However, in addition to more felony cases going through the courts in Illinois during the period examined, there was also a slow, but steady increase in the proportion of convicted felons being sentenced to prison in the state as a whole. In the 1980s, 42 percent of convicted felons were sentenced to prison, but during the 2005 to 2010 period, 48 percent of all convicted felons in Illinois received a prison sentence. When multiplied by the 50,000 to 60,000 felony convictions in Illinois each year during the period from 2005 to 2010, this increase of 6 percentage points in the probability of going to prison translates to 3,300 more defendants *per year* being sentenced to prison. Further, while the number of felony offenders sentenced to prison for non-probationable crimes increased during the 1990s and through 2009, the number of prison sentences for *probationable* crimes increase even more. As a result, the *proportion* of prison sentences accounted for by non-probationable offenses fell during the period examined—from more than 50 percent during most of the 1990s to less than 40 percent during the mid-2000s. This change in the use of prison is also illustrated by the fact that more than one-half of all prison sentences since 2000 have been for Class 3 and 4 felonies, the least serious felony classes, whereas Class 3 and 4 felonies accounted for only one-third of prison sentences during most of the 1990s.

It does not appear that the lengths of probation and prison sentences imposed have changed dramatically over the past 20 years, however, the actual length of time served (and projected time to serve) has increased for the most serious felony classes (Class X and murder), but has remained relatively stable or decreased slightly for other felony classes. As a result of these differential patterns in time served, the end-of-the-year population within IDOC increasingly is being accounted for by the most serious felony classes and non-probationable offenses even though a large proportion of *admissions* to, and *exits from*, prison in Illinois are for less serious felony classes. ❖

The Research Briefing is an update to the one published in May 2011 by the Illinois Sentencing Policy Advisory Council and was written collaboratively by David E. Olson, Ph.D., and Donald Stemen, Ph.D., both from Loyola University Chicago; Kathy Saltmarsh, SPAC Executive Director; and Lindsay Bostwick, Jordan Boulger, Christine Devitt Westley, Cristin Monti Evans, and Mark Powers from the Illinois Criminal Justice Information Authority. Data used in the analyses to produce the briefing were obtained from reports published by the Illinois State Police (*Crime in Illinois*), the Administrative Office of the Illinois Courts (*Annual Report of the Illinois Courts*), analyses of data provided by the Illinois Department of Corrections, and analyses of data collected through the 2000 Illinois Probation Outcome Study.

This project was supported by Grant # 09-DJ-BX-0023 awarded to the Illinois Criminal Justice Information Authority by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions contained within this document are those of the author and not necessarily represent the official position or policies of the U.S. Department of Justice or the Illinois Criminal Justice Information Authority.