

HOUSE BILL 2291 HOUSE AMENDMENT 1

720 ILCS 570/402(c)
DRUG OFFENSE SENTENCING REFORM

INSUFFICIENT DATA TO SUPPORT A FULL FISCAL ANALYSIS

House Amendment 1 to House Bill 2291 ([HB2291 HA1](#)) reclassifies the possession of low levels of controlled substances and methamphetamines from felonies to misdemeanors. According to national data, the majority of all drug possession cases would fall within the new misdemeanor categories. The amendment permits people previously convicted with low-level drug possession to be eligible for statutorily authorized qualified probation. Additional reforms in this proposal include creating a Misdemeanor Diversion program with expungement and retroactive resentencing for people previously convicted of low-level drug possession.

HB2291 HA1 raises the minimum felony threshold for a controlled substance possessed. Possession of a controlled substance under 720 ILCS 570/402(c) is reduced to a Class A misdemeanor except when the weight is above 3-5 grams, depending on the substance. A full table displaying the changes begins on the following page. The proposal also limits second or subsequent violation sentencing enhancements for possession of a controlled substance.

Criminal history data does not include drug weights. Consequently, SPAC is unable to identify the weight of drugs an individual possessed at the time of their arrest for the low-level drug possession offenses in the Controlled Substances Act (CSA) and the Methamphetamine Control and Community Protection Act (MCCPA). Similarly, the eligibility for the qualified probation programs depends on discretionary sentencing. The impact of HB2291 HA1 will depend on these factors and implementation.

SPAC used criminal history records information (CHRI) and Illinois Department of Corrections (IDOC) data from 2016-2018 to identify the number of arrests, convictions, and sentences under the affected statutes. Table 1 below shows the people that potentially would have been affected by this change has it been in effect during those three years.

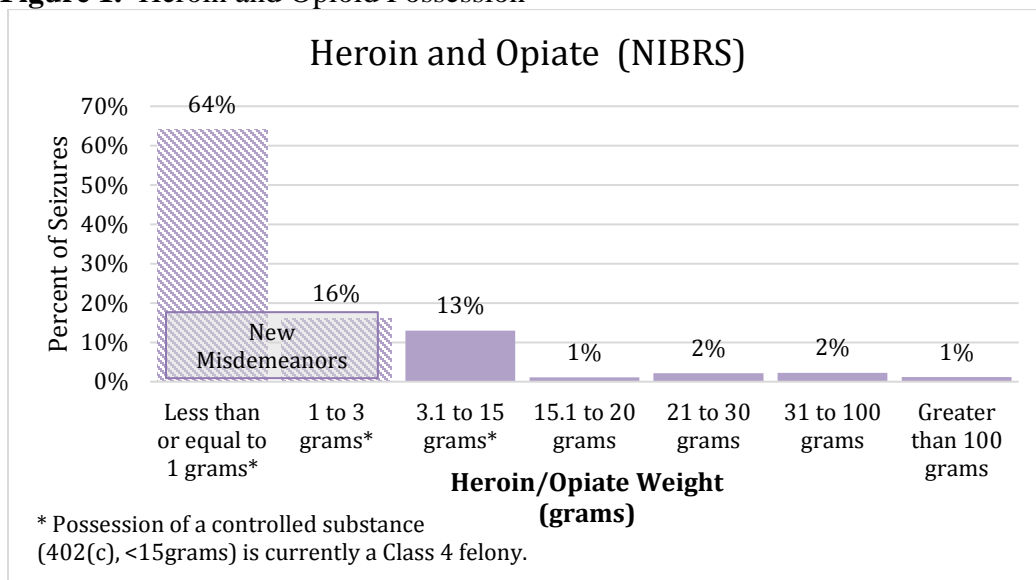
Table 1: Eligibility Pool for People Effected by HB2291 HA1

Fiscal Year 2016-2018		Controlled Substances Act	Methamphetamine Control and Community Protection Act
Arrests		39,900	5,555
Convictions		16,755	3,039
Probation	Qualified Probation	4,073	1,199
	Standard Probation	7,753	1,757
IDOC Prison Admissions		6,528	1,062
Average Sentence Imposed		1.95 years	2.97 years
Average Pretrial Detention Time Served		0.4 years	0.2 years
Average Prison Time Served		0.6 years	1.0 years
June 30, 2018 Prison Population		1,201	509

The penalties for possession of controlled substances depend on the weight of the drugs. HB2291 HA1 maintains that framework but lowers the penalty for offenses below a new threshold of 3-5 grams, depending on the substance. Unfortunately, Illinois data does not specify the weight of the substance but instead just the classification of the crime, *i.e.*, a Class 4 felony or a Class A misdemeanor.

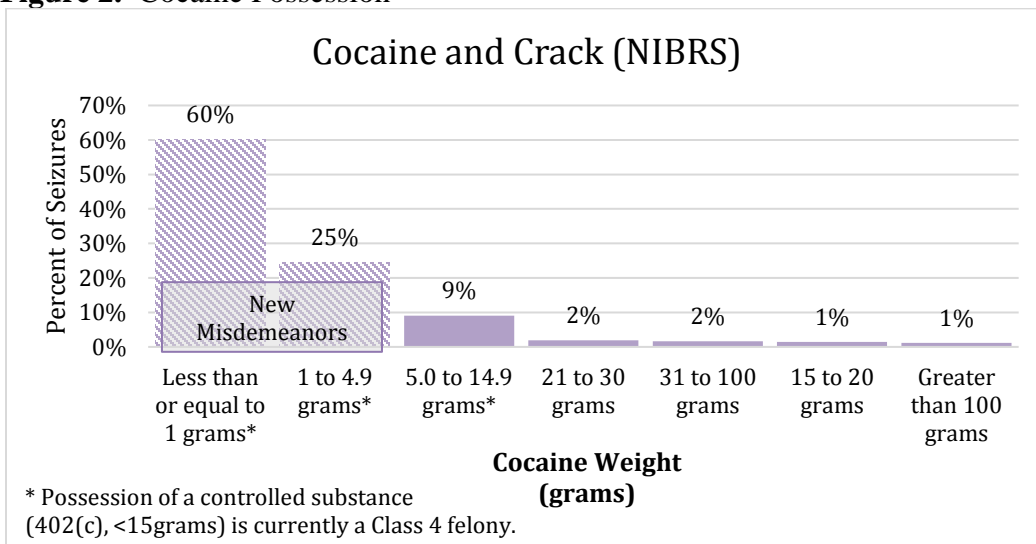
The National Incident-Based Reporting System (NIBRS) does record the weight of substances possessed and can be used as an approximation of the weights of typical drug possession incidents. Currently, NIBRS overrepresents non-metro jurisdictions. ***The Rockford Police Department is the only NIBRS-compliant jurisdiction in Illinois.*** Until more Illinois jurisdictions begin reporting into the national system, SPAC will be unable to provide Illinois-specific estimates of the effects of changing the weight thresholds for classifying drug possession.

Figure 1. Heroin and Opioid Possession



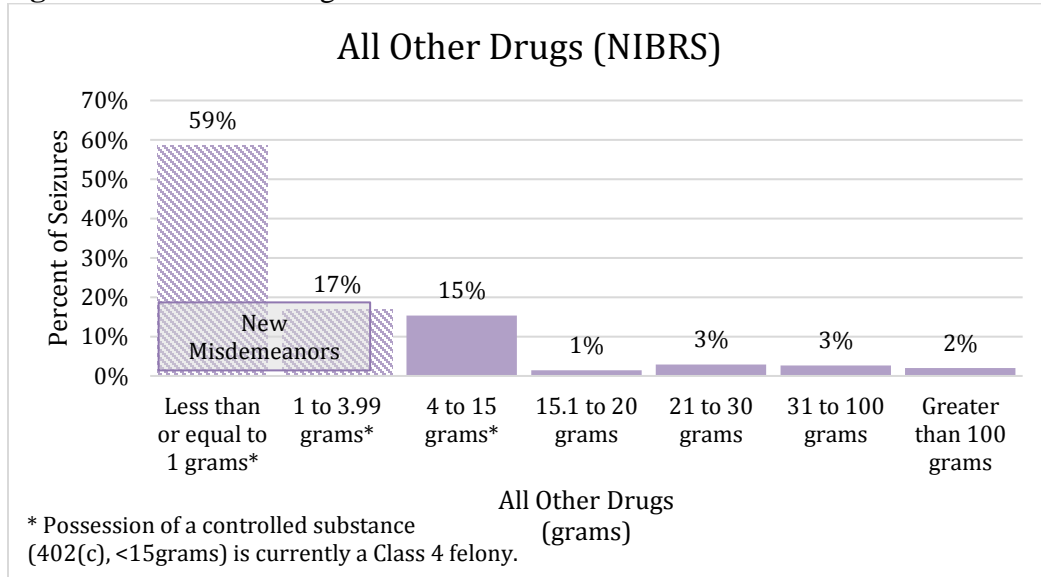
Source: NIBRS, 2016.

Figure 2. Cocaine Possession



Source: NIBRS, 2016.

Figure 3. All Other Drug Possession



Source: NIBRS, 2016.

The figures above show the current weight thresholds of the national NIBRS data. Rockford Police Department reported data that closely matched the national data. Well over half of the incidents would be classified as misdemeanors if HB2291 HA1 were in effect *and if* the national data are similar to Illinois drug possession incidents.

Table 2: Proposed Changes to Controlled Substances Act

		Possession 720 ILCS 570/402	
Current Substances and Weights		Proposed	
		Current Law	Proposed
Any other amount	(c) any amount of controlled substance under the weights specified below	Class 4	Class A
Heroin	-- 402(c) - Under 15 grams	(a-5)(1) Under 3 grams	-- Class 4 -- Class A
		(a-1)(1) 3-15 grams	-- Class 4 -- Class 4
	(a)(1)(A) 15-100 grams		Class 1
	(a)(1)(B) 100-400 grams		Class 1 (6-30 extended term)
	(a)(1)(C) 400-900 grams		Class 1 (8-40 extended term)
(a)(1)(D) 900 or more grams		Class 1 (10-50 extended term)	
Fentanyl	-- 402(c) - Under 200 grams	(a-5)(2) Under 3 grams	-- Class 4 -- Class A
		(a-1)(2) 3-200 grams	-- Class 4 -- Class 4
Cocaine	-- 402(c) - Under 15 grams	(a-5)(3) Under 5 grams	-- Class 4 -- Class A
		(a-1)(3) 5-15 grams	-- Class 4 -- Class 4
	(a)(2)(A) 15-100 grams		Class 1
	(a)(2)(B) 100-400 grams		Class 1 (6-30 extended term)
	(a)(2)(C) 400-900 grams		Class 1 (8-40 extended term)
(a)(2)(D) 900 or more grams		Class 1 (10-50 extended term)	
Morphine	-- 402(c) - Under 15 grams	(a-5)(4) Under 4 grams	-- Class 4 -- Class A
		(a-1)(4) 4-15 grams	-- Class 4 -- Class 4
	(a)(3)(A) 15-100 grams		Class 1
	(a)(3)(B) 100-400 grams		Class 1 (6-30 extended term)
	(a)(3)(C) 400-900 grams		Class 1 (6-40 extended term)
(a)(3)(D) 900 or more grams		Class 1 (10-50 extended term)	
Peyote	(a)(4) 200 or more grams	Class 1	
Barbituric acid	(a)(5) 200 or more grams	Class 1	
Amphetamine or any optical isomer salt thereof	(a)(6) 200 or more grams	Class 1	

		Possession 720 ILCS 570/402		
Current Substances and Weights		Proposed		
		Current Law	Proposed	
Lysergic acid diethylamide (LSD)	-- 402(c) - Under 15 grams or 15 objects	(a-5)(5) Under 1 gram or 40 objects or segregated parts of an object	-- Class 4 --	Class A
		(a-1)(5) 1-15 grams, 40-100 objects or segregated parts of an object	-- Class 4 for grams -- Class 1 for objects	Class 4
	(a)(7)(A) 15-100 grams or 15-200 objects containing LSD	(a)(7)(A) 15-100 grams, 100-200 objects or 100-200 segregated parts of an object	Class 1	Class 1
	(a)(7)(B) 100-400 grams or 200-600 objects containing LSD		Class 1 (6-30 extended term)	
	(a)(7)(C) 400-900 grams or 600-1,500 objects containing LSD		Class 1 (8-40 extended term)	
	(a)(7)(D) 900 or more grams or more than 1,500 objects containing LSD		Class 1 (10-50 extended term)	
Other Drugs	-- 402(c) - Under 15 grams or 15 objects	(a-5)(6) Under 2 grams or 5 objects	-- Class 4 --	Class A
		(a-1)(6) 2-15 grams or 5 or more objects	-- Class 4 --	Class 4
	(a)(7.5)(A) 15-100 grams or 15-200 objects containing controlled substance		Class 1	
	(a)(7.5)(B) 100-400 grams or 200-600 objects containing controlled substance		Class 1 (6-30 extended term)	
	(a)(7.5)(C) 400-900 grams or 600-1,500 objects containing controlled substance		Class 1 (8-40 extended term)	
	(a)(7.5)(D) 900 or more grams or more than 1,500 objects containing controlled substance		Class 1 (10-50 extended term)	
Pentazocine, methaqualone, phencyclidine (PCP), ketamine, or any salts or isomers thereof	-- 402(c) - Under 30 grams	(a-5)(7) Under 4 grams pentazocine (a-5)(8) Under 3 grams phencyclidine (PCP) (a-5)(9) Under 3 grams ketamine	-- Class 4 --	Class A
		(a-1)(7) 4-30 grams pentazocine (a-1)(8) 3-15 grams phencyclidine (PCP) (a-1)(9) 3-30 grams ketamine	-- Class 4 --	Class 4
	(a)(8), (9), (10), or (10.5) 30 grams or more		Class 1	
NEW: Hydrocodone, dihydrocodeine, oxycodone	-- 402(c) - Under 15 grams	(a-5)(10) under 4 grams or 40 objects	-- Class 4 --	Class A
		(a-1)(10) 4-200 grams or 40-100 objects	-- Class 4 --	Class 4

Table 3 shows the proposed changes to the sentence enhancements for a second or subsequent possession violation of the Controlled Substances Act.

Table 3: Changes to 720 ILCS 570/408

	Prior Offenses		Sentences
Current Law	Second or subsequent	Controlled Substance Act, cannabis, or meth conviction	Twice Maximum Term
Proposed Pre-effective date convictions	-- No Change --	<u>Class 1 or higher felony</u> Controlled Substance Act conviction	Twice Maximum Term
Proposed Post-effective date convictions	-- No Change --	<u>Felony</u> Controlled Substance Act, cannabis, or meth conviction	Twice Maximum Term

Table 4: Proposed Changes to Methamphetamine Controlled and Community Protection Act

		Possession 720 ILCS 646/60		
Current Substances and Weights		Proposed	Current Law	Proposed
Meth Possession	(b)(1) Under 5 grams	Under 3 grams	Class 3	Class A
		3-5 grams		Class 4
	(b)(2) 5-15 grams	3-15 grams	Class 2	
	(b)(3) 15-100 grams		Class 1	
	(b)(4) 100-400 grams		Class X	
	(b)(5) 400-900 grams		Class X (8-40 extended term)	
	(b)(6) 900 or more grams		Class X (10-50 extended term)	

Probation Eligibility

HB2291 HA1 expands eligibility for qualified probation, which withholds the final judgment pending completion of the programs' requirements. To be eligible for a qualified probation sentence; the person must:

- (1) Be arrested for a statutorily enumerated offense;
- (2) Not be previously convicted of certain offenses;
- (3) Plead guilty or be found guilty;
- (4) Consent to participation; and
- (5) For some qualified probation programs, the State's Attorney must consent.

The HB2291 HA1 expansion reclassifies which offenses qualify and reduces criminal history restrictions. The table on the following page explains the criteria--and changes—to these probation programs. There were insufficient data to support a full analysis and to determine the extent of the impact. Instead, SPAC estimated the number of people eligible for qualified probation under HB2291 HA1.

Table 5: Changes to Probationable Statutes

Probation Type	Cannabis Probation (710 Probation) 720 ILCS 550/10	First Offender Probation (1410 Probation) 720 ILCS 570/410	Probation 720 ILCS 646/70	Offender Initiative Program	Second Chance
Current Offenses Allowed	Possession of less than 100g cannabis (Sec. 4(a), 4(b), and 4(c)) Manufacture or delivery of less than 30g cannabis (Sec. 5(a), 5(b), and 5(c)) Possession of cannabis plants (Sec. 8)	Possession of less than 15g (Sec. 402(c)) Possession of unauthorized prescription form (Sec. 406.2)	Possession of less than 15g meth (Sec. 60(b)(1) and 60(b)(2))	Enumerated property or drug offenses* (except for violent arrests or charges)	Possession of less than 15g any controlled substance or meth Any probationable cannabis possession Enumerated property or drug offenses* (except for violent arrests or charges)
Changes to Offenses Allowed	-- No Change --	Must be <u>felony</u> possession of controlled substance (i.e., the new Sec. 402(a-1)).	Must be <u>felony</u> possession of meth (i.e., 3-15grams)	Must be <u>probationable</u> drug felony	Must be <u>probationable</u> drug felony
Eligible Arrests and Pleading Requirements	Not previously convicted of any felony offense under this [Cannabis Control] Act, + Controlled Substances, + or similar fed/State laws Pleads guilty to or is found guilty of	Not previously convicted of any felony offense under this [Controlled Substances] Act, + Cannabis Control, + or similar fed/State laws Pleads guilty to or is found guilty of	Not previously convicted of any felony offense under this [Meth] Act, + Controlled Substances, + Cannabis Control, + or similar fed/State laws Pleads guilty to or is found guilty of	Not previously convicted of any felony offense in Illinois or other fed/States Arrested and Charged with probationable felony offense [of any enumerated* property or drug offense]	Not previously convicted of any felony offense in Illinois or other fed/States Pleads guilty to Or is found guilty of A probationable felony violation of [felony drug possession] or [of any enumerated* property or drug offense]
Disposition Type	Without entering a judgment ... sentence him to probation	Without entering a judgment ... sentence him or her to probation	Without entering a judgment ... may sentence him or her to probation	At completion...State's Attorney shall dismiss the case or Court shall discharge the person and dismiss the proceedings against the person.	Without entering a judgment ... may sentence the defendant to probation
Consent?	Consent of the defendant	Consent of the defendant	Consent of the defendant	Consent of the defendant and State's Attorney	Consent of the defendant and State's Attorney
Current Exclusions due to Criminal History	Not previously convicted of Any felony cannabis, Any felony controlled subst.	Not previously convicted of Any felony cannabis, Any felony controlled subst.	Not previously convicted of Any felony meth, Any felony controlled subst., Any felony cannabis.	Not previously convicted of Any felony or Any violent offense	Not previously convicted of Any felony or Any violent offense
Exceptions to Criminal History Exclusions	If convicted prior to this Act <ul style="list-style-type: none"> Class 4 possession Controlled Substance Class 3 possession Meth 	If convicted prior to this Act <ul style="list-style-type: none"> Class 4 possession Controlled Substance Class 3 possession Meth 	If convicted prior to this Act <ul style="list-style-type: none"> Class 4 possession Controlled Substance Class 3 possession Meth 	If convicted prior to this Act <ul style="list-style-type: none"> Class 4 possession Controlled Substance Class 3 possession Meth 	If convicted prior to this Act <ul style="list-style-type: none"> Class 4 possession Controlled Substance Class 3 possession Meth

*** Enumerated property offenses:**

- Theft 720 ILCS 5/16-1
- Retail theft 720 ILCS 5/16-25
- Forgery 720 ILCS 5/17-3
- Possession of a stolen motor vehicle 625 ILCS 5/4-103
- Burglary 720 ILCS 5/19-1
- Burglary tools 720 ILCS 5/19-2
- Deceptive practices 720 ILCS 5/17-1
- Disorderly conduct 720 ILCS 5/26-1
- Criminal damage or trespass to property under Article 21 720 ILCS 5/21 et seq.
- Criminal trespass to a residence 720 ILCS 5/19-4
- Obstructing justice 720 ILCS 5/31-4
- Fraudulent identification 15 ILCS 335/14, 14A, or 14B; 625 ILCS 5/6-301.1 and 6-301.2

*** Enumerated drug offenses:**

- Cannabis possession 720 ILCS 550/4
- Controlled substance possession 720 ILCS 570/402
- Meth possession 720 ILCS 646/60

The figure on the following page shows the method of SPAC’s analysis for qualified probation programs. This analysis uses only one year of data—2017—to permit sufficient time for cases to resolve and to account for significant changes to the Cannabis Control Act in July 2016. Table 6 shows the number of arrests in FY 2017 that were probation eligible had this proposal been in effect. The probation expansion has different impacts depending on the type of specialty probation.

Total Eligible Arrests for Qualified Probation Programs

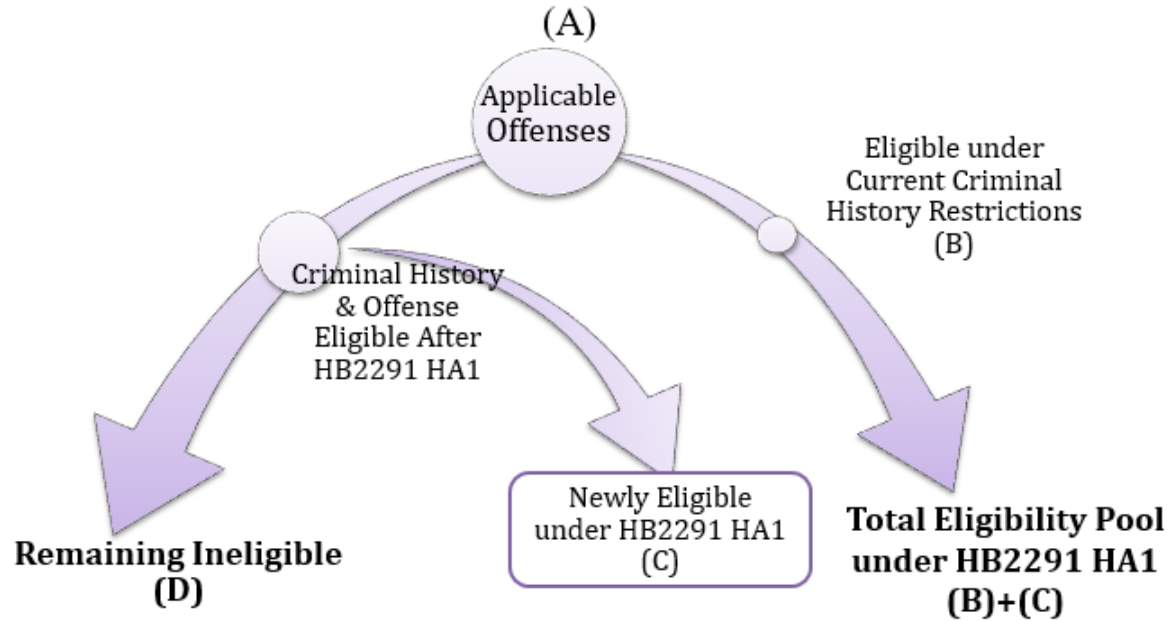


Table 6: Probation Eligibility under HB2291 HA1

2017	Cannabis Qualified Probation (710 Probation) 720 ILCS 550/10	First Offender Probation (1410 Probation) 720 ILCS 570/410	Methamphetamines Qualified Probation 720 ILCS 646/70	Offender Initiative Program	Second Chance	All Qualified Probation (deduplicated)
Applicable Arrests (A)	6,842	12,102	2,063	36,340	31,679	42,233
Eligible Under Current Law (B)	5,091	7,240	1,446	17,200	14,607	23,987
Newly Eligible (C)	400	2,044	374	1,831	4,515*	4,659*
Total Eligibility Pool under HB2291 HA1 (B)+(C)	5,491	9,284	1,820	19,031	19,085*	27,933*
Ineligible after HB2291 HA1 (D)	1,351	2,818	243	17,309	15,510	15,295
<i>Of currently eligible arrests (B), Percent getting qualified probation</i>	15%	12%	19%	14%	13%	14%

* Includes additional arrests not included in (A) that would be eligible due to expansion in statutes allowed.

Demographic Impact of Proposed Legislation

Table 7 provides the race and gender of the arrestees would be eligible for probation under HB2291 HA1. Table 8 provides the race and geographic region of the arrests that would be eligible under the new criteria in HB2291 HA1.

Table 7: Eligible Arrestst by Race and Sex Under HB2291 HA1

	Male	Female	Total	Percent
Black	7,966	2,098	10,064	36%
White	9,580	4,919	14,499	52%
Hispanic	2,494	434	2,928	10%
Other	384	118	502	2%
Total	73%	27%	27,993	100%

Table 8: Eligible Arrests by Race and Region Under HB2291 HA1

	Cook	Collar	Urban	Rural	Percent
Black	5,584	1,105	2,550	825	36%
White	2,751	2,420	4,145	5,183	52%
Hispanic	2,050	576	202	100	10%
Other	179	161	95	67	2%
Total	38%	15%	25%	22%	100%

Table 9 provides the race and sex of the arrestees who are would be ineligible under HB2291 HA1. Table 10 provides the race and geographic region of the arrests that would be ineligible under the new criteria in HB2291 HA1.

Table 9: Inelible Arretsts by Race and Sex Under HB2291 HA1

	Male	Female	Total	Percent
Black	7,588	1,019	8,607	56%
White	4,389	1,389	5,778	38%
Hispanic	694	97	791	5%
Other	99	20	119	1%
Total	83%	17%	15,295	100%

Table 10: Ineligible Arrests by Race and Region Under HB2291 HA1

	Cook	Collar	Urban	Rural	Percent
Black	5,274	904	1,921	508	56%
White	841	806	2,162	1,969	38%
Hispanic	563	154	54	20	5%
Other	49	29	22	19	1%
Total	44%	12%	27%	16%	100%

Table 11 shows the race and gender of the people in prison that would be impacted had this bill been in effect. Table 12 shows where these commitments to IDOC originate. Finally, Table 13 shows the relationship between geography and race for commitments to IDOC. Here race is self-identified upon admission to prison. The “Other” category includes, Asian/Pacific Island, Native American, and Unknown races.

Table 11: Race and Sex Controlled Substance Admissions to IDOC

	Male	Female	Percent
Black	4,221	371	70%
White	1,067	445	23%
Hispanic	338	52	6%
Other	22	17	1%
Total	86%	14%	6,533

Table 12: Top 10 Committing Counties Controlled Substance Admissions to IDOC

Committing County	Number of Admissions	Percent
Cook	4645	71%
Will	263	4%
DuPage	186	3%
Lake	95	1%
Winnebago	89	1%
Madison	73	1%
Peoria	62	1%
Kane	60	1%
Macon	59	1%
St. Clair	52	1%
Other	949	15%
Total	6,533	100%

Table 13: Race by Geographic location over Past Three Years Controlled Substances

	Cook	Collar	Urban	Rural	Percent
Black	4,030	217	238	107	70%
White	328	334	274	576	23%
Hispanic	269	78	24	19	6%
Other	18	12	7	2	1%
Total	71%	10%	8%	11%	6,533

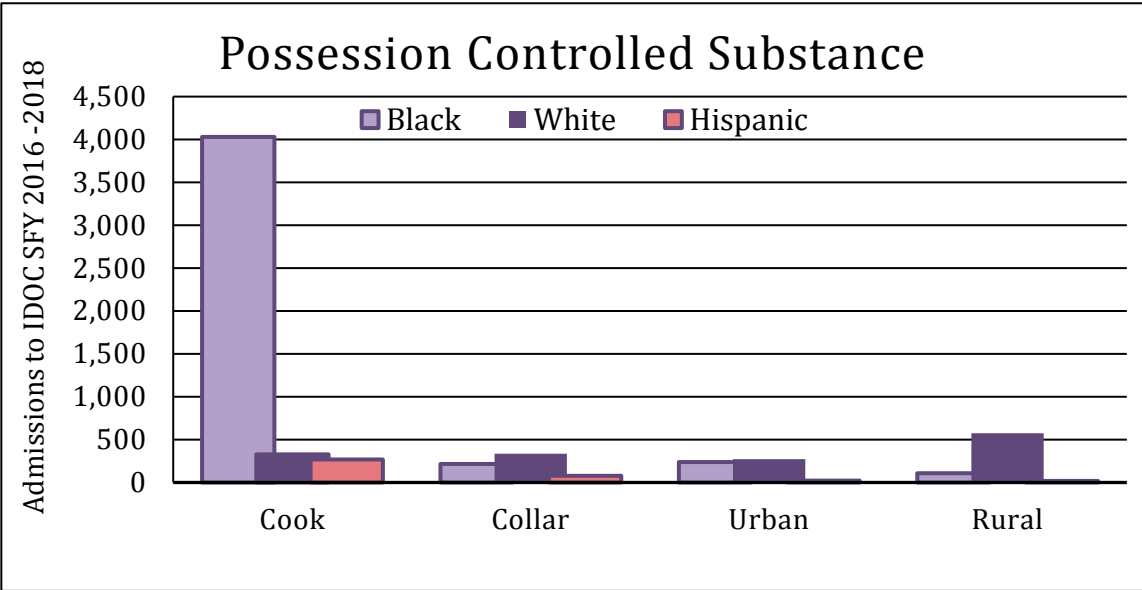


Table 14 shows the race and sex of the offenders that would be impacted had this bill been in effect. Table 15 shows where these commitments to IDOC originate. Finally, Table 16 shows the relationship between geography and race for commitments to IDOC. Here race is self-identified upon admission to prison. The “Other” category includes, Asian/Pacific Island, Native American, and Unknown races.

Table 14: Race and Sex Possession Methamphetamine

	Male	Female	Percent
Black	69	6	7%
White	710	264	91%
Hispanic	8	5	1%
Other	2	3	0%
Total	74%	26%	1,067

Table 15: Top 10 Admitting Counties Methamphetamine Possession

Committing County	Number of Admissions	Percent
Adams	86	8%
Madison	61	6%
Lawrence	57	5%
Vermilion	43	4%
Crawford	40	4%
Cook	38	4%
Macoupin	37	3%
Montgomery	32	3%
Richland	26	2%
Pike	26	2%
Other	621	58%
Grand Total	1,067	100%

Table 16: Race and Geographic Location for IDOC admissions Possession of Methamphetamine

	Cook	Collar	Urban	Rural	Percent
Black	28	3	8	36	7%
White	7	6	133	828	91%
Hispanic	3	1	3	6	1%
Other	0	1	0	4	0%
Total	4%	1%	13%	82%	1,067

