

**SB1342, HOUSE AMENDMENTS (HA) 3 and 5
 SENTENCE ENHANCEMENTS FOR UNLAWFUL USE OF A WEAPON (UW) OFFENSES
 720 ILCS 5/24-1.1, 5/24-1.6, and 5/24-1.8¹**

**COST AND OUTCOMES FOR 2010-2012
 \$116,344,728**

House Amendments [3](#) and [5](#) to [SB1342](#) make two changes that significantly reduce the cost of the bill: (1) reduce the minimum sentences by one year and (2) exempt first-time aggravated UW offenses from the 85% truth-in-sentencing requirement. The remaining increase in mandatory minimums and new truth-in-sentencing requirements still result in significant cost increases for the Illinois Department of Corrections (IDOC).²

SPAC used data from 2010, 2011, and 2012 for arrests, convictions, IDOC admissions, and probation sentences in order to calculate the cost of the proposed sentences had they been in effect for those years. SPAC assumes the imposition of the minimum sentence on all UW offenders, despite approximately 30% of these offenders receiving higher than the current minimum sentences. SPAC refined its methodology by: (1) deducting from length of stay in IDOC the average period of pretrial detention, with the appropriate adjustment to IDOC costs; and (2) adjusting the probation calculations to reflect that, as of January 1, 2011,³ aggravated UW offenses based on the lack of Firearm Owner Identification (FOID) card and, as of January 1, 2012,⁴ UW by a felon offenses are not eligible for probation.

Table 1. Total Change in State Prison Costs over Three Years

Offense	Current costs	Costs under SB1342	Total increase in state prison costs*
UW / Felon	\$ 67,368,816	\$ 152,866,656	\$ 85,497,840
Aggravated UW	\$ 21,488,544	\$ 43,139,844	\$ 21,651,300
UW / Gang Member	\$ 3,138,228	\$ 12,333,816	\$ 9,195,588
TOTAL	\$ 91,995,588	\$ 208,340,316	\$ 116,344,728

* Total increase column includes only state prison costs. Time served pretrial in jail is assumed for this analysis to be unchanged and therefore pretrial jail detention is subtracted from the increased prison sentences. This analysis uses a 2013 SPAC survey of marginal jail costs for housing additional individuals and estimates that the cost of pretrial detention was \$37,306,040 for the past three years. SPAC weighted the survey responses by the size of the average daily population of the jail, finding \$15,256 as the state average marginal cost for one year in jail. These costs do not reflect the costs incurred for processing arrestees.

Source: CHRI and IDOC data, SPAC calculations

POLICY QUESTIONS: Will these policies deter gun crimes and reduce recidivism sufficiently to justify the increased corrections costs? Where will the funding to buy more prison beds come from?

¹ P.A. 98-063, effective July 9, 2013, legalized concealed carry in Illinois and eliminated two unlawful use of a weapons offenses formerly set forth in 720 ILCS 5/24-1, therefore those offenses are not included in this analysis. Concealed carry without a FOID card is now covered by aggravated unlawful use of a weapon, however the penalty has not changed.

² See SPAC's website (<http://www.icjia.state.il.us/spac/>) for an analysis of earlier versions of this bill.

³ [P.A. 96-1107](#), effective Jan. 1, 2011.

⁴ [P.A. 97-237](#), effective Jan. 1, 2012 (UW-Felon). [P.A. 96-829](#), effective Dec. 3, 2009, eliminated the possibility for probation for UW felon offenses and UW gang-related offenses.

METHODOLOGY: SPAC performed a retrospective analysis of data on arrests, convictions, and sentences for these offenses in calendar year 2010, 2011, and 2012. This approach will be used while SPAC builds its capacity to produce a reliable population projection. Using IDOC cost estimates, SPAC initially calculated costs that change with addition or subtraction of offenders from the population, and then added administrative costs caused by significant increases in the IDOC population, resulting in the annual, per capita cost of \$21,600 used for this analysis.

To calculate the cost of state corrections spending on these three offenses for 2010 through 2012, SPAC used Criminal History Reporting Information (CHRI) and IDOC data on (A) the number of convictions for first and subsequent arrests under the applicable statutes, (B) the average length of stay in IDOC facilities, and (C) the per capita cost per inmate per year. Next, SPAC calculated the proposed costs of the minimum prison time mandated under the proposed legislation by multiplying the per capita cost and the estimated average length of stay (i.e., 85% of the mandatory minimum minus the average time-served in jails). SPAC modified its methodology for this SB1342 analysis by breaking out the amount and costs of pre-trial detention.

As SPAC builds its capability for estimating costs and benefits to other stakeholders—the judicial system, probation systems, law enforcement, and victims, families and communities—SPAC will include impact on these areas and constituencies in its analysis of proposed legislation.

LIMITATIONS AND ASSUMPTIONS

1. In calculating the increase in length of stay, SPAC used the new mandatory minimum sentence, which does not account for offenders who are sentenced to more than the minimum. In general the mandatory minimum is less than the average sentence imposed; however, the majority of offenders receive the minimum sentence. This difference, as well as the fact that not all offenders receive the maximum good-time credits, results in a conservative calculation of the costs of the legislation.
2. In estimating the effects of mandatory minimums, Illinois data are insufficient to identify alternative charges or the effects on the plea agreement process that may create additional costs or benefits within the criminal justice system.
3. The capital cost of building more prison beds is not included.
4. Costs for health and pension benefits for additional staff, which are carried in the CMS budget, are not included.
5. The 2012 figures may be low due to a lag time in reporting dispositions and sentences to the CHRI system.

The figures generated by the IDOC differ from those of SPAC for the following reasons:

1. IDOC is projecting forward ten years based on 2013's prison admissions. In contrast, SPAC analyzes the last three years and calculates the costs that would have occurred had the proposed changes been the law. Both methods assume that there are no additional offenders being sentenced as a result of this proposal.
2. IDOC accounts for the increased space needed due to keeping the same number of offenders incarcerated for a significantly longer amount of time by adding capital costs of construction to their estimate when the change to the population exceeds 500 beds (that threshold was met for one of the provisions affected by HA5 based on IDOC analysis). Please note that "costs of construction" reflects the higher operational costs of providing additional beds over time, whether that is done through construction or other means such as reopening closed facilities or renting space in other jurisdictions. SPAC does not include costs of construction but uses the higher per capita cost rather than marginal costs.
3. IDOC uses an average sentence imposed, which is slightly longer than the minimum sentence, because it accounts for individuals who must be housed by IDOC due to longer than minimum sentences. SPAC assumes the minimum sentence for all offenders because the majority of offenders (roughly 70%) receive the minimum sentence; however, this is a more conservative approach that underestimates the costs to IDOC.

IMPACT OF PROPOSED LEGISLATION ON STATE PRISONS: \$116,344,728 over three years.

The total increased per capita cost to the IDOC had these policies been in place from 2010 through 2012. This cost is based on the increase in the average daily population that would have been caused by:

- The combined effect of raising the minimum sentence and requiring offenders to serve 85% of the sentence imposed on the length of stay in an IDOC facility for all but first-offense aggravated UUW.
- Without increased appropriations, IDOC would have to adjust spending on treatment, workforce development, and other alternative programming to accommodate increased costs.

IMPACT OF PROPOSED LEGISLATION ON COUNTY JAILS: \$0 / Unknown.

No reliable data exist on the possible effects of changes in mandatory minimums on county jails. Jails would continue to house UUW offenders before sentencing. For this analysis, SPAC assumes that the average length of jail time served from 2010 through 2012 is unchanged by this legislation. Because the effect of the legislation on prosecution and law enforcement are unknown, we conservatively assume that no more offenders would be charged and held by jails during judicial processing. Thus, we assume that the county jail system would have no budgetary change. However, the county jail systems must continue to accommodate:

- UUW offenders detained prior to sentencing cost counties approximately \$37,306,040 for the three years examined. SPAC surveyed county sheriffs to determine the marginal costs for housing additional individuals in county jails. The responses were weighted by the size of the average daily population of the jail. SPAC calculated \$15,256 as the average marginal cost for one year. These costs do not reflect the costs incurred for processing the 14,059 total UUW arrestees.

IMPACT OF PROPOSED LEGISLATION ON VICTIMS, PUBLIC SAFETY, AND COMMUNITIES: Unknown.

Increasing sentences generally reduces crime due to incapacitating individuals who have committed crimes. However, research has not found reductions in crime due solely to deterrent effects of mandatory minimums. SPAC is currently developing the capability to reliably calculate victim, social, and community costs and benefits as found in evidence-based research.

OTHER UNKNOWN IMPACTS OF PROPOSED LEGISLATION:

JUDICIAL SYSTEM. The use of mandatory minimums shifts discretion from judges to prosecutors. Because prosecutors can use mandatory minimums to leverage plea bargains, it can reduce the number of cases processed by courts but increase the workload of prosecutors and public defenders.

PROBATION CASELOADS. As a general rule, probation costs significantly less than prison. While SPAC continues to work with the Administrative Office of the Illinois Courts (AOIC) to calculate an accurate marginal cost for probation, please contact the AOIC directly for more information on the fiscal impact this bill will have on probation.

LAW ENFORCEMENT. Police and other local law enforcement bodies are encouraged to arrest and assist prosecutors in cases depending on changes in the criminal code. At this time, no reliable data are available to estimate the effects of these adaptations.

- 14,059 were arrested for these three sections of UUW crimes statewide, requiring additional expenditures by local governments for these offenders.

ASSESSING BENEFITS AND COSTS: When fully populated with Illinois criminal justice data on costs, system involvement and programming, [the Pew-MacArthur Results First Initiative](#) cost-benefit model SPAC is utilizing will be capable of estimating the number of victimizations avoided through implementation of this proposal. At that time, we will monetize both the costs and benefits to allow for a more complete comparison of government costs to total social benefits. In addition, we will estimate the effects of incapacitation, which reduces the number of crimes committed while individuals are incarcerated, and the effects of reduced funding for alternative programs such as diversion, treatment, and educational programs, which can be highly effective in reducing recidivism as well as achieving other sentencing objectives. By evaluating both effects simultaneously, we will have a full range of estimates and assessments of legislative changes.

Aggravated Unlawful Use of a Weapon - 720 ILCS 5/24-1.6

FOR 2010, 2011, AND 2012

Total arrests: 6,388

Total convictions: 3,910

SENTENCES IMPOSED:

Probation: 1,811

First offense IDOC: 1,098

Second offense IDOC: 550

PER CAPITA COST OF INCARCERATION: \$21,600 / year

AVERAGE IDOC SENTENCE IMPOSED:

First Offense: 2.24 years

Second offense: 4.0 years

AVERAGE LENGTH OF STAY FOR INDIVIDUALS EXITING IDOC IN THE LAST THREE YEARS

First Offense: 0.33 years

Second offense: 1.15 years

This is the term of the sentence less credit for time served in pretrial detention and any sentence credits for which the offender is eligible.

AVERAGE DAYS SPENT IN JAIL, PRIOR TO IDOC SENTENCE IN THE LAST THREE YEARS:

First Offense: 0.31 years (3.74 months)

Second Offense: 0.43 years (5.13 months)

LENGTH OF STAY WITH MANDATORY MINIMUM SENTENCE AND THE TRUTH-IN-SENTENCING ENHANCEMENT:

First Offense: 0.50 years (day-for-day, 1 year)	Second offense: 3.40 years (85% of 4 years)
Less Avg. Jail Time: <u>- 0.31 years</u>	Less Avg. Jail Time: <u>- 0.43 years</u>
0.18 years	2.97 years

CURRENT COST OF INCARCERATING AN OFFENDER:

First Offense: For 0.33 years	=	\$7,128 (\$21,600 x 0.33)
Second Offense: For 1.15 years	=	\$24,840 (\$21,600 x 1.15)

PROPOSED COST OF INCARCERATING AN OFFENDER FOR:

First Offense: No change	=	\$7,128
Second Offense: 2.97 years	=	\$64,206

INCREASED IDOC COST HAD THIS BILL BEEN IN EFFECT FOR THE LAST THREE YEARS:

First Offense (no change):	1,098 x \$7,128 =	\$7,826,544
Second Offense 85% sentence:	550 x \$64,206 =	\$35,313,300
Addition of probation offenders: ⁷	=	<u>\$ 0</u>
		\$43,139,844

Current cost, First Offense:	1,098 x \$7,128	-	\$7,826,544
Current cost, Second Offense:	550 x \$24,840	-	<u>\$13,662,000</u>

Total Increase in Prison Costs: \$21,651,300

⁷ First-time aggravated UUW offenders remain eligible for probation unless additional criteria are met.

Unlawful Use of a Weapon by a Gang Member - 720 ILCS 5/24-1.8

FOR 2010, 2011, AND 2012

Total arrests: 631

Total convictions: 298

SENTENCES IMPOSED:

Probation: 21 (for possession of an unloaded weapon)

IDOC: 179

PER CAPITA COST OF INCARCERATION: \$21,600 / year

AVERAGE IDOC SENTENCE IMPOSED: 3.87 years

AVERAGE LENGTH OF STAY FOR INDIVIDUALS EXITING IDOC IN THE LAST TWO YEARS (NO EXITS IN 2010):

Offense: 0.81 years (9.74 months)

This is the term of the sentence imposed less credit for time served in pretrial detention and any sentence credits for which the offender is eligible.

AVERAGE DAYS SPENT IN JAIL, PRIOR TO IDOC SENTENCE IN THE LAST THREE YEARS:

Offense: 0.21 years (2.54 months)

LENGTH OF STAY WITH MANDATORY MINIMUM SENTENCE AND THE TRUTH-IN-SENTENCING ENHANCEMENT:

3.40 years (85% of 4 year minimum)
Less Avg. Jail Time: $-\frac{0.21 \text{ years}}{3.19 \text{ years}}$

CURRENT COST OF INCARCERATING AN OFFENDER

First Offense: For 0.81 years = \$17,532 (\$21,600 x 0.81)

PROPOSED COST OF INCARCERATING AN OFFENDER

First Offense: For 3.19 years = \$68,904 (\$21,600 x 3.19)

INCREASED IDOC COST HAD THIS BILL BEEN IN EFFECT FOR THE LAST THREE YEARS:

85% sentence:	179 x \$68,904 =	\$12,333,816
Additional probation offenders: ⁸		<u>\$ 0</u>
		\$12,333,816

Current cost:	179 x \$17,532 =	<u>- \$3,138,228</u>
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Total Increase in Prison Costs:		\$9,195,588
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⁸ P.A. 96-829, effective Dec. 3, 2009, created this separate offense and did not permit probation if the weapon was loaded. SB1342 and HA 3 and 5 eliminated county impact incarceration sentences, but this analysis does not add any additional costs for alternative sentences.

UUV Statute Section	Information from 2010, 2011, and 2012 – Sentences under current law								Proposals under SBI342, HA 3 and 5				Calculations				
	In 2010-2012, Number of Arrests, Convictions, Probation ¹			(A) Per Capita Cost of Prison ²	(B) Number of Sentences ³	(C) Average IDOC Sentence Imposed ⁴	(D) Average Length of Stay for Individuals Exiting IDOC ⁵	(G) Minimum Sentence	(H) Truth-in-Sentencing	(I) Average Pretrial Detention ⁶	(J) Expected Length of Stay $((G \times (H)) - (I))$	(K) Estimated Current IDOC Costs for UUV, Past Three Years $(E \times (B))$	(L) Estimated IDOC Costs Had This Bill Been in Effect For Past Three Years ⁷ $(F \times (B))$	Total Change (negative is an increase) $(K) - (L)$			
Unlawful Use of a Weapon by a Felon 720 ILCS 5/24-1.1	7,040	3,546	475	\$21,600 / year	First Offense	768	3.19 years	0.97 years	3 years	85%	0.36 years	2.19 years	\$16,091,136	\$36,329,472	(\$20,238,336)		
					Second Offense	1,832	4.48 years	1.30 years	4 years	85%	0.46 years	2.95 years	\$51,277,680	\$116,537,184	(\$65,259,504)		
					(E) Current Cost of Incarcerating an Offender $(D) \times (A)$				(F) Proposed Cost of Incarcerating an Offender $(J) \times (A)$				Total IDOC Costs sum (K)	\$67,368,816	Total IDOC Costs sum (L)	\$152,866,656	(\$85,497,840)
	First Offense		\$20,952		First Offense		\$47,304										
Second Offense		\$27,990		Second Offense		\$63,612											
Aggravated Unlawful Use of a Weapon 720 ILCS 5/24-1.6	6,388	3,910	1,811	\$21,600 / year	First Offense	1,098	2.24 years	0.33 years	1 year	Day-for-day	0.31 years	0.18 years	\$7,826,544	\$7,826,544			
					Second Offense	550	4.00 years	1.15 years	4 years	85%	0.43 years	2.97 years	\$13,662,000	\$35,313,300	(\$21,651,300)		
					(E) Current Cost of Incarcerating an Offender				(F) Proposed Cost of Incarcerating an Offender				Total IDOC Costs	\$21,488,544	Total IDOC Costs	\$43,139,844	(\$21,651,300)
	First Offense		\$7,128		First Offense		\$7,128										
Second Offense		\$24,840		Second Offense		\$64,206											
Unlawful Use of a Weapon by a Gang Member 720 ILCS 5/24-1.8	631	298	21	\$21,600 / year	First Offense	179	3.87 years	0.81 years	4 years	85%	0.21 years	3.19 years	\$3,138,228	\$12,333,816	(\$9,195,588)		
					Second Offense												
					(E) Current Cost of Incarcerating an Offender				(F) Proposed Cost of Incarcerating an Offender				Total IDOC Costs	\$3,138,228	Total IDOC Costs	\$12,333,816	(\$9,195,588)
	First Offense		\$17,532		First Offense		\$68,904										
Second Offense				Second Offense													

¹ The differences in arrest, conviction and sentencing numbers reflect the fact that people arrested for UUV may be charged with a different crime, the effect of plea bargains, charges being dismissed and the time between arrest and resolution of the case. In cases where multiple charges are filed the offender may be convicted and sentenced for more serious offenses while lesser charges are dismissed. Source: CHRl data.

² Source: IDOC calculation.

³ Source: IDOC admissions data.

⁴ Source: IDOC admissions data.

⁵ Source: IDOC exit data. This is the term of the sentence less credit for time served in pretrial detention and any sentence credits for which the offender is eligible.

⁶ Source: IDOC admissions data.

⁷ For *UUV-Felon offenses*, P.A. 97-237, effective Jan. 1, 2012, eliminated the possibility of probation for section 24-1.1. For *aggravated UUV offenses*, Probation remains eligible for first-time offenders of the aggravated UUV section, unless additional criteria are met. For *UUV-gang member offenses*, P.A. 96-829, effective Dec. 3, 2009, created this offense and did not permit probation if the weapon was loaded. SB1342 and HA 3 and 5 eliminated county impact incarceration sentences for gang members. This analysis excludes the additional costs of prison rather than probation or county impact incarceration sentences.