

SENATE BILL 219 – SENATE AMENDMENT 1

MANDATORY MINIMUM FOR CERTAIN CHILD PORNOGRAPHY POSSESSION OFFENSES
730 ILCS 5/5-5-3

PROJECTED IDOC POPULATION IMPACT: +15 PEOPLE ANNUALLY

TOTAL FISCAL COSTS INCREASED OVER THREE YEARS: \$305,710

TOTAL VICTIMIZATION BENEFITS OVER THREE YEARS: \$0

NET BENEFITS (BENEFITS MINUS COSTS) –\$305,710

A negative benefit indicates that costs are greater than benefits

Table 1: Total Change in Costs Over Three Years

Illinois Compiled Statutes 720 ILCS 5	Statute Description	Current costs	Proposed costs	Victimization benefits	Total Benefits*
Section 11-20.1(a)(6)	Possession Child Pornography Victim is a Family Member	\$2,003,825	\$2,309,535	\$0	-\$305,710
	TOTAL	\$2,003,825	\$2,309,535	\$0	-\$305,710

* Negative benefits are additional costs that would have been incurred had this bill been in effect over the past three years.
Source: CHRI and IDOC data, SPAC calculations

Senate Amendment 1 to Senate Bill 219 ([SB219 SA1](#)) proposes to impose a mandatory minimum prison term for possession of child pornography when the victim is a family or household member of the offender.¹ Under current law, possession of child pornography is a Class 3 felony that can be sentenced to prison for 2-5 years or probation for up to 2.5 years. Other child pornography offenses, including creating the images or distribution of images, have higher penalties.

In Table 1, the total benefits column subtracts the proposed costs from the current costs and then adds the victimization benefits. For this bill the proposed costs outweigh the proposed benefits to victim. Table 2 breaks out these costs in more detail by level of government. The following pages explain the full calculations.

SPAC used criminal history records information (CHRI) from fiscal years 2016, 2017, and 2018 to calculate the number of arrests, convictions, and sentences for possession of child pornography. SPAC used IDOC data from the same years for IDOC admissions, exits, and prison population. A national

Table 2: Change in Cost by Category

Change in	Three Year Value of Benefits
Increase in Local Jail Costs for Pretrial Detention	-\$73,113
Decrease in Local Probation Costs	\$196,324
Total Local Costs Avoided	\$123,211
Increase in State Prison Costs	-\$281,336
Increase in State Supervision Costs	-\$147,585
Total Additional State Costs	-\$428,921
Change in State and Local Costs	-\$305,710
Victimization Benefits	\$0
Total Net Costs	-\$305,710

¹ Family member defined as “parent, grandparent, child, aunt, uncle, great-aunt, or great-uncle, whether by whole blood, half-blood, or adoption, and includes a step-grandparent, step-parent, or step-child. ‘Family member’ also means, if the victim is a child under 18 years of age, an accused who has resided in the household with the child continuously for at least 6 months.” 720 ILCS 5/11-0.1.

estimate of 25% is used to calculate the percentage of child pornography possession cases with family or household members.

During the past three years, the data show all child pornography possession arrests, convictions, and sentences:

Table 3: Arrests, Convictions, Sentences, and Sentence Length for Possession of Child Pornography

Three Years		Possession of Child Pornography
Arrests		291
Convictions		218
Withheld judgements		<10
Probation Sentences	Class 1	<10
	Class 2	118
	Class 3	22
IDOC Admissions	Class X	1
	Class 1	1
	Class 2	61
	Class 3	22
	Total Prison	85
June 30, 2018 Population	Class X	1
	Class 1	1
	Class 2	39
	Class 3	7
	Total Prison Population	48
Average Sentence Imposed*		4.9
Average Pretrial Detention Served		0.64
Average Prison Time Served*		0.98

* **Note:** The average sentence imposed is the average sentence over the past three years, many of whom have not yet been released. Pretrial detention is also calculated from those admitted to prison during that time. In contrast, average prison time served is the average of those who were released prison during the past three years. The average sentence imposed for those released from prison was between three and four years.

SPAC PARTIAL PRISON POPULATION PROJECTION

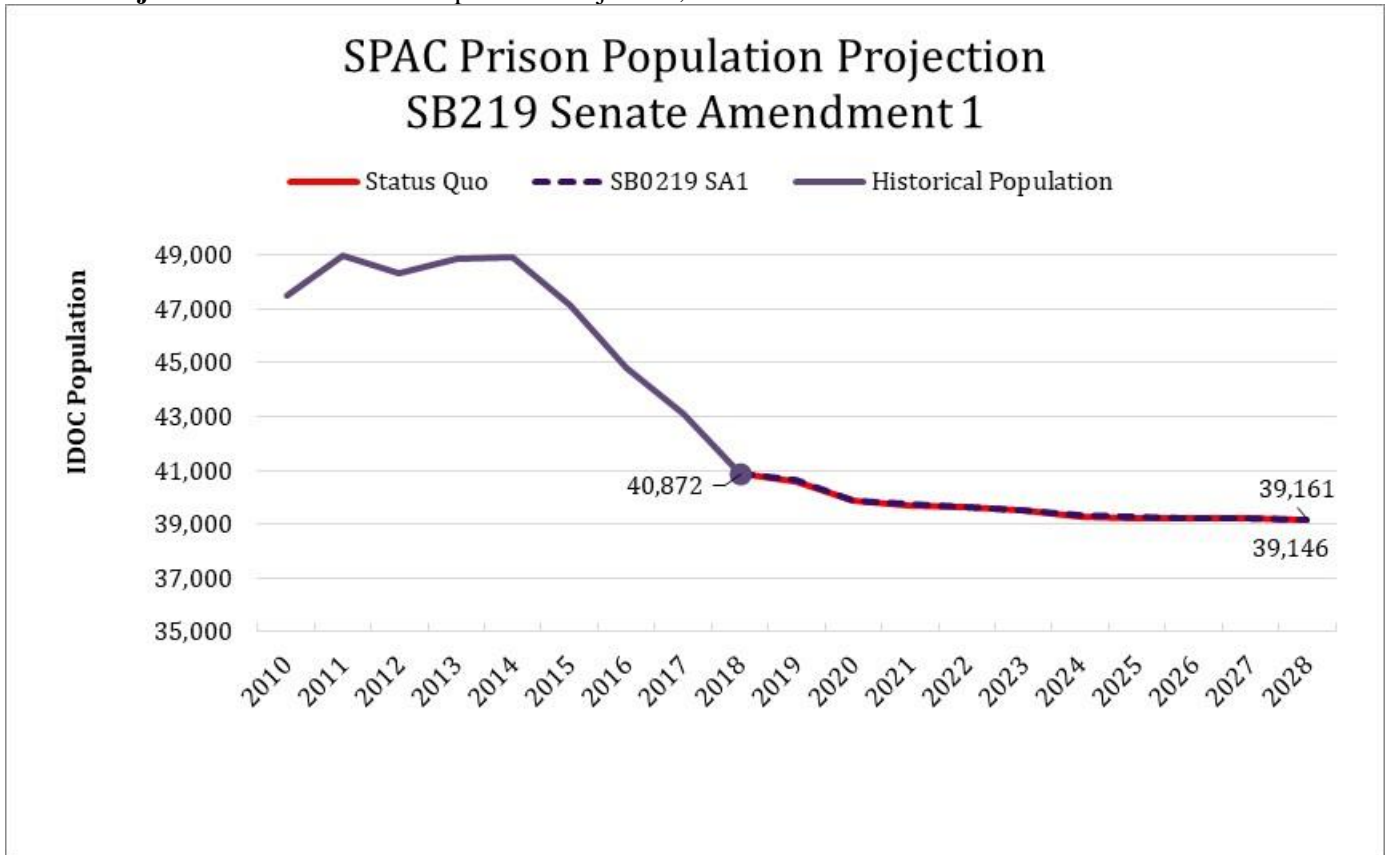
A population projection answers the question “What if these policies were enacted?” To answer the question, the projection first asks what the estimated prison population would be without any change to the current policy. In the graph below, the red line in the projection shows the baseline, status quo projection of the prison population estimated for June 30th of each year. On June 30, 2028, the status quo projection estimates 39,146 individuals would be held in prison.

The dotted line answers the what if question: If convictions for possession of child pornography when the victim is a member of the household were non-probationable, how many people would

be added to the prison population? To answer this question, SPAC looked to national literature to find what percent of child pornography possession offenses might be expected to be of a family or household member. National research mostly discussed the production or dissemination of child pornography, but SPAC found a rough estimate of 25% to be a reasonable approximation for the prison population projection.²

Using the national research as a guide, SPAC’s projection estimates a net increase of about 15 inmates each year, or about 39,161 individuals would be held in prison. This projection is only marginally different than the status quo projection when shown in Projection 1:

Projection 1. SPAC Prison Population Projection, SB219-SA1



The status quo projection relies on the assumption that admissions, sentences, and IDOC practices remain consistent with the recent year, 2018. The projection is the result of altering that assumption by increasing prison admissions by the percent of new felony cases that would result from SB219 SA1. Changes to crime or recidivism rates are also not accounted for in the projection.

Overall, the projected population on June 30 for future years would increase by roughly 15 people. More than 15 people each year would be sentenced to prison compared to the status quo but, because of time served prior to sentencing in county jails and the average time served, the average daily population would only be expected to increase by 15 people.

² Finkelhor, David & Richard Ormrod. Dec. 2004. *Child Pornography: Patterns from NIBRS*. JUV. JUST. BULLETIN, OFF. OF JUV. JUST. & DELINQUENCY PREV, U.S. DEP'T OF JUST. (finding 25% of juvenile victims identified in pornography crimes are victimized by family). Mitchell, Kimberly & Lisa Jones. Nov. 2013. *Internet-Facilitated Commercial Sexual Exploitation of Children*. CRIMES AGAINST CHILDREN RESEARCH CENTER, UNI. OF NEW HAMPSHIRE. (finding 23% of offenders were family members).
 April 2019 Child Pornography Page 3 of 8
 SB219 Senate Amendment 1

The model uses the following assumptions:

- SPAC assumes that 25% of the probation sentences will have a family or household member as the victim and thus will receive a prison sentence.
- SPAC assumes that the sentence distribution for prison sentences will not change.
- SPAC assumes no change in arrests, charges, convictions, or sentencing other than the above modifications.

SPAC FISCAL IMPACT ANALYSIS METHODOLOGY

Unlike the population projection on the previous page, SPAC looks retrospectively at the past three fiscal years, 2016 through 2018, to determine the fiscal impact of these policies had they been in effect. The data for arrests, convictions, IDOC admissions, and probation sentences are from Criminal History Reporting Information (CHRI) and from the IDOC's Planning and Research Division.

To calculate the fiscal impact of the criminal justice system, SPAC uses 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 county and IDOC facilities, and (C) past spending on prisons and county criminal justice systems.³ SPAC uses a dynamic marginal cost (DMC) methodology that was developed after analyzing both state and local public safety budgeting over several decades. Budgets in Illinois are most frequently based on past appropriations and expenditures to minimize disruptions in services and government spending, resulting in a divergence of costs from services: *i.e.*, the number of prisoners in State prisons, or probationers supervised by county probation departments, is not predictive of those agencies' budgets. The DMC approach matches SPAC's fiscal analysis with this reality by utilizing steps at which costs would be expected to change, with each step having a separate economic value.

Dynamic marginal costs allow a more accurate calculation of costs per client where the costs depend on the magnitude of the change compared to the status quo. The DMC can include multiple cost types: (1) traditional variable costs, which vary directly with changes in service and are consistent for the first or thousandth person; (2) step costs, which are primarily personnel costs that change only when the services increase or decrease sufficient to affect staffing and grow with the number of steps; and (3) fixed costs, which are related to physical space requirements that vary only with large service changes.

The Administrative Office of the Illinois Courts (AOIC) calculated the cost of probation based on risk level. The \$2,011 per person per year is the average of these annual costs. To calculate the cost of pretrial detention, local supervision (probation), SPAC examined the CHRI data for time served (pretrial detention) and the sentence lengths ordered by the court for jail or probation terms.

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

³ Local costs are estimated from SPAC's survey of county budgets, available on SPAC's website: <http://ilspac.illinois.gov>.

IMPACTS OF PROPOSED LEGISLATION:

The following pages describe the impact categories that the proposed sentencing change would have on the Illinois criminal justice system. First, a narrative section describes each impact and how SPAC estimated the dollar value of the impact. Second, the table used to create the estimates is shown in full detail. Finally, the demographic impact shows the current demographics of those in prison under the effected statutes.

IMPACT OF PROPOSED LEGISLATION ON STATE PRISONS:

\$281,336

Additional costs over three years.

The above estimates are the total additional costs to IDOC had these policies been in place from 2016 through 2018. This cost increased is created by an increased number of admissions to prison rather than sentences to probation for possession of child pornography for when the victim is a family member. To calculate this impact, SPAC assumed 25% of probation sentences for possession of child pornography were of family or household members.

IMPACT OF PROPOSED LEGISLATION ON STATE SUPERVISION:

\$147,585

Additional costs over three years.

This bill would increase the number of people entering prison and, a few years later, leaving the prison system and entering the Mandatory Supervised Release (MSR) supervision caseload. These additional MSR cases would have an impact on the Parole Division of IDOC.

IMPACT OF PROPOSED LEGISLATION ON COUNTY JAILS:

\$73,113

Additional costs over three years.

The additional jail costs are calculated because people facing mandatory prison terms will likely spend more time in pretrial detention than people facing probation sentences. Had this bill been in effect, SPAC assumes that people receiving prison instead of probation sentences would spend the average prison pretrial detention length instead of the average probation pretrial detention, resulting in a \$77,811 increase in jail spending for three years across the Illinois.

IMPACT OF PROPOSED LEGISLATION ON LOCAL PROBATION:

\$196,324

Costs avoided over three years.

The reduced probation costs are the result of making possession of child pornography a non-probationable offense if the victim is a family or household member of the offender. People would no longer be eligible for probation and thus there would be a reduction to probation caseloads had this bill been in effect.

IMPACT OF PROPOSED LEGISLATION ON VICTIMS AND COMMUNITIES:

N/A

Avoided victimization over three years.

Typically, SPAC incorporates the incapacitation effect on victims in two ways: (1) as offenders age out because they are incarcerated for a longer period of time, recidivism may change due to offending patterns at different ages; and (2) as offenders are incapacitated for longer, the timing of typical recidivism events changes and there is a value in delaying recidivism. However, this proposal changes the *type* of punishment—from community supervision on probation to incarceration in prison—that may have different impacts on recidivism rates. For this reason, this analysis does not estimate a potential recidivism impact due to this bill.

DEMOGRAPHIC IMPACT OF PROPOSED LEGISLATION:

Table 4 shows the race and gender of offenders admitted to IDOC. Table 5 shows where these commitments to IDOC originate. Finally, Table 6 shows the relationship between geography and race for child pornography commitments to State prisons. Here, race is self-identified upon admission to prison. The “Other” includes self-identified Asian/Island Pacific, Native American, and Unknown races.

Table 4: Past Three Years Admissions to IDOC for **Possession of Child Pornography**

	Male	Female	Total	Percent
Black	5	0	5	6%
White	68	1	69	81%
Hispanic	8	0	8	9%
Other	3	0	2	2%
Total	99%	1%	85	100%

Table 5: Admitting Counties over Past Three Years for **Possession of Child Pornography**

County	Number of Admissions	Percent
Cook	24	28%
DuPage	11	13%
Will	4	5%
Boone	3	4%
Knox	3	4%
Lake	3	4%
Macon	3	4%
Champaign	2	2%
Franklin	2	2%
Grundy	2	2%
Other	28	33%
Total	85	100%

Table 6: Race by Geographic Region County Over Past Three Years for Possession of Child Pornography

	Cook	Collar	Urban	Rural	Percent
Black	2	0	3	0	6%
White	17	16	10	26	81%
Hispanic	4	3	0	1	9%
Other	1	1	0	1	2%
Total	28%	24%	15%	33%	85

Figure 1: Race by Geographic Region County Over Past Three Years for Possession of Child Pornography

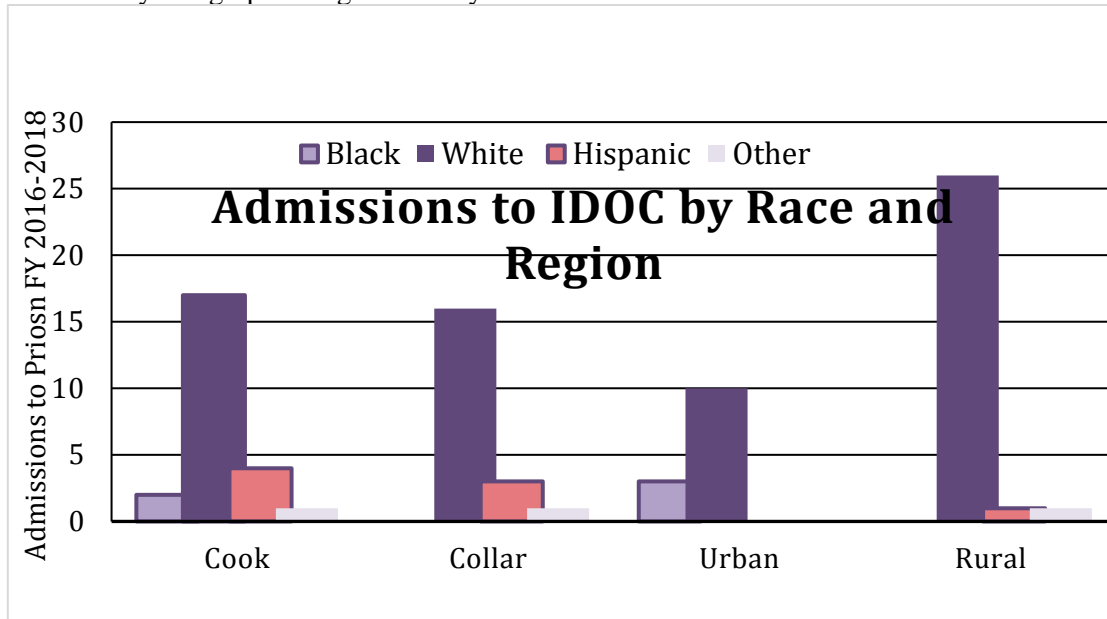


Table 7: Fiscal Impact Analysis
Possession of Child Pornography
720 ILCS 5/11-20.1(a)(6)
For Fiscal Years 2016, 2017, and 2018

Total arrests	291
Total convictions	218
Total withheld judgments	<10

Withheld judgments are similar to court supervision: charges are dismissed or judgment vacated after a set time and/or tasks completed.

	Dollar Value from 2016-18
Current Costs	\$2,003,825
Proposed Costs	\$2,309,535
Victimization Benefits	\$0
Total Costs	\$305,710

Sentences		Number of Offenders	Average Sentence Imposed (years)	Average Jail Stay Prior to IDOC Sentence (years)	Average Sentence Served in IDOC (years)
	Pretrial Detention	93		0.64	
	Probation	142	2.75		
	Prison	85	4.2	0.7	0.99

** Average sentence served is the time less credit for time served in detention and any sentence credits for which the offender is eligible. Some people with probation sentences also receive pretrial credit for time served in pretrial detention. On average, they spend the same amount of time in jail as prison sentences.*

Current Cost		Cost	Length of Stay (Years)	Current Cost for Each Offender	Number of Offenders	Total Cost of Current System
		C	L	C x L	N	C x L x N
	Pretrial Detention	\$3,218	0.64	\$2,060	93	\$191,535
	Probation	\$2,011	2.75	\$5,530	142	\$785,296
	Prison	\$8,005	0.99	\$7,925	85	\$673,621
	IDOC Supervision	\$2,841	1.46	\$4,157	85	\$353,373
Total				85	\$2,003,825	

Note: SPAC uses the average cost of supervising all risk levels of offenders from AOIC's 2015 calculations. IDOC Supervision is average time spent on MSR for these offenders.

Predicted Sentence (Length of Stay Under Proposal)	New Prison Admissions Calculations	Percent with Family or Household Member	Estimated New Prison Admissions	Average Pretrial Detention	Total Length of Stay in Prison (years)
		25%	36	0.70	0.99

Note: SPAC assumes that 25% of current probation sentences would instead be sentenced to prison and receive the same pretrial detention and stay in prison as current prisoners.

Effect of Legislative Proposal		Cost	Length of Stay Proposed (Years)	Predicted Cost for Each Offender	Number of Offenders	Total Cost of Predicted System
		C	L'	L' x C	N	L' x C x N = TC'
	Pretrial Detention	\$3,218	0.64	\$2,060	129	\$264,648
	Probation	\$2,011	2.75	\$5,530	107	\$588,972
	Prison	\$8,005	0.99	\$7,925	121	\$954,956
	IDOC Supervision	\$2,841	1.46	\$4,157	121	\$500,958
Total					\$2,309,535	

Increased Costs, Had This Bill Been in Effect for Past Three Years		Proposed Cost	Current Cost	Total Cost Increase
	Pretrial	\$264,648	\$191,535	\$73,113
	Probation	\$588,972	\$785,296	-\$196,324
	Prison	\$954,956	\$673,621	\$281,336
	MSR	\$500,958	\$353,373	\$147,585
	<i>* Estimating Probationers as receiving First Offense Costs</i>		Total:	\$305,710

The Sentencing Policy Advisory Council (SPAC) is a statutorily created council that does not support or oppose legislation. Data analysis and research is conducted by SPAC's research staff. The analysis presented here is not intended to reflect the opinions or judgments of SPAC's member organizations.