

SENATE BILL 2872 – HOUSE FLOOR AMENDMENT 2

INSUFFICIENT DATA TO SUPPORT A FULL FISCAL IMPACT ANALYSIS

The prison population is primarily driven by two levers, admissions and length of stay. House Floor Amendment 2 to Senate Bill 2872 ([SB2872](#)), which was passed by both chambers of the General Assembly and sent to the Governor for signature, impacts the length of stay lever by amending the statute governing the awarding of sentence credits and admissions by making several crimes probation eligible. This House Amendment is different than the first floor amendment and so the analysis that follows is different than an early SPAC analysis. The current proposal expands eligibility for credits by eliminating some restrictions based on the crime of conviction and the prohibition on credits to repeat offenders. In addition to these two levers, House Floor Amendment 2 to SB2872 authorizes technical assistance and strategic planning from the Illinois Criminal Justice Information Authority to support implementation of trauma recovery services in underserved communities. The services in the community and allowing more serious offenders access to programming may also have population reduction impact as more people receive and complete evidence-based treatments and the overall crime and recidivism rates decrease.¹

This analysis sets forth the number of people admitted to prison between 2013 and 2015 who would be affected by these changes and provides some scenarios to illustrate the range of impacts these changes might have had, had they been in effect. Because it is impossible to know how many newly eligible people would get sentence credits or be sentenced to probation instead of prison, or the costs of building sufficient programming capacity in IDOC to serve a greater number of those eligible, it is not possible to reliably calculate the fiscal impact of these provisions. It should be noted however, that small changes to length of stay distributed over a large group of individuals can result in a measureable change in the prison population when coupled with policies that reduce admissions and recidivism.

SPAC analyzed admissions to and exits from the Illinois Department of Corrections (IDOC) from 2013-2015. Data from the Illinois State Police’s Criminal History Record Information (CHRI) system was used to review criminal histories and probation sentences. The data sources were used to estimate how many individuals might change eligibility status.

Table 1. Annual Admissions with New Eligibility for Probation or Sentence Credits

	Annual Admissions with New Eligibility Average from FY2013-15	Notes
Probation Reforms	2,944	If a high percent of these admissions are instead sentenced to probation, admissions could decrease by as much as 1,523 per year. Under more modest assumptions, admissions could decrease by 937 per year.
Supplemental Sentence Credits	1,887	About 80% of newly eligible offenders are admitted to prison on forcible felonies.
Programming Credits	10,048	The number of inmates awarded programming credit will depend on the programming availability in IDOC.

¹ See SPAC’s cost-benefit analysis report on the potential benefits for investing in evidence-based practices. Illinois Results First: A Cost-Benefit Tool for Illinois Criminal Justice Policymakers. Summer 2016. Available at: http://www.icjia.state.il.us/spac/pdf/Illinois_Results_First_Consumer_Reports_072016.pdf.

Probation

The challenge for analyzing changes to probation eligibility is determining how frequently prosecutors, defendants, and judges will utilize the non-prison alternatives. This frequency is not known. Under Illinois sentencing law, probation is the presumptive sentence unless imprisonment is necessary for public safety and probation would undermine the seriousness of the conduct.² Trends over the past decade have seen a decrease in the use of probation, although the majority of felony sentences remain probation and supervision rather than prison. However, probation is imposed for more serious crimes less often; SPAC analysis of CHRI data showed that about one third of Class 1 felons received probation.

First, SPAC analyzed how many prison admissions would be made probation-eligible by SB2872 HFA2.

Table 2. Annual Admissions with New Eligibility for Probation by Statutory Subsection

Nonprobationable Offenses 730 ILCS 5/5-5-3(c)(2)	Action	Annual Admissions with New Eligibility Average from FY2013-15
Total newly probation-eligible:		2,944 per year
(D) drug manufacture, delivery, and trafficking (cocaine)	<i>Made probation eligible</i>	704 per year
(E) drug manufacture, delivery, and trafficking (cannabis)	<i>Made probation eligible</i>	11 per year
(F) repeat Class 2 or greater felonies	<i>Changed to repeat Class 1 or greater felonies</i>	2,106 per year
(F-3) repeat Class 2 or greater weapons or sex offenses	<i>Repeat Class 2 or higher offenses currently nonprobationable</i>	<i>Same as status quo</i>
(T) second or subsequent methamphetamine conviction	<i>Made probation eligible</i>	123 per year

SPAC then modeled several scenarios varying the number of people from the eligible group to estimate a range of annual impacts on admissions. To calculate this estimate, SPAC examined the overall prison/probation rates by class and for similar offenses. Under one scenario where probation is frequently granted, the net annual impact could reach a reduction of 1,523 prison admissions per year. Under a scenario where probation is less frequently granted, the net annual impact could reach a reduction of 937 fewer admissions per year. The probation rates used to calculate these estimates are shown in *Table 3* below.

² 730 ILCS 5/5-6-1(a).
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Table 3. Estimates of Annual Admissions Reduced by New Probation Eligibility

Nonprobationable Section 730 ILCS 5/5-5-3(c)(2)	Possible Probation Rate	Average Annual Admissions Impact	
		High Estimate	Low Estimate
Net - annual estimate	60 - 5%	1,523	937
(D) drug manufacture, delivery, and trafficking (cocaine and fentanyl)	60 - 33%	422	232
(E) drug manufacture, delivery, and trafficking (cannabis)	60 - 33%	7	4
(F) repeat Class 2 or greater felonies	50 - 33%	1,053	695
(F-3) repeat Class 2 or greater weapons or sex offenses	100%	--	--
(T) second or subsequent methamphetamine conviction	33 - 5%	41	6

These estimates are based on several assumptions:

- The Criminal History Record Information (CHRI) data are sufficiently accurate to use for analysis. The Illinois Criminal Justice Information Authority is currently conducting a data integrity audit of CHRI.
- Arrests, convictions, and sentences to prison are consistent with the pattern established in 2013 through 2015. This assumption does not incorporate reactions by system stakeholders, who may alter practices to adapt to the new sentencing structures.
- The above percentages are reasonable in light of past probation trends, however they are not predictive of how frequently probation will be imposed. In the past, judges have sentenced all of the offenders under these crimes to prison. The change in the law will have an effect, but the size and timing of the effect is based only on reasonable estimates.

In addition to the admissions analysis shown above, SPAC uses its prison population projection to analyze “what if” scenarios on how proposed legislation can change the prison population in the future. The projection includes the impact of increasing probation eligibility and additional probation sentences being awarded, as well as the impact of increasing earned sentence credits awarded within IDOC.

Overall, the SPAC projection finds that the annual reduction could be **between 2,500 and 4,000 fewer inmates in prison**, depending on (1) how many individuals are sentenced to probation rather than prison, (2) how many inmates receive programming credits, and (3) how many inmates receive supplemental sentence credits. This estimate is slightly higher than SB2872 House Floor Amendment 1, which made all Class 2 weapons and sex offenses nonprobationable. House Floor Amendment 2 made repeat Class 2 weapons and sex offenses nonprobationable. A full description of the projection, its assumptions, and the two scenarios is listed at the end of this report.

Sentence Credit

House Floor Amendment 2 to Senate Bill 2872 expands eligibility for two types of sentence credits: supplemental credits for good behavior and programming credits. Sentence credits reduce the amount of time the inmate must spend in prison. As with the probation eligibility, SPAC identified all admissions to prison from the past three years (FY2013-2015) that would be affected. Overall, an average of 11,935 inmates admitted to prison each year would have had different eligibility for sentencing credits had this proposal been in effect. Eligibility does not guarantee that the credits will be awarded as there are a number of variables IDOC can consider when determining how much credit to give. In addition, IDOC can revoke credits for bad behavior. The following calculations represent the estimated scale in changing current sentencing policy. If credits are awarded, this proposal may change the length of stay lever to reduce the prison population.

Programming credits require successful completion of programming offered by IDOC, which depends on programming capacity. Under current law, some offenders are prohibited from receiving programming credit based on their crime of conviction or their status as repeat offenders. House Floor Amendment 2 to SB 2872 removes the latter prohibition, the bar for repeat offenders. The earlier version, House Floor Amendment 1, removed the barrier for programming credits for Class X offenses and some other crimes but also added some restrictions. The analysis presented here focuses HFA2, which passed both chambers.

Supplemental credits can be earned by an inmate by complying with the rules of the institution, and rendering service to the institution, community, or State. Eligibility requirements include, but are not limited to, review of any validated risk assessment or other evaluations, a history of forcible felonies, and the offender's disciplinary history. Under current law, offenders admitted for certain enumerated offenses which involve crimes against people are eligible for 90 days of supplemental credits. The proposal allows up to 180 days of this kind of credit for the offenses currently limited to 90 days (partially newly eligible). An average of 38 inmates admitted to prison would have been eligible for an additional 90 days of supplemental sentence credit.³ An additional 1,849 admissions each year would be fully newly eligible for the 180 supplemental sentence credits. Of those fully newly eligible, almost 80% are for crimes classified as forcible felonies, a factor that the IDOC Director must consider before awarding credits.

Table 4. Annual Admissions with New Eligibility for Sentence Credits

Annual Admissions with New Eligibility Average from FY2013-15		
	Supplemental Sentence Credits	Programming Credits
Newly Eligible	1,849	10,048
Partially Newly Eligible	38	--

Table 5. Credit Eligibility Changes by Crime Type

Supplemental Sentence Credits				Programming Credits	
Newly Eligible		Partially Newly Eligible		Newly Eligible	
Crim. Sexual Assault	22%	Stalking	60%	Possession Controlled Substance	21%
Crim. Sex Abuse	14%	Kidnapping	27%	Theft	18%
Murder	13%	Child Endangerment	12%	M/D Controlled Substance	13%
Agg Battery	9%			Burglary	10%
Domestic Battery	8%			Driving Revoked License	7%

³ IDOC currently reports annually on the amount of credits awarded. The reports are available at: <https://www.illinois.gov/idoc/reportsandstatistics/Pages/AnnualReportsforSSC.aspx>.

Table 6. Credit Eligibility Changes by Most Severe Felony Class

	Supplemental Sentence Credits		Programming Credits
	Newly Eligible	Partially Eligible	Newly Eligible
First-Degree Murder	13%		--
Class X	44%		--
Class 1	12%		12%
Class 2	25%	26%	19%
Class 3	2%	40%	21%
Class 4	3%	34%	48%

Table 7. Credit Eligibility Average Sentence Imposed

	Supplemental Sentence Credits		Programming Credits
	Newly Eligible	Partially Eligible	Newly Eligible
Average Sentence Imposed	12.7 years	3.7 years	3.3 years
Average Pre-trial Detention Time	1.5 years	0.9 years	0.5 years

Table 8. Credit Eligibility Changes by Race

	Supplemental Sentence Credits		Programming Credits
	Newly Eligible	Partially Eligible	Newly Eligible
White	31%	37%	27%
Black	48%	48%	66%
Other	21%	15%	7%

Table 9. Credit Eligibility Changes by Gender

	Supplemental Sentence Credits		Programming Credits
	Newly Eligible	Partially Eligible	Newly Eligible
Male	95%	90%	91%
Female	5%	10%	9%

Table 10. Credit Eligibility Changes by Age

	Supplemental Sentence Credits		Programming Credits
	Newly Eligible	Partially Eligible	Newly Eligible
Under 20	9%	22%	2%
21 to 25	24%	14%	13%
26 to 30	18%	24%	16%
31 to 35	14%	13%	16%
Over 35	34%	27%	53%

Table 11. Credit Eligibility Changes by Region

	Supplemental Sentence Credits		Programming Credits
	Newly Eligible	Partially Eligible	Newly Eligible
Cook	47%	57%	55%
Collar	21%	25%	11%
Urban	15%	9%	19%
Rural	16%	9%	15%

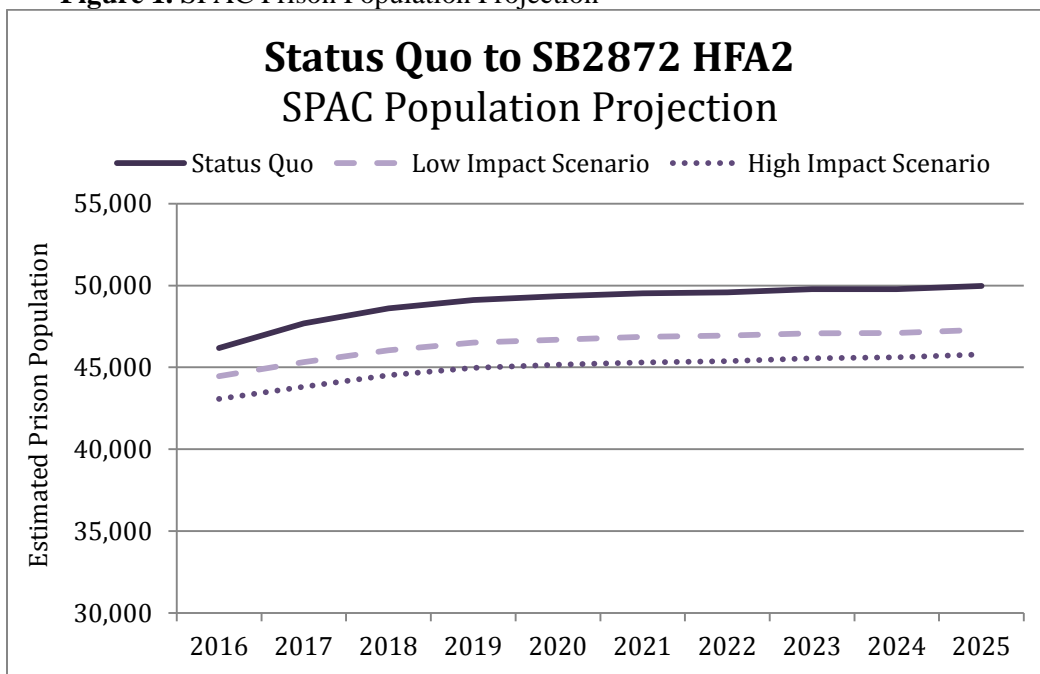
These estimates show the potential the impact of increasing eligibility for earned sentence credits on length of stay in prison. These estimates are based on the following assumptions:

- Arrests, convictions, and sentences to prison are consistent with the pattern established in 2013 through 2015. This assumption does not incorporate reactions by system stakeholders, who may alter practices to adapt to the new sentencing structures.
- The Illinois Department of Corrections determines eligibility based on the most severe offense. Other factors in the determinations, based on risk and needs assessments, behavior in prison, and other fiscal and space constraints may dramatically impact—and limit—how frequently credits are awarded.
- SPAC makes no assumptions about the number of eligible people who would actually receive the credit.

SPAC Prison Population Projection: Comparing Status Quo to SB2872 HFA2

The projection takes past data to create a status quo projection into the future and, using the same calculations and equations, projects alternative scenarios with changes to admissions and offenders’ length of stay in prison.⁴ The model produces a projection of the cumulative effect of multiple policy changes. The interpretation of the projections should focus on the differences between the two scenarios and the status quo, not on the projected population number.

Figure 1. SPAC Prison Population Projection



The difference between the two scenarios and the status quo is a reduction in the prison population of between 2,500 and 4,000 people. The size of the impact depends on (1) how many individuals are sentenced to probation rather than prison, (2) how many inmates receive programming credits, and (3) how many inmates receive supplemental sentence credits. The above scenarios do not include any reductions that may occur due to changing crime or recidivism rates. Evidence-based programming within prison and in the community, enhanced by these bills, may cause some these rates to change. However, these projections measure only the effects of the changes described above.

⁴ A more detailed description of the SPAC prison population projection can be found online, available at: <http://ilspac.illinois.gov>.

The estimates and assumptions that SPAC uses in these projections are described below. For the purposes of the population projection model, the IDOC admissions data are from FY2013-2015, which are the latest data available. Since the end of FY2015, prison admissions have decreased and the overall population has gone down. Those changes are not reflected in the status quo projection. SPAC made adjustments to the status quo according to the bill's language regarding sentence credit and probation eligibility. The projection was run twice: once with low impact estimates and another with a high estimates. The low and high impact projections are two plausible scenarios based on available information.

For both of the following scenarios, SPAC examined the overall prison/probation rates by class and for similar offenses. Trends over the past decade have seen a decrease in the use of probation, although the majority of felony sentences remain probation and supervision rather than prison. However, probation is imposed for more serious crimes less often; SPAC analysis of CHRI data showed that about one third of Class 1 felons received probation.

Low impact scenario:

- **A smaller percent of eligible admissions are instead sentenced to probation.**
 - For cocaine and cannabis drug offenses subject to 730 ILCS 5/5-5-3(c)(2)(D) and (E), one third of future prison admissions are instead sentenced to probation.
 - For meth drug offenses subject to 730 ILCS 5/5-5-3(c)(2)(T), 5% of future prison admissions are instead sentenced to probation.
 - For repeat Class 2 or greater felonies subject to 730 ILCS 5/5-5-3(c)(2)(F), which under SB2872 is changed to only repeat Class 1 or greater felonies, one third of repeat Class 2 admissions *only with the minimum sentence* are instead sentenced to probation.
- **IDOC increases supplemental sentence credit awards 50% above previous policies.** In the last available SSC report in October 2015, 1,915 inmates received, on average, about 136 days of supplemental sentence credits.⁵ Although many more inmates meet statutory criteria for these credits, the low impact scenario analyzes only a 50% increase in IDOC's credit awards (958 inmates).
- **Programming credits double in IDOC for those inmates newly eligible.** SPAC doubled the projection model's parameter that accounts for discretionary credits (*i.e.*, the difference between actual release times and the projected length of stay from the sentence, truth-in-sentencing, and pre-trial jail credits). For offenses thought to have an increase in program credits available, this discretionary estimate was doubled. No change was made to the status quo for those not impacted.
- **Eventually, the prison population would be about 2,500 lower than the status quo.**

High impact scenario:

- **A larger percent of eligible admissions are instead sentenced to probation.** Under this scenario:
 - For cocaine and cannabis drug offenses subject to 730 ILCS 5/5-5-3(c)(2)(D) and (E), 60% of future prison admissions are instead sentenced to probation.
 - For meth drug offenses subject to 730 ILCS 5/5-5-3(c)(2)(T), 5% of future prison admissions are instead sentenced to probation.
 - For repeat Class 2 or greater felonies subject to 730 ILCS 5/5-5-3(c)(2)(F), which under SB2872 is changed to only repeat Class 1 or greater felonies, one half of repeat Class 2 admissions *only with the minimum sentence* are instead sentenced to probation.
- **IDOC doubles the supplemental sentence credit awards above previous policies.** In the last available SSC report in October 2015, 1,915 inmates received, on average, about 136 days of supplemental sentence credits. Although many more inmates meet statutory criteria for these credits, the low impact scenario analyzes a 100% increase in IDOC's credit awards (1,915 inmates).

⁵ IDOC currently reports annually on the amount of credits awarded. The reports are available at:

<https://www.illinois.gov/idoc/reportsandstatistics/Pages/AnnualReportsforSSC.aspx>.

- **Programming credits double in IDOC for those inmates newly eligible.** SPAC doubled the projection model's parameter that accounts for discretionary credits (*i.e.*, the difference between actual release times and the projected length of stay from the sentence, truth-in-sentencing, and pre-trial jail credits). For offenses thought to have an increase in program credits available, this discretionary estimate was doubled. No change was made to the status quo for those not impacted.
- **Eventually, the prison population would be about 4,000 lower than the status quo.**