

Sentencing & Prison for Drug-Law Violators: Broad Structures and Issues to Consider

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Structure of Drug Laws

- Each drug type is separately considered
- Weight of the drugs involved dictates offense classification (e.g., felony class)
 - Weight of substance. 1 gram that is 20% pure is the same as 1 gram that is 80% pure
- “Behavior” dictates offense classification
 - Possession, possession with intent to deliver/delivery/manufacture
- Other circumstances can enhance class/sentence
 - Sentence enhancements depending on location of delivery (i.e., 1,000 foot rule) or to whom drugs are being sold (minors, pregnant women)

Weights & Perspective

- Cocaine \approx \$40 (dealer-level) to \$85 (retail level) per gram
 - 15 grams would be worth \$600 to \$1,275
- Heroin \approx \$80 (dealer) to \$140 (retail) per gram
 - 15 grams would be worth \$1,200 to \$2,100
- Methamphetamine \approx \$60 to \$175 per gram
 - 15 grams would be worth \$900 to \$2,625
- Illinois Law
 - Sale/delivery of 5- <15 grams, Class 1, mandatory IDOC, sentence of 4 to 15 years
 - Sale/delivery 15+ grams, Class X, mandatory IDOC, sentence of 6 to 30 years

Source of price data: Office of National Drug Control Policy, *National Drug Control Strategy 2014: Data Supplement*

Basic Structure of Illinois' Drug Laws

- All drugs other than cannabis
 - Possession of any amount is a felony offense
 - For cocaine and heroin, possession is either a Class 4 (<15g.) or 1 felony (15+g.); Meth, Class 3, 2, 1, or X
 - For cocaine and heroin, sale/delivery is either a Class 2, 1, or X felony
 - Class 2 is less than 1 gram
 - Class 1 is 1 to <15 grams; 5 to <15 grams cocaine mandatory IDOC; 3 to <15 grams heroin mandatory IDOC
 - Class X is 15 grams or more
 - Methamphetamine
 - Possession Class 3, 2, 1, and X felonies
 - Sale/delivery, Class 2, 1, or X

Commission recommendation #6 in December 2015 report is these have probation as option

Enhancements to Classification Based on Location of Poss. w/intent/Sale/Delivery

- Drug sale/delivery offense *moves up one felony* class, or sentences double, if offense occurs within 1,000 feet of specific locations
- (1985: 15 & 16 year-olds charged with sale/delivery within 1,000 feet of school automatically tried as adults)
- 1988 (1,000 feet of a school enhancement)
- 1990 (1,000 feet of public housing & parks) (15 & 16 year olds automatically tried as adults)
- 1993 (1,000 feet of truck stop or rest area)
- 1994 (1,000 feet of church, synagogue or any other place used as place of worship)
- 1998 (1,000 feet of nursing home, assisted living)
- 2000 (1,000 feet of property owned or leased by public housing or mixed income housing)
- (2005: presumptive transfer of 15&16 year old drug/1,000 ft cases)

1,000 Foot Enhancements

- All states have these types of provisions, 31 states include more than just schools
- Variations in application
 - Some limit only to offenses on public property
 - Some limit applicability based on time of day and/or if children are present
 - Example:
 - Distance varies: 10 states less than 1,000 feet, 7 states more than 1,000 feet
 - Less than 1,000 feet usually 500 feet
 - Some states allow judicial discretion, used as an aggravating factor in sentencing

Source: Sentencing Project, *Drug Free Zone Law: An Overview of State Policies*.



Issues Raised

- Weight used to classify offenses are not based on any objective relationship to behavior
- Broad leaps from felony classes (cocaine example)
 - Possession of <15 grams, Class 4 felony
 - Possession of 15+ grams, Class 1 felony
 - Possession w/intent/delivery 5 to <15g, Class 1 (non-probationable) (1,000 feet rule goes to Class X)
 - Delivery of 15+ grams, Class X felony
- Over time, with modifications and enhancements, non-violent drug-law violations are classified similar to serious, violent offenses
- Enhancements are automatic, broad, and disproportionately impact those in urban areas

Historical Changes (Cocaine Example)

Sale of 5 to <15 grams of cocaine

- Pre-1988
 - Class 2 felony, probationable
- 1988 (Weight change & non-probationable)
 - Class 1 felony, not probationable
- 1988 (1,000 feet of a school enhancement)
 - Class X felony
- 1990-2000 various other 1,000 foot enhancements, all making sale of 5-15 grams of cocaine a Class X felony



Current Classification of Drug Offenses

- **Class X**

- Delivery of 15+ g. of cocaine or heroin; manufacture or delivery of 15+ g. methamphetamine
- Delivery of 1 to <15 g. of cocaine or heroin, 5 to <15 g of methamphetamine, within 1,000 feet;

- **Class 1**

- Delivery of 1 to < 15 g. of cocaine or heroin, or 5 to <15 g. methamphetamine
- Delivery of any amount of cocaine, heroin or methamphetamine within 1,000 feet
- Possession of 15+ g. cocaine, heroin or methamphetamine

- **Class 2**

- Delivery of < 1 g. of cocaine of heroin, or < 5 g. methamphetamine
- Possession of 5 to <15 g. methamphetamine

Current Classification of Drug Offenses

- **Class 3**
 - Possession of < 5 g. of methamphetamine
- **Class 4**
 - Possession of < 15 g. of cocaine or heroin;



Proportionality with other crimes?

- **Class X**

- If you sell 15 grams or more of cocaine (\$1,200+ worth at retail) or heroin (\$2,100 + at retail)
- Aggravated criminal sexual assault, predatory criminal sexual assault of a child, armed robbery, attempted murder

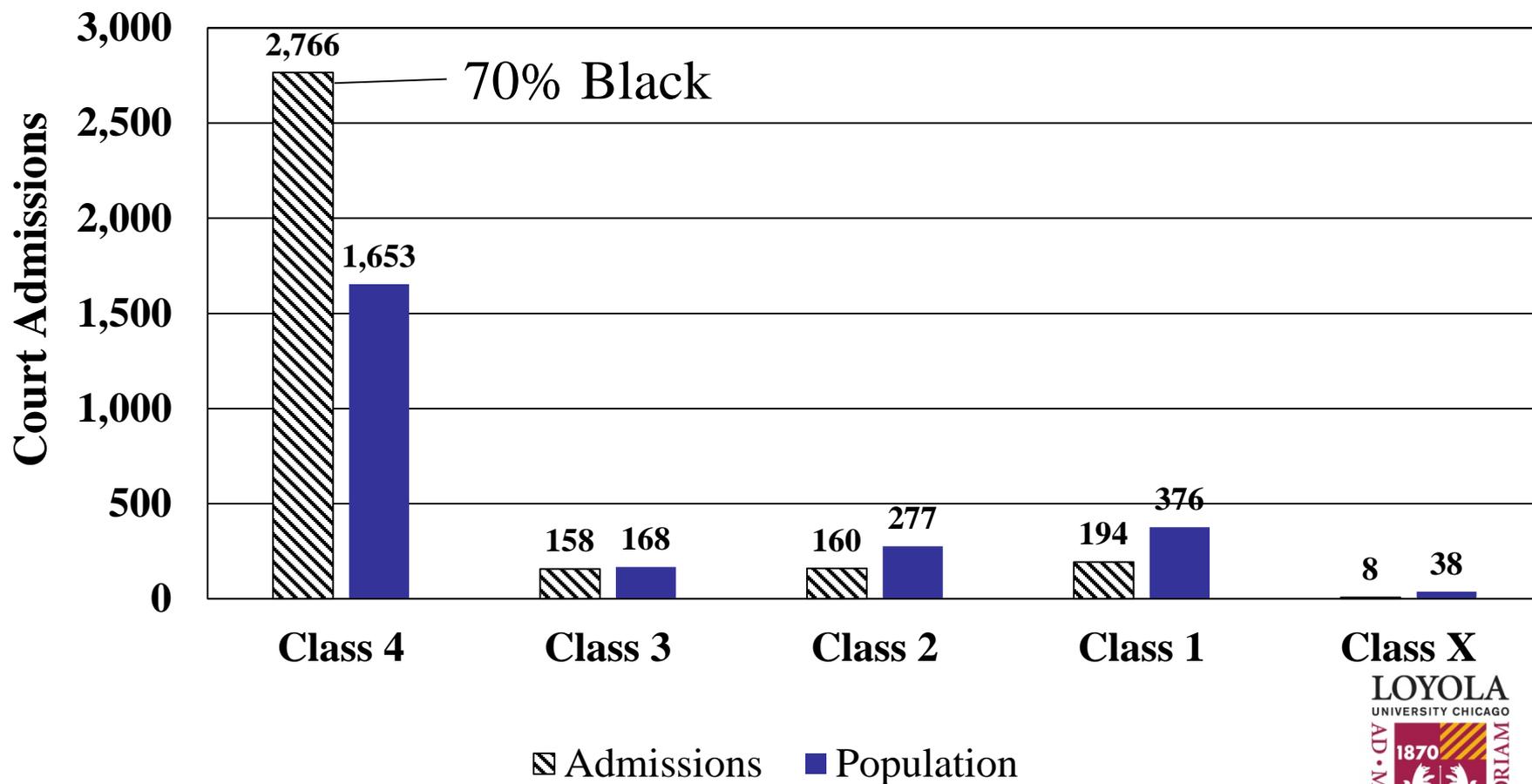
- **Class 1**

- Cocaine: if you sell 5-15 grams (worth between \$425 and \$1,200 at retail) or 3-15 grams of heroin (with \$420 to \$2,100)
- Criminal sexual assault, residential burglary, robbery, aggravated robbery, aggravated discharged of a firearm

- **Class 2**

- If you sell less than 1 gram of cocaine (worth less than \$85) or heroin (worth less than \$140)
- Aggravated criminal sexual abuse, aggravated UUW by a felon, burglary, motor vehicle theft

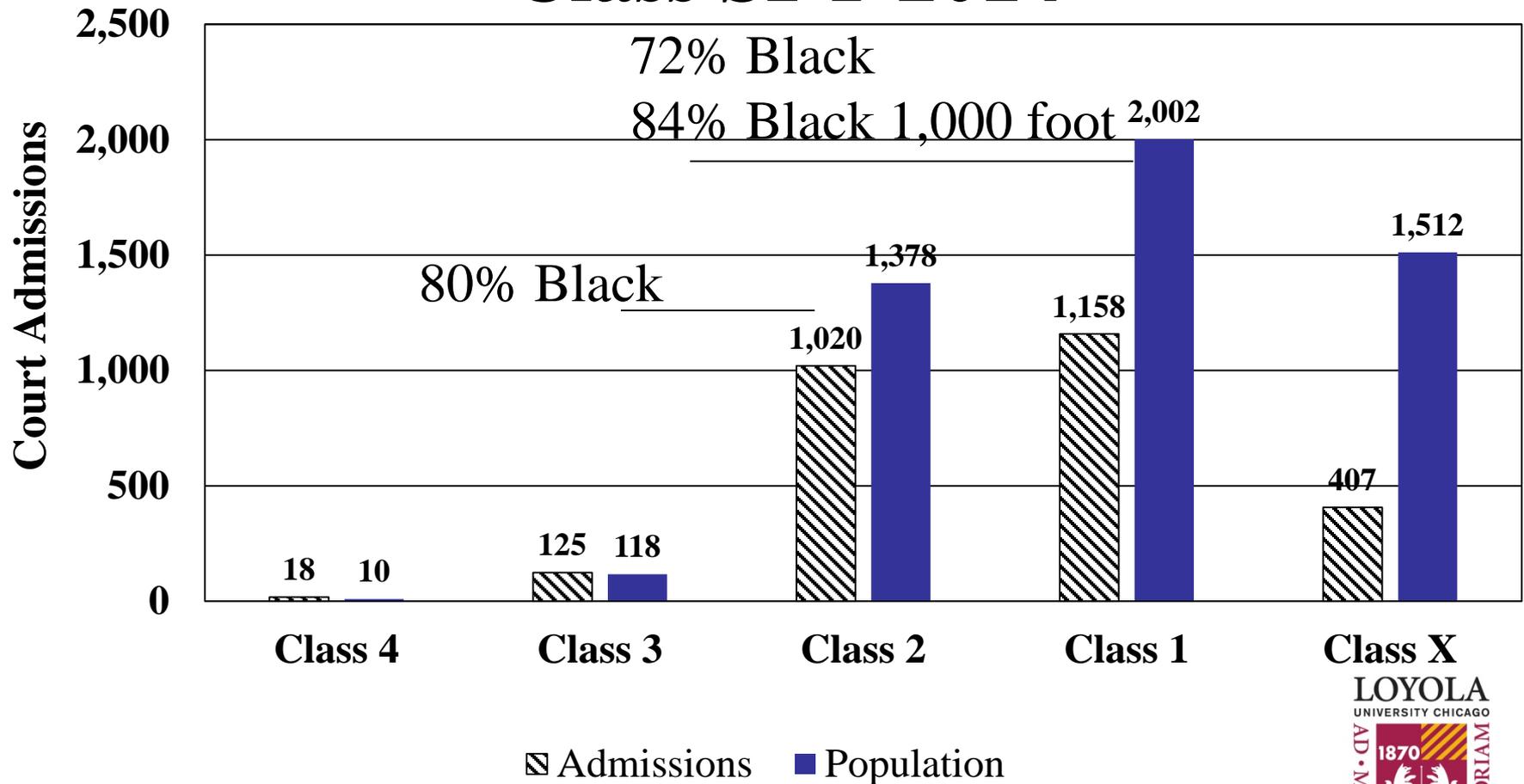
IDOC Court Admissions & Population for Controlled Substance Possession, by Felony Class SFY 2014



Source: David Olson analyses of offender-level IDOC data provided by the IDOC Planning and Research Unit.



IDOC Court Admissions and Population for Controlled Substance Delivery, by Felony Class SFY 2014



Source: David Olson analyses of offender-level IDOC data provided by the IDOC Planning and Research Unit.

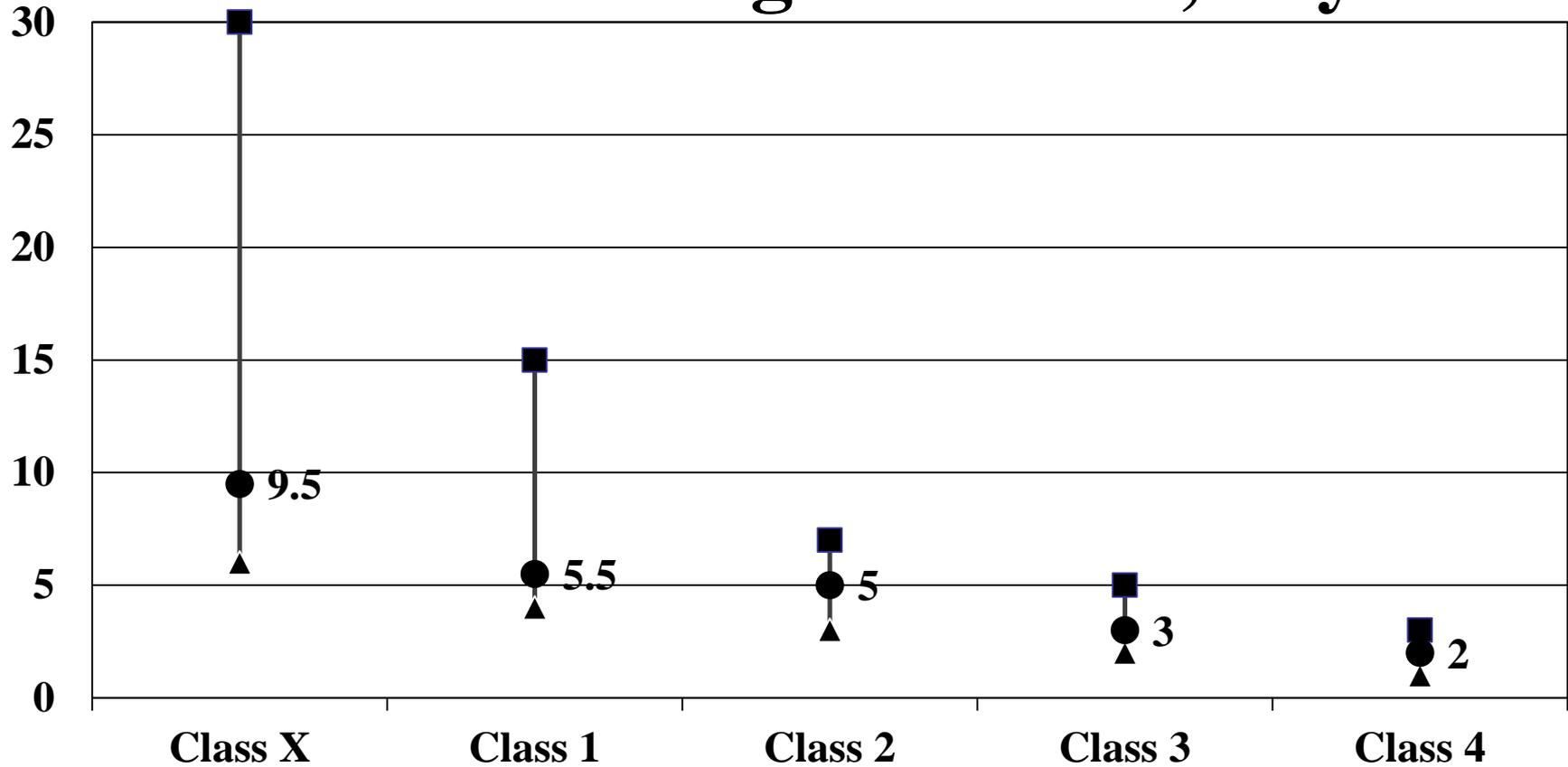


Current Sentencing Patterns to Prison

- Of those sentenced to IDOC for drug-law violations, most sentences are towards the lower end of the sentencing ranges
- Most sentences imposed would be possible even if offense was classified as one felony class lower than how currently classified
- Majority of those sentenced to IDOC for drug delivery are in need of drug treatment; higher need than those admitted to IDOC for non-drug offenses.



Sentence Range by Felony Class & 75th Percentile for Drug Sentences, in years



■ Max Sent. Range

▲ Min Sent. Range

● 75th percentile



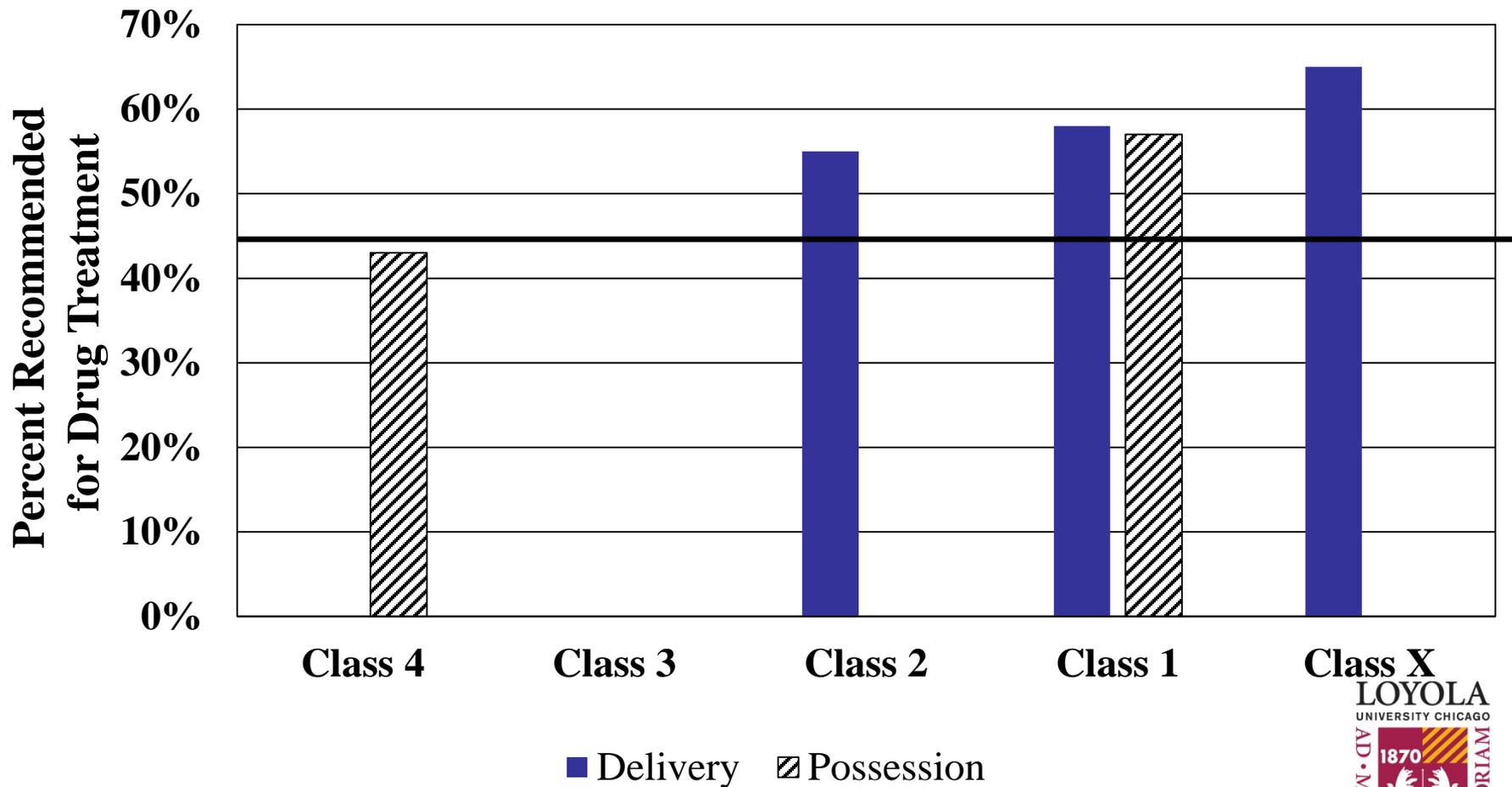
Source: David Olson analyses of offender-level IDOC data provided by the IDOC Planning and Research Unit.

Sentencing Ranges and Felony Class of Drug Offenses, SFY 2014

- Of those sentenced to IDOC on a Class X felony drug offense, 95% received a sentence allowable under Class 1 felony range
- Of those sentenced to IDOC on a Class 1 felony drug offense, 87% received a sentence allowable under Class 2 felony range
- Of those sentenced to IDOC on a Class 2 felony drug offense, 73% received a sentence allowable under Class 3 felony range
- Of those sentenced to IDOC on a Class 3 felony drug offense, 79% received a sentence allowable under Class 4 felony range

Source: David Olson analyses of offender-level IDOC data provided by the IDOC Planning and Research Unit.

Percent of IDOC Drug-Law Violators Recommended for Drug Treatment, by Offense Type and Felony Class, SFY 2014 exits



Source: David Olson analyses of offender-level IDOC data provided by the IDOC Planning and Research Unit.



Potential Changes

- To make drug laws more proportionate to other offenses, reduce large gaps in felony classes by moving all offenses down 1 class, with the exception of Class 4, and small number of Class X
 - Example: Sale of less than 1 gram of cocaine would move from Class 2 felony to Class 3 felony; Sale of 1-15 grams of cocaine would move from Class 1 to Class 2 felony.
- Change 1,000 foot rule to discretionary or aggravating circumstance at sentencing, requiring nexus between offense and location (i.e., school day when children present, on public housing property, etc)
 - Example: Sale of less than 1 gram of cocaine could be Class 2 felony; Sale of 1-15 grams could be Class 1; Sale of 15+ grams could be Class X.

Impact of Shift Down 1 Class

- Based on sentencing in new felony class, reduced sentence length/length of stay would reduce IDOC population between 780 and 1,800
- Shift in numbers admitted to MSR for different lengths of time (based on example of SFY 2014 exits)
 - Class X (3 years MSR): \approx 430 fewer
 - Class 1-2 (2 years MSR) \approx 570 fewer
 - Class 3-4 (1 year MSR) \approx 1,000 more
 - Total years of MSR for cohort drops from 9,500 to 8,100 years
- Drop in number of subsequent Class 2 or higher from 2,900 to 1,900