



Trends in Sentencing: Mandatory Presentence Investigation Reports

**730 ILCS 5/5-4-1(b)(1)
Public Act 99-861**

Background

Public Act 99-861 (PA 99-861), effective January 1, 2017, was an outgrowth of the Commission on Criminal Justice & Sentencing Reform (the Commission) created in 2015 by Governor Bruce Rauner. The Commission met for two years and in December 2016 published its final report recommending changes that would attempt to reduce the prison population by 25% in ten years.¹ Public Act 99-861 implemented recommendation 12, which sought to strengthen the statutory preference for probation by requiring the sentencing judge to state on the record the reasons for a prison sentence, including why probation or conditional discharge was not appropriate, when imposing a sentence for a Class 3 or Class 4 felony on an offender with no history of violent crime or a prior sentence to probation.

The enacted legislation differs from the recommendation in two important aspects:

1. The recommendation targeted people who did not have a previous sentence to probation *or* a violent crime conviction while the legislation requires people to meet *both* criteria. Consequently, the pool of individuals impacted by the statute is smaller.
2. The recommendation required a judge imposing a prison term to state on the record the reasons that a sentence to probation or conditional discharge was not appropriate. In addition to the statement on the record, the statute requires a presentence investigation report to be considered before imposing a prison sentence.

The recommendation was resource neutral in that it required only the judge's statement on the record. Public Act 99-861's requirement for presentence investigations (PSI), which are done by probation officers, consume significant probation staff resources because they are time intensive. These reports synthesize information about the individual's life history, criminal record, and factors that could be considered in aggravation or mitigation at sentencing. Where available, risk assessment scores and other relevant assessments or evaluations would be included. Currently, most Class 3 and 4 felony cases are resolved by plea bargains. When there is a negotiated plea, a PSI is not required. The new requirement for PSIs prior to imposing a prison term for the individuals that meet the new law's criteria has significant procedural and resource allocation

¹ The full report is available at: http://www.icjia.state.il.us/cjreform2015/pdf/CJSR_Final_Report_Dec_2016.pdf.

implications. Though a new requirement was imposed on probation offices, no additional funding was appropriated in FY18 or FY19 to ensure staff capacity to produce the reports.

The Commission members shared an interest in developing a “feedback loop” that would allow analysis of the outcomes of the policies and procedures implemented because of the Commission’s work. Public Act 99-861 therefore included a requirement that SPAC report on the law’s impact on sentencing trends for the designated group of individuals, the prison population, and the racial demographics of those sentenced pursuant to the new provision.²

This report is based on SPAC’s review of the best available administrative data and court records reported in aggregate form. Individual case orders, waivers, or judicial sentencing justifications were not available. As more detailed data become available in the future, the nature and extent of the analysis will be improved.

Trends in Sentencing Class 3 and Class 4 Felonies

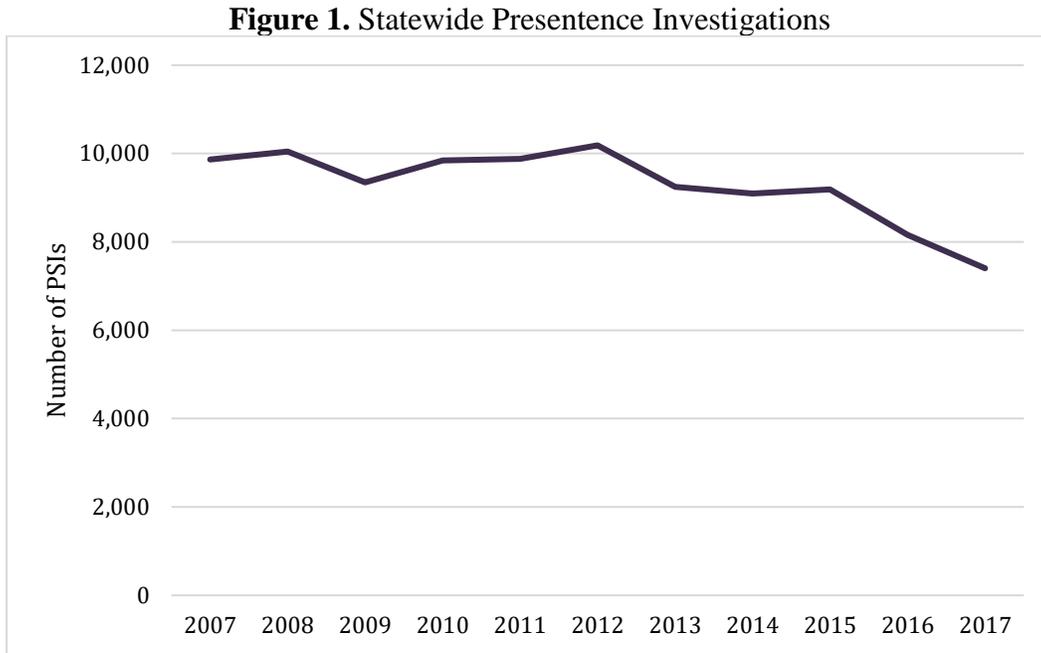
The available data show:

- The aggregate number of PSIs has decreased across the State since the law took effect.
- In fiscal year 2015 (FY15) approximately 30% of Class 3 and 4 prison inmates had not had a probation sentence before being sent to prison and 58% of new court admissions to prison for Class 3 and Class 4 felonies had no prior convictions for violent crimes as defined in the Rights of Crime Victims and Witnesses Act, 725 ILCS 120/1, *et seq.*
- The probability of getting a probation or prison sentence for those eligible for sentencing under PA 99-861 has not changed since the effective date.
- The number of people eligible under this law to be sentenced to prison has decreased; however, this trend generally followed the overall downward trend of prison admissions.
- Racial demographics have not changed significantly for either eligible probation or prison populations since January 1, 2017.

² See 730 ILCS 5/5-8-8(d)(7).

PSIs Conducted: Administrative Office of the Illinois Court Reports

Across the State, the number of PSIs conducted has decreased since peaking in 2012. The decrease has been offset by a slight increase in the number of PSIs conducted within Cook County; however, Cook County also saw a large decrease in PSIs conducted after 2016.

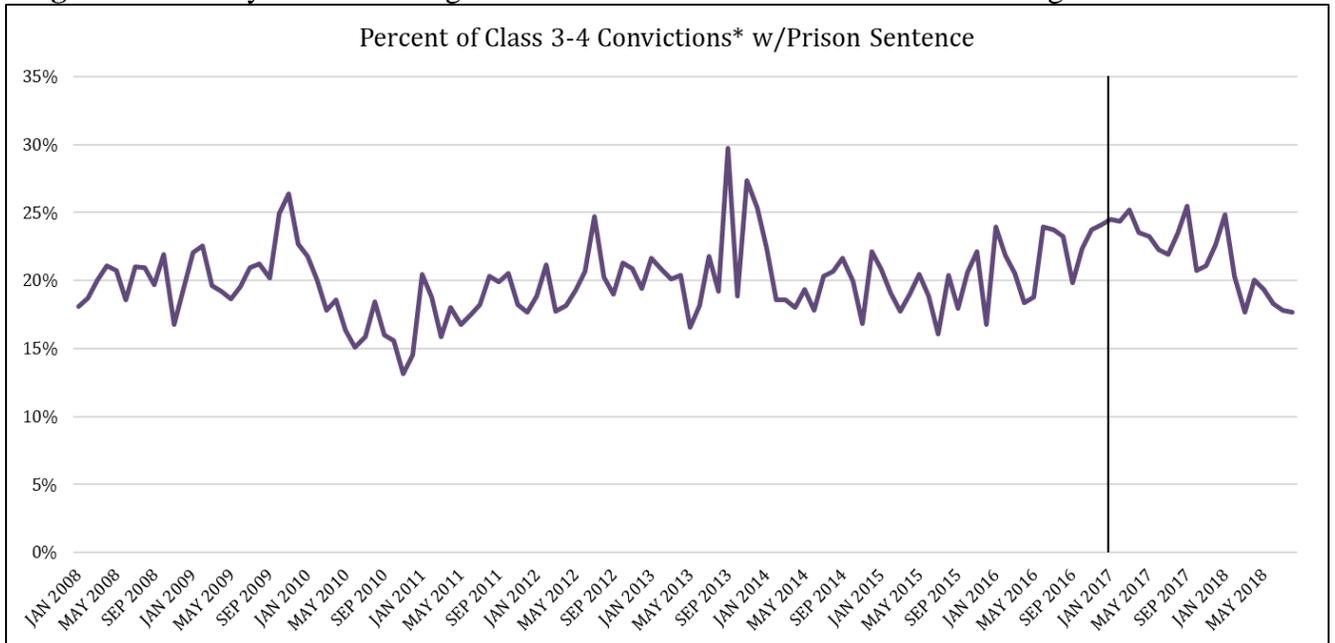


Source: AOIC annual reports

Sentencing Trends

There were 31,816 sentences imposed for Class 3 and 4 convictions from January 1, 2017 through June 30, 2018. SPAC has identified those cases that fit the new statutory criteria. Approximately 20% of the eligible cases were sentenced to prison, and 80% were sentenced to probation. Under the law’s new requirement for all prison sentences receiving PSIs, the expectation would be that a PSI would be completed for the 20% that were sentenced to prison. However, the data do not support that expectation.

Figure 2. Monthly Percent of Eligible Class 3 and Class 4 Convictions Receiving Prison Sentence



* Convictions of Class 3 or Class 4 felonies eligible under PA 99-861.

Source: SPAC analysis of CHRI data

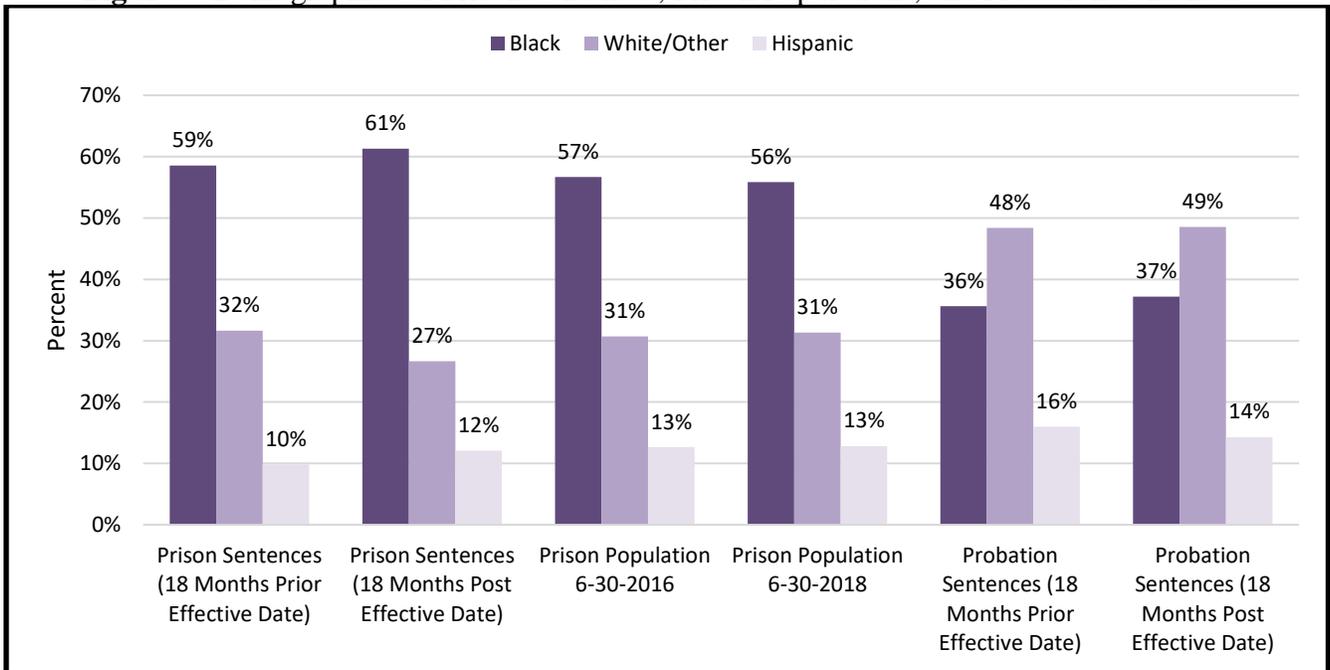
The prison sentences for eligible convictions generally varies between 16% to 25% of the monthly convictions. The post-implementation rates stay within the historic norms.

Social science typically prefers comparable before and after periods to examine policy impacts. Therefore, more narrowly, approximately 24% of the eligible convictions received a prison sentence in the 18 months after the January 2017 effective date compared to 23% for the 18 months prior. Importantly, the pre-period had an upward trend that turned downward after the effective date. SPAC will reexamine these trends and averages over time as more data is generated.

Changes in Racial Demographics

The law change had no discernable effect on the prison population. Black people convicted of eligible offenses were a slightly larger percent of prison sentences after the law. This change is primarily due to increases in convictions for gun possession offenses. However, the demographics of both the prison and probation populations remained stable.

Figure 3. Demographics of Prison Sentences, Prison Populations, and Probation Sentences



Source: SPAC analysis of CHRI and IDOC data

Conclusion

Public Act 99-861 has not produced the outcome contemplated by the Governor’s Commission. Several factors contribute to that shortcoming:

- The requirement that an individual meet both criteria of no prior probation sentences *and* no violent criminal history rather than one *or* the other, as set forth by the recommendation, has reduced the pool of eligible people.
- The failure to adequately address the resource needs of probation departments responsible for producing presentence reports.

SPAC discussed PSIs and the law with stakeholders to get a better understanding of the context around the law. In general, practitioners were unable to definitively say that their activities had changed due to the law. This sentiment was heard from criminal justice lawyers, judges, and court staff. Probation offices, for example, have seen budget decreases and a limited capacity for conducting PSIs under current circumstances, let alone expanding use to a larger group of cases.

The analysis above shows that (1) fewer PSIs appear to be conducted and (2) the overall sentencing trends have not changed since the law’s effective date. SPAC is requesting additional administrative data from counties that most frequently see eligible convictions. These records may document PSI orders and completed reports, which would connect the crimes, adjudications, and sentences with the presence (or lack of) a PSI. Currently, the number of PSIs is from summary data that does not specify the type of crime or reason for the PSI. Case-level data would permit significantly more accurate analysis of correlations between offense type, criminal history, and the sentence imposed, as well as analysis of recidivism rates and patterns of sentencing.

Additional Information

The eligible Class 3 and Class 4 felonies are most typically drug and property types of crimes. The tables below are SPAC analysis of three years' worth of Criminal History Records Information (CHRI) data—aggregated because no significant differences occur before or after the law's effective date.

Figure 4. Class 3 and Class 4 Convictions and Criminal Histories

Mutually Exclusive Categories	FY 2016-2018 Convictions	Percent within Category
Prior probation or conditional discharge	20,578	30%
Prior violent crime	3,218	5%
Both prior probation/conditional discharge <i>and</i> prior violent crime	21,097	31%
Eligible Class 3 and Class 4 Felonies No history of probation/conditional discharge and violent crime	23,755	35%
Total Class 3 and Class 4 convictions	68,648	100%

Figure 5. Eligible Convictions' Demographics

Eligible Convictions from FY 2016-2018	Male		Female		Total	
	Number	Percent	Number	Percent	Number	Percent
White/Other	7,491	40%	2,942	56%	10,433	44%
Black	8,088	44%	1,916	37%	10,004	42%
Hispanic	2,948	16%	370	7%	3,318	14%
Total Eligible Class 3 and Class 4 convictions	18,527	100% (78% of total)	5,228	100% (22% of total)	23,755	100%

Figure 6. Eligible Convictions' Regions

Eligible Convictions from FY 2016-2018	Number	Percent
Cook County	11,297	48%
Collar Counties	3,573	15%
Urban Counties	4,757	20%
Rural Counties	4,128	17%
Total Eligible Class 3 and Class 4 convictions	23,755	100%

Figure 7. Eligible Convictions' Offense Types

Eligible Convictions from FY 2016-2018	Number	Percent
Drug	7,337	31%
Property	5,596	24%
Weapons	3,034	13%
Person	2,338	10%
Sex Crimes	177	1%
Non-Violent Sex	139	1%
Other	5,134	22%
Total Eligible Class 3 and Class 4 convictions	23,755	100%

Limitations:

- Please note that the conviction and sentencing data do not reflect the arrest or charging decisions that occurred prior to conviction. Currently, CHRI data are inadequate to fully understand charging decisions made by prosecutors and plea negotiations. Future research will examine this issue and SPAC hopes for better data are available on state's attorneys' decisions.
- Statewide data do not show out-of-state convictions. Some of the identified cases here may have disqualifying criminal histories in other states.