

Combating Gun Violence in Illinois: Evidence-Based Solutions¹
October 17, 2013

Although we are all deeply disturbed by gun violence – each death is another tragedy and a call for action – our responses must be smart, strategic and grounded in evidence-based solutions. The evidence indicates, repeatedly, that mandatory minimum sentences will not reduce gun violence. On the contrary, such restrictions are not only costly, but also counterproductive.

But there is good news: other approaches to reducing gun violence show great promise. Conducted outside of the criminal court process – in the real world, where effects are more concrete and immediate – these approaches have been proven to reduce risky behavior and violence, with significantly less damage to our justice and corrections systems as well as our social fabric. Together with targeted enforcement of existing Illinois laws that provide for harsh gun sentences where appropriate, these initiatives offer real solutions to gun violence.

¹ This paper was authored by Stephanie Kollmann and Dominique D. Nong of the Bluhm Legal Clinic at Northwestern School of Law, on behalf of the following individuals (affiliations included for identification purposes only):

Deborah Baskin, Ph.D., Chair, Department of Criminal Justice and Criminology, Loyola University of Chicago
Sheila Bedi, Clinical Associate Professor of Law, Roderick MacArthur Justice Center
Julie Biehl, Director, Children and Family Justice Center, Bluhm Legal Clinic, Northwestern University School of Law
Bruce Boyer, Director, Civitas ChildLaw Clinic, Loyola University Chicago School of Law
Paul Cain, Clinical Associate Professor, Zeke Giorgi Legal Clinic, Northern Illinois University College of Law
James “Chip” R. Coldren, Jr., Ph.D., Associate Professor of Criminal Justice, Governors State University
John Conroy, Senior Lecturer and Director of Investigations, DePaul Legal Clinic, DePaul University College of Law
Herschella G. Conyers, Clinical Professor of Law, Criminal & Juvenile Justice Project, Edwin F. Mandel Legal Aid Clinic, The University of Chicago, The Law School
Daniel T. Coyne, Clinical Professor of Law, Illinois Institute of Technology, Chicago-Kent College of Law
Steven A. Drizin, Associate Director, Bluhm Legal Clinic, Northwestern University School of Law
Gipsy Escobar, Ph.D., Assistant Professor, Department of Criminal Justice and Criminology, Loyola University Chicago School of Law
Marc Falkoff, Ph.D., Associate Professor of Law, Northern Illinois University College of Law
Alison Flaum, Legal Director, Children and Family Justice Center, Bluhm Legal Clinic, Northwestern University School of Law
Carolyn Frazier, Clinical Assistant Professor of Law, Children and Family Justice Center, Bluhm Legal Clinic, Northwestern University School of Law
Diane C. Geraghty, Director, Civitas ChildLaw Center, Loyola University Chicago School of Law
Thomas F. Geraghty, Director, Bluhm Legal Clinic, Northwestern University School of Law
Arthur J. Lurigio, Ph.D., Senior Associate Dean, Professor of Criminal Justice and Criminology and Psychology, Loyola University Chicago

Anita Maddali, Director of Clinics, Zeke Giorgi Legal Clinic, Northern Illinois University College of Law
Andrea Lyon, Associate Dean for Clinical Programs and Director, Center for Justice in Capital Cases, DePaul University College of Law
Shobha Mahadev, Project Director, Illinois Coalition for the Fair Sentencing of Children, Northwestern University School of Law
Nancy J. Michaels, Associate Director, Mansfield Institute for Social Justice and Transformation, Roosevelt University
David E. Olson, Ph.D., Professor and Graduate Program Director, Department of Criminal Justice and Criminology, Loyola University Chicago
Stacey Platt, Clinical Professor and Associate Director, Civitas ChildLaw Clinic, Loyola University Chicago School of Law
Lawrence Schlam, Professor of Law, Northern Illinois University College of Law
Traci Schlesinger, Ph.D., Director of Sociology Graduate Program, Associate Professor, DePaul University
Alison Siegler, Associate Clinical Professor of Law, Federal Criminal Justice Clinic, Edwin F. Mandel Legal Aid Clinic, The University of Chicago, The Law School
Randolph N. Stone, Clinical Professor of Law, Criminal & Juvenile Justice Project, Edwin F. Mandel Legal Aid Clinic, The University of Chicago, The Law School
Bryan L. Sykes, Ph.D., Assistant Professor, Department of Sociology, DePaul University
Douglas Thomson, Professor of Criminal Justice and Sociology, Department of Criminal Justice, Philosophy and Political Science, Chicago State University
Jeffrey Urdangen, Director, Center for Criminal Defense, Bluhm Legal Clinic, Northwestern University School of Law
David N. Yellen, Dean, Loyola University Chicago School of Law
Erica Zunkel, Clinical Instructor, Federal Criminal Justice Clinic, Edwin F. Mandel Legal Aid Clinic, The University of Chicago, The Law School

I. Mandatory Sentences Do Not Deter Crime

a. *There is No Credible Evidence that Mandatory Sentences Lead to Crime Reduction*²

- Decades of empirical research, including a recent meta-analysis reviewing over 29 separate studies of the effectiveness of policies and programs that attempt to reduce firearm violence,³ have established that **“policies [like enhanced prison terms] rooted in the deterrence theory framework . . . have been shown to have little empirical support.”**⁴

Supporting research includes:

- “The Effectiveness of Policies and Programs that Attempt to Reduce Firearm Violence: A Meta-Analysis.” 58 *Crime & Delinquency* 222 (2012). – Makarios, M.D. & T.C. Pratt
- “The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings.” *Crime and Justice*, Vol. 38, No. 1 (2009). – Tonry, M.
- “Sentence Severity and Crime: Accepting the Null Hypothesis.” *Crime and Justice*, Vol. 38, No. 1 (2009). – Doob, A. & C. Webster
- *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research*. University of Cambridge Institute of Criminology (1999) – von Hirsch, A, A. Bottoms, E. Burney & P. Wikstrom
- “The Deterrent Effects of the Florida Felony Firearm Law.” 75 *Journal of Criminal Law and Criminology* 250 (1984). – Loftin, C & D. McDowell
- “Mandatory Sentencing and Firearms Violence: Evaluating an Alternative to Gun Control.” 17 *Law and Society Review* 287 (1983). – Loftin, C., M. Heumann & D. McDowell
- “Mandatory Sentencing: The Experience of Two States.” National Institute of Justice, U.S. Department of Justice (1982). – Carlson, K.
- “‘And Nobody Can Get You Out’: The Impact of a Mandatory Prison Sentence for the Illegal Carrying of a Firearm on the Use of Firearms and on the Administration of Criminal Justice in Boston.” 57 *Boston University Law Review* 96; 289. (1977). – Beha II, J.

² Some studies by economists, not criminologists, have concluded that increases in punishment achieve marginal deterrent effects. For a discussion of why these studies are not as authoritative as the criminology research on this subject, see Michael Tonry, *Learning from the Limitations of Deterrence Research*, 37 *CRIME & JUSTICE* 279 (2008).

³ Matthew D. Makarios and Travis C. Pratt, *The effectiveness of policies and programs that attempt to reduce firearm violence: A meta-analysis*. 58 *CRIME & DELINQUENCY* 222 (2012).

⁴ *Id.* at 236.

b. *States That Have Experimented with Mandatory Sentences to Deter Crime Have Found Such Initiatives to Be Ineffective*

- Florida: An assessment of Florida’s Felony Firearm Law – a three-year mandatory sentence for firearm possession during the commission of specified felonies – determined that **there was “little evidence that the introduction of the Florida gun law was followed by a systematic decline in violent gun crimes,”⁵ and that “the Florida gun law did not have a measurable deterrent effect on violent crime.”⁶**
- Massachusetts: A recent University of Chicago Crime Lab memorandum suggests that the 1974 Bartley-Fox Amendment – which mandated a one-year prison sentence for unlicensed possession of a firearm – achieved a deterrent effect. Studies of the amendment do not support this characterization, instead concluding that “[i]t is **difficult, perhaps fundamentally impossible, to substantiate the popular claim that mandatory sentencing is an effective tool for reducing crime.**”⁷
- Michigan: A study of Michigan’s Felony Firearm Statute—a two-year mandatory add-on sentence for possession of a firearm during the commission of a felony—concluded the following: **“When all of the evidence is considered, it appears the Gun Law did not have a discernible effect on the level or the pattern of violent crime in Detroit.”⁸**
- Virginia: In 2003, a rigorous examination of Virginia’s Project Exile by Jens Ludwig and Steven Raphael ruled out the possibility that the project achieved the dramatic gun violence reductions touted by many, including President George W. Bush.⁹ It “demonstrated fairly conclusively” that enhanced sentencing “is a bust [in terms of firearm violence reduction]. It has no impact. It does not work.”¹⁰ Indeed, **“crime control strategies that primarily involve tough sentencing enhancements for some designated group of offenders believed to represent a high-risk to society seldom deliver their promised punch.”¹¹**

⁵ Colin Loftin and David McDowell, *The Deterrent Effects of the Florida Felony Firearm Law*, 75 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 250, 255 (1984).

⁶ *Id.* at 258.

⁷ Kenneth Carlson, *Mandatory Sentencing: The Experience of Two States*. USDOJ, NATIONAL INSTITUTE OF JUSTICE, 16 (1982): **“These highly ambiguous statistical results should be a source of caution to those who promise that mandatory sentencing will deliver more certain punishment, harsher penalties, and reductions in crime. . . . [S]uch promises can only be based on faith, not fact.”** Accord James A. Beha II, *“And Nobody Can Get You Out”*: *The Impact of a Mandatory Prison Sentence for the Illegal Carrying of a Firearm on the Use of Firearms and on the Administration of Criminal Justice in Boston*, 57 BOSTON UNIVERSITY LAW REVIEW 96 (part 1); 289 (part 2) (1977). “[A]n analysis of robbery, assault and homicide trends does not, to date, reveal any clear deterrent to those crimes created by anticipation of additional Bartley-Fox penalties.” *Id.* at 314-15.

⁸ Colin Loftin, Milton Heumann, and David McDowall *Mandatory Sentencing and Firearms Violence: Evaluating an Alternative to Gun Control*, 17 LAW AND SOCIETY REVIEW 287, 309 (1983).

⁹ Jens Ludwig and Steven Raphael, *Prison Sentence Enhancements: The Case of Project Exile*, in Jens Ludwig and Philip J. Cook (eds), *EVALUATING GUN POLICY: EFFECTS ON CRIME AND VIOLENCE* (2003). Project Exile was “effectively a sentence enhancement program” designed to deter the use and illegal possession of firearms. It involved a coordinated effort to prosecute many gun possession cases in federal court.

¹⁰ *Id.* at 280, 282 (comment accompanying article, from Peter W. Greenwood, former director of the RAND Corporation’s Criminal Justice Research Program).

¹¹ *Id.* at 282 (Greenwood comment).

c. *Sidebar: The New York Myth Revealed*

A great deal of political support for mandatory minimum and truth-in-sentencing provisions for illegal gun-carrying behavior originates from the mistaken belief that such penalties were the largest cause of New York City's dramatic decline in homicide. There is a large body of lively academic debate – literally, entire volumes of articles¹² – about how to measure New York's success and what might have been most responsible for it. Suggestions range from “hotspot” policing¹³ to the waning of crack cocaine use¹⁴ to an upswing in religious belief.¹⁵

One conclusion is not debatable: the New York difference was not mandatory minimum sentencing.

The murder rate in New York City dropped 80%, from 2,250 murders in 1990 to 419 in 2012.¹⁶ Yet the 3.5 year mandatory minimum sentence for possession of an unlicensed, loaded handgun did not go into effect until 2007 – after 90% of the reduction in homicides had already taken place.¹⁷

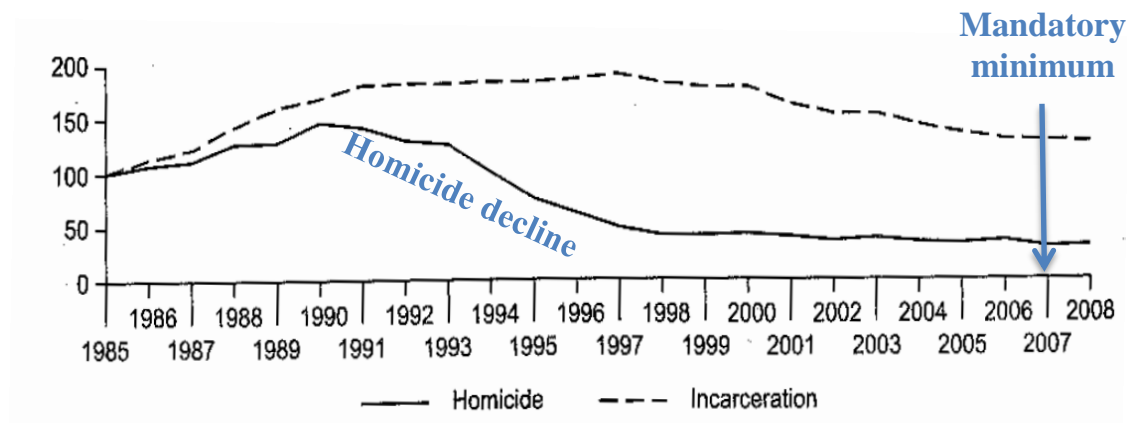


FIGURE 6.2 New York City Homicide and Incarceration Rate Base 100 (1985).

Source: Bureau of Vital Statistics, New York City Department of Health and Mental Hygiene; New York Department of Corrections and U.S. Census (daily inmate population, New York City).

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¹² See, e.g., Richard Rosenfeld, Karen Terry, and Preeti Chauhan. *New York's Crime Drop Puzzle: Introduction to the Special Issue*, JUSTICE QUARTERLY ahead-of-print (2013): 1-4.

¹³ Frank Zimring, THE CITY THAT BECAME SAFE: NEW YORK'S LESSONS FOR URBAN CRIME AND ITS CONTROL 154 (2012).

¹⁴ Benjamin Bowling, *The rise and fall of New York murder: zero tolerance or crack's decline?*, 39 BRITISH JOURNAL OF CRIMINOLOGY 531 (1999).

¹⁵ Andrew Karmen, NEW YORK MURDER MYSTERY: THE TRUE STORY BEHIND THE CRIME CRASH OF THE 1990S (2006).

¹⁶ Rob Wildeboer, *Emanuel pushes mandatory minimums for gun crimes, but research shows they are ineffective* (April 11, 2013), <http://www.wbez.org/news/emanuel-pushes-mandatory-minimums-gun-crimes-research-shows-they-are-ineffective-106621> (citing to Frank Zimring).

¹⁷ *Id.*

¹⁸ Zimring, *supra* n. 13 at 165 (notations added).

Proponents of mandatory minimums in Illinois suggest that, in addition to deterring crime, longer prison terms will avert many crimes through incapacitation.¹⁹ Research strongly suggests, however, that incapacitation did not account for the drop in homicide and other crimes in New York City after 1990.²⁰ During the time period of 1990 – 2008, the incarceration rate of New York **declined** (see graph previous page), even as the overall U.S. incarceration rate increased.²¹

d. *Mandatory Minimum Sentences Prevent Deterrence through “Swift and Certain” Consequences*

The success of probation programs like Hawaii’s Opportunity Probation with Enforcement (HOPE)²² does not support sentencing conclusions drawn by mandatory minimum proponents. The HOPE program demonstrates the deterrence potential of the swift and certain sanctions principle – a principle impossible to implement within a mandatory sentencing framework. As evaluators of the HOPE program note, “[s]everity is the enemy of swiftness and certainty, because a severe penalty will be more fiercely resisted and requires more due process to support it.”²³

II. Targeted Interventions, Including Focused Policing, Are More Promising Solutions to Gun Violence

Policymakers need not accept the current rate of gun violence as a tragic inevitability. As an alternative to the flawed and costly option of increasing mandatory sentences, several evidence-based programs could be implemented or expanded. A 2013 report on gun violence produced under an executive order of the President called into question the effectiveness of mandatory sentences, finding that focused policing and community-based programs in high-risk physical locations have been effective in reducing violence.²⁴

a. *Problem-Oriented Policing and Prosecution are Proven, Cost-Effective Approaches to Reducing Gun Violence*

- **Boston Model:** In the 1990s, a coalition comprised of community organizations, the police department, and Harvard researchers created an initiative that aimed to reduce

¹⁹ University of Chicago Crime Lab, *Analysis of Potential Costs and Benefits of Illinois HB2265/SB2267: Sentence Enhancements for Unlawful Use of a Weapon (UW) Offenses* (Oct. 7, 2013), http://crimelab.uchicago.edu/sites/crimelab.uchicago.edu/files/uploads/Mandatory%20Minimum%20BCA%2020131008_revised.pdf.

²⁰ Zimring, *supra* n. 13 at 165-66.

²¹ *Id.* at 188.

²² The HOPE program is a probation-modification program for drug-involved probationers that relies on guaranteed sanctions and prompt hearings (typically within 72 hours). Probationers assigned to the HOPE program exhibited large reductions in positive drug tests and missed appointments, were significantly less likely to be re-arrested, and spent one-third as many days in prison on revocations or new convictions as general population probationers. Angela Hawken and Mark Kleimen, *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii’s HOPE*, NAT’L INST. JUST. (December 2, 2009), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>.

²³ *Id.* at 30.

²⁴ IOM (INSTITUTE OF MEDICINE) AND NRC (NATIONAL RESEARCH COUNCIL), *PRIORITIES FOR RESEARCH TO REDUCE THE THREAT OF FIREARM-RELATED VIOLENCE* (2013) at 7.

youth homicide and youth firearms violence.²⁵ The initiative placed strong and targeted enforcement pressure on illicit firearms traffickers and created a set of community-based police intervention actions²⁶ geared toward deterring gang members from committing acts of gun violence, in part by offering alternatives to prosecution²⁷ for gun possession. According to the National Institute of Justice, the Boston program had remarkable results, reducing firearm violence by an astounding 68% in one year.²⁸ This program proved far more effective than the Bartley-Fox amendment imposing mandatory minimums enacted nearly two decades earlier. A 2005 analysis of 10 programs based on this model found such programs to be effective in reducing gun crime.²⁹

- **Pittsburgh Model:** In 1998, Pittsburgh adopted the strategy of focusing police resources on high-risk places at high-risk times.³⁰ Additional five-officer, three-vehicle “firearm suppression patrols” were assigned to work four-hour night shifts twice a week in two zones that together contained most of the city’s high-crime neighborhoods. Patrol teams utilized pedestrian and traffic stops to solicit information and investigate suspicious activity associated with illegal carrying and use of guns. Researchers found that the patrols substantially reduced citizen reports of shots fired and assault-related gunshot injuries in the targeted neighborhoods. The estimated cost of the additional patrols was less than \$35,000 in overtime expenditures over the 14-week program period. It is important to note that the police department took extra steps to address community concerns about intrusive policing.³¹

b. Existing Local, Replicable Intervention Initiatives Are Already Producing Positive Results

- **One Summer Plus:** One Summer Plus (OSP), a summer employment program designed and implemented by Chicago’s Department of Family and Support Services, is a promising crime reduction intervention.³² OSP provided part-time jobs to youth from high-violence neighborhoods for seven weeks during the summer. After studying the 2012 program, the University of Chicago Crime Lab found “convincing evidence that OSP was highly successful in reducing violence among adolescents;” **violent crime**

²⁵ Anthony A. Braga, et al., *Problem-Oriented Policing, Deterrence, and Youth Violence: An Evaluation of Boston’s Operation Ceasefire*, 38 J. RES. CRIME & DELINQUENCY 195 (2001).

²⁶ *Id.*

²⁷ *Gun Violence Programs: Operation Ceasefire*, NAT’L INST. JUST. (June 25, 2008), <http://www.nij.gov/nij/topics/crime/gun-violence/prevention/ceasefire.htm>.

²⁸ *Id.*

²⁹ Jan Roehl, et al., STRATEGIC APPROACHES TO COMMUNITY SAFETY INITIATIVE (SACSI) IN 10 U.S. CITIES: THE BUILDING BLOCKS FOR PROJECT SAFE NEIGHBORHOODS, (2005). (Final Report No. 212866, National Institute of Justice) (2005).

³⁰ Jacqueline Cohen and Jens Ludwig (2003) “Policing Crime Guns – Research in Brief.” Working Paper. H.J. Heinz III College, Carnegie Mellon University, Pittsburgh, PA.

³¹ The police department issued explicit guidelines on when officers could engage in *Terry* pat-down safety frisks, imposed specific reporting requirements for circumstances precipitating more intrusive searches and seizures, and hand-selected participating officers. No citizen complaints were filed as a result of activities by the new patrols. *Id.*

³² *Short Term Results of the One Summer Plus 2012 Evaluation*, UNIV. CHI. CRIME LAB, (2013), available at <http://crimelab.uchicago.edu/sites/crimelab.uchicago.edu/files/uploads/Plus%20results%20brief%20FINAL%2020130802.pdf>.

arrests were cut in half.³³ While evaluation of the 2013 program is still underway, it is important to note that the program eligibility was expanded in a way that specifically targets potential gun possessors: high-risk, formerly justice-involved young men under 25.³⁴

- **Becoming a Man:** Another local intervention program with proven results is Becoming a Man (BAM), developed and directed by Youth Guidance and World Sport Chicago.³⁵ BAM uses group counseling, mentoring, and nontraditional sports activities to strengthen young people’s impulse control, personal responsibility, and capacity for conflict resolution.³⁶ The Crime Lab found that not only did the program “**generate[] massive declines in violent crimes by at-risk youth,**” but it also increased the degree to which the children were engaged at school.³⁷ Just last month, the Illinois Criminal Justice Information Authority (ICJIA) Board’s Budget Committee voted to allocate \$3.1 million to expand the BAM program in Chicago Public Schools.³⁸

c. *Young Adult Perception of Immediate vs. Future Repercussions Helps to Explain Why Intervention Initiatives Are Safer and More Effective*

Studies indicate that for developmental reasons, young people³⁹ are especially unlikely to be deterred by significant changes to criminal penalties⁴⁰ and become much more likely to recidivate after incarceration.⁴¹ Young people are motivated by consequences that happen

³³ *Id.*

³⁴ For a discussion of the significance of age, *see* n. 39, *infra*.

³⁵ *Becoming a Man (BAM) - Sports Edition Findings*, UNIV. CHI. CRIME LAB, <http://crimelab.uchicago.edu/page/becoming-man-bam-sports-edition-findings>.

³⁶ Press Release, UNIV. CHI. CRIME LAB, *Randomized Trial Finds Counseling and Mentoring Program in Chicago Reduces Youth Violence and Improves School Engagement* (July 13, 2012, 10:30 AM), http://crimelab.uchicago.edu/sites/crimelab.uchicago.edu/files/uploads/BAM_FINAL%20Press%20Release_20120712.pdf.

³⁷ *Becoming a Man (BAM) - Sports Edition Findings*, *supra* n. 35 (emphasis in original).

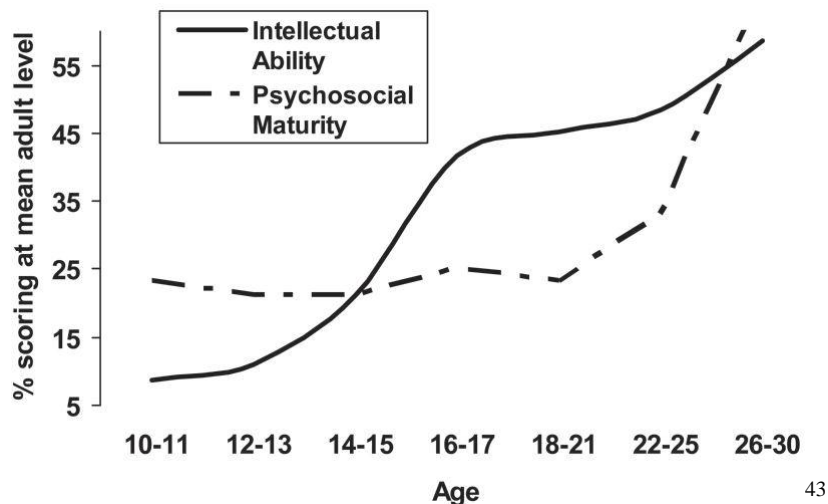
³⁸ Information on the proposed funding at: http://www.icjia.state.il.us/public/pdf/budget/Materials_092513.PDF.

³⁹ In urban environments focusing on enforcing illegal gun possession laws, the typical defendant is a young man under the age of 25. *See, e.g.*, FRED A. SOLOMON, NYC CRIM. JUST. AGENCY, NEW YORK CITY’S GUN COURT INITIATIVE: THE BROOKLYN PILOT PROGRAM 9-10 (Nov. 2005) (noting that over 60% of defendants in New York City’s gun court in Brooklyn were between the ages of 14 – 24). In Cook County, 40-48% of people admitted to the county jail for gun possession are 21 and under—a rate more than twice as high as other offenses for that age group (19%). *Draft Report: Court Based Violence Reduction Strategies*, COOK COUNTY VIOLENCE PREVENTION, INTERVENTION AND REDUCTION ADVISORY COMMITTEE (undated) (discussed at committee meeting on May 6, 2013) at 3.

⁴⁰ Richard E. Redding, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE TRANSFER LAWS: AN EFFECTIVE DETERRENT TO DELINQUENCY? (2010), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>; Jeffrey A. Butts, *Transfer of Juveniles to Criminal Court is Not Correlated with Falling Youth Violence*, JOHN JAY COLLEGE OF CRIMINAL JUSTICE (2012), available at http://johnjayresearch.org/wp-content/uploads/2012/03/databit2012_05.pdf. Younger people engage in risky behaviors (e.g. gun possession) because their psychosocial maturity—measured by impulsivity, risk perception, sensation-seeking, future orientation, and resistance to peer influence—develops later than basic intellectual ability. Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEVELOPMENTAL REVIEW 78 (2008).

⁴¹ Anna Aizer and Joseph Doyle, *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-assigned Judges* 28 (June 2013) (working paper), available at http://www.mit.edu/~jjdoyle/aizer_doyle_judges_06242013.pdf.

now, not later. Research on reducing youth gun violence therefore discusses the efficacy of focusing on swift and certain – but less severe – penalties for gun carrying behavior by young people.⁴²



III. Mandatory Sentencing Laws Are Being Reconsidered – and Removed – Across the Country

a. Federal Sentencing Reforms

Since 2011, the United States Sentencing Commission has taken a series of steps to reduce, and in some cases eliminate, the use of mandatory sentences. “The Commission uniformly believes . . . that a strong and effective sentencing guidelines system best serves the purposes of the Sentencing Reform Act.”⁴⁴ For example, the Sentencing Commission has recommended “safety valve mechanisms” that permit judges to impose sentences below the statutory mandatory minimum. In March 2013, Senators Patrick Leahy (D-VT) and Rand Paul (R-KY) introduced the Justice Safety Valve Act of 2013. The Act is driven by the senators’ beliefs that mandatory minimums are mistaken, costly, and ineffective at increasing public safety.⁴⁵ Notably, the bill **allows mandatory minimum sentences to be**

⁴² Roseanna Ander, et al., *Gun Violence among School-age Youth in Chicago*, UNIV. CHI. CRIME LAB (2009). “Research suggests people are more responsive to swifter and more certain punishment than to more severe punishment. Our existing criminal justice practices too often run exactly counter to this principle. . . . We would do society as a whole and the youth themselves a favor by making far greater use of **swifter, less severe punishments for infractions like gun carrying, including intermediate sanctions like community service** or more stringent probation conditions.” *Id.* at 12 (emphasis added).

⁴³ Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEVELOPMENTAL REVIEW 78, 97 at Fig. 1 (2008).

⁴⁴ UNITED STATES SENTENCING COMMISSION, REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (October 2011). http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/20111031_RtC_Mandatory_Minimum.cfm.

⁴⁵ In support of the bill, Senator Leahy stated the following: “As a former prosecutor, I understand that criminals must be held accountable, and that long sentences are sometimes necessary to keep violent criminals off the street. I have come to believe, however, that our reliance on mandatory minimums has been a great mistake . . . It does not make us safer.” <http://www.leahy.senate.gov/press/comment-of-senator-patrick-leahy-on-attorney-general->

avoided – even if a gun was present during the offense⁴⁶ – and enjoys strong support across the political spectrum. Support includes conservative columnist George Will, Americans for Tax Reform President Grover Norquist, former National Rifle Association President David Keene, the *New York Times*, and more than fifty former federal prosecutors and judges.⁴⁷

b. State Reforms and Lessons

Legislators in other states are taking action against mandatory sentences. In 2011, Colorado passed HB 1180, prioritizing alternative sentencing options other than incarceration,⁴⁸ while Louisiana enacted a safety valve mechanism for current mandatory minimums (HB 305).⁴⁹ Most strikingly, Pennsylvania State Senator Stewart Greenleaf, Republican Chair of the Senate Judiciary Committee, opposes a proposed two-year mandatory minimum sentence for anyone convicted of illegally possessing a firearm in Philadelphia: **“I introduced most of the mandatory sentences in Pennsylvania over the years. We thought we would get really tough on crime, and reduce violent crime and have lower recidivism and things like that. Well, just the opposite happened . . . All we did was fill our prisons up and violent crime continued to go up.”**⁵⁰ According to Greenleaf, by opposing mandatory sentences for gun possession, “we’re not being soft on crime. We’re being smart on crime.”⁵¹

IV. Additional Mandatory Sentences Mean Additional State, Local, Public Safety, Community, and Justice Costs

a. State Costs

The Illinois Sentencing Policy Advisory Council (SPAC) has estimated that if proposed gun penalties had been in place over the last three years, they would have cost an additional \$392 million.⁵² As SPAC noted, its cost estimate was limited to only the marginal and direct staffing costs related to the projected population increase, and does not include capital costs of new prison construction to house additional inmates. Illinois traditionally relies upon

[holders-statement-on-mandatory-minimums-](#) . Senator Paul has spoken equally strongly: “Mandatory minimums are costly, unfair and do not make our country safer.” <http://www.paul.senate.gov/?p=news&id=926>.

⁴⁶ H.R. 1695, The Justice Safety Valve Act of 2013.

⁴⁷ <http://www.paul.senate.gov/?p=news&id=926>.

⁴⁸ THE STATE OF SENTENCING 2011: DEVELOPMENTS IN POLICY AND PRACTICE, THE SENTENCING PROJECT (Feb. 2012), at 5.

⁴⁹ *Id.* at 8.

⁵⁰ Daniel Denvir, *The Worst Gun Control Idea Has Bipartisan Support*, NEW REPUBLIC (May 2, 2013), <http://www.newrepublic.com/article/113088/gun-control-and-mandatory-minimum-sentences-chicago-and-philadelphia>.

⁵¹ *Id.*

⁵² ILLINOIS SENTENCING POLICY ADVISORY COUNCIL, *HB2265/SB2267 Sentence Enhancements for Unlawful Use of a Weapon (UUW) Offenses 720 ILCS 5/24-1.1, 5/24-1.6 and 5/24-1.8*, available at http://www.icjia.org/spac/pdf/HB2265_SB2267_SPAC_Analysis.pdf. See also ILLINOIS DEPARTMENT OF CORRECTIONS, *Fiscal Note for HB2265*, accessed via www.ilga.gov: “The total impact of HB 2265 would result in an increase of 3,860 inmates, with additional operating costs of \$701,712,300 and construction costs of \$263,130,300 over ten years [averaging \$965M/year].”

correction agency budgets alone to estimate the fiscal impact of potential sentencing and prison population changes, thereby undercalculating the total direct cost to taxpayers.⁵³ Once capital costs and the proportional costs of administrative services and employee health care, taxes, retirement, and pension costs are assessed, the total estimated cost of incarceration to Illinois taxpayers is 42% higher than the current Department of Corrections budget.⁵⁴ Adding these costs to the SPAC analysis, **UW sentencing enhancements could bring estimated expenditures to \$1.86 billion over 10 years**, without adjusting for inflation.

b. County Costs

A new mandatory minimum law will likely cause costly increases in local pretrial jail populations due to longer case processing times and higher court-ordered bail amounts. Defendants facing increased sentences will fight harder to avoid those penalties by filing more motions and opting for trial more often. A study of New York’s 1973 law imposing mandatory minimums for drug offenses observed the following effects:

- the total proportion of cases proceeding to **trial increased by nearly a factor of three**;
- due to more motion filings, there were **twice as many court appearances** as for cases not subject to the mandatory minimum, and;
- the **median time to disposition rose from 173 days to 340 days**.⁵⁵

In addition to longer jail stays per capita due to case disposition length,⁵⁶ counties can also expect an increase in the number of detainees who are unable to make bail. Illinois law requires that bail-setting courts take into account a number of factors, including the prison sentence applicable upon conviction—a factor that weighs in favor of higher bail amounts for people who are subject to mandatory minimum prison sentences.⁵⁷

c. Public Safety Costs

Incarceration’s public safety impact is affected by differences in recidivism. “Incapacitation benefit” analyses assume that offenders will commit certain street crimes under community supervision that they cannot commit while in prison (and that someone else will not simply take over their criminal activities while they are off the street). However, prison is not without its own public safety costs, which are frequently left out of such calculations.

⁵³ Christian Henrichson and Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers*, VERA INSTITUTE OF JUSTICE (2012), available at: <http://www.vera.org/pubs/special/price-prisons-what-incarceration-costs-taxpayers>. Many corrections costs are housed in the budgets of other state agencies (e.g. the Department of Central Management Services).

⁵⁴ *Id.* at *Illinois Fact Sheet*, <http://www.vera.org/files/price-of-prisons-illinois-fact-sheet.pdf> (includes the cost of fully-funded pension obligations).

⁵⁵ Carlson, *supra* n. 7, at 7.

⁵⁶ See David Olson, *Drivers of the Sentenced Population: Length of Time Served in Prison*, ILLINOIS SENTENCING POLICY ADVISORY COUNCIL RESEARCH BRIEFING 7-8 (Summer, 2013).

⁵⁷ 725 ILCS 5/110-5. Determining the amount of bail and conditions of release.

Because incarceration increases the likelihood of recidivism for low-level offenders, incapacitation benefits that do not take recidivism into account are overstated. Meta-analyses of recidivism studies conclude that incarceration does not generally reduce recidivism upon a prisoner's return to the community;⁵⁸ if mandatory minimums for gun possession are implemented, recidivism rates may well increase:

- Young offenders commit more crimes if they are detained than if they are not.⁵⁹ Incarcerating younger, lower-level prisoners with older and more violent offenders turns prisons into “crime schools” for the less-experienced, increasing recidivism upon release.⁶⁰
- Recidivism reductions are particularly unlikely in the Illinois prison system, with largely inaccessible treatment and educational programming.⁶¹ An additional influx of inmates would overburden the already-overcrowded state prison system,⁶² further diluting resources required for positive change.
- **Negative public safety impacts would not be restricted to prisoners sentenced for gun possession;** overcrowding and lack of programming due to the sudden population increase can reasonably be expected to increase the chances of re-offense of all IDOC prisoners upon release.⁶³

d. *Community Economic Costs, Neighborhood Stabilization, and Equal Justice*

Incarceration affects individual earnings⁶⁴ and health,⁶⁵ children and families,⁶⁶ local economies,⁶⁷ and neighborhood stability.⁶⁸ When incarceration is geographically

⁵⁸ Mark W. Lipsey and Francis T. Cullen. *The effectiveness of correctional rehabilitation: A review of systematic reviews*, 3 ANNU. REV. LAW SOC. SCI. 297 (2007); Paula Smith, Claire Goggin, and Paul Gendreau. THE EFFECTS OF PRISON SENTENCES AND INTERMEDIATE SANCTIONS ON RECIDIVISM: GENERAL EFFECTS AND INDIVIDUAL DIFFERENCES. Ottawa, ON: Solicitor General Canada (2002).

⁵⁹ See generally, Aizer, *supra* n. 41.

⁶⁰ *Id.*

⁶¹ JOHN HOWARD ASSOCIATION OF ILLINOIS, MONITORING VISIT TO VIENNA CORRECTIONAL FACILITY 7-8 (Sept. 27, 2011), available at www.illinoistimes.com/Springfield/file-123-.pdf.

⁶² JOHN HOWARD ASSOCIATION OF ILLINOIS, <http://www.thejha.org/sb2621> (noting that Illinois houses over 48,000 inmates in a system designed to support only 34,000) (citing IDOC population data current as of 7/15/2013).

⁶³ “The crime reduction effect of incarceration may therefore be offset by increased recidivism from reduced access to programming if programming budgets are cut to fund more prison beds. This would produce a negative multiplier effect that cannot be easily quantified.” SPAC, *supra* n. 52 at 1. See also M. Keith Chen and Jesse M. Shapiro. *Do harsher prison conditions reduce recidivism? A discontinuity-based approach*, AMERICAN LAW AND ECONOMICS REVIEW 9.1 (2007): 1-29.

⁶⁴ Incarceration lowers a man's annual earnings by 40 percent. THE PEW CHARITABLE TRUSTS, COLLATERAL COSTS: INCARCERATION'S EFFECT ON ECONOMIC MOBILITY 4 (2010), available at [http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs\(1\).pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/Collateral_Costs(1).pdf).

⁶⁵ Christopher Wildeman and Christopher Muller, *Mass Imprisonment and Inequality in Health and Family Life*, 8 ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE, 11 (December 2012).

⁶⁶ THE PEW CHARITABLE TRUSTS, *supra* n. 64, at 20. Megan Comfort, et al, *Taking children into account: Addressing the intergenerational effects of parental incarceration*, 10 CRIMINOLOGY & PUBLIC POLICY, 839 (2011); Jeremy Travis and Michelle Waul, eds. *Prisoners once removed: The impact of incarceration and reentry on children, families, and communities*, THE URBAN INSTITUTE (2003).

⁶⁷ Todd R. Clear, *IMPRISONING COMMUNITIES: HOW MASS INCARCERATION MAKES DISADVANTAGED NEIGHBORHOODS WORSE*. Oxford University Press (2007).

concentrated⁶⁹ and imposed for longer periods of time on a large scale,⁷⁰ community costs are noticeable and devastating. Interestingly, when they are measured, many negative community effects attributable to incarceration are categorized as costs of criminality itself, not as the costs of a particular public policy response to criminality. The social context in which mandatory minimum sentences are applied matters.

Sentencing for “strict liability” offenses like gun or drug possession occurs only after a large number of criminal process decisions (e.g. stop and frisk searches⁷¹ or requests to search a vehicle during a traffic stop⁷²) have been made, each of which carries a disproportionate minority impact. Even when mandatory sentencing is applied in a manner that appears race-neutral, the overall negative impacts fall unevenly upon minority defendants, influencing the public’s perceptions about race and crime.⁷³

Because they reduce judicial discretion, mandatory minimum reforms were initially supported by some advocates of racial justice who believed that uniform sentences would prevent racial bias from entering the sentencing process and reduce racial sentencing disparities.⁷⁴ Instead, the ostensibly race-neutral reform had the opposite effect. For more than two decades, it has been clear that white, non-Hispanic defendants arrested for mandatory minimum-eligible offenses are less likely to be charged at the mandatory level, more likely to be given diversion options, and less likely to be convicted at the mandatory level, than similarly-situated African-American and Hispanic defendants.⁷⁵ The vast

⁶⁸ For example, the economic problems faced by former inmates “can also reduce the opportunities for and interest in employment among young men in poor neighborhoods who otherwise might not engage in crime.” Harry Holzer, *Collateral Costs: Effects of Incarceration on Employment and Earnings among Youth Workers*, in *DO PRISONS MAKE US SAFER? THE BENEFITS AND COSTS OF THE PRISON BOOM* 242 Steven Raphael and Michael Stoll, eds., (2009). See also James P. Lynch and William J. Sabol, *Assessing the effects of mass incarceration on informal social control in communities*, 2 *CRIMINOLOGY & PUBLIC POLICY* 267 (2004).

⁶⁹ Angela Caputo, *Cell Blocks*, *THE CHICAGO REPORTER* (March-April 2013) (analyzing the cost of sentencing Chicagoans to Illinois state prisons, revealing that 2% of the city’s Census blocks – known as “million-dollar blocks” – generate 30% of the cost to state taxpayers attributed to Chicago residents).

⁷⁰ In some communities, so many people are gone, for such long periods, that overall cultural organization resembles that of societies that have suffered epidemic or war. Dorothy E. Roberts, *The social and moral cost of mass incarceration in African American communities*, 56 *STANFORD LAW REV.* 1271, 1277 (2004) discussing Ernest Drucker, *Population impact of mass incarceration under New York’s Rockefeller drug laws: an analysis of years of life lost*, 79 *JOURNAL OF URBAN HEALTH BULLETIN OF THE NEW YORK ACADEMY OF MEDICINE* 434 (2002).

⁷¹ *Floyd v. City of New York*, 2013 WL 4046209 and 2013 WL 4046217. For example, in 2012, white New Yorkers who were stopped and frisked were twice as likely as African-Americans to be carrying an illegal weapon, but they made up less than 15% of the searches. Bill de Blasio, *Stop and Frisk and the Urgent Need for Meaningful Reforms*, *NEW YORK CITY OFFICE OF THE PUBLIC ADVOCATE* 1-3 (May 2013).

⁷² *New Data Shows Racial Bias in Consent Searches*, *ACLU OF ILLINOIS* (July 13, 2011) at: <http://www.aclu-il.org/new-data-shows-racial-bias-in-police-consent-searches/> (discussing Illinois Department of Transportation data on vehicle searches performed without cause, by motorists’ race).

⁷³ Traci Schlesinger, *The failure of race neutral policies: How mandatory terms and sentencing enhancements contribute to mass racialized incarceration*, 57 *CRIME & DELINQUENCY* 56 (2011).

⁷⁴ “Amelioration of racial disparities and discrimination was a major objective of proponents of constraints on judicial discretion.” Michael Tonry, *MALIGN NEGLECT: RACE, CRIME, AND PUNISHMENT IN AMERICA* 164 (1995).

⁷⁵ “The disparate application of mandatory minimum sentences in cases in which available data strongly suggest that a mandatory minimum is applicable appears to be related to the race of the defendant, where whites are more likely than non-whites to be sentenced below the mandatory minimum.” US Sentencing Commission, *supra* n. 44. See also

majority of criminal cases result in a plea agreement, meaning that the sentencing decision is the lone moment between arrest and prison during which a neutral party – the criminal court judge – evaluates the severity of the offense and takes into consideration both aggravating and mitigating factors. Mandatory sentences remove neutral judgment from sentencing.

V. Illinois Does Not Need to Increase Existing Mandatory Minimum Gun Laws

Proponents of additional mandatory penalties have characterized the current sentencing structure for gun offenses as insufficient to either incarcerate or deter.⁷⁶ In doing so, they ignore Illinois' two existing mandatory minimum gun sentences: one for possession during a crime and one for possession alone.

- Gun enhancements known as “15/20/25-to-life” mandate minimum 15-year sentences when a person in possession of a gun commits any felony offense,⁷⁷ whether or not the offense is violent or the gun is actually used in furtherance of the crime (e.g., check fraud, drug possession).⁷⁸
- As of January 1, 2011, unlicensed gun possession and licensed possession of a loaded gun were given a new, one-year mandatory minimum penalty.⁷⁹ Since then, there have not been any studies analyzing the effects of this significant, recent legal change, including: judicial application of the new (current) mandatory sentencing scheme;⁸⁰ whether it has resulted in greater uniformity or longer sentences; whether it has had any positive or negative impact upon illegal gun carrying behavior; or, how the brand-new “concealed carry” legislation⁸¹ could impact application rates of the mandatory minimum sentence in 2014.

Without a clear understanding of the impact of existing mandatory minimum sentences on gun carrying behavior, there is no reason to assume that a new mandatory minimum will achieve any public safety goal that current law cannot.

Stephen J. Schulhofer, *Rethinking mandatory minimums*, 28 WAKE FOREST L. REV. 199 (1993); Traci Schlesinger, *Racial Disparities in Pretrial Diversion: An Analysis of Outcomes among Men Charged with Felonies and Processed in State Courts*, RACE AND JUSTICE (ahead-of-print) (2013).

⁷⁶ Frank Main, *Emanuel, cops, prosecutors aim for stiffer sentences for gun possession*, CHICAGO SUN-TIMES (February 10, 2013); Annie Sweeney, *Police and Prosecutors Call for Tougher Gun Sentences*, CHICAGO TRIBUNE (September 30, 2013).

⁷⁷ Public Act 91-404.

⁷⁸ 720 ILCS 5/33A-2.

⁷⁹ Public Act 96-1107.

⁸⁰ Proponents commonly cite only two surveys that may indicate “low” sentences for gun possession; these are limited to Cook County only and mix together sentences issued both before and after the 2011 implementation of the current mandatory minimum. See Main, *supra* n. 76 at *Figure: 2011 dispositions for illegal gun cases, by Cook County judges who handled more than 10 cases*. “About the data: Figures are from 2011 and are based on 799 sentencing outcomes in felony gun possession cases that didn’t include other types of crimes. **Many of those cases involved 2010 arrests that didn’t apply to mandatory minimum sentences that took effect in 2011**” (emphasis added). *Id.* See also Sweeney, *supra* n. 76: (“According to the **Tribune’s review of 10 cases** of people charged with Class 4 gun charges near Cornell Square Park **between 2008 and 2012**, most were given probation. Three received one-year sentences and one a two-year sentence” (emphasis added)).

⁸¹ Public Act 98-0063 (eff. July 9, 2013).