



**A response to Franklin Zimring's critique of the University of Chicago Crime Lab analysis of Illinois HB2265/SB2267, Sentence Enhancements for Unlawful Use of a Weapon (UW) Offenses**

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Recently in the Chicago *Sun-Times*, University of California at Berkeley law professor Franklin Zimring argued that the analysis of HB2265/SB2267 carried out by the University of Chicago Crime Lab, which I help direct, is based on three assumptions that are "provably not true." ("False premise of gun sentences," October 15, 2013):

- "Penalties on the books for carrying a firearm unlawfully are too lenient."
- "Everybody who carries a gun on Chicago's streets deserves three years in prison"
- "Mandatory minimum sentencing legislation will eliminate discretion in Cook County criminal justice."

Zimring's claim that our analysis assumes any of these points is, for lack of a more diplomatic way to put it, wrong. His editorial also conflates complaints about the Crime Lab's analysis of the bill with his complaints about the bill itself.

Perhaps the most surprising aspect of Zimring's editorial, given that he is one of the nation's most distinguished scholars of gun violence, is his clear view of illegal gun carrying as essentially a victimless crime. Setting aside for the moment the question of whether HB2265/SB2267 is the right response to the problem of illegal gun carrying, any careful examination of the homicide data in Chicago (or in other American cities) makes clear that illegal gun carrying is a precursor to murder. Illegal gun carrying, just like drunk driving, imposes probabilistic harm on society.

In what follows I elaborate on each of these points.

**The role of discretion in the Crime Lab's analysis**

Two of Zimring's claims are that the Crime Lab's analysis of the bill assumes that "everybody who carries a gun on Chicago's streets deserves three years in prison" and "Mandatory minimum sentencing legislation will eliminate discretion in Cook County criminal justice."

His claim that our analysis of the bill assumes that everyone who carries a gun illegally "deserves" three years is completely and absolutely incorrect. He is conflating the Crime Lab's analysis of the bill with the bill itself. Our analysis takes the legislation as given and uses the best available data and social science research to estimate the effects of the law, rather than take a

normative position about who should or should not be eligible for the new penalties spelled out by the new bill. We analyze the laws, we don't write or implement them.

His claim about what the bill itself does is also incorrect. The bill, as I understand it, applies to unlawful use of a weapon (UW) by a felon, UW by a gang member, and aggravated UW. The retired fireman who flaked out and let his firearm owner ID card expire then gets caught taking his unloaded gun to the firing range is not eligible.

His claim that the Crime Lab's analysis assumes that discretion disappears is incorrect. The memorandum posted on the Crime Lab's public website makes clear that we recognize that the use of discretion by various criminal justice actors may reduce the number of people who are affected by the mandatory minimum. We note that this type of criminal justice response may reduce the aggregate benefits (and costs) of the law, but should not substantially reduce the ratio of benefits to costs per person affected by the law, and could increase it (for example if prosecutors focus their discretion on exempting the least dangerous UW cases).

Zimring goes on to critique the Cook County State's Attorney's office for their support of the new bill; he argues they should actually oppose the bill, because prosecutors plea bargain the vast majority of felony convictions for UW. The implication is that prosecutors are currently "going easy" on UW cases so their support of the bill is, in Zimring's view, inconsistent with their actual practice.

While the State's Attorney's office should obviously feel free to represent their own perspective on this, as someone committed to the socially-productive use of data I feel compelled to note that Zimring's plea bargain point is narrowly true, but misleading. As anyone familiar with the criminal justice system knows, the vast majority of convictions for *all* crimes come from plea bargains rather than from taking cases to trial. Felony UW cases are no exception. What makes Zimring's point particularly misleading is that he is implying that by using plea bargains, prosecutors are currently going easy on these cases. Yet the Crime Lab's analysis of aggravated UW cases in Cook County, not more than 6% of these cases are being pled down to lesser charges. Or put differently, the vast majority of plea bargains secured by prosecutors for felony illegal gun carrying arrests are resulting in convictions for felony illegal gun carrying.

### **Potential public safety consequences of new bill**

Zimring's third point is that the Crime Lab assumes that "Penalties on the books for carrying a firearm unlawfully are too lenient." Here again I think Zimring is conflating the Crime Lab's analysis of the potential consequences of the bill with the bill itself.

Moreover in what is, I recognize, a departure from normal discourse in the criminal justice area, we aspire to report what the data say in a non-ideological way. Our goal is to report what we believe are the most accurate numbers possible – regardless of which side of the political aisle the results fall on.

Our best estimate is that there would be 3,800 fewer crimes per year, including 400 serious violent crimes, which would be prevented due to additional incapacitation. (“Incapacitation” is the mechanical reduction in crime that occurs because people behind bars are physically prevented from committing crimes out on the street). We estimate that the social costs of this criminal activity are likely to be much larger than what the Illinois Sentencing Policy Advisory Council estimates to be the extra costs to the Department of Corrections. If the numbers had turned out differently and suggested that the expected public safety gains of the law were less than the expected costs, we would have reported that.

Zimring doesn’t question our estimates for this incapacitation effect, but he does express some skepticism about whether the new law could really generate any deterrent effect on illegal gun carrying above and beyond incapacitation. Zimring’s skepticism stems partly from his belief that the vast majority of people convicted of illegal gun carrying right now are going to prison. He also emphasizes that the maximum penalties under current law are quite high, ranging from three to fourteen years.

I regret that the Crime Lab’s original analysis of the bill did not make clearer the current outcomes of illegal gun carrying cases. Here’s what our analysis of the data say: Among all cases where there was a conviction for an aggravated UUW charge in Chicago from 2003 through 2012, on average 43% were sentenced to probation and another 10% were sentenced to boot camp, community service, or “other.” Put differently, fewer than half are sentenced to jail or prison over this time period.

The data do show that the share of aggravated UUW cases receiving probation, boot camp, community service or “other” declined from 2003 to 2012. But it’s still the case that as of 2012, one-third (33%) of aggravated UUW cases receive a sentence of something other than time in jail or prison. Analysis by the Illinois Sentencing Policy Advisory Council claims that the average length of stay in the Illinois Department of Corrections (DOC) for aggravated UUW cases that do get sent to prison is one-third of a year for people convicted of their first aggravated UUW offense, and 1.15 years for those convicted for at least the second time.

If the new bill is enacted and succeeds in increasing the chances that people convicted of illegal gun carrying get some time behind bars (rather than probation, community service, or boot camp), I believe the most likely result is that some illegal gun carrying behavior will be deterred. This belief comes from the body of empirical research cited in the Crime Lab’s original analysis of the bill about the deterrent effects in other applications that come from increasing the certainty of sanctions for illegal behavior.

One potential critique of this analysis (which Zimring did not make but others have) is that whatever deterrent effects might arise from the bill come at the expense of reducing the good rehabilitation work achieved by boot camp. But the Crime Lab’s analysis of outcomes for people convicted of aggravated UUW and sent to boot camp suggest they do not have noticeably lower violent-crime re-arrest rates than do those convicted of aggravated UUW and assigned to either probation or to prison.

### **Alternatives to mandatory minimums**

A different potential critique is that there could be alternative ways to increase the certainty of punishment for illegal gun carrying other than mandatory minimums. I am sympathetic to this possibility, although I would not claim to know myself what those alternatives would be. If there were an alternative proposal about how to increase the certainty of punishment for illegal gun carrying the Crime Lab would be delighted to immediately carry out a benefit-cost analysis of that alternative and compare the expected net returns across different potential policy options to help inform the public debate.

I am also sympathetic to the general distrust many people have around mandatory minimums, particularly when they are applied to drug and other non-violent cases. However I wonder whether it might be a mistake for critics of the new bill to instinctively assume that all mandatory minimum proposals are the same. The Crime Lab's analysis suggests that compared to other felony cases assigned to probation, aggravated UUC cases assigned to probation are nearly nine times as likely to be re-arrested for shooting someone and more than four times as likely to be arrested for homicide.

A different reason why this mandatory minimum bill might be thought of as being different from other applications is because of the nature of the offense itself that is being affected, and the general difficulty people have in thinking about probabilistic harms.

Zimring himself channels his inner judge when he writes several times in his editorial about the important distinction in his mind between carrying a gun and discharging it or using it in a robbery. The implication that comes through clearly is that illegal gun carrying in Zimring's view is not really a serious crime, which I suspect is at the heart of a lot of the disagreement about the proposed bill. Setting aside for the moment the specifics of the particular piece of legislation being considered in Illinois, I think that Zimring's perspective that illegal gun carrying is a victimless crime or somehow not serious is misguided.

I myself have often heard judges in bond court be presented with a case where someone was caught driving with a blood alcohol level several times the legal limit, in response to which the judge's first question is: "Was there an accident?" The judge in deciding how to handle the case is making a distinction between the risky behavior that endangers the public (driving drunk) and the dumb luck that happens to determine whether a pedestrian or other motorist is injured as a result of that act. Every act of drunk driving imposes probabilistic harm on society. Given that so many homicides stem from an argument over nothing that turns deadly because a gun is at hand, so does illegal gun carrying.

Mandatory minimums may or may not be the best way to overcome the natural human tendency to focus on the after-the-fact outcome of some risky behavior, rather than on the risky behavior itself. But everyone concerned about the massive social costs that gun violence imposes on the most disadvantaged neighborhoods in Illinois should be in agreement that we need to figure out some way to increase the certainty of some sort of sanction for the very high-risk behavior of illegal gun carrying.