

State Legislation Monitoring Report: FY2006

Iowa Department of Human Rights
Division of Criminal and Juvenile Justice Planning

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Introduction

The Division of Criminal and Juvenile Justice Planning issued its first state legislation monitoring report in February 2002, covering the first six months' impact of Senate File 543 (which enacted a number of sentencing changes) on the justice system; monitoring of the correctional impact of this bill was at the request of several members of the legislature. Since then, the Criminal and Juvenile Justice Planning Advisory Council has requested that CJJP monitor the correctional impact of enacted legislation of particular interest. This report covers monitoring results or future plans to monitor the following:

- No “good time” if offender refused sex offender treatment (effective FY2006, see p. 4).
- Class A felony enhancement for second and subsequent sexual offenses with child victims (effective FY2006, see p.4).
- Lascivious acts with a child, changed classification and penalties (effective FY2006, see p.4).
- Child endangerment, co-habiting with a sex offender (effective FY2006, see p.5).
- Establishment of parole eligibility at 70% of time served for persons sentenced under the “85% law” provisions of *Iowa Code* Section 902.12. (effective FY2005; see p. 5).
- S.F. 169, Pseudoephedrine, and related methamphetamine issues (SF 169 effective May, 2005, various other dates, see p.7).
- 2000 ft residency restrictions for convicted sex offenders with child victims (implemented September, 2005, see p.10).

Summary of Findings

Effect of “no good time” for refusing sex offender treatment. More time needs to elapse before any effect of this policy change could be noticed.

Class A penalty enhancement. No offender has been given the enhanced penalty since the effective date of the policy change.

Lascivious Acts, C felony, offender age changes. There have been 34 convictions under the new C felony classification under 709.8. No juveniles have been adjudicated for lascivious acts since July 1, 2005.

Child Endangerment, cohabitation. Data are not currently available to distinguish the circumstances for charges of child endangerment.

“85%” law parole eligibility. During the 2004 legislative session, changes were made to Code sections dealing with what had previously been referred to as “85% sentences,” establishing parole eligibility at 70% for all inmates previously sentenced under these sections. The first of these inmates became eligible for release consideration in FY05. Through January 23, 2007, 136 inmates serving sentences covered by this provision had been released from Iowa prisons. Only 57 of these would have been released under the previous 85% provisions. Another 52 inmates were eligible for release on January 23, and another 77 will become eligible for release during calendar 2007.

Monitoring Pseudoephedrine and various methamphetamine data. FY2005 saw the first reduction in prison drug admissions in a decade, as well as a reduction in the percentage of drug-related commitments stemming from methamphetamine. These decreases continued through FY2006 and into the first two quarters of FY07. Charges related to the possession of precursors showed a significant reduction in FY2007 compared to previous years. The number of meth labs discovered has dropped as well since the effective date of SF 169.

Monitoring the impact of the 2000 ft residency restrictions. The enforcement of the 2000-ft residency restrictions does not appear to have had an effect on reducing the number of sex offenses with child victims. However, there has been an effect on the justice system in terms of registry violations, “lost” registrants, resources diverted to enforce the provision, and negative consequences for the treatment and supervision of offenders in the community.

Effect of “no good time” for refusing sex offender treatment.

H.F. 619 eliminated the ability of sex offenders to earn “good time” if they refused to participate in sex offender treatment while in prison.

Typically there is a 6-month lag time from the effective date of a legislative change and when convictions under that change occur; in this instance this lag time between the effective date of the policy change and its impact will be longer. This requirement will apply to offenders who are convicted and sent to prison for offenses committed after July 1, 2005; treatment is usually provided toward the end of an offender’s prison time. Therefore, the first date for data to become available would be in late FY2007, the earliest time that some offenders would be eligible for release from prison under this requirement.

Class A felonies for second and subsequent sex offenses.

H.F.619 created a new penalty (life in prison) for sex offenders who are convicted of a second or subsequent offense for selected crimes with child victims.

Impact to Date. This provision was for enhanced penalties under Iowa Code chapter 902. No one has received the new enhancement since July 1, 2005, the effective date of the statute. As it is an enhanced penalty, not a separate criminal charge, a second conviction is necessary prior to the imposition of the life sentence. Original estimates had assumed a prison population impact for increased life sentences. Since the enhanced penalty has not been used to date, the Prison Population Forecast for 2006 adjusted the number of life sentences downward for A felony sex offenders to 4 new admissions per year. Monitoring of the impact of this provision will continue.

Changes in Lascivious Acts.

H.F. 619 increased selected types of lascivious acts (709.8) to a C felony, and lowered the age limit for offenders from 18 to 16.

In FY2005 there were 121 adult convictions for 709.8, lascivious acts with a child, a class D felony. In FY2006 there were 106 convictions under provisions of 709.8, 34 of which were for the new class C felonies, or 32%. This was somewhat lower than the estimate that 50% of lascivious acts would be C felonies.

During FY2006 there were 36 C felony lascivious act charges filed, with 21 convicted as charged. It can be assumed that a portion of the charges were reduced to D felonies, while a portion of the C felony convictions were plea adjustments from more serious charges.

Prior to July 1, 2005, an individual had to be at least 18 to be charged with lascivious acts.

Changing the age to 16 did not require a minor to be tried in adult court, but did allow for the charge of lascivious acts to be made. In FY2006 there were 6 juvenile charge counts for 709.8, but no juvenile adjudications. There has been no significant reduction in the number of juvenile charges adjudicated for sexual abuse, 2nd degree, a B felony in adult court. Therefore, the impact of H.F. 619 on juvenile court proceedings is minimal.

Child Endangerment

H.F. 619 established a new definition for child endangerment, cohabiting with a sex offender if children were present in the home.

Although there have been anecdotal reports of instances where these charges have been filed, at the present time the coding structures in the Iowa Court Information System (ICIS) have not distinguished the reason for child endangerment charges. Unless the Courts alter the coding structure for charges under 726.6, monitoring of the correctional impact of this change is not possible.

Impact of SF 2275 (2004), parole eligibility at 70% for 85% sentences.

Provisions: Effective beginning in FY2005, all persons sentenced under “85% law” provisions of *Iowa Code* Section 902.12 automatically became eligible for parole after serving 70% of their maximum terms. Release of these inmates is discretionary by the Board of Parole until the sentence expires at 85% of the maximum term.

Monitoring Plan: A list of all persons sentenced under the “85% law” has been compiled which includes the tentative discharge date and the inmate’s parole eligibility date. This file is updated periodically to determine which of the eligible inmates have been released and whether any have returned to prison.

Impact to Date: As of 1/23/07, 136 offenders serving (previously) 85 percent sentences have been released from Iowa prisons. Seventy-two of these have gone to work release and 96 to parole (42 were paroled after originally going on work release). Ten offenders were discharged directly from prison without having gone to either parole or work release. One additional inmate died in prison prior to release and one (Class B) inmate was released by court order prior to expiration of his minimum.

The savings resulting from the change from 85 percent to 70 percent parole eligibility for these released offenders (excluding the Class B offender who, one assumes, would have been released regardless) ranges from zero inmate-days to 623 inmate-days, with the median savings being 371 inmate days (up slightly from 345 inmate-days in FY05). The total savings since the change to 70 percent is 42,024 inmate-days (again excluding the Class B release). This figure accounts for inmates who have been returned.

The average inmate released to parole or work release was released 220 days after

originally becoming eligible for release (after expiration of 70 percent of sentence).

Twenty-seven of these inmates have been returned to prison, eighteen as work release revocations (four with new convictions), seven as parole revocations (one with a new conviction), one as a new commitment after discharge, and one as a “safekeeper” following expiration of his original sentence (apparently awaiting civil commitment as a sex offender). Another parolee was returned to work release without returning to prison. In addition, four releases have received new probations since being released.

Of these 136 inmates, 57 would have been released by 1/23/07 under the original 85 percent law. The remainder would still be incarcerated.

There are currently 52 inmates serving 70% sentences who are eligible for release. Another 77 inmates will become eligible for release during 2007 as they pass their parole eligibility dates.

Estimated Long-Term Impact. Examining those incarcerated on 70% sentences as of 6/30/06, CJP analysis of the potential correctional impact of the change effected under HF2275 suggests that the impact of the change is relatively consistent over time, at least until potential release of Class B 85% inmates starts in late FY2014. The table below shows the estimated reduction in prison population resulting from the change to parole eligibility at 70%, again starting with the population as of 6/30/06:

| Estimated Population Reduction | |
|---------------------------------------|------------------|
| Fiscal Year End | Reduction |
| 2006 | 14 |
| 2007 | 31 |
| 2008 | 42 |
| 2009 | 39 |
| 2010 | 45 |
| 2011 | 37 |
| 2012 | 45 |
| 2013 | 48 |
| 2014 | 37 |
| 2015 | 31 |
| 2016 | 34 |

After 2015 the impact of SF2275 will rise, as those sentenced under 85% Class B provisions become eligible for parole consideration. The first of these offenders becomes eligible for release in 2014, but, assuming release midway between expiration of the mandatory term and expiration of sentence, none are projected for release until 2016. As of June 30, 2006,

there were 406 of these inmates housed in Iowa's prisons, 46 of whom were committed to prison in FY06. The potential impact of sentence reduction for these Class B inmates is greater than is the case for the Class C 85% commitments, as the possible reduction for the latter inmates is 18 months per inmate, while the same figure for Class B offenses is 45 months for 25-year terms and 90 months for 50-year terms.

Impact of S.F. 169 and Methamphetamine in Iowa

S.F. 169 made significant changes in the availability of products containing pseudoephedrine, a major ingredient in the manufacturing of methamphetamine. The act also repealed some previous provisions relating to the sale of products over the counter, eliminating one item included in earlier monitoring reports. Because of the number of meth issues that S.F. 169 was intended to address, all methamphetamine issues are included in this section.

Enhanced penalty, manufacturing meth in the presence of a minor. In FY2006 there were no convictions for manufacturing meth in the presence of a minor. During FY2005 there were 2 convictions for the same charge.

Prison admissions. *Monitoring Plan.* Due to the significant impact of methamphetamine in Iowa, CJJP staff were directed to compile regular data on the impact of its use on Iowa's prison population.

In response, data were collected from the Iowa Corrections Offender Network (ICON) on inmates admitted for drug offenses since the start of state FY2005. Data were collected on the type of drug involved in drug offenses for all incoming inmates whose lead charge involved drugs

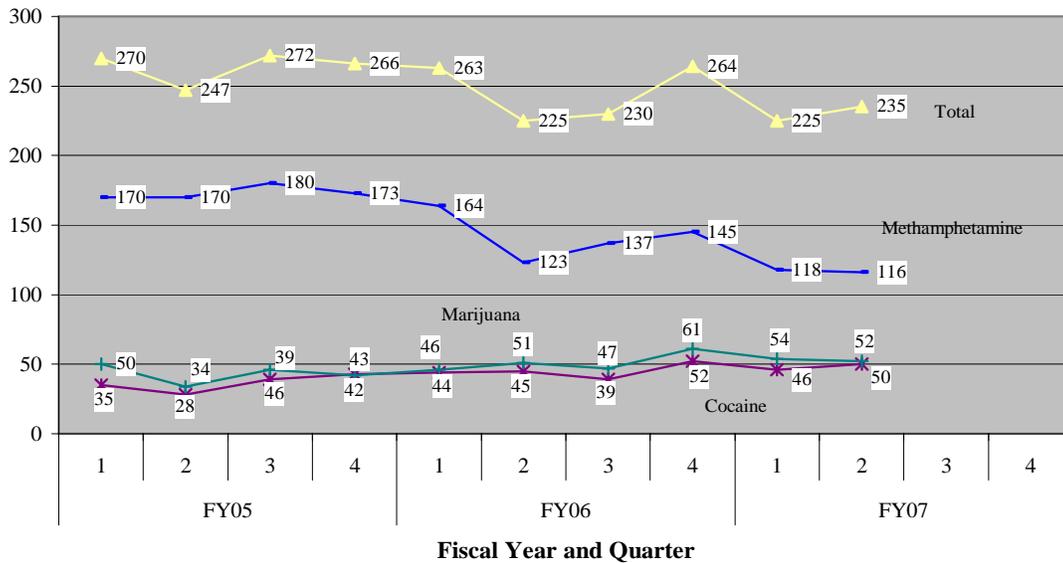
Impact to Date. The table below shows the primary controlled substance resulting in commitment for drug-related offenses during state FY2005-2006 and the first two quarters of FY06. It shows that methamphetamine was involved in far more commitments than any other type of controlled substance throughout the fiscal year, with marijuana being next most likely to result in commitment. Since reaching a peak of 180 admissions in the third quarter of FY05, however, the number of meth-related commitments has dropped.

Drug Involved in New Drug Commitments to Prison, by Quarter

| Drug | FY05 | | | | FY06 | | | | FY07 | |
|-----------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| | 1 | 2 | 3 | 4 | 1 | 2 | 3 | 4 | 1 | 2 |
| Amphetamine | 5 | 1 | 3 | 0 | 0 | 2 | 0 | 0 | 0 | 1 |
| Cocaine | 35 | 28 | 39 | 43 | 44 | 45 | 39 | 52 | 46 | 50 |
| LSD | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 1 |
| Marijuana | 50 | 34 | 46 | 42 | 46 | 51 | 47 | 61 | 54 | 52 |
| Methamphetamine | 170 | 170 | 180 | 173 | 164 | 123 | 137 | 145 | 118 | 116 |
| Other | 9 | 13 | 4 | 7 | 8 | 1 | 3 | 2 | 1 | 3 |
| RX | 1 | 0 | 1 | 0 | 0 | 1 | 4 | 4 | 5 | 1 |
| Unknown | 1 | 1 | 0 | 0 | 0 | 2 | 0 | 0 | 1 | 11 |
| Total | 270 | 247 | 272 | 266 | 263 | 225 | 230 | 264 | 225 | 235 |

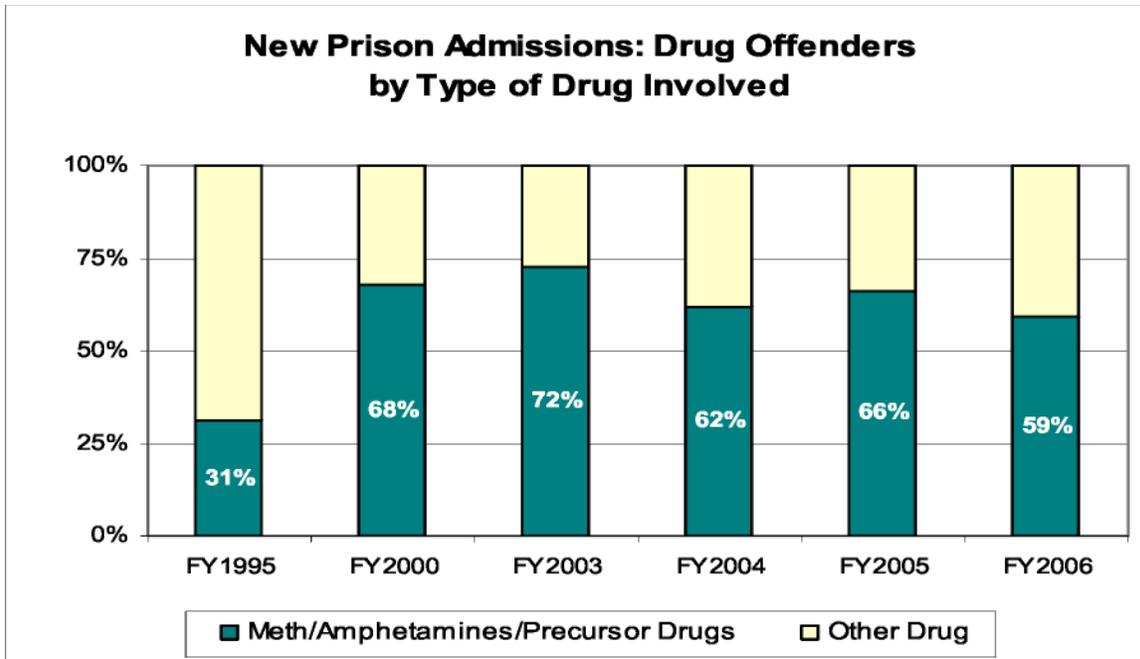
Monthly figures for FY06 are shown below:

Drug involved in Prison Commitments, FY05-FY07



The monthly trend would suggest that the meth-related percentage may continue to drop during FY07.

To put this information into some perspective, the table below shows that admissions of inmates whose most serious crimes were drug-related dropped slightly in FY2005, the first such drop in ten years



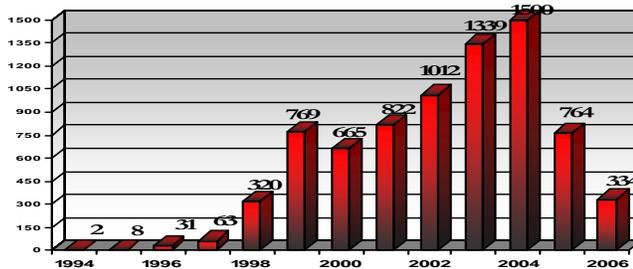
| Offense Type | Fiscal Year | | | | | |
|--------------|-------------|-------|-------|-------|-------|-------|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
| Drug | 904 | 966 | 1,096 | 1,110 | 1,049 | 987 |
| Order | 106 | 146 | 155 | 132 | 141 | 154 |
| OWI | 302 | 262 | 284 | 261 | 242 | 311 |
| Property | 1,059 | 1,070 | 1,130 | 1,070 | 1,041 | 1,094 |
| Sex | 269 | 258 | 235 | 214 | 261 | 261 |
| Traffic | 67 | 90 | 109 | 112 | 120 | 125 |
| Violent | 536 | 562 | 629 | 515 | 608 | 614 |
| Weapon | 56 | 53 | 67 | 34 | 56 | 63 |
| Unknown | 1 | 0 | 0 | 0 | 1 | 0 |
| Total | 3,300 | 3,407 | 3,705 | 3,448 | 3,519 | 3,609 |

It is evident that this decrease is continuing thus far in FY07.

Manufacturing. Below is a table showing the number of methamphetamine lab incidents in Iowa from 1994 through 2006. There has been a significant reduction in the number of meth labs discovered, especially since the enactment of S.F. 169.

Iowa Meth Lab Incidents, by Calendar Year

Source: Iowa Department of Public Safety, Division of Narcotics Enforcement



Drug charges. CJJP compared convictions (adult only) for drug offenses between FY2004, FY2005 and FY2006. Conviction data include all charges that were related to a case that resulted in convictions.

| | FY2004 | FY2005 | FY2006 |
|-----------------------|--------|--------|--------|
| All drug convictions | 12,936 | 13,048 | 13,367 |
| Precursor convictions | 738 | 695 | 303 |

Although the number of drug convictions has remained constant or increased slightly between FY2004 and FY2006, there has been a significant reduction in the number of convictions for possession of precursors in that time period (58.9%). In FY2005 there was 1 conviction for purchasing >7500 mg of pseudoephedrine from a pharmacy, while in FY2006 there were 51 such convictions. Violation of the pharmacy provision is a serious misdemeanor.

2000 ft Residency Restrictions for Sex Offenders with Minor Victims

Provisions. In September, 2005, after the Courts determined that the provisions in Iowa Code 692A.2A(3), residency restrictions for sex offenders with minor victims, was constitutional, law enforcement officials began enforcing the law. This law is called the 2000-foot law.

Monitoring Plan. CJJP has used data from the Justice Data Warehouse to evaluate the impact the law has had on convictions for both violations of the law and convictions for sex abuse crimes involving minors. In addition, CJJP surveyed all county sheriffs, county attorneys, chief juvenile court officers, and community-based corrections offices to elicit feedback on implementation of the law.

Impact. CJJP compared the disposed charges for sex offenses with minor victims and

charges where there were likely to be minor victims for the 12 months prior to the enforcement of 692A.2A(3) with 12 months after (September 2004 – August 2005 to September 2005 – August 2006).

| Time Period | Charges filed | Charges dismissed/acquitted | Convictions |
|--------------------|----------------------|------------------------------------|--------------------|
| 9/2004 – 8/2005 | 913 | 425 | 433 |
| 9/2005 – 8/2006 | 928 | 400 | 445 |

There is very little difference between the two time periods in the number of charges or convictions.

The same trend is seen in convictions for the same offenses. A comparison was made of convictions that occurred in the 6 months prior to enforcement, and those that were recorded after the law had been in effect for 6 months (March 2005 – August 2005 compared to March 2006 – August 2006). In the pre-enforcement time period there were 236 convictions while in the post-enforcement period there were 244. The difference is not significant.

The number of offenders entering prison for sex abuse crimes with child victims also has not been affected by the enforcement of 692A.2A(3). The numbers for the first two quarters of FY2006 (pre-enforcement) were 113 offenders with child victims; the number for the first two quarters of FY2007 (post-enforcement) was 114.

Based upon these numbers, it does not appear, at this time, that there has been a reduction in the number of child victims of sexual abuse in Iowa. However, there has been an impact on the offenders required to register on the Sex Offender Registry and on offenders covered by the residency restriction. During the 12 months prior to the enforcement of 692A.2A(3), there were 258 convictions for failure to register as a sex offender. In the 12 months after enforcement, that number had risen to 442. In addition, there have been 137 convictions for violating the residency restrictions.

In FY06 there were four new prison admissions for residency violations (692A.2A(3)). One of these was a probation revocation and the other three were direct court commitments. There were three more new admissions the first six months of FY07 (all probation revocations). All these were aggravated misdemeanors.

Prison commitments for registry violations have increased since the enforcement of the 2000-ft law. There have been more prison admissions for registry violations in the first 6 months of FY2007 than there were in all of FY2005.

| | FY2005 | FY2006 | FY2007 (6 months) |
|--|---------------|---------------|--------------------------|
| # of prison admits for registry violations | 48 | 72 | 54 |

According to the Sex Offender Registry, as of January 24, 2007, there were 6111 offenders on the registry, with 324 with “whereabouts unconfirmed.”

Survey Results

After a brief review of literature, a survey was created by CJJP to elicit information about the impact of implementing 692A.2A(3) from those responsible for enforcing the law. A pre-notice describing the study and inviting participation was mailed to each Iowa chief juvenile court officer (n=8), community-based corrections sex offender coordinator (n=9), county attorney (n=99), and county sheriff (n=99) on November 1, 2006. A cover letter and survey were mailed to each participant on Monday, November 6, 2006.

Response rates by group are listed below in Table 1. Of the 215 surveys mailed, 103 surveys were returned. Of the returned surveys, 98 were usable. Overall, the survey response rate was 45.6%. In addition to district staff, the county attorney, sheriff or both from 66 of Iowa’s 99 counties completed and returned a usable survey.

Table 1. *Residency Restriction Survey Response Rates*

| Group | N | % |
|--|----|-------|
| Chief Juvenile Court Officer | 2 | 25.0% |
| Community-Based Corrections Sex-Offender Coordinator | 8 | 88.9% |
| County Attorney | 33 | 33.3% |
| County Sheriff | 56 | 56.5% |
| Total | 98 | 45.6% |

Respondents were asked to indicate the approximate number of registered sex offenders in their county or district’s supervision that have faced issues related to access to housing, support networks, employment, and treatment. Percentages were computed by dividing the sum of the number of sex offenders facing each issue by the sum of the reported number of registered sex offenders currently under the respondents’ supervision or residing in their jurisdiction. One offender could face multiple issues.

It should be noted that some participants were challenged to respond to the survey either because they had not kept the kinds of statistics that were asked for on the instrument or had not been notified that offenders faced these issues. As such, these estimates are most likely conservative.

Table 2. *Reported Percentage of Sex Offenders Facing Issues Related to Treatment Access, Housing, Employment, and Support Networks*

| Item | % |
|---|-------|
| “Grandfathered in” – established residency before July 2002 | 15.9% |
| Moved out of an apartment that they rented | 15.4% |
| Could not live with supportive family members or friends | 13.4% |
| Could not find affordable housing | 12.7% |
| Moved into the county or district | 9.4% |
| Moved out of the county or district | 9.3% |
| Did not comply with supervision | 7.4% |
| Lived in a car, motel, non-structural location (e.g., rest area), or homeless | 6.5% |
| Could not move home when released from confinement | 6.4% |
| Isolated from support networks | 6.2% |
| Whereabouts unconfirmed | 5.1% |
| Moved to a different state | 4.8% |
| Could not obtain or keep employment | 4.2% |
| Moved out of a home that they owned | 4.0% |
| Attended treatment less frequently | 1.6% |

Respondents were asked to report the number of staff involved with and the monthly average person hours devoted to issues surrounding residency restrictions. Respondents were also asked to report monthly monetary resources devoted to issues related to residency restrictions. Those results are provided below in Tables 3 and 4, respectively.

Table 3. *Average and Total Number of Staff, Person Hours, and Monetary Resources Devoted to Residency Restrictions per Month*

| Item | Average Number | Total Number |
|--|----------------|--------------|
| Number of staff involved with issues surrounding residency restrictions | 3.5 | 324.5 |
| Number of person hours devoted to issues pertaining to residency restrictions <i>per month</i> | 20.2 | 1677.5 |

Table 4. *Average and Total Monetary Resources Devoted to Residency Restrictions per Month*

| Item | Average Amount | Total Amount |
|--|----------------|--------------|
| Monetary resources devoted to issues relating to residency restrictions <i>per month</i> | \$463.69 | \$25,039.00 |

Participants were also asked to respond to three open-ended questions or prompts. First, “has your agency had to cut back on or stop doing other things in order to devote resources to issues surrounding residency restrictions? If yes, please describe.” Second, “additional issues you’ve encountered relating to residency restrictions.” The final

prompt asked for other comments. The responses were entered into a Word document where words or phrases were clustered into themes or categories. This process yielded four major themes. The number of comments related to each theme is included in parentheses. As a result of residency restrictions a) public safety is reduced (n=28), b) offender non-compliance has increased (n=21), c) human resources have been reallocated (n=39), and d) housing problems for offenders have increased (n=26).

Although the public perceives that residency restrictions make them safer, respondents indicated that public safety is not protected. As one respondent explained “The biggest issue is with the public. They don’t realize a sex offender can visit near a school or day care center. They can’t reside. It is a warm fuzzy law that doesn’t protect our children.” Another respondent noted “It has done nothing to protect children as the perpetrators can still visit families and friends where most of the sex offenders with child victims already know or associate with their victims.”

Residency restrictions have increased non-compliance. Offenders are harder to track. One respondent noted “Most of the registrants simply become non-compliant and register a false address or move without notification. Our agency arrests have increased, however, so has staff time devoted to the arrests.” The restrictions also work against keeping offenders’ lives stable. One respondent shared “Isolation and secrecy increase stress and risk of negative behaviors increase.”

Human resources have been reallocated to deal with residency restrictions. Time is taken away from supervision, surveillance, support, treatment, investigations (including sex abuse), other cases (including drug), or patrol. In one department the “deputy has encountered less time for actual sex abuse investigations and other duties to deal with residency restriction issues and phone calls from concerned citizens as well as registrants themselves.” County attorneys reported spending more time prosecuting cases and greater difficulty in getting pleas. For example “Defendants refuse to plead guilty because they do not want to be forced to move or be subject to the residency restrictions.” Time is also spent responding to inquiries from law enforcement, public, and offenders. Newly created positions or current positions have been dedicated to dealing with residency restrictions. One respondent indicated that their department had “cut back time spent with offenders individually. New positions go to sex offender work and general caseload size is increasing.”

Finally, residency restrictions have created a hardship for offenders to find housing. Offenders cannot live with supportive family. Often, residency restrictions create clusters of sex offenders. One respondent noted “We currently have 11 offenders living in a small one story motel. Rather than a positive support network these offenders turn to each other.” Offenders have difficulty finding affordable housing. Offenders are also driven to rural areas. For example, “Metro area offenders move to small towns or rural areas. Small towns without schools do not have not rules against them.” Many do not have driving privileges which makes it more difficult and more costly to get to work.