

State Legislation Monitoring Report: FY2007

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

Paul Stageberg, Ph.D., Administrator

Primary Authors:
Phyllis Blood, MPA
Lanette Watson, MPP
Paul Stageberg, Ph.D.

February, 2008



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).
- Drug commitments to prison, continuing evaluation of the impact of drug laws on the prison population. (See p. 4.)
- Lascivious acts with a child, changed classification and penalties (effective FY2006, see p.5).
- Fines and administrative license suspensions (HF641, payment schedules). (See p. 7)
- 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. 7).
- Smuggling and tax stamp convictions due to changes in cigarette taxes (effective April, 2007). (See p. 9.)
- 2000 ft residency restrictions for convicted sex offenders with child victims (implemented September, 2005, see p. 9).
- Keg registration and Under-age possession of alcohol (see p.11).
- Contraband in Jails (see p. 11).

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.

Drug commitments. The number of new commitments to prison for drug offenses decreased again in FY2007, mainly due to a continuing decrease in the number of commitments for methamphetamine. This represented the 3rd year in which drug offense commitments fell. However, there appears to be an increase in the number of new commitments for marijuana and cocaine.

Lascivious Acts, C felony, offender age changes. Although the act increased the number of charging options for C felony sex offenses, there has not been a significant increase in the number of C felony sex offense convictions. There are fewer D felony convictions, and a slight increase in the number of Aggravated misdemeanor convictions. There has been no impact on the juvenile system due to the age change.

Financial impact, fine payment schedules.. No reliable source of data has been identified.

“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 November 21, 2007, 182 inmates serving sentences covered by this provision had been released from Iowa prisons. Only 116 of these would have been released under the previous 85% provisions. Another 64 inmates were eligible for release on November 21, and another 59 will become eligible for release during calendar 2008.

Cigarette smuggling/tax stamp convictions. There have been no convictions of smuggling or tax stamp evasions for tobacco products through September 30, 2007.

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.

Keg registration and Under-age possession of alcohol. Since July 1, 2007, the effective date of the legislation, there have been no convictions for keg registration violations. It is too soon to tell if there will be a lasting impact on the number of convictions for supplying alcohol to minors or for underage possession of alcohol.

Possession of Contraband in a Correctional Facility. There was an increase in the number of charges filed in the first quarter of FY08 compared to the first quarter of FY07.

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

Provisions: H.F. 619 (Sex Offender Act 2005) eliminated the ability of sex offenders to earn a reduction in their sentence or “good time” if they refused to participate in sex offender treatment while in prison. This applied to offenders who were convicted and sent to prison for offenses committed after July 1, 2005.

Monitoring Plan: Data from the Iowa Corrections Offender Network (ICON) will be used to monitor sex offender releases.

Impact to Date: Because this provision applies to offenses committed after July 1, 2005, its potential impact should only be seen for offenders convicted of no more than aggravated misdemeanor charges during this reporting period. Aggravated misdemeanor charges are charges that carry sentences up to 2 years.

Data was compiled on aggravated misdemeanor sex offenders released in fiscal years 2006 and 2007 from ICON. The data for fiscal year 2006 did not yield any cases covered under this provision and data for fiscal year 2007 showed only 7 cases. Five out of the 7 were new court commitments and 2 probation revocations.

At this point, it is too soon to evaluate the impact as only a limited number of individuals, in a limited offense class, have been affected. A more accurate evaluation may be possible in future reports as data comes available for different class offenses.

Drug commitments to prisons

Monitoring Plan. Due to the significant impact of methamphetamine and other drugs in Iowa, CJJP staff were directed to compile regular data on the impact of drugs on Iowa’s prison population.

In 2005 the Legislature passed S.F. 169, restricting the availability of pseudoephedrine and other precursors to methamphetamine manufacturing. Previous analyses have demonstrated the effectiveness of that measure in reducing the number of clandestine labs found, as well as the number of convictions for possession of precursors.

Data have been 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.

	FY2005	FY2006	FY2007
Amphetamine	9	2	2
Cocaine	145	180	211
LSD	1	1	1
Marijuana	172	205	192

Methamphetamine	693	569	448
Other	33	14	10
RX	2	9	15
Unknown	2	2	2
Total	1,057	982	881

The trend indicates that meth-related admissions continued to drop during FY07. The decrease in meth-related admissions has led to an overall decrease in the number of admissions for drug-related crimes, even though there appears now to be an increase in the number of convictions and admissions for cocaine (the number shown does not distinguish between powder and crack cocaine) and marijuana.

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. It has continued to drop since then.

Offense Type	Fiscal Year						
	2001	2002	2003	2004	2005	2006	2007
Drug	904	966	1,096	1,110	1,049	987	881
Order	106	146	155	132	141	154	197
OWI	302	262	284	261	242	311	264
Property	1,059	1,070	1,130	1,070	1,041	1,094	1,044
Sex	269	258	235	214	261	261	233
Traffic	67	90	109	112	120	125	102
Violent	536	562	629	515	608	614	583
Weapon	56	53	67	34	56	63	54
Unknown	1	0	0	0	1	0	0
Total	3,300	3,407	3,705	3,448	3,519	3,609	3,358

It is evident that this decrease is continued in FY07.

Changes in Lascivious Acts.

Provisions. 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. This change was effective for offenses that occurred after July 1, 2005. There is usually a six-month lag from effective date to dispositions and convictions appearing in the database.

Monitoring Plan. CJJP used data from the Justice Data Warehouse to look at changes in charges and convictions for several sexual offenses to determine if there has been an effect on the system.

Impact. Prior to the enactment of H.F. 619, there was a continuum of sorts for sexual abuse offenses, with each level meeting certain criteria. Although not all were specific to

child sexual abuse, the continuum did span the levels of criminal offenses from Class A felonies to C felonies. Lascivious acts (709.8) and indecent contact with a child (709.12) do not fall into the definitional category of sexual abuse as defined in the code as they do not involve an overt sex act.

Concern has been expressed that changing portions of the definition of lascivious acts to a C felony comparable to sexual abuse in the third degree would affect charging and plea practices, as well as increase the number of admissions to prison and life-time supervision of sex offenders. Below is a table showing the number of disposed charges and convictions for sex offenses by offense class for FY2005, FY2006, and FY2007.

	FY05		FY06		FY07	
	Disposed charges	Convictions	Disposed charges	Convictions	Disposed charges	Convictions
AFEL	8	1	4	0	6	2
BFEL	320	46	345	42	339	50
CFEL	580	250	628	307	758	275
DFEL	201	143	142	97	118	84
AGMS	203	131	226	142	181	176
SRMS	208	92	175	76	187	73
UNK/O	2	1	1	2	2	1
TOTAL	1522	664	1521	667	1591	661

There does not appear to be a significant change in the number of sex offense charges or convictions, nor is there a clear trend toward an increase in C felony sex offense convictions. There is a downward trend in the number of D felony disposed charges and convictions; this is not surprising as the definition governing D felony actions is much narrower. There also is an increase in the number of aggravated misdemeanor convictions, but not disposed charges.

When individual charge codes are included, the charge/conviction changes appear to be from sexual abuse 2nd to lascivious acts, C felony, while prior to FY2006 the shift was from sexual abuse 2nd to sexual abuse 3rd. So although H.F.619 created a new C felony, the overall impact on the number of C felony convictions for sex crimes has not increased.

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 six juvenile charge counts for 709.8, but no juvenile adjudications. In FY2007 there were five charge counts and one juvenile adjudication. 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.

Payment Schedules

Provisions. Effective beginning in FY2008, individuals who had their drivers' license administratively suspended because of unpaid fines and court costs could establish payment schedules with a county attorney's office. If a payment schedule were established, the \$200 civil penalty for reinstatement of the license could be added to the payment schedule and the license reinstated. The intent was to increase the payment of fines and to enable individuals to obtain a license and insurance to drive.

Monitoring Plan. At this time, there is not a good source of information to determine if there has been an increase in license reinstatements as a result of this provision. It is also unlikely that payment against aged debt can be tracked against this provision due to limitations in the database. Therefore, no data are currently available.

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.¹

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 6/30/07, there were 855 inmates in Iowa prisons to whom the 70% mandatory minimum sentence applied. As of 11/21/07, 182 offenders serving (previously) 85 percent sentences have been released from Iowa prisons. Ninety-one of these have gone to work release and 137 to parole (61 were paroled after originally going on work release). Ten offenders were discharged directly from prison without having gone to either parole or work release. Three additional inmates died in prison prior to release, one was released on appeal bond, 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 585 inmate-days, with the median savings being 350 inmate days (down slightly from 371 inmate-days in FY06). The total savings since the change to 70 percent is 55,254 inmate-days (again excluding the Class B release). This figure accounts for inmates who have been returned.

¹ The discussion here will not include individuals committed under 901A (sex predators), as the change from 85% to 70% did not affect these inmates.

The average inmate released to parole or work release was released 226 days after originally becoming eligible for release (after expiration of 70 percent of sentence).

Thirty-five of these inmates have been returned to prison, nineteen as work release revocations (four with new convictions), eleven as parole revocations (two with a new conviction), and two as new commitments after discharge. Another three parolees were returned to work release without returning to prison. In addition, six releases have received new probations since being released and another three have been released through Pre-Trial Release following new charges.

Of these 182 inmates, 116 would have been released by 11/21/07 under the original 85 percent law. The remainder would still be incarcerated.

As of 6/30/07 there were 58 inmates serving 70% sentences who are eligible for release. Another 59 inmates will become eligible for release during 2008 as they pass their parole eligibility dates.

Estimated Long-Term Impact. Examining those incarcerated on 70% sentences as of 6/30/07, CJJP 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 6/30/07. The decrease starting in FY2015 is artificial in that it does not reflect earlier release of Class C 70% inmates yet to enter the prison system:

Estimated Population Reduction

Fiscal Year End	Reduction
2008	33
2009	28
2010	33
2011	23
2012	34
2013	35
2014	24
2015	14
2016	10
2017	14
2018	17

After 2015 the potential 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 2015. As of June 30, 2007, there were 440 of these inmates housed in Iowa's prisons, 38 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. Realization of these savings will depend on the extent to which the Board of Parole sees release of these inmates as being consistent with public safety.

Cigarette smuggling/Tax stamp violations.

Provisions. S.F.128, effective at signing in March, 2007 increased the cigarette tax by \$1. Concern was expressed that there would be an increase in violations of the cigarette tax stamp and smuggling provisions in Iowa Code 453A.

Monitoring Plan. CJJP used data from the Justice Data Warehouse to look at convictions for tax stamp evasion or smuggling. The impact on sales or revenue is not a part of the CJJP monitoring plan.

Impact. Although there was one reported theft of a significant number of cigarettes from a warehouse, there have been no convictions for smuggling or tax stamp evasions for tobacco products between April 1, 2007 and September 30, 2997.

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.

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 24 months after (September 2004 – August 2005 to September 2005 – August 2007).

Time Period	Charges filed	Charges dismissed/acquitted	Convictions
9/2004 – 8/2005	913	425	433
9/2005 – 8/2006	928	400	445
9/2006 – 8/2007	1,095	482	490

The law does not seem to have led to fewer charges or convictions, indicating that there probably have not been fewer child victims.

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.

For the full fiscal year of 2007, July, 2006 through June, 2007, there were 422 convictions for the same offenses (child or likely child victims). This is consistent with the 6-month figures above, and does not demonstrate any effect due to the 2000 foot law.

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 were 137 convictions for violating the residency restrictions. When looking at fiscal year figures, it appears as if the registry violations remain higher than before enforcement, with 399 convictions during FY2007. The residency violations, however, appear to be lower, at 72 for FY2007.

Prison commitments for registry violations have increased since the enforcement of the 2000-ft law.

	FY2005	FY2006	FY2007
# of prison admits for registry violations	48	72	89

Keg Registration and Underage Possession of Alcohol.

Provisions. H.F. 650 established a statewide requirement for the registration of beer kegs for personal use in an attempt to reduce the availability of beer to underage individuals. The requirement went into effect on July 1, 2007.

Monitoring Plan. CJJP will check on the number of convictions for violation of the registration requirements, providing alcohol to underage drinkers (not employee or establishment violations), and underage possession convictions.

Impact. Comparisons were made between the two time periods July – September, 2006 and July – September, 2007 for supplying alcohol to a person underage and underage possession. Juvenile allegations for possession were also included, as a separate category. The results are below. Since July 1, 2007, through September, 2007, there have been no convictions for keg registration violations.

	Jul-Sept, 06	Jul-Sept, 07
Supplying alcohol to underage, convictions	80	89
Underage possession, convictions	2,109	2,024
Juvenile possession, allegations	1,229	1,123

The time frame available for analysis is still fairly short, so it is not possible at this time to determine if there will be a decrease in convictions or allegations relating to underage and minor access and use of alcohol.

Possession of Contraband in a Correctional Facility

Provisions. S.F.529 expanded the definition for possession of contraband in a correctional facility to include city and county jails. It was anticipated that there could be significant increase in the number of charges and convictions, with a resulting increase in the number of days in jail or prison.

Monitoring Plan. The Justice Data Warehouse was used to determine if there has been an increase in the number of charges or convictions with the expansion of facility type.

Impact. There is generally a six-month lag between the effective date of a code change and the first numbers of convictions. However, charge information is available. The number of charges for contraband for the first quarter of FY2008 (July – September 2007) were compared to the number of charges for the first quarter of FY2007 (July – September 2006). There were 7 charges filed in the first quarter of FY07, while there were 16 charges filed in the first quarter of FY08. Although it is too soon to determine if this reflects a continuing trend, it may indicate that there will be an increase in convictions as well.