

State Legislation Monitoring Report:

FY2002

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 month's impact of Senate File 543 on the justice system. SF 543, enacted during the 2001 legislative session, changed the maximum penalty for first-offense Burglary-3rd degree, and established new sentencing options available to the court:

- An alternative determinate prison sentence for certain Class D felons
- Extended felony sentence reconsideration from 90 days to one year

Because of the increased discretion extended to judges by this legislation, the General Assembly and the Criminal and Juvenile Justice Planning Advisory Council (CJJPAC) have requested information describing the use of Senate File 543 provisions. Additionally, the CJJPAC has requested that CJJP also monitor the correctional impact of two bills passed during the 2002 legislative session that pertain to requirements associated with the state sex offender registry:

- House File 2338, which requires registration for students and employees of institutions of higher education in the county where the institution is located, if different from the county of their residence
- Senate File 2197, which prohibits registered sex offenders from residing within two thousand feet of an elementary or secondary school, or a child care facility

Summary

- *First-offense Burglary-3rd degree.* During FY2002, 192 offenders have been convicted of first-offense Burglary-3rd or attempts. A reduction in the use of prisons is occurring, due to lower imprisonment rates for these offenses. Use of jail to sanction these offenders has increased; however, average jail terms are lower than for aggravated misdemeanor attempted burglary prior to the law change.
- *Determinate Class D Felony Sentence.* During FY2002, 39 offenders have been sentenced to determinate terms. A substantial number of offenders are projected to serve more time in prison under determinate sentencing than they would have if sentenced to indeterminate terms. CJJP estimates that the prison population will increase by about 33 offenders by December 31, 2004 as a result of determinate sentencing practices, and that this increase will remain steady in subsequent years. There have been no disparities observed with regard to race/ethnicity or sex. However, most such sentences are handed down in the 7th and 8th judicial districts, and a high percentage are handed down in rural counties.
- *Extended Felony Sentence Reconsideration.* There has been no increase in use of sentence reconsideration authority by judges as a result of this change. However, offender length of stay prior to release from prison increased by one month on average during FY2002, when compared with FY2001 releases.
- *Sex Offender Registry Requirements.* Since these laws were passed effective in FY2003, it is too soon to draw conclusions regarding their correctional impact.

First-Offense Burglary-3rd Degree

Provision. The penalty for first-offense Burglary-3rd degree involving an unoccupied motor vehicle, truck or boat is reduced from a Class D felony to an aggravated misdemeanor. First-offense Attempted Burglary-3rd of vehicles and boats is reduced from an aggravated misdemeanor to a serious misdemeanor.

Impact on Convictions. A total of 186 offenders were convicted under the new first-offense burglary penalties during FY2002, rather than being convicted of a Class D felony. Six offenders were convicted of serious misdemeanor attempted burglary rather than being convicted of aggravated misdemeanors. The total number of convictions for Burglary-3rd and attempts during FY2002 are similar to FY2001.

Offender-Based Convictions: Burglary-3rd degree			
	FY2001	FY2002	
	Total	Total	1st-Offense Only
Burglary-3rd	942	935	186
Attempted Burglary-3rd	232	196	6

Impact on Sentences. About 13% of offenders convicted of first-offense Burglary-3rd were sentenced to prison, which is less than half of the imprisonment rate of those convicted of Class D felony Burglary-3rd in FY2001, and about half of the imprisonment rate for Class D felony Burglary-3rd in FY2002. Instead, the imprisonment rate of first-offense burglars in FY2002 is similar to the imprisonment rate of aggravated misdemeanor burglars prior to the law change. However, a higher percentage of first-offense burglars in FY2002 received sentences involving jail time, compared with aggravated misdemeanor burglars in FY2001.

Burglary Incarceration Rates		
	% Sentenced to Prison	% Sentenced to Jail
<i>FY2002:</i>		
Burglary-3 rd (Class D)	26%	2%
First-Offense Burglary-3 rd (Agg Misd)	13%	27%
<i>Comparison with FY2001:</i>		
Burglary-3rd (Class D)	32%	NA
Attempted Burglary (Agg Misd)	13%	17%

Impact on Prison Admissions. The observed reduction in imprisonment rates for first-offense Burglary-3rd has led to a reduction in new court-ordered prison commitments of offenders with lead crimes of Burglary-3rd, when compared with FY2001.¹ Nine offenders were admitted to prison for lead offenses of first-offense Burglary-3rd. Other prison inmates are also serving sentences for first-offense Burglary-3rd, but not as a lead offense.

New Prison Admissions: Burglary-3rd degree (Lead Offenses Only)			
	FY2001	FY2002	
	Total	Total	First-Offense Only
Burglary-3rd:			
<i>Total New Prison Admissions</i>	279	232	9
New Court-Ordered Commitments	138	95	5
New - Probation Revocations	141	137	4
Attempted Burglary-3rd:			
<i>Total New Prison Admissions</i>	21	16	0
New Court-Ordered Commitments	6	5	0
New - Probation Revocations	15	11	0

Impact on Average Length of Stay in Prison and Jail. An insufficient amount of time has elapsed to compare the average length of stay in prison for offenders convicted of first-offense Burglary-3rd with those convicted of Class D felony Burglary-3rd. However, based on a sample of year 2002 prison exits, one may expect that offenders imprisoned for first-offense Burglary-3rd will serve less time on average than if they had been convicted of a Class D felony. Non-violent Class D felons released in 2002 served an average of 15 months in prison prior to “first release”, while non-violent aggravated misdemeanants served an average of 8 months. Non-violent offenses include burglary, other property crimes, and drug offenses. Releases include parole, work release, sentence reconsideration, expiration of sentence, and other forms of release. “First release” is the first prison exit that occurs on the prison commitment.

Regarding offenders sentenced to jail on conviction for first-offense Burglary-3rd, the average length of the jail term (the portion to be actually served in jail and not suspended) was 39 days. This is substantially less than the average jail term for aggravated misdemeanor Attempted Burglary-3rd during FY2001, which was 67 days. Therefore, while first-offense burglars are being sentenced to jail more often than aggravated misdemeanor burglars in the past, their sentences are shorter on average.

¹ The lead offense is the crime that holds the inmate in prison for the longest amount of time, as determined by the tentative discharge date. The lead offense is usually, but not always, the most serious offense.

Optional Determinate Class D Felony Sentence

Provision. A judge may sentence a person convicted of a Class D felony to a determinate term of at least one year, but less than the five-year maximum sentence, if mitigating circumstances exist and are specifically stated on the record. This provision is limited largely to those whose crimes are not against persons², and offenders who commit new offenses while in prison, on parole or on work release are not eligible for the determinate term.

Impact on Prison Admissions. Hundreds of new prison admissions involve Class D felony sentences eligible to receive the optional determinate sentence. However, only 39 offenders have received determinate terms during FY2002.

New Prison Admissions: Class D Felony Non-Persons/Non-OWI

	FY2001	FY2002	
	Total	Total	Those w/ Determinate Sentences
Total New Prison Admissions:	995	1,057	39*
New Court-Ordered Commitments	522	495	35
New - Probation Revocations	473	562	2

* Includes two admissions due to parole revocation.

Impact on Average Length of Stay in Prison. CJJP conducted an analysis of a sample of Class D non-violent felons released from prison during 2001, including examination of these offenders' criminal histories and disciplinary reports received while in prison. This information was used to create the following chart:

For Prior Incarceration History of This:	Determinate Term Would Be No More Than This:
No Prior Jail or Prison	2 years
One or More Prior Jail Terms	2 years and 6 months
One Prior Prison Term	2 years and 10 months
Two or More Prior Prison Terms	3 years and 2 months

Note: The determinate terms listed above represent the longest sentence that a judge may give an offender without creating the potential for the offender to serve more than the historical average time served for the offense.

This information formed the basis for examining whether persons sentenced under the determinate option are likely to serve less than, the same as, or more than what they would have

² The law excludes convictions for forcible felonies, drunken driving, murder/manslaughter offenses (Chapter 707), assault (Chapter 708) and sexual abuse (Chapter 709), as well as felonies listed in Section 901A.1 and Section 902.12 of the *Iowa Code*.

served if sentenced to an indeterminate term. CJJP's analysis shows that 18 or 46% of those receiving determinate terms are projected to serve the same or less time than they would have served if they had received indeterminate terms, based on their criminal histories. Hereafter, we will refer to this group as Group A. The remainder, 21 or 54% of those receiving determinate terms are projected to serve more time in prison than they would have otherwise served if convicted of a Class D felony and sentenced to an indeterminate term. This latter group (Group B) included two offenders who were ineligible to receive the determinate term due to having committed their crimes while on parole.³

Determinate Terms: Impact on Average Length of Stay in Prison (LOS)

Criminal History	Total # of Offenders	Group A		Group B	
		# in Group A	Avg. Difference in LOS	# in Group B	Avg. Difference in LOS
No Prior Jail or Prison	13	8	- 4 mos.	5	+ 16 mos.*
One or More Prior Jail Terms	8	0	--	8	+ 7 mos.
One Prior Prison Term	12	7	- 5 mos.	5	+ 9 mos.
Two or More Prior Prison Terms	6	3	- 9 mos.	3	+ 6 mos.

*This average is substantially affected by one case where the offender was sentenced to 2 consecutive 4.5 year terms, and will serve about 42 months more than if sentenced to an indeterminate Class D felony. The average difference in LOS for the two other cases is + 10 months.

"Average Difference in LOS" is the projected average number of months more or less in prison that the offender category will serve due to determinate sentencing, compared with similar offenders sentenced to indeterminate terms.

Group A: Will serve the same or less time than they would have otherwise.

Group B: Will serve more than they would have otherwise if convicted of Class D felonies.

Of Group B offenders, five or 24% were originally charged with a more serious offense. Therefore, the prosecution and defense may have reached an agreement in these cases for the defendant to plead to a lower level felony in exchange for a determinate term that would hold the offender in prison for longer than the average Class D felon. However, it is also likely that at least some prosecutors, defense attorneys and/or judges involved in Group B sentences were unaware that these offenders were receiving sentences that would require them to serve longer prison terms than they would have otherwise.

The net effect of these changes in average length of stay on the prison population has been to slightly *increase* the inmate population. As of December 31, 2002, four offenders will be incarcerated within Iowa's prison system, who would have been released had they been sentenced to indeterminate terms. By December 31, 2004, CJJP estimates that the prison population will have increased by about 33 offenders due to determinate Class D felony sentencing, and that no further increase in prisoners will occur subsequent to that date.

³ The Attorney General's office pointed out the ineligibility for determinate sentencing of one of these offenders' cases to the county attorney, and the offender was subsequently resented to an indeterminate term. The other offender's case has only recently come to the attention of the Attorney General.

Geographic Sentencing Differences. At the request of some members of the Iowa General Assembly as well as the Department of Corrections, CJJP examined whether any rural/urban differences in use of the optional determinate term existed. Please keep in mind that the number of determinate terms examined is small, and therefore these findings are preliminary. CJJP examined offenders receiving determinate terms in two separate groups: a) those projected to serve the same or less than they would have otherwise, or Group A; and b) those projected to serve more time than the average, or Group B.

When compared with FY2002 new prison admissions for non-violent, non-OWI Class D felons, it appears that a greater proportion of other counties are using the determinate Class D felony option than are the largest counties. This difference appears to be highest for offenders projected to serve more time than they would have if sentenced to an indeterminate term.

New Prison Admissions: Class D Felony Non-Persons/Non-OWI			
	All DF Non-Violent FY2002	Determinate Group A	Determinate Group B
% Large Population Counties*	51%	44%	38%
% All Other Counties	49%	56%	62%

*Black Hawk, Linn, Polk, Scott and Woodbury.

Most Determinate Terms Arose in Southern and Eastern Iowa. CJJP did find differences among the judicial districts in application of determinate terms. Twenty-two or 56% of determinate sentences were due to convictions in the 7th Judicial District. Another 12 or 31% of determinate sentences were handed down in the 8th Judicial District.

Determinate Terms by Judicial District		
Judicial District	Determinate Group A	Determinate Group B
1st	1	---
2nd	1	---
3rd	---	---
4th	---	---
5th	1	1
6th	1	---
7th	13	9
8th	1	11

No Differences in Sentencing by Offenders' Race/Ethnicity. Also at the request of various officials, CJPJ examined whether there were differences in determinate terms for various race and ethnic groups. Again, due to the low numbers involved, these findings are preliminary. Regarding both groups, there were no substantial differences found with regard to offenders' race/ethnicity in the application of determinate terms, when compared with FY2002 new prison admissions for non-violent, non-OWI Class D felons.

New Prison Admissions: Class D Felony Non-Persons/Non-OWI			
Offenders' Race/Ethnicity	All DF Non-		
	Violent FY2002	Determinate Group A	Determinate Group B
% White (non-Latino)	76%	78%	90%
% African-American	18%	22%	10%
% Latino and Other Races	6%	---	---

No Differences in Sentencing by Offenders' Sex. CJPJ also examined determinate terms by offenders' sex. Regarding Groups A and B, there were no substantial differences found with regard to offenders' sex in the application of determinate terms, when compared with FY2002 new prison admissions for non-violent, non-OWI Class D felons.

New Prison Admissions: Class D Felony Non-Persons/Non-OWI			
Offenders' Sex	All DF Non-		
	Violent FY2002	Determinate Group A	Determinate Group B
% Female	16%	11%	10%
% Male	84%	89%	90%

Extended Felony Sentence Reconsideration

Provision. Allows a judge up to one year to reconsider the sentence of a felon. Previously, the judge had up to 90 days to reconsider the sentence.

No Impact on Prison Admissions. CJPJ examined the possibility that judges might increase sentences to prison for offenders that they will later release under the new sentence reconsideration provisions. As documented below, probation revocations between FY2001 and FY2002 have increased by 14.9%, while new court-ordered prison commitments have decreased by 3.1%. Overall, there has been a 3.2% increase in total new prison admissions. However, due to the opposing trends in new court-ordered commitments and probation revocations, it appears unlikely that extended sentence reconsideration has led to the observed overall increase.

New Prison Admissions			
	FY2001	FY2002	% Change
Total New Prison Admissions	3,271	3,376	3.2%
New Court-Ordered Commitments	2,125	2,059	-3.1%
New - Probation Revocations	1,146	1,317	14.9%

No Impact on Prison Releases Due to Sentence Reconsideration. The number of releases due to sentence reconsideration during FY2002 declined by 21 offenders, or by about 7.6% when compared with the previous year.

Prison Releases: Sentence Reconsideration			
	FY2001	FY2002	% Change
Number of Releases	273	252	-7.6%

Source: E-1 Reports

Longer Prisoner Average Length of Stay. The average length of prison stay for offenders released due to sentencing reconsideration during FY2002 increased by one month overall, when compared with the average length of stay for FY2001 releases. While 19% of those released to shock probation in FY2001 served five months in prison or longer, 36% of those released to shock probation in FY2002 served five months in prison or longer.

It should also be noted that prior to enactment of Senate File 543, some offenders were serving up to one year or more in prison prior to release due to sentence reconsideration. A number of judges have confirmed that they found a way under previous law to use their sentence reconsideration authority in a manner resulting in prison stays exceeding 90 days for felons. Another factor in lengths of stay exceeding 90 days (particularly in the 3-to-4.9 month range) is

the length of time required by corrections officials to process inmates for release to community supervision.

Prison Releases: Sentence Reconsideration		
Length of Prison Stay	FY2001	FY2002
up to 90 days	26%	20%
3.0 to 4.9 months	55%	44%
5.0 to 11.9 months	18%	33%
12+ months	1%	3%
<i>Average Time Served</i>	4 months	5 months

No Substantial Change in the Number of Judges Exercising Sentence Reconsideration Authority. The number of judges involved in FY2002 releases due to sentence reconsideration was about the same as the number ordering such releases in FY2001.

Number of Judges Ordering Releases Due to Sentence Reconsideration		
	FY2001	FY2002
1 Reconsideration	35	45
2 Reconsiderations	22	20
3+ Reconsiderations	28	23
<i>Total Judges</i>	85	88

Sex Offender Registry Requirements

Provisions. Effective beginning in FY2003, additional requirements placed on persons subject to registry as sex offenders are as follows:

- Registration for students and employees of institutions of higher education in the county where the institution is located, if different from the county of their residence. Violations are punishable as a serious misdemeanor for a first offense and a Class D felony for a repeat violation.
- Registered sex offenders may not reside within two thousand feet of an elementary or secondary school, or a child care facility (with some exceptions). Violations are punishable as an aggravated misdemeanor.

Monitoring Plan. Information from the court information within the Iowa Justice Data Warehouse will be used to obtain monitoring information to assess the impact of these new requirements on the justice system. Data will include charge filings, dispositions and penalties imposed.

Concerning requirements pertaining to institutions of higher education, CJJP will be able to differentiate most such charges, because first-offense violations are serious misdemeanors under *Iowa Code* section 692A.7, while other registration violations under the section are at higher offense class levels. Second and subsequent violations of higher education requirements are Class D felonies; CJJP will monitor Class D felony violations of section 692A for FY2003 and compare the number of such offenses with FY2002 information to determine whether there has been a change in the number of such felony violations. During FY2002, there were 20 Class D felony charges disposed under section 692A.7.

Concerning requirements pertaining to schools and child care facilities, CJJP will be able to differentiate most such charges, because these will be under a separate *Iowa Code* section (692A.2A).

For all of the above, CJJP will access community-based corrections information within the Iowa Justice Data Warehouse, as well as the Adult Corrections Information System, to describe the correctional impact on the district departments of correctional services and the state prison system.

FY2003 Case Filings for Violations Already Occurring. According to the Iowa Justice Data Warehouse, twelve offenders have been charged with sex offender registry violations relating to living near schools/child care facilities, through December 2002. None of these charges have reached disposition as of the end of December. There were no charges filed for violations pertaining to institutions of higher education for the same time period.