

State Legislation Monitoring Report:

FY2004

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:

- Changes in “crack” cocaine and “powder” cocaine penalties under Chapter 124.401 (effective FY2004; see p.3).
- Commitments to prison involving manufacture, distribution, or possession of methamphetamine under Chapter 124.401 (see p.5).
- Prosecution of offenders for child endangerment under Chapter 726.6(g) for permitting the presence of a child or minor at a location where a controlled substance manufacturing or a product possession violation occurs (see p.7).
- Provision of an enhanced penalty for manufacturing of controlled substances under Chapter 124.401C when children are present and the offender is not charged under section 726.6(g) (see p. 7).
- Creating a new offense when a retailer sells more than two packages of any product containing pseudoephedrine (chapter 126.23A) and providing for an enhanced penalty under Chapter 714.7C when a theft involves more than two packages of similar products (see p.8).
- 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. 9).

Summary of Findings

- ***“Crack” vs. “powder” cocaine penalties (chapter 124.401[1B]).*** It is difficult to determine if the change to equalize penalties for crack cocaine and powder cocaine has had any impact. Collection of data from pre-sentence investigations and institutional reception summaries indicates inconsistency in how drug amounts are recorded. That said, a comparison of cocaine admissions to prison in FY03 and FY04 contains some evidence that the statutory change may be having the desired impact in reducing crack cocaine admissions for small amounts of drugs.
- ***Monitoring “meth” prison commitments.*** While there was no statutory change pertaining to manufacture, distribution, or use of methamphetamine during the 2004 legislative session, the Criminal Justice Advisory Council requested continued monitoring of prison commitments for meth due to its primacy in drug-related prison commitment in Iowa. While the fourth quarter of FY2004 showed the highest percentage of commitments for meth during the year, the overall percentage of commitments for meth manufacture, distribution, and use was less than was seen in FY2003.
- ***Child endangerment.*** A new section (chapter 726.6[g]) was added to the Code to provide for child endangerment charges when a child is knowingly permitted at a location where methamphetamine is being manufactured. There were no prosecutions under this chapter during the first six months of state FY2005.
- ***Child endangerment.*** An enhancement was added to sections 124.401C of the code to permit an additional confinement of five years when methamphetamine is manufactured in the presence of minors. Two persons were sentenced to Iowa prisons during the first six months of FY2005 under chapter 124.401C, but neither sentence appears to have been affected by this enhancement.
- ***Retail sale of more than two packages of products containing pseudoephedrine.*** A new section (chapter 126.23A) imposes penalties on retailers violating this chapter. There were no charges filed under this chapter during the first six months of FY2005.
- ***Theft of products containing pseudoephedrine.*** A new section, 714.7C, imposes penalties when a person steals more than two packages or products containing pseudoephedrine as an active ingredient. There were eight charges filed under chapter 714.7C during the first six months of FY2005 and one conviction.
- ***“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 on July 1, 2004. Through January 18, 2005, forty-two inmates had become eligible for release consideration, with eight of these having been released to parole and/or work release.

“Crack” and “powder” cocaine penalties

Provision. Effective beginning in FY2004, SF422 modified the amounts specified in the *Iowa Code* that determine the penalty level of “crack” and “powder cocaine offenses as follows:

“Crack” Cocaine

Penalty	Prior to FY2004: Amount Dealt	Current Law: Amount Dealt
Class B – 50 years	> 50 grams	> 50 grams
Class B – 25 years	> 5 grams	> 10 grams
Class C – 10 years	Up to 5 grams	Up to 10 grams

“Powder” Cocaine

Penalty	Prior to FY2004: Amount Dealt	Current Law: Amount Dealt
Class B – 50 years	> 5 kilograms	> 500 grams
Class B – 25 years	> 500 grams	> 100 grams
Class C – 10 years	Up to 500 grams	Up to 100 grams

Monitoring Activity. CJJJ collected information on type of drug involved in drug offenses from the Iowa Corrections Offender Network (ICON) for all incoming inmates whose lead charge involved drugs during state FY2004 and for the third quarter of FY2003. The distribution of sentences for incoming inmates with cocaine drug crimes as lead offenses during these two periods is shown below:

Drug Involved in Commitment to Iowa Prisons, FY2003 and FY2004, by Class

Class	Primary Drug Leading to Commitment					
	FY2003			FY2004		
	Cocaine	Crack	Total	Cocaine	Crack	Total
B Felony N	1	1	2	2	7	9
Percent	7.1%	3.1%	4.3%	3.3%	7.7%	5.9%
Other Felony	1	3	4	6	7	13
Percent	7.1%	9.4%	8.7%	9.8%	7.7%	8.6%
C Felony	9	21	30	47	54	101
Percent	64.3%	65.6%	65.2%	77.0%	59.3%	66.4%
D Felony	0	4	4	4	18	22
Percent	0.0%	12.5%	8.7%	6.6%	19.8%	14.5%
Misdemeanors	3	3	6	2	5	7
Percent	21.4%	9.4%	13.0%	3.3%	5.5%	4.6%
Total N	14	32	46	61	91	152

* FY 2003 figures are for January-March 2003.

The table suggests some differences between the two years. First, if one assumes that the figures for FY03 represent about one-quarter of that year’s admissions, it appears that the

raw number of admissions for cocaine-related offenses dropped somewhat in FY04. All of this apparent decrease occurred in admissions for crack-related offenses. One result of this apparent decrease in crack admissions is that the **ratio** of powder cocaine to crack admissions for the two years is quite different, as the sample of FY2003 admissions shows a ratio of crack to powder of more than 2:1, while in FY2004 the ratio was approximately 1.5:1.

Second, while SF422 appears to make it easier to prosecute for Class B felonies those who possess powder cocaine (as the threshold for Class B offenses was lowered from 500 grams to 100 grams) the *percentage* of incoming inmates convicted of powder cocaine offenses classed as Class B felonies dropped (7.1% in FY03 to 3.3% in FY04, although there was only one admission in the FY03 sample). On the other hand, while SF422 required higher amounts of crack cocaine to reach the Class B threshold (>10 grams vs. >5 grams) the percentage of Class B admissions rose from 3.1% to 7.7%. While one should be cautious in interpreting these numbers, particularly due to small numbers in the FY2003 sample, this tentative finding suggests further study in this area.

At the level of less serious offenses, however, there is evidence that the statutory change may be having the desired effect. Commitments to prison for powder cocaine Class D felonies and misdemeanors dropped from 21.4% in FY03 to 9.9% in FY04 as the amount of cocaine necessary for a Class C conviction was reduced. The rise in the amount of crack cocaine necessary for a Class C felony, on the other hand, was raised, and the result appears to have been an increase in Class D felony and misdemeanor commitments to prison for crack offenses. Thus, for both crack and powder cocaine, the change in the amount necessary for a Class C conviction appears to be functioning consistent with the statutory change.

To obtain a more thorough idea of the impact of the legislative changes, an attempt was made to determine the amount of drugs involved in powder and crack cocaine commitments. Unfortunately, determining the impact of the effort to equalize penalties between powder and crack cocaine has been problematic. An examination of pre-sentence reports and institutional reception summaries suggests that there is great variation in whether and how this information is presented. Many contain no information on drug amounts. Those that include amounts do not use standardized measures, as some include specific amounts (usually in grams), some will provide a range (e.g., “more than five grams”), and some will use another index (e.g., “two rocks of cocaine,” “\$20 worth of cocaine,” or “one bag of marijuana”). It may be possible to expand monitoring of this issue, but only through fairly labor-intensive collection of data from court transcripts or other records.

Monitoring of prison admissions stemming from methamphetamine manufacturing, distribution, or use

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. This instruction was particularly appropriate in FY2004, as admissions to prison dropped during that period while admissions for drug-related offenses continued to rise. For the first time, inmates convicted of drug-related offenses constituted the largest group of admissions to Iowa’s prisons.

Impact to Date. The table below shows the primary controlled substance resulting in commitment for drug-related offenses during state FY2004. 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.

Drug Involved in Commitments to Iowa Prisons, FY2004, by Quarter

Primary drug	QUARTER				Total
	1	2	3	4	
Powder Cocaine	8.3%	6.0%	4.4%	3.5%	5.5%
Crack Cocaine	9.1%	8.7%	8.5%	6.6%	8.2%
Hallucinogens	0.4%	0.4%	0.7%	0.3%	0.5%
Methamphetamine	64.9%	59.5%	61.4%	70.0%	64.1%
Marijuana	15.2%	23.0%	23.4%	18.1%	19.9%
Morphine-derivatives	0.4%	0.0%	0.0%	0.3%	0.2%
Rx drugs	1.4%	2.4%	1.0%	1.0%	1.4%
Unknown	0.4%	0.0%	0.7%	0.0%	0.3%
Total N	276	252	295	287	1,110

According to Iowa’s 2004 Prison Population Forecast, however, commitments for drug offenses involving methamphetamine dropped from 72 percent in FY2003 to the figure above in FY2004, suggesting that, while the number of drug-related commitments continued to rise during FY2004, the *percentage* involving meth actually dropped.

These data may also be broken down by lead commitment offense class. This shows that convictions for methamphetamine manufacture, distribution, and possession tend to fall among the most serious felonies, with 87.9 percent of the Class B drug felonies involving meth. The reverse is true for marijuana.

Drug Involved in Commitments to Iowa Prisons, FY2004, by Class

Class	Primary Drug Leading to Commitment					Total N
	Cocaine	Crack	Meth	MJ	Other	
B Felony N Percent	2 1.7%	7 6.0%	102 87.9%	4 3.4%	1 0.9%	116
Other Felony Percent	6 9.1%	7 10.6%	39 59.1%	13 19.7%	1 1.5%	66
C Felony Percent	47 9.0%	54 10.4%	379 72.7%	23 4.4%	18 3.5%	521
D Felony Percent	4 1.1%	18 5.0%	171 47.9%	160 44.8%	4 1.1%	357
Misdemeanor s Percent	2 4.0%	5 10.0%	20 40.0%	21 42.0%	2 4.0%	50

Impact of HF 2150, creating an offense of Child Endangerment for manufacture of drugs with children present and creating an enhanced penalty under chapter 124.401C.

Provision. This legislation created a new Class D felony under section 726.6(g) when methamphetamine is manufactured in the presence of minors. It also created an enhancement of the maximum term under Chapter 124.401C (manufacturing methamphetamine in the presence of minors) when the individual is not charged under 726.6(g).

Monitoring activity. Analysis of charge and conviction data in the Iowa Court Information System (ICIS) for the first six months of FY2005 indicates that there were no charges brought under sections 726.6(g) during the period, and no convictions. To date, it appears that this new section has had little impact on charges for the crime of Child Endangerment.

There were seven charges brought under Chapter 124.401C, one of which led to conviction. Two persons entered prison under Chapter 124.401C during this period (one resulting from the FY2005 conviction), but neither appears to have been sentenced to the additional five years permitted under HF2150, as both received 15-year sentences which have been typical for this offense. Thus, to date, it appears that the sentencing enhancement has not been used.

For comparison purposes, there were seven admissions to prison for violations of Section 124.401C during FY2003, so (preliminarily) it appears that the statute change has not resulted in an increase in commitments.

Impact of HF 2259, enhancement of penalties relating to the retail sale or theft of packages containing pseudoephedrine

Provision. This legislation created enhancements contained in two sections of the Criminal Code, Section 126.23A and Section 714.7C. The former imposed penalties on retailers selling more than two packages of products containing pseudoephedrine as an active ingredient. The latter increased thefts of more than two packages of similar products from a simple misdemeanor to a serious misdemeanor.

Monitoring Activity. Analysis of data for July 1, 2004 through December 31, 2004, shows no charges in Iowa for violation of section 126.23A and eight charges under 714.7C. Of these eight, one resulted in conviction as charged and three resulted in conviction on other charges. The remaining cases are pending.

Impact of SF 2275, establishing 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 January 18, 2005, forty-two inmates serving 85% sentences have become eligible for release under the provisions of SF2275. None of these inmates would have been previously eligible for release. Of these 42, eight have been released (five to work release, with one of these subsequently being paroled, and an additional three to parole [with one of these released to Interstate Compact and one to detainer]). None of these inmates have been returned to Iowa prisons.

Release of these inmates has saved 2,127 prisoner-days through 1/18/05, or an average of 266 days per inmate. The average savings (per inmate) is expected to increase as the Department of Corrections and Board of Parole become more familiar with preparing 85% inmates for parole eligibility. Assuming release midway between parole eligibility and expiration, it is estimated that twenty-three more inmates will have been released by the end of FY05 than would have been the case under the previous statute.

Estimated Long-Term Impact. CJPJ analysis of the potential correctional impact of the change effected under HF2275 suggests that the impact of the change is greatest in the short term, at least until potential release of Class B 85% inmates starts (under current law) in 2014. The table below shows the estimated reduction in prison population resulting in the change to parole eligibility at 70%:

Fiscal Year End	Reduction
2005	23
2006	48
2007	54
2008	60
2009	36
2010	43
2011	28
2012	16
2013	9
2014	7

While it may not appear intuitive that the population decrease would diminish in the later years, one must remember that 85% sentences handed down for acts committed on or after July 1, 2003 had **already** been modified to permit parole consideration at 70 %. The change occurring due to the passage of HF2275, therefore, will have no impact on these inmates. This accounts for the reduction in impact after 2010.

After 2014 the impact of SF2275 again becomes significant, as those sentenced under 85% Class B provisions become eligible for parole consideration. As of June 30, 2004, there were 331 of these inmates housed in Iowa's prisons, with 39 of these sentenced to 50-year terms. The overall impact of sentence reduction for these inmates is far greater than is the case for the Class C 85% commitments, as the potential 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.