

**PROBATION REVOCATION PROJECT
IN IOWA'S
SIXTH JUDICIAL DISTRICT**

EVALUATION REPORT

Prepared by

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<http://www.state.ia.us/government/dhr/cjip/recpub.html>

Postscript : On February 27, 2002, the Iowa Supreme Court, in the case of Mark Klouda and Michael Wayne Mayberry v. Sixth Judicial District Department of Correctional services and Iowa Board of Parole, found that the Sixth District Pilot Project violated the separation-of-powers doctrine of the Iowa State Constitution. In the Court's ruling, Chief Justice Louis Lavorato wrote the following:

In any event, suspending a sentence, granting probation, revoking probation, or continuing probation fall within the realm of judicial powers. They are judicial functions which result in a court deciding a pronouncing a judgment and carrying it into effect. Because the challenged statutes vest such powers in the ALJs in the sixth judicial district, they encroach upon judicial power and therefore violate the separation-of-powers doctrine of the Iowa Constitution.

The Pilot Project ceased operation upon receiving the Court's opinion. Administrative Law Judges will continue to be used in Iowa for hearings in which revocation of parole is being considered, but not revocation of probation.

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The Division of Criminal and Juvenile Justice Planning (CJJP) would like to acknowledge the assistance and cooperation it received from many justice system officials in the Sixth Judicial District as this report was being prepared. Special thanks are also due to staff members of the Iowa Board of Parole for the support they provided in this research. Although many people contributed to this report, the analyses, interpretations of data, and conclusions are solely those of CJJP.

PROBATION REVOCATION PROJECT IN THE SIXTH JUDICIAL DISTRICT

Project History

During the 1997 legislative session, Governor Branstad recommended that the legislature authorize the Parole Board's administrative law judges (ALJs) to conduct probation revocation hearings in the Sixth Judicial District on an experimental basis. The reasons for this recommendation were two-fold:

- To reduce the workload of criminal court judges.
- To take advantage of the parole Judges' correctional sanctioning expertise.

There was also discussion of additional project goals, including reducing the use of appointed counsel in probation revocations and reducing revocations to prison, but these were not specifically enunciated as project goals.

The General Assembly accepted this recommendation and passed Senate File 503, which became effective July 1, 1997. The Parole Board began implementing the statute on that date and held numerous planning sessions with the Sixth District judges, county attorneys, clerks of court, sheriffs, and Department of Corrections. Due to an early interpretation of the statute, the Board not only was deemed in charge of hearings, but also arrest warrants, bonds, initial appearances, and appointment of counsel. The Board proceeded under this interpretation of the law until December 31, 1997, when Sixth District Court Judge David M. Remley ruled the project invalid.

The Parole Board appealed this decision to the Iowa Supreme Court but dismissed its appeal when the legislature modified the statute to correct the alleged deficiencies of the project by passing Senate File 2377, which became effective on May 22, 1998. This legislation also required an evaluation of the Pilot Project to be completed by the Division of Criminal and Juvenile Justice Planning. The current assessment is in response to that requirement.

One of the requirements for the evaluation was an examination of the impact of the project on probation revocations to prison, so while prison population control has not been a specific goal of the project, it is evident that changes in revocation dispositions were of interest to those supporting the legislation.

A further challenge to the Sixth District project occurred in 1999, resulting in a ruling handed down by District Court Judge L. Vern Robinson on September 2. Petitioners had both received suspended sentences and had been placed on probation, only to have the probation later revoked by an administrative law judge. In this case, as in earlier cases, the petitioners claimed a lack of due process and equal protection, and also challenged the use of administrative law judges in revocations on the basis of separation of powers. The Court determined that the revocation procedure used in the Sixth Judicial District as set out in section 907.8A was constitutional.

As to the due process contentions of the appellants, the Court noted that [A probationer's due process rights] are guarded and assured in section 907.8A. A probationer is given notice of the alleged violations and a hearing is scheduled to prove the truth of the allegations. A probationer is entitled to appointed counsel and is given an opportunity to defend the application. A record is made and an appeal is available through the administrative process as well as to the district and ultimately the Supreme Court. Any claim of a failure to afford a probationer due process in the 6th Judicial District is without merit.¹

On the issue of equal protection, the Court noted that, while there were "minor distinctions" between the rights of probationers in the 6th District and those in other districts, they "do not rise to constitutional infirmity."

The tribunal which hears probation revocation case[s] in the 6th Judicial District has the same options available to it that a district judge has in the other districts. Other than the method of appeal (17A appeal versus post conviction relief), there is virtually no distinction. Thus, factually, there is no violation of equal protection.²

The Court added that using the 6th Judicial District to test an administrative system is a "reasonable legislative prerogative," and may "result in a court system which is more efficient and is able to resolve more disputes."

The potential information to come from the 6th District experiment furthers a legitimate State interest. There is no unequal protection of law.³

Petitioners also claimed that section 907.8A breached the separation of powers by entrusting a judicial function to a representative of the Executive Branch. The Court also rejected this contention, indicating that

...the judicial branch has carried out its obligation when it sentenced the defendants to an indeterminate term of years, placed them in the custody of the Director of Corrections, and then suspended the sentence conditioned on the probationer's compliance with all rules and requirements imposed by the court and the probation office. Once the court has sentenced the defendants, they are "turned over" to a representative of the Executive Branch of government (probation officer), who monitors their conduct and, if the probationers fail in following condition[s] of the probation, they (probationers) are subject to revocation and sanctions. Determining whether a probationer has violated his or her conditions of probation is not necessarily a judicial responsibility.⁴

During the 2000 legislative session the life of the Sixth District Pilot Project was continued for another two years.

¹ Michael Wayne Mayberry and Mark Klouda vs. Sixth Judicial Department of Correctional Services and Board of Parole for the State of Iowa, p. 3.

² *Id.*, at p. 4.

³ *Ibid.*

⁴ *Id.*, at p. 5.

Project Description

Essentially, the Sixth Judicial District Pilot Project treats probation violation hearings in the same manner as parole violation hearings. When a probationer is serving a suspended prison sentence, the project permits an administrative law judge to dispose of the case rather than requiring the District Court to adjudicate the violation. These decisions are appealable to the Chairperson of the Board of Parole through an administrative appeal process, and ultimately to the District and Supreme Courts. Such appeals have been very rare.

Since the project's beginning, most Pilot Project hearings have been held over the Iowa Communications Network (ICN), with the probationer, his or her counsel, a probation officer, and (occasionally) an assistant county attorney present at a county ICN site, while the administrative law judge conducts the hearing from Des Moines or a Boone field office.⁵ At each site are a camera and television monitor so that there is visual and audio communication between locations. The hearings are conducted in the same manner as most judicial hearings, with presentation of the charges against the probationer and then the probationer's response. In these hearings, like others, most defendants have already stipulated to the truth of the allegations, and the probation officer and probationer have already agreed to a recommended sanction; in disputed hearings, the probation officer normally acts as the prosecutor, as most county attorneys seldom have become involved in hearings.

Since October of 2000 a second administrative law judge has been handling cases in all the counties but Linn. He conducts hearings in person rather than on the ICN. Those involved in these live hearings have voiced their approval of the change, as there have been logistical problems associated with use of the ICN. The ICN sites in some of the smaller counties were also viewed as being inappropriate for violation hearings, and the use of courtrooms for the live hearings has been received favorably.

Research Methodology

Data used in this assessment are of two types. Archival data were collected from files of the Iowa Board of Parole and Department of Corrections to provide an indication of the functioning of the Pilot Project. In addition, interview data were collected from representatives throughout the justice system to determine the impact of the project on justice system functioning. Those interviewed came from the following groups:

Table 1: Interview Respondents

| | |
|---------------------------|-----------|
| Judiciary | 5 |
| Administrative. Law Judge | 2 |
| County Attorney staff | 6 |
| Public Defense staff | 2 |
| Judicial Branch staff | 4 |
| Corrections staff | 9 |
| Total interviewed | 28 |

⁵ Face-to-face hearings are available upon request or when there are special security concerns.

Interviewing was done in two episodes, the first in March and April of 2000 and the second in April of 2001. Most of those interviewed during the first series of interviews were re-contacted during the second to determine any change in their opinions during the intervening year, so opinions expressed here should be representative of current views toward the project.

Findings

Archival Data Analysis

The archival data used in this assessment were collected primarily by the Iowa Board of Parole to permit monitoring of Pilot Project operation. From the project's inception the Revocation Division of the Board has collected information on each hearing conducted by the primary administrative law judge involved in the project. These figures run through the project's beginning to the current time. Figures presented here cover the period through March of 2001. The administrative law judge who currently conducts live hearings in four of the six Sixth District counties has established his own database to monitor project activity, but his figures have been used here only marginally.

Probation revocation hearings held by the administrative law judge rose markedly during FY2000, as the number of cases disposed increased from 74 in FY99 to 258 in FY 2000. The monthly distribution of dispositions is shown below:

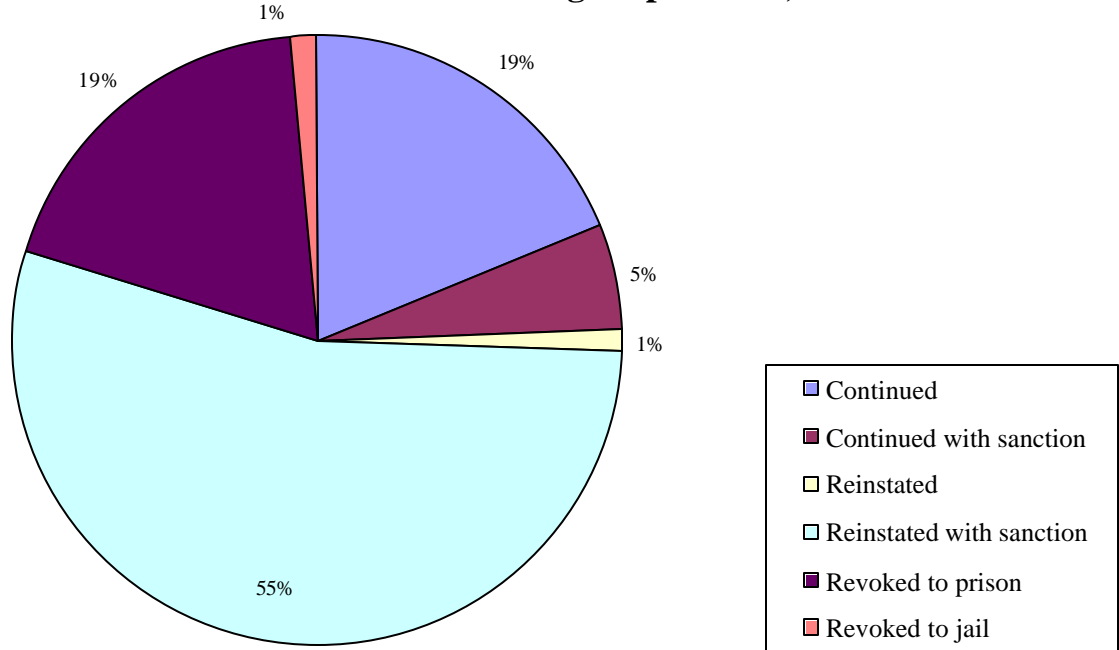
Table 2: Sixth District Pilot Project Dispositions, by Quarter

| Quarter | Dispositions |
|------------------------------|--------------|
| 3 rd quarter 1998 | 3 |
| 4 th quarter 1998 | 16 |
| 1 st quarter 1999 | 23 |
| 2 nd quarter 1999 | 32 |
| 3 rd quarter 1999 | 42 |
| 4 th quarter 1999 | 51 |
| 1 st quarter 2000 | 57 |
| 2 nd quarter 2000 | 78 |
| 3 rd quarter 2000 | 100 |
| 4 th quarter 2000 | 41+47* |
| Total | 490 |

* 47 live hearings conducted by second ALJ.

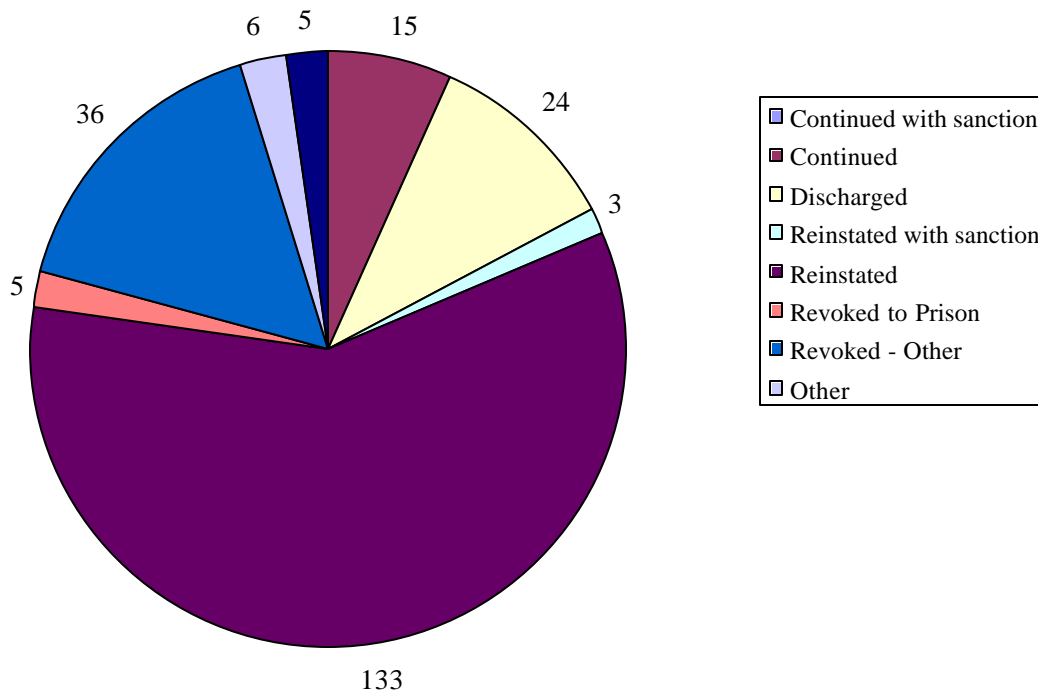
The distributions of hearing dispositions for FY99 and FY2000 are shown in the chart below.

Probation Revocation Hearing Dispositions, FY99



The FY99 figures are notable in several respects. First, there was a large increase in the number of cases adjudicated (from 24 in FY98 to 74 in FY99). There was also a shift away from revocations to jail (7 in FY98, compared to 1 in FY99 despite added numbers). There was similarity in revocations as a percentage of the total (54% in FY98 vs. 56% in FY99). Four individuals were referred to Violator Programs operated by the Department of Corrections (vs. 1 in FY98). Twenty-nine cases (39%) involved placement in residential facilities (the Hinzman Center, Hope House, or the Nelson Center).

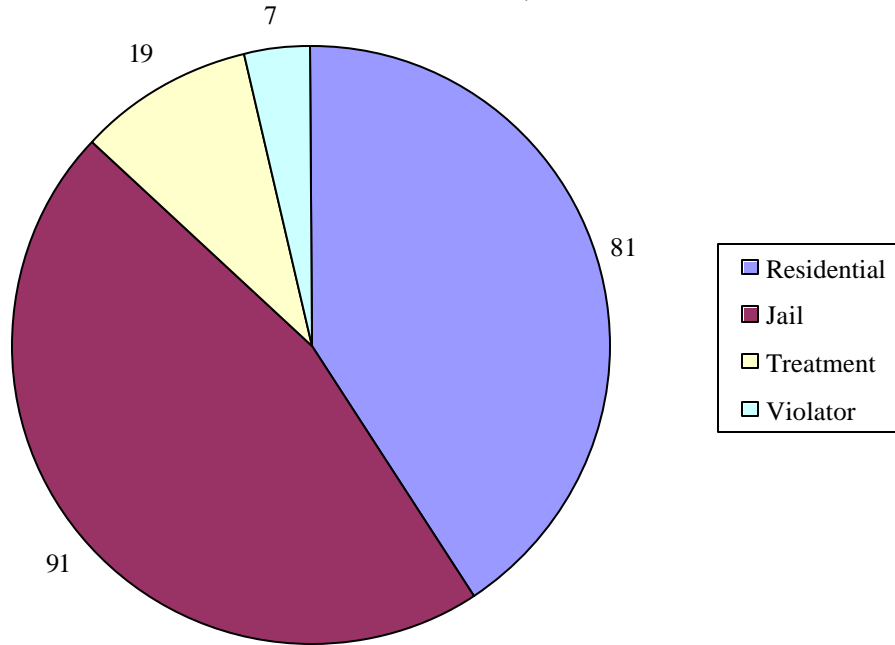
Sixth District Dispositions, FY2000



The FY2000 figures showed a large increase in the number of cases adjudicated (from 74 in FY99 to 258 in FY2000). There was a substantial drop in the percentage of cases resulting in revocation (54 percent in FY98, 56 percent in FY99, and 18.5 percent in FY2000).

The distribution of sanctions handed down in FY2000 dispositions is shown below. It should be remembered that there may be multiple sanctions within a single disposition, so there is overlap in the numbers. The most common sanction was referral to jail (91 individuals, or 45 percent of the dispositions). Eighty-one cases (41 percent) involved placement in residential facilities (the Hinzman Center, Hope House, or the Nelson Center). Seven individuals were referred to Violator Programs operated by the Department of Corrections and 19 were referred to treatment.

Distribution of Sanctions, FY2000



One factor upon which the Pilot Project can be judged is its impact on the number of probations resulting in revocation to prison. As noted above, while a reduction in revocations was not specifically enunciated as one of the goals of the project, there was a clear belief among some of those interviewed that controlling admissions to prison was a primary focus of the project.

Examining changes in revocations is not without its complexities, however. The Pilot Project was implemented at a time when Iowa has been faced with a crowded prison system, and one of the factors associated with rising commitments has been increasing probation revocations. The Department of Corrections, as a result, as a matter of policy has attempted to reduce probation revocations by urging probation staffs to exhaust every possible community-based option prior to requesting revocation.

Opinions on the impact of the project on probation revocations vary. There are a number of justice system actors who believe that the project has resulted in a reduction in prison commitments from the District; some respondents were favorable about this impact and others were not. The probation staff, while acknowledging a drop in revocations from the District, insist that the major factor associated with this drop has been implementation of an “alternative sanction grid” that has helped them ensure that all local alternatives have been considered prior to a request for revocation. It is left to the reader to decide the role of the project in the figures below:

Table 3: Revocations to Prison, by District

| District | FY97 | FY98 | FY99 | FY00 |
|-----------------|-------------|-------------|-------------|-------------|
| 1 | 147 | 192 | 186 | 215 |
| 2 | 89 | 110 | 101 | 84 |
| 3 | 68 | 91 | 68 | 78 |
| 4 | 35 | 50 | 34 | 40 |
| 5 | 264 | 367 | 270 | 276 |
| 6 | 102 | 86 | 62 | 60 |
| 7 | 96 | 124 | 118 | 131 |
| 8 | 133 | 172 | 108 | 126 |

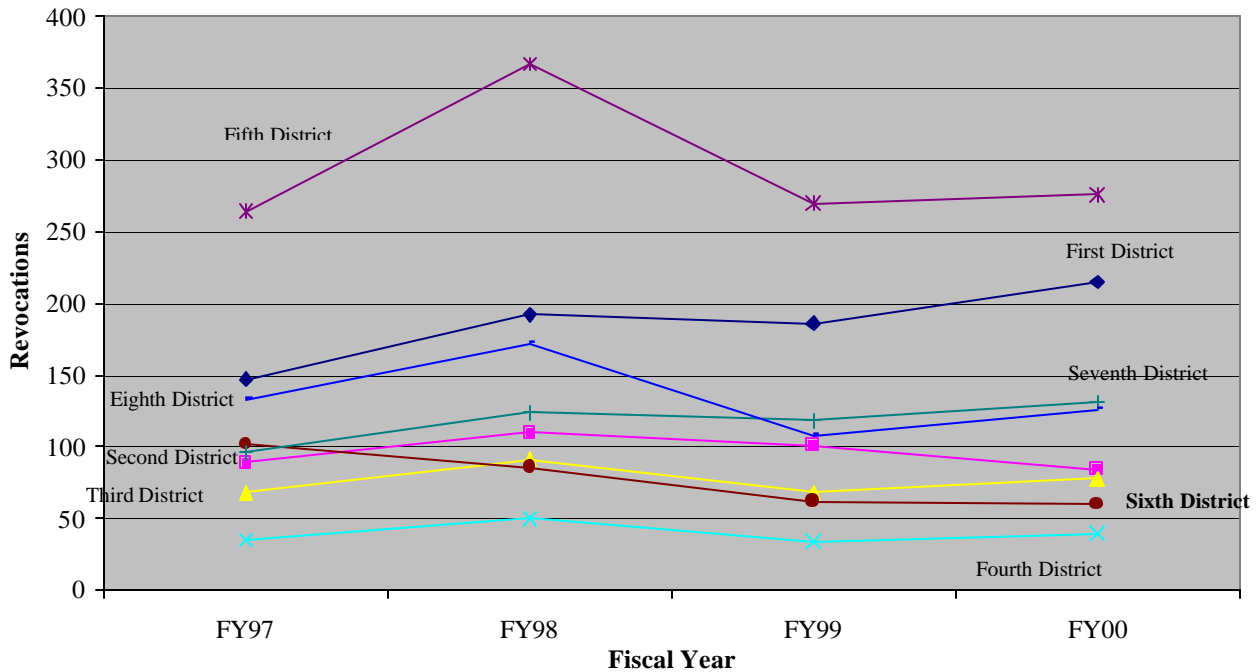
Source: ACIS prison admission file.

Note that the Sixth District is the only one to show reductions in each of the three years after FY97. Supporting the notion that the project has affected revocations, in the period covered by the Pilot Project the District dropped from having the fifth-lowest numbers of revocations to the second-lowest. The largest drop in the Sixth District occurred between FY98, prior to implementation, and FY99, when the project was becoming operational.

On the other hand, there was little change in Sixth District revocations between FY99 and FY2000, when the number of revocation hearings conducted by the administrative law judge escalated rapidly and the percentage of dispositions resulting in revocations dropped (as shown above). Thus, while it can't necessarily be said that that project has resulted in **reduced revocations** in the Sixth District, it can be said that the project has not been associated with **more revocations**.

A graphical presentation of statewide probation revocations is shown below:

Revocations to Prison, FY97-FY00



The tables below present information on the range of dispositions used in the Sixth District by administrative law judges during fiscal years 1998-2000 and the first nine months of FY01. Note that figures from the second administrative law judge are not included here:

Table 4: Total Pilot Project Dispositions, by Sex

| Disposition* | Sex | | | | Total | |
|---------------------------|-----------|---------------|------------|---------------|------------|---------------|
| | Female | | Male | | | |
| | N | % | N | % | N | % |
| Continued | 8 | 11.4% | 52 | 12.5% | 60 | 12.3% |
| Cont w/sanction | 4 | 5.7% | 19 | 4.6% | 23 | 4.7% |
| Discharged | 1 | 1.4% | 3 | 0.7% | 4 | 0.8% |
| Disch. W/sanction | 1 | 1.4% | 0 | 0.0% | 1 | 0.2% |
| Other | 5 | 7.1% | 8 | 1.9% | 13 | 2.7% |
| Reinstated | 3 | 4.3% | 8 | 1.9% | 11 | 2.3% |
| Rein w/sanction | 37 | 52.9% | 245 | 58.9% | 282 | 58.0% |
| Rev to Jail | 0 | 0.0% | 2 | 0.5% | 2 | 0.4% |
| Rev-OWI facility | 0 | 0.0% | 4 | 1.0% | 4 | 0.8% |
| Rev to Prison | 11 | 15.7% | 75 | 18.0% | 86 | 17.7% |
| Total Dispositions | 70 | 100.0% | 416 | 100.0% | 486 | 100.0% |

* Figures represent all dispositions included in the Pilot Project database maintained by the Iowa Board of Parole through 3/1/01. Numbers relate to the numbers of dispositions, not the number of offenders. One offender may have several dispositions.

Figures in Table 4 indicate that there has been little variation in dispositions by sex, as it appears that men and women facing violation hearings before the administrative judge have been treated similarly. Women have been slightly less likely to be revoked to prison and slightly more likely to receive a disposition coded here as “other” (most often reconsideration of sentence).

Table 5 presents disposition data by race:

Table 5: Pilot Project Dispositions, by Race

| Disposition* | Race | | | | | | | | | | Total | |
|---------------------------|------------|---------------|-----------|---------------|-----------|---------------|--------------|---------------|----------|---------------|------------|---------------|
| | White | | Black | | Hispanic | | Native Amer. | | Other | | | |
| | N | % | N | % | N | % | N | % | N | % | N | % |
| Continued | 46 | 12.5% | 9 | 11.8% | 2 | 11.1% | 3 | 13.6% | 0 | 0.0% | 60 | 12.3% |
| Cont w/sanction | 17 | 4.6% | 3 | 3.9% | 1 | 5.6% | 2 | 9.1% | 0 | 0.0% | 23 | 4.7% |
| Discharged | 3 | 0.8% | 1 | 1.3% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 4 | 0.8% |
| Disch. w/sanction | 1 | 0.3% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 1 | 0.2% |
| Other | 9 | 2.4% | 2 | 2.6% | 1 | 5.6% | 1 | 4.5% | 0 | 0.0% | 13 | 2.7% |
| Reinstated | 8 | 2.2% | 2 | 2.6% | 0 | 0.0% | 1 | 4.5% | 0 | 0.0% | 11 | 2.3% |
| Rein w/sanction | 216 | 58.7% | 46 | 60.5% | 13 | 72.2% | 7 | 31.8% | 0 | 0.0% | 282 | 58.0% |
| Rev to Jail | 1 | 0.3% | 1 | 1.3% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 2 | 0.4% |
| Rev-OWI facility | 3 | 0.8% | 1 | 1.3% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 4 | 0.8% |
| Rev to Prison | 64 | 17.4% | 11 | 14.5% | 1 | 5.6% | 8 | 36.4% | 2 | 100.0% | 86 | 17.7% |
| Total Dispositions | 368 | 100.0% | 76 | 100.0% | 18 | 100.0% | 22 | 100.0% | 2 | 100.0% | 486 | 100.0% |

* Figures represent all dispositions included in the Pilot Project database maintained by the Iowa Board of Parole through 3/1/01. Numbers relate to the numbers of dispositions, not the number of offenders. One offender may have several dispositions.

This table shows that there is similarity in the dispositions of blacks and whites, with similar fates of revocation and similar rates of reinstatement with sanction. Hispanics were most likely to be reinstated, while Native Americans were most likely to be revoked. One should be cautious in interpreting results for Hispanics, Native Americans, and “others” due to small numbers.

Table 6, on the following page, presents information on the range of Pilot Project dispositions compared to a small sample of non-Pilot Project dispositions in the Sixth District. The comparison group here is probationers with suspended prison sentences who had violation hearings conducted in District Court during fiscal years 1998-2000. This list was obtained from probation officers in the Sixth District. The reasons these hearings were dealt with in District Court are unclear, save a number that occurred when the Pilot Project was under suspension.

Table 6: Comparison of Pilot Project and Non-Pilot Project Dispositions

| Disposition | Pilot Project | | Non-Pilot Project | |
|---------------------------|---------------|---------------|-------------------|---------------|
| | N | % | N | % |
| Continued | 83 | 17.1% | 14 | 29.2% |
| Discharged | 5 | 1.0% | 2 | 4.2% |
| Other | 13 | 2.7% | 2 | 4.2% |
| Reinstated | 293 | 60.3% | 19 | 39.6% |
| Rev to Jail | 2 | 0.4% | 0 | 0.0% |
| Rev-OWI facility | 4 | 0.8% | 0 | 0.0% |
| Rev to Prison | 86 | 17.7% | 11 | 22.9% |
| Total Dispositions | 486 | 100.0% | 48 | 100.0% |

One must be cautious in interpreting the non-Pilot Project dispositions due to low numbers, but it appears that the District Court was somewhat more likely to continue cases and the administrative law judge was more likely to reinstate, two dispositions that result in essentially the same outcome. The most noteworthy finding in the table is that Pilot Project dispositions resulted in revocation somewhat less often than those from the District Court. While, due to low numbers, it cannot be concluded that the Pilot Project has resulted in **fewer** revocations to prison, it can again be said that the project does not appear to have **increased** the level of revocations.

In examining Table 6, it should be remembered that a number of the continuances and reinstatements also involved the imposition of sanctions. The District Court was more likely than the ALJ to *continue* a case with sanction – imposition jail term, referral to a residential facility or to drug treatment, for example. The administrative law judge, however, imposed sanctions in most of his *reinstated* cases. Overall, the ALJ imposed additional sanctions in 63 percent of dispositions, and the District Court in 67 percent.

Interview Findings

As noted above, a variety of justice system actors were interviewed to determine prior and current opinions about the Pilot Project. The initial interviews were held in the spring of 2000, with follow-up interviews and several new interviews conducted a year later. Those selected for interview were those recommended to the evaluation team as being in a position to comment knowledgeably about the Pilot Project. Although not all of those interviewed offered opinions on the project's impact on parts of the justice system other than their own, all had knowledge of the project and all volunteered their opinions on its utility.

The focus of the interview pertained to the advantages and disadvantages resulting from the project. Respondents were asked whether justice system actors spent more or less time on revocations under the Pilot Project and whether they had concerns about fairness and due process.⁶ Given that the project had been in operation for some time prior to the interviews, respondents were asked if their opinion had changed over time. Generally, it could be said that while some of those with initially negative opinions had become more positive, there were none who were initially positive who had become negative.

Synopsis of judicial opinions

It would probably be fair to state that most of the judges in the Sixth Judicial District were initially skeptical of the Pilot Project, as they had reservations about a judicial responsibility being assumed by the Executive Branch and had concerns about due process. There also were concerns about how thoroughly the project had been thought through prior to implementation. Several noted significant logistical problems as the project developed.

Most of the judicial concerns seem to have abated, although there remain judges who are staunchly opposed due to the separation of powers. Several of the favorable judges saw saving of judicial time, freeing them up for other activities. Even one of the negative judges admitted that there had been some time savings, but he noted that revocations had never been very time-consuming, as most violation hearings involve stipulation to the facts.

One judge who had become favorable about the project after initial skepticism noted that there might be more consistency in rulings with fewer judges handling the hearings. He also noted that defense attorneys have quit complaining to him about the project, a sign that due process reservations have abated. There is still some concern, however, that the Executive Branch is controlling both the input and output from the prison system. One also noted that he is more comfortable with the initial ALJ (in Linn County) than with the auxiliary ALJ now working in the District's other four counties.

One supporter mentioned that offenders might "get a fairer shake" under the new system, as it involves less "assembly line justice," and the ALJ is in a position to be more familiar with treatment resources in the community. Several agreed that the project might result in fewer revocations to prison.

⁶ A copy of the interview schedule is in the appendix. Tabular presentations of interview results were not developed because of the wide range of responses obtained with the relatively open-ended questions.

Those who are currently supportive of the project recognize the due process problems with having different procedures in different judicial districts, so (surviving constitutional challenges) they would like to see the project expanded statewide.

Synopsis of judiciary staff opinions

Judiciary staff should be classified as neutral to supportive of the Pilot Project. They voiced concerns about the logistical problems that plagued the project in its first year, but noted that there have been improvements that had surmounted most of the problems. Logistical problems affected clerks' offices in particular, as probation officers assumed some of the responsibilities that the clerks formerly fulfilled, and the paperwork flow that continued to move through the clerks' offices occasionally was problematic. Responsibilities that weren't necessarily made clear in the beginning have since been clarified. The use of faxes and e-mail to expedite paper work has been a boon.

Judiciary staff seemed particularly enthusiastic about the addition of a second ALJ to conduct in-person hearings. They indicated that the new judge has been well-received and is easy to work with.

There was agreement that the project has freed up District Court time to deal with other issues.

One staff noted initial puzzlement about the goals of the project, as he understood that cost savings due to a reduction in appointment of counsel for indigent probationers was one goal; he wondered (correctly, as it turns out) how this could happen.

One staff indicated that one impediment to expansion statewide involves the need for new resources. At minimum, if the project were expanded, the Parole Board would need additional administrative law judges, and the respondent wasn't confident that sufficient funds would be allocated to supply the necessary judges.

Synopsis of county attorney opinions

County attorneys (or their assistants) who were interviewed in five of the District's six counties showed no clear pattern of responses, although a majority did **not** favor the project's continuation.

In the District's two largest counties, the county attorneys both saw some time savings in their offices, but they were split regarding the utility of the project, with one opposing the project on philosophical grounds and the other supporting it because he wanted his office to have as little to do with revocations as possible. The latter referred to the traditional revocation process as a "monumental merry-go-round" in which his staff's sentencing recommendations were usually ignored.

The philosophical argument raised by the one county attorney was that the process was fundamentally flawed with regard to the roles of the Executive and Judicial Branches.

- He expressed apprehension about the Executive Branch being the gatekeeper to the prison system;
- He saw one result of the process being a reduction in revocations to prison and a resulting decrease in public safety.
- He maintained that there is a fundamental difference between probation and parole, and that the probation revocation process should be the responsibility of the judiciary, as the decision may involve a significant new loss of liberty.

Objections to the project in the smaller counties centered on both the nature of the process and its outcome. Two of the county attorneys voiced objections to the project's resulting in fewer revocations to prison. These two, therefore, opposed continuation of the project, one because of comfort with the old system and the other because the old system held offenders more accountable. The one county attorney in favor of continuation hadn't seen much change in revocation hearing outcomes and saw benefits in saving judicial time.

In the smaller counties there was less agreement about any time savings from the project, in part because these counties don't attempt many revocations. The county attorneys also indicated more involvement in revocations than in the larger counties; one, for example, indicated that he reviewed violation reports even if his office weren't involved in the hearing itself. These county attorneys were more likely than their large-county counterparts to be involved in contested hearings at the request of probation officers, and there appeared to be very good communication between county attorneys' offices and probation officers.

The smaller counties are currently being served by a second ALJ who holds hearings in each county rather than via the ICN, so the problems associated with an "electronic court" do not currently manifest themselves in these counties.

Synopsis of defense attorney opinions

Two defense attorneys were interviewed, the public defender and the advocate's office.

Both were apprehensive about the project originally. There had been some indication that the hearings were going to be more like parole revocation hearings, *sans* counsel, and there was concern about that and the extent to which there would be procedural safeguards. One of the two hasn't changed his initial opinion, and the other has become more accepting of the project.

Both mentioned logistical and communication difficulties and occasional equipment malfunctions. One mentioned one occasion when the ALJ was on vacation, but had a hearing scheduled and the players didn't find out he was gone until they'd all waited for him. Both mentioned that there are still occasions when procedures aren't clear. There have been growing pains.

The defense attorneys mentioned continuing inefficiencies with the new system. One example is that District Court judges still handle initial appearances, but they then can't set a hearing date or set bond (the ALJ does those).

One logistical problem involved the general accessibility of judges in the Sixth District compared with the relative inaccessibility of the single administrative law judge. In a populous county like Linn or Johnson a defense attorney could always find a judge if action was needed on a case, but with a single ALJ working the project, finding him hasn't always been easy. The addition of one ALJ on-site who is responsible for hearings in four of the counties should have allayed this concern

Neither had any personal problems with ALJ Twedt, although one mentioned a reluctance to rely on a single person in this capacity. He would have a real problem if there were a "hanging judge" in this position.

Both thought that there might be fewer people revoked to prison, but this may have more to do with new district policy. One thought that revocation outcomes might be less appropriate; the other thought that the ALJ might give more consideration to various treatment alternatives and might have a better handle on them. The latter also thought that the ALJ might have better knowledge about the state of the prison population and work to keep it down. The "flip side" is also true, however; if the population dropped, would that make the ALJ more likely to use imprisonment?

Both mentioned negotiation between the defense and the probation officer as to hearing outcomes. In theory, this negotiation has historically taken place between the prosecution and the defense, but in actuality probation officers have worked with defense attorneys to reach an agreement before presenting a recommendation to the prosecution. With the new process not necessarily involving the prosecution, the old informal process has become more streamlined and formalized.

Neither saw much change in the amount of time defense attorneys spend on revocations.

One was neutral on continuation, the other against. Both continue to have some concerns about the due process aspects of the project, however, although their initial apprehension has abated somewhat.

Synopsis of corrections staff opinions

These personnel were clearly the most negative toward the project. While a number of them indicated being somewhat negative toward the project at its inception, they claim to have tried to make the process work. None said that their opinion of the project had improved over time. Several referred to the project as a "disaster." Their objections stem from a variety of issues:

- There was universal agreement that the project has caused them more work, as they have had to act as prosecutor and, to some extent, clerk, in setting up hearings and distributing documents to the appropriate parties.
- There was significant sentiment of "if it ain't broke, don't fix it." Officers were pleased with the traditional revocation process and believe it ran efficiently in the

Sixth District. Some indicated that the project might help in some other judicial districts with less efficient systems, but that it wasn't needed in the Sixth.

- There was universal agreement that there were major logistical problems, at least at first. Officers felt that the initial enabling legislation was poorly written and did not clearly lay out responsibilities. While there were some early planning meetings to more specifically assign responsibilities, these did not solve all the problems. Most indicated improvement over time, but probation officers still indicated that all the “bugs” have yet to be worked out. These problems, combined with satisfaction with the former process, led all of the probation officers to conclude that the project should not be continued.
- There were also operational problems not necessarily stemming from the lack of defined responsibilities. One officer, for example, mentioned having testified at a hearing without being sworn in. There have also been equipment failures due to use of the ICN.
- Another major concern among the correctional staff was the lack of decorum in the new system. Most believed that the hearings conducted over the ICN were too informal. They'd like to see a judge in robes. They'd like to see hearings conducted in a more formal setting. Hearings have not always been well organized (e.g., the judge has also not always had the necessary paperwork, so hearings have been delayed while it has been faxed to him). At minimum, this has given the impression that the court is not always prepared to fairly consider revocation requests. This problem appears to have abated somewhat with the second ALJ conducting live hearings in four of the six counties.
- There was much discomfort among the probation officers pertaining to their having to act as prosecutors in contested cases. While defendants may be represented by counsel, the county attorneys in Linn and Johnson counties have chosen not to be involved in these hearings. Probation officers pointed out their lack of legal training and their discomfort and inexperience in examining or cross-examining witnesses. They also raise the difficulty in continuing to work with a probationer they have attempted to revoke. In the traditional setting the county attorney acts as prosecutor in contested hearings; in Linn and Johnson Counties, at least, the county attorney staffs have been involved seldom, even in contested cases. If the probation officer's attempt to revoke a client fails in these cases, the officer is placed in a difficult position. One noted a case in which the client had had repeated problems but the ALJ refused to revoke. Eventually the client was discharged early because all other options had been exhausted. It was the opinion of the officer that this client was a threat to the community and that failing to revoke him reduced public safety.
- Although this has become less of a concern in the rural counties, there was concern about holding hearings in non-secure environments. While a deputy may be present to transport detained offenders from the jail, they constitute the only security officers present. There is concern not necessarily about what offenders might do (as they generally are aware of what the result of the hearing will be), but rather family members who might be threatening or abusive toward probation officers. If a probationer has not been held in jail, there is generally no police officer present.

- There was some frustration voiced at the outcome of cases, as it was clear to some officers that one purpose of the new system was to reduce prison revocations. Officers maintained that the District makes every effort to **not** revoke probationers, and that revocation is recommended only when all other avenues have been exhausted. Some officers complained about frequent continuances that, they think, take their time unnecessarily and fail to hold their clients accountable.
- There was some concern that the original administrative law judge didn't appreciate what they see as the sometimes-intricate differences between probation and parole.
- There was also concern about efficient use of time. Initially, all hearings were scheduled at 1:00 on Thursdays, resulting in delays for some clients. This arrangement has been discontinued, and probationers are currently given a set time for their hearing. This, however, may also result in delays for the staff when a hearing is continued or takes less time than allotted.
- The use of a single administrative law judge until late 2000 sometimes fostered logistical problems when unscheduled actions were necessary. Under the traditional system, officers in Linn and Johnson County, at least, have been able to locate a judge when they needed judicial assistance in an out-of-the-ordinary situation. Tracking down the ALJ has not always been so easy; while all indicated that he was always willing to help, locating him in these situations has sometimes been an irritation to the probation officers. The establishment of a second ALJ in the District may have alleviated this problem, however.
- Operation of dual revocation systems has made little sense to the probation officers. They noted the inconsistency of misdemeanants and those on deferred judgments appearing before a district court judge for revocations and felons appearing before an ALJ. The dual system also creates additional work in the cases of probationers with suspended jail **and** suspended prison sentences.

Synopsis of administrative law judge opinions

Both administrative law judges voiced support for the project and for its continuation and eventual expansion. Both indicated support for the project from its inception; the second ALJ's first exposure to the project was while he was working as a probation officer, but he indicated support for the project during that time, as well.

The judges believed that the project was significantly reducing the amount of time the District Court spends on probation revocations, although there was an acknowledgement that probation officers had more responsibilities under the new system. One of the judges indicated that there might be more hearings in his counties under the new system because he prefers to continue dispositions to permit the weighing of alternatives.

Both judges saw one of the project's goals as reducing revocations to prison. They both indicated their belief that the project has achieved this goal, in part due to more exhaustive use of intermediate sanctions. They believed that revocation dispositions under the project might be more appropriate than under the old system, although adherence to probation officer recommendations might have been reduced somewhat.

Accomplishments

In determining the merits of continuing, expanding, or terminating the Pilot Project, one should weigh the project's accomplishments against areas of concern....

The data collected for this evaluation have shown that the project has been met with the following successes:

- The project has succeeded in reducing the judiciary's involvement in probation revocations in the Sixth District. In slightly more than two years of operation, 490 dispositions were handed down, including 258 during the final year examined here. There was general agreement from the judiciary that the project had reduced their probation workload, even among judges who were not necessarily supportive of the project.
- The project has withstood appellate review.
- The project has succeeded in making innovative use of the Iowa Communications Network and has made extensive use of other electronic means of communications (e.g., faxes and e-mail) in streamlining the revocation hearing process.
- The project has succeeded in moving what had been a judicial responsibility to the Executive Branch. In doing so, difficulties were encountered (as would be expected in such a major transition), but all major logistical problems appear to have been overcome.
- While some interview respondents who had been either negative or neutral about the project had become more supportive over time, there were none who started out supportive who reported becoming more negative. The administrative law judge in charge of the project should be commended for his dedication and commitment to making the project work.
- While it can't be said with certainty that the project has resulted in **fewer** revocations to prison, it can be said that the project has **not caused an increase** in revocations.

Areas of Concern

A number of problem areas also became evident as the result of interviews. These should be taken into account when a determination is made to either continue or terminate the Pilot Project. They fall into the following areas:

- Communication
- The initial enabling legislation
- Dual track cases
- Probation officer workload and responsibilities
- Decorum
- Fundamental fairness
- The role of the prosecutor
- Unrealistic expectations

Each of these will be discussed briefly below.

Communication. It is evident that problems with the initial enabling legislation heightened the need for communication among those involved in the violation hearing process, as there was great uncertainty at the beginning about what tasks were to be completed by what personnel. While there were planning meetings prior to project implementation, these meetings didn't answer every question or plan for every eventuality. Once the project began operation, the logistical problems caused by the use of the Iowa Communications Network by a single ALJ in Des Moines worked against the project's success. The Board of Parole has acted responsibly to respond to criticisms. As a result, most communication problems have been overcome.

The initial enabling legislation. The project experienced problems from the beginning, apparently due in part to inadequacies in the enabling legislation. Passage of corrective legislation after the initial court challenge to the project facilitated smooth operation, but did not solve all structural and procedural problems.

Dual track cases. There are a number of instances in which the structure of the project works against efficient use of justice system resources. One of these is when probationers serving multiple sentences are handled by the ALJ for suspended prison sentences and by the District Court for either suspended jail sentences or deferred judgments. Another problem occurs when a probationer under ALJ jurisdiction is rearrested; any new charges are the jurisdiction of the District Court, while the probation revocation must be dealt with by the ALJ.

Probation Officer Workload and Responsibilities. The Pilot Project transferred to probation officers a number of responsibilities previously handled elsewhere. This has resulted in a heavier burden for probation officers requesting violation hearings. It has also resulted in probation officers having responsibility for some duties traditionally beyond the scope of their duties. While some of the problems associated with these new responsibilities have been reduced as the new revocation process has become more familiar, there will probably always be complaints about the project because of the change it has caused in the role and workload of probation officers.

Decorum. In the early days of the project there seems to have been underestimation on the part of the ALJ as to the impact of decorum on offenders. Probation officers, in particular, have been critical of the informality of some hearings conducted over the ICN. These hearings may involve significant loss of liberty for probationers, and they should be conducted accordingly. These problems seem to have abated as time has passed.

Fundamental Fairness. On appeal, the District Court has determined that the Pilot Project does not violate the Separation of Powers and does not raise significant equal protection issues. While acknowledging these District Court opinions, there are those that have honest and adamant disagreement with these conclusions. It does not appear that these concerns will disappear soon, although they don't necessarily work against efficient project operation.

The Role of the Prosecutor. In current Pilot Project operation, most county attorneys in the Sixth District have largely removed themselves from probation violation hearings. While there is evidence in the smaller counties that prosecutors continue to review violation requests and sometimes assist probation officers in disputed cases, the role of the prosecutor in the Pilot Project still varies according to the desires of the County Attorney.

Summary and Conclusions

Continuation and/or expansion of the Sixth District Pilot Project should not rest solely on whether it has achieved its original goals of making more efficient use of the judiciary and reducing probation revocations to prison. There is much divergence of opinion on the legitimacy of the project, and opponents and proponents each make valid points:

- Proponents cite a reduced revocation workload on the judiciary, with some also claiming reduced workload in clerks' and county attorneys' offices. While there were initial fears of relaxed due process considerations, most respondents indicated that these fears have not been realized. Those supporting reductions in probation revocations to prison suggest that the project has also assisted in this effort.
- Opponents cite issues of workload, community safety, and the Separation of Powers. Probation officers are opposed to the project because the reductions of workload apparently felt in the court system and prosecution have been transferred to them. They also have found themselves performing tasks – e.g., examining witnesses in court -- for which they have not been trained. Probation officers and some county attorneys also claim that the apparent reduction in probation revocations has come at the expense of community safety, as they see some probationers they view as dangerous not being held accountable. Other opponents object philosophically to the project because they see the Executive Branch usurping a responsibility of the Judicial Branch. While courts have held that revocation of probation is not unlike revocation of parole, and as such can be legitimately handled by the Executive Branch, there remains serious philosophical disagreement over this question in the Sixth District.

In assessing the project's impact on justice system costs, it should be remembered that it **realigns** the allocation of justice system resources rather than **reducing** them. While the project has apparently resulted in fewer hours of judge time spent on revocations, the judges are simply spending that time on other duties. If it were expanded statewide, the project might eventually reduce the need for **more** judges, but it likely would not permit a **reduction** in judges. This potential savings would also have to be balanced against the need for additional administrative law judges and (possibly) probation officers.

All those involved in project operation acknowledge that there were missteps and growing pains in the project's development. It was evident from interviews and observation that those governing the project have worked well to overcome operational problems. A few logistical problems remain but, if history is any indication, these should eventually be overcome if the project is continued.

It is difficult to argue with those who maintain that matters dealing with potential loss of liberty should be the province of the Judiciary rather than the Executive Branch. There is

something to be said about the decorum inherent in a courtroom in which a judge's bench is elevated and all parties communicate face-to-face. If the Pilot Project is continued, some of that decorum will be lost, even when hearings are held face-to-face.

Should the project be continued, there are several steps that can be taken to make it either more efficient or less objectionable to opponents. Since one of the primary reasons for development of the project was saving justice system resources, one should attempt to maximize efficiency within the constraints of due process. There are at least two situations, however, in which the use of administrative law judges in probation revocation hearings can result in more, rather than fewer hearings: when a probationer is serving simultaneous suspended jail **and** prison sentences, and when a probationer is arrested on a new charge.

- Currently, when a violation report is filed on a probationer serving suspended jail and prison sentences or a suspended prison sentence and a deferred judgment, two hearings result, one for the suspended prison sentence and one of the suspended jail sentence or deferred judgment. An administrative law judge handles the hearing for the suspended prison sentence (under the Pilot Project), while a district court judge deals with the other case (because the ALJ does not have jurisdiction). This duplication should be eliminated by giving jurisdiction to whomever has jurisdiction on the most serious offense. This should reduce district court time spent on misdemeanor probation revocations without significantly affecting the ALJ workload.
- When a probationer is arrested on new charges, there normally are two issues to be dealt with: adjudication of the new charge and revocation of the existing probation. When the existing probation involves a suspended prison sentence, the ALJ handles the revocation while adjudication of the new offense is processed in the District Court. This process can result in multiple hearings because of District Court interest in determining the outcome of the probation revocation and ALJ interest in determining if the offender is convicted on the new charge.

Because adjudication of new offenses rightly belongs in District Court, the task is to reduce this duplication. We suggest that, when a probationer under ALJ jurisdiction is re-arrested for a felony-level offense, jurisdiction over **both** the new offense and the probation revocation stay in the District Court. This process would permit dealing with both issues simultaneously without multiple hearings. As the District Court is already handling the new offenses in these situations, adding the responsibility to deal with the probation revocation should not impose a significantly greater burden. Further, to reduce any (however minor) burden the probation revocation constitutes, statutory provisions should be enacted so that a (non-suspended) prison sentence on the new charge results in automatic revocation on the old charge.

When the new offense is a misdemeanor -- presumably having less potential impact on revocation of the existing probation -- we suggest continuing the dual system as it currently exists. If the new offense results in conviction and a jail or suspended jail sentence, the ALJ can then determine if such a new sentence should result in revocation of the current suspended sentence.

- Another problem is evident when a revocation hearing is scheduled and the probationer does not appear. Because the ALJ does not have warrant power, probation officers in these situations must file a new violation report with the District Court to obtain a warrant for the probationer's arrest. This is an inefficient use of probation officers' time and involves the District Court in a revocation hearing in which it would not otherwise be involved. If the Pilot Project is continued, the ALJ should be given warrant power to avoid such duplication.
- A related issue concerns bond. Some respondents reported that administrative law judges may exonerate an appearance bond after a final disposition is entered; any other changes in the bond have to be handled in the District Court or Associate District Court. One of the administrative law judges disagrees with this interpretation and maintains that he has the power to modify bonds. If statutory changes are to be made to continue this project, it should be clarified that administrative law judges can modify bonds as necessary to ensure a probationer's appearance at hearings.
- One persistent operational problem mentioned by probation officers concerns their role as prosecutor in disputed cases. They rightly maintain that, while defense attorneys have been trained in techniques of courtroom examination, they have not. This problem may be overcome in several ways:
 - training should either be made available to probation officers in handling disputed cases;
 - a single probation officer could be trained to handle disputed cases;
 - an assistant county attorney could be made available to assist probation officers in disputed hearings.

A final recommendation deals with assessing the impact of the project:

- Aside from the data collection occurring for the Pilot Project, there currently is no way to monitor probation revocation hearings and outcomes in Iowa. Although it is possible to track hearings and their outcomes in cases under the jurisdiction of the administrative law judge in the Sixth District, there is no standardized reporting of probation hearings and outcomes in other cases either through the community-based corrections data system (ICON) or the courts data system (ICIS). While this evaluation should have included comparative data either from other judicial districts or Sixth District cases handled by the District Court, doing so proved highly unwieldy. Thus, data collection on these hearings should become standardized, either as part of ICON or ICIS, and that this information be available as part of the State justice data warehouse

Appendix I. Sixth Judicial District Probation Revocation Project Questionnaire

Respondent's name: _____

1. What was your initial opinion of this project?
 1. Very favorable
 2. Favorable
 3. Neutral
 4. Negative
 5. Very negative

2. What is your current opinion of the project?
 1. Very favorable
 2. Favorable
 3. Neutral
 4. Negative
 5. Very negative

3. (If a change) What led to your change of opinion?
 1. Positive experiences with the project due to efficiency
 2. Positive experiences with the project due to due process
 3. Other reasons to be more positive (specify) _____

 4. Negative experiences with the project due to lack of efficiency
 5. Negative experiences with the project due to lack of due process
 6. Other reasons to be more negative (specify) _____

 7. No change

4. Has the project affected judicial time spent on revocations?
 1. Yes, has increased time a great deal
 2. Yes, has increased time somewhat
 3. No change
 4. No, has decreased time somewhat
 5. No, has decreased time a great deal
 6. Don't know

5. Has the project affected the time probation officers spend on revocations?
 1. Yes, has increased time a great deal
 2. Yes, has increased time somewhat
 3. No change
 4. No, has decreased time somewhat
 5. No, has decreased time a great deal
 6. Don't know

6. Has the project affected the time the County Attorney's office spends on revocations?
 1. Yes, has increased time a great deal
 2. Yes, has increased time somewhat
 3. No change
 4. No, has decreased time somewhat
 5. No, has decreased time a great deal
 6. Don't know

7. Has the project affected the time defense attorneys spend on revocations?
 1. Yes, has increased time a great deal
 2. Yes, has increased time somewhat
 3. No change
 4. No, has decreased time somewhat
 5. No, has decreased time a great deal
 6. Don't know

8. Has there been any change in how often probation officer recommendations are followed?
 1. Yes, they are followed more frequently
 2. Yes, there are followed less frequently
 3. No change
 4. Don't know/no opinion.

9. Has there been any change in the outcomes of probation revocations (circle all that apply)?
 1. Yes, defendants are more frequently revoked to prison
 2. Yes, defendants are less frequently revoked to prison
 3. Yes, defendants are more frequently revoked to jail
 4. Yes, defendants are less frequently revoked to jail
 5. Yes, defendants are more frequently placed in residential facilities
 6. Yes, defendants are less frequently placed in residential facilities
 7. Yes, defendants are more frequently placed in the violators' program
 8. Yes, defendants are less frequently placed in the violators' program
 9. Yes, defendants are more frequently placed in other treatment facilities
 10. Yes, defendants are less frequently placed in other treatment facilities
 11. Yes, the ALJ tries more options, but the end result is usually the same
 12. Yes, other change (specify) _____

 13. No, no change
 14. Don't know/no opinion

10. In your opinion, has there been any change in the appropriateness of probation revocation outcomes?

1. Yes, probation revocation outcomes are generally more appropriate.
2. Yes, probation revocation outcomes are generally less appropriate.
3. No, no change
4. Don't know/no opinion

11. Has there been any change in the due process afforded defendants by this process (i.e., is the new system as fair as the old system)?

1. No, I think the new system is as fair as the old one
2. Yes, I think the new system is more fair because it provides more consistency in decisions
3. Yes, I think the new system is less fair because a regular judge is not presiding
4. Yes, I think the new system is less fair because the judge who heard the case originally is not involved
5. Yes, less fair other reasons (specify) _____

6. Yes, more fair other reasons (specify) _____

12. Has there been any change in the number of **hearings** involved in revocations under the new system?

1. Yes, more hearings
2. Yes, fewer hearings
3. No, no change
4. Don't know

13. Has there been any change in the number of **motions** involved in revocations under the new system?

1. Yes, more motions
2. Yes, fewer motions
3. No, no change
4. Don't know

14. Has there been any change in the number of **court orders** involved in revocations under the new system?

1. Yes, more court orders
2. Yes, fewer court orders
3. No, no change
4. Don't know

15. Should the use of administrative judges in probation revocations be continued in the Sixth District, or not?

1. Yes, should be continued as is
2. Yes, should be continued with modifications
(specify: _____)
3. No should not be continued
4. No opinion

16. Would you recommend use of this procedure in other Districts? Why, or why not?

1. Yes, should be expanded throughout the state due to efficiencies
2. Yes, should be expanded throughout the state due to other reasons (specify) _____

3. Yes, should be expanded in a more limited way (specify) _____

4. No should not be expanded (specify reasons) _____

5. Don't know/no opinion

17. Are there any other impacts of this project? (Specify) _____

18. What is your position within the justice system?

1. Judge
2. Prosecutor
3. Defense Attorney
4. Probation officer
5. Other corrections official
6. Other (specify):
