

Iowa Sex Offender Research Council

Report to the Iowa General Assembly January, 2010

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The Division of Criminal and Juvenile Justice Planning
Iowa Department of Human Rights
Lucas State Office Building
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Preface

Over the last several years, lawmakers have responded to several highly publicized child abduction, assault, and murder cases. While such cases remain rare in Iowa, the public debates they have generated are having far-reaching effects. Policy makers are responsible for controlling the nature of such effects. Challenges they face stem from the need to avoid responses whose primary motivation is political and the desire to make informed decisions that recognize both the strengths and the limitations of the criminal justice system as a vehicle for promoting safe and healthy families and communities.

One of the standing goals of the Research Council is to provide nonpartisan guidance to help avoid or fix problematic sex offense policies and practices. Setting this goal was a response to the concern over what can result from elected officials' efforts to respond to the types of sex offender-related concerns that can easily become emotionally laden and politically charged due to the universally held abhorrence of sex crimes against children.

An issue of perhaps the greatest interest to many Council members is a belief in the benefit of viewing Iowa's efforts to protect children from sex crimes with as comprehensive a platform as possible. It has been suggested that much more can be done to prevent child-victim sex crimes than would be accomplished by concentrating solely on what to do with offenders *after* a crime has occurred. To prevent child victimization, most laws and policy provisions rely largely on incapacitation and future deterrent effects of increased penalties, more restrictive supervision practices, and greater public awareness of the risk presented by a segment of Iowa's known sex offenders. For some offenders, these policies will no doubt prevent future sex crimes against children, and the Council supports long-term studies to examine the desired results and for ways to improve such results through better supervision tools and more effective offender treatment.

Unfortunately, many of the effects from the new policies may primarily influence persons who have already committed sex offenses against minors and who have already been caught doing so. The evidence suggests, however, that most offenders coming to the attention of the justice system for sex crimes have not previously been adjudicated for such crimes. Thus, Council members continue to discuss the need for a range of preventive efforts and a need to think about sex crimes against children from other than just a "reaction-to-the-offender" perspective.

Along with incapacitation and deterrence, comprehensive approaches to the prevention of child-victim sex crimes would also involve ensuring that parents have the tools needed to detect signs of adults with sex behavior problems, to both help teach their children about warning signs and to find the support necessary for healthy parenting. School, faith-based, and other community organizations might benefit from stronger supports and better tools to more effectively promote positive youth development and the learning of respect for others, respect for boundaries, and healthy relationships.

All of us who have children, or who live in communities where there are children, need to understand the limitations of our justice system and the importance of our own ability to play a role in preventing sexual abuse and protecting children from sex offenders, who are often the child's own family members. Over 1,000 incidents of child sexual abuse are confirmed or

founded each year in Iowa, and many such acts take place in the child's home or the residence of the caretaker of the child. Efforts to prevent child sexual abuse and to provide for early interventions with children and families at risk should be strategically examined and strengthened.

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Through the 2005 enactment of H.F. 619, the Division of Criminal and Juvenile Justice Planning (CJJP) was required to establish a task force to study and make periodic recommendations for treating and supervising sex offenders in correctional institutions and in the community. In 2008, the Legislature formalized the need for on-going research and policy analysis for sex offenses, offenders, and prevention through the establishment of the Sex Offender Research Council as a part of the Department of Human Rights, Division of Criminal and Juvenile Justice Planning. The Council was directed to set research priorities and make recommendations to the Iowa Legislature annually on issues determined important by the Council. Members of the current Council can be found in Appendix A.

Following are the findings and recommendations of the Council for 2010.

I. Summary of Recommendations

1. The Council reiterates its recommendations from the 2009 Report to the Legislature. The Council recommends that the Legislature intentionally consider the ramifications of registration and residency policies on **juveniles** and their ability to develop into productive adult members of society. The Council's research and findings on juvenile sex offenders in Iowa suggest that only a small number of juveniles recidivate with sex crimes as adults; stigmatizing the majority for long periods of time is counter-productive. This research is supported by studies conducted in other states.
2. The Council voted unanimously to support the practice of treating the 2-year and 5-year prison sentences for special sentence revocations as maximums, not mandatory minimums. Therefore, those offenders should be eligible for work release or parole. If the practice cannot be initiated through rule changes at the Department of Corrections, the General Assembly should pass legislation clarifying intent.
3. The Council recommends that IA Code section 903B be revised to reflect the registration requirements of 692A, thus limiting the number of individuals required to be on lifetime supervision to those individuals deemed to represent the most serious risk.
4. The Council further intends to continue research into the most effective and cost-efficient means of supervising sex offenders in order to establish recommendations for best practices that would provide the most public safety while not over-burdening the State budget. The Council supports the concept that scarce public dollars should be allocated to supervising the highest risk offenders.
5. Although the Council recognizes that policies requiring prevention efforts are difficult to enforce, members encourage the dissemination of evidence-based materials to the widest audiences possible, and encourage all agencies, institutions, and providers that work with parents and children to include information on sexual abuse in materials, conversations, and education sessions. Further, as funds become available, the Council would recommend providing funds to help with the dissemination of materials and supporting the training of key individuals who work with the target population.

II. General Information/Trends in Sex Offenders in Iowa

Number of Sex Offenders Convicted (Adult)

FY2007	FY2008	FY2009
507	460	455

The largest changes have occurred in the C felony charges for Sex Abuse 3rd and Lascivious Acts. It is interesting to note that there was an increase in the C felony charge for Sex Abuse 3rd, defendant under 20, the “statutory rape” section of the Code, although this increase did not offset the decreases in other sex offense charges.

Number of Juveniles Adjudicated for Sex Offenses

FY2007	FY2008	FY2009
107	111	123

Number of Sex Offenders Committed to Prison (Adult)

	FY2007	FY2008	FY2009
New Commitments	172	154	120
Probation Revocations	62	52	50

Number of Sex Offenders on Active Supervision, end of Fiscal Year

FY2007	FY2008	FY2009
521	512	595

The largest increase has been in offenders being supervised under the Special Sentence provisions (see Section III. of this report).

Number of Charges Filed – 1st Quarter

	1st Quarter, FY2009	1st Quarter, FY2010
Adult	248	213
Juvenile	86	70

Percent Convicted as Charged, Adult, Charge-based

FY2007	FY2008	FY2009
23.5	26.9	25.7

III. Juveniles and the New Requirements for Registration

On October 1, 2009, there were 5,041 registrants on Iowa’s Sex Offender Registry. Of these, 42 were juveniles under the age of 18.

Under the requirements in Iowa Code 692A prior to July 1, 2009, Juvenile Court had discretion in placing juveniles on the registry. A study commissioned last year by the Sex Offender Research Council found that in the three years from FY2006 through FY2008, only 27 of the 312 juveniles adjudicated for sex offenses were placed on the Registry. The study also found that of the juveniles adjudicated for sex offenses in the three years prior to that (FY2003 through FY2005), only six of 350 had reoffended for sex offenses between their original offense and the end of FY2008. The conclusion was that juvenile offenders did not constitute heightened risk for re-offending, and that court discretion for placement on the Registry was warranted.

Beginning July 1, 2009, court discretion was eliminated for juvenile offenders age 14 and older who are adjudicated for certain offenses under IA Code sections 709.3 and 709.4 if force was determined to be an element of the offense. Although current coding structures do not allow for precise determinations of the sections of 709.3 and 709.4 involved, below is a chart depicting the number of juveniles from FY2007 through FY2009 who may have been required to register as sex offenders if the new requirements in 692A had been in place, as they were adjudicated for violations of 709.3 or 709.4.

	FY2007	FY2008	FY2009	TOTAL
14 - 15	23	25	29	77
16 -17	15	16	12	43
TOTAL	38	41	41	120

As these are Tier III offenses, juveniles adjudicated under these offenses could be required to register for life, and would therefore also qualify for lifetime supervision under the Special Sentence provisions of 903B. Modifications are allowed under certain circumstances, but it unknown how the courts and Parole Board would respond to requests for modification.

Recent studies funded by the Centers for Disease Control, as reported by Elizabeth Letourneau, Medical University of South Carolina, have found that required registration of juveniles has been of questionable value in South Carolina. As that state’s Sex Offender Registration and Notification law (SORN) closely matches what is included in the Adam Walsh Act, and in Iowa’s new requirements, the findings of those studies may be applicable to Iowa as well.

A series of studies looked at primary prevention of sex offenses by juveniles, recidivism by juvenile sex offenders, and charging and adjudication practices before and after the implementation of South Carolina’s SORN law. There was no independent decline in the

number of first offenses for sexual charges for juveniles, re-offending for sex or person crimes did not decline (it was very low during both time periods), and charging and plea bargaining practices changed the number of adjudications for sex offenses. Registration of juvenile offenders did increase the risk for those juveniles of being charged with nuisance, nonperson offenses, many of which did not result in prosecution or conviction.

The authors concluded that registration and notification of juvenile sex offenders did not improve public safety, put juveniles at some risk of increasing contact with the criminal justice system when not necessary, and negatively affected adjudicating juveniles for sex offenses when appropriate.¹

Recommendation: The Council reiterates its recommendations from the 2009 Report to the Legislature. The Council recommends that the Legislature intentionally consider the ramifications of registration and residency policies on juveniles and their ability to develop into productive adult members of society. The Council’s research and findings on juvenile sex offenders in Iowa suggest that only a small number of juveniles recidivate with sex crimes as adults; stigmatizing the majority for long periods of time is counter-productive. This research is supported by studies conducted in other states.

IV. Special Sentences

Beginning on July 1, 2006, offenders convicted for sex offenses are required to serve “special sentences” after completing their original sentences. These special sentences are intended to extend the supervision time of offenders within the community; these sentences fall under the purview of the Board of Parole, and the supervision is provided by parole officers of the Judicial District Departments of Correctional Services.

At the time this provision was passed, estimates were provided on the anticipated impact on the judicial and correctional system. Following are data demonstrating the impact after three years of implementation.

Number of Offenders on Special Sentence Supervision (CBC)

6/30/2007	6/30/2008	6/30/2009	9/30/2009
6	28	95	113

Number of Offenders Eligible for Special Sentence, Based on Conviction Class

	FY2007	FY2008	FY2009	FY2010 (3 months)
10 year	255	240	241	69
Life	223	201	183	48

Although both the 10-year special sentences and lifetime special sentences are considered Category “A” sentences for the calculation of earned time, it is unclear at this time how that

would be handled for life sentences, with no known end time to use for calculations. As the first of the lifetime supervision offenders will be beginning their sentences sometime this fiscal year (earliest completion of prison sentences, work release, etc), this issue may be addressed in future years.

By 2019, it is anticipated that about 962 offenders will be in the community serving 10-year special sentences, with an additional 954 serving lifetime supervision. The number serving 10-year sentences will have reached its plateau by 2019 and is not expected to change significantly in future years. The number serving lifetime supervision, however, will continue to rise until the time that the number entering lifetime supervision equals the number leaving supervision, either by death or other circumstances. The annual cost by 2019 to supervise the special sentence offenders, without specialties such as electronic monitoring, is estimated to be \$2.8 million.

The special sentences can be revoked. A first revocation is a return to prison for a maximum of two years, and a second is for a maximum of five years. Currently the Department of Corrections is requiring special sentence revocations to serve the full sentence, with no adjustment for early release to work release or parole. Rates of revocation through early FY10 have been higher than anticipated; given current trends, it is estimated that there will be approximately 314 inmates serving time for special sentence revocations in FY2019.

Number of Offenders Committed to Prison for Special Sentence Revocations

FY2007	FY2008	FY2009
0	5	14

The sex offender registry requires 10-year registration periods with three exceptions—an additional 10 years for registry violations, lifetime for offenders convicted of a single “aggravated” sexual offense or of a second/subsequent sexual offense requiring SOR registration, and lifetime for any offender required to serve lifetime special sentence supervision under IA Code 903.B. Therefore, there will be a significant number of individuals who will be required to stay on the Sex Offender Registry past the requirements of IA Code 692A simply because of the lifetime supervision requirements of 903B. Using offenders convicted of Class C felonies and above from FY2007 through FY2009, 607 offenders would be required to be on the Sex Offender Registry for life because of 903B provisions.

Recommendations:

1. The Council voted unanimously to support the practice of treating the 2-year and 5-year prison sentences for special sentence revocations as maximums, not mandatory minimums. Therefore, those offenders should be eligible for work release or parole. If the practice cannot be initiated through rule changes at the Department of Corrections, the General Assembly should pass legislation clarifying intent.
2. The Council recommends that IA Code section 903B be revised to reflect the registration requirements of 692A, thus limiting the number of individuals required to be on lifetime supervision to those individuals deemed to represent the most serious risk.
3. The Council further intends to continue research into the most effective and cost-efficient means of supervising sex offenders in order to establish recommendations for best practices that would provide the most public safety while not over-burdening the State

budget. The Council supports the concept that scarce public dollars should be allocated to supervising the highest risk offenders.

V. Enticing

The current IA Code section 710.10(1) defines enticing a minor under the age of 13 for the purpose of sexual abuse or sexual exploitation as a Class C felony. Enticing a minor under the age of 16 for an illegal act is a Class D felony. Attempts to entice are aggravated misdemeanors, and include attempts for minors up to the age of 16.

With the increased awareness of the use of the Internet by sexual predators, concern has been voiced about changing the Iowa Code. Below are three years of data about offenders convicted under 710.10.

	FY2007	FY2008	FY2009
C Felony	1	0	0
D Felony	13	4	4
Agg. Misdemeanor	12	12	22

In response to issues raised in an Iowa Supreme Court case concerning the use of law enforcement officers in undercover operations, there have been discussions about equalizing the penalties for enticing and attempted enticing. Currently, cases involving only attempts can only be brought as aggravated misdemeanors. Federal law allows for higher level offense classes.

Although the Council is not prepared to make a recommendation at this time, members support ongoing discussion of this topic.. Included in the discussion should be issues surrounding juveniles “sexting” and how responses to such actions should be measured against the differences between adults and juveniles.

VI. Prevention

The ultimate goal in preventing sexual abuse is to prevent first time perpetration and victimization. To date, the majority of the activity by this Council has focused on the incapacitation of offenders through increased sentences, civil commitment, increased supervision via special sentence paroles and electronic monitoring, and restricting where offenders live or loiter and where they can be employed. The theory behind these approaches is that these restrictions will reduce the opportunities for known offenders to re-offend. Research on the efficacy of these approaches indicates that recidivism may be delayed for high risk offenders, but that these approaches have either little impact or adverse effects on low risk offenders.

Another approach that has been taken is treatment of offenders. Treatment is available in the prison system and through CBC. Treatment is also available to juveniles through services ordered by the Juvenile Courts. The Department of Corrections uses treatment providers that have been certified by the Iowa Board for the Treatment of Sexual Abusers (IBTSA). However, there is no comparable requirement for providers of treatment for juveniles, nor is the

certification recognized in the Code of Iowa. (There have been protocols in place, but no requirements to implement them.) Treatment for sex offenders has been evaluated extensively, and has been proven to reduce recidivism. Treatment is particularly beneficial for juveniles if provided through proven interventions and trained professionals (Finkelhor, David, “The Prevention of Childhood Sexual Abuse”, *Preventing Child Maltreatment*, Vol. 19, No. 2, Fall 2009).

Combination approaches of incapacitation and community education exist in sex offender registries and community notification. Controlled studies of these approaches have been limited and show mixed results (*ibid*).

These prevention approaches are considered to be secondary or tertiary (i.e., after the abuse has occurred). Research on effective primary prevention strategies has been recent and more common in the fields of substance abuse and HIV prevention. Early approaches to child sexual abuse prevention (during the 1980s and early 1990s) typically involved education programs for children that focused on appropriate space and touching. A number of studies and meta-analyses have been done on programs designed for children for abuse prevention that show some benefit. Some of the discussions about these approaches include concerns about making children fearful or distrustful of adults and about making children responsible for preventing their own abuse.

Other primary prevention approaches involve parents, caregivers, educational personnel, and other “influential” adults. Accurate information about sexual abuse, sex offenders, and warning signs in child and adult behaviors that could suggest the potential for abusing are areas that have been addressed. Research done in Vermont during the 1990s suggests that many people do not have factual information, and lack skills, knowledge, or confidence in how to approach either the child or the adult in a potential abuse situation. More recently, there have been programs developed that promote the benefit of providing normal sexual development training to adults who work with children as a protective factor to sexual violence. An example of this type of program is *Nurturing Healthy Sexual Development* developed by Prevent Child Abuse Vermont.

Educational materials that are based upon research are available from several sources. Most of the research to date suggests that both child and community education efforts at least increase reporting of cases. (See Chasan-Taber, Lisa and Tabachnick, Joan, “Evaluation of a Child Sexual Abuse Prevention Program,” *Sexual Abuse: A Journal of Research and Treatment*, Vol. 11, No. 4, 1999.)

During the 2005 session of the General Assembly, the Iowa Legislature amended IA Code chapter 256.9, subsection 54.a to require the Department of Education to “develop and make available to school districts, examples of age-appropriate and research-based materials and lists of resources which parents may use to teach their children to recognize unwanted physical and verbal sexual advances....” In August, 2006 the department published “Preventing Child and Youth Sexual Harassment, Abuse, and Assault: A Resource for Iowa’s Families.” It is not known how many districts or individual schools are regularly disseminating this material. An addendum that provides a list of resources related to bullying and internet safety for children has been released in the past year.

Vermont also experimented with a confidential hotline designed to encourage abusers or potential abusers to call in for assistance. Two other states, Minnesota and Virginia, are also using this strategy. Evaluation of the benefit of the Vermont hotline over a two-year period was inconclusive; it is not known how many individuals actually approached the legal system in order to receive treatment as a result of the hotline (Chasan-Taber, et al). However, given the legal climate that has emerged since then for sex abusers, with increased punitive effects, it seems unlikely that such an approach would work today. In past reports, the SORC has recommended treatment options outside the criminal justice framework.

Additional references:

Prevent Child Abuse Vermont, *Nurturing Healthy Sexual Development* curriculum - <http://www.pcavt.org/index.asp?pageid=603>

Nation M, Crusto C, Wandersman A, Kumpfer K, Seybolt D, Morrissey-Kane E, Davino K. What works in prevention: principles of effective prevention programs. *American Psychologist*. 2003;58(6/7):449-56.

Lee D, Guy L, Perry B, Sniffen CK, & Mixson SA. Sexual violence prevention. *The Prevention Researcher*. 2007;14(2):15-20.

McMahon P. The public health approach to the prevention of sexual violence. *Sexual Abuse: A Journal of Research and Treatment*. 2000; 12:27-36.

Morrison S, Hardison J, Mathew A, O'Neil J. An evidence-based review of sexual assault preventive intervention programs. Department of Justice. 2004. Available from: <http://www.ncjrs.gov/pdffiles1/nij/grants/207262.pdf>

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Recommendation:

1. Although the Council recognizes that policies requiring prevention efforts are difficult to enforce, members encourage the dissemination of evidence-based materials to the widest audiences possible, and encourage all agencies, institutions, and providers that work with parents and children to include information on sexual abuse in materials, conversations, and education sessions. Further, as funds become available, the Council would recommend providing funds to help with the dissemination of materials and supporting the training of key individuals who work with the target population.

Appendix A

Sex Offender Research Council Membership, 2009

Senator Jeff Angelo	Iowa Senate
Senator Keith Kreiman	Iowa Senate
Vacant	Iowa House of Representatives
Representative Ray Zirkelbach	Iowa House of Representatives
Ben Stone	American Civil Liberties Union of Iowa
Jason Smith	Iowa Department of Human Services
James Saunders	Iowa Department of Public Safety
H. LeRoy Kunde	Iowa State Sheriffs and Deputies Association
Thomas Ferguson	Iowa County Attorneys Association
Jerry Bartruff	Iowa Department of Corrections
Vacant	Iowa Board of Parole
Ron Mullen	Iowa Department of Corrections
Thomas H. Miller	Iowa Department of Justice
Mark Smith	Iowa State Public Defender
Beth Barnhill	Iowa Coalition Against Sexual Assault
Marilyn Lantz	Juvenile Court Services
Binnie LeHew	Iowa Department of Public Health