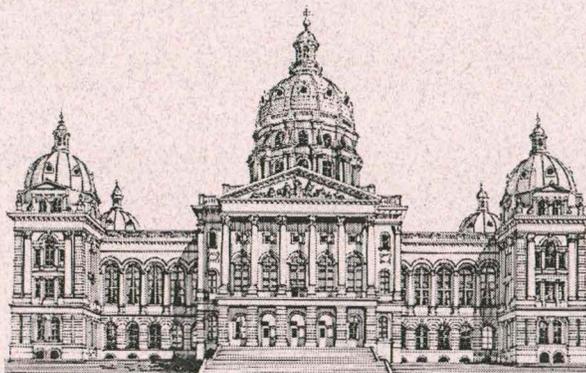


**FINAL REPORT**

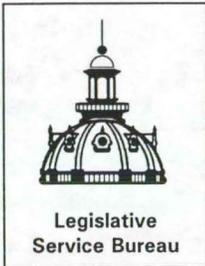
**SENTENCING COMMISSION**



Presented to the  
**LEGISLATIVE COUNCIL**  
and the  
**IOWA GENERAL ASSEMBLY**  
April 2000

Prepared by the  
**LEGISLATIVE SERVICE BUREAU**





# FINAL REPORT

## Sentencing Commission

April 2000

### MEMBERS

Senator Andy McKean,  
Co-chairperson  
Senator Robert Dvorsky  
Senator Johnnie Hammond  
Senator Jeff Lamberti  
Senator Gene Maddox  
Pam Dettmann, Sac County Attorney  
Honorable William Dowell, District Judge  
Dorothy Faust, Director, Fifth Judicial District  
Department of Correctional Services  
Priscilla Forsyth, Private Criminal Defense Attorney  
Honorable J.G. Johnson, District Associate Judge  
W.L. Kautzky, Director, Department of Corrections  
Kay Kopatich, Chaplain, Iowa Correctional  
Institution for Women

Representative Teresa Garman,  
Co-chairperson  
Representative Galen Davis  
Representative Chuck Larson, Jr.  
Representative Dolores Mertz  
Representative Steve Richardson  
Charles Larson, Sr., Chairman, Board of Parole  
Karla Miller, Trauma Recovery Groups  
Honorable Tom Miller, Attorney General  
Honorable Mary Jane Sokolovske,  
District Associate Judge  
Charles Van Toorn, Mahaska County Sheriff  
Penny Westfall, Commissioner of Public Safety  
Valorie Wilson, Public Defender

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### AUTHORIZATION AND APPOINTMENT

On June 23, 1998, the Legislative Council authorized the formation of the Sentencing Commission and provided the following charge: "Review current criminal penalties and sentencing practices, including but not limited to the effects mandatory minimum penalties, mandatory service of sentence requirements, and sentence enhancements have on sentencing practices. Consider the effects that those sentencing practices and restrictions on Board of Parole discretion have on populations at state and community-based correctional facilities, as well as the numbers of persons on probation and on parole. Conduct a comparative assessment of the relative penalties imposed for various crimes based not only on the threat posed by the prohibited criminal conduct, but also by the risk associated with particular criminal offenders. Review the efforts of other states to implement reforms of sentencing policy which permit the effective management of correctional resources while accommodating public safety concerns. Review the treatment approaches available and used in the United States and other countries to rehabilitate juvenile and adult sex offenders and to deter those persons from engaging in criminal sexual acts or activities in the future." The Commission was a successor to the Criminal Sentencing Interim Subcommittee, which met twice during the 1997 Legislative Interim.



## Sentencing Commission

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### I. Overview.

**A. Membership.** The Commission consisted of 24 members, of whom 10 were legislators and 14 were public members. The original co-chairpersons were Senator Andy McKean and Representative Jeff Lamberti. In February 1999, following Representative Lamberti's election to the Senate, Speaker of the House Ron Corbett nominated Representative Teresa Garman as co-chairperson from the House. The Commission in turn confirmed Representative Garman as co-chairperson along with Senator McKean. Other changes in membership were as follows: Senator Lamberti replaced Senator Kitty Rehberg; Representative Galen Davis replaced Representative Lamberti; and Penny Westfall replaced Paul Wieck.

**B. Staffing.** The Legislative Council made a special authorization of \$65,000 for the Legislative Service Bureau to retain administrative staffing and cover other costs of the commission.

**C. Commission meetings.** The plenary Commission held nine meetings between November 1998 and December 1999, with one of those meetings being a two-day meeting. A summary of each meeting is included in this report.

**D. Subcommittee meetings.** The Commission utilized the following five subcommittees (number of meeting dates in parentheses): Misdemeanor Reclassification (1); Data Collection (1); Offense Severity and Classification (2); Sentencing Characteristics (1); and Operating While Intoxicated (1). A summary of these meetings is included in this report.

**E. Staff Work Group.** Following directions provided in the May 17, 1999, meeting of the Commission, the Legislative Service Bureau (LSB) and the Division of Criminal and Juvenile Justice Planning (CJJP) of the Department of Human Rights organized an inter-agency staff work group to respond collaboratively to Commission data requests, and provide input for proposals under consideration. There were also several working groups used by the plenary work group for specific tasks. The plenary work group met 17 times between May and November 1999. A list of the meeting dates and a summary of the topics discussed is included in this report.

**F. Grants.** The Commission obtained funding from grant sources to make possible visits by several consultants and presenters.

**National Institute of Corrections.** The National Institute of Corrections (NIC) provided funding to enlist the services of Kay Knapp, a nationally known sentencing consultant, to facilitate the January 6, 1999, meeting of the Commission. NIC also provided travel expenses to bring presenters from Minnesota and Kansas to the February 19, 1999, meeting of the Commission.

**North Carolina Sentencing and Policy Advisory Commission.** Through a Ford Foundation grant, three representatives of the North Carolina Sentencing and Policy Advisory Commission traveled to Des Moines to assist the Iowa Sentencing Commission. The



Honorable Thomas Ross, Chairman of the North Carolina Commission, made a presentation on sentencing guidelines to the Iowa Sentencing Commission at its February 19 meeting. Susan Katzenelson, Executive Director of the North Carolina Commission, and Ginny Hevener, a Statistical Analyst, provided technical assistance in March 1999.

## II. Commission Meetings.

### A. First Meeting – November 18-19, 1998.

**Preliminary Business.** The Commission elected Senator Andy McKean and Representative Jeffrey Lamberti as Co-chairpersons and adopted rules in conformance with the guidelines of the Legislative Council. Under these rules, legislative members, but not public members, were voting members for purposes of making final recommendations. The Co-chairpersons stated, however, that the voting/nonvoting distinction would not prevent the Commission from seeking a consensus and that no final recommendation would be made without a consensus of all members.

**Presentations by Stakeholders.** Following an introductory presentation on state sentencing commissions by Eric Sponheim of the Legislative Service Bureau (LSB), public members of the Commission and other criminal justice stakeholders made a series of presentations outlining their views of Iowa's current sentencing system. Presenters identified a number of areas that the Commission could consider for improving the system, but also noted several areas where it should proceed with caution in recommending any change.

**Subcommittee Formed.** Co-chairperson Lamberti and others noted that the constitutional amendment adopted by public referendum in the fall of 1998 removing the \$100 fine limit for non-indictable offenses created an opportunity for the Commission to propose reclassification of certain misdemeanors. The Commission formed a subcommittee for this purpose.

### B. Second Meeting – January 6, 1999.

**Report of Misdemeanor Reclassification Subcommittee.** The Commission received the report of the Misdemeanor Reclassification Subcommittee. The subcommittee recommended reclassifying certain misdemeanors from serious to simple misdemeanors, enhancing penalties for second and subsequent driving while license under suspension offenses, increasing the allowable fine for certain misdemeanors and ordinances, and changing the statutory elements for certain other misdemeanors. The plenary Commission recommended that enhancement of driving while license under suspension offenses be removed from the subcommittee's recommendations, and that the revised reclassification list be forwarded to the General Assembly in bill draft form. The recommended legislation was enacted by the 1999 Session of the General Assembly.

**Presentation on Fundamental Sentencing Issues.** Kay Knapp, a nationally recognized consultant on sentencing policy, presented an overview of three fundamental sentencing



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issues: (1) what information sentencing decisions should be based upon; (2) how discretion is to be distributed among the various parts of the criminal justice system; and (3) how a given jurisdiction seeks to balance sentencing practices and correctional resources.

**Continuation of Goals Discussion.** Ms. Knapp also facilitated a continuation of the preliminary discussion of goals begun at the previous meeting. Both legislative and public members stated their main concerns about Iowa's current system. Among the most frequently cited concerns were: insufficient intermediate sanctions usage; effect of the statutes requiring service of 85 percent of the sentence for certain offenses on judicial and parole board discretion; sentencing disparity and the need for more truth in sentencing; and lack of good data on which programs work.

**Formation of Data Collection Subcommittee.** Ms. Knapp encouraged the Commission to consider what type of data should be collected to assist in analyzing Iowa's current sentencing system. The Commission formed a subcommittee to consider this matter further.

### C. Third Meeting – February 19, 1999.

The third meeting was devoted to learning about the operation of sentencing guidelines in three states suggested by Ms. Knapp: Minnesota, North Carolina, and Kansas. Presenters from these states reported similar experiences in reducing disparity; gaining more consistency, certainty, and predictability; and being better able to balance sentencing policy with correctional resources.

**North Carolina.** The Honorable Thomas Ross, Chairman of the North Carolina Sentencing and Policy Advisory Commission, described how North Carolina has used its structured sentencing program to focus the use of incarceration on violent offenders while increasing the use of intermediate sanctions programs for nonviolent offenders. Judge Ross outlined the results achieved by the program in restoring credibility to the correctional system and reducing costs since its implementation in 1994.

**Minnesota.** Robert Johnson, Anoka County Attorney, described the operation of Minnesota's sentencing guidelines. Mr. Johnson emphasized that prosecutors have more discretion in a guidelines system than in an indeterminate system. He also noted that Minnesota has successfully used the guidelines format to coordinate sentencing policy and prison capacity.

**Kansas.** The Honorable Richard Walker, Chair of the Kansas Sentencing Commission, described the process of sentencing reform in Kansas. He said that Kansas is very pleased with the results of its guidelines, which took effect in 1993, because they have reduced sentencing disparity; enhanced public safety by incarcerating violent offenders for longer than before; and allowed policy makers to make more informed resource allocations.



### D. Fourth Meeting – May 17, 1999.

**Review of Commission Progress and Materials.** Eric Sponheim of LSB presented a review of the Commission meetings held to date and the informational materials produced by staff. Informational materials produced by LSB included an updated chart of Iowa's criminal offenses and memoranda on the following issues: goal identification; proportionality and disparity issues; role of offender characteristics in structured sentencing systems; and comparisons of sentences across states. Lettie Prell of the Division of Criminal and Juvenile Justice Planning (CJJP) described tables produced by CJJP summarizing data on: length of stay by offense type, January – June 1998; new prison admissions by offense type, Fiscal Year 1997–1998; comparisons of sentences in Iowa with Kansas, Minnesota, and North Carolina; offender recidivism in Iowa; and average length of stay in Iowa and nationwide, by offense category.

**Misdemeanor Bill.** Joe McEniry of LSB summarized Senate File 189, the statutory enactment that resulted from the work of the Commission's Subcommittee on Misdemeanor Reclassification. This Act reclassified certain misdemeanors from serious to simple misdemeanors, increased the amount of the allowable fine for simple misdemeanors and ordinances, and changed the statutory elements for certain other misdemeanors. The offenses reclassified included: possession or attempt to purchase alcohol by minor, second or subsequent offense; driving while under suspension; defacement or unauthorized possession of a traffic signal; and interference with official acts not involving physical injury. According to the Legislative Fiscal Bureau, this Act is expected to result in an increase of \$2.4 million in revenue to the General Fund through increased fines in Fiscal Year 1999–2000 and \$4.8 million per year thereafter.

**Additional Staffing Plan.** John Pollak of LSB and Dick Moore of CJJP presented a proposal developed in consultation with the Co-chairpersons to form an inter-agency staff work group to respond to the Commission's informational requests. All agencies interested in the Commission's work were invited to participate.

**Governor's Remarks.** Governor Tom Vilsack thanked the Commission for undertaking its work and encouraged Commission members to seek ways to use resources more effectively while maintaining public safety.

**Primary Goals for Justice System.** Without prioritizing them, the Commission agreed that the following are primary goals for Iowa's criminal justice system: public safety; rehabilitation; just punishment; deterrence/incapacitation; and restoration of victims and community.

**System Improvement Goals.** Choosing from a list of fifteen possible goals for improving the justice system, Commission ranked their preferences on a written listing. Staff tabulated the results, using two different methods. One method was based on the number of first place votes each goal received; the other used a weighted ranking, with five points for a first place vote, four for second, three for third, and so on. Under both methods, six goals were clustered at the top. These were: reduce disparity; promote



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greater consistency and uniformity; establish greater proportionality; provide more certainty and truth in sentencing; balance sentencing policies with correctional resources; expand treatment and other behavior modification programs; and increase use of intermediate sanctions. The Commission did not prioritize among these six goals, but accepted them as a working understanding of what its priorities were at this time.

**Formation of Subcommittees.** Co-chairperson McKean proposed that the Commission divide into two subcommittees to continue its work. The Commission agreed to the plan, by which one subcommittee, Offense Severity and Classification, would focus on offense severity, and the other, Sentencing Characteristics, would focus on offender characteristics.

**Proposal Solicitation.** Representative Larson proposed that the Commission solicit specific suggestions for system improvement from organizations involved in or affected by the criminal justice system. The Commission agreed to this proposal.

### **E. June Meeting of the Offense Severity and Classification Subcommittee.**

**Overview.** All of the Commission members were invited to attend this meeting and twelve were present. Prior to the meeting, nineteen of twenty-four Commission members returned a survey form in which they ranked the severity of Iowa's criminal offenses within each offense class. The ranking began with class "A" felonies and continued through aggravated misdemeanors. Discussion of the ranking results made clear that most Commission members thought crimes against persons are more severe than crimes that are not against persons. The subcommittee expressed interest in further consideration of how a grid system might apply to Iowa, and requested that staff develop options for doing this.

**Grid Considerations.** The following listing summarizes considerations of interest to subcommittee members for inclusion in the grid options. A priority order among the considerations was not identified.

- Use existing average length of stay information.
- Use the subcommittee ranking exercise results.
- Judicial discretion should stay the same or increase.
- A role for the Board of Parole should remain.
- Utilize appropriate offense groupings and consider some form of separate treatment for sex offenses and drug offenses.
- Distinguish between person and property or nonperson offenses.
- "Good time" credit should be eliminated ("earned time" concept was discussed).
- Incorporate other sentencing options such as the corrections continuum.
- Incorporate a mandatory supervised release concept.

### **F. Fifth Meeting – July 20, 1999.**

**Discussion of Scenarios.** Commission members discussed various possible ways in which Iowa's sentencing system could be changed through a different allocation of discretion among the decision makers or through grouping offenses differently. For those members



interested in a grid approach, there was most interest in an allocation of discretion whereby a judge would sentence to a range of months within each grid cell. These members also suggested that offenses be grouped into no more than eleven severity levels. Co-chairperson Garman and others expressed concern about proceeding any further with a grid approach.

**Good Time.** The Commission discussed at some length whether good time should be replaced with "earned time" and, if so, how. Mr. Kautzky pointed out that good time dilutes the value of truth in sentencing. Co-chairperson McKean said the Commission was interested in "earned time," but only as a small part of the sentence. Mr. Kautzky was asked to develop a description of how an earned time policy would function.

**Post-release Supervision.** Commission members discussed whether a six-month period of post-release supervision should be implemented for all offenders, and if so, how it should be structured. Some members were interested, others expressed concerns about costs and administrative issues.

**Corrections Continuum.** Commission members discussed ways in which judges could make greater use of the corrections continuum.

### **G. Sixth Meeting – August 17, 1999.**

Through a series of presentations, the Commission examined how decision makers in Iowa's current sentencing system make use of data regarding offender characteristics.

**Law Enforcement.** Commissioner Westfall and Sheriff Van Toorn described how offender characteristics affect the discretionary decisions made by law enforcement officers. They identified such factors as criminal history, mental health status, substance abuse status, and probation status as factors relevant to these decisions.

**County Attorneys.** Ms. Dettmann said that county attorneys work with both law enforcement and correctional officials in making informed charging decisions. She stated prosecutors use their sense of fairness, formed by experience and a knowledge of how the system works. Ms. Dettmann also said the County Attorneys Associations opposes a strict grid system and questioned whether the 85 percent service of sentence rule is truly helping Iowa reach its criminal justice goals.

**Defense Attorneys.** Ms. Forsyth and Ms. Wilson summarized their perspectives on how defense attorneys use offender characteristics. Ms. Forsyth noted the importance of the appeals process as a check against the use of improper characteristics. Ms. Wilson suggested that the elimination of the 85 percent rule and other mandatory penalties would allow offender characteristics to be taken more fully into account by prosecutors, judges, and correctional officials.

**Judiciary.** The Honorable Linda Reade from Polk County said each judge approaches sentencing somewhat differently, and described in detail the factors she considers in making sentencing decisions. She noted that in Iowa, unlike the federal system, judges must restrict their considerations to what the offender has been formally convicted of.



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**DOC Classification Criteria.** Two officials from the Department of Corrections (DOC) outlined the criteria used by DOC to classify offenders and assign custody levels. Ken Burger, Assistant Director for Offender Services, explained that all inmates are classified when they first enter the system and are reevaluated for reclassification at least once a year. Jim Felker, Intake Manager at the Iowa Medical and Classification Center, summarized the weighted factors that DOC uses to assign a custody score to each offender.

**Community-Based Corrections (CBCs).** Gary Hinzman and Curt Campbell, Directors of the Sixth and Eighth Judicial District Departments of Correctional Services, respectively, described how community-based corrections officials view the role of offender characteristics in supervising offenders. Mr. Hinzman emphasized that appropriate placement of offenders depends upon factual determinations regarding mental health status, substance abuse status, educational level/IQ, and other factors. Mr. Campbell called particular attention to the high percentage of offenders with substance abuse problems.

**Board of Parole.** Charles Larson, Sr. presented an overview of the factors considered by the Board of Parole in making parole decisions. He said that after offenders have served a punishment portion of their sentence, the focus of correctional agencies should be to determine which placement setting will be most effective in minimizing the risk of reoffense.

**Level of Service Inventory. (LSI)** Robert Hoffmann and Steve Street, CBC supervisors from the Fifth and Sixth Judicial District Departments of Correctional Services, respectively, presented an overview of a new risk assessment tool called the Level of Service Inventory. Numerous agencies, including CBCs, DOC, the judiciary, and the Board of Parole, have been collaborating on adapting this tool for use in Iowa. The goal is to have decision makers across the criminal justice system work together as seamlessly as possible in making appropriate placement decisions.

**Offender Characteristics Research.** Paul Stageberg of CJJP and Eric Sponheim of LSB presented a summary of the offender profiling research undertaken by the staff work group. The work group selected 19 offenses, primarily those with most impact on the prison population, and gathered data for comparing the characteristics of offenders who received prison sentences with those who received probation. The data indicated that offenders can go to prison for only one violent offense, whereas property offenders who are in prison tend to have numerous previous convictions.

**Offender Characteristics in a Grid System.** Ms. Prell and Mr. McEniry described two different options for utilizing offender characteristics in a grid system. The first option was premised on a qualitative assessment looking solely at the number and severity of previous offenses. The second option was based on a quantitative criminal history score that would include aggravating and mitigating factors. The Commission members who were interested in a grid approach agreed that the quantitative option was preferable.



Other Commission members, however, expressed concerns that a grid system would not be sufficiently flexible.

### **H. Seventh Meeting – September 13, 1999.**

The Commission used this meeting to consider a number of specific proposals for improving Iowa's current justice system.

**Equality in the Courts Task Force.** David Boyd, Deputy State Court Administrator, briefed the Commission on the recommendations of the Equality in the Courts Task Force created by the Iowa Supreme Court. The Court has set up a committee to oversee implementation of the Task Force's recommendations for addressing concerns about racial bias in the courts.

**Options for Reducing Racial Disparity.** Representative Wayne Ford made a presentation on options for reducing racial disparity in the criminal justice system. He emphasized the importance of early intervention for at-risk youth and of identifying resources for job training and job-seeking programs for adult and youthful offenders.

**Time Served in Another Jurisdiction.** W.L. Kautzky presented a proposal to remove the prohibition in the Iowa Code against an inmate receiving credit against their Iowa sentence for time served in another jurisdiction. Mr. Kautzky said Iowa is the only state in the country with this type of prohibition.

**Good Time and Earned Time.** Before discussing whether Iowa's current good time law should be modified, the Commission heard a presentation from Rusty Rogerson, Warden at the Iowa Medical and Classification Center (IMCC), and Patsy Bozarth, Records Administrator at IMCC. Mr. Rogerson said good time calculation in the Iowa prison system has become quite complex, because different calculations apply depending upon when the offense was committed. He urged the Commission not to recommend changing the good time calculation unless the change were to be comprehensive in nature. At Co-chairperson Garman's request, Chris Trip, a correctional officer, offered the viewpoint of a correctional officer on good time. He said good time can provide an incentive for inmates, but that the current system needs to be modified. The Commission discussed the considerations that would be involved in changing from a good time system, where credit is calculated at the outset of the sentence, to an earned time system, where credit would be genuinely earned.

**Supervised Release.** Mr. Larson, Sr. presented a brief overview of the concept of mandatory supervised release for offenders who would otherwise discharge their sentences without being released on parole. Ms. Prell provided data on the increasing number of offenders whose sentences are expiring without any parole supervision. Linda Murken, Director of the Second Judicial District Department of Correctional Services, said the CBC directors agree on the need for supervised release for these offenders. Commission discussion centered on the resource implications a more developed supervised release proposal would have.



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**Split Sentencing.** Judge Johnson presented an introduction to a consideration of options for increasing the use of split sentencing. Mr. McEniry described three options: funding additional county jail space; creating lockdown facilities at CBCs; and using short prison stays as a form of shock probation. Dwayne Ferguson of the Legislative Fiscal Bureau provided data on the costs associated with these options. Commission members expressed interest in exploring the split sentencing idea further, with sensitivity to the fact that many counties already have overcrowded jails and are not well situated to absorb any increase in costs.

**Possible 85 Percent Release Mechanism.** Representative Larson asked whether the Commission should consider recommending a revision to the 85 percent statute that would allow for an opportunity for early release for convicted offenders upon recommendation by the Department of Corrections and Board of Parole and approval by the court. He also suggested that a county attorney be given more discretion regarding whether to prosecute an offender under the 85 percent statute.

**OWI Subcommittee.** The Commission formed an Operating While Intoxicated Subcommittee, to be chaired by Charles Larson, Sr. The subcommittee was asked to examine the type of treatment programs available and the length of time necessary for treatment to be effective.

**Simple Misdemeanors.** The Commission asked the staff work group to compile a list of simple misdemeanors that might be appropriately reclassified to scheduled fines.

**Consolidation of Offenses.** Mark Smith, Acting State Public Defender, reported on the progress of the staff work group assigned to develop a proposal for consolidating offenses in order to avoid duplication.

**Elaboration on Offender Research Finding.** Paul Stageberg of CJJP presented revised data from the offender characteristics research undertaken by the work group. He commented that pretrial detention was strongly associated with later imprisonment. Nearly 70 percent of offenders sentenced to prison were in jail at sentencing, compared to 12 percent of those placed on probation.

### I. Eighth Meeting – November 23, 1999.

The Commission gave further consideration to several of the specific improvement proposals discussed at the previous meeting. It also discussed a preliminary proposal of a comprehensive nature presented by Co-chairperson McKean.

**Consolidation of Offenses.** The Commission approved a proposal in bill draft form to consolidate computer theft and video rental theft into the general theft statute, and to consolidate the offense of computer damage with the criminal mischief statute. The bill also consolidates various offenses involving election bribery and improper voting activity. Mr. Smith explained that the proposal would not change current law or penalties in any way.



**Simple Misdemeanors.** The Commission discussed a list of simple misdemeanors identified by the staff work group as possibilities for reclassification as scheduled violations. After deleting reckless driving and drag racing from the list, the Commission approved the amended proposal. (A listing of the misdemeanors recommended for reclassification can be found in the Commission recommendations.)

**Definition of Burglary – 1<sup>st</sup> Degree.** Mr. McEniry summarized a proposal prepared by the work group to change one of the elements of Burglary – 1<sup>st</sup> degree from “inflicts bodily injury” to “inflicts serious injury.” Commission members had differing opinions on the advisability of this change. Co-chairperson McKean asked staff to refine the proposal further.

**Definition of Robbery – 2<sup>nd</sup> Degree.** Ms. Prell presented a proposal developed by the staff work group for changing the definition of Robbery – 2<sup>nd</sup> degree to exclude shoplifting and assault cases. Some Commission members supported the proposed change, while others had concerns that it would make convictions more difficult to obtain. Co-chairperson McKean asked staff to refine the proposal further.

**Credit for Time Served in Another Jurisdiction.** The Commission finalized its approval of this recommendation.

**Report of OWI Subcommittee.** Judge Johnson and Jeanette Bucklew of DOC presented a summary of the OWI subcommittee meeting held on October 25. Ms. Bucklew identified three potential alternatives for improving access to OWI treatment programs: increased use of electronic monitoring; improved utilization of the Luster Heights facility; and enhanced assessment and program consistency.

**Comprehensive Proposal.** Co-chairperson McKean outlined the elements of a proposal he intended as a starting point for Commission discussion of comprehensive modification of Iowa’s sentencing system. Elements of the proposal were: increased truth in sentencing; increased judicial discretion; increased use of intermediate sanctions; retention of current felony classes and maximum penalties for felonies; reduce maximum sentence for aggravated misdemeanors from two years to one year, and serious misdemeanors from one year to nine months; judge imposes a determinate sentence, of which the offender would be required to serve 85 percent under correctional supervision. Under the proposal, a judge could sentence a class “C” felon to six years of correctional supervision as opposed to the current 10 year indeterminate period for class “C” felonies; courts would be allowed to “mix and match” all sentencing alternatives (probation, community service, fines, residential placement, jail, prison) based on seriousness of the offense and the risk posed by the offender; a period of mandatory supervised release would be an option when the offender poses a serious risk to public safety; the Board of Parole would be allowed to release an offender from prison for supervision when it is determined through use of risk assessment tools that the individual is not a threat to society; the Board of Parole could release an offender from supervision once at least 85 percent of the



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sentence is served; and violations of the conditions of release could result in additional incarceration for a specified time period up to the remaining portion of the sentence.

**Deliberations.** In the course of discussion, some Commission members expressed concerns about various aspects of the proposal. The Commission also discussed whether to ask the Legislative Council for additional time to continue its work. By a voice vote, a motion to make this request to the Council did not receive the requisite number of affirmative votes from members in each chamber.

### **J. Ninth Meeting – December 21, 1999.**

At its final meeting, after approving a recommendation to reclassify certain simple misdemeanors, the Commission discussed six items for possible recommendation to the General Assembly for further consideration. These were: OWI treatment; good time calculation; split sentencing; sentences for Burglary – 3<sup>rd</sup> degree and Forgery offenses; 85 percent sentences; and mandatory supervised release. Co-chairperson McKean expressed the hope that proposals on these topics, as refined by the General Assembly, could become building blocks for future improvements in Iowa's justice system.

**Reclassification of Certain Simple Misdemeanors (Overweight trucks).** Kevin Parker, Warren County Attorney, presented a proposal to reclassify certain violations of the maximum gross weight limitations for vehicles in order to make them scheduled violations. Without objection, the Commission recommended that this proposal be forwarded to the General Assembly as a recommendation of the Commission.

**OWI Treatment.** This proposal acknowledges that there is a waiting list for OWI treatment programs, and that the waiting time and program length vary by judicial district. The proposal identifies increased use of Luster Heights, expanded electronic monitoring, and more uniform program standards as possible areas for the General Assembly to consider in addressing these issues. Without objection, the Commission recommended that this item be forwarded to the General Assembly for further consideration.

**Good Time Calculation.** This proposal would require the Department of Corrections to calculate good time as it is earned, rather than calculating a tentative release date at the beginning of an offender's sentence, in order to move toward a system with greater truth in sentencing and the use of earned time. Mr. Kautzky expressed concern about the administrative implications of calculating good time in this way. Attorney General Miller suggested that language be inserted into the proposal to give assurance that if DOC is required to calculate good time as it is earned, necessary resources be appropriated to the department for doing so. The Commission recommended that the proposal, as amended, be forwarded to the General Assembly for further consideration.

**Split Sentencing.** Under this proposal, additional resources could be allocated to CBCs to create space so that offenders convicted of specific nonviolent class "C" or "D" felonies could be sentenced to a CBC rather than to prison or jail. The Commission recommended that this proposal be forwarded to the General Assembly for consideration.



**Burglary- 3<sup>rd</sup> Degree and Forgery.** This proposal acknowledges that Burglary – 3<sup>rd</sup> Degree and Forgery are property offenses that significantly impact the prison population. Under the proposal, the General Assembly would examine the sentencing practices for these types of offenses, to determine whether there are more effective options than prison. The Commission recommended that this item be forwarded to the General Assembly for consideration.

**85 Percent Statute.** This option would allow DOC and the Board of Parole to recommend to the court that an offender serving an 85 percent sentence become eligible for reconsideration of sentence, and give county attorneys more discretion in deciding whether to pursue an 85 percent sentence. The Commission recommended that this option be forwarded to the General Assembly for further consideration.

**Mandatory Supervised Release.** This proposal is intended to address the fact that certain offenders are being released from prison without any community supervision. Upon appropriation of sufficient funds, mandatory supervised release could be implemented for offenders serving an 85 percent sentence or for those who refuse to be paroled. The Commission recommended that this option be forwarded to the General Assembly for further consideration.

Co-chairperson McKean said he hoped that these items could become building blocks for improving the state's justice system. These improvements could be based on such goals as greater judicial discretion; increased truth in sentencing; more alternatives to incarceration for nonviolent offenders; more rational utilization of prison beds; and reduced prison crowding.

**Accomplishments of the Commission.** Co-chairperson McKean listed the following accomplishments of the Commission:

- 1999 Misdemeanor Reclassification Bill (Senate File 189).
- Consolidation of Offenses.
- Reclassification of Certain Simple Misdemeanors to Scheduled Violations.
- Removal of Prohibition against Credit for Time Served in Another Jurisdiction.
- Offense Severity Ranking Exercise.
- Identification of Items for Further Consideration by General Assembly.

### III. Subcommittee Meetings.

#### A. Misdemeanor Reclassification – January 5, 1999.

The subcommittee consisted of Judge Johnson (Chairperson); Representative Lamberti; Pam Dettmann; W.L. Kautzky; Doug Marek (Attorney General's Office); Paul Wieck and Valorie Wilson. Following discussion, the subcommittee recommended that the following misdemeanors be reclassified or changed:

- Interference with official acts (serious misdemeanor violation).
- Driving while license under suspension for violations of section 321.218, 321A.32, or 321J.21.



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- Possession of alcohol under legal age (second offense).
- Fireworks in state parks.
- Theft in the 4<sup>th</sup> degree and 5<sup>th</sup> degree.
- Criminal mischief in the 4<sup>th</sup> degree and 5<sup>th</sup> degree.
- Computer damage in the 4<sup>th</sup> degree and 5<sup>th</sup> degree.
- Computer theft in the 4<sup>th</sup> degree and 5<sup>th</sup> degree.
- Polygraph examination by employers.
- Interference with signs or signals.

### **B. Data Collection – February 8, 1999.**

Subcommittee members present were: Co-chairperson McKean (Chairperson); Ms. Faust; Mr. Kautzky; and Ms. Forsyth (by phone). Others present were: Eric Sponheim (LSB); Dick Moore, Lettie Prell and Clarence Key, Jr. (CJJP); Dwayne Ferguson and Christina Schaefer (LFB); Ed Conlow (House Democrats); Roxann Ryan and John Lewis (Iowa Research Council); Gene Lutz and Keith Crew (University of Northern Iowa); and Patrick Brodeur (Fifth Judicial District Department of Correctional Services). The subcommittee discussed the Commission's data requirements and the need for ongoing research support. The subcommittee requested that the Division of Criminal and Juvenile Justice Planning, the Iowa Research Council, and the Center for Social and Behavioral Research at the University of Northern Iowa collaborate on developing a research proposal for the Sentencing Commission.

### **C. Offense Severity and Classification – May 17 and June 17, 1999.**

Members of the subcommittee were: Co-chairperson McKean (Chairperson); Senator Hammond; Senator Maddox; Representative Larson; Representative Richardson; Judge Johnson; Mr. Kautzky; Charles Larson, Sr.; Attorney General Miller; Judge Sokolovske; and Ms. Wilson.

- May 17 meeting. At this organizational meeting, the subcommittee discussed the procedure to be used in ranking the severity of criminal offenses. The subcommittee expressed interest in collecting useful data regarding how offender characteristics influence sentencing severity.
- June 17 meeting. See this summary listed in the proceedings of the Commission meetings.

### **D. Sentencing Characteristics – May 17, 1999.**

Members present were: Co-chairperson Garman (Chairperson); Senator Dvorsky; Ms. Dettmann; Judge Dowell; Ms. Forsyth; Ms. Kopatich; Ms. Miller; Sheriff Van Toorn; and Commissioner Westfall. Co-chairperson Garman announced that the subcommittee would not meet in June, but that staff would develop materials on offender characteristics for consideration prior to the July meeting.

### **E. Operating While Intoxicated – October 25, 1999.**

Subcommittee members present were: Charles Larson, Sr. (Chairperson); Judge Johnson; and Pete Grady (Attorney General's Office). Others present with specialized knowledge



of OWI were: Tom Bonefas (1<sup>st</sup> Judicial District CBC); Ken Smid (5<sup>th</sup> Judicial District CBC); Jeanette Bucklew (DOC); and Elizabeth Ford (Board of Parole). The subcommittee noted that there are substantial waiting lists for OWI treatment and that the length of treatment programs varies significantly among the CBC districts. The consensus of the subcommittee was that DOC and CBCs have sufficient administrative flexibility for placing OWI offenders appropriately, but that additional resources are needed to reduce or remove waiting lists. The subcommittee requested that Ms. Bucklew prepare an estimate of the resource levels needed to do this, using such means as expanded electronic monitoring programs.

#### IV. Staff Work Group.

In addition to LSB and CJJP, participating agencies included: Senate Republican Caucus Staff; House Republican Caucus Staff; Senate Democratic Caucus Staff; House Democratic Caucus Staff; State Court Administrator's Office; Attorney General's Office; Department of Corrections; Department of Public Safety; Board of Parole; Judicial District Departments of Correctional Services; State Public Defender's Office; and Legislative Fiscal Bureau. Plenary meetings of the workgroup are summarized below.

Meeting Date (all in 1999)	Topics/Tasks	Participating Agencies
May 18	Organize group; develop procedure for ranking exercise.	LSB, CJJP, LFB, SR, HR, SD, AG, JB, DPS, DOC
June 1	Finalize procedure for ranking exercise; invite participation in offender profiling research.	LSB, CJJP, LFB, HR, SD, CS, AG, DOC, IRC
June 23	Respond to informational requests made by Commission at June 17 meeting; begin Accountability Grid Development Project.	LSB, CJJP, LFB, SR, SD, HD, AG, JB, DOC, SPD, DOM, IRC, CBC
June 25	Develop scenario for distribution of discretion in sample grid.	LSB, CJJP, LFB, SR
June 29	Continue work on sample grid.	LSB, CJJP, LFB, SR, AG, CBC, DOC
July 6	Review grid considerations from June 17 Commission meeting; continue grid work.	LSB, CJJP, LFB, SR, AG, CBC, DOC, BOP
July 9	Further discussion of sample grid.	LSB, CJJP, DOC, SR
July 28	Discuss Commission data requests and considerations from July 20 meeting; identify offender characteristics options.	LSB, CJJP, SR, HR, SD, HD, DPS, DOC, BOP, SPD
August 4	Discuss agenda for August 17 Commission meeting.	LSB, CJJP, LFB, SR, HD, AG, DPS, CBC, DOC, SPD



## Sentencing Commission

August 9	Finalize offender characteristics options and focus questions for August 17 Commission meeting.	LSB, CJJP, HR, HD, DOC, BOP, SPD
August 27	Identify further uses of offender characteristics research.	LSB, CJJP, HR, SD, SPD, DOC, DPS, BOP
September 3	Discuss offender characteristics research findings.	LSB, CJJP, HR, BOP
September 15	Review options/proposals for next Commission meeting.	LSB, CJJP, LFB, SR, HD, DOC, DPS, SPD
October 5	Further review of options/proposals for next Commission meeting.	LSB, CJJP, LFB, SR, HR, DOC, CBC
October 7	Develop options for consideration of sentence lengths.	LSB, CJJP, SR, HR, HD, DOC, DPS, JB
October 13	Discuss proposals prior to their submission to co-chairpersons.	LSB, CJJP, LFB, SR, HR, SD, SR, AG, CBC, DOC, SPD
November 18	Discuss comprehensive proposal.	LSB, CJJP, LFB, SR, HR, SD, HD, JB, AG, DPS, CBC, DOC, BOP

**KEY.** LSB=Legislative Service Bureau (Joe McEniry, John Pollak, Eric Sponheim); CJJP=Division of Criminal and Juvenile Justice Planning, Department of Human Rights (Clarence Key, Jr., Dick Moore, Lettie Prell, Paul Stageberg); LFB=Legislative Fiscal Bureau (Dwayne Ferguson, Christina Schaefer); SR=Senate Republican Caucus Staff (Stacey Abildtrup, Pam Dugdale, Michael Mulford, Michael Savala); HR=House Republican Caucus Staff (Margaret Thomson); SD=Senate Democratic Caucus Staff (Steve Conway); HD=House Democratic Caucus Staff (Ed Conlow); JB=Judicial Branch-State Court Administrator's Office (David Boyd); AG=Attorney General's Office (Anne Bunz, Doug Marek); IRC=Iowa Research Council (Keith Crew, John Lewis, Roxann Ryan); DPS=Department of Public Safety (Donna Bacus, Betsy Dittimore); DOC=Department of Corrections (John Goeldner, W.L. Kautzky); DOM=Department of Management (Dennis Hart); SPD=State Public Defender's Office (Chris DeVeer, Mark Smith); BOP=Board of Parole (Charles Larson, Sr.); CBC=Community-Based Corrections, Judicial District Departments of Correctional Services (Dot Faust, Linda Murken, Toni Tassone).

### V. Recommendation Discussion.

**Overview.** The Commission discussed recommendations at two meetings. A list of all recommendations adopted is attached as appendix G. The following is a summary of the Commission's deliberation on the adopted recommendations:

**A. Serious Misdemeanor Reclassification.** At its meeting on January 6, 1999, the Commission accepted the report of the Misdemeanor Reclassification Subcommittee. Following discussion, the Commission recommended that enhancement of driving while license under suspension be removed from the list of recommendations. The amended list



of recommendations was forwarded to the General Assembly in bill draft form (Senate File 189). It was passed by the General Assembly in the 1999 Session and signed by the Governor. See Appendix A for the text of the bill.

**B. Consolidation of Offenses.** At its meeting on November 23, 1999, the Commission approved a proposal to consolidate computer theft and video rental theft into the general theft statute, and to consolidate the offense of computer damage with the criminal mischief statute. The proposal would also consolidate certain offenses involving election bribery and improper voting activity. See Appendix B for the text of the proposal.

**C. Simple Misdemeanors Reclassification.** At its meeting on November 23, 1999, the Commission discussed a list of simple misdemeanors identified by the staff work group as possibilities for reclassification as scheduled violations. After deleting reckless driving and drag racing from the list, the Commission approved the amended proposal. At the December 21, 1999, meeting the Commission approved a related proposal for reclassifying simple misdemeanor offenses involving overweight truck violations to make them punishable as scheduled violations. See Appendix E for the proposal approved in bill draft form. Under the amended proposal recommended by the Commission from the two meetings, the following offenses would be reclassified as simple misdemeanors punishable as a scheduled violation:

1. Illegal transfer of ownership of a motor vehicle.
2. Abandoning a motor vehicle.
3. Fraudulent use of a motor vehicle registration.
4. Violation of antique vehicle law.
5. Permitting an unauthorized minor to drive a motor vehicle.
6. Permitting an unlicensed person to drive a motor vehicle.
7. Operating an all-terrain vehicle on a highway without a safety flag.
8. Passing on the shoulder of the roadway.
9. Failure to yield the right-of-way to a pedestrian.
10. Stopping, parking, or leaving a vehicle illegally.
11. Overweight truck violations.
12. Violating requirements on motor vehicle lighting.
13. Commercial fishing violations.
14. Hunter safety requirements of minors.
15. Violation of fishing and hunting license requirements.

**D. Credit for Time Served in Another Jurisdiction.** At its meeting on November 23, 1999, the Commission approved a proposal in bill draft form to remove the prohibition in Iowa Code against the receipt of sentence credit for time served in another jurisdiction. See Appendix F for the text of the proposed bill.



## **Sentencing Commission**

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### **E. Items for Further Consideration by General Assembly.**

At its meeting on December 21, 1999, the Commission recommended that the following items be forwarded to the General Assembly for further consideration:

1. **OWI treatment.** Review OWI treatment availability and uniformity.
2. **Good Time.** Review the manner in which good time credits are accumulated by offenders to reflect more truth in sentencing. The Commission emphasized that any implementation would be contingent upon appropriation of sufficient funds.
3. **Split Sentencing.** Review options for allocating additional resources for facilities at community-based corrections for purposes of split sentencing.
4. **Burglary – 3<sup>rd</sup> degree and Forgery.** Review current sentencing practices associated with crimes of Forgery and Burglary – 3<sup>rd</sup> degree.
5. **85 Percent.** Review options for reconsideration of 85 percent sentences and for prosecutors to have greater discretion to prosecute an offender under the 85 percent statute.
6. **Mandatory Supervised Release.** Review options to require a period of mandatory supervised release to address the issue of offenders who are discharging their sentences while in prison. The Commission emphasized that any implementation would be contingent upon the appropriation of sufficient funds.

### **VI. Appendices.**

- A. Text of Misdemeanor Reclassification bill (1999 Iowa Acts, Chapter 153-Senate File 189).
- B. Results of Offense Severity Ranking Exercise, June 17, 1999.
- C. Offender Characteristics Study: Discussion of Prisoner and Probationer Samples, September 13, 1999.
- D. Proposed Bill for Consolidation of Offenses (LSB 5085IC).
- E. Proposed Bill for reclassification of overweight truck violations (LSB 5138IC).
- F. Proposed Bill on Credit for Time Served in Another Jurisdiction (LSB 5065IC).
- G. Commission Recommendations.

### **VII. Materials Filed with the Legislative Service Bureau.**

In addition to the materials identified in the minutes, materials received by the Commission included the following:



### A. National Institute of Corrections Material.

1. Guide to a Criminal Justice System Assessment (Center for Effective Public Policy, 1996).
2. Technical Assistance Report, National Institute of Corrections, by consultant Kay A. Knapp, January 1999.
3. Report of Robert Johnson, Anoka County Attorney (presenter at February 19, 1999, Commission meeting, whose travel was funded by NIC).

### B. Data on Comparisons of Sentences across States.

1. *Crime, Sentencing and Prison: Comparisons of Iowa with Kansas, Minnesota, and North Carolina* (CJJP series of charts/tables, March 16, 1999).
2. *Comparative Penalties/Time Served* (LSB memorandum, incorporating material from CJJP and other sources, May 13, 1999).

### C. Data on Structured Sentencing.

1. *Sentencing Commission Profiles* (National Center for State Courts, 1997).
2. *Sentencing Digest* (National Center for State Courts, 1998).
3. *Role of Offender Characteristics in Structured Sentencing* (LSB memorandum, May 11, 1999).

### D. Offense Severity Ranking Material.

1. Criminal Offense Elements, class "A" felonies through aggravated misdemeanors, Revised June 17, 1999.
2. Offense Severity Ranking Form (for survey conducted prior to June 17, 1999 meeting).
3. Offense Severity Ranking Results, June 17, 1999.

### E. Additional Iowa Data.

1. *Iowa Prison Population Forecast, FY1999–FY2008* (CJJP, September 1998).
2. *Iowa Prison Population Forecast, FY2000–FY2009* (CJJP, October 1999).
3. *State of Iowa 1998 Inmate Profile* (CJJP, September 1998).
4. *Offender Recidivism in Iowa* (CJJP, April 13, 1999).
5. *Proportionality and Disparity Issues* (LSB memorandum, May 14, 1999).



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### F. Equality in the Courts Task Force.

1. Equality in the Courts Task Force, *Final Report, Chapter IX* (February 1993).
2. Criminal Issues Committee, *Report for Implementation of Recommendations from Task Force* (December 1996).
3. Equality in the Courts Implementation/Monitoring Committee, *Final Report* (December 1998).

### G. Community-Based Corrections.

1. Iowa's Intermediate Criminal Sanctions Continuum – Community Based Corrections – State Summary (Department of Corrections, April 1999).
2. Implementation Plans for Intermediate Sanctions Programs, CBC Districts, January 1999.
3. *Outcomes in Community Based Corrections* (Department of Corrections, December 1998).
4. *Final Report of the Commission on Community Justice* (Cedar Rapids Community Corrections Improvement Association, December 1997).
5. *Criminal Justice Policy Forecasting for the State of Iowa*, by Jack O'Connell, Bureau of Justice Assistance consultant (February 1999).

### H. Input Received from Justice System Stakeholders.

1. DOC letter on Sentencing Policy and Correctional Cost Control (April 12, 1999).
2. Specific Improvement Proposals Received in Response to Commission Solicitation (July 1999).
3. Letter from County Attorneys Association (August 5, 1999).
4. Letter from Iowa Civil Liberties Union (December 13, 1999).
5. Memorandum from the Directors of the Judicial District Department of Community Based Correctional Services (December 10, 1999).

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SENATE FILE 189

AN ACT

TO CHANGE THE PENALTY FOR AND TO RECLASSIFY CERTAIN  
MISDEMEANORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 123.47, subsection 3, Code 1999, is amended to read as follows:

3. A person who is under legal age, other than a licensee or permittee, who violates this section regarding the purchase of or attempt to purchase alcoholic liquor, wine, or beer, or possessing or having control of alcoholic liquor, wine, or beer, commits a simple misdemeanor punishable by a fine of one hundred dollars for the first offense. A second or subsequent offense shall be a ~~serious~~ simple misdemeanor punishable by a fine of two hundred dollars and the suspension of the person's motor vehicle operating privileges for a period not to exceed one year. The court may, in its discretion, order the person who is under legal age to perform community service work under section 909.3A, of an equivalent value to the fine imposed under this section. However, if the person who commits the violation of this section is under the age of eighteen, the matter shall be disposed of in the manner provided in chapter 232.

Sec. 2. Section 321.218, subsection 1, Code 1999, is amended to read as follows:

1. A person whose driver's license or operating privilege has been denied, canceled, suspended, or revoked as provided in this chapter or as provided in section 252J.8 or section 901.5, subsection 10, and who operates a motor vehicle upon the highways of this state while the license or privilege is denied, canceled, suspended, or revoked, commits a **serious simple misdemeanor**. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars nor more than one thousand five hundred dollars.

Sec. 3. Section 321.260, subsection 1, paragraph a, Code 1999, is amended to read as follows:

a. A person who willfully and intentionally, without lawful authority, attempts to or in fact alters, defaces, injures, knocks down, or removes an official traffic-control device, an authorized warning sign or signal or barricade, whether temporary or permanent, a railroad sign or signal, an inscription, shield or insignia on any of such devices, signs, signals, or barricades, or any other part thereof, shall, upon conviction, be guilty of a **serious simple misdemeanor** and shall be required to make restitution to the affected jurisdiction. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars.

Sec. 4. Section 321.260, subsection 2, Code 1999, is amended to read as follows:

2. It shall be unlawful for any person to have in the person's possession any official traffic-control device except by legal right or authority. Any person convicted of unauthorized possession of any official traffic-control device shall upon conviction be guilty of a **serious simple misdemeanor**. In addition to any other penalties, the

punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars.

Sec. 5. Section 321A.32, subsection 1, Code 1999, is amended to read as follows:

1. Any person whose license or registration or nonresident's operating privilege has been suspended, denied or revoked under this chapter or continues to remain suspended or revoked under this chapter, and who, during such suspension, denial or revocation, or during such continuing suspension or continuing revocation, drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this chapter, shall be guilty of a serious simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars nor more than one thousand five hundred dollars.

Sec. 6. Section 321J.21, subsection 1, Code 1999, is amended to read as follows:

1. A person whose driver's license or nonresident operating privilege has been suspended, denied, revoked, or barred due to a violation of this chapter and who drives a motor vehicle while the license or privilege is suspended, denied, revoked, or barred commits a serious misdemeanor, ~~punishable with a mandatory fine of one thousand dollars.~~ In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of one thousand dollars.

Sec. 7. Section 331.302, subsection 2, Code 1999, is amended to read as follows:

2. A county shall not provide a penalty in excess of a one two hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. The criminal

penalty surcharge required by section 911.2 shall be added to a county fine and is not a part of the county's penalty.

Sec. 8. Section 331.302, subsection 4A, paragraph a, subparagraph (2), Code 1999, is amended to read as follows:

(2) A portion of the Code of Iowa may be adopted by reference only if the criminal penalty provided by the law adopted does not exceed thirty days' imprisonment or a one two hundred dollar fine.

Sec. 9. Section 364.3, subsection 2, Code 1999, is amended to read as follows:

2. A city shall not provide a penalty in excess of a one two hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. An amount equal to ten percent of all fines collected by cities shall be deposited in the account established in section 602.8108. However, one hundred percent of all fines collected by a city pursuant to section 321.236, subsection 1, shall be retained by the city. The criminal penalty surcharge required by section 911.2 shall be added to a city fine and is not a part of the city's penalty.

Sec. 10. Section 461A.42, subsection 2, Code 1999, is amended to read as follows:

2. The use of fireworks, as defined in section 727.2, in state parks and preserves is prohibited except as authorized by a permit issued by the department. The commission shall establish, by rule adopted pursuant to chapter 17A, a fireworks permit system which authorizes the issuance of a limited number of permits to qualified persons to use or display fireworks in selected state parks and preserves. A person violating this subsection is guilty of a serious simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars. The court ~~may~~ shall order restitution ~~for~~ if any damages were caused by the violation which may include,

but is not limited to, community service. ~~The court may also require that the violator provide proof of restitution.~~

Sec. 11. Section 714.2, subsections 4 and 5, Code 1999, are amended to read as follows:

4. The theft of property exceeding ~~one~~ two hundred dollars in value but not exceeding five hundred dollars in value is theft in the fourth degree. Theft in the fourth degree is a serious misdemeanor.

5. The theft of property not exceeding ~~one~~ two hundred dollars in value is theft in the fifth degree. Theft in the fifth degree is a simple misdemeanor.

Sec. 12. Section 714.12, unnumbered paragraph 1, Code 1999, is amended to read as follows:

Fraudulent practice in the fourth degree is a fraudulent practice where the amount of money or value of property or services involved exceeds ~~one~~ two hundred dollars but does not exceed five hundred dollars.

Sec. 13. Section 714.13, unnumbered paragraph 1, Code 1999, is amended to read as follows:

Fraudulent practice in the fifth degree is a fraudulent practice where the amount of money or value of property or services involved does not exceed ~~one~~ two hundred dollars.

Sec. 14. Section 716.6, Code 1999, is amended to read as follows:

716.6 CRIMINAL MISCHIEF IN THE FOURTH AND FIFTH DEGREES.

Criminal mischief is criminal mischief in the fourth degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed exceeds ~~one~~ two hundred dollars, but does not exceed five hundred dollars.

Criminal mischief in the fourth degree is a serious misdemeanor. All criminal mischief which is not criminal mischief in the first degree, second degree, third degree, or fourth degree is criminal mischief in the fifth degree.

Criminal mischief in the fifth degree is a simple misdemeanor.

Sec. 15. Section 716.8, subsection 2, Code 1999, is amended to read as follows:

2. Any person committing a trespass as defined in section 716.7 which results in injury to any person or damage in an amount more than ~~one~~ two hundred dollars to anything, animate or inanimate, located thereon or therein commits a serious misdemeanor.

Sec. 16. Section 716.8, subsection 4, Code 1999, is amended to read as follows:

4. A person committing a trespass as defined in section 716.7 with the intent to commit a hate crime which results in injury to any person or damage in an amount more than ~~one~~ two hundred dollars to anything, animate or inanimate, located thereon or therein commits an aggravated misdemeanor.

Sec. 17. Section 716A.7, Code 1999, is amended to read as follows:

716A.7 COMPUTER DAMAGE IN THE FOURTH DEGREE.

Computer damage is computer damage in the fourth degree when the damage results in a loss of property or services of more than ~~one~~ two hundred dollars but not more than five hundred dollars. Computer damage in the fourth degree is a serious misdemeanor.

Sec. 18. Section 716A.8, Code 1999, is amended to read as follows:

716A.8 COMPUTER DAMAGE IN THE FIFTH DEGREE.

Computer damage is computer damage in the fifth degree when the damage results in a loss of property or services of not more than ~~one~~ two hundred dollars. Computer damage in the fifth degree is a simple misdemeanor.

Sec. 19. Section 716A.13, Code 1999, is amended to read as follows:

716A.13 COMPUTER THEFT IN THE FOURTH DEGREE.

Computer theft is computer theft in the fourth degree when the theft involves or results in a loss of services or property of more than ~~one~~ two hundred dollars but not more

than five hundred dollars. Computer theft in the fourth degree is a serious misdemeanor.

Sec. 20. Section 716A.14, Code 1999, is amended to read as follows:

716A.14 COMPUTER THEFT IN THE FIFTH DEGREE.

Computer theft is computer theft in the fifth degree when the theft involves or results in a loss of services or property of not more than ~~one~~ two hundred dollars. Computer theft in the fifth degree is a simple misdemeanor.

Sec. 21. Section 719.1, subsection 1, Code 1999, is amended to read as follows:

1. A person who knowingly resists or obstructs anyone known by the person to be a peace officer, emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, in the performance of any act which is within the scope of the lawful duty or authority of that officer, emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, or who knowingly resists or obstructs the service or execution by any authorized person of any civil or criminal process or order of any court, commits a ~~serious~~ simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars. However, if a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts bodily injury other than serious injury, that person commits an aggravated misdemeanor. If a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts or attempts to inflict serious injury, or displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm, that person commits a class "D" felony.

Sec. 22. Section 727.2, unnumbered paragraph 2, Code 1999, is amended to read as follows:

A person, firm, copartnership, or corporation who offers for sale, exposes for sale, sells at retail, or uses or explodes any fireworks, commits a **serious simple** misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this section shall include assessment of a fine of not less than two hundred fifty dollars. However, the council of a city or a county board of supervisors may, upon application in writing, grant a permit for the display of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals approved by the city or the county board of supervisors when the fireworks display will be handled by a competent operator, but no such permit shall be required for the display of fireworks at the Iowa state fairgrounds by the Iowa state fair board, at incorporated county fairs, or at district fairs receiving state aid. Sales of fireworks for such display may be made for that purpose only.

Sec. 23. Section 730.4, subsection 6, Code 1999, is amended to read as follows:

6. A person who violates this section commits a **serious simple** misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this section shall include assessment of a fine of not less than two hundred fifty dollars.

Sec. 24. Section 903.1, subsection 1, paragraph a, Code 1999, is amended to read as follows:

a. For a simple misdemeanor, ~~either-imprisonment-not-to exceed-thirty-days,-or~~ there shall be a fine of at least fifty dollars but not to exceed one five hundred dollars. The court may order imprisonment not to exceed thirty days in lieu of a fine or in addition to a fine.

Sec. 25. THIRD OFFENSE OWI REVOCATIONS.

1. When revoking a defendant's driver's license under section 321J.4, the court shall not consider a conviction under section 321J.2 which occurred on or prior to June 30,

1991, for the purpose of determining whether a conviction is a third or subsequent offense under section 321J.2. If a person whose license was revoked under section 321J.4, subsection 4, for three violations of section 321J.2, one of which occurred on or prior to June 30, 1991, the person may apply for reinstatement of the person's driving privileges and the court shall reinstate those privileges two years after the date of the order for revocation.

2. a. If a defendant's driver's license is revoked for a third or subsequent violation of section 321J.2 and one or more of the violations which resulted in the revocation occurred before June 30, 1991, the person shall be permitted to apply to the court for restoration of the defendant's driving privileges. The application may be granted only if all of the following are shown by the defendant by a preponderance of the evidence:

(1) The defendant has completed an evaluation and, if recommended by the evaluation, a program of treatment for chemical dependency and is recovering, or has substantially recovered, from that dependency on or tendency to abuse alcohol or drugs.

(2) The defendant has not been convicted, since the date of the revocation order, of any subsequent violations of section 321J.2 or 123.46, or any comparable city or county ordinance, and the defendant has not, since the date of the revocation order, submitted to a chemical test under this chapter that indicated an alcohol concentration as defined in section 321J.1 of .10 or more, or refused to submit to chemical testing under this chapter.

(3) The defendant has abstained from the excessive consumption of alcoholic beverages and the consumption of controlled substances, except at the direction of a licensed physician or pursuant to a valid prescription.

(4) The defendant's motor vehicle license is not currently subject to suspension or revocation for any other reason.

b. The court shall forward to the department a record of any application submitted under paragraph "a" and the results of the court's disposition of the application.

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MARY E. KRAMER  
President of the Senate

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BRENT SIEGRIST  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 189, Seventy-eighth General Assembly.

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MICHAEL E. MARSHALL  
Secretary of the Senate

Approved \_\_\_\_\_, 1999

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THOMAS J. VILSACK  
Governor

# OFFENSE SEVERITY RANKING EXERCISE RESULTS

June 17, 1999

**Background on Ranking Exercise:** All Commission members were provided with a form listing all felony and aggravated misdemeanor offenses, arranged by offense class. They were asked to rank the severity of the harm caused by each offense compared to others in the offense class, on a scale of 1 to 5. A rank of 1 indicated the most severe type of harm in each offense class, a rank of 2 indicated the next most severe, and so on. Commission members were also given the opportunity to make specific suggestions about areas for the Commission to consider regarding possible changes to offense severity classifications or particular penalties. Nineteen of the 24 Commission members completed the form, and staff tabulated the results prior to the June 17, 1999 meeting of the Offense Severity and Classification Subcommittee.

**Ranking Form:** To assist Commission members in their rankings, the form contained the following data. (Statutory elements of the offenses were made available on a separate sheet.)

- Number of convictions for each offense in FY97.
- Percentage of convictions for each offense in FY97 resulting in a prison sentence.
- Average time served by offenders sentenced to prison for each offense, based on analysis of releases in the first half of 1998. (For offenses subject to recent statutory changes abolishing parole, the average time served was based on the minimum sentence length.)
- For some, newer offenses, historical conviction and sentencing numbers were not yet available.

**Ranking Results:** The results of the ranking exercise helped provide a focus for discussion at the June 17, 1999 meeting of the Offense Severity and Ranking Subcommittee. All members of the Commission were invited to this meeting, and 12 attended. Prior to the meeting, staff calculated an average score for each offense and arranged offenses within each offense class in descending order based on the ranking, beginning with the most severe. Staff also grouped Commission members' specific suggestions into general categories.

### Class A Felonies

Code Section	Crime	Crime Against Person	Number of Convictions FY97	Percent Sentenced to Prison	Average Length of Stay in Months	Average
707.2	Murder--1st degree	Y	31	100%	Life	1.00
710.2	Kidnapping-1st degree	Y	2	100%	Life	1.47
709.2	Sexual abuse--1st degree	Y	1	100%	Life	1.58
703.1	Aiding and abetting	See underlying offense	0	---	Life	2.53
124.401D	Conspiracy to manufacture for delivery or delivery of meth to a minor - 2nd offense	N	0	---	Life	3.06

### Class B Felonies

Code Section	Crime	Crime Against Person	Number of Convictions FY97	Percent Sentenced to Prison	Average Length of Stay in Months	Average
707.3	Murder--2nd degree	Y	14	100%	510	1.11
712.2	Arson--1st degree	Y	2	100%	99	1.42
710.3	Kidnapping-2nd degree	Y	7	100%	255	1.47
709.3	Sexual abuse--2nd degree	Y	31	94%	255	1.53
707.9	Murder of fetus aborted alive	Y	0	---		1.58
707.11	Attempt to commit murder	Y	15	100%	255	1.74
711.2	Robbery--1st degree	Y	87	95%	255	1.74
726.6A	Course of conduct involving 3 or more acts of child endangerment with same child or mentally or physically disabled child resulting in serious injury or skeletal injury to child under 4 yrs of age	Y	0	---		1.74
709C.1	Criminal transmission of human immunodeficiency virus	Y	0	---		1.78
713.3	Burglary--1st degree	Y	30	67%	71	1.89
707.8(1)	Nonconsensual termination of human pregnancy during forcible felony	Y	0	---		1.95
124.401 (1)(a)	Manufacture/delivery of controlled substance (large amounts: e.g. 1+kg heroin; 5+kg coca leaves, cocaine, ecgonine, methamphetamine, amphetamine;50 g of mixture of coca leaves, etc. with cocaine base; 100 g PCP; 10 g of LSD mix; 1,000 kg of marijuana mix)	N	0	---		2.06
707.6A(1)	Homicide by motor vehicle during OWI	Y	26*	50%*	30*	2.21
124.406 (1)(a)	Distribution of controlled substances to persons under 18 (schedule I or II)	Y	9	44%		2.33
716.10(2)(a)	Railroad vandalism--1st degree	Y	0	---		2.58
124.401 (1)(b)	Manufacture/delivery of controlled substance (100 g or less of heroin; 500 g or less of coca leaves, cocaine, ecgonine, methamphetamine, amphetamine; 5 g or less prep w/ cocaine base; 10 g or less of PCP or 100 g of PCP mix;50-100 kg of marijuana)	N	169	24%	39	2.68
703.1	Aiding and abetting	See underlying offense	0	---		2.79
706A.4	Ongoing criminal conduct	N	0	---		2.88
124.406 (2)(a)	Distribution of counterfeit controlled substances (narcotic or cocaine) to persons under 18 (schedule I and II)	Y	1	---		2.89
155A.24	Sale, offering, giving, or administering of unlawfully procured prescription drugs--if large amounts of sched I, II, and III controlled substance or marijuana (see 124.401 (1)(a))	N	0	---		3.16
716.10(2)(b)	Railroad vandalism--2nd degree	Y	0	---		3.26

### Class B Felonies

Code Section	Crime	Crime Against Person	Number of Convictions FY97	Percent Sentenced to Prison	Average Length of Stay in Months	Average
155A.24	Sale, offering, giving, or administering of unlawfully procured prescription drugs--if lesser amounts of sched I,II,and III controlled substance or marijuana (see 124.401 (1)(b))	N	0	---		3.53

### Class C Felonies

Code Section	Crime	Crime Against Person	Number of Convictions FY97	Percent Sentenced to Prison	Average Length of Stay in Months	Average
726.6 (2)	Child endangerment resulting in serious injury	Y	27	33%	55	1.42
235B.20(2)	Intentional dependent adult abuse resulting in serious injury	Y	0	---		1.44
728.12 (1)	Sexual exploitation of a minor	Y	3	---		1.47
709.11	Assault with intent to commit sexual abuse resulting in serious injury	Y	0	---		1.53
710.5	Child stealing	Y	1	100%		1.63
707.6A(2)	Homicide by vehicle during reckless driving, or eluding	Y	9*	67%*		1.67
707.8(2)	Termination of human pregnancy during felony or felony assault	Y	0	---		1.68
709.4	Sexual abuse--3rd degree	Y	158	72%	48	1.68
710.11	Purchase or sale of an individual	Y	0	---		1.68
719.1 (2)	Interference with official acts of correctional officer, agent, employee, or contractor by person under custody, control, or supervision of DOC involving use of dangerous weapon or infliction of serious injury	Y	16	31%		1.68
707.8 (3)	Intentional nonconsensual termination of a human pregnancy without knowledge or consent	Y	0	---		1.74
707.4	Voluntary manslaughter	Y	3	100%		1.79
708.4	Willful injury	Y	53	85%		1.84
708.6	Terrorism with intent	Y	0	---		1.84
708.11(3)	Stalking--3rd offense	Y	0	---		1.84
719.6 (1)	Assisting prisoner convicted of class "A" felony to escape	N	0	---		1.84
710.4	Kidnapping-3rd degree	Y	7	100%		1.89
712.3	Arson--2nd degree	N	27	33%	20	1.89
726.7 (2)	Wanton neglect of a resident of a health care facility resulting in serious injury	Y	0	---		1.89
235B.20 (4)	Intentional dependent adult abuse resulting in physical injury	Y	0	---		1.95
726.3	Abandonment of dependent person	Y	14	57%		1.95
707.7	Feticide by person not licensed as doctor	Y	0	---		2.00
707.8 (5)	Obtaining consent to termination of a human pregnancy by force or intimidation	Y	0	---		2.00
711.3	Robbery--2nd degree	Y	64	88%	102	2.00
724.16A	Trafficking in stolen weapons--2nd offense	N	0	---		2.00
724.30 (1)	Reckless use of firearm resulting in serious injury	Y	1	100%		2.00
692A.7	Willful failure to register with sex offender registry and commission of new sex offense	N	1	100%		2.05

### Class C Felonies

Code Section	Crime	Crime Against Person	Number of Convictions FY97	Percent Sentenced to Prison	Average Length of Stay in Months	Average
708.3	Assault while participating in a felony, other than sexual abuse, resulting in serious injury	Y	26	23%		2.05
713.4	Attempted burglary--1st degree	Y	4	50%	18	2.05
719.5 (1)	Jailer, or public officer or employee, permitting class "A" felony prisoner to escape	N	0	---		2.11
124.406A	Recruiting of persons under 18 by persons over 18 to deliver or manufacture a schedule I-IV controlled substance	Y	0	---		2.17
706.3	Conspiracy to commit a forcible felony	Y	6	83%	36	2.21
725.3(2)	Pandering involving minor	Y	0	---		2.26
707.7	Feticide after end of 2nd trimester	Y	0	---		2.32
708.13(3)	Disarming a peace officer	Y	0	---		2.37
124.406 (1)(b)	Distribution of controlled substances to persons under 18 (schedule I, II, or III) by person who is 18 or older and more than 3 years older than recipient	Y	1	---	3	2.39
713.5	Burglary--2nd degree	N	152	38%	34	2.53
703.1	Aiding and abetting	See underlying offense	0	---		2.53
124.401 (1)(c)	Manufacture/delivery of controlled substance (smaller amounts of sched I, II, and III drugs)	N	1187	33%	22	2.56
707.8A(5)	Partial birth abortion	Y	0	---		2.56
124.406 (2)(b)	Distribution of counterfeit controlled substances (narcotic or cocaine) to persons under 18 (schedule I, II, or III) by person who is 18 or older and more than 3 years older than recipient	Y	0	---		2.61
709A.6	Using juvenile to commit certain offenses	Y	0	---		2.68
718.1	Insurrection	Y	0	---		2.68
707.8(4)	Unintentional termination of a human pregnancy by motor vehicle	Y	0	---		2.84
712.6	Possession of explosive or incendiary materials or devices	N	1	---		2.84
155A.24	Sale, offering, giving, or administering of unlawfully procured prescription drugs--if not controlled substance--involving minor. Sale, offering, giving, or administering of unlawfully procured prescription drugs--if lesser amounts of sched. I, II, and III controlled substance or marijuana (see 124.401(1)(c))	Y	4	---		2.89

### Class C Felonies

Code Section	Crime	Crime Against Person	Number of Convictions FY97	Percent Sentenced to Prison	Average Length of Stay in Months	Average
124B.9	Sale, transfer, furnishing, or receipt of precursor substance for purposes of unlawful manufacture of controlled substance	N	0	---		2.94
714.2 (1)	Theft--1st degree	N	296	40%	25	2.95
723A.3(1)	Gang recruitment	N	0	---		2.95
707A.2	Intentional or knowing assistance of suicide	Y	0	---		3.00
717A.1(4)(a)	Animal facility violations if injury to animals or damage to property exceeds \$50,000	N	0	---		3.05
722.2	Accepting a bribe	N	0	---		3.05
709.7	Detention in a brothel	Y	0	---		3.11
714.9	Fraudulent practices--1st degree	N	6	---		3.21
719.7(4)(a)	Possessing contraband in prisons	N	0	---		3.26
101A.14 (1)	Explosive materials license or user permit violations	N	0	---		3.28
706B.2 (2)(a)	Money laundering	N	0	---	12	3.32
716.3	Criminal mischief--1st degree	N	4	25%	47	3.56
725.7 (2)(d)	Illegal gaming--first degree	N	3	---		3.58
716A.10	Computer theft--1st degree	N	0	---		3.68
714.1(3)-A	Theft by deception	N	2	100%		3.72
524.1605	False statements, reports etc. by director, officer, or employee of state bank; certification of check issuance of CD, or drawing of any draft or bill of exchange by officer or employee of state bank with intent to defraud	N	0	---		3.74
716.10(2)(c)	Railroad vandalism--3rd degree	Y	0	---		3.74
725.7 (2)(c)(2)	Illegal gaming-second degree--second offense	N	0	---		3.74
716A.4	Computer damage--1st degree	N	0	---		3.79
725.7 (2)(b)(3)	Illegal gaming-third degree--3rd or subsequent offense	N	0	---		3.84
714.1(4)(A)	Possession of stolen property	N	9	---		3.94
725.7 (2)(a)(4)	Illegal gaming-fourth degree--4th or subsequent offense	N	0	---		4.05
529.2(7)	Financial transactions reporting Act violations	N	0	---		4.06
8E.5	Fraudulent production contract	N	0	---		4.11
714C.4	Video rental property theft--1st degree	N	0	---		4.16
172B.6(2)	Falsifying, altering, forging, or counterfeiting a transportation certificate for livestock	N	0	---		4.17
172C.7	Packer including confidentiality provision in a contract with livestock seller.	N	0	---		4.28

### Class D Felonies

Code Section	Crime	Crime Against Person	# of Convictions	% Sentenced to Prison	Average Length of Stay in Months	Average
709.8	Lascivious acts with a child	Y	153	43%	20	1.44
235B.20 (3)	Reckless abuse of dependent adult causing serious injury	Y	0	---		1.56
709.11	Assault with intent to commit sexual abuse resulting in bodily injury	Y	1	100%	25	1.56
707.6A(3)	Homicide by vehicle by drag racing	Y	0	---		1.65
708.3A(1), (2)	Assault on peace officer, fire fighter, or health care provider with intent to inflict serious injury or with a dangerous weapon	Y	43	30%	3	1.67
708.11 (3)(b)	Stalking--2nd or subsequent offense, stalking when person is the subject of a civil or criminal protective order, stalking of minor, stalking with dangerous weapon	Y	10	40%		1.67
707.6A(4)	Injury by vehicle during OWI or reckless driving or eluding	Y	28*	39%*	3	1.72
719.4 (1)	Escape from custody as felon	N	49	39%	7	1.72
708.3B	Assaults by inmates on employees of jails or DOC institutions or facilities	Y	0	---		1.78
709.15 (2)	Sexual exploitation by counselor or therapist--pattern or practice/scheme to engage in sexual conduct with current or former emotionally dependent patient/client or to engage in sexual conduct with any patient/client within 1 yr after ending services	Y	0	---	3	1.83
719.1 (1)	Interference with official acts of correctional officer, agent, employee, or contractor by person under custody, control, or supervision of DOC resulting in serious injury, involving display of dangerous weapon or firearm	Y	0	---	23	1.83
708.2A(4)	Domestic abuse assault--3rd offense	Y	18	44%	10	1.88
123.47(6)	Sale of alcohol to persons under legal age by nonlicensee or nonpermittee which results in death of any person	N	0	---		1.89
328.41	Operating an aircraft while intoxicated or under influence of narcotic drugs--3rd offense	N	0	---		1.89
708.8	Going armed with intent	Y	80	56%	20	1.89
708.4(2)	Willful injury	Y	0	---		1.94
710.10 (1)	Enticing away a child	Y	1	---	49	1.94
321J.2(2)(c)	Operating while intoxicated or drugged--3rd offense	N	737	51%	5	2.00
708.2C (4)	Assault in violation of individual rights using or displaying a dangerous weapon	Y	0	---		2.00

### Class D Felonies

Code Section	Crime	Crime Against Person	# of Convictions	% Sentenced to Prison	Average Length of Stay in Months	Average
708.3	Assault while participating in a felony, other than sexual abuse, without causing serious injury	Y	6	100%	48	2.00
708.13(2)	Disarming a peace officer	Y	0	---		2.06
724.22 (1)	Sale of rifle, shotgun, or rifle or shotgun ammunition to minors--2nd or subsequent offense	N	0	---		2.06
707.7	Attempted feticide	Y	0	---		2.06
719.5 (2)	Jailer, or public officer or employee, permitting prisoner charged with crime other than class "A" felony to escape	N	0	---		2.11
724.16A	Trafficking in stolen weapons--1st offense	N	3	67%	11	2.11
724.26	Receipt, transportation, and possession of firearms and destructive devices by felons or juveniles adjudicated delinquent of felony type offense	N	195	46%	21	2.11
726.2	Incest	Y	7	57%		2.11
708.2C (2)	Assault in violation of individual rights with intent to inflict serious injury	Y	0	---		2.17
719.1(2)B	Interference with DCS officer, assault	Y	5	80%		2.17
707.5 (1)	Involuntary manslaughter by public offense other than forcible felony or escape	Y	12	50%	14	2.22
719.4 (4)	Flight from state to avoid prosecution for felony or aggravated misdemeanor	N	1	---		2.22
724.22 (2)	Sale of pistol or revolver or pistol or revolver ammunition --2nd offense	N	0	---		2.22
711.4	Extortion	Y	31	35%	13	2.28
724.30 (2)	Reckless use of firearm resulting in bodily but not serious injury	Y	2	50%	12	2.28
124.406 (3)	Delivery to another to conspire or recruit the other to deliver controlled substance to persons under 18	N	0	---	24	2.33
719.6 (2)	Assisting prisoner convicted of crime other than class "A" felony to escape	N	0	---		2.33
729.5	Violation of individual rights	Y	2	---		2.35
710.6	Violating a custodial order by taking and concealing child	Y	4	---		2.39
724.3	Knowing unauthorized possession of offensive weapons	N	55	18%	17	2.39
235B.20 (5)	Exploiting a dependent adult causing more than \$100 in loss	Y	0	---		2.44
707.8(6)	Unintentional termination of pregnancy by drag racing	Y	0	---		2.44
708.6	Terrorism without intent	Y	49	59%	23	2.44
719.8	Furnishing controlled substances to inmates	N	9	67%	11	2.44

### Class D Felonies

Code Section	Crime	Crime Against Person	# of Convictions	% Sentenced to Prison	Average Length of Stay in Months	Average
724.16 (2)	Transfer of pistol or revolver to person known to be prohibited from owning pistol or revolver	N	1	---		2.44
724.21	Giving false name information when acquiring pistol or revolver	N	0	---		2.50
705.1	Solicitation to commit a felony	See underlying offense	1	---	10	2.53
712.8	Threats involving incendiary or explosive device	Y	10	30%		2.56
728.12 (2)	Sexual exploitation of a minor--promotion of material only	Y	4	100%		2.56
728.15	Telephone dissemination of obscene materials to minors--2nd or subsequent offense	N	0	---		2.56
124.401 (1)(d)	Manufacture/delivery of controlled substance (50 kg of marijuana or less)	N	314	33%	14	2.61
692A.7	Willful failure to register with sex offender registry for second or subsequent time	N	0	---		2.61
713.6	Burglary--attempted 2nd degree	N	16	13%	21	2.61
708.5	Administering harmful substances	Y	0	---		2.67
124.401 (5)	Possession of a controlled substance -- 3rd or subsequent offense	N	0	---		2.72
716B.3	Unlawful transportation of hazardous waste--2nd or subsequent offense	N	0	---		2.72
717B.9 (2)	Torturing, injuring so as to disfigure or disable, kill, or administer poison to a police service dog	N	0	---		2.72
721.1	Felonious misconduct in office	N	1	---		2.72
155A.24	Sale, offering, giving, or administering of unlawfully procured prescription drugs -- less than 50 kg marijuana (see 124.401(1)(d)). Sale, offering, giving, or administering of unlawfully procured prescription drugs--if not controlled substance--3rd offe	N	52	8%		2.78
716B.2	Unlawful disposal of hazardous waste	N	0	---		2.78
720.3	Suborning perjury	N	1	---		2.78
724.10	Knowing false statement on application for permit to carry weapons	N	0	---		2.78
719.7(4)(b)	Possessing contraband in prisons	N	0	---		2.83
723A.2	Criminal street gangs participation	N	2	100%	48	2.83
811.2 (8)	Failure to appear on felony charge or for sentencing on any public offense	N	50	54%	18	2.83
703.1	Aiding and abetting	See underlying offense	0	---		2.86

**Class D Felonies**

Code Section	Crime	Crime Against Person	# of Convictions	% Sentenced to Prison	Average Length of Stay in Months	Average
706.3	Conspiracy to commit a felony other than forcible felony	See underlying offense	18	17%	24	2.88
716B.4	Unlawful storage or treatment of hazardous waste--2nd or subsequent offense	N	0	---		2.89
722.1	Bribery	N	1	---		2.89
722.10	Commercial bribery	N	1	---		2.89
723A.3 (2)	Conspiracy to commit gang recruitment	N	0	---		2.89
715A.8(3)	Identity theft	N	0	---		2.94
124.401 (4)	Possession of ephedrine or pseudoephedrine with intent to use as a precursor or intermediary to any illegal or controlled substance	N	0	---		2.94
321.189A(4)(b)	Law enforcement officer using or displaying undercover motor vehicle license during the commission or attempted commission of a public offense or knowingly permitting another to do so	N	0	---		2.94
553.14	Engaging in bid rigging or price fixing in contracts with state or government agency by person having substantial control over an enterprise	N	0	---		3.00
709.18	Abuse of a corpse	N	0	---		3.00
709A.6	Using a juvenile to commit certain offenses	N	1	---		3.00
714.2(2)	Theft--2nd degree	N	767	25%	16	3.00
718.5	Falsifying public documents	N	1	---		3.00
124A.4(3)	Deliver of imitation controlled substance to person under 18 by person who is over 18 and at least 3 years older than recipient	N	0	---		3.06
147.103A	Unauthorized practice of medicine	N	0	---		3.06
712.7	False reports regarding explosive device	N	3	33%		3.06
713.6A	Burglary--3rd degree	N	1121	27%	18	3.06
726.8 (2)	Nonsupport of a dependent adult where have legal obligation to provide support	Y	0	---		3.06
321.189A(4)(a)	Law enforcement officer providing false information for purposes of obtaining undercover motor vehicle license	N	0	---		3.11
422.25 (8)	Willful evasion of income, sales, services, or franchise tax	N	3	---		3.11
715A.6(2)	Use of credit cards to obtain value of more than \$1,000	N	46	26%	3	3.11
719.7	Furnishing intoxicants to prisoners	N	1	---		3.11

### Class D Felonies

Code Section	Crime	Crime Against Person	# of Convictions	% Sentenced to Prison	Average Length of Stay in Months	Average
728.4	Rental or sale of hard core pornography--2nd or subsequent offense	N	0	---		3.11
422.40 (4)	Fail to pay tax or make or verify false information or false return, with intent to evade income, sales, services, or franchise tax	N	0	---		3.17
692.7 (2)	Willfully requesting, obtaining, or seeking to obtain criminal intelligence data under false pretenses or unlawful communication of intelligence data	N	0	---		3.22
720.2	Perjury, contradictory statements, and retraction	N	14	36%		3.22
716.4	Criminal mischief--2nd degree	N	101	22%	23	3.28
726.5	Nonsupport	Y	0	---		3.28
453B.12	Criminal (drug) tax stamp violations	N	314	35%	13	3.33
808B.2 (1) and (3)	Unlawful interception of communications; unauthorized disclosure of existence of lawful wire or oral communications interception device by switchboard operator or common carrier agent, officer, or employee	N	0	---		3.33
424.17	Willful attempt to evade or making false or fraudulent return with intent to evade environmental protection charge	N	0	---		3.35
99D.24 (4)	Fixing races through bribery	N	0	---		3.39
422.58 (3)	Willful evasion of tax on goods or services or making of false or fraudulent deposit form or return	N	0	---		3.39
714.10	Fraudulent practices--2nd degree	N	77	8%	10	3.39
725.3(1)	Pandering involving adult	N	1	100%		3.39
99F.15 (4)	Activities designed to "fix" gambling or defraud wagerers on excursion boats	N	0	---	11	3.44
124.407	Gatherings where controlled substances other than marijuana are unlawfully used	N	0	---		3.44
147A.11 (1)	Acting as advanced EMT without a certificate	N	0	---		3.44
725.2	Pimping	N	1	---		3.44
99D.25	Unlawful drugging or numbing of dog or horse	N	0	---		3.50
147A.11 (2)	Operating ambulance, rescue, or first response service without authorization	N	0	---		3.50
423.18	Willful attempt to evade use tax or payment of 90 percent of tax or making of false or fraudulent monthly deposit form or return with intent to evade tax	N	0	---		3.50
507E.3(2)(a)	Insurance fraud--presenting false information	N	1	---		3.50
99D.24 (5)	Use of whips, spurs, or stimulants or depressants on horse or dog during race or workout	N	0	---		3.61

### Class D Felonies

Code Section	Crime	Crime Against Person	# of Convictions	% Sentenced to Prison	Average Length of Stay in Months	Average
706B.2 (2)(b)	Knowing involvement in transactions involving specified unlawful activity	N	0	---		3.61
321.92 (1)	Fraudulent alteration of vehicle identification numbers	N	0	---		3.67
321.483	Violations of motor vehicle laws specified as felony	N	0	---		3.67
523B.11	Failure of seller of business opportunity promotions requirements to register, comply with minimum net worth or bond requirements; fraudulent practices by seller of business opportunity promotions	N	0	---		3.67
715A.2 (2)(a)	Forgery of money, securities, or other instruments representing property claims, checks, drafts, or other writings, possession of forged immigration documents	N	1304	29%	15	3.67
141.6	Violation of confidentiality requirements in HIV partner notification program	N	0	---		3.72
521A.10	Willful violations of requirements relating to insurance holding company systems	N	0	---		3.72
714.1(3)-B	Theft by deception	N	3	---		3.72
714.1(4)(B)	Possession of stolen property	N	3	---		3.72
725.7 (2)(a)(3)	Illegal gaming-fourth degree--3rd offense	N	0	---		3.72
99E.18 (4)	Making, alteration, forgery, uttering, passing, or counterfeiting of lottery tickets	N	9	79%		3.78
321.217	Making false affidavit or knowingly falsely swearing to any matter or thing required under motor vehicle laws	N	2	---		3.78
716A.11	Computer theft--2nd degree	N	0	---		3.78
725.7 (2)(b)(2)	Illegal gaming-third degree--2nd offense	N	0	---		3.83
725.7 (2)(c)(1)	Illegal gaming-second degree--first offense	N	9	---		3.83
502.605	Willful and knowing violation of uniform securities Act--unspecified	N	2	---		3.88
462A.70 (4)	Fraudulent alteration or changing of water vessel hull identification plates; failure to permit inspection	N	0	---		3.89
716.10(2)(d)	Railroad vandalism--4th degree	N	0	---		3.89
716A.5	Computer damage--2nd degree	N	2	---		3.89
80.9 (2)(d)	Unauthorized communication of HIV information by employee of agency receiving information	N	0	---		3.94
8E.5	Fraudulent production contract	N	0	---		4.00
87.14A	Coal mining compensation benefits insurance, relief from insurance, or bond required--knowing violations	N	0	---		4.06
126.25	Unlawful sale or advertisement of HIV home testing kits	N	0	---		4.06

### Class D Felonies

Code Section	Crime	Crime Against Person	# of Convictions	% Sentenced to Prison	Average Length of Stay in Months	Average
523C.18	Failure of residential service company to post bond with commissioner of insurance, or make cash deposit, or establish custodial account as part of residential service contract	N	0	---		4.06
172C.7	Packer including confidentiality provision in a contract with livestock seller.	N	0	---		4.11
714C.4	Video rental property theft--2nd degree	N	0	---		4.11
535B.8	Acting as a mortgage banker or broker without a license	N	0	---		4.17
725.16	Gambling in violation of chapter 99B--violation of 99B.10 involving an amusement device	N	0	---		4.17

### Class D Felonies

Code Section	Crime	Crime Against Person	# of Convictions	% Sentenced to Prison	Average Length of Stay in Months	Average
709.8	Lascivious acts with a child	Y	153	43%	20	1.44
235B.20 (3)	Reckless abuse of dependent adult causing serious injury	Y	0	---		1.56
709.11	Assault with intent to commit sexual abuse resulting in bodily injury	Y	1	100%	25	1.56
707.6A(3)	Homicide by vehicle by drag racing	Y	0	---		1.65
708.3A(1), (2)	Assault on peace officer, fire fighter, or health care provider with intent to inflict serious injury or with a dangerous weapon	Y	43	30%	3	1.67
708.11 (3)(b)	Stalking--2nd or subsequent offense, stalking when person is the subject of a civil or criminal protective order, stalking of minor, stalking with dangerous weapon	Y	10	40%		1.67
707.6A(4)	Injury by vehicle during OWI or reckless driving or eluding	Y	28*	39%*	3	1.72
719.4 (1)	Escape from custody as felon	N	49	39%	7	1.72
708.3B	Assaults by inmates on employees of jails or DOC institutions or facilities	Y	0	---		1.78
709.15 (2)	Sexual exploitation by counselor or therapist--pattern or practice/scheme to engage in sexual conduct with current or former emotionally dependent patient/client or to engage in sexual conduct with any patient/client within 1 yr after ending services	Y	0	---	3	1.83
719.1 (1)	Interference with official acts of correctional officer, agent, employee, or contractor by person under custody, control, or supervision of DOC resulting in serious injury, involving display of dangerous weapon or firearm	Y	0	---	23	1.83
708.2A(4)	Domestic abuse assault--3rd offense	Y	18	44%	10	1.88
123.47(6)	Sale of alcohol to persons under legal age by nonlicensee or nonpermittee which results in death of any person	N	0	---		1.89
328.41	Operating an aircraft while intoxicated or under influence of narcotic drugs--3rd offense	N	0	---		1.89
708.8	Going armed with intent	Y	80	56%	20	1.89
708.4(2)	Willful injury	Y	0	---		1.94
710.10 (1)	Enticing away a child	Y	1	---	49	1.94
321J.2(2)(c)	Operating while intoxicated or drugged--3rd offense	N	737	51%	5	2.00
708.2C (4)	Assault in violation of individual rights using or displaying a dangerous weapon	Y	0	---		2.00

### Class D Felonies

Code Section	Crime	Crime Against Person	# of Convictions	% Sentenced to Prison	Average Length of Stay in Months	Average
708.3	Assault while participating in a felony, other than sexual abuse, without causing serious injury	Y	6	100%	48	2.00
708.13(2)	Disarming a peace officer	Y	0	---		2.06
724.22 (1)	Sale of rifle, shotgun, or rifle or shotgun ammunition to minors--2nd or subsequent offense	N	0	---		2.06
707.7	Attempted feticide	Y	0	---		2.06
719.5 (2)	Jailer, or public officer or employee, permitting prisoner charged with crime other than class "A" felony to escape	N	0	---		2.11
724.16A	Trafficking in stolen weapons--1st offense	N	3	67%	11	2.11
724.26	Receipt, transportation, and possession of firearms and destructive devices by felons or juveniles adjudicated delinquent of felony type offense	N	195	46%	21	2.11
726.2	Incest	Y	7	57%		2.11
708.2C (2)	Assault in violation of individual rights with intent to inflict serious injury	Y	0	---		2.17
719.1(2)B	Interference with DCS officer, assault	Y	5	80%		2.17
707.5 (1)	Involuntary manslaughter by public offense other than forcible felony or escape	Y	12	50%	14	2.22
719.4 (4)	Flight from state to avoid prosecution for felony or aggravated misdemeanor	N	1	---		2.22
724.22 (2)	Sale of pistol or revolver or pistol or revolver ammunition --2nd offense	N	0	---		2.22
711.4	Extortion	Y	31	35%	13	2.28
724.30 (2)	Reckless use of firearm resulting in bodily but not serious injury	Y	2	50%	12	2.28
124.406 (3)	Delivery to another to conspire or recruit the other to deliver controlled substance to persons under 18	N	0	---	24	2.33
719.6 (2)	Assisting prisoner convicted of crime other than class "A" felony to escape	N	0	---		2.33
729.5	Violation of individual rights	Y	2	---		2.35
710.6	Violating a custodial order by taking and concealing child	Y	4	---		2.39
724.3	Knowing unauthorized possession of offensive weapons	N	55	18%	17	2.39
235B.20 (5)	Exploiting a dependent adult causing more than \$100 in loss	Y	0	---		2.44
707.8(6)	Unintentional termination of pregnancy by drag racing	Y	0	---		2.44
708.6	Terrorism without intent	Y	49	59%	23	2.44
719.8	Furnishing controlled substances to inmates	N	9	67%	11	2.44

### Class D Felonies

Code Section	Crime	Crime Against Person	# of Convictions	% Sentenced to Prison	Average Length of Stay in Months	Average
724.16 (2)	Transfer of pistol or revolver to person known to be prohibited from owning pistol or revolver	N	1	---		2.44
724.21	Giving false name information when acquiring pistol or revolver	N	0	---		2.50
705.1	Solicitation to commit a felony	See underlying offense	1	---	10	2.53
712.8	Threats involving incendiary or explosive device	Y	10	30%		2.56
728.12 (2)	Sexual exploitation of a minor--promotion of material only	Y	4	100%		2.56
728.15	Telephone dissemination of obscene materials to minors--2nd or subsequent offense	N	0	---		2.56
124.401 (1)(d)	Manufacture/delivery of controlled substance (50 kg of marijuana or less)	N	314	33%	14	2.61
692A.7	Willful failure to register with sex offender registry for second or subsequent time	N	0	---		2.61
713.6	Burglary--attempted 2nd degree	N	16	13%	21	2.61
708.5	Administering harmful substances	Y	0	---		2.67
124.401 (5)	Possession of a controlled substance -- 3rd or subsequent offense	N	0	---		2.72
716B.3	Unlawful transportation of hazardous waste--2nd or subsequent offense	N	0	---		2.72
717B.9 (2)	Torturing, injuring so as to disfigure or disable, kill, or administer poison to a police service dog	N	0	---		2.72
721.1	Felonious misconduct in office	N	1	---		2.72
155A.24	Sale, offering, giving, or administering of unlawfully procured prescription drugs -- less than 50 kg marijuana (see 124.401(1)(d)). Sale, offering, giving, or administering of unlawfully procured prescription drugs--if not controlled substance--3rd offe	N	52	8%		2.78
716B.2	Unlawful disposal of hazardous waste	N	0	---		2.78
720.3	Suborning perjury	N	1	---		2.78
724.10	Knowing false statement on application for permit to carry weapons	N	0	---		2.78
719.7(4)(b)	Possessing contraband in prisons	N	0	---		2.83
723A.2	Criminal street gangs participation	N	2	100%	48	2.83
811.2 (8)	Failure to appear on felony charge or for sentencing on any public offense	N	50	54%	18	2.83
703.1	Aiding and abetting	See underlying offense	0	---		2.86

Class D Felonies

Code Section	Crime	Crime Against Person	# of Convictions	% Sentenced to Prison	Average Length of Stay in Months	Average
706.3	Conspiracy to commit a felony other than forcible felony	See underlying offense	18	17%	24	2.88
716B.4	Unlawful storage or treatment of hazardous waste--2nd or subsequent offense	N	0	---		2.89
722.1	Bribery	N	1	---		2.89
722.10	Commercial bribery	N	1	---		2.89
723A.3 (2)	Conspiracy to commit gang recruitment	N	0	---		2.89
715A.8(3)	Identity theft	N	0	---		2.94
124.401 (4)	Possession of ephedrine or pseudoephedrine with intent to use as a precursor or intermediary to any illegal or controlled substance	N	0	---		2.94
321.189A(4)(b)	Law enforcement officer using or displaying undercover motor vehicle license during the commission or attempted commission of a public offense or knowingly permitting another to do so	N	0	---		2.94
553.14	Engaging in bid rigging or price fixing in contracts with state or government agency by person having substantial control over an enterprise	N	0	---		3.00
709.18	Abuse of a corpse	N	0	---		3.00
709A.6	Using a juvenile to commit certain offenses	N	1	---		3.00
714.2(2)	Theft--2nd degree	N	767	25%	16	3.00
718.5	Falsifying public documents	N	1	---		3.00
124A.4(3)	Deliver of imitation controlled substance to person under 18 by person who is over 18 and at least 3 years older than recipient	N	0	---		3.06
147.103A	Unauthorized practice of medicine	N	0	---		3.06
712.7	False reports regarding explosive device	N	3	33%		3.06
713.6A	Burglary--3rd degree	N	1121	27%	18	3.06
726.8 (2)	Nonsupport of a dependent adult where have legal obligation to provide support	Y	0	---		3.06
321.189A(4)(a)	Law enforcement officer providing false information for purposes of obtaining undercover motor vehicle license	N	0	---		3.11
422.25 (8)	Willful evasion of income, sales, services, or franchise tax	N	3	---		3.11
715A.6(2)	Use of credit cards to obtain value of more than \$1,000	N	46	26%	3	3.11
719.7	Furnishing intoxicants to prisoners	N	1	---		3.11

### Class D Felonies

Code Section	Crime	Crime Against Person	# of Convictions	% Sentenced to Prison	Average Length of Stay in Months	Average
728.4	Rental or sale of hard core pornography--2nd or subsequent offense	N	0	---		3.11
422.40 (4)	Fail to pay tax or make or verify false information or false return, with intent to evade income, sales, services, or franchise tax	N	0	---		3.17
692.7 (2)	Willfully requesting, obtaining, or seeking to obtain criminal intelligence data under false pretenses or unlawful communication of intelligence data	N	0	---		3.22
720.2	Perjury, contradictory statements, and retraction	N	14	36%		3.22
716.4	Criminal mischief--2nd degree	N	101	22%	23	3.28
726.5	Nonsupport	Y	0	---		3.28
453B.12	Criminal (drug) tax stamp violations	N	314	35%	13	3.33
808B.2 (1) and (3)	Unlawful interception of communications; unauthorized disclosure of existence of lawful wire or oral communications interception device by switchboard operator or common carrier agent, officer, or employee	N	0	---		3.33
424.17	Willful attempt to evade or making false or fraudulent return with intent to evade environmental protection charge	N	0	---		3.35
99D.24 (4)	Fixing races through bribery	N	0	---		3.39
422.58 (3)	Willful evasion of tax on goods or services or making of false or fraudulent deposit form or return	N	0	---		3.39
714.10	Fraudulent practices--2nd degree	N	77	8%	10	3.39
725.3(1)	Pandering involving adult	N	1	100%		3.39
99F.15 (4)	Activities designed to "fix" gambling or defraud wagerers on excursion boats	N	0	---	11	3.44
124.407	Gatherings where controlled substances other than marijuana are unlawfully used	N	0	---		3.44
147A.11 (1)	Acting as advanced EMT without a certificate	N	0	---		3.44
725.2	Pimping	N	1	---		3.44
99D.25	Unlawful drugging or numbing of dog or horse	N	0	---		3.50
147A.11 (2)	Operating ambulance, rescue, or first response service without authorization	N	0	---		3.50
423.18	Willful attempt to evade use tax or payment of 90 percent of tax or making of false or fraudulent monthly deposit form or return with intent to evade tax	N	0	---		3.50
507E.3(2)(a)	Insurance fraud--presenting false information	N	1	---		3.50
99D.24 (5)	Use of whips, spurs, or stimulants or depressants on horse or dog during race or workout	N	0	---		3.61

### Class D Felonies

Code Section	Crime	Crime Against Person	# of Convictions	% Sentenced to Prison	Average Length of Stay in Months	Average
706B.2 (2)(b)	Knowing involvement in transactions involving specified unlawful activity	N	0	---		3.61
321.92 (1)	Fraudulent alteration of vehicle identification numbers	N	0	---		3.67
321.483	Violations of motor vehicle laws specified as felony	N	0	---		3.67
523B.11	Failure of seller of business opportunity promotions requirements to register, comply with minimum net worth or bond requirements; fraudulent practices by seller of business opportunity promotions	N	0	---		3.67
715A.2 (2)(a)	Forgery of money, securities, or other instruments representing property claims, checks, drafts, or other writings, possession of forged immigration documents	N	1304	29%	15	3.67
141.6	Violation of confidentiality requirements in HIV partner notification program	N	0	---		3.72
521A.10	Willful violations of requirements relating to insurance holding company systems	N	0	---		3.72
714.1(3)-B	Theft by deception	N	3	---		3.72
714.1(4)(B)	Possession of stolen property	N	3	---		3.72
725.7 (2)(a)(3)	Illegal gaming-fourth degree--3rd offense	N	0	---		3.72
99E.18 (4)	Making, alteration, forgery, uttering, passing, or counterfeiting of lottery tickets	N	9	79%		3.78
321.217	Making false affidavit or knowingly falsely swearing to any matter or thing required under motor vehicle laws	N	2	---		3.78
716A.11	Computer theft--2nd degree	N	0	---		3.78
725.7 (2)(b)(2)	Illegal gaming-third degree--2nd offense	N	0	---		3.83
725.7 (2)(c)(1)	Illegal gaming-second degree--first offense	N	9	---		3.83
502.605	Willful and knowing violation of uniform securities Act--unspecified	N	2	---		3.88
462A.70 (4)	Fraudulent alteration or changing of water vessel hull identification plates; failure to permit inspection	N	0	---		3.89
716.10(2)(d)	Railroad vandalism--4th degree	N	0	---		3.89
716A.5	Computer damage--2nd degree	N	2	---		3.89
80.9 (2)(d)	Unauthorized communication of HIV information by employee of agency receiving information	N	0	---		3.94
8E.5	Fraudulent production contract	N	0	---		4.00
87.14A	Coal mining compensation benefits insurance, relief from insurance, or bond required--knowing violations	N	0	---		4.06
126.25	Unlawful sale or advertisement of HIV home testing kits	N	0	---		4.06

### Class D Felonies

Code Section	Crime	Crime Against Person	# of Convictions	% Sentenced to Prison	Average Length of Stay in Months	Average
523C.18	Failure of residential service company to post bond with commissioner of insurance, or make cash deposit, or establish custodial account as part of residential service contract	N	0	---		4.06
172C.7	Packer including confidentiality provision in a contract with livestock seller.	N	0	---		4.11
714C.4	Video rental property theft--2nd degree	N	0	---		4.11
535B.8	Acting as a mortgage banker or broker without a license	N	0	---		4.17
725.16	Gambling in violation of chapter 99B--violation of 99B.10 involving an amusement device	N	0	---		4.17

## Sentencing Commission Member Proposals and Comments

### A. Proposed Changes in Penalties:

<i>Code Section</i>	<i>Crime (type of incident)</i>	<i>Current Offense Class</i>	<i>Proposed Offense Class (Or Other Change)</i>
80.9(2)(d)	Unauthorized communication of HIV information by employee of agency receiving information	D Felony	Ser Misd
124	Drug Crimes	Various	Many of the drug offenses should be reduced and treatment rather than harsh mandatory sentences should be available and/or mandatory.
124	Drug Crimes	Various	Many of the drug offenses could be reclassified less severely, including tax stamp violations.
124	Drug Crimes	Various	The whole range of drug offenses needs to be examined. Raise the upper limit on hard core dealers, but give treatment incentives for those who deal only to support their own use. Add mandatory treatment for possession offenders who sometimes miss treatment-related interventions. Structured Drug Court may be a better option than prison.
124.401(5)	Possession of Drugs (Cocaine)	Ser Misd	Agg Misd
124.401(5)	Possession of Drugs (Meth)	Ser Misd	Agg Misd
124.401D	Conspiracy to manufacture for delivery of meth to a minor-2nd offense	A Felony	Should not have a life sentence
321J.2(C)	OMVUI (6th and Subsequent)	D Felony	C Felony
707	Homicide Laws	Various	Create some sort of homicide offense between Murder-2nd (50 yrs.) and Voluntary Manslaughter (10 yrs.).
707.7	Feticide/Attempted Feticide	C & D Felony	We should decriminalize abortion and provide adequate services and/or support for the woman considering abortion.
707.8A(5)	Partial Birth Abortion	C Felony	We should decriminalize abortion and provide adequate services and/or support for the woman considering abortion.
708.2A	Domestic Abuse Assault	Various	Increase the severity of domestic violence-related assaults.

<i>Code Section</i>	<i>Crime (type of incident)</i>	<i>Current Offense Class</i>	<i>Proposed Offense Class (Or Other Change)</i>
708.2A	Domestic Abuse Assault	Various	Increase severity.
708.2A	Domestic Abuse Assault	Various	Enhance penalties for repeat offenses (or additional offenses)
708.11	Stalking	Various	Increase severity.
708.11	Stalking	Various	Enhance penalties for repeat offenses (or additional offenses)
709.8	Lascivious Acts w/Child	D Felony	Should either be removed, or subsumed under sexual abuse by degree
711.3	Robbery-2nd (shoplifting situations where defendant pushes store clerk)	C Felony	Remove as a Robbery offense. Reclassify as an aggravated misd. Maybe call it Aggravated Shoplifting.
715A.2	Forgery	D Felony/Agg Misd	Forgery offenses could possibly be treated less severely.
717B.2	Animal Abuse	Agg Misd	Increase to D Felony, and then enhance penalty if multiple acts or particularly heinous.
Various	Property Crimes	Various	Many of the property crimes can be downgraded a step or two and it wouldn't have much impact on the prison time served.
Various	Violent crimes and crimes against children	Various	Need to be ranked as more serious than nonviolent crimes. Examples of discrepancies include domestic assaults and some sex offenses against children. Several property crimes have stiffer penalties than assault-related crimes.

**A. Proposed Changes in Penalties (continued):**

Based on the judge's sentencing decisions, the following sanctions may be disproportionate, because judges sent less than 50% to prison.

<i>Code Section</i>	<i>Crime</i>	<i>Class</i>
124.401 (1)(b)	Manufacture/delivery of controlled substance	B Felony
124.406 (1)(a)	Distribution of controlled substances to persons under 18	B Felony
707.8(1)	Nonconsensual termination of human pregnancy during forcible felony	B Felony
124.401 (1)(c)	Manufacture/delivery of controlled substance	C Felony
708.3	Assault while participating in a felony -- serious injury	C Felony
712.3	Arson--2nd degree	C Felony
713.4	Attempted burglary--1st degree	C Felony
713.5	Burglary--2nd degree	C Felony
714.2 (1)	Theft--1st degree	C Felony
716.3	Criminal mischief--1st degree	C Felony
719.1 (2)	Interference with official acts	C Felony
726.3	Abandonment of dependent person	C Felony
726.6 (2)	Child endangerment resulting in serious injury	C Felony
99E.18 (4)	Making, alteration, etc. of lottery tickets	D Felony
124.401 (1)(d)	Manufacture/delivery of controlled substance (50 kg of marijuana or less)	D Felony
155A.24	Sale, offering, etc. of unlawfully procured prescription drugs	D Felony
321.483	Violations of motor vehicle laws specified as felony	D Felony
321J.2(2)(c)	Operating while intoxicated or drugged--3rd offense	D Felony
453B.12	Criminal (drug) tax stamp violations	D Felony
706.3	Conspiracy to commit a felony other than forcible felony	D Felony
707.5 (1)	Involuntary manslaughter by public offense	D Felony
708.2A(4)	Domestic abuse assault--3rd offense	D Felony
708.3A(1), (2)	Assault on peace officer, fire fighter, etc.	D Felony
708.11 (3)(b)	Stalking--2nd or subsequent offense	D Felony
709.8	Lascivious acts with a child	D Felony
711.4	Extortion	D Felony
712.7	False reports regarding explosive device	D Felony
712.8	Threats involving incendiary or explosive device	D Felony
713.6	Burglary--attempted 2nd degree	D Felony
714.2(2)	Theft--2nd degree	D Felony

<i>Code Section</i>	<i>Crime</i>	<i>Class</i>
715A.2 (2)(a)	Forgery	D Felony
715A.6(2)	Use of credit cards: value of more than \$1,000	D Felony
715A.8(3)	Identity theft	D Felony
720.2	Perjury, contradictory statements, and retraction	D Felony
724.3	Knowing unauthorized possession of offensive weapons	D Felony
124.402(1)	Prohibited act by registrant	Agg Misd
692A.7	First-time failure to register with sex offender registry	Agg Misd
703.1	Aiding and abetting	Agg Misd
706.3	Conspiracy to commit an aggravated misdemeanor	Agg Misd
707.5 (2)	Involuntary manslaughter by act likely to cause death or serious injury	Agg Misd
708.2 (1)	Assault with intent to inflict serious injury	Agg Misd
708.2 (3)	Assault with use or display of dangerous weapon	Agg Misd
712.4	Arson--3rd degree	Agg Misd
713.6B	Burglary--attempted 3rd degree	Agg Misd
713.7	Possession of burglar's tools	Agg Misd
714.2(3)	Theft--3rd degree	Agg Misd
714.7	Operating vehicle without owner's consent	Agg Misd
714.11	Fraudulent practices--3rd degree	Agg Misd
714.1(3)-C	Theft by deception	Agg Misd
715A.2 (2)(b)	Forgery	Agg Misd
715A.5	Tampering with records	Agg Misd
715A.6(2)	Use of credit cards: value of less than \$1,000	Agg Misd
716.5	Criminal mischief--3rd degree	Agg Misd
719.1 (1)	Interference with official acts	Agg Misd
719.3	Preventing apprehension, obstructing prosecution/defense	Agg Misd
720.1	Compounding a felony	Agg Misd
724.4 (1)	Carrying concealed dangerous weapon	Agg Misd
724.4 (3)(a)	Carrying concealed knife	Agg Misd
725.1	Prostitution	Agg Misd

1. With further study of dispositions, a realignment to a less severe sanction level may be warranted.
2. Aggravated misdemeanors should be examined for expanded community structure to avoid imprisonment for misdemeanor. Jail may be one option.
3. Each of the above offense categories can be adjusted based on judges view of harm to: a) a person; b) community; c) property (Harm Priorities).

**B. Proposed Changes in Crime Definitions:**

Burglary-1st (713.3(1)(c)) seems overly broad. Perhaps 1st degree should be "inflicts serious physical injury" and 2nd degree should be "inflicts bodily injury".

As defined, criminal transmission of HIV (709C.1) would be a Class B felony even if safe sex were practiced. This seems a bit out of line.

Burglary-3rd (713.6A) is extremely broad. Stealing from a pop machine doesn't seem as bad as breaking into other unoccupied structures. Perhaps this could be better defined.

Problem of defining a crime. For example: There are so many ways to commit an assault. Give the store clerk a shove and you have "Shoplifting Robbery" -- C Felony (10 yrs.)! OWI-3rd is a Class D! Break into an automobile (interpreted to be an "occupied structure") to take something = Burglary-3rd -- D Felony (5 yrs.). The point being: If sentencing is going to be mandatory -- or discretion severely limited -- then one has to be very careful how the offense is defined.

### **C. Other Proposals and Comments:**

My sense is that we are using too many prison spaces for relatively minor criminal offenses. With the limited information presented with this survey on time served it is hard to know whether this is true. I look forward to the results of the survey and further material on the make-up by offense and prisoner time served

Let's classify crimes by person/non-person crimes and place sentencing on a grid with great latitude.

Current ranking is fine. We need to return more discretion to our judges.

#### OWI Offenses: 321J:

- \* Review the "time" requirements for incarceration or residential placement, possibly utilizing a structured treatment alternative.
- \* Include more incentives for treatment. Premise: Public protection comes from changing the offenders' behavior.

#### Driving while license suspended, barred:

- \* Consider front-end interventions so that cases will not unnecessarily clog the system.
- \* Review all loss of license laws. Several laws require loss of license, although many are not related to driving offenses.

Put more teeth in domestic violence interventions. Require (and fund) research-based, differential treatment; and increase penalties for noncompliance.

Fund specialized offender assessment for domestic violence.

Review juvenile transfers to adult court. Research shows that juveniles usually recidivate at a higher rate when transferred to the adult system.

Review mandatory minimums on all crimes, including non-violent drug offenses.

## **Offender Characteristics Study: Discussion of Prisoner and Probationer Samples, September 13, 1999**

### **Background**

At the May 17 meeting of the Offense Severity and Classification Subcommittee, several subcommittee members suggested that in addition to ranking the severity of offenses, it is also necessary to take account of the characteristics of offenders and the circumstances of the crime. This is because factors not included in the definition of an offense can significantly influence sentencing severity. For example, the subcommittee wondered to what extent offenders who are in prison for property offenses are there because of multiple prior convictions. Accordingly, the staff work group selected nineteen offenses, primarily those with the most impact on the prison population, and collected data on offenders convicted of those offenses. The data was based on Fiscal Year 1998-1999 admissions and was drawn from numerous databases, including those made available by Iowa Community-Based Corrections, Department of Corrections, Board of Parole, and other agencies.

### **Executive Summary**

At the request of the Sentencing Commission, a study was conducted to permit comparison of samples of offenders sentenced either to probation or prison. Results of data analysis suggest the following:

- Most of those sentenced to prison for the selected offenses either had a lengthy (or serious) prior record or were sentenced for crimes against persons. Most non-persons offenders sentenced to prison either had lengthy records or were sent to prison as the result of a probation revocation.
- About sixteen percent of the prison sample had no prior adult felony or misdemeanor convictions and no prior imprisonments. An additional twenty percent had no prior felonies or imprisonments and four or fewer prior misdemeanor convictions. Conversely, about twenty percent of the probation population had prior adult felony convictions.
- While there was variation among the offense groups, those sentenced to prison were more likely than probationers to
  - have been convicted of multiple charges (55 percent vs. 31 percent)
  - have served prior prison sentences (37 percent to 8 percent)
  - have been under justice system jurisdiction at arrest (41 percent vs. 20 percent)
  - have a prior felony conviction (45 percent vs. 22 percent).
- Sex offenders sentenced to prison tended to have less extensive criminal histories than other groups, followed by drug offenders. These two groups were less likely to have been under justice system jurisdiction (for another crime) at arrest and were less likely to have

previously been imprisoned. Sex offenders were also least likely to have been previously convicted of felonies.

- Pre-trial detention is strongly associated with later imprisonment. Of those sentenced to prison, nearly 70 percent were in jail at sentencing, compared to 12 percent of those going to community-based programs.
- In both samples, blacks were under-represented in their percentage of OWI and sex offenses and over-represented in public order crimes (driving while barred and prostitution). In the prison sample, blacks were more likely to have been committed for offenses against persons (19.3% to 13.7%)
- In the prison sample, blacks were more likely than whites to be imprisoned for drug offenses and persons offenses while having “clean”<sup>1</sup> adult records.

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<sup>1</sup> No prior adult felony or misdemeanor convictions, no prior imprisonments.

## Discussion

At the request of the workgroup members, further analyses have been conducted on the samples of prisoners and probationers drawn for the study of sentencing practices requested by the Sentencing Commission. The bulk of this discussion will deal with the prisoner sample.

Before proceeding with the discussion, it should be noted that considerable additional time has been spent to verify the accuracy of data, particularly in the prisoner sample. This has resulted in modification of many of the figures contained in previous drafts of these materials. The variables most affected have been those relating to prior criminal history and, to some extent, circumstances of the instant offense. It was also discovered that figures pertaining to prior prison commitments and misdemeanor convictions within the prisoner sample were previously overstated. The figures included here have been checked carefully to ensure their accuracy, and are believed to be correct given currently-available data.<sup>2</sup>

In responding to the workgroup's suggestions, additional time has been spent analyzing the data in both samples to identify possible disparity in sentencing African-Americans and whites and to identify prisoners not having extensive prior records. As further suggested, some of the analyses grouped offenses more generally than the offense-specific tables prepared previously.

Offense groups are as follows:

**OWI:** Operating while intoxicated;

**Drug offenses:** Class B, Class C, and Class D drug offenses

**Property crimes:** Burglary-2, Burglary-3, Theft-1, Theft-2, Theft-3, Forgery

**Persons crimes:** Burglary-1, Robbery-2, Going armed with intent, Assault with intent, and Domestic abuse

**Public order crimes:** Driving while barred, prostitution

**Sex crimes:** Sex abuse-3, Lascivious acts.

## Race

Page six presents data, by race, on multiple conviction offenses, prior felony convictions and prison sentences, offender status at arrest, and drug- and alcohol-related offenses. The tables show remarkable consistency. While there are differences between the races within offense types (e.g., blacks convicted of persons offenses were more likely than whites to have been convicted on multiple charges), the totals for these offenses showed great consistency. The largest differences between the races on the totals was 7.8 percent (61.5 of the blacks were convicted on multiple counts, compared to 53.7% of the whites). Similar consistency is shown on the tables on page seven.

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<sup>2</sup> If the study is carried further to include collection of FBI rapsheets, there will undoubtedly be some change in figures, particularly prior prison sentences and prior felony convictions. Some of these out-of-state data have already been collected through pre-sentence investigations.

There were only two African-Americans in the prisoner sample convicted of OWI-3, so care should be taken in reaching any conclusions about this group. Total prisoner samples are shown on page eight of the attachment.

One possible indication of racial disparity is that, in the prison sample, blacks were more likely than whites to be imprisoned for drug offenses and persons offenses while having “clean”<sup>3</sup> adult records. One-quarter of the blacks committed for drug offenses had clean records, compared to 11 percent of the whites. More than 40 percent of the blacks committed for crimes against persons had clean records, compared to 15 percent of the whites.

Comparable tables have been prepared for the probation sample on pages eight and nine. These also show consistency between the black and white probationers, although the blacks were more likely to have been committed to prison previously (21 percent to 8 percent) and were more likely to have been detained at sentencing (20 percent to 10 percent). Care must be taken in interpreting this information, however, as there were only 70 African-Americans in this sample.

### Comparison of prisoners by offense groups

Data pertaining to the text below are also found on pages seven and eight. Similar tables for each individual offense pertaining to the prisoner sample are found on pages ten through fourteen.

**Multiple convictions:** Those convicted of public order crimes were most likely to have been convicted of more than one current offense. A majority of each group had multiple convictions.

**Prior prison:** Those convicted of OWI-3 were most likely to have served a prior prison sentence (57.4%), with those convicted of sex offenses least likely (20.3%). This supports the earlier conclusion that those convicted of more minor offenses reach prison on the basis of an accumulated record, while some more serious offenders (e.g., sex offenders) reach prison on the basis of a conviction for a single very serious offense.

**Under jurisdiction:** This shows much the same pattern as the prior prison table.

**Prior felonies:** This is consistent with the pattern for *prior prison* and *under jurisdiction*.

**Training School:** Figures here are low, with those convicted of property crimes most likely to have juvenile commitments.

**Drug or alcohol use:** for the purposes of this table, drug and alcohol use was defined as being under the influence of drugs or alcohol or committing the instant offense to support a drug habit. Overall, about 40 percent of the prisoner sample showed such drug and alcohol abuse, with OWI and the drug offenses (not surprisingly) showing the highest percentages. Sex crimes also showed low percentages on this variable.

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<sup>3</sup> No prior adult felony or misdemeanor convictions, no prior imprisonments.

**In jail at sentence:** prisoners were most likely to have been detained awaiting trial for crimes against persons and sex offenses, illustrating that these offenders (even when not yet convicted) are frequently regarded either as a threat to the community or a risk to abscond.

### Less serious offenders

In an effort to identify prisoners who might be candidates either for early parole or for community-based sentencing, a file was created consisting of prisoners who had no prior prison commitments, no prior felony convictions, and no misdemeanor convictions. This group consisted of 94 individuals, as shown on page seven of the tables. This constitutes 16 percent of the prisoner sample.

There is great variation among the offense types in the percentage of prisoners found in this “clean” group. No OWI offenders had short records (they obviously had to have been convicted of at least two misdemeanors to have been convicted of OWI-3). More than one-third of the sex offenders, on the other hand, fell into the group having a “short” criminal history. A slightly higher percentage of the black sample fell into this “clean” group; there is much variation in the black sample’s percentage in the various offense groups in part due to a small number of offenders (22 African-Americans total in this group).

As a further check to determine if these offenders could have been safely released to the community, the data were checked to determine if their admissions to prison were due to probation revocations. About 33 percent of this group, in fact, were admitted due to revocations.<sup>4</sup> This is slightly lower than for the entire prison sample. Of the 63 in the non-revoked group, nine were subsequently released via reconsideration of sentence (“shock probation”), leaving 54 incarcerated (or about nine percent of the original sample).

In addition to the 16 percent of “clean” prisoners, another twenty percent of the prisoners had no prior felonies or imprisonments and four or fewer prior misdemeanor convictions. Conversely, about twenty percent of the probation population had prior adult felony convictions. Members of this group had as many as two prior imprisonments, 13 jail or residential placements, six prior felony convictions, and 41 prior adult misdemeanor convictions. There is, therefore, an amount of overlap in the prison and probation populations. The group of more serious probationers may be worthy of further study to determine their outcomes on probation and the treatment resources used to modify offender behavior.

## **GENERAL CONCLUSIONS**

This study has shown that support both for those who suggest that offenders sentenced to prison are sent there for good reason and for those who suggest that there may be some in prison who could be safely released. **Most non-persons offenders sentenced to prison either have lengthy records or have been sent to prison as the result of a probation revocation.** The offenders

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<sup>4</sup> It should be noted that a concerted effort has been made recently to reduce probation revocations; early figures suggest that this effort has been successful in helping to safely maintain some of these offenders without revocation to prison.

sentenced to prison without having accumulated a lengthy or serious criminal history tend most often to be either sex offenders or drug offenders.

These two latter groups embody the conflict between society's need to be protected and the need to punish offenders for serious behavior. On the basis of research conducted in Iowa and elsewhere, some of these offenders constitute little threat to the public; nonetheless, there is a legitimate societal need to punish them. The question is, then, how much punishment is enough.

About sixteen percent of the prison sample had no prior adult felony or misdemeanor convictions and no prior imprisonments. An additional twenty percent had no prior felonies or imprisonments and four or fewer prior misdemeanor convictions. These are groups worthy of further analysis to determine their suitability for sanctions other than imprisonment. While a portion of these groups reached prison as the result of probation revocations, it is also possible that other sanctions could be developed to safely deal with these offenders.

One variable differentiating between the prison and probation populations stands out in the earlier presentation. A high percentage of those entering prison have been detained prior to trial, while the percentage of probationers so-detained is much lower. And while the percentage of prisoners detained is high (69 percent), about a third of the prisoner sample was **not** in jail at sentencing, suggesting that some of this group could have been safely been released to supervision in the community. The difference in detention figures between the prisoner and probationer group also suggests that, if additional resources were devoted to strengthening pre-trial programming, an impact on the level of prison commitments would eventually be felt. The workgroup suggests that this may be an area worthy of further study.

SENATE/HOUSE FILE \_\_\_\_\_

BY (RECOMMENDED BY SENTENCING COMMISSION)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the consolidation of certain criminal offenses  
2 concerning computer access, damage, or theft, video rental  
3 theft, election bribery, and voting duress.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 622.51A COMPUTER PRINTOUTS.

2 For purposes of chapters 714 and 716, computer printouts  
3 shall be admitted as evidence of any computer software,  
4 program, or data contained in or taken from a computer,  
5 notwithstanding an applicable rule of evidence to the  
6 contrary.

7 Sec. 2. NEW SECTION. 702.1A COMPUTER TERMINOLOGY.

8 For purposes of section 714.1, subsection 7A, and section  
9 716.6B:

10 1. "Computer" means an electronic device which performs  
11 logical, arithmetical, and memory functions by manipulation of  
12 electronic or magnetic impulses, and includes all input,  
13 output, processing, storage, computer software, and  
14 communication facilities which are connected or related to the  
15 computer in a computer system or computer network.

16 2. "Computer access" means to instruct, communicate with,  
17 store data in, or retrieve data from a computer, computer  
18 system, or computer network.

19 3. "Computer data" means a representation of information,  
20 knowledge, facts, concepts, or instructions that has been  
21 prepared or is being prepared in a formalized manner and has  
22 been processed, or is intended to be processed in a computer.  
23 Computer data may be in any form including, but not limited  
24 to, printouts, magnetic storage media, punched cards, and as  
25 stored in the memory of a computer.

26 4. "Computer network" means a set of related, remotely  
27 connected devices and communication facilities including two  
28 or more computers with capability to transmit data among them  
29 through communication facilities.

30 5. "Computer program" means an ordered set of instructions  
31 or statements that, when executed by a computer, causes the  
32 computer to process data.

33 6. "Computer services" means the use of a computer,  
34 computer system, or computer network and includes, but is not  
35 limited to, computer time, data processing, and storage

1 functions.

2 7. "Computer software" means a set of computer programs,  
3 procedures, or associated documentation used in the operation  
4 of a computer.

5 8. "Computer system" means related, connected or  
6 unconnected, computers or peripheral equipment.

7 9. "Loss of property" means the greatest of the following:

8 a. The retail value of the property involved.

9 b. The reasonable replacement or repair cost, whichever is  
10 less.

11 10. "Loss of services" means the reasonable value of the  
12 damage created by the unavailability or lack of utility of the  
13 property or services involved until repair or replacement can  
14 be effected.

15 Sec. 3. Section 702.14, Code 1999, is amended to read as  
16 follows:

17 702.14 PROPERTY.

18 "Property" is anything of value, whether publicly or  
19 privately owned, including but not limited to computers and  
20 computer data, computer software, and computer programs. The  
21 term includes both tangible and intangible property, labor,  
22 and services. The term includes all that is included in the  
23 terms "real property" and "personal property".

24 Sec. 4. NEW SECTION. 702.20A VIDEO RENTAL PROPERTY.

25 "Video rental property" means an audiovisual recording,  
26 including a videotape, videodisc, or other tangible medium of  
27 expression on which an audiovisual work is recorded or  
28 otherwise stored, or any equipment or supplies used to view  
29 the recording, and which is held out for rental to the public  
30 in the ordinary course of business.

31 Sec. 5. Section 714.1, Code 1999, is amended by adding the  
32 following new subsections:

33 NEW SUBSECTION. 7A. Knowingly and without authorization  
34 accesses or causes to be accessed a computer, computer system,  
35 or computer network, or any part thereof, for the purpose of

1 obtaining computer services, information, or property or  
2 knowingly and without authorization and with the intent to  
3 permanently deprive the owner of possession, takes, transfers,  
4 conceals, or retains possession of a computer, computer  
5 system, or computer network or any computer software or  
6 computer program, or computer data contained in a computer,  
7 computer system, or computer network.

8 NEW SUBSECTION. 7B. a. Obtains the temporary use of  
9 video rental property with the intent to deprive the owner of  
10 the use and possession of the video rental property without  
11 the consent of the owner.

12 b. Lawfully obtains the temporary use of video rental  
13 property and fails to return the video rental property by the  
14 agreed time with the intent to deprive the owner of the use  
15 and possession of the video rental property without the  
16 consent of the owner. The aggregate value of the video rental  
17 property involved shall be the original retail value of the  
18 video rental property.

19 Sec. 6. NEW SECTION. 714.6A VIDEO RENTAL PROPERTY THEFT  
20 -- EVIDENCE OF INTENTION -- AFFIRMATIVE DEFENSE.

21 1. The fact that a person obtains possession of video  
22 rental property by means of deception, including but not  
23 limited to furnishing a false name, address, or other  
24 identification to the owner, is evidence that possession was  
25 obtained with intent to knowingly deprive the owner of the use  
26 and possession of the video rental property.

27 2. The fact that a person, having lawfully obtained  
28 possession of video rental property, fails to pay the owner  
29 the fair market value of the video rental property or to  
30 return or make arrangements acceptable to the owner to return  
31 the video rental property to the owner, within forty-eight  
32 hours after receipt of written notice and demand from the  
33 owner is evidence of an intent to knowingly deprive the owner  
34 of the use and possession of the video rental property.

35 3. It shall be an affirmative defense to a prosecution

1 under section 714.1, subsection 7B, paragraph "a", if the  
2 defendant in possession of video rental property pays the  
3 owner the fair market value of the video rental property or  
4 returns the property to the owner within forty-eight hours of  
5 arrest, together with any standard overdue charges for the  
6 period that the owner was unlawfully deprived of possession,  
7 but not to exceed one hundred twenty days, and the value of  
8 the damage to the property, if any.

9 Sec. 7. NEW SECTION. 716.6B UNAUTHORIZED COMPUTER  
10 ACCESS.

11 A person who knowingly and without authorization accesses a  
12 computer, computer system, or computer network commits a  
13 simple misdemeanor.

14 Sec. 8. Section 722.4, Code 1999, is amended to read as  
15 follows:

16 722.4 BRIBERY OF ELECTOR OR ELECTION OFFICIALS.

17 1. A person who offers, promises, or gives anything of  
18 value or any benefit to any elector for the purpose of  
19 influencing the elector's vote, in any election authorized by  
20 law, or any elector who receives anything of value or any  
21 benefit knowing that it was given for such purpose, commits an  
22 aggravated misdemeanor.

23 2. A person who offers, promises, or gives anything of  
24 value or any benefit to any precinct election official  
25 authorized by law, or to any executive officer attending the  
26 same, conditioned on some act done or omitted to be done  
27 contrary to the person's official duty in relation to such  
28 election, commits an aggravated misdemeanor.

29 Sec. 9. Section 722.8, Code 1999, is amended to read as  
30 follows:

31 722.8 DURESS TO PREVENT OR PROCURE VOTING.

32 1. A person who unlawfully and by force, or threats of  
33 force, prevents or endeavors to prevent an elector from giving  
34 the elector's vote at any public election commits an  
35 aggravated misdemeanor.



SENATE/HOUSE FILE \_\_\_\_\_  
BY (RECOMMENDED BY  
SENTENCING COMMISSION)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to violations of the maximum gross weight  
2 limitations for vehicles operated on the highways of this  
3 state.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 805.8, subsection 2, paragraph v, Code  
2 Supplement 1999, is amended to read as follows:

3 v. Violations of the schedule of axle and tandem axle and  
4 gross or group of axle weight violations in section 321.463  
5 shall be scheduled violations subject to the provisions,  
6 procedures and exceptions contained in sections 805.6 to  
7 805.11, irrespective of the amount of the fine under that  
8 schedule. Violations of the schedule of weight violations  
9 shall be chargeable~~7-where-the-fine-charged-does-not-exceed~~  
10 ~~one-hundred-dollars7~~, only by uniform citation and complaint.  
11 ~~Violations-of-the-schedule-of-weight-violations7-where-the~~  
12 ~~fine-charged-exceeds-one-hundred-dollars-shall7-when-the~~  
13 ~~violation-is-admitted-and-section-805-9-applies7-be-chargeable~~  
14 ~~upon-uniform-citation-and-complaint7-indictment7-or-county~~  
15 ~~attorney's-information7-but-otherwise7-shall-be-chargeable~~  
16 ~~only-upon-indictment-or-county-attorney's-information7~~

17 In all cases of charges under the schedule of weight  
18 violations, the charge shall specify the amount of fine  
19 charged under the schedule. ~~Where-a-defendant-is-convicted~~  
20 ~~and-the-fine-under-the-foregoing-schedule-of-weight-violations~~  
21 ~~exceeds-one-hundred-dollars7-the-conviction-shall-be-of-an~~  
22 ~~indictable-offense-although-section-805-9-is-employed-and~~  
23 ~~whether-the-violation-is-charged-upon-uniform-citation-and~~  
24 ~~complaint7-indictment7-or-county-attorney's-information7~~

25 EXPLANATION

26 Currently, Code section 805.8 requires violations of the  
27 schedule of maximum gross weight limitations for vehicles  
28 operated on highways of this state in Code section 321.463 to  
29 be charged as indictable offenses when the fine charged for  
30 the violation exceeds \$100. This bill eliminates that  
31 requirement, making such violations scheduled violations  
32 rather than indictable offenses.

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SENATE/HOUSE FILE \_\_\_\_\_  
BY (RECOMMENDED BY SENTENCING  
COMMISSION)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the accumulation of credit upon an inmate's  
2 sentence for Iowa inmates incarcerated in another  
3 jurisdiction.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 903A.5, unnumbered paragraph 2, Code  
2 Supplement 1999, is amended to read as follows:

3 An inmate shall not receive credit upon the inmate's  
4 sentence for time spent in custody in another state resisting  
5 return to Iowa following an escape~~7--or-for-time-served.~~  
6 However, an inmate shall receive credit upon the inmate's  
7 sentence while incarcerated in an institution or jail of  
8 another jurisdiction during any period of time the person is  
9 receiving credit upon a sentence of that other jurisdiction.

10 EXPLANATION

11 Existing law prohibits an inmate who is incarcerated in  
12 another jurisdiction from receiving credit upon the inmate's  
13 Iowa sentence if the inmate is also receiving credit upon the  
14 inmate's sentence in the other jurisdiction.

15 This bill provides that an inmate incarcerated in another  
16 jurisdiction shall receive credit upon the inmate's Iowa  
17 sentence if the inmate is receiving credit upon a sentence in  
18 that other jurisdiction. Generally, an inmate would receive  
19 one day of credit on the inmate's Iowa sentence for one day  
20 served in the other jurisdiction.

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## SENTENCING COMMISSION RECOMMENDATIONS

The Sentencing Commission made the following recommendations to the General Assembly:

1. **Serious Misdemeanor Reclassification.** Reclassify certain serious misdemeanors. (1999 recommendation, enacted by the 1999 General Assembly, 1999 Iowa Acts, Chapter 153, Appendix A)
2. **Consolidation of Offenses.** Consolidate the offenses of computer theft and video rental theft into the general theft statute, consolidate the offense of computer damage into the criminal mischief statute, and consolidate certain offenses involving election bribery and improper voting activity. (LSB 5085IC, Appendix D)
3. **Scheduled Violations.** Reclassify the following simple misdemeanors as scheduled violations:
  - Illegal transfer of ownership of a motor vehicle
  - Abandoning a motor vehicle
  - Fraudulent use of a motor vehicle registration
  - Violation of antique vehicle law
  - Permitting an unauthorized minor to drive a motor vehicle
  - Permitting an unlicensed person to drive a motor vehicle
  - Operating an all-terrain vehicle on a highway without a safety flag
  - Passing on the shoulder of the roadway
  - Failure to yield the right-of-way to a pedestrian
  - Stopping, parking, or leaving a vehicle illegally
  - Overweight truck violations (See LSB5138IC for bill draft concerning overweight trucks – Appendix E)
  - Violating requirements on motor vehicle lighting
  - Commercial fishing violations
  - Hunter safety requirements of minors
  - Violations of fishing and hunting license requirements
4. **Credit for Time Served.** Remove prohibition against receipt of sentence credit for time served in another jurisdiction (LSB 5065, Appendix F)
5. **Items for Further Consideration by General Assembly:**
  - OWI Treatment. Review OWI treatment availability and uniformity.
  - Good Time. Review the manner in which good time credits are accumulated by offenders to reflect more truth in sentencing.
  - Split Sentencing. Review options for allocating additional resources for facilities at community-based corrections for purposes of split sentencing.
  - Burglary – 3<sup>rd</sup> degree and Forgery. Review current sentencing practices associated with crimes of Forgery and Burglary – 3<sup>rd</sup> degree.
  - 85 Percent. Review options for reconsideration of 85 percent sentences and for prosecutors to have greater discretion to prosecute an offender under the 85 percent statute.
  - Mandatory Supervised Release. Review options to require a period of mandatory supervised release to address the issue of offenders who are discharging their sentences while in prison.

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