

State Legislation Monitoring Report: FY2012

Iowa Department of Human Rights
Division of Criminal and Juvenile Justice Planning

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Introduction

The Division of Criminal and Juvenile Justice Planning issued its first state legislation monitoring report in February 2002, covering the first six months' impact of Senate File 543 (which enacted a number of sentencing changes) on the justice system; monitoring of the correctional impact of this bill was at the request of several members of the legislature. Since then, the Criminal and Juvenile Justice Planning Advisory Council has requested that CJJP monitor the correctional impact of enacted legislation of particular interest. This report covers monitoring results or future plans to monitor the following:

- Non-homicide Class A felonies, juveniles
- K2/Salvia
- Aggravated theft
- Residential treatment backlog
- 70% crimes.

Non-homicide Class A felonies, juveniles

In May, 2010 the U.S. Supreme Court issued a ruling on sentencing juvenile offenders to life in prison without the possibility of parole for non-homicide offenses (Graham vs. Florida). The 2011 Iowa Code includes five offenses that are Class A felonies with mandatory life without parole sentences: murder in the 1st degree, kidnapping in the 1st degree, sex abuse in the 1st degree, second or subsequent conviction for intent to manufacture or deliver methamphetamine to a minor, and second or subsequent conviction for sex abuse of a child.

During the 2011 session, the Legislature passed SF533 to amend IA Code 902.1 for Class A felonies to allow for the possibility of parole for non-homicide offenses committed by juveniles: kidnapping 1st, sex abuse 1st, second or subsequent methamphetamine, and second or subsequent child sexual abuse. Parole could be considered after a minimum of 25 years under the new guidelines.

As of July 1, 2011, there were seven prisoners serving life sentences for non-homicide Class A offenses, all of them kidnapping in the 1st degree, who committed the offense as a juvenile. Three of these prisoners were also convicted of murder in the 2nd degree with mandatory minimum sentences of 35 years. Based upon the murder convictions, the earliest these individuals could be considered for parole would be in 2029. Two individuals started their sentences in 2002 and 2005, with their earliest parole eligibility in 2027 and 2030 respectively. Two individuals are eligible for parole under the new law. One has served 29 years and the other has served 27.

At the current time, the Board of Parole is awaiting guidance from the Attorney General's office on protocols for reviewing cases that are affected by the change in IA Code.

K2/Salvia

During the 2011 session of the Iowa General Assembly, action was taken to add synthetic

cannabinoids (such as K2), Salvia Divinorum, and "bath salts" to Iowa's list of Schedule I Controlled Substances, with no known medicinal properties. These changes were accomplished by language in two different bills, Senate File 510 and Senate File 533. Synthetic cannabinoids became Schedule I controlled substances under Iowa law and criminal penalties for violations became available on July 29, 2011. The two other substances – Salvia Divinorum and "bath salts" (synthetic cathinones) – became Schedule I controlled substances 30 days after the enactment of the latter of the two bills (SF 510 and SF 533). Though there was some debate as to when the criminal penalties for distribution and possession of Salvia Divinorum and "bath salts" took effect, it is clear that on September 27, 2011, (and possibly 30 days earlier) distribution and possession of Salvia Divinorum or "bath salts" became prohibited and criminal penalties began to apply

The coding structure used by the Courts will not capture charges and convictions for the specific drugs involved in violation of IA Code 124.401(1)(d). Therefore, the decision was made to track hospitalizations and emergency room visits for drug poisoning as a proxy measure. The hypothesis is that the number of accidental poisoning events will decrease once these drugs are no longer available through retail outlets. The data are from the Iowa Department of Public Health, and include diagnostic and external cause codes for poisoning by sedative, hypnotics, psychotropic agents, hallucinogens, psychostimulants, and other psychotropic agents.

Hospitalizations			
YEAR	ACCIDENTAL POISON (ECODE)		
	NO	YES	Total
2006	1560	84	1644
2007	1784	87	1871
2008	1898	99	1997
2009	2071	101	2172
2010	3492	17	3509
Total	10805	388	11193

Emergency Room Visits			
year	ACCIDENTAL POISON (ECODE)		
	NO	YES	Total
2006	5124	204	5328
2007	5564	201	5765
2008	5949	230	6179
2009	5993	273	6266
2010	884	265	1149

Total	30272	979	31251
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Another source of information is the Poison Control Center in Sioux City. Reporting is not mandatory, so the Center's information is limited only to those health care facilities that voluntarily report. The following chart is based upon health care facility calls and treatment reporting for bath salts, K2, and salvia.

	CY2009		CY2010		CY2011, Jan - Sept	
	# Calls	# Treated	# Calls	# Treated	# Calls	# Treated
Bath Salts	0	0	0	0	38	31
K2	0	0	6	6	53	57
Salvia	1	0	3	3	0	0

Aggravated Theft

During the 2010 legislative session, the General Assembly created a new theft charge, aggravated theft (IA Code §714.3A). This offense, an aggravated misdemeanor, was intended to be an alternative, non-forcible charge for acts of theft combined with low-level physical threat. Prior to the passage of this amendment, offenders could be charged with first degree robbery, a Class B forcible felony with a 70% sentence. Robbery 2nd, a Class C 70% crime, was also a charging/convicting offense that could be used. Anecdotal information indicated that some jurisdictions, in these instances, also used theft 5th in combination with simple assault, two misdemeanor offenses.

Another charging/conviction alternative suggested by Criminal and Juvenile Justice Advisory Council members was IA Code §711.4, extortion.

Data were examined for FY2010, the year before §714.3A was enacted, and FY2011, the first full year after. Charges and convictions for robbery 1st, robbery 2nd, and aggravated theft were obtained from the Iowa Justice Data Warehouse (JDW). In addition, offenders who were convicted of the theft 5th/simple assault combination during the two years were also identified.

The number of robbery 1st and robbery 2nd charges were lower in FY2011 than in FY2010. However, the number of offenders convicted of robbery 1st increased.

Charges and Offenders Convicted, Robbery and Aggravated Theft

	FY2010		FY2011	
	# Charges	# Offenders Convicted	# Charges	# Offenders Convicted
Robbery 1 st	290	36	251	41
Robbery 2 nd	340	83	243	75
Aggravated theft	NA	NA	52	60

Historically, robbery 1st, with its related 70% sentence, has contributed to the disproportionate number of African Americans in Iowa's prison system. In comparing FY2011 to FY2010, the

proportion of offenders convicted of robbery 1st who are African American increased by a little over seventeen percentage points. The actual number of African Americans convicted of robbery 1st increased by 64%. The number of African Americans convicted of robbery 2nd did not noticeably change. The largest decrease for robbery 2nd was for the Other/Unknown racial category.

Offenders Convicted by Race

	FY2010				FY2011					
	Robbery 1st		Robbery 2nd		Robbery 1st		Robbery 2nd		Aggravated Theft	
	#	%	#	%	#	%	#	%	#	%
Caucasian	13	36.1%	26	31.3%	8	19.6%	29	38.7%	35	58.3%
African American	14	38.8%	40	48.2%	23	56.1%	39	52.0%	16	26.7%
Other/Unk	9	25.1%	17	20.5%	10	24.3%	8	9.3%	9	15.0%
Total	36	100.0%	83	100.0%	41	100.0%	75	100.0%	60	100.0%

Combined convictions for theft 5th and simple assault were based upon offenders with the same case number and disposition date for both offenses. There may in fact have been more cases that resulted in combined convictions but did not meet the search criteria, so the following numbers may represent an undercount of offenders.

In FY2010, there were 31 offenders convicted of both theft 5th and simple assault. In FY2011, there were 24. In both years, the majority of the offenders were Caucasian.

Offenders Convicted of Theft/Simple Assault, by Race

	FY2010		FY2011	
	#	%	#	%
Caucasian	19	61.2%	14	58.4%
African American	5	16.1%	5	20.8%
Other/Unknown	7	22.7%	5	20.8%
TOTAL	31	100%	24	100%

Extortion does not appear to be a commonly-used charge. The numbers of charges and offenders convicted appear to be consistent during the years before and after enactment of IA Code §714.3A(2)(a), although the distribution among racial categories is different. However, given the small numbers, change is likely due to random variation.

Extortion

	FY2010		FY2011	
	#	%	#	%
# Charges	33		28	
Total Offenders	26		23	
Caucasian	11	42.3%	11	47.8%
African American	11	42.3%	4	17.4%
Other/Unknown	4	15.4%	8	34.8%

Adjudicated charges for juveniles were also examined for the two time periods for robbery 1st and robbery 2nd and aggravated theft. Combined simple misdemeanor assault/theft 5th adjudications were not examined.

Juvenile Charges Adjudicated, Robbery and Aggravated Theft

	FY2010	FY2011
	# Charges	# Charges
Robbery 1 st	6	8
Robbery 2 nd	16	12
Aggravated theft	NA	5

Until more time elapses, the extent to which the new offense of aggravated theft may affect charging and conviction practices cannot be determined. This is a topic that will continue to be monitored.

Residential Treatment Facilities

Below is information regarding residential facility capacities, populations, and waiting lists for all residential facilities in the state. Please note the waiting list numbers in the chart include only those offenders who have been approved by the receiving facility—and such offenders may be waiting for placement from prison, county jails, or the community.

The information that follows is based upon the dates identified in the tables. Waiting lists, for instance, may change daily depending upon changes in supervision status.

As of October 19, 2011, there were 751 offenders on waiting lists for residential facilities—511 in the community and 240 in prison. The daily marginal cost for residential facilities is \$11.50, while the marginal cost for prisons is \$15.59. The median period waiting for placement into a residential facility from prison was 31.41 days; the average was 43.9 days (as of 10/19). This translates into a cost differential of \$4.09 per day.

It is somewhat more difficult to determine any cost differences for those waiting placement from the community, as these offenders are likely to be receiving an array of community-based supervision services and levels of intensity, all of which would influence the daily costs within the community. The median waiting time for this group was 31.41 days, and the average was

69.9 days. The differential between these two figures suggests that a small group of offenders is awaiting placement for a very long period of time.

The table below shows residential facility capacities, populations on July 31, 2011, and the individual facility waiting lists as of August, 24, 2011.

District	Facility	Capacity	Population on Jul 31, 2011			Waiting List on Aug 24, 2011		
			Males	Females	Total	Males	Females	Total
1	Dubuque	80	68	8	76	14	5	19
1	Waterloo	150	127	23	150	55	7	62
1	West Union	48	41	4	45	10	4	14
	<i>District Total</i>	<i>278</i>	<i>236</i>	<i>35</i>	<i>271</i>	<i>79</i>	<i>16</i>	<i>95</i>
2	Beje Clark Mason City	51	32	10	42	5	0	5
2	Curt Forbes Ames	45	38	4	42	27	5	32
2	Fort Dodge	60	57	6	63	20	6	26
2	Marshalltown	51	42	10	52	23	3	26
	<i>District Total</i>	<i>207</i>	<i>169</i>	<i>30</i>	<i>199</i>	<i>75</i>	<i>14</i>	<i>89</i>
3	Sheldon	30	29	0	29	21	0	21
3	Sioux City	57	44	7	51	134	25	159
	<i>District Total</i>	<i>87</i>	<i>73</i>	<i>7</i>	<i>80</i>	<i>155</i>	<i>25</i>	<i>180</i>
4	Council Bluffs	71	61	0	61	24	0	24
4	Council Bluffs Women	26	0	25	25	0	5	5
	<i>District Total</i>	<i>97</i>	<i>61</i>	<i>25</i>	<i>86</i>	<i>24</i>	<i>5</i>	<i>29</i>
5	Des Moines Women	48	0	58	58	0	23	23
5	Fort Des Moines Bldg #65 - Bridges	68	40	0	40	0	0	0
5	Fort Des Moines Bldg #66 - Honors	40	51	0	51	10	0	10
5	Fort Des Moines Bldg #68	80	79	0	79	27	0	27
5	Fort Des Moines Bldg #70	120	123	0	123	71	0	71
	<i>District Total</i>	<i>356</i>	<i>293</i>	<i>58</i>	<i>351</i>	<i>108</i>	<i>23</i>	<i>131</i>
6	Cedar Rapids Gerald Hinzman	83	38	27	65	25	18	43
6	Cedar Rapids Lary Nelson	90	102	1	103	32	1	33
6	Coralville Hope House	55	59	0	59	19	0	19
	<i>District Total</i>	<i>228</i>	<i>199</i>	<i>28</i>	<i>227</i>	<i>76</i>	<i>19</i>	<i>95</i>
7	Davenport Residential	64	63	0	63	20	0	20
7	Davenport Work Rel/OWI	81	54	23	77	77	18	95
	<i>District Total</i>	<i>145</i>	<i>117</i>	<i>23</i>	<i>140</i>	<i>97</i>	<i>18</i>	<i>115</i>
8	Burlington	60	55	0	55	6	0	6
8	Ottumwa	51	39	9	48	37	0	37
	<i>District Total</i>	<i>111</i>	<i>94</i>	<i>9</i>	<i>103</i>	<i>43</i>	<i>10</i>	<i>53</i>
	Statewide	1,509	1,242	215	1,457	657	130	787

Waiting list numbers include offenders in the community and in prison. Major groups on the waiting lists include probation (388 or 49%), work release (227 or 29%) and federal (105 or 13%).

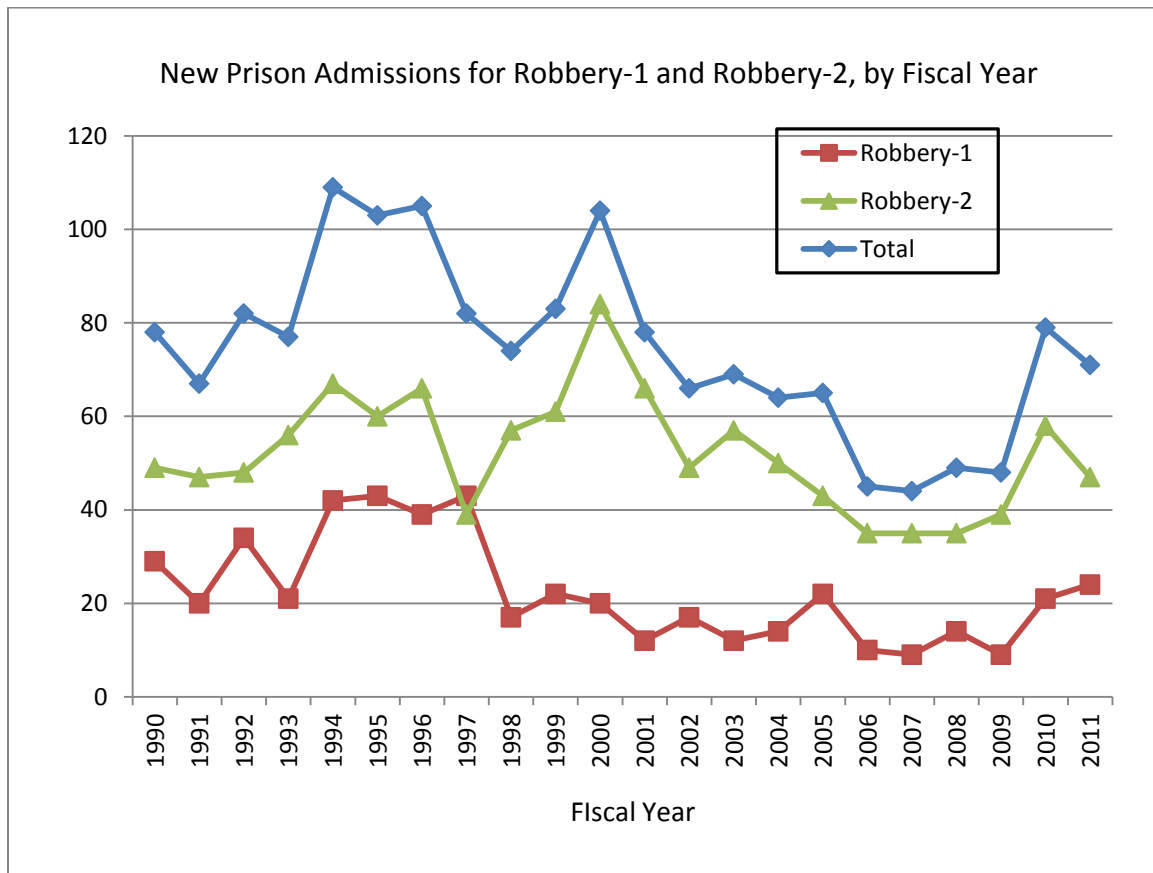
70% Crimes

In 1996 the Iowa General Assembly adopted SF1151 in response to a federal initiative called Violent Offender Incarceration and Truth in Sentencing (VOI/TIS) (42 U.S.C. §13711.) . This effort occurred during a time when it was becoming more accepted that a substantial percentage of serious crime is committed by a relatively small number of individual offenders. With proper identification of these offenders, it was believed that prolonged incarceration or other

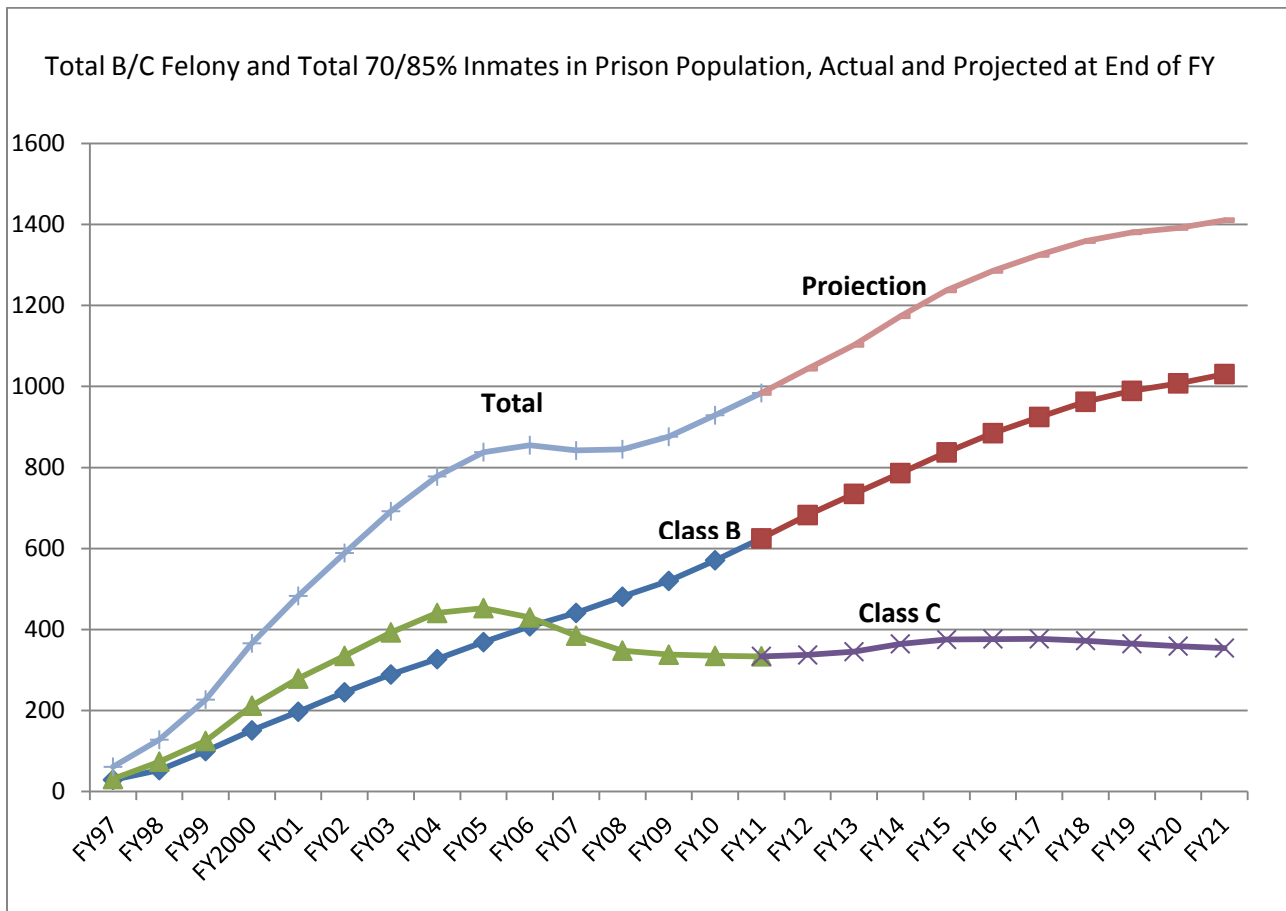
incapacitation would reduce the level of violent crimes.

Like other states, Iowa adopted the 85% requirement of the federal legislation when SF1151 was passed in 1996. This requirement was modified in 2003, when inmates covered by these sentences were made eligible for parole release after having served 70 percent of their sentences. The following year this provision was made retroactive, so all those originally covered by the 85% requirement became eligible for parole at the 70% mark. The entire group will be referred to here as “70% inmates”.

The largest group of inmates admitted to Iowa’s prisons under the 70% provisions has been robbers committed under chapter 711.2 (Robbery-1) and 711.3 (Robbery-2) of the IA Code. The chart below shows new prison admissions for robbery since 1990. Prior to FY1996, robbery admissions did not carry 70% sentences; gradually, starting in FY1996, virtually all robbers were subject to the 70% mandatory provision. It is evident from the chart that there was a precipitous drop in admissions of first-degree robbers starting in FY98, with a bit of a spike in Robbery-2 admissions thereafter, followed a an apparent return to previous levels of Robbery-2 admissions.



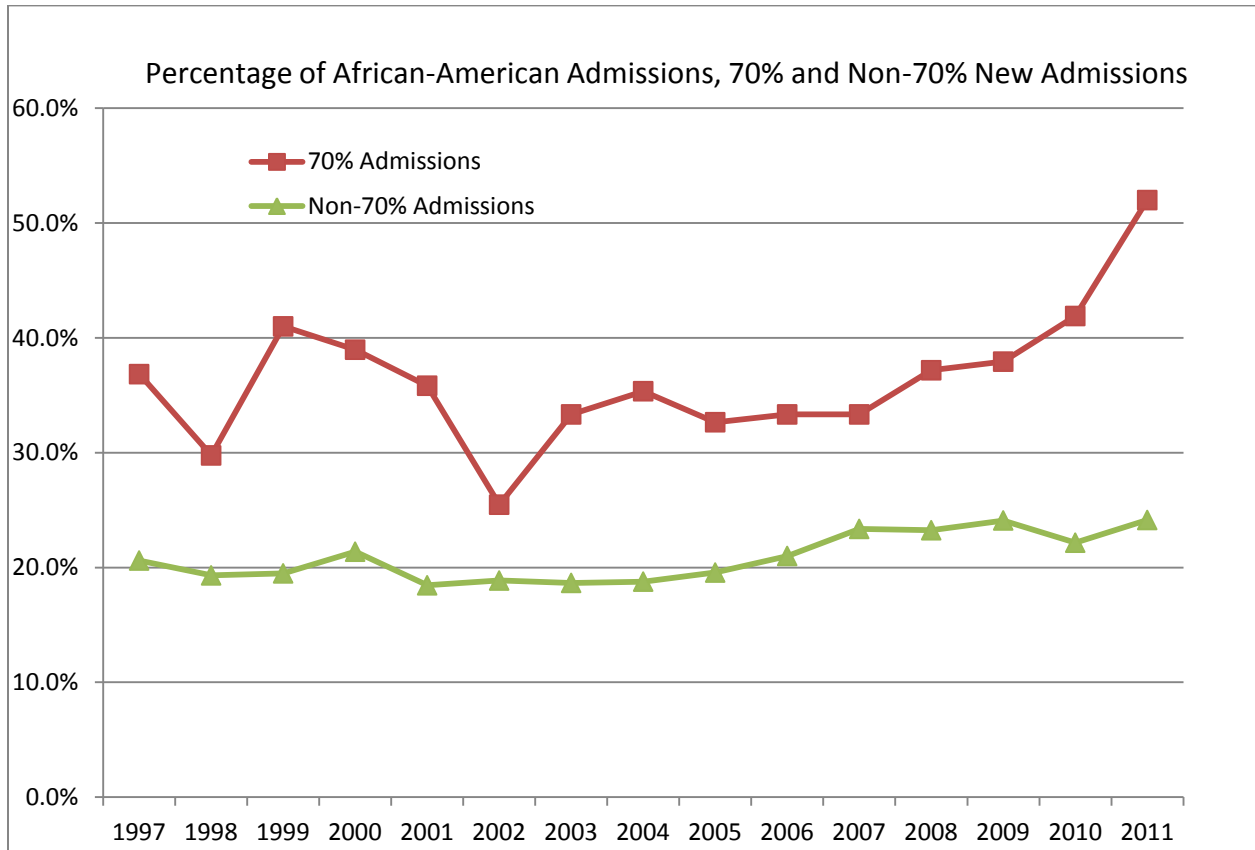
Contrasting with this picture is the graph below, which presents the actual and projected numbers of 70% inmates in the prison population at the end of each fiscal year. The projected numbers come from the 2011-2021 Prison Population Forecast:



The graph shows a leveling off of Class C 70% inmates in the population through 2021, but a continued rise in Class B inmates in the population. The cause of the rise in Class B inmates is the length of the 70% mandatory minimum sentence on Class B inmates, which is 17.5 years. With the exception of one current inmate who was sentenced under Youthful Offender provisions, the first Class B 70% inmate becomes eligible for parole consideration in April of 2014. If these Class B inmates are released, on average, midway between their mandatory minimum date and their expiration date (as has been the case for Class C inmates), the first release is likely to occur in April, 2016. In that event, the number of Class B 70% inmates in the population will continue to rise through at least 2021, although the rate of increase will abate as the number of releases increases to equal the number of admissions (37 in FY 10 and 40 in FY11).

Finally, there has been evidence to support the contention that 70% sentences are discriminatory because they target offenses for which African-Americans have been disproportionately incarcerated. To investigate that claim, the graph below is presented, which shows the African-American percentage of new admissions for 70% crimes and non-70% crimes. The graph shows clearly that, indeed, African-Americans are much more likely to be incarcerated for 70% crimes than crimes which do not carry this sanction. While the actual number of African-Americans

incarcerated for 70% offenses is not great (52 new admissions in FY2011), the disproportionality is considerable, and apparently growing.



CJJP expects to release a more complete analysis of the impact of 70% sentences later in 2011.