



# 2016\* State Justice System Legislation Monitoring Report

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Division of Criminal and Juvenile Justice Planning  
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\*This report satisfies the CJJPAC's obligation to submit an annual report to the Iowa State Legislature by December 1, 2016. While previous reports were entitled with the following year in which recommendations might be considered, this and future reports will be labeled with the year in which they are submitted.

Completion of this report fulfills the Criminal and Juvenile Justice Planning Advisory Council's (CJJPAC) legislative obligations outlined in Iowa Code section §216A.133. This section of the code instructs the CJJPAC, a council staffed by The Division of Criminal and Juvenile Justice Planning (CJJP), to examine and provide analysis of criminal and juvenile justice policy. The council is to "report criminal and juvenile justice system needs to the governor, the general-assembly, and other decision makers to improve the criminal and juvenile justice system."

On November 16, 2016 Iowa's CJJPAC approved this report.

## **Summary of 2016 Enacted Legislation**

The Criminal and Juvenile Justice Planning Advisory Council (CJJPAC) has requested that the Division of Criminal and Juvenile Justice Planning (CJJ) monitor the correctional impact of enacted legislation of particular interest. The following information provides a summary of enacted legislation during the 2016 session by the 86<sup>th</sup> General Assembly and the estimated correctional impact.

### **HF 2064 - Mandatory Minimums for Violent Offenses**

- Decreased the mandatory minimum term for parole eligibility for Robbery 2<sup>nd</sup> offenders to a range of 50% to 70%.
- Established a new crime of Robbery 3<sup>rd</sup> which is an aggravated misdemeanor, and not subject to a mandatory term.
- Reduced the mandatory minimum term for 726.6 Child Endangerment convictions from 70% to 30% of prescribed confinement.

#### **Correctional Impact:**

- The collective impact of this legislation revealed this bill will not result in an increase or decrease in the total number of convictions but rather some crimes that were formerly Robbery 2<sup>nd</sup>, Theft 1<sup>st</sup>, or Aggravated Assault will become Robbery 3<sup>rd</sup> under this legislation.
- There will be a reduction in prison admissions, as some crimes that were formerly felonies become misdemeanors, also influencing the prison population projections; suggesting a decrease by 166 inmates by year-eight of enactment.
- This proposal is expected to increase jail orders by 7 annually and probation orders by 19 annually.
- This proposal is expected to have a minority impact as approximately 43% of Robbery 2<sup>nd</sup> convictions in FY2015 were African-American.

### **HF 2064 - Mandatory Minimums for Drug Offenses**

- Allows for non-violent drug offenders, who are not high-risk, to be eligible for parole after having served at least one-half of their minimum sentence. This includes a person sentenced for a violation of Iowa Code sections 124.401 (1) a, b, or c. This proposal was retroactive and affects current inmates as well as new prison admissions.

#### **Correctional Impact:**

- This portion of the bill is expected to reduce the number of inmates in year-one by 205 and year-five by 179.
- Approximately 17.8% of inmates currently incarcerated on these offenses are African-American, while 11.5% of prison admissions are African-American.
- This estimate indicates that approximately 14.6% of inmates affected by this legislation would be African-American.

### **HF 2278- Human Trafficking and Kidnapping**

- Established an office within the Department of Public Safety (DPS) to monitor and manage human trafficking efforts.
- Extended the statute of limitations for kidnapping and human trafficking.

Correctional Impact:

- In FY2015 there were no dismissed or acquitted charges for Human Trafficking or Kidnapping that would have qualified for convictions under the given proposal. CJPJ expects the impact of this bill to be minimal.

**SF2185- Trespassing**

- Provides that filming an individual without their knowledge is an aggravated misdemeanor.
- Specifies that trespassing to *intentionally* view, photograph or film another person without their consent, in an area where reasonable privacy is expected, commits a serious misdemeanor, whereas a person who knowingly trespasses upon the property of another commits a simple misdemeanor.

Correctional Impact:

- During FY15 there were 2,310 offenders convicted of trespassing (716.7 and 716.8), 20% of whom were African-American. It is difficult to know how many of these offenses involved viewing, photographing, or filming of another; therefore, it is difficult to determine the correctional impact of this bill.

## Summary of Historical Legislation Data Tracking

The following provides a list of historical legislation passed for which the CJPAC continues to monitor in regard to impact upon the judicial system in Iowa.

### **Synthetic Drugs**

#### **SF510: July, 2011, Iowa Code 124.401(1)(d)**

In July of 2011 the Iowa General Assembly added synthetic cannabinoids (such as K2), Salvia Divinorum, and synthetic cathinones (bath salts) to Iowa's list of Schedule I controlled substances. The effects of this provision are best captured by observing accidental hospitalizations and emergency room visits, as the result of substance abuse, provided by the Iowa Department of Public Health (IDPH). The IDPH reports that FY2016 data is not available, and FY2015 data only includes information for the first six months from January through June.

- Data indicate that accidental poisoning hospitalizations, as a result of substance use, have declined since 2011, with more notable declines observed during FY2014. FY2015 data may indicate an increase in accidental poison hospitalizations, as the six-month figure (46) is higher than the annual figure reported in 2014 (38).
- Accidental poisoning emergency room visits have declined since FY2011 from 324 to 264 in FY2014. The first six months of FY2015 revealed a count of accidental poisoning emergency room visits of 145.

Data from the Poison Control Center located in Sioux City demonstrate that of voluntary calls to the facility concerning patient treatment, salvia treatments have remained relatively low and stable from CY2010-2015, while treatments for bath salts and K2 have followed similar patterns, increasing in 2011 and substantially declining thereafter.

### **Aggravated Theft**

#### **SF2250: July 2010, Iowa Code 714.3A**

Intended to be an alternative to Robbery 1<sup>st</sup> or Robbery 2<sup>nd</sup> degree, both of which are 70% forcible felony crimes, Aggravated Theft is a non-forcible crime for acts of theft combined with low-level physical threat and is not subject to the 70% mandatory minimum.

- During FY 2011 – FY 2016 aggravated theft convictions increased 50%.
- During FY 2011 – FY 2016 Robbery 1<sup>st</sup> convictions decreased by 69.7%, while Robbery 2<sup>nd</sup> convictions increased by 4.4%.
- African-Americans are overrepresented in both aggravated theft and robbery convictions however, the overrepresentation is greater for robbery offenses.

### **70% Mandatory Minimum Crimes**

#### **SF1151: July, 1996, Iowa Code 902.12**

This bill required that inmates convicted of certain crimes were to serve 85% of their sentence before being eligible for parole. This requirement was modified in 2003, when inmates subject to 85% sentences were made eligible for parole after having served 70% of their sentence. The following year, this provision became retroactive.

- Admissions of new prisoners serving 70% mandatory minimum sentences have generally remained stable since 1998.
- From FY 2011- FY 2016 the number of prisoners in the population serving mandatory 70% sentences has increased 25.6%.

### **Enhanced Penalty for Domestic Abuse Involving Strangulation**

#### **SF93: July 2012, Iowa Code 708.2A(5)**

This bill enhanced the penalty of strangulation in the domestic abuse statute (708.2A) from a serious misdemeanor to an aggravated misdemeanor if a person knowingly impedes the normal breathing or circulation of the blood of another by applying pressure to the throat or neck, or by obstructing the nose or mouth of the other person. If the assault causes bodily injury, it is a violation of Iowa Code 708.2A(5) and a class D felony.

- During FY2013 - FY2016, the number of charges for this crime has increased by 17% and the number of convictions has increased by 132.6% (43 to 100).

### **Changes to the Purchase or Possession of Child Pornography**

#### **HF2390: July, 2012, Iowa Code 728.12(3)**

This bill amended section 728.12(3) Purchase or Possess Medium Depicting Exploitation of a Minor by allowing separate charges to be filed for each child being exploited rather than the number of storage systems, mediums, or images purchased or possessed.

- From FY2013-FY2016 the number of disposed charges increased from 26 to 199 and the number of convictions increased from 9 to 65.

### **DNA Hits**

#### **HF527: May, 2013, Iowa Code 321J.2**

This bill required a person (other than a juvenile) convicted of or receiving a deferred judgement for an aggravated misdemeanor to submit a DNA sample. This mandate excludes some crimes including those identified under Iowa code chapters 321 (motor vehicles), 321J.2 (OWI 2<sup>nd</sup>), 716B (criminal mischief), 717A (animal facility violations), and 725.7 (gaming and betting). Prior law required this action solely for those convicted of felony level offenses.

- During 2016, DNA hits were received at higher rates for crimes involving burglary (54.5%), sex offenses (14.0%) and theft (14.3%).
- The total number of DNA hits increased during FY 2016 to 321; historical figures from FY 2011-FY 2015 have totaled approximately 200 total hits per year.<sup>1</sup>

### **Interference with Official Acts**

#### **SF384: July, 2013, Iowa Code 719.1 & 719.2**

This bill created a new offense, removal of an officer's communication or control device. The bill provided a graduated system of penalties for the offense depending on the purpose behind communication device removal and whether injury was sustained by the officer. This legislation designates lesser penalties for the crime of interference with official acts for actions that simply *result* in bodily injury rather than requiring that the offender's actions *caused* serious injury.

- In FY 2016 there were 5,646 charges of Interference disposed in Iowa courts and 2,740 convictions. These are the lowest figures observed even prior to crime code modification.
- While it was suggested that the 'loosening' of the requirements for providing injury could result in more convictions, it does not appear that charges or convictions have increased.

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<sup>1</sup> The Department of Public Safety (DPS) indicates that in FY2016 there were about 315 more profiles (convicted offender forensics) entered into CODIS, than were entered during FY2015. The increase in entered profiles is due to the passage of HF 527, new positions staffed within DPS's DNA division, and burglary cases (crimes with the historically the highest proportion of hits) that frequently involve repeat offenders.

## **Elder Abuse**

### **SF2239: May, 2014, Iowa Code 235F**

This bill created a process for obtaining a civil protective order for vulnerable elders in cases involving physical injury, sexual assault, neglect, and financial exploitation. Individuals who violate an issued protective order can be found in contempt of court and subject to jail time.

- The impact of this bill is difficult to examine due to the fact that protective orders are not clearly tied to charge or conviction data. Crime code descriptions for 235B violations are generally defined as dependent adult abuse and more specific information regarding victim age is unavailable.
- The bill's impact could potentially be examined by observing the number of petitions for civil protective orders filed for relief of elder abuse. State Court Administration reports that this information is difficult to extract although better data on this topic in the future is anticipated.

## **Coach-Student Sex**

### **HF2474: July, 2014, Iowa Code 709.15**

This bill expanded the criminal offense of, and related penalties for, sexual exploitation to include persons issued a school coaching authorization. This law provided that the definition of a school employee is expanded to include individuals issued a coaching authorization.

- From FY2012-FY2016 the number of charges and convictions for this crime has remained relatively low with the exception of FY2013 charges where one case received 49 charges.

## **Human Trafficking**

### **SF2311: July, 2014, Iowa Code 710A.2**

This bill related to sexual and criminal offenses involving minors and others, including prostitution, pimping, and human trafficking, providing for a fee, and including penalties and effective date and applicability provisions.

- Convictions at the state-level for crimes involving human trafficking are rare. However, it is difficult to know whether this finding speaks to the actual prevalence of the crimes in Iowa and/or indicates barriers in the tracking of these offenses.
- To better explain these findings, CJJP contacted a variety of state and federal agencies as well as local task force members knowledgeable about human trafficking in Iowa. It was generally acknowledged that data capturing the prevalence and nature of human trafficking within the state is currently unavailable.

## **Sentencing Practices for Juveniles**

### **SF448: April, 2015, Iowa Code 902.12**

This bill related to the commission of a class "A" felony by a person less than eighteen years of age, providing penalties, and including effective date and applicability provisions. This Act provided additional sentencing options for the adult court for juveniles convicted of class "A" felonies.

- As of August, 2016, there were 39 offenders convicted of A felonies who were under age 18 at time of offense who had been resentenced, and six offenders waiting to be resentenced.

While no legislative activity took place, the Supreme Court ruling of *Lyle v. State* filed on July 18th, 2014 also found that juveniles should not be automatically subjected to serve the 902.12 mandatory minimum for crimes including murder, attempted murder, sex abuse, kidnapping, robbery or vehicular homicide without considering offender level characteristics such as age, maturity and family history.

- As of July 29, 2016 there were 100 inmates incarcerated with a 902.12 mandatory minimum conviction who were under age 18 at the time of the offense. Of those, 89 have been resentenced. Of those resentenced, 55 have had their minimum parole date removed, meaning that the mandatory sentence requirement they would have otherwise served is removed allowing for earlier release.<sup>2</sup>

### **Probation Revocations by Race**

In September of 2014, members of the CJPAC requested data examining probation revocations by district by race.

- From FY2011-FY2016 the percentage of individuals revoked by race increased by 5% for white offenders, and decreased by approximately 6% for African-American offenders.

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<sup>2</sup> It should be noted that Iowa Code 901.5(14) provides that “if the defendant, other than a child being prosecuted as a youthful offender, is guilty of a public offense other than a class “A” felony, and was under the age of eighteen at the time the offense was committed, the court may suspend the sentence in whole or in part, including any mandatory minimum sentence, or with the consent of the defendant, defer judgment or sentence, and place the defendant on probation upon such conditions as the court may require.”<sup>2</sup>



Table 1: Historical Legislation Tracking

Year Enacted	Legislation	FY11	FY12	FY13	FY14	FY15	FY16	% Change <sup>3</sup>
<b>Synthetic Drugs - Accidental Poisoning as a Result of Substance Use (Source: IDPH)</b>								
FY2011	Hospitalizations (In-Patient)	140	109	107	38	46 <sup>4</sup>	NA	-67.1%
	ER Visits (Out-Patient)	324	282	262	264	145 <sup>5</sup>	NA	-55.2%
<b>Aggravated Theft (Source: JDW)</b>								
FY2010	# Charges- AG Theft	74	129	112	131	114	155	109.5%
	# Convictions- AG Theft	56	102	75	104	97	84	50.0%
	# Convictions – Robbery 1	33	26	33	20	24	10	-69.7%
	# Convictions – Robbery 2	68	43	54	69	97	71	4.4%
<b>70% Crimes (Source: JDW and ICON)</b>								
FY1996	# New Prison Admissions	92	89	84	108	106	115	25.0%
	# Prison Population	931	964	1008	1074	1119	1,169	25.6%
<b>Domestic Abuse Enhancement for Strangulation 708.2A(5) (Source: JDW)</b>								
FY2013	# Charges	NA	NA	472	526	544	553	17.0%
	# Convictions	NA	NA	43	86	128	100	132.6%
<b>Child Pornography Purchase or Possession (Source: JDW)</b>								
FY2013	# Charges	25	30	26	82	198	199	--
	# Convictions	3	6	9	22	48	65	--
<b>Iowa DNA Hits (Source: IDPS)</b>								
FY2013	# Hits Burglary	126	107	104	129	114	175	38.8%
	# Hits Sex Offenses	36	36	29	40	43	45	25.0%
	# Hits Death	2	4	7	3	1	3	--
	# Hits Theft	19	30	31	33	32	46	124.1%
	# Robbery	5	4	9	7	6	16	220.0%
	# Misc. or No Data	23	22	18	19	18	36	56.5%
	# Total Hits	211	203	198	231	214	321	52.1%

<sup>3</sup> Percent change was calculated using the earliest and most recent data available.

<sup>4</sup> Data represents first six months of FY15.

<sup>5</sup> Data represents first six months of FY15.

Table 1: Historical Legislation Tracking Continued...

Year Enacted	Legislation	FY11	FY12	FY13	FY14	FY15	FY16	% Change <sup>6</sup>
<b>Interference with Official Acts 719.1 and 719.2 (Source: JDW)</b>								
FY2014	# Charges	NA	5,797	6,169	5,845	5,528	5,646	-2.6%
	# Convictions	NA	3,542	3,703	3,463	3,315	2740	22.6%
<b>Coach-Student Sex</b>								
FY2014	# Charges	NA	5	69	12	22	29	480.0%
	# Convictions	NA	6	11	2	3	11	83.3%
<b>Human Trafficking</b>								
FY2011	# Charges	0	3	0	6	1	2	--
	# Convictions	0	1	0	0	0	0	--
<b>Juvenile Sentencing</b>								
FY2015	# Inmates	NA	NA	NA	NA	101 <sup>7</sup>	92	-8.9%
	# MMPD Removed	NA	NA	NA	NA	48	63	31.2%
<b>Probation Revocations by Race</b>								
--	% White	71.7%	73.7%	74.8%	74.3%	75.5%	76.9%	5.2% <sup>8</sup>
	% African-American	26.1%	24.5%	22.5%	23.1%	21.9%	20.4%	-5.7%
	% Other	2.2%	1.8%	2.7%	2.5%	2.5%	2.6%	0.4%
	# Total Probation Revocations	1,475	1,524	1,489	1,571	1,294	1,624	10.1% <sup>9</sup>

<sup>6</sup> Percent change was calculated using the earliest and most recent data available.

<sup>7</sup> Figures drawn using October 2015 figures.

<sup>8</sup> Calculated based on percent difference.

<sup>9</sup> Calculated based on percent change.