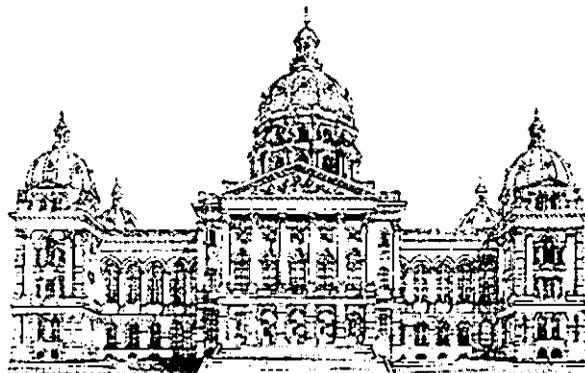


FINAL REPORT

**CRIMINAL SENTENCING INTERIM
STUDY COMMITTEE**



Presented to the
LEGISLATIVE COUNCIL
and the
IOWA GENERAL ASSEMBLY
January 1998

Prepared by the
LEGISLATIVE SERVICE BUREAU



Legislative
Service
Bureau

FINAL REPORT

Criminal Sentencing Interim Study Committee

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MEMBERS

Senator Andy McKean
Co-chairperson
Senator James Black
Senator Rod Halvorson
Senator Johnie Hammond
Senator Kitty Rehberg

Representative Jeff Lamberti
Co-chairperson
Representative Teresa Garman
Representative Chuck Larson
Representative Dolores Mertz
Representative Steve Richardson

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AUTHORIZATION AND APPOINTMENT

The Criminal Sentencing Interim Study Committee was established by the Legislative Council to perform all of the following duties:

- (1) Review current criminal and sentencing practices on inmate populations at state and adult residential community-based correctional facilities;
- (2) Conduct a comparative assessment of the relative penalties imposed for various crimes not only on the threat posed by the prohibited criminal conduct, but also by the risk generally associated with particular criminal offenders; and
- (3) Review and make recommendations concerning sexual predator statutory proposals and the existing sex offender registry.



Criminal Sentencing Interim Study Committee

1. Committee Proceedings and Background Information.

The Legislative Council authorized two Committee meetings for the performance of Committee tasks. The first meeting was held on October 20, 1997. The second meeting was held November 21, 1997.

The Committee members received a background statement prepared by the Legislative Service Bureau before the October 20th meeting date, summarizing Iowa's sentencing procedures, sex offender registry laws and litigation, and sexually violent predator laws and litigation. A chart of Iowa's crimes, which was to be part of the initial background information, was received subsequent to the October 20th meeting but before the November 21st meeting of the Committee.

2. October 20th Meeting.

At the October 20th meeting, Committee members heard testimony from the following individuals and associations:

a. **Restorative Justice Advocacy, Inc.** Betty Jean Clarke, Fred Gay, and Elizabeth Chrisinger discussed the principles underlying restorative justice and how restorative justice can and is being used in Iowa and other states to help to rectify the effects of criminal behavior in a manner that involves and empowers victims and makes offenders more accountable for their actions. They described the effectiveness of restorative justice programs in holding criminal offenders accountable to both their victims and the community at large, in providing greater community safety by giving offenders the services they need, and in meeting the particular needs of individual communities by tailoring application of creative sanctions to help deter future criminal conduct. They emphasized the need for collaboration of all persons and portions of the criminal justice system affected by or involved in each case in order to maximize the effectiveness of such programs.

b. **Drug Court.** Jim Hancock, Director of the Fifth Judicial District Department of Correctional Services, described both the origins and the nature of the Drug Court which has been in operation in the Fifth Judicial District for approximately one year. The Drug Court is a program for nonviolent offenders with a history of substance abuse. Participation entails completion of several program phases over a period of supervision encompassing approximately nine months to one year, including substance abuse assessment, treatment, and enforcement of probation terms, including weekly urinalyses and other types of programming. Participants receive positive reinforcement for successful completion of the phases of the program, and may be removed from the program due to failing a urine test. Participants removed from the program become subject to the criminal penalties applicable to their offense. The first graduating class is expected during October 1997. While the program has been successful thus far, Mr. Hancock cited as a problem a lack of long-term inpatient or residential treatment in helping the small percentage of substance abusers who have more serious addictions to overcome their drug habits.

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c. **Sixth Judicial District Department of Correctional Services/Iowa Corrections Association.** Jean Kuehl, representing two different organizations with similar but distinctly different positions, discussed how sentencing policy affects the capacity and workload of the community corrections system, experiences of the Sixth Judicial District in trying to manage the populations that are served through the community corrections system, and the policy positions of the Iowa Corrections Association regarding sentencing reform. Overall, she stated that because the corrections system must solve their problems with a finite supply of resources, it is increasingly important to identify what procedures work best, in order to maximize use of those limited resources.

With regard to sentencing reform, Ms. Kuehl expressed concern that the imposition of mandatory minimum sentences on low-level drug offenders has the effect of forcing the premature release of more violent offenders into the community, and that more drug treatment is needed for such offenders, not just mandatory minimums. For the criminal justice system to maintain credibility, it must have a comprehensive strategy, including addressing prevention and treatment at all stages. She also noted that one of the effects of the relatively new statutory requirement that certain offenders serve 85 percent of their sentences is that those offenders end up released into the community without any postrelease supervision, because they have completely served their sentences and the statute does not provide for postrelease supervision.

With respect to the pilot probation revocation project in the Sixth Judicial District, Ms. Kuehl indicated that time is needed to work out the challenges presented by the new system before it is extended statewide. She noted that there is a lack of authority for the exercise of contempt power, and that the Department feels that contempt authority and other intermediate sanctions that provide swift and effective justice for violations of a court order without full revocation of probation are needed, in conjunction with adequate surveillance. She also suggested that exclusion of misdemeanants from the program would be the best way to limit population within the program and allocate limited resources, and granting concurrent jurisdiction with the court might help to alleviate some of the concerns that have arisen relating to provision of initial appearances within the required time limits.

d. **Sex Offender Registry.** Betsy Dittmore and Steve Conlon, Iowa Department of Public Safety, discussed the current operations of the Sex Offender Registry, including the total number and statewide distribution of current registrants, the documentation process used for the registry and public notification, and the activities of the Department in the verification of offender addresses and dissemination of information regarding offenders.

Currently, almost 2,000 persons are registered. This includes only persons who were convicted or under supervision for a sex offense as of July 1, 1995. The registration process, as well as the process of public notification, was detailed, together with historical information regarding the numbers of registry queries that



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have been made thus far. Since July 1, 1997, approximately 3,900 queries have been made from the public and law enforcement, which represents a significant increase over past years. Current registry expenditures were described as around \$60,000, although it was clarified that a request for an additional \$551,000, including 11 additional FTEs, will be submitted in the next fiscal year to run the registry and conduct the risk assessments for the public notification process.

e. County Attorneys Association. Rich Phillips and Kevin Parker, Association legislative co-chairpersons, described the Association's positions relating to the 85 percent service of sentence requirement, the Sixth Judicial District probation revocation pilot project, sexual predator commitment proposals, and juvenile justice issues.

They noted that the 85 percent service requirement has had the impact of encouraging plea agreements while helping to positively deal with a negative public perception of criminal sentencing practices. They expressed the Association's opposition to the Sixth Judicial District's administrative probation revocation pilot project, emphasizing the need for county attorney and judicial involvement in the revocation process.

With regard to a possible civil commitment process for sexual predators that would be modeled after the Kansas system upheld this summer by the United States Supreme Court, both expressed that although their organization had not yet taken a formal position on the details of such a law, their preliminary concern was that the state should pay for commitments under such a process, rather than utilizing the current cost allocation method for mental health commitments of county of legal residence, because of unique characteristics about the sexual predator population. Both men also expressed public safety concerns, if the process would allow for the release of dangerous individuals back into society.

Mr. Phillips and Mr. Parker also emphasized that the juveniles that are entering the juvenile court system are very violent and that detention and shelters are often inappropriately used because of the lack of appropriate placement options for juveniles. Both men agreed that additional residential placement options are needed.

f. Corrections System Information. Fred Scaletta, Iowa Department of Corrections, began his presentation with an explanation of how the Department implements statutory "good time" reductions to inmates' sentences for good behavior, including how "good time" is applied to sentences with mandatory minimums. Mr. Scaletta also indicated that the real impact of mandatory minimum sentences on inmate populations has been minimal, except for certain drug offenses, because the average length of stay of most inmates (according to application of the "good time" formula) tends to exceed any mandatory minimum imposed as part of the full sentence. In addition, he noted that since application of the 85 Percent Rule began for certain offenses committed since July 1, 1996, the corrections system presently includes only 63 inmates who are subject to that rule.

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However, Lettie Prell, Division of Criminal and Juvenile Justice Planning, projected that in 10 years, the number of inmates in the correctional system under the 85 Percent Rule would be 879, and in 20 years would be 1,889. Ms. Prell also described the current and future composition of the prison population based on offenses committed, and noted that the design capacity of the prison system, including the new Fort Dodge facility, is 5,897 beds, but that the total system population is expected to be over 9,000 by the year 2006, because of the increase in the average length of stay.

Ms. Prell noted that the three most common offenses which resulted in incarceration are nonviolent offenses: drug offenses, theft, and burglary. The fourth most common offense, assault, is the first violent offense among those offenses which most frequently result in incarceration. She also noted a marked increase in the number of probationers in prison, with 48 percent of those probationers having been convicted of new offenses, and only 23 percent of whom have committed "technical" violations of their probation.

g. Iowa Board of Parole. Walt Saur provided information regarding trends in prison admissions, probation revocations, and parole returns; information regarding median sentences and median time served; the effectiveness of prison on criminal behavior; the use of video conferencing by parole authorities; and the effectiveness of treatment for sex offenders. Mr. Saur also describe how improved communication between the various segments of the criminal justice system could assist the system as a whole in dealing with criminals and criminal behavior.

Mr. Saur noted that the current trend is to put offenders into prison instead of on probation, which is a change in the trend that was experienced in the 1980s. However, he noted studies which show that prison is not an effective crime deterrent. Nationally, Iowa's rates of recidivism rank low.

h. Sexually Violent Predator Study. Gordon Allen spoke briefly with regard to the Sexually Violent Predator Study conducted by the Attorney General's Office, which was changed and reissued after the United State Supreme Court upheld the Kansas civil commitment procedure for sexually violent predators this summer in Kansas v. Hendricks. The Attorney General's Office has concluded that a similar civil commitment process would be constitutional if implemented in Iowa, but it would be costly, and would apply to only a few offenders.

3. November 21st Meeting.

At the November 21st meeting, Committee members heard testimony from the following individuals and associations:

a. Iowa Department of Public Safety. Steve Conlon and Darwin Chapman of the Department of Public Safety presented updated facts and figures relating to the current Sex Offender Registry. Betsy Dittmore presented the concepts which they intend to present in study bill form during the upcoming General Assembly. An initial draft version of that study bill was provided to the members.



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b. **Judge Van Zimmer, Sixth Judicial District.** Judge Zimmer provided the Committee with examples of how certain recent legislation and some existing statutes have affected judicial discretion and workload. He provided the Committee with various factual situations that have had outcomes under the new OWI revisions which may not have been considered or intended by the legislature. He noted how recent legislation, which requires that individuals serve 85 percent of the sentence for certain types of offenses, has created apparent disparities in sentencing under certain factual scenarios and has impacted on the frequency of plea agreements on various offenses. He noted that a recent upgrading of two provisions, a driving while license suspended and an interference with official acts provision, from simple to serious misdemeanors has not only increased the district associate judges' workloads by approximately 20 to 25 percent, but has also triggered the court-appointed counsel requirements. He also commented on the proliferation of provisions providing for the suspension of a person's driver's license and suggested that a more simplified system might be useful.

c. **Attorney General.** Attorney General Miller discussed a sexually violent predator proposal which has been submitted as a study bill by his office and informed the Committee that members of his office have been working with the Governor's Office and others to determine how a sexually violent predator Act might be accomplished most efficiently.

4. Committee Recommendations.

The Committee made the following recommendations:

- ◆ That the General Assembly review and consider proposals from the Department of Public Safety and the Office of Attorney General concerning the Sex Offender Registry and sexually violent predators. The Committee did not take action to support or oppose either of the proposals.

- ◆ That the Legislative Counsel be requested to continue the authorization for the Interim Committee, so that the Committee can continue to review the sentencing reform efforts in other states during the 1998 Legislative Session, and succeeding interim, and determine whether any of those reforms should be implemented in Iowa.

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