

Senate File 543 Monitoring Report:

First Half FY2002

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

Richard G. Moore, Administrator

Primary Author:
Lettie Prell, Analyst

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Introduction

Senate File 543, enacted during the 2001 legislative session, changes the maximum penalty for first-offense Burglary-3rd degree, and establishes new sentencing options available to the court:

- An alternative determinate prison sentence for certain Class D felons
- Extended felony sentence reconsideration from 90 days to one year

Because of the increased discretion extended to judges by this legislation, the General Assembly has requested the Department of Corrections (DOC) provide a preliminary report by February 1, 2002 concerning use of these new provisions. In turn, the DOC and the Criminal and Juvenile Justice Planning Advisory Council have requested that CJJP complete a monitoring report describing the use of Senate File 543 provisions.

Summary

- Thus far, 81 persons have been convicted of first-offense Burglary-3rd or attempts. A reduction in the use of prisons is occurring, due to lower incarceration rates for these offenses.
- There has been little impact of the other SF 543 provisions to date on convictions, sentences and the use of correctional resources. This is likely due to the following factors:
 - Case processing times. SF 543 largely affects sentencing for crimes committed on or after July 1, 2001. Case processing times for Class D felonies average six months (between filing date and disposition date). Regarding the extended reconsideration of sentence provisions, the impact may not be apparent until the end of FY2002 because judges have up to one year to exercise their authority under this option.
 - Need for policy development. Particularly with regard to the Class D determinate sentence, many judges, prosecutors and defense attorneys may have been limiting use of this option during the first few months until they become more familiar with the law, and determine when and how to apply it (or recommend its application) in individual cases. More experience with the law may eventually lead to more frequent use.
 - Other considerations. No systematic survey of officials regarding provisions of SF 543 has been conducted. There are therefore likely to be numerous other reasons for limited use of SF 543 provisions to date. For example, some judges and prosecutors may not have attended informational sessions regarding SF 543. Others may have elected not to use determinate Class D felony provisions because they prefer that the Board of Parole continue to determine the appropriate timing for release of prison inmates.

First-Offense Burglary-3rd Degree

Provision. The penalty for first-offense Burglary-3rd degree involving an unoccupied motor vehicle, truck or boat is reduced from a Class D felony to an aggravated misdemeanor. First-offense Attempted Burglary-3rd of vehicles and boats is reduced from an aggravated misdemeanor to a serious misdemeanor.

Impact on Convictions. A total of 80 offenders were convicted under the new first-offense burglary penalties during the first half of FY2002, rather than being convicted of a Class D felony. One offender was convicted of serious misdemeanor attempted burglary rather than being convicted of an aggravated misdemeanor. The total number of convictions for Burglary-3rd and attempts during the first half of FY2002 are similar to the six-month average for FY2001.

Offender-Based Convictions: Burglary-3rd degree				
	FY2001		FY2002	
	Total for Year	6-Month Average	First 6 Months	1st-Offense Only
Burglary-3rd	942	471	460	80
Attempted Burglary-3rd	232	116	96	1

Impact on Sentences. About 14% of offenders convicted of first-offense Burglary-3rd were sentenced to prison, which is less than half of the imprisonment rate of those convicted of Class D felony Burglary-3rd in FY2001. Instead, incarceration rates (prison and jail) for those convicted of first-offense Burglary-3rd are similar to rates for aggravated misdemeanor burglary prior to the law change.

Burglary Incarceration Rates		
	% Sentenced to Prison	% Sentenced to Jail
First-Offense Burglary-3 rd (Agg Misd)	14%	20%
<i>Comparison with FY2001:</i>		
Burglary-3rd (Class D)	32%	NA
Attempted Burglary (Agg Misd)	13%	17%

Impact on Prison Admissions. The observed reduction in imprisonment rates for first-offense Burglary-3rd has led to a reduction in new court-ordered prison commitments of offenders with lead crimes of Burglary-3rd, when compared with the six-month average for FY2001.¹ Three offenders were admitted to prison for lead offenses of first-offense

¹ The lead offense is the crime that holds the inmate in prison for the longest amount of time, as determined by the tentative discharge date. The lead offense is usually, but not always, the most serious offense.

Burglary-3rd. Other prison inmates are also serving sentences for first-offense Burglary-3rd, but not as a lead offense.

New Prison Admissions: Burglary-3rd degree (Lead Offenses Only)				
	FY2001		FY2002	
	Total for Year	6-Month Average	First 6 Months	First-Offense Only
Burglary-3rd:				
<i>Total New Prison Admissions</i>	279	140	109	3
New Court-Ordered Commitments	138	69	43	2
New - Probation Revocations	141	71	66	1
Attempted Burglary-3rd:				
<i>Total New Prison Admissions</i>	21	11	9	0
New Court-Ordered Commitments	6	3	2	0
New - Probation Revocations	15	8	7	0

Impact on Average Length of Stay in Prison and Jail. An insufficient amount of time has elapsed to compare the average length of stay in prison for offenders convicted of first-offense Burglary-3rd with those convicted of Class D felony Burglary-3rd. However, based on a sample of year 2001 prison exits, one may expect that offenders imprisoned for first-offense Burglary-3rd will serve less time on average than if they had been convicted of a Class D felony. Non-violent Class D felons released in 2001 served an average of 15 months in prison prior to “first release”, while non-violent aggravated misdemeanants served an average of 9 months. Non-violent offenses include burglary, other property crimes, and drug offenses. Releases include parole, work release, sentence reconsideration, expiration of sentence, and other forms of release. “First release” is the first prison exit that occurs on the prison commitment.

Regarding offenders sentenced to jail on conviction for first-offense Burglary-3rd, the average length of the jail term (the portion to be actually served in jail and not suspended) was 53 days. This is slightly less than the average jail term for aggravated misdemeanor Attempted Burglary-3rd during FY2001, which was 67 days.

Optional Determinate Class D Felony Sentence

Provision. A judge may sentence a person convicted of a Class D felony to a determinate term of at least one year, but less than the five-year maximum sentence, if mitigating circumstances exist and are specifically stated on the record. This provision is limited largely to those whose crimes are not against persons², and offenders who commit new offenses while in prison, on parole or on work release are not eligible for the determinate term.

Impact on Prison Admissions. Hundreds of new prison admissions involve Class D felony sentences eligible to receive the optional determinate sentence. However, only 15 offenders received determinate terms during the first half of FY2002.

New Prison Admissions: Class D Felony Non-Persons/Non-OWI				
	FY2001		FY2002	
	Total for Year	6-Month Average	First 6 Months	Total Determinate Sentences
Total New Prison Admissions:	995	498	522	15*
New Court-Ordered Commitments	522	261	245	12
New - Probation Revocations	473	237	277	2

* Includes one admission due to parole revocation.

Impact on Average Length of Stay in Prison. CJJP conducted an analysis of a sample of Class D non-violent felons released from prison during 2001, including examination of these offenders' criminal histories and disciplinary reports received while in prison. This information was used to create the following chart:

For Prior Incarceration History of This:	Determinate Term Should Be No More Than This:
No Prior Jail or Prison	2 years
One or More Prior Jail Terms	2 years and 6 months
One Prior Prison Term	2 years and 10 months
Two or More Prior Prison Terms	3 years and 2 months

Note: The determinate terms listed above represent the longest sentence that a judge may give an offender without creating the potential for the offender to serve more than the historical average time served for the offense.

This information formed the basis for examining whether persons sentenced under the determinate option are likely to serve less than, the same as, or more than what they

² The law excludes convictions for forcible felonies, drunken driving, murder/manslaughter offenses (Chapter 707), assault (Chapter 708) and sexual abuse (Chapter 709), as well as felonies listed in Section 901A.1 and Section 902.12 of the *Iowa Code*.

would have served if sentenced to an indeterminate term. CJJP's analysis shows that nine or 60% of those receiving determinate terms are projected to serve the same or less time than they would have served if they had received indeterminate terms, based on their criminal histories. Hereafter, we will refer to this group as Group A. The remainder, six or 40% of those receiving determinate terms are projected to serve more time in prison than they would have otherwise served if convicted of a Class D felony and sentenced to an indeterminate term. This latter group (Group B) included one offender who was ineligible to receive the determinate term due to having committed her crime while on parole.³

Determinate Terms: Impact on Average Length of Stay in Prison (LOS)

Criminal History	Total # of Offenders	Group A		Group B	
		# in Group A	Avg. Difference in LOS	# in Group B	Avg. Difference in LOS
No Prior Jail or Prison	8	5	- 4 mos.	3	+ 19 mos.*
One or More Prior Jail Terms	1	0	--	1	+ 3 mos.
One Prior Prison Term	4	3	- 5 mos.	1	+ 7 mos.
Two or More Prior Prison Terms	2	1	- 7 mos.	1	+ 5 mos.

*This average is substantially affected by one case where the offender was sentenced to 2 consecutive 4.5 year terms, and will serve about 42 months more than if sentenced to an indeterminate Class D felony. The average difference in LOS for the two other cases is + 8 months.

"Average Difference in LOS" is the projected average number of months more or less in prison that the offender category will serve due to determinate sentencing, compared with similar offenders sentenced to indeterminate terms.

Group A: Will serve the same or less time than they would have otherwise.

Group B: Will serve more than they would have otherwise if convicted of Class D felonies.

Of Group B offenders, three or 50% were originally charged with a more serious offense. Therefore, the prosecution and defense may have reached an agreement in these cases for the defendant to plead to a lower level felony in exchange for a determinate term that would hold the offender in prison for longer than the average Class D felon. However, it is also likely that at least some prosecutors, defense attorneys and/or judges involved in Group B sentences were unaware that these offenders were receiving sentences that would require them to serve longer prison terms than they would have otherwise.

No Differences in Sentencing by Rural vs. Urban Counties. At the request of some members of the Iowa General Assembly as well as the Department of Corrections, CJJP examined whether any rural/urban differences in use of the optional determinate term existed. Please keep in mind that the number of determinate terms examined is small, and therefore these findings are preliminary. CJJP examined offenders receiving determinate terms in two separate groups: a) those projected to serve the same or less than they would

³ The Attorney General's office has pointed out this offender's ineligibility for determinate sentencing to the county attorney. As of this writing, the sentence still stands. However, the offender was temporarily released from prison for a court appearance on January 21, 2002, which may or may not be related to this issue.

have otherwise, or Group A; and b) those projected to serve more time than the average, or Group B.

Regarding both groups, there were no substantial differences found with regard to urban/rural sentencing practices, when compared with first-half FY2002 new prison admissions for non-violent, non-OWI Class D felons.

New Prison Admissions: Class D Felony Non-Persons/Non-OWI			
	All DF Non-Violent FY2002*	Determinate Group A	Determinate Group B
% Convicted in Urban Counties	51%	56%	50%
% Convicted in Rural Counties	49%	44%	50%

* First-half FY2002 admissions
Urban counties were defined as Black Hawk, Linn, Polk, Scott and Woodbury.

Majority of Determinate Terms Arose in 7th Judicial District. CJJP did find geographic differences in application of determinate terms. Nine or 60% of determinate sentences were due to convictions in the 7th Judicial District. All but one term arose from counties in southern and eastern Iowa.

Determinate Terms by Judicial District		
Judicial District	Determinate Group A	Determinate Group B
1st	---	---
2nd	1	---
3rd	---	---
4th	---	---
5th	1	1
6th	---	---
7th	6	3
8th	1	2

No Differences in Sentencing by Offenders' Race/Ethnicity. Also at the request of various officials, CJJP examined whether there were differences in determinate terms for various race and ethnic groups. Again, due to the low numbers involved, these findings are preliminary. Regarding both groups, there were no substantial differences found with regard to offenders' race/ethnicity in the application of determinate terms, when compared with first-half FY2002 new prison admissions for non-violent, non-OWI Class D felons.

New Prison Admissions: Class D Felony Non-Persons/Non-OWI

Offenders' Race/Ethnicity	All DF Non-Violent		
	FY2002*	Determinate Group A	Determinate Group B
% White (non-Latino)	76%	78%	100%
% African-American	18%	22%	---
% Latino and Other Races	6%	---	---

* First-half FY2002 admissions

No Differences in Sentencing by Offenders' Sex. CJPJ also examined determinate terms by offenders' sex. Regarding Groups A and B, there were no substantial differences found with regard to offenders' sex in the application of determinate terms, when compared with first-half FY2002 new prison admissions for non-violent, non-OWI Class D felons.

New Prison Admissions: Class D Felony Non-Persons/Non-OWI

Offenders' Sex	All DF Non-Violent		
	FY2002*	Determinate Group A	Determinate Group B
% Female	16%	22%	17%
% Male	84%	78%	83%

* First-half FY2002 admissions

Extended Felony Sentence Reconsideration

Provision. Allows a judge up to one year to reconsider the sentence of a felon. Previously, the judge had up to 90 days to reconsider the sentence.

No Impact on Prison Admissions. CJJP examined the possibility that judges might increase sentences to prison for offenders that they will later release under the new sentence reconsideration provisions. As documented below, probation revocations during the first half of FY2002 have increased when compared with the six-month average for FY2001, while new court-ordered prison commitments have decreased. Overall, there has been a slight increase in total new prison admissions. However, due to the opposing trends in new court-ordered commitments and probation revocations, it appears unlikely that extended sentence reconsideration has led to the observed overall increase.

New Prison Admissions			
	FY2001		FY2002
	Total for Year	6-Month Average	First 6 Months
<i>Total New Prison Admissions</i>	3,271	1,636	1,664
New Court-Ordered Commitments	2,125	1,063	1,006
New - Probation Revocations	1,146	573	658

No Impact on Prison Releases Due to Sentence Reconsideration. The number of releases due to sentence reconsideration during the first half of FY2002 is similar to the FY2001 six-month average number of such releases.

Prison Releases: Sentence Reconsideration			
	FY2001		FY2002
	Total for Year	6-Month Average	First 6 Months
Number of Releases	264	132	124

No Impact on Prisoner Average Length of Stay. There is no substantial difference in the length of prison stays for offenders released due to sentencing reconsideration during the first half of FY2002, when compared with the length of stays for FY2001 releases. While it appears that first-half FY2002 releases are trending toward longer prison stays (note the increase in the 5-to-11.9 month range), average length of stay remains at four months.

It should also be noted that prior to enactment of Senate File 543, some offenders were serving up to one year or more in prison prior to release due to sentence reconsideration. A number of judges have confirmed that they found a way under previous law to use their

sentence reconsideration authority in a manner resulting in prison stays exceeding 90 days for felons. Another factor in lengths of stay exceeding 90 days (particularly in the 3-to-4.9 month range) is the length of time required by corrections officials to process inmates for release to community supervision.

**Prison Releases:
Sentence Reconsideration**

Length of Prison Stay	FY2001	FY2002*
up to 90 days	26%	28%
3.0 to 4.9 months	55%	46%
5.0 to 11.9 months	18%	25%
12+ months	1%	1%
<i>Average Time Served</i>	4 months	4 months

* First-half FY2002 releases

More Judges Exercising Sentence Reconsideration Authority. The number of judges involved in first-half FY2002 releases due to sentence reconsideration exceeds the six-month average number of judges involved in such releases in FY2001. However, as noted previously, there has been no increase to date in the number of releases due to sentence reconsideration. Therefore, the observed increase in judges exercising this authority is, at least thus far, not having an impact on releases.

**Number of Judges Involved in Releases
Due to Sentence Reconsideration**

	FY2001		FY2002
	Total Judges for Year	6-Month Average	N Judges First 6 Months
1 Reconsideration	35	18	28
2 Reconsiderations	22	11	16
3+ Reconsiderations	28	14	12
<i>Total Judges</i>	85	43	56
