



2016* Public Safety Advisory Board Annual Report

Legislative Recommendations to the General Assembly

December 1, 2016

Sarah Fineran, M.A., Primary Author

Iowa Department of Human Rights
Division of Criminal and Juvenile Justice Planning
Steve Michael, Administrator



*This report satisfies the PSAB'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.

I. INTRODUCTION

The Iowa General Assembly, during its 2010 legislative session, created a new body, the Public Safety Advisory Board (PSAB). The purpose of the Board is to provide the General Assembly with an analysis of current and proposed criminal code provisions. The mission of this Board is to provide research, evaluation, and data to the General Assembly to facilitate improvement in the criminal justice system in Iowa in terms of public safety, improved outcomes, and appropriate use of public resources.

The duties of the Board, as enumerated in the Iowa Code Section 216A.133A, consist of the following:

- a. Reviewing and making recommendations relating to current sentencing provisions. In reviewing such provisions the board shall consider the impact on all of the following:
 1. Potential disparity in sentencing.
 2. Truth in sentencing.
 3. Victims.
 4. The proportionality of specific sentences.
 5. Sentencing procedures.
 6. Costs associated with the implementation of criminal code provisions, including costs to the judicial branch, department of corrections, and judicial district departments of correctional services, costs for representing indigent defendants, and costs incurred by political subdivisions of the state.
 7. Best practices related to the department of corrections including recidivism rates, safety and efficient use of correctional staff, and compliance with correctional standards set by the federal government and other jurisdictions.
 8. Best practices related to the Iowa child death review team established in section 135.43 and the Iowa domestic abuse death review team established in section 135.109.
- b. Reviewing and making recommendations relating to proposed legislation, in accordance with paragraph "a", as set by rule by the general assembly or as requested by the executive or judicial branch proposing such legislation.
- c. Providing expertise and advice to the legislative services agency, the department of corrections, the judicial branch, and others charged with formulating fiscal, correctional, or minority impact statements.
- d. Reviewing data supplied by the division, the department of management, the legislative services agency, the Iowa supreme court, and other departments or agencies for the purpose of determining the effectiveness and efficiency of the collection of such data.

It should be noted the PSAB considers the impact that various policies and recommendations have on the disproportionality of racial minorities in the justice system. The PSAB carefully explores and considers such impact and makes policy recommendations in an effort to reduce this disproportionality.

The following report is a compilation of the PSAB's deliberations for submittal to the General Assembly as required. The PSAB respectfully submits this report, and welcomes the opportunity to provide any additional assistance to the Iowa Legislature upon request.

II. PRIORITY AREAS FOR THE 2017 LEGISLATIVE SESSION

The following legislative recommendations are deemed areas of high priority by the PSAB for the upcoming legislative session.

Enactment of Anti-Racial Profiling Legislation

During the September 21st, 2016, meeting of the Criminal and Juvenile Justice Planning Advisory Council (CJJPAC), a presentation from the NAACP was made regarding the lack of anti-racial profiling legislation in Iowa. Senate File 2173 was introduced during the 2016 legislative session supporting comprehensive anti-racial profiling laws, but did not pass. The CJJPAC passed a motion¹ to recommend the legislature enact anti-racial profiling legislation. This issue was discussed by the PSAB and a motion carried in support of enactment of anti-racial profiling legislation in Iowa.

Modifying Penalties for Powder and Crack Cocaine²

In Iowa, prohibited acts involving more than 10 grams but less than 50 grams of crack currently carry the same penalty as offenses involving more than 100 but less than 500 grams of powder cocaine. Iowa data presented to the PSAB suggest that this disparity in penalties contributes to disproportionate incarceration of African-Americans. Data were also presented pertaining to the amounts of crack and powder cocaine seizures. Research was presented illustrating that the physiological and psychotropic effects of crack and powder cocaine are the same, and that the drugs are now widely acknowledged as pharmacologically identical.

As a result of an analysis examining the effects of the sentencing disparity between crack and powder cocaine, the PSAB continues to support modifying the penalties for crack and powdered cocaine, and agrees to continue discussions on penalty modifications during 2017.

Amend Iowa Code §124.401 for the amounts of crack cocaine.

- a. §124.401(a)(3) to greater than 125 grams
- b. §124.401(b)(3) to greater than 35 grams and not more than 125 grams
- c. §124.401(c)(3) to equal to or less than 35 grams

Changes to Iowa's Child Kidnapping Legislation³

A 2013 CJP analysis revealed that while child kidnapping in Iowa is rare, a review of the effectiveness of kidnapping laws reveals weaknesses in Iowa's Criminal Code. Currently, the Code does not distinguish between adult and child victims and does not provide for penalty enhancements for repeat offenders. The PSAB believes Iowa's Criminal Code should be strengthened by addressing these weaknesses.

The PSAB specifically offered that Iowa Code §710.3 is narrowly defined and rarely imposed, as

¹ This motion was passed by the Criminal and Juvenile Justice Advisory Council and is being presented for review and adoption by the Public Safety Advisory Board for inclusion in the 2017 PSAB Annual Update report to the General Assembly.

² <https://humanrights.iowa.gov/sites/default/files/media/PSAB%202010%20report.pdf>

³ <https://humanrights.iowa.gov/sites/default/files/media/Child%20Kidnapping%20Report%20FY2014-Final.pdf>

it penalizes only kidnapping involving a ransom or dangerous weapon. This section of the Code should be revised to include language making non-parental/custodial kidnapping of a child/minor or any subsequent kidnapping conviction an automatic Class B felony subject to the mandatory minimum contained in §902.12.

Additionally, policymakers should clearly define the age of the child/minor so as not to exclude minor victims over the age of 14, as many kidnapping victims are in their mid-teens.

Changes to Iowa's Robbery Mandatory Minimum Sentencing Legislation⁴

A 2013 CJP analysis studied mandatory minimum sentences imposed by §902.12 of the Iowa Code (the "70% rule") and concluded that the current law does not meet the public safety needs of Iowans. Evidence suggests that 70% sentences disproportionately affect minorities; 37% of offenders serving mandatory minimums are African-American, however, African-Americans comprise approximately 26% of the total prison population. The PSAB offers the following recommendations:

- As in current law, robbery should remain a forcible felony that requires incarceration.
- Continue the current 15% cap on earned time for robbery offenses covered by §902.12. While this option contributes to larger prison populations, it permits the incapacitation of some of the prison system's most dangerous and violent offenders, increasing public safety.
- Establish a mandatory minimum term of seven years for Robbery in the First Degree and three years for Robbery in the Second Degree. These recommended minimum sentences are consistent with the average length-of-stay for robbers prior to establishment of the 70% sentence. They would require imprisonment of robbers for a period consistent with the seriousness of robbery offenses while allowing the Board of Parole discretion to consider possible release between expiration of the mandatory minimum and the maximum 85% term. While allowing for earlier release of lower-risk inmates, this proposal also would permit lengthy incarceration of those individuals at high risk to reoffend or those individuals who pose a significant threat to public safety.

Following the PSAB's recommendation for modifications to robbery mandatory minimum legislation, HF2064 was enacted in FY2016. This bill provides modifications to the Iowa Code for crimes including robbery, child endangerment, and drug offenses. Portions of this bill specifically modifying robbery crimes include the following:

- Decreased the mandatory minimum term for parole eligibility for Robbery 2nd offenders to a range of 50% to 70%.
- Established a new crime of Robbery 3rd which is an aggravated misdemeanor, and not subject to a mandatory term.

⁴ https://humanrights.iowa.gov/sites/default/files/media/Violent_Offender_70Pct_Report%5B1%5D.pdf

The PSAB recognizes the efforts of the legislature in the passage of HF 2064. In light of this legislation, the PSAB will continue to support recommendations for modifications to Robbery-1 penalties to align with those changes made for Robbery 2nd offenses.

Modifying Special Sentence for Sex Offenders⁵

Imposition of the special sentence would remain as it is today, with the added provision to give the court the opportunity to review and reduce the special sentence. The change to current policy will be to allow the court to remove an offender from the special sentence supervision based on an evidentiary hearing that reviews information believed to be pertinent to special sentence placement (the nature of the sex offense, the offender's institutional behavior, sex offender treatment compliance, court mandate compliance, victim impact, risk assessment, etc.). This information would then be utilized by the judge to render a judgment as to whether or not continued special sentence supervision is appropriate.

This is a joint recommendation of the PSAB and the Sex Offender Research Council.

III. OTHER RECOMMENDATIONS OF THE PUBLIC SAFETY ADVISORY BOARD

The PSAB supports the following efforts not requiring specific legislation:

Continuation of Study of Juvenile Sentencing Options in Adult Court

Due to recent legislative changes, including the passage of SF 288, an act relating to the placement of a juvenile on youthful offender status, signed by the Governor on April 24, 2013, the PSAB would like to continue to study the impact of juvenile sentences in adult court and any disproportionate impact on racial minorities.

Appropriate use of Risk Assessments for Drug Traffickers⁶

As a result of a 2011 CJP analysis on the effects of mandatory minimums for drug traffickers, the PSAB continues to recommend that a validated risk assessment be made a standard part of pre-sentence investigation reports and that sufficient training is provided to those in the criminal justice system (defense, prosecutors, and the judiciary) so that they are utilized appropriately.

Implementation of Results First in Iowa's Corrections and Juvenile Justice Systems

"The Iowa Public Safety Advisory Board has used the Iowa Results First model to estimate the costs and benefits associated with implementing alternative sentencing strategies and reinvesting projected taxpayer savings in effective programming."⁷

The PSAB continues to support the use of the Results First model to evaluate which types of criminal justice programs are better investments than others.

⁵https://humanrights.iowa.gov/sites/default/files/media/An%2520Analysis%2520of%2520the%2520Sex%2520Offender%2520Special%2520Sentence%2520in%2520Iowa_2014%5B1%5D.pdf

⁶https://www.humanrights.iowa.gov/sites/default/files/media/PSAB_MandatoryMinimumReport2011%5B1%5D.pdf

⁷<http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2013/10/04/the-pewmacarthur-results-first-initiative-in-iowa>