

State Legislation Monitoring Report: FY2013*

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

Paul Stageberg, Ph.D., Administrator

Primary Authors:
Paul Stageberg, Ph.D.
Lanette Watson M.P.P.

December, 2012



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:

- K2, Salvia and Bath Salts
- Aggravated theft
- Residential treatment backlog
- 70% crimes
- Enhanced penalty for domestic abuse assault involving strangulation
- Recidivism study based on the Anderson ruling
- Child Pornography

K2, Salvia, and Bath Salts

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 (substances having 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 (IDPH), and include diagnostic and external cause codes for poisoning by sedative, hypnotics, psychotropic agents, hallucinogens, psychostimulants, and other psychotropic agents.

Data for hospitalizations and emergency room visits for drug poisoning were only available through calendar 2011. Due to the lag time in the availability of the drug poisoning data and the recent enactment of this legislation, more time needs to elapse in order to draw conclusions from this particular measure.

Hospitalizations			
YEAR	ACCIDENTAL POISON (E CODE)		
	NO	YES	Total
2006	1560	84	1644
2007	1784	87	1871
2008	1898	99	1997
2009	2071	101	2172
2010	2123	109	2239
2011	2028	104	2168
Average	1911	103	2014

Emergency Room Visits			
YEAR	ACCIDENTAL POISON (E CODE)		
	NO	YES	Total
2006	5124	204	5328
2007	5564	201	5765
2008	5949	230	6179
2009	5993	273	6266
2010	884	265	1149
2011	997	324	1321
Average	4085	250	4335

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. The data for the first six months of CY2012 shows roughly half the number of calls and treatment as all of CY2011. This would suggest the number of calls and treatment for CY 2012 will be similar to CY 2011. More time needs to elapse in order to draw conclusions from this measure as well.

Iowa Poison Control Center Health Care Facility Calls and Treatment

	CY2009		CY2010		CY2011		CY2012 Jan-July	
	# Calls	# Treated	# Calls	# Treated	# Calls	# Treated	# Calls	# Treated
Bath Salts	0	0	0	0	57	52	30	29
K2	0	0	6	6	91	94	52	53
Salvia	1	0	3	3	0	0	2	2

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 and FY2012. 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 three years were also identified. The number of robbery 1st and robbery 2nd charges were lower in FY2011 than in FY2010 and lower yet in FY2012. However, the number of offenders convicted of robbery 1st increased in FY2011 before dropping back in FY2012. There was a substantial drop in robbery-2 convictions in FY2012. The number of aggravated theft charges and convictions doubled in FY2012.

Charges and Offenders Convicted, Robbery and Aggravated Theft

	FY2010		FY2011		FY2012	
	# Charges	# Offenders Convicted	# Charges	# Offenders Convicted	# Charges	# Offenders Convicted
Robbery 1 st	290	24	251	33	241	25
Robbery 2 nd	340	65	243	62	240	36
Aggravated theft	NA	NA	52	52	122	94
Total	630	89	546	147	603	155

Since the last report, an error was discovered in the number of convictions for robbery 1st, robbery 2nd, and aggravated theft by race. The table below provides the corrected numbers and percentages for these offenses.

African-Americans accounted for at least half of all robbery 1st convictions for each of the three fiscal years presented in the table below. The percentage of African-Americans convicted of robbery 2nd was greater than the percentage of whites in FY2010 and FY2011 and equal in FY2012.

The total number of convictions for aggravated theft nearly doubled in FY2012. The racial distribution for FY2011 and FY2012 were similar with a greater percentage of whites convicted of aggravated theft compared to African-Americans.

Offenders Convicted of Robbery and Aggravated Theft, by Race

	FY2010				FY2011						FY2012					
	Robbery 1 st		Robbery 2 nd		Robbery 1 st		Robbery 2 nd		Aggravated Theft		Robbery 1 st		Robbery 2 nd		Aggravated Theft	
Race	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
White	9	37.5%	23	35.4%	8	24.2%	25	40.3%	32	61.5%	7	28.0%	15	41.7%	58	61.7%
African-American	12	50.0%	32	49.2%	19	57.6%	35	56.5%	15	28.8%	13	52.0%	15	41.7%	28	29.8%
Other*	3	12.5%	10	15.4%	6	18.2%	2	3.2%	5	9.6%	5	20.0%	6	16.7%	8	8.5%
Total	24	100%	65	100%	33	100%	62	100%	52	100%	25	100%	36	100%	94	100%

*Includes unknown

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, and in FY2012 there were 19. In both years, the majority of the offenders were White.

Offenders Convicted of Theft 5th/Simple Assault, by Race

	FY2010		FY2011		FY2012	
	#	%	#	%	#	%
Caucasian	19	61.2%	14	58.4%	13	68.4%
African-American	5	16.1%	5	20.8%	5	26.3%
Other/Unknown	7	22.7%	5	20.8%	1	5.3%
Total	31	100%	24	100%	19	100%

Extortion does not appear to be a commonly-used charge. The numbers of charges and offenders convicted appear to be consistent during the year before and years 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.

Charges and Offenders Convicted, Extortion

	FY2010		FY2011		FY2012	
	#	%	#	%	#	%
# Charges	33		28		40	
Total Offenders	26		23		23	
White	11	42.3%	11	47.8%	16	69.6%
African-American	11	42.3%	4	17.4%	7	30.4%
Other/Unknown	4	15.4%	8	34.8%	0	---

Adjudicated charges for juveniles were also examined for the 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	FY2012
	# Charges	# Charges	# Charges
Robbery 1 st	6	8	10
Robbery 2 nd	16	12	16
Aggravated theft	NA	5	11
Total	22	25	37

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 backlog

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 September 12, 2012, there were 674 offenders on waiting lists for residential facilities—463 in the community and 211 in prison. This is a total decrease of 103 from 2011. The DOC reports daily marginal cost for residential facilities is \$11.82, while the marginal cost for prisons is \$17.60. This translates into a cost differential of \$5.78 per day. The FY2012 median wait time for placement into a residential facility from prison was 49 days; the average was 61 days.

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 FY2012 median wait time for this group was 10 days, and the average was 17 days.

The table below shows residential facility capacities, populations, and the individual facility waiting lists on September 12, 2012.

State Residential Facilities Population and Waiting List Counts

District	Facility	Capacity	2012 Population			2012 Waiting List			2011 Waiting List
			Males	Females	Total	Males	Females	Total	Total
1	Dubuque	80	73	14	87	15	4	19	19
1	Waterloo	150	108	25	133	30	5	35	62
1	West Union	48	41	2	43	9	1	10	14
	<i>District Total</i>	<i>278</i>	<i>222</i>	<i>41</i>	<i>263</i>	<i>54</i>	<i>10</i>	<i>64</i>	<i>95</i>
2	Beje Clark Mason City	51	39	5	44	8	3	11	5
2	Curt Forbes Ames	45	37	7	44	9	3	12	32
2	Fort Dodge	60	43	5	48	10	3	13	26
2	Marshalltown	51	42	7	49	8	2	10	26
	<i>District Total</i>	<i>207</i>	<i>161</i>	<i>24</i>	<i>185</i>	<i>35</i>	<i>11</i>	<i>46</i>	<i>89</i>
3	Sheldon	30	26	0	26	14	0	14	21
3	Sioux City	57	40	6	46	80	22	102	159
	<i>District Total</i>	<i>87</i>	<i>66</i>	<i>6</i>	<i>72</i>	<i>94</i>	<i>22</i>	<i>116</i>	<i>180</i>
4	Council Bluffs	71	68	0	68	37	0	37	24
4	Council Bluffs Women	26	0	15	15	0	5	5	5
	<i>District Total</i>	<i>97</i>	<i>68</i>	<i>15</i>	<i>83</i>	<i>37</i>	<i>5</i>	<i>42</i>	<i>29</i>
5	Des Moines Women	48	0	55	55	0	26	26	23
5	Fort Des Moines Bldg #65 - Bridges	68	27	0	27	0	0	0	0
5	Fort Des Moines Bldg #66 - Honors	40	53	0	53	14	0	14	10
5	Fort Des Moines Bldg #68	80	78	0	78	40	0	40	27
5	Fort Des Moines Bldg #70	120	128	0	128	64	0	64	71
	<i>District Total</i>	<i>356</i>	<i>286</i>	<i>55</i>	<i>341</i>	<i>118</i>	<i>26</i>	<i>144</i>	<i>131</i>
6	Cedar Rapids Gerald Hinzman	83	43	28	71	28	14	42	43
6	Cedar Rapids Lary Nelson	90	100	0	100	18	0	18	33
6	Coralville Hope House	55	60	0	60	59	0	59	19
	<i>District Total</i>	<i>228</i>	<i>203</i>	<i>28</i>	<i>231</i>	<i>105</i>	<i>14</i>	<i>119</i>	<i>95</i>
7	Davenport Residential	64	63	0	63	27	0	27	20
7	Davenport Work Rel/OWI	81	57	24	81	34	11	45	95
	<i>District Total</i>	<i>145</i>	<i>120</i>	<i>24</i>	<i>144</i>	<i>61</i>	<i>11</i>	<i>72</i>	<i>115</i>
8	Burlington	60	54	0	54	14	0	14	6
8	Ottumwa	51	47	13	60	45	12	57	37
	<i>District Total</i>	<i>111</i>	<i>101</i>	<i>13</i>	<i>114</i>	<i>59</i>	<i>12</i>	<i>71</i>	<i>43</i>
	Statewide	1,509	1,227	206	1,433	563	111	674	777

Waiting list numbers include offenders in the community and in prison. Major groups on the waiting lists in 2012 include probation (362 or 54%), work release (169 or 25%) and federal (92 or 14%).

2012 population and waiting list numbers draw on September 12, 2012.

2011 waiting list numbers drawn on August 24, 2011.

Source: Iowa Department of Corrections

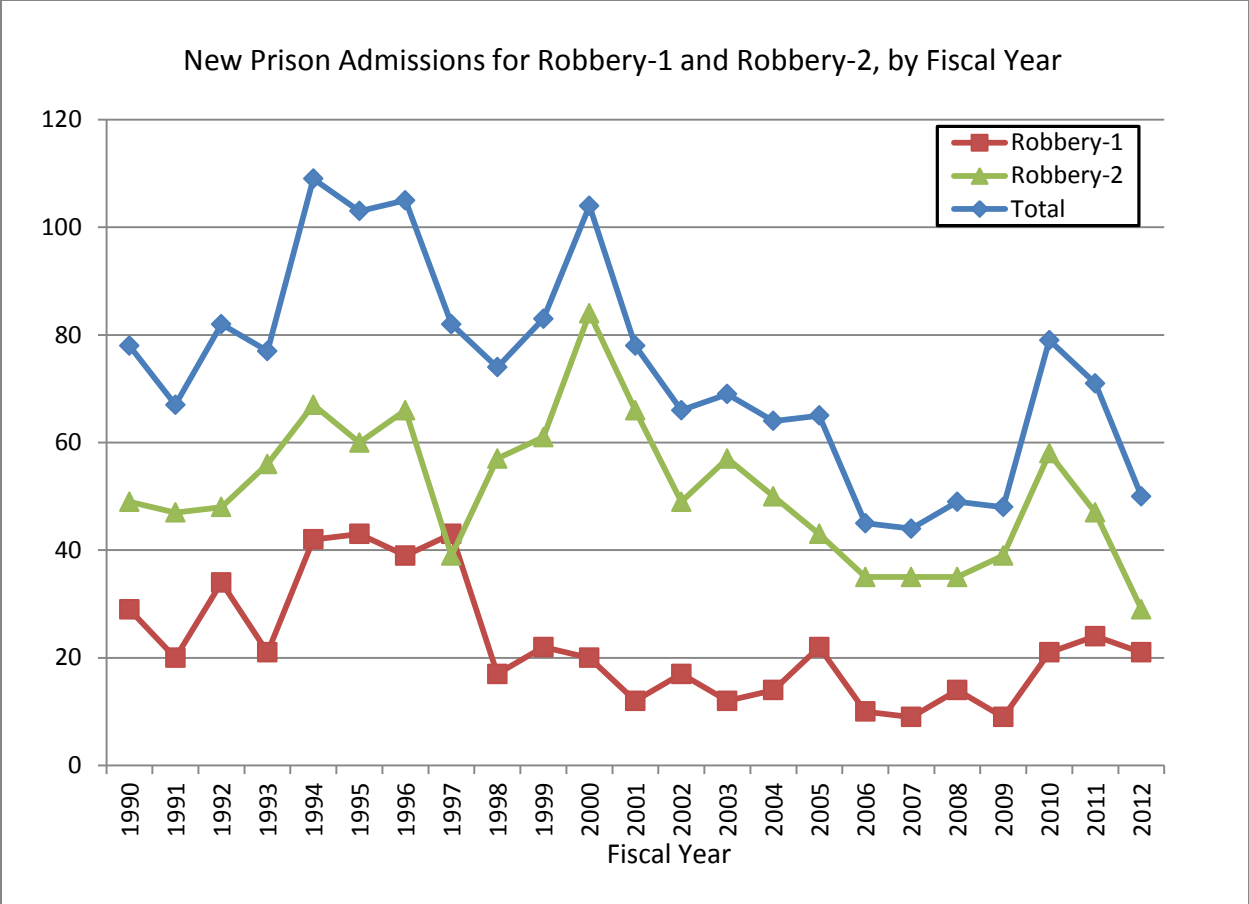
On September 17, 2012, the DOC raised the 4th District's Women's Unit capacity from 26 to 46. The Women's unit is being switched to men's sex offender facility that will have 40 capacity and 6 transition beds.

70% Crimes

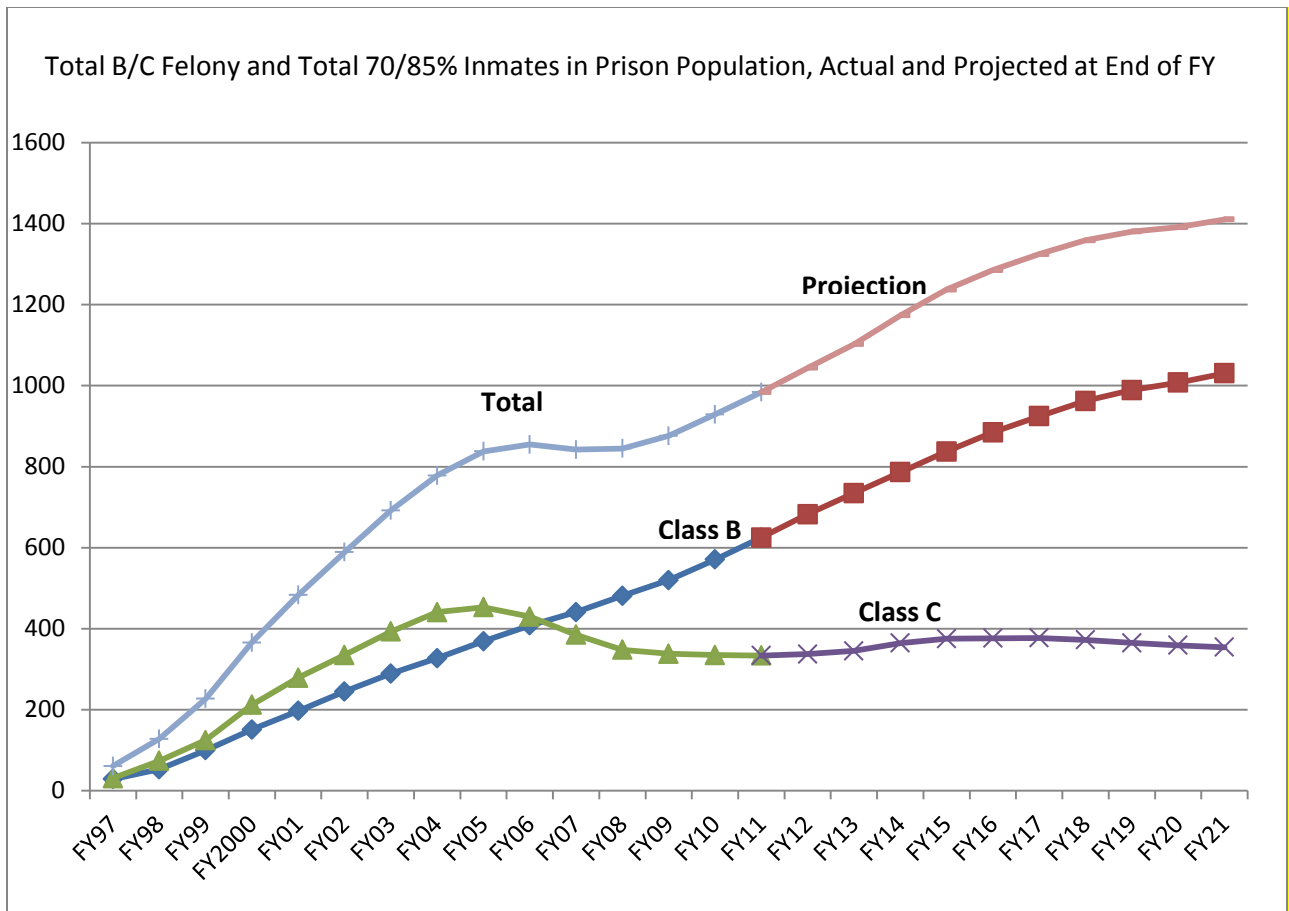
In 1996 the Iowa General Assembly adopted SF1151 in response to a federal initiative called Violent Offender Incarceration and Truth in Sentencing (VOI/TIS) (42 U.S.C. §13711.). This effort occurred during a time when it was becoming more accepted that a substantial percentage of serious crime is committed 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 Iowa 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 FY1998, with a bit of a spike in Robbery-2 admissions thereafter, followed an apparent return to previous levels of Robbery-2 admissions. FY2012 saw the smallest number of Robbery-2 admissions since 1990.



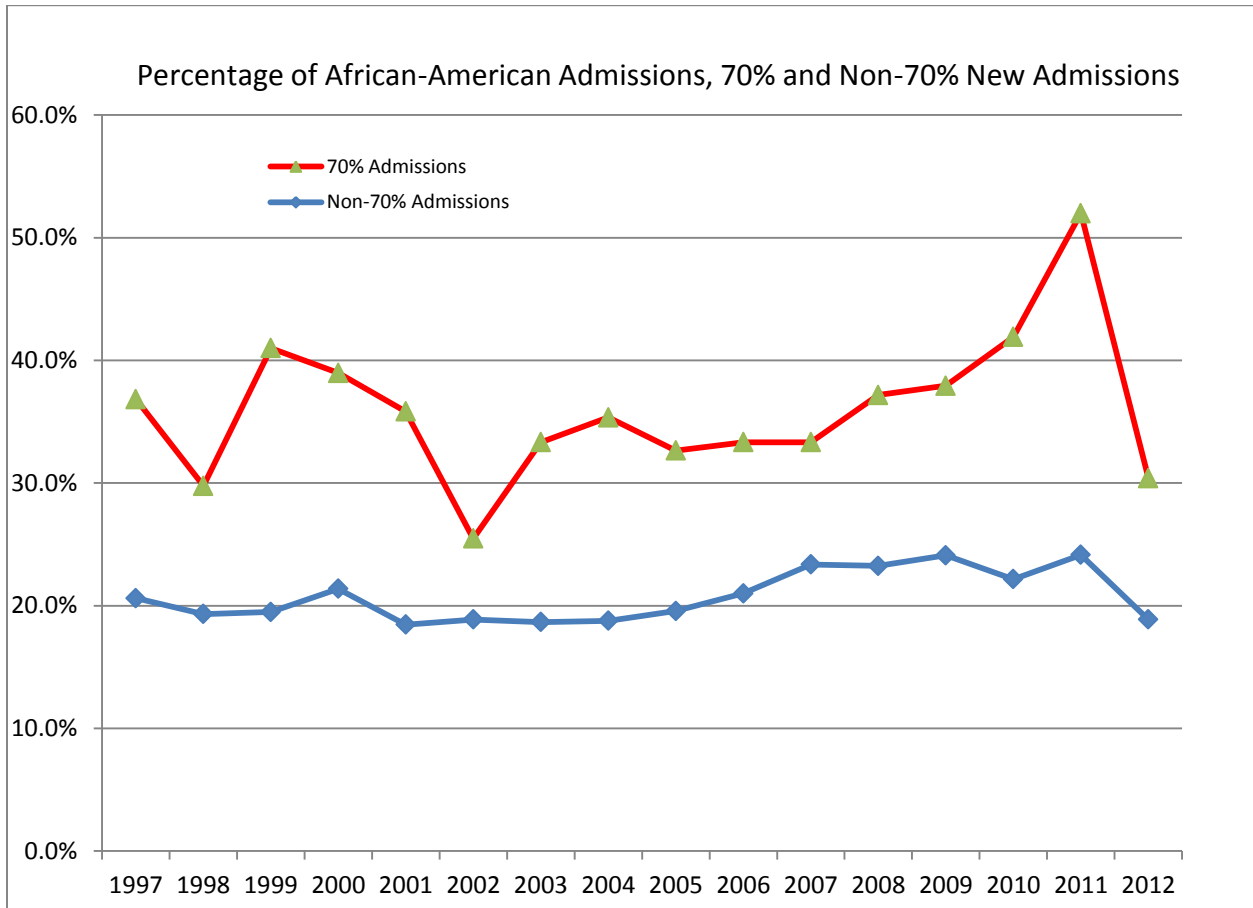
Contrasting with this picture is the graph below, which presents the actual and projected numbers of 70% inmates in the prison population at the end of each fiscal year. The projected numbers come from the 2011-2021 Prison Population Forecast. These figures have not been updated from FY2011 because the number of 70% inmates projected one year ago was within one inmate of the actual end-of-FY2012 70% population.



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 (59 in FY2011 and 70 in FY12, including 70% Class B sex offenders).

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 have been 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 (31 new admissions in FY2012), the

disproportionality is considerable. The unexpected drop of African-American admissions in FY12 is a further testimony to relatively small numbers of 70% admissions, as small numbers may vary widely from year-to-year.



CJJP expects to release a more complete analysis of the impact of 70% sentences in 2013.

Enhanced penalty for domestic abuse assault involving strangulation

Senate File 93: Domestic Abuse Strangulation

Signed by the Governor on February 15, 2012

Effective July 1, 2012

708.2A(5) Domestic Abuse-Choking

This Act enhances the penalty of strangulation in the domestic abuse statute (708.2A) 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, the person commits a class “D” felony. The offense classified as a class “D” felony under the Act is exempted from the definition of a forcible felony.

Analysis was not conducted during this reporting because the enhanced penalties did not go into effect until July 1st. This is a topic that will continue to be monitored.

Recidivism study based on the Anderson ruling

The July 2011 Iowa Supreme Court ruling in Anderson v. State of Iowa allowed felons to earn credit while on probation (even if that probation was revoked). Previously, credit was only granted while in prison or on parole. This ruling affected offenders who were sentenced on or after July 1, 1996. The Iowa Department of Corrections estimated that the sentences of over 3,000 inmates would have to be recalculated. Because the Anderson ruling allowed the early release of numerous felony offenders, public safety concerns were raised.

Most of the effect of the Anderson Ruling and calculation of probation credits occurred in September and October 2011, when 554 offenders were released from prison (275), work release (32), and OWI treatment facility placements (3) or were discharged from parole (243) or probation (1, who was immediately discharged upon revocation due to the probation credits). Most of these would have discharged much earlier if probation credits had already been a part of time computation. Since then, there is little further impact on the prison population and community-based corrections caseloads. In the month of November 2011 there were only twenty discharges system-wide that may be attributed to probation credit calculations – and only eight of these were prison releases. The effect of probation credits on inmate length of stay is 104 days on average.

An examination of new charges for Anderson releases, for the period they would have otherwise remained incarcerated, shows that twelve offenders incurred new charges during this timeframe. Seven have been convicted (four for felony and three for misdemeanor offenses) and five have pending charges (four with felony charges and one with a misdemeanor charge).

Changes to the Purchase or Possession of Child Pornography

House File 2390: An Act relating to obscene material, commercial sexual activity, and human trafficking, and providing penalties and making penalties applicable.

Signed by the Governor on April 4, 2012

Effective July 1, 2012

This Act 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.

Analysis was not conducted during this reporting because the changes did not go into effect until July 1st. Presented below are the number of charges and convictions for 728.12(3) for fiscal years 2011 and 2012. This is a topic that will continue to be monitored.

728.12(3) Charges and Convictions, by Fiscal Year

	FY2011	FY2012
Charges	5	13
Convictions	3	7