

# PUBLIC SAFETY ADVISORY BOARD

## REPORT TO THE IOWA GENERAL ASSEMBLY

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## INTRODUCTION

The Iowa General Assembly, during the 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 in order to improve 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 Code, shall 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.

The following report is the 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 Legislature upon request.

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PUBLIC SAFETY ADVISORY BOARD  
REPORT TO THE IOWA GENERAL ASSEMBLY

## Overview of 2010 Activities

The Criminal and Juvenile Justice Planning Advisory Council (CJJPAC) met on July 21, 2010 to address the membership of the new Public Safety Advisory Board. The CJJPAC determined at that meeting that its full membership would serve as members of the Public Safety Advisory Board (PSAB). After discussing the legislative language governing the intent for the PSAB, the PSAB requested staff to provide a mechanism to gather input from Board members, other interested parties, and the public on justice system improvements as a way to initiate and focus the work of the PSAB.

In response to the PSAB's request, staff developed a free, short, on-line questionnaire asking for areas where the system needed strengthening, where the system may be too harsh, and an open-ended section for other suggestions. The survey link was posted on the Department of Human Rights, CJJP, website; the link, with a cover memo, was also sent to PSAB members, members of the Juvenile Justice Advisory Council, the six DHR advocacy boards for special populations, legislative caucus staff, the Legislative Services Agency, and public information contacts. Each of those groups was invited to share the link to the survey with their respective constituencies and interested parties.

The Public Safety Advisory Board held its first meeting as a Board separate from the Criminal and Juvenile Justice Advisory Council on September 8, 2010. Topics of discussion included items submitted to the Board by the public, items of particular interest to the Board, and the results of the survey. Submitted materials included draft legislative proposals from the Iowa Bar Association, the League of Women Voters, and the Justice Reform Consortium.

The major topics identified through this process were

- Juvenile sex offenders
- Response to the Federal Supreme Court ruling in Graham vs. Florida
- Juvenile waivers to adult court

- Penalty disparity between powder and crack cocaine
- Pre-sentence investigations and sentencing decisions
- Mandatory minimums for certain drug offenses
- Court efficiency and sentencing orders

The PSAB recognized that, given the short time before the first report was due to the General Assembly, there would be little opportunity to develop a full range of recommendations for legislative deliberation. However, it also recognized that there were substantive issues identified that needed to be discussed. Therefore, members established four subcommittees with charges to identify further research topics or specific legislative or policy changes. The four subcommittees were Efficiency, Sentencing Structure, Specific Crimes, and Correctional Policies. In addition, the PSAB requested the Sex Offender Research Council to discuss juvenile sex offenders and provide information back to the PSAB. Members also asked the Juvenile Justice Advisory Council to provide input on juvenile waivers and life without parole for non-homicide juvenile offenders (Graham vs. Florida).

Following is a brief description of the meetings of the subcommittees. Full descriptions and recommendations can be found in the main sections of this report.

The Sex Offender Research Council (SORC) met on September 22, 2010. In addition to recommendations concerning juvenile sex offenders, the SORC also voted to forward additional information and recommendations to the PSAB on sex offender legislation in Iowa.

The Juvenile Justice Advisory Council (JJAC) convened an ad hoc committee on October 18, 2010. This committee received information on juveniles/life sentences and juvenile waivers to adult court.

The Correctional Policy subcommittee met on October 25, 2010. The main topic of discussion was providing the results of pre-sentence investigations, along with risk assessments, to judges prior to sentencing.

The Sentencing Structure subcommittee met on October 25, 2010. The main topics of discussion were the use of mandatory minimum sentences for certain drug offenses and life without parole for non-homicide juvenile offenders.

The Efficiency subcommittee met on October 26, 2010. The main topic of discussion was the process of writing and transmitting sentencing orders from judges to the corrections system.

The Specific Crimes subcommittee met on October 28, 2010. The main topic of discussion was the disparity in penalties between crack and powder cocaine.

This report is the synthesis of the work done by these groups and the decisions of the PSAB made at its meeting on December 1, 2010.

## Summary of Recommended Specific Changes to Legislation

### A. Amend IA 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

The PSAB voted to approve the above legislation, which reduces the disparity between crack cocaine and powder cocaine penalties, by a vote of 9 in favor and 6 against. Further discussion led to a consensus by the PSAB that the amounts and attendant penalties for the two forms of cocaine should be equalized. However, the PSAB disagrees on how this should be accomplished.

*Please refer to page 19 of this report for a description of the current thresholds and penalties for crack cocaine and powder cocaine.*

### B. Amend IA Code 907.5 as follows:

Before deferring judgment, deferring sentence, or suspending sentence, the court first shall determine which option, if available, will provide maximum opportunity for the rehabilitation of the defendant and protection of the community from further offenses by the defendant and others. In make this determination the court shall consider the age of the defendant; the defendant's prior record of convictions and prior record of deferments of judgment if any; the defendant's employment circumstances; the defendant's family circumstances; whether the defendant suffers from an treatable mental health or substance abuse problems; the nature of the offense committed; and such other factors as are appropriate. The court shall file a specific written statement of its reasons for and the facts supporting its decision to defer judgment, to defer sentence, or to suspend sentence, and its decision on the length of probation."

### C. Amend IA Code 901.3:

"8. The defendant suffers from any mental health or substance abuse problems."



## Summary of Recommended Changes to Legislation without Specific Language

### **Amend IA Code 902.1 to conform to the U.S. Supreme Court ruling in Graham vs. Florida.**

The PSAB recognizes that the Iowa Code needs to provide an opportunity for juveniles convicted of non-homicide Class A offenses to obtain parole. However, there was no consensus on the mandatory length of sentence prior to eligibility for parole. In addition, the PSAB recommends that any change to 902.1 clearly defines what constitutes a non-homicide case for the purpose of determining eligibility for parole.

## Summary of Recommended Changes to Correctional Policy

The PSAB recommends that the Department of Corrections include a validated risk assessment score and score category, with explanation, in all formal pre-sentence investigations. In addition, the Department of Corrections and the Judicial Branch should provide opportunities for judges to receive training on the meaning and use of the LSI-R scores and score categories in sentencing decisions. Further, the Judicial Branch should encourage judges to make use of the additional information in determining sentences. However, references to any specific risk assessment tool should not be in the Iowa Code, allowing the Department the flexibility to use any tool that has been scientifically validated.

## Summary of Items for Further Research

### **A. Mandatory Minimums for Certain Drug Offenses**

The PSAB is requesting research on the differences among drug offenders with and without mandatory minimum sentences. The research should include variables such as the drug involved, prior criminal history, race and ethnicity, time served, supervision status, and services received. The outcome of most

interest is the recidivism rate for the offenders, and types of new offenses committed. This research and the data generated will be used to determine if mandatory minimum sentences are cost-effective and add to public safety.

#### **B. Sentencing Orders**

The PSAB is requesting a study on the cost and benefit of establishing a more uniform format and procedure for judges in Iowa to record and transmit sentencing orders. This study should include input from judges, Department of Corrections' institutions, Community Based Corrections, the Board of Parole, clerks of court, county attorneys, public defenders, the Department of Public Safety's Sex Offender Registry, and the Court of Appeals. The study will be used to develop a position paper to share with the Judicial Branch.

#### **C. Court Efficiencies**

The PSAB is requesting that a survey be developed and deployed to identify areas within the court processing system that could be improved in order to provide greater efficiency. Target groups for the survey would be similar to the list above, with additions such as the Iowa Bar Association and Iowa Association for Justice.

#### **D. Violation of No-contact Orders**

The PSAB is requesting a study on the practices among the eight judicial districts pertaining to the violation of no-contact orders for domestic assault and sexual abuse. Current IA Code 664A.7 allows the violation of no-contact or protective orders to be treated as contempt (civil infraction) or as a simple misdemeanor. The purpose of the study is to learn about any differences or similarities among the districts; the results will be used to recommend whether to pursue this issue.

#### **E. Juvenile Waivers to Adult Court/Youthful Offender Program**

The PSAB is requesting a study on current practices concerning juvenile waivers to adult court, both by Juvenile Court and those juveniles statutorily excluded from Juvenile Court authority. The research shall include such variables as age, race and ethnicity, offense, offense history, services provided, and jurisdiction. Outcomes shall include general recidivism and recidivism by offense type. This research and the data generated will be used to determine if waivers are the best alternative for juvenile offenders, are cost-effective, and add to public safety. Included in the study should be an evaluation of the current youthful offender program and the potential impact of any modification to the program on outcomes for juveniles and public safety.

## Detail by Subcommittee and/or Topic

### Efficiency Subcommittee

PSAB decision:

**The PSAB is requesting a study on the cost and benefit of establishing a more uniform format and procedure for judges in Iowa to record and transmit sentencing orders. This study should include input from judges, Department of Corrections' institutions, Community Based Corrections, the Board of Parole, clerks of court, county attorneys, public defenders, the Department of Public Safety's Sex Offender Registry, and the Court of Appeals. The study will be used to develop a position paper to share with the Judicial Branch.**

**The PSAB is requesting that a survey be developed and deployed to identify areas within the court processing system that could be improved in order to provide greater efficiency. Target groups for the survey would be similar to the list above, with additions such as the Iowa Bar Association and Iowa Association for Justice.**

**The PSAB is requesting a study on the practices among the eight judicial districts pertaining to the violation of no-contact orders for domestic assault and sexual abuse. Current IA Code 664A.7 allows the violation of no-contact or protective orders to be treated as contempt (civil infraction) or as a simple misdemeanor. The purpose of the study is to learn about any differences or similarities among the districts; the results will be used to recommend whether to pursue this issue.**

The Efficiency Subcommittee is chaired by The Honorable Jeffrey Neary, a judge from the 3<sup>rd</sup> Judicial District. Members of the committee are Senator Keith Kreiman, Stephanie Fawkes-Lee, and Kathy Stone.

The committee discussed at length issues that can arise from the practice of judges using different mechanisms to write sentencing orders, a range that can include hand-written orders, orders prepared by court reporters, and different forms. Some of the issues include unclear orders, errors in entry, missed mandatory inclusions such as special sentences, etc. There are suggested forms that can be used, but no consistent usage. It was felt that there could be time savings, as well as some cost savings,

if there were a standard format. Staff who spend time on errors and clarifications include clerks of court, Department of Corrections' institutional staff, Community Based Corrections staff, county attorneys, and Sex Offender Registry staff. There may also be issues for the Court of Appeals.

Because it was felt that there was not sufficient information to make a recommendation to the Judicial Branch at this time, the committee requested that staff research the issue further. This study should include input from judges, Department of Corrections' institutions, Community Based Corrections, the Board of Parole, clerks of court, county attorneys, public defenders, the Department of Public Safety's Sex Offender Registry, and the Court of Appeals.

The committee also requested a survey of groups and agencies to receive suggestions for other opportunities for increased efficiency in court processing.

The third topic of discussion was the violation of no-contact and protective orders. The IA Code requires jail time, but the offense can be treated as a civil contempt charge or as a simple misdemeanor. The committee requested that staff undertake a study to determine how the usage of the two types of charges is handled among the eight judicial districts. An overview of convictions for violations of no-contact and protective orders is shown below.

FY2010 Convictions, by District and Offense Type

DISTRICT	Contempt	Simple Misdemeanor	Total
1	204	105	309
2	199	99	298
3	147	100	247
4	14	34	48
5	312	152	464
6	248	20	268
7	180	55	235
8	105	141	246

## Juvenile Life without Parole, or Graham vs. Florida

### PSAB decision:

The PSAB recognizes that the Iowa Code needs to provide an opportunity for juveniles convicted of non-homicide Class A offenses to obtain parole. However, there was no consensus on the mandatory length of sentence prior to eligibility for parole. In addition, the PSAB recommends that any change to 902.1 clearly defines what constitutes a non-homicide case for the purpose of determining eligibility for parole.

This topic was discussed by two groups, the Sentencing Structure subcommittee of the PSAB and an ad hoc committee called by the Juvenile Justice Advisory Council (JJAC). Therefore, this topic is presented separately.

In May, 2010 the U.S. Supreme Court issued a ruling on sentencing juvenile offenders to life in prison without the possibility of parole for non-homicide offenses (Graham vs. Florida). The Iowa Code currently includes five offenses that are Class A felonies with mandatory life without parole sentences—murder in the 1<sup>st</sup> degree, kidnapping in the 1<sup>st</sup> degree, sex abuse in the 1<sup>st</sup> degree, second or subsequent conviction for intent to manufacture or deliver methamphetamine to a minor, and second or subsequent conviction for sex abuse of a child.

At the current time, there are 43 prisoners serving life sentences for offenses committed when they were juveniles. Of these, 36 were convicted of murder in the 1<sup>st</sup> degree and seven were convicted of kidnapping in the 1<sup>st</sup> degree. Three of the prisoners with life sentences for kidnapping in the 1<sup>st</sup> degree were also convicted of murder in the 2<sup>nd</sup> degree, a Class B felony with a 50-year prison sentence and a mandatory 70% minimum (35 years) before parole consideration.

Both groups reviewed a proposal submitted by the Iowa Bar Association that set a 25-year minimum sentence. Both groups also were informed that the County Attorneys Association was planning on developing a proposal with a mandatory minimum in excess of 25 years, although the details had not been finalized. A proposal from the Justice Reform Consortium was withdrawn by the author. The Sentencing Structure subcommittee also received a suggestion from staff that would build upon the current 10-year parole hearing mechanism existing in IA Code 902.1, with a first review at 20 years and

every 10 years thereafter. The subcommittee also received the text of a ruling from the 7<sup>th</sup> Judicial District, Means vs. State of Iowa, which overturned the defendant's life sentence.

Both groups recognized the need for Iowa to pass legislation to bring the State into substantial compliance with the Supreme Court ruling. However, neither group felt that it had enough information to make a determination of what the minimum sentence should be before eligibility for parole could begin. It was also noted that in the Graham case the defendant was sentenced to life for a burglary charge with no death involved. The Supreme Court did not address the issue of what further could constitute a case with a homicide. It was noted that three of the current prisoners sentenced to life on a non-homicide charge in Iowa were also convicted of a murder offense. Therefore, it is recommended that the Legislature, in its work to amend IA Code 902.1, clearly defines what constitutes a non-homicide case.

## **Mandatory Minimum for Certain Drug Offenses**

### **PSAB decision:**

**The PSAB is requesting research on the differences among drug offenders with and without mandatory minimum sentences. The research should include variables such as the drug involved, prior criminal history, race and ethnicity, time served, supervision status, and services received. The outcome of most interest is the recidivism rate for the offenders, and types of new offenses committed. This research and the data generated will be used to determine if mandatory minimum sentences are cost-effective and add to public safety.**

The Sentencing Structure subcommittee is chaired by Gary Kendall, Director of the Office of Drug Control Policy. The members are Senator Keith Kreiman, the Honorable Jeff Neary, Tom Walton, Stephanie Fawkes-Lee, Clarence Key, Jr., Representative Jim Lykam, and Thomas Ferguson.

The committee's discussion concerning juvenile life sentences is summarized above. The other topic of discussion was the use of mandatory minimum sentences for certain drug offenses. IA Code 124.413 establishes a mandatory minimum sentence of one-third of the maximum indeterminate sentence prescribed by law for offenders convicted of offenses under IA Code 124.401, subsection 1, paragraphs

*a, b, c, e, or f.* IA Code 901.10 allows the court discretion to order a term less than that prescribed in 124.413 for first offenses as long as the conviction is not for methamphetamine under paragraphs *a* or *b* of 124.401, subsection 1.

A review of first releases from prison during FY2010 for drug offenses showed that offenders with a mandatory minimum served an average of 3 to 4 months longer than those without a mandatory minimum. While the averages do not appear to be significant, the differences can add a substantial number of prison bed days over the entire population.

However, the basic statistics did not address issues such as the drug involved, race and ethnicity, previous criminal history, or other court processing variables. The committee was also interested in knowing the recidivism rates for the two groups, compared to each other and offenders convicted of similar offenses placed on probation. Therefore, the subcommittee requested that staff conduct a research project to answer those questions prior to addressing any potential changes in IA Code 124.413.

## **Correctional Policy**

### **PSAB decision:**

**The PSAB recommends that the Department of Corrections include a validated risk assessment score and score category, with explanation, in all formal pre-sentence investigations. In addition, the Department of Corrections and the Judicial Branch should provide opportunities for judges to receive training on the meaning and use of the LSI-R scores and score categories in sentencing decisions. Further, the Judicial Branch should encourage judges to make use of the additional information in determining sentences.**

**The PSAB recognizes the intersection between mental illness, substance abuse, and criminal activity. However, language proposed by the Iowa Bar Association places an undue burden upon the Department of Corrections during pre-sentence investigations in terms of the availability of treatment services for offenders. In many communities in Iowa, local access to treatment services for mental illness is extremely limited. Therefore, the PSAB supports the inclusion of mental illness and substance abuse history in pre-sentence reports, but cannot support availability of local resources in**



**determining sentence until such time as the State addresses a statewide system of mental illness treatment. The committee supported the Iowa Bar Association’s proposals for IA Code 907.5 and 901.3 with the following modifications:**

**Language modification to the Iowa Bar proposal for 907.5: “...whether the defendant suffers from any mental health or substance abuse problems;”**

**Language modification to the Iowa Bar proposal for 901.3: “8. The defendant ‘s mental health and substance abuse history.”**

The Correctional Policy subcommittee is chaired by Lettie Prell, Research Director of the Department of Corrections. Its members are Stephanie Fawkes-Lee and Thomas Ferguson.

The membership discussed the use of risk assessments in providing additional information to judges in sentencing decisions. Offenders in Iowa are assessed for risk by the Department of Corrections using the LSI-R (Level of Service Inventory, Revised), a 54-item tool that looks at criminogenic needs. Validation studies completed by the Department of Corrections have shown that a 10% reduction in risk through service provision results in a 6% reduction in recidivism for the highest risk offenders.

Separate risk assessment tools, the Static-99 and Iowa Sex Offender Risk Assessment, are also used for determining risk and needs for sex offenders.

Committee members felt that the inclusion of the LSI-R scores and score categories within a formal pre-sentence investigation would be beneficial to judges in determining appropriate sentences. However, it was recognized that a numeric score without accompanying interpretation would do little to aid judicial decisions. The committee recommends, therefore, that the LSI-R score and score categories with accompanying interpretation be a part of all formal pre-sentence investigations. They further recommend that the Department of Corrections and Judicial Branch provide adequate opportunities to train judges on the uses of the LSI-R scores. It was also recommended that specific language referencing the LSI-R not be placed in the Iowa Code; instead, Code language should refer to a “validated risk assessment” to allow the Department the flexibility to use other tools as they are developed and tested.

The committee also discussed a proposal from the Iowa Bar Association (IBA) regarding the consideration of mental illness and substance abuse in determining appropriate sentencing. A part of

the proposal required the inclusion of community-based and institutional treatment services as a part of any sentencing recommendations. The proposed text from the IBA follows:

#### “Sentencing Factors

Iowa Code Section 907.5 is hereby amended as follows:

Before deferring judgment, deferring sentence, or suspending sentence, the court first shall determine which option, if available, will provide maximum opportunity for the rehabilitation of the defendant and protection of the community from further offenses by the defendant and others. In make this determination the court shall consider the age of the defendant; the defendant’s prior record of convictions and prior record of deferments of judgment if any; the defendant’s employment circumstances; the defendant’s family circumstances; whether the defendant suffers from an treatable mental health or substance abuse problems and, if so, the treatment options available in both the defendant’s community and the correctional system; the nature of the offense committed; and such other factors as are appropriate. The court shall file a specific written statement of its reasons for and the facts supporting its decision to defer judgment, to defer sentence, or to suspend sentence, and its decision on the length of probation.”

In addition, the IAB recommended the addition of the following subsection to IA Code 901.3:

“8. If the defendant suffers from any mental health or substance abuse problems and, if so, the treatment options available in both the defendant’s community and the correctional system.”

The assessments currently performed by the Department of Corrections do include mental illness and substance abuse; however, there is currently a significant lack of community-based treatment alternatives, especially for mental illness. Committee members feared that requiring the provision of mental health treatment availability as part of sentencing would result in increased prison admissions, as many communities do not have these resources available to offenders. Although the lack of mental health resources is a major concern, the group recommended that the issue of treatment availability and funding needed to be addressed systemically prior to making any mandatory changes to correctional policy.

The committee recommends the following modifications to the Iowa Bar Association’s legislative proposals:

907.5: “...whether the defendant suffers from any mental health or substance abuse problems;”

901.3: “8. The defendant ‘s mental health and substance abuse history.”

## Specific Crimes

### PSAB decision:

Amend IA 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

**The PSAB voted to approve the above legislation, which reduces the disparity between crack cocaine and powder cocaine penalties, by a vote of 9 in favor and 6 against. Further discussion led to a consensus by the PSAB that the amounts and attendant penalties for the two forms of cocaine should be equalized. However, the PSAB disagrees on how this should be accomplished.**

The Specific Crimes subcommittee is chaired by Michelle Leonard, Dallas Center Police Chief. Members of the committee are Sherri Soich, Stephanie Fawkes-Lee, Kim Cheeks, Gary Kendall, Clarence Key, Jr., Ross Loder, Lettie Prell, and Tomas Rodriguez.

The subcommittee discussed the current disparity in sentences between powder and crack cocaine. Information provided to the committee included a recommendation from the Department of Corrections , data on prison admissions by race, and data on drug seizure amounts.

The Department of Corrections recommended that the threshold amounts of crack be increased for the various penalty class levels for the following reasons:

- a. There is no rational basis to punish crack cocaine offenses more severely than powder cocaine offenses. Numerous studies have shown that the physiological and psychotropic effects of crack and powder cocaine are the same, and the drugs are now widely

acknowledged as pharmacologically identical. Dr. Glen Hanson, Ph.D., D.D.S., Acting Director of the National Institute on Drug Abuse, in testimony to the U.S. Sentencing Commission on February 25, 2002 provided the following: "Cocaine, in any form, produces the same effects once it reaches the brain. It produces similar physiological and psychological effects, but the onset, intensity and duration of its effects are related directly to the method of use and how rapidly cocaine enters the brain. Cocaine inhalation became popular because it produces the quickest and highest peak blood levels in the brain without the risks attendant to IV use such as exposure to HIV from contaminated needles. Inhalation or smoking involves the inhalation of cocaine vapor or smoke into the lungs, where absorption into the bloodstream is as rapid as by injection."

- b. In Iowa, prohibited acts involving more than 10 grams but less than 50 grams of crack carry the same penalty as offenses involving more than 100 but less than 500 grams of powder cocaine.
- c. It may assist in reducing the disproportionate incarceration of African-Americans.

Prison admission data for the state fiscal years FY09 and FY10 show the following:

Percent Prison Admissions, by Race

	Powder Cocaine		Crack Cocaine	
	African American	Caucasian	African American	Caucasian
FY2009	44%	56%	86%	14%
FY2010	47%	53%	83%	17%

Further, a correctional impact analysis completed during the 2009 Legislative session showed that decreasing the threshold amounts of powder cocaine to those of crack cocaine would have a disproportionate effect on the incarceration rate of African Americans. The total number of Class B felony convictions for powder cocaine would increase, and 31 of the total new admissions would be African Americans each year. African Americans would comprise 46% of the prison population increase attributable to increased powder penalties.

Another study done during the 2009 legislative session investigated the amounts of crack and powder cocaine confiscated and analyzed by the Iowa Crime Lab. The purpose of the study was to determine the distribution of amounts confiscated to determine if there was significant variance in cases.

Findings

1. Analysis was based upon an initial set of 2,303 cases. If a case had both crack and powder cocaine involved, it was counted twice, once in each category. Of these cases, the breakdown was
  - a. 937 powder cocaine
  - b. 1,072 crack cocaine
  - c. 294 residue or trace only
  
2. After adjusting for the outliers (>1,000 grams) and eliminating analysis of the trace amounts only, there were 927 powder cases, and 1,071 crack cases.
  
3. The cases were analyzed looking at mean, median, and 1<sup>st</sup> and 3<sup>rd</sup> quartiles. The range between the 1<sup>st</sup> and 3<sup>rd</sup> quartiles includes 50% of all cases analyzed. The results are below.

	Powder (in grams)	Crack (in grams)
Mean	20.08	8.76
Median	1.15	1.55
1 <sup>st</sup> Quartile	.30	.43
3 <sup>rd</sup> Quartile	6.6	5.24

4. Cases were then assigned the theoretical Offense Class based upon the weights identified. This should not be considered a proxy for convictions, as the end results for these cases are not known. This was done simply to identify any differences in potential charges and convictions. The weight ranges and class of offense for powder and crack in the IA Code are shown below.

	Powder	Crack
B+ (50-yr sentence)	> 500 grams	> 50 grams
B (25-yr sentence)	>100 to 500 grams	>10 to 50 grams
C (10-yr sentence)	100 grams or less	10 grams or less

The theoretical distribution of cases, based upon weight of seizures

	Powder	Crack
B+	.6%	4.0%
B	4.4%	10.2%
C	93.7%	85.3%
Outlier cases	1%	--

The committee engaged in discussion as to the appropriate approach toward the equalization of crack and powder amounts among the offense classes. Lowering powder amounts to equal those of crack was not considered viable due to the increase in prison admissions and the disproportionate impact on minority populations.

Raising the crack amounts to equal those of powder was felt by some to be the most appropriate approach; however, consensus was not reached on that option.

The third approach discussed used data that hypothesized the distribution of Class C, B, and B+ offenses based upon the distribution of amounts of drugs seized, discounting outliers of large seizures. This approach raised the amounts of crack cocaine within each offense class but did not make the amounts equal gram to gram. The committee did reach consensus on that proposal. The comparative amounts proposed are listed below.

	Powder	Crack
B+ (50-yr sentence)	> 500 grams	> 125 grams
B (25-yr sentence)	>100 to 500 grams	>35 to 125 grams
C (10-yr sentence)	100 grams or less	35 grams or less

The associated Code changes were presented to the full PSAB for consideration.

## Juvenile Waivers to Adult Court

### **PSAB decision:**

**The PSAB is requesting a study on current practices concerning juvenile waivers to adult court, both by Juvenile Court and those juveniles statutorily excluded from Juvenile Court authority. The research shall include such variables as age, race and ethnicity, offense, offense history, services provided, and jurisdiction. Outcomes shall include general recidivism and recidivism by offense type. This research and the data generated will be used to determine if waivers are the best alternative for juvenile offenders, are cost-effective, and add to public safety. Included in the study should be an evaluation of the current youthful offender program and the potential impact of any modification to the program on outcomes for juveniles and public safety.**

The ad hoc committee seated by the Juvenile Justice Advisory Council (JJAC) discussed the current practices of juvenile waivers to adult court. Juveniles who are at least 14 years of age may be waived to adult court, and juveniles who are 16 or 17 at the time of offense and who have committed enumerated offenses in IA Code 232.8, subsection 1, paragraph “c” (forcible felonies), must be transferred to adult court. The committee reviewed statistics on juveniles and adult court for FY2010, as found below.

In addition, the ad hoc committee reviewed a publication by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) entitled “Juvenile Transfer Laws: An Effective Deterrent to Delinquency?” that reviewed studies on the subject. This review found that recidivism rates are generally higher for juveniles waived to adult court when compared to similarly situated youth who were kept in juvenile court.

The ad hoc committee also discussed a position paper and suggested language from the Honorable Stephen C. Clarke, Judge, First Judicial District that would change IA Code 803.6 and IA Code 232.45 to allow juveniles age 16 and 17 to be treated as youthful offenders

**Juveniles Serving in Adult Correctional Facilities, Non-Class A, June 30, 2010**

Number who committed offense before age 18:	354	Number who entered prison before age 18:	107
Offense type	SRMS – 1	Offense type	DFEL – 11
	AGMS – 13		CFEL – 57
	DFEL – 79		BFEL – 36
	CFEL – 185		Enhanced – 1
	BFEL – 68		Other FEL – 2
	Enhanced – 5	Average age at time of entry:	17.3
	Other FEL – 3	Median age at time of entry:	17.4
Average age at time of offense:	17.2	Youngest age at time of entry:	15.8
Median age at time of offense:	17.4	Number and % females:	5 (4.6%)
Youngest age at time of offense:	14.3	Number and % minority:	73 (68.2%)
Number and % females:	19 (5.3%)		
Number and % minority:	179 (50.5%)		

**Juvenile waivers to adult court, not required by statute, FY2010**

Total waivers ordered:	619
Number and percent female:	109 (17.6%)
Number and percent minority:	152 (24.5%)

**Reverse waivers from adult court for statute-identified offenses, FY2010**

Total waivers ordered:	43
Number and percent female:	7 (16.2%)
Number and percent minority:	23 (53.4%)

After reviewing and discussing the JJAC sub-committee recommendations, the PSAB chose to request further study as set out in the decision above.

After lengthy discussion, the following were the PSAB’s major concerns with the JJAC ad hoc committee proposals: the age (17) of the youthful offender, potential impact on Class A and forcible felony cases, and the effect of the court no longer appearing to be a neutral presider.



## Juvenile Sex Offenders

**PSAB decision:**

**The PSAB is not making any recommendations regarding juvenile sex offenders at this time.**