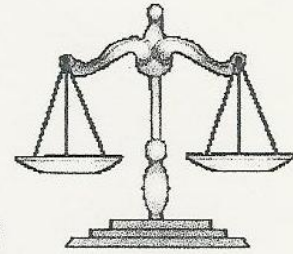


JRC

Justice Reform Consortium



Vol. 4 #6 March 24, 2013

3¢

A Disappointing Disproportionate Impact

A minority impact statement is a significant portion of a fiscal note prepared by the nonpartisan Fiscal Division of the Iowa Legislative Services Agency. In cooperation with the Division of Criminal and Juvenile Justice Planning of the Department of Human Rights, the Fiscal Division analyzes legislation to determine if the legislation will have an impact on minorities.

Because Iowa has a staggering racial disparity in incarceration rates (as a matter-of-fact, a 2007 report from the Sentencing Project rates Iowa as THE state with the “highest racial disparity in incarceration”), it is important for legislators to take the time to look at these fiscal notes. Placing an emphasis on the minority impact statements, legislators should examine whether there might be a better method of achieving the same goals while reducing the imbalance of disproportionate incarceration.

One of this year’s best examples of a bill that may have a huge impact on increasing rather than decreasing the imbalance of minorities in the correctional system is [Senate File 384](#), a bill that creates the new offense of removal of an officer’s communication or control device (radio).

A legitimate fear of a law enforcement officer is having someone strip the service revolver from the officer’s holster. A person who commits this crime violates the Iowa law of “Disarming a peace officer of a dangerous weapon” and the punishment is a class “D” felony. A class “D” felony is punishable by confinement for no more than five years and a fine of at least \$750 but not more than \$7,500. The penalty for discharging that dangerous weapon, whether it hits the officer, a bystander, the ground, or anything else is a class “C” felony, which carries a penalty of up to ten years and a fine of between \$1,000 and \$10,000. This is all understandable and defensible.

Now, a related issue has come before the General Assembly. [Senate File 384](#) began as a [bill](#) that would make removing a communications device from a peace officer a class “D” felony, same as a weapon. This penalty seemed a little steep in comparison with intentionally removing a weapon, but we did understand that the loss of radio communication can be just as frightening as losing a weapon. We made an offer. What if the law had graduated steps?

Wouldn't it make sense to gradually increase the penalty along with the defendant's level of intent? Our idea was to suggest that if the defendant removed the radio, but inflicted no damage, didn't hurt the officer, and had no intention of preventing communication, the charge should be less than a defendant who caused bodily injury; serious injury; or tried to prevent the peace officer from communicating. Legislators in the Senate listened to what we had to say.

The bill was amended in the Senate Judiciary Committee to reflect our suggestion. The penalty for removing a radio or other communications device would range from a simple misdemeanor to a class "D" felony. However, in the course of amending the bill with our suggestion, the Senate Judiciary Committee added another issue to the bill.

A bill that has been coined by some as the "clumsy cop bill", [House File 528](#), is a bill that proposes to amend Iowa law that enhances the crime of "Interference with official acts" under certain instances. As it is now, the law states that if "a person commits an interference with official acts, . . . and in doing so *inflicts* or attempts to *inflict* [serious injury or bodily injury]" the penalty is enhanced. Several special interests desire to replace the phrase "*inflicts* or attempts to *inflict*" with the phrase "which results in". The derogatory title, "clumsy cop bill", comes from the possible analogy of a police officer tripping on a curb and getting injured in the course of arresting a defendant. There is a huge difference between "inflicting" and "resulting". Inflicts means to "cause (something unpleasant or painful) to be suffered by someone or something." Result is defined "as to happen or end in a certain way as a consequence of something else." As you can see, *inflicts* has a direct causal relationship to the incident, while *results* can be an indirect consequence of a separate act. Therefore, a peace officer may be injured in an act that is the "result" of the arrest, but in which the defendant has no part.

We would settle for the word "causes" to replace the word inflict, if a change needs to be made. Causes can mean "make something happen". This change was offered by Rep. [Dave Dawson](#) (D-Sioux City) at a subcommittee on the bill in the House. We accepted the compromise; the County Attorneys Association flat out refused to meet us in the middle. The Peace Officers Association at least thought about it.

Recently, a [fiscal note](#) on SF 384 was prepared at the Request of Senator [Charles Schneider](#) (R-West Des Moines). The minority impact statement says:

It is expected this Bill will have a disproportionate impact on minorities because approximately 34.6% of offenders convicted under the Bill's provisions related to interference with official acts may be minorities. Under current law, these simple misdemeanor offenders are not supervised in the corrections system. This Bill shifts simple misdemeanor convictions to aggravated misdemeanor and Class "D" felony convictions. There will be an increase in the number of minority offenders supervised in the correctional system. To the extent that the new crime, removal of an officer's communication or control device, results in new convictions, the minority impact may be understated in this fiscal note.

The addition of a separate and somewhat unrelated issue to a bill that we have worked on with pride and fairness, and one that treats minorities with balance is a step backward.

Animal Farm II

In the most recent [JRC Newsletter](#), we reported on several bills that made it out of committee and are ready for debate. One of the bills is [HF 573](#) (formerly [HSB 142](#)): A study bill for enhancing the criminal penalty for an assault on a public transit bus operator, and providing penalties. We call these “Animal Farm” bills because they create a situation in which some people are “more equal” than others. Enhancing penalties for assault does not deter the criminal element. Assaults are often committed under the influence of drugs or alcohol, in the heat of passion, and without thinking. Now we have discovered another reason why some people assault others – mental illness.

In the past week, a couple of Assistant Story County Attorneys were attacked by a man in the Story County Courthouse. Story County Attorney Stephen Holmes has stated that this “case demonstrated a need for laws to protect prosecutors and other court personnel”. We have claimed time and time again that these laws do nothing to protect people from being assaulted.

Major Louis Robinson II is the person accused of attacking the two county attorneys in Story County. Currently, he is being held on two charges of willful injury, which is a class “D” felony “if the person causes bodily injury to another.” And evidently he did cause bodily injury because he is also being charged with two counts of “assault causing bodily injury”, which, if convicted, is worth a serious misdemeanor.

But why hasn’t this sort of law worked before. Major Robinson has proven that these laws have absolutely no deterrent effect whatsoever. Robinson’s rap sheet (Iowa Courts Online) is full of examples of how enhanced penalties do not work to deter persons who are inclined to act with violence. He should know. Below is a sample of Robinson’s previous run-ins with the law.

- May, 2002: **Assault on a police officer.**
- September, 2002: Disorderly Conduct.
- January, 2004: Interference with Official Acts.
- February, 2004: Disorderly Conduct.
- August, 2004: Disorderly Conduct.
- September, 2006: Charged with “Domestic Abuse and Assault with intent or Display of a Weapon; Harassment in the 2nd Degree and Probation violations. It was 2007 and 2008 before sentencing on these charges was complete.
- February, 2007: Domestic Abuse Assault.
- November, 2008: Charged with and convicted of Interference with Official Acts.
- June, 2009: Disorderly Conduct.
- August, 2009: Assault.
- October, 2009: Negotiated a plea whereas the Harassment in the 1st Degree charges were lowered to Harassment in the 2nd Degree.
- October, 2009: Charged with and convicted of Disorderly Conduct – Abusive Epithets/Threat Gesture.

- October, 2009: Assault causing bodily injury.
- November, 2009: Convicted of an **assault on a police officer**, which carries an enhanced penalty.
- September, 2010: Negotiated a plea of simple assault after being charged with “domestic abuse assault, 2nd offense”.
- September, 2010: Charged with and convicted of Criminal Mischief in the 5th degree.
- December, 2010: Charged with Disorder Conduct – Loud and Raucous Noise, and with Interference with Official Acts.
- In 2011 Robinson was charged with Harassment in the 1st degree and violation of probation. Various sentences were doled out on these charges.
- December, 2011: Charged with and convicted of Assault Causing Bodily Injury. Part of his sentencing for this crime was a mental health evaluation.

The charges and sentences above represent only the violent documentation of Major Louis Robinson, II. There are several other offenses, such as illegal parking, no insurance, speeding, etc. Does it appear anywhere in Robinson’s criminal history that he would have thought twice about assaulting two assistant county attorneys if the penalty was enhanced?

Movement on Bills

The following bills were listed in the [previous newsletter](#) and have had some sort of movement or action within the past two weeks.

[HF 475](#): by Public Safety Committee. A bill relating to the issuance of a search warrant to authorize the placement, tracking, monitoring, and removal of a global positioning device. (Formerly [HSB 91](#).) *JRC Opposes* this bill, just as it did last year. Those who want this change are adamant about placing the change in the law under Iowa’s current law addressing search warrants. We believe this change should be made in a different section of the Iowa Code. As we see it, the bill as it stands now would make a short cut around the Fourth Amendment for obtaining warrants. **HF 475 passed the House by a vote of 76 to 23 on March 12. It is now in a Senate Judiciary subcommittee made up of Senators [Sodders](#) (D-State Center), [Horn](#) (D-Cedar Rapids), and [Schneider](#) (R-West Des Moines).**

[SF 399](#) by Committee on Judiciary (formerly [SF 134](#) by Jochum): A bill for an act relating to the use of restraints against a pregnant inmate or detainee and including effective date provisions. *JRC Supports* this legislation. Please [contact your state senator](#) and urge him or her to support passage of this issue. [Eighteen states](#) already prohibit this practice, and more are considering it. Iowa needs to keep up with the humanity of those 18 states and the Federal Bureau of Prisons. **This bill has been in the news lately because of an amendment filed by Senator [Kent Sorenson](#) (R-Milo), 23 other Republicans, and Democratic Senator Dr. [Joe Seng](#) (D-Davenport).** The amendment, if it isn’t pulled by the sponsor, will eventually kill the bill for this year. The amendment prohibits the state from spending state dollars on an abortion for a woman incarcerated in a correctional facility. The point is rather moot since it can’t be done, currently.

SF 384 (formerly SF 151) by Sodders: A bill for an act establishing a criminal offense for removing or attempting to remove a communication device from the possession of a peace officer. *JRC Opposes* this legislation. The original bill required a class “D” felony as a penalty, no matter what situation was evident. We worked in subcommittee to improve the bill by offering a suggestion that the bill be amended to graduate the penalty depending upon the severity of the injury to the officer and the intent of the defendant. The bill was amended in the Senate Judiciary Committee to adopt our suggestion. However, the amendment included language that JRC has opposed in another bill (**See the lead story above**). Because of the added language, we remain adamantly opposed to the legislation. **If the language in the “interference with official acts” portion of the bill changes from “inflicts” to “causes” we will change our registration from “opposed” to ‘at least’ undecided.**

SF 203 by Human Resources: A bill for an act relating to mental health and disability services requirements involving the department of human services and including effective date and retroactive applicability provisions. (Formerly SSB 1130.) *JRC* is registered as “*undecided*” on this bill. The Senate passed this bill 48-0 on March 12; the House passed it 97-0 on March 19. It is ready for the governor’s signature.

HF 393 & SF 288: These identical bills are the cumulative work of a Working Group of experts from the Iowa State Bar Association, the Iowa County Attorneys Association, and the Iowa Juvenile Court Services Association. The bills make necessary changes in Iowa’s Youth Offender law (not to be confused with Polk County’s Youthful Offender Program), including the establishment of a minimum age for prosecution as a Youthful Offender, and the possibility of a child receiving a deferred judgment (currently, the YO may only receive a deferred sentence), and several more changes. A Youthful Offender is a juvenile who is prosecuted in adult court for certain offenses (such as serious felonies, including murder in the first degree). *JRC supports* this legislation. Please contact your legislators and urge them to support these bills. **SF 288 passed the Senate on March 12 by a vote of 48-0. It was passed on file in the House and remains on the Unfinished Business Calendar where it will remain eligible for debate until the General Assembly adjourns for the year.**

Please keep up with those calls to Governor Branstad’s office asking him for support of mental health funding and services – 515-281-5211.

Links of interest:

The Spring edition of the International CURE Newsletter. Find it at www.internationalcure.org/newsletters/INL_Spring_2013_p_1-7.pdf

South Dakota passes new legislation to address *Miller v. Alabama*

South Dakota Governor Dennis Daugaard has signed into law a bill that seeks to reform the way that state holds children accountable when they commit serious crimes. The new law is the state's effort to comply with last year's U.S. Supreme Court ruling in *Miller v. Alabama*, which found that mandatory sentences of life without parole are unconstitutional when imposed upon individuals who were younger than 18 at the time of a crime.

Senate Bill 39 allows for broad judicial discretion at sentencing because it eliminates any mandatory minimum sentence. However, the new law still keeps life without parole as a sentencing option. SB39 allows a judge to sentence a youth to any number of years up to life without parole. We are hopeful that judges in the state will utilize the full breadth of their judicial discretion under the new law in order to ensure sentences that hold youth accountable while also acknowledging their unique capacity for rehabilitation. The Supreme Court has said that life without parole sentences should become rare, noting that children are categorically different from adults and that this difference must be considered in the context of sentencing.

According to the Supreme Court, mitigating factors to be considered include specifics such as the youth's age at the time of the crime, role in it, family background and history of abuse.

The CFSY continues to work with other states that are seeking to advance more progressive legislation. More than a dozen states now have active or pending legislation.



Find us on
Facebook



Contributions to JRC are appreciated and needed.

Please help us continue our work with your generous contribution today.

I want to help Justice Reform Consortium with its goal of working toward restorative justice.

Here is my contribution of \$ _____

Submit your subscription payment to:

Jean Basinger
Justice Reform Consortium
c/o Trinity United Methodist Church
P.O. Box 41005
Des Moines, IA 50311

Name: _____

Address: _____

City: _____ State _____ Zip _____

UPCOMING EVENTS

.....
The next [Friends of Iowa Women Prisoners](#) meeting is at noon on **Tues., April 16th** at Wesley United Methodist Church, 800 East 12th.

In April our speaker will be Eleena Mitchell-Sadler, an Assistant Ombudsman at the Iowa Citizens' Aide/Ombudsman office. The Ombudsman office is a legislative agency which accepts citizens' complaints about state and local government agencies and their employees. The Ombudsman investigates those complaints to determine whether actions taken by the agency are contrary to law, policy or may be unreasonable. Agencies within the Ombudsman's investigative jurisdiction include prisons and jails.

Bring your lunch. The place and time are consistent throughout the year. The meetings are always held on the third Tuesday of the month, and always held from noon to 1:00 pm at Wesley United Methodist Church located at 800 East 12th Street in Des Moines. The location is a block

west of East High School. Please contact [Vi](#) for more information.

.....

Voices to be Heard is a support group for families and children of an incarcerated loved one. The group gathers to support and comfort those who know too well the grief that comes to those left behind when someone they love is incarcerated. The group meets on the first and third Tuesdays of the month at Union Park Methodist Church (East 12th & Guthrie in Des Moines) from 5:30 – 7:00 p.m. The group brings in speakers, performs outreach, provide support groups and leadership classes. It is a good idea to contact Melissa ahead of time because the group provides dinner and a head count is preferred. Contact Melissa at 515/229-2645 for more information.



ART THERAPY FOR CHILDREN OF VOICES TO BE HEARD

ART THERAPY PROVIDED BY DES MOINES ART CENTER

Voices to be Heard is a support group for families and children of an incarcerated loved one.

Who: Children grades K-8th that have a loved one incarcerated

****Parents** would need to be present and attend an adult socialization

When: 1st and 3rd Tuesday of the Month; 6 week course

April 9, 23
May 7

Where: Union Park Methodist located on E. 12th & Guthrie

Time: 5:30 potluck dinner

6:00-7:00 Voices to be Heard art therapy/adult socialization

PLEASE RSVP TO MELISSA BY EMAIL AT mel@cfpciowa.org

or calling 515-229-2645

or Jolene at joventure@me.com

Justice Reform Consortium member organizations: Iowa CURE & Iowa Coalition 4 Juvenile Justice; Friends of Iowa Women Prisoners; Trinity United Methodist Church; Methodist Federation for Social Action; Voices to be Heard; ACLU of Iowa; Social Action Committee, Des Moines Presbytery; Des Moines Chapter of WILPF; American Friends Service Committee; Plymouth Congregational Church, Board of Christian Social Action; Iowa Annual Conference, UMC; Iowa NOW and Des Moines NOW; National Association of Social Workers; Beacon of Life; Citizens for Undoing Racism-War on Drugs Task Force.

This newsletter published by:



Fawkes-Lee & Ryan, Public Policy Advocates <http://iowappa.com/>

Copyright © 2013. You may copy, download and print the information in this newsletter provided you do so in an unaltered manner, with full copyright acknowledgement and website link. This newsletter may also be found online in PDF format at:

http://justicereformconsortium.org/?page_id=19 and at: http://iowappa.com/?page_id=407

Distributing this newsletter, or any part thereof, for commercial use is prohibited.

UNSUBSCRIBE INSTRUCTIONS: Simply reply to this message with the word “Unsubscribe” in the subject box.