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Iowa Department of Human Rights
CJJP Advisory Council
321 E. 12th St.
Des Moines, Iowa 50319

October 14, 2014

Re: Public Comments Regarding the CJJP's 20-year criminal justice plan for the state.

Dear CJJP Members:

These brief comments are in response to the request for feedback the CJJP issued on October 1, 2014 asking for "citizens to provide ideas and raise issues they think should be addressed in the criminal and juvenile justice systems ... [to be considered] when drafting a 20-year plan for the state."

The ACLU of Iowa commends the CJJP in seeking feedback from the public as it initiates the process to create the 20 year criminal and juvenile justice plan. However, we would also ask that the CJJP to take note of the fact that the amount of time provided to stakeholders – two weeks – is inadequate. More time for the public to assist the CJJP in crafting a 20 year strategic plan would yield greater detail, thoughtful analysis, and research that would assist the CJJP in this effort.

That said, below is a non-exhaustive list of 4 of the current, major, systemic problems that the criminal and juvenile justice systems in our state face that require strategic, long-term solutions and should be addressed in the 20 year plan, along with proposed solutions:

1. Community policing failures, including racial inequities in arrest rates.

For example the ACLU, using FBI data, found that Iowa has the greatest racial disparity in arrest rates for possession of marijuana, despite equal usage rates among African American and White Iowans. In Iowa, a Black person is more than 8 times as likely to be arrested than a White person. The full study and analysis, including information that looks at arrest rates at the county level in Iowa, can be read at this url: <http://www.aclu-ia.org/2013/06/04/iowa-ranks-worst-in-racial-disparities-of-marijuana-arrests/>. An effective reform that targets this problem is to stop addressing low-level personal use of marijuana as a criminal offense and implement civil and public health solutions. Short of legalization, the state should consider de-criminalization strategies. A civil fine, the distribution of public

health information, and information about drug treatment, paired with confiscation of low amounts of marijuana, is likely to be an effective deterrent; as importantly, it avoids the needless destruction of families and futures of young people, particularly people of color, that comes with arrest. Currently, this model is being implemented in other jurisdictions that want to avoid full legalization.

2. Racial inequity in conviction and imprisonment.

Similarly, Iowa has the worst racial disparities in incarceration in the nation. The Sentencing Project reports that in Iowa, Black people are incarcerated at 13.6 times the rate of White people.

3. Expensive and ineffective warehousing of persons with substance abuse and dependency issues rather than the provision of systems to provide effective public health solutions.

Non-violent drug convictions are the single biggest driver of the tripling of the prison population in Iowa over the last 25 years. Using August 2013 Department of Corrections data, there are 1,809 people in Iowa's prisons for non-violent drug offenses, comprising 23 percent of Iowa's overall prison population of 7,951. Of 1,809 people serving time for drug offenses, 1,233 are in prison for drug trafficking. Of that number, 560 people, or 45 percent of all people incarcerated for drug trafficking, are in prison for the lowest level trafficking in crack cocaine (less than 10 grams), methamphetamine and amphetamine combined (less than 5 grams). According to the Iowa Department of Corrections 2012 Annual Report, the Iowa prison system costs in excess of \$262 million to run (FY 2012). Significant taxpayer savings could be achieved through smart reform targeting nonviolent drug crimes, which comprise approximately a quarter of the prison population, and has not been shown to effectively deal with drug abuse in our communities. The state should act to address these harms by:

- (1) ***Eliminating all mandatory minimum sentences for non-violent drug offenses.*** The Public Safety Advisory Board found that 62 percent of drug traffickers served mandatory minimum sentences, which correlated to higher, not lower, recidivism rates.
- (2) ***Eliminating the sentence enhancement for a second or subsequent drug offense.*** The use of enhanced penalties ignores the science of addiction, and is unsupported by any evidence that it works to deter repeated drug use.
- (3) ***Eliminate the crack/powder cocaine disparity.*** This disparate treatment of equivalent amounts of crack and cocaine work to exacerbate racial disparity in the prison system and arbitrarily penalizes equivalently harmful drug abuse.

- (4) **Correct the amounts of methamphetamine and crack cocaine that enable charging low levels that are typical of personal consumption to be charged as possession with intent to deliver.**

August 2013 Dept. of Corrections data indicates that 70 percent of people incarcerated for drug trafficking were convicted of methamphetamine and cocaine offenses. Among them, the largest quantities of prisoners possessed low amounts consistent with personal use by a person with a dependency problem. This unfair scheme punishes heavy users as harshly as actual drug traffickers.

- (5) **Create and fund alternatives to prison and jail for nonviolent drug offenders.** Publicly funded treatment programs in Iowa yield better results and lower relapse rates than prison-treatment programs.

The ACLU's recommendations to the PSAB in 2013, which explain all the reforms suggested here in greater detail, are attached.

4. Inadequate parole procedures for juveniles under *Miller* and *Graham* and their Iowa progeny *Ragland*, *Null*, *Pearson*, and *Lyle*.

Children should not be treated as if they are not children by our criminal justice system. Citing the scientific research regarding the developing brains of juveniles, the Iowa Supreme Court has found that the protections against cruel and unusual mandatory minimum sentences for juveniles are assured by our state constitution. Yet regulations governing the Board of Parole procedures have not yet been updated to provide for the individualized, meaningful consideration that takes into account the mitigating factors pertaining to youth as constitutionally required. This untenable and unconstitutional deprivation of a meaningful opportunity to demonstrate rehabilitation should be urgently addressed through rulemaking.

Thank you for the opportunity to provide feedback. The ACLU would welcome further conversations to reform our badly broken system of mass incarceration in Iowa.

I may be reached at rita.bettis@aclu-ia.org and by phone at (515)243-3988.

Thank you,



Rita Bettis
Legal Director

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Targeted Reforms to Reduce Unnecessary Incarceration in Iowa by Focusing on Nonviolent Drug Crimes

Iowa's challenges surrounding sensible reduction of the prison population will not be resolved overnight, but meaningful reform is attainable. The people of Iowa are ready for change. Research has found strong, broad based support for reduction in sentencing and other penalties for those convicted of nonviolent drug crimes.

Non-violent drug convictions are the single biggest driver of the tripling of the prison population in Iowa over the last 25 years.

- Using August 2013 Department of Corrections data, there are 1,809 people in Iowa's prisons for non-violent drug offenses, comprising 23 percent of Iowa's overall prison population of 7,951. Of 1,809 people serving time for drug offenses, 1,233 are in prison for drug trafficking. Of that number, 560 people, or 45 percent of all people incarcerated for drug trafficking, are in prison for the lowest level trafficking in crack cocaine (less than 10 grams), methamphetamine and amphetamine combined (less than 5 grams).
- According to the Iowa Department of Corrections 2012 Annual Report, the Iowa prison system costs in excess of \$262 million to run (FY 2012). Significant taxpayer savings could be achieved through smart reform targeting nonviolent drug crimes, which comprise approximately a quarter of the prison population.
- Using the Department of Corrections daily statistics published on its website, as of October 15, 2013, our prison population has grown to 8,204 inmates, which is 115.4 percent of capacity (7,109 beds), while failing to solve the underlying problems of communities negatively impacted by drugs.

Focusing on the priorities that the Public Safety Advisory Board has identified to include in its report, the following reforms are recommended:

Reform 1: Eliminate mandatory minimum sentences for non-violent drug offenses.

- Based on Department of Corrections information provided in August 2013, there are approximately 1,085 people serving mandatory minimum sentences for non-violent sales of controlled substances. This is over 13 percent of the total prison population (7,951 people).
- In this body's 2011 report on mandatory minimums, the Division of Criminal and Juvenile Justice Planning staff found that 62 percent of drug traffickers served mandatory minimums, and that mandatory minimums correlated to higher, not lower, recidivism rates.¹

¹ Public Safety Advisory Board, *Final Report: Outcomes of Mandatory Minimum Sentences for Drug Traffickers 1* (October 2011)[hereinafter "2011 PSAB Final Report"]. According to the report, 33 percent of those who served mandatory minimums returned to prison, compared to a recidivism rate of 28 percent of those who were eligible for mandatory minimums, but whose terms were waived. *Id.* at 2.

Reform 2: Eliminate the sentence enhancement for a second or subsequent drug offense.

- As of August 2013, there are 303 inmates serving an enhanced sentence under §124.411 for a second or subsequent drug offense, about one sixth of the number of people in prison for all drug crimes (1,809 people).
- Under this enhancement, a person can be sentenced to up to three times the normal sentence, and three times the authorized minimum sentence, simply because of a qualifying prior drug conviction.
- The use of enhanced penalties ignores the science of addiction, and is unsupported by evidence that it works to deter repeated drug use.

Reform 3: Eliminate the crack/powder cocaine disparity.

- Currently, equivalent amounts of cocaine and crack cocaine are penalized very differently:

Classification	Cocaine or cocaine preparation/mixture	Crack Cocaine
Class B felony under Iowa Code § 124.401(1)(a)	>500 grams (5 people)	>50 grams (4 people)
Class B felony under Iowa Code § 124.401(1)(b)	>100-500 grams (4 people)	>10 grams (23 people)
Class C felony under Iowa Code § 124.401(1)(c)	<100 grams (57 people)	<10 grams (109 people)

- From a public health perspective, this disparity is unjustified, because research consistently demonstrates that the form of cocaine – powder or crack – is not the crucial variable in harm caused; rather, the route of administration (smoked, intravenous administration, or snorted) accounts for behavioral effect differences.²
- U.S. DEA information indicates that a crack user is likely to personally consume anywhere from 3.3-16.5 grams of crack cocaine per week.³ Notably, as shown in the chart above, this range of typical personal usage is treated severely as a Class C and Class B drug trafficking crimes in Iowa.
- While African Americans accounted for 83 percent of crack cocaine admissions in Iowa in FY 2010,⁴ public health information indicates that African Americans make up only 37 percent of all crack cocaine users (whites comprise 50 percent and Latinos 13 percent).⁵ According to the most recent available census data (2010), African Americans only comprise 3.7 percent of the total Iowa population,

² Nora D. Volkow, M.D., Director, Nat'l Insts. of Health, National Inst. on Drug Abuse, U.S. Dept. of Health and Human Svcs., Testimony before the U.S. Senate Judiciary Committee, Subcommittee on Crime and Drugs, *Scientific Research on the Scope, Pharmacology, and Health Consequences on Cocaine Abuse and Addiction* (Feb. 12, 2008), available at <http://www.hhs.gov/asl/testify/2008/02/t20080212c.html>.

³ U.S. Dept. of Justice, *Federal Cocaine Offenses: An Analysis of Crack and Powder Penalties 4* (March 2002).

⁴ 2011 PSAB Final Report, *supra* note 1, at 7.

⁵ Substance Abuse and Mental Health Services Administration, Division of Population Survey, Office of Applied Studies, *National Survey on Drug Use and Health* (2008 and 2009).

so the disproportionate minority impact of crack sentencing is particularly pronounced in our state.

- Numerous other states and the federal government have passed reforms to substantially reduce or eliminate this disparity.

Reform 4: Correct the amounts of methamphetamine and crack cocaine that enable charging low levels typical of personal consumption to be charged as possession with intent to deliver.

- The current threshold amount of drugs that enables charging under Iowa Code § 124.401 as possession with intent to deliver, rather than mere possession, are dramatically lower for methamphetamine and crack cocaine than for other substances. This allows heavy users with addiction problems to be unfairly punished as harshly as true traffickers.
- As of August 2013, Department of Corrections data indicates that there are 1,233 people in prison for drug trafficking; of this number, approximately 70 percent have been convicted of methamphetamine and cocaine offenses. Among them, the largest quantities of prisoners possess low amounts that are consistent with personal use, as the chart below demonstrates. Under existing law, even these low-level amounts trigger a mandatory minimum sentencing scheme, which unfairly punishes heavy users as harshly as real traffickers. Areas for highest impact reforms are shaded below:

Classification	Cocaine or cocaine preparation/mixture	Crack Cocaine	Methamphetamine or Amphetamine
Class B felony under Iowa Code §124.401(1)(a)	>500 grams (5 people)	>50 grams (4 people)	0 people
Class B felony under Iowa Code §124.401(1)(b)	>100-500 grams (4 people)	>10 grams (23 people)	>5 grams-1 kg (197 people)
Class C felony under Iowa Code §124.401(1)(c)	<100 grams (57 people)	<10 grams (109 people)	<5 grams (451 people)

Reform 5: Create and fund alternatives to prison and jail for nonviolent drug offenders.

- There are programs in Iowa that approach drug addiction in a different way, a way that works, and saves the state money. In FY 2010, publicly funded drug treatment programs in Iowa⁶ obtained the following results:

Clients reporting no arrests in the six months following discharge from treatment	80 percent
Clients abstaining from substance abuse in the six months following discharge from treatment	57 percent
Clients full-time or part-time employed six months after discharge from treatment, up from 37 percent at treatment admission	60 percent

- As the data demonstrate, Iowans are safer when offenders have completed adequate substance abuse treatment. Hand in hand with drug crime reforms, alternatives to incarceration need to be increased and fully funded.

⁶ Governor's Office of Drug Control Policy, *Iowa Drug Control Strategy 2012 13* (2012), available at http://www.iowa.gov/odcp/drug_control_strategy/Strategy2012.Final.pdf (citing data from The Iowa Consortium for Substance Abuse Research and Evaluation, on behalf of the Iowa Department of Public Health, Division of Behavioral Health (2010)).



Governor Terry E. Branstad

Lt. Governor Kim Reynolds

San Wong, Director

FOR IMMEDIATE RELEASE:

October 1, 2014

CONTACT: Steve Michael, Interim Administrator

steve.michael@iowa.gov

Feedback Sought on Criminal and Juvenile Justice Systems Iowans Invited to Public Comment Session October 14

Interested Iowans are encouraged to provide feedback on the state's criminal justice system and juvenile justice system during an upcoming public comment session. This is an opportunity for citizens to provide ideas and raise issues they think should be addressed in the criminal and juvenile justice systems.

Iowa's Criminal and Juvenile Justice Planning Advisory Council, along with the Juvenile Justice Advisory Council, have called for the public comment session. The councils are created within the Iowa Department of Human Rights and are responsible for identifying and analyzing the operation and impact of current criminal and juvenile justice policy.

Council members will consider Iowans' input when drafting a 20-year plan for the state. The long-range goals are meant to provide direction to many stakeholders who collectively make up the justice system.

Citizens wishing to comment may do so at the public hearing, Tuesday, October 14 from 6 – 8 p.m. Remarks will be limited to two minutes per speaker. The public comment session will take place at the DMACC Center for Career & Professional Development at Southridge, Room 20A, 1111 E. Army Post Road, Des Moines.

People can also participate via webinar by registering at this link: <https://www4.gotomeeting.com/register/86939467>. After registering, you will receive a confirmation email containing information about joining the Webinar.

Individuals may also submit input in writing, postmarked by October 14, to:

Iowa Department of Human Rights
CJJP Advisory Council
321 E. 12th St.
Des Moines, IA 50319

Remarks will also be accepted via email at chr.cjpp@iowa.gov.

If you are a person with a disability and need a reasonable accommodation to participate, please contact Julie Rinker, Julie.Rinker@iowa.gov by 4:30 p.m. Wednesday, October 8.

Division of Criminal and Juvenile Justice Planning