

CHAPTER 165**CRIMINAL SENTENCING — MISCELLANEOUS CHANGES***S.F. 543*

AN ACT making changes to criminal sentences by permitting an aggravated misdemeanor charge for certain burglary in the third degree criminal offenses, by creating a sentence of a determinate term of confinement and an additional indeterminate term of years for certain class "D" felonies, by extending the length of time for reconsideration of certain felony sentences, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 713.6A, Code 2001, is amended to read as follows:

713.6A BURGLARY IN THE THIRD DEGREE.

1. All burglary which is not burglary in the first degree or burglary in the second degree is burglary in the third degree. Burglary in the third degree is a class "D" felony, except as provided in subsection 2.

2. Burglary in the third degree involving a burglary of an unoccupied motor vehicle or motor truck as defined in section 321.1, or a vessel defined in section 462A.2, is an aggravated misdemeanor for a first offense. A second or subsequent conviction under this section is punishable under subsection 1.

Sec. 2. Section 713.6B, Code 2001, is amended to read as follows:

713.6B ATTEMPTED BURGLARY IN THE THIRD DEGREE.

1. All attempted burglary which is not attempted burglary in the first degree or attempted burglary in the second degree is attempted burglary in the third degree. Attempted burglary in the third degree is an aggravated misdemeanor, except as provided in subsection 2.

2. Attempted burglary in the third degree involving an attempted burglary of an unoccupied motor vehicle or motor truck as defined in section 321.1, or a vessel defined in section 462A.2, is a serious misdemeanor for a first offense. A second or subsequent conviction under this section is punishable under subsection 1.

Sec. 3. Section 901.5, Code 2001, is amended by adding the following new subsection: NEW SUBSECTION. 13. In addition to any sentence or other penalty imposed against the defendant, the court shall sentence the defendant to an additional indeterminate term of years if required under section 902.3A, subsection 2.

Sec. 4. NEW SECTION. 902.3A DETERMINATE SENTENCING AND ADDITIONAL TERM OF YEARS FOR CLASS "D" FELONS.

1. Notwithstanding section 902.3, when a conviction for a class "D" felony is entered against a person, the court, at its discretion, in imposing a sentence of confinement pursuant to section 901.5, may commit the person into the custody of the director of the Iowa department of corrections for a determinate term of less than the maximum length of the sentence prescribed by section 902.9, subsection 5, if mitigating circumstances exist and those circumstances are stated specifically on the record.

a. The determinate term of confinement shall not be for less than one year and if a mandatory minimum sentence is required by law, the determinate term of confinement imposed under this section shall not be less than the mandatory minimum term of confinement prescribed by law.

b. A person sentenced to a determinate term of confinement under this section shall not be eligible for parole until the person has served one-half of the determinate term of confinement under the sentence.

c. Earned time shall be calculated as provided in chapter 903A. However, earned time accrued and not forfeited shall not apply to cause the person to become eligible for parole until the person has served one-half of the determinate term of confinement.

d. A person on parole or work release under a determinate term of confinement imposed under this section shall be subject to the terms and conditions of parole or work release as set out in chapter 906. Violations of parole or work release shall be subject to the procedures set out in chapters 905 and 908 or rules adopted under those chapters.

e. This section does not apply to an offense classified as a forcible felony, a felony under section 321J.2, felonies in chapters 707, 708, and 709, a person sentenced as a habitual offender, felonies listed in section 901A.1, felonies listed in section 902.12, or a felony committed by a person on parole or work release, or while in the custody of the director of the department of corrections.

2. When the person is sentenced and committed into the custody of the director of the department of corrections pursuant to subsection 1, the person shall also be sentenced to an additional indeterminate term of years not to exceed two years. The sentence of an additional term shall be consecutive to the determinate term of confinement.

a. The sentence of an additional indeterminate term of years shall commence immediately upon the expiration of the determinate term of confinement and the person shall be assigned to the judicial district department of correctional services by the department of corrections. The district department shall place a person assigned to it under this paragraph in a level of sanction and supervision which is appropriate to the person pursuant to the district's intermediate criminal sanctions program operated under chapter 901B.

b. The district department may transfer a person along the continuum of the intermediate criminal sanctions program operated pursuant to chapter 901B as necessary and appropriate during the period the person is assigned to the district department. If the person violates the terms and conditions of the placement, the district may transfer the person to a more restrictive placement as provided in the program.

c. A person serving an additional indeterminate term of years may be discharged from that sentence in the same manner as a person serving probation may be discharged under section 907.9. Discharge from an additional indeterminate term of years terminates the person's sentence of an additional indeterminate term of years.

d. A person serving an additional indeterminate term of years shall receive credit for any time served after discharge from the preceding determinate term of confinement against the person's sentence of an additional indeterminate term of years.

3. Notwithstanding subsection 2, if a person is paroled at least six months prior to the expiration of the person's determinate term of confinement, the person shall not serve an additional indeterminate term of years.

4. Section 907.3 governs the inapplicability of deferred judgments and deferred or suspended sentences to sentences imposed under this section.

Sec. 5. Section 902.4, Code 2001, is amended to read as follows:

902.4 RECONSIDERATION OF FELON'S SENTENCE.

For a period of ~~ninety days~~ one year from the date when a person convicted of a felony, other than a class "A" felony or a felony for which a minimum sentence of confinement is imposed, begins to serve a sentence of confinement, the court, on its own motion or on the recommendation of the director of the Iowa department of corrections, may order the person to be returned to the court, at which time the court may review its previous action and reaffirm it or substitute for it any sentence permitted by law. Copies of the order to return the person to the court shall be provided to the attorney for the state, the defendant's attorney, and the defendant. Upon a request of the attorney for the state, the defendant's attorney, or the defendant if the defendant has no attorney, the court may, but is not required to, conduct a hearing on the issue of reconsideration of sentence. The court shall not disclose its decision to reconsider or not to reconsider the sentence of confinement until the date reconsideration is ordered or the date the ~~ninety-day~~ one-year period expires, whichever occurs first. The district court retains jurisdiction for the limited purposes of conducting such review and entering an appropriate order notwithstanding the timely filing of a notice of appeal. The court's final order in the proceeding shall be delivered to the defendant person-

ally or by certified mail. The court's decision to take the action or not to take the action is not subject to appeal. However, for the purposes of appeal, a judgment of conviction of a felony is a final judgment when pronounced.

Sec. 6. Section 903.4, Code 2001, is amended to read as follows:
903.4 PROVIDING PLACE OF CONFINEMENT.

All persons sentenced to confinement for a period of one year or less shall be confined in a place to be furnished by the county where the conviction was had unless the person is presently committed to the custody of the director of the Iowa department of corrections, in which case the provisions of section 901.8 apply, or unless the person is serving a determinate term of confinement of one year pursuant to section 902.3A. All persons sentenced to confinement for a period of more than one year shall be committed to the custody of the director of the Iowa department of corrections to be confined in a place to be designated by the director and the cost of the confinement shall be borne by the state. The director may contract with local governmental units for the use of detention or correctional facilities maintained by the units for the confinement of such persons.

Sec. 7. Section 907.3, subsection 1, Code 2001, is amended by adding the following new paragraph:

NEW PARAGRAPH. m. The offense is for a determinate term of confinement or an additional indeterminate term of years as provided in section 902.3A.

Sec. 8. Section 907.3, subsection 2, Code 2001, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. The offense is for a determinate term of confinement or an additional indeterminate term of years as provided in section 902.3A.

Sec. 9. Section 907.3, subsection 3, Code 2001, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. The sentence for a determinate term of confinement or an additional indeterminate term of years as provided in section 902.3A.

Sec. 10. DETERMINATE SENTENCING AND RECONSIDERATION OF A FELON'S SENTENCE — INFORMATION. The department of corrections, in cooperation with the division of criminal and juvenile justice planning of the department of human rights, the state public defender, and the office of the prosecuting attorneys training coordinator in the department of justice, shall compile and provide information about determinate sentencing under section 902.3A and about reconsideration of a felon's sentence under section 902.4 for distribution through the Iowa state bar association for the purpose of educating attorneys and judges about those sections.

Approved May 30, 2001