

House File 2401

H-8171

1 Amend House File 2401 as follows:

2 1. By striking everything after the enacting clause and
3 inserting:

4 <DIVISION I

5 SEXUALLY VIOLENT PREDATORS ACCUMULATION OF EARNED TIME

6 Section 1. Section 229A.2, subsection 4, Code 2018, is
7 amended to read as follows:

8 4. "*Discharge*" means an unconditional discharge from the
9 sexually violent predator program. A person released from a
10 secure facility into a transitional release program or released
11 with ~~or without~~ supervision is not considered to be discharged.

12 Sec. 2. Section 229A.5B, subsection 1, unnumbered paragraph
13 1, Code 2018, is amended to read as follows:

14 A person who is detained pursuant to [section 229A.5](#) or is
15 subject to an order of civil commitment under [this chapter](#)
16 shall remain in custody unless released by court order or
17 discharged under [section 229A.8](#) or [229A.10](#). A person who has
18 been placed in a transitional release program or who is under
19 release with ~~or without~~ supervision is considered to be in
20 custody. A person in custody under [this chapter](#) shall not do
21 any of the following:

22 Sec. 3. Section 229A.5C, subsection 4, Code 2018, is amended
23 to read as follows:

24 4. A person who committed a public offense while in a
25 transitional release program or on release with ~~or without~~
26 supervision may be returned to a secure facility operated by
27 the department of human services upon completion of any term
28 of confinement that resulted from the commission of the public
29 offense.

30 Sec. 4. Section 229A.6A, subsection 1, paragraph d, Code
31 2018, is amended to read as follows:

32 *d.* To a facility for placement or treatment in a
33 transitional release program or for release with ~~or without~~
34 supervision. A transport order is not required under this
35 paragraph.

1 hearing requirement under subparagraph subdivision (a);
2 however, the committed person or the attorney for the committed
3 person may reassert a demand that the final hearing be held
4 within sixty days from the date of filing the demand with the
5 clerk of court.

6 (c) The final hearing may be continued upon request of
7 either party and a showing of good cause, or by the court
8 on its own motion in the due administration of justice, and
9 if the committed person is not substantially prejudiced. In
10 determining what constitutes good cause, the court shall
11 consider the length of the pretrial detention of the committed
12 person.

13 Sec. 7. Section 229A.8B, subsection 3, Code 2018, is amended
14 to read as follows:

15 3. Upon the return of the committed person to a secure
16 facility, the director of human services or the director's
17 designee shall notify the court that issued the ex parte order
18 that the absconder has been returned to a secure facility, and
19 the court shall set a hearing ~~within five days~~ to determine if
20 a violation occurred. If a court order was not issued, the
21 director or the director's designee shall contact the nearest
22 district court with jurisdiction to set a hearing to determine
23 whether a violation of the rules or directives occurred. The
24 court shall schedule a hearing ~~within five days of~~ after
25 receiving notice that the committed person has been returned
26 from the transitional release program to a secure facility.

27 Sec. 8. Section 229A.9A, Code 2018, is amended to read as
28 follows:

29 **229A.9A Release with ~~or without~~ supervision.**

30 1. In any proceeding under [section 229A.8](#), the court may
31 order the committed person released with ~~or without~~ supervision
32 if any of the following apply:

33 a. The attorney general stipulates to the release with ~~or~~
34 ~~without~~ supervision.

35 b. The court or jury has determined that the person should

1 be ~~discharged~~ released from the ~~program~~ a secure facility or
2 a transitional release program, but the court has determined
3 the person suffers from a mental abnormality and it is in the
4 best interest of the community to order release with ~~or without~~
5 supervision before the committed person is discharged.

6 2. If release with ~~or without~~ supervision is ordered, the
7 department of human services shall prepare within sixty days of
8 the order of the court a release plan addressing the person's
9 needs for counseling, medication, community support services,
10 residential services, vocational services, alcohol or other
11 drug abuse treatment, sex offender treatment, or any other
12 treatment or supervision necessary.

13 3. The court shall set a hearing on the release plan
14 prepared by the department of human services before the
15 committed person is released from a secure facility or a
16 transitional release program.

17 4. If the court orders release with supervision, the court
18 shall order supervision by an agency with jurisdiction that
19 is familiar with the placement of criminal offenders in the
20 community. The agency with jurisdiction shall be responsible
21 for initiating proceedings for violations of the release plan
22 as provided in [section 229A.9B](#). ~~If the court orders release~~
23 ~~without supervision, the agency with jurisdiction shall also be~~
24 ~~responsible for initiating proceedings for any violations of~~
25 ~~the release plan as provided in [section 229A.9B](#).~~

26 5. A committed person may not petition the court for release
27 with ~~or without~~ supervision.

28 6. A committed person released with ~~or without~~ supervision
29 is not considered discharged from civil commitment under this
30 chapter.

31 7. After being released with ~~or without~~ supervision, the
32 person may petition the court for discharge as provided in
33 section 229A.8.

34 8. The court shall retain jurisdiction over the committed
35 person who has been released with ~~or without~~ supervision until

1 the person is discharged from the program. The department
2 of human services or a judicial district department of
3 correctional services shall not be held liable for any acts
4 committed by a committed person who has been ordered released
5 with ~~or without~~ supervision.

6 Sec. 9. Section 229A.9B, Code 2018, is amended to read as
7 follows:

8 **229A.9B Violations of release with ~~or without~~ supervision.**

9 1. If a committed person violates the release plan, the
10 agency with jurisdiction over the person may request the
11 district court to issue an emergency ex parte order directing
12 any law enforcement officer to take the person into custody
13 so that the person can be returned to a secure facility.
14 The request for an ex parte order may be made orally or by
15 telephone, but the original written request or a facsimile copy
16 of the request shall be filed with the clerk of court no later
17 than 4:30 p.m. on the next business day the office of the clerk
18 of court is open.

19 2. If a committed person has absconded in violation of the
20 conditions of the person's release plan, a presumption arises
21 that the person poses a risk to public safety. The department
22 of human services or contracting agency, in cooperation with
23 local law enforcement agencies, may make a public announcement
24 about the absconder. The public announcement may include a
25 description of the committed person, that the committed person
26 is on release with ~~or without~~ supervision from the sexually
27 violent predator program, and any other information pertinent
28 to public safety.

29 3. Upon the return of the committed person to a secure
30 facility, the director of human services or the director's
31 designee shall notify the court that issued the ex parte
32 order that the committed person has been returned to a secure
33 facility, and the court shall set hearing ~~within five days~~ to
34 determine if a violation occurred. If a court order was not
35 issued, the director or the director's designee shall contact

1 the nearest district court with jurisdiction to set a hearing
2 to determine whether a violation of the conditions of the
3 release plan occurred. The court shall schedule a hearing
4 ~~within five days of~~ after receiving notice that the committed
5 person has been returned to a secure facility.

6 4. At the hearing, the burden shall be upon the attorney
7 general to show by a preponderance of the evidence that a
8 violation of the release plan occurred.

9 5. If the court determines a violation occurred, the court
10 shall receive release recommendations from the department of
11 human services and either order that the committed person be
12 returned to release with ~~or without~~ supervision or placed
13 in a transitional release program, or be confined in a
14 secure facility. The court may impose further conditions
15 upon the committed person if returned to release with ~~or~~
16 ~~without~~ supervision or placed in the transitional release
17 program. If the court determines no violation occurred, the
18 committed person shall be returned to release with ~~or without~~
19 supervision.

20 Sec. 10. Section 229A.15, Code 2018, is amended to read as
21 follows:

22 **229A.15 Court records — sealed and opened by court order.**

23 1. Any Except as otherwise provided in this section, any
24 psychological reports, drug and alcohol reports, treatment
25 records, reports of any diagnostic center, medical records, or
26 victim impact statements which have been submitted to the court
27 or admitted into evidence under [this chapter](#) shall be part of
28 the record but shall be sealed and opened only on order of the
29 court.

30 2. The documents described in subsection 1 shall be
31 available to the prosecuting attorney or attorney general, the
32 committed person, and the attorney for the committed person
33 without an order of the court.

34 Sec. 11. Section 901A.2, subsection 6, Code 2018, is amended
35 to read as follows:

1 6. A person who has been placed in a transitional release
2 program, released with ~~or without~~ supervision, or discharged
3 pursuant to [chapter 229A](#), and who is subsequently convicted of
4 a sexually predatory offense or a sexually violent offense,
5 shall be sentenced to life in prison on the same terms as
6 a class "A" felon under [section 902.1](#), notwithstanding any
7 other provision of the Code to the contrary. The terms and
8 conditions applicable to sentences for class "A" felons under
9 chapters 901 through 909 shall apply to persons sentenced under
10 this subsection. However, if the person commits a sexually
11 violent offense which is a misdemeanor offense under chapter
12 709, the person shall be sentenced to life in prison, with
13 eligibility for parole as provided in [chapter 906](#).

14 Sec. 12. Section 903A.2, subsection 1, paragraph a,
15 subparagraph (2), Code 2018, is amended to read as follows:

16 (2) However, an inmate required to participate in a sex
17 offender treatment program shall not be eligible for a any
18 reduction of sentence ~~unless~~ until the inmate participates in
19 and completes a sex offender treatment program established by
20 the director.

21 Sec. 13. Section 903A.2, subsection 1, paragraph b,
22 subparagraph (2), Code 2018, is amended to read as follows:

23 (2) An inmate required to participate in a domestic abuse
24 treatment program shall not be eligible for a any reduction of
25 sentence ~~unless~~ until the inmate participates in and completes
26 a domestic abuse treatment program established by the director.

27 Sec. 14. Section 903A.3, subsection 1, Code 2018, is amended
28 to read as follows:

29 1. Upon finding that an inmate has violated an institutional
30 rule, has failed to complete a sex offender or domestic abuse
31 treatment program as specified in section 903A.2, or has
32 had an action or appeal dismissed under [section 610A.2](#), the
33 independent administrative law judge may order forfeiture of
34 any or all earned time accrued and not forfeited up to the
35 date of the violation by the inmate and may order forfeiture

1 of any or all earned time accrued and not forfeited up to
2 the date the action or appeal is dismissed, unless the court
3 entered such an order under [section 610A.3](#). The independent
4 administrative law judge has discretion within the guidelines
5 established pursuant to [section 903A.4](#), to determine the amount
6 of time that should be forfeited based upon the severity of the
7 violation. Prior violations by the inmate may be considered by
8 the administrative law judge in the decision.

9

DIVISION II

10 CHILD ABUSE — SEXUAL OFFENSES AND SEX OFFENDERS

11 Sec. 15. Section 232.68, subsection 2, paragraph a,
12 subparagraph (3), Code 2018, is amended to read as follows:

13 (3) The commission of a sexual offense with or to a child
14 pursuant to [chapter 709, section 726.2](#), or section 728.12,
15 subsection 1, as a result of the acts or omissions of the
16 person responsible for the care of the child or of a person who
17 is fourteen years of age or older and resides in a home with
18 the child. Notwithstanding [section 702.5](#), the commission of
19 a sexual offense under this subparagraph includes any sexual
20 offense referred to in this subparagraph with or to a person
21 under the age of eighteen years.

22 Sec. 16. Section 232.68, subsection 2, paragraph a,
23 subparagraph (9), Code 2018, is amended to read as follows:

24 (9) (a) ~~Knowingly~~ A person who is responsible for the
25 care of a child knowingly allowing a ~~person~~ another person
26 custody ~~or of~~, control ~~of~~ over, or unsupervised access to a
27 ~~child or minor~~ child under the age of fourteen or a child with
28 a physical or mental disability, after knowing the ~~person~~
29 other person is required to register or is on the sex offender
30 registry under [chapter 692A](#) for a violation of ~~section 726.6~~.

31 (b) This subparagraph does not apply in any of the following
32 circumstances:

33 (i) A child living with a parent or guardian who is a sex
34 offender required to register or on the sex offender registry
35 under [chapter 692A](#).

1 (ii) A child living with a parent or guardian who is married
2 to and living with a sex offender required to register or on
3 the sex offender registry under chapter 692A.

4 (iii) A child who is a sex offender required to register or
5 on the sex offender registry under chapter 692A who is living
6 with the child's parent, guardian, or foster parent and is also
7 living with the child to whom access was allowed.

8 (c) For purposes of this subparagraph, "control over" means
9 any of the following:

10 (i) A person who has accepted, undertaken, or assumed
11 supervision of a child from the parent or guardian of the
12 child.

13 (ii) A person who has undertaken or assumed temporary
14 supervision of a child without explicit consent from the parent
15 or guardian of the child.

16 DIVISION III

17 SEX OFFENDERS AND PREDATORS — REGISTRATION AND CHILD
18 ENDANGERMENT

19 Sec. 17. Section 692A.101, subsection 14, Code 2018, is
20 amended to read as follows:

21 14. "*Incarcerated*" means to be imprisoned by placing a
22 person in a jail, prison, penitentiary, juvenile facility,
23 or other correctional institution or facility or a place or
24 condition of confinement or forcible restraint regardless
25 of the nature of the institution in which the person serves
26 a sentence for a conviction. "Incarcerated" does not mean
27 placement in an adult residential correctional or treatment
28 facility that allows a resident to leave the facility for a
29 portion of a day or days.

30 Sec. 18. Section 692A.101, subsection 31, Code 2018, is
31 amended by striking the subsection and inserting in lieu
32 thereof the following:

33 31. "*Sexually violent predator*" means a person who has
34 been determined to be a sexually violent predator pursuant to
35 section 229A.7.

1 Sec. 19. Section 692A.128, Code 2018, is amended to read as
2 follows:

3 **692A.128 Modification.**

4 1. A sex offender who is ~~on probation, parole, work release,~~
5 ~~special sentence, or any other type of conditional release on~~
6 the registry may file an application in district court seeking
7 to modify the registration requirements under this chapter.

8 2. An application shall not be granted unless all of the
9 following apply:

10 a. The date of the commencement of the requirement to
11 register occurred at least ~~two~~ ten years prior to the filing
12 of the application for a tier I offender and ~~five~~ twenty-five
13 years prior to the filing of the application for a tier ~~II or~~
14 III offender.

15 b. The ~~sex offender~~ applicant has successfully completed all
16 sex offender treatment programs that have been required.

17 c. ~~A risk assessment has been completed and the sex offender~~
18 ~~was classified as a low risk to reoffend. The risk assessment~~
19 ~~used to assess an offender as a low risk to reoffend shall~~
20 ~~be a validated risk assessment approved by the department~~
21 ~~of corrections. The applicant has successfully completed~~
22 any period of probation, parole, or other supervised release
23 for the offense requiring registration, without incurring a
24 revocation of probation, parole, or other supervised release
25 for such offense.

26 d. The ~~sex offender~~ applicant is not incarcerated when the
27 application is filed.

28 e. (1) ~~The director of the judicial district department~~
29 ~~of correctional services supervising the sex offender, or~~
30 ~~the director's designee, stipulates to the modification,~~
31 ~~and a certified copy of the stipulation is attached to the~~
32 ~~application. For a tier I offender, the applicant has had~~
33 no other criminal convictions other than simple misdemeanor
34 violations of chapter 321 or similar local violations for the
35 ten-year period preceding the filing of the application.

1 (2) For a tier III offender, the applicant has had no
2 other criminal convictions other than simple misdemeanor
3 violations of chapter 321 or similar local violations for
4 the twenty-five-year period preceding the filing of the
5 application, and the requirement to register is based upon an
6 adjudication in juvenile court.

7 3. The application shall be filed in the sex offender's
8 county of principal residence.

9 4. Notice of any application shall be provided to the
10 county attorney of the county of the ~~sex offender's~~ applicant's
11 principal residence, the county attorney of any county in
12 this state where a conviction requiring the ~~sex offender's~~
13 applicant's registration occurred, and the department. The
14 county attorney where the conviction occurred shall notify the
15 victim of an application if the victim's address is known.

16 5. The court may, but is not required to, conduct a hearing
17 on the application to hear any evidence deemed appropriate by
18 the court. ~~The court may modify the registration requirements~~
19 ~~under this chapter.~~

20 6. a. ~~A sex offender may be granted a modification if the~~
21 ~~offender is required to be on the sex offender registry as a~~
22 ~~result of an adjudication for a sex offense, the offender is~~
23 ~~not under the supervision of the juvenile court or a judicial~~
24 ~~district judicial department of correctional services, and the~~
25 ~~department of corrections agrees to perform a risk assessment~~
26 ~~on the sex offender. However, all other provisions of this~~
27 ~~section not in conflict with this subsection shall apply to the~~
28 ~~application prior to an application being granted except that~~
29 ~~the sex offender is not required to obtain a stipulation from~~
30 ~~the director of a judicial district department of correctional~~
31 ~~services, or the director's designee. If the court grants a~~
32 modification for a tier I offender, the court may modify the
33 registration period by reducing such period by up to five
34 years.

35 b. If the court grants a modification for a tier III

1 offender, the court may modify the registration period by
2 reducing such period to a term of years.

3 7. If the court modifies the registration requirements
4 under [this chapter](#), the court shall send a copy of the order to
5 the department, the sheriff of the county of the sex offender's
6 principal residence, any county attorney notified in subsection
7 4, and the victim, if the victim's address is known.

8 Sec. 20. Section 726.6, subsection 1, paragraph h, Code
9 2018, is amended to read as follows:

10 *h.* Knowingly allows a person custody or control of, or
11 unsupervised access to a child or a minor after knowing the
12 person is required to register due to a conviction for a sex
13 offense against a minor or is on the sex offender registry ~~as~~
14 ~~a sex offender~~ due to a conviction for a sex offense against
15 a minor under [chapter 692A](#). However, this paragraph does
16 not apply to a person who is a parent or guardian of a child
17 or a minor, ~~who is~~ and the parent or guardian is required
18 to register as a sex offender due to a conviction for a sex
19 offense against a minor, or to a person who is married to and
20 living with a person required to register as a sex offender due
21 to a conviction for a sex offense against a minor.

22 Sec. 21. Section 726.6, Code 2018, is amended by adding the
23 following new subsection:

24 NEW SUBSECTION. 1A. A person who knowingly takes custody or
25 control of a child or minor, or who knowingly has unsupervised
26 access to a child or minor while required to register as a sex
27 offender for a sex offense against a minor under chapter 692A,
28 commits child endangerment. However, this subsection does not
29 apply to a person who is a parent or guardian of the child or
30 minor, or to a person who is married to and living with a person
31 who is the parent or guardian of the child or minor.

32 Sec. 22. Section 726.6, subsection 3, unnumbered paragraph
33 1, Code 2018, is amended to read as follows:

34 For the purposes of [subsection 1](#) or [1A](#), ~~"person having~~
35 ~~control~~ "control over a child or a minor" means any of the

1 following:

2 Sec. 23. EFFECTIVE DATE. This division of this Act takes
3 effect July 1, 2019.

4 DIVISION IV

5 LASCIVIOUS CONDUCT WITH A MINOR

6 Sec. 24. Section 709.14, Code 2018, is amended by striking
7 the section and inserting in lieu thereof the following:

8 **709.14 Lascivious conduct with a minor.**

9 1. *a.* It is unlawful for a person eighteen years of age
10 or older who is in a position of authority over a minor to
11 force, persuade, or coerce a minor, with or without consent,
12 to disrobe or partially disrobe for the purpose of arousing or
13 satisfying the sexual desires of either of them.

14 *b.* A violation of this subsection is a serious misdemeanor.

15 2. For purposes of subsections 3 and 4, "*minor*" means a
16 person fourteen or fifteen years of age.

17 3. *a.* It is unlawful for a person eighteen years of age
18 or older who is in a position of authority over a minor to
19 perform any of the following acts with a minor, with or without
20 consent, for the purpose of arousing or satisfying the sexual
21 desires of either of them:

22 (1) Fondle or touch the inner thigh, groin, buttock, anus,
23 or breast of the minor.

24 (2) Touch the clothing covering the immediate area of the
25 inner thigh, groin, buttock, anus, or breast of the minor.

26 (3) Solicit or permit the minor to fondle or touch the inner
27 thigh, groin, buttock, anus, or breast of the person.

28 (4) Solicit the minor to engage in any act prohibited under
29 subsection 4, paragraph "*a*", subparagraph (1), (2), or (3).

30 *b.* A violation of this subsection is a serious misdemeanor.

31 4. *a.* It is unlawful for a person eighteen years of age
32 or older who is in a position of authority over a minor to
33 perform any of the following acts with a minor, with or without
34 consent, for the purpose of arousing or satisfying the sexual
35 desires of either of them:

- 1 (1) Fondle or touch the pubes or genitals of the minor.
2 (2) Permit or cause the minor to fondle or touch the
3 person's genitals or pubes.
4 (3) Cause the touching of the person's genitals to any part
5 of the body of the minor.
6 (4) Solicit the minor to engage in a sex act or solicit a
7 person to arrange a sex act with the minor.
8 (5) Inflict pain or discomfort upon the minor or permit the
9 minor to inflict pain or discomfort on the person.
10 b. A violation of this subsection is an aggravated
11 misdemeanor.

12 DIVISION V

13 SEX OFFENDER HOUSING WORKGROUP

14 Sec. 25. SEX OFFENDER — HOUSING — WORKGROUP. The
15 department of corrections shall lead a workgroup to study the
16 issue of housing for the placement of aging sex offenders
17 who qualify for release from the custody of the department
18 of corrections or the department of human services. The
19 workgroup shall consist of representatives of the departments
20 of inspections and appeals, human services, and justice, the
21 department on aging, the state public defender, the office
22 of ombudsman, the office of long-term care ombudsman, the
23 judicial branch, the older Iowans legislature Iowa legal aid,
24 and AARP. The workgroup shall meet to study this issue and
25 submit a report to the general assembly by January 2019, with
26 recommendations containing housing options for the placement of
27 aging sex offenders who qualify for release from custody.>

28 2. Title page, by striking lines 1 through 3 and inserting
29 <An Act relating to sexual offenses, including provisions
30 relating to sex offenders and sexually violent predators and
31 sexual offenses involving a child, providing penalties, and
32 including effective date provisions.>

KLEIN of Washington