

Request for Information Regarding Sex Offender Special Sentence and Registry Requirements

Iowa Department of Human Rights
Division of Criminal and Juvenile Justice Planning
Statistical Analysis Center
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Introduction

Representatives Chip Baltimore and Mary Wolfe requested that the Public Safety Advisory Board (PSAB) provide a report addressing questions regarding sex offender special sentence and registry requirements. This request was due to interest and questions generated by Senate File 385 during the 2013 Legislative Session.

Senate File 385 was a proposal that would have amended Iowa Code §692A.106 by allowing a person eighteen years of age or younger, at the time of an offense requiring a special sentence, to be granted an early release if the victim was thirteen years of age or older and the act did not include force and was not against the will of the victim. Requirements for an early release would be subject to similar requirements enumerated in the Code for modification to the sex offender registry. In addition, Senate File 385 would have removed the sex offender registry requirements for persons receiving an early release from the special sentence.

This legislation was met with interest from both chambers, but there were questions regarding its need, as some statutory mechanisms in current law may allow the same relief.

At the May 29, 2013 PSAB meeting members directed the Division of Criminal and Juvenile Justice Planning (CJJP) to undertake a review of the request by Representatives Baltimore and Wolfe. See Attachment A.

Below are the questions posed in the letter of request followed by CJJP response:

- **Whether or not anyone has applied for, or been granted early discharge from a 903B special sentence pursuant to §906.15 or any other statute?**

Iowa Code §906.15 allows early discharge from a special sentence in the same manner as any other parole with the exception of certain offenses committed with a child (709.3, 709.4 or 709.8) or sexual abuse in the second degree (709.3). These persons cannot be discharged from a special sentence until they serve the same length of time as their original convicting offense (e.g. C felony =10 years, B Felony= 25 years).

The Code makes no provision for persons to apply for an early discharge from the Special Sentence. It does, however, direct *both* the Board of Parole and parole officers to periodically review all paroles and make a determination if any person on parole is able and willing to fulfill the obligations of a law-abiding citizen without further supervision. If this determination is made, then the person is to be discharged from parole. See attachment B.

It should be noted that, upon release to the special sentence the Board and the District establish the terms and conditions of parole for the offender. The Board imposes standard

terms and conditions (e.g. restrictions on movement, association, treatment) and may impose additional conditions as part of the standard terms and conditions. The District can then require additional conditions or lift any of the conditions imposed by the Board of Parole, with three exceptions. These exceptions are: 1) no early discharge, 2) no contact with victim, and 3) no contact with minors.

The Board of Parole imposes the above conditions on special sentence paroles and thus becomes the determining body for eligibility for early release.

The Board of Parole and District Directors report that no one has yet been granted an early release from a 903B special sentence.

- **What policies, if any have the Board of Parole developed with regard to applications for early discharge of 903B special sentences?**

No application process for early discharge of 903B special sentences or regular parole is specified in the Code. The Board applies the same policies to the special sentences that apply to regular parole.

- **a) Does a judge’s authority, pursuant to §692A.128, include the authority to completely remove a person from the sex offender registry?**

A judge does not have the authority to remove a person from the registry unless the offender is on conditional release and all other components outlined in §692A.128 have been met (e.g. two year wait time for Tier I and five years for Tier II and III offenders, completion of all required sex offender treatment, risk assessment). See attachment C.

If a modification is granted, the offender is placed on inactive status and all information is taken off the website. Previously posted information is maintained by the Department of Public Safety and is no longer publically accessible.

Removal from the registry does not necessarily remove an offender’s information from the public domain. Previous registry information may be posted indefinitely on other “sex offender” websites. These sites collect and post information from registries nationally and do not update, maintain, or ensure that the information is current or correct. Additionally, sites may charge to have information corrected or removed.¹

¹Sex-offender data is used to collect money and intimidate: Innocent people listed as sex offenders on databases. Arizona Central. <http://www.azcentral.com/business/call12foraction/articles/20130518sex-offender-data-used-collect-money-intimidate.html>

b) How many §692A.128 applications have been filed and how many have been granted?

Number Filed

The Judicial District directors were surveyed to find out how many §692A.128 applications have been submitted since the requirement has been in effect. The directors report 33 requests, although the number may be slightly more due to personnel turnover and undocumented tracking.

Table 1. Requests for Registry Modification by District	District								Total
	1	2*	3	4	5	6	7	8	
Stipulated		1			1	1	1	1	5
No opinion					3				3
Declined					5				5
Did not meet criteria						4	1		5
Not applicable (not under supervision)							1		1
Juvenile required to register as adult; no stipulation required						6			6
Under investigation or pending						2	1		3
Offender did not follow through or withdrew			3		2	2			7
Total Requests	0	1	3	0	11	15	3	1	33

*New Director in July 2013. Prior requests not tracked. Estimates fewer than half a dozen previous requests

Number Granted

The Department of Public Safety reports approval of eight applications. Two were for out-of-state offenders with a juvenile offense. One was overturned by the Court of Appeals because the offender failed to petition while under conditional release.

One offender was granted a modification after he accrued a new misdemeanor conviction because after the new conviction he was placed under correctional supervision and was again eligible to apply.

All of the offenders removed from the registry were under 20 years old at the time of the offense, ranging in age from 14 to 19 years old. At the time of removal from the registry they ranged in age from 19 to 28 years. Table 2 shows the type of sex offense committed by offenders removed from the registry.

Table 2. Type of Sex offense Committed by Offenders Removed from the Registry

Convicting Description	Code	Code Year	Class	n
Sexual Abuse 3rd Degree/Life special Sentence.	709.4(2C,4)	2005	CF	1
LASCIVIOUS ACTS WITH A CHILD	709.8(4)	1978	DF	1
ASSAULT W/INTENT SEX ABUSE/NO INJ. (AGMS)	709.11(C)	1978	AG	1
ASSLT. TO SEX ABUSE/NO INJ	709.11,C (1983)	1983	AG	1
INDECENT EXPOSURE-	709.9 (1978)	1978	SE	1
Unknown Juvenile	Unknown	Unknown	Unknown	3

- **Could the statutory mechanisms created by §906.15 and §692A.128 be improved upon, and if so, how?**

The statutory mechanisms created by §906.15 and §692A.128 for early release from special sentence supervision and registration requirements of the sex offender registry are arduous, as they may well should be. However, these mechanisms are providing little to no relief for low-risk offenders or the justice system. There have been no early releases from the special sentence and only eight modifications have been granted to the registry, with one overturned by the Court of Appeals because the offender failed to petition while under supervision. The requirement that offenders must be under correctional supervision in order to petition for removal from the registry serves no legitimate public policy goal.

Currently the Districts do not have the discretion to grant early release from the special sentence under §906.15 because the Board of Parole imposes “no early release” as a condition of parole. Nonetheless, if Districts were able to grant early release from the special sentence it seems unlikely that many would be granted, as Districts require offenders to pay restitution in full before they can be discharged. Districts have, however, occasionally allowed offenders to discharge early if a payment plan has been established for court costs and fines and the offender is current on payments, and is fully employed.

The cost associated with a conviction can be significant, particularly for young offenders who have little earning power and reduced future earning power due to a sex offense conviction. Table 3 shows examples of costs association with a sex offense.

Table 3. Cost Examples

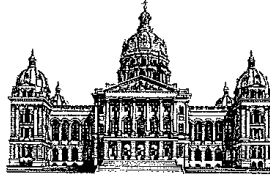
Courts	Costs	Source
Court Costs	\$0.00 -upward	
Fines*	\$250.00 - \$10,000.00	902.9 and 903.1
Surcharge	\$87.50-\$3,500.00 (35% of fine)	911.1 Criminal penalty surcharge
Restitution	\$0.00 -upward	
Other		
Registry fee and civil penalty	\$250.00 onetime and \$25.00 annual	692.110 Reg. Fee and Civil Penalty
District		
Sex offender programming	Set by district	
Other Treatment/program	Set by district	
Residential Placement	Set by district	905.12 Surrender of Earnings
Supervision fee	\$300.00	905.14 Fees for Probation and Parole
Registry modification evaluation	\$350.00	5th Judicial District
Pre Supervision		
Bond (10% of Bail)	\$195.00-\$3,250.00	A 2 Z Bail Bond Polk County
Jail	\$70.00 day plus \$25.00 booking fee	Black Hawk County
Phone calls	\$2.00 min - \$9.00 max	DOC

*The court may allow an offender perform unpaid community service work toward the amount of the fine at a per-hour rate equal to the federal minimum wage.

Since the intent of Senate File 385 was to provide some leeway for young low-risk offenders, it may worthwhile to consider remedies beyond the limited statutory mechanisms created by §906.15 and §692A.128.

Attachment A

Chip Baltimore
STATE REPRESENTATIVE
Forty-Seventh District
House Judiciary Committee, Chair



Mary Wolfe
STATE REPRESENTATIVE
Ninety-Eighth District
House Judiciary Committee, Ranking Member

Iowa Legislature
State of Iowa
Eighty-Fifth General Assembly
STATEHOUSE
Des Moines, Iowa 50319

Dear Public Safety Advisory Board Members,

During the 2013 Legislative Session, the House and Senate addressed Senate File 385, which dealt with modification of a sex offender's special sentence and sex offender registry requirements. While this legislation was met with great interest from members of both chambers, it was noted that statutory mechanisms already exist in current law that theoretically allows for the same relief as that provided by SF 385.

After doing some research, we found that the following statutes play a role in this issue:

Under Iowa Code § 903B.1, a criminal defendant convicted of a class "C" felony or greater offense under chapter 709, or a class "C" felony under § 728.12, "shall also be sentenced, in addition to any other punishment provided by law, to a special sentence committing the person into the custody of the director of the Iowa department of corrections for the rest of the person's life, with eligibility for parole as provided in chapter 906"; under § 903B.2, a Class D felony or misdemeanor sex offense conviction carries a "special sentence" of ten years duration.

Under § 692A.106(3), a defendant must register as a sex offender for the duration of his/her 903B special sentence.

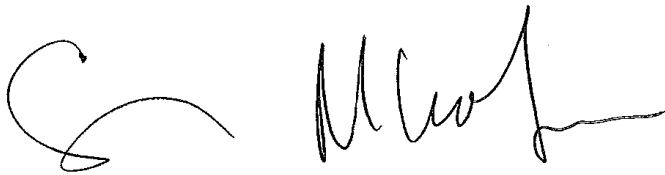
Iowa Code § 906.15 appears to provide for the possibility of early discharge from a 903B special sentence as follows:

(I) If a person has been sentenced to a special sentence under section 903B.1 or 903B.2 the person may be discharged early from the sentence in the same manner as any other person on parole. However, a person convicted of a violation of section 709.3, 709.4, or 709.8 committed on or with a child, or a person serving a sentence under section 902.12, shall not be discharged from parole until the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement.

Finally, Iowa Code § 692A.128 allows a sex offender to petition the Court for a "modification" of his/her sex offender registry requirements.

We would respectfully request that the Iowa Public Safety Advisory Board review the mentioned and related statutes and provide a report setting out:

1. Whether or not anyone has applied for, or been granted, early discharge from a 903B special sentence pursuant to § 905.15 or any other statute?
2. What policies, if any, has the Board of Parole developed with regards to applications for early discharge of 903B special sentences?
3. Does a judge's authority pursuant to § 692A.128 include the authority to completely remove a person from the sex offender registry? How many § 692A.128 applications have been filed, and how many have been granted?
4. Could the statutory mechanisms created by § 905.15 and 692A.128 be improved upon, and if so, how?

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a name that appears to be 'McCool'.

Attachment B

906.15 DISCHARGE FROM PAROLE.

Unless sooner discharged, a person released on parole shall be discharged when the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement. Discharge from parole may be granted prior to such time, when an early discharge is appropriate. The board shall periodically review all paroles, and when the board determines that any person on parole is able and willing to fulfill the obligations of a law-abiding citizen without further supervision, the board shall discharge the person from parole. A parole officer shall periodically review all paroles assigned to the parole officer, and when the parole officer determines that any person assigned to the officer is able and willing to fulfill the obligations of a law-abiding citizen without further supervision, the officer may discharge the person from parole after notification and approval of the district director and notification of the board of parole. In any event, discharge from parole shall terminate the person's sentence. If a person has been sentenced to a special sentence under section 903B.1 or 903B.2, the person may be discharged early from the sentence in the same manner as any other person on parole. However, a person convicted of a violation of section 709.3, 709.4, or 709.8 committed on or with a child, or a person serving a sentence under section 902.12, shall not be discharged from parole until the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement. A parole officer or the district director who acts in compliance with this section is acting in the course of the person's official duty and is not personally liable, either civilly or criminally, for the acts of a person discharged from parole by the officer after such discharge, unless the discharge constitutes willful disregard of the person's duty.

Attachment C

692A.128 MODIFICATION.

1. A sex offender who is on probation, parole, work release, special sentence, or any other type of conditional release may file an application in district court seeking to modify the registration requirements under this chapter.
2. An application shall not be granted unless all of the following apply:
 - a. The date of the commencement of the requirement to register occurred at least two years prior to the filing of the application for a tier I offender and five years prior to the filing of the application for a tier II or III offender.
 - b. The sex offender has successfully completed all sex offender treatment programs that have been required.
 - c. A risk assessment has been completed and the sex offender was classified as a low risk to reoffend. The risk assessment used to assess an offender as a low risk to reoffend shall be a validated risk assessment approved by the department of corrections.
 - d. The sex offender is not incarcerated when the application is filed.
 - e. The director of the judicial district department of correctional services supervising the sex offender, or the director's designee, stipulates to the modification, and a certified copy of the stipulation is attached to the application.
3. The application shall be filed in the sex offender's county of principal residence.
4. Notice of any application shall be provided to the county attorney of the county of the sex offender's principal residence, the county attorney of any county in this state where a conviction requiring the sex offender's registration occurred, and the department. The county attorney where the conviction occurred shall notify the victim of an application if the victim's address is known.
5. The court may, but is not required to, conduct a hearing on the application to hear any evidence deemed appropriate by the court. The court may modify the registration requirements under this chapter.
6. A sex offender may be granted a modification if the offender is required to be on the sex offender registry as a result of an adjudication for a sex offense, the offender is not under the supervision of the juvenile court or a judicial district judicial department of correctional services, and the department of corrections agrees to perform a risk assessment on the sex offender. However, all other provisions of this section not in conflict with this subsection shall apply to the application prior to an application being granted except that the sex offender is not required to obtain a stipulation from the director of a judicial district department of correctional services, or the director's designee.

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