

JAN 30 1995

JUDICIARY

HOUSE FILE 102
BY CATALDO

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act related to criminal offenses against minors and sexually
2 violent offenses and offenders committing those offenses, by
3 requiring registration by offenders, providing for the
4 establishment of a sex offender registry, and providing
5 penalties.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 102

1 Section 1. NEW SECTION. 692A.1 DEFINITIONS.

2 As used in this chapter and unless the context otherwise
3 requires:

4 1. "Convicted" or "conviction" means a person who is found
5 guilty of, pleads guilty to, or is sentenced or adjudicated
6 delinquent for an act which is a public offense in this state
7 or in another jurisdiction, including, but not limited to, a
8 person who has received a deferred sentence or a deferred
9 judgment and a person who has been found not guilty by reason
10 of insanity. "Convicted" or "conviction" does not mean a
11 plea, sentence, adjudication, deferral of sentence or judgment
12 which has been reversed or otherwise set aside.

13 2. a. "Criminal offense against a minor" means any of the
14 following criminal offenses or conduct:

15 (1) Kidnapping of a minor, except when committed by a
16 parent.

17 (2) False imprisonment of a minor, except when committed
18 by a parent.

19 (3) Any public offense involving sexual conduct directed
20 toward a minor.

21 (4) Solicitation of a minor to engage in an illegal sex
22 act.

23 (5) Use of a minor in a sexual performance.

24 (6) Solicitation of a minor to practice prostitution.

25 (7) Any public offense against a minor involving sexual
26 contact with the minor.

27 (8) An attempt to commit an offense enumerated in this
28 subsection.

29 (9) A public offense committed in another jurisdiction
30 which would constitute a public offense under subparagraphs
31 (1) through (8).

32 b. "Criminal offense against a minor" does not mean
33 conduct which is criminal only because of the age of the
34 victim if the perpetrator is eighteen years of age or younger
35 at the time of the conduct.

1 3. "Department" means the department of public safety.

2 4. "Law enforcement agency" means an agency or department
3 of federal, state, or local government or an entity which is
4 wholly owned, financed, or controlled by one or more agencies
5 or departments of federal, state, or local government, which
6 performs as its principal function the apprehension,
7 prosecution, adjudication, incarceration, or rehabilitation of
8 criminal offenders.

9 5. "Residence" means the place where a person sleeps,
10 which may include more than one location, and may be mobile or
11 transitory.

12 6. "Sexually violent offense" means any of the following
13 public offenses:

14 a. Sexual abuse as defined under section 709.1.

15 b. Assault with intent to commit sexual abuse in violation
16 of section 709.11.

17 c. Sexual exploitation by a counselor or therapist in
18 violation of section 709.15.

19 d. Sexual misconduct with offenders in violation of
20 section 709.16.

21 e. Any of the following offenses, if the offense involves
22 sexual abuse or attempted sexual abuse: murder, kidnapping,
23 or burglary.

24 f. A public offense committed in another jurisdiction
25 which would constitute a public offense under paragraphs "a"
26 through "e" if committed in this state.

27 Sec. 2. NEW SECTION. 692A.2 PERSONS REQUIRED TO
28 REGISTER.

29 1. A person who has been convicted of or acquitted by
30 reason of insanity of either a criminal offense against a
31 minor or a sexually violent offense shall register as provided
32 in this chapter for a period of ten years commencing from the
33 date of placement on probation, parole, work release, or other
34 release from custody. A person is not required to register
35 while incarcerated. If a person is placed on probation,

1 parole, or work release and the probation, parole, or work
2 release is revoked, the ten years shall commence anew upon
3 release from custody.

4 2. A person who has been convicted of an offense under the
5 laws of another state which would qualify the person as a
6 sexually violent predator under the federal Violent Crime
7 Control and Law Enforcement Act of 1994, Pub. L. No. 103-322,
8 shall register as provided in this chapter for an
9 indeterminate period terminating only upon a determination by
10 the sentencing court of the other state that registration is
11 no longer required.

12 Sec. 3. NEW SECTION. 692A.3 REGISTRATION PROCESS.

13 1. A person required to register under this chapter shall
14 register with the sheriff of the county of the person's
15 residence within ten days of establishment of residence in
16 this state or within ten days of any conviction for which the
17 person is not incarcerated, a release from custody, or
18 placement on probation, parole, or work release.

19 2. A person required to register under this chapter shall,
20 within ten days of changing residence within a county in this
21 state, notify the sheriff of the county in which the person is
22 registered of the change of address and any changes in the
23 person's telephone number in writing on a form provided by the
24 sheriff. The sheriff shall send a copy of the change of
25 address to the department within three working days of receipt
26 of notice of the address change.

27 3. A person required to register under this chapter shall
28 register with the sheriff of a county in which residence has
29 been newly established and notify the sheriff of the county in
30 which the person was registered, within ten days of changing
31 residence to a location outside the county in which the person
32 was registered. Registration shall be in writing on a form
33 provided by the sheriff and shall include the person's change
34 of address and any changes to the person's telephone number.
35 The sheriff shall send a copy of the change of address to the

1 department within three working days of receipt of notice of
2 the address change.

3 4. A person required to register under this chapter shall
4 notify the sheriff of the county in which the person is
5 registered, within ten days of changing residence to a
6 location outside this state, of the new residence address and
7 any changes in telephone number and shall register in the
8 other state within the ten days, if persons are required to
9 register under the laws of the other state. The sheriff shall
10 send a copy of the change of address to the department within
11 three working days of receipt of notice of the address change.

12 5. The collection of information by a court or releasing
13 agency under section 692A.5 shall serve as the person's
14 initial registration for purposes of this section. The court
15 or releasing agency shall forward a copy of the registration
16 to the department within three working days of completion of
17 registration.

18 Sec. 4. NEW SECTION. 692A.4 VERIFICATION OF ADDRESS.

19 1. The address of a person required to register under this
20 chapter shall be verified annually as follows:

21 a. On a date which falls within the month in which the
22 person was initially required to register, the department
23 shall mail a verification form to the last reported address of
24 the person. Verification forms shall not be forwarded to the
25 person who is required to register under this chapter if the
26 person no longer resides at the address, but shall be returned
27 to the department.

28 b. The person shall complete and mail the verification to
29 the department within ten days of receipt of the form.

30 c. The verification form shall be signed by the person,
31 and state the address at which the person resides. If the
32 person is in the process of changing residences, the person
33 shall state that fact as well as the old and new addresses or
34 places of residence.

35 2. Verification of address for a person who has been

1 convicted of an offense under the laws of another state which
2 would qualify the person as a sexually violent predator under
3 the federal Violent Crime Control and Law Enforcement Act of
4 1994, Pub. L. No. 103-322, shall be accomplished in the same
5 manner as in subsection 1, except that the verification shall
6 be done every three months at times established by the
7 department.

8 Sec. 5. NEW SECTION. 692A.5 DUTY TO FACILITATE
9 REGISTRATION.

10 1. When a person who is required to register under this
11 chapter is released from confinement from a jail, prison,
12 juvenile facility, or other correctional institution or
13 facility, or when such a person is convicted but not
14 incarcerated, the warden or superintendent, or in the case of
15 conviction without incarceration, the court, shall do the
16 following prior to release or sentencing of the convicted
17 person:

18 a. Obtain fingerprints and a photograph of the person if
19 fingerprints and a photograph have not already been obtained
20 in connection with the offense that triggers registration. A
21 current photograph may also be required.

22 b. Inform the person of the duty to register.

23 c. Inform the person that, within ten days of changing
24 residence, registration with the sheriff in the county in
25 which residence is established is required, if the residence
26 is within the state.

27 d. Inform the person that if the person moves their
28 residence to another state, the person must give the person's
29 new address to the sheriff's department in the county of the
30 person's old residence within ten days of changing addresses,
31 and that, if the other state has a registration requirement,
32 the person is also required to register in the new state of
33 residence, not later than ten days after establishing
34 residence in the other state.

35 e. Require the person to read and sign a form stating that

1 the duty of the person to register under this chapter has been
2 explained. If the person cannot read, is unable to write, or
3 refuses to cooperate, the duty and the form shall be explained
4 orally and a written record maintained by the person
5 explaining the duty and the form.

6 2. When a person who is required to register under this
7 chapter is released from confinement from a jail, prison,
8 juvenile facility, or other correctional institution or
9 facility, or when such a person is convicted but not
10 incarcerated, the warden or superintendent, or in the case of
11 conviction without incarceration, the court, shall verify that
12 the person has completed initial registration forms, and
13 accept the forms on behalf of the sheriff of the county of
14 registration. The warden or superintendent or the court shall
15 send a copy of the initial registration form to the department
16 within three working days of completion of the registration.
17 Probation, parole, work release, or any other form of release
18 after conviction shall not be granted unless the person has
19 registered as required under this chapter.

20 3. The warden or superintendent, or in the case the person
21 is placed on probation, the court, shall forward one copy of
22 the registration to the department and one copy to the sheriff
23 of the county in which the person is to reside within three
24 days after completion of the registration.

25 Sec. 6. NEW SECTION. 692A.6 CIVIL PENALTY FOR SEX
26 OFFENDERS.

27 1. In addition to any other penalty, at the time of
28 conviction for a public offense committed on or after the
29 effective date of this chapter which requires a person to
30 register under this chapter, the person shall be assessed a
31 civil penalty of one hundred dollars, to be payable in the
32 same manner as a fine.

33 2. The clerk of the district court shall transmit money
34 collected under this section each month to the treasurer of
35 state, who shall deposit the money in the sex offender

1 registry fund established under section 692A.11.

2 Sec. 7. NEW SECTION. 692A.7 FAILURE TO COMPLY --
3 PENALTY.

4 1. Failure to register as required under this chapter is a
5 serious misdemeanor for a first offense, an aggravated
6 misdemeanor for a second offense, and a class "D" felony for a
7 third or subsequent offense. Any fine imposed for a second or
8 subsequent offense shall not be suspended. The court shall
9 not defer judgment or sentence for any violation of the
10 registration requirements of this chapter. The failure of a
11 person who is on probation, parole, or work release, or any
12 other form of release to register as required under this
13 chapter shall result in the automatic revocation of the
14 person's probation, parole, or work release.

15 2. In determining if a violation is a second or subsequent
16 offense, a conviction for a violation of this section which
17 occurred more than ten years prior to the date of the
18 violation charged shall not be considered in determining that
19 the violation charged is a second, third, or subsequent
20 offense. Violations in any other states under sex offenders
21 registry provisions that are substantially similar to those
22 contained in this section shall be counted as previous
23 offenses. The court shall judicially notice the statutes of
24 other states which are substantially equivalent to this
25 section.

26 Sec. 8. NEW SECTION. 692A.8 DETERMINATION OF REQUIREMENT
27 TO REGISTER.

28 1. A person who is registered under this chapter may
29 request that the department determine whether the offense for
30 which the person has been convicted requires the person to
31 register under this chapter or whether the period of time
32 during which the person is obligated to register under this
33 chapter has expired.

34 2. Application for determination shall be made on forms
35 provided by the department and accompanied by copies of

1 sentencing or adjudicatory orders with respect to each offense
2 for which the person asks that a determination be made.

3 3. The department shall, within ninety days of the filing
4 of the request, determine whether the person is required to
5 register under this chapter.

6 Sec. 9. NEW SECTION. 692A.9 REGISTRATION FORMS.

7 Registration forms shall be prepared by the department and
8 shall include the registrant's name, the registrant's current
9 address, and, if applicable, the registrant's telephone
10 number. The forms may provide for the reporting of additional
11 relevant information such as, but not limited to, fingerprints
12 and photographs. Copies of blank forms shall be available
13 upon request to any person from the sheriff.

14 Sec. 10. NEW SECTION. 692A.10 DEPARTMENT DUTIES --
15 REGISTRY.

16 The department shall perform all of the following duties:

17 1. Develop and disseminate standard forms for use in
18 registering of, verifying addresses of, and verifying
19 understanding of registration requirements by persons required
20 to register under this chapter. Forms used to verify
21 addresses of persons required to register under this chapter
22 shall contain a warning against forwarding of the forms and of
23 the requirement to return the forms if the person to whom the
24 form is directed no longer resides at the address listed on
25 the form or the mailing.

26 2. Maintain a central registry of information collected
27 from persons required to register under this chapter, which
28 shall be known as the sex offender registry.

29 3. In consultation with the attorney general, adopt rules
30 under chapter 17A which list specific offenses under present
31 and former law which constitute criminal offenses against a
32 minor under this chapter.

33 4. Adopt rules under chapter 17A, as necessary, to ensure
34 compliance with registration and verification requirements of
35 this chapter, to provide guidelines for persons required to

1 assist in obtaining registry information, and to provide a
2 procedure for the dissemination of information contained in
3 the registry.

4 Sec. 11. NEW SECTION. 692A.11 SEX OFFENDER REGISTRY
5 FUND.

6 A sex offender registry fund is established as a separate
7 fund within the state treasury under the control of the
8 department. The fund shall consist of moneys received as a
9 result of the imposition of the penalty imposed under section
10 692A.6 and other funds allocated for purposes of establishing
11 and maintaining the sex offender registry, conducting research
12 and analysis related to sex crimes and offenders, and to
13 perform other duties required under this chapter.

14 Notwithstanding section 8.33, unencumbered or unobligated
15 moneys and any interest remaining in the fund on June 30 of
16 any fiscal year shall not revert to the general fund of the
17 state, but shall remain available for expenditure in
18 subsequent fiscal years.

19 Sec. 12. NEW SECTION. 692A.12 DUTIES OF THE SHERIFF.

20 The sheriff of each county shall comply with the
21 requirements of this chapter and rules adopted by the
22 department pursuant to this chapter.

23 Sec. 13. NEW SECTION. 692A.13 CONFIDENTIALITY OF
24 RECORDS.

25 Information contained in the sex offender registry is a
26 confidential record under section 22.7, subsection 9, and
27 shall only be disseminated or redisseminated as follows:

28 1. The department or a sheriff may disclose information to
29 law enforcement agencies for law enforcement or prosecution
30 purposes.

31 2. The department may disclose information to government
32 agencies which are conducting confidential background
33 investigations.

34 3. The department or a law enforcement agency with case-
35 specific authorization from the department may release

1 relevant information, other than the identity of a victim of a
2 criminal offense against a minor or a sexually violent
3 offense, that is necessary to protect the public concerning a
4 specific person who is required to register under this
5 chapter.

6 4. The department may disseminate departmental analyses of
7 information contained in the sex offender registry to persons
8 conducting bona fide research, if the data does not contain
9 individually identified information, as defined under section
10 692.1.

11 5. Criminal history information contained in the registry
12 may be released as provided in chapter 692 or used by law
13 enforcement agencies as an index for purposes of locating a
14 relevant conviction record.

15 Sec. 14. NEW SECTION. 692A.14 COOPERATION WITH
16 REGISTRATION.

17 Each agency of state and local government which possesses
18 information relevant to requirements that a person register
19 under this chapter shall provide that information to the court
20 or the department upon request. All confidential records
21 provided under this section shall remain confidential, unless
22 otherwise ordered by a court, by the lawful custodian of the
23 records, or by another person duly authorized to release such
24 information.

25 Sec. 15. NEW SECTION. 692A.15 IMMUNITY FOR GOOD FAITH
26 CONDUCT.

27 Law enforcement agencies and employees of law enforcement
28 agencies and state agencies and their employees shall be
29 immune from liability for good faith conduct under this
30 chapter.

31 Sec. 16. NEW SECTION. 692A.16 SUPREME COURT RULES.

32 The supreme court shall prescribe rules relating to the
33 judicial department's administration of procedures required
34 under this chapter.

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EXPLANATION

1 This bill establishes a central registry within the
2 department of public safety for persons who commit criminal
3 offenses against a minor and persons who commit sexually
4 violent offenses. Criminal offenses against a minor are
5 defined to include kidnapping of a minor, false imprisonment
6 of a minor, public offenses involving sexual conduct which is
7 directed toward a minor, solicitation of a minor to commit an
8 illegal sex act, use of a minor in a sexual performance,
9 solicitation of a minor to practice prostitution, public
10 offenses involving sexual contact with a minor, public
11 offenses under prior law which would be criminal offenses
12 against a minor if they were current law, and offenses
13 committed in another jurisdiction which would be criminal
14 offenses against a minor if committed in this state. Sexually
15 violent offenses include sexual abuse, assault with intent to
16 commit sexual abuse, sexual exploitation by a counselor or
17 therapist, sexual misconduct with offenders, and murder,
18 kidnapping, or burglary involving sexual abuse or attempted
19 sexual abuse. Persons who subject to the registration
20 requirement are required to be registered for 10 years from
21 the date that the person is placed on probation, parole, work
22 release, or otherwise released from custody with the sheriff
23 of the county of the person's residence. When the person is
24 initially released either the court or the agency or person
25 releasing the person will collect the initial registration
26 information, which will be forwarded to the department of
27 public safety and the sheriff of the county in which the
28 person is to reside. Each year the department will verify the
29 address of any persons convicted of committing criminal
30 offenses against minors. The addresses of persons convicted
31 of committing sexually violent offenses will be verified every
32 three months by the department. Persons who are required to
33 register under the bill are also required to reregister in the
34 event that the person moves and notify the sheriffs in both
35 locations of the address change. Penalties are established

1 for a failure to register. A first offense is a serious
2 misdemeanor; a second offense is an aggravated misdemeanor;
3 and a third or subsequent offense is a class "D" felony. Any
4 fines imposed for a second or subsequent violation are not to
5 be suspended. Persons who violate the registration
6 requirement are not eligible for a deferred judgment or
7 sentence. Persons who are required to register are, at the
8 time of conviction, also to be assessed a \$100 civil penalty,
9 which is to be deposited in a sex offender registry fund. The
10 fund is used to pay for the costs of maintaining the registry
11 by the department and to pay for research and analysis of the
12 data collected through the registry. Persons who are not sure
13 whether they are subject to the registration requirement may
14 ask the department to issue an opinion on the issue of whether
15 they are required to register. Registry information is
16 considered to be a confidential law enforcement record and its
17 dissemination and redissemination is generally limited to law
18 enforcement agencies, although further dissemination is
19 permitted under certain limited circumstances. State and
20 local government entities are to cooperate with the court and
21 the department in the provision of information relevant to
22 implementation of the registry. Law enforcement agencies and
23 employees of law enforcement agencies, as well as state
24 agencies and their employees, are immune from liability for
25 good faith conduct under the new chapter established in the
26 bill. The department of public safety and the supreme court
27 are to adopt rules to implement the provisions of the bill.

28 This bill may create a state mandate under chapter 25B.
29 However, pursuant to section 25B.2, subsection 3, unnumbered
30 paragraph 2, any requirement imposed under the bill is not a
31 state mandate which requires full state funding.

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**HOUSE FILE 102
FISCAL NOTE**

The estimate for House File 102 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 102 establishes a central registry within the Department of Public Safety for persons who commit criminal offenses against a minor and persons who commit sexually violent offenses. A person who has been convicted of either a criminal offense against a minor or a sexually violent offense shall register for a period of ten years commencing from the date of placement on probation, parole, work release, or other release from custody. A person is not required to register while incarcerated. A person is required to register with the sheriff of the county of the person's residence.

In addition to any other penalty, at the time of conviction for a public offense committed, the person shall be assessed a civil penalty of \$100 to be payable in the same manner as a fine. Fines collected shall be deposited in the Sex Offender Registry Fund. The Fund is to be controlled by the Department of Public Safety. Failure to register as required is a serious misdemeanor for a first offense, an aggravated misdemeanor for a second, and a third or subsequent offense is a Class "D" felony.

Assumptions

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections policies and practices will not change over the projection period.
3. Lag effects are assumed from the law's effective date to the date of first entry of affected offenders in the correctional system.
4. It is reasonable to assume that 1.0% of those individuals required to register as specified under the Bill will fail to do so and be charged with the new offense of failure to register.
5. It is likely that most sheriffs will handle less than ten reports a year.

Fiscal Analysis:

Projected Pool of Offenders to be Registered

Description	FY 1996	FY 1997	FY 2000
Total Offenders	437	870	2,142

It is estimated that approximately 1.0% of those individuals registered in a

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given year who are residing in the community and who otherwise would not have been revoked, will be charged with the new offense of failure to register. These individuals will likely be on probation or parole, and will automatically be revoked to prison, resulting in the following correctional impact on the prison population:

Increase in Admissions to Prison

Prison	FY 1996	FY 1997	FY 2000
Admissions	4	9	21
Population Increase	4	11	38

Fiscal Effect on the General Fund:

1. The Department of Corrections may experience the following increase in costs:

Description	FY 1996	FY 1997	FY 2000
Prison	\$16,000	\$44,000	\$151,000

Note: The marginal cost per year for an inmate is estimated to be \$3,982.

2. The Judicial Department may be required to develop a specific software application for collecting the \$100 civil penalty. The one-time cost for developing the application is estimated to range from \$5,000 to \$10,000. For each case tried at the District Court level, it will cost approximately \$3,907, and the estimated cost for Appellate Court time for each new offense will be approximately \$44,440.

Revenues to Sex Offender Registry Fund:

It is estimated that approximately \$61,500 in civil penalties may be assessed the first year as a result of the adoption of SF 93. The revenues are based on the assumption that 533 adult offenders and 86 juvenile offenders will be required to pay the \$100 civil penalty. However, based on data regarding fines collection rates in 17 Iowa counties, it is anticipated that approximately \$24,066 will actually be collected the first year for the Sex Offender Registry Fund (assuming a collection rate of 18.0% for those sentenced to prison and 54.0% for other offenders).

Department of Public Safety - The Department is required to develop and disseminate standard forms for registration, maintain a central registry of information collected from persons required to register, and adopt rules. The estimated cost for implementing the requirements of the Bill include:

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Description	FY 1996	FY 1997
Salaries	\$51,272	\$51,272
Support	5,000	5,000
Capital Eqmt.	75,000	0
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Total Expenditures	\$131,272	\$56,272

Depending on the number of requests received, the Department of Public Safety anticipates employing a minimum of two FTE positions to fulfill the requirements of the Bill. In addition, there would be a need to purchase computer equipment and develop programs for the Sex Crimes Offender Registry. The Registry would be available by way of the Iowa Terminal to all sheriff's offices throughout the State.

The Department expects to collect approximately \$5,000 in revenues the first year by assessing a \$6.00 fee to non-law enforcement agencies requesting information relating to the Sex Offender Registry. Based on the anticipated collection of fines and the anticipated fees generated, there are likely to be insufficient resources to cover the anticipated costs of maintaining the Registry.

Sources:

Criminal Juvenile Justice Planning
 Department of Public Safety
 Iowa State Association of Counties
 Judicial Department
 Department of Corrections

(LSB 1172hh, LAM)

FILED FEBRUARY 14, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR