

1-8-96 Judiciary

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BY FRAISE

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to prison time served by persons convicted of an  
2 aggravated misdemeanor or greater offense, by providing for  
3 changes in the mandatory minimum terms of sentences to be  
4 served, providing for a reduction in the amount of good and  
5 honor time that may be earned by forcible felons, providing  
6 for a legislative interim and a departmental study, providing  
7 for a pilot project, and making other related changes.

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

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1 Section 1. Section 901.10, Code 1995, is amended to read  
2 as follows:

3 901.10 IMPOSITION OF MANDATORY MINIMUM SENTENCES.

4 1. A court sentencing a person for an act prohibited under  
5 section 124.406 or sections 124.401 and 124.413 may, at its  
6 discretion, waive the mandatory minimum term of confinement if  
7 the person was not using or in control of a firearm and did  
8 not commit an assault as defined under section 708.1 while  
9 participating in the prohibited act, if mitigating  
10 circumstances exist, and if the mitigating circumstances are  
11 stated specifically in the record. However, the state may  
12 appeal the discretionary decision on the grounds that the  
13 stated mitigating circumstances do not warrant a reduction of  
14 the sentence.

15 2. A court sentencing a person for the person's first  
16 conviction under section ~~124.406~~~~7~~~~-124.413~~~~7~~ or 902.7 may, at  
17 its discretion, sentence the person to a mandatory minimum  
18 term which is less than the mandatory minimum term which is  
19 provided by the statute if mitigating circumstances exist and  
20 those circumstances are stated specifically in the record.  
21 However, the state may appeal the discretionary decision on  
22 the grounds that the stated mitigating circumstances do not  
23 warrant a reduction of the sentence.

24 Sec. 2. Section 902.11, unnumbered paragraph 1, Code 1995,  
25 is amended to read as follows:

26 A person serving a sentence for conviction of a felony,  
27 other than a forcible felony, who has a criminal record of one  
28 or more prior convictions for a forcible felony or a crime of  
29 a similar gravity in this or any other state, shall be denied  
30 parole or work release unless the person has served at least  
31 one-half of the maximum term of the defendant's sentence.  
32 However, the mandatory sentence provided for by this section  
33 does not apply if either of the following apply:

34 Sec. 3. Section 902.11, subsection 1, Code 1995, is  
35 amended to read as follows:

1     1. ~~The sentence-being-served-is-for-a-felony-other-than-a~~  
2 ~~forcible-felony-and-the~~ sentences for the prior forcible  
3 felonies expired at least five years before the date of  
4 conviction for the present felony.

5     Sec. 4. NEW SECTION. 902.12 MINIMUM SENTENCE -- ELIGI-  
6 BILITY OF FORCIBLE FELONS FOR PAROLE OR WORK RELEASE.

7     1. A person serving a sentence for a conviction of a  
8 forcible felony who has a criminal record of one prior  
9 conviction for a forcible felony or a crime of similar gravity  
10 in this or any other state shall be denied parole or work  
11 release unless the person has served at least eighty-five  
12 percent of the maximum term of the person's sentence.

13     2. A person serving a sentence for a conviction of a  
14 forcible felony who has a criminal record of two or more prior  
15 convictions for a forcible felony or a crime of similar  
16 gravity in this or any other state shall serve one hundred  
17 percent of the maximum term of the person's sentence and shall  
18 not be released on parole or work release.

19     Sec. 5. Section 903A.2, unnumbered paragraph 1, Code 1995,  
20 is amended to read as follows:

21     Each Unless an inmate is sentenced pursuant to section  
22 902.12, subsection 2, an inmate of an institution under the  
23 Iowa department of corrections, is eligible for a reduction of  
24 sentence of one day for each day of good conduct of the inmate  
25 while committed to one of the department's institutions. ~~In~~  
26 Unless an inmate is sentenced pursuant to section 902.12,  
27 subsection 2, in addition to the sentence reduction of one day  
28 for each day of good conduct, each inmate is eligible for an  
29 additional reduction of sentence of up to five days a month if  
30 the inmate participates satisfactorily in employment in the  
31 institution, in Iowa state industries, in an inmate employment  
32 program established by the director, in a treatment program  
33 established by the director, or in an inmate educational  
34 program approved by the director. Inmates who are sentenced  
35 pursuant to section 902.12, subsection 2, are eligible for a

1 reduction of sentence of up to one day per month for good  
2 conduct while committed to one of the department's  
3 institutions. Reduction of sentence pursuant to this section  
4 may be subject to forfeiture pursuant to section 903A.3.  
5 Computation of good conduct time is subject to the following  
6 conditions:

7     Sec. 6. APPLICABILITY OF WAIVER TO CURRENT INMATES. The  
8 board of parole shall identify inmates currently serving  
9 mandatory minimum sentences for an offense under section 1 of  
10 this Act that would have been eligible for waiver of the  
11 mandatory minimum term if the inmates had been sentenced on or  
12 after the effective date of this Act. For each inmate  
13 identified, the board of parole shall review the inmate's  
14 record and the circumstances surrounding the inmate's  
15 conviction and make a determination as to whether the inmate's  
16 mandatory minimum term should be waived. If the parole board  
17 determines that the inmate's mandatory minimum term of  
18 confinement should be waived, the inmate shall be immediately  
19 eligible for parole.

20     Sec. 7. INTERIM STUDY COMMITTEE. The legislative council  
21 is requested to establish an interim committee to study  
22 currently available sentencing and incarceration options. The  
23 study may include but shall not be limited to a review of  
24 available jail, community corrections, and prison beds; the  
25 potential impact of the use of split sentencing on jail,  
26 community corrections, and prison bed space; security needs  
27 and costs associated with the implementation of hard labor  
28 requirements for persons incarcerated in corrections  
29 institutions; and the nature and costs associated with other  
30 sentencing options. In addition to legislative members, the  
31 membership of the interim committee shall include the  
32 following public members:

- 33     1. A representative from the board of parole.
- 34     2. A representative from the division of criminal and  
35 juvenile justice planning of the department of human rights.

1 3. A representative from an association of sheriffs and  
2 deputy sheriffs.

3 4. A representative from the department of corrections.

4 5. A representative from a county board of supervisors.

5 The committee shall submit findings and any recommendations  
6 in a report to the general assembly by January 1, 1997.

7 Sec. 8. RISK ASSESSMENT STUDY. The department of  
8 corrections, in consultation with the board of parole and the  
9 division of criminal and juvenile justice planning of the  
10 department of human rights, shall conduct a study of the  
11 various risk assessment tools currently used in the Iowa  
12 corrections system to determine the relative risk posed by a  
13 criminal offender and the prospects for the offender's  
14 rehabilitation, and make findings and recommendations  
15 regarding the implementation and use of a risk assessment tool  
16 during or as part of the presentence investigation process.  
17 In conducting the study, the department shall also consult  
18 with faculty members with expertise in risk assessment who are  
19 from Iowa institutions of higher education which offer degree  
20 programs in criminology. The recommendations and any  
21 corresponding findings shall be submitted in a report to the  
22 general assembly by January 1, 1997.

23 Sec. 9. SPLIT-SENTENCING PILOT PROJECT.

24 1. The general assembly finds that the implementation of a  
25 split-sentencing pilot project within this state could serve  
26 as a test for a fair and flexible method of dispensing  
27 criminal justice which provides for an incremental approach to  
28 the imposition of aggravated misdemeanor and felony criminal  
29 sentences and may help to reduce the current prison  
30 overcrowding problems while protecting the public safety. A  
31 split-sentencing pilot project is therefore established in a  
32 judicial district to be determined by the supreme court. The  
33 judicial district shall be selected based on the availability  
34 of jail space within the judicial district, and whether the  
35 judicial district in consultation with the county board or

1 boards of supervisors and the sheriff or sheriffs desires to  
2 participate in the project. Notwithstanding any other  
3 contrary provision of law, subsection 2 of this section shall  
4 apply within and only within the judicial district which is  
5 selected to participate in this pilot project from the date of  
6 the enactment of this Act through June 30, 1997.

7 2. By record entry at the time of or after sentencing for  
8 an aggravated misdemeanor or a felony, other than a class "A"  
9 felony, the court may sentence the defendant to serve up to  
10 ninety days of the sentence in the county jail and suspend the  
11 balance of the term imposed. If the person is ordered to  
12 serve up to ninety days in jail, the costs of the person's  
13 confinement shall be paid by the state at the rate negotiated  
14 by the department of corrections with the judicial district  
15 under section 904.908. Payment shall be made by the  
16 department of revenue and finance upon submission of a voucher  
17 executed by the sheriff. Persons serving time in a county  
18 jail under this subsection shall be committed to the custody  
19 of the director of the department of corrections and the  
20 department shall be responsible for all prisoner medical  
21 costs.

22 EXPLANATION

23 This bill provides that the court, when sentencing a person  
24 for certain drug offenses not involving a firearm or an  
25 assault, may waive an applicable mandatory minimum sentence if  
26 mitigating circumstances exist and are on record. The waiver  
27 is appealable by the state. The waiver may also be made  
28 retroactively applicable at the discretion of the parole  
29 board.

30 The bill also provides that persons sentenced for a second  
31 forcible felony are to serve 85 percent of their sentence  
32 before they are eligible for parole or work release. Persons  
33 sentenced for a third or subsequent forcible felony, under the  
34 bill, are to serve their entire sentence but are eligible for  
35 sentence reductions of up to 12 days per year for good

1 behavior. Persons confined in an institution under the  
2 control of the department of corrections are currently  
3 eligible for reductions of one day for each day of good  
4 behavior and an additional five days a month for participation  
5 in institutional employment, an employment program, or an  
6 educational or treatment program.

7 The bill establishes a split-sentencing pilot project under  
8 which a court in the judicial district selected for the pilot  
9 project would be permitted to sentence a person convicted of a  
10 crime which is classified as an aggravated misdemeanor through  
11 a class "B" felony to up to 90 days in a county jail as part  
12 of the person's sentence and suspend the remaining term of  
13 confinement. If a person is serving a sentence of confinement  
14 in a county jail, the person is committed to the custody of  
15 the director of the department of corrections and the costs of  
16 confinement in the jail and medical care will be paid by the  
17 state.

18 The bill requests that the legislative council establish an  
19 interim committee to study currently available sentencing and  
20 incarceration options. The committee is to include  
21 representatives of the board of parole, the division of  
22 criminal and juvenile justice planning, the sheriffs  
23 association, county boards of supervisors, and the department  
24 of corrections.

25 The bill also directs the department of corrections to  
26 study the risk assessment tools currently used by the Iowa  
27 corrections system. The department is to consult with persons  
28 with expertise in criminology, the division of criminal and  
29 juvenile justice planning, and the board of parole.

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