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FILED MAR 4 1996

SENATE FILE 2390

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2279)

(P.707)
 Passed Senate, Date 3-11-96 Passed House, Date _____
 Vote: Ayes 49 Nays 0 Vote: Ayes _____ Nays _____
 Approved _____

A BILL FOR

1 An Act relating to establishing community-based corrections
 2 programs.

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

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S.F. 2390

REPRINTED

1 Section 1. Section 321J.2, subsection 2, paragraphs b and
2 c, Code 1995, are amended to read as follows:

3 b. An aggravated misdemeanor for a second offense and
4 shall be imprisoned in the county jail or community-based
5 correctional facility not less than seven days, which minimum
6 term cannot be suspended notwithstanding section 901.5,
7 subsection 3 and section 907.3, subsection 3 2, and assessed a
8 fine of not less than seven hundred fifty dollars.

9 c. A class "D" felony for a third offense and each
10 subsequent offense and shall be imprisoned in the county jail
11 for a determinate sentence of not more than one year but not
12 less than thirty days, or committed to the custody of the
13 director of the department of corrections, and assessed a fine
14 of not less than seven hundred fifty dollars. The minimum
15 jail term of thirty days cannot be suspended notwithstanding
16 section 901.5, subsection 3, and section 907.3, subsection 3
17 2, however, the person sentenced shall receive credit for any
18 time the person was confined in a jail or detention facility
19 following arrest. If a person is committed to the custody of
20 the director of the department of corrections pursuant to this
21 paragraph and the sentence is suspended, the sentencing court
22 shall order that the offender serve the thirty-day minimum
23 term in the county jail. If the sentence which commits the
24 person to the custody of the director of the department of
25 corrections is later imposed by the court, all time served in
26 a county jail toward the thirty-day minimum term shall count
27 as time served toward the sentence which committed the person
28 to the custody of the director of the department of
29 corrections. A person convicted of a second or subsequent
30 offense shall be ordered to undergo a substance abuse
31 evaluation prior to sentencing. If a person is convicted of a
32 third or subsequent offense or if the evaluation recommends
33 treatment, the offender may be committed to the custody of the
34 director of the department of corrections, who, if the
35 sentence is not suspended, shall assign the person to a

1 facility pursuant to section 904.513 or the offender may be
2 committed to treatment in the community under the provisions
3 of section 907.6.

4 Sec. 2. NEW SECTION. 901A.1 CORRECTIONS CONTINUUM --
5 INTERMEDIATE CRIMINAL SANCTIONS PROGRAM.

6 1. The corrections continuum consists of the following:

7 a. LEVEL ONE. Noncommunity-based corrections sanctions
8 including the following:

9 (1) SELF-MONITORED SANCTIONS. Self-monitored sanctions
10 which are not monitored for compliance including, but not
11 limited to, fines, community service, and pretrial release on
12 one's own recognizance.

13 (2) OTHER THAN SELF-MONITORED SANCTIONS. Other than self-
14 monitored sanctions which are monitored for compliance by
15 other than the district department of correctional services
16 including, but not limited to, mandatory mediation, victim and
17 offender reconciliation, and noncommunity-based corrections
18 supervision.

19 b. LEVEL TWO. Probation and parole options consisting of
20 the following:

21 (1) MONITORED SANCTIONS. Monitored sanctions are
22 administrative supervision sanctions which are monitored for
23 compliance by the district department of correctional services
24 and include, but are not limited to, low-risk offender-
25 diversion programs under paragraph "a".

26 (2) SUPERVISED SANCTIONS. Supervised sanctions are
27 regular probation or parole supervision, and supervised
28 pretrial release with services including minimum, normal, and
29 intensive supervision only.

30 (3) INTENSIVE SUPERVISION SANCTIONS. Intensive
31 supervision sanctions provide levels of supervision above
32 sanctions in subparagraph (2) but are less restrictive than
33 sanctions under paragraph "c" and include electronic
34 monitoring, day reporting, day programming, live out programs
35 for persons on work release or who have violated chapter 321J,

1 institutional work release under section 904.910, and release
2 with intensive supervision services.

3 c. LEVEL THREE. Quasi-incarceration sanctions. Quasi-
4 incarceration sanctions are those supported by residential
5 facility placement or twenty-four hour electronic monitoring
6 including, but not limited to, the following:

7 (1) Residential treatment facilities, either secure or
8 nonsecure.

9 (2) Operating while intoxicated offender treatment
10 facilities.

11 (3) Work release facilities.

12 (4) House arrest with electronic monitoring.

13 d. LEVEL FOUR. Short-term incarceration designed to be of
14 short duration, including, but not limited to, the following:

15 (1) Prison with sentence reconsideration.

16 (2) Twenty-one-day shock probation for persons who violate
17 chapter 321J.

18 (3) Jail for less than thirty days.

19 (4) Relapse treatment.

20 (5) Violators' facilities.

21 (6) Boot camps.

22 e. LEVEL FIVE. Incarceration which consists of the
23 following:

24 (1) Prison.

25 (2) Jail for thirty days or longer.

26 2. "Intermediate criminal sanctions program" means a
27 program structured around the corrections continuum in
28 subsection 1, describing sanctions and services available in
29 each level of the continuum in the district and containing the
30 policies of the district department of correctional services
31 regarding placement of a person in a particular level of
32 sanction and the requirements and conditions under which a
33 defendant will be transferred between levels in the
34 corrections continuum under the program.

35 3. An intermediate criminal sanctions program shall

1 consist of only levels two and three of the corrections
2 continuum and shall be operated in accordance with an
3 intermediate criminal sanctions plan adopted by the judicial
4 district and the judicial district department of correctional
5 services. The plan adopted shall be designed to reduce
6 probation revocations to prison through the use of
7 incremental, community-based sanctions for minor probation
8 violations. A copy of the program and plan shall be filed
9 with the chief judge of the judicial district, the department
10 of corrections, and the division of criminal and juvenile
11 justice planning of the department of human rights.

12 4. a. The district department of correctional services
13 shall place an individual committed to it under section 907.3,
14 subsection 2, to the sanction and level of supervision which
15 is appropriate to the individual based upon a risk assessment
16 evaluation. Placements may be to levels two and three of the
17 corrections continuum and may include commitment of the
18 individual to a residential treatment facility established
19 under this chapter or, with the approval of the department of
20 corrections, a violator facility established pursuant to
21 section 904.207.

22 b. The district department may transfer an individual
23 along the intermediate criminal sanctions program operated
24 pursuant to subsection 3 as necessary and appropriate during
25 the period the individual is assigned to the district
26 department. However, transfer to a different level of
27 supervision or sanctions under subsection 1 shall only occur
28 as follows:

29 (1) If the individual agrees to the transfer, the court
30 shall review the transfer without a hearing. Such individual
31 shall be afforded assistance of counsel prior to such
32 agreement. The agreement must be made in writing, must advise
33 the individual that the individual is waiving the individual's
34 right to an evidentiary hearing and must state the reasons for
35 the transfer. The court shall approve the transfer only if it

1 determines that the district department has established by a
2 preponderance of the evidence that the transfer is justified.
3 The court shall give written reasons for its decision to
4 either approve or disapprove the transfer.

5 (2) If the individual does not agree to the transfer, the
6 individual may appeal the decision to the director of the
7 district department. If the director approves the transfer,
8 the defendant may contest the transfer at a hearing before the
9 court. No transfer to a different level of supervision shall
10 be effective until after the appeal and hearing has been held.
11 Nothing in this section shall limit the district department's
12 ability to seek a revocation of the individual's probation
13 pursuant to section 908.11.

14 Sec. 3. Section 905.1, subsection 2, Code 1995, is amended
15 to read as follows:

16 2. "Community-based correctional program" means
17 correctional programs and services, including but not limited
18 to an intermediate criminal sanctions program in accordance
19 with the corrections continuum in section 901A.1, designed to
20 supervise and assist individuals who are charged with or have
21 been convicted of a felony, an aggravated misdemeanor or a
22 serious misdemeanor, or who are on probation or parole in lieu
23 of or as a result of a sentence of incarceration imposed upon
24 conviction of any of these offenses, or who are contracted to
25 the district department for supervision and housing while on
26 work release.

27 An intermediate criminal sanctions program shall be
28 designed by a district department in a manner that provides
29 services in a manner free of disparities based upon an
30 individual's race or ethnic origin.

31 Sec. 4. Section 907.3, subsection 1, unnumbered paragraph
32 1, Code Supplement 1995, is amended to read as follows:

33 With the consent of the defendant, the court may defer
34 judgment and may place the defendant on probation upon such
35 conditions as it may require. Upon a showing that the

1 defendant is not ~~co-operating~~ cooperating with the program of
2 probation or is not responding to it, the court may withdraw
3 the defendant from the program, pronounce judgment, and impose
4 any sentence authorized by law. Before taking such action,
5 the court shall give the defendant an opportunity to be heard
6 on any matter relevant to the proposed action. Upon
7 fulfillment of the conditions of probation, the defendant
8 shall be discharged without entry of judgment. Upon violation
9 of the conditions of probation, the court may proceed as
10 provided in chapter 908.

11 Sec. 5. Section 907.3, subsection 2, Code Supplement 1995,
12 is amended to read as follows:

13 2. At the time of or after pronouncing judgment and with
14 the consent of the defendant, the court may defer do either of
15 the following:

16 a. Defer the sentence and assign the defendant to the
17 judicial district department of correctional services.
18 However, the court shall not defer the sentence for a
19 violation of section 708.2A if the defendant has previously
20 received a deferred judgment or sentence for a violation of
21 section 708.2 or 708.2A which was issued on a domestic abuse
22 assault, or if similar relief was granted anywhere in the
23 United States concerning that jurisdiction's statutes which
24 substantially correspond to domestic abuse assault as provided
25 in section 708.2A. In addition, the court shall not defer a
26 sentence if it is imposed for a conviction for or plea of
27 guilty to a violation of section 236.8 or for contempt
28 pursuant to section 236.8 or 236.14. Upon a showing that the
29 defendant is not fulfilling the conditions of probation, the
30 court may revoke probation and impose any sentence authorized
31 by law. Before taking such action, the court shall give the
32 defendant an opportunity to be heard on any matter relevant to
33 the proposed action. Upon violation of the conditions of
34 probation, the court may proceed as provided in chapter 908.

35 b. Suspend the sentence and place the defendant on

1 probation upon such terms and conditions as the court may
2 require including commitment to an alternate jail facility, or
3 a secure or other community correctional residential treatment
4 facility, for a specific number of days to be followed by a
5 term of probation as specified in section 907.7, or commitment
6 of the defendant to the judicial district department of
7 correctional services for supervision or services under
8 section 901A.1, subsection 3.

9 A person so committed who has probation revoked shall be
10 given credit for such time served. However, the court shall
11 not suspend the minimum term of two days imposed pursuant to
12 section 708.2A, and the court shall not suspend a sentence
13 imposed pursuant to section 708.2A, and the court shall not
14 suspend a sentence imposed pursuant to section 236.8 or 236.14
15 for contempt.

16 Sec. 6. Section 907.3, subsection 3, Code Supplement 1995,
17 is amended by striking the subsection.

18 Sec. 7. Section 907.6, Code 1995, is amended to read as
19 follows:

20 907.6 CONDITIONS OF PROBATION -- REGULATIONS.

21 Probationers are subject to the conditions established by
22 the judicial district department of correctional services
23 subject to the approval of the court, and any additional
24 reasonable conditions which the court or district department
25 may impose to promote rehabilitation of the defendant or
26 protection of the community. Conditions may include but are
27 not limited to adherence to regulations generally applicable
28 to persons released on parole and including requiring unpaid
29 community service as allowed pursuant to section 907.13.

30 Sec. 8. Section 908.11, Code 1995, is amended to read as
31 follows:

32 908.11 VIOLATION OF PROBATION.

33 A probation officer or the judicial district department of
34 correctional services having probable cause to believe that
35 any person released on probation has violated the conditions

1 of probation shall proceed by arrest or summons as in the case
2 of a parole violation. The functions of the liaison officer
3 and the board of parole shall be performed by the judge or
4 magistrate who placed the alleged violator on probation if
5 that judge or magistrate is available, otherwise by another
6 judge or magistrate who would have had jurisdiction to try the
7 original offense. If the probation officer proceeds by
8 arrest, any magistrate may receive the complaint, issue an
9 arrest warrant, or conduct the initial appearance and probable
10 cause hearing if it is not convenient for the judge who placed
11 the alleged violator on probation to do so. The initial
12 appearance, probable cause hearing, and probation revocation
13 hearing, or any of them, may at the discretion of the court be
14 merged into a single hearing when it appears that the alleged
15 violator will not be prejudiced thereby. If the violation is
16 established, the court may continue the probation with or
17 without an alteration of the conditions of probation. If the
18 defendant is an adult the court may hold the defendant in
19 contempt of court and sentence the defendant to a jail term
20 while continuing the probation, order the defendant to be
21 placed in a secure residential treatment facility under the
22 supervision of the judicial district department of
23 correctional services, order the defendant to be placed in a
24 violator facility established pursuant to section 904.207
25 while continuing the probation, or revoke the probation and
26 require the defendant to serve the sentence imposed or any
27 lesser sentence, and, if imposition of sentence was deferred,
28 may impose any sentence which might originally have been
29 imposed.

30

EXPLANATION

31 This bill provides that an individual who is given a
32 deferred or suspended sentence may be placed in an
33 intermediate criminal sanctions program through a judicial
34 district department of correctional services in addition to
35 the current dispositions available to the court.

1 The bill authorizes each judicial district to adopt an
2 intermediate criminal sanctions plan before the judicial
3 district department of correctional services may implement an
4 intermediate criminal sanctions program. A program shall
5 consist of two levels of sanctions and services, extensive
6 supervision, and short-term confinement in secure residential
7 treatment facilities.

8 A judicial district department of correctional services
9 operating an intermediate criminal sanctions program would
10 have the authority to move an individual in the program to
11 different levels of sanctions or services based on the
12 judicial district department's assessment of the individual's
13 needs. Individuals who do not agree with a proposed transfer
14 to a different level of sanctions or supervision have the
15 right to appeal the decision first to the director of the
16 judicial district department and then to the court.

17 The bill also provides that a court may suspend the
18 sentence of an individual, place the individual on probation,
19 and then assign the individual to the judicial district
20 department of correctional services for placement in an
21 intermediate criminal sanctions program.

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SENATE FILE 2390

S-5261

- 1 Amend Senate File 2390 as follows:
- 2 1. Page 2, lines 11 and 12, by striking the words
- 3 ", community service, and pretrial release on one's
- 4 own recognizance" and inserting the following: "and
- 5 community service".
- 6 2. Page 2, line 25, by striking the words "under
- 7 paragraph "a".
- 8 3. Page 2, by striking lines 27 through 29 and
- 9 inserting the following: "regular probation or parole
- 10 supervision."
- 11 4. Page 3, line 1, by inserting before the word
- 12 "institutional" the following: "and".
- 13 5. Page 3, lines 1 and 2, by striking the words
- 14 ", and release with intensive supervision services".
- 15 6. Page 3, by striking lines 19 through 21 and
- 16 inserting the following:
- 17 "(4) Violators' facilities."
- 18 7. Page 4, lines 3 and 4, by striking the words
- 19 "judicial district and the" and inserting the
- 20 following: "chief judge of the judicial district and
- 21 the director of the".
- 22 8. Page 4, line 7, by striking the word "minor".
- 23 9. Page 4, line 26, by striking the words
- 24 "different level" and inserting the following: "more
- 25 restrictive level or sublevel".
- 26 10. Page 4, by striking lines 30 through 33 and
- 27 inserting the following: "shall review the transfer
- 28 without a hearing. The agreement must be made in
- 29 writing, must advise the individual that the
- 30 individual has the opportunity to consult with an
- 31 attorney, that the individual is waiving the
- 32 individual's".
- 33 11. Page 5, line 9, by striking the words
- 34 "different level" and inserting the following: "more
- 35 restrictive level or sublevel".
- 36 Page 7, line 9, by inserting after the word
- 37 "committed" the following: ", except a person
- 38 committed to the judicial district department of
- 39 correctional services for supervision or services
- 40 under section 901A.1, subsection 3,".

By ROBERT DVORSKY

S-5261 FILED MARCH 11, 1996

ADOPTED

(P. 707)

SENATE FILE 2390

S-5245

- 1 Amend Senate File 2390 as follows:
- 2 1. Page 2, line 25, by striking the words "under
- 3 paragraph "a".

By ROBERT DVORSKY

S-5245 FILED MARCH 7, 1996

Out of Order 3-11-96 (P. 707)

**SENATE FILE 2390
FISCAL NOTE**

A fiscal note for **Senate File 2390** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2390 establishes an intermediate criminal sanctions program through the Community-Based Corrections District Departments. The Bill authorizes each District Department to move individuals in the Program to different levels of sanction, based on the individual's needs. An individual may appeal being moved to a more restrictive level of supervision.

BACKGROUND

The Intermediate Criminal Sanctions Task Force was created by SF 267 and held its first meeting in July 1993. The Task Force was staffed by the Criminal and Juvenile Justice Planning Division, Department of Human Rights and met during FY 1994, FY 1995, and FY 1996. The Task Force was to recommend a Statewide structure for intermediate sanctions. The resulting program was to utilize existing resources and provide a means of increasing or decreasing the intensity of supervision to match the offender's needs. This Bill is a result of those recommendations.

ASSUMPTIONS

1. There will be a lag between the effective date of this Bill and the implementation of the program because of the need to plan for the program and to reach the required agreements between the chief judge and the district department director.
2. Existing probation and parole programs will be utilized in the Intermediate Criminal Sanctions Program, and clients will be moved to the appropriate level of supervision to meet his or her needs.

CORRECTIONAL IMPACT

There is no readily available information from which to predict the impact on the community-based corrections system or to estimate the savings in prisons beds.

FISCAL IMPACT

There is no readily available information from which to estimate the costs of this Bill. The Courts may experience some additional cases from the appeal of transfers to more restrictive levels of supervision. The cost is estimated to be approximate \$1,300 per appeal. The Department of Corrections is not expected to experience cost increases to implement the program.

SOURCES

Criminal and Juvenile Justice Planning Division, Department of Human Rights
Judicial Branch
Department of Corrections

(LSB 4311sv, MDF)

SENATE FILE 2390
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2279)

(AS AMENDED AND PASSED BY THE SENATE MARCH 11, 1996)

- New Language by the Senate
- * - Language Stricken by the Senate

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

A BILL FOR

1 An Act relating to establishing community-based corrections
 2 programs.
 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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S.F. 2390

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2 c, Code 1995, are amended to read as follows:

3 b. An aggravated misdemeanor for a second offense and
4 shall be imprisoned in the county jail or community-based
5 correctional facility not less than seven days, which minimum
6 term cannot be suspended notwithstanding section 901.5,
7 subsection 3 and section 907.3, subsection 3 2, and assessed a
8 fine of not less than seven hundred fifty dollars.

9 c. A class "D" felony for a third offense and each
10 subsequent offense and shall be imprisoned in the county jail
11 for a determinate sentence of not more than one year but not
12 less than thirty days, or committed to the custody of the
13 director of the department of corrections, and assessed a fine
14 of not less than seven hundred fifty dollars. The minimum
15 jail term of thirty days cannot be suspended notwithstanding
16 section 901.5, subsection 3, and section 907.3, subsection 3
17 2, however, the person sentenced shall receive credit for any
18 time the person was confined in a jail or detention facility
19 following arrest. If a person is committed to the custody of
20 the director of the department of corrections pursuant to this
21 paragraph and the sentence is suspended, the sentencing court
22 shall order that the offender serve the thirty-day minimum
23 term in the county jail. If the sentence which commits the
24 person to the custody of the director of the department of
25 corrections is later imposed by the court, all time served in
26 a county jail toward the thirty-day minimum term shall count
27 as time served toward the sentence which committed the person
28 to the custody of the director of the department of
29 corrections. A person convicted of a second or subsequent
30 offense shall be ordered to undergo a substance abuse
31 evaluation prior to sentencing. If a person is convicted of a
32 third or subsequent offense or if the evaluation recommends
33 treatment, the offender may be committed to the custody of the
34 director of the department of corrections, who, if the
35 sentence is not suspended, shall assign the person to a

1 facility pursuant to section 904.513 or the offender may be
2 committed to treatment in the community under the provisions
3 of section 907.6.

4 Sec. 2. NEW SECTION. 901A.1 CORRECTIONS CONTINUUM --
5 INTERMEDIATE CRIMINAL SANCTIONS PROGRAM.

6 1. The corrections continuum consists of the following:

7 a. LEVEL ONE. Noncommunity-based corrections sanctions
8 including the following:

9 (1) SELF-MONITORED SANCTIONS. Self-monitored sanctions
10 which are not monitored for compliance including, but not
11 limited to, fines and community service.

12 (2) OTHER THAN SELF-MONITORED SANCTIONS. Other than self-
13 monitored sanctions which are monitored for compliance by
14 other than the district department of correctional services
15 including, but not limited to, mandatory mediation, victim and
16 offender reconciliation, and noncommunity-based corrections
17 supervision.

18 b. LEVEL TWO. Probation and parole options consisting of
19 the following:

20 (1) MONITORED SANCTIONS. Monitored sanctions are
21 administrative supervision sanctions which are monitored for
22 compliance by the district department of correctional services
23 and include, but are not limited to, low-risk offender-
* 24 diversion programs.

25 (2) SUPERVISED SANCTIONS. Supervised sanctions are
26 regular probation or parole supervision.

27 (3) INTENSIVE SUPERVISION SANCTIONS. Intensive
28 supervision sanctions provide levels of supervision above
29 sanctions in subparagraph (2) but are less restrictive than
30 sanctions under paragraph "c" and include electronic
31 monitoring, day reporting, day programming, live out programs
32 for persons on work release or who have violated chapter 321J,
* 33 and institutional work release under section 904.910.

34 c. LEVEL THREE. Quasi-incarceration sanctions. Quasi-
35 incarceration sanctions are those supported by residential

1 facility placement or twenty-four hour electronic monitoring
2 including, but not limited to, the following:
3 (1) Residential treatment facilities, either secure or
4 nonsecure.
5 (2) Operating while intoxicated offender treatment
6 facilities.
7 (3) Work release facilities.
8 (4) House arrest with electronic monitoring.
9 d. LEVEL FOUR. Short-term incarceration designed to be of
10 short duration, including, but not limited to, the following:
11 (1) Prison with sentence reconsideration.
12 (2) Twenty-one-day shock probation for persons who violate
13 chapter 321J.
14 (3) Jail for less than thirty days.
15 (4) Violators' facilities.
16 e. LEVEL FIVE. Incarceration which consists of the
17 following:
18 (1) Prison.
19 (2) Jail for thirty days or longer.
20 2. "Intermediate criminal sanctions program" means a
21 program structured around the corrections continuum in
22 subsection 1, describing sanctions and services available in
23 each level of the continuum in the district and containing the
24 policies of the district department of correctional services
25 regarding placement of a person in a particular level of
26 sanction and the requirements and conditions under which a
27 defendant will be transferred between levels in the
28 corrections continuum under the program.
29 3. An intermediate criminal sanctions program shall
30 consist of only levels two and three of the corrections
31 continuum and shall be operated in accordance with an
32 intermediate criminal sanctions plan adopted by the chief
33 judge of the judicial district and the director of the
34 judicial district department of correctional services. The
35 plan adopted shall be designed to reduce probation revocations

1 to prison through the use of incremental, community-based
*2 sanctions for probation violations. A copy of the program and
3 plan shall be filed with the chief judge of the judicial
4 district, the department of corrections, and the division of
5 criminal and juvenile justice planning of the department of
6 human rights.

7 4. a. The district department of correctional services
8 shall place an individual committed to it under section 907.3,
9 subsection 2, to the sanction and level of supervision which
10 is appropriate to the individual based upon a risk assessment
11 evaluation. Placements may be to levels two and three of the
12 corrections continuum and may include commitment of the
13 individual to a residential treatment facility established
14 under this chapter or, with the approval of the department of
15 corrections, a violator facility established pursuant to
16 section 904.207.

17 b. The district department may transfer an individual
18 along the intermediate criminal sanctions program operated
19 pursuant to subsection 3 as necessary and appropriate during
20 the period the individual is assigned to the district
21 department. However, transfer to a more restrictive level or
22 sublevel of supervision or sanctions under subsection 1 shall
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27 individual has the opportunity to consult with an attorney,
28 that the individual is waiving the individual's right to an
29 evidentiary hearing and must state the reasons for the
30 transfer. The court shall approve the transfer only if it
31 determines that the district department has established by a
32 preponderance of the evidence that the transfer is justified.
33 The court shall give written reasons for its decision to
34 either approve or disapprove the transfer.

35 (2) If the individual does not agree to the transfer, the

1 individual may appeal the decision to the director of the
2 district department. If the director approves the transfer,
3 the defendant may contest the transfer at a hearing before the
4 court. No transfer to a more restrictive level or sublevel of
5 supervision shall be effective until after the appeal and
6 hearing has been held. Nothing in this section shall limit
7 the district department's ability to seek a revocation of the
8 individual's probation pursuant to section 908.11.

9 Sec. 3. Section 905.1, subsection 2, Code 1995, is amended
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17 serious misdemeanor, or who are on probation or parole in lieu
18 of or as a result of a sentence of incarceration imposed upon
19 conviction of any of these offenses, or who are contracted to
20 the district department for supervision and housing while on
21 work release.

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24 services in a manner free of disparities based upon an
25 individual's race or ethnic origin.

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29 judgment and may place the defendant on probation upon such
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32 probation or is not responding to it, the court may withdraw
33 the defendant from the program, pronounce judgment, and impose
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35 the court shall give the defendant an opportunity to be heard

1 on any matter relevant to the proposed action. Upon
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3 shall be discharged without entry of judgment. Upon violation
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9 the consent of the defendant, the court may ~~defer~~ do either of
10 the following:

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12 judicial district department of correctional services.
13 However, the court shall not defer the sentence for a
14 violation of section 708.2A if the defendant has previously
15 received a deferred judgment or sentence for a violation of
16 section 708.2 or 708.2A which was issued on a domestic abuse
17 assault, or if similar relief was granted anywhere in the
18 United States concerning that jurisdiction's statutes which
19 substantially correspond to domestic abuse assault as provided
20 in section 708.2A. In addition, the court shall not defer a
21 sentence if it is imposed for a conviction for or plea of
22 guilty to a violation of section 236.8 or for contempt
23 pursuant to section 236.8 or 236.14. Upon a showing that the
24 defendant is not fulfilling the conditions of probation, the
25 court may revoke probation and impose any sentence authorized
26 by law. Before taking such action, the court shall give the
27 defendant an opportunity to be heard on any matter relevant to
28 the proposed action. Upon violation of the conditions of
29 probation, the court may proceed as provided in chapter 908.

30 b. Suspend the sentence and place the defendant on
31 probation upon such terms and conditions as the court may
32 require including commitment to an alternate jail facility, or
33 a secure or other community correctional residential treatment
34 facility, for a specific number of days to be followed by a
35 term of probation as specified in section 907.7, or commitment

1 of the defendant to the judicial district department of
2 correctional services for supervision or services under
3 section 901A.1, subsection 3.

4 A person so committed, except a person committed to the
5 judicial district department of correctional services for
6 supervision or services under section 901A.1, subsection 3,
7 who has probation revoked shall be given credit for such time
8 served. However, the court shall not suspend the minimum term
9 of two days imposed pursuant to section 708.2A, and the court
10 shall not suspend a sentence imposed pursuant to section
11 708.2A, and the court shall not suspend a sentence imposed
12 pursuant to section 236.8 or 236.14 for contempt.

13 Sec. 6. Section 907.3, subsection 3, Code Supplement 1995,
14 is amended by striking the subsection.

15 Sec. 7. Section 907.6, Code 1995, is amended to read as
16 follows:

17 907.6 CONDITIONS OF PROBATION -- REGULATIONS.

18 Probationers are subject to the conditions established by
19 the judicial district department of correctional services
20 subject to the approval of the court, and any additional
21 reasonable conditions which the court or district department
22 may impose to promote rehabilitation of the defendant or
23 protection of the community. Conditions may include but are
24 not limited to adherence to regulations generally applicable
25 to persons released on parole and including requiring unpaid
26 community service as allowed pursuant to section 907.13.

27 Sec. 8. Section 908.11, Code 1995, is amended to read as
28 follows:

29 908.11 VIOLATION OF PROBATION.

30 A probation officer or the judicial district department of
31 correctional services having probable cause to believe that
32 any person released on probation has violated the conditions
33 of probation shall proceed by arrest or summons as in the case
34 of a parole violation. The functions of the liaison officer
35 and the board of parole shall be performed by the judge or

1 magistrate who placed the alleged violator on probation if
2 that judge or magistrate is available, otherwise by another
3 judge or magistrate who would have had jurisdiction to try the
4 original offense. If the probation officer proceeds by
5 arrest, any magistrate may receive the complaint, issue an
6 arrest warrant, or conduct the initial appearance and probable
7 cause hearing if it is not convenient for the judge who placed
8 the alleged violator on probation to do so. The initial
9 appearance, probable cause hearing, and probation revocation
10 hearing, or any of them, may at the discretion of the court be
11 merged into a single hearing when it appears that the alleged
12 violator will not be prejudiced thereby. If the violation is
13 established, the court may continue the probation with or
14 without an alteration of the conditions of probation. If the
15 defendant is an adult the court may hold the defendant in
16 contempt of court and sentence the defendant to a jail term
17 while continuing the probation, order the defendant to be
18 placed in a secure residential treatment facility under the
19 supervision of the judicial district department of
20 correctional services, order the defendant to be placed in a
21 violator facility established pursuant to section 904.207
22 while continuing the probation, or revoke the probation and
23 require the defendant to serve the sentence imposed or any
24 lesser sentence, and, if imposition of sentence was deferred,
25 may impose any sentence which might originally have been
26 imposed.

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Bisignano
Vilsack
Giannetto
Bartger
Drake

SSB-2279
Judiciary

Succeeded By
SENATE FILE SF/HF 2390
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY CHAIR-
PERSON GIANNETTO)

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

A BILL FOR

1 An Act relating to establishing community-based corrections
2 programs.

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

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1 Section 1. Section 321J.2, subsection 2, paragraphs b and
2 c, Code 1995, are amended to read as follows:

3 b. An aggravated misdemeanor for a second offense and
4 shall be imprisoned in the county jail or community-based
5 correctional facility not less than seven days, which minimum
6 term cannot be suspended notwithstanding section 901.5,
7 subsection 3 and section 907.3, subsection 3 2, and assessed a
8 fine of not less than seven hundred fifty dollars.

9 c. A class "D" felony for a third offense and each
10 subsequent offense and shall be imprisoned in the county jail
11 for a determinate sentence of not more than one year but not
12 less than thirty days, or committed to the custody of the
13 director of the department of corrections, and assessed a fine
14 of not less than seven hundred fifty dollars. The minimum
15 jail term of thirty days cannot be suspended notwithstanding
16 section 901.5, subsection 3, and section 907.3, subsection 3
17 2, however, the person sentenced shall receive credit for any
18 time the person was confined in a jail or detention facility
19 following arrest. If a person is committed to the custody of
20 the director of the department of corrections pursuant to this
21 paragraph and the sentence is suspended, the sentencing court
22 shall order that the offender serve the thirty-day minimum
23 term in the county jail. If the sentence which commits the
24 person to the custody of the director of the department of
25 corrections is later imposed by the court, all time served in
26 a county jail toward the thirty-day minimum term shall count
27 as time served toward the sentence which committed the person
28 to the custody of the director of the department of
29 corrections. A person convicted of a second or subsequent
30 offense shall be ordered to undergo a substance abuse
31 evaluation prior to sentencing. If a person is convicted of a
32 third or subsequent offense or if the evaluation recommends
33 treatment, the offender may be committed to the custody of the
34 director of the department of corrections, who, if the
35 sentence is not suspended, shall assign the person to a

1 facility pursuant to section 904.513 or the offender may be
2 committed to treatment in the community under the provisions
3 of section 907.6.

4 Sec. 2. NEW SECTION. 901A.1 CORRECTIONS CONTINUUM --
5 INTERMEDIATE CRIMINAL SANCTIONS PROGRAM.

6 1. The corrections continuum consists of the following:

7 a. LEVEL ONE. Noncommunity-based corrections sanctions
8 including the following:

9 (1) SELF-MONITORED SANCTIONS. Self-monitored sanctions
10 which are not monitored for compliance including, but not
11 limited to, fines, community service, and pretrial release on
12 one's own recognizance.

13 (2) OTHER THAN SELF-MONITORED SANCTIONS. Other than self-
14 monitored sanctions which are monitored for compliance by
15 other than the district department of correctional services
16 including, but not limited to, mandatory mediation, victim and
17 offender reconciliation, and noncommunity-based corrections
18 supervision.

19 b. LEVEL TWO. Probation and parole options consisting of
20 the following:

21 (1) MONITORED SANCTIONS. Monitored sanctions are
22 administrative supervision sanctions which are monitored for
23 compliance by the district department of correctional services
24 and include, but are not limited to, low-risk offender-
25 diversion programs under paragraph "a".

26 (2) SUPERVISED SANCTIONS. Supervised sanctions are
27 regular probation or parole supervision, and supervised
28 pretrial release with services including minimum, normal, and
29 intensive supervision only.

30 (3) INTENSIVE SUPERVISION SANCTIONS. Intensive
31 supervision sanctions provide levels of supervision above
32 sanctions in subparagraph (2) but are less restrictive than
33 sanctions under paragraph "c" and include electronic
34 monitoring, day reporting, day programming, live out programs
35 for persons on work release or who have violated chapter 321J,

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1 institutional work release under section 904.910, and release
2 with intensive supervision services.

3 c. LEVEL THREE. Quasi-incarceration sanctions. Quasi-
4 incarceration sanctions are those supported by residential
5 facility placement or twenty-four hour electronic monitoring
6 including, but not limited to, the following:

7 (1) Residential treatment facilities, either secure or
8 nonsecure.

9 (2) Operating while intoxicated offender treatment
10 facilities.

11 (3) Work release facilities.

12 (4) House arrest with electronic monitoring.

13 d. LEVEL FOUR. Short-term incarceration designed to be of
14 short duration, including, but not limited to, the following:

15 (1) Prison with sentence reconsideration.

16 (2) Twenty-one-day shock probation for persons who violate
17 chapter 321J.

18 (3) Jail for less than thirty days.

19 (4) Relapse treatment.

20 (5) Violators' facilities.

21 (6) Boot camps.

22 e. LEVEL FIVE. Incarceration which consists of the
23 following:

24 (1) Prison.

25 (2) Jail for thirty days or longer.

26 2. "Intermediate criminal sanctions program" means a
27 program structured around the corrections continuum in
28 subsection 1, describing sanctions and services available in
29 each level of the continuum in the district and containing the
30 policies of the district department of correctional services
31 regarding placement of a person in a particular level of
32 sanction and the requirements and conditions under which a
33 defendant will be transferred between levels in the
34 corrections continuum under the program.

35 3. An intermediate criminal sanctions program shall

1 consist of only levels two and three of the corrections
2 continuum and shall be operated in accordance with an
3 intermediate criminal sanctions plan adopted by the judicial
4 district and the judicial district department of correctional
5 services. The plan adopted shall be designed to reduce
6 probation revocations to prison through the use of
7 incremental, community-based sanctions for minor probation
8 violations. A copy of the program and plan shall be filed
9 with the chief judge of the judicial district, the department
10 of corrections, and the division of criminal and juvenile
11 justice planning of the department of human rights.

12 4. a. The district department of correctional services
13 shall place an individual committed to it under section 907.3,
14 subsection 2, to the sanction and level of supervision which
15 is appropriate to the individual based upon a risk assessment
16 evaluation. Placements may be to levels two and three of the
17 corrections continuum and may include commitment of the
18 individual to a residential treatment facility established
19 under this chapter or, with the approval of the department of
20 corrections, a violator facility established pursuant to
21 section 904.207.

22 b. The district department may transfer an individual
23 along the intermediate criminal sanctions program operated
24 pursuant to subsection 3 as necessary and appropriate during
25 the period the individual is assigned to the district
26 department. However, transfer to a different level of
27 supervision or sanctions under subsection 1 shall only occur
28 as follows:

29 (1) If the individual agrees to the transfer, the court
30 shall review the transfer without a hearing. Such individual
31 shall be afforded assistance of counsel prior to such
32 agreement. The agreement must be made in writing, must advise
33 the individual that the individual is waiving the individual's
34 right to an evidentiary hearing and must state the reasons for
35 the transfer. The court shall approve the transfer only if it

1 determines that the district department has established by a
2 preponderance of the evidence that the transfer is justified.
3 The court shall give written reasons for its decision to
4 either approve or disapprove the transfer.

5 (2) If the individual does not agree to the transfer, the
6 individual may appeal the decision to the director of the
7 district department. If the director approves the transfer,
8 the defendant may contest the transfer at a hearing before the
9 court. No transfer to a different level of supervision shall
10 be effective until after the appeal and hearing has been held.
11 Nothing in this section shall limit the district department's
12 ability to seek a revocation of the individual's probation
13 pursuant to section 908.11.

14 Sec. 3. Section 905.1, subsection 2, Code 1995, is amended
15 to read as follows:

16 2. "Community-based correctional program" means
17 correctional programs and services, including but not limited
18 to an intermediate criminal sanctions program in accordance
19 with the corrections continuum in section 901A.1, designed to
20 supervise and assist individuals who are charged with or have
21 been convicted of a felony, an aggravated misdemeanor or a
22 serious misdemeanor, or who are on probation or parole in lieu
23 of or as a result of a sentence of incarceration imposed upon
24 conviction of any of these offenses, or who are contracted to
25 the district department for supervision and housing while on
26 work release.

27 An intermediate criminal sanctions program shall be
28 designed by a district department in a manner that provides
29 services in a manner free of disparities based upon an
30 individual's race or ethnic origin.

31 Sec. 4. Section 907.3, subsection 1, unnumbered paragraph
32 1, Code Supplement 1995, is amended to read as follows:

33 With the consent of the defendant, the court may defer
34 judgment and may place the defendant on probation upon such
35 conditions as it may require. Upon a showing that the

1 defendant is not ~~co-operating~~ cooperating with the program of
2 probation or is not responding to it, the court may withdraw
3 the defendant from the program, pronounce judgment, and impose
4 any sentence authorized by law. Before taking such action,
5 the court shall give the defendant an opportunity to be heard
6 on any matter relevant to the proposed action. Upon
7 fulfillment of the conditions of probation, the defendant
8 shall be discharged without entry of judgment. Upon violation
9 of the conditions of probation, the court may proceed as
10 provided in chapter 908.

11 Sec. 5. Section 907.3, subsection 2, Code Supplement 1995,
12 is amended to read as follows:

13 2. At the time of or after pronouncing judgment and with
14 the consent of the defendant, the court may defer do either of
15 the following:

16 a. Defer the sentence and assign the defendant to the
17 judicial district department of correctional services.
18 However, the court shall not defer the sentence for a
19 violation of section 708.2A if the defendant has previously
20 received a deferred judgment or sentence for a violation of
21 section 708.2 or 708.2A which was issued on a domestic abuse
22 assault, or if similar relief was granted anywhere in the
23 United States concerning that jurisdiction's statutes which
24 substantially correspond to domestic abuse assault as provided
25 in section 708.2A. In addition, the court shall not defer a
26 sentence if it is imposed for a conviction for or plea of
27 guilty to a violation of section 236.8 or for contempt
28 pursuant to section 236.8 or 236.14. Upon a showing that the
29 defendant is not fulfilling the conditions of probation, the
30 court may revoke probation and impose any sentence authorized
31 by law. Before taking such action, the court shall give the
32 defendant an opportunity to be heard on any matter relevant to
33 the proposed action. Upon violation of the conditions of
34 probation, the court may proceed as provided in chapter 908.

35 b. Suspend the sentence and place the defendant on

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1 probation upon such terms and conditions as the court may
2 require including commitment to an alternate jail facility, or
3 a secure or other community correctional residential treatment
4 facility, for a specific number of days to be followed by a
5 term of probation as specified in section 907.7, or commitment
6 of the defendant to the judicial district department of
7 correctional services for supervision or services under
8 section 901A.1, subsection 3.

9 A person so committed who has probation revoked shall be
10 given credit for such time served. However, the court shall
11 not suspend the minimum term of two days imposed pursuant to
12 section 708.2A, and the court shall not suspend a sentence
13 imposed pursuant to section 708.2A, and the court shall not
14 suspend a sentence imposed pursuant to section 236.8 or 236.14
15 for contempt.

16 Sec. 6. Section 907.3, subsection 3, Code Supplement 1995,
17 is amended by striking the subsection.

18 Sec. 7. Section 907.6, Code 1995, is amended to read as
19 follows:

20 907.6 CONDITIONS OF PROBATION -- REGULATIONS.

21 Probationers are subject to the conditions established by
22 the judicial district department of correctional services
23 subject to the approval of the court, and any additional
24 reasonable conditions which the court or district department
25 may impose to promote rehabilitation of the defendant or
26 protection of the community. Conditions may include but are
27 not limited to adherence to regulations generally applicable
28 to persons released on parole and including requiring unpaid
29 community service as allowed pursuant to section 907.13.

30 Sec. 8. Section 908.11, Code 1995, is amended to read as
31 follows:

32 908.11 VIOLATION OF PROBATION.

33 A probation officer or the judicial district department of
34 correctional services having probable cause to believe that
35 any person released on probation has violated the conditions

1 of probation shall proceed by arrest or summons as in the case
2 of a parole violation. The functions of the liaison officer
3 and the board of parole shall be performed by the judge or
4 magistrate who placed the alleged violator on probation if
5 that judge or magistrate is available, otherwise by another
6 judge or magistrate who would have had jurisdiction to try the
7 original offense. If the probation officer proceeds by
8 arrest, any magistrate may receive the complaint, issue an
9 arrest warrant, or conduct the initial appearance and probable
10 cause hearing if it is not convenient for the judge who placed
11 the alleged violator on probation to do so. The initial
12 appearance, probable cause hearing, and probation revocation
13 hearing, or any of them, may at the discretion of the court be
14 merged into a single hearing when it appears that the alleged
15 violator will not be prejudiced thereby. If the violation is
16 established, the court may continue the probation with or
17 without an alteration of the conditions of probation. If the
18 defendant is an adult the court may hold the defendant in
19 contempt of court and sentence the defendant to a jail term
20 while continuing the probation, order the defendant to be
21 placed in a secure residential treatment facility under the
22 supervision of the judicial district department of
23 correctional services, order the defendant to be placed in a
24 violator facility established pursuant to section 904.207
25 while continuing the probation, or revoke the probation and
26 require the defendant to serve the sentence imposed or any
27 lesser sentence, and, if imposition of sentence was deferred,
28 may impose any sentence which might originally have been
29 imposed.

30

EXPLANATION

31 This bill provides that an individual who is given a
32 deferred or suspended sentence may be placed in an
33 intermediate criminal sanctions program through a judicial
34 district department of correctional services in addition to
35 the current dispositions available to the court.

1 The bill authorizes each judicial district to adopt an
2 intermediate criminal sanctions plan before the judicial
3 district department of correctional services may implement an
4 intermediate criminal sanctions program. A program shall
5 consist of two levels of sanctions and services, extensive
6 supervision, and short-term confinement in secure residential
7 treatment facilities.

8 A judicial district department of correctional services
9 operating an intermediate criminal sanctions program would
10 have the authority to move an individual in the program to
11 different levels of sanctions or services based on the
12 judicial district department's assessment of the individual's
13 needs. Individuals who do not agree with a proposed transfer
14 to a different level of sanctions or supervision have the
15 right to appeal the decision first to the director of the
16 judicial district department and then to the court.

17 The bill also provides that a court may suspend the
18 sentence of an individual, place the individual on probation,
19 and then assign the individual to the judicial district
20 department of correctional services for placement in an
21 intermediate criminal sanctions program.

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