

4/3/95 Referred to Judiciary

FILED MAR 20 1995

SENATE FILE **444**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 141)

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

A BILL FOR

1 An Act relating to the sentencing of criminal defendants, by
2 requiring an assessment of risk posed by a defendant to the
3 presentence investigations, by permitting the court to waive
4 imposition of mandatory minimum penalties for certain drug
5 offenders, providing for imposition of alternative sentences
6 within the parameters of the indeterminate term established
7 for an offense, and providing that appeal of certain sentences
8 be by writ of certiorari.

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

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SENATE FILE 444

S-3300

1 Amend Senate File 444 as follows:
2 1. Page 2, line 32, by inserting after the word
3 "corrections." the following: "Persons confined in
4 institutions under the control of the department of
5 corrections under this paragraph shall be eligible for
6 parole during their period of confinement."

By RANDAL J. GIANNETTO

S-3300 FILED MARCH 30, 1995

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S.F. 444

1 Section 1. Section 822.9, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 822.9 APPEAL.

5 An appeal from a final judgment entered under this chapter
6 may be taken, perfected, and prosecuted either by the
7 applicant or by the state in the manner and within the time
8 after judgment as provided in the rules of appellate procedure
9 for appeals from final judgments in criminal cases. However,
10 if a party is seeking an appeal under section 822.2,
11 subsection 6, the appeal shall be by writ of certiorari.

12 Sec. 2. Section 901.3, Code 1995, is amended by adding the
13 following new subsection:

14 NEW SUBSECTION. 7. The risk posed by the defendant to
15 society, as compared to other persons convicted of the same
16 offense and persons who have been incarcerated in prison,
17 given the likelihood of the defendant to commit new offenses
18 and the seriousness of the offense committed.

19 Sec. 3. Section 901.10, Code 1995, is amended to read as
20 follows:

21 901.10 IMPOSITION OF MANDATORY MINIMUM SENTENCES.

22 1. A court sentencing a person for an act prohibited under
23 section 124.406 or sections 124.401 and 124.413 may, at its
24 discretion, waive the mandatory minimum term of confinement if
25 the person was not in the possession or control of a firearm
26 and did not commit an assault as defined under section 708.1
27 while participating in the prohibited act, if mitigating
28 circumstances exist, and if the mitigating circumstances are
29 stated specifically in the record. However, the state may
30 appeal the discretionary decision on the grounds that the
31 stated mitigating circumstances do not warrant a reduction of
32 the sentence.

33 2. A court sentencing a person for the person's first
34 conviction under section ~~124.4067-124.4137~~ or 902.7 may, at
35 its discretion, sentence the person to a term less than

1 provided by the statute if mitigating circumstances exist and
2 those circumstances are stated specifically in the record.
3 However, the state may appeal the discretionary decision on
4 the grounds that the stated mitigating circumstances do not
5 warrant a reduction of the sentence.

6 Sec. 4. Section 902.3, Code 1995, is amended to read as
7 follows:

8 902.3 ~~INDETERMINATE-SENTENCE~~ FELONY SENTENCING.

9 1. When Except as otherwise provided in subsection 2, when
10 a judgment of conviction of a felony other than a class "A"
11 felony is entered against a person, the court, in imposing a
12 sentence of confinement, shall commit the person into the
13 custody of the director of the Iowa department of corrections
14 for an indeterminate term, the maximum length of which shall
15 not exceed the limits as fixed by section 707.3 or section
16 902.9 nor shall the term be less than the minimum term imposed
17 by law, if a minimum sentence is provided. ~~However, the~~

18 2. The court may sentence a person convicted of a class
19 "D" felony for as follows:

20 a. For a conviction of a class "D" felony violation of
21 section 321J.2 to imprisonment for up to one year in a county
22 jail under section 902.9, subsection 4, and the person shall
23 not be under the custody of the director of the Iowa
24 department of corrections.

25 b. For a conviction of a felony other than a class "A"
26 felony, to imprisonment for a portion of the maximum term
27 specified for the offense, provided that the term shall not be
28 less than any minimum term required by law. If a person is
29 imprisoned for a portion of the maximum term specified for an
30 offense, the balance of the term shall be suspended and the
31 person shall be under the custody of the director of the Iowa
32 department of corrections.

33 Sec. 5. Section 907.3, subsection 3, Code 1995, is amended
34 to read as follows:

35 3. By record entry at the time of or after sentencing, the

1 court may suspend the sentence and place the defendant on
2 probation upon such terms and conditions as it may require
3 including commitment to an alternate jail facility or a
4 community correctional residential treatment facility for a
5 specific number of days to be followed by a term of probation
6 as specified in section 907.7. A person so committed who has
7 probation revoked shall be given credit for such time served.
8 By record entry at the time of or after sentencing for a
9 felony other than a class "A" felony, the court may also
10 sentence the defendant to imprisonment for a portion of the
11 maximum term specified for the offense and suspend the balance
12 of the term as provided in section 902.3, subsection 2,
13 paragraph "b". However, the court shall not suspend the
14 minimum term of two days imposed pursuant to section 708.2A,
15 and the court shall not suspend a sentence imposed pursuant to
16 section 236.8 or 236.14 for contempt.

17 EXPLANATION

18 This bill provides for an assessment of the risk posed by a
19 defendant to society to be included in the presentence
20 investigation report, which is considered by the court in the
21 sentencing of all felony offenders, other than persons
22 convicted of class "A" felonies, and may be used in the
23 sentencing of persons convicted of aggravated or serious
24 misdemeanors. The bill permits the court to waive the
25 mandatory minimum term imposed on certain drug offenses if the
26 person was not in the possession or control of a firearm, the
27 person did not commit an assault while participating in the
28 prohibited act, and if mitigating circumstances exist.
29 Currently the court is only permitted to waive the mandatory
30 minimum term if the offense is the person's first conviction
31 for one of those drug offenses. The bill also permits the
32 court to sentence a person convicted of a felony to
33 confinement for a portion of the maximum term specified for
34 the offense and suspend the balance of the term. Persons so
35 confined are under the custody of the director of the Iowa

1 department of corrections, and the costs of the confinement
2 are borne by the state.

3 The bill also strikes and replaces a provision relating to
4 appeals in postconviction proceedings. The replacement of the
5 provision has the effect of reenacting the current Code
6 language, including a change which was made in 1992, that pro-
7 vides that appeals of forfeiture of reductions in sentences
8 must be made by writ of certiorari.

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**SENATE FILE 444
FISCAL NOTE**

The estimate for Senate File 444 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.

Senate File 444 provides for the inclusion of a risk assessment in a presentence investigation. The Bill permits the court to waive the mandatory minimum term for a drug offense if the person did not use a gun or commit an assault and if there are mitigating circumstances. The Bill permits the court to sentence an offender to jail before probation or suspending the remainder of the sentence. The offender is under the custody of the Department of Corrections so that the counties are reimbursed for the confinement costs.

Assumptions:

1. A majority of judges would use the option of sentencing offenders to jail before probation if the option were available (based on a 1992 survey by the Criminal and Juvenile Justice Planning Division). It is not known how frequently this option would be applied or to which types of offenses it would be applied.
2. The average cost to the Department of Corrections for confining a parole or work release violator in jail is \$51.07 per day. It is anticipated that the State would pay the same rate for these offenders who are confined in jail.
3. The budgeted marginal cost for a prison inmate is \$10 per day.

Correctional Impact:

It is estimated that waiving the mandatory minimum for drug offenders who do not use a gun would not affect the prison population in FY 1996. There would be a reduction of 18 inmates in FY 1997 and another 28 inmates by FY 2000, for a total savings of 46 prison beds.

There is insufficient information to estimate the number of offenders that will be sentenced to jail.

Fiscal Impact:

Waiving the mandatory minimum sentence for this group of drug offenders would not produce any savings from a reduced prison population in FY 1996. The savings are estimated to be \$66,000 in FY 1997 and \$168,000 in FY 2000.

Each offender sentenced to jail as a result of this Bill will cost the State \$51 per day. If the offender would have gone to prison for the same amount of time, such as for shock probation, the net cost to the State would be \$41 per day. There is insufficient information to estimate how many persons will be

-2-

sentenced to jail or the associated reimbursement costs.

Sources:

Criminal and Juvenile Justice Planning Division, Department of Human Services
Department of Corrections. (LSB 1441sv, MDF)

FILED MARCH 27, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

Giannetto - ch
Vilsack
Fraise
Maddox
McKean

SSB-141

Introduced By Judiciary
Staff

SENATE FILE 444
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON GIANNETTO)

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