

Senate Study Bill 2279

Conference Committee Text

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1 1 Section 1. Section [321J.2](#), subsection 2, paragraphs b and
1 2 c, Code 1995, are amended to read as follows:
1 3 b. An aggravated misdemeanor for a second offense and
1 4 shall be imprisoned in the county jail or community-based
1 5 correctional facility not less than seven days, which minimum
1 6 term cannot be suspended notwithstanding section 901.5,
1 7 subsection 3 and section 907.3, subsection

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- 2, and assessed a
1 8 fine of not less than seven hundred fifty dollars.
1 9 c. A class "D" felony for a third offense and each
1 10 subsequent offense and shall be imprisoned in the county jail
1 11 for a determinate sentence of not more than one year but not
1 12 less than thirty days, or committed to the custody of the
1 13 director of the department of corrections, and assessed a fine
1 14 of not less than seven hundred fifty dollars. The minimum
1 15 jail term of thirty days cannot be suspended notwithstanding
1 16 section 901.5, subsection 3, and section 907.3, subsection

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1 17 2, however, the person sentenced shall receive credit for any
1 18 time the person was confined in a jail or detention facility
1 19 following arrest. If a person is committed to the custody of
1 20 the director of the department of corrections pursuant to this
1 21 paragraph and the sentence is suspended, the sentencing court
1 22 shall order that the offender serve the thirty-day minimum
1 23 term in the county jail. If the sentence which commits the
1 24 person to the custody of the director of the department of
1 25 corrections is later imposed by the court, all time served in
1 26 a county jail toward the thirty-day minimum term shall count
1 27 as time served toward the sentence which committed the person
1 28 to the custody of the director of the department of
1 29 corrections. A person convicted of a second or subsequent
1 30 offense shall be ordered to undergo a substance abuse
1 31 evaluation prior to sentencing. If a person is convicted of a
1 32 third or subsequent offense or if the evaluation recommends
1 33 treatment, the offender may be committed to the custody of the
1 34 director of the department of corrections, who, if the
1 35 sentence is not suspended, shall assign the person to a
2 1 facility pursuant to section 904.513 or the offender may be
2 2 committed to treatment in the community under the provisions
2 3 of section 907.6.

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

2 6 1. The corrections continuum consists of the following:
2 7 a. LEVEL ONE. Noncommunity-based corrections sanctions
2 8 including the following:

2 9 (1) SELF-MONITORED SANCTIONS. Self-monitored sanctions
2 10 which are not monitored for compliance including, but not
2 11 limited to, fines, community service, and pretrial release on
2 12 one's own recognizance.

2 13 (2) OTHER THAN SELF-MONITORED SANCTIONS. Other than self-
2 14 monitored sanctions which are monitored for compliance by
2 15 other than the district department of correctional services

2 16 including, but not limited to, mandatory mediation, victim and
2 17 offender reconciliation, and noncommunity-based corrections
2 18 supervision.

2 19 b. LEVEL TWO. Probation and parole options consisting of
2 20 the following:

2 21 (1) MONITORED SANCTIONS. Monitored sanctions are
2 22 administrative supervision sanctions which are monitored for
2 23 compliance by the district department of correctional services
2 24 and include, but are not limited to, low-risk offender-
2 25 diversion programs under paragraph "a".

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

2 30 (3) INTENSIVE SUPERVISION SANCTIONS. Intensive
2 31 supervision sanctions provide levels of supervision above
2 32 sanctions in subparagraph (2) but are less restrictive than
2 33 sanctions under paragraph "c" and include electronic
2 34 monitoring, day reporting, day programming, live out programs
2 35 for persons on work release or who have violated chapter 321J,
3 1 institutional work release under section 904.910, and release
3 2 with intensive supervision services.

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

3 7 (1) Residential treatment facilities, either secure or
3 8 nonsecure.

3 9 (2) Operating while intoxicated offender treatment
3 10 facilities.

3 11 (3) Work release facilities.

3 12 (4) House arrest with electronic monitoring.

3 13 d. LEVEL FOUR. Short-term incarceration designed to be of
3 14 short duration, including, but not limited to, the following:

3 15 (1) Prison with sentence reconsideration.

3 16 (2) Twenty-one-day shock probation for persons who violate
3 17 chapter 321J.

3 18 (3) Jail for less than thirty days.

3 19 (4) Relapse treatment.

3 20 (5) Violators' facilities.

3 21 (6) Boot camps.

3 22 e. LEVEL FIVE. Incarceration which consists of the
3 23 following:

3 24 (1) Prison.

3 25 (2) Jail for thirty days or longer.

3 26 2. "Intermediate criminal sanctions program" means a
3 27 program structured around the corrections continuum in
3 28 subsection 1, describing sanctions and services available in
3 29 each level of the continuum in the district and containing the
3 30 policies of the district department of correctional services
3 31 regarding placement of a person in a particular level of
3 32 sanction and the requirements and conditions under which a
3 33 defendant will be transferred between levels in the
3 34 corrections continuum under the program.

3 35 3. An intermediate criminal sanctions program shall
4 1 consist of only levels two and three of the corrections
4 2 continuum and shall be operated in accordance with an
4 3 intermediate criminal sanctions plan adopted by the judicial
4 4 district and the judicial district department of correctional
4 5 services. The plan adopted shall be designed to reduce
4 6 probation revocations to prison through the use of
4 7 incremental, community-based sanctions for minor probation
4 8 violations. A copy of the program and plan shall be filed
4 9 with the chief judge of the judicial district, the department
4 10 of corrections, and the division of criminal and juvenile
4 11 justice planning of the department of human rights.

4 12 4. a. The district department of correctional services

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

4 22 b. The district department may transfer an individual
4 23 along the intermediate criminal sanctions program operated
4 24 pursuant to subsection 3 as necessary and appropriate during
4 25 the period the individual is assigned to the district
4 26 department. However, transfer to a different level of
4 27 supervision or sanctions under subsection 1 shall only occur
4 28 as follows:

4 29 (1) If the individual agrees to the transfer, the court
4 30 shall review the transfer without a hearing. Such individual
4 31 shall be afforded assistance of counsel prior to such
4 32 agreement. The agreement must be made in writing, must advise
4 33 the individual that the individual is waiving the individual's
4 34 right to an evidentiary hearing and must state the reasons for
4 35 the transfer. The court shall approve the transfer only if it
5 1 determines that the district department has established by a
5 2 preponderance of the evidence that the transfer is justified.
5 3 The court shall give written reasons for its decision to
5 4 either approve or disapprove the transfer.

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

5 14 Sec. 3. Section [905.1](#), subsection 2, Code 1995, is amended
5 15 to read as follows:

5 16 2. "Community-based correctional program" means
5 17 correctional programs and services, including but not limited
5 18 to an intermediate criminal sanctions program in accordance
5 19 with the corrections continuum in section 901A.1, designed to
5 20 supervise and assist individuals who are charged with or have
5 21 been convicted of a felony, an aggravated misdemeanor or a
5 22 serious misdemeanor, or who are on probation or parole in lieu
5 23 of or as a result of a sentence of incarceration imposed upon
5 24 conviction of any of these offenses, or who are contracted to
5 25 the district department for supervision and housing while on
5 26 work release.

5 27 An intermediate criminal sanctions program shall be
5 28 designed by a district department in a manner that provides
5 29 services in a manner free of disparities based upon an
5 30 individual's race or ethnic origin.

5 31 Sec. 4. Section [907.3](#), subsection 1, unnumbered paragraph
5 32 1, Code Supplement 1995, is amended to read as follows:

5 33 With the consent of the defendant, the court may defer
5 34 judgment and may place the defendant on probation upon such
5 35 conditions as it may require. Upon a showing that the
6 1 defendant is not

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- cooperating with the program of

6 2 probation or is not responding to it, the court may withdraw
6 3 the defendant from the program, pronounce judgment, and impose
6 4 any sentence authorized by law. Before taking such action,
6 5 the court shall give the defendant an opportunity to be heard
6 6 on any matter relevant to the proposed action. Upon

6 7 fulfillment of the conditions of probation, the defendant
6 8 shall be discharged without entry of judgment. Upon violation
6 9 of the conditions of probation, the court may proceed as
6 10 provided in chapter 908.
6 11 Sec. 5. Section [907.3](#), subsection 2, Code Supplement 1995,
6 12 is amended to read as follows:
6 13 2. At the time of or after pronouncing judgment and with
6 14 the consent of the defendant, the court may

~~defer~~

- do either of

6 15 the following:

6 16 a. Defer the sentence and assign the defendant to the
6 17 judicial district department of correctional services.
6 18 However, the court shall not defer the sentence for a
6 19 violation of section 708.2A if the defendant has previously
6 20 received a deferred judgment or sentence for a violation of
6 21 section 708.2 or 708.2A which was issued on a domestic abuse
6 22 assault, or if similar relief was granted anywhere in the
6 23 United States concerning that jurisdiction's statutes which
6 24 substantially correspond to domestic abuse assault as provided
6 25 in section 708.2A. In addition, the court shall not defer a
6 26 sentence if it is imposed for a conviction for or plea of
6 27 guilty to a violation of section 236.8 or for contempt
6 28 pursuant to section 236.8 or 236.14. Upon a showing that the
6 29 defendant is not fulfilling the conditions of probation, the
6 30 court may revoke probation and impose any sentence authorized
6 31 by law. Before taking such action, the court shall give the
6 32 defendant an opportunity to be heard on any matter relevant to
6 33 the proposed action. Upon violation of the conditions of
6 34 probation, the court may proceed as provided in chapter 908.

6 35 b. Suspend the sentence and place the defendant on
7 1 probation upon such terms and conditions as the court may
7 2 require including commitment to an alternate jail facility, or
7 3 a secure or other community correctional residential treatment
7 4 facility, for a specific number of days to be followed by a
7 5 term of probation as specified in section 907.7, or commitment
7 6 of the defendant to the judicial district department of
7 7 correctional services for supervision or services under
7 8 section 901A.1, subsection 3.

7 9 A person so committed who has probation revoked shall be
7 10 given credit for such time served. However, the court shall
7 11 not suspend the minimum term of two days imposed pursuant to
7 12 section 708.2A, and the court shall not suspend a sentence
7 13 imposed pursuant to section 708.2A, and the court shall not
7 14 suspend a sentence imposed pursuant to section 236.8 or 236.14
7 15 for contempt.

7 16 Sec. 6. Section [907.3](#), subsection 3, Code Supplement 1995,
7 17 is amended by striking the subsection.

7 18 Sec. 7. Section [907.6](#), Code 1995, is amended to read as
7 19 follows:

7 20 907.6 CONDITIONS OF PROBATION - REGULATIONS.

7 21 Probationers are subject to the conditions established by
7 22 the judicial district department of correctional services
7 23 subject to the approval of the court, and any additional
7 24 reasonable conditions which the court or district department
7 25 may impose to promote rehabilitation of the defendant or
7 26 protection of the community. Conditions may include but are
7 27 not limited to adherence to regulations generally applicable
7 28 to persons released on parole and including requiring unpaid
7 29 community service as allowed pursuant to section 907.13.

7 30 Sec. 8. Section [908.11](#), Code 1995, is amended to read as
7 31 follows:

7 32 908.11 VIOLATION OF PROBATION.

7 33 A probation officer or the judicial district department of
7 34 correctional services having probable cause to believe that
7 35 any person released on probation has violated the conditions

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

8 30 EXPLANATION

8 31 This bill provides that an individual who is given a
8 32 deferred or suspended sentence may be placed in an
8 33 intermediate criminal sanctions program through a judicial
8 34 district department of correctional services in addition to
8 35 the current dispositions available to the court.

9 1 The bill authorizes each judicial district to adopt an
9 2 intermediate criminal sanctions plan before the judicial
9 3 district department of correctional services may implement an
9 4 intermediate criminal sanctions program. A program shall
9 5 consist of two levels of sanctions and services, extensive
9 6 supervision, and short-term confinement in secure residential
9 7 treatment facilities.

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

9 17 The bill also provides that a court may suspend the
9 18 sentence of an individual, place the individual on probation,
9 19 and then assign the individual to the judicial district
9 20 department of correctional services for placement in an
9 21 intermediate criminal sanctions program.

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