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JUDICIARY

SENATE FILE 2168

BY DVORSKY

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

A BILL FOR

1 An Act relating to the sixth judicial district pilot probation
 2 revocation project and providing for effective dates and for
 3 repeal of the pilot project provisions.

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

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S.F. 2168

DIVISION I

1
2 Section 1. Section 907.8A, subsection 1, Code Supplement
3 1997, is amended by striking the subsection and inserting in
4 lieu thereof the following:

5 1. Except as otherwise provided in this section, the
6 probation violation sanctioning jurisdiction of the court in
7 the sixth judicial district shall be transferred to an
8 administrative parole and probation judge upon entry of the
9 sentencing order for each person whose sentence of confinement
10 is suspended and who is placed on probation. The court shall
11 retain jurisdiction to establish the amount of restitution,
12 approve the plan of restitution, and for reconsideration of
13 the original sentence. The court shall have concurrent
14 jurisdiction with an administrative parole and probation judge
15 for arrest warrants, initial appearances, preliminary
16 probation violation information, bond proceedings, violations
17 of restitution plans, and appointment of counsel.

18 Sec. 2. NEW SECTION. 908.10B CONVICTION OF NEW OFFENSE
19 IN SIXTH JUDICIAL DISTRICT -- REVOCATION -- CONSECUTIVE
20 SENTENCES.

21 If a person is convicted and sentenced to confinement in a
22 state correctional institution for an aggravated misdemeanor
23 or felony offense which was committed while the person was on
24 probation in the sixth judicial district, the person's
25 probation shall be deemed revoked as of the date of the
26 commission of the new offense.

27 The probation officer shall inform the sentencing judge on
28 the new offense that the person is a probation violator. The
29 sentence imposed for the new offense shall be served
30 consecutively to the sentence for the other offense, unless
31 the court orders that both sentences be served concurrently.
32 The probationer shall be notified in writing that the
33 probation has been revoked on the basis of the new conviction,
34 and a copy of the commitment order shall accompany the
35 notification. The inmate's record shall be reviewed pursuant

1 to the provisions of section 906.5, or as soon as practical
2 after a final reversal of the new conviction. An inmate may
3 appeal the revocation of the probation under this section
4 according to the board of parole's rules relating to probation
5 revocation appeals. Neither the administrative parole and
6 probation judge nor a board panel shall retry the facts
7 underlying the conviction or convictions.

8 Sec. 3. section 908.11, subsections 4 and 5, Code
9 Supplement 1997, are amended to read as follows:

10 4. If the person who is believed to have violated the
11 conditions of probation was sentenced and placed on probation
12 in the sixth judicial district under section 907.8A, or
13 jurisdiction over the person was transferred to the sixth
14 judicial district as a result of transfer of the person's
15 probation supervision, the functions of the liaison officer
16 and the board of parole shall may be performed by the
17 administrative parole and probation judge as provided in
18 section 907.8A.

19 5. If the probation officer proceeds by arrest and section
20 907.8A applies, the administrative parole and probation judge
21 may receive the complaint, issue an arrest warrant, or conduct
22 the initial appearance and probable cause hearing. The
23 initial appearance, probable cause hearing, and probation
24 revocation hearing, or any of them, may, at the discretion of
25 the administrative parole and probation judge, be merged into
26 a single hearing when it appears that the alleged violator
27 will not be prejudiced by the merger. An administrative
28 parole and probation judge may appoint counsel at state
29 expense in the same manner as other appointments of counsel in
30 criminal matters. The administrative parole and probation
31 judge shall have concurrent jurisdiction with the court on
32 arrest warrants, initial appearances, preliminary probation
33 violation information, bond proceedings, violations of the
34 conditions of plans of restitution, and appointment of
35 counsel. An administrative parole and probation judge may

1 conduct any or all appearances or hearings electronically or
2 by telephone. An administrative parole and probation judge
3 may reconsider a person's sentence in the manner provided in
4 sections 902.4 and 903.2 if the person's probation was revoked
5 by an administrative parole and probation judge in the sixth
6 judicial district. The sheriff shall coordinate and provide
7 transportation and security for probation hearings conducted
8 by an administrative parole and probation judge.

9 Sec. 4. Section 908.11, subsection 6, Code Supplement
10 1997, is amended by striking the subsection and inserting in
11 lieu thereof the following:

12 6. If the violation is established, the court or the
13 administrative parole and probation judge may take any of the
14 following actions:

15 a. Continue the probation with or without an alteration of
16 the conditions of probation.

17 b. Sentence the defendant to a jail term while continuing
18 the probation.

19 c. Order the defendant to be placed in a violator facility
20 established pursuant to section 904.207 while continuing the
21 probation.

22 d. Revoke the probation and require the defendant to serve
23 the sentence imposed or any lesser sentence.

24 The order of an administrative parole and probation judge
25 shall become a final decision, unless the defendant appeals
26 the decision to the board of parole within the time provided
27 in rules adopted by the board. The appeal shall be conducted
28 pursuant to rules adopted by the board and the record on
29 appeal shall be the record made at the hearing conducted by
30 the administrative parole and probation judge.

31 DIVISION II

32 Sec. 5. Section 907.2, unnumbered paragraph 2, Code
33 Supplement 1997, is amended to read as follows:

34 Probation officers employed by the judicial district
35 department of correctional services, while performing the

1 duties prescribed by that department, are peace officers.
2 Probation officers shall investigate all persons referred to
3 them for investigation by the director of the judicial
4 district department of correctional services which employs
5 them. They shall furnish to each person released under their
6 supervision or committed to a community corrections
7 residential facility operated by the judicial district
8 department of correctional services, a written statement of
9 the conditions of probation or commitment. They shall keep
10 informed of each person's conduct and condition and shall use
11 all suitable methods prescribed by the judicial district
12 department of correctional services to aid and encourage the
13 person to bring about improvements in the person's conduct and
14 condition. Probation officers shall keep records of their
15 work and ~~unless section 907.8A applies,~~ shall make reports to
16 the court when alleged violations occur and within no less
17 than thirty days before the period of probation will expire.
18 ~~If section 907.8A applies, the probation officers shall make~~
19 ~~the reports of alleged violations to the administrative parole~~
20 ~~and probation judge within no less than thirty days before the~~
21 ~~period of probation will expire.~~ Probation officers shall
22 coordinate their work with other social welfare agencies which
23 offer services of a corrective nature operating in the area to
24 which they are assigned.

25 Sec. 6. Section 907.7, unnumbered paragraph 2, Code
26 Supplement 1997, is amended to read as follows:

27 The length of the probation shall not be less than one year
28 if the offense is a misdemeanor and shall not be less than two
29 years if the offense is a felony. However, the court ~~or the~~
30 ~~administrative parole and probation judge, if section 907.8A~~
31 ~~applies,~~ may subsequently reduce the length of the probation
32 if the court ~~or the administrative parole and probation judge~~
33 determines that the purposes of probation have been fulfilled
34 and the fees imposed under section 905.14 have been paid to or
35 waived by the judicial district department of correctional

1 services. The purposes of probation are to provide maximum
2 opportunity for the rehabilitation of the defendant and to
3 protect the community from further offenses by the defendant
4 and others.

5 Sec. 7. Section 907.8, unnumbered paragraph 3, Code
6 Supplement 1997, is amended to read as follows:

7 ~~Except as otherwise provided in section 907.8A, the court~~
8 ~~shall retain jurisdiction~~ Jurisdiction over these persons
9 shall remain with the sentencing court. Jurisdiction may be
10 ~~transferred to a court in another jurisdiction, or to the~~
11 ~~administrative parole and probation judge under section~~
12 ~~907.8A, if a person's probation supervision is transferred to~~
13 ~~a judicial district department of correctional services in a~~
14 ~~district other than the district in which the person was~~
15 ~~sentenced.~~

16 Sec. 8. Section 907.9, subsections 1 through 4, Code
17 Supplement 1997, are amended to read as follows:

18 1. ~~Except as otherwise provided in section 907.8A, at~~ At
19 any time that the court determines that the purposes of
20 probation have been fulfilled and the fees imposed under
21 section 905.14 have been paid to or waived by the judicial
22 district department of correctional services, the court may
23 order the discharge of a person from probation.

24 2. At any time that a probation officer determines that
25 the purposes of probation have been fulfilled and the fees
26 imposed under section 905.14 have been paid to or waived by
27 the judicial district department of correctional services, the
28 officer may order the discharge of a person from probation
29 after approval of the district director and notification of
30 the sentencing court, ~~the administrative parole and probation~~
31 ~~judge if section 907.8A applies,~~ and the county attorney who
32 prosecuted the case.

33 3. The sentencing judge or, ~~if section 907.8A applies,~~ ~~the~~
34 ~~administrative parole and probation judge,~~ may order a hearing
35 on its own motion, or shall order a hearing upon the request

1 of the county attorney, for review of such discharge. If the
2 sentencing judge is no longer serving or unable to order such
3 hearing, the chief judge of the district or the chief judge's
4 designee shall order any hearing pursuant to this section, ~~if~~
5 ~~section-907.8A-does-not-apply~~. Following the hearing, the
6 court ~~or-the-administrative-parole-and-probation-judge~~ shall
7 approve or rescind such discharge. If a hearing is not
8 ordered within thirty days after notification by the probation
9 officer, the person shall be discharged and the probation
10 officer shall notify the state court administrator of such
11 discharge.

12 4. At the expiration of the period of probation and if the
13 fees imposed under section 905.14 have been paid to or waived
14 by the judicial district department of correctional services,
15 the court ~~or-if-section-907.8A-applies,-the-administrative~~
16 ~~parole-and-probation-judge~~ shall order the discharge of the
17 person from probation, and the court ~~or-administrative-parole~~
18 ~~and-probation-judge~~ shall forward to the governor a
19 recommendation for or against restoration of citizenship
20 rights to that person. A person who has been discharged from
21 probation shall no longer be held to answer for the person's
22 offense. Upon discharge from probation, if judgment has been
23 deferred under section 907.3, the court's criminal record with
24 reference to the deferred judgment shall be expunged. The
25 record maintained by the state court administrator as required
26 by section 907.4 shall not be expunged. The court's record
27 shall not be expunged in any other circumstances.

28 Sec. 9. Section 908.11, subsections 2 through 6, Code
29 Supplement 1997, are amended to read as follows:

30 2. ~~Except-as-otherwise-provided-in-sections-907-8-and~~
31 ~~907-8A,-the~~ The functions of the liaison officer and the board
32 of parole shall be performed by the judge or magistrate who
33 placed the alleged violator on probation if that judge or
34 magistrate is available, otherwise by another judge or
35 magistrate who would have had jurisdiction to try the original

1 offense.

2 3. If the probation officer proceeds by arrest and section
3 907.8A does not apply, any magistrate may receive the
4 complaint, issue an arrest warrant, or conduct the initial
5 appearance and probable cause hearing if it is not convenient
6 for the judge who placed the alleged violator on probation to
7 do so. The initial appearance, probable cause hearing, and
8 probation revocation hearing, or any of them, may at the
9 discretion of the court be merged into a single hearing when
10 it appears that the alleged violator will not be prejudiced by
11 the merger.

12 4. -- If the person who is believed to have violated the
13 conditions of probation was sentenced and placed on probation
14 in the sixth judicial district under section 907.8A, or
15 jurisdiction over the person was transferred to the sixth
16 judicial district as a result of transfer of the person's
17 probation supervision, the functions of the liaison officer
18 and the board of parole shall be performed by the
19 administrative parole and probation judge as provided in
20 section 907.8A.

21 5. -- If the probation officer proceeds by arrest and section
22 907.8A applies, the administrative parole and probation judge
23 may receive the complaint, issue an arrest warrant, or conduct
24 the initial appearance and probable cause hearing. -- The
25 initial appearance, probable cause hearing, and probation
26 revocation hearing, or any of them, may, at the discretion of
27 the administrative parole and probation judge, be merged into
28 a single hearing when it appears that the alleged violator
29 will not be prejudiced by the merger.

30 6. If the violation is established, the court or the
31 administrative parole and probation judge may continue the
32 probation or youthful offender status with or without an
33 alteration of the conditions of probation or a youthful
34 offender status. If the defendant is an adult or a youthful
35 offender the court may hold the defendant in contempt of court

1 and sentence the defendant to a jail term while continuing the
2 probation or youthful offender status, order the defendant to
3 be placed in a violator facility established pursuant to
4 section 904.207 while continuing the probation or youthful
5 offender status, or revoke the probation or youthful offender
6 status and require the defendant to serve the sentence imposed
7 or any lesser sentence, and, if imposition of sentence was
8 deferred, may impose any sentence which might originally have
9 been imposed. ~~The administrative parole and probation judge
10 may revoke the probation and require the defendant to serve
11 the sentence which was originally imposed. The administrative
12 parole and probation judge may grant credit against the
13 sentence, for any time served while the defendant was on
14 probation. The order of the administrative parole and
15 probation judge shall become a final decision, unless the
16 defendant appeals the decision to the board of parole within
17 the time provided in rules adopted by the board. The appeal
18 shall be conducted pursuant to rules adopted by the board and
19 the record on appeal shall be the record made at the hearing
20 conducted by the administrative parole and probation judge.~~

21 Sec. 10. Sections 906.16, 908.4, 908.5, 908.6, 908.7,
22 908.10, and 908.10A, Code Supplement 1997, are amended by
23 striking from the sections the words "administrative parole
24 and probation judge" and "administrative parole and probation
25 judge's" and inserting in lieu thereof the words
26 "administrative parole judge" and "administrative parole
27 judge's", respectively.

28 Sec. 11. Section 907.8A, Code Supplement 1997, is
29 repealed.

30 Sec. 12. PILOT PROJECT EVALUATION. The division of
31 criminal and juvenile justice planning of the department of
32 human rights, in cooperation with the court, prosecutors, and
33 community corrections personnel of the sixth judicial district
34 and representatives of the board of parole, shall conduct an
35 evaluation of the effectiveness of the sixth judicial district

1 probation pilot project. The evaluation shall include but
2 shall not be limited to a comparative assessment of the effect
3 of the use of an administrative parole and probation judge on
4 the efficient processing of cases, sentences imposed, number
5 of revocations, and offender compliance with sentence terms in
6 the sixth judicial district. The evaluation shall be
7 submitted in a report to the general assembly which convenes
8 in January 2001.

9 Sec. 13. CONSTRUCTION -- DIRECTIONS TO CODE EDITOR. It is
10 the intent of the general assembly that sections 5 through 11
11 of this Act be construed only to remove references to the
12 pilot probation project in the sixth judicial district and not
13 to substantively conflict with or supersede any other or
14 intervening amendments to those sections which do not relate
15 to that pilot project. The Code editor is specifically
16 directed to harmonize the removal of any references to the
17 sixth judicial district with any intervening or other
18 amendments to those Code sections to allow those intervening
19 or other amendments to take effect.

20 DIVISION III

21 Sec. 14. EFFECTIVE DATES -- REPEALS.

22 1. This division and Division I of this Act, being deemed
23 of immediate importance, take effect upon enactment.

24 2. Division I of this Act is repealed June 30, 1999.

25 3. Division II of this Act takes effect July 1, 1999.

26 EXPLANATION

27 This bill makes changes to and, on June 30, 1999, repeals
28 the probation pilot project which is being carried out in the
29 sixth judicial district. The bill provides that the court
30 retains jurisdiction in the sixth judicial district to
31 establish the amount of restitution, approve the plan of
32 restitution, and for reconsideration of the original sentence.
33 The bill provides for concurrent jurisdiction between the
34 court and the administrative parole and probation judge for
35 arrest warrants, initial appearances, preliminary probation

1 violation information, bond proceedings, violations of
2 restitution plans, and appointment of counsel.

3 Language is added to allow the administrative parole and
4 probation judge to conduct any or all appearances or hearings
5 electronically or by telephone. An administrative parole and
6 probation judge is permitted under the bill to reconsider a
7 person's sentence if the person's probation was revoked by an
8 administrative parole and probation judge in the sixth
9 judicial district. The sheriff is required under the bill to
10 coordinate and provide transportation and security for
11 probation hearings conducted by an administrative parole and
12 probation judge.

13 If a violation of probation is established, the bill
14 authorizes the administrative parole and probation judge to
15 continue the probation, sentence the defendant to a jail term
16 while continuing probation, order the defendant to be placed
17 in a violator facility while continuing probation, or revoke
18 probation and require the defendant to serve the sentence
19 imposed or some lesser sentence. If the defendant does not
20 appeal the decision of the administrative parole and probation
21 judge to the parole judge, the decision of the administrative
22 parole and probation judge becomes a final decision.

23 Effective June 30, 1999, the bill removes references to the
24 sixth judicial district probation pilot project and directs
25 the Code editor to harmonize the remaining language with any
26 other amendments to those same provisions which do not relate
27 to the pilot project. The division of criminal and juvenile
28 justice of the department of human rights is required to
29 conduct an evaluation of the pilot project in cooperation with
30 the court, prosecutors, and community corrections personnel of
31 the sixth judicial district and representatives of the board
32 of parole and submit the evaluation in a report to the general
33 assembly which convenes in January 2001.

34 The portions of the bill which make changes to the pilot
35 project, but do not remove the references to the pilot

1 project, take effect upon enactment.

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