

H 3/13/98 Judiciary  
H. 3/20/98 Do Pass

FILED MAR 2 1998  
H. 3/2/98 UNFINISHED BUSINESS CALENDAR

SENATE FILE 2377  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 2168)

Passed Senate, Date <sup>(p. 675)</sup> 3/12/98 Passed House, Date <sup>(p. 1373)</sup> 4-8-98  
Vote: Ayes 44 Nays 0 Vote: Ayes 78 Nays 19

Approved May 18, 1998  
<sup>(p. 1234)</sup> Carried 4-14-98  
Vote 48-0

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. 2377

LEGISLATIVE COUNCIL

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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## SENATE FILE 2377

H-8952

1 Amend Senate File 2377, as passed by the Senate, as  
2 follows:

3 1. Page 1, line 5, by striking the words "in this  
4 section".

5 2. Page 1, by striking lines 9 through 14 and  
6 inserting the following: "sentencing order for each  
7 person who is sentenced to the custody of the director  
8 of the department of corrections and whose sentence is  
9 suspended. The court shall retain jurisdiction to  
10 establish the amount of restitution, approve the plan  
11 of restitution, and for reconsideration of the  
12 original sentence. The court shall also retain  
13 jurisdiction".

14 3. Page 1, line 16, by striking the word  
15 "information" and inserting the following:  
16 "informations".

17 4. Page 1, line 17, by inserting after the word  
18 "counsel." the following: "If a person is not  
19 sentenced to the custody of the director of the  
20 department of corrections the court shall retain the  
21 jurisdiction over matters relating to those cases."

22 5. By striking page 1, line 18, through page 2,  
23 line 7.

24 6. Page 2, by striking lines 21 through 24 and  
25 inserting the following: "~~may receive the complaint,~~  
26 ~~issue an arrest warrant, or~~ conduct the initial  
27 ~~appearance and~~ probable cause hearing and probation  
28 revocation hearing. The ~~initial appearance,~~ probable  
29 cause hearing, ~~and probation revocation hearing, or~~  
30 ~~any of them,~~ may, at the discretion of".

31 7. Page 2, by striking lines 27 through 35 and  
32 inserting the following: "will not be prejudiced by  
33 the merger. An administrative parole and probation  
34 judge may".

35 8. Page 3, line 4, by inserting after the word  
36 "if" the following: "reconsideration is deemed  
37 appropriate and".

38 9. Page 9, line 24, by striking the figure "1999"  
39 and inserting the following: "2000".

40 10. Page 9, line 25, by striking the figure  
41 "1999" and inserting the following: "2000".

By SUKUP of Franklin

H-8952 FILED APRIL 6, 1998

*Adopted*

*4-8-98*

*(P. 1312)*

## SENATE FILE 2377

H-8947

1 Amend Senate File 2377, as passed by the Senate, as  
2 follows:

3 1. Page 1, line 5, by striking the words "in this  
4 section".

5 2. Page 1, by striking lines 9 through 14 and  
6 inserting the following: "sentencing order for each  
7 person who is sentenced to the custody of the director  
8 of the department of corrections and whose sentence is  
9 suspended. The court shall retain jurisdiction to  
10 establish the amount of restitution, approve the plan  
11 of restitution, and for reconsideration of the  
12 original sentence. The court shall also retain  
13 jurisdiction".

14 3. Page 1, line 16, by striking the word  
15 "information" and inserting the following:  
16 "informations".

17 4. Page 1, line 17, by inserting after the word  
18 "counsel." the following: "If a person is not  
19 sentenced to the custody of the director of the  
20 department of corrections, the probation violation  
21 sanctioning jurisdiction shall not be transferred and  
22 the court shall retain the jurisdiction over those  
23 matters."

24 5. By striking page 1, line 18, through page 2,  
25 line 7.

26 6. Page 2, by striking lines 21 through 24 and  
27 inserting the following: "~~may receive the complaint,~~  
28 ~~issue an arrest warrant, or~~ conduct the initial  
29 ~~appearance and~~ probable cause hearing and probation  
30 revocation hearing. The ~~initial appearance,~~ probable  
31 ~~cause hearing,~~ and probation revocation hearing ~~or~~  
32 ~~any of them,~~ may, at the discretion of".

33 7. Page 2, by striking lines 27 through 35 and  
34 inserting the following: "will not be prejudiced by  
35 the merger. An administrative parole and probation  
36 judge may".

37 8. Page 3, line 4, by inserting after the word  
38 "if" the following: "reconsideration is deemed  
39 appropriate and".

40 9. Page 9, line 24, by striking the figure "1999"  
41 and inserting the following: "2000".

42 10. Page 9, line 25, by striking the figure  
43 "1999" and inserting the following: "2000".

By SUKUP of Franklin

H-8947 FILED APRIL 6, 1998

W/P  
4/8/98  
(p. 1371)

HOUSE AMENDMENT TO  
SENATE FILE 2377

S-5580

1 Amend Senate File 2377, as passed by the Senate, as  
2 follows:

3 1. Page 1, line 5, by striking the words "in this  
4 section".

5 2. Page 1, by striking lines 9 through 14 and  
6 inserting the following: "sentencing order for each  
7 person who is sentenced to the custody of the director  
8 of the department of corrections and whose sentence is  
9 suspended. The court shall retain jurisdiction to  
10 establish the amount of restitution, approve the plan  
11 of restitution, and for reconsideration of the  
12 original sentence. The court shall also retain  
13 jurisdiction".

14 3. Page 1, line 16, by striking the word  
15 "information" and inserting the following:  
16 "informations".

17 4. Page 1, line 17, by inserting after the word  
18 "counsel." the following: "If a person is not  
19 sentenced to the custody of the director of the  
20 department of corrections the court shall retain the  
21 jurisdiction over matters relating to those cases."

22 5. By striking page 1, line 18, through page 2,  
23 line 7.

24 6. Page 2, by striking lines 21 through 24 and  
25 inserting the following: "~~may receive the complaint,~~  
26 ~~issue an arrest warrant, or~~ conduct the initial  
27 appearance and probable cause hearing and probation  
28 revocation hearing. The ~~initial appearance,~~ probable  
29 ~~cause hearing,~~ and probation revocation hearing, ~~or~~  
30 ~~any of them,~~ may, at the discretion of".

31 7. Page 2, by striking lines 27 through 35 and  
32 inserting the following: "will not be prejudiced by  
33 the merger. An administrative parole and probation  
34 judge may".

35 8. Page 3, line 4, by inserting after the word  
36 "if" the following: "reconsideration is deemed  
37 appropriate and".

38 9. Page 9, line 24, by striking the figure "1999"  
39 and inserting the following: "2000".

40 10. Page 9, line 25, by striking the figure  
41 "1999" and inserting the following: "2000".

RECEIVED FROM THE HOUSE

S-5580 FILED APRIL 8, 1998

*Senate Concurred*  
4/14/98  
(P. 1234)

SENATE FILE 2377

AN ACT  
RELATING TO THE SIXTH JUDICIAL DISTRICT PILOT PROBATION  
REVOCATION PROJECT AND PROVIDING FOR EFFECTIVE DATES AND  
FOR REPEAL OF THE PILOT PROJECT PROVISIONS.

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

DIVISION I

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

1. Except as otherwise provided, the probation violation sanctioning jurisdiction of the court in the sixth judicial district shall be transferred to an administrative parole and probation judge upon entry of the sentencing order for each person who is sentenced to the custody of the director of the department of corrections and whose sentence is suspended. The court shall retain jurisdiction to establish the amount of restitution, approve the plan of restitution, and for reconsideration of the original sentence. The court shall also retain jurisdiction for arrest warrants, initial appearances, preliminary probation violation informations, bond proceedings, violations of restitution plans, and appointment of counsel. If a person is not sentenced to the custody of the director of the department of corrections the court shall retain the jurisdiction over matters relating to those cases.

Sec. 2. Section 908.11, subsections 4 and 5, Code Supplement 1997, are amended to read as follows:

4. If the person who is believed to have violated the conditions of probation was sentenced and placed on probation in the sixth judicial district under section 907.8A, or jurisdiction over the person was transferred to the sixth

judicial district as a result of transfer of the person's probation supervision, the functions of the liaison officer and the board of parole shall may be performed by the administrative parole and probation judge as provided in section 907.8A.

5. If the probation officer proceeds by arrest and section 907.8A applies, the administrative parole and probation judge may ~~receive the complaint, issue an arrest warrant, or~~ conduct the ~~initial appearance and~~ probable cause hearing and probation revocation hearing. The ~~initial appearance,~~ probable cause hearing, and probation revocation hearing, ~~or any of them,~~ may, at the discretion of the administrative parole and probation judge, be merged into a single hearing when it appears that the alleged violator will not be prejudiced by the merger. An administrative parole and probation judge may conduct any or all appearances or hearings electronically or by telephone. An administrative parole and probation judge may reconsider a person's sentence in the manner provided in sections 902.4 and 903.2 if reconsideration is deemed appropriate and the person's probation was revoked by an administrative parole and probation judge in the sixth judicial district. The sheriff shall coordinate and provide transportation and security for probation hearings conducted by an administrative parole and probation judge.

Sec. 3. Section 908.11, subsection 6, Code Supplement 1997, is amended by striking the subsection and inserting in lieu thereof the following:

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

- a. Continue the probation with or without an alteration of the conditions of probation.
- b. Sentence the defendant to a jail term while continuing the probation.



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

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

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

#### DIVISION II

Sec. 4. Section 907.2, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

Probation officers employed by the judicial district department of correctional services, while performing the duties prescribed by that department, are peace officers. Probation officers shall investigate all persons referred to them for investigation by the director of the judicial district department of correctional services which employs them. They shall furnish to each person released under their supervision or committed to a community corrections residential facility operated by the judicial district department of correctional services, a written statement of the conditions of probation or commitment. They shall keep informed of each person's conduct and condition and shall use all suitable methods prescribed by the judicial district department of correctional services to aid and encourage the person to bring about improvements in the person's conduct and condition. Probation officers shall keep records of their work and, unless section 907.8A applies, shall make reports to the court when alleged violations occur and within no less than thirty days before the period of probation will expire. If section 907.8A applies, the probation officers shall make

~~the reports of alleged violations to the administrative parole and probation judge within no less than thirty days before the period of probation will expire.~~ Probation officers shall coordinate their work with other social welfare agencies which offer services of a corrective nature operating in the area to which they are assigned.

Sec. 5. Section 907.7, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

The length of the probation shall not be less than one year if the offense is a misdemeanor and shall not be less than two years if the offense is a felony. However, the court or the administrative parole and probation judge, if section 907.8A applies, may subsequently reduce the length of the probation if the court or the administrative parole and probation judge determines that the purposes of probation have been fulfilled and the fees imposed under section 905.14 have been paid to or waived by the judicial district department of correctional services. The purposes of probation are to provide maximum opportunity for the rehabilitation of the defendant and to protect the community from further offenses by the defendant and others.

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

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

Sec. 7. Section 907.9, subsections 1 through 4, Code Supplement 1997, are amended to read as follows:

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

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

3. The sentencing judge ~~or, if section 907.8A applies, the administrative parole and probation judge,~~ may order a hearing on its own motion, or shall order a hearing upon the request of the county attorney, for review of such discharge. If the sentencing judge is no longer serving or unable to order such hearing, the chief judge of the district or the chief judge's designee shall order any hearing pursuant to this section, ~~if section 907.8A does not apply.~~ Following the hearing, the court ~~or the administrative parole and probation judge,~~ shall approve or rescind such discharge. If a hearing is not ordered within thirty days after notification by the probation officer, the person shall be discharged and the probation officer shall notify the state court administrator of such discharge.

4. At the expiration of the period of probation and if the fees imposed under section 905.14 have been paid to or waived by the judicial district department of correctional services, the court ~~or, if section 907.8A applies, the administrative parole and probation judge,~~ shall order the discharge of the person from probation, and the court ~~or administrative parole~~

~~and probation judge~~ shall forward to the governor a recommendation for or against restoration of citizenship rights to that person. A person who has been discharged from probation shall no longer be held to answer for the person's offense. Upon discharge from probation, if judgment has been deferred under section 907.3, the court's criminal record with reference to the deferred judgment shall be expunged. The record maintained by the state court administrator as required by section 907.4 shall not be expunged. The court's record shall not be expunged in any other circumstances.

Sec. 8. Section 908.11, subsections 2 through 6, Code Supplement 1997, are amended to read as follows:

2. ~~Except as otherwise provided in sections 907.8 and 907.8A, the~~ The functions of the liaison officer and the board of parole shall be performed by the judge or magistrate who placed the alleged violator on probation if that judge or magistrate is available, otherwise by another judge or magistrate who would have had jurisdiction to try the original offense.

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

4. ~~If the person who is believed to have violated the conditions of probation was sentenced and placed on probation in the sixth judicial district under section 907.8A, or jurisdiction over the person was transferred to the sixth judicial district as a result of transfer of the person's probation supervision, the functions of the liaison officer~~

~~and the board of parole shall be performed by the administrative parole and probation judge as provided in section 907.8A:~~

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

6. If the violation is established, the court or the administrative parole and probation judge may continue the probation or youthful offender status with or without an alteration of the conditions of probation or a youthful offender status. If the defendant is an adult or a youthful offender the court may hold the defendant in contempt of court and sentence the defendant to a jail term while continuing the probation or youthful offender status, order the defendant to be placed in a violator facility established pursuant to section 904.207 while continuing the probation or youthful offender status, or revoke the probation or youthful offender status and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed. ~~The administrative parole and probation judge may revoke the probation and require the defendant to serve the sentence which was originally imposed. The administrative parole and probation judge may grant credit against the sentence, for any time served while the defendant was on probation. The order of the administrative parole and probation judge shall become a final decision, unless the defendant appeals the decision to the board of parole within the time provided in rules adopted by the board. The appeal~~

~~shall be conducted pursuant to rules adopted by the board and the record on appeal shall be the record made at the hearing conducted by the administrative parole and probation judge.~~

Sec. 9. Sections 906.16, 908.4, 908.5, 908.6, 908.7, 908.10, and 908.10A, Code Supplement 1997, are amended by striking from the sections the words "administrative parole and probation judge" and "administrative parole and probation judge's" and inserting in lieu thereof the words "administrative parole judge" and "administrative parole judge's", respectively.

Sec. 10. Section 907.8A, Code Supplement 1997, is repealed.

Sec. 11. PILOT PROJECT EVALUATION. The division of criminal and juvenile justice planning of the department of human rights, in cooperation with the court, prosecutors, and community corrections personnel of the sixth judicial district and representatives of the board of parole, shall conduct an evaluation of the effectiveness of the sixth judicial district probation pilot project. The evaluation shall include but shall not be limited to a comparative assessment of the effect of the use of an administrative parole and probation judge on the efficient processing of cases, sentences imposed, number of revocations, and offender compliance with sentence terms in the sixth judicial district. The evaluation shall be submitted in a report to the general assembly which convenes in January 2001.

Sec. 12. CONSTRUCTION -- DIRECTIONS TO CODE EDITOR. It is the intent of the general assembly that sections 4 through 10 of this Act be construed only to remove references to the pilot probation project in the sixth judicial district and not to substantively conflict with or supersede any other or intervening amendments to those sections which do not relate to that pilot project. The Code editor is specifically directed to harmonize the removal of any references to the sixth judicial district with any intervening or other

amendments to those Code sections to allow those intervening or other amendments to take effect.

DIVISION III

Sec. 13. EFFECTIVE DATES -- REPEALS.

1. This division and Division I of this Act, being deemed of immediate importance, take effect upon enactment.
2. Division I of this Act is repealed June 30, 2000.
3. Division II of this Act takes effect July 1, 2000.

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MARY E. KRAMER  
President of the Senate

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RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2377, Seventy-seventh General Assembly.

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MARY PAT GUNDERSON  
Secretary of the Senate

Approved May 18, 1998

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TERRY E. BRANSTAD  
Governor

SF 2377