

MAY 2 2001  
JUDICIARY

HOUSE FILE 756  
BY RANTS AND MYERS

(COMPANION TO LSB 3742SS BY  
IVERSON)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act making changes to criminal sentences by permitting an  
2 aggravated misdemeanor charge for certain burglary in the  
3 third degree criminal offenses, by creating a sentence of a  
4 determinate term of confinement and an additional  
5 indeterminate term of years for certain class "D" felonies, by  
6 extending the length of time for reconsideration of certain  
7 felony sentences, and providing penalties.

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

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HF-756

1 Section 1. Section 713.6A, Code 2001, is amended to read  
2 as follows:

3 713.6A BURGLARY IN THE THIRD DEGREE.

4 1. All burglary which is not burglary in the first degree  
5 or burglary in the second degree is burglary in the third  
6 degree. Burglary in the third degree is a class "D" felony,  
7 except as provided in subsection 2.

8 2. Burglary in the third degree involving a burglary of an  
9 unoccupied motor vehicle or motor truck as defined in section  
10 321.1, or a vessel defined in section 462A.2, is an aggravated  
11 misdemeanor for a first offense. A second or subsequent  
12 conviction under this section is punishable under subsection  
13 1.

14 Sec. 2. Section 713.6B, Code 2001, is amended to read as  
15 follows:

16 713.6B ATTEMPTED BURGLARY IN THE THIRD DEGREE.

17 1. All attempted burglary which is not attempted burglary  
18 in the first degree or attempted burglary in the second degree  
19 is attempted burglary in the third degree. Attempted burglary  
20 in the third degree is an aggravated misdemeanor, except as  
21 provided in subsection 2.

22 2. Attempted burglary in the third degree involving an  
23 attempted burglary of an unoccupied motor vehicle or motor  
24 truck as defined in section 321.1, or a vessel defined in  
25 section 462A.2, is a serious misdemeanor for a first offense.  
26 A second or subsequent conviction under this section is  
27 punishable under subsection 1.

28 Sec. 3. Section 901.5, Code 2001, is amended by adding the  
29 following new subsection:

30 NEW SUBSECTION. 13. In addition to any sentence or other  
31 penalty imposed against the defendant, the court shall  
32 sentence the defendant to an additional indeterminate term of  
33 years if required under section 902.3A, subsection 2.

34 Sec. 4. NEW SECTION. 902.3A DETERMINATE SENTENCING AND  
35 ADDITIONAL TERM OF YEARS FOR CLASS "D" FELONS.

1 1. Notwithstanding section 902.3, when a conviction for a  
2 class "D" felony is entered against a person, the court, at  
3 its discretion, in imposing a sentence of confinement pursuant  
4 to section 901.5, may commit the person into the custody of  
5 the director of the Iowa department of corrections for a  
6 determinate term of less than the maximum length of the  
7 sentence prescribed by section 902.9, subsection 5, if  
8 mitigating circumstances exist and those circumstances are  
9 stated specifically on the record.

10 a. The determinate term of confinement shall not be for  
11 less than one year and if a mandatory minimum sentence is  
12 required by law, the determinate term of confinement imposed  
13 under this section shall not be less than the mandatory  
14 minimum term of confinement prescribed by law.

15 b. A person sentenced to a determinate term of confinement  
16 under this section shall not be eligible for parole until the  
17 person has served one-half of the determinate term of  
18 confinement under the sentence.

19 c. Earned time shall be calculated as provided in chapter  
20 903A. However, earned time accrued and not forfeited shall  
21 not apply to cause the person to become eligible for parole  
22 until the person has served one-half of the determinate term  
23 of confinement.

24 d. A person on parole or work release under a determinate  
25 term of confinement imposed under this section shall be  
26 subject to the terms and conditions of parole or work release  
27 as set out in chapter 906. Violations of parole or work  
28 release shall be subject to the procedures set out in chapters  
29 905 and 908 or rules adopted under those chapters.

30 e. This section does not apply to an offense classified as  
31 a forcible felony, a felony under section 321J.2, felonies in  
32 chapters 707, 708, and 709, a person sentenced as a habitual  
33 offender, felonies listed in section 901A.1, felonies listed  
34 in section 902.12, or a felony committed by a person on parole  
35 or work release, or while in the custody of the director of

1 the department of corrections.

2     2. When the person is sentenced and committed into the  
3 custody of the director of the department of corrections  
4 pursuant to subsection 1, the person shall also be sentenced  
5 to an additional indeterminate term of years not to exceed two  
6 years. The sentence of an additional term shall be  
7 consecutive to the determinate term of confinement.

8     a. The sentence of an additional indeterminate term of  
9 years shall commence immediately upon the expiration of the  
10 determinate term of confinement and the person shall be  
11 assigned to the judicial district department of correctional  
12 services by the department of corrections. The district  
13 department shall place a person assigned to it under this  
14 paragraph in a level of sanction and supervision which is  
15 appropriate to the person pursuant to the district's  
16 intermediate criminal sanctions program operated under chapter  
17 901B.

18     b. The district department may transfer a person along the  
19 continuum of the intermediate criminal sanctions program  
20 operated pursuant to chapter 901B as necessary and appropriate  
21 during the period the person is assigned to the district  
22 department. If the person violates the terms and conditions  
23 of the placement, the district may transfer the person to a  
24 more restrictive placement as provided in the program.

25     c. A person serving an additional indeterminate term of  
26 years may be discharged from that sentence in the same manner  
27 as a person serving probation may be discharged under section  
28 907.9. Discharge from an additional indeterminate term of  
29 years terminates the person's sentence of an additional  
30 indeterminate term of years.

31     d. A person serving an additional indeterminate term of  
32 years shall receive credit for any time served after discharge  
33 from the preceding determinate term of confinement against the  
34 person's sentence of an additional indeterminate term of  
35 years.

1 3. Notwithstanding subsection 2, if a person is paroled at  
2 least six months prior to the expiration of the person's  
3 determinate term of confinement, the person shall not serve an  
4 additional indeterminate term of years.

5 4. Section 907.3 governs the inapplicability of deferred  
6 judgments and deferred or suspended sentences to sentences  
7 imposed under this section.

8 Sec. 5. Section 902.4, Code 2001, is amended to read as  
9 follows:

10 902.4 RECONSIDERATION OF FELON'S SENTENCE.

11 For a period of ~~ninety-days~~ one year from the date when a  
12 person convicted of a felony, other than a class "A" felony or  
13 a felony for which a minimum sentence of confinement is  
14 imposed, begins to serve a sentence of confinement, the court,  
15 on its own motion or on the recommendation of the director of  
16 the Iowa department of corrections, may order the person to be  
17 returned to the court, at which time the court may review its  
18 previous action and reaffirm it or substitute for it any  
19 sentence permitted by law. Copies of the order to return the  
20 person to the court shall be provided to the attorney for the  
21 state, the defendant's attorney, and the defendant. Upon a  
22 request of the attorney for the state, the defendant's  
23 attorney, or the defendant if the defendant has no attorney,  
24 the court may, but is not required to, conduct a hearing on  
25 the issue of reconsideration of sentence. The court shall not  
26 disclose its decision to reconsider or not to reconsider the  
27 sentence of confinement until the date reconsideration is  
28 ordered or the date the ~~ninety-day~~ one-year period expires,  
29 whichever occurs first. The district court retains  
30 jurisdiction for the limited purposes of conducting such  
31 review and entering an appropriate order notwithstanding the  
32 timely filing of a notice of appeal. The court's final order  
33 in the proceeding shall be delivered to the defendant  
34 personally or by certified mail. The court's decision to take  
35 the action or not to take the action is not subject to appeal.

1 However, for the purposes of appeal, a judgment of conviction  
2 of a felony is a final judgment when pronounced.

3 Sec. 6. Section 903.4, Code 2001, is amended to read as  
4 follows:

5 903.4 PROVIDING PLACE OF CONFINEMENT.

6 All persons sentenced to confinement for a period of one  
7 year or less shall be confined in a place to be furnished by  
8 the county where the conviction was had unless the person is  
9 presently committed to the custody of the director of the Iowa  
10 department of corrections, in which case the provisions of  
11 section 901.8 apply, or unless the person is serving a  
12 determinate term of confinement of one year pursuant to  
13 section 902.3A. All persons sentenced to confinement for a  
14 period of more than one year shall be committed to the custody  
15 of the director of the Iowa department of corrections to be  
16 confined in a place to be designated by the director and the  
17 cost of the confinement shall be borne by the state. The  
18 director may contract with local governmental units for the  
19 use of detention or correctional facilities maintained by the  
20 units for the confinement of such persons.

21 Sec. 7. Section 907.3, subsection 1, Code 2001, is amended  
22 by adding the following new paragraph:

23 NEW PARAGRAPH. m. The offense is for a determinate term  
24 of confinement or an additional indeterminate term of years as  
25 provided in section 902.3A.

26 Sec. 8. Section 907.3, subsection 2, Code 2001, is amended  
27 by adding the following new paragraph:

28 NEW PARAGRAPH. g. The offense is for a determinate term  
29 of confinement or an additional indeterminate term of years as  
30 provided in section 902.3A.

31 Sec. 9. Section 907.3, subsection 3, Code 2001, is amended  
32 by adding the following new paragraph:

33 NEW PARAGRAPH. g. The sentence for a determinate term of  
34 confinement or an additional indeterminate term of years as  
35 provided in section 902.3A.



1 specifically on the record. The bill provides that the court  
2 may, at its discretion, sentence a person to a term of  
3 confinement at an institution of the department of corrections  
4 for a determinate term less than the maximum indeterminate  
5 sentence of five years for a class "D" felony. The term of  
6 confinement shall not be for less than one year. However, if  
7 the sentence also carries a mandatory minimum sentence, the  
8 determinate term of confinement shall not be less than the  
9 mandatory minimum sentence required by law. The bill provides  
10 that the court is not authorized to defer or suspend the  
11 sentence, or enter a deferred judgment of a determinate  
12 sentence entered under this sentencing option.

13 The bill provides that if a person is sentenced to a  
14 determinate term of confinement, the person shall not be  
15 eligible for parole until one-half of the term has been  
16 served. The bill also provides that earned time accrued and  
17 not forfeited shall not apply to cause the person to become  
18 eligible for parole until the person has served one-half of  
19 the determinate term of confinement entered under this  
20 sentencing option.

21 Determinate sentencing does not apply to an offense  
22 classified as a forcible felony, a felony under Code section  
23 321J.2, felonies in Code chapters 707, 708, and 709, a person  
24 sentenced as a habitual offender, felonies listed in Code  
25 section 901A.1, felonies listed in Code section 902.12, or a  
26 felony committed by a person on parole or work release, or  
27 while in the custody of the director of the department of  
28 corrections.

29 **ADDITIONAL TERM OF YEARS FOR "D" FELONS.** The bill also  
30 provides that if the person is sentenced to a determinate term  
31 of confinement under this sentencing option, the court shall  
32 also sentence the person to an additional indeterminate term  
33 of years not to exceed two years. The sentence of an  
34 additional indeterminate term of years commences immediately  
35 upon the expiration of the preceding determinate term of



1 confinement and the person shall be assigned to the judicial  
2 district department of correctional services by the department  
3 of corrections.

4 The bill provides that the district department shall place  
5 a person serving an additional indeterminate term of years in  
6 a level of sanction and supervision which is appropriate to  
7 the person pursuant to the district's intermediate criminal  
8 sanctions program under Code chapter 901B. The district  
9 department may transfer a person along the continuum, if  
10 necessary and appropriate. If a person violates the terms and  
11 conditions of placement, the district may transfer the person  
12 to a more restrictive placement as provided in the district's  
13 program.

14 The bill provides that a person serving an additional  
15 indeterminate term of years may be discharged from the  
16 sentence in the same manner as a person serving probation may  
17 be discharged under Code section 907.9.

18 The bill provides that a person serving an additional  
19 indeterminate term of years shall receive credit for any time  
20 served after expiration from the preceding determinate term of  
21 confinement against the person's sentence of an additional  
22 indeterminate term of years.

23 The bill also provides that if a person is paroled more  
24 than six months prior to the expiration of the person's  
25 determinate term of confinement, the person shall not serve an  
26 additional indeterminate term of years.

27 RECONSIDERATION OF SENTENCES. The bill provides that a  
28 felon's sentence other than a class "A" felony or where a  
29 minimum sentence of confinement is imposed may be reconsidered  
30 by the court within one year from the date of the felon's  
31 sentence. Current law provides that a felon's sentence may be  
32 reconsidered by the court within 90 days from the date of the  
33 felon's sentence. Reconsideration of sentence is where the  
34 court sentences a person to a term of confinement and then  
35 orders the person returned to the court, at which time the

1 court reviews its previous sentence and may substitute the  
2 previous sentence with any other sentence permitted by law.

3 EDUCATION. The bill provides that the department of  
4 corrections, in cooperation with the division of criminal and  
5 juvenile justice planning, the state public defender, and the  
6 office of the prosecuting attorneys training coordinator,  
7 shall compile and provide information for distribution about  
8 the changes to criminal sentencing under the bill.

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**HOUSE FILE 756**  
**FISCAL NOTE**

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The estimate for **House File 756** 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.

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House File 756 changes the penalties for burglary in the third degree and attempted burglary in the third degree. The Bill provides that a person who commits burglary in the third degree on an unoccupied motor vehicle or vessel commits an aggravated misdemeanor. A person who commits attempted burglary in the third degree on an unoccupied motor vehicle or vessel commits a serious misdemeanor. Burglary in the third degree on any other type of unoccupied structure remains a Class D felony. Attempted burglary in the third degree on any other type of unoccupied structure remains an aggravated misdemeanor. House File 756 provides for determinate sentencing for Class D felons with an additional indeterminate term for no more than two years on supervised release. The Bill assigns the offender to the criminal sanctions continuum in the Community-Based Corrections (CBC) District Departments. House File 756 also provides for sentence reconsideration for up to one year. Under current law, the sentence may be reconsidered within 90 days of the felon's sentence. The Bill also requires the Department of Corrections, the Prosecuting Attorney Training Coordinator, and the Criminal and Juvenile Justice Planning Division of the Department of Human Rights to compile and provide information about determinate sentencing through the Iowa Bar Association to educate attorneys and judges.

**ASSUMPTIONS**

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections' practices and policies will not change over the projection period.
3. The law will become effective July 1, 2001. A lag effect of six months is assumed, from the effective date of the change in the law to the date of first entry of affected offenders into the correctional system.
4. No lag effect is assumed for sentence reconsideration since a judge may immediately begin reconsidering sentences on July 1, 2001.
5. The analysis is based on information obtained from the Adult Corrections Information System, the computerized database for Iowa's prison system. Conviction and penalty information is based on FY 2000 data.
6. Approximately 20.0% of prison admissions for burglary in the third degree and attempted burglary in the third degree involved burglaries of

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- vehicles. It is assumed that 20.0% of burglary in the third degree convictions that are now Class D felonies will be aggravated misdemeanors under House File 756. It is assumed that 20.0% of all attempted burglary in the third degree convictions that are now aggravated misdemeanors will be serious misdemeanors under House File 756.
7. A recidivism rate of 19.5% is used, based upon recent parole revocation data for all nonviolent offenses.
  8. The average length of stay in county jails for aggravated misdemeanors is 41 days, based upon the crimes of burglary and forgery. The average length of stay in county jails for serious misdemeanors is 50 days, based upon theft. The average length of stay for Class D felons is 187 days. The marginal cost per day for county jails is \$25 per inmate.
  9. The marginal cost per day for probation or parole is \$1.55 per offender. The average length of stay for community supervision is 6 months for a serious misdemeanor, 19 months for an aggravated misdemeanor, and 29 months for a Class D felony.
  10. The average length of stay in a CBC facility is four months. The marginal cost per offender per day is \$16.
  11. The average length of stay in the State prison system is 16.7 months for nonviolent Class D felony convictions. The marginal cost per day is \$16 per State prison inmate.
  12. The median cost per case for aggravated misdemeanors and Class D felonies is \$1,000 to defend. The marginal cost per case for serious misdemeanors is \$750.
  13. Court costs vary by type of offense charged as well as contested versus uncontested cases. Information concerning the ratio of contested versus uncontested cases is not available.
  14. The average court cost for an uncontested serious misdemeanor case is \$282 while the average court cost for a contested serious misdemeanor case is \$2,500.
  15. The average court cost for an uncontested aggravated misdemeanor case is \$271 while the average court cost for a contested aggravated misdemeanor case is approximately \$2,900.
  16. The average minimum court cost for a Class D felony is \$3,000. The average maximum court cost for a Class D felony is \$4,900.
  17. Court costs include expenses for the Clerk of Court, court attendant, court reporter, juries, and judges; i.e., Magistrates, District Associate Judges, and District Court Judges.
  18. The requirement that the Department of Corrections, Prosecuting Attorney Training Coordinator, and the Criminal and Juvenile Justice Planning Division provide training to judges and attorneys is not expected to have

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a significant fiscal impact.

19. It is assumed there will be no impact on revocation rates to prison under the CBC continuum. However, since the deadline for each CBC District Department to implement the continuum is July 1, 2001, there is no data with which to estimate the revocation rates.

#### CORRECTIONAL IMPACT

During FY 2002, 95 offenders will be convicted of an aggravated misdemeanor for burglary in the third degree. Under current law, these convictions would be Class D felonies. There will be 27 offenders convicted of a serious misdemeanor for attempted burglary in the third degree. Under current law, these convictions would be aggravated misdemeanors.

During FY 2003, 190 offenders will be convicted of an aggravated misdemeanor for burglary in the third degree. Under current law, these convictions would be Class D felonies. There will be 53 offenders convicted of a serious misdemeanor for attempted burglary in the third degree. Under current law, these convictions would be aggravated misdemeanors.

Admissions to the State prison system will decrease. There will be 3 fewer admissions to the prison system during FY 2002, 15 fewer admissions during FY 2003, and 1 less admission during FY 2006. The prison population will decrease by 13 inmates during FY 2002, 91 inmates during FY 2003, and 116 inmates during FY 2006.

Admissions to CBC facilities will decrease by 6 offenders during FY 2002, and 12 offenders during FY 2003 and each year thereafter. Admissions to probation and parole supervision will increase by 37 offenders during FY 2002 and 74 offenders each year thereafter.

Annual admissions to county jails will change as follows: 29 more admissions for aggravated misdemeanors with an average length of stay of 41 days; 25 more admissions for serious misdemeanors with an average length of stay of 50 days; and, 23 fewer admissions for Class D felons with an average length of stay of 187 days.

#### FISCAL IMPACT

State criminal justice system costs and county jail operations costs are expected to decrease under House File 756 as follows:

##### **State General Fund:**

	FY 2002	FY 2003
	_____	_____
State Prison Costs	\$ (76,000)	\$ (531,000)
CBC Costs	9,000	18,000
Indigent Defense Costs	(7,000)	(13,000)
Judicial Branch Costs	(232,000)	(463,000)
	_____	_____
Total General Fund Cost	\$ (306,000)	\$ (989,000)
	_____	_____

