

MAR 17 2003
Place On Calendar

HOUSE FILE 598
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 177)

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

A BILL FOR

1 An Act relating to criminal sentencing by permitting a
2 conditional discharge, reclassifying certain felonies, and
3 reopening a sentence that requires a maximum accumulation of
4 earned time credits of fifteen percent of the total term of
5 confinement, and providing penalties.

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

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HF 598

DIVISION I

1
2 Section 1. Section 124.409, Code 2003, is amended to read
3 as follows:

4 124.409 CONDITIONAL DISCHARGE, COMMITMENT FOR TREATMENT,
5 AND PROBATION.

6 1. If a person is convicted of an offense under this
7 chapter, the court, without entering a judgment of guilt and
8 with the consent of the accused, may defer further proceedings
9 and place the accused on probation upon terms and conditions
10 as the court requires. When a person is placed on probation
11 under this subsection, the person's appearance bond may be
12 discharged at the discretion of the court. Upon violation of
13 a term or condition, the court may enter an adjudication of
14 guilt and proceed as otherwise provided. Upon fulfillment of
15 the terms and conditions, the court shall discharge the person
16 and dismiss the proceedings against the person. Discharge and
17 dismissal under this section shall be without court
18 adjudication of guilt and is not a conviction for purposes of
19 this section or for purposes of disqualifications or
20 disabilities imposed by law upon conviction of a crime,
21 including the additional penalties imposed for second or
22 subsequent convictions under section 124.411.

23 2. Whenever the court finds that a person who is charged
24 with a violation of section 124.401 and who consents thereto,
25 or who has entered a plea of guilty to or been found guilty of
26 a violation of that section, is addicted to, dependent upon,
27 or a chronic abuser of any controlled substance and that such
28 person will be aided by proper medical treatment and
29 rehabilitative services, ~~it~~ the court may order that the
30 person be committed as an in-patient or out-patient to a
31 facility licensed by the Iowa department of public health for
32 medical treatment and rehabilitative services. A person
33 committed under this subsection who is not possessed of
34 sufficient income or estate to enable the person to make
35 payment of the costs of such treatment in whole or in part

1 shall be considered a state patient and the costs of treatment
2 shall be paid as provided in section 125.44. The
3 determination of ability to pay shall be made by the court.
4 The court shall require the patient, or the patient's parent,
5 guardian, or custodian to complete under oath a detailed
6 financial statement. The court may enter appropriate orders
7 requiring the patient or those legally liable for the
8 patient's support to reimburse the state with the costs, or
9 any part thereof. In order to obtain the most effective
10 results from such medical treatment and rehabilitative
11 services, the court may commit the person to the custody of a
12 public or private agency or any other responsible person and
13 impose other conditions upon the commitment as is necessary to
14 ~~insure~~ ensure compliance with the court's order and to ~~insure~~
15 ensure that the person will not, during the period of
16 treatment and rehabilitation, again violate a provision of
17 this chapter. If it is established thereafter to the
18 satisfaction of the court that the person has again violated a
19 provision of this chapter, the person may be returned to
20 custody or sentenced upon conviction as provided by law. The
21 public or private agency or responsible person to whom the
22 accused person was committed by the court shall immediately
23 report to the court when the person has received maximum
24 benefit from the program or has recovered from addiction,
25 dependency, or tendency to chronically abuse any controlled
26 substance. The person shall then be returned to the court for
27 disposition of the case. If the person has been charged or
28 indicted, but not convicted, such charge shall proceed to
29 trial or final disposition. If the person has been convicted
30 or is thereafter convicted, the court shall sentence the
31 person as provided by law but may remit all or any part of the
32 sentence and place the person on probation upon terms and
33 conditions as the court may prescribe.

34

DIVISION II

35 Sec. 2. Section 901.5A, Code 2003, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 1A. A defendant may have a judgment and
3 sentence entered under section 901.5 reopened for resentencing
4 if all of the following apply:

5 a. The sentence of the defendant is subject to a maximum
6 accumulation of earned time of fifteen percent of the total
7 sentence of confinement under section 902.12.

8 b. The board of parole and the department of corrections
9 file a joint motion in the sentencing court to reopen the
10 sentence of the defendant.

11 c. The county attorney from the county which prosecuted
12 the defendant is served a copy of the motion to reopen by
13 certified mail. The motion shall specify that the county
14 attorney has thirty days from the date of service to consult
15 with the victim, if possible, and to file a written objection.

16 d. The court, upon hearing, grants the motion.

17 Sec. 3. Section 901.5A, subsections 2 and 3, Code 2003,
18 are amended to read as follows:

19 2. Upon a finding by the court that the defendant
20 cooperated in the prosecution of other persons or upon the
21 court granting a joint motion to reopen the sentence filed by
22 the board of parole and the department of corrections, the
23 court may reduce the maximum sentence imposed under the
24 original sentencing order.

25 3. For purposes of calculating earned time under section
26 903A.2, the sentencing date for a defendant whose sentence has
27 been reopened under ~~this-section~~ subsection 1 shall be the
28 date of the original sentencing order. If the original
29 sentence was subject to the maximum accumulation of earned
30 time of fifteen percent of the total sentence of confinement
31 under section 902.12, the maximum accumulation of earned time
32 on the new sentence of confinement shall not be fifteen
33 percent of the new total sentence of confinement imposed by
34 the court upon reopening but shall accumulate as provided in
35 section 903A.2, subsection 1, paragraph "a". Any earned time

1 accumulated on the original sentence shall be credited to the
2 new sentence upon reopening.

3 Sec. 4. Section 901.5A, Code 2003, is amended by adding
4 the following new subsection:

5 NEW SUBSECTION. 3A. Upon reopening, a person serving a
6 sentence that was subject to the maximum accumulation of
7 earned time of fifteen percent of the total sentence of
8 confinement under section 902.12 may be paroled if eligible.

9 DIVISION III

10 Sec. 5. Section 48A.11, subsection 2, paragraph b, Code
11 2003, is amended to read as follows:

12 b. The penalty provided by law for submission of a false
13 voter registration form, which shall be the penalty for
14 perjury as provided by section 902.9, subsection 5 6.

15 Sec. 6. Section 124.401, subsection 1, paragraph a,
16 unnumbered paragraph 1, Code 2003, is amended to read as
17 follows:

18 Violation of this subsection, with respect to the following
19 controlled substances, counterfeit substances, or simulated
20 controlled substances is a class "B" felony, and
21 ~~notwithstanding section 902.97, subsection 27, shall be punished~~
22 ~~by confinement for no more than fifty years and~~ in addition
23 shall be sentenced to a fine of not more than one million
24 dollars:

25 Sec. 7. Section 124.401, subsection 1, paragraph b,
26 unnumbered paragraph 1, Code 2003, is amended to read as
27 follows:

28 Violation of this subsection with respect to the following
29 controlled substances, counterfeit substances, or simulated
30 controlled substances is a class "B" felony, and
31 notwithstanding the provisions of section 902.9, subsection 2,
32 shall be punished by confinement for no more than fifteen
33 years, and ~~in addition to the provisions of section 902.97~~
34 ~~subsection 27,~~ shall be punished by a fine of not less than
35 five thousand dollars nor more than one hundred thousand

1 dollars:

2 Sec. 8. Section 142C.10, subsection 3, Code 2003, is
3 amended to read as follows:

4 3. A person who violates this section is guilty of a class
5 ~~"e"~~ "D" felony ~~and is subject to imprisonment not to exceed~~
6 ~~ten years and notwithstanding section 902.9, to a~~ and shall be
7 punished by a fine not to exceed two hundred fifty thousand
8 dollars, or both.

9 Sec. 9. Section 189A.19, Code 2003, is amended to read as
10 follows:

11 189A.19 BRIBERY.

12 Any person who gives, pays, or offers, directly or
13 indirectly, to any officer or employee of this state
14 authorized to perform any of the duties prescribed by this
15 chapter or by the regulations of the secretary, any money or
16 other thing of value, with intent to influence said officer or
17 employee in the discharge of any such duty, shall be deemed
18 guilty of a class "F" felony and, upon conviction thereof,
19 shall be punished by a fine not less than five thousand
20 dollars nor more than ten thousand dollars ~~and by imprisonment~~
21 ~~in the penitentiary not less than one year nor more than three~~
22 ~~years~~; and any officer or employee of this state authorized to
23 perform any of the duties prescribed by this chapter who
24 accepts any money, gift, or other thing of value from any
25 person, given with intent to influence the officer's or
26 employee's official action, or who receives or accepts from
27 any person engaged in intrastate commerce any gift, money, or
28 other thing of value given with any purpose or intent
29 whatsoever, shall be deemed guilty of a class "F" felony and
30 shall, upon conviction thereof, be summarily discharged from
31 office and shall be punished by a fine not less than one
32 thousand dollars nor more than ten thousand dollars ~~and by~~
33 ~~imprisonment in the penitentiary not less than one year nor~~
34 ~~more than three years.~~

35 Sec. 10. Section 706B.2, subsection 2, paragraph a, Code

1 2003, is amended to read as follows:

2 a. Subsection 1, paragraph "a", "b", or "c", commits a
3 class "E" "D" felony, and may be fined not more than ten
4 thousand dollars or twice the value of the property involved,
5 whichever is greater, ~~7-or-be-imprisoned-for-not-more-than-ten~~
6 ~~years,7-or-both.~~

7 Sec. 11. Section 716B.2, Code 2003, is amended to read as
8 follows:

9 716B.2 UNLAWFUL DISPOSAL OF HAZARDOUS WASTE -- PENALTIES.

10 A person who knowingly or with reason to know, disposes of
11 hazardous waste or arranges for or allows the disposal of
12 hazardous waste at any location other than one authorized by
13 the department or the United States environmental protection
14 agency, or in violation of any material term or condition of a
15 hazardous waste facility permit, is guilty of an aggravated
16 misdemeanor and upon conviction shall be punished by a fine of
17 not more than twenty-five thousand dollars for each day of
18 violation or imprisonment for not more than two years, or
19 both. If the conviction is for a violation committed after a
20 first conviction under this section, the person is guilty of a
21 class "D" "F" felony and shall be punished by a fine of not
22 more than fifty thousand dollars for each day of a violation
23 ~~or-imprisonment-for-not-more-than-five-years,7-or-both~~ occurs.

24 Sec. 12. Section 716B.3, Code 2003, is amended to read as
25 follows:

26 716B.3 UNLAWFUL TRANSPORTATION OF HAZARDOUS WASTE --
27 PENALTIES.

28 A person who knowingly or with reason to know, transports
29 or causes to be transported any hazardous waste to any
30 location other than a facility that is authorized to receive,
31 treat, store, or dispose of the hazardous waste under rules
32 adopted pursuant to the federal Resource Conservation and
33 Recovery Act, 42 U.S.C. § 6901--6992, is guilty of an
34 aggravated misdemeanor and upon conviction shall be punished
35 by a fine of not more than twenty-five thousand dollars for

1 each day of violation or imprisonment for not more than two
2 years, or both. If the conviction is for a violation
3 committed after a first conviction under this section, the
4 person is guilty of a class "D" "F" felony and shall be
5 punished by a fine of not more than fifty thousand dollars for
6 each day of a violation or imprisonment for not more than five
7 years, or both occurs.

8 Sec. 13. Section 716B.4, Code 2003, is amended to read as
9 follows:

10 716B.4 UNLAWFUL STORAGE OR TREATMENT OF HAZARDOUS WASTE --
11 PENALTIES.

12 A person who knowingly or with reason to know, treats or
13 stores hazardous waste without a permit issued pursuant to 42
14 U.S.C. § 6925 or § 6926 is guilty of an aggravated misdemeanor
15 and upon conviction shall be punished by a fine of not more
16 than twenty-five thousand dollars for each day of violation or
17 imprisonment for not more than two years, or both. If the
18 conviction is for a violation committed after a first
19 conviction under this section, the person is guilty of a class
20 "D" "F" felony and shall be punished by a fine of not more
21 than fifty thousand dollars for each day of a violation or
22 imprisonment for not more than five years, or both occurs.

23 Sec. 14. Section 902.9, subsections 4 and 5, Code 2003,
24 are amended to read as follows:

25 4. A class "C" felon, not an habitual offender, shall be
26 confined for no more than ten years, and in addition shall be
27 sentenced to a fine of at least one thousand dollars but not
28 more than ten thousand dollars.

29 4A. A class "D" felon, not an habitual offender, shall be
30 confined for no more than seven years, and in addition shall
31 be sentenced to a fine of at least one thousand dollars but
32 not more than ten thousand dollars.

33 5. A class "D" "E" felon, not an habitual offender, shall
34 be confined for no more than five years, and in addition shall
35 be sentenced to a fine of at least seven hundred fifty dollars

1 but not more than seven thousand five hundred dollars.

2 Sec. 15. Section 902.9, Code 2003, is amended by adding
3 the following new subsection:

4 NEW SUBSECTION. 6. A class "F" felon, not an habitual
5 offender, shall be confined for no more than three years, and
6 in addition shall be sentenced to a fine of at least seven
7 hundred fifty dollars but not more than seven thousand five
8 hundred dollars.

9 Sec. 16. Sections 124.401, 124B.9, 142C.10, 172B.6,
10 502.605, 524.1605, 529.2, 706B.2, 714.9, 716.3, 722.2, and
11 725.7, Code 2003, are amended by striking from the sections
12 anywhere the letter "C" appears after the word "class" and
13 inserting in lieu thereof the letter "D".

14 Sec. 17. Sections 123.47, 124.406, 124A.4, 235B.20,
15 subsection 3, sections 321.279, 321J.2, 328.41, 462A.14,
16 692A.7, 705.1, 707.5, 707.6A, 707.7, 707.8, 708.2, 708.2A,
17 708.2C, 708.3, 708.3A, 708.3B, 708.4, 708.5, 708.6, 708.8,
18 708.11, 708.13, 708A.5, 709.8, 709.11, 709.15, 709.18, 710.6,
19 710.10, 711.4, 712.7, 712.8, 713.6, 713.6A, 717A.2, 717A.3,
20 717B.3A, 717B.9, 719.1, 719.4, 719.5, 719.6, 719.7, 719.8,
21 723A.2, 723A.3, 724.3, 724.4B, 724.10, 724.16, 724.16A,
22 724.17, 724.21, 724.22, 724.26, 724.30, 725.2, 725.3, 726.2,
23 726.5, 726.6, 726.8, 728.4, 728.12, 728.15, 729.5, and 811.2,
24 Code 2003, are amended by striking from the referenced
25 sections anywhere the letter "D" appears after the word
26 "class" and inserting in lieu thereof the letter "E".

27 Sec. 18. Sections 39A.2, 80.9, 80A.16, 87.11E, 87.14A,
28 91E.3, 99D.24, 99D.25, 99E.18, 99F.15, 124.401, 124.407,
29 126.25, 147.103A, 147A.11, 155A.24, 235B.20, subsection 5,
30 sections 321.189A, 321.217, 321.483, 422.25, 422.40, 422.58,
31 423.18, 424.17, 437A.13, 453B.12, 462A.70, 502.605, 507E.3,
32 516E.15, 521A.10, 523B.11, 523C.18, 535B.8, 553.14, 554D.122,
33 554D.123, 692.7, 706.3, 706B.2, 714.2, 714.10, 715A.2, 715A.6,
34 715A.8, 716.4, 716.10, 718.5, 720.2, 720.3, 721.1, 722.1,
35 722.10, 725.7, 725.16, 808B.2, 809A.10, and 809A.18, Code

1 2003, are amended by striking from the referenced sections
2 anywhere the letter "D" appears after the word "class" and
3 inserting in lieu thereof the letter "F".

4

DIVISION IV

5 Sec. 19. Section 91E.3, subsection 1, paragraph e, Code
6 2003, is amended to read as follows:

7 e. That possession of forged documentation authorizing the
8 person to stay or be employed in the United States is a class
9 "B" "F" felony.

10 Sec. 20. Section 602.6306, subsection 2, Code 2003, is
11 amended to read as follows:

12 2. District associate judges also have jurisdiction in
13 civil actions for money judgment where the amount in
14 controversy does not exceed ten thousand dollars; jurisdiction
15 over involuntary commitment, treatment, or hospitalization
16 proceedings under chapters 125 and 229; jurisdiction of
17 indictable misdemeanors, ~~class-"B"~~ class "E" or class "F"
18 felony violations, and other felony arraignments; jurisdiction
19 to enter a temporary or emergency order of protection under
20 chapter 236, and to make court appointments and set hearings
21 in criminal matters; jurisdiction to enter orders in probate
22 which do not require notice and hearing and to set hearings in
23 actions under chapter 633; and the jurisdiction provided in
24 section 602.7101 when designated as a judge of the juvenile
25 court. While presiding in these subject matters a district
26 associate judge shall employ district judges' practice and
27 procedure.

28 Sec. 21. Section 701.7, Code 2003, is amended to read as
29 follows:

30 701.7 FELONY DEFINED AND CLASSIFIED.

31 A public offense is a felony of a particular class when the
32 statute defining the crime declares it to be a felony.
33 Felonies are class "A" felonies, class "B" felonies, class "C"
34 felonies, and class "D" felonies, class "E" felonies, and
35 class "F" felonies. Where the statute defining the offense

1 declares it to be a felony but does not state what class of
2 felony it is or provide for a specific penalty, that felony
3 shall be a class "D" "F" felony.

4 Sec. 22. Section 901.2, unnumbered paragraph 2, Code 2003,
5 is amended to read as follows:

6 The court shall not order a presentence investigation when
7 the offense is a class "A" felony. If, however, the board of
8 parole determines that the Iowa medical and classification
9 center reception report for a class "A" felon is inadequate,
10 the board may request and shall be provided with additional
11 information from the appropriate judicial district department
12 of correctional services. The court shall order a presentence
13 investigation when the offense is any felony punishable under
14 section 902.9, subsection 1, or a class "B", class "C", or
15 class "D", class "E", or class "F" felony. A presentence
16 investigation for any felony punishable under section 902.9,
17 subsection 1, or a class "B", class "C", or class "D", class
18 "E", or class "F" felony shall not be waived. The court may
19 order, with the consent of the defendant, that the presentence
20 investigation begin prior to the acceptance of a plea of
21 guilty, or prior to a verdict of guilty. The court may order
22 a presentence investigation when the offense is an aggravated
23 misdemeanor. The court may order a presentence investigation
24 when the offense is a serious misdemeanor only upon a finding
25 of exceptional circumstances warranting an investigation.
26 Notwithstanding section 901.3, a presentence investigation
27 ordered by the court for a serious misdemeanor shall include
28 information concerning only the following:

29 Sec. 23. Section 902.3A, subsection 1, unnumbered
30 paragraph 1, Code 2003, is amended to read as follows:

31 Notwithstanding section 902.3, when a conviction for a
32 class "D", class "E", or class "F" felony is entered against a
33 person, the court, at its discretion, in imposing a sentence
34 of confinement pursuant to section 901.5, may commit the
35 person into the custody of the director of the Iowa department

1 of corrections for a determinate term of less than the maximum
2 length of the sentence prescribed by section 902.9, subsection
3 57, if mitigating circumstances exist and those circumstances
4 are stated specifically on the record.

5 Sec. 24. Section 902.8, Code 2003, is amended to read as
6 follows:

7 902.8 MINIMUM SENTENCE -- HABITUAL OFFENDER.

8 An habitual offender is any person convicted of a class
9 "C", ~~or a~~ class "D", class "E", or class "F" felony, who has
10 twice before been convicted of any felony in a court of this
11 or any other state, or of the United States. An offense is a
12 felony if, by the law under which the person is convicted, it
13 is so classified at the time of the person's conviction. A
14 person sentenced as an habitual offender shall not be eligible
15 for parole until the person has served the minimum sentence of
16 confinement of three years.

17 Sec. 25. Section 902.9, unnumbered paragraph 2, Code 2003,
18 is amended to read as follows:

19 The criminal penalty surcharge required by sections 911.2
20 and 911.3 shall be added to a fine imposed on a class "C", ~~or~~
21 class "D", class "E", or class "F" felon, as provided by those
22 sections, and is not a part of or subject to the maximums set
23 in this section.

24 EXPLANATION

25 This bill makes changes to criminal sentencing.

26 DIVISION I -- CONDITIONAL DISCHARGE FOR DRUG-RELATED
27 OFFENSES. The bill reinstates Code section 124.409(1), which
28 was repealed in the 2002 Legislative Session and makes changes
29 to the section. The bill permits a defendant to receive a
30 conditional discharge of a sentence for an offense committed
31 under Code chapter 124 or any other drug-related offense. A
32 conditional discharge permits the court, upon a plea or
33 conviction of guilt, to defer entering judgment of guilt and
34 place the defendant on probation. If the defendant violates
35 probation, the court may enter an adjudication of guilt and

1 sentence the defendant. If the defendant fulfills the terms
2 of probation, the court shall dismiss the proceedings against
3 the defendant without an adjudication of guilt. The Code
4 section repealed in the 2002 Legislative Session restricted
5 the conditional discharge to a first offense. The bill
6 permits more than one conditional discharge.

7 DIVISION II -- EIGHTY-FIVE PERCENT SENTENCE REOPENINGS.

8 The bill also provides for the reopening of a judgment and
9 sentence for a person serving a sentence that requires the
10 maximum accumulation of earned time credits of 15 percent of
11 the total sentence of confinement or most commonly referred to
12 as an 85 percent sentence.

13 Under the bill, an 85 percent sentence may be reopened upon
14 a joint motion filed by the board of parole and the department
15 of corrections if the original sentencing court grants the
16 motion. The county attorney from the county which prosecuted
17 the defendant may, after consulting with the victim, if the
18 victim can be found, file an objection to the motion to
19 reopen. If the sentence is reopened, the court may resentence
20 the defendant and reduce the maximum sentence imposed in the
21 original sentencing order and the new sentence shall no longer
22 be subject to the maximum accumulation of earned time of 15
23 percent of the total sentence of confinement. If a defendant
24 is resentenced to a new maximum sentence, the maximum
25 accumulation of earned time shall be calculated in the same
26 manner as other offenses in Code chapter 903A, which is one
27 and two-tenths days for each day the inmate demonstrates good
28 conduct or satisfactorily participates in prison programs.
29 Any earned time accumulated on the original sentence shall be
30 credited to the new sentence upon reopening. If a sentence is
31 reopened, the defendant may be paroled if eligible.

32 DIVISION III -- RECLASSIFICATION OF CERTAIN FELONY

33 OFFENSES. The bill changes the maximum term of confinement
34 for certain class "B" felonies, reclassifies certain class "C"
35 felonies as class "D" felonies, changes the maximum term of

1 confinement for certain class "D" felonies, and reclassifies
2 all class "D" felonies into either a class "E" or class "F"
3 felony. The new class "D" felony is punishable by confinement
4 for no more than seven years and a fine of at least \$750 but
5 not more than \$7,500. The class "E" felony is punishable by
6 confinement for no more than five years and a fine of at least
7 \$750 but not more than \$7,500. The class "F" felony is
8 punishable by confinement for no more than three years and a
9 fine of at least \$750 but not more than \$7,500.

10 The bill does not change any minimum or maximum fine amount
11 for any criminal offense, thus if the minimum fine amount was
12 \$750 before the offense was reclassified, the minimum fine
13 amount will be \$750 after reclassification.

14 **MAXIMUM TERM OF CONFINEMENT CHANGED FOR CERTAIN CLASS "B"**
15 **FELONIES.** The maximum term of confinement is changed from 50
16 years to 25 years of confinement for manufacture or delivery
17 of large quantities of a controlled substance in violation of
18 Code section 124.401(1)(a). The maximum term of confinement
19 is changed from 25 years to 15 years of confinement for the
20 manufacture or delivery of certain controlled substances in
21 violation of Code section 124.401(1)(b).

22 **CLASS "C" FELONIES RECLASSIFIED AS CLASS "D" FELONIES.** The
23 bill reclassifies the following class "C" felonies as class
24 "D" felonies: manufacture or delivery of a controlled
25 substance (124.401), sale or receipt of precursor substances
26 used in controlled substances (124B.9), sale or purchase of an
27 anatomical gift (142C.10), falsifying, altering, or forging a
28 transportation certificate for livestock (172B.6), willful
29 violation of the uniform securities Act (502.605), false
30 statements or entries by bank officers or employees
31 (524.1605), financial transaction reporting violations
32 (529.2), money laundering (706B.2), fraudulent practice in the
33 first degree (714.9), criminal mischief in the first degree
34 (716.3), accepting a bribe (722.2), and illegal gaming
35 (725.7).

1 CLASS "D" FELONIES RECLASSIFIED AS CLASS "E" FELONIES. If
2 a class "D" felony is reclassified under the bill as a class
3 "E" felony, the maximum term of confinement remains at five
4 years and the minimum and maximum fine amounts remain the
5 same.

6 CLASS "D" FELONIES RECLASSIFIED AS CLASS "F" FELONIES. The
7 bill reclassifies the following class "D" felonies as class
8 "F" felonies: election misconduct (39A.2), false voter
9 registration form (48A.11), transmission of HIV-related
10 information (80.9), bail enforcement license violations
11 (80A.16), filing false financial statements (87.11E),
12 obtaining insurance covering compensation benefits violation
13 (87.14A), pari-mutuel wagering prohibited activities (99D.24),
14 drugging or numbing a horse or dog prior to race (99D.25),
15 prohibited sales or forgery of lottery tickets (99E.18),
16 prohibited activities on excursion boats (99F.15), possession
17 of certain substances used to make a controlled substance
18 (124.401), gatherings where controlled substances unlawfully
19 used (124.407), offering for sale HIV test kits (126.25),
20 unauthorized practice of medicine (147.103A), acting as an EMT
21 without certificate (147A.11), sale or delivery of unlawfully
22 procured prescription drugs (155A.24), bribery of meat and
23 poultry inspectors (189A.19), exploiting dependant adult
24 causing monetary loss (235B.20), misuse of vehicle license by
25 undercover peace officer (321.189A), false affidavit submitted
26 under motor vehicle laws (321.217), violations under motor
27 vehicle laws specified as a felony (321.483), willful invasion
28 of income, sales, services, or franchise tax (422.25), make or
29 verify false information or make false return by corporation
30 or partnership (422.40), willful evasion of tax on retail
31 sales (422.58), willful evasion of use tax (423.18), willful
32 attempt to evade environmental protection charge (424.17),
33 willful evasion of replacement tax (437A.13), criminal drug
34 stamp violations (453B.12), fraudulent alteration of water
35 vessel hull identification (462A.70), willful violation of the

1 uniform securities Act (502.605), insurance fraud (507E.3),
2 willful violation of motor vehicle service contract (516E.15),
3 willful violations of requirements relating to insurance
4 holding company (521A.10), business opportunity promotion
5 violations (523B.11), residential service contract violations
6 (523C.18), acting as mortgage broker or banker without a
7 license (535B.8), price-fixing contracts with government
8 (553.14), fraudulent use of electronic signature (554D.122),
9 false or unauthorized request to obtain private key for use as
10 digital signature (554D.123), requesting criminal intelligence
11 data under false pretenses (692.7), conspiracy to commit a
12 felony other than a forcible felony (706.3), money laundering
13 (706B.2), theft in the second degree (714.2), fraudulent
14 practices in the second degree (714.10), forgery (715A.2),
15 fraudulent use of credit cards (715A.6), identity theft
16 (715A.8), criminal mischief in the second degree (716.4),
17 railroad vandalism in the fourth degree (716.10), unlawful
18 disposal of hazardous waste (716B.2), unlawful transportation
19 of hazardous waste (716B.3), unlawful storage or treatment of
20 hazardous waste (716B.4), falsifying public documents (718.5),
21 perjury (720.2), suborning perjury (720.3), felonious
22 misconduct in office (721.1), bribery (722.1), commercial
23 bribery (722.10), illegal gambling (725.7), gambling violation
24 involving an amusement device (725.16), unlawful interception
25 of communications (808B.2), failure of trustee to notify
26 prosecuting attorney (809A.10), and destruction of material
27 subject to subpoena in a forfeiture proceeding (809A.18).

28 DIVISION IV -- MISCELLANEOUS CHANGES. This division of the
29 bill amends various Code sections to conform with
30 reclassifying certain felonies in the bill.

31
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34
35

HOUSE FILE 598*

H-1215

1 Amend House File 598 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. Section 124.401, subsection 1,
5 paragraph a, unnumbered paragraph 1, Code 2003, is
6 amended to read as follows:

7 Violation of this subsection, with respect to th
8 following controlled substances, counterfeit
9 substances, or simulated controlled substances is a
10 class "B" felony, and notwithstanding section 902.9,
11 subsection 2, shall be punished by confinement for n
12 more than ~~fifty~~ thirty years and a fine of not mor
13 than one million dollars:

14 Sec. 2. Section 124.401, subsection 1, paragraph
15 a, subparagraph (2), unnumbered paragraph 1, Code
16 2003, is amended to read as follows:

17 More than five ~~kilograms~~ hundred grams of a mix
18 or substance containing a detectable amount of any of
19 the following:

20 Sec. 3. Section 124.401, subsection 1, paragraph
21 a, subparagraph (2), subparagraph subdivisions (d) and
22 (e), Code 2003, are amended by striking the
23 subparagraph subdivisions.

24 Sec. 4. Section 124.401, subsection 1, paragraph
25 a, Code 2003, is amended by adding the following new
26 subparagraph:

27 NEW SUBPARAGRAPH. (7) More than five kilograms of
28 a mixture or substance containing a detectable amount
29 of any of the following:

30 (a) Methamphetamine, its salts, isomers, or salts
31 of isomers.

32 (b) Amphetamine, its salts, isomers, and salts of
33 isomers.

34 (c) Any compound, mixture, or preparation which
35 contains any quantity of any of the substances
36 referred to in subparagraph subdivisions (a) and (b).

37 Sec. 5. Section 124.401, subsection 1, paragraph
38 b, subparagraph (2), unnumbered paragraph 1, Code
39 2003, is amended to read as follows:

40 More than ~~five~~ one hundred grams but not more t
41 five ~~kilograms~~ hundred grams of any of the followi

42 Sec. 6. Section 124.401, subsection 1, paragraph
43 b, subparagraph (3), Code 2003, is amended to read as
44 follows:

45 (3) More than ~~five~~ ten grams but not more than
46 fifty grams of a mixture or substance described in
47 subparagraph (2) which contains cocaine base.

48 Sec. 7. Section 124.401, subsection 1, paragraph
49 c, subparagraph (2), unnumbered paragraph 1, Code
50 2003, is amended to read as follows:

H-1215

1 ~~Five~~ One hundred grams or less of any of the
2 following:

3 Sec. 8. Section 124.401, subsection 1, paragraph
4 c, subparagraph (3), Code 2003, is amended to read as
5 follows:

6 (3) ~~Five~~ Ten grams or less of a mixture or
7 substance described in subparagraph (2) which contains
8 cocaine base.

9 Sec. 9. Section 124.413, unnumbered paragraph 1,
10 Code 2003, is amended to read as follows:

11 A person sentenced pursuant to section 124.401,
12 subsection 1, paragraph "a", "b", ~~"e"~~, "e", or "f",
13 shall not be eligible for parole until the person has
14 served a minimum period of confinement of one-third of
15 the maximum indeterminate sentence prescribed by law.

16 Sec. 10. Section 692A.2A, subsection 4, Code 2003,
17 is amended by adding the following new paragraph:

18 NEW PARAGRAPH. aa. The person resides at a
19 hospice program as defined in section 135J.1, a
20 hospital as defined in section 135B.1, a health care
21 facility as defined in section 135C.1, a nursing
22 facility as defined in section 135C.1, a residential
23 care facility as defined in section 135C.1, or the
24 Iowa veterans home.

25 Sec. 11. Section 711.3, Code 2003, is amended to
26 read as follows:

27 711.3 ROBBERY IN THE SECOND DEGREE.

28 All robbery which is not robbery in the first
29 degree is robbery in the second degree, except as
30 provided in section 711.3A. Robbery in the second
31 degree is a class "C" felony.

32 Sec. 12. NEW SECTION. 711.3A ROBBERY IN THE
33 THIRD DEGREE.

34 A person commits robbery in the third degree when,
35 while perpetrating a theft as defined in section
36 714.2, subsection 5, the person commits an assault
37 upon another as defined in section 708.2, subsection
38 5. Robbery in the third degree is an aggravated
39 misdemeanor.

40 Sec. 13. Section 901.5, subsection 13, Code 2003,
41 is amended by striking the subsection.

42 Sec. 14. NEW SECTION. 901.5B REOPENING OF
43 SENTENCE FOR PERSONS SERVING SENTENCE SUBJECT TO
44 MAXIMUM ACCUMULATION OF EARNED TIME OF FIFTEEN
45 PERCENT.

46 1. A defendant serving a sentence under section
47 902.12 who is sentenced by the court to the custody of
48 the director of the department of corrections, may
49 have the judgment and sentence reopened for
50 resentencing if all of the following apply:

1 a. The board of parole and the department of
2 corrections file a joint motion in the sentencing
3 court to reopen the sentence of the defendant.
4 b. The county attorney from the county which
5 prosecuted the defendant is served with a copy of the
6 motion to reopen by certified mail. The motion shall
7 specify that the county attorney has thirty days from
8 the date of service to consult with the victim and
9 file a written objection.

10 c. The court upon hearing grants the motion.

11 2. Notwithstanding section 902.12, the defendant
12 becomes eligible for parole or work release upon the
13 reopening of the sentence.

14 3. The reopening of a sentence under this section
15 does not affect the accrual of earned time under
16 section 903A.2, and earned time shall accrue in the
17 same manner as it accrued prior to the reopening.

18 4. The filing of a motion or the reopening of a
19 sentence under this section shall not constitute
20 grounds to stay any other court proceedings, or to
21 toll or restart the time for filing of any posttrial
22 motion or any appeal.

23 5. The defendant may request appointment of
24 counsel, if eligible under section 815.10, during any
25 proceedings pursuant to this section.

26 Sec. 15. Section 903.4, Code 2003, is amended to
27 read as follows:

28 903.4 PROVIDING PLACE OF CONFINEMENT.

29 All persons sentenced to confinement for a period
30 of one year or less shall be confined in a place to be
31 furnished by the county where the conviction was had
32 unless the person is presently committed to the
33 custody of the director of the Iowa department of
34 corrections, in which case the provisions of section
35 901.8 apply, ~~or unless the person is serving a~~
36 ~~determinate term of confinement of one year pursuant~~
37 ~~to section 902.3A.~~ All persons sentenced to
38 confinement for a period of more than one year shall
39 be committed to the custody of the director of the
40 Iowa department of corrections to be confined in a
41 place to be designated by the director and the cost of
42 the confinement shall be borne by the state. The
43 director may contract with local governmental units
44 for the use of detention or correctional facilities
45 maintained by the units for the confinement of such
46 persons.

47 Sec. 16. Section 907.3, subsection 1, paragraph m,
48 Code 2003, is amended by striking the paragraph.

49 Sec. 17. Section 907.3, subsection 2, paragraph g,
50 Code 2003, is amended by striking the paragraph.

1 Sec. 18. Section 907.3, subsection 3, paragraph g,
2 Code 2003, is amended by striking the paragraph.

3 Sec. 19. Section 902.3A, Code 2003, is repealed."

4 2. Title page, by striking lines 1 through 5 and
5 inserting the following: "An Act relating to criminal
6 sentencing and procedure by modifying the penalties
7 for certain offenses related to controlled substances,
8 changing residency restrictions for persons required
9 to register as a sex offender, creating a criminal
10 offense of robbery in the third degree, providing for
11 the reopening of a sentence that requires a maximum
12 accumulation of earned time credits of fifteen percent
13 of the total term of confinement, repealing certain
14 determinate sentences, and providing penalties."

15 3. By renumbering as necessary.

By MADDUX of Polk

H-1215 FILED APRIL 1, 2003

Withdrawn 4/23/03 L R

HOUSE FILE 598

H-1263

1 Amend the amendment, H-1215, to House File 598 as
2 follows:

3 1. Page 2, by inserting after line 15 the
4 following:

5 "Sec. _____. Section 692A.2A, subsections 2 and 3,
6 Code 2003, are amended to read as follows:

7 2. A person shall not reside within ~~two~~ one
8 thousand three hundred twenty feet of the real
9 property comprising a public or nonpublic elementary
10 or secondary school or a child care facility.

11 3. A person who resides within ~~two~~ one thousand
12 three hundred twenty feet of the real property
13 comprising a public or nonpublic elementary or
14 secondary school, or a child care facility, commits an
15 aggravated misdemeanor.

16 Sec. _____. Section 692A.2A, subsection 4,
17 unnumbered paragraph 1, Code 2003, is amended to read
18 as follows:

19 A person residing within ~~two~~ one thousand three
20 hundred twenty feet of the real property comprising a
21 public or nonpublic elementary or secondary school or
22 a child care facility does not commit a violation of
23 this section if any of the following apply:"

24 2. Page 2, by inserting after line 24 the
25 following:

26 "Sec. _____. Section 692A.5, subsection 1, paragraph
27 h, Code 2003, is amended to read as follows:

28 h. Inform the person, if the person's residency is
29 restricted under section 692A.2A, that the person
30 shall not reside within ~~two~~ one thousand three hundred
31 twenty feet of the real property comprising a public
32 or nonpublic elementary or secondary school, or a
33 child care facility."

34 3. By renumbering as necessary.

By JENKINS of Black Hawk

H-1263 FILED APRIL 3, 2003

Out of order

Legislative Fiscal Bureau

Fiscal Note

HF 598 - Sentencing Reform (LSB 1141HV.1)

Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)

Fiscal Note Version — As Amended by H-1215

Requested by Representative O. Gene Maddox

Description

Amendment H-1215 to House File 598 strikes everything after the enacting clause and inserts new language that relates to sentencing options. Sections One through Eight relate to sentencing options for powder and crack cocaine. Section Nine repeals the waivable mandatory minimum term for certain drug offenses. Section Ten relates to sex offender residency requirements. Sections 11 and 12 create a new offense, Robbery in the Third Degree. Sections 13, 15, 16, 17, 18, and 19 relate to the repeal of a sentencing option: Determinate term for certain Class D felony convictions. Section 14 provides for a reopening of a judgment and sentence for certain crimes referred to as "85.0%" sentences where, under current law, an inmate must serve 85.0% of the sentence to be eligible for release from prison.

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 policies and practices will not change over the projection period.
3. The law will become effective July 1, 2003. A lag effect of six months is assumed, from the law's effective date to the date of first entry of affected offenders into the correctional system.
4. The information in this fiscal note is based on data in the Justice Data Warehouse, which consists of court and Community-Based Corrections (CBC) information through FY 2002.
5. Iowa's convictions, incarceration rate, and number of admissions to prison will not change. However, the length of stay in prison for offenders who committed offenses not involving threats or violence will decrease.
6. The repeal of the mandatory minimum term for certain drug offenses will not be applied retroactively to offenders currently serving such terms. During FY 2002, 227 offenders were admitted to prison with this drug offense mandatory minimum term as their most serious sentence. An estimated 227 offenders annually will serve an average length of stay in prison similar to drug offenders who have not been sentenced to serve a mandatory minimum term.
7. Section Ten permits sex offenders to live within a larger area of the State than under current law. This provision is expected to have no significant correctional or fiscal impact.
8. The correctional and fiscal impact of creating a new offense, Robbery in the Third Degree, cannot be estimated due to lack of sufficient data. However, the correctional and fiscal impact is expected to be minimal. County attorneys control the charge level, and this offense may simply be used for plea bargaining.
9. Court hearings for considering the reopening of a sentence will be held in the county of the offender's conviction.
10. It is likely that if a County Attorney opposes reopening a sentence, the Department of Corrections and the Board of Parole will not pursue the case.
11. On average, offenders not serving Murder in the Second Degree 85.0% terms would be recommended to the court for sentence reconsideration after at least seven years have been served on their sentence. This is based on the average length of stay in prison for Class B felony non-murder offenses before the 85.0% laws were enacted. This analysis

- recognizes that many offenders serving 85.0% sentences for Robbery in the Second Degree were plea-bargained from a charge of Robbery in the First Degree. It is assumed these offenders will be treated as Robbery in the First Degree. For offenders convicted of Murder in the Second Degree and serving 85.0% sentences, they will be recommended to the court for sentence reconsideration after serving at least 16 years.
12. The Board of Parole indicates it will review all cases of offenders serving 85.0% terms. At mid-year 2002, there were 608 offenders serving 85.0% terms as their most serious offense. Of these, 590 offenders were serving sentences under Section 902.12, Code of Iowa, and would be eligible for sentencing reconsideration under the Amendment. The remaining 18 offenders were convicted of sexually predatory offenses and would not be considered for reopening of their sentence. Approximately 50.0% of the cases would be eligible for the sentencing court's reconsideration after serving a minimum of at least seven years in prison.
 13. This analysis provides the maximum number of potential sentences that could be reopened under Amendment H-1215 to HF 598. No attempt was made to estimate how many judges would reject the reconsideration of sentences. The actual number of sentences that are reopened if Amendment H-1215 to HF 598 is enacted ranges from 0 to 21 in FY 2004, 0 to 63 in FY 2005, 0 to 92 in FY 2006, 0 to 123 in FY 2007, and 0 to 134 in FY 2008.
 14. The Board of Parole will incur additional costs associated with case reviews to consider reopening sentences. The Board is comprised of two full-time and three part-time members. The part-time members receive \$265 per diem. An additional eight days is required to review cases using a panel comprised of three Board members. The Board will require two additional staff, a Clerk and a Statistical Analyst.
 15. The Office of the Attorney General will incur additional costs associated with sentence reopenings. It is estimated that each hearing will require 1.5 attorney days plus clerical support, to prepare and file motions, represent the State, and travel to the county of conviction, at a cost of \$722 per hearing.
 16. The Judicial Branch will incur additional costs for sentence reopenings. Each hearing is estimated to be one hour for a Clerk of Court staff, District Court Judge, Court Reporter and a Court Attendant at a cost of \$114.
 17. The Indigent Defense Program will incur additional costs for each case that is reopened. The estimated cost per case is \$300.
 18. The repeal of the determinate Class D option will reduce the average length of stay for certain offenders. During FY 2002, 39 offenders were sentenced under this provision. Approximately 53.8% of these offenders will serve a longer prison sentence than if they had been sentenced to an indeterminate term.
 19. There will be cost reductions for the Indigent Defense Program associated with redefining certain Class B, non-person offenses. The savings per case is estimated to be \$1,300. These savings will be offset by the increased number of cases that will be tried at a higher felony level due to the cocaine provisions.
 20. Community-Based Corrections (CBC) will experience an initial increase in parole cases. Over the long term, caseloads will not be significantly impacted. Offenders released under the reopening of a sentence will be released to work release at an average daily cost of \$15 per day. After completing work release, these offenders will be paroled to the Intensive Supervision level, at an average daily cost of \$9.91.
 21. There are 1,404 CBC facility beds statewide. Of these, approximately 466 are dedicated to the work release program. There were 134 offenders in prison on March 5, 2003, who had been approved for work release but were waiting for a CBC bed to become available. The facilities are operating at full capacity under current law. Amendment H-1215 to HF 598 may increase demand for CBC beds, or alternatively, day programming.
 22. The average annual cost for a new Parole/Probation Officer III is \$52,000 (salary and benefits). The standard supervision ratio for Intensive Supervision is one officer to 30 offenders. Offenders paroled will be supervised for multiple years.

23. The State prisons were operating at 124.9% of current designed capacity on March 28, 2003, with a prison population of 8,507 offenders. Current designed capacity is 6,812 beds. Designed capacity will increase to 7,142 beds by FY 2006 when the Clinical Care Unit at Fort Madison (200 beds) is fully operational in June 2003 and the 170-bed Special Needs Unit at Oakdale is constructed and operating (FY 2006).
24. The State prison budget is based on 7,600 inmates; the current system is operating at 112.3% of budgeted capacity.
25. The Criminal and Juvenile Justice Planning Division in the Department of Human Rights released its prison population forecast in December 2002. The report stated that by FY 2012, the prison population is expected to reach 12,127 offenders if offender behavior and justice system policies, trends, and practices remain unchanged.
26. If the prison population reaches 12,127 offenders, five new prisons will need to be built over the next ten years. Construction cost per prison is estimated to be \$45.0 million, and annual operating costs are approximately \$28.0 million. If five new 750-bed prisons are built and the population reaches 12,127 offenders, designed capacity would be 10,892 beds, and the prisons would be operating at 111.3% of designed capacity.
27. There is no operating cost savings for Iowa's prison system under Amendment H-1215 to HF 598. Rather, the sentencing options are a cost avoidance mechanism.

Correctional Impact

Admissions to prison will not change. However, the average length of stay for certain offenders will decrease. There will be prison readmissions for those offenders released under sentencing reopenings, who failed the requirements of work release or parole, and are revoked back to prison. There will be 3 readmissions in FY 2005, 9 readmissions in FY 2006, 12 readmissions in FY 2007, and 15 readmissions in FY 2008. The table below illustrates the maximum cumulative impact on the prison population. The provisions that relate to cocaine increase the prison incarceration rate for these offenses.

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
Cocaine	5	15	26	31	31
Sentence Reopenings	- 21	- 63	- 92	- 123	- 134
Repeal Mandatory Min.	0	- 118	- 125	- 130	- 135
Repeal Determinate D	0	0	- 22	- 22	- 22
Total	<u>- 16</u>	<u>- 166</u>	<u>- 213</u>	<u>- 244</u>	<u>- 260</u>

The cumulative impact is different than the actual number of offenders released annually, due to the long length of stay under current law.

The offenders released under sentencing reconsideration will be placed in work release facilities, and then intensively supervised on parole. This will increase the number of offenders in prison placed on waiting lists, which will increase the need for additional CBC beds. The number of admissions to work release in outlying years may result in the CBC system shifting beds from probation and the Operating While Intoxicated (OWI) facility-based treatment program. If this occurs, the prison population may increase because probation and the OWI treatment program serve as a diversion from prison. Alternatively, CBC District Departments may seek funds to begin or expand day programming, which combines intensive supervision with treatment, electronic monitoring, and daily reporting to a CBC facility. This program permits the length of stay in work release to be reduced while maintaining security.

Offenders released to CBC supervision due to repealing the mandatory minimum sentence for certain drug offenses and the repeal of the determinate Class D felony sentencing option would have been released to CBC under current law; their length of stay in prison is reduced. There is no impact on CBC resources for repealing these sentencing options.

The possibility exists that no offenders may be released under the sentencing reopening provisions of Amendment H-1215 to HF 598.

Fiscal Impact

The estimated fiscal impact of Amendment H-1215 to HF 598 to the State General Fund is an increase in expenditures of \$136,000 during FY 2004, and an increase in expenditures of \$287,000 in FY 2005. Costs in outlying years will increase if more sentences are reopened. If no sentences are reopened, the fiscal impact of the other sentencing options is estimated to be minimal. A breakdown of expenditures follows.

<u>Sentence Reopening</u>		
	<u>FY 2004</u>	<u>FY 2005</u>
Attorney General's Office	\$ 15,000	\$ 45,000
Judicial Branch	2,500	7,000
State Public Defender's Office	6,500	19,000
Board of Parole	60,000	60,000
CBC Facilities	0	0
CBC Supervision Staff	52,000	156,000
Total General Fund Impact	<u>\$ 136,000</u>	<u>\$ 287,000</u>

Community-Based Corrections (CBC) Facilities are currently at capacity. Offenders approved for work release will remain in prison until a CBC facility bed becomes available. Therefore, costs for CBC facilities will not increase. Additional CBC staff will be required for the Intensive Supervision Program statewide: 1.0 FTE position in FY 2004 and 3.0 FTE positions in FY 2005. The Board of Parole's estimated cost includes 2.0 FTE positions, a Clerk and a Statistical Analyst.

Sources

- Department of Human Rights, Criminal and Juvenile Justice Planning Division
- Department of Corrections
- Judicial Branch
- State Public Defender's Office
- Iowa State Association of Counties
- Office of the Attorney General
- Iowa County Attorneys Association
- Board of Parole
- Department of Public Safety

/s/ Dennis C Prouty

April 2, 2003

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and 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.

HOUSE FILE 598

H-1265

- 1 Amend the amendment, H-1215, to House File 598 as
2 follows:
3 1. Page 2, by inserting after line 15, the
4 following:
5 "Sec. ____ . NEW SECTION. 321J.2C PERSONS FOUND
6 NOT GUILTY.
7 1. Notwithstanding any other provision of this
8 chapter to the contrary, if any prosecution for a
9 violation of section 321J.2 or 321J.2A does not result
10 in a conviction, and the defendant's driver's license
11 or nonresident operating privilege has been revoked
12 under section 321J.12 for the occurrence from which
13 the arrest arose, the department shall, upon receipt
14 of the court order finding the defendant not guilty,
15 immediately rescind the revocation order and reinstate
16 the defendant's license.
17 2. Notwithstanding section 321.12 or any other
18 provision of chapter 321 or 321J to the contrary, the
19 director shall immediately destroy any operating
20 records pertaining to a revocation under section
21 321J.12 for the occurrence from which an arrest arose
22 when the defendant was subsequently prosecuted and
23 found not guilty upon receipt of the court order
24 finding the defendant not guilty."
25 2. Page 4, line 7, by inserting after the word
26 "substances," the following: "reinstating a driver's
27 license upon a finding of not guilty in an operating-
28 while-intoxicated offense,".
29 3. By renumbering as necessary.

By HEATON of Henry
HORBACH of Tama
SHOULTZ of Black Hawk

H-1265 FILED APRIL 3, 2003

Def of order

HOUSE FILE 598

H-1269

- 1 Amend the amendment, H-1215, to House File 598 as
2 follows:
3 1. Page 1, line 12, by striking the word "thirty"
4 and inserting the following: "thirty-five".
5 2. Page 2, by striking lines 25 through 39.
6 3. Page 4, lines 9 and 10, by striking the *words*
7 "creating a criminal offense of robbery in the *third*
8 degree,"
9 4. By renumbering as necessary.

By SWAIM of Davis

H-1269 FILED APRIL 3, 2003

Def of order

HOUSE FILE 598

H-1266

1 Amend the amendment, H-1215, to House File 598 as
2 follows:

3 1. Page 1, line 12, by striking the word "thirty"
4 and inserting the following: "thirty-five".

5 2. Page 2, by striking lines 25 through 39.

6 3. By striking page 2, line 42, through page 3,
7 line 25, and inserting the following:

8 "Sec. ____ . NEW SECTION. 901.5B REOPENING OF
9 SENTENCE FOR PERSONS SERVING SENTENCE SUBJECT TO
10 MAXIMUM ACCUMULATION OF EARNED TIME OF FIFTEEN
11 PERCENT.

12 1. A defendant serving a sentence under section
13 902.12 prior to the effective date of this Act, who is
14 sentenced by the court to the custody of the director
15 of the department of corrections, may have the
16 judgment and sentence reopened for resentencing if all
17 of the following apply:

18 a. The county attorney from the county which
19 prosecuted the defendant files a motion in the
20 sentencing court to reopen the sentence of the
21 defendant. The victim, if possible, shall be served a
22 copy of the motion by certified mail. The motion
23 shall specify that the county attorney, if possible,
24 has informed the victim about the filing of the
25 motion, and that the victim has thirty days from the
26 date of the filing of the motion to file a written
27 objection with the court.

28 b. No written objection is filed, thereby
29 requiring the court to grant the motion, or if a
30 written objection is filed, and upon hearing the court
31 grants the motion.

32 2. Upon the court granting the motion to reopen
33 the sentence, the court shall order that the defendant
34 be eligible for consideration of parole or work
35 release in the same manner as a defendant serving a
36 sentence under section 902.12.

37 3. For purposes of calculating earned time under
38 section 903A.2, the sentencing date for a defendant
39 whose sentence has been reopened under this section
40 shall be the date of the original sentencing order.

41 4. The filing of a motion or reopening of a
42 sentence under this section shall not constitute
43 grounds to stay any other court proceedings, or to
44 toll or restart the time for filing of any posttrial
45 motion or any appeal."

46 4. Page 4, lines 9 and 10, by striking the words
47 "creating a criminal offense of robbery in the third
48 degree,"

49 5. By renumbering as necessary.

By SWAIM of Davis

H-1266 FILED APRIL 3, 2003

Out of order

HOUSE FILE 598

H-1267

1 Amend the amendment, H-1215, to House File 598 as
2 follows:

3 1. Page 3, by inserting after line 25 the
4 following:

5 "Sec. ____ . Section 902.11, unnumbered paragraph 1,
6 Code 2003, is amended to read as follows:

7 A person serving a sentence for conviction of a
8 felony, ~~other than a forcible felony under section~~
9 ~~902.12~~, who has a criminal record of one or more prior
10 convictions for a forcible felony or a crime of a
11 similar gravity in this or any other state, shall be
12 denied parole or work release unless the person has
13 served at least one-half of the maximum term of the
14 defendant's sentence. However, the mandatory sentence
15 provided for by this section does not apply if either
16 of the following apply:

17 Sec. ____ . Section 902.12, unnumbered paragraph 1,
18 Code 2003, is amended to read as follows:

19 ~~Except as otherwise provided in section 903A.2, a~~ A
20 person serving a sentence for conviction of the
21 following forcible felonies shall serve one hundred
22 percent of the maximum term of the person's sentence
23 and shall not be released on be denied parole or work
24 release unless the person has served at least one-half
25 of the maximum term of the person's sentence:

26 Sec. ____ . Section 902.12, subsection 5, unnumbered
27 paragraph 2, Code 2003, is amended to read as follows:

28 ~~Except as otherwise provided in section 903A.2, a~~
29 ~~person serving a sentence for conviction under~~
30 6. Vehicular homicide in violation of section
31 707.6A, subsection 1 or 2, shall serve one hundred
32 percent of the maximum term of the person's sentence
33 and shall not be released on parole or work release if
34 the person was also convicted under section 321.261,
35 subsection 3, based on the same facts or event that
36 resulted in the conviction under section 707.6A,
37 subsection 1 or 2."

38 2. Page 4, line 11, by inserting after the word
39 "of" the following: "and relating to".

40 3. By renumbering as necessary.

By SWAIM of Davis

H-1267 FILED APRIL 3, 2003

Out of order

HOUSE FILE 598

H-1268

1 Amend the amendment, H-1215, to House File 598 as
2 follows:

3 1. Page 2, by inserting after line 15 the
4 following:

5 "Sec. ____ . NEW SECTION. 321J.2D PERSONS FOUND
6 NOT GUILTY -- INSURANCE.

7 Notwithstanding any other provision to the
8 contrary, if any prosecution for a violation of
9 section 321J.2 or 321J.2A does not result in a
10 conviction, an insurance company that has increased
11 the defendant's insurance premium due to the
12 prosecution of a violation of section 321J.2 or
13 321J.2A shall reimburse the defendant any insurance
14 premium collected by the insurance company which is in
15 excess of the defendant's insurance premium prior to
16 the prosecution."

17 2. Page 4, line 8, by inserting before the word
18 "changing" the following: "requiring reimbursement of
19 insurance premiums upon a finding of not guilty in an
20 operating-while-intoxicated prosecution,".

21 3. By renumbering as necessary.

By BAUDLER of Adair

H-1268 FILED APRIL 3, 2003

Out of folder

HOUSE FILE 598

H-1270

1 Amend the amendment, H-1215, to House File 598 as
2 follows:

3 1. By striking page 2, line 42, through page 3,
4 line 25, and inserting the following:

5 "Sec. ____ . NEW SECTION. 901.5B REOPENING OF
6 SENTENCE FOR PERSONS SERVING SENTENCE SUBJECT TO
7 MAXIMUM ACCUMULATION OF EARNED TIME OF FIFTEEN
8 PERCENT.

9 1. A defendant serving a sentence under section
10 902.12 prior to the effective date of this Act, who is
11 sentenced by the court to the custody of the director
12 of the department of corrections, may have the
13 judgment and sentence reopened for resentencing if all
14 of the following apply:

15 a. The county attorney from the county which
16 prosecuted the defendant files a motion in the
17 sentencing court to reopen the sentence of the
18 defendant. The victim, if possible, shall be served a
19 copy of the motion by certified mail. The motion
20 shall specify that the county attorney, if possible,
21 has informed the victim about the filing of the
22 motion, and that the victim has thirty days from the
23 date of the filing of the motion to file a written
24 objection with the court.

25 b. No written objection is filed, thereby
26 requiring the court to grant the motion, or if a
27 written objection is filed, and upon hearing the court
28 grants the motion.

29 2. Upon the court granting the motion to reopen
30 the sentence, the court shall order that the defendant
31 be eligible for consideration of parole or work
32 release in the same manner as a defendant serving a
33 sentence under section 902.12.

34 3. For purposes of calculating earned time under
35 section 903A.2, the sentencing date for a defendant
36 whose sentence has been reopened under this section
37 shall be the date of the original sentencing order.

38 4. The filing of a motion or reopening of a
39 sentence under this section shall not constitute
40 grounds to stay any other court proceedings, or to
41 toll or restart the time for filing of any posttrial
42 motion or any appeal."

43 2. Page 3, by inserting after line 25 the
44 following:

45 "Sec. ____ . Section 902.11, unnumbered paragraph 1,
46 Code 2003, is amended to read as follows:

47 A person serving a sentence for conviction of a
48 felony, ~~other than a forcible felony under section~~
49 ~~902.12~~, who has a criminal record of one or more prior
50 convictions for a forcible felony or a crime of a

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Page 2

1 similar gravity in this or any other state, shall be
2 denied parole or work release unless the person has
3 served at least one-half of the maximum term of the
4 defendant's sentence. However, the mandatory sentence
5 provided for by this section does not apply if either
6 of the following apply:

7 Sec. ____ . Section 902.12, unnumbered paragraph 1,
8 Code 2003, is amended to read as follows:

9 ~~Except as otherwise provided in section 903A.2, a A~~
10 person serving a sentence for conviction of the
11 following ~~forcible~~ felonies shall ~~serve one hundred~~
12 ~~percent of the maximum term of the person's sentence~~
13 ~~and shall not be released on be denied~~ parole or work
14 release unless the person has served at least one-half
15 of the maximum term of the person's sentence:

16 Sec. ____ . Section 902.12, subsection 5, unnumbered
17 paragraph 2, Code 2003, is amended to read as follows:

18 ~~Except as otherwise provided in section 903A.2, a~~
19 ~~person serving a sentence for conviction under~~
20 6. Vehicular homicide in violation of section
21 707.6A, subsection 1 or 2, shall serve one hundred
22 percent of the maximum term of the person's sentence
23 and shall not be released on parole or work release if
24 the person was also convicted under section 321.261,
25 subsection 3, based on the same facts or event that
26 resulted in the conviction under section 707.6A,
27 subsection 1 or 2."

28 3. Page 4, line 11, by inserting after the word
29 "of" the following: "and relating to".

30 4. By renumbering as necessary.

By SWAIM of Davis

Out of order H-1270 FILED APRIL 3, 2003

HOUSE FILE 598

H-1358

1 Amend House File 598 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. Section 124.401, subsection 1,
5 paragraph a, unnumbered paragraph 1, Code 2003, is
6 amended to read as follows:

7 Violation of this subsection, with respect to the
8 following controlled substances, counterfeit
9 substances, or simulated controlled substances is a
10 class "B" felony, and notwithstanding section 902.9,
11 subsection 2, shall be punished by confinement for no
12 more than ~~fifty~~ thirty-five years and a fine of not
13 more than one million dollars:

14 Sec. 2. Section 124.401, subsection 1, paragraph
15 a, subparagraph (2), unnumbered paragraph 1, Code
16 2003, is amended to read as follows:

17 More than five ~~kilograms~~ hundred grams of a mixture
18 or substance containing a detectable amount of any of
19 the following:

20 Sec. 3. Section 124.401, subsection 1, paragraph
21 a, subparagraph (2), subparagraph subdivisions (d) and
22 (e), Code 2003, are amended by striking the
23 subparagraph subdivisions.

24 Sec. 4. Section 124.401, subsection 1, paragraph
25 a, Code 2003, is amended by adding the following new
26 subparagraph:

27 NEW SUBPARAGRAPH. (7) More than five kilograms of
28 a mixture or substance containing a detectable amount
29 of any of the following:

30 (a) Methamphetamine, its salts, isomers, or salts
31 of isomers.

32 (b) Amphetamine, its salts, isomers, and salts of
33 isomers.

34 (c) Any compound, mixture, or preparation which
35 contains any quantity of any of the substances
36 referred to in subparagraph subdivisions (a) and (b).

37 Sec. 5. Section 124.401, subsection 1, paragraph
38 b, subparagraph (2), unnumbered paragraph 1, Code
39 2003, is amended to read as follows:

40 More than ~~five one~~ hundred grams but not more than
41 five ~~kilograms~~ hundred grams of any of the following:

42 Sec. 6. Section 124.401, subsection 1, paragraph
43 b, subparagraph (3), Code 2003, is amended to read as
44 follows:

45 (3) More than ~~five~~ ten grams but not more than
46 fifty grams of a mixture or substance described in
47 subparagraph (2) which contains cocaine base.

48 Sec. 7. Section 124.401, subsection 1, paragraph
49 c, subparagraph (2), unnumbered paragraph 1, Code
50 2003, is amended to read as follows:

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1 ~~Five~~ One hundred grams or less of any of the
2 following:

3 Sec. 8. Section 124.401, subsection 1, paragraph
4 c, subparagraph (3), Code 2003, is amended to read as
5 follows:

6 (3) ~~Five~~ Ten grams or less of a mixture or
7 substance described in subparagraph (2) which contains
8 cocaine base.

9 Sec. 9. Section 124.413, unnumbered paragraph 1,
10 Code 2003, is amended to read as follows:

11 A person sentenced pursuant to section 124.401,
12 subsection 1, paragraph "a", "b", ~~"e"~~, "e", or "f",
13 shall not be eligible for parole until the person has
14 served a minimum period of confinement of one-third of
15 the maximum indeterminate sentence prescribed by law.

16 Sec. 10. Section 229A.8A, subsection 4, Code 2003,
17 is amended to read as follows:

18 4. For purposes of registering as a sex offender
19 under chapter 692A, a person placed in the
20 transitional release program shall be ~~classified a~~
21 ~~"high-risk" sex offender and~~ required to register and
22 public notification shall be as provided in section
23 ~~692A.13A, subsection 2~~ 692A.13. A committed person
24 who refuses to register as a sex offender is not
25 eligible for placement in a transitional release
26 program.

27 Sec. 11. Section 692A.2A, subsections 2 and 3,
28 Code 2003, are amended to read as follows:

29 2. A person shall not reside within ~~two~~ one
30 thousand three hundred twenty feet of the real
31 property comprising a public or nonpublic elementary
32 or secondary school or a child care facility.

33 3. A person who resides within ~~two~~ one thousand
34 three hundred twenty feet of the real property
35 comprising a public or nonpublic elementary or
36 secondary school, or a child care facility, commits an
37 aggravated misdemeanor.

38 Sec. 12. Section 692A.2A, subsection 4, unnumbered
39 paragraph 1, Code 2003, is amended to read as follows:

40 A person residing within ~~two~~ one thousand three
41 hundred twenty feet of the real property comprising a
42 public or nonpublic elementary or secondary school or
43 a child care facility does not commit a violation of
44 this section if any of the following apply:

45 Sec. 13. Section 692A.5, subsection 1, paragraph
46 h, Code 2003, is amended to read as follows:

47 h. Inform the person, if the person's residency is
48 restricted under section 692A.2A, that the person
49 shall not reside within ~~two~~ one thousand three hundred
50 twenty feet of the real property comprising a public

1 or nonpublic elementary or secondary school, or a
2 child care facility.

3 Sec. 14. Section 692A.13, Code 2003, is amended by
4 striking the section and inserting in lieu thereof the
5 following:

6 692A.13 AVAILABILITY OF RECORDS.

7 1. The department may provide relevant information
8 from the sex offender registry to the following:

9 a. A criminal or juvenile justice agency, an
10 agency of the state, any sex offender registry of
11 another state, or the federal government.

12 b. The general public through the sex offender
13 registry's web page.

14 c. The single contact repository established
15 pursuant to section 135C.33, in accordance with the
16 rules adopted by the department.

17 2. A criminal or juvenile justice agency may
18 provide relevant information from the sex offender
19 registry to the following:

20 a. A criminal or juvenile justice agency, an
21 agency of the state, or any sex offender registry of
22 another state, or the federal government.

23 b. The general public, including public and
24 private agencies, organizations, public places, public
25 and private schools, child care facilities, religious
26 and youth organizations, neighbors, neighborhood
27 associations, community meetings, and employers.
28 Registry information may be distributed to the public
29 through printed materials, visual or audio press
30 releases, or through a criminal or juvenile justice
31 agency's web page.

32 3. Any member of the public may contact a county
33 sheriff's office or police department to request
34 relevant information from the registry regarding a
35 specific person required to register under this
36 chapter. The request for information shall be in
37 writing, and shall include the name of the person and
38 at least one of the following identifiers pertaining
39 to the person about whom the information is sought:

40 a. The date of birth of the person.

41 b. The social security number of the person.

42 c. The address of the person.

43 The request for information is a confidential
44 record under chapter 22 and is not subject to
45 dissemination.

46 4. A county sheriff shall also provide to any
47 person upon request access to a list of all
48 registrants in that county. However, records of a
49 person protected under 18 U.S.C. § 3521 shall not be
50 disclosed.

1 5. Relevant information provided to the general
2 public may include the offender's name, address, a
3 photograph, locations frequented by the offender,
4 relevant criminal history information from the
5 registry, and any other relevant information.
6 Relevant information provided to the public shall not
7 include the identity of any victim.

8 6. Notwithstanding sections 232.147 through
9 232.151, records concerning convictions which are
10 committed by a minor may be released in the same
11 manner as records of convictions of adults.

12 Sec. 15. Section 901.4, Code 2003, is amended to
13 read as follows:

14 901.4 PRESENTENCE INVESTIGATION REPORT
15 CONFIDENTIAL -- DISTRIBUTION.

16 The presentence investigation report is
17 confidential and the court shall provide safeguards to
18 ensure its confidentiality, including but not limited
19 to sealing the report, which may be opened only by
20 further court order. At least three days prior to the
21 date set for sentencing, the court shall serve all of
22 the presentence investigation report upon the
23 defendant's attorney and the attorney for the state,
24 and the report shall remain confidential except upon
25 court order. However, the court may conceal the
26 identity of the person who provided confidential
27 information. The report of a medical examination or
28 psychological or psychiatric evaluation shall be made
29 available to the attorney for the state and to the
30 defendant upon request. The reports are part of the
31 record but shall be sealed and opened only on order of
32 the court. If the defendant is committed to the
33 custody of the Iowa department of corrections and is
34 not a class "A" felon, a copy of the presentence
35 investigation report shall be forwarded to the
36 director with the order of commitment by the clerk of
37 the district court and to the board of parole at the
38 time of commitment. The presentence investigation
39 report may also be released by the department of
40 corrections or a judicial district department of
41 correctional services pursuant to section 904.602 to
42 another jurisdiction for the purpose of providing
43 interstate probation and parole compact services or
44 evaluations. The defendant or the defendant's
45 attorney may file with the presentence investigation
46 report, a denial or refutation of the allegations, or
47 both, contained in the report. The denial or
48 refutation shall be included in the report. If the
49 person is sentenced for an offense which requires
50 registration under chapter 692A, the court shall

1 release the report to the department ~~which is~~
2 ~~responsible under section 692A.13A for performing the~~
3 ~~assessment of risk of public safety.~~

4 Sec. 16. Section 901.5, subsection 13, Code 2003,
5 is amended by striking the subsection.

6 Sec. 17. NEW SECTION. 901.5B REOPENING OF
7 SENTENCE FOR PERSONS SERVING SENTENCE SUBJECT TO
8 MAXIMUM ACCUMULATION OF EARNED TIME OF FIFTEEN
9 PERCENT.

10 1. A defendant serving a sentence under section
11 902.12 prior to the effective date of this Act, who is
12 sentenced by the court to the custody of the director
13 of the department of corrections, may have the
14 judgment and sentence reopened for resentencing if all
15 of the following apply:

16 a. The county attorney from the county which
17 prosecuted the defendant files a motion in the
18 sentencing court to reopen the sentence of the
19 defendant. The county attorney shall notify the
20 victim pursuant to section 915.13 of the filing of the
21 motion. The motion shall specify that the county
22 attorney has informed the victim about the filing of
23 the motion, and that the victim has thirty days from
24 the date of the filing of the motion to file a written
25 objection with the court.

26 b. No written objection is filed or if a written
27 objection is filed, and upon hearing the court grants
28 the motion.

29 2. Upon the court granting the motion to reopen
30 the sentence, the court shall order that the defendant
31 be eligible for consideration of parole or work
32 release in the same manner as a defendant serving a
33 sentence under section 902.12.

34 3. For purposes of calculating earned time under
35 section 903A.2, the sentencing date for a defendant
36 whose sentence has been reopened under this section
37 shall be the date of the original sentencing order.

38 4. The filing of a motion or reopening of a
39 sentence under this section shall not constitute
40 grounds to stay any other court proceedings, or to
41 toll or restart the time for filing of any posttrial
42 motion or any appeal.

43 Sec. 18. Section 902.11, unnumbered paragraph 1,
44 Code 2003, is amended to read as follows:

45 A person serving a sentence for conviction of a
46 felony, ~~other than a forcible felony under section~~
47 ~~902.12~~, who has a criminal record of one or more prior
48 convictions for a forcible felony or a crime of a
49 similar gravity in this or any other state, shall be
50 denied parole or work release unless the person has

1 served at least one-half of the maximum term of the
2 defendant's sentence. However, the mandatory sentence
3 provided for by this section does not apply if either
4 of the following apply:

5 Sec. 19. Section 902.12, unnumbered paragraph 1,
6 Code 2003, is amended to read as follows:

7 ~~Except as otherwise provided in section 903A.2, a~~ A
8 person serving a sentence for conviction of the
9 following ~~forcible~~ felonies shall ~~serve one hundred~~
10 ~~percent of the maximum term of the person's sentence~~
11 ~~and shall not be released on be denied parole or work~~
12 ~~release unless the person has served at least seven-~~
13 ~~tenths of the maximum term of the person's sentence:~~

14 Sec. 20. Section 902.12, subsection 5, unnumbered
15 paragraph 2, Code 2003, is amended to read as follows:

16 ~~Except as otherwise provided in section 903A.2, a~~
17 ~~person serving a sentence for conviction under~~

18 6. Vehicular homicide in violation of section
19 707.6A, subsection 1 or 2, shall serve one hundred
20 percent of the maximum term of the person's sentence
21 and shall not be released on parole or work release if
22 the person was also convicted under section 321.261,
23 subsection 3, based on the same facts or event that
24 resulted in the conviction under section 707.6A,
25 subsection 1 or 2.

26 Sec. 21. Section 903.4, Code 2003, is amended to
27 read as follows:

28 903.4 PROVIDING PLACE OF CONFINEMENT.

29 All persons sentenced to confinement for a period
30 of one year or less shall be confined in a place to be
31 furnished by the county where the conviction was had
32 unless the person is presently committed to the
33 custody of the director of the Iowa department of
34 corrections, in which case the provisions of section
35 901.8 apply, ~~or unless the person is serving a~~
36 ~~determinate term of confinement of one year pursuant~~
37 ~~to section 902.3A.~~ All persons sentenced to
38 confinement for a period of more than one year shall
39 be committed to the custody of the director of the
40 Iowa department of corrections to be confined in a
41 place to be designated by the director and the cost of
42 the confinement shall be borne by the state. The
43 director may contract with local governmental units
44 for the use of detention or correctional facilities
45 maintained by the units for the confinement of such
46 persons.

47 Sec. 22. Section 905.6, Code 2003, is amended by
48 adding the following new subsection:

49 NEW SUBSECTION. 9. Notify the board of parole,
50 thirty days prior to release, of the release from a

1 residential facility operated by the district
2 department of a person serving a sentence under
3 section 902.12.

4 Sec. 23. NEW SECTION. 905.11 RESIDENTIAL
5 FACILITY RESIDENCY -- MINIMUM.

6 A person who is serving a sentence under section
7 902.12, the maximum term of which exceeds ten years,
8 and who is released on parole or work release shall
9 reside in a residential facility operated by the
10 district department for a period of not less than one
11 year.

12 Sec. 24. Section 906.4, Code 2003, is amended by
13 adding the following new unnumbered paragraph after
14 unnumbered paragraph 1:

15 NEW UNNUMBERED PARAGRAPH. A person on parole or
16 work release who is serving a sentence under section
17 902.12 shall begin parole or work release in a
18 residential facility operated by a judicial district
19 department of correctional services.

20 Sec. 25. Section 907.3, subsection 1, paragraph m,
21 Code 2003, is amended by striking the paragraph.

22 Sec. 26. Section 907.3, subsection 2, paragraph g,
23 Code 2003, is amended by striking the paragraph.

24 Sec. 27. Section 907.3, subsection 3, paragraph g,
25 Code 2003, is amended by striking the paragraph.

26 Sec. 28. Section 915.13, subsection 1, Code 2003,
27 is amended by adding the following new paragraph:

28 NEW PARAGRAPH. h. The filing of a motion to
29 reopen a sentence of a defendant pursuant to section
30 901.5B. Notwithstanding section 915.10, the notice
31 shall be served by certified mail. Notice shall
32 include the scheduled date, time, and place of any
33 hearing to reopen a sentence and that the victim has
34 thirty days from the date of the service of the motion
35 to file a written objection with the court.

36 Sec. 29. Sections 692A.13A and 902.3A, Code 2003,
37 are repealed.

38 Sec. 30. APPLICABILITY OF AVAILABLE RECORDS IN THE
39 SEX OFFENDER REGISTRY. Section 692A.13, as amended by
40 this Act, shall apply retroactively to all offenders
41 on the registry.

42 Sec. 31. EFFECTIVE DATE. The section of this Act
43 amending section 692A.13, being deemed of immediate
44 importance, takes effect upon enactment."

45 2. Title page, by striking lines 1 through 5 and
46 inserting the following: "An Act relating to the
47 criminal sentencing and procedure by modifying the
48 penalties for certain offenses related to controlled
49 substances, modifying dissemination of sex offender
50 registry information and residence restrictions for a

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1 sex offender, repealing certain determinate sentences,
2 changing the parole and work release eligibility of a
3 person serving a sentence that requires a maximum
4 accumulation of earned time credits of fifteen percent
5 of the total term of confinement and by permitting the
6 reopening of such a sentence, providing a penalty, and
7 providing an effective date."

By MADDIX of Polk

H-1358 FILED APRIL 16, 2003

Adopted 4/23/03

HF 598 - Sentencing Reform (LSB 1141 HV)

Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)

Fiscal Note Version — New

Requested by Representative O. Gene Maddox

Description

House File 598 provides sentencing options. Division One permits a second or subsequent deferred judgment for drug-related offenses. Division Two provides for a reopening of a judgment and sentence for certain crimes referred to as "85.0%" sentences where, under current law, an inmate must serve 85.0% of the sentence to be eligible for release from prison. Division Three changes the graduated system of felonies by adding a Class E and a Class F felony. Certain Class C felonies are reclassified to Class D felonies, and all current Class D felonies are reclassified as Class E or Class F felonies. The maximum term of confinement for certain Class B felonies is reduced. Division Four amends various sections of the Code of Iowa to conform with reclassifying certain felony offenses.

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 policies and practices will not change over the projection period.
3. The law will become effective July 1, 2003. A lag effect of six months is assumed, from the law's effective date to the date of first entry of affected offenders into the correctional system.
4. The information in this fiscal note is based on data in the Justice Data Warehouse, which consists of court and Community-Based Corrections (CBC) information through FY 2002.
5. Iowa's convictions, incarceration rate, and number of admissions to prison will not change under this Bill. However, the length of stay in prison for offenders who committed offenses not involving threats or violence will decrease.
6. Regarding Division One, there were 1,638 offenders granted deferred judgments for drug offenses listed in Chapter 124, Code of Iowa, in FY 2002. There is no readily available information with which to estimate if and to what extent deferred judgments may increase under the Bill's provisions. However, to the extent that the number of deferred judgments granted increases, there will be a reduction in the use of incarceration and parole or probation supervision levels of these offenders.
7. Regarding Division Two, it is likely that if a County Attorney opposes reopening a sentence, the Department of Corrections (DOC) and the Board of Parole will not pursue the case.
8. Court hearings for considering the reopening of a sentence will be held in the county of the offender's conviction.
9. On average, offenders not serving Murder in the Second Degree 85.0% terms would be recommended to the court for sentence reconsideration after seven years have been served on their sentence. This is based on the average length of stay in prison for Class B felony non-murder offenses before the 85.0% laws were enacted. This analysis recognizes that many offenders serving 85.0% sentences for Robbery in the Second Degree were plea-bargained from a charge of Robbery in the First Degree. It is assumed these offenders will be treated as Robbery in the First Degree. For offenders convicted of Murder in the Second Degree and serving 85.0% sentences, they will be recommended to the court for sentence reconsideration after serving 16 years.
10. The Board of Parole indicates it will review all cases of offenders serving 85.0% terms. At mid-year 2002, there were 608 offenders serving 85.0% terms as their most serious offense. Of these, 590 offenders were serving sentences under Section 902.12, Code of

Iowa, and would be eligible for sentencing reconsideration under the Bill. The remaining 18 offenders were convicted of sexual predatory offenses and would not be eligible for reconsideration of their sentence under this Bill. Approximately 50.0% of the cases would be eligible for the sentencing court's reconsideration after serving a minimum of at least seven years in prison.

11. This analysis provides the maximum number of potential sentences that could be reopened under the Bill. No attempt was made to estimate how many Judges would reject the reconsideration of sentences, or how many County Attorneys may object to having a sentence reconsidered. The actual number of sentences that are reopened if HF 598 is enacted ranges from 0 to 21 in FY 2004, 0 to 63 in FY 2005, 0 to 92 in FY 2006, 0 to 123 to FY 2007, and 0 to 134 in FY 2008.
12. The Board of Parole will incur additional costs associated with case reviews to consider reopening sentences. The Board is comprised of two full-time members and three part-time members. The part-time members receive \$265 per diem. An additional eight days is required to review cases using a panel comprised of three Board members. The Board will require two additional staff, a Clerk and a Statistical Analyst.
13. The Office of the Attorney General will incur additional costs associated with sentence reopenings. It is estimated that each hearing will require 1.5 attorney days plus clerical support, to prepare and file motions, represent the DOC and Board of Parole, and travel to the county of conviction, at a cost of \$722 per hearing.
14. The Judicial Branch will incur additional costs for sentence reopenings. Each hearing is estimated to be one hour for a Clerk of Court staff, District Court Judge, Court Reporter and a Court Attendant at a cost of \$114. This cost estimate assumes the County Attorney is not objecting to the reopening of the sentence.
15. The Indigent Defense Program will incur additional costs for each case that is reopened. The estimated cost per case is \$300.
16. Average time served for changes made in Division Three of the Bill was extrapolated based on current average length of stay in comparison with the current maximum term. Under the Bill, 1,286 offenders will receive lower maximum terms annually: 149 offenders sentenced as Class B felons will have the maximum term reduced from 25 years to 15 years; 434 Class C felons will have the maximum term reduced from 10 years to 7 years (new Class D); and 703 Class D felons will have the maximum term reduced from 5 years to 3 years (new Class F).
17. There will be cost reductions for the Indigent Defense Program associated with Division Three, redefining certain Class B, non-person offenses. The savings per case is estimated to be \$1,300.
18. Community-Based Corrections (CBC) will experience an initial increase in parole cases. Over the long term, caseloads will not be significantly impacted. Offenders released under the reopening of a sentence will be released to Work Release at an average daily cost of \$15 per day. After completing Work Release, these offenders will be paroled to the Intensive Supervision level, at an average daily cost of \$9.91.
19. There are 1,404 CBC facility beds statewide. Of these, approximately 466 are dedicated to the Work Release Program. There were 134 offenders in prison on March 5, 2003, who had been approved for Work Release but were waiting for a CBC bed to become available. The facilities are operating at full capacity under current law. Division Two of the Bill may increase demand for CBC beds, or alternatively, day programming.
20. The average annual cost for a new Parole/Probation Officer III is \$52,000 (salary and benefits). The standard supervision ratio for Intensive Supervision is one officer to 30 offenders. Offenders paroled under Division Two of the Bill will be supervised for multiple years.
21. The State prisons were operating at 125.3% of current designed capacity on March 14, 2003, with a prison population of 8,536 offenders. Current designed capacity is 6,812 beds. Designed capacity will increase to 7,142 beds by FY 2006 when the Critical Care Unit at Fort Madison (200 beds) is fully operational in June 2003 and the 170-bed Special Needs Unit at Oakdale is constructed and operating (FY 2006).

22. The State prison budget is based on 7,600 inmates; the current system is operating at 112.3% of budgeted capacity.
23. The Criminal and Juvenile Justice Planning Division in the Department of Human Rights released its prison population forecast in December 2002. The report stated that by FY 2012, the prison population is expected to reach 12,127 offenders if there are no changes to offender behavior, and justice system policies, trends, and practices remain unchanged.
24. If the prison population reaches 12,127 offenders, five new prisons will need to be built over the next ten years. Construction cost per prison is estimated to be \$45.0 million, and annual operating costs are approximately \$28.0 million. If five new 750-bed prisons are built and the population reaches 12,127 offenders, designed capacity would be 10,892 beds, and the prisons would be operating at 111.3% of designed capacity.
25. There is no operating cost savings for Iowa's prison system under this Bill. Rather, the sentencing options are a cost avoidance mechanism.

Correctional Impact

Admissions to prison will not change. However, the average length of stay for certain offenders will decrease. The table below illustrates the maximum cumulative impact on the prison population. Prison readmissions are those offenders released under Division Two of HF 598, who failed the requirements of Work Release or parole, and are revoked back to prison.

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
Prison Readmissions	0	3	9	12	15
Division Two	- 21	- 63	- 92	- 123	- 134
Division Three	0	- 215	- 381	- 562	- 785
Total	<u>- 21</u>	<u>- 275</u>	<u>- 464</u>	<u>- 673</u>	<u>- 904</u>

The cumulative impact is different than the actual number of offenders released annually, due to the long length of stay under current law.

The offenders released under Division Two will be placed in Work Release facilities, and then intensively supervised on parole. This will increase the number of offenders in prison placed on waiting lists, which will increase the need for additional CBC beds. The number of admissions to Work Release in FY 2006 through FY 2008 may result in the CBC system shifting beds from probation and the Operating While Intoxicated (OWI) Facility-Based Treatment Program. If this occurs, the prison population may increase because probation and the OWI Treatment Program serve as diversion from prison. Alternatively, CBC District Departments may seek funds to begin or expand day programming, which combines Intensive Supervision with treatment, electronic monitoring, and daily reporting to a CBC facility. This Program permits the length of stay in Work Release to be reduced while maintaining security.

Offenders released to CBC supervision under Division Three of the Bill would have been released to CBC under current law; their length of stay in prison is reduced. There is no impact on CBC resources for Division Three.

The possibility exists that no offenders may be released under Division Two of the Bill.

Fiscal Impact

The estimated net fiscal impact of HF 598 to the State General Fund is an increase in expenditures of \$38,000 during FY 2004, and an increase in expenditures of \$93,000 in FY 2005. Costs in outlying years will increase if more sentences are reopened. If no sentences are reopened under Division Two of the Bill, the fiscal impact of Division Three is estimated to be a cost reduction of \$98,000 in FY 2004 and a cost reduction of \$194,000 in FY 2005 due to savings in the Indigent Defense Program. However, this savings may be a cost containment effort rather than a reduction in the amount of paid claims. The average annual increase in

spending for the Indigent Defense Program has been 7.7% from FY 1989 through FY 2002. A breakdown of expenditures follows.

Community-Based Corrections Facilities are currently at capacity. Offenders approved for Work

	<u>FY 2004</u>	<u>FY 2005</u>
Division Two		
Attorney General's Office	\$ 15,000	\$ 45,000
Judicial Branch	2,500	7,000
State Public Defender's Office	6,500	19,000
Board of Parole	60,000	60,000
CBC Facilities	0	0
CBC Supervision Staff	52,000	156,000
Subtotal	<u>\$ 136,000</u>	<u>\$ 287,000</u>
Division Three		
State Public Defender's Office	<u>\$ - 98,000</u>	<u>\$ - 194,000</u>
Total General Fund Impact	<u>\$ 38,000</u>	<u>\$ 93,000</u>

Release will remain in prison until a CBC facility bed becomes available. Therefore, costs for CBC facilities will not increase. Additional CBC staff will be required for the Intensive Supervision Program statewide: 1.0 FTE position in FY 2004 and 3.0 FTE positions in FY 2005. The Board of Parole's estimated cost includes 2.0 FTE positions, a Clerk and a Statistical Analyst.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
Department of Corrections
Judicial Branch
State Public Defender's Office
Iowa State Association of Counties
Office of the Attorney General
Iowa County Attorneys Association
Board of Parole

/s/ Dennis C Prouty

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