

FILED MAR 08 '04

SENATE FILE 2275
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3154)

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

A BILL FOR

1 An Act relating to criminal sentencing practice and procedure.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2275 JUDICIARY

1 Section 1. Section 901.5B, subsection 1, Code Supplement
2 2003, is amended to read as follows:

3 1. A defendant serving a sentence under section 902.12
4 prior to July 1, 2003, who is sentenced by the court to the
5 custody of the director of the department of corrections, may
6 have the judgment and sentence reopened for resentencing if
7 ~~all-of-the-following-apply~~ paragraph "a" or "b" applies:

8 a. The county attorney from the county which prosecuted
9 the defendant files a motion in the sentencing court to reopen
10 the sentence of the defendant. The county attorney shall
11 notify the victim pursuant to section 915.13 of the filing of
12 the motion. The motion shall specify that the county attorney
13 has informed the victim about the filing of the motion, and
14 that the victim has thirty days from the date of the filing of
15 the motion to file a written objection with the court. If no
16 written objection is filed, or if a written objection is filed
17 and upon hearing, the court may grant the motion.

18 b. The board of parole and the department of corrections
19 file a joint motion in the sentencing court to reopen the
20 sentence of the defendant. The county attorney from the
21 county which prosecuted the defendant is served a copy of the
22 motion by certified mail. The county attorney has thirty days
23 from the date of service to notify and consult with the victim
24 pursuant to section 915.13, and to file a written objection.
25 ~~No~~ If no written objection is filed, or if a written objection
26 is filed, ~~and upon hearing,~~ and upon hearing, the court ~~grants~~ may grant the
27 motion.

28 Sec. 2. CRIMINAL CODE REVISIONS -- STUDY. The legislative
29 council is requested to establish an interim study committee
30 to review and propose revisions to the criminal code. In
31 establishing the committee, the legislative council is
32 requested to consider proposals for the study by the Iowa
33 state bar association and other appropriate agencies or
34 organizations. Proposals submitted to the legislative council
35 may address committee membership, member voting, committee

1 rules, the process to be used for reviewing and revising the
2 criminal code and other pertinent matters.

3 EXPLANATION

4 This bill relates to criminal practice and procedure.

5 Under the bill, a person who was sentenced to an 85 percent
6 sentence prior to July 1, 2003, may have the person's sentence
7 reopened upon a joint motion filed by the board of parole and
8 the department of corrections if the original sentencing court
9 grants the motion. The county attorney from the county which
10 prosecuted the defendant may, after consulting with the
11 victim, if the victim can be found, file an objection to the
12 motion to reopen. If the sentence is reopened, the defendant
13 becomes parole-eligible after serving 70 percent of the
14 maximum term of the sentence, as are persons sentenced to an
15 85 percent sentence on or after July 1, 2003.

16 Under current law, only the county attorney may file a
17 motion to reopen an 85 percent sentence.

18 The bill also requests the legislative council to establish
19 an interim study committee to review and propose revisions to
20 the criminal code. The legislative council is requested to
21 consider proposals for the study from the Iowa state bar
22 association and other appropriate agencies or organizations.

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SENATE FILE 2275

S-5112

1 Amend Senate File 2275 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. Section 602.8102, Code Supplement
5 2003, is amended by adding the following new
6 subsection:

7 NEW SUBSECTION. 135C. Assess the domestic abuse
8 assault surcharge of fifty dollars as provided by
9 section 911.4.

10 Sec. _____. Section 602.8107, subsection 4,
11 unnumbered paragraph 2, Code Supplement 2003, is
12 amended to read as follows:

13 This subsection does not apply to amounts collected
14 for victim restitution, the victim compensation fund,
15 criminal penalty surcharge, law enforcement initiative
16 surcharge, domestic abuse assault surcharge, amounts
17 collected as a result of procedures initiated under
18 subsection 5 or under section 8A.504, or sheriff's
19 room and board fees.

20 Sec. _____. Section 602.8108, Code Supplement 2003,
21 is amended by adding the following new subsection:

22 NEW SECTION. 4A. Notwithstanding provisions of
23 this section to the contrary, all moneys collected
24 from the domestic abuse assault surcharge provided in
25 section 911.4 shall be deposited in the crime victim
26 compensation fund established in section 915.94."

27 2. Page 1, by inserting after line 27 the
28 following:

29 "Sec. _____. Section 902.9, unnumbered paragraph 2,
30 Code 2003, is amended to read as follows:

31 The ~~criminal penalty surcharge~~ surcharges required
32 by sections 911.2, ~~and 911.3,~~ and 911.4 shall be added
33 to a fine imposed on a class "C" or class "D" felon,
34 as provided by those sections, and is not a part of or
35 subject to the maximums set in this section.

36 Sec. _____. Section 903.1, subsection 4, Code 2003,
37 is amended to read as follows:

38 4. The ~~criminal penalty surcharge~~ surcharges
39 required by sections 911.2, ~~and 911.3,~~ and 911.4 shall
40 be added to a fine imposed on a misdemeanor, and ~~is~~
41 are not a part of or subject to the maximums set in
42 this section.

43 Sec. _____. Section 909.8, Code 2003, is amended to
44 read as follows:

45 909.8 PAYMENT AND COLLECTION PROVISIONS APPLY TO
46 SURCHARGE.

47 The provisions of this chapter governing the
48 payment and collection of a fine, except section
49 909.3A, also apply to the payment and collection of
50 surcharges imposed pursuant to chapter 911. However,

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1 section 909.10 shall not apply to surcharges assessed
2 under ~~section~~ sections 911.3 and 911.4.

3 Sec. . NEW SECTION. 911.4 DOMESTIC ABUSE
4 ASSAULT SURCHARGE.

5 In addition to any of the other surcharges assessed
6 under this chapter, a domestic abuse assault surcharge
7 of fifty dollars shall be assessed by the clerk of the
8 district court if an adjudication of guilt or a
9 deferred judgment has been entered for a criminal
10 violation of section 708.2A."

11 3. Title page, line 1, by inserting after the word
12 "procedure" the following: ", and providing for a
13 fee".

By ROBERT E. DVORSKY

S-5112 FILED MARCH 17, 2004
WITHDRAWN

SENATE FILE 2275

S-5114

1 Amend Senate File 2275 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. Section 602.8102, Code Supplement
5 2003, is amended by adding the following new
6 subsection:

7 NEW SUBSECTION. 135C. Assess the domestic or
8 sexual abuse surcharge of fifty dollars as provided by
9 section 911.4.

10 Sec. _____. Section 602.8107, subsection 4,
11 unnumbered paragraph 2, Code Supplement 2003, is
12 amended to read as follows:

13 This subsection does not apply to amounts collected
14 for victim restitution, the victim compensation fund,
15 criminal penalty surcharge, law enforcement initiative
16 surcharge, domestic or sexual abuse surcharge, amounts
17 collected as a result of procedures initiated under
18 subsection 5 or under section 8A.504, or sheriff's
19 room and board fees.

20 Sec. _____. Section 602.8108, Code Supplement 2003,
21 is amended by adding the following new subsection:

22 NEW SECTION. 4A. Notwithstanding provisions of
23 this section to the contrary, all moneys collected
24 from the domestic or sexual abuse surcharge provided
25 in section 911.4 shall be deposited in the crime
26 victim compensation fund established in section
27 915.94."

28 2. Page 1, by inserting after line 27 the
29 following:

30 "Sec. _____. Section 902.9, unnumbered paragraph 2,
31 Code 2003, is amended to read as follows:

32 The ~~criminal penalty surcharge~~ surcharges required
33 by sections 911.2, ~~and~~ 911.3, and 911.4 shall be added
34 to a fine imposed on a class "C" or class "D" felon,
35 as provided by those sections, and is not a part of or
36 subject to the maximums set in this section.

37 Sec. _____. Section 903.1, subsection 4, Code 2003,
38 is amended to read as follows:

39 4. The ~~criminal penalty surcharge~~ surcharges
40 required by sections 911.2, ~~and~~ 911.3, and 911.4 shall
41 be added to a fine imposed on a misdemeanor, and ~~is~~
42 are not a part of or subject to the maximums set in
43 this section.

44 Sec. _____. Section 909.8, Code 2003, is amended to
45 read as follows:

46 909.8 PAYMENT AND COLLECTION PROVISIONS APPLY TO
47 SURCHARGE.

48 The provisions of this chapter governing the
49 payment and collection of a fine, except section
50 909.3A, also apply to the payment and collection of

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-1-

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Page 2

1 surcharges imposed pursuant to chapter 911. However,
2 section 909.10 shall not apply to surcharges assessed
3 under ~~section~~ sections 911.3 and 911.4.

4 Sec. ____ . NEW SECTION. 911.4 DOMESTIC OR SEXUAL
5 ABUSE SURCHARGE.

6 In addition to any of the other surcharges assessed
7 under this chapter, a domestic or sexual abuse
8 surcharge of fifty dollars shall be assessed by the
9 clerk of the district court if an adjudication of
10 guilt or a deferred judgment has been entered for a
11 criminal violation of section 708.2A, 709.2, 709.3, or
12 709.4."

13 3. Title page, line 1, by inserting after the
14 word "procedure" the following: ", and providing for
15 a fee".

By ROBERT E. DVORSKY

S-5114 FILED MARCH 17, 2004

RULED OUT OF ORDER

SENATE FILE 2275**S-5115**

1 Amend Senate File 2275 as follows:

2 1. Page 1, by inserting after line 27 the
3 following:

4 "Sec. ____ . CONTROLLED SUBSTANCE PENALTY STUDY.
5 The Iowa state bar association is requested to
6 establish and lead a study committee to review the
7 disparity of criminal penalties related to crack
8 cocaine, cocaine, and other controlled substances,
9 especially such criminal penalties classified as
10 serious and aggravated misdemeanors and class "C" and
11 "D" felonies. The members of the study committee
12 shall include but are not limited to representatives
13 of the Iowa state bar association, the attorney
14 general, the county attorneys association, the state
15 public defender, the department of corrections, the
16 judicial district department of correctional services,
17 and the criminal law section of the Iowa trial lawyers
18 association. The study committee is requested to file
19 recommendations with the general assembly by December
20 15, 2004."

By DONALD B. REDFERN

S-5115 FILED MARCH 17, 2004

ADOPTED

Legislative Fiscal Bureau

Fiscal Note

SF 2275 – Reopening Certain Sentences (LSB 6687 SV)

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

Fiscal Note Version - New

Requested by Senator Donald Redfern

Description

Senate File 2275 provides for a reopening of a sentence for certain crimes referred to as "85.0%" sentences where, under current law, an offender must serve 85.0% of the sentence in the State prison system. Under current law, these offenders will be released from prison without parole.

Assumptions

1. Under current law, an offender convicted of certain crimes after July 1, 2003, is eligible for parole after 70.0% of the maximum term has been served in prison. An offender who was convicted before July 1, 2003, could have the sentence reopened by motion of the County Attorney, and if the sentence is reopened, the offender becomes eligible for parole after 70.0% of the maximum term has been served in prison. To date, no County Attorney has filed a motion to reopen a sentence.
2. Senate File 2275 provides another option to reopen an 85.0% sentence for those offenders sentenced before July 1, 2003. There were 684 such offenders on June 30, 2003. Those eligible to be released under the Bill over the next five years are all Class C felons convicted of Second Degree Robbery. No Class B felons will be released under SF 2275 in the next five years. Approximately 50.0% of the offenders sentenced for Second Degree Robbery will be eligible for the sentencing court's reconsideration after serving 70.0% of the maximum term in prison.
3. The table below shows the number of offenders sentenced under Section 902.12, Code of Iowa, before July 1, 2003, for the next six fiscal years. All of these offenders will expire their sentence in prison under current law.

Offenders Released Due to Expiration - 85.0% Sentence

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Offenders	10	30	66	76	73	51

4. All of the offenders who have their sentence reopened will receive parole.
5. The Board of Parole indicates it will review all cases of offenders serving 85.0% terms. The Board of Parole will incur additional costs associated with case reviews to consider reopening sentences. The three part-time Board members will require more per diem days. The Board will require two additional staff, a Clerk and a Statistical Analyst.
6. The Office of the Attorney General will incur additional costs associated with sentence reopenings. Costs are estimated at \$19,000 in FY 2005 and \$40,000 in FY 2006. The costs cited above do not include any additional costs for contracting for outside counsel, if required.
7. The Judicial Branch will incur additional costs of \$250 for each sentence reopening.
8. The Indigent Defense Program will incur additional costs of \$500 for each case reopening.
9. Community-Based Corrections (CBC) will experience an 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 \$11 per day. After completing Work Release, these offenders will be paroled to the Intensive Supervision level, at an average daily cost of \$5.02.

10. The CBC facilities are operating at full capacity under current law. There were 203 offenders in prison on March 3, 2004, who had been approved for Work Release but were waiting for a CBC bed to become available.
11. The average annual cost for a new Parole/Probation Officer III is \$55,000. The standard supervision ratio for Intensive Supervision is one officer to 30 offenders.
12. The State prisons were operating at 123.0% of current designed capacity on March 9, 2004, with a prison population of 8,591 offenders. Current designed capacity is 6,989 beds.
13. The State prison budget is based on 7,800 inmates; the current system is operating at 110.0% of budgeted capacity.
14. The Criminal and Juvenile Justice Planning Division in the Department of Human Rights released its prison population forecast that stated by FY 2013, the prison population is expected to reach 11,925 offenders. If the prison population reaches 11,925 offenders, five new prisons will need to be built over the next ten years at a total construction cost of \$250.0 million. Total annual operating costs will increase by approximately \$140.0 million compared to current law. If five new 800-bed prisons are built and the population reaches 11,925 offenders, designed capacity would be 11,384 beds, and the prisons would be operating at 104.8% of designed capacity.
15. There are no operating cost savings for Iowa's prison system under this Bill.

Correctional Impact

The average length of stay for certain offenders will decrease. The table below illustrates the estimated cumulative impact on the prison population.

Offenders Released Under SF 2275					
	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Offenders	- 15	- 33	- 38	- 37	- 26

The offenders released under SF 2275 in FY 2005 will be placed on intensive supervision because their length of stay on parole will be short. The offenders released under SF 2275 in future fiscal years 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. Alternatively, CBC District Departments may seek funds to begin or expand day programming, which permits the length of stay in Work Release to be reduced while maintaining security.

The possibility exists that no offenders may be released under the Bill. All of the offenders may be released from prison due to sentence expiration under current law.

Fiscal Impact

The estimated fiscal impact of SF 2275 to the State General Fund is an increase in expenditures of \$119,000 during FY 2005, and an increase in expenditures of \$180,000 in FY 2006. Costs in outlying years will increase if more sentences are reopened. If no sentences are reopened, there are no costs under SF 2275. A breakdown of expenditures follows:

<u>State Agency</u>	<u>FY 2005</u>	<u>FY 2006</u>
Attorney General's Office	\$ 19,000	\$ 40,000
Board of Parole	60,000	60,000
Judicial Branch	4,000	8,000
State Public Defender	8,000	17,000
CBC Supervision Staff	28,000	55,000
	<u>\$ 119,000</u>	<u>\$ 180,000</u>

Additional CBC staff will be required for the Intensive Supervision Program statewide in future fiscal years: 0.5 FTE position in FY 2005 and 1.0 FTE position in FY 2006. The cumulative impact on CBC staff in outlying years may increase because the offenders may be supervised for multiple fiscal years.

Sources

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

Dennis C Prouty

March 15, 2004

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.

SENATE FILE 2275
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3154)

(AS AMENDED AND PASSED BY THE SENATE MARCH 17, 2004)

_____ - New Language by the Senate

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to criminal sentencing practice and procedure.

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

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S.F. 2275

SF 2275

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1 Section 1. Section 901.5B, subsection 1, Code Supplement
2 2003, is amended to read as follows:

3 1. A defendant serving a sentence under section 902.12
4 prior to July 1, 2003, who is sentenced by the court to the
5 custody of the director of the department of corrections, may
6 have the judgment and sentence reopened for resentencing if
7 ~~all-of-the-following-apply~~ paragraph "a" or "b" applies:

8 a. The county attorney from the county which prosecuted
9 the defendant files a motion in the sentencing court to reopen
10 the sentence of the defendant. The county attorney shall
11 notify the victim pursuant to section 915.13 of the filing of
12 the motion. The motion shall specify that the county attorney
13 has informed the victim about the filing of the motion, and
14 that the victim has thirty days from the date of the filing of
15 the motion to file a written objection with the court. If no
16 written objection is filed, or if a written objection is filed
17 and upon hearing, the court may grant the motion.

18 b. The board of parole and the department of corrections
19 file a joint motion in the sentencing court to reopen the
20 sentence of the defendant. The county attorney from the
21 county which prosecuted the defendant is served a copy of the
22 motion by certified mail. The county attorney has thirty days
23 from the date of service to notify and consult with the victim
24 pursuant to section 915.13, and to file a written objection.
25 ~~No~~ If no written objection is filed, or if a written objection
26 is filed, and upon hearing, the court grants may grant the
27 motion.

28 Sec. 2. CONTROLLED SUBSTANCE PENALTY STUDY. The Iowa
29 state bar association is requested to establish and lead a
30 study committee to review the disparity of criminal penalties
31 related to crack cocaine, cocaine, and other controlled
32 substances, especially such criminal penalties classified as
33 serious and aggravated misdemeanors and class "C" and "D"
34 felonies. The members of the study committee shall include
35 but are not limited to representatives of the Iowa state bar

1 association, the attorney general, the county attorneys
2 association, the state public defender, the department of
3 corrections, the judicial district department of correctional
4 services, and the criminal law section of the Iowa trial
5 lawyers association. The study committee is requested to file
6 recommendations with the general assembly by December 15,
7 2004.

8 Sec. 3. CRIMINAL CODE REVISIONS -- STUDY. The legislative
9 council is requested to establish an interim study committee
10 to review and propose revisions to the criminal code. In
11 establishing the committee, the legislative council is
12 requested to consider proposals for the study by the Iowa
13 state bar association and other appropriate agencies or
14 organizations. Proposals submitted to the legislative council
15 may address committee membership, member voting, committee
16 rules, the process to be used for reviewing and revising the
17 criminal code and other pertinent matters.

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SENATE FILE 2275

H-8328

1 Amend Senate File 2275, as amended, passed, and
2 reprinted by the Senate as follows:

3 1. Page 1, by striking lines 1 through 27, and
4 inserting the following:

5 "Section 1. Section 902.12, unnumbered paragraph
6 1, Code Supplement 2003, is amended to read as
7 follows:

8 A person serving a sentence for conviction of the
9 following felonies, including a person serving a
10 sentence for conviction of the following felonies
11 prior to July 1, 2003, shall 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. _____. Section 906.15, unnumbered paragraph 1,
15 Code 2003, is amended to read as follows:

16 Unless sooner discharged, a person released on
17 parole shall be discharged when the person's term of
18 parole equals the period of imprisonment specified in
19 the person's sentence, less all time served in
20 confinement. Discharge from parole may be granted
21 prior to such time, when an early discharge is
22 appropriate. The board shall periodically review all
23 paroles, and when the board determines that any person
24 on parole is able and willing to fulfill the
25 obligations of a law-abiding citizen without further
26 supervision, the board shall discharge the person from
27 parole. A parole officer shall periodically review
28 all paroles assigned to the parole officer, and when
29 the parole officer determines that any person assigned
30 to the officer is able and willing to fulfill the
31 obligations of a law-abiding citizen without further
32 supervision, the officer may discharge the person from
33 parole after notification and approval of the district
34 director and notification of the board of parole. In
35 any event, discharge from parole shall terminate the
36 person's sentence. However, a person convicted of a
37 violation of section 709.3, 709.4 or 709.8 committed
38 on or with a child, or a person serving a sentence
39 under section 902.12, shall not be discharged from
40 parole until the person's term of parole equals the
41 period of imprisonment specified in the person's
42 sentence, less all time served in confinement.

43 Sec. _____. Section 915.13, subsection 1, paragraph
44 h, Code Supplement 2003, is amended by striking the
45 paragraph.

46 Sec. _____. Section 915.14, Code Supplement 2003, is
47 amended to read as follows:

48 915.14 NOTIFICATION BY CLERK OF THE DISTRICT
49 COURT.

50 The clerk of the district court shall notify a

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Page 2

1 registered victim of all dispositional orders of the
2 case in which the victim was involved and may advise
3 the victim of any other orders regarding custody or
4 confinement. ~~If a motion to reopen the sentence has
5 been filed pursuant to section 901.5B, the clerk of
6 the district court shall notify a registered victim of
7 the case in which the victim was involved. The notice
8 shall include the scheduled date, time, and place of
9 the hearing, and the clerk shall notify the victim of
10 a cancellation or postponement of any hearing
11 regarding the motion to reopen.~~

12 Sec. ____ . Section 901.5B, Code Supplement 2003, is
13 repealed."

By COMMITTEE ON JUDICIARY
MADDOX of Polk, Chairperson

H-8328 FILED MARCH 29, 2004

**Fiscal Services Division
Legislative Services Agency
Fiscal Note**

SF 2275 – Reopening Certain Sentences (LSB 6687 SV.1)
Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)
Fiscal Note Version – SF 2275 As Amended by H - 8328
Requested by Representative Gene Maddox

Description

Amendment H - 8328 to SF 2275 permits the Board of Parole to consider certain offenders for parole: those serving 85.0% sentences where, under current law, an offender must serve 85.0% of the sentence in the State prison system. Under current law, these offenders will be released from prison without parole. Those offenders who receive parole under H - 8328 are required to serve the remainder of their term on parole.

Assumptions

1. Under current law, an offender convicted of certain crimes after July 1, 2003, is eligible for parole after 70.0% of the maximum term has been served in prison. An offender who was convicted before July 1, 2003, could have the sentence reopened by motion of the County Attorney, and if the sentence is reopened, the offender becomes eligible for parole after 70.0% of the maximum term has been served in prison. To date, no County Attorney has filed a motion to reopen a sentence. This option is repealed by Amendment H - 8328.
2. Amendment H - 8328 provides an option to parole those offenders sentenced before July 1, 2003. There were 684 such offenders on June 30, 2003. Those eligible to be released over the next five years are all Class C felons convicted of Second Degree Robbery. No Class B felons will be released in the next five years.
3. The table below shows the number of offenders sentenced under Section 902.12, Code of Iowa, before July 1, 2003, for the next six fiscal years. All of these offenders will expire their sentence in prison under current law.

Offenders Released Due to Expiration - 85.0% Sentence

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Offenders	10	30	66	76	73	51

4. All eligible offenders will receive parole and will remain on parole until the 85.0% term is served.
5. The Board of Parole indicates it will review all cases of offenders serving 85.0% terms. The Board of Parole will incur additional costs associated with case reviews to consider reopening sentences. The three part-time Board members will require more per diem days. The Board will require two additional staff, a Clerk and a Statistical Analyst.
6. Community-Based Corrections (CBC) will experience an 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 \$11 per day. After completing Work Release, these offenders will be paroled to the Intensive Supervision level, at an average daily cost of \$5.02.
7. The CBC facilities are operating at full capacity under current law. There were 203 offenders in prison on March 3, 2004, who had been approved for Work Release but were waiting for a CBC bed to become available.
8. The average annual cost for a new Parole/Probation Officer III is \$55,000. The standard supervision ratio for Intensive Supervision is one officer to 30 offenders.
9. The State prisons were operating at 123.0% of current designed capacity on March 9, 2004, with a prison population of 8,591 offenders. Current designed capacity is 6,989 beds.
10. The State prison budget is based on 7,800 inmates; the current system is operating at 110.0% of budgeted capacity.

11. DennThe Criminal and Juvenile Justice Planning Division in the Department of Human Rights released its prison population forecast that stated by FY 2013, the prison population is expected to reach 11,925 offenders. If the prison population reaches 11,925 offenders, five new prisons will need to be built over the next ten years at a total construction cost of \$250.0 million. Total annual operating costs will increase by approximately \$140.0 million compared to current law. If five new 800-bed prisons are built and the population reaches 11,925 offenders, designed capacity would be 11,384 beds, and the prisons would be operating at 104.8% of designed capacity.
12. There are no operating cost savings for Iowa's prison system under this Bill.

Correctional Impact

The average length of stay for certain offenders will decrease. The table below illustrates the estimated cumulative impact on the prison population.

Offenders Released Under H - 8328					
	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Offenders	- 40	- 66	- 76	- 74	- 52

The offenders released in FY 2005 will be placed on intensive supervision because their length of stay on parole will be short. The offenders released in future fiscal years 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. Alternatively, CBC District Departments may seek funds to begin or expand day programming, which permits the length of stay in Work Release to be reduced while maintaining security.

Fiscal Impact

The estimated fiscal impact of Amendment H - 8328 to SF 2275 to the State General Fund is an increase in expenditures of \$115,000 during FY 2005, and an increase in expenditures of \$161,000 in FY 2006. A breakdown of expenditures follows:

<u>State Agency</u>	<u>FY 2005</u>	<u>FY 2006</u>
Board of Parole	\$ 60,000	\$ 40,000
CBC Supervision Staff	55,000	121,000
	<u>\$ 115,000</u>	<u>\$ 161,000</u>

Additional CBC staff will be required for the Intensive Supervision Program statewide in future fiscal years: 1.0 FTE position in FY 2005 and 2.2 FTE positions in FY 2006.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
 Department of Corrections
 Board of Parole

Dennis C Prouty

March 31, 2004

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 AMENDMENT TO
SENATE FILE 2275

S-5378

1 Amend Senate File 2275, as amended, passed, and
2 reprinted by the Senate as follows:

3 1. Page 1, by striking lines 1 through 27, and
4 inserting the following:

5 "Section 1. Section 902.12, unnumbered paragraph
6 1, Code Supplement 2003, is amended to read as
7 follows:

8 A person serving a sentence for conviction of the
9 following felonies, including a person serving a
10 sentence for conviction of the following felonies
11 prior to July 1, 2003, shall 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. _____. Section 906.15, unnumbered paragraph 1,
15 Code 2003, is amended to read as follows:

16 Unless sooner discharged, a person released on
17 parole shall be discharged when the person's term of
18 parole equals the period of imprisonment specified in
19 the person's sentence, less all time served in
20 confinement. Discharge from parole may be granted
21 prior to such time, when an early discharge is
22 appropriate. The board shall periodically review all
23 paroles, and when the board determines that any person
24 on parole is able and willing to fulfill the
25 obligations of a law-abiding citizen without further
26 supervision, the board shall discharge the person from
27 parole. A parole officer shall periodically review
28 all paroles assigned to the parole officer, and when
29 the parole officer determines that any person assigned
30 to the officer is able and willing to fulfill the
31 obligations of a law-abiding citizen without further
32 supervision, the officer may discharge the person from
33 parole after notification and approval of the district
34 director and notification of the board of parole. In
35 any event, discharge from parole shall terminate the
36 person's sentence. However, a person convicted of a
37 violation of section 709.3, 709.4 or 709.8 committed
38 on or with a child, or a person serving a sentence
39 under section 902.12, shall not be discharged from
40 parole until the person's term of parole equals the
41 period of imprisonment specified in the person's
42 sentence, less all time served in confinement.

43 Sec. _____. Section 915.13, subsection 1, paragraph
44 h, Code Supplement 2003, is amended by striking the
45 paragraph.

46 Sec. _____. Section 915.14, Code Supplement 2003, is
47 amended to read as follows:

48 915.14 NOTIFICATION BY CLERK OF THE DISTRICT
49 COURT.

50 The clerk of the district court shall notify a

S-5378

1 registered victim of all dispositional orders of the
2 case in which the victim was involved and may advise
3 the victim of any other orders regarding custody or
4 confinement. ~~If a motion to reopen the sentence has
5 been filed pursuant to section 901.5B, the clerk of
6 the district court shall notify a registered victim of
7 the case in which the victim was involved. The notice
8 shall include the scheduled date, time, and place of
9 the hearing, and the clerk shall notify the victim of
10 a cancellation or postponement of any hearing
11 regarding the motion to reopen.~~
12 Sec. ____ . Section 901.5B, Code Supplement 2003, is
13 repealed."

RECEIVED FROM THE HOUSE

S-5378 FILED APRIL 15, 2004

Redfern
Kreiman
Tinsman

Succeeded By
SF/HF 2275 Judiciary

SSB# 3154

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON REDFERN)

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

A BILL FOR

1 An Act relating to sentences that restrict the maximum
2 accumulation of earned time credits to fifteen percent of the
3 total sentence of confinement.

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

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1 Section 1. Section 711.1, subsection 1, Code 2003, is
2 amended to read as follows:

3 1. Commits an assault upon another other than an assault
4 as defined in section 708.2, subsection 6.

5 Sec. 2. Section 901.5B, subsection 1, Code Supplement
6 2003, is amended to read as follows:

7 1. A defendant serving a sentence under section 902.12
8 prior to July 1, 2003, who is sentenced by the court to the
9 custody of the director of the department of corrections, may
10 have the judgment and sentence reopened for resentencing if
11 ~~all-of-the-following-apply~~ paragraph "a" or "b" applies:

12 a. The county attorney from the county which prosecuted
13 the defendant files a motion in the sentencing court to reopen
14 the sentence of the defendant. The county attorney shall
15 notify the victim pursuant to section 915.13 of the filing of
16 the motion. The motion shall specify that the county attorney
17 has informed the victim about the filing of the motion, and
18 that the victim has thirty days from the date of the filing of
19 the motion to file a written objection with the court. If no
20 written objection is filed, or if a written objection is filed
21 and upon hearing, the court may grant the motion.

22 b. The board of parole and the department of corrections
23 file a joint motion in the sentencing court to reopen the
24 sentence of the defendant. The county attorney from the
25 county which prosecuted the defendant is served a copy of the
26 motion by certified mail. The county attorney has thirty days
27 from the date of service to notify and consult with the victim
28 pursuant to section 915.13, and to file a written objection.
29 ~~No~~ If no written objection is filed, or if a written objection
30 is filed, and upon hearing, the court ~~grants~~ may grant the
31 motion.

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EXPLANATION

33 This bill relates to sentences that restrict the maximum
34 accumulation of earned time credits to 15 percent of the total
35 sentence of confinement, commonly referred to as an 85 percent

1 sentence.

2 The bill creates an exception to the definition of the
3 criminal offense of robbery. The bill provides that a person
4 who commits or intends to commit a theft, and who commits a
5 simple misdemeanor assault to further the commission of the
6 theft, does not commit robbery. Under current law, a person
7 who commits or intends to commit any theft, and who commits
8 any assault to further the commission of the theft, commits
9 either robbery in the first degree or robbery in the second
10 degree depending on the severity of the assault.

11 Robbery in the first degree is an 85 percent class "B"
12 felony punishable by confinement for no more than 25 years.
13 Robbery in the second degree is an 85 percent class "C" felony
14 punishable by confinement for no more than 10 years and a fine
15 of at least \$1,000 but not more than \$10,000.

16 Under the bill, a person who was sentenced to an 85 percent
17 sentence prior to July 1, 2003, may have the person's sentence
18 reopened upon a joint motion filed by the board of parole and
19 the department of corrections if the original sentencing court
20 grants the motion. The county attorney from the county which
21 prosecuted the defendant may, after consulting with the
22 victim, if the victim can be found, file an objection to the
23 motion to reopen. If the sentence is reopened, the defendant
24 becomes parole-eligible after serving 70 percent of the
25 maximum term of the sentence, as persons sentenced to an 85
26 percent sentence on or after July 1, 2003.

27 Under current law, the county attorney may only file a
28 motion to reopen an 85 percent sentence.

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SENATE FILE 2275

AN ACT

RELATING TO CRIMINAL SENTENCING PRACTICE AND PROCEDURE.

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

Section 1. Section 902.12, unnumbered paragraph 1, Code Supplement 2003, is amended to read as follows:

A person serving a sentence for conviction of the following felonies, including a person serving a sentence for conviction of the following felonies prior to July 1, 2003, shall be denied parole or work release unless the person has served at least seven-tenths of the maximum term of the person's sentence:

Sec. 2. Section 906.15, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Unless sooner discharged, a person released on parole shall be discharged when the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement. Discharge from parole may be granted prior to such time, when an early discharge is appropriate. The board shall periodically review all paroles, and when the board determines that any person on parole is able and willing to fulfill the obligations of a law-abiding citizen without further supervision, the board shall discharge the person from parole. A parole officer shall periodically review all paroles assigned to the parole officer, and when the parole officer determines that any person assigned to the officer is able and willing to fulfill the obligations of a law-abiding citizen without further supervision, the officer may discharge the person from parole after notification and approval of the district director and notification of the board of parole. In any event, discharge from parole shall

terminate the person's sentence. However, a person convicted of a violation of section 709.3, 709.4 or 709.8 committed on or with a child, or a person serving a sentence under section 902.12, shall not be discharged from parole until the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement.

Sec. 3. Section 915.13, subsection 1, paragraph h, Code Supplement 2003, is amended by striking the paragraph.

Sec. 4. Section 915.14, Code Supplement 2003, is amended to read as follows:

915.14 NOTIFICATION BY CLERK OF THE DISTRICT COURT.

The clerk of the district court shall notify a registered victim of all dispositional orders of the case in which the victim was involved and may advise the victim of any other orders regarding custody or confinement. ~~If a motion to reopen the sentence has been filed pursuant to section 902.5B, the clerk of the district court shall notify a registered victim of the case in which the victim was involved. The notice shall include the scheduled date, time, and place of the hearing, and the clerk shall notify the victim of a cancellation or postponement of any hearing regarding the motion to reopen.~~

Sec. 5. Section 901.5B, Code Supplement 2003, is repealed.

Sec. 6. CONTROLLED SUBSTANCE PENALTY STUDY. The Iowa state bar association is requested to establish and lead a study committee to review the disparity of criminal penalties related to crack cocaine, cocaine, and other controlled substances, especially such criminal penalties classified as serious and aggravated misdemeanors and class "C" and "D" felonies. The members of the study committee shall include but are not limited to representatives of the Iowa state bar association, the attorney general, the county attorneys association, the state public defender, the department of corrections, the judicial district department of correctional services, and the criminal law section of the Iowa trial lawyers association. The study committee is requested to file

recommendations with the general assembly by December 15, 2004.

Sec. 7. CRIMINAL CODE REVISIONS -- STUDY. The legislative council is requested to establish an interim study committee to review and propose revisions to the criminal code. In establishing the committee, the legislative council is requested to consider proposals for the study by the Iowa state bar association and other appropriate agencies or organizations. Proposals submitted to the legislative council may address committee membership, member voting, committee rules, the process to be used for reviewing and revising the criminal code and other pertinent matters.

JEFFREY M. LAMBERTI
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2275, Eightieth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2004

THOMAS J. VILSACK
Governor