

SENATE FILE 422  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1138)

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

**A BILL FOR**

1 An Act relating to the criminal sentencing and procedure by  
2 modifying the penalties for certain offenses related to  
3 controlled substances, by creating a criminal offense of  
4 robbery in the third degree, modifying dissemination of sex  
5 offender registry information and residence restrictions for a  
6 sex offender, repealing certain determinate sentences,  
7 changing the parole and work release eligibility of a person  
8 serving a sentence that requires a maximum accumulation of  
9 earned time credits of fifteen percent of the total term of  
10 confinement and by permitting the reopening of such a  
11 sentence, providing a penalty, and providing an effective  
12 date.

SF 422

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

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1 Section 1. Section 124.401, subsection 1, paragraph a,  
2 unnumbered paragraph 1, Code 2003, is amended to read as  
3 follows:

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

10 Sec. 2. Section 124.401, subsection 1, paragraph a,  
11 subparagraph (2), unnumbered paragraph 1, Code 2003, is  
12 amended to read as follows:

13 More than five ~~kilograms~~ hundred grams of a mixture or  
14 substance containing a detectable amount of any of the  
15 following:

16 Sec. 3. Section 124.401, subsection 1, paragraph b,  
17 subparagraph (2), unnumbered paragraph 1, Code 2003, is  
18 amended to read as follows:

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

21 Sec. 4. Section 124.401, subsection 1, paragraph b,  
22 subparagraph (3), Code 2003, is amended to read as follows:

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

26 Sec. 5. Section 124.401, subsection 1, paragraph c,  
27 subparagraph (2), unnumbered paragraph 1, Code 2003, is  
28 amended to read as follows:

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

30 Sec. 6. Section 124.401, subsection 1, paragraph c,  
31 subparagraph (3), Code 2003, is amended to read as follows:

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

34 Sec. 7. Section 124.401E, subsection 3, Code 2003, is  
35 amended to read as follows:

1 3. If a court sentences a person for the person's second  
2 or subsequent conviction for delivery or possession with  
3 intent to deliver a controlled substance under section  
4 124.401, subsection 1, and the controlled substance is  
5 amphetamine, its salts, isomers, or salts of its isomers, or  
6 methamphetamine, its salts, isomers, or salts of its isomers,  
7 the court, in addition to any other authorized penalties,  
8 shall sentence the person to imprisonment in accordance with  
9 section 124.401, subsection 1, ~~and the person shall serve the~~  
10 ~~minimum period of confinement as required by section 124.413.~~

11 Sec. 8. Section 229A.8A, subsection 4, Code 2003, is  
12 amended to read as follows:

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

20 Sec. 9. Section 232.45, subsection 14, unnumbered  
21 paragraph 1, Code 2003, is amended to read as follows:

22 If a child who is alleged to have delivered, manufactured,  
23 or possessed with intent to deliver or manufacture, a  
24 controlled substance except marijuana, as defined in chapter  
25 124, is waived to district court for prosecution, ~~the~~  
26 ~~mandatory minimum sentence provided in section 124.413 shall~~  
27 ~~not be imposed if a conviction is had, however, each child~~  
28 convicted of such an offense and the child is convicted, the  
29 child shall be confined for not less than thirty days in a  
30 secure facility.

31 Sec. 10. Section 692A.2A, subsections 2 and 3, Code 2003,  
32 are amended to read as follows:

33 2. A person shall not reside within two one thousand three  
34 hundred twenty feet of the real property comprising a public  
35 or nonpublic elementary or secondary school or a child care

1 facility.

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

6 Sec. 11. Section 692A.2A, subsection 4, unnumbered  
7 paragraph 1, Code 2003, is amended to read as follows:

8 A person residing within ~~two~~ one thousand three hundred  
9 twenty feet of the real property comprising a public or  
10 nonpublic elementary or secondary school or a child care  
11 facility does not commit a violation of this section if any of  
12 the following apply:

13 Sec. 12. Section 692A.5, subsection 1, paragraph h, Code  
14 2003, is amended to read as follows:

15 h. Inform the person, if the person's residency is  
16 restricted under section 692A.2A, that the person shall not  
17 reside within ~~two~~ one thousand three hundred twenty feet of  
18 the real property comprising a public or nonpublic elementary  
19 or secondary school, or a child care facility.

20 Sec. 13. Section 692A.13, Code 2003, is amended by  
21 striking the section and inserting in lieu thereof the  
22 following:

23 692A.13 AVAILABILITY OF RECORDS.

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

26 a. A criminal or juvenile justice agency, an agency of the  
27 state, any sex offender registry of another state, or the  
28 federal government.

29 b. The general public through the sex offender registry's  
30 web page.

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

34 2. A criminal or juvenile justice agency may provide  
35 relevant information from the sex offender registry to the

1 following:

2 a. A criminal or juvenile justice agency, an agency of the  
3 state, or any sex offender registry of another state, or the  
4 federal government.

5 b. The general public, including public and private  
6 agencies, organizations, public places, public and private  
7 schools, child care facilities, religious and youth  
8 organizations, neighbors, neighborhood associations, community  
9 meetings, and employers. Registry information may be  
10 distributed to the public through printed materials, visual or  
11 audio press releases, or through a criminal or juvenile  
12 justice agency's web page.

13 3. Any member of the public may contact a county sheriff's  
14 office or police department to request relevant information  
15 from the registry regarding a specific person required to  
16 register under this chapter. The request for information  
17 shall be in writing, and shall include the name of the person  
18 and at least one of the following identifiers pertaining to  
19 the person about whom the information is sought:

- 20 a. The date of birth of the person.  
21 b. The social security number of the person.  
22 c. The address of the person.

23 The request for information is a confidential record under  
24 chapter 22 and is not subject to dissemination.

25 4. A county sheriff shall also provide to any person upon  
26 request access to a list of all registrants in that county.  
27 However, records of a person protected under 18 U.S.C. § 3521  
28 shall not be disclosed.

29 5. Relevant information provided to the general public may  
30 include the offender's name, address, a photograph, locations  
31 frequented by the offender, relevant criminal history  
32 information from the registry, and any other relevant  
33 information. Relevant information provided to the public  
34 shall not include the identity of any victim.

35 6. Notwithstanding sections 232.147 through 232.151,

1 records concerning convictions which are committed by a minor  
2 may be released in the same manner as records of convictions  
3 of adults.

4 Sec. 14. Section 711.3, Code 2003, is amended to read as  
5 follows:

6 711.3 ROBBERY IN THE SECOND DEGREE.

7 All robbery which is not robbery in the first degree is  
8 robbery in the second degree, except as provided in section  
9 711.3A. Robbery in the second degree is a class "C" felony.

10 Sec. 15. NEW SECTION. 711.3A ROBBERY IN THE THIRD  
11 DEGREE.

12 A person commits robbery in the third degree when, while  
13 perpetrating a theft as defined in section 714.2, subsection  
14 5, the person commits an assault upon another as defined in  
15 section 708.2, subsection 5. Robbery in the third degree is  
16 an aggravated misdemeanor.

17 Sec. 16. Section 901.4, Code 2003, is amended to read as  
18 follows:

19 901.4 PRESENTENCE INVESTIGATION REPORT CONFIDENTIAL --  
20 DISTRIBUTION.

21 The presentence investigation report is confidential and  
22 the court shall provide safeguards to ensure its  
23 confidentiality, including but not limited to sealing the  
24 report, which may be opened only by further court order. At  
25 least three days prior to the date set for sentencing, the  
26 court shall serve all of the presentence investigation report  
27 upon the defendant's attorney and the attorney for the state,  
28 and the report shall remain confidential except upon court  
29 order. However, the court may conceal the identity of the  
30 person who provided confidential information. The report of a  
31 medical examination or psychological or psychiatric evaluation  
32 shall be made available to the attorney for the state and to  
33 the defendant upon request. The reports are part of the  
34 record but shall be sealed and opened only on order of the  
35 court. If the defendant is committed to the custody of the

1 Iowa department of corrections and is not a class "A" felon, a  
2 copy of the presentence investigation report shall be  
3 forwarded to the director with the order of commitment by the  
4 clerk of the district court and to the board of parole at the  
5 time of commitment. The presentence investigation report may  
6 also be released by the department of corrections or a  
7 judicial district department of correctional services pursuant  
8 to section 904.602 to another jurisdiction for the purpose of  
9 providing interstate probation and parole compact services or  
10 evaluations. The defendant or the defendant's attorney may  
11 file with the presentence investigation report, a denial or  
12 refutation of the allegations, or both, contained in the  
13 report. The denial or refutation shall be included in the  
14 report. If the person is sentenced for an offense which  
15 requires registration under chapter 692A, the court shall  
16 release the report to the department ~~which is responsible~~  
17 ~~under section 692A-13A for performing the assessment of risk~~  
18 of public safety.

19 Sec. 17. Section 901.5, subsection 13, Code 2003, is  
20 amended by striking the subsection.

21 Sec. 18. NEW SECTION. 901.5B REOPENING OF SENTENCE FOR  
22 PERSONS SERVING SENTENCE SUBJECT TO MAXIMUM ACCUMULATION OF  
23 EARNED TIME OF FIFTEEN PERCENT.

24 1. A defendant serving a sentence under section 902.12  
25 prior to the effective date of this Act, who is sentenced by  
26 the court to the custody of the director of the department of  
27 corrections, may have the judgment and sentence reopened for  
28 resentencing if all of the following apply:

29 a. The county attorney from the county which prosecuted  
30 the defendant files a motion in the sentencing court to reopen  
31 the sentence of the defendant. The victim, if possible, shall  
32 be served a copy of the motion by certified mail. The motion  
33 shall specify that the county attorney, if possible, has  
34 informed the victim about the filing of the motion, and that  
35 the victim has thirty days from the date of the filing of the

1 motion to file a written objection with the court.

2 b. No written objection is filed, thereby requiring the  
3 court to grant the motion, or if a written objection is filed,  
4 and upon hearing the court grants the motion.

5 2. Upon the court granting the motion to reopen the  
6 sentence, the court shall order that the defendant be eligible  
7 for consideration of parole or work release in the same manner  
8 as a defendant serving a sentence under section 902.12.

9 3. For purposes of calculating earned time under section  
10 903A.2, the sentencing date for a defendant whose sentence has  
11 been reopened under this section shall be the date of the  
12 original sentencing order.

13 4. The filing of a motion or reopening of a sentence under  
14 this section shall not constitute grounds to stay any other  
15 court proceedings, or to toll or restart the time for filing  
16 of any posttrial motion or any appeal.

17 Sec. 19. Section 901.10, subsection 1, Code 2003, is  
18 amended to read as follows:

19 1. A court sentencing a person for the person's first  
20 conviction under section 124.406~~7-124.413~~ or 902.7 may, at  
21 its discretion, sentence the person to a term less than  
22 provided by the statute if mitigating circumstances exist and  
23 those circumstances are stated specifically in the record.

24 Sec. 20. Section 901.10, subsection 2, Code 2003, is  
25 amended by striking the subsection.

26 Sec. 21. Section 902.11, unnumbered paragraph 1, Code  
27 2003, is amended to read as follows:

28 A person serving a sentence for conviction of a felony,  
29 ~~other-than-a-forcible-felony-under-section-902.12~~, who has a  
30 criminal record of one or more prior convictions for a  
31 forcible felony or a crime of a similar gravity in this or any  
32 other state, shall be denied parole or work release unless the  
33 person has served at least one-half of the maximum term of the  
34 defendant's sentence. However, the mandatory sentence  
35 provided for by this section does not apply if either of the

1 following apply:

2 Sec. 22. Section 902.12, unnumbered paragraph 1, Code  
3 2003, is amended to read as follows:

4 ~~Except as otherwise provided in section 903A.27, a~~ A person  
5 serving a sentence for conviction of the following forcible  
6 felonies shall ~~serve one hundred percent of the maximum term~~  
7 ~~of the person's sentence and shall not be released on~~ be  
8 denied parole or work release unless the person has served at  
9 least one-half of the maximum term of the person's sentence:

10 Sec. 23. Section 902.12, subsection 5, unnumbered  
11 paragraph 2, Code 2003, is amended to read as follows:

12 ~~Except as otherwise provided in section 903A.27, a person~~  
13 ~~serving a sentence for conviction under~~

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

21 Sec. 24. Section 903.4, Code 2003, is amended to read as  
22 follows:

23 903.4 PROVIDING PLACE OF CONFINEMENT.

24 All persons sentenced to confinement for a period of one  
25 year or less shall be confined in a place to be furnished by  
26 the county where the conviction was had unless the person is  
27 presently committed to the custody of the director of the Iowa  
28 department of corrections, in which case the provisions of  
29 section 901.8 apply, ~~or unless the person is serving a~~  
30 ~~determinate term of confinement of one year pursuant to~~  
31 ~~section 902.3A.~~ All persons sentenced to confinement for a  
32 period of more than one year shall be committed to the custody  
33 of the director of the Iowa department of corrections to be  
34 confined in a place to be designated by the director and the  
35 cost of the confinement shall be borne by the state. The

1 director may contract with local governmental units for the  
2 use of detention or correctional facilities maintained by the  
3 units for the confinement of such persons.

4 Sec. 25. Section 906.4, Code 2003, is amended by adding  
5 the following new unnumbered paragraph after unnumbered  
6 paragraph 1:

7 NEW UNNUMBERED PARAGRAPH. A person on parole or work  
8 release who is serving a sentence under section 902.12 shall  
9 begin parole or work release in a residential facility  
10 operated by a judicial district department of correctional  
11 services.

12 Sec. 26. Section 907.3, subsection 1, paragraph m, Code  
13 2003, is amended by striking the paragraph.

14 Sec. 27. Section 907.3, subsection 2, paragraph g, Code  
15 2003, is amended by striking the paragraph.

16 Sec. 28. Sections 124.413, 692A.13A, and 902.3A, Code  
17 2003, are repealed.

18 Sec. 29. APPLICABILITY OF AVAILABLE RECORDS IN THE SEX  
19 OFFENDER REGISTRY. Section 692A.13, as amended by this Act,  
20 shall apply retroactively to all offenders on the registry.

21 Sec. 30. EFFECTIVE DATE. The section of this Act amending  
22 section 692A.13, being deemed of immediate importance, takes  
23 effect upon enactment.

24 EXPLANATION

25 This bill relates to criminal sentencing and procedure by  
26 changing the penalties for certain offenses involving  
27 controlled substances, by creating a criminal offense of  
28 robbery in the third degree, modifying residency restrictions  
29 for a sex offender, changing the parole and work release  
30 eligibility of a person serving a sentence that requires a  
31 maximum accumulation of earned time credits of 15 percent of  
32 the total term of confinement, and by permitting the reopening  
33 of such a sentence.

34 CONTROLLED SUBSTANCES. The bill relates to the unlawful  
35 manufacture, delivery, or possession with the intent to

1 manufacture or deliver, or conspiring to manufacture, deliver,  
2 or possess with the intent to manufacture or deliver certain  
3 controlled substances. The bill also aligns, using a 10-to-1  
4 ratio, the threshold amount for a conviction of a cocaine-  
5 related offense with a "crack cocaine" offense.

6 The bill modifies the criminal penalty for a person who  
7 unlawfully manufactures, delivers, or possesses with the  
8 intent to deliver large amounts of a controlled substance from  
9 a class "B" felony punishable by confinement for no more than  
10 50 years to a class "B" felony punishable by confinement for  
11 no more than 35 years.

12 If a criminal offense under the bill involves more than 500  
13 grams of cocaine, methamphetamine, or amphetamine, the person  
14 commits a class "B" felony, punishable by confinement for no  
15 more than 35 years, and a fine of not more than \$1 million.  
16 Under current law, if the amount of the cocaine,  
17 methamphetamine, or amphetamine is more than 5 kilograms, a  
18 person commits a class "B" felony punishable by confinement  
19 for no more than 50 years.

20 If a criminal offense under the bill involves more than 100  
21 grams but not more than 500 grams of cocaine, the person  
22 commits a class "B" felony, punishable by confinement for no  
23 more than 25 years, and a fine of not less than \$5,000 but not  
24 more than \$100,000. Under current law, if the amount of  
25 cocaine involves more than 500 grams but not more than 5  
26 kilograms of cocaine, the person commits a class "B" felony  
27 punishable by confinement for no more than 25 years, and a  
28 fine of not less than \$5,000 but not more than \$100,000.

29 If a criminal offense under the bill involves more than 10  
30 grams but not more than 50 grams of a substance containing  
31 cocaine base, the person commits a class "B" felony punishable  
32 by confinement for no more than 25 years, and a fine of not  
33 less than \$5,000 but not more than \$100,000. Under current  
34 law, if the amount of the substance containing cocaine base  
35 involves more than 5 grams but not more than 50 grams of

1 cocaine base, the person commits a class "B" felony punishable  
2 by confinement for no more than 25 years, and a fine of not  
3 less than \$5,000 but not more than \$100,000.

4 If a criminal offense under the bill involves 100 grams or  
5 less of cocaine, the person commits a class "C" felony  
6 punishable by confinement for no more than 10 years, and a  
7 fine of not less than \$1,000 but not more than \$50,000. Under  
8 current law, if the amount of the cocaine involves 500 grams  
9 or less, the person commits a class "C" felony punishable by  
10 confinement for no more than 10 years, and a fine of not less  
11 than \$1,000 but not more than \$50,000.

12 If a criminal offense under the bill involves 10 grams or  
13 less of a substance containing cocaine base, the person  
14 commits a class "C" felony punishable by confinement for no  
15 more than 10 years, and a fine of not less than \$1,000 but not  
16 more than \$50,000. Under current law, if the amount of the  
17 substance containing cocaine base involves 5 grams or less,  
18 the person commits a class "C" felony punishable by  
19 confinement for no more than 10 years, and a fine of not less  
20 than \$1,000 but not more than \$50,000.

21 The bill repeals Code section 124.413, relating to imposing  
22 a minimum mandatory sentence for certain controlled substance  
23 crimes.

24 SEX OFFENDER REGISTRY RESIDENCY MODIFICATIONS. The bill  
25 provides that a person who commits an aggravated offense,  
26 criminal offense against a minor, sexually violent offense, or  
27 any other relevant offense defined in Code chapter 692A shall  
28 not reside within 1,320 feet (quarter of a mile) of the real  
29 property comprising a public or nonpublic elementary or  
30 secondary school or child care facility. Current law provides  
31 that such a person shall not reside within 2,000 feet of the  
32 real property comprising a public or nonpublic elementary or  
33 secondary school or child care facility.

34 SEX OFFENDER REGISTRY -- DISSEMINATION OF INFORMATION.  
35 Code sections 692A.13 and 692A.13A regarding dissemination of

1 information on the sex offender registry are replaced. The  
2 bill provides that the department of corrections, the  
3 department of human services, the department of public safety,  
4 and a juvenile court officer are not required to perform a  
5 risk assessment for persons under the jurisdiction of the  
6 department or the juvenile court, for purposes of  
7 dissemination of information on the sex offender registry.  
8 The bill provides that sex offender registry information shall  
9 be disseminated in the same manner for each offender  
10 regardless of the risk assessment of the offender. The bill  
11 provides that the department of public safety may provide  
12 relevant sex offender registry information to a criminal or  
13 juvenile justice agency, the general public via the  
14 department's web page, and a single contact repository under  
15 Code section 135C.33. The bill provides that a criminal or  
16 juvenile justice agency may provide sex offender registry  
17 information to another criminal or juvenile justice agency, an  
18 agency of the state, another state's sex offender registry, or  
19 the federal government. The bill provides that sex offender  
20 information which may be disseminated includes the following:  
21 the offender's name, address, photograph, relevant criminal  
22 history, locations frequented by the offender, and any other  
23 relevant information.

24 **ROBBERY IN THE THIRD DEGREE.** The bill creates the criminal  
25 offense of robbery in the third degree. The bill provides  
26 that a person who commits or intends to commit a simple  
27 misdemeanor theft, and who commits a simple misdemeanor  
28 assault to further the commission of the theft, commits  
29 robbery in the third degree. Under the bill a person who  
30 commits robbery in the third degree commits an aggravated  
31 misdemeanor. Current law provides that a person who commits  
32 or intends to commit a theft and who commits a simple  
33 misdemeanor assault to further the commission of the theft  
34 commits robbery in the second degree punishable as an 85  
35 percent class "C" felony.

1 DETERMINATE SENTENCES. The bill repeals Code section  
2 902.3A relating to determinate sentences. Current law  
3 provides that a judge may sentence certain class "D" felons to  
4 a determinate term not to exceed five years. The repeal in  
5 effect makes all class "D" felonies subject to an  
6 indeterminate term just as all other felonies.

7 EIGHTY-FIVE PERCENT SENTENCES. The bill makes changes to a  
8 sentence that requires the maximum accumulation of earned time  
9 credits of 15 percent of the total sentence of confinement,  
10 most commonly referred to as an 85 percent sentence.

11 The bill provides that a person who is serving an 85  
12 percent sentence may be eligible for parole or work release  
13 after serving 50 percent of the maximum term of confinement.  
14 However, the bill does not change the maximum amount of earned  
15 time which can be earned by a person serving an 85 percent  
16 sentence; thus if a person is not released on parole or work  
17 release, the person shall serve 85 percent of the sentence in  
18 confinement. If a person is paroled after serving 50 percent  
19 of the maximum term of confinement, all aspects of the  
20 person's parole are the same as parole for other offenders,  
21 except the person is required to begin parole or work release  
22 in a residential treatment facility.

23 The bill also provides for the reopening of a judgment and  
24 sentence for a person serving a sentence, prior to the  
25 effective date of this Act, that requires the maximum  
26 accumulation of earned time credits of 15 percent of the total  
27 sentence of confinement or most commonly referred to as an 85  
28 percent sentence. Under the bill, an 85 percent sentence may  
29 be reopened upon a motion filed by the county attorney.

30 The bill provides that the victim, if possible, shall be  
31 served a copy of the motion by certified mail. The bill  
32 requires the motion to specify that the county attorney, if  
33 possible, has informed the victim about the filing of the  
34 motion, and that the victim has 30 days from the date of the  
35 motion to file a written objection to the motion. If no

1 written objection is filed by the victim, then the court is  
2 required to grant the motion. If a written objection is  
3 filed, then the court shall hold a hearing to determine if  
4 reopening the sentence is appropriate. The bill provides that  
5 upon reopening the court shall order that the person be  
6 eligible for parole or work release in the same manner as a  
7 person who is sentenced to serve an 85 percent sentence after  
8 the effective date of the bill.

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SF 422 - Sentencing Reform (LSB 2707 SV)

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Fiscal Note Version — New

Requested by Senator Donald R. Redfern

### **Description**

Senate File 422 relates to sentencing options. Sections One through Six relate to sentencing options for powder and crack cocaine and methamphetamine. Sections 7, 9, 19, 20, and 28 repeal the waivable mandatory minimum term for certain drug offenses. Sections 8, 13, 16, 28, 29, and 30 relate to the sex offender registry. Sections 10 through 12 modify sex offender residency requirements. Sections 14 and 15 create a new offense, Robbery in the Third Degree. Sections 17, 24, 26, 27, and 28 relate to the repeal of a sentencing option: Determinate term for certain Class D felony convictions. Sections 18, 21, 22, 23, and 25 provide 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 under this Bill. However, the length of stay in prison for offenders who committed offenses not involving threats or violence will decrease.
6. The repeal of Section 124.413, Code of Iowa, the mandatory minimum term for certain drug offenses, will not be applied retroactively to offenders currently serving such terms. During FY 2002, 448 offenders were admitted to prison with drug offenses mandatory minimum term as their most serious sentence. An estimated 448 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. Sections 10 through 12 permit sex offenders to live within a larger area of the State than under current law. These provisions of SF 422 are expected to have no significant correctional or fiscal impact.
8. The sections relating to the sex offender registry maintained by the Department of Public Safety (DPS) will have no correctional impact. The Bill provides that the Department of Corrections (DOC), DPS, and the Department of Human Services (DHS) and a juvenile court officer are not required to perform a risk assessment for purposes of dissemination of information on the sex offender registry. The Bill requires that sex offender registry information be disseminated in the same manner for each offender regardless of the risk assessment of the offender.
9. The DOC, DHS, and juvenile court officers will continue to perform risk assessments because the information gained through that process is used to determine supervision requirements. There is no fiscal impact on these agencies for these provisions.

10. The DPS will accrue savings in time and staffing related to the administration of the sex offender registry. However, this is a cost containment provision rather than an actual reduction in the DPS operating budget. The changes in SF 422 may permit the DPS to eliminate the backlog of cases that are waiting to be entered on the sex offender registry.
11. 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.
12. Court hearings for considering the reopening of a sentence will be held in the county of the offender's conviction.
13. 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.
14. 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 sexually predatory offenses and would not be considered for reopening of their sentence under this Bill. Approximately 25.0% of the cases would be eligible for the sentencing court's reconsideration after serving a minimum of at least seven years in prison.
15. 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. The actual number of sentences that are reopened if SF 422 is enacted ranges from 0 to 10 in FY 2004, 0 to 32 in FY 2005, 0 to 46 in FY 2006, 0 to 61 in FY 2007, and 0 to 67 in FY 2008.
16. The Bill permits county attorneys to file a motion to reopen an 85.0% sentence. The Board of Parole will review these cases as part of its usual workload, once the offender has been resentenced. The Board of Parole will not incur additional costs associated with case reviews to consider reopening sentences.
17. 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.
18. 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.
19. The Indigent Defense Program will incur additional costs for each case that is reopened. The estimated cost per case is \$300.
20. 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.
21. 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 and methamphetamine provisions in SF 422.
22. 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.
23. 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. The Bill may increase demand for CBC beds, or alternatively, day programming.
  24. 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 the Bill will be supervised for multiple years.
  25. 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).
  26. The State prison budget is based on 7,600 inmates; the current system is operating at 112.3% of budgeted capacity.
  27. 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.
  28. 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.
  29. 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 sentencing reopenings, who failed the requirements of work release or parole, and are revoked back to prison. The provisions in SF 422 that relate to cocaine and methamphetamine increase the prison incarceration rate for these offenses. Regarding powder cocaine, on an annual basis, 17 offenders convicted as Class C felons under current law will become Class B felons under SF 422. Regarding the methamphetamine provisions, on an annual basis, eight offenders convicted of a Class C felony will now be convicted of a Class B felony.

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
Prison Readmissions	0	1	4	6	7
Cocaine/Meth	5	15	30	37	37
Sentence Reopenings	- 10	- 32	- 46	- 61	- 67
Repeal Mandatory Min.	- 1	- 123	- 135	- 153	- 192
Repeal Determinate D	0	0	- 22	- 22	- 22
Total	<u>- 6</u>	<u>- 139</u>	<u>- 169</u>	<u>- 193</u>	<u>- 237</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 SF 422.

**Fiscal Impact**

The estimated net fiscal impact of SF 422 to the State General Fund is an increase in expenditures of \$29,000 during FY 2004, and an increase in expenditures of \$110,000 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	\$ 7,000	\$ 23,000
Judicial Branch	1,000	4,000
State Public Defender's Office	3,000	10,000
CBC Facilities	0	0
CBC Supervision Staff	17,000	73,000
Total General Fund Impact	<u>\$ 28,000</u>	<u>\$ 110,000</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: 0.3 FTE position in FY 2004 and 1.4 FTE positions in FY 2005.

**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

March 24, 2003

SENATE FILE 422

S-3084

1 Amend the amendment, S-3077, to Senate File 422 as  
2 follows:

3 1. Page 1, by inserting after line 17 the  
4 following:

5 "\_\_\_\_. Page 8, by striking line 4 and inserting  
6 the following:

7 "Except as otherwise provided in section ~~903A.2~~  
8 902.12A, a person".

9 \_\_\_\_\_. Page 8, by inserting after line 20 the  
10 following:

11 "Sec. \_\_\_\_\_. NEW SECTION. 902.12A MINIMUM SENTENCE  
12 FOR CERTAIN FELONIES -- CRIME AGAINST A CHILD.

13 A person serving a sentence for a conviction of a  
14 felony described in section 902.12, where the victim  
15 of the felony is a child, shall be denied parole or  
16 work release unless the person has served at lea.  
17 eighty-five percent of the maximum term of the  
18 person's confinement.""

19 2. Page 1, by striking line 20 and inserting the  
20 following:

21 ""Sec. \_\_\_\_\_. NEW SECTION. 903A.2A EARNED TIME --  
22 CHILD VICTIM. Notwithstanding section 903A.2, ar  
23 inmate serving a sentence under section 902.12A is not  
24 eligible for a reduction of the sentence.

25 Sec. \_\_\_\_\_. Section 905.6, Code 2003, is amended  
26 by".

27 3. Page 1, line 29, by inserting after the figure  
28 "902.12" the following: "or 902.12A".

29 4. Page 1, by inserting after line 33 the  
30 following:

31 "\_\_\_\_. Page 9, line 8, by inserting after the  
32 figure "902.12" the following: "or 902.12A"."

By MARY A. LUNDBY

S-3084 FILED MARCH 25, 2003

*Ruled Out of order 4/8/03*

SENATE FILE 422

S-3171

1 Amend Senate File 422 as follows:

2 1. Page 8, line 9, by striking the word "one-  
3 half" and inserting the following: "seven-tenths".

By CHARLES W. LARSON, JR.

MARY A. LUNDBY

LARRY McKIBBEN

KITTY REHBERG

MARK ZIEMAN

JOHN PUTNEY

MATT McCOY

RON WIECK

JERRY BEHN

BRYAN J. SIEVERS

NANCY BOETTGER

JAMES SEYMOUR

JULIE HOSCH

NEAL SCHUERER

DAVID JOHNSON

DOUG SHULL

KEN VEENSTRA

STEVE KETTERING

STEVEN H. WARNSTADT

E. THURMAN GASKILL

S-3171 FILED APRIL 8, 2003

SENATE FILE 422

S-3077

1 Amend Senate File 422 as follows:

2 1. By striking page 1, line 34, through page 2,  
3 line 10.

4 2. Page 2, by inserting before line 11 the  
5 following:

6 "Sec. \_\_\_\_\_. Section 124.413, unnumbered paragraph  
7 1, Code 2003, is amended to read as follows:

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

13 3. Page 2, by striking lines 20 through 30.

14 4. Page 5, by striking lines 4 through 16.

15 5. Page 7, lines 2 and 3, by striking the words  
16 ", thereby requiring the court to grant the motion."

17 6. Page 7, by striking lines 17 through 25.

18 7. Page 9, by inserting after line 3 the  
19 following:

20 "Sec. \_\_\_\_\_. Section 905.6, Code 2003, is amended by  
21 adding the following new subsection:

22 NEW SUBSECTION. 9. Notify the board of parole,  
23 thirty days prior to release, of the release from a  
24 residential facility operated by the district  
25 department of a person serving a sentence under  
26 section 902.12.

27 Sec. \_\_\_\_\_. NEW SECTION. 905.11 RESIDENTIAL  
28 FACILITY RESIDENCY -- MINIMUM. A person who is  
29 serving a sentence under section 902.12, the maximum  
30 term of which exceeds ten years, and who is released  
31 on parole or work release shall reside in a  
32 residential facility operated by the district  
33 department for a period of not less than one year."

34 8. Page 9, line 16, by striking the figures  
35 "124.413, 692A.13A," and inserting the following:  
36 "692A.13A".

By DONALD B. REDFERN

S-3077 FILED MARCH 24, 2003

*Ruled out of order 4/8/03*

SENATE FILE 422

S-3173

1 Amend Senate File 422 as follows:

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

4 "Sec. \_\_\_\_\_. Section 124.401, subsection 1,  
5 paragraph a, subparagraph (2), subparagraph  
6 subdivisions (d) and (e), Code 2003, are amended by  
7 striking the subparagraph subdivisions.

8 Sec. \_\_\_\_\_. Section 124.401, subsection 1, paragraph  
9 a, Code 2003, is amended by adding the following new  
10 subparagraph:

11 NEW SUBPARAGRAPH. (7) More than five kilograms of  
12 a mixture or substance containing a detectable amount  
13 of any of the following:

14 (a) Methamphetamine, its salts, isomers, or salts  
15 of isomers.

16 (b) Amphetamine, its salts, isomers, and salts of  
17 isomers.

18 (c) Any compound, mixture, or preparation which  
19 contains any quantity of any of the substances  
20 referred to in subparagraph subdivisions (a) and (b)."

21 2. By striking page 1, line 34, through page 2,  
22 line 10.

23 3. Page 2, by inserting before line 11 the  
24 following:

25 "Sec. \_\_\_\_\_. Section 124.413, unnumbered paragraph  
26 1, Code 2003, is amended to read as follows:

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

32 4. Page 2, by striking lines 20 through 30.

33 5. Page 5, by striking lines 4 through 16.

34 6. Page 7, lines 2 and 3, by striking the words  
35 ", thereby requiring the court to grant the motion,".

36 7. Page 7, by striking lines 17 through 25.

37 8. Page 9, by inserting after line 3 the  
38 following:

39 "Sec. \_\_\_\_\_. Section 905.6, Code 2003, is amended by  
40 adding the following new subsection:

41 NEW SUBSECTION. 9. Notify the board of parole,  
42 thirty days prior to release, of the release from a  
43 residential facility operated by the district  
44 department of a person serving a sentence under  
45 section 902.12.

46 Sec. \_\_\_\_\_. NEW SECTION. 905.11 RESIDENTIAL  
47 FACILITY RESIDENCY -- MINIMUM. A person who is  
48 serving a sentence under section 902.12, the maximum  
49 term of which exceeds ten years, and who is released  
50 on parole or work release shall reside in a

S-3173

**S-3173**

Page 2

1 residential facility operated by the district  
2 department for a period of not less than one year."

3 9. Page 9, by inserting after line 15, the  
4 following:

5 "Sec. \_\_\_\_\_. Section 907.3, subsection 3, paragraph  
6 g, Code 2003, is amended by striking the paragraph."

7 10. Page 9, line 16, by striking the figures  
8 "124.413, 692A.13A," and inserting the following:  
9 "692A.13A".

10 11. Title page, lines 3 and 4, by striking the  
11 words "by creating a criminal offense of robbery in  
12 the third degree,".

By DONALD B. REDFERN

**S-3173** FILED APRIL 8, 2003

ADOPTED 4/8/03

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**SENATE FILE 422**

**S-3157**

1 Amend Senate File 422 as follows:

2 1. Page 6, lines 31 and 32, by striking the words  
3 "The victim, if possible, shall be served a copy of  
4 the motion by certified mail." and inserting the  
5 following: "The county attorney shall notify the  
6 victim pursuant to section 915.13 of the filing of the  
7 motion."

8 2. Page 6, line 33, by striking the words ", if  
9 possible,".

10 3. Page 9, by inserting after line 15 the  
11 following:

12 "Sec. \_\_\_\_\_. Section 915.13, subsection 1, Code  
13 2003, is amended by adding the following new  
14 paragraph:

15 NEW PARAGRAPH. h. The filing of a motion to  
16 reopen a sentence of a defendant pursuant to section  
17 901.5B. Notwithstanding section 915.10, the notice  
18 shall be served by certified mail. Notice shall  
19 include the scheduled date, time, and place of any  
20 hearing to reopen a sentence and that the victim has  
21 thirty days from the date of the service of the motion  
22 to file a written objection with the court."

By KEITH A. KREIMAN

**S-3157** FILED APRIL 8, 2003

ADOPTED

SENATE FILE 422

S-3106

1 Amend Senate File 422 as follows:

2 1. Page 6, lines 31 and 32, by striking the words  
3 "The victim, if possible, shall be served a copy of  
4 the motion by certified mail." and inserting the  
5 following: "The county attorney shall notify the  
6 victim pursuant to section 915.13 of the filing of the  
7 motion."

8 2. Page 6, line 33, by striking the words ", if  
9 possible,".

10 3. Page 9, by inserting after line 15 the  
11 following:

12 "Sec. \_\_\_\_ . Section 915.13, subsection 1, Code  
13 2003, is amended by adding the following new  
14 paragraph:

15 NEW PARAGRAPH. h. The filing of a motion to  
16 reopen a sentence of a defendant pursuant to section  
17 901.5B. Notwithstanding section 915.10, the notice  
18 shall be served by certified mail. Notice shall  
19 include notice to the victim that the victim has  
20 thirty days from the date of the service of the motion  
21 to file a written objection with the court.

22 Sec. \_\_\_\_ . Section 915.14, Code 2003, is amended to  
23 read as follows:

24 915.14 NOTIFICATION BY CLERK OF THE DISTRICT  
25 COURT.

26 The clerk of the district court shall notify a  
27 registered victim of all dispositional orders of the  
28 case in which the victim was involved and may advise  
29 the victim of any other orders regarding custody or  
30 confinement. The clerk of the district court shall  
31 also notify a registered victim of the scheduled date,  
32 time, and place of any hearing on a motion to reopen a  
33 sentence pursuant to section 901.5B."

By KEITH A. KREIMAN

S-3106 FILED MARCH 31, 2003

Withdrawn 4/8/03

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SENATE FILE 422

S-3161

1 Amend the amendment, S-3077, to Senate File 422 as  
2 follows:

3 1. Page 1, by inserting after line 17 the  
4 following:

5 "    ". Page 8, line 9, by striking the word "one-  
6 half" and inserting the following: "seven-tenths."

By CHARLES W. LARSON, JR.

MARY A. LUNDBY

LARRY MCKIBBEN

KITTY REHBERG

MARK ZIEMAN

JOHN PUTNEY

MATT McCOY

RON WIECK

JERRY BEHN

BRYAN J. SIEVERS

NANCY BOETTGER

JAMES SEYMOUR

JULIE HOSCH

NEAL SCHUERER

DAVID JOHNSON

DOUG SHULL

KEN VEENSTRA

STEVE KETTERING

STEVEN H. WARNSTADT

S-3161 FILED APRIL 8, 2003

RULED OUT OF ORDER

SENATE FILE 422  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1138)

(AS AMENDED AND PASSED BY THE SENATE APRIL 8, 2003)

- \_\_\_\_\_ - New Language by the Senate  
\* - Language Stricken by the Senate

Passed Senate, Date Passed 4/28/03 Passed House, Date 4/29/03  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved 5/30/03

A BILL FOR

1 An Act relating to the criminal sentencing and procedure by  
2 modifying the penalties for certain offenses related to  
\* 3 controlled substances, modifying dissemination of sex offender  
4 registry information and residence restrictions for a sex  
5 offender, repealing certain determinate sentences, changing  
6 the parole and work release eligibility of a person serving a  
7 sentence that requires a maximum accumulation of earned time  
8 credits of fifteen percent of the total term of confinement  
9 and by permitting the reopening of such a sentence, providing  
10 a penalty, and providing an effective date.

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

12  
13  
14  
15  
16  
17  
18  
19

S.F. 422

1 hundred twenty feet of the real property comprising a public  
2 or nonpublic elementary or secondary school, or a child care  
3 facility, commits an aggravated misdemeanor.

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

6 A person residing within ~~two~~ one thousand three hundred  
7 twenty feet of the real property comprising a public or  
8 nonpublic elementary or secondary school or a child care  
9 facility does not commit a violation of this section if any of  
10 the following apply:

11 Sec. 13. Section 692A.5, subsection 1, paragraph h, Code  
12 2003, is amended to read as follows:

13 h. Inform the person, if the person's residency is  
14 restricted under section 692A.2A, that the person shall not  
15 reside within ~~two~~ one thousand three hundred twenty feet of  
16 the real property comprising a public or nonpublic elementary  
17 or secondary school, or a child care facility.

18 Sec. 14. Section 692A.13, Code 2003, is amended by  
19 striking the section and inserting in lieu thereof the  
20 following:

21 692A.13 AVAILABILITY OF RECORDS.

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

24 a. A criminal or juvenile justice agency, an agency of the  
25 state, any sex offender registry of another state, or the  
26 federal government.

27 b. The general public through the sex offender registry's  
28 web page.

29 c. The single contact repository established pursuant to  
30 section 135C.33, in accordance with the rules adopted by the  
31 department.

32 2. A criminal or juvenile justice agency may provide  
33 relevant information from the sex offender registry to the  
34 following:

35 a. A criminal or juvenile justice agency, an agency of the

1 state, or any sex offender registry of another state, or the  
2 federal government.

3     b. The general public, including public and private  
4 agencies, organizations, public places, public and private  
5 schools, child care facilities, religious and youth  
6 organizations, neighbors, neighborhood associations, community  
7 meetings, and employers. Registry information may be  
8 distributed to the public through printed materials, visual or  
9 audio press releases, or through a criminal or juvenile  
10 justice agency's web page.

11     3. Any member of the public may contact a county sheriff's  
12 office or police department to request relevant information  
13 from the registry regarding a specific person required to  
14 register under this chapter. The request for information  
15 shall be in writing, and shall include the name of the person  
16 and at least one of the following identifiers pertaining to  
17 the person about whom the information is sought:

- 18     a. The date of birth of the person.
- 19     b. The social security number of the person.
- 20     c. The address of the person.

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

23     4. A county sheriff shall also provide to any person upon  
24 request access to a list of all registrants in that county.  
25 However, records of a person protected under 18 U.S.C. § 3521  
26 shall not be disclosed.

27     5. Relevant information provided to the general public may  
28 include the offender's name, address, a photograph, locations  
29 frequented by the offender, relevant criminal history  
30 information from the registry, and any other relevant  
31 information. Relevant information provided to the public  
32 shall not include the identity of any victim.

33     6. Notwithstanding sections 232.147 through 232.151,  
34 records concerning convictions which are committed by a minor  
35 may be released in the same manner as records of convictions

1 of adults.

\*2 Sec. 15. Section 901.4, Code 2003, is amended to read as  
3 follows:

4 901.4 PRESENTENCE INVESTIGATION REPORT CONFIDENTIAL --  
5 DISTRIBUTION.

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

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

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

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

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

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

\*22 b. No written objection is filed or if a written objection  
23 is filed, and upon hearing the court grants the motion.

24 2. Upon the court granting the motion to reopen the  
25 sentence, the court shall order that the defendant be eligible  
26 for consideration of parole or work release in the same manner  
27 as a defendant serving a sentence under section 902.12.

28 3. For purposes of calculating earned time under section  
29 903A.2, the sentencing date for a defendant whose sentence has  
30 been reopened under this section shall be the date of the  
31 original sentencing order.

32 4. The filing of a motion or reopening of a sentence under  
33 this section shall not constitute grounds to stay any other  
34 court proceedings, or to toll or restart the time for filing  
35 of any posttrial motion or any appeal.

\* 1 Sec. 18. Section 902.11, unnumbered paragraph 1, Code  
2 2003, is amended to read as follows:

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

12 Sec. 19. Section 902.12, unnumbered paragraph 1, Code  
13 2003, is amended to read as follows:

14 ~~Except-as-otherwise-provided-in-section-903A.2,-a~~ A person  
15 serving a sentence for conviction of the following forcible  
16 felonies shall ~~serve-one-hundred-percent-of-the-maximum-term~~  
17 ~~of-the-person's-sentence-and-shall-not-be-released-on~~ be  
18 denied parole or work release unless the person has served at  
19 least seven-tenths of the maximum term of the person's  
20 sentence:

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

23 ~~Except-as-otherwise-provided-in-section-903A.2,-a-person~~  
24 ~~-serving-a-sentence-for-conviction-under~~

25 6. Vehicular homicide in violation of section 707.6A,  
26 subsection 1 or 2, ~~shall-serve-one-hundred-percent-of-the~~  
27 ~~maximum-term-of-the-person's-sentence-and-shall-not-be~~  
28 ~~released-on-parole-or-work-release~~ if the person was also  
29 convicted under section 321.261, subsection 3, based on the  
30 same facts or event that resulted in the conviction under  
31 section 707.6A, subsection 1 or 2.

32 Sec. 21. Section 903.4, Code 2003, is amended to read as  
33 follows:

34 903.4 PROVIDING PLACE OF CONFINEMENT.

35 All persons sentenced to confinement for a period of one

1 year or less shall be confined in a place to be furnished by  
2 the county where the conviction was had unless the person is  
3 presently committed to the custody of the director of the Iowa  
4 department of corrections, in which case the provisions of  
5 section 901.8 apply ~~7-or-unless-the-person-is-serving-a~~  
6 ~~determinate-term-of-confinement-of-one-year-pursuant-to~~  
7 ~~section-902-3A~~. All persons sentenced to confinement for a  
8 period of more than one year shall be committed to the custody  
9 of the director of the Iowa department of corrections to be  
10 confined in a place to be designated by the director and the  
11 cost of the confinement shall be borne by the state. The  
12 director may contract with local governmental units for the  
13 use of detention or correctional facilities maintained by the  
14 units for the confinement of such persons.

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

17 NEW SUBSECTION. 9. Notify the board of parole, thirty  
18 days prior to release, of the release from a residential  
19 facility operated by the district department of a person  
20 serving a sentence under section 902.12.

21 Sec. 23. NEW SECTION. 905.11 RESIDENTIAL FACILITY  
22 RESIDENCY -- MINIMUM. A person who is serving a sentence  
23 under section 902.12, the maximum term of which exceeds ten  
24 years, and who is released on parole or work release shall  
25 reside in a residential facility operated by the district  
26 department for a period of not less than one year.

27 Sec. 24. Section 906.4, Code 2003, is amended by adding  
28 the following new unnumbered paragraph after unnumbered  
29 paragraph 1:

30 NEW UNNUMBERED PARAGRAPH. A person on parole or work  
31 release who is serving a sentence under section 902.12 shall  
32 begin parole or work release in a residential facility  
33 operated by a judicial district department of correctional  
34 services.

35 Sec. 25. Section 907.3, subsection 1, paragraph m, Code

1 2003, is amended by striking the paragraph.

2 Sec. 26. Section 907.3, subsection 2, paragraph g, Code  
3 2003, is amended by striking the paragraph.

4 Sec. 27. Section 907.3, subsection 3, paragraph g, Code  
5 2003, is amended by striking the paragraph.

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

8 NEW PARAGRAPH. h. The filing of a motion to reopen a  
9 sentence of a defendant pursuant to section 901.5B.

10 Notwithstanding section 915.10, the notice shall be served by  
11 certified mail. Notice shall include the scheduled date,  
12 time, and place of any hearing to reopen a sentence and that  
13 the victim has thirty days from the date of the service of the  
14 motion to file a written objection with the court.

15 Sec. 29. Sections 692A.13A and 902.3A, Code 2003, are  
16 repealed.

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

20 Sec. 31. EFFECTIVE DATE. The section of this Act amending  
21 section 692A.13, being deemed of immediate importance, takes  
22 effect upon enactment.

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SENATE FILE 422

H-1357

- 1 Amend Senate File 422, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 1, by striking lines 1 through 9.
- 4 2. By striking page 2, line 13, through page 6,
- 5 line 3.
- 6 3. By striking page 6, line 6, through page 7,
- 7 line 31.
- 8 4. Page 8, by striking lines 15 through 34.
- 9 5. Page 9, by striking lines 6 through 14.
- 10 6. Page 9, by striking line 15, and inserting the
- 11 following:
- 12 "Sec. \_\_\_\_ . Section 902.3A, Code 2003, is".
- 13 7. Page 9, by striking lines 17 through 22.
- 14 8. Title page, by striking lines 3 through 10 and
- 15 inserting the following: "controlled substances and
- 16 repealing certain determinate sentences."
- 17 9. By renumbering as necessary.

By MADDUX of Polk

H-1357 FILED APRIL 16, 2003

*Adopted 4/23/03*

SENATE FILE 422

H-1381

- 1 Amend the amendment, H-1357, to Senate File 422, as
- 2 amended, passed, and reprinted by the Senate, as
- 3 follows:
- 4 1. Page 1, by inserting after line 2 the
- 5 following:
- 6 "\_\_\_\_ . Page 1, by inserting before line 1 the
- 7 following:
- 8 "Sec. \_\_\_\_ . Section 124.212, subsection 5,
- 9 unnumbered paragraph 1, Code 2003, is amended to read
- 10 as follows:
- 11 Unless specifically excepted in paragraph "b" ~~or~~
- 12 ~~"e"~~, or listed in another schedule, any material,
- 13 compound, mixture, or preparation which contains any
- 14 quantity of the following substance, including its
- 15 salts, optical isomers, and salts of such optical
- 16 isomers:
- 17 Sec. \_\_\_\_ . Section 124.212, subsection 5, Code
- 18 2003, is amended by adding the following new paragraph
- 19 after paragraph a:
- 20 NEW PARAGRAPH. aa. Any dietary supplement if the
- 21 dietary supplement is a naturally occurring ephedrine
- 22 alkaloid or associated salts, isomers, salts of
- 23 isomers, or a combination of these substances that are
- 24 contained in a matrix of organic material.
- 25 Sec. \_\_\_\_ . Section 124.212, subsection 5, paragraph
- 26 c, Code 2003, is amended by striking the paragraph."
- 27 2. Page 1, line 15, by striking the word "and"
- 28 and inserting the following: ", modifying schedule V
- 29 controlled substances, and".

By BAUDLER of Adair

H-1381 FILED APRIL 21, 2003

*Ruled not germane*

SENATE FILE 422

H-1405

1 Amend the amendment, H-1357, to Senate File 422, as  
2 amended, passed, and reprinted by the Senate as  
3 follows:

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

6 "\_\_\_\_. Page 1, line 13, by striking the words  
7 "five kilograms hundred grams" and inserting the  
8 following: "~~five kilograms~~ one kilogram".

9 \_\_\_\_\_. Page 1, by inserting after line 18 the  
10 following:

11 "Sec. \_\_\_\_\_. Section 124.401, subsection 1,  
12 paragraph a, subparagraph (3), Code 2003, is amended  
13 to read as follows:

14 (3) More than ~~fifty~~ one hundred grams of a mixture  
15 or substance described in subparagraph (2) which  
16 contains cocaine base."

17 \_\_\_\_\_. Page 1, lines 33 and 34, by striking the  
18 words "five kilograms hundred grams" and inserting the  
19 following: "~~five kilograms~~ one kilogram".

20 \_\_\_\_\_. Page 2, line 2, by striking the word "fifty"  
21 and inserting the following: "~~fifty~~ one hundred"."

22 2. By renumbering as necessary.

By FALLON of Polk

H-1405 FILED APRIL 22, 2003

Lost 4/23/03

SENATE FILE 422

H-1409

1 Amend the amendment, H-1357, to Senate File 422, as  
2 amended, passed, and reprinted by the Senate as  
3 follows:

4 1. Page 1, by inserting after line 5, the  
5 following:

6 "\_\_\_\_. Page 6, line 10, by striking the words,  
7 "prior to the effective date of this Act,".

8 \_\_\_\_\_. Page 6, line 24, by striking the word "Upon"  
9 and inserting the following: "Notwithstanding section  
10 902.12, upon".

11 \_\_\_\_\_. Page 6, lines 26 and 27, by striking the  
12 words "in the same manner as a defendant serving a  
13 sentence under section 902.12".

14 \_\_\_\_\_. Page 6, line 31, by inserting after the word  
15 "order" the following: ", and the reopening of the  
16 sentence does not change the manner in which earned  
17 time is calculated pursuant to section 903A.2"."

18 2. Page 1, by striking lines 6 and 7, and  
19 inserting the following:

20 "\_\_\_\_. Page 7, by striking lines 1 through 31."

21 3. Page 1, by striking line 9.

22 4. Page 1, line 15, by inserting after the word  
23 "substances" the following: "by permitting the  
24 reopening of certain sentences,".

By MADDUX of Polk

H-1409 FILED APRIL 23, 2003

ADOPTED

SENATE FILE 422

H-1437

1 Amend the amendment, H-1357, to Senate File 422, as  
2 amended, passed, and reprinted by the Senate, as  
3 follows:

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

6 "\_\_\_\_. Page 2, by inserting after line 12, the  
7 following:

8 "Sec. \_\_\_\_ . NEW SECTION. 321J.2C PERSONS FOUND  
9 NOT GUILTY.

10 1. Notwithstanding any other provision of this  
11 chapter to the contrary, if any prosecution for a  
12 violation of section 321J.2 or 321J.2A does not result  
13 in a conviction, and the defendant's driver's license  
14 or nonresident operating privilege has been revoked  
15 under section 321J.12 for the occurrence from which  
16 the arrest arose, the department shall, upon receipt  
17 of the court order finding the defendant not guilty,  
18 immediately rescind the revocation order and reinstate  
19 the defendant's license.

20 2. Notwithstanding section 321.12 or any other  
21 provision of chapter 321 or 321J to the contrary, the  
22 director shall immediately destroy any operating  
23 records pertaining to a revocation under section  
24 321J.12 for the occurrence from which an arrest arose  
25 when the defendant was subsequently prosecuted and  
26 found not guilty upon receipt of the court order  
27 finding the defendant not guilty.""

28 2. Page 1, by inserting after line 13 the  
29 following:

30 "\_\_\_\_. Title page, line 1, by inserting before the  
31 word "procedure" the following: "administrative"."

32 3. Page 1, line 15 by inserting after the word  
33 "substances" the following: ", by reinstating a  
34 driver's license upon a finding of not guilty in an  
35 operating-while-intoxicated offense,".

By HEATON of Henry  
HORBACH of Tama  
SHOULTZ of Black Hawk

H-1437 FILED APRIL 23, 2003

ADOPTED

SENATE FILE 422

H-1434

1 Amend the amendment, H-1357, to Senate File 422, as  
2 amended, passed, and reprinted by the Senate, as  
3 follows:

4 1. Page 1, line 4, by striking the word and  
5 figure "line 13" and inserting the following: "line  
6 20".

By SWAIM of Davis

H-1434 FILED APRIL 23, 2003  
WITHDRAWN

SENATE FILE 422

H-1441

1 Amend the amendment, H-1357, to Senate File 422, as  
2 amended, passed, and reprinted by the Senate, as  
3 follows:

4 1. Page 1, by inserting after line 9 the  
5 following:

6 "\_\_\_\_. Page 9, by inserting before line 15, the  
7 following:

8 "Sec. \_\_\_\_ . Section 915.14, Code 2003, is amended  
9 to read as follows:

10 915.14 NOTIFICATION BY CLERK OF THE DISTRICT  
11 COURT.

12 The clerk of the district court shall notify a  
13 registered victim of all dispositional orders of the  
14 case in which the victim was involved and may advise  
15 the victim of any other orders regarding custody or  
16 confinement. If a motion to reopen the sentence has  
17 been filed pursuant to section 901.5B, the clerk of  
18 the district court shall notify a registered victim of  
19 the case in which the victim was involved. The notice  
20 shall include the scheduled date, time, and place of  
21 the hearing, and the clerk shall notify the victim of  
22 a cancellation or postponement of any hearing  
23 regarding the motion to reopen."

24 2. By renumbering as necessary.

By MADDOX of Polk

H-1441 FILED APRIL 23, 2003  
ADOPTED

**HOUSE AMENDMENT TO  
SENATE FILE 422**

**S-3301**

1 Amend Senate File 422, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 1, by striking lines 1 through 9.

4 2. Page 2, by inserting after line 12, the  
5 following:

6 "Sec. \_\_\_\_ . NEW SECTION. 321J.2C PERSONS FOUND  
7 NOT GUILTY.

8 1. Notwithstanding any other provision of this  
9 chapter to the contrary, if any prosecution for a  
10 violation of section 321J.2 or 321J.2A does not result  
11 in a conviction, and the defendant's driver's license  
12 or nonresident operating privilege has been revoked  
13 under section 321J.12 for the occurrence from which  
14 the arrest arose, the department shall, upon receipt  
15 of the court order finding the defendant not guilty,  
16 immediately rescind the revocation order and reinstate  
17 the defendant's license.

18 2. Notwithstanding section 321.12 or any other  
19 provision of chapter 321 or 321J to the contrary, the  
20 director shall immediately destroy any operating  
21 records pertaining to a revocation under section  
22 321J.12 for the occurrence from which an arrest arose  
23 when the defendant was subsequently prosecuted and  
24 found not guilty upon receipt of the court order  
25 finding the defendant not guilty."

26 3. By striking page 2, line 13, through page 6,  
27 line 3.

28 4. Page 6, line 10, by striking the words "prior  
29 to the effective date of this Act,".

30 5. Page 6, line 24, by striking the word "Upon"  
31 and inserting the following: "Notwithstanding section  
32 902.12, upon".

33 6. Page 6, lines 26 and 27, by striking the words  
34 "in the same manner as a defendant serving a sentence  
35 under section 902.12".

36 7. Page 6, line 31, by inserting after the word  
37 "order" the following: ", and the reopening of the  
38 sentence does not change the manner in which earned  
39 time is calculated pursuant to section 903A.2".

40 8. Page 7, by striking lines 1 through 31.

41 9. Page 8, by striking lines 15 through 34.

42 10. Page 9, by inserting before line 15, the  
43 following:

44 "Sec. \_\_\_\_ . Section 915.14, Code 2003, is amended  
45 to read as follows:

46 915.14 NOTIFICATION BY CLERK OF THE DISTRICT  
47 COURT.

48 The clerk of the district court shall notify a  
49 registered victim of all dispositional orders of the  
50 case in which the victim was involved and may advise

**S-3301**

S-3301

Page 2

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

10 11. Page 9, by striking line 15, and inserting  
11 the following:

12 "Sec. \_\_\_\_ . Section 902.3A, Code 2003, is".

13 12. Page 9, by striking lines 17 through 22.

14 13. Title page, line 1, by inserting before the  
15 word "procedure" the following: "administrative".

16 14. Title page, by striking lines 3 through 10  
17 and inserting the following: "controlled substances  
18 by permitting the reopening of certain sentences, by  
19 reinstating a driver's license upon a finding of not  
20 guilty in an operating-while-intoxicated-offense, and  
21 repealing certain determinate sentences."

22 15. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-3301 FILED APRIL 24, 2003

Senate concurred 4/28/03

SENATE FILE 422

S-3325

1 Amend the House amendment, S-3301, to Senate File  
2 422, as amended, passed, and reprinted by the Senate,  
3 as follows:

4 1. Page 1, by striking lines 4 through 25.

5 2. Page 1, by striking lines 28 through 41.

6 3. Page 2, by inserting after the line 13, the  
7 following:

8 " \_\_\_\_ . Title page, line 1, by striking the word  
9 "the"."

10 4. Page 2, by striking lines 14 and 15.

11 5. Page 2, by striking lines 18 through 21 and  
12 inserting the following: "by permitting the reopening  
13 of a sentence that requires a maximum accumulation of  
14 earned time credits of fifteen percent of the total  
15 term of confinement and by changing the parole and  
16 work release eligibility of a person serving such a  
17 sentence, repealing certain determinate sentences, and  
18 providing a penalty.""

By DONALD B. REDFERN

S-3325 FILED APRIL 28, 2003

ADOPTED

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**SF 422 - Sentencing Reform (LSB 2707 SV.2)**

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

Fiscal Note Version — SF 422 as Amended and Passed by the House

Requested by Senator Donald R. Redfern

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**Description**

Senate File 422, as amended and passed by the House, relates to sentencing options. The Bill, as amended and passed by the House, amends sentencing options for powder and crack cocaine. The Bill, as amended and passed by the House, repeals the sentencing option of a determinate term for certain Class D felony convictions. Senate File 422, as amended and passed by the House, 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. The county attorney may reopen these sentences at any time without a mandatory minimum term being served, both retroactively and in the future. The Bill, as amended and passed by the House, also modifies Iowa's Operating While Intoxicated (OWI) statutes so that upon a finding of not guilty, the Department of Transportation (DOT) is required to reinstate the person's driver's license if it has been revoked. The DOT is also required to destroy any records related to that specific revocation.

**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.
  6. Court hearings for considering the reopening of a sentence will be held in the county of the offender's conviction.
  7. 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.
  8. 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 as amended and passed by the House. The remaining 18 offenders were convicted of sexually predatory offenses and would not be considered for reopening of their sentence. Approximately 25.0% of the Class C felony cases would be eligible for the sentencing court's reconsideration after serving a minimum of at least seven years in prison. These provisions will not impact offenders convicted of Class B 85.0% sentences.
-

9. This analysis provides the maximum number of potential sentences that could be reopened under the Bill as amended and passed by the House. No attempt was made to estimate how many judges would reject the reconsideration of sentences. The actual number of sentences that are reopened if SF 422, as amended and passed by the House, is enacted ranges from 0 to 5 in FY 2004, 0 to 21 for FY 2005, FY 2006, and FY 2007, and 0 to 29 in FY 2008.
10. The Bill, as amended and passed by the House, permits county attorneys to file a motion to reopen an 85.0% sentence for those offenders sentenced before the enactment date of the Bill, and in the future. The offenders are not required to serve a minimum term before being considered for re-sentencing.
11. The Bill, as amended and passed by the House, requires the county attorney to notify all victims who have registered with the county attorney's office that a case is being considered for reopening. The notice is required to be made by certified mail. County expenditures related to staff time, postage, and office supplies may increase under this provision; however, these costs are not anticipated to be significant.
12. Senate File 422, as amended and passed by the House, requires Clerk of Court Offices to notify registered victims of the date, time, and place of the re-sentencing hearing, and any postponements or cancellations of the re-sentencing hearing. Expenditures related to staff time, postage, and office supplies may increase under this provision; however, these costs are not anticipated to be significant.
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 State, 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.
15. The Indigent Defense Program will incur additional costs for each case that is reopened. The estimated cost per case is \$300.
16. The repeal of the determinate Class D felony 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.
17. 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.
18. There will be additional costs for the Indigent Defense Program due to the increased number of cases that will be tried at a higher felony level due to the powder cocaine provisions. The cost increase is approximately \$2,300 per case.
19. There are 1,404 CBC facility beds statewide. Of these, approximately 466 are dedicated to the work release program. There were 171 offenders in prison on April 2, 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. The Bill, as amended and passed by the House, 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 1 officer to 30 offenders. Offenders paroled under the Bill, as amended and passed by the House, will be supervised for multiple years.
21. The State prisons were operating at 124.5% of current designed capacity on April 18, 2003, with a prison population of 8,484 offenders. Current designed capacity is 6,812 beds. Designed capacity will increase to 7,142 beds by FY 2007 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 2007).

22. The State prison budget is based on 7,600 inmates; the current system is operating at 111.6% 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, total construction costs are estimated to be \$225.0 million and annual operating costs are estimated to be \$140.0 million. If the prison population reaches 12,127 offenders and five new prisons are built, designed capacity would be 10,892 beds, and the prisons would be operating at 111.4% 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.
26. The Bill, as amended and passed by the House, requires the Department of Transportation (DOT) to rescind the license revocation order and reinstate the driver's license of a person who has been arrested for an OWI violation, and found not guilty. The DOT is required to expunge all records related to that revocation.
27. There were 15,036 OWI charges disposed of in FY 2002. Of these, 1,077 (7.2%) were dismissed or acquitted. There were 92 OWI cases closed via bench trial and 79 OWI cases closed via jury trial. The cases that went to trial had a 28.0% acquittal rate, which is a higher acquittal rate than for cases that do not go to trial. The provision related to license reinstatement provides an incentive to the defendant to request a trial. Any increase in OWI trials will increase costs for the Judicial Branch. Because the number of OWI cases disposed of annually is large, the impact on the Judicial Branch could be significant. However, there is no readily available information with which to estimate how many more trials will occur.

### 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 two readmissions in FY 2006, two readmissions in FY 2007, and three readmissions in FY 2008. The table below illustrates the maximum cumulative impact on the prison population. The provisions in SF 422, as amended and passed by the House, that relate to powder cocaine increase the prison incarceration rate for these offenses. On an annual basis, 17 offenders convicted as Class C felons under current law for powder cocaine offenses will become Class B felons under SF 422 as amended and passed by the House.

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
Cocaine	5	15	25	31	31
Sentence Reopenings	- 5	- 21	- 21	- 21	- 29
Repeal Determinate D	0	0	- 22	- 22	- 22
Total	<u>0</u>	<u>- 6</u>	<u>- 18</u>	<u>- 12</u>	<u>- 20</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 number of estimated releases under sentence reopenings stabilizes in FY 2005 because prison terms for certain Class C offenders will begin to expire. Offenders released from prison due to expiration of sentence are not supervised in the community after their release.

The offenders released under sentencing reconsideration will be placed in work release facilities, paroled from those facilities by the Board of Parole, and then intensively supervised while on parole by the CBC District Departments. Community-Based Corrections 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.

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.

Offenders released to CBC supervision due to repealing 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 this sentencing option.

The possibility exists that no offenders may be released under the sentencing reopening provisions of SF 422 as amended and passed by the House.

**Fiscal Impact**

The estimated net fiscal impact of SF 422, as amended and passed by the House, to the State General Fund is an increase in expenditures of \$35,000 during FY 2004, and an increase in expenditures of \$115,000 in FY 2005. Costs in outlying years will increase if more sentences are reopened. If no sentences are reopened, the fiscal impact of the enhanced sentencing option for powder cocaine is anticipated to be \$39,000 annually. The fiscal impact of the other sentencing options is expected to be minimal. A breakdown of expenditures follows.

<u>Sentence Reopening</u>		
	<u>FY 2004</u>	<u>FY 2005</u>
Attorney General's Office	\$ 4,000	\$ 15,000
Judicial Branch	1,000	3,000
State Public Defender's Office	1,500	6,000
CBC Facilities	0	0
CBC Supervision Staff	9,000	52,000
Subtotal	<u>\$ 15,500</u>	<u>\$ 76,000</u>
Indigent Defense - Powder Cocaine	<u>\$ 19,500</u>	<u>\$ 39,000</u>
Total	<u><u>\$ 35,000</u></u>	<u><u>\$ 115,000</u></u>

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: 0.17 FTE position in FY 2004 and 1.0 FTE position in FY 2005.

The impact on counties is not expected to be significant.

**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  
Department of Transportation

/s/ Dennis C Prouty

April 28, 2003

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**SENATE FILE 422**

**S-3330**

1 Amend the amendment, S-3325, to the House  
2 amendment, S-3301, to Senate File 422, as amended,  
3 passed, and reprinted by the Senate, as follows:  
4 1. Page 1, by striking line 4.  
5 2. Page 1, by striking line 10.  
6 3. Page 1, line 17, by inserting after the word  
7 "sentence," the following: "by reinstating a driver's  
8 license upon a finding of not guilty in an operating  
9 while intoxicated offense,".

**By** BOB BRUNKHORST  
DENNIS H. BLACK

**S-3330** FILED APRIL 28, 2003

LOST

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**SENATE AMENDMENT TO HOUSE AMENDMENT  
SENATE FILE 422**

**H-1497**

1 Amend the House amendment, S-3301, to Senate File  
2 422, as amended, passed, and reprinted by the Senate,  
3 as follows:

4 1. Page 1, by striking lines 4 through 25.

5 2. Page 1, by striking lines 28 through 41.

6 3. Page 2, by inserting after the line 13, the  
7 following:

8 "\_\_\_\_\_. Title page, line 1, by striking the word  
9 "the"."

10 4. Page 2, by striking lines 14 and 15.

11 5. Page 2, by striking lines 18 through 21 and  
12 inserting the following: "by permitting the reopening  
13 of a sentence that requires a maximum accumulation of  
14 earned time credits of fifteen percent of the total  
15 term of confinement and by changing the parole and  
16 work release eligibility of a person serving such a  
17 sentence, repealing certain determinate sentences, and  
18 providing a penalty.""

RECEIVED FROM THE SENATE

**H-1497 FILED APRIL 28, 2003**

*House concurred 4/29/03*

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SF 422 - Sentencing Reform (LSB 2707 SV.1)

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

Fiscal Note Version — SF 422 as Amended and Passed by the Senate

Requested by Representative O. Gene Maddox

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### **Description**

Senate File 422, as amended and passed by the Senate, relates to sentencing options. Sections One through Nine relate to sentencing options for powder and crack cocaine. Sections 10, 14, 15, 29, 30, and 31 relate to the sex offender registry. Sections 11 through 13 modify sex offender residency requirements. Sections 16, 21, 25, 26, 27, and 29 relate to the repeal of a sentencing option: Determinate term for certain Class D felony convictions. Sections 17, 18, 19, 20, 22, 23, 24, and 28 provide 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 under this Bill. However, the length of stay in prison for offenders who committed offenses not involving threats or violence will decrease.
  6. The section that lowers the penalty for certain Class B offenses from 50 years to 35 years will have no significant correctional or fiscal impact over the next five years.
  7. The repeal of Section 124.413, Code of Iowa, the mandatory minimum term for certain drug offenses, will not be applied retroactively to offenders currently serving such terms. During FY 2002, 277 offenders were admitted to prison with drug offenses mandatory minimum term as their most serious sentence. An estimated 277 offenders annually will serve an average length of stay in prison similar to drug offenders who have not been sentenced to serve this mandatory minimum term.
  8. Sections 11 through 13 permit sex offenders to live within a larger area of the State than under current law. These provisions of SF 422, as amended and passed by the Senate, are expected to have no significant correctional or fiscal impact.
  9. The sections relating to the sex offender registry maintained by the Department of Public Safety (DPS) will have no correctional impact. The Bill provides that the Department of Corrections (DOC), DPS, and the Department of Human Services (DHS) and a juvenile court officer are not required to perform a risk assessment for purposes of dissemination of information on the sex offender registry. The Bill requires that sex offender registry information be disseminated in the same manner for each offender regardless of the risk assessment of the offender.
  10. The DOC, DHS, and juvenile court officers will continue to perform risk assessments because the information gained through that process is used to determine supervision requirements. There is no fiscal impact on these agencies for these provisions.
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11. The DPS will accrue savings in time and staffing related to the administration of the sex offender registry. However, this is a cost containment provision rather than an actual reduction in the DPS operating budget. The changes in SF 422, as amended and passed by the Senate, may permit the DPS to eliminate the backlog of cases that are waiting to be entered on the sex offender registry.
12. Court hearings for considering the reopening of a sentence will be held in the county of the offender's conviction.
13. 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.
14. 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 sexually predatory offenses and would not be considered for reopening of their sentence under this Bill. Approximately 25.0% of the Class C felony cases would be eligible for the sentencing court's reconsideration after serving a minimum of at least seven years in prison. These provisions will not impact offenders convicted of Class B 85.0% sentences.
15. 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. The actual number of sentences that are reopened if SF 422, as amended and passed by the Senate, is enacted ranges from 0 to 5 in FY 2004, 0 to 21 for FY 2005, FY 2006, and FY 2007, and 0 to 29 in FY 2008.
16. The Bill permits county attorneys to file a motion to reopen an 85.0% sentence for those offenders sentenced before the enactment date of the Bill, after the offenders have served 70.0% of their prison term.
17. The Bill requires the county attorney to notify all victims who have registered with the county attorney's office that a case is being considered for reopening. The notice is required to be made by certified mail. County expenditures related to postage and office supplies may increase under this provision; however, these costs are not anticipated to be significant.
18. The Bill permits the Board of Parole to grant parole or work release to offenders convicted of certain forcible felonies after 50.0% of the maximum prison term has been served. This section will have no significant correctional or fiscal impact.
19. The Bill permits the Board of Parole to grant parole or work release to certain offenders convicted after July 1, 2003, after 70.0% of the maximum prison term has been served. Under current law, these offenders would need to serve 85.0% of the maximum term. This section will have no significant correctional or fiscal impact over the next five years.
20. The Board of Parole will review current cases reopened upon motion by the county attorneys or future 70.0% cases as part of its usual workload. The Board of Parole will not incur additional costs associated with case reviews to consider reopening sentences.
21. 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.
22. 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.
23. The Indigent Defense Program will incur additional costs for each case that is reopened. The estimated cost per case is \$300.

24. 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.
25. 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 in SF 422 as amended and passed by the Senate.
26. 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.
27. There are 1,404 CBC facility beds statewide. Of these, approximately 466 are dedicated to the work release program. There were 171 offenders in prison on April 2, 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. The Bill may increase demand for CBC beds, or alternatively, day programming.
28. 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 the Bill will be supervised for multiple years.
29. The State prisons were operating at 124.8% of current designed capacity on April 4, 2003, with a prison population of 8,496 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).
30. The State prison budget is based on 7,600 inmates; the current system is operating at 111.8% of budgeted capacity.
31. 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.
32. 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, total construction costs are estimated to be \$225.0 million and annual operating costs are estimated to be \$140.0 million. If the prison population reaches 12,127 offenders and five new prisons are built, designed capacity would be 10,892 beds, and the prisons would be operating at 111.4% of designed capacity.
33. 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. 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 two readmissions in FY 2006, two readmissions in FY 2007, and three readmissions in FY 2008. The table below illustrates the maximum cumulative impact on the prison population. The provisions in SF 422, as amended and passed by the Senate, that relate to powder cocaine increase the prison incarceration rate for these offenses. On an annual basis, 17 offenders convicted as Class C felons under current law for powder cocaine offenses will become Class B felons under SF 422 as amended and passed by the Senate.

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
Cocaine	5	15	25	31	31
Sentence Reopenings	- 5	- 21	- 21	- 21	- 29
Repeal Determinate D	0	0	- 22	- 22	- 22
Repeal Mandatory Min.	0	- 118	- 125	- 130	- 135
Total	<u>0</u>	<u>- 124</u>	<u>- 143</u>	<u>- 142</u>	<u>- 155</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 number of estimated releases under sentence reopenings stabilizes in FY 2005 because prison terms for certain Class C offenders will begin to expire. Offenders released from prison due to expiration of sentence are not supervised in the community after their release.

The offenders released under sentencing reconsideration will be placed in work release facilities, and then intensively supervised on parole. Certain offenders will be required to spend one year in work release before being granted 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 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.

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.

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 SF 422 as amended and passed by the Senate.

### **Fiscal Impact**

The estimated net fiscal impact of SF 422, as amended and passed by the Senate, to the State General Fund is an increase in expenditures of \$15,000 during FY 2004, and an increase in expenditures of \$76,000 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	\$ 3,600	\$ 15,000
Judicial Branch	1,000	3,000
State Public Defender's Office	1,500	6,000
CBC Facilities	0	0
CBC Supervision Staff	9,000	52,000
Total General Fund Impact	<u>\$ 15,100</u>	<u>\$ 76,000</u>

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:  
0.17 FTE position in FY 2004 and 1.0 FTE position in FY 2005.

The impact on counties is not expected to be significant.

**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 9, 2003

Redfern  
Fraise  
Kreiman  
Larson  
Miller

Judiciary

SSB 1138

Succeeded By

(SF) / HF 422

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 the criminal sentencing and procedure by  
2 changing the penalties for certain offenses involving a  
3 substance containing cocaine base, by creating a criminal  
4 offense of robbery in the third degree, modifying residence  
5 restrictions for a sex offender, changing the parole and work  
6 release eligibility of a person serving a sentence that  
7 requires a maximum accumulation of earned time credits of  
8 fifteen percent of the total term of confinement and by  
9 permitting the reopening of such a sentence, and providing a  
10 penalty.

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

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1 Section 1. Section 124.401, subsection 1, paragraph a,  
2 subparagraph (3), Code 2003, is amended to read as follows:

3 (3) More than fifty five hundred grams of a mixture or  
4 substance described in subparagraph (2) which contains cocaine  
5 base.

6 Sec. 2. Section 124.401, subsection 1, paragraph b,  
7 subparagraph (3), Code 2003, is amended to read as follows:

8 (3) More than five fifty grams but not more than fifty  
9 five hundred grams of a mixture or substance described in  
10 subparagraph (2) which contains cocaine base.

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

13 (3) Five Fifty grams or less of a mixture or substance  
14 described in subparagraph (2) which contains cocaine base.

15 Sec. 4. Section 692A.2A, subsections 2 and 3, Code 2003,  
16 are amended to read as follows:

17 2. A person shall not reside within two one thousand three  
18 hundred twenty feet of the real property comprising a public  
19 or nonpublic elementary or secondary school or a child care  
20 facility.

21 3. A person who resides within two one thousand three  
22 hundred twenty feet of the real property comprising a public  
23 or nonpublic elementary or secondary school, or a child care  
24 facility, commits an aggravated misdemeanor.

25 Sec. 5. Section 692A.2A, subsection 4, unnumbered  
26 paragraph 1, Code 2003, is amended to read as follows:

27 A person residing within two one thousand three hundred  
28 twenty feet of the real property comprising a public or  
29 nonpublic elementary or secondary school or a child care  
30 facility does not commit a violation of this section if any of  
31 the following apply:

32 Sec. 6. Section 692A.5, subsection 1, paragraph h, Code  
33 2003, is amended to read as follows:

34 h. Inform the person, if the person's residency is  
35 restricted under section 692A.2A, that the person shall not

1 reside within ~~two~~ one thousand three hundred twenty feet of  
2 the real property comprising a public or nonpublic elementary  
3 or secondary school, or a child care facility.

4 Sec. 7. Section 711.3, Code 2003, is amended to read as  
5 follows:

6 711.3 ROBBERY IN THE SECOND DEGREE.

7 All robbery which is not robbery in the first degree is  
8 robbery in the second degree, except as provided in section  
9 711.3A. Robbery in the second degree is a class "C" felony.

10 Sec. 8. NEW SECTION. 711.3A ROBBERY IN THE THIRD DEGREE.

11 A person commits robbery in the third degree when, while  
12 perpetrating a robbery, the person commits an assault upon  
13 another as defined in section 708.2, subsection 5. Robbery in  
14 the third degree is an aggravated misdemeanor.

15 Sec. 9. Section 901.5A, Code 2003, is amended by adding  
16 the following new subsection:

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

20 a. The sentence of the defendant is subject to a maximum  
21 accumulation of earned time of fifteen percent of the total  
22 sentence of confinement under section 902.12.

23 b. The board of parole and the department of corrections  
24 file a joint motion in the sentencing court to reopen the  
25 sentence of the defendant.

26 c. The county attorney from the county which prosecuted  
27 the defendant is served a copy of the motion to reopen by  
28 certified mail. The motion shall specify that the county  
29 attorney has thirty days from the date of service to consult  
30 with the victim, if possible, and to file a written objection.

31 d. No written objection is filed, thereby requiring the  
32 court to grant the motion, or if a written objection is filed,  
33 and upon hearing the court grants the motion.

34 Sec. 10. Section 901.5A, subsections 2 and 3, Code 2003,  
35 are amended to read as follows:

1        2. Upon a finding by the court that the defendant  
2 cooperated in the prosecution of other persons or upon the  
3 court granting a joint motion to reopen the sentence filed by  
4 the board of parole and the department of corrections, the  
5 court may reduce the maximum sentence imposed under the  
6 original sentencing order.

7        3. For purposes of calculating earned time under section  
8 903A.2, the sentencing date for a defendant whose sentence has  
9 been reopened under ~~this-section~~ subsection 1 shall be the  
10 date of the original sentencing order. If the original  
11 sentence was subject to the maximum accumulation of earned  
12 time of fifteen percent of the total sentence of confinement  
13 under section 902.12, the maximum accumulation of earned time  
14 on the new sentence of confinement shall not be fifteen  
15 percent of the new total sentence of confinement imposed by  
16 the court upon reopening but shall accumulate as provided in  
17 section 903A.2, subsection 1, paragraph "a". Any earned time  
18 accumulated on the original sentence shall be credited to the  
19 new sentence upon reopening.

20        Sec. 11. Section 901.5A, Code 2003, is amended by adding  
21 the following new subsection:

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

26        Sec. 12. Section 902.11, unnumbered paragraph 1, Code  
27 2003, is amended to read as follows:

28        A person serving a sentence for conviction of a felony,  
29 ~~other-than-a-forcible-felony-under-section-902-12~~, who has a  
30 criminal record of one or more prior convictions for a  
31 forcible felony or a crime of a similar gravity in this or any  
32 other state, shall be denied parole or work release unless the  
33 person has served at least one-half of the maximum term of the  
34 defendant's sentence. However, the mandatory sentence  
35 provided for by this section does not apply if either of the

1 following apply:

2 Sec. 13. Section 902.12, unnumbered paragraph 1, Code  
3 2003, is amended to read as follows:

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

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

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

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

21 Sec. 15. Section 906.15, unnumbered paragraph 1, Code  
22 2003, is amended to read as follows:

23 Unless sooner discharged, a person released on parole shall  
24 be discharged when the person's term of parole equals the  
25 period of imprisonment specified in the person's sentence,  
26 less all time served in confinement. Discharge from parole  
27 may be granted prior to such time, when an early discharge is  
28 appropriate. However, a person released on parole who is  
29 serving a sentence under section 902.12 shall serve a minimum  
30 term of parole of three years unless the person's term of  
31 parole equals the period of imprisonment specified in the  
32 person's sentence less all time served in confinement. The  
33 board shall periodically review all paroles, and when the  
34 board determines that any person on parole is able and willing  
35 to fulfill the obligations of a law-abiding citizen without

1 further supervision, the board shall discharge the person from  
2 parole. A parole officer shall periodically review all  
3 paroles assigned to the parole officer, and when the parole  
4 officer determines that any person assigned to the officer is  
5 able and willing to fulfill the obligations of a law-abiding  
6 citizen without further supervision, the officer may discharge  
7 the person from parole after notification and approval of the  
8 district director and notification of the board of parole. In  
9 any event, discharge from parole shall terminate the person's  
10 sentence. However, a person convicted of a violation of  
11 section 709.3, 709.4 or 709.8 committed on or with a child  
12 shall not be discharged from parole until the person's term of  
13 parole equals the period of imprisonment specified in the  
14 person's sentence, less all time served in confinement.

15 EXPLANATION

16 This bill relates to criminal sentencing and procedure by  
17 changing the penalties for certain offenses involving a  
18 substance containing cocaine base, by creating a criminal  
19 offense of robbery in the third degree, modifying residency  
20 restrictions for a sex offender, changing the parole and work  
21 release eligibility of a person serving a sentence that  
22 requires a maximum accumulation of earned time credits of 15  
23 percent of the total term of confinement, and by permitting  
24 the reopening of such a sentence.

25 CONTROLLED SUBSTANCES. The bill relates to the unlawful  
26 manufacture, delivery, or possession with the intent to  
27 manufacture or deliver, or conspiring to manufacture, deliver,  
28 or possess with the intent to manufacture or deliver a cocaine  
29 substance containing cocaine base, which is commonly referred  
30 to as "crack cocaine". The bill increases the threshold  
31 amount of "crack cocaine" that is necessary to obtain certain  
32 felony drug convictions.

33 If a criminal offense under the bill involves more than 500  
34 grams of a cocaine substance containing cocaine base, the  
35 person commits a class "B" felony, punishable by confinement

1 for no more than 50 years, and a fine of not more than \$1  
2 million. Under current law, if the amount of the cocaine  
3 substance containing cocaine base is more than 50 grams, a  
4 person commits a class "B" felony, punishable by confinement  
5 for no more than 50 years, and a fine of not more than \$1  
6 million. Current law also provides that the same criminal  
7 penalty for other cocaine-related offenses requires more than  
8 five kilograms.

9 If a criminal offense under the bill involves more than 50  
10 grams but not more than 500 grams of a cocaine substance  
11 containing cocaine base, the person commits a class "B"  
12 felony, punishable by confinement for no more than 25 years,  
13 and a fine of not less than \$5,000 but not more than \$100,000.  
14 Under current law, if the amount of the cocaine substance  
15 containing cocaine base is more than five grams but not more  
16 than 50 grams, a person commits a class "B" felony, punishable  
17 by confinement for no more than 25 years, and a fine of not  
18 less than \$5,000 but not more than \$100,000. Current law also  
19 provides that the same criminal penalty for other cocaine-  
20 related offenses requires more than 500 grams but not more  
21 than five kilograms.

22 If a criminal offense under the bill involves 50 grams or  
23 less of a cocaine substance containing cocaine base, a person  
24 commits a class "C" felony, punishable by confinement for no  
25 more than 10 years, and a fine of not less than \$1,000 but not  
26 more than \$50,000. Under current law, if the amount of the  
27 cocaine substance containing cocaine base is five grams or  
28 less, a person commits a class "C" felony, punishable by  
29 confinement for no more than 10 years, and a fine of not less  
30 than \$1,000 but no more than \$50,000. Current law also  
31 provides that the same criminal penalty for other cocaine-  
32 related offenses requires 500 grams or less.

33 SEX OFFENDER REGISTRY. The bill provides that a person who  
34 commits an aggravated offense, criminal offense against a  
35 minor, sexually violent offense, or any other relevant offense

1 defined in Code chapter 692A shall not reside within 1,320  
2 feet (quarter of a mile) of the real property comprising a  
3 public or nonpublic elementary or secondary school or child  
4 care facility. Current law provides that such a person shall  
5 not reside within 2,000 feet of the real property comprising a  
6 public or nonpublic elementary or secondary school or child  
7 care facility.

8 ROBBERY IN THE THIRD DEGREE. The bill creates the criminal  
9 offense of robbery in the third degree. The bill provides  
10 that a person who commits or intends to commit a theft, and  
11 who commits a simple misdemeanor assault to further the  
12 commission of the theft, commits robbery in the third degree.  
13 Under the bill a person who commits robbery in the third  
14 degree commits an aggravated misdemeanor. Current law  
15 provides that a person who commits or intends to commit a  
16 theft and who commits a simple misdemeanor assault to further  
17 the commission of the theft commits robbery in the second  
18 degree punishable as a class "C" felony.

19 EIGHTY-FIVE PERCENT SENTENCES. The bill makes changes to a  
20 sentence that requires the maximum accumulation of earned time  
21 credits of 15 percent of the total sentence of confinement,  
22 most commonly referred to as an 85 percent sentence.

23 The bill provides that a person who is serving an 85  
24 percent sentence may be eligible for parole or work release  
25 after serving 50 percent of the maximum term of confinement.  
26 However, the bill does not change the maximum amount of earned  
27 time which can be earned by a person serving an 85 percent  
28 sentence; thus if a person is not released on parole or work  
29 release, the person shall serve 85 percent of the sentence in  
30 confinement. If a person is paroled after serving 50 percent  
31 of the maximum term of confinement, all aspects of the  
32 person's parole are the same as parole for other offenders,  
33 except the person's term of parole shall be for at least three  
34 years, or up to the maximum term of the sentence permitted by  
35 law.

1 The bill also provides for the reopening of a judgment and  
2 sentence for a person serving a sentence that requires the  
3 maximum accumulation of earned time credits of 15 percent of  
4 the total sentence of confinement or most commonly referred to  
5 as an 85 percent sentence. Under the bill, an 85 percent  
6 sentence may be reopened upon a joint motion filed by the  
7 board of parole and the department of corrections if the  
8 original sentencing court grants the motion. The county  
9 attorney from the county which prosecuted the defendant may,  
10 after consulting with the victim, if the victim can be found,  
11 file an objection to the motion to reopen. If no written  
12 objection is filed, the court shall grant the motion, or if a  
13 written objection, the court shall conduct a hearing to  
14 determine whether the sentence should be reopened. If the  
15 sentence is reopened, the court may resentence the defendant  
16 and reduce the maximum sentence imposed in the original  
17 sentencing order and the new sentence shall no longer be  
18 subject to the maximum accumulation of earned time of 15  
19 percent of the total sentence of confinement. If a defendant  
20 is resentenced to a new maximum sentence, the maximum  
21 accumulation of earned time shall be calculated in the same  
22 manner as other offenses in Code chapter 903A, which is one  
23 and two-tenths days for each day the inmate demonstrates good  
24 conduct or satisfactorily participates in prison programs.  
25 Any earned time accumulated on the original sentence shall be  
26 credited to the new sentence upon reopening. If a sentence is  
27 reopened, the defendant may be paroled if eligible.

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SENATE FILE 422

AN ACT

RELATING TO CRIMINAL SENTENCING AND PROCEDURE BY MODIFYING THE PENALTIES FOR CERTAIN OFFENSES RELATED TO CONTROLLED SUBSTANCES BY PERMITTING THE REOPENING OF A SENTENCE THAT REQUIRES A MAXIMUM ACCUMULATION OF EARNED TIME CREDITS OF FIFTEEN PERCENT OF THE TOTAL TERM OF CONFINEMENT AND BY CHANGING THE PAROLE AND WORK RELEASE ELIGIBILITY OF A PERSON SERVING SUCH A SENTENCE, REPEALING CERTAIN DETERMINATE SENTENCES, AND PROVIDING A PENALTY.

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

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

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

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

Sec. 3. Section 124.401, subsection 1, paragraph a, Code 2003, is amended by adding the following new subparagraph:

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

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

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

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

Sec. 4. Section 124.401, subsection 1, paragraph b, subparagraph (2), unnumbered paragraph 1, Code 2003, is amended to read as follows:

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

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

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

Sec. 6. Section 124.401, subsection 1, paragraph c, subparagraph (2), unnumbered paragraph 1, Code 2003, is amended to read as follows:

Five one hundred grams or less of any of the following:

Sec. 7. Section 124.401, subsection 1, paragraph c, subparagraph (3), Code 2003, is amended to read as follows:

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

Sec. 8. Section 901.5, subsection 13, Code 2003, is amended by striking the subsection.

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

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

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

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

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

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

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

Sec. 10. Section 902.11, unnumbered paragraph 1, Code 2003, is amended to read as follows:

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

Sec. 11. Section 902.12, unnumbered paragraph 1, Code 2003, is amended to read as follows:

~~Except as otherwise provided in section 903A.2, a~~ A person serving a sentence for conviction of the following ~~forcible~~ felonies shall ~~serve one hundred percent of the maximum term of the person's sentence and shall not be released on~~ 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. 12. Section 902.12, subsection 5, unnumbered paragraph 2, Code 2003, is amended to read as follows:

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

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

Sec. 13. Section 903.4, Code 2003, is amended to read as follows:

903.4 PROVIDING PLACE OF CONFINEMENT.

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

Sec. 14. Section 905.6, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 9. Notify the board of parole, thirty days prior to release, of the release from a residential facility operated by the district department of a person serving a sentence under section 902.12.

Sec. 15. NEW SECTION. 905.11 RESIDENTIAL FACILITY RESIDENCY -- MINIMUM.

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

Sec. 16. Section 906.4, Code 2003, is amended by adding the following new unnumbered paragraph after unnumbered paragraph 1:

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

Sec. 17. Section 907.3, subsection 1, paragraph m, Code 2003, is amended by striking the paragraph.

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

Sec. 19. Section 907.3, subsection 3, paragraph g, Code 2003, is amended by striking the paragraph.

Sec. 20. Section 915.13, subsection 1, Code 2003, is amended by adding the following new paragraph:

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

Sec. 21. Section 915.14, Code 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 901.5B,

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. 22. Section 902.3A, Code 2003, is repealed.

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MARY E. KRAMER  
President of the Senate

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CHRISTOPHER C. RANTS  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 422, Eightieth General Assembly.

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MICHAEL E. MARSHALL  
Secretary of the Senate

Approved \_\_\_\_\_, 2003

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THOMAS J. VILSACK  
Governor