

# Senate Study Bill 1138

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:  
12 TLSB 2707XC 80  
13 jm/sh/8

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1 1 Section 1. Section 124.401, subsection 1, paragraph a,  
1 2 subparagraph (3), Code 2003, is amended to read as follows:  
1 3 (3) More than ~~five~~ five hundred grams of a mixture or  
1 4 substance described in subparagraph (2) which contains cocaine  
1 5 base.  
1 6 Sec. 2. Section 124.401, subsection 1, paragraph b,  
1 7 subparagraph (3), Code 2003, is amended to read as follows:  
1 8 (3) More than ~~five~~ five grams but not more than ~~five~~  
1 9 five hundred grams of a mixture or substance described in  
1 10 subparagraph (2) which contains cocaine base.  
1 11 Sec. 3. Section 124.401, subsection 1, paragraph c,  
1 12 subparagraph (3), Code 2003, is amended to read as follows:  
1 13 (3) ~~Five~~ Fifty grams or less of a mixture or substance  
1 14 described in subparagraph (2) which contains cocaine base.  
1 15 Sec. 4. Section 692A.2A, subsections 2 and 3, Code 2003,  
1 16 are amended to read as follows:  
1 17 2. A person shall not reside within ~~two one thousand three~~  
1 18 hundred twenty feet of the real property comprising a public  
1 19 or nonpublic elementary or secondary school or a child care  
1 20 facility.  
1 21 3. A person who resides within ~~two one thousand three~~  
1 22 hundred twenty feet of the real property comprising a public  
1 23 or nonpublic elementary or secondary school, or a child care  
1 24 facility, commits an aggravated misdemeanor.  
1 25 Sec. 5. Section 692A.2A, subsection 4, unnumbered  
1 26 paragraph 1, Code 2003, is amended to read as follows:  
1 27 A person residing within ~~two one thousand three hundred~~  
1 28 twenty feet of the real property comprising a public or  
1 29 nonpublic elementary or secondary school or a child care  
1 30 facility does not commit a violation of this section if any of  
1 31 the following apply:  
1 32 Sec. 6. Section 692A.5, subsection 1, paragraph h, Code  
1 33 2003, is amended to read as follows:  
1 34 h. Inform the person, if the person's residency is  
1 35 restricted under section 692A.2A, that the person shall not  
2 1 reside within ~~two one thousand three hundred twenty~~ feet of  
2 2 the real property comprising a public or nonpublic elementary  
2 3 or secondary school, or a child care facility.  
2 4 Sec. 7. Section 711.3, Code 2003, is amended to read as  
2 5 follows:  
2 6 711.3 ROBBERY IN THE SECOND DEGREE.  
2 7 All robbery which is not robbery in the first degree is  
2 8 robbery in the second degree, except as provided in section  
2 9 711.3A. Robbery in the second degree is a class "C" felony.  
2 10 Sec. 8. NEW SECTION. 711.3A ROBBERY IN THE THIRD DEGREE.  
2 11 A person commits robbery in the third degree when, while  
2 12 perpetrating a robbery, the person commits an assault upon  
2 13 another as defined in section 708.2, subsection 5. Robbery in  
2 14 the third degree is an aggravated misdemeanor.  
2 15 Sec. 9. Section 901.5A, Code 2003, is amended by adding

2 16 the following new subsection:  
2 17 NEW SUBSECTION. 1A. A defendant may have a judgment and  
2 18 sentence entered under section 901.5 reopened for resentencing  
2 19 if all of the following apply:

2 20 a. The sentence of the defendant is subject to a maximum  
2 21 accumulation of earned time of fifteen percent of the total  
2 22 sentence of confinement under section 902.12.

2 23 b. The board of parole and the department of corrections  
2 24 file a joint motion in the sentencing court to reopen the  
2 25 sentence of the defendant.

2 26 c. The county attorney from the county which prosecuted  
2 27 the defendant is served a copy of the motion to reopen by  
2 28 certified mail. The motion shall specify that the county  
2 29 attorney has thirty days from the date of service to consult  
2 30 with the victim, if possible, and to file a written objection.  
2 31 d. No written objection is filed, thereby requiring the  
2 32 court to grant the motion, or if a written objection is filed,  
2 33 and upon hearing the court grants the motion.

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

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

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

3 20 Sec. 11. Section 901.5A, Code 2003, is amended by adding  
3 21 the following new subsection:

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

3 26 Sec. 12. Section 902.11, unnumbered paragraph 1, Code  
3 27 2003, is amended to read as follows:

3 28 A person serving a sentence for conviction of a felony-  
3 29 ~~other than a forcible felony under section 902.12~~, who has a  
3 30 criminal record of one or more prior convictions for a  
3 31 forcible felony or a crime of a similar gravity in this or any  
3 32 other state, shall be denied parole or work release unless the  
3 33 person has served at least one-half of the maximum term of the  
3 34 defendant's sentence. However, the mandatory sentence  
3 35 provided for by this section does not apply if either of the

4 1 following apply:

4 2 Sec. 13. Section 902.12, unnumbered paragraph 1, Code  
4 3 2003, is amended to read as follows:

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

4 10 Sec. 14. Section 902.12, subsection 5, unnumbered  
4 11 paragraph 2, Code 2003, is amended to read as follows:

4 12 ~~Except as otherwise provided in section 903A.2, a person~~  
4 13 ~~serving a sentence for conviction under~~

4 14 6. Vehicular homicide in violation of section 707.6A,  
4 15 subsection 1 or 2, shall serve one hundred percent of the  
4 16 maximum term of the person's sentence and shall not be  
4 17 released on parole or work release if the person was also  
4 18 convicted under section 321.261, subsection 3, based on the  
4 19 same facts or event that resulted in the conviction under  
4 20 section 707.6A, subsection 1 or 2.

4 21 Sec. 15. Section 906.15, unnumbered paragraph 1, Code  
4 22 2003, is amended to read as follows:

4 23 Unless sooner discharged, a person released on parole shall  
4 24 be discharged when the person's term of parole equals the  
4 25 period of imprisonment specified in the person's sentence,  
4 26 less all time served in confinement. Discharge from parole

4 27 may be granted prior to such time, when an early discharge is  
4 28 appropriate. However, a person released on parole who is  
4 29 servng a sentence under section 902.12 shall serve a minimum  
4 30 term of parole of three years unless the person's term of  
4 31 parole equals the period of imprisonment specified in the  
4 32 person's sentence less all time served in confinement. The  
4 33 board shall periodically review all paroles, and when the  
4 34 board determines that any person on parole is able and willing  
4 35 to fulfill the obligations of a law-abiding citizen without  
5 1 further supervision, the board shall discharge the person from  
5 2 parole. A parole officer shall periodically review all  
5 3 paroles assigned to the parole officer, and when the parole  
5 4 officer determines that any person assigned to the officer is  
5 5 able and willing to fulfill the obligations of a law-abiding  
5 6 citizen without further supervision, the officer may discharge  
5 7 the person from parole after notification and approval of the  
5 8 district director and notification of the board of parole. In  
5 9 any event, discharge from parole shall terminate the person's  
5 10 sentence. However, a person convicted of a violation of  
5 11 section 709.3, 709.4 or 709.8 committed on or with a child  
5 12 shall not be discharged from parole until the person's term of  
5 13 parole equals the period of imprisonment specified in the  
5 14 person's sentence, less all time served in confinement.

#### 5 15 EXPLANATION

5 16 This bill relates to criminal sentencing and procedure by  
5 17 changing the penalties for certain offenses involving a  
5 18 substance containing cocaine base, by creating a criminal  
5 19 offense of robbery in the third degree, modifying residency  
5 20 restrictions for a sex offender, changing the parole and work  
5 21 release eligibility of a person serving a sentence that  
5 22 requires a maximum accumulation of earned time credits of 15  
5 23 percent of the total term of confinement, and by permitting  
5 24 the reopening of such a sentence.

5 25 CONTROLLED SUBSTANCES. The bill relates to the unlawful  
5 26 manufacture, delivery, or possession with the intent to  
5 27 manufacture or deliver, or conspiring to manufacture, deliver,  
5 28 or possess with the intent to manufacture or deliver a cocaine  
5 29 substance containing cocaine base, which is commonly referred  
5 30 to as "crack cocaine". The bill increases the threshold  
5 31 amount of "crack cocaine" that is necessary to obtain certain  
5 32 felony drug convictions.

5 33 If a criminal offense under the bill involves more than 500  
5 34 grams of a cocaine substance containing cocaine base, the  
5 35 person commits a class "B" felony, punishable by confinement  
6 1 for no more than 50 years, and a fine of not more than \$1  
6 2 million. Under current law, if the amount of the cocaine  
6 3 substance containing cocaine base is more than 50 grams, a  
6 4 person commits a class "B" felony, punishable by confinement  
6 5 for no more than 50 years, and a fine of not more than \$1  
6 6 million. Current law also provides that the same criminal  
6 7 penalty for other cocaine-related offenses requires more than  
6 8 five kilograms.

6 9 If a criminal offense under the bill involves more than 50  
6 10 grams but not more than 500 grams of a cocaine substance  
6 11 containing cocaine base, the person commits a class "B"  
6 12 felony, punishable by confinement for no more than 25 years,  
6 13 and a fine of not less than \$5,000 but not more than \$100,000.  
6 14 Under current law, if the amount of the cocaine substance  
6 15 containing cocaine base is more than five grams but not more  
6 16 than 50 grams, a person commits a class "B" felony, punishable  
6 17 by confinement for no more than 25 years, and a fine of not  
6 18 less than \$5,000 but not more than \$100,000. Current law also  
6 19 provides that the same criminal penalty for other cocaine=  
6 20 related offenses requires more than 500 grams but not more  
6 21 than five kilograms.

6 22 If a criminal offense under the bill involves 50 grams or  
6 23 less of a cocaine substance containing cocaine base, a person  
6 24 commits a class "C" felony, punishable by confinement for no  
6 25 more than 10 years, and a fine of not less than \$1,000 but not  
6 26 more than \$50,000. Under current law, if the amount of the  
6 27 cocaine substance containing cocaine base is five grams or  
6 28 less, a person commits a class "C" felony, punishable by  
6 29 confinement for no more than 10 years, and a fine of not less  
6 30 than \$1,000 but no more than \$50,000. Current law also  
6 31 provides that the same criminal penalty for other cocaine=  
6 32 related offenses requires 500 grams or less.

6 33 SEX OFFENDER REGISTRY. The bill provides that a person who  
6 34 commits an aggravated offense, criminal offense against a  
6 35 minor, sexually violent offense, or any other relevant offense  
7 1 defined in Code chapter 692A shall not reside within 1,320  
7 2 feet (quarter of a mile) of the real property comprising a

7 3 public or nonpublic elementary or secondary school or child  
7 4 care facility. Current law provides that such a person shall  
7 5 not reside within 2,000 feet of the real property comprising a  
7 6 public or nonpublic elementary or secondary school or child  
7 7 care facility.

7 8 ROBBERY IN THE THIRD DEGREE. The bill creates the criminal  
7 9 offense of robbery in the third degree. The bill provides  
7 10 that a person who commits or intends to commit a theft, and  
7 11 who commits a simple misdemeanor assault to further the  
7 12 commission of the theft, commits robbery in the third degree.  
7 13 Under the bill a person who commits robbery in the third  
7 14 degree commits an aggravated misdemeanor. Current law  
7 15 provides that a person who commits or intends to commit a  
7 16 theft and who commits a simple misdemeanor assault to further  
7 17 the commission of the theft commits robbery in the second  
7 18 degree punishable as a class "C" felony.

7 19 EIGHTY-FIVE PERCENT SENTENCES. The bill makes changes to a  
7 20 sentence that requires the maximum accumulation of earned time  
7 21 credits of 15 percent of the total sentence of confinement,  
7 22 most commonly referred to as an 85 percent sentence.

7 23 The bill provides that a person who is serving an 85  
7 24 percent sentence may be eligible for parole or work release  
7 25 after serving 50 percent of the maximum term of confinement.  
7 26 However, the bill does not change the maximum amount of earned  
7 27 time which can be earned by a person serving an 85 percent  
7 28 sentence; thus if a person is not released on parole or work  
7 29 release, the person shall serve 85 percent of the sentence in  
7 30 confinement. If a person is paroled after serving 50 percent  
7 31 of the maximum term of confinement, all aspects of the  
7 32 person's parole are the same as parole for other offenders,  
7 33 except the person's term of parole shall be for at least three  
7 34 years, or up to the maximum term of the sentence permitted by  
7 35 law.

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

8 28 LSB 2707XC 80

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