

MAR 8 2005
Place On Calendar

HOUSE FILE 619
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HF 442)

Passed House, Date 3-30-05 Passed Senate, Date _____
Vote: Ayes 100 Nays 0 Vote: Ayes _____ Nays _____
Approved 6/14/05

A BILL FOR

1 An Act establishing a sex offender registry database task force
2 within the department of administrative services.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HOUSE FILE 619

H-1191

1 Amend House File 619 as follows:
2 1. Page 2, line 9, by striking the words "and the
3 general assembly by July 1, 2006" and inserting the
4 following: ", judicial branch, and the general
5 assembly by December 30, 2005".

By HUTTER of Scott Tjepkes of Webster
DANDEKAR of Linn PETERSEN of Polk

H-1191 FILED MARCH 28, 2005

HF 619

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1 Section 1. SEX OFFENDER REGISTRY DATABASE TASK FORCE.

2 1. The department of administrative services is directed
3 to create a sex offender registry database task force to
4 develop a plan to integrate state government databases for the
5 purpose of updating addresses of persons on the sex offender
6 registry so that local law enforcement agencies have access to
7 more timely and accurate address information regarding sex
8 offenders. The state government database proposed for
9 development by the task force shall not be considered a
10 replacement of any other databases used to track sex offenders
11 pursuant to chapter 692A. The department shall provide staff
12 support to the task force, and the task force may utilize
13 staff support and other assistance provided to the task force
14 by other departments or associations. Members of the task
15 force shall include representatives of the following state
16 agencies or associations:

- 17 a. Department of administrative services.
- 18 b. Department of public safety.
- 19 c. Department of transportation.
- 20 d. Department of workforce development.
- 21 e. Department of human services.
- 22 f. Department of education.
- 23 g. Department of justice.
- 24 h. Iowa state sheriffs' and deputies' association.
- 25 i. Iowa association of chiefs of police and peace
26 officers.

27 2. The task force may consult with other public and
28 private agencies and may seek expertise from a national
29 organization.

30 3. The duties of the task force shall include the
31 following:

- 32 a. Study the feasibility of developing an integrated state
33 government database system designed to share sex offender
34 registry information with local law enforcement agencies.
- 35 b. Establish an organizational structure for such a

1 system.

2 c. Analyze any fiscal impact of such a system on the state
3 and political subdivisions of the state.

4 d. Review related confidentiality and legal issues.

5 e. Develop cost-effective methods of sharing sex offender
6 registry information with local law enforcement agencies after
7 an integrated system is put into place.

8 4. The task force shall file a progress report with the
9 executive branch and the general assembly by July 1, 2006.

10 EXPLANATION

11 This bill establishes a sex offender registry database task
12 force within the department of administrative services. Under
13 the bill, the task force is to develop a plan to integrate
14 state government databases for the purpose of updating
15 addresses of persons on the sex offender registry so that
16 local law enforcement agencies have access to more timely and
17 accurate address information regarding sex offenders.

18 The duties of the task force include studying the
19 feasibility of developing such an integrated state system,
20 establishing the system's organizational structure, analyzing
21 the cost of creating such a system, reviewing any related
22 confidentiality and legal issues, and developing cost-
23 effective measures regarding the sharing of any information
24 with local law enforcement agencies.

25 The task force shall file a progress report with the
26 executive branch and the general assembly by July 1, 2006.

27 Members of the task force shall include representatives of
28 the following state agencies or associations: department of
29 administrative services; department of public safety;
30 department of transportation; department of workforce
31 development; department of human services; department of
32 education; department of justice; the Iowa state sheriffs' and
33 deputies' association; and the Iowa association of chiefs of
34 police and peace officers.

35

H-1218

1 Amend House File 619 as follows:

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

4 "Section 1. Section 709.8, unnumbered paragraph 2,
5 Code 2005, is amended to read as follows:

6 Any person who violates a provision of this section
7 shall, upon conviction, be guilty of a class "D"
8 felony. ~~A person who violates a provision of this~~
9 ~~section and who is sentenced to a term of confinement~~
10 ~~shall also be sentenced to an additional term of~~
11 ~~parole or work release not to exceed two years. The~~
12 ~~board of parole shall determine whether the person~~
13 ~~should be released on parole or placed in a work~~
14 ~~release program. The sentence of an additional term~~
15 ~~of parole or work release supervision shall commence~~
16 ~~immediately upon the expiration of the preceding~~
17 ~~sentence and shall be under the terms and conditions~~
18 ~~as set out in chapter 906. Violations of parole or~~
19 ~~work release shall be subject to the procedures set~~
20 ~~out in chapter 905 or 908 or rules adopted under those~~
21 ~~chapters. The sentence of an additional term of~~
22 ~~parole or work release shall be consecutive to the~~
23 ~~original term of confinement.~~

24 Sec. _____. Section 901.5, Code 2005, is amended by
25 adding the following new subsection:

26 NEW SUBSECTION. 13. In addition to any sentence
27 or other penalty imposed against the defendant, the
28 court shall sentence the defendant to an additional
29 term of years if required under chapter 901A, or
30 section 902.14 or 903.2A.

31 Sec. _____. Section 901A.2, subsection 8, Code 2005,
32 is amended to read as follows:

33 8. In addition to any other sentence imposed on a
34 person convicted of a sexually predatory offense
35 pursuant to subsection 1, 2, or 3, the person shall be
36 sentenced to an additional indeterminate term of
37 parole or work release years not to exceed two years.
38 The board of parole shall determine whether the person
39 should be released on parole or placed in a work
40 release program. ~~The sentence of parole supervision~~
41 ~~shall commence immediately upon the person's release~~
42 ~~by the board of parole and shall be under the~~ When a
43 person commences service of the additional term of
44 years, the person shall initially be released by the
45 board of parole subject to the terms and conditions as
46 set out in chapter 906. Violations of parole or work
47 release terms and conditions of release shall be
48 subject to the procedures set out in chapter 905 or
49 908 or rules adopted under those chapters. For
50 ~~purposes of disposition of a parole violator upon~~

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~~1 revocation of parole or work release, the sentence of
2 an additional term of parole or work release shall be
3 considered part of the original term of commitment to
4 the department of corrections.~~

5 Sec. ____ . NEW SECTION. 902.14 ADDITIONAL TERM OF
6 YEARS -- FELONIES.

7 A person who is convicted of a felony under chapter
8 709, or under section 692A.7, 708.2A, 708.11, or
9 726.2, and who is committed to the custody of the
10 director of the department of corrections to serve a
11 term of confinement shall also be sentenced to an
12 additional indeterminate term of years not to exceed
13 two years. The board of parole shall determine
14 whether the person should be released on parole or
15 placed in a work release program. When a person
16 commences service of the additional term of years, the
17 person shall initially be released by the board of
18 parole subject to the terms and conditions set out in
19 chapter 906. Violations of the terms and conditions
20 of release shall be subject to the procedures set out
21 in chapter 905 or 908 or rules adopted under those
22 chapters. The sentence of an additional term of years
23 shall be consecutive to the original term of
24 confinement.

25 Sec. ____ . NEW SECTION. 903.2A ADDITIONAL TERM OF
26 YEARS -- MISDEMEANORS.

27 A person who is convicted of an aggravated
28 misdemeanor under chapter 709, or section 692A.7 or
29 708.11, and who is committed to the custody of the
30 director of the department of corrections to serve a
31 term of confinement shall also be sentenced to an
32 additional indeterminate term of years not to exceed
33 two years. The board of parole shall determine
34 whether the person should be released on parole or
35 placed in a work release program. When a person
36 commences service of the additional term of years, the
37 person shall initially be released by the board of
38 parole subject to the terms and conditions set out in
39 chapter 906. Violations of the terms and conditions
40 of release shall be subject to the procedures set out
41 in chapter 905 or 908 or rules adopted under those
42 chapters. The sentence of an additional term of years
43 shall be consecutive to the original term of
44 confinement.

45 Sec. ____ . Section 906.15, unnumbered paragraph 1,
46 Code 2005, is amended to read as follows:

47 Unless sooner discharged, a person released on
48 parole shall be discharged when the person's term of
49 parole equals the period of imprisonment specified in
50 the person's sentence, less all time served in

1 confinement. Discharge from parole may be granted
2 prior to such time, when an early discharge is
3 appropriate. The board shall periodically review all
4 paroles, and when the board determines that any person
5 on parole is able and willing to fulfill the
6 obligations of a law-abiding citizen without further
7 supervision, the board shall discharge the person from
8 parole. A parole officer shall periodically review
9 all paroles assigned to the parole officer, and when
10 the parole officer determines that any person assigned
11 to the officer is able and willing to fulfill the
12 obligations of a law-abiding citizen without further
13 supervision, the officer may discharge the person from
14 parole after notification and approval of the district
15 director and notification of the board of parole. In
16 any event, discharge from parole shall terminate the
17 person's sentence. If a person has been sentenced to
18 an additional term of years under chapter 901A, or
19 section 902.14 or 903.2A, the person may be discharged
20 from the term in the same manner as a person on
21 parole. However, a person convicted of a violation of
22 section 709.3, 709.4, or 709.8 committed on or with a
23 child, or a person serving a sentence under section
24 902.12, shall not be discharged from parole until the
25 person's term of parole equals the period of
26 imprisonment specified in the person's sentence, less
27 all time served in confinement.

28 Sec. ____ . NEW SECTION. 906.19 APPLICABILITY OF
29 ADDITIONAL TERM OF YEARS.

30 Notwithstanding chapter 901A, or section 902.14 or
31 903.2A, if a person is paroled prior to the expiration
32 of the person's term and prior to the commencement of
33 the additional term of years, the person shall not
34 serve the additional term of years.

35 Sec. ____ . ADDITIONAL TERM OF YEARS -- REPORT. The
36 department of corrections and the eight judicial
37 district departments of correctional services, in
38 cooperation with the division of criminal and juvenile
39 justice planning of the department of human rights,
40 the state public defender, and the office of the
41 prosecuting attorneys training coordinator in the
42 department of justice, shall compile and provide a
43 report regarding offenders serving an additional term
44 of years, to the general assembly, cochairpersons and
45 ranking members of the joint appropriations
46 subcommittee on the justice system, and the
47 legislative services agency on or before January 15,
48 2007. The report shall include the actual number of
49 offenders sentenced to serve an additional term of
50 years from July 1, 2006, through December 31, 2006, in

1 each judicial district, including each offender's race
 2 and gender. The report shall also include the
 3 anticipated number of offenders who will be serving an
 4 additional term of years in each judicial district in
 5 the fiscal year beginning July 1, 2006, and ending
 6 June 30, 2007, and the fiscal year beginning July 1,
 7 2007, and ending June 30, 2008. The report shall
 8 detail the number of probation and parole officers and
 9 staff needed to supervise offenders serving an
 10 additional term of years and the capacity to supervise
 11 such offenders in each judicial district. The report
 12 shall detail actual expenditures related to
 13 supervising offenders serving an additional term of
 14 years for the fiscal year beginning July 1, 2006, and
 15 ending June 30, 2007, and the revenue source and
 16 budgeted expenditures for the fiscal year beginning
 17 July 1, 2007, and ending June 30, 2008. The report
 18 shall include any quantitative measures analyzing
 19 persons serving an additional term of years."

20 2. Title page, by striking lines 1 and 2 and
 21 inserting the following: "An Act relating to persons
 22 convicted of criminal offenses requiring registration
 23 on the sex offender registry or requiring an
 24 additional indeterminate sentence, establishing a sex
 25 offender registry database task force, and providing
 26 penalties."

By PAULSEN of Linn
 J. K. VAN FOSSEN of Scott
 J. R. VAN FOSSEN of Scott
 KURTENBACH of Story
 KAUFMANN of Cedar
 BOAL of Polk
 LUKAN of Dubuque

HEATON of Henry
 GREINER of Washington
 DE BOEF of Keokuk
 ELGIN of Linn
 HUTTER of Scott
 RANTS of Woodbury

H-1219

1 Amend House File 619 as follows:

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

4 "Section 1. Section 13.10, subsection 1, Code
5 2005, is amended by adding the following new
6 paragraph:

7 NEW PARAGRAPH. h. Any other offense that requires
8 a person to register under chapter 692A.

9 Sec. _____. Section 692A.2, Code 2005, is amended by
10 adding the following new subsection:

11 NEW SUBSECTION. 1A. If a person violates any of
12 the requirements of section 692A.4, the person shall
13 register for an additional ten years beginning from
14 the date the first registration period ends as
15 calculated under this section.

16 Sec. _____. Section 692A.4, Code 2005, is amended to
17 read as follows:

18 692A.4 VERIFICATION OF ADDRESS AND TAKING OF
19 PHOTOGRAPH.

20 1. The address of a person required to register
21 under this chapter shall be verified annually as
22 follows:

23 a. On a date which falls within the month in which
24 the person was initially required to register, the
25 department shall mail a verification form to the last
26 reported address of the person. Verification forms
27 shall not be forwarded to the person who is required
28 to register under this chapter if the person no longer
29 resides at the address, but shall be returned to the
30 department.

31 b. The person shall complete and mail the
32 verification to the department within ten days of
33 receipt of the form.

34 c. The verification form shall be signed by the
35 person, and state the address at which the person
36 resides. If the person is in the process of changing
37 residences, the person shall state that fact as well
38 as the old and new addresses or places of residence.

39 2. Verification of address for a person who has
40 been convicted of an offense under the laws of this
41 state or of another state which would qualify the
42 person as a sexually violent predator shall be
43 accomplished in the same manner as in subsection 1,
44 except that the verification shall be done every three
45 months at times established by the department.

46 3. A photograph of a person required to register
47 under this chapter shall be updated annually. When
48 the department mails the address verification form in
49 subsection 1, the department shall also enclose a form
50 informing the person to annually submit to being

H-1219

1 photographed by the sheriff of the county of the
2 person's residence within ten days of receipt of the
3 address verification form. The sheriff shall send the
4 current photograph to the department within ten days
5 of the photograph being taken and the department shall
6 post the current photograph on the sex offender
7 registry's web page.

8 Sec. _____. Section 692A.5, subsection 1, Code 2005,
9 is amended by adding the following new paragraph:

10 NEW PARAGRAPH. i. Inform the person that the
11 person must annually submit to being photographed by
12 the sheriff of the county of the person's residence.

13 Sec. _____. Section 692A.13, subsection 5, Code
14 2005, is amended to read as follows:

15 5. Relevant information provided to the general
16 public may include the offender's name, address, a
17 photograph, locations frequented by the offender,
18 relevant criminal history information from the
19 registry, and any other relevant information.
20 Relevant information provided to the public shall not
21 include the identity of any victim. The general
22 public may post any relevant information at public
23 institutions including but not limited to a school,
24 post office, or library.

25 Sec. _____. Section 903A.2, subsection 1, paragraph
26 a, Code 2005, is amended to read as follows:

27 a. Category "A" sentences are those sentences
28 which are not subject to a maximum accumulation of
29 earned time of fifteen percent of the total sentence
30 of confinement under section 902.12. To the extent
31 provided in subsection 5, category "A" sentences also
32 include life sentences imposed under section 902.1.
33 An inmate of an institution under the control of the
34 department of corrections who is serving a category
35 "A" sentence is eligible for a reduction of sentence
36 equal to one and two-tenths days for each day the
37 inmate demonstrates good conduct and satisfactorily
38 participates in any program or placement status
39 identified by the director to earn the reduction. The
40 programs include but are not limited to the following:

- 41 (1) Employment in the institution.
- 42 (2) Iowa state industries.
- 43 (3) An employment program established by the
44 director.
- 45 (4) A treatment program established by the
46 director.
- 47 (5) An inmate educational program approved by the
48 director.

49 However, an inmate required to participate in a sex
50 offender treatment program shall not be eligible for a

1 reduction of sentence unless the inmate participates
2 in and completes a sex offender treatment program
3 established by the director.

4 An inmate serving a category "A" sentence is
5 eligible for an additional reduction of sentence of up
6 to three hundred sixty-five days of the full term of
7 the sentence of the inmate for exemplary acts. In
8 accordance with section 903A.4, the director shall by
9 policy identify what constitutes an exemplary act that
10 may warrant an additional reduction of sentence."

By PAULSEN of Linn GREINER of Washington
J. K. VAN FOSSEN of Scott DE BOEF of Keokuk
J. R. VAN FOSSEN of Scott ELGIN of Linn
KURTENBACH of Story HEATON of Henry
KAUFMANN of Cedar HUTTER of Scott
BOAL of Polk RANTS of Woodbury
LUKAN of Dubuque

H-1219 FILED MARCH 29, 2005

HOUSE FILE 619

H-1220

1 Amend House File 619 as follows:

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

4 "Section 1. NEW SECTION. 692A.4A ELECTRONIC
5 MONITORING.

6 A person required to register under this chapter
7 who is placed on probation, parole, work release, or
8 any other type of conditional release shall be
9 supervised by an electronic tracking and monitoring
10 system in addition to any other conditions of
11 supervision."

12 2. By renumbering as necessary.

By GREINER of Washington BOAL of Polk
PAULSEN of Linn LUKAN of Dubuque
J. K. VAN FOSSEN of Scott MAY of Dickinson
J. R. VAN FOSSEN of Scott FREEMAN of Buena Vista
KURTENBACH of Story DE BOEF of Keokuk
KAUFMANN of Cedar HUTTER of Scott

H-1220 FILED MARCH 29, 2005

HOUSE FILE 619

H-1221

1 Amend House File 619 as follows:

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

4 "Section 1. NEW SECTION. 692A.2B RESTRICTIONS ON
5 RESIDENCY NEAR CHILD CARE FACILITIES OR SCHOOLS.

6 1. For purposes of this section, "person" means a
7 person who is required to register under this chapter.

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

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

16 4. A person residing within one thousand feet of
17 the real property comprising a public or nonpublic
18 elementary or secondary school or a child care
19 facility does not commit a violation of this section
20 if any of the following apply:

21 a. The person is required to serve a sentence at a
22 jail, prison, juvenile facility, or other correctional
23 institution or facility.

24 b. The person is subject to an order of commitment
25 under chapter 229A.

26 c. The person has established a residence prior to
27 July 1, 2005, or a school or child care facility is
28 newly located on or after July 1, 2005.

29 d. The person is a minor or a ward under a
30 guardianship.

31 Sec. ____ Section 692A.5, subsection 1, paragraph
32 h, Code 2005, is amended to read as follows:

33 h. Inform the person, if the person's residency is
34 restricted under section 692A.2A, that the person
35 shall not reside within two thousand feet of the real
36 property comprising a public or nonpublic elementary
37 or secondary school, or a child care facility. After
38 June 30, 2005, inform the person, if the person's
39 residency is restricted under section 692A.2B, that
40 the person shall not reside within one thousand feet
41 of the real property comprising a public or nonpublic
42 elementary or secondary school, or a child care
43 facility."

44 2. By renumbering as necessary.

By RANTS of Woodbury

PAULSEN of Linn

J. K. VAN FOSSEN of Scott

J. R. VAN FOSSEN of Scott

KAUFMANN of Cedar

BOAL of Polk

LUKAN of Dubuque

BAUDLER of Adair

DE BOEF of Keokuk

HUTTER of Scott

H-1221 FILED MARCH 29, 2005

HOUSE FILE 619

H-1227

1 Amend the amendment, H-1220, to House File 619 as
2 follows:
3 1. Page 1, line 8, by inserting after the word
4 "release" the following: ", or serving an additional
5 term of years under chapter 901A or section 902.14 or
6 903.2A,".

By PAULSEN of Linn

H-1227 FILED MARCH 30, 2005

ADOPTED

HOUSE FILE 619

H-1228

1 Amend the amendment, H-1219, to House File 619 as
2 follows:
3 1. Page 1, line 47, by inserting after the word
4 "updated" the following: ", at a minimum,".
5 2. Page 1, line 48, by striking the word "form"
6 and inserting the following: "notice".
7 3. Page 2, line 4, by striking the word "current"
8 and inserting the following: "updated".
9 4. Page 2, line 6, by striking the word "current"
10 and inserting the following: "updated".
11 5. Page 2, line 7, by inserting after the word
12 "page." the following: "The sheriff may require the
13 person to submit to being photographed by the sheriff
14 more than once a year by mailing another notice
15 informing the person to submit to being photographed."
16 6. Page 2, line 11, by inserting after the word
17 "must" the following: ", at a minimum,".

By PAULSEN of Linn

H-1228 FILED MARCH 30, 2005

ADOPTED

HOUSE FILE 619

H-1232

1 Amend the amendment, H-1221, to House File 619 as
2 follows:
3 1. Page 1, by inserting before line 4 the
4 following:
5 ""Sec. ____ . Section 692A.1, subsection 8, Code
6 2005, is amended to read as follows:
7 8. "Residence" means the place where a person
8 sleeps, which may include more than one location, and
9 may be mobile or transitory including a shelter or
10 group home."

By T. TAYLOR of Linn

H-1232 FILED MARCH 30, 2005

ADOPTED

HOUSE FILE 619

H-1237

1 Amend the amendment, H-1221, to House File 619 as
2 follows:
3 1. Page 1, by inserting after line 43 the
4 following:
5 "Sec. ____ Section 692A.13, Code 2005, is amended
6 by adding the following new subsection:
7 NEW SUBSECTION. 5A. The department, on an annual
8 basis, shall publish all the names and addresses of
9 the registered sex offenders in each county in a
10 newspaper of general circulation in the county. The
11 department, on a monthly basis, shall also publish any
12 new additions to the sex offender registry for each
13 county in a newspaper of general circulation in the
14 county. Notwithstanding section 618.10, the costs for
15 publication shall be submitted to the treasurer of
16 state and shall be paid by the treasurer of state from
17 the general fund of the state, otherwise publication
18 shall be pursuant to chapter 618. The treasurer of
19 state, in consultation with the department, shall
20 adopt rules in accordance with chapter 17A to
21 implement this subsection."

By DAVITT of Warren

H-1237 FILED MARCH 30, 2005
ADOPTED

HOUSE FILE 619

H-1226

1 Amend the amendment, H-1219, to House File 619 as
2 follows:
3 1. Page 2, line 24, by inserting after the word
4 "library" the following: ", subject to local
5 ordinances or policies adopted by those public
6 institutions".

By PAULSEN of Linn

H-1226 FILED MARCH 30, 2005
ADOPTED

HOUSE FILE 619
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HF 442)

(As Amended and Passed by the House March 30, 2005)

Re- Passed House, Date 5-10-05 Passed Senate, Date 5-3-05
Vote: Ayes 97 Nays 0 Vote: Ayes 50 Nays 0
Approved _____ *Re-passed*
5-20-05 48-0

A BILL FOR

1 An Act relating to persons convicted of criminal offenses
2 requiring registration on the sex offender registry or
3 requiring an additional indeterminate sentence, establishing a
4 sex offender registry database task force, and providing
5 penalties.

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

7
8 House Amendments _____
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HF 619

jm/es/25

1 Section 1. Section 13.10, subsection 1, Code 2005, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. h. Any other offense that requires a
4 person to register under chapter 692A.

5 Sec. 2. Section 692A.1, subsection 8, Code 2005, is
6 amended to read as follows:

7 8. "Residence" means the place where a person sleeps,
8 which may include more than one location, and may be mobile or
9 transitory including a shelter or group home.

10 Sec. 3. Section 692A.2, Code 2005, is amended by adding
11 the following new subsection:

12 NEW SUBSECTION. 1A. If a person violates any of the
13 requirements of section 692A.4, the person shall register for
14 an additional ten years beginning from the date the first
15 registration period ends as calculated under this section.

16 Sec. 4. NEW SECTION. 692A.2B RESTRICTIONS ON RESIDENCY
17 NEAR CHILD CARE FACILITIES OR SCHOOLS.

18 1. For purposes of this section, "person" means a person
19 who is required to register under this chapter.

20 2. A person shall not reside within one thousand feet of
21 the real property comprising a public or nonpublic elementary
22 or secondary school or a child care facility.

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

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

31 a. The person is required to serve a sentence at a jail,
32 prison, juvenile facility, or other correctional institution
33 or facility.

34 b. The person is subject to an order of commitment under
35 chapter 229A.

1 c. The person has established a residence prior to July 1,
2 2005, or a school or child care facility is newly located on
3 or after July 1, 2005.

4 d. The person is a minor or a ward under a guardianship.
5 Sec. 5. Section 692A.4, Code 2005, is amended to read as
6 follows:

7 692A.4 VERIFICATION OF ADDRESS AND TAKING OF PHOTOGRAPH.

8 1. The address of a person required to register under this
9 chapter shall be verified annually as follows:

10 a. On a date which falls within the month in which the
11 person was initially required to register, the department
12 shall mail a verification form to the last reported address of
13 the person. Verification forms shall not be forwarded to the
14 person who is required to register under this chapter if the
15 person no longer resides at the address, but shall be returned
16 to the department.

17 b. The person shall complete and mail the verification to
18 the department within ten days of receipt of the form.

19 c. The verification form shall be signed by the person,
20 and state the address at which the person resides. If the
21 person is in the process of changing residences, the person
22 shall state that fact as well as the old and new addresses or
23 places of residence.

24 2. Verification of address for a person who has been
25 convicted of an offense under the laws of this state or of
26 another state which would qualify the person as a sexually
27 violent predator shall be accomplished in the same manner as
28 in subsection 1, except that the verification shall be done
29 every three months at times established by the department.

30 3. A photograph of a person required to register under
31 this chapter shall be updated, at a minimum, annually. When
32 the department mails the address verification notice in
33 subsection 1, the department shall also enclose a form
34 informing the person to annually submit to being photographed
35 by the sheriff of the county of the person's residence within

1 ten days of receipt of the address verification form. The
2 sheriff shall send the updated photograph to the department
3 within ten days of the photograph being taken and the
4 department shall post the updated photograph on the sex
5 offender registry's web page. The sheriff may require the
6 person to submit to being photographed by the sheriff more
7 than once a year by mailing another notice informing the
8 person to submit to being photographed.

9 Sec. 6. NEW SECTION. 692A.4A ELECTRONIC MONITORING.

10 A person required to register under this chapter who is
11 placed on probation, parole, work release, or any other type
12 of conditional release, or serving an additional term of years
13 under chapter 901A or section 902.14 or 903.2A, shall be
14 supervised by an electronic tracking and monitoring system in
15 addition to any other conditions of supervision.

16 Sec. 7. Section 692A.5, subsection 1, paragraph h, Code
17 2005, is amended to read as follows:

18 h. Inform the person, if the person's residency is
19 restricted under section 692A.2A, that the person shall not
20 reside within two thousand feet of the real property
21 comprising a public or nonpublic elementary or secondary
22 school, or a child care facility. After June 30, 2005, inform
23 the person, if the person's residency is restricted under
24 section 692A.2B, that the person shall not reside within one
25 thousand feet of the real property comprising a public or
26 nonpublic elementary or secondary school, or a child care
27 facility.

28 Sec. 8. Section 692A.5, subsection 1, Code 2005, is
29 amended by adding the following new paragraph:

30 NEW PARAGRAPH. i. Inform the person that the person must,
31 at a minimum, annually submit to being photographed by the
32 sheriff of the county of the person's residence.

33 Sec. 9. Section 692A.13, subsection 5, Code 2005, is
34 amended to read as follows:

35 5. Relevant information provided to the general public may

1 include the offender's name, address, a photograph, locations
2 frequented by the offender, relevant criminal history
3 information from the registry, and any other relevant
4 information. Relevant information provided to the public
5 shall not include the identity of any victim. The general
6 public may post any relevant information at public
7 institutions including but not limited to a school, post
8 office, or library, subject to local ordinances or policies
9 adopted by those public institutions.

10 Sec. 10. Section 692A.13, Code 2005, is amended by adding
11 the following new subsection:

12 NEW SUBSECTION. 5A. The department, on an annual basis,
13 shall publish all the names and addresses of the registered
14 sex offenders in each county in a newspaper of general
15 circulation in the county. The department, on a monthly
16 basis, shall also publish any new additions to the sex
17 offender registry for each county in a newspaper of general
18 circulation in the county. Notwithstanding section 618.10,
19 the costs for publication shall be submitted to the treasurer
20 of state and shall be paid by the treasurer of state from the
21 general fund of the state, otherwise publication shall be
22 pursuant to chapter 618. The treasurer of state, in
23 consultation with the department, shall adopt rules in
24 accordance with chapter 17A to implement this subsection.

25 Sec. 11. Section 709.8, unnumbered paragraph 2, Code 2005,
26 is amended to read as follows:

27 Any person who violates a provision of this section shall,
28 upon conviction, be guilty of a class "D" felony. A person
29 who violates a provision of this section and who is sentenced
30 to a term of confinement shall also be sentenced to an
31 additional term of parole or work release not to exceed two
32 years. The board of parole shall determine whether the person
33 should be released on parole or placed in a work release
34 program. The sentence of an additional term of parole or work
35 release supervision shall commence immediately upon the

~~1 expiration-of-the-preceding-sentence-and-shall-be-under-the
2 terms-and-conditions-as-set-out-in-chapter-906.--Violations-of
3 parole-or-work-release-shall-be-subject-to-the-procedures-set
4 out-in-chapter-905-or-908-or-rules-adopted-under-those
5 chapters.--The-sentence-of-an-additional-term-of-parole-or
6 work-release-shall-be-consecutive-to-the-original-term-of
7 confinement.~~

8 Sec. 12. Section 901.5, Code 2005, is amended by adding
9 the following new subsection:

10 NEW SUBSECTION. 13. In addition to any sentence or other
11 penalty imposed against the defendant, the court shall
12 sentence the defendant to an additional term of years if
13 required under chapter 901A, or section 902.14 or 903.2A.

14 Sec. 13. Section 901A.2, subsection 8, Code 2005, is
15 amended to read as follows:

16 8. In addition to any other sentence imposed on a person
17 convicted of a sexually predatory offense pursuant to
18 subsection 1, 2, or 3, the person shall be sentenced to an
19 additional indeterminate term of parole-or-work-release years
20 not to exceed two years. The board of parole shall determine
21 whether the person should be released on parole or placed in a
22 work release program. ~~The-sentence-of-parole-supervision~~
23 ~~shall-commence-immediately-upon-the-person's-release-by-the~~
24 ~~board-of-parole-and-shall-be-under-the~~ When a person commences
25 service of the additional term of years, the person shall
26 initially be released by the board of parole subject to the
27 terms and conditions as set out in chapter 906. Violations of
28 parole-or-work-release terms and conditions of release shall
29 be subject to the procedures set out in chapter 905 or 908 or
30 rules adopted under those chapters. ~~For-purposes-of~~
31 ~~disposition-of-a-parole-violator-upon-revocation-of-parole-or~~
32 ~~work-release, the-sentence-of-an-additional-term-of-parole-or~~
33 ~~work-release-shall-be-considered-part-of-the-original-term-of~~
34 ~~commitment-to-the-department-of-corrections.~~

35 Sec. 14. NEW SECTION. 902.14 ADDITIONAL TERM OF YEARS --

1 FELONIES.

2 A person who is convicted of a felony under chapter 709, or
3 under section 692A.7, 708.2A, 708.11, or 726.2, and who is
4 committed to the custody of the director of the department of
5 corrections to serve a term of confinement shall also be
6 sentenced to an additional indeterminate term of years not to
7 exceed two years. The board of parole shall determine whether
8 the person should be released on parole or placed in a work
9 release program. When a person commences service of the
10 additional term of years, the person shall initially be
11 released by the board of parole subject to the terms and
12 conditions set out in chapter 906. Violations of the terms
13 and conditions of release shall be subject to the procedures
14 set out in chapter 905 or 908 or rules adopted under those
15 chapters. The sentence of an additional term of years shall
16 be consecutive to the original term of confinement.

17 Sec. 15. NEW SECTION. 903.2A ADDITIONAL TERM OF YEARS --
18 MISDEMEANORS.

19 A person who is convicted of an aggravated misdemeanor
20 under chapter 709, or section 692A.7 or 708.11, and who is
21 committed to the custody of the director of the department of
22 corrections to serve a term of confinement shall also be
23 sentenced to an additional indeterminate term of years not to
24 exceed two years. The board of parole shall determine whether
25 the person should be released on parole or placed in a work
26 release program. When a person commences service of the
27 additional term of years, the person shall initially be
28 released by the board of parole subject to the terms and
29 conditions set out in chapter 906. Violations of the terms
30 and conditions of release shall be subject to the procedures
31 set out in chapter 905 or 908 or rules adopted under those
32 chapters. The sentence of an additional term of years shall
33 be consecutive to the original term of confinement.

34 Sec. 16. Section 903A.2, subsection 1, paragraph a, Code
35 2005, is amended to read as follows:

1 a. Category "A" sentences are those sentences which are
2 not subject to a maximum accumulation of earned time of
3 fifteen percent of the total sentence of confinement under
4 section 902.12. To the extent provided in subsection 5,
5 category "A" sentences also include life sentences imposed
6 under section 902.1. An inmate of an institution under the
7 control of the department of corrections who is serving a
8 category "A" sentence is eligible for a reduction of sentence
9 equal to one and two-tenths days for each day the inmate
10 demonstrates good conduct and satisfactorily participates in
11 any program or placement status identified by the director to
12 earn the reduction. The programs include but are not limited
13 to the following:

- 14 (1) Employment in the institution.
- 15 (2) Iowa state industries.
- 16 (3) An employment program established by the director.
- 17 (4) A treatment program established by the director.
- 18 (5) An inmate educational program approved by the
19 director.

20 However, an inmate required to participate in a sex
21 offender treatment program shall not be eligible for a
22 reduction of sentence unless the inmate participates in and
23 completes a sex offender treatment program established by the
24 director.

25 An inmate serving a category "A" sentence is eligible for
26 an additional reduction of sentence of up to three hundred
27 sixty-five days of the full term of the sentence of the inmate
28 for exemplary acts. In accordance with section 903A.4, the
29 director shall by policy identify what constitutes an
30 exemplary act that may warrant an additional reduction of
31 sentence.

32 Sec. 17. Section 906.15, unnumbered paragraph 1, Code
33 2005, is amended to read as follows:

34 Unless sooner discharged, a person released on parole shall
35 be discharged when the person's term of parole equals the

1 period of imprisonment specified in the person's sentence,
2 less all time served in confinement. Discharge from parole
3 may be granted prior to such time, when an early discharge is
4 appropriate. The board shall periodically review all paroles,
5 and when the board determines that any person on parole is
6 able and willing to fulfill the obligations of a law-abiding
7 citizen without further supervision, the board shall discharge
8 the person from parole. A parole officer shall periodically
9 review all paroles assigned to the parole officer, and when
10 the parole officer determines that any person assigned to the
11 officer is able and willing to fulfill the obligations of a
12 law-abiding citizen without further supervision, the officer
13 may discharge the person from parole after notification and
14 approval of the district director and notification of the
15 board of parole. In any event, discharge from parole shall
16 terminate the person's sentence. If a person has been
17 sentenced to an additional term of years under chapter 901A,
18 or section 902.14 or 903.2A, the person may be discharged from
19 the term in the same manner as a person on parole. However, a
20 person convicted of a violation of section 709.3, 709.4, or
21 709.8 committed on or with a child, or a person serving a
22 sentence under section 902.12, shall not be discharged from
23 parole until the person's term of parole equals the period of
24 imprisonment specified in the person's sentence, less all time
25 served in confinement.

26 Sec. 18. NEW SECTION. 906.19 APPLICABILITY OF ADDITIONAL
27 TERM OF YEARS.

28 Notwithstanding chapter 901A, or section 902.14 or 903.2A,
29 if a person is paroled prior to the expiration of the person's
30 term and prior to the commencement of the additional term of
31 years, the person shall not serve the additional term of
32 years.

33 Sec. 19. ADDITIONAL TERM OF YEARS -- REPORT. The
34 department of corrections and the eight judicial district
35 departments of correctional services, in cooperation with the

1 division of criminal and juvenile justice planning of the
2 department of human rights, the state public defender, and the
3 office of the prosecuting attorneys training coordinator in
4 the department of justice, shall compile and provide a report
5 regarding offenders serving an additional term of years, to
6 the general assembly, cochairpersons and ranking members of
7 the joint appropriations subcommittee on the justice system,
8 and the legislative services agency on or before January 15,
9 2007. The report shall include the actual number of offenders
10 sentenced to serve an additional term of years from July 1,
11 2006, through December 31, 2006, in each judicial district,
12 including each offender's race and gender. The report shall
13 also include the anticipated number of offenders who will be
14 serving an additional term of years in each judicial district
15 in the fiscal year beginning July 1, 2006, and ending June 30,
16 2007, and the fiscal year beginning July 1, 2007, and ending
17 June 30, 2008. The report shall detail the number of
18 probation and parole officers and staff needed to supervise
19 offenders serving an additional term of years and the capacity
20 to supervise such offenders in each judicial district. The
21 report shall detail actual expenditures related to supervising
22 offenders serving an additional term of years for the fiscal
23 year beginning July 1, 2006, and ending June 30, 2007, and the
24 revenue source and budgeted expenditures for the fiscal year
25 beginning July 1, 2007, and ending June 30, 2008. The report
26 shall include any quantitative measures analyzing persons
27 serving an additional term of years.

28 **Sec. 20. SEX OFFENDER REGISTRY DATABASE TASK FORCE.**

29 1. The department of administrative services is directed
30 to create a sex offender registry database task force to
31 develop a plan to integrate state government databases for the
32 purpose of updating addresses of persons on the sex offender
33 registry so that local law enforcement agencies have access to
34 more timely and accurate address information regarding sex
35 offenders. The state government database proposed for

1 development by the task force shall not be considered a
2 replacement of any other databases used to track sex offenders
3 pursuant to chapter 692A. The department shall provide staff
4 support to the task force, and the task force may utilize
5 staff support and other assistance provided to the task force
6 by other departments or associations. Members of the task
7 force shall include representatives of the following state
8 agencies or associations:

- 9 a. Department of administrative services.
- 10 b. Department of public safety.
- 11 c. Department of transportation.
- 12 d. Department of workforce development.
- 13 e. Department of human services.
- 14 f. Department of education.
- 15 g. Department of justice.
- 16 h. Iowa state sheriffs' and deputies' association.
- 17 i. Iowa association of chiefs of police and peace
18 officers.

19 2. The task force may consult with other public and
20 private agencies and may seek expertise from a national
21 organization.

22 3. The duties of the task force shall include the
23 following:

- 24 a. Study the feasibility of developing an integrated state
25 government database system designed to share sex offender
26 registry information with local law enforcement agencies.
- 27 b. Establish an organizational structure for such a
28 system.
- 29 c. Analyze any fiscal impact of such a system on the state
30 and political subdivisions of the state.
- 31 d. Review related confidentiality and legal issues.
- 32 e. Develop cost-effective methods of sharing sex offender
33 registry information with local law enforcement agencies after
34 an integrated system is put into place.

35 4. The task force shall file a progress report with the

1 executive branch, judicial branch, and the general assembly by
2 December 30, 2005.

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HOUSE FILE 619

S-3222

1 Amend House File 619, as amended, passed, and
2 reprinted by the House, as follows:

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

5 "Sec. ____ . Section 232.68, subsection 2, Code
6 2005, is amended by adding the following new
7 paragraph:

8 NEW PARAGRAPH. i. Cohabitation with a person on
9 the sex offender registry under chapter 692A in
10 violation of section 726.6."

11 2. Page 5, by inserting after line 7 the
12 following:

13 "Sec. ____ . Section 726.6, subsection 1, Code 2005,
14 is amended by adding the following new paragraph:

15 NEW PARAGRAPH. h. Cohabits with a person after
16 knowing the person is required to register or is on
17 the sex offender registry as a sex offender under
18 chapter 692A. However, this paragraph does not apply
19 to a person who is a parent, guardian, or a person
20 having custody or control over a child or a minor who
21 is required to register as a sex offender."

22 3. By renumbering as necessary.

By DAVID MILLER
JERRY BEHN

S-3222 FILED MAY 2, 2005

Fiscal Services Division
Legislative Services Agency
Fiscal Note

HF 619 - Sex Offender Registry, Supervision, and Data Base Task Force (LSB 2527 HV)

Analyst: Jennifer Acton (Phone: (515) 281-7846) (jennifer.acton@legis.state.ia.us)

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Fiscal Note Version – As Amended and Passed by the House

Description

House File 619, as amended and passed by the House, relates to persons convicted of criminal offenses requiring registration on the Sex Offender Registry, requiring an additional indeterminate sentence or treatment, and establishing a Sex Offender Registry Task Force.

Background

1. Under current law, sex offenders who commit violations of Sections 709.2, 709.3, 709.4, and 709.11, Code of Iowa, must provide a DNA sample.
2. The cost for a DNA collection kit, analysis of a DNA sample, and development of a DNA profile is approximately \$45 per sample.
3. The Sex Offender Registry was created in 1995 in SF 93 (Sex Offender Registry Act).
4. The current budget for the Sex Offender Registry is \$524,000, which includes 3.0 special agents and 5.0 civilian employees.
5. As of March 1, 2005, there were 6,427 offenders on the Sex Offender Registry. There are also 1,054 offenders registered as out-of-State offenders. An offender remains on the Registry for a minimum of ten years and in some instances, life-time registration is required.
6. The Bill imposes an aggravated misdemeanor penalty for violating residency requirements. The average State cost for one aggravated misdemeanor conviction ranges from \$1,100 to \$5,700. The maximum costs will be incurred across multiple fiscal years while the offender is supervised in the correctional system.
7. In regards to the residency requirements for sex offenders, there are 5,902 registered day care centers in Iowa. There are 1,532 public and 194 private schools in Iowa.
8. As of March 30, 2005, there were 1,099 sex offenders in prison; 39 of these offenders violated the Sex Offender Registry requirements. Of the 1,099 offenders, 211 or 19.2% are repeat offenders. The previous incarceration may or may not have been for a sex crime.
9. The current sex offender treatment budget for prison is \$693,000. The Department of Corrections (DOC) estimates an additional \$355,000 is required to meet current demand for treatment.
10. There are currently 73 sex offenders in Community-Based Corrections (CBC) facilities. There are 636 sex offenders under CBC supervision in field services (parole, probation, interstate compacts, and pre-trial release.) Current treatment budgets in CBC are \$2.6 million. The DOC estimates an additional \$855,000 is required statewide to meet current demand for treatment.
11. The marginal cost per day for State prisons is \$13 per inmate.
12. The cost of a Parole/Probation Officer II is \$51,100. The cost of a Parole/Probation III is \$57,000.
13. In FY 2004, the following sex offenders were sentenced to prison: 4 serious misdemeanants, 31 aggravated misdemeanants, 51 Class D felons, and 89 Class C felons.
14. The average length of stay in prison for a sex offender is as follows: 7 months for serious misdemeanants, 10 months for aggravated misdemeanants, 30 months for Class D felons, and 50 months for Class C felons. This average includes earned time credit.
15. Approximately 50.0% of sex offenders in prison refuse sex offender treatment and/or are released without supervision due to the expiration of their sentence while in prison. The current sex offender treatment program is 15 months.

16. In FY 2004, there were 35 misdemeanants sentenced to prison. The average length of stay for a misdemeanant sex offender is seven to ten months. Since the length of the sex offender program is 15 months, misdemeanants are prevented from participating in the sex offender treatment program.

Assumptions

1. In FY 2004, there were 263 sex offenders released from prison of which, approximately 139 offenders had not had a DNA sample taken. There were 227 probation admissions for sex offenses of which, approximately 120 offenders had not provided a DNA sample. The cost for the additional DNA samples is approximately \$12,000 a year.
2. The cost to re-work and enhance the Sex Offender Registry web site would be approximately \$25,000 to update the programming (one-time cost, including an e-mail list serve) and \$62,000 for an Information Technology Specialist 1 (web master). Within ten years, the Registry is estimated to double in size. The cost to maintain photos and addresses on the web site for an additional ten years, if an offender fails to comply, may require the addition of three special agents over the next ten years. The cost for one field agent, including car, bullet proof vest, equipment, and salary is \$110,000.
3. An electronic monitoring bracelet based on radio frequency technology costs \$2.87 per day, per offender. (This bracelet monitors an offender in a specific area, such as their home.) A global positioning system (GPS) bracelet costs \$4.75 per day, per offender. (This bracelet monitors an offender throughout the community.)
4. Offenders released with the electronic monitoring requirement will be supervised at the intensive supervision level – no more than 30 offenders per Probation/Parole Officer (PPO III). Each offender will be on parole or work release for two years. Offenders who violate the terms of their parole or work release will be returned to prison. Cost for sex offender treatment is \$7.04 per day, per offender.
5. Newspaper readership on Sunday is higher than newspaper readership during the week. Estimated costs for the advertising requirements for HF 619, as amended and passed by the House, are similar to the costs of a full-page display ad such as the Great Iowa Treasure Hunt. The cost to run one full-page ad in the Cedar Rapids Gazette is \$7,530 on Sunday or \$6,654 on a weekday. If the ad was repeated within six days, the price for the second printing on a weekday would be 25.0% less or \$4,990. The cost of a full-page ad statewide in the Des Moines Register on a weekday would be \$6,648 and on a Sunday would be \$11,142. The cost of a full-page ad in the Omaha World Herald is \$16,800 for the daily paper and \$21,040 for the Sunday paper.
6. Under current law, there are 25 Class D felons receiving sex offender treatment. An additional 25 Class D felons are estimated to be in need of treatment. Of these, approximately 50.0% or 13 felons will accept treatment while the remaining 50.0% will refuse treatment.
7. Since misdemeanant sex offenders are not in prison long enough to participate in the sex offender treatment program, the DOC plans to create a shortened treatment program for these offenders to meet the current length of stay in prison. Follow-up treatment in CBC is required to complete the full program.
8. If all sex offenders in prison are required to participate in a sex offender treatment program in prison, the estimated cost is \$1.0 million. This includes \$355,000 for the current shortfall for sex offender treatment. The estimated \$1.0 million also includes \$645,000 for additional sex offender treatment plus increased operating costs related to increased length of stay for those to refuse treatment. Sex offenders only accrue earned time if they participate in treatment under HF 619 as amended and passed by the House.
9. House File 619, as amended and passed by the House, contains a mandatory two years supervision for parole or work release for certain offenses including sexual abuse, failure to register as a sex offender, domestic abuse, stalking, and incest. Offenders would serve time in prison before this mandated supervision would take effect. In FY 2007, there would be approximately 58 offenders released under the mandated supervision.

The chart below shows the estimated number of sex offenders who will receive treatment in prison under HF 619.

Offenders in Prison Being Treated Under HF 619

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Felons	7	20	26	26	26
Misdemeanants	9	18	18	18	18
	16	38	44	44	44

There will be an increase in the number of sex offenders receiving treatment in CBC. This increase includes those misdemeanants in prison who accepted treatment, but need to complete treatment upon their release from prison. The increase also includes those offenders who are in the mandated two-year supervision.

Fiscal Impact

The overall fiscal impact of HF 619, as amended and passed by the House, for FY 2006 is \$4.1 million, and in FY 2007, costs are estimated to be \$4.3 million.

Fiscal Impact

Department	FY 2006	FY 2007
Administrative Services	\$ 72,000	\$ 0
Public Safety	209,000	184,000
Treasurer of State	26,000	26,000
Corrections Total	3,778,000	4,069,000
Total Costs	\$4,085,000	\$4,279,000

Costs will continue to increase in future fiscal years due to anticipated increases in costs for the correctional system plus costs for maintaining the Sex Offender Registry.

Sources

Department of Corrections
 Department of Human Rights, Criminal Juvenile Justice Planning Division (CJJP)
 Department of Public Safety

/s/ Holly M. Lyons

April 4, 2005

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

10. The Department of Corrections, Attorney General's Office, State Public Defender's Office, and the Criminal Juvenile Justice Planning Division will submit a report regarding offenders serving additional terms of years to the General Assembly on January 15, 2007.
11. The cost for the Sex Offender Data Base Task Force is approximately \$72,000. This assumes that each participating organization will have its own database. The Department of Administrative Services (DAS) would chair and provide clerical and technology staff to analyze the individual databases and design a new database and interfaces. The Task Force will exist for one year and would meet approximately every three weeks. A report on the progress is due to the General Assembly on December 30, 2005.

Correctional Impact

There may be a significant increase in convictions and incarcerations for the new aggravated misdemeanor term for the requirement that a person cannot reside within 1,000 feet of a public or nonpublic elementary or secondary school or child care facility. It is estimated that the 1,000 foot rule would place up to half of the State of Iowa off limits to housing for sex offenders. If no acceptable location in the community can be located, sex offenders granted parole may be required to remain in prison, which may increase the length of stay resulting in an increased prison population and correctional impact.

Under the provision of mandated supervision, there is no correctional impact in FY 2006 because offenders are serving their term in prison. In FY 2007, there will be approximately 58 offenders released under this requirement. By FY 2010, there will be approximately 142 offenders released under this requirement. The chart below estimates the number of offenders who will receive an additional two year sentence to parole or work release. (These figures include other offenses in addition to sex offenses such as stalking, incest, and domestic assault.)

CBC - Additional Two Year Sentence to Parole or Work Release

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Offenders	0	58	75	119	142

Under the provision of mandated treatment in prison plus the loss of earned time if the inmate refuses treatment, Class D felons will serve two and a half additional years in prison because they refused treatment. Under current law, they will serve 30 months in prison. Under this Bill, they will serve 60 months in prison. Therefore, the correctional impact will occur in FY 2008, the third year after the effective date of HF 619 as amended and passed by the House.

Additionally, there will be misdemeanants who will serve an average of 14 months longer in prison than under current law because they refused treatment. Currently, these misdemeanants serve ten months in prison on average. Therefore, the correctional impact will occur in FY 2006, with nine misdemeanants serving two more months in prison.

The chart below shows the estimated number of sex offenders who will remain in prison and lose earned time.

Loss of Earned Time, Additional Length of Stay in Prison

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Felons	0	0	7	20	33
Misdemeanants	9	26	34	34	34
	<u>9</u>	<u>26</u>	<u>41</u>	<u>54</u>	<u>67</u>

The impact on prisons after FY 2010 will be substantial as Class C offenders lose earned time. It is estimated that after FY 2008 and through FY 2017, an additional 267 offenders will be added to the prison system on an annual basis.

S-3174

1 Amend House File 619, as amended, passed, and
2 reprinted by the House, as follows:

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

5 "DIVISION I"

6 2. Page 11, by inserting after line 2 the
7 following:

8 "DIVISION II"

9 Sec. _____. Section 13B.4, Code 2005, is amended by
10 adding the following new subsection:

11 NEW SUBSECTION. 6A. The state public defender
12 shall perform all of the following duties with respect
13 to the appointment of counsel for indigent persons in
14 cases in which a sentence of death may be or is to be
15 imposed:

16 a. Provide or contract with attorneys for
17 appointment as lead counsel and cocounsel to provide
18 legal services in cases where a person is charged with
19 murder in the first degree and the state has given
20 notice of intent to seek the death penalty or in cases
21 in which a sentence of death is to be imposed.

22 b. Conduct or sponsor specialized training
23 programs for attorneys representing persons who may be
24 executed.

25 Sec. _____. Section 216A.133, Code 2005, is amended
26 by adding the following new subsection:

27 NEW SUBSECTION. 8. Review the effects of the
28 reinstatement of the death penalty on arrest,
29 prosecution, conviction, and incarceration rates; law
30 enforcement duties and ability to obtain evidence
31 necessary for arrests; court dockets and workload;
32 prison space; recidivism rates of persons charged with
33 crimes of violence against persons; and other aspects
34 of the criminal justice system. Based on the review
35 and other factors deemed relevant, the council shall
36 make findings and develop recommendations resulting
37 from those findings. Commencing January 1, 2007, the
38 council shall report its findings and any related
39 recommendations annually to the governor and to the
40 general assembly.

41 Sec. _____. NEW SECTION. 602.10111A QUALIFICATIONS
42 OF COUNSEL IN DEATH PENALTY CASES.

43 The supreme court shall prescribe rules which
44 establish minimum standards and procedures by which
45 attorneys may become qualified to provide legal
46 services as lead counsel in cases in which a sentence
47 of death may be or is to be imposed.

48 Sec. _____. NEW SECTION. 812A.1 PROCEDURE TO
49 DETERMINE SANITY OF CONDEMNED INMATE.

50 1. At any time prior to execution of an inmate

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1 under section 902.1, if the director of the department
2 of corrections or the counsel for a person who is
3 under a sentence of execution has cause to believe
4 that the inmate is suffering from such a diseased or
5 deranged condition of the mind as to prevent the
6 defendant from knowing the nature and quality of the
7 act the defendant has been convicted of, or from
8 understanding that trial on the offense has taken
9 place and that execution proceedings are about to take
10 place, or to otherwise cause the defendant to lack the
11 capacity to understand the sentence which has been
12 imposed and to participate in any legal proceedings
13 relating to the sentence, the director or counsel may
14 file a request with the court that issued the warrant
15 for execution for a determination of the inmate's
16 sanity. If the district court determines that there
17 is not sufficient reason to believe that the inmate is
18 insane, the court shall enter an order denying the
19 request and shall state the grounds for denying the
20 request. If the court believes that there is
21 sufficient reason to believe that the inmate is
22 insane, the court shall suspend the execution and
23 conduct a hearing to determine the sanity of the
24 inmate.

25 2. At the hearing, the court shall determine the
26 issue of the inmate's sanity. Prior to the hearing,
27 the court shall appoint two licensed physicians or
28 licensed psychologists, or one licensed physician and
29 one licensed psychologist, who are qualified by
30 training and practice, for purposes of conducting a
31 psychiatric or psychological examination of the
32 inmate. The physicians or psychologists shall examine
33 the inmate and report any findings in writing to the
34 court within ten days after the order of examination
35 is issued. The inmate shall have the right to present
36 evidence and cross-examine any witnesses at the
37 hearing. Any statement made by the inmate during the
38 course of any examination provided for in this
39 section, whether or not the inmate consents to the
40 examination, shall not be admitted into evidence
41 against the inmate in any criminal proceeding for
42 purposes other than a determination of the inmate's
43 sanity.

44 3. If, at the conclusion of a hearing held
45 pursuant to this section, the court determines that
46 the inmate is sane, the court shall enter an order
47 setting a date for the inmate's execution, which shall
48 be carried into effect in the same manner as provided
49 in the original sentence. A copy of the order shall
50 be sent to the director of the department of

1 corrections and the governor.

2 4. If, at the conclusion of a hearing held
3 pursuant to this section, the court determines that
4 the inmate is insane, the court shall suspend the
5 execution until further order. At any time after
6 issuance of the order, if the court has sufficient
7 reason to believe that the inmate has become sane, the
8 court shall again determine the sanity of the inmate
9 as provided by this section. Proceedings pursuant to
10 this section may continue to be held at such times as
11 the court orders until it is either determined that
12 the inmate is sane or incurably insane.

13 Sec. ____ . NEW SECTION. 814.28 REVIEW OF DEATH
14 SENTENCE.

15 1. In a case in which a sentence of death is
16 imposed, the supreme court shall automatically review
17 the judgment and sentence. The court's review of the
18 case shall be de novo. The case shall not be
19 transferred to the court of appeals.

20 2. A review by the supreme court of a judgment and
21 sentence imposing the punishment of death has priority
22 over all other criminal and other actions pending
23 before the supreme court.

24 3. The supreme court shall review the trial and
25 judgment, and shall separately review the sentencing
26 proceeding. Upon determining that errors did not
27 occur at the trial requiring reversal or modification
28 of the judgment, the supreme court shall proceed to
29 determine if the sentence of death is lawfully
30 imposed. In its review of the sentencing proceeding
31 the supreme court shall determine all of the
32 following:

33 a. Whether the sentence of death was imposed
34 capriciously or under the influence of prejudice or
35 other arbitrary factor.

36 b. Whether the special verdicts returned under
37 section 901.11 are supported by the evidence.

38 c. Whether the sentence of death is excessive or
39 disproportionate to the penalty imposed in similar
40 cases, considering both the crime and the defendant.

41 4. If the supreme court determines that the
42 sentence of death was not lawfully imposed, the court
43 shall set aside the sentence and shall remand the case
44 to the trial court for a second sentencing proceeding
45 to determine if the imposition of death is warranted.

46 5. If the supreme court affirms the judgment and
47 sentence of death, the clerk of the supreme court
48 shall certify the judgment of the supreme court under
49 the seal of the court to the clerk of the trial court.

50 Sec. ____ . Section 815.10, Code 2005, is amended by

1 adding the following new subsection:

2 NEW SUBSECTION. 1A. If two attorneys have not
3 already been appointed pursuant to section 13B.4 or
4 13B.9, the court shall appoint, for each indigent
5 person who is charged with murder in the first degree
6 and in which a notice of intent to seek the death
7 penalty has been filed, two attorneys who are
8 qualified under section 602.10111A to represent the
9 person in the murder proceedings and in all state
10 legal proceedings which take place from the time the
11 person is indicted or arraigned until the person is
12 sentenced on the charge. In addition, if at any point
13 in federal postconviction proceedings an indigent
14 person is not afforded court-appointed counsel, the
15 state shall provide counsel to the person to present
16 any claims determined meritorious by the federal court
17 if the person is not otherwise represented by legal
18 counsel. Only private attorneys and public defenders
19 who are qualified to provide representation in cases
20 in which the death penalty may be imposed are eligible
21 for appointment or assignment to a case in which the
22 death penalty may be imposed.

23 Sec. ____ . NEW SECTION. 901.11 MURDER PROCEEDINGS
24 -- REQUEST FOR DEATH PENALTY -- PENALTY PROCEEDINGS.

25 1. If a notice of intent to seek the death penalty
26 has been filed, objections to the imposition of the
27 death penalty based upon allegations that a defendant
28 was mentally retarded or mentally ill at the time of
29 the commission of the offense shall be raised within
30 the time provided for the filing of pretrial motions
31 under rule of criminal procedure 2.11, Iowa court
32 rules. The court may, for good cause shown, allow
33 late filing of the motion. Hearing on the motion
34 shall be held prior to trial and the burden of proof
35 shall be on the defendant to prove mental retardation
36 or mental illness by a preponderance of the evidence.
37 However, a rebuttable presumption of mental
38 retardation arises if a defendant has an intelligence
39 quotient of seventy or below. If the court finds that
40 the defendant is mentally retarded, the defendant, if
41 convicted of murder in the first degree, shall not be
42 sentenced to death but shall be sentenced to life
43 imprisonment in the manner provided in section 902.1,
44 subsection 1. A finding by the court that the
45 evidence presented by the defendant at the hearing
46 does not preclude the imposition of the death penalty
47 under this section and section 902.15 shall not
48 preclude the introduction of evidence of mental
49 retardation or mental illness during the penalty
50 proceeding. If the court finds that evidence of

1 mental retardation or mental illness does not preclude
2 imposition of the death penalty, evidence of mental
3 retardation or mental illness may be reviewed by the
4 jury in the penalty proceeding and the jury shall not
5 be informed of the finding in the initial proceeding
6 at any time during the penalty proceeding.

7 2. If at the trial on a charge of murder in the
8 first degree, the state intends to request that the
9 death penalty be imposed under section 902.1,
10 subsection 2, the prosecutor shall file a notice of
11 intent to seek the death penalty, listing the factors
12 enumerated under section 902.15 that the state intends
13 to establish in support of imposition of the death
14 penalty, at the time of and as part of the information
15 or indictment filed in the case.

16 3. If a notice of intent to seek the death penalty
17 has been filed, the trial shall be conducted in
18 bifurcated proceedings before the same trier of fact.
19 During the initial proceeding, the jury, or the court,
20 if the defendant waives the right to a jury trial,
21 shall decide only whether the defendant is guilty or
22 not guilty of murder in the first degree.

23 a. If, in the initial proceeding, the court or
24 jury finds the defendant guilty of, or the defendant
25 pleads guilty to, an offense other than murder in the
26 first degree, the court shall sentence the defendant
27 in accordance with the sentencing procedures set forth
28 in rule of criminal procedure 2.23, Iowa court rules,
29 and chapters 901 through 909, which are applicable to
30 the offense.

31 b. If the court or jury finds the defendant guilty
32 of, or the defendant pleads guilty to, murder in the
33 first degree, but the prosecuting attorney waives the
34 death penalty, the court shall sentence the defendant
35 to life imprisonment in accordance with the sentencing
36 procedures set forth in rule of criminal procedure
37 2.23, Iowa court rules, and chapters 901 through 909,
38 which are applicable to convictions of murder in the
39 first degree.

40 c. If the court or jury finds the defendant guilty
41 of murder in the first degree, or a defendant enters a
42 plea of guilty in the initial proceeding, and the
43 prosecuting attorney does not waive imposition of the
44 death penalty, a penalty proceeding shall be held in
45 the manner provided in subsections 4 through 12.

46 4. No sooner than twenty-four hours after a
47 verdict of guilty or a plea of guilty to the charge of
48 murder in the first degree is returned in the initial
49 proceeding, a penalty proceeding shall be held to
50 determine whether the defendant shall be sentenced to

1 death or to life imprisonment. The proceeding shall
2 be conducted in the trial court before the trial jury,
3 or the court if the defendant has waived the right to
4 a jury trial or has waived the right for the
5 proceeding to be before the trial jury. Both the
6 state and the defendant shall have the right to
7 present opening statements at the commencement of the
8 penalty proceedings. In the proceeding, evidence
9 relevant to the existence of any aggravating or
10 mitigating circumstances may be presented as follows:

11 a. The state or the defendant may present evidence
12 relevant to any of the factors enumerated in section
13 902.15 and any aggravating circumstances other than
14 juvenile delinquency adjudications for offenses which
15 carry penalties equivalent to the penalties imposed
16 for simple or serious misdemeanors. The state may
17 introduce evidence of the actual harm caused by the
18 commission of the murder including, but not limited
19 to, evidence relating to the life of the victim and
20 the impact of the loss of the victim to the victim's
21 family and society. The state shall be required to
22 prove the existence of one or more of the factors
23 enumerated in section 902.15 beyond a reasonable
24 doubt.

25 b. The defendant may present evidence that the
26 defendant was mentally retarded at the time of the
27 commission of the offense. The burden of proof shall
28 be on the defendant to prove mental retardation by a
29 preponderance of the evidence. However, a rebuttable
30 presumption of mental retardation arises if a
31 defendant has an intelligence quotient of seventy or
32 below.

33 c. The state or the defendant may present evidence
34 relevant to any mitigating circumstances which may
35 exist. Mitigating circumstances may include the
36 following circumstances:

37 (1) The defendant was under the influence of an
38 extreme mental or emotional disturbance insufficient
39 to constitute a defense.

40 (2) The age of the defendant at the time of the
41 murder.

42 (3) The defendant's capacity to appreciate the
43 wrongfulness of the defendant's conduct and to conform
44 that conduct to the requirements of law was
45 significantly impaired as a result of a mental disease
46 or defect or mental retardation, but not to a degree
47 sufficient to constitute a defense.

48 (4) The defendant has no significant history of
49 prior adult criminal activity.

50 (5) The defendant acted under extreme duress or

1 under the substantial domination of another person.

2 (6) The defendant did not directly commit the
3 murder and the defendant did not intend to kill or
4 anticipate that lethal force would be used.

5 (7) Any other factor which is relevant to the
6 defendant's character or record or to the
7 circumstances of the offense.

8 d. The state and the defendant or the defendant's
9 counsel shall be permitted to present and cross-
10 examine witnesses and present arguments for or against
11 a sentence of death. The admission of evidence in
12 support of the existence of a factor enumerated in
13 section 902.15 shall be governed by the rules
14 governing admissibility of evidence at a criminal
15 trial. Evidence regarding aggravating and mitigating
16 circumstances shall not be governed by the rules
17 governing admissibility of evidence, except that
18 introduction of evidence secured in violation of the
19 Constitution of the United States or of the
20 Constitution of the State of Iowa shall not be
21 permitted.

22 5. At the conclusion of presentation of evidence
23 in the penalty proceeding, the state and the defendant
24 or the defendant's counsel shall be permitted to make
25 closing arguments, including any rebuttal arguments,
26 in the same manner as in the initial proceeding and
27 the following issues shall be determined by the jury
28 or the court, if there is no jury:

29 a. Whether one or more of the factors enumerated
30 in section 902.15 have been established beyond a
31 reasonable doubt.

32 b. If one or more aggravating circumstances are
33 established, whether the aggravating circumstance or
34 circumstances outweigh any one or more mitigating
35 circumstances.

36 c. Whether the defendant shall be sentenced to
37 death.

38 6. A recommendation for a sentence of death shall
39 not be permitted if the recommendation is based on the
40 race, color, religious beliefs, national origin, or
41 sex of the defendant or any victim. After submission
42 of the issues, but prior to the return of a finding in
43 the penalty proceeding, if the matter is tried before
44 a jury, the court shall instruct the jury that in
45 considering whether a sentence of death is justified,
46 it shall not consider race, color, religious beliefs,
47 national origin, or sex of the defendant or of any
48 victim. The court shall further instruct the jury
49 that it shall not return a sentence of death unless it
50 concludes that such a sentence would be recommended no

1 matter what the race, color, religious beliefs,
2 national origin, or sex of the defendant or any victim
3 may be.

4 7. After submission of the issues, but prior to
5 the commencement of the jury deliberations in the
6 penalty proceeding, the court shall instruct the jury
7 that if the defendant is not sentenced to death, the
8 court is required by law to impose a sentence of
9 imprisonment until death without parole. The court
10 shall further instruct the jury that the sentence of
11 imprisonment until death without parole is required by
12 law if the jury fails to reach a unanimous verdict
13 recommending a sentence of death.

14 8. Concurrently with the return of the findings on
15 the issues submitted under subsection 5, the jury, or
16 the court if there is no jury, shall return special
17 verdicts as follows:

18 a. Which factors, as enumerated in section 902.15,
19 have been unanimously found to have been established
20 beyond a reasonable doubt.

21 b. Which aggravating circumstances were
22 established and were considered in reaching the
23 verdict returned on the issue specified in subsection
24 5, paragraph "b".

25 c. Which mitigating circumstances were established
26 and were considered in reaching the verdict returned
27 on the issue specified in subsection 5, paragraph "b".

28 9. If the jury, or the court if there is no jury,
29 returns a unanimous affirmative finding on each of the
30 issues submitted under subsection 5, paragraphs "a",
31 "b", and "c", the court shall enter a judgment of
32 conviction and shall sentence the defendant to death
33 as provided in section 902.1, subsection 2.

34 10. However, if evidence that the defendant was
35 not a major participant in the commission of the
36 murder and that the defendant's conduct did not
37 manifest a reckless indifference to human life is
38 presented to the jury, or the court, if there is no
39 jury, the jury or the court shall also return a
40 special verdict on the issue. If the jury unanimously
41 determines, or the court, if there is no jury, finds
42 that a preponderance of evidence exists that shows
43 that the defendant was not a major participant in the
44 commission of the murder and that the defendant's
45 conduct did not manifest a reckless indifference to
46 human life, the court shall enter a judgment of
47 conviction and shall sentence the defendant to life
48 imprisonment as provided in section 902.1, subsection
49 1, even if the jury or the court returns unanimous
50 affirmative findings on each of the issues submitted

1 under subsection 5.

2 11. If the jury, or the court, if there is no
3 jury, returns a negative finding on any of the issues
4 submitted under subsection 5, paragraphs "a", "b", and
5 "c", the court shall enter a judgment of conviction
6 and shall sentence the defendant to life imprisonment
7 as provided in section 902.1, subsection 1.

8 12. After a verdict has been rendered it shall be
9 recorded on the jury verdict form and shall be read
10 and recorded in open court. The jurors shall be
11 collectively asked by the court whether the verdict
12 returned is their true and correct verdict. Even
13 though no juror makes any declaration to the contrary,
14 the jury shall, if either party so requests, be polled
15 and each juror shall be separately asked whether the
16 verdict rendered by the jury foreperson is the juror's
17 true and correct verdict. If, upon either the
18 collective or the separate inquiry, any juror denies
19 that the verdict is the juror's verdict, the court
20 shall refuse to accept the verdict. The court may
21 direct inquiry or permit inquiry by counsel to
22 ascertain whether any juror has been subjected to
23 coercion or has become confused during the jury
24 deliberation process. The court may, as appropriate,
25 direct the jury to resume deliberation in the case.
26 If no disagreement on the verdict is expressed by any
27 of the jurors, the court shall discharge the jury.

28 13. This section shall not apply to a defendant
29 who was under the age of eighteen at the time the
30 offense was committed.

31 Sec. _____. Section 902.1, Code 2005, is amended to
32 read as follows:

33 902.1 CLASS "A" FELONY.

34 1. Upon Except as otherwise provided in subsection
35 2, upon a plea of guilty, a verdict of guilty, or a
36 special verdict upon which a judgment of conviction of
37 a class "A" felony may be rendered, the court shall
38 enter a judgment of conviction and shall commit the
39 defendant into the custody of the director of the Iowa
40 department of corrections for the rest of the
41 defendant's life. Nothing in the Iowa corrections
42 code pertaining to deferred judgment, deferred
43 sentence, suspended sentence, or reconsideration of
44 sentence applies to a sentence of life imprisonment
45 for a class "A" felony, and a person convicted of a
46 class "A" felony and sentenced to life imprisonment
47 shall not be released on parole unless the governor
48 commutes the sentence to a term of years.

49 2. Upon return of a plea or verdict of guilty to
50 the offense of murder in the first degree under

1 section 707.2 and a return of a verdict in favor of a
2 sentence of death in a penalty proceeding conducted as
3 provided in section 901.11, the court shall enter a
4 judgment of conviction and shall commit the defendant
5 into the custody of the director of the Iowa
6 department of corrections. The sentence shall be
7 carried out by the administration of a lethal
8 injection pursuant to rules adopted by the board of
9 corrections. If a defendant, for whom a warrant of
10 execution is issued, is pregnant, the execution shall
11 not take place until after the defendant is no longer
12 pregnant. If a defendant, for whom a warrant of
13 execution is issued, is suffering from such a diseased
14 or deranged condition of the mind as to prevent the
15 defendant from knowing the nature and quality of the
16 act the defendant has been convicted of, or from
17 understanding that trial on the offense has taken
18 place and that execution proceedings are about to take
19 place, or otherwise causes the defendant to lack the
20 capacity to understand the sentence which has been
21 imposed and to participate in any legal proceedings
22 relating to the sentence, the execution shall not take
23 place until after the defendant's capacity is
24 restored. If the director of the department of
25 corrections or the defendant's counsel files a request
26 with the court which issued the warrant of execution,
27 alleging that the defendant suffers from such a
28 diseased or deranged condition, a hearing on the
29 matter shall be held in the manner provided in section
30 812A.1. If a defendant was under the age of eighteen
31 at the time the offense was committed, the defendant
32 shall be sentenced as provided in subsection 1. For
33 the purposes of this section, "lethal injection" means
34 a continuous intravenous injection of a lethal
35 substance sufficient to cause death.

36 Sec. ____ . NEW SECTION. 902.15 FIRST DEGREE
37 MURDER -- ADDITIONAL FACTORS.

38 A person who commits murder in the first degree,
39 who is not mentally retarded or mentally ill, and who
40 is age eighteen or older at the time the offense is
41 committed, shall be eligible for a sentence of death
42 under section 902.1, subsection 2, if the person also
43 kidnaps and commits sexual abuse against a victim who
44 was a minor.

45 For purposes of this section, "mentally retarded"
46 means significant subaverage general intellectual
47 functioning accompanied by significant deficits or
48 impairments in adaptive functioning manifested in the
49 developmental period, but no later than the age of
50 eighteen years, and accompanied by deficits in

1 adaptive behavior.

2 For purposes of this section, "mentally ill" means
3 the condition of a person who is suffering from a
4 chronic and persistent serious mental disease or
5 disorder and who, by reason of that condition, lacks
6 sufficient judgment to make responsible decisions
7 regarding treatment and is reasonably likely to injure
8 the person's self or others who may come into contact
9 with the person if the person is allowed to remain at
10 liberty without treatment.

11 Sec. ____ . NEW SECTION. 902.16 DATA COLLECTION
12 FOR DEATH PENALTY.

13 1. The supreme court shall collect data on all
14 murder charges in which the death penalty is or was
15 not waived, which are filed and processed in the
16 courts in this state. This data may be used by the
17 supreme court to determine whether death sentences
18 imposed are excessive or disproportionate, or under
19 the influence of prejudice as a result of racial
20 discrimination under section 814.28. The court shall
21 make this data available to litigants in death penalty
22 cases.

23 2. Data collected by public officials concerning
24 factors relevant to the imposition of the death
25 sentence shall be made publicly available.

26 Sec. ____ . NEW SECTION. 903C.1 EXECUTIONS --
27 REFUSAL TO PERFORM.

28 An employee of the state who may lawfully perform,
29 assist, or participate in the execution of a person
30 pursuant to section 902.1, and rules adopted by the
31 department of corrections, shall not be required to
32 perform, assist, or participate in the execution.
33 State employees who refuse to perform, assist, or
34 participate in the execution of a person shall not be
35 discriminated against in any way, including, but not
36 limited to, employment, promotion, advancement,
37 transfer, licensing, education, training, or the
38 granting of any privileges or appointments because of
39 the refusal to perform, assist, or participate in the
40 execution.

41 Sec. ____ . Section 904.105, Code 2005, is amended
42 by adding the following new subsection:

43 NEW SUBSECTION. 9A. Adopt rules pursuant to
44 chapter 17A pertaining to executions of persons
45 convicted of murder in the first degree. Rules
46 adopted shall include, but are not limited to, rules
47 permitting the witnessing of executions by members of
48 the public and the victim's family. Invitations to
49 witness an execution shall at least be extended to the
50 following representatives of the news media:

- 1 a. A representative from a wire service serving
- 2 Iowa.
- 3 b. A representative from a broadcasting network
- 4 serving Iowa.
- 5 c. A representative from a television station
- 6 located in Iowa.
- 7 d. A representative from a radio station located
- 8 in Iowa.
- 9 e. A representative from a daily newspaper
- 10 published in Iowa.
- 11 f. A representative from a weekly newspaper
- 12 published in Iowa.
- 13 g. A representative from the news media from the
- 14 community in which the condemned person resided, if
- 15 that community is located in Iowa.

16 Sec. ____ . Rules of criminal procedure, Iowa court
17 rules, are amended by adding sections 101 through 104
18 of this Act.

19 Sec. 101. NEW RULE. 2. MURDER IN THE FIRST
20 DEGREE -- PROCEDURE.

21 2.__(1) If a notice of intent to seek the death
22 penalty has been filed, objections to the imposition
23 of the death penalty based upon allegations that a
24 defendant was mentally retarded at the time of the
25 commission of the offense shall be raised within the
26 time provided for the filing of pretrial motions under
27 R.Cr.P. 2.11, Iowa court rules. The court may, for
28 good cause shown, allow late filing of the motion.
29 Hearing on the motion shall be held prior to trial and
30 the burden of proof shall be on the defendant to prove
31 mental retardation by a preponderance of the evidence.
32 However, a rebuttable presumption of mental
33 retardation arises if a defendant has an intelligence
34 quotient of seventy or below. A finding of the court
35 that the evidence presented by the defendant at the
36 hearing does not preclude the imposition of the death
37 penalty under this rule and Iowa Code section 902.15
38 shall not preclude the introduction of evidence of
39 mental retardation during the penalty proceeding. If
40 the court finds that the evidence presented by the
41 defendant does not preclude the imposition of the
42 death penalty, evidence of mental retardation may be
43 reviewed by the jury during the penalty proceeding and
44 the jury shall not be informed of the finding in the
45 initial proceeding at any time during the penalty
46 proceeding.

47 2.__(2) Upon a finding or plea that a defendant
48 is guilty of murder in the first degree in an initial
49 proceeding, if a notice of intent to seek the death
50 penalty has been filed and has not been waived, the

1 court shall conduct a separate penalty proceeding to
2 determine whether the defendant shall be sentenced to
3 death or to life imprisonment. The penalty proceeding
4 shall be conducted in the trial court before the trial
5 jury, or the court, if there is no jury, no sooner
6 than twenty-four hours after the return of the verdict
7 or plea in the initial proceeding. In the penalty
8 proceeding, additional evidence may be presented as to
9 any factor enumerated in Iowa Code section 902.15 or
10 any aggravating or mitigating circumstance which may
11 exist. Evidence presented which is relevant to the
12 existence of a factor enumerated in Iowa Code section
13 902.15 shall be subject to the rules of evidence.
14 Presentation of evidence which is relevant to the
15 existence of an aggravating or mitigating circumstance
16 shall not be bound by the rules of evidence. This
17 subsection does not authorize the introduction of any
18 evidence secured in violation of the Constitution of
19 the United States or of the Constitution of the State
20 of Iowa. The state and the defendant or the
21 defendant's counsel shall be permitted to cross-
22 examine witnesses and to present arguments for or
23 against a sentence of death.

24 2. (3) On conclusion of the presentation of the
25 evidence in the penalty proceeding, the state and the
26 defendant or the defendant's counsel shall be
27 permitted to make closing arguments, including any
28 rebuttal arguments, in the same manner as in the
29 initial proceeding and the court shall submit each of
30 the following issues to the jury:

31 a. Whether one or more of the factors enumerated
32 in Iowa Code section 902.15 have been established
33 beyond a reasonable doubt.

34 b. If one or more aggravating circumstances have
35 been established, whether one or more of those
36 circumstances outweigh any one or more mitigating
37 circumstances.

38 c. Whether the defendant shall be sentenced to
39 death.

40 If the case is not tried to a jury, the court shall
41 determine the issues.

42 2. (4) The state must prove the issue in rule 2.
43 (3)(a) beyond a reasonable doubt, and the jury, or
44 the court if there is no jury, shall return a special
45 verdict of "yes" or "no" on each issue.

46 2. (5) If the case is tried to a jury, the court
47 shall charge the jury that:

48 a. It shall answer any issue "yes" if it agrees
49 unanimously.

50 b. It shall answer any issue "no" if the jurors

1 unanimously agree that the answer is "no" or if the
2 jurors do not unanimously agree that the answer is
3 "yes".

4 2.____(6) Concurrently with the return of the
5 special verdicts under rule 2.____(4), the jury, or the
6 court if there is no jury, shall also return special
7 verdicts as follows:

8 a. Which of the factor, or factors, enumerated in
9 Iowa Code section 902.15, has been unanimously found
10 to have been established beyond a reasonable doubt.

11 b. Which aggravating circumstances were
12 established and were considered in reaching the
13 verdict returned on the issue specified in rule
14 2.____(3)(b).

15 c. Which mitigating circumstances were established
16 and were considered in reaching the verdict returned
17 on the issue specified in rule 2.____(3)(b).

18 2.____(7) If the jury, or the court, if there is no
19 jury, returns an affirmative finding on all applicable
20 issues, the court shall sentence the defendant to
21 death. If the jury or the court returns a negative
22 finding on any applicable issue, the court shall
23 sentence the defendant to the custody of the director
24 of the department of corrections for confinement for
25 the rest of the defendant's life.

26 2.____(8) After a verdict has been rendered it
27 shall be recorded on the jury verdict form and shall
28 be read and recorded in open court. The jurors shall
29 be collectively asked by the court whether the verdict
30 returned is their true and correct verdict. Even
31 though no juror makes any declaration to the contrary,
32 the jury shall, if either party so requests, be polled
33 and each juror shall be separately asked whether the
34 verdict rendered by the jury foreperson is the juror's
35 true and correct verdict. If, upon either the
36 collective or the separate inquiry, any juror denies
37 that the verdict is the juror's verdict, the court
38 shall refuse to accept the verdict. The court may
39 direct inquiry or permit inquiry by counsel to
40 ascertain whether any juror has been subjected to
41 coercion or has become confused during the jury
42 deliberation process. The court may, as appropriate,
43 direct the jury to resume deliberation in the case.
44 If no disagreement on the verdict is expressed by any
45 of the jurors, the court shall discharge the jury.

46 2.____(9) Provisions relating to deferred judgment,
47 deferred sentence, suspended sentence, reconsideration
48 of sentence, probation, parole, or work release
49 contained in Iowa Code chapters 901 through 909 do not
50 apply to a conviction of murder in the first degree if

1 the defendant is sentenced to death.

2 Sec. 102. NEW RULE. 2. AUTOMATIC REVIEW --

3 STAY OF EXECUTION OF JUDGMENT.

4 2. (1) A judgment of conviction and sentence of
5 death shall be reviewed automatically in the manner
6 provided in Iowa Code section 814.28, and the Iowa
7 supreme court has exclusive jurisdiction of the
8 review.

9 2. (2) Upon entry of judgment and sentence of
10 death, the trial court shall prepare a complete record
11 and transcript of the action in the manner provided in
12 the rules of criminal procedure and shall docket the
13 record and transcript with the clerk of the supreme
14 court.

15 2. (3) The execution of judgment of the trial
16 court is stayed as a matter of law from the time of
17 its entry until the judgment of the supreme court is
18 certified to and entered by the trial court. Upon
19 entry of a judgment of the supreme court which affirms
20 the conviction and sentence, the stay of execution of
21 judgment terminates as a matter of law.

22 2. (4) All court costs required due to the
23 automatic preparation of the record and transcript,
24 docketing with the supreme court, and stay of
25 execution of judgment shall be assessed to the state.

26 Sec. 103. NEW RULE. 2. ISSUANCE OF WARRANT.

27 2. (1) Upon entry by the trial court of the
28 judgment of the supreme court affirming a judgment and
29 sentence of death, a district judge shall within five
30 days of the entry issue a warrant under the seal of
31 the court for the execution of the sentence of death.
32 The warrant shall specifically set forth the offense
33 and the fact of conviction, shall state the judgment
34 and sentence of the court, shall state that the
35 judgment and sentence were affirmed by the supreme
36 court and the date of entry of judgment of the supreme
37 court in the trial court, and shall, subject to the
38 requirements of Iowa Code section 902.1, subsection 2,
39 specify a range of five days for execution of the
40 defendant which shall be not less than fifty nor more
41 than sixty days after the date of entry in the trial
42 court of the judgment of the supreme court affirming
43 the judgment and sentence of death. The warrant shall
44 be directed to the director of the department of
45 corrections commanding the director to cause the
46 warrant to be executed within the dates specified.
47 The trial court shall deliver the warrant to the
48 sheriff of the county in which judgment of conviction
49 was entered and the sheriff shall deliver the warrant
50 to the director of the department of corrections. The

1 director of the department of corrections shall
2 acknowledge receipt of the warrant and the defendant,
3 and the sheriff shall return the acknowledgment to the
4 office of the clerk of the trial court from which the
5 warrant was issued.

6 2.__(2) Immediately after issuance of a warrant
7 ordering a sentence of death, the clerk of the trial
8 court issuing the warrant shall transmit by certified
9 mail to the governor a copy of the indictment, the
10 plea, the verdict and special findings, the
11 affirmation of judgment and sentence by the supreme
12 court, and the complete transcript of the trial court.

13 2.__(3) Notwithstanding rule 2.__(1), if a
14 defendant, for whom a warrant of execution is issued,
15 is pregnant, the execution shall not take place until
16 after the defendant is no longer pregnant.
17 Notwithstanding rule 2.__(1), if a defendant, for
18 whom a warrant of execution is issued, is suffering
19 from such a diseased or deranged condition of the mind
20 as to prevent the defendant from knowing the nature
21 and quality of the act the defendant has been
22 convicted of, or from understanding that trial on the
23 offense has taken place and that execution proceedings
24 are about to take place, or to otherwise cause the
25 defendant to lack the capacity to understand the
26 sentence which has been imposed and to participate in
27 any legal proceedings relating to the sentence, the
28 execution shall not take place until after the
29 defendant is no longer suffering from the condition.

30 Sec. 104. NEW RULE. 2.____ EVIDENCE AT PENALTY
31 PROCEEDING WHERE DEATH SENTENCE REQUESTED.

32 2.__(1) At a reasonable time before the
33 commencement of initial proceedings in a first degree
34 murder trial in which a sentence of death has been
35 requested, each party shall file and serve upon the
36 other party the following:

37 a. A list of all aggravating or mitigating
38 circumstances which the party intends to prove during
39 the sentencing proceedings.

40 b. The names of all persons whom the party intends
41 to call as witnesses during the sentencing
42 proceedings.

43 c. Notwithstanding rule 2.14, copies, or for
44 inspection purposes, the location, of all documents,
45 including books, papers, writings, drawings, graphs,
46 charts, photographs, telephone records, and other data
47 compilations from which information can be obtained,
48 or other objects which the party intends to offer into
49 evidence during the sentencing proceedings. If copies
50 are not supplied to opposing counsel, the party shall

1 make the items available for inspection and copying
2 without order of the court.

3 2. ___ (2) In proceedings to determine whether the
4 sentence shall be death or life imprisonment, evidence
5 may be presented as to any matter which the trial
6 court deems relevant to the sentence, including but
7 not limited to the nature, circumstances, and manner
8 of completion of the murder, and the defendant's
9 character, background, history, and mental and
10 physical condition. The trial court shall admit any
11 relevant admissible evidence respecting any
12 aggravating or mitigating circumstances, if the party
13 has included the circumstance on a list provided
14 pursuant to this rule, or good cause is shown for the
15 failure to do so.

16 Sec. ____. EFFECTIVE DATE -- SEVERABILITY.

17 1. This division of this Act takes effect January
18 1, 2006, and applies to offenses committed on or after
19 that date.

20 2. If any provision of this division of this Act
21 or the application thereof to any person is invalid,
22 the invalidity shall not affect the provisions or
23 application of this division of this Act which can be
24 given effect without the invalid provisions or
25 application and to this end, the provisions of this
26 division of this Act are severable."

27 3. Title page, by striking lines 1 through 3 and
28 inserting the following: "An Act relating to criminal
29 practices and procedures, by applying the death
30 penalty for certain class "A" felons, by relating to
31 persons convicted of criminal offenses requiring
32 registration on the sex offender registry or requiring
33 an additional indeterminate sentence, by establishing
34 a".

35 4. Title page, line 5, by inserting after the
36 word "penalties" the following: ", and providing an
37 effective date and for the Act's applicability".

38 5. By renumbering as necessary.

By LARRY MCKIBBEN
JEFF LAMBERTI
JERRY BEHN
JEFF ANGELO
JAMES SEYMOUR
PAUL MCKINLEY
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JAMES HAHN
HUBERT M. HOUSER
STEWART IVERSON, Jr.

S-3182

1 Amend House File 619, as amended, passed, and
2 reprinted by the House, as follows:

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

5 "DIVISION I

6 DNA PROFILING

7 Section 1. NEW SECTION. 81.1 DEFINITIONS.

8 As used in this chapter, unless the context

9 otherwise requires:

10 1. "DNA" means deoxyribonucleic acid.

11 2. "DNA databank" means the repository for DNA
12 samples obtained pursuant to section 81.4.

13 3. "DNA database" means the collection of DNA
14 profiles and DNA records.

15 4. "DNA profile" means the objective form of the
16 results of DNA analysis performed on a DNA sample.
17 The results of all DNA identification analysis on an
18 individual's DNA sample are also collectively referred
19 to as the DNA profile of an individual.

20 5. "DNA profiling" means the procedure established
21 by the division of criminal investigation, department
22 of public safety, for determining a person's genetic
23 identity.

24 6. "DNA record" means the DNA sample and DNA
25 profile, and other records in the DNA database and DNA
26 data bank used to identify a person.

27 7. "DNA sample" means a biological sample provided
28 by any person required to submit a DNA sample or a DNA
29 sample submitted for any other purpose under section
30 81.4.

31 8. "Person required to submit a DNA sample" means
32 a person convicted, adjudicated delinquent, receiving
33 a deferred judgment, or found not guilty by reason of
34 insanity of an offense requiring DNA profiling
35 pursuant to section 81.2. "Person required to submit
36 a DNA sample" also means a person determined to be a
37 sexually violent predator pursuant to section 229A.7.

38 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO
39 SUBMIT A DNA SAMPLE.

40 1. A person who receives a deferred judgment for a
41 felony or against whom a judgment or conviction for a
42 felony has been entered shall be required to submit a
43 DNA sample for DNA profiling pursuant to section 81.4.

44 2. A person determined to be a sexually violent
45 predator pursuant to chapter 229A shall be required to
46 submit a DNA sample for DNA profiling pursuant to
47 section 81.4 prior to discharge or placement in a
48 transitional release program.

49 3. A person found not guilty by reason of insanity
50 of an offense that requires DNA profiling shall be

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1 required to submit a DNA sample for DNA profiling
2 pursuant to section 81.4 as part of the person's
3 treatment management program.

4 4. A juvenile adjudicated delinquent of an offense
5 that requires DNA profiling of an adult offender shall
6 be required to submit a DNA sample for DNA profiling
7 pursuant to section 81.4 as part of the disposition of
8 the juvenile's case.

9 5. An offender placed on probation shall
10 immediately report to the judicial district department
11 of correctional services after sentencing so it can be
12 determined if the offender has been convicted of an
13 offense requiring DNA profiling. If it is determined
14 by the judicial district that DNA profiling is
15 required, the offender shall immediately submit a DNA
16 sample.

17 6. A person required to register as a sex
18 offender.

19 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA
20 DATABASE AND DNA DATABANK.

21 1. A state DNA database and a state DNA databank
22 are established under the control of the division of
23 criminal investigation, department of public safety.
24 The division of criminal investigation shall conduct
25 DNA profiling of a DNA sample submitted in accordance
26 with this section.

27 2. A DNA sample shall be submitted, and the
28 division of criminal investigation shall store and
29 maintain DNA records in the DNA database and DNA
30 databank for persons required to submit a DNA sample.

31 3. A DNA sample may be submitted, and the division
32 of criminal investigation shall store and maintain DNA
33 records in the DNA database and DNA databank for any
34 of the following:

- 35 a. Crime scene evidence and forensic casework.
36 b. A relative of a missing person.
37 c. An anonymous DNA profile used for forensic
38 validation, forensic protocol development, or quality
39 control purposes, or for the establishment of a
40 population statistics database.

41 4. A fingerprint record of a person required to
42 submit a DNA sample shall also be submitted to the
43 division of criminal investigation with the DNA sample
44 to verify the identity of the person required to
45 submit a DNA sample.

46 Sec. 4. NEW SECTION. 81.4 COLLECTING,
47 SUBMITTING, ANALYZING, IDENTIFYING, AND STORING DNA
48 SAMPLES AND DNA RECORDS.

49 1. The division of criminal investigation shall
50 adopt rules for the collection, submission, analysis,

1 identification, storage, and disposition of DNA
2 records.

3 2. A supervising agency having control, custody,
4 or jurisdiction over a person shall collect a DNA
5 sample from a person required to submit a DNA sample.
6 The supervising agency shall collect a DNA sample,
7 upon admittance to the pertinent institution or
8 facility, of the person required to submit a DNA
9 sample or at a determined date and time set by the
10 supervising agency. If a person required to submit a
11 DNA sample is confined at the time a DNA sample is
12 required, the person shall submit a DNA sample as soon
13 as practicable. If a person required to submit a DNA
14 sample is not confined after the person is required to
15 submit a DNA sample, the supervising agency shall
16 determine the date and time to collect the DNA sample.

17 3. A person required to submit a DNA sample who
18 refuses to submit a DNA sample may be subject to
19 contempt proceedings pursuant to chapter 665 until the
20 DNA sample is submitted.

21 4. The division of criminal investigation shall
22 conduct DNA profiling on a DNA sample or may contract
23 with a private entity to conduct the DNA profiling.

24 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL
25 LIABILITY -- LIMITATION.

26 A person who collects a DNA sample shall not be
27 civilly or criminally liable for the collection of the
28 DNA sample if the person performs the person's duties
29 in good faith and in a reasonable manner according to
30 generally accepted medical practices or in accordance
31 with the procedures set out in the administrative
32 rules of the department of public safety adopted
33 pursuant to section 81.4.

34 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

35 1. A person who knowingly or intentionally does
36 any of the following commits an aggravated
37 misdemeanor:

38 a. Discloses any part of a DNA record to a person
39 or agency that is not authorized by the division of
40 criminal investigation to have access to the DNA
41 record.

42 b. Uses or obtains a DNA record for a purpose
43 other than what is authorized under this chapter.

44 2. A person who knowingly or intentionally alters
45 or attempts to alter a DNA sample, falsifies the
46 source of a DNA sample, or materially alters a
47 collection container used to collect the DNA sample,
48 commits a class "D" felony.

49 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST
50 NOT INVALIDATED.

1 The detention, arrest, or conviction of a person
2 based upon a DNA database match is not invalidated if
3 it is determined that the DNA sample or DNA profile
4 was obtained or placed into the DNA database by
5 mistake or error.

6 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

7 1. A DNA record shall be considered a confidential
8 record and disclosure of a DNA record is only
9 authorized pursuant to this section.

10 2. Confidential DNA records under this section may
11 be released to the following agencies for law
12 enforcement identification purposes:

13 a. Any criminal or juvenile justice agency as
14 defined in section 692.1.

15 b. Any criminal or juvenile justice agency in
16 another jurisdiction that meets the definition of a
17 criminal or juvenile justice agency as defined in
18 section 692.1.

19 3. The division of criminal investigation shall
20 share the DNA record information with the appropriate
21 federal agencies for use in a national DNA database.

22 4. A DNA record or other forensic information
23 developed pursuant to this chapter may be released for
24 use in a criminal or juvenile delinquency proceeding
25 in which the state is a party and where the DNA record
26 or forensic information is relevant and material to
27 the subject of the proceeding. Such a record or
28 information may become part of a public transcript or
29 other public recording of such a proceeding.

30 5. A DNA record or other forensic information may
31 be released pursuant to a court order for criminal
32 defense purposes to a defendant, who shall have access
33 to DNA samples and DNA profiles related to the case in
34 which the defendant is charged.

35 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA
36 RECORDS.

37 1. A person whose DNA record has been included in
38 the DNA database or DNA databank established pursuant
39 to section 81.3 may request, in writing to the
40 division of criminal investigation, expungement of the
41 DNA record from the DNA database and DNA databank
42 based upon the person's conviction, adjudication, or
43 civil commitment which caused the submission of the
44 DNA sample being reversed on appeal and the case
45 dismissed. The written request shall contain a
46 certified copy of the final court order reversing the
47 conviction, adjudication, or civil commitment, and a
48 certified copy of the dismissal, and any other
49 information necessary to ascertain the validity of the
50 request.

1 2. The division of criminal investigation, upon
2 receipt of a written request that validates reversal
3 on appeal of a person's conviction, adjudication, or
4 commitment, and subsequent dismissal of the case, or
5 upon receipt of a written request by a person who
6 voluntarily submitted a DNA sample under section 81.3,
7 subsection 3, paragraph "b", or upon receipt of a
8 written request by a person who voluntarily submitted
9 a DNA sample pursuant to section 81.3, subsection 3,
10 paragraph "b", shall expunge all of the DNA records
11 and identifiable information of the person in the DNA
12 database and DNA databank. However, if the division
13 of criminal investigation determines that the person
14 is otherwise obligated to submit a DNA sample, the DNA
15 records shall not be expunged. If the division of
16 criminal investigation denies an expungement request,
17 the division shall notify the person requesting the
18 expungement of the decision not to expunge the DNA
19 record and the reason supporting its decision. The
20 division of criminal investigation decision is subject
21 to judicial review pursuant to chapter 17A. The
22 department of public safety shall adopt rules
23 governing the expungement procedure and a review
24 process.

25 3. The division of criminal investigation is not
26 required to expunge or destroy a DNA record pursuant
27 to this section, if expungement or destruction of the
28 DNA record would destroy evidence related to another
29 person.

30 Sec. 10. NEW SECTION. 81.10 DNA PROFILING AFTER
31 CONVICTION.

32 1. A defendant who has been convicted of a felony
33 and who has not been required to submit a DNA sample
34 for DNA profiling may make a motion to the court for
35 an order to require that DNA analysis be performed on
36 evidence collected in the case for which the person
37 stands convicted.

38 2. The motion shall state the following:

39 a. The specific crimes for which the defendant
40 stands convicted in this case.

41 b. The facts of the underlying case, as proven at
42 trial or admitted to during a guilty plea proceeding.

43 c. Whether any of the charges include sexual abuse
44 or involve sexual assault, and if so, whether a sexual
45 assault examination was conducted and evidence
46 preserved, if known.

47 d. Whether identity was at issue or contested by
48 the defendant.

49 e. Whether the defendant offered an alibi, and if
50 so, testimony corroborating the alibi and, from whom.

- 1 f. Whether eyewitness testimony was offered, and
2 if so from whom.
- 3 g. Whether any issues of police or prosecutor
4 misconduct have been raised in the past or are being
5 raised by the motion.
- 6 h. The type of inculpatory evidence admitted into
7 evidence at trial or admitted to during a guilty plea
8 proceeding.
- 9 i. Whether blood testing or other biological
10 evidence testing was conducted previously in
11 connection with the case and, if so, by whom and to
12 the result, if known.
- 13 j. What biological evidence exists and, if known,
14 the agency or laboratory storing the evidence that the
15 defendant seeks to have tested.
- 16 k. Why the requested analysis of DNA evidence is
17 material to the issue in the case and not merely
18 cumulative or impeaching.
- 19 1. Why the DNA evidence would have changed the
20 outcome of the trial or invalidated a guilty plea if
21 DNA profiling had been conducted prior to the
22 conviction.
- 23 3. A motion filed under this section shall be
24 filed in the county where the defendant was convicted,
25 and notice of the motion shall be served by certified
26 mail upon the county attorney and, if known, upon the
27 state, local agency, or laboratory holding evidence
28 described in subsection 2, paragraph "k". The county
29 attorney shall have sixty days to file an answer to
30 the motion.
- 31 4. Any DNA profiling of the defendant or other
32 biological evidence testing conducted by the state or
33 by the defendant shall be disclosed and the results of
34 such profiling or testing described in the motion or
35 answer.
- 36 5. If the evidence requested to be tested was
37 previously subjected to DNA or other biological
38 analysis by either party, the court may order the
39 disclosure of the results of such testing, including
40 laboratory reports, notes, and underlying data, to the
41 court and the parties.
- 42 6. The court may order a hearing on the motion to
43 determine if evidence should be subjected to DNA
44 analysis.
- 45 7. The court shall grant the motion if all of the
46 following apply:
- 47 a. The evidence subject to DNA testing is
48 available and in a condition that will permit
49 analysis.
- 50 b. A sufficient chain of custody has been

1 established for the evidence.

2 c. The identity of the person who committed the
3 crime for which the defendant was convicted was a
4 significant issue in the crime for which the defendant
5 was convicted.

6 d. The evidence subject to DNA analysis is
7 material to, and not merely cumulative or impeaching
8 of, evidence included in the trial record or admitted
9 to at a guilty plea proceeding.

10 e. DNA analysis of the evidence would raise a
11 reasonable probability that the defendant would not
12 have been convicted if DNA profiling had been
13 available at the time of the conviction and had been
14 conducted prior to the conviction.

15 8. Upon the court granting a motion filed pursuant
16 to this section, DNA analysis of evidence shall be
17 conducted within the guidelines generally accepted by
18 the scientific community. The defendant shall provide
19 DNA samples for testing if requested by the state.

20 9. Results of DNA analysis conducted pursuant to
21 this section shall be reported to the parties and to
22 the court and may be provided to the board of parole,
23 department of corrections, and criminal and juvenile
24 justice agencies, as defined in section 692.1, for use
25 in the course of investigations and prosecutions, and
26 for consideration in connection with requests for
27 parole, pardon, reprieve, and commutation. DNA
28 samples obtained pursuant to this section may be
29 included in the DNA databank, and DNA profiles and DNA
30 records developed pursuant to this section may be
31 included in the DNA database.

32 10. A criminal or juvenile justice agency, as
33 defined in section 692.1, shall maintain DNA samples
34 and evidence that could be tested for DNA for a period
35 of three years beyond the limitations for the
36 commencement of criminal actions as set forth in
37 chapter 802. This section does not create a cause of
38 action for damages or a presumption of spoliation in
39 the event evidence is no longer available for testing.

40 11. If the court determines a defendant who files
41 a motion under this section is indigent, the defendant
42 shall be entitled to appointment of counsel as
43 provided in chapter 815.

44 12. If the court determines after DNA analysis
45 ordered pursuant to this section that the results
46 indicate conclusively that the DNA profile of the
47 defendant matches the profile from the analyzed
48 evidence used against the defendant, the court may
49 order the defendant to pay the costs of these
50 proceedings, including costs of all testing, court

1 costs, and costs of court-appointed counsel, if any.

2 Sec. 11. Section 229A.7, Code 2005, is amended by
3 adding the following new subsection:

4 NEW SUBSECTION. 5A. If the court or jury
5 determines that the respondent is a sexually violent
6 predator, the court shall order the respondent to
7 submit a DNA sample for DNA profiling pursuant to
8 section 81.4.

9 Sec. 12. Section 232.52, Code 2005, is amended by
10 adding the following new subsection:

11 NEW SUBSECTION. 10. The court shall order a
12 juvenile adjudicated a delinquent for an offense that
13 requires DNA profiling under section 81.2 to submit a
14 DNA sample for DNA profiling pursuant to section 81.4.

15 Sec. 13. Section 669.14, Code 2005, is amended by
16 adding the following new subsection:

17 NEW SUBSECTION. 15. Any claim arising from or
18 related to the collection of a DNA sample for DNA
19 profiling pursuant to section 81.4 or a DNA profiling
20 procedure performed by the division of criminal
21 investigation, department of public safety.

22 Sec. 14. Section 901.5, subsection 8A, Code 2005,
23 is amended to read as follows:

24 8A. a. The court shall order DNA profiling of a
25 defendant convicted of an offense that requires
26 profiling under section ~~13.10~~ 81.2.

27 b. Notwithstanding section ~~13.10~~ 81.2, the court
28 may order the defendant to provide a ~~physical specimen~~
29 DNA sample to be submitted for DNA profiling if
30 appropriate. In determining the appropriateness of
31 ordering DNA profiling, the court shall consider the
32 deterrent effect of DNA profiling, the likelihood of
33 repeated offenses by the defendant, and the
34 seriousness of the offense.

35 Sec. 15. Section 906.4, unnumbered paragraph 3,
36 Code 2005, is amended to read as follows:

37 ~~Notwithstanding section 13.10, the~~ The board may
38 order the defendant to provide a physical specimen to
39 be submitted for DNA profiling as a condition of
40 parole or work release, if appropriate a DNA profile
41 has not been previously conducted pursuant to chapter
42 81. In determining the appropriateness of ordering
43 DNA profiling, the board shall consider the deterrent
44 effect of DNA profiling, the likelihood of repeated
45 offenses by the defendant, and the seriousness of the
46 offense.

47 Sec. 16. 2002 Iowa Acts, chapter 1080, is
48 repealed.

49 Sec. 17. Section 13.10, Code 2005, is repealed.

50 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE

1 PRIOR TO EFFECTIVE DATE OF THIS DIVISION OF THIS ACT.
2 A person convicted, adjudicated a delinquent, civilly
3 committed as a sexually violent predator, or found not
4 guilty by reason of insanity, prior to the effective
5 date of this Act, who would otherwise be required to
6 submit a DNA sample under this Act, and who is under
7 the custody, control, or jurisdiction of a supervising
8 agency, shall submit a DNA sample prior to being
9 released from the supervising agency's custody,
10 control, or jurisdiction.

11 Sec. 19. EFFECTIVE DATE. This division of this
12 Act, being deemed of immediate importance, takes
13 effect upon enactment.

14 DIVISION II

15 SEX OFFENDER REGISTRY AND TREATMENT

16 Sec. 20. Section 321.11, subsection 3, Code 2005,
17 is amended to read as follows:

18 3. Notwithstanding other provisions of this
19 section to the contrary, the department shall not
20 release personal information to a person, other than
21 to an officer or employee of a law enforcement agency,
22 an employee of a federal or state agency or political
23 subdivision in the performance of the employee's
24 official duties, a contract employee of the department
25 of inspections and appeals in the conduct of an
26 investigation, or a licensed private investigation
27 agency or a licensed security service or a licensed
28 employee of either, if the information is requested by
29 the presentation of a registration plate number. In
30 addition, an officer or employee of a law enforcement
31 agency may release the name, address, and telephone
32 number of a motor vehicle registrant to a person
33 requesting the information by the presentation of a
34 registration plate number if the officer or employee
35 of the law enforcement agency believes that the
36 release of the information is necessary in the
37 performance of the officer's or employee's duties.
38 For purposes of this section, "personal information"
39 includes whether the person is on the sex offender
40 registry as provided in chapter 692A.

41 Sec. 21. Section 692A.1, subsection 8, Code 2005,
42 is amended to read as follows:

43 8. "Residence" means the place where a person
44 sleeps, which may include more than one location, and
45 may be mobile or transitory, including a shelter or
46 group home.

47 Sec. 22. Section 692A.2, Code 2005, is amended by
48 adding the following new subsection:

49 NEW SUBSECTION. 1A. If a person is required to
50 register for a period of ten years under subsection 1

1 and the period under subsection 1 has expired, the
2 person shall be required to remain on the registry if
3 the person has been sentenced to a special sentence as
4 required under section 903B.0A or 903B.0B, for a
5 period equal to the term of the special sentence.

6 Sec. 23. NEW SECTION. 692A.2B RESTRICTIONS ON
7 RESIDENCY NEAR CHILD CARE FACILITIES OR SCHOOLS.

8 1. For purposes of this section, "person" means a
9 person who is required to register under this chapter.

10 2. A person shall not reside within one thousand
11 feet of the real property comprising a public or
12 nonpublic elementary or secondary school or a child
13 care facility.

14 3. A person who resides within one thousand feet
15 of the real property comprising a public or nonpublic
16 elementary or secondary school, or a child care
17 facility, commits an aggravated misdemeanor.

18 4. A person residing within one thousand feet of
19 the real property comprising a public or nonpublic
20 elementary or secondary school or a child care
21 facility does not commit a violation of this section
22 if any of the following apply:

23 a. The person is required to serve a sentence at a
24 jail, prison, juvenile facility, or other correctional
25 institution or facility.

26 b. The person is subject to an order of commitment
27 under chapter 229A.

28 c. The person has established a residence prior to
29 July 1, 2005, or a school or child care facility is
30 newly located on or after July 1, 2005.

31 d. The person is a minor or a ward under a
32 guardianship.

33 Sec. 24. Section 692A.4, Code 2005, is amended to
34 read as follows:

35 692A.4 VERIFICATION OF ADDRESS AND TAKING OF
36 PHOTOGRAPH.

37 1. The address of a person required to register
38 under this chapter shall be verified annually as
39 follows:

40 a. On a date which falls within the month in which
41 the person was initially required to register, the
42 department shall mail a verification form to the last
43 reported address of the person. Verification forms
44 shall not be forwarded to the person who is required
45 to register under this chapter if the person no longer
46 resides at the address, but shall be returned to the
47 department.

48 b. The person shall complete and mail the
49 verification to the department within ten days of
50 receipt of the form.

1 c. The verification form shall be signed by the
2 person, and state the address at which the person
3 resides. If the person is in the process of changing
4 residences, the person shall state that fact as well
5 as the old and new addresses or places of residence.

6 2. Verification of address for a person who has
7 been convicted of an offense under the laws of this
8 state or of another state which would qualify the
9 person as a sexually violent predator shall be
10 accomplished in the same manner as in subsection 1,
11 except that the verification shall be done every three
12 months at times established by the department.

13 3. A photograph of a person required to register
14 under this chapter shall be updated, at a minimum,
15 annually. When the department mails the address
16 verification notice in subsection 1, the department
17 shall also enclose a form informing the person to
18 annually submit to being photographed by the sheriff
19 of the county of the person's residence within ten
20 days of receipt of the address verification form. The
21 sheriff shall send the updated photograph to the
22 department within ten days of the photograph being
23 taken and the department shall post the updated
24 photograph on the sex offender registry's web page.
25 The sheriff may require the person to submit to being
26 photographed by the sheriff more than once a year by
27 mailing another notice informing the person to submit
28 to being photographed.

29 Sec. 25. NEW SECTION. 692A.4A ELECTRONIC
30 MONITORING.

31 A person required to register under this chapter
32 who is placed on probation, parole, work release,
33 special sentence, or any other type of conditional
34 release, may be supervised by an electronic tracking
35 and monitoring system in addition to any other
36 conditions of supervision.

37 Sec. 26. Section 692A.5, subsection 1, paragraph
38 h, Code 2005, is amended to read as follows:

39 h. Inform the person, if the person's residency is
40 restricted under section 692A.2A, that the person
41 shall not reside within two thousand feet of the real
42 property comprising a public or nonpublic elementary
43 or secondary school, or a child care facility. After
44 June 30, 2005, inform the person, if the person's
45 residency is restricted under section 692A.2B, that
46 the person shall not reside within one thousand feet
47 of the real property comprising a public or nonpublic
48 elementary or secondary school, or a child care
49 facility.

50 Sec. 27. Section 692A.5, subsection 1, Code 2005,

1 is amended by adding the following new paragraph:

2 NEW PARAGRAPH. i. Inform the person that the
3 person must, at a minimum, annually submit to being
4 photographed by the sheriff of the county of the
5 person's residence.

6 Sec. 28. Section 692A.13, subsection 3, Code 2005,
7 is amended to read as follows:

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

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

23 A county sheriff shall not charge a fee relating to
24 a request for relevant information.

25 Sec. 29. Section 692A.10, Code 2005, is amended by
26 adding the following new subsection:

27 NEW SUBSECTION. 2A. Notify the state department
28 of transportation of the name of any person required
29 to register, and subsequently notify the state
30 department of transportation of the name of any person
31 no longer required to register.

32 Sec. 30. Section 692A.13, subsection 5, Code 2005,
33 is amended to read as follows:

34 5. Relevant information provided to the general
35 public may include the offender's name, address, a
36 photograph, locations frequented by the offender,
37 relevant criminal history information from the
38 registry, and any other relevant information.
39 Relevant information provided to the public shall not
40 include the identity of any victim. For purposes of
41 inclusion in the sex offender registry's web page or
42 dissemination to the general public, a conviction for
43 incest shall be disclosed as either a violation of
44 section 709.4 or 709.8.

45 Sec. 31. Section 903A.2, subsection 1, paragraph
46 a, Code 2005, is amended to read as follows:

47 a. Category "A" sentences are those sentences
48 which are not subject to a maximum accumulation of
49 earned time of fifteen percent of the total sentence
50 of confinement under section 902.12. To the extent

1 provided in subsection 5, category "A" sentences also
2 include life sentences imposed under section 902.1.
3 An inmate of an institution under the control of the
4 department of corrections who is serving a category
5 "A" sentence is eligible for a reduction of sentence
6 equal to one and two-tenths days for each day the
7 inmate demonstrates good conduct and satisfactorily
8 participates in any program or placement status
9 identified by the director to earn the reduction. The
10 programs include but are not limited to the following:

- 11 (1) Employment in the institution.
- 12 (2) Iowa state industries.
- 13 (3) An employment program established by the
14 director.
- 15 (4) A treatment program established by the
16 director.
- 17 (5) An inmate educational program approved by the
18 director.

19 However, an inmate required to participate in a sex
20 offender treatment program shall not be eligible for a
21 reduction of sentence unless the inmate participates
22 in and completes a sex offender treatment program
23 established by the director.

24 An inmate serving a category "A" sentence is
25 eligible for an additional reduction of sentence of up
26 to three hundred sixty-five days of the full term of
27 the sentence of the inmate for exemplary acts. In
28 accordance with section 903A.4, the director shall by
29 policy identify what constitutes an exemplary act that
30 may warrant an additional reduction of sentence.

31 DIVISION III

32 ENHANCED CRIMINAL PENALTIES AND
33 STATUTE OF LIMITATIONS

34 Sec. 32. Section 709.8, Code 2005, is amended to
35 read as follows:

36 709.8 LASCIVIOUS ACTS WITH A CHILD.

37 It is unlawful for any person ~~eighteen~~ sixteen
38 years of age or older to perform any of the following
39 acts with a child with or without the child's consent
40 unless married to each other, for the purpose of
41 arousing or satisfying the sexual desires of either of
42 them:

- 43 1. Fondle or touch the pubes or genitals of a
44 child.
- 45 2. Permit or cause a child to fondle or touch the
46 person's genitals or pubes.
- 47 3. Solicit a child to engage in a sex act or
48 solicit a person to arrange a sex act with a child.
- 49 4. Inflict pain or discomfort upon a child or
50 permit a child to inflict pain or discomfort on the

1 person.

2 Any person who violates a provision of this section
3 shall, upon conviction, be guilty of a class ~~"D"~~ "C"
4 felony. A person who violates a provision of this
5 section and who is sentenced to a term of confinement
6 shall also be sentenced to an additional term of
7 parole or work release not to exceed two years. The
8 board of parole shall determine whether the person
9 should be released on parole or placed in a work
10 release program. The sentence of an additional term
11 of parole or work release supervision shall commence
12 immediately upon the expiration of the preceding
13 sentence and shall be under the terms and conditions
14 as set out in chapter 906. Violations of parole or
15 work release shall be subject to the procedures set
16 out in chapter 905 or 908 or rules adopted under those
17 chapters. The sentence of an additional term of
18 parole or work release shall be consecutive to the
19 original term of confinement.

20 Sec. 33. Section 709.12, unnumbered paragraph 1,
21 Code 2005, is amended to read as follows:

22 A person eighteen years of age or older is upon
23 conviction guilty of ~~an aggravated misdemeanor~~ a class
24 "D" felony if the person commits any of the following
25 acts with a child, not the person's spouse, with or
26 without the child's consent, for the purpose of
27 arousing or satisfying the sexual desires of either of
28 them:

29 Sec. 34. Section 802.2, Code 2005, is amended to
30 read as follows:

31 802.2 SEXUAL ABUSE -- FIRST, SECOND, OR THIRD
32 DEGREE.

33 1. An information or indictment for sexual abuse
34 in the first, second, or third degree committed on or
35 with a person who is under the age of eighteen years
36 shall be found within ten years after the person upon
37 whom the offense is committed attains eighteen years
38 of age, or if the identity of the person against whom
39 the information or indictment is sought is established
40 through the use of a DNA profile, an information or
41 indictment shall be found within three years from the
42 date the identity of the person is identified by the
43 person's DNA profile, whichever is later.

44 2. An information or indictment for any other
45 sexual abuse in the first, second, or third degree
46 shall be found within ten years after its commission,
47 or if the identity of the person against whom the
48 information or indictment is sought is established
49 through the use of a DNA profile, an information or
50 indictment shall be found within three years from the

1 date the identity of the person is identified by the
2 person's DNA profile, whichever is later.

3 3. As used in this section, "identified" means a
4 person's legal name is known and the person has been
5 determined to be the source of the DNA.

6 Sec. 35. Section 901.5, Code 2005, is amended by
7 adding the following new subsection:

8 NEW SUBSECTION. 13. In addition to any other
9 sentence or other penalty imposed against the
10 defendant, the court shall impose a special sentence
11 if required under section 903B.0A or 903B.0B.

12 Sec. 36. NEW SECTION. 902.15 ENHANCED PENALTY --
13 SEXUAL ABUSE OR LASCIVIOUS ACTS WITH A CHILD.

14 1. A person commits a class "A" felony if the
15 person commits a second or subsequent offense
16 involving any combination of the following offenses:

17 a. Sexual abuse in the second degree in violation
18 of section 709.3.

19 b. Sexual abuse in the third degree in violation
20 of section 709.4.

21 c. Lascivious acts with a child in violation of
22 section 709.8, subsection 1 or 2.

23 2. In determining if a violation charged is a
24 second or subsequent offense for purposes of criminal
25 sentencing in this section, each previous violation on
26 which conviction or deferral of judgment was entered
27 prior to the date of the violation charged shall be
28 considered and counted as a separate previous offense,
29 regardless of whether the previous offense occurred
30 before, on, or after the effective date of this Act.
31 Convictions or the equivalent of deferred judgments
32 for violations in any other states under statutes
33 substantially corresponding to the offenses listed in
34 subsection 1 shall be counted as previous offenses.
35 The courts shall judicially notice the statutes of
36 other states which define offenses substantially
37 equivalent to the offenses listed in subsection 1 and
38 can therefore be considered corresponding statutes.

39 Sec. 37. NEW SECTION. 903B.0A SPECIAL SENTENCE
40 -- CLASS "B" OR CLASS "C" FELONIES.

41 A person convicted of a class "C" felony or greater
42 offense under chapter 709, or a class "C" felony under
43 section 728.12, shall also be sentenced, in addition
44 to any other punishment provided by law, to a special
45 sentence committing the person into the custody of the
46 director of the Iowa department of corrections for the
47 rest of the person's life, with eligibility for parole
48 as provided in chapter 906. The special sentence
49 imposed under this section shall commence upon
50 completion of the sentence imposed under any

1 applicable criminal sentencing provisions for the
2 underlying criminal offense and the person shall begin
3 the sentence under supervision as if on parole. The
4 person shall be placed on the corrections continuum in
5 chapter 901B, and the terms and conditions of the
6 special sentence, including violations, shall be
7 subject to the same set of procedures set out in
8 chapters 901B, 905, 906, and chapter 908, and rules
9 adopted under those chapters for persons on parole
10 shall not be for a period greater than two years upon
11 any first revocation, and five years upon any second
12 or subsequent revocation. A special sentence shall be
13 considered a category "A" sentence for purposes of
14 calculating earned time under section 903A.2.

15 Sec. 38. NEW SECTION. 903B.0B SPECIAL SENTENCE
16 -- CLASS "D" FELONIES OR MISDEMEANORS.

17 A person convicted of a misdemeanor or a class "D"
18 felony offense under chapter 709, section 726.2, or
19 section 728.12 shall also be sentenced, in addition to
20 any other punishment provided by law, to a special
21 sentence committing the person into the custody of the
22 director of the Iowa department of corrections for a
23 period of ten years, with eligibility for parole as
24 provided in chapter 906. The special sentence imposed
25 under this section shall commence upon completion of
26 the sentence imposed under any applicable criminal
27 sentencing provisions for the underlying criminal
28 offense and the person shall begin the sentence under
29 supervision as if on parole. The person shall be
30 placed on the corrections continuum in chapter 901B,
31 and the terms and conditions of the special sentence,
32 including violations, shall be subject to the same set
33 of procedures set out in chapters 901B, 905, 906, and
34 908, and rules adopted under those chapters for
35 persons on parole. The revocation of release shall
36 not be for a period greater than two years upon any
37 first revocation, and five years upon any second or
38 subsequent revocation. A special sentence shall be
39 considered a category "A" sentence for purposes of
40 calculating earned time under section 903A.2.

41 Sec. 39. Section 903B.1, subsection 3, Code 2005,
42 is amended by striking the subsection.

43 Sec. 40. Section 906.15, unnumbered paragraph 1,
44 Code 2005, is amended to read as follows:

45 Unless sooner discharged, a person released on
46 parole shall be discharged when the person's term of
47 parole equals the period of imprisonment specified in
48 the person's sentence, less all time served in
49 confinement. Discharge from parole may be granted
50 prior to such time, when an early discharge is

1 appropriate. The board shall periodically review all
2 paroles, and when the board determines that any person
3 on parole is able and willing to fulfill the
4 obligations of a law-abiding citizen without further
5 supervision, the board shall discharge the person from
6 parole. A parole officer shall periodically review
7 all paroles assigned to the parole officer, and when
8 the parole officer determines that any person assigned
9 to the officer is able and willing to fulfill the
10 obligations of a law-abiding citizen without further
11 supervision, the officer may discharge the person from
12 parole after notification and approval of the district
13 director and notification of the board of parole. In
14 any event, discharge from parole shall terminate the
15 person's sentence. If a person has been sentenced to
16 a special sentence under section 903B.0A or 903B.0B,
17 the person may be discharged early from the sentence
18 in the same manner as any other person on parole.
19 However, a person convicted of a violation of section
20 709.3, 709.4, or 709.8 committed on or with a child,
21 or a person serving a sentence under section 902.12,
22 shall not be discharged from parole until the person's
23 term of parole equals the period of imprisonment
24 specified in the person's sentence, less all time
25 served in confinement.

26 Sec. 41. Section 908.5, Code 2005, is amended to
27 read as follows:

28 908.5 DISPOSITION.

29 1. If a violation of parole is established, the
30 administrative parole judge may continue the parole
31 with or without any modification of the conditions of
32 parole. The administrative parole judge may revoke
33 the parole and require the parolee to serve the
34 sentence originally imposed, or may revoke the parole
35 and reinstate the parolee's work release status.

36 2. If the person is serving a special sentence
37 under chapter 903B, the administrative parole judge
38 may revoke the release. Upon the revocation of
39 release, the person shall not serve the entire length
40 of the special sentence imposed, and the revocation
41 shall be for a period not to exceed two years in a
42 correctional institution upon a first revocation and
43 for a period not to exceed five years in a
44 correctional institution upon a second or subsequent
45 revocation.

46 3. The order of the administrative parole judge
47 shall contain findings of fact, conclusions of law,
48 and a disposition of the matter.

49 DIVISION IV
50 DEATH PENALTY

1 Sec. 42. Section 13B.4, Code 2005, is amended by
2 adding the following new subsection:

3 NEW SUBSECTION. 6A. The state public defender
4 shall perform all of the following duties with respect
5 to the appointment of counsel for indigent persons in
6 cases in which a sentence of death may be or is to be
7 imposed:

8 a. Provide or contract with attorneys for
9 appointment as lead counsel and cocounsel to provide
10 legal services in cases where a person is charged with
11 murder in the first degree, kidnapping, and sexual
12 abuse under section 902.15, and the state has given
13 notice of intent to seek the death penalty or in cases
14 in which a sentence of death is to be imposed.

15 b. Conduct or sponsor specialized training
16 programs for attorneys representing persons who may be
17 executed.

18 Sec. 43. Section 216A.133, Code 2005, is amended
19 by adding the following new subsection:

20 NEW SUBSECTION. 8. Review the effects of the
21 reinstatement of the death penalty on arrest,
22 prosecution, conviction, and incarceration rates; law
23 enforcement duties and ability to obtain evidence
24 necessary for arrests; court dockets and workload;
25 prison space; recidivism rates of persons charged with
26 crimes of violence against persons; and other aspects
27 of the criminal justice system. Based on the review
28 and other factors deemed relevant, the council shall
29 make findings and develop recommendations resulting
30 from those findings. Commencing January 1, 2007, the
31 council shall report its findings and any related
32 recommendations annually to the governor and to the
33 general assembly.

34 Sec. 44. NEW SECTION. 602.10111A QUALIFICATIONS
35 OF COUNSEL IN DEATH PENALTY CASES.

36 The supreme court shall prescribe rules which
37 establish minimum standards and procedures by which
38 attorneys may become qualified to provide legal
39 services as lead counsel in cases in which a sentence
40 of death may be or is to be imposed.

41 Sec. 45. NEW SECTION. 812A.1 PROCEDURE TO
42 DETERMINE SANITY OF CONDEMNED INMATE.

43 1. At any time prior to execution of an inmate
44 under section 902.1, if the director of the department
45 of corrections or the counsel for a person who is
46 under a sentence of execution has cause to believe
47 that the inmate is suffering from such a diseased or
48 deranged condition of the mind as to prevent the
49 defendant from knowing the nature and quality of the
50 act the defendant has been convicted of, or from

1 understanding that trial on the offense has taken
2 place and that execution proceedings are about to take
3 place, or to otherwise cause the defendant to lack the
4 capacity to understand the sentence which has been
5 imposed and to participate in any legal proceedings
6 relating to the sentence, the director or counsel may
7 file a request with the court that issued the warrant
8 for execution for a determination of the inmate's
9 sanity. If the district court determines that there
10 is not sufficient reason to believe that the inmate is
11 insane, the court shall enter an order denying the
12 request and shall state the grounds for denying the
13 request. If the court believes that there is
14 sufficient reason to believe that the inmate is
15 insane, the court shall suspend the execution and
16 conduct a hearing to determine the sanity of the
17 inmate.

18 2. At the hearing, the court shall determine the
19 issue of the inmate's sanity. Prior to the hearing,
20 the court shall appoint two licensed physicians or
21 licensed psychologists, or one licensed physician and
22 one licensed psychologist, who are qualified by
23 training and practice, for purposes of conducting a
24 psychiatric or psychological examination of the
25 inmate. The physicians or psychologists shall examine
26 the inmate and report any findings in writing to the
27 court within ten days after the order of examination
28 is issued. The inmate shall have the right to present
29 evidence and cross-examine any witnesses at the
30 hearing. Any statement made by the inmate during the
31 course of any examination provided for in this
32 section, whether or not the inmate consents to the
33 examination, shall not be admitted into evidence
34 against the inmate in any criminal proceeding for
35 purposes other than a determination of the inmate's
36 sanity.

37 3. If, at the conclusion of a hearing held
38 pursuant to this section, the court determines that
39 the inmate is sane, the court shall enter an order
40 setting a date for the inmate's execution, which shall
41 be carried into effect in the same manner as provided
42 in the original sentence. A copy of the order shall
43 be sent to the director of the department of
44 corrections and the governor.

45 4. If, at the conclusion of a hearing held
46 pursuant to this section, the court determines that
47 the inmate is insane, the court shall suspend the
48 execution until further order. At any time after
49 issuance of the order, if the court has sufficient
50 reason to believe that the inmate has become sane, the

1 court shall again determine the sanity of the inmate
2 as provided by this section. Proceedings pursuant to
3 this section may continue to be held at such times as
4 the court orders until it is either determined that
5 the inmate is sane or incurably insane.

6 Sec. 46. NEW SECTION. 814.28 REVIEW OF DEATH
7 SENTENCE.

8 1. In a case in which a sentence of death is
9 imposed, the supreme court shall automatically review
10 the judgment and sentence. The court's review of the
11 case shall be de novo. The case shall not be
12 transferred to the court of appeals.

13 2. A review by the supreme court of a judgment and
14 sentence imposing the punishment of death has priority
15 over all other criminal and other actions pending
16 before the supreme court.

17 3. The supreme court shall review the trial and
18 judgment, and shall separately review the sentencing
19 proceeding. Upon determining that errors did not
20 occur at the trial requiring reversal or modification
21 of the judgment, the supreme court shall proceed to
22 determine if the sentence of death is lawfully
23 imposed. In its review of the sentencing proceeding
24 the supreme court shall determine all of the
25 following:

26 a. Whether the sentence of death was imposed
27 capriciously or under the influence of prejudice or
28 other arbitrary factor.

29 b. Whether the special verdicts returned under
30 section 901.11 are supported by the evidence.

31 c. Whether the sentence of death is excessive or
32 disproportionate to the penalty imposed in similar
33 cases, considering both the crime and the defendant.

34 4. If the supreme court determines that the
35 sentence of death was not lawfully imposed, the court
36 shall set aside the sentence and shall remand the case
37 to the trial court for a second sentencing proceeding
38 to determine if the imposition of death is warranted.

39 5. If the supreme court affirms the judgment and
40 sentence of death, the clerk of the supreme court
41 shall certify the judgment of the supreme court under
42 the seal of the court to the clerk of the trial court.

43 Sec. 47. Section 815.10, Code 2005, is amended by
44 adding the following new subsection:

45 NEW SUBSECTION. 1A. If two attorneys have not
46 already been appointed pursuant to section 13B.4 or
47 13B.9, the court shall appoint, for each indigent
48 person who is charged with murder in the first degree
49 and in which a notice of intent to seek the death
50 penalty has been filed, two attorneys who are

1 qualified under section 602.10111A to represent the
2 person in the murder proceedings and in all state
3 legal proceedings which take place from the time the
4 person is indicted or arraigned until the person is
5 sentenced on the charge. In addition, if at any point
6 in federal postconviction proceedings an indigent
7 person is not afforded court-appointed counsel, the
8 state shall provide counsel to the person to present
9 any claims determined meritorious by the federal court
10 if the person is not otherwise represented by legal
11 counsel. Only private attorneys and public defenders
12 who are qualified to provide representation in cases
13 in which the death penalty may be imposed are eligible
14 for appointment or assignment to a case in which the
15 death penalty may be imposed.

16 Sec. 48. NEW SECTION. 901.11 MURDER PROCEEDINGS
17 -- REQUEST FOR DEATH PENALTY -- PENALTY PROCEEDINGS.

18 1. If a notice of intent to seek the death penalty
19 has been filed, objections to the imposition of the
20 death penalty based upon allegations that a defendant
21 was mentally retarded or mentally ill at the time of
22 the commission of the offense shall be raised within
23 the time provided for the filing of pretrial motions
24 under rule of criminal procedure 2.11, Iowa court
25 rules. The court may, for good cause shown, allow
26 late filing of the motion. Hearing on the motion
27 shall be held prior to trial and the burden of proof
28 shall be on the defendant to prove mental retardation
29 or mental illness by a preponderance of the evidence.
30 However, a rebuttable presumption of mental
31 retardation arises if a defendant has an intelligence
32 quotient of seventy or below. If the court finds that
33 the defendant is mentally retarded, the defendant, if
34 convicted of murder in the first degree, shall not be
35 sentenced to death but shall be sentenced to life
36 imprisonment in the manner provided in section 902.1,
37 subsection 1. A finding by the court that the
38 evidence presented by the defendant at the hearing
39 does not preclude the imposition of the death penalty
40 under this section and section 902.15 shall not
41 preclude the introduction of evidence of mental
42 retardation or mental illness during the penalty
43 proceeding. If the court finds that evidence of
44 mental retardation or mental illness does not preclude
45 imposition of the death penalty, evidence of mental
46 retardation or mental illness may be reviewed by the
47 jury in the penalty proceeding and the jury shall not
48 be informed of the finding in the initial proceeding
49 at any time during the penalty proceeding.

50 2. If at the trial on a charge of murder in the

1 first degree, the state intends to request that the
2 death penalty be imposed under section 902.1,
3 subsection 2, the prosecutor shall file a notice of
4 intent to seek the death penalty, listing the
5 additional factors enumerated under section 902.15
6 that the state intends to establish in support of
7 imposition of the death penalty, at the time of and as
8 part of the information or indictment filed in the
9 case.

10 3. If a notice of intent to seek the death penalty
11 has been filed, the trial shall be conducted in
12 bifurcated proceedings before the same trier of fact.
13 During the initial proceeding, the jury, or the court,
14 if the defendant waives the right to a jury trial,
15 shall decide only whether the defendant is guilty or
16 not guilty of murder in the first degree, kidnapping,
17 and sexual abuse.

18 a. If, in the initial proceeding, the court or
19 jury finds the defendant guilty of, or the defendant
20 pleads guilty to, an offense other than murder in the
21 first degree kidnapping, and sexual abuse, the court
22 shall sentence the defendant in accordance with the
23 sentencing procedures set forth in rule of criminal
24 procedure 2.23, Iowa court rules, and chapters 901
25 through 909, which are applicable to the offense.

26 b. If the court or jury finds the defendant guilty
27 of, or the defendant pleads guilty to, murder in the
28 first degree, kidnapping, and sexual abuse but the
29 prosecuting attorney waives the death penalty, the
30 court shall sentence the defendant to life
31 imprisonment in accordance with the sentencing
32 procedures set forth in rule of criminal procedure
33 2.23, Iowa court rules, and chapters 901 through 909,
34 which are applicable to convictions of murder in the
35 first degree, kidnapping, and sexual abuse.

36 c. If the court or jury finds the defendant guilty
37 of murder in the first degree, kidnapping, and sexual
38 abuse, or a defendant enters a plea of guilty in the
39 initial proceeding, and the prosecuting attorney does
40 not waive imposition of the death penalty, a penalty
41 proceeding shall be held in the manner provided in
42 subsections 4 through 12.

43 4. No sooner than twenty-four hours after a
44 verdict of guilty or a plea of guilty to the charge of
45 murder in the first degree, kidnapping, and sexual
46 abuse is returned in the initial proceeding, a penalty
47 proceeding shall be held to determine whether the
48 defendant shall be sentenced to death or to life
49 imprisonment. The proceeding shall be conducted in
50 the trial court before the trial jury, or the court if

1 the defendant has waived the right to a jury trial or
2 has waived the right for the proceeding to be before
3 the trial jury. Both the state and the defendant
4 shall have the right to present opening statements at
5 the commencement of the penalty proceedings. In the
6 proceeding, evidence relevant to the existence of any
7 aggravating or mitigating circumstances may be
8 presented as follows:

9 a. The state or the defendant may present evidence
10 relevant to the conviction of murder in the first
11 degree and any of the additional factors enumerated in
12 section 902.15 and any aggravating circumstances other
13 than juvenile delinquency adjudications for offenses
14 which carry penalties equivalent to the penalties
15 imposed for simple or serious misdemeanors. The state
16 may introduce evidence of the actual harm caused by
17 the commission of the murder including, but not
18 limited to, evidence relating to the life of the
19 victim and the impact of the loss of the victim to the
20 victim's family and society.

21 b. The defendant may present evidence that the
22 defendant was mentally retarded at the time of the
23 commission of the offense. The burden of proof shall
24 be on the defendant to prove mental retardation by a
25 preponderance of the evidence. However, a rebuttable
26 presumption of mental retardation arises if a
27 defendant has an intelligence quotient of seventy or
28 below.

29 c. The state or the defendant may present evidence
30 relevant to any mitigating circumstances which may
31 exist. Mitigating circumstances may include the
32 following circumstances:

33 (1) The defendant was under the influence of an
34 extreme mental or emotional disturbance insufficient
35 to constitute a defense.

36 (2) The age of the defendant at the time of the
37 murder.

38 (3) The defendant's capacity to appreciate the
39 wrongfulness of the defendant's conduct and to conform
40 that conduct to the requirements of law was
41 significantly impaired as a result of a mental disease
42 or defect or mental retardation, but not to a degree
43 sufficient to constitute a defense.

44 (4) The defendant has no significant history of
45 prior adult criminal activity.

46 (5) The defendant acted under extreme duress or
47 under the substantial domination of another person.

48 (6) The defendant did not directly commit the
49 murder and the defendant did not intend to kill or
50 anticipate that lethal force would be used.

1 (7) Any other factor which is relevant to the
2 defendant's character or record or to the
3 circumstances of the offense.
4 d. The state and the defendant or the defendant's
5 counsel shall be permitted to present and cross-
6 examine witnesses and present arguments for or against
7 a sentence of death. Evidence regarding aggravating
8 and mitigating circumstances shall not be governed by
9 the rules governing admissibility of evidence, except
10 that introduction of evidence secured in violation of
11 the Constitution of the United States or of the
12 Constitution of the State of Iowa shall not be
13 permitted.

14 5. At the conclusion of presentation of evidence
15 in the penalty proceeding, the state and the defendant
16 or the defendant's counsel shall be permitted to make
17 closing arguments, including any rebuttal arguments,
18 in the same manner as in the initial proceeding and
19 the following issues shall be determined by the jury
20 or the court, if there is no jury:

21 a. Whether the aggravating circumstance or
22 circumstances outweigh any one or more mitigating
23 circumstances.

24 b. Whether the defendant shall be sentenced to
25 death.

26 6. A recommendation for a sentence of death shall
27 not be permitted if the recommendation is based on the
28 race, color, religious beliefs, national origin, or
29 sex of the defendant or any victim. After submission
30 of the issues, but prior to the return of a finding in
31 the penalty proceeding, if the matter is tried before
32 a jury, the court shall instruct the jury that in
33 considering whether a sentence of death is justified,
34 it shall not consider race, color, religious beliefs,
35 national origin, or sex of the defendant or of any
36 victim. The court shall further instruct the jury
37 that it shall not return a sentence of death unless it
38 concludes that such a sentence would be recommended no
39 matter what the race, color, religious beliefs,
40 national origin, or sex of the defendant or any victim
41 may be.

42 7. After submission of the issues, but prior to
43 the commencement of the jury deliberations in the
44 penalty proceeding, the court shall instruct the jury
45 that if the defendant is not sentenced to death, the
46 court is required by law to impose a sentence of
47 imprisonment until death without parole. The court
48 shall further instruct the jury that the sentence of
49 imprisonment until death without parole is required by
50 law if the jury fails to reach a unanimous verdict

1 recommending a sentence of death.

2 8. Concurrently with the return of the findings on
3 the issues submitted under subsection 5, the jury, or
4 the court if there is no jury, shall return special
5 verdicts as follows:

6 a. Which aggravating circumstances were
7 established and were considered in reaching the
8 verdict.

9 b. Which mitigating circumstances were established
10 and were considered in reaching the verdict returned
11 on the issue specified in subsection 5, paragraph "a".

12 9. If the jury, or the court if there is no jury,
13 returns a unanimous affirmative finding on each of the
14 issues submitted under subsection 5, paragraphs "a"
15 and "b", the court shall enter a judgment of
16 conviction and shall sentence the defendant to death
17 as provided in section 902.1, subsection 2.

18 10. However, if evidence that the defendant was
19 not a major participant in the commission of the
20 murder and that the defendant's conduct did not
21 manifest a reckless indifference to human life is
22 presented to the jury, or the court, if there is no
23 jury, the jury or the court shall also return a
24 special verdict on the issue. If the jury unanimously
25 determines, or the court, if there is no jury, finds
26 that a preponderance of evidence exists that shows
27 that the defendant was not a major participant in the
28 commission of the murder and that the defendant's
29 conduct did not manifest a reckless indifference to
30 human life, the court shall enter a judgment of
31 conviction and shall sentence the defendant to life
32 imprisonment as provided in section 902.1, subsection
33 1, even if the jury or the court returns unanimous
34 affirmative findings on each of the issues submitted
35 under subsection 5.

36 11. If the jury, or the court, if there is no
37 jury, returns a negative finding on any of the issues
38 submitted under subsection 5, paragraphs "a" and "b",
39 the court shall enter a judgment of conviction and
40 shall sentence the defendant to life imprisonment as
41 provided in section 902.1, subsection 1.

42 12. After a verdict has been rendered it shall be
43 recorded on the jury verdict form and shall be read
44 and recorded in open court. The jurors shall be
45 collectively asked by the court whether the verdict
46 returned is their true and correct verdict. Even
47 though no juror makes any declaration to the contrary,
48 the jury shall, if either party so requests, be polled
49 and each juror shall be separately asked whether the
50 verdict rendered by the jury foreperson is the juror's

1 true and correct verdict. If, upon either the
2 collective or the separate inquiry, any juror denies
3 that the verdict is the juror's verdict, the court
4 shall refuse to accept the verdict. The court may
5 direct inquiry or permit inquiry by counsel to
6 ascertain whether any juror has been subjected to
7 coercion or has become confused during the jury
8 deliberation process. The court may, as appropriate,
9 direct the jury to resume deliberation in the case.
10 If no disagreement on the verdict is expressed by any
11 of the jurors, the court shall discharge the jury.

12 13. This section shall not apply to a defendant
13 who was under the age of eighteen at the time the
14 offense was committed.

15 Sec. 49. Section 902.1, Code 2005, is amended to
16 read as follows:

17 902.1 CLASS "A" FELONY.

18 1. Upon Except as otherwise provided in subsection
19 2, upon a plea of guilty, a verdict of guilty, or a
20 special verdict upon which a judgment of conviction of
21 a class "A" felony may be rendered, the court shall
22 enter a judgment of conviction and shall commit the
23 defendant into the custody of the director of the Iowa
24 department of corrections for the rest of the
25 defendant's life. Nothing in the Iowa corrections
26 code pertaining to deferred judgment, deferred
27 sentence, suspended sentence, or reconsideration of
28 sentence applies to a sentence of life imprisonment
29 for a class "A" felony, and a person convicted of a
30 class "A" felony and sentenced to life imprisonment
31 shall not be released on parole unless the governor
32 commutes the sentence to a term of years.

33 2. Upon return of a plea or verdict of guilty to
34 the offense of murder in the first degree under
35 section 707.2, kidnapping, and sexual abuse, and a
36 return of a verdict in favor of a sentence of death in
37 a penalty proceeding conducted as provided in section
38 901.11, the court shall enter a judgment of conviction
39 and shall commit the defendant into the custody of the
40 director of the Iowa department of corrections. The
41 sentence shall be carried out by the administration of
42 a lethal injection pursuant to rules adopted by the
43 board of corrections. If a defendant, for whom a
44 warrant of execution is issued, is pregnant, the
45 execution shall not take place until after the
46 defendant is no longer pregnant. If a defendant, for
47 whom a warrant of execution is issued, is suffering
48 from such a diseased or deranged condition of the mind
49 as to prevent the defendant from knowing the nature
50 and quality of the act the defendant has been

1 convicted of, or from understanding that trial on the
2 offense has taken place and that execution proceedings
3 are about to take place, or otherwise causes the
4 defendant to lack the capacity to understand the
5 sentence which has been imposed and to participate in
6 any legal proceedings relating to the sentence, the
7 execution shall not take place until after the
8 defendant's capacity is restored. If the director of
9 the department of corrections or the defendant's
10 counsel files a request with the court which issued
11 the warrant of execution, alleging that the defendant
12 suffers from such a diseased or deranged condition, a
13 hearing on the matter shall be held in the manner
14 provided in section 812A.1. If a defendant was under
15 the age of eighteen at the time the offense was
16 committed, the defendant shall be sentenced as
17 provided in subsection 1. For the purposes of this
18 section, "lethal injection" means a continuous
19 intravenous injection of a lethal substance sufficient
20 to cause death.

21 Sec. 50. NEW SECTION. 902.15 FIRST DEGREE MURDER
22 -- ADDITIONAL FACTORS.

23 A person who commits murder in the first degree,
24 who is not mentally retarded or mentally ill, and who
25 is age eighteen or older at the time the offense is
26 committed, shall be eligible for a sentence of death
27 under section 902.1, subsection 2, if the person also
28 kidnaps and commits sexual abuse against the murder
29 victim who was a minor.

30 For purposes of this section, "mentally retarded"
31 means significant subaverage general intellectual
32 functioning accompanied by significant deficits or
33 impairments in adaptive functioning manifested in the
34 developmental period, but no later than the age of
35 eighteen years, and accompanied by deficits in
36 adaptive behavior.

37 For purposes of this section, "mentally ill" means
38 the condition of a person who is suffering from a
39 chronic and persistent serious mental disease or
40 disorder and who, by reason of that condition, lacks
41 sufficient judgment to make responsible decisions
42 regarding treatment and is reasonably likely to injure
43 the person's self or others who may come into contact
44 with the person if the person is allowed to remain at
45 liberty without treatment.

46 Sec. 51. NEW SECTION. 902.16 DATA COLLECTION FOR
47 DEATH PENALTY.

48 1. The supreme court shall collect data on all
49 murder charges in which the death penalty is or was
50 not waived, which are filed and processed in the

1 courts in this state. This data may be used by the
2 supreme court to determine whether death sentences
3 imposed are excessive or disproportionate, or under
4 the influence of prejudice as a result of racial
5 discrimination under section 814.28. The court shall
6 make this data available to litigants in death penalty
7 cases.

8 2. Data collected by public officials concerning
9 factors relevant to the imposition of the death
10 sentence shall be made publicly available.

11 Sec. 52. NEW SECTION. 903C.1 EXECUTIONS --
12 REFUSAL TO PERFORM.

13 An employee of the state who may lawfully perform,
14 assist, or participate in the execution of a person
15 pursuant to section 902.1, and rules adopted by the
16 department of corrections, shall not be required to
17 perform, assist, or participate in the execution.
18 State employees who refuse to perform, assist, or
19 participate in the execution of a person shall not be
20 discriminated against in any way, including, but not
21 limited to, employment, promotion, advancement,
22 transfer, licensing, education, training, or the
23 granting of any privileges or appointments because of
24 the refusal to perform, assist, or participate in the
25 execution.

26 Sec. 53. Section 904.105, Code 2005, is amended by
27 adding the following new subsection:

28 NEW SUBSECTION. 9A. Adopt rules pursuant to
29 chapter 17A pertaining to executions of persons
30 convicted of murder in the first degree. Rules
31 adopted shall include, but are not limited to, rules
32 permitting the witnessing of executions by members of
33 the public and the victim's family. Invitations to
34 witness an execution shall at least be extended to the
35 following representatives of the news media:

36 a. A representative from a wire service serving
37 Iowa.

38 b. A representative from a broadcasting network
39 serving Iowa.

40 c. A representative from a television station
41 located in Iowa.

42 d. A representative from a radio station located
43 in Iowa.

44 e. A representative from a daily newspaper
45 published in Iowa.

46 f. A representative from a weekly newspaper
47 published in Iowa.

48 g. A representative from the news media from the
49 community in which the condemned person resided, if
50 that community is located in Iowa.

1 Sec. 54. Rules of criminal procedure, Iowa court
2 rules, are amended by adding sections 101 through 104
3 of this Act.

4 Sec. 55. NEW RULE. 2. MURDER IN THE FIRST DEGREE
5 -- PROCEDURE.

6 2. (1) If a notice of intent to seek the death
7 penalty has been filed, objections to the imposition
8 of the death penalty based upon allegations that a
9 defendant was mentally retarded at the time of the
10 commission of the offense shall be raised within the
11 time provided for the filing of pretrial motions under
12 R.Cr.P. 2.11, Iowa court rules. The court may, for
13 good cause shown, allow late filing of the motion.
14 Hearing on the motion shall be held prior to trial and
15 the burden of proof shall be on the defendant to prove
16 mental retardation by a preponderance of the evidence.
17 However, a rebuttable presumption of mental
18 retardation arises if a defendant has an intelligence
19 quotient of seventy or below. A finding of the court
20 that the evidence presented by the defendant at the
21 hearing does not preclude the imposition of the death
22 penalty under this rule and Iowa Code section 902.15
23 shall not preclude the introduction of evidence of
24 mental retardation during the penalty proceeding. If
25 the court finds that the evidence presented by the
26 defendant does not preclude the imposition of the
27 death penalty, evidence of mental retardation may be
28 reviewed by the jury during the penalty proceeding and
29 the jury shall not be informed of the finding in the
30 initial proceeding at any time during the penalty
31 proceeding.

32 2. (2) Upon a finding or plea that a defendant
33 is guilty of murder in the first degree in an initial
34 proceeding, if a notice of intent to seek the death
35 penalty has been filed and has not been waived, the
36 court shall conduct a separate penalty proceeding to
37 determine whether the defendant shall be sentenced to
38 death or to life imprisonment. The penalty proceeding
39 shall be conducted in the trial court before the trial
40 jury, or the court, if there is no jury, no sooner
41 than twenty-four hours after the return of the verdict
42 or plea in the initial proceeding. In the penalty
43 proceeding, additional evidence may be presented as to
44 the conviction for murder in the first degree and any
45 additional factor enumerated in Iowa Code section
46 902.15 or any aggravating or mitigating circumstance
47 which may exist. Presentation of evidence which is
48 relevant to the existence of an aggravating or
49 mitigating circumstance shall not be bound by the
50 rules of evidence. This subsection does not authorize

1 the introduction of any evidence secured in violation
2 of the Constitution of the United States or of the
3 Constitution of the State of Iowa. The state and the
4 defendant or the defendant's counsel shall be
5 permitted to cross-examine witnesses and to present
6 arguments for or against a sentence of death.

7 2.__(3) On conclusion of the presentation of the
8 evidence in the penalty proceeding, the state and the
9 defendant or the defendant's counsel shall be
10 permitted to make closing arguments, including any
11 rebuttal arguments, in the same manner as in the
12 initial proceeding and the court shall submit each of
13 the following issues to the jury:

14 a. Whether one or more of those circumstances
15 outweigh any one or more mitigating circumstances.

16 b. Whether the defendant shall be sentenced to
17 death.

18 If the case is not tried to a jury, the court shall
19 determine the issues.

20 2.__(4) The state must prove the issue in rule 2.
21 ____(3)(a) beyond a reasonable doubt, and the jury, or
22 the court if there is no jury, shall return a special
23 verdict of "yes" or "no" on each issue.

24 2.__(5) If the case is tried to a jury, the court
25 shall charge the jury that:

26 a. It shall answer any issue "yes" if it agrees
27 unanimously.

28 b. It shall answer any issue "no" if the jurors
29 unanimously agree that the answer is "no" or if the
30 jurors do not unanimously agree that the answer is
31 "yes".

32 2.__(6) Concurrently with the return of the
33 special verdicts under rule 2.__(4), the jury, or the
34 court if there is no jury, shall also return special
35 verdicts as follows:

36 a. Which aggravating circumstances were
37 established and were considered in reaching the
38 verdict returned on the issue specified in rule
39 2.__(3)(a).

40 b. Which mitigating circumstances were established
41 and were considered in reaching the verdict returned
42 on the issue specified in rule 2.__(3)(a).

43 2.__(7) If the jury, or the court, if there is no
44 jury, returns an affirmative finding on all applicable
45 issues, the court shall sentence the defendant to
46 death. If the jury or the court returns a negative
47 finding on any applicable issue, the court shall
48 sentence the defendant to the custody of the director
49 of the department of corrections for confinement for
50 the rest of the defendant's life.

1 2.____(8) After a verdict has been rendered it
2 shall be recorded on the jury verdict form and shall
3 be read and recorded in open court. The jurors shall
4 be collectively asked by the court whether the verdict
5 returned is their true and correct verdict. Even
6 though no juror makes any declaration to the contrary,
7 the jury shall, if either party so requests, be polled
8 and each juror shall be separately asked whether the
9 verdict rendered by the jury foreperson is the juror's
10 true and correct verdict. If, upon either the
11 collective or the separate inquiry, any juror denies
12 that the verdict is the juror's verdict, the court
13 shall refuse to accept the verdict. The court may
14 direct inquiry or permit inquiry by counsel to
15 ascertain whether any juror has been subjected to
16 coercion or has become confused during the jury
17 deliberation process. The court may, as appropriate,
18 direct the jury to resume deliberation in the case.
19 If no disagreement on the verdict is expressed by any
20 of the jurors, the court shall discharge the jury.

21 2.____(9) Provisions relating to deferred judgment,
22 deferred sentence, suspended sentence, reconsideration
23 of sentence, probation, parole, or work release
24 contained in Iowa Code chapters 901 through 909 do not
25 apply to a conviction of murder in the first degree,
26 kidnapping, and sexual abuse under Iowa Code section
27 902.15 if the defendant is sentenced to death.

28 Sec. 56. NEW RULE. 2.____ AUTOMATIC REVIEW --
29 STAY OF EXECUTION OF JUDGMENT.

30 2.____(1) A judgment of conviction and sentence of
31 death shall be reviewed automatically in the manner
32 provided in Iowa Code section 814.28, and the Iowa
33 supreme court has exclusive jurisdiction of the
34 review.

35 2.____(2) Upon entry of judgment and sentence of
36 death, the trial court shall prepare a complete record
37 and transcript of the action in the manner provided in
38 the rules of criminal procedure and shall docket the
39 record and transcript with the clerk of the supreme
40 court.

41 2.____(3) The execution of judgment of the trial
42 court is stayed as a matter of law from the time of
43 its entry until the judgment of the supreme court is
44 certified to and entered by the trial court. Upon
45 entry of a judgment of the supreme court which affirms
46 the conviction and sentence, the stay of execution of
47 judgment terminates as a matter of law.

48 2.____(4) All court costs required due to the
49 automatic preparation of the record and transcript,
50 docketing with the supreme court, and stay of

1 execution of judgment shall be assessed to the state.

2 Sec. 57. NEW RULE. 2. ISSUANCE OF WARRANT.

3 2. (1) Upon entry by the trial court of the
4 judgment of the supreme court affirming a judgment and
5 sentence of death, a district judge shall within five
6 days of the entry issue a warrant under the seal of
7 the court for the execution of the sentence of death.
8 The warrant shall specifically set forth the offense
9 and the fact of conviction, shall state the judgment
10 and sentence of the court, shall state that the
11 judgment and sentence were affirmed by the supreme
12 court and the date of entry of judgment of the supreme
13 court in the trial court, and shall, subject to the
14 requirements of Iowa Code section 902.1, subsection 2,
15 specify a range of five days for execution of the
16 defendant which shall be not less than fifty nor more
17 than sixty days after the date of entry in the trial
18 court of the judgment of the supreme court affirming
19 the judgment and sentence of death. The warrant shall
20 be directed to the director of the department of
21 corrections commanding the director to cause the
22 warrant to be executed within the dates specified.
23 The trial court shall deliver the warrant to the
24 sheriff of the county in which judgment of conviction
25 was entered and the sheriff shall deliver the warrant
26 to the director of the department of corrections. The
27 director of the department of corrections shall
28 acknowledge receipt of the warrant and the defendant,
29 and the sheriff shall return the acknowledgment to the
30 office of the clerk of the trial court from which the
31 warrant was issued.

32 2. (2) Immediately after issuance of a warrant
33 ordering a sentence of death, the clerk of the trial
34 court issuing the warrant shall transmit by certified
35 mail to the governor a copy of the indictment, the
36 plea, the verdict and special findings, the
37 affirmation of judgment and sentence by the supreme
38 court, and the complete transcript of the trial court.

39 2. (3) Notwithstanding rule 2. (1), if a
40 defendant, for whom a warrant of execution is issued,
41 is pregnant, the execution shall not take place until
42 after the defendant is no longer pregnant.
43 Notwithstanding rule 2. (1), if a defendant, for
44 whom a warrant of execution is issued, is suffering
45 from such a diseased or deranged condition of the mind
46 as to prevent the defendant from knowing the nature
47 and quality of the act the defendant has been
48 convicted of, or from understanding that trial on the
49 offense has taken place and that execution proceedings
50 are about to take place, or to otherwise cause the

1 defendant to lack the capacity to understand the
2 sentence which has been imposed and to participate in
3 any legal proceedings relating to the sentence, the
4 execution shall not take place until after the
5 defendant is no longer suffering from the condition.

6 Sec. 58. NEW RULE. 2. EVIDENCE AT PENALTY
7 PROCEEDING WHERE DEATH SENTENCE REQUESTED.

8 2. (1) At a reasonable time before the
9 commencement of initial proceedings in a first degree
10 murder trial in which a sentence of death has been
11 requested, each party shall file and serve upon the
12 other party the following:

13 a. A list of all aggravating or mitigating
14 circumstances which the party intends to prove during
15 the sentencing proceedings.

16 b. The names of all persons whom the party intends
17 to call as witnesses during the sentencing
18 proceedings.

19 c. Notwithstanding rule 2.14, copies, or for
20 inspection purposes, the location, of all documents,
21 including books, papers, writings, drawings, graphs,
22 charts, photographs, telephone records, and other data
23 compilations from which information can be obtained,
24 or other objects which the party intends to offer into
25 evidence during the sentencing proceedings. If copies
26 are not supplied to opposing counsel, the party shall
27 make the items available for inspection and copying
28 without order of the court.

29 2. (2) In proceedings to determine whether the
30 sentence shall be death or life imprisonment, evidence
31 may be presented as to any matter which the trial
32 court deems relevant to the sentence, including but
33 not limited to the nature, circumstances, and manner
34 of completion of the murder, and the defendant's
35 character, background, history, and mental and
36 physical condition. The trial court shall admit any
37 relevant admissible evidence respecting any
38 aggravating or mitigating circumstances, if the party
39 has included the circumstance on a list provided
40 pursuant to this rule, or good cause is shown for the
41 failure to do so.

42 Sec. 59. EFFECTIVE DATE -- SEVERABILITY.

43 1. This division of this Act takes effect January
44 1, 2006, and applies to offenses committed on or after
45 that date.

46 2. If any provision of this division of this Act
47 or the application thereof to any person is invalid,
48 the invalidity shall not affect the provisions or
49 application of this division of this Act which can be
50 given effect without the invalid provisions or

1 application and to this end, the provisions of this
2 division of this Act are severable.

3 DIVISION V
4 VICTIM RIGHTS

5 Sec. 60. NEW SECTION. 235D.1 CRIMINAL HISTORY
6 CHECK -- APPLICANTS AT DOMESTIC ABUSE OR SEXUAL
7 ASSAULT CENTERS.

8 An applicant for employment at a domestic abuse or
9 sexual assault center shall be subject to a national
10 criminal history check through the federal bureau of
11 investigation. The domestic abuse or sexual assault
12 center shall request the criminal history check and
13 shall provide the applicant's fingerprints to the
14 department of public safety for submission through the
15 state criminal history repository to the federal
16 bureau of investigation. The applicant shall
17 authorize release of the results of the criminal
18 history check to the domestic abuse or sexual assault
19 center. The applicant shall pay the actual cost of
20 the fingerprinting and criminal history check, if any.
21 Unless the criminal history check was completed within
22 the ninety calendar days prior to the date the
23 application is received by the domestic abuse or
24 sexual assault center, the center shall reject and
25 return the application to the applicant. The results
26 of a criminal history check conducted pursuant to this
27 subsection shall not be considered a public record
28 under chapter 22. For purposes of this section,
29 "domestic abuse or sexual assault center" means a
30 facility which is used to house victims of domestic
31 abuse or sexual assault, and is owned, operated, or
32 maintained by a nonprofit organization.

33 Sec. 61. NEW SECTION. 709.22 PREVENTION OF
34 FURTHER SEXUAL ASSAULT -- NOTIFICATION OF RIGHTS.

35 If a peace officer has reason to believe that a
36 sexual assault as defined in section 915.40 has
37 occurred, the officer shall use all reasonable means
38 to prevent further violence including but not limited
39 to the following:

40 1. If requested, remaining on the scene of the
41 alleged sexual assault as long as there is a danger to
42 the victim's physical safety without the presence of a
43 peace officer, including but not limited to staying in
44 the dwelling unit, or if unable to remain on the
45 scene, assisting the victim in leaving the residence.

46 2. Assisting a victim in obtaining medical
47 treatment necessitated by the sexual assault,
48 including providing assistance to the victim in
49 obtaining transportation to the emergency room of the
50 nearest hospital.

1 3. Providing a victim with immediate and adequate
2 notice of the victim's rights. The notice shall
3 consist of handing the victim a copy of the following
4 statement written in English and Spanish, asking the
5 victim to read the statement, and asking whether the
6 victim understands the rights:

7 "You have the right to ask the court for help with
8 any of the following on a temporary basis:

9 a. Keeping your attacker away from you, your home,
10 and your place of work.

11 b. The right to stay at your home without
12 interference from your attacker.

13 c. The right to seek a no-contact order under
14 section 709.20 or 915.22, if your attacker is arrested
15 for sexual assault.

16 You have the right to register as a victim with the
17 county attorney under section 915.12.

18 You have the right to file a complaint for threats,
19 assaults, or other related crimes.

20 You have the right to seek restitution against your
21 attacker for harm to you or your property.

22 You have the right to apply for victim
23 compensation.

24 You have the right to contact the county attorney
25 or local law enforcement to determine the status of
26 your case.

27 If you are in need of medical treatment, you have
28 the right to request that the officer present assist
29 you in obtaining transportation to the nearest
30 hospital or otherwise assist you.

31 You have the right to a sexual assault examination
32 performed at state expense.

33 If you believe that police protection is needed for
34 your physical safety, you have the right to request
35 that the officer present remain at the scene until you
36 and other affected parties can leave or until safety
37 is otherwise ensured."

38 The notice shall also contain the telephone numbers
39 of shelters, support groups, and crisis lines
40 operating in the area.

41 Sec. 62. Section 915.10, subsections 1 and 2, Code
42 2005, are amended to read as follows:

43 1. "Notification" means mailing by regular mail or
44 providing for hand delivery of appropriate information
45 or papers. However, this notification procedure does
46 not prohibit an office, agency, or department from
47 also providing appropriate information to a registered
48 victim by telephone, electronic mail, or other means.

49 2. "Registered" means having provided the county
50 attorney with the victim's written request for

1 registration and current mailing address and telephone
2 number. If an automated victim notification system is
3 implemented pursuant to section 915.10A, "registered"
4 also means having filed a request for registration
5 with the system.

6 Sec. 63. NEW SECTION. 915.10A AUTOMATED VICTIM
7 NOTIFICATION SYSTEM.

8 1. An automated victim notification system may be
9 utilized to assist public officials in informing crime
10 victims or other interested persons as provided in
11 this subchapter and where otherwise specifically
12 provided. The system shall disseminate the
13 information to registered users through telephonic,
14 electronic, or other means of access.

15 2. An office, agency, or department may satisfy a
16 notification obligation to registered victims required
17 by this subchapter through participation in the system
18 to the extent information is available for
19 dissemination through the system. Nothing in this
20 section shall relieve a notification obligation under
21 this subchapter due to the unavailability of
22 information for dissemination through the system.

23 3. Notwithstanding section 232.147, information
24 concerning juveniles charged with a felony offense
25 shall be released to the extent necessary to comply
26 with this section.

27 Sec. 64. Section 915.11, Code 2005, is amended to
28 read as follows:

29 915.11 INITIAL NOTIFICATION BY LAW ENFORCEMENT.

30 A local police department or county sheriff's
31 department shall advise a victim of the right to
32 register with the county attorney, and shall provide a
33 request-for-registration form to each victim. If an
34 automated victim notification system is available
35 pursuant to section 915.10A, a local police department
36 or county sheriff's department shall provide a
37 telephone number and website to each victim to
38 register with the system.

39 Sec. 65. Section 915.12, Code 2005, is amended to
40 read as follows:

41 915.12 REGISTRATION.

42 ~~1. The county attorney shall be the sole registrar~~
43 ~~of victims under this subchapter.~~

44 ~~2.~~ 1. A victim may register by filing a written
45 request-for-registration form with the county
46 attorney. The county attorney shall notify the
47 victims in writing and advise them of their
48 registration and rights under this subchapter.

49 ~~3.~~ The county attorney shall provide a registered
50 victim list to the offices, agencies, and departments

1 required to provide information under this subchapter
2 for notification purposes.

3 2. If an automated victim notification system is
4 available pursuant to section 915.10A, a victim or
5 other interested person may register with the system
6 by filing a request for registration through written,
7 telephonic, or electronic means.

8 ~~4.~~ 3. Notwithstanding chapter 22 or any other
9 contrary provision of law, a victim's or other
10 interested person's registration shall be strictly
11 maintained in a separate confidential file or other
12 confidential medium, and shall be available only to
13 the offices, agencies, and departments required to
14 provide information under this subchapter.

15 Sec. 66. Section 915.29, Code 2005, is amended by
16 adding the following new unnumbered paragraph:

17 NEW UNNUMBERED PARAGRAPH. The notification
18 required pursuant to this section may occur through
19 the automated victim notification system referred to
20 in section 915.10A to the extent such information is
21 available for dissemination through the system.

22 Sec. 67. Section 915.45, Code 2005, is amended by
23 adding the following new unnumbered paragraph:

24 NEW UNNUMBERED PARAGRAPH. The notification
25 required pursuant to this section may occur through
26 the automated victim notification system referred to
27 in section 915.10A to the extent such information is
28 available for dissemination through the system.

29 DIVISION VI

30 TASK FORCE

31 Sec. 68. SEX OFFENDER TREATMENT AND SUPERVISION
32 TASK FORCE.

33 1. The division of criminal and juvenile justice
34 planning shall establish a task force to study and
35 make periodic recommendations for treating and
36 supervising sex offenders in correctional institutions
37 and in the community. The task force shall file a
38 report with recommendations with the general assembly
39 by January 15, 2006. The task force shall study the
40 effectiveness of electronic monitoring and the
41 potential effects and costs associated with the
42 special sentence created in this Act. The task force
43 shall study risk assessment models created for sex
44 offenders. The task force shall also review this
45 state's efforts and the efforts of other states to
46 implement treatment programs and make recommendations
47 as to the best treatment options available for sex
48 offenders. The task force shall also develop a plan
49 to integrate state government databases for the
50 purpose of updating addresses of persons on the sex

1 offender registry.

2 2. Members of the task force shall include
3 representatives of the following state agencies and
4 organizations:

5 a. One representative of the department of human
6 services.

7 b. One representative of the department of public
8 safety.

9 c. One representative of the Iowa state sheriffs
10 and deputies association.

11 d. One representative of the Iowa county attorneys
12 association.

13 e. One representative of the department of
14 corrections.

15 f. One representative of the board of parole.

16 g. One representative of a judicial district
17 department of correctional services.

18 h. One representative of the department of
19 justice.

20 i. One representative of the state public
21 defender.

22 j. One representative of the Iowa coalition
23 against sexual assault.

24 DIVISION VII

25 STATE MANDATE

26 Sec. 69. IMPLEMENTATION OF ACT. Section 25B.2,
27 subsection 3, shall not apply to this Act."

28 2. Title page, by striking lines 1 through 5 and
29 inserting the following: "An Act relating to criminal
30 sentencing, victim notification, and the sex offender
31 registry, including establishing the death penalty,
32 and establishing a special sentence for certain
33 offenders, requiring DNA testing of certain offenders,
34 requiring sex offender treatment in order to
35 accumulate earned time, establishing a sex offender
36 treatment and supervision task force, providing
37 penalties, and providing an effective date and for the
38 Act's applicability."

By LARRY McKIBBEN
JEFF LAMBERTI
JERRY BEHN
JEFF ANGELO
JAMES SEYMOUR
PAUL McKINLEY
NANCY BOETTGER

RON WIECK
PAT WARD
BOB BRUNKHORST
STEVE KETTERING
JAMES HAHN
STEWART IVERSON, Jr.

S-3184

1 Amend the amendment, S-3182, to House File 619, as
 2 amended, passed, and reprinted by the House, as
 3 follows:

4 1. Page 9, by striking lines 16 through 40.
 5 2. Page 12, by striking line 22.
 6 3. Page 12, line 23, by inserting after the words
 7 "county sheriff" the following: "or police
 8 department".

9 4. Page 12, by striking lines 25 through 31.

10 5. Page 12, by inserting before line 32 the
 11 following:

12 "Sec. _____. Section 692A.13, subsection 2,
 13 paragraph b, Code 2005, is amended to read as follows:

14 b. The general public, including public and
 15 private agencies, organizations, public places, ~~public~~
 16 ~~and private schools~~, child care facilities, religious
 17 and youth organizations, neighbors, neighborhood
 18 associations, community meetings, and employers.
 19 Registry information may be distributed to the public
 20 through printed materials, visual or audio press
 21 releases, radio communications, or through a criminal
 22 or juvenile justice agency's web page.

23 Sec. _____. Section 692A.13, Code 2005, is amended
 24 by adding the following new subsection:

25 NEW SUBSECTION. 2A. When a person required to
 26 register under this chapter moves into a school
 27 district or moves within a school district, the county
 28 sheriff of the county of the person's new residence
 29 shall provide relevant information from the sex
 30 offender registry to the administrative office of the
 31 school district in which the person required to
 32 register resides."

33 6. Page 22, line 21, by striking the word
 34 "degree" and inserting the following: "degree,".

35 7. Page 29, line 2, by striking the word and
 36 figures "101 through 104" and inserting the following:
 37 "55 through 58".

38 8. Page 29, by striking line 4 and inserting the
 39 following:

40 "Sec. _____. NEW RULE. 2. DEATH PENALTY".

41 9. Page 36, line 10, by inserting after the word
 42 "victims" the following: ", the victim's family,".

43 10. Page 37, line 4, by inserting after the word
 44 "victim" the following: ", the victim's family,".

45 11. Page 37, by striking lines 9 and 10 and
 46 inserting the following: "contrary provision of law,
 47 a victim's the registration of a victim, victim's
 48 family, or other interested person shall be strictly".

By LARRY MCKIBBEN

S-3184 FILED APRIL 27, 2005

ADOPTED

S-3185

1 Amend House File 619, as amended, passed, and
2 reprinted by the House, as follows:

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

5 "DIVISION I
6 DNA PROFILING

7 Section 1. NEW SECTION. 81.1 DEFINITIONS.

8 As used in this chapter, unless the context
9 otherwise requires:

10 1. "DNA" means deoxyribonucleic acid.

11 2. "DNA databank" means the repository for DNA
12 samples obtained pursuant to section 81.4.

13 3. "DNA database" means the collection of DNA
14 profiles and DNA records.

15 4. "DNA profile" means the objective form of the
16 results of DNA analysis performed on a DNA sample.
17 The results of all DNA identification analysis on an
18 individual's DNA sample are also collectively referred
19 to as the DNA profile of an individual.

20 5. "DNA profiling" means the procedure established
21 by the division of criminal investigation, department
22 of public safety, for determining a person's genetic
23 identity.

24 6. "DNA record" means the DNA sample and DNA
25 profile, and other records in the DNA database and DNA
26 data bank used to identify a person.

27 7. "DNA sample" means a biological sample provided
28 by any person required to submit a DNA sample or a DNA
29 sample submitted for any other purpose under section
30 81.4.

31 8. "Person required to submit a DNA sample" means
32 a person convicted, adjudicated delinquent, receiving
33 a deferred judgment, or found not guilty by reason of
34 insanity of an offense requiring DNA profiling
35 pursuant to section 81.2. "Person required to submit
36 a DNA sample" also means a person determined to be a
37 sexually violent predator pursuant to section 229A.7.

38 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO
39 SUBMIT A DNA SAMPLE.

40 1. A person who receives a deferred judgment for a
41 felony or against whom a judgment or conviction for a
42 felony has been entered shall be required to submit a
43 DNA sample for DNA profiling pursuant to section 81.4.

44 2. A person determined to be a sexually violent
45 predator pursuant to chapter 229A shall be required to
46 submit a DNA sample for DNA profiling pursuant to
47 section 81.4 prior to discharge or placement in a
48 transitional release program.

49 3. A person found not guilty by reason of insanity
50 of an offense that requires DNA profiling shall be

S-3185

1 required to submit a DNA sample for DNA profiling
2 pursuant to section 81.4 as part of the person's
3 treatment management program.

4 4. A juvenile adjudicated delinquent of an offense
5 that requires DNA profiling of an adult offender shall
6 be required to submit a DNA sample for DNA profiling
7 pursuant to section 81.4 as part of the disposition of
8 the juvenile's case.

9 5. An offender placed on probation shall
10 immediately report to the judicial district department
11 of correctional services after sentencing so it can be
12 determined if the offender has been convicted of an
13 offense requiring DNA profiling. If it is determined
14 by the judicial district that DNA profiling is
15 required, the offender shall immediately submit a DNA
16 sample.

17 6. A person required to register as a sex
18 offender.

19 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA
20 DATABASE AND DNA DATABANK.

21 1. A state DNA database and a state DNA databank
22 are established under the control of the division of
23 criminal investigation, department of public safety.
24 The division of criminal investigation shall conduct
25 DNA profiling of a DNA sample submitted in accordance
26 with this section.

27 2. A DNA sample shall be submitted, and the
28 division of criminal investigation shall store and
29 maintain DNA records in the DNA database and DNA
30 databank for persons required to submit a DNA sample.

31 3. A DNA sample may be submitted, and the division
32 of criminal investigation shall store and maintain DNA
33 records in the DNA database and DNA databank for any
34 of the following:

- 35 a. Crime scene evidence and forensic casework.
- 36 b. A relative of a missing person.
- 37 c. An anonymous DNA profile used for forensic
38 validation, forensic protocol development, or quality
39 control purposes, or for the establishment of a
40 population statistics database.

41 4. A fingerprint record of a person required to
42 submit a DNA sample shall also be submitted to the
43 division of criminal investigation with the DNA sample
44 to verify the identity of the person required to
45 submit a DNA sample.

46 Sec. 4. NEW SECTION. 81.4 COLLECTING,
47 SUBMITTING, ANALYZING, IDENTIFYING, AND STORING DNA
48 SAMPLES AND DNA RECORDS.

49 1. The division of criminal investigation shall
50 adopt rules for the collection, submission, analysis,

1 identification, storage, and disposition of DNA
2 records.

3 2. A supervising agency having control, custody,
4 or jurisdiction over a person shall collect a DNA
5 sample from a person required to submit a DNA sample.
6 The supervising agency shall collect a DNA sample,
7 upon admittance to the pertinent institution or
8 facility, of the person required to submit a DNA
9 sample or at a determined date and time set by the
10 supervising agency. If a person required to submit a
11 DNA sample is confined at the time a DNA sample is
12 required, the person shall submit a DNA sample as soon
13 as practicable. If a person required to submit a DNA
14 sample is not confined after the person is required to
15 submit a DNA sample, the supervising agency shall
16 determine the date and time to collect the DNA sample.

17 3. A person required to submit a DNA sample who
18 refuses to submit a DNA sample may be subject to
19 contempt proceedings pursuant to chapter 665 until the
20 DNA sample is submitted.

21 4. The division of criminal investigation shall
22 conduct DNA profiling on a DNA sample or may contract
23 with a private entity to conduct the DNA profiling.

24 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL
25 LIABILITY -- LIMITATION.

26 A person who collects a DNA sample shall not be
27 civilly or criminally liable for the collection of the
28 DNA sample if the person performs the person's duties
29 in good faith and in a reasonable manner according to
30 generally accepted medical practices or in accordance
31 with the procedures set out in the administrative
32 rules of the department of public safety adopted
33 pursuant to section 81.4.

34 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

35 1. A person who knowingly or intentionally does
36 any of the following commits an aggravated
37 misdemeanor:

38 a. Discloses any part of a DNA record to a person
39 or agency that is not authorized by the division of
40 criminal investigation to have access to the DNA
41 record.

42 b. Uses or obtains a DNA record for a purpose
43 other than what is authorized under this chapter.

44 2. A person who knowingly or intentionally alters
45 or attempts to alter a DNA sample, falsifies the
46 source of a DNA sample, or materially alters a
47 collection container used to collect the DNA sample,
48 commits a class "D" felony.

49 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST
50 NOT INVALIDATED.

1 The detention, arrest, or conviction of a person
2 based upon a DNA database match is not invalidated if
3 it is determined that the DNA sample or DNA profile
4 was obtained or placed into the DNA database by
5 mistake or error.

6 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

7 1. A DNA record shall be considered a confidential
8 record and disclosure of a DNA record is only
9 authorized pursuant to this section.

10 2. Confidential DNA records under this section may
11 be released to the following agencies for law
12 enforcement identification purposes:

13 a. Any criminal or juvenile justice agency as
14 defined in section 692.1.

15 b. Any criminal or juvenile justice agency in
16 another jurisdiction that meets the definition of a
17 criminal or juvenile justice agency as defined in
18 section 692.1.

19 3. The division of criminal investigation shall
20 share the DNA record information with the appropriate
21 federal agencies for use in a national DNA database.

22 4. A DNA record or other forensic information
23 developed pursuant to this chapter may be released for
24 use in a criminal or juvenile delinquency proceeding
25 in which the state is a party and where the DNA record
26 or forensic information is relevant and material to
27 the subject of the proceeding. Such a record or
28 information may become part of a public transcript or
29 other public recording of such a proceeding.

30 5. A DNA record or other forensic information may
31 be released pursuant to a court order for criminal
32 defense purposes to a defendant, who shall have access
33 to DNA samples and DNA profiles related to the case in
34 which the defendant is charged.

35 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA
36 RECORDS.

37 1. A person whose DNA record has been included in
38 the DNA database or DNA databank established pursuant
39 to section 81.3 may request, in writing to the
40 division of criminal investigation, expungement of the
41 DNA record from the DNA database and DNA databank
42 based upon the person's conviction, adjudication, or
43 civil commitment which caused the submission of the
44 DNA sample being reversed on appeal and the case
45 dismissed. The written request shall contain a
46 certified copy of the final court order reversing the
47 conviction, adjudication, or civil commitment, and a
48 certified copy of the dismissal, and any other
49 information necessary to ascertain the validity of the
50 request.

1 2. The division of criminal investigation, upon
2 receipt of a written request that validates reversal
3 on appeal of a person's conviction, adjudication, or
4 commitment, and subsequent dismissal of the case, or
5 upon receipt of a written request by a person who
6 voluntarily submitted a DNA sample under section 81.3,
7 subsection 3, paragraph "b", or upon receipt of a
8 written request by a person who voluntarily submitted
9 a DNA sample pursuant to section 81.3, subsection 3,
10 paragraph "b", shall expunge all of the DNA records
11 and identifiable information of the person in the DNA
12 database and DNA databank. However, if the division
13 of criminal investigation determines that the person
14 is otherwise obligated to submit a DNA sample, the DNA
15 records shall not be expunged. If the division of
16 criminal investigation denies an expungement request,
17 the division shall notify the person requesting the
18 expungement of the decision not to expunge the DNA
19 record and the reason supporting its decision. The
20 division of criminal investigation decision is subject
21 to judicial review pursuant to chapter 17A. The
22 department of public safety shall adopt rules
23 governing the expungement procedure and a review
24 process.

25 3. The division of criminal investigation is not
26 required to expunge or destroy a DNA record pursuant
27 to this section, if expungement or destruction of the
28 DNA record would destroy evidence related to another
29 person.

30 Sec. 10. NEW SECTION. 81.10 DNA PROFILING AFTER
31 CONVICTION.

32 1. A defendant who has been convicted of a felony
33 and who has not been required to submit a DNA sample
34 for DNA profiling may make a motion to the court for
35 an order to require that DNA analysis be performed on
36 evidence collected in the case for which the person
37 stands convicted.

38 2. The motion shall state the following:

39 a. The specific crimes for which the defendant
40 stands convicted in this case.

41 b. The facts of the underlying case, as proven at
42 trial or admitted to during a guilty plea proceeding.

43 c. Whether any of the charges include sexual abuse
44 or involve sexual assault, and if so, whether a sexual
45 assault examination was conducted and evidence
46 preserved, if known.

47 d. Whether identity was at issue or contested by
48 the defendant.

49 e. Whether the defendant offered an alibi, and if
50 so, testimony corroborating the alibi and, from whom.

- 1 f. Whether eyewitness testimony was offered, and
- 2 if so from whom.
- 3 g. Whether any issues of police or prosecutor
- 4 misconduct have been raised in the past or are being
- 5 raised by the motion.
- 6 h. The type of inculpatory evidence admitted into
- 7 evidence at trial or admitted to during a guilty plea
- 8 proceeding.
- 9 i. Whether blood testing or other biological
- 10 evidence testing was conducted previously in
- 11 connection with the case and, if so, by whom and to
- 12 the result, if known.
- 13 j. What biological evidence exists and, if known,
- 14 the agency or laboratory storing the evidence that the
- 15 defendant seeks to have tested.
- 16 k. Why the requested analysis of DNA evidence is
- 17 material to the issue in the case and not merely
- 18 cumulative or impeaching.
- 19 l. Why the DNA evidence would have changed the
- 20 outcome of the trial or invalidated a guilty plea if
- 21 DNA profiling had been conducted prior to the
- 22 conviction.
- 23 3. A motion filed under this section shall be
- 24 filed in the county where the defendant was convicted,
- 25 and notice of the motion shall be served by certified
- 26 mail upon the county attorney and, if known, upon the
- 27 state, local agency, or laboratory holding evidence
- 28 described in subsection 2, paragraph "k". The county
- 29 attorney shall have sixty days to file an answer to
- 30 the motion.
- 31 4. Any DNA profiling of the defendant or other
- 32 biological evidence testing conducted by the state or
- 33 by the defendant shall be disclosed and the results of
- 34 such profiling or testing described in the motion or
- 35 answer.
- 36 5. If the evidence requested to be tested was
- 37 previously subjected to DNA or other biological
- 38 analysis by either party, the court may order the
- 39 disclosure of the results of such testing, including
- 40 laboratory reports, notes, and underlying data, to the
- 41 court and the parties.
- 42 6. The court may order a hearing on the motion to
- 43 determine if evidence should be subjected to DNA
- 44 analysis.
- 45 7. The court shall grant the motion if all of the
- 46 following apply:
- 47 a. The evidence subject to DNA testing is
- 48 available and in a condition that will permit
- 49 analysis.
- 50 b. A sufficient chain of custody has been

1 established for the evidence.

2 c. The identity of the person who committed the
3 crime for which the defendant was convicted was a
4 significant issue in the crime for which the defendant
5 was convicted.

6 d. The evidence subject to DNA analysis is
7 material to, and not merely cumulative or impeaching
8 of, evidence included in the trial record or admitted
9 to at a guilty plea proceeding.

10 e. DNA analysis of the evidence would raise a
11 reasonable probability that the defendant would not
12 have been convicted if DNA profiling had been
13 available at the time of the conviction and had been
14 conducted prior to the conviction.

15 8. Upon the court granting a motion filed pursuant
16 to this section, DNA analysis of evidence shall be
17 conducted within the guidelines generally accepted by
18 the scientific community. The defendant shall provide
19 DNA samples for testing if requested by the state.

20 9. Results of DNA analysis conducted pursuant to
21 this section shall be reported to the parties and to
22 the court and may be provided to the board of parole,
23 department of corrections, and criminal and juvenile
24 justice agencies, as defined in section 692.1, for use
25 in the course of investigations and prosecutions, and
26 for consideration in connection with requests for
27 parole, pardon, reprieve, and commutation. DNA
28 samples obtained pursuant to this section may be
29 included in the DNA databank, and DNA profiles and DNA
30 records developed pursuant to this section may be
31 included in the DNA database.

32 10. A criminal or juvenile justice agency, as
33 defined in section 692.1, shall maintain DNA samples
34 and evidence that could be tested for DNA for a period
35 of three years beyond the limitations for the
36 commencement of criminal actions as set forth in
37 chapter 802. This section does not create a cause of
38 action for damages or a presumption of spoliation in
39 the event evidence is no longer available for testing.

40 11. If the court determines a defendant who files
41 a motion under this section is indigent, the defendant
42 shall be entitled to appointment of counsel as
43 provided in chapter 815.

44 12. If the court determines after DNA analysis
45 ordered pursuant to this section that the results
46 indicate conclusively that the DNA profile of the
47 defendant matches the profile from the analyzed
48 evidence used against the defendant, the court may
49 order the defendant to pay the costs of these
50 proceedings, including costs of all testing, court

1 costs, and costs of court-appointed counsel, if any.
 2 Sec. 11. Section 229A.7, Code 2005, is amended by
 3 adding the following new subsection:
 4 NEW SUBSECTION. 5A. If the court or jury
 5 determines that the respondent is a sexually violent
 6 predator, the court shall order the respondent to
 7 submit a DNA sample for DNA profiling pursuant to
 8 section 81.4.

9 Sec. 12. Section 232.52, Code 2005, is amended by
 10 adding the following new subsection:

11 NEW SUBSECTION. 10. The court shall order a
 12 juvenile adjudicated a delinquent for an offense that
 13 requires DNA profiling under section 81.2 to submit a
 14 DNA sample for DNA profiling pursuant to section 81.4.

15 Sec. 13. Section 669.14, Code 2005, is amended by
 16 adding the following new subsection:

17 NEW SUBSECTION. 15. Any claim arising from or
 18 related to the collection of a DNA sample for DNA
 19 profiling pursuant to section 81.4 or a DNA profiling
 20 procedure performed by the division of criminal
 21 investigation, department of public safety.

22 Sec. 14. Section 901.5, subsection 8A, Code 2005,
 23 is amended to read as follows:

24 8A. a. The court shall order DNA profiling of a
 25 defendant convicted of an offense that requires
 26 profiling under section ~~13.10~~ 81.2.

27 b. Notwithstanding section ~~13.10~~ 81.2, the court
 28 may order the defendant to provide a ~~physical specimen~~
 29 DNA sample to be submitted for DNA profiling if
 30 appropriate. In determining the appropriateness of
 31 ordering DNA profiling, the court shall consider the
 32 deterrent effect of DNA profiling, the likelihood of
 33 repeated offenses by the defendant, and the
 34 seriousness of the offense.

35 Sec. 15. Section 906.4, unnumbered paragraph 3,
 36 Code 2005, is amended to read as follows:

37 ~~Notwithstanding section 13.10, the~~ The board may
 38 order the defendant to provide a physical specimen to
 39 be submitted for DNA profiling as a condition of
 40 parole or work release, if ~~appropriate~~ a DNA profile
 41 has not been previously conducted pursuant to chapter
 42 81. In determining the appropriateness of ordering
 43 DNA profiling, the board shall consider the deterrent
 44 effect of DNA profiling, the likelihood of repeated
 45 offenses by the defendant, and the seriousness of the
 46 offense.

47 Sec. 16. 2002 Iowa Acts, chapter 1080, is
 48 repealed.

49 Sec. 17. Section 13.10, Code 2005, is repealed.

50 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE

1 PRIOR TO EFFECTIVE DATE OF THIS DIVISION OF THIS ACT.
2 A person convicted, adjudicated a delinquent, civilly
3 committed as a sexually violent predator, or found not
4 guilty by reason of insanity, prior to the effective
5 date of this Act, who would otherwise be required to
6 submit a DNA sample under this Act, and who is under
7 the custody, control, or jurisdiction of a supervising
8 agency, shall submit a DNA sample prior to being
9 released from the supervising agency's custody,
10 control, or jurisdiction.

11 Sec. 19. EFFECTIVE DATE. This division of this
12 Act, being deemed of immediate importance, takes
13 effect upon enactment.

14 DIVISION II

15 SEX OFFENDER REGISTRY AND TREATMENT

16 Sec. 20. Section 692A.1, subsection 8, Code 2005,
17 is amended to read as follows:

18 8. "Residence" means the place where a person
19 sleeps, which may include more than one location, and
20 may be mobile or transitory, including a shelter or
21 group home.

22 Sec. 21. Section 692A.2, Code 2005, is amended by
23 adding the following new subsection:

24 NEW SUBSECTION. 1A. If a person is required to
25 register for a period of ten years under subsection 1
26 and the period under subsection 1 has expired, the
27 person shall be required to remain on the registry if
28 the person has been sentenced to a special sentence as
29 required under section 903B.0A or 903B.0B, for a
30 period equal to the term of the special sentence.

31 Sec. 22. NEW SECTION. 692A.2B RESTRICTIONS ON
32 RESIDENCY NEAR CHILD CARE FACILITIES OR SCHOOLS.

33 1. For purposes of this section, "person" means a
34 person who is required to register under this chapter.

35 2. A person shall not reside within one thousand
36 feet of the real property comprising a public or
37 nonpublic elementary or secondary school or a child
38 care facility.

39 3. A person who resides within one thousand feet
40 of the real property comprising a public or nonpublic
41 elementary or secondary school, or a child care
42 facility, commits an aggravated misdemeanor.

43 4. A person residing within one thousand feet of
44 the real property comprising a public or nonpublic
45 elementary or secondary school or a child care
46 facility does not commit a violation of this section
47 if any of the following apply:

48 a. The person is required to serve a sentence at a
49 jail, prison, juvenile facility, or other correctional
50 institution or facility.

- 1 b. The person is subject to an order of commitment
- 2 under chapter 229A.
- 3 c. The person has established a residence prior to
- 4 July 1, 2005, or a school or child care facility is
- 5 newly located on or after July 1, 2005.
- 6 d. The person is a minor or a ward under a
- 7 guardianship.
- 8 Sec. 23. Section 692A.4, Code 2005, is amended to
- 9 read as follows:

10 692A.4 VERIFICATION OF ADDRESS AND TAKING OF
11 PHOTOGRAPH.

- 12 1. The address of a person required to register
- 13 under this chapter shall be verified annually as
- 14 follows:
 - 15 a. On a date which falls within the month in which
 - 16 the person was initially required to register, the
 - 17 department shall mail a verification form to the last
 - 18 reported address of the person. Verification forms
 - 19 shall not be forwarded to the person who is required
 - 20 to register under this chapter if the person no longer
 - 21 resides at the address, but shall be returned to the
 - 22 department.
 - 23 b. The person shall complete and mail the
 - 24 verification to the department within ten days of
 - 25 receipt of the form.
 - 26 c. The verification form shall be signed by the
 - 27 person, and state the address at which the person
 - 28 resides. If the person is in the process of changing
 - 29 residences, the person shall state that fact as well
 - 30 as the old and new addresses or places of residence.
- 31 2. Verification of address for a person who has
- 32 been convicted of an offense under the laws of this
- 33 state or of another state which would qualify the
- 34 person as a sexually violent predator shall be
- 35 accomplished in the same manner as in subsection 1,
- 36 except that the verification shall be done every three
- 37 months at times established by the department.
- 38 3. A photograph of a person required to register
- 39 under this chapter shall be updated, at a minimum,
- 40 annually. When the department mails the address
- 41 verification notice in subsection 1, the department
- 42 shall also enclose a form informing the person to
- 43 annually submit to being photographed by the sheriff
- 44 of the county of the person's residence within ten
- 45 days of receipt of the address verification form. The
- 46 sheriff shall send the updated photograph to the
- 47 department within ten days of the photograph being
- 48 taken and the department shall post the updated
- 49 photograph on the sex offender registry's web page.
- 50 The sheriff may require the person to submit to being

1 photographed by the sheriff more than once a year by
2 mailing another notice informing the person to submit
3 to being photographed.

4 Sec. 24. NEW SECTION. 692A.4A ELECTRONIC
5 MONITORING.

6 A person required to register under this chapter
7 who is placed on probation, parole, work release,
8 special sentence, or any other type of conditional
9 release, may be supervised by an electronic tracking
10 and monitoring system in addition to any other
11 conditions of supervision.

12 Sec. 25. Section 692A.5, subsection 1, paragraph
13 h, Code 2005, is amended to read as follows:

14 h. Inform the person, if the person's residency is
15 restricted under section 692A.2A, that the person
16 shall not reside within two thousand feet of the real
17 property comprising a public or nonpublic elementary
18 or secondary school, or a child care facility. After
19 June 30, 2005, inform the person, if the person's
20 residency is restricted under section 692A.2B, that
21 the person shall not reside within one thousand feet
22 of the real property comprising a public or nonpublic
23 elementary or secondary school, or a child care
24 facility.

25 Sec. 26. Section 692A.5, subsection 1, Code 2005,
26 is amended by adding the following new paragraph:

27 NEW PARAGRAPH. i. Inform the person that the
28 person must, at a minimum, annually submit to being
29 photographed by the sheriff of the county of the
30 person's residence.

31 Sec. 27. Section 692A.13, subsection 3, Code 2005,
32 is amended to read as follows:

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

- 44 a. The date of birth of the person.
45 b. The social security number of the person.
46 c. The address of the person.

47 A county sheriff or police department shall not
48 charge a fee relating to a request for relevant
49 information.

50 Sec. 28. Section 692A.13, subsection 2, paragraph

1 b, Code 2005, is amended to read as follows:

2 b. The general public, including public and
3 private agencies, organizations, public places, public
4 ~~and private schools~~, child care facilities, religious
5 and youth organizations, neighbors, neighborhood
6 associations, community meetings, and employers.

7 Registry information may be distributed to the public
8 through printed materials, visual or audio press
9 releases, radio communications, or through a criminal
10 or juvenile justice agency's web page.

11 Sec. 29. Section 692A.13, Code 2005, is amended by
12 adding the following new subsection:

13 NEW SUBSECTION. 2A. When a person required to
14 register under this chapter moves into a school
15 district or moves within a school district, the county
16 sheriff of the county of the person's new residence
17 shall provide relevant information from the sex
18 offender registry to the administrative office of the
19 school district in which the person required to
20 register resides.

21 Sec. 30. Section 692A.13, subsection 5, Code 2005,
22 is amended to read as follows:

23 5. Relevant information provided to the general
24 public may include the offender's name, address, a
25 photograph, locations frequented by the offender,
26 relevant criminal history information from the
27 registry, and any other relevant information.

28 Relevant information provided to the public shall not
29 include the identity of any victim. For purposes of
30 inclusion in the sex offender registry's web page or
31 dissemination to the general public, a conviction for
32 incest shall be disclosed as either a violation of
33 section 709.4 or 709.8.

34 Sec. 31. Section 903A.2, subsection 1, paragraph
35 a, Code 2005, is amended to read as follows:

36 a. Category "A" sentences are those sentences
37 which are not subject to a maximum accumulation of
38 earned time of fifteen percent of the total sentence
39 of confinement under section 902.12. To the extent
40 provided in subsection 5, category "A" sentences also
41 include life sentences imposed under section 902.1.
42 An inmate of an institution under the control of the
43 department of corrections who is serving a category
44 "A" sentence is eligible for a reduction of sentence
45 equal to one and two-tenths days for each day the
46 inmate demonstrates good conduct and satisfactorily
47 participates in any program or placement status
48 identified by the director to earn the reduction. The
49 programs include but are not limited to the following:

- 50 (1) Employment in the institution.

1 (2) Iowa state industries.

2 (3) An employment program established by the
3 director.

4 (4) A treatment program established by the
5 director.

6 (5) An inmate educational program approved by the
7 director.

8 However, an inmate required to participate in a sex
9 offender treatment program shall not be eligible for a
10 reduction of sentence unless the inmate participates
11 in and completes a sex offender treatment program
12 established by the director.

13 An inmate serving a category "A" sentence is
14 eligible for an additional reduction of sentence of up
15 to three hundred sixty-five days of the full term of
16 the sentence of the inmate for exemplary acts. In
17 accordance with section 903A.4, the director shall by
18 policy identify what constitutes an exemplary act that
19 may warrant an additional reduction of sentence.

20 DIVISION III

21 ENHANCED CRIMINAL PENALTIES AND

22 STATUTE OF LIMITATIONS

23 Sec. 32. Section 709.8, Code 2005, is amended to
24 read as follows:

25 709.8 LASCIVIOUS ACTS WITH A CHILD.

26 It is unlawful for any person ~~eighteen~~ sixteen
27 years of age or older to perform any of the following
28 acts with a child with or without the child's consent
29 unless married to each other, for the purpose of
30 arousing or satisfying the sexual desires of either of
31 them:

32 1. Fondle or touch the pubes or genitals of a
33 child.

34 2. Permit or cause a child to fondle or touch the
35 person's genitals or pubes.

36 3. Solicit a child to engage in a sex act or
37 solicit a person to arrange a sex act with a child.

38 4. Inflict pain or discomfort upon a child or
39 permit a child to inflict pain or discomfort on the
40 person.

41 Any person who violates a provision of this section
42 involving an act included in subsection 1 or 2 shall,
43 upon conviction, be guilty of a class "D" "C" felony.

44 ~~A person who violates a provision of this section and~~
45 ~~who is sentenced to a term of confinement shall also~~
46 ~~be sentenced to an additional term of parole or work~~
47 ~~release not to exceed two years. The board of parole~~
48 ~~shall determine whether the person should be released~~
49 ~~on parole or placed in a work release program. The~~
50 ~~sentence of an additional term of parole or work~~

~~1 release supervision shall commence immediately upon
2 the expiration of the preceding sentence and shall be
3 under the terms and conditions as set out in chapter
4 906. Violations of parole or work release shall be
5 subject to the procedures set out in chapter 905 or
6 908 or rules adopted under those chapters. The
7 sentence of an additional term of parole or work
8 release shall be consecutive to the original term of
9 confinement. Any person who violates a provision of
10 this section involving an act included in subsection 3
11 or 4 shall, upon conviction, be guilty of a class "D"
12 felony.~~

13 Sec. 33. Section 802.2, Code 2005, is amended to
14 read as follows:

15 802.2 SEXUAL ABUSE -- FIRST, SECOND, OR THIRD
16 DEGREE.

17 1. An information or indictment for sexual abuse
18 in the first, second, or third degree committed on or
19 with a person who is under the age of eighteen years
20 shall be found within ten years after the person upon
21 whom the offense is committed attains eighteen years
22 of age, or if the identity of the person against whom
23 the information or indictment is sought is established
24 through the use of a DNA profile, an information or
25 indictment shall be found within three years from the
26 date the identity of the person is identified by the
27 person's DNA profile, whichever is later.

28 2. An information or indictment for any other
29 sexual abuse in the first, second, or third degree
30 shall be found within ten years after its commission,
31 or if the identity of the person against whom the
32 information or indictment is sought is established
33 through the use of a DNA profile, an information or
34 indictment shall be found within three years from the
35 date the identity of the person is identified by the
36 person's DNA profile, whichever is later.

37 3. As used in this section, "identified" means a
38 person's legal name is known and the person has been
39 determined to be the source of the DNA.

40 Sec. 34. Section 901.5, Code 2005, is amended by
41 adding the following new subsection:

42 NEW SUBSECTION. 13. In addition to any other
43 sentence or other penalty imposed against the
44 defendant, the court shall impose a special sentence
45 if required under section 903B.0A or 903B.0B.

46 Sec. 35. NEW SECTION. 902.15 ENHANCED PENALTY --
47 SEXUAL ABUSE OR LASCIVIOUS ACTS WITH A CHILD.

48 1. A person commits a class "A" felony if the
49 person commits a second or subsequent offense
50 involving any combination of the following offenses:

1 a. Sexual abuse in the second degree in violation
2 of section 709.3.
3 b. Sexual abuse in the third degree in violation
4 of section 709.4.
5 c. Lascivious acts with a child in violation of
6 section 709.8, subsection 1 or 2.
7 2. In determining if a violation charged is a
8 second or subsequent offense for purposes of criminal
9 sentencing in this section, each previous violation on
10 which conviction or deferral of judgment was entered
11 prior to the date of the violation charged shall be
12 considered and counted as a separate previous offense,
13 regardless of whether the previous offense occurred
14 before, on, or after the effective date of this Act.
15 Convictions or the equivalent of deferred judgments
16 for violations in any other states under statutes
17 substantially corresponding to the offenses listed in
18 subsection 1 shall be counted as previous offenses.
19 The courts shall judicially notice the statutes of
20 other states which define offenses substantially
21 equivalent to the offenses listed in subsection 1 and
22 can therefore be considered corresponding statutes.

23 Sec. 36. NEW SECTION. 903B.0A SPECIAL SENTENCE
24 -- CLASS "B" OR CLASS "C" FELONIES.

25 A person convicted of a class "C" felony or greater
26 offense under chapter 709, or a class "C" felony under
27 section 728.12, shall also be sentenced, in addition
28 to any other punishment provided by law, to a special
29 sentence committing the person into the custody of the
30 director of the Iowa department of corrections for the
31 rest of the person's life, with eligibility for parole
32 as provided in chapter 906. The special sentence
33 imposed under this section shall commence upon
34 completion of the sentence imposed under any
35 applicable criminal sentencing provisions for the
36 underlying criminal offense and the person shall begin
37 the sentence under supervision as if on parole. The
38 person shall be placed on the corrections continuum in
39 chapter 901B, and the terms and conditions of the
40 special sentence, including violations, shall be
41 subject to the same set of procedures set out in
42 chapters 901B, 905, 906, and chapter 908, and rules
43 adopted under those chapters for persons on parole
44 shall not be for a period greater than two years upon
45 any first revocation, and five years upon any second
46 or subsequent revocation. A special sentence shall be
47 considered a category "A" sentence for purposes of
48 calculating earned time under section 903A.2.

49 Sec. 37. NEW SECTION. 903B.0B SPECIAL SENTENCE
50 -- CLASS "D" FELONIES OR MISDEMEANORS.

1 A person convicted of a misdemeanor or a class "D"
2 felony offense under chapter 709, section 726.2, or
3 section 728.12 shall also be sentenced, in addition to
4 any other punishment provided by law, to a special
5 sentence committing the person into the custody of the
6 director of the Iowa department of corrections for a
7 period of ten years, with eligibility for parole as
8 provided in chapter 906. The special sentence imposed
9 under this section shall commence upon completion of
10 the sentence imposed under any applicable criminal
11 sentencing provisions for the underlying criminal
12 offense and the person shall begin the sentence under
13 supervision as if on parole. The person shall be
14 placed on the corrections continuum in chapter 901B,
15 and the terms and conditions of the special sentence,
16 including violations, shall be subject to the same set
17 of procedures set out in chapters 901B, 905, 906, and
18 908, and rules adopted under those chapters for
19 persons on parole. The revocation of release shall
20 not be for a period greater than two years upon any
21 first revocation, and five years upon any second or
22 subsequent revocation. A special sentence shall be
23 considered a category "A" sentence for purposes of
24 calculating earned time under section 903A.2.

25 Sec. 38. Section 903B.1, subsection 3, Code 2005,
26 is amended by striking the subsection.

27 Sec. 39. Section 906.15, unnumbered paragraph 1,
28 Code 2005, is amended to read as follows:

29 Unless sooner discharged, a person released on
30 parole shall be discharged when the person's term of
31 parole equals the period of imprisonment specified in
32 the person's sentence, less all time served in
33 confinement. Discharge from parole may be granted
34 prior to such time, when an early discharge is
35 appropriate. The board shall periodically review all
36 paroles, and when the board determines that any person
37 on parole is able and willing to fulfill the
38 obligations of a law-abiding citizen without further
39 supervision, the board shall discharge the person from
40 parole. A parole officer shall periodically review
41 all paroles assigned to the parole officer, and when
42 the parole officer determines that any person assigned
43 to the officer is able and willing to fulfill the
44 obligations of a law-abiding citizen without further
45 supervision, the officer may discharge the person from
46 parole after notification and approval of the district
47 director and notification of the board of parole. In
48 any event, discharge from parole shall terminate the
49 person's sentence. If a person has been sentenced to
50 a special sentence under section 903B.0A or 903B.0B,

1 the person may be discharged early from the sentence
2 in the same manner as any other person on parole.
3 However, a person convicted of a violation of section
4 709.3, 709.4, or 709.8 committed on or with a child,
5 or a person serving a sentence under section 902.12,
6 shall not be discharged from parole until the person's
7 term of parole equals the period of imprisonment
8 specified in the person's sentence, less all time
9 served in confinement.

10 Sec. 40. Section 908.5, Code 2005, is amended to
11 read as follows:

12 908.5 DISPOSITION.

13 1. If a violation of parole is established, the
14 administrative parole judge may continue the parole
15 with or without any modification of the conditions of
16 parole. The administrative parole judge may revoke
17 the parole and require the parolee to serve the
18 sentence originally imposed, or may revoke the parole
19 and reinstate the parolee's work release status.

20 2. If the person is serving a special sentence
21 under chapter 903B, the administrative parole judge
22 may revoke the release. Upon the revocation of
23 release, the person shall not serve the entire length
24 of the special sentence imposed, and the revocation
25 shall be for a period not to exceed two years in a
26 correctional institution upon a first revocation and
27 for a period not to exceed five years in a
28 correctional institution upon a second or subsequent
29 revocation.

30 3. The order of the administrative parole judge
31 shall contain findings of fact, conclusions of law,
32 and a disposition of the matter.

33 DIVISION IV

34 VICTIM RIGHTS

35 Sec. 41. NEW SECTION. 235D.1 CRIMINAL HISTORY
36 CHECK -- APPLICANTS AT DOMESTIC ABUSE OR SEXUAL
37 ASSAULT CENTERS.

38 An applicant for employment at a domestic abuse or
39 sexual assault center shall be subject to a national
40 criminal history check through the federal bureau of
41 investigation. The domestic abuse or sexual assault
42 center shall request the criminal history check and
43 shall provide the applicant's fingerprints to the
44 department of public safety for submission through the
45 state criminal history repository to the federal
46 bureau of investigation. The applicant shall
47 authorize release of the results of the criminal
48 history check to the domestic abuse or sexual assault
49 center. The applicant shall pay the actual cost of
50 the fingerprinting and criminal history check, if any.

1 Unless the criminal history check was completed within
2 the ninety calendar days prior to the date the
3 application is received by the domestic abuse or
4 sexual assault center, the center shall reject and
5 return the application to the applicant. The results
6 of a criminal history check conducted pursuant to this
7 subsection shall not be considered a public record
8 under chapter 22. For purposes of this section,
9 "domestic abuse or sexual assault center" means a
10 facility which is used to house victims of domestic
11 abuse or sexual assault, and is owned, operated, or
12 maintained by a nonprofit organization.

13 Sec. 42. NEW SECTION. 709.22 PREVENTION OF
14 FURTHER SEXUAL ASSAULT -- NOTIFICATION OF RIGHTS.

15 If a peace officer has reason to believe that a
16 sexual assault as defined in section 915.40 has
17 occurred, the officer shall use all reasonable means
18 to prevent further violence including but not limited
19 to the following:

20 1. If requested, remaining on the scene of the
21 alleged sexual assault as long as there is a danger to
22 the victim's physical safety without the presence of a
23 peace officer, including but not limited to staying in
24 the dwelling unit, or if unable to remain on the
25 scene, assisting the victim in leaving the residence.

26 2. Assisting a victim in obtaining medical
27 treatment necessitated by the sexual assault,
28 including providing assistance to the victim in
29 obtaining transportation to the emergency room of the
30 nearest hospital.

31 3. Providing a victim with immediate and adequate
32 notice of the victim's rights. The notice shall
33 consist of handing the victim a copy of the following
34 statement written in English and Spanish, asking the
35 victim to read the statement, and asking whether the
36 victim understands the rights:

37 "You have the right to ask the court for help with
38 any of the following on a temporary basis:

39 a. Keeping your attacker away from you, your home,
40 and your place of work.

41 b. The right to stay at your home without
42 interference from your attacker.

43 c. The right to seek a no-contact order under
44 section 709.20 or 915.22, if your attacker is arrested
45 for sexual assault.

46 You have the right to register as a victim with the
47 county attorney under section 915.12.

48 You have the right to file a complaint for threats,
49 assaults, or other related crimes.

50 You have the right to seek restitution against your

1 attacker for harm to you or your property.

2 You have the right to apply for victim

3 compensation.

4 You have the right to contact the county attorney

5 or local law enforcement to determine the status of

6 your case.

7 If you are in need of medical treatment, you have

8 the right to request that the officer present assist

9 you in obtaining transportation to the nearest

10 hospital or otherwise assist you.

11 You have the right to a sexual assault examination

12 performed at state expense.

13 If you believe that police protection is needed for

14 your physical safety, you have the right to request

15 that the officer present remain at the scene until you

16 and other affected parties can leave or until safety

17 is otherwise ensured."

18 The notice shall also contain the telephone numbers

19 of shelters, support groups, and crisis lines

20 operating in the area.

21 Sec. 43. Section 915.10, subsections 1 and 2, Code
22 2005, are amended to read as follows:

23 1. "Notification" means mailing by regular mail or
24 providing for hand delivery of appropriate information
25 or papers. However, this notification procedure does
26 not prohibit an office, agency, or department from
27 also providing appropriate information to a registered
28 victim by telephone, electronic mail, or other means.

29 2. "Registered" means having provided the county
30 attorney with the victim's written request for
31 registration and current mailing address and telephone
32 number. If an automated victim notification system is
33 implemented pursuant to section 915.10A, "registered"
34 also means having filed a request for registration
35 with the system.

36 Sec. 44. NEW SECTION. 915.10A AUTOMATED VICTIM
37 NOTIFICATION SYSTEM.

38 1. An automated victim notification system may be
39 utilized to assist public officials in informing crime
40 victims, the victim's family, or other interested
41 persons as provided in this subchapter and where
42 otherwise specifically provided. The system shall
43 disseminate the information to registered users
44 through telephonic, electronic, or other means of
45 access.

46 2. An office, agency, or department may satisfy a
47 notification obligation to registered victims required
48 by this subchapter through participation in the system
49 to the extent information is available for
50 dissemination through the system. Nothing in this

1 section shall relieve a notification obligation under
2 this subchapter due to the unavailability of
3 information for dissemination through the system.

4 3. Notwithstanding section 232.147, information
5 concerning juveniles charged with a felony offense
6 shall be released to the extent necessary to comply
7 with this section.

8 Sec. 45. Section 915.11, Code 2005, is amended to
9 read as follows:

10 915.11 INITIAL NOTIFICATION BY LAW ENFORCEMENT.

11 A local police department or county sheriff's
12 department shall advise a victim of the right to
13 register with the county attorney, and shall provide a
14 request-for-registration form to each victim. If an
15 automated victim notification system is available
16 pursuant to section 915.10A, a local police department
17 or county sheriff's department shall provide a
18 telephone number and website to each victim to
19 register with the system.

20 Sec. 46. Section 915.12, Code 2005, is amended to
21 read as follows:

22 915.12 REGISTRATION.

23 ~~1. The county attorney shall be the sole registrar~~
24 ~~of victims under this subchapter.~~

25 ~~2.~~ 1. A victim may register by filing a written
26 request-for-registration form with the county
27 attorney. The county attorney shall notify the
28 victims in writing and advise them of their
29 registration and rights under this subchapter.

30 ~~3.~~ The county attorney shall provide a registered
31 victim list to the offices, agencies, and departments
32 required to provide information under this subchapter
33 for notification purposes.

34 2. If an automated victim notification system, the
35 victim's family, is available pursuant to section
36 915.10A, a victim, the victim's family, or other
37 interested person may register with the system by
38 filing a request for registration through written,
39 telephonic, or electronic means.

40 ~~4.~~ 3. Notwithstanding chapter 22 or any other
41 contrary provision of law, a victim's the registration
42 of a victim, victim's family, or other interested
43 person shall be strictly maintained in a separate
44 confidential file or other confidential medium, and
45 shall be available only to the offices, agencies, and
46 departments required to provide information under this
47 subchapter.

48 Sec. 47. Section 915.29, Code 2005, is amended by
49 adding the following new unnumbered paragraph:

50 NEW UNNUMBERED PARAGRAPH. The notification

1 required pursuant to this section may occur through
2 the automated victim notification system referred to
3 in section 915.10A to the extent such information is
4 available for dissemination through the system.
5 Sec. 48. Section 915.45, Code 2005, is amended by
6 adding the following new unnumbered paragraph:
7 NEW UNNUMBERED PARAGRAPH. The notification
8 required pursuant to this section may occur through
9 the automated victim notification system referred to
10 in section 915.10A to the extent such information is
11 available for dissemination through the system.

DIVISION V

TASK FORCE

14 Sec. 49. SEX OFFENDER TREATMENT AND SUPERVISION
15 TASK FORCE.

16 1. The division of criminal and juvenile justice
17 planning shall establish a task force to study and
18 make periodic recommendations for treating and
19 supervising sex offenders in correctional institutions
20 and in the community. The task force shall file a
21 report with recommendations with the general assembly
22 by January 15, 2006. The task force shall study the
23 effectiveness of electronic monitoring and the
24 potential effects and costs associated with the
25 special sentence created in this Act. The task force
26 shall study risk assessment models created for sex
27 offenders. The task force shall also review this
28 state's efforts and the efforts of other states to
29 implement treatment programs and make recommendations
30 as to the best treatment options available for sex
31 offenders. The task force shall also develop a plan
32 to integrate state government databases for the
33 purpose of updating addresses of persons on the sex
34 offender registry.

35 2. Members of the task force shall include
36 representatives of the following state agencies and
37 organizations:

38 a. One representative of the department of human
39 services.

40 b. One representative of the department of public
41 safety.

42 c. One representative of the Iowa state sheriffs
43 and deputies association.

44 d. One representative of the Iowa county attorneys
45 association.

46 e. One representative of the department of
47 corrections.

48 f. One representative of the board of parole.

49 g. One representative of a judicial district
50 department of correctional services.

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- 1 h. One representative of the department of
- 2 justice.
- 3 i. One representative of the state public
- 4 defender.
- 5 j. One representative of the Iowa coalition
- 6 against sexual assault.

7 DIVISION VI
8 STATE MANDATE

9 Sec. 50. IMPLEMENTATION OF ACT. Section 25B.2,
10 subsection 3, shall not apply to this Act."

11 2. Title page, by striking lines 1 through 5 and
12 inserting the following: "An Act relating to criminal
13 sentencing, victim notification, and the sex offender
14 registry, including establishing a special sentence
15 for certain offenders, requiring DNA testing of
16 certain offenders, requiring sex offender treatment in
17 order to accumulate earned time, establishing a sex
18 offender treatment and supervision task force,
19 providing penalties, and providing an effective date."

By ROBERT E. DVORSKY

WALLY E. HORN

CHARLES W. LARSON, JR.

KEITH A. KREIMAN

NANCY BOETTGER

LARRY McKIBBEN

EUGENE S. FRAISE

DAVID MILLER

S-3185 FILED APRIL 27, 2005

HOUSE FILE 619

S-3186

1 Amend the amendment, S-3182, to House File 619, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 13, by inserting after line 33 the
5 following:

6 "Sec. _____. Section 232.68, subsection 2, Code
7 2005, is amended by adding the following new
8 paragraph:

9 NEW PARAGRAPH. i. Cohabitation with a person
10 required to register as a sex offender under chapter
11 692A in violation of section 726.6."

12 2. Page 14, by inserting after line 28 the
13 following:

14 "Sec. _____. Section 726.6, subsection 1, Code 2005,
15 is amended by adding the following new paragraph:

16 NEW PARAGRAPH. h. Knowingly cohabits with a
17 person required to register as a sex offender under
18 chapter 692A. However, this paragraph does not apply
19 to a person who is a parent, guardian, or a person
20 having custody or control over a child or a minor who
21 is required to register as a sex offender."

22 3. By renumbering as necessary.

By DAVID MILLER

JERRY BEHN

S-3186 FILED APRIL 27, 2005

ADOPTED

S-3198

1 Amend the amendment, S-3185, to House File 619, as
 2 amended, passed, and reprinted by the House, as
 3 follows:

4 1. By striking page 1, line 1, through page 22,
 5 line 19, and inserting the following:

6 "Amend House File 619, as amended, passed, and
 7 reprinted by the House, as follows:

8 _____. By striking everything after the enacting
 9 clause and inserting the following:

10 "DIVISION I

11 DNA PROFILING

12 Section 1. NEW SECTION. 81.1 DEFINITIONS.

13 As used in this chapter, unless the context
 14 otherwise requires:

15 1. "DNA" means deoxyribonucleic acid.

16 2. "DNA databank" means the repository for DNA
 17 samples obtained pursuant to section 81.4.

18 3. "DNA database" means the collection of DNA
 19 profiles and DNA records.

20 4. "DNA profile" means the objective form of the
 21 results of DNA analysis performed on a DNA sample.
 22 The results of all DNA identification analysis on an
 23 individual's DNA sample are also collectively referred
 24 to as the DNA profile of an individual.

25 5. "DNA profiling" means the procedure established
 26 by the division of criminal investigation, department
 27 of public safety, for determining a person's genetic
 28 identity.

29 6. "DNA record" means the DNA sample and DNA
 30 profile, and other records in the DNA database and DNA
 31 data bank used to identify a person.

32 7. "DNA sample" means a biological sample provided
 33 by any person required to submit a DNA sample or a DNA
 34 sample submitted for any other purpose under section
 35 81.4.

36 8. "Person required to submit a DNA sample" means
 37 a person convicted, adjudicated delinquent, receiving
 38 a deferred judgment, or found not guilty by reason of
 39 insanity of an offense requiring DNA profiling
 40 pursuant to section 81.2. "Person required to submit
 41 a DNA sample" also means a person determined to be a
 42 sexually violent predator pursuant to section 229A.7.

43 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO
 44 SUBMIT A DNA SAMPLE.

45 1. A person who receives a deferred judgment for a
 46 felony or against whom a judgment or conviction for a
 47 felony has been entered shall be required to submit a
 48 DNA sample for DNA profiling pursuant to section 81.4.

49 2. A person determined to be a sexually violent
 50 predator pursuant to chapter 229A shall be required to

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1 submit a DNA sample for DNA profiling pursuant to
2 section 81.4 prior to discharge or placement in a
3 transitional release program.

4 3. A person found not guilty by reason of insanity
5 of an offense that requires DNA profiling shall be
6 required to submit a DNA sample for DNA profiling
7 pursuant to section 81.4 as part of the person's
8 treatment management program.

9 4. A juvenile adjudicated delinquent of an offense
10 that requires DNA profiling of an adult offender shall
11 be required to submit a DNA sample for DNA profiling
12 pursuant to section 81.4 as part of the disposition of
13 the juvenile's case.

14 5. An offender placed on probation shall
15 immediately report to the judicial district department
16 of correctional services after sentencing so it can be
17 determined if the offender has been convicted of an
18 offense requiring DNA profiling. If it is determined
19 by the judicial district that DNA profiling is
20 required, the offender shall immediately submit a DNA
21 sample.

22 6. A person required to register as a sex
23 offender.

24 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA
25 DATABASE AND DNA DATABANK.

26 1. A state DNA database and a state DNA databank
27 are established under the control of the division of
28 criminal investigation, department of public safety.
29 The division of criminal investigation shall conduct
30 DNA profiling of a DNA sample submitted in accordance
31 with this section.

32 2. A DNA sample shall be submitted, and the
33 division of criminal investigation shall store and
34 maintain DNA records in the DNA database and DNA
35 databank for persons required to submit a DNA sample.

36 3. A DNA sample may be submitted, and the division
37 of criminal investigation shall store and maintain DNA
38 records in the DNA database and DNA databank for any
39 of the following:

40 a. Crime scene evidence and forensic casework.

41 b. A relative of a missing person.

42 c. An anonymous DNA profile used for forensic
43 validation, forensic protocol development, or quality
44 control purposes, or for the establishment of a
45 population statistics database.

46 4. A fingerprint record of a person required to
47 submit a DNA sample shall also be submitted to the
48 division of criminal investigation with the DNA sample
49 to verify the identity of the person required to
50 submit a DNA sample.

1 Sec. 4. NEW SECTION. 81.4 COLLECTING,
2 SUBMITTING, ANALYZING, IDENTIFYING, AND STORING DNA
3 SAMPLES AND DNA RECORDS.

4 1. The division of criminal investigation shall
5 adopt rules for the collection, submission, analysis,
6 identification, storage, and disposition of DNA
7 records.

8 2. A supervising agency having control, custody,
9 or jurisdiction over a person shall collect a DNA
10 sample from a person required to submit a DNA sample.
11 The supervising agency shall collect a DNA sample,
12 upon admittance to the pertinent institution or
13 facility, of the person required to submit a DNA
14 sample or at a determined date and time set by the
15 supervising agency. If a person required to submit a
16 DNA sample is confined at the time a DNA sample is
17 required, the person shall submit a DNA sample as soon
18 as practicable. If a person required to submit a DNA
19 sample is not confined after the person is required to
20 submit a DNA sample, the supervising agency shall
21 determine the date and time to collect the DNA sample.

22 3. A person required to submit a DNA sample who
23 refuses to submit a DNA sample may be subject to
24 contempt proceedings pursuant to chapter 665 until the
25 DNA sample is submitted.

26 4. The division of criminal investigation shall
27 conduct DNA profiling on a DNA sample or may contract
28 with a private entity to conduct the DNA profiling.

29 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL
30 LIABILITY -- LIMITATION.

31 A person who collects a DNA sample shall not be
32 civilly or criminally liable for the collection of the
33 DNA sample if the person performs the person's duties
34 in good faith and in a reasonable manner according to
35 generally accepted medical practices or in accordance
36 with the procedures set out in the administrative
37 rules of the department of public safety adopted
38 pursuant to section 81.4.

39 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

40 1. A person who knowingly or intentionally does
41 any of the following commits an aggravated
42 misdemeanor:

43 a. Discloses any part of a DNA record to a person
44 or agency that is not authorized by the division of
45 criminal investigation to have access to the DNA
46 record.

47 b. Uses or obtains a DNA record for a purpose
48 other than what is authorized under this chapter.

49 2. A person who knowingly or intentionally alters
50 or attempts to alter a DNA sample, falsifies the

1 source of a DNA sample, or materially alters a
2 collection container used to collect the DNA sample,
3 commits a class "D" felony.

4 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST
5 NOT INVALIDATED.

6 The detention, arrest, or conviction of a person
7 based upon a DNA database match is not invalidated if
8 it is determined that the DNA sample or DNA profile
9 was obtained or placed into the DNA database by
10 mistake or error.

11 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

12 1. A DNA record shall be considered a confidential
13 record and disclosure of a DNA record is only
14 authorized pursuant to this section.

15 2. Confidential DNA records under this section may
16 be released to the following agencies for law
17 enforcement identification purposes:

18 a. Any criminal or juvenile justice agency as
19 defined in section 692.1.

20 b. Any criminal or juvenile justice agency in
21 another jurisdiction that meets the definition of a
22 criminal or juvenile justice agency as defined in
23 section 692.1.

24 3. The division of criminal investigation shall
25 share the DNA record information with the appropriate
26 federal agencies for use in a national DNA database.

27 4. A DNA record or other forensic information
28 developed pursuant to this chapter may be released for
29 use in a criminal or juvenile delinquency proceeding
30 in which the state is a party and where the DNA record
31 or forensic information is relevant and material to
32 the subject of the proceeding. Such a record or
33 information may become part of a public transcript or
34 other public recording of such a proceeding.

35 5. A DNA record or other forensic information may
36 be released pursuant to a court order for criminal
37 defense purposes to a defendant, who shall have access
38 to DNA samples and DNA profiles related to the case in
39 which the defendant is charged.

40 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA
41 RECORDS.

42 1. A person whose DNA record has been included in
43 the DNA database or DNA databank established pursuant
44 to section 81.3 may request, in writing to the
45 division of criminal investigation, expungement of the
46 DNA record from the DNA database and DNA databank
47 based upon the person's conviction, adjudication, or
48 civil commitment which caused the submission of the
49 DNA sample being reversed on appeal and the case
50 dismissed. The written request shall contain a

1 certified copy of the final court order reversing the
2 conviction, adjudication, or civil commitment, and a
3 certified copy of the dismissal, and any other
4 information necessary to ascertain the validity of the
5 request.

6 2. The division of criminal investigation, upon
7 receipt of a written request that validates reversal
8 on appeal of a person's conviction, adjudication, or
9 commitment, and subsequent dismissal of the case, or
10 upon receipt of a written request by a person who
11 voluntarily submitted a DNA sample under section 81.3,
12 subsection 3, paragraph "b", or upon receipt of a
13 written request by a person who voluntarily submitted
14 a DNA sample pursuant to section 81.3, subsection 3,
15 paragraph "b", shall expunge all of the DNA records
16 and identifiable information of the person in the DNA
17 database and DNA databank. However, if the division
18 of criminal investigation determines that the person
19 is otherwise obligated to submit a DNA sample, the DNA
20 records shall not be expunged. If the division of
21 criminal investigation denies an expungement request,
22 the division shall notify the person requesting the
23 expungement of the decision not to expunge the DNA
24 record and the reason supporting its decision. The
25 division of criminal investigation decision is subject
26 to judicial review pursuant to chapter 17A. The
27 department of public safety shall adopt rules
28 governing the expungement procedure and a review
29 process.

30 3. The division of criminal investigation is not
31 required to expunge or destroy a DNA record pursuant
32 to this section, if expungement or destruction of the
33 DNA record would destroy evidence related to another
34 person.

35 Sec. 10. NEW SECTION. 81.10 DNA PROFILING AFTER
36 CONVICTION.

37 1. A defendant who has been convicted of a felony
38 and who has not been required to submit a DNA sample
39 for DNA profiling may make a motion to the court for
40 an order to require that DNA analysis be performed on
41 evidence collected in the case for which the person
42 stands convicted.

43 2. The motion shall state the following:

44 a. The specific crimes for which the defendant
45 stands convicted in this case.

46 b. The facts of the underlying case, as proven at
47 trial or admitted to during a guilty plea proceeding.

48 c. Whether any of the charges include sexual abuse
49 or involve sexual assault, and if so, whether a sexual
50 assault examination was conducted and evidence

- 1 preserved, if known.
- 2 d. Whether identity was at issue or contested by
3 the defendant.
- 4 e. Whether the defendant offered an alibi, and if
5 so, testimony corroborating the alibi and, from whom.
- 6 f. Whether eyewitness testimony was offered, and
7 if so from whom.
- 8 g. Whether any issues of police or prosecutor
9 misconduct have been raised in the past or are being
10 raised by the motion.
- 11 h. The type of inculpatory evidence admitted into
12 evidence at trial or admitted to during a guilty plea
13 proceeding.
- 14 i. Whether blood testing or other biological
15 evidence testing was conducted previously in
16 connection with the case and, if so, by whom and to
17 the result, if known.
- 18 j. What biological evidence exists and, if known,
19 the agency or laboratory storing the evidence that the
20 defendant seeks to have tested.
- 21 k. Why the requested analysis of DNA evidence is
22 material to the issue in the case and not merely
23 cumulative or impeaching.
- 24 l. Why the DNA evidence would have changed the
25 outcome of the trial or invalidated a guilty plea if
26 DNA profiling had been conducted prior to the
27 conviction.
- 28 3. A motion filed under this section shall be
29 filed in the county where the defendant was convicted,
30 and notice of the motion shall be served by certified
31 mail upon the county attorney and, if known, upon the
32 state, local agency, or laboratory holding evidence
33 described in subsection 2, paragraph "k". The county
34 attorney shall have sixty days to file an answer to
35 the motion.
- 36 4. Any DNA profiling of the defendant or other
37 biological evidence testing conducted by the state or
38 by the defendant shall be disclosed and the results of
39 such profiling or testing described in the motion or
40 answer.
- 41 5. If the evidence requested to be tested was
42 previously subjected to DNA or other biological
43 analysis by either party, the court may order the
44 disclosure of the results of such testing, including
45 laboratory reports, notes, and underlying data, to the
46 court and the parties.
- 47 6. The court may order a hearing on the motion to
48 determine if evidence should be subjected to DNA
49 analysis.
- 50 7. The court shall grant the motion if all of the

- 1 following apply:
- 2 a. The evidence subject to DNA testing is
- 3 available and in a condition that will permit
- 4 analysis.
- 5 b. A sufficient chain of custody has been
- 6 established for the evidence.
- 7 c. The identity of the person who committed the
- 8 crime for which the defendant was convicted was a
- 9 significant issue in the crime for which the defendant
- 10 was convicted.
- 11 d. The evidence subject to DNA analysis is
- 12 material to, and not merely cumulative or impeaching
- 13 of, evidence included in the trial record or admitted
- 14 to at a guilty plea proceeding.
- 15 e. DNA analysis of the evidence would raise a
- 16 reasonable probability that the defendant would not
- 17 have been convicted if DNA profiling had been
- 18 available at the time of the conviction and had been
- 19 conducted prior to the conviction.
- 20 8. Upon the court granting a motion filed pursuant
- 21 to this section, DNA analysis of evidence shall be
- 22 conducted within the guidelines generally accepted by
- 23 the scientific community. The defendant shall provide
- 24 DNA samples for testing if requested by the state.
- 25 9. Results of DNA analysis conducted pursuant to
- 26 this section shall be reported to the parties and to
- 27 the court and may be provided to the board of parole,
- 28 department of corrections, and criminal and juvenile
- 29 justice agencies, as defined in section 692.1, for use
- 30 in the course of investigations and prosecutions, and
- 31 for consideration in connection with requests for
- 32 parole, pardon, reprieve, and commutation. DNA
- 33 samples obtained pursuant to this section may be
- 34 included in the DNA databank, and DNA profiles and DNA
- 35 records developed pursuant to this section may be
- 36 included in the DNA database.
- 37 10. A criminal or juvenile justice agency, as
- 38 defined in section 692.1, shall maintain DNA samples
- 39 and evidence that could be tested for DNA for a period
- 40 of three years beyond the limitations for the
- 41 commencement of criminal actions as set forth in
- 42 chapter 802. This section does not create a cause of
- 43 action for damages or a presumption of spoliation in
- 44 the event evidence is no longer available for testing.
- 45 11. If the court determines a defendant who files
- 46 a motion under this section is indigent, the defendant
- 47 shall be entitled to appointment of counsel as
- 48 provided in chapter 815.
- 49 12. If the court determines after DNA analysis
- 50 ordered pursuant to this section that the results

1 indicate conclusively that the DNA profile of the
2 defendant matches the profile from the analyzed
3 evidence used against the defendant, the court may
4 order the defendant to pay the costs of these
5 proceedings, including costs of all testing, court
6 costs, and costs of court-appointed counsel, if any.

7 Sec. 11. Section 229A.7, Code 2005, is amended by
8 adding the following new subsection:

9 NEW SUBSECTION. 5A. If the court or jury
10 determines that the respondent is a sexually violent
11 predator, the court shall order the respondent to
12 submit a DNA sample for DNA profiling pursuant to
13 section 81.4.

14 Sec. 12. Section 232.52, Code 2005, is amended by
15 adding the following new subsection:

16 NEW SUBSECTION. 10. The court shall order a
17 juvenile adjudicated a delinquent for an offense that
18 requires DNA profiling under section 81.2 to submit a
19 DNA sample for DNA profiling pursuant to section 81.4.

20 Sec. 13. Section 669.14, Code 2005, is amended by
21 adding the following new subsection:

22 NEW SUBSECTION. 15. Any claim arising from or
23 related to the collection of a DNA sample for DNA
24 profiling pursuant to section 81.4 or a DNA profiling
25 procedure performed by the division of criminal
26 investigation, department of public safety.

27 Sec. 14. Section 901.5, subsection 8A, Code 2005,
28 is amended to read as follows:

29 8A. a. The court shall order DNA profiling of a
30 defendant convicted of an offense that requires
31 profiling under section ~~13.10~~ 81.2.

32 b. Notwithstanding section ~~13.10~~ 81.2, the court
33 may order the defendant to provide a ~~physical specimen~~
34 DNA sample to be submitted for DNA profiling if
35 appropriate. In determining the appropriateness of
36 ordering DNA profiling, the court shall consider the
37 deterrent effect of DNA profiling, the likelihood of
38 repeated offenses by the defendant, and the
39 seriousness of the offense.

40 Sec. 15. Section 906.4, unnumbered paragraph 3,
41 Code 2005, is amended to read as follows:

42 ~~Notwithstanding section 13.10, the~~ The board may
43 order the defendant to provide a physical specimen to
44 be submitted for DNA profiling as a condition of
45 parole or work release, if ~~appropriate~~ a DNA profile
46 has not been previously conducted pursuant to chapter
47 81. In determining the appropriateness of ordering
48 DNA profiling, the board shall consider the deterrent
49 effect of DNA profiling, the likelihood of repeated
50 offenses by the defendant, and the seriousness of the

1 offense.
2 Sec. 16. 2002 Iowa Acts, chapter 1080, is
3 repealed.
4 Sec. 17. Section 13.10, Code 2005, is repealed.
5 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE
6 PRIOR TO EFFECTIVE DATE OF THIS DIVISION OF THIS ACT.
7 A person convicted, adjudicated a delinquent, civilly
8 committed as a sexually violent predator, or found not
9 guilty by reason of insanity, prior to the effective
10 date of this Act, who would otherwise be required to
11 submit a DNA sample under this Act, and who is under
12 the custody, control, or jurisdiction of a supervising
13 agency, shall submit a DNA sample prior to being
14 released from the supervising agency's custody,
15 control, or jurisdiction.
16 Sec. 19. EFFECTIVE DATE. This division of this
17 Act, being deemed of immediate importance, takes
18 effect upon enactment.

19 DIVISION II

20 SEX OFFENDER REGISTRY AND TREATMENT

21 Sec. 20. Section 692A.1, subsection 8, Code 2005,
22 is amended to read as follows:

23 8. "Residence" means the place where a person
24 sleeps, which may include more than one location, and
25 may be mobile or transitory, including a shelter or
26 group home.

27 Sec. 21. Section 692A.2, Code 2005, is amended by
28 adding the following new subsection:

29 NEW SUBSECTION. 1A. If a person is required to
30 register for a period of ten years under subsection 1
31 and the period under subsection 1 has expired, the
32 person shall be required to remain on the registry if
33 the person has been sentenced to a special sentence as
34 required under section 903B.0A or 903B.0B, for a
35 period equal to the term of the special sentence.

36 Sec. 22. NEW SECTION. 692A.2B RESTRICTIONS ON
37 RESIDENCY NEAR CHILD CARE FACILITIES OR SCHOOLS.

38 1. For purposes of this section, "person" means a
39 person who is required to register under this chapter.

40 2. A person shall not reside within one thousand
41 feet of the real property comprising a public or
42 nonpublic elementary or secondary school or a child
43 care facility.

44 3. A person who resides within one thousand feet
45 of the real property comprising a public or nonpublic
46 elementary or secondary school, or a child care
47 facility, commits an aggravated misdemeanor.

48 4. A person residing within one thousand feet of
49 the real property comprising a public or nonpublic
50 elementary or secondary school or a child care

1 facility does not commit a violation of this section
 2 if any of the following apply:
 3 a. The person is required to serve a sentence at a
 4 jail, prison, juvenile facility, or other correctional
 5 institution or facility.
 6 b. The person is subject to an order of commitment
 7 under chapter 229A.
 8 c. The person has established a residence prior to
 9 July 1, 2005, or a school or child care facility is
 10 newly located on or after July 1, 2005.
 11 d. The person is a minor or a ward under a
 12 guardianship.

13 Sec. 23. Section 692A.4, Code 2005, is amended to
 14 read as follows:

15 692A.4 VERIFICATION OF ADDRESS AND TAKING OF
 16 PHOTOGRAPH.

17 1. The address of a person required to register
 18 under this chapter shall be verified annually as
 19 follows:

20 a. On a date which falls within the month in which
 21 the person was initially required to register, the
 22 department shall mail a verification form to the last
 23 reported address of the person. Verification forms
 24 shall not be forwarded to the person who is required
 25 to register under this chapter if the person no longer
 26 resides at the address, but shall be returned to the
 27 department.

28 b. The person shall complete and mail the
 29 verification to the department within ten days of
 30 receipt of the form.

31 c. The verification form shall be signed by the
 32 person, and state the address at which the person
 33 resides. If the person is in the process of changing
 34 residences, the person shall state that fact as well
 35 as the old and new addresses or places of residence.

36 2. Verification of address for a person who has
 37 been convicted of an offense under the laws of this
 38 state or of another state which would qualify the
 39 person as a sexually violent predator shall be
 40 accomplished in the same manner as in subsection 1,
 41 except that the verification shall be done every three
 42 months at times established by the department.

43 3. A photograph of a person required to register
 44 under this chapter shall be updated, at a minimum,
 45 annually. When the department mails the address
 46 verification notice in subsection 1, the department
 47 shall also enclose a form informing the person to
 48 annually submit to being photographed by the sheriff
 49 of the county of the person's residence within ten
 50 days of receipt of the address verification form. The

1 sheriff shall send the updated photograph to the
2 department within ten days of the photograph being
3 taken and the department shall post the updated
4 photograph on the sex offender registry's web page.
5 The sheriff may require the person to submit to being
6 photographed by the sheriff more than once a year by
7 mailing another notice informing the person to submit
8 to being photographed.

9 Sec. 24. NEW SECTION. 692A.4A ELECTRONIC
10 MONITORING.

11 A person required to register under this chapter
12 who is placed on probation, parole, work release,
13 special sentence, or any other type of conditional
14 release, may be supervised by an electronic tracking
15 and monitoring system in addition to any other
16 conditions of supervision.

17 Sec. 25. Section 692A.5, subsection 1, paragraph
18 h, Code 2005, is amended to read as follows:

19 h. Inform the person, if the person's residency is
20 restricted under section 692A.2A, that the person
21 shall not reside within two thousand feet of the real
22 property comprising a public or nonpublic elementary
23 or secondary school, or a child care facility. After
24 June 30, 2005, inform the person, if the person's
25 residency is restricted under section 692A.2B, that
26 the person shall not reside within one thousand feet
27 of the real property comprising a public or nonpublic
28 elementary or secondary school, or a child care
29 facility.

30 Sec. 26. Section 692A.5, subsection 1, Code 2005,
31 is amended by adding the following new paragraph:

32 NEW PARAGRAPH. i. Inform the person that the
33 person must, at a minimum, annually submit to being
34 photographed by the sheriff of the county of the
35 person's residence.

36 Sec. 27. Section 692A.13, subsection 3, Code 2005,
37 is amended to read as follows:

38 3. Any member of the public may contact a county
39 sheriff's office or police department to request
40 relevant information from the registry regarding a
41 specific person required to register under this
42 chapter. ~~The request for information shall be in~~
43 ~~writing, and~~ A person making a request for relevant
44 information may make the request by telephone, in
45 writing, or in person, and the request shall include
46 the name of the person and at least one of the
47 following identifiers pertaining to the person about
48 whom the information is sought:

- 49 a. The date of birth of the person.
50 b. The social security number of the person.

1 c. The address of the person.

2 A county sheriff or police department shall not
3 charge a fee relating to a request for relevant
4 information.

5 Sec. 28. Section 692A.13, subsection 2, paragraph
6 b, Code 2005, is amended to read as follows:

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

16 Sec. 29. Section 692A.13, Code 2005, is amended by
17 adding the following new subsection:

18 NEW SUBSECTION. 2A. When a person required to
19 register under this chapter moves into a school
20 district or moves within a school district, the county
21 sheriff of the county of the person's new residence
22 shall provide relevant information from the sex
23 offender registry to the administrative office of the
24 school district in which the person required to
25 register resides, and shall also provide relevant
26 information to any private school near the person's
27 residence.

28 Sec. 30. Section 692A.13, subsection 5, Code 2005,
29 is amended to read as follows:

30 5. Relevant information provided to the general
31 public may include the offender's name, address, a
32 photograph, locations frequented by the offender,
33 relevant criminal history information from the
34 registry, and any other relevant information.
35 Relevant information provided to the public shall not
36 include the identity of any victim. For purposes of
37 inclusion in the sex offender registry's web page or
38 dissemination to the general public, a conviction for
39 incest shall be disclosed as either a violation of
40 section 709.4 or 709.8.

41 Sec. 31. Section 903A.2, subsection 1, paragraph
42 a, Code 2005, is amended to read as follows:

43 a. Category "A" sentences are those sentences
44 which are not subject to a maximum accumulation of
45 earned time of fifteen percent of the total sentence
46 of confinement under section 902.12. To the extent
47 provided in subsection 5, category "A" sentences also
48 include life sentences imposed under section 902.1.
49 An inmate of an institution under the control of the
50 department of corrections who is serving a category

1 "A" sentence is eligible for a reduction of sentence
2 equal to one and two-tenths days for each day the
3 inmate demonstrates good conduct and satisfactorily
4 participates in any program or placement status
5 identified by the director to earn the reduction. The
6 programs include but are not limited to the following:

- 7 (1) Employment in the institution.
- 8 (2) Iowa state industries.
- 9 (3) An employment program established by the
10 director.
- 11 (4) A treatment program established by the
12 director.
- 13 (5) An inmate educational program approved by the
14 director.

15 However, an inmate required to participate in a sex
16 offender treatment program shall not be eligible for a
17 reduction of sentence unless the inmate participates
18 in and completes a sex offender treatment program
19 established by the director.

20 An inmate serving a category "A" sentence is
21 eligible for an additional reduction of sentence of up
22 to three hundred sixty-five days of the full term of
23 the sentence of the inmate for exemplary acts. In
24 accordance with section 903A.4, the director shall by
25 policy identify what constitutes an exemplary act that
26 may warrant an additional reduction of sentence.

27 DIVISION III

28 ENHANCED CRIMINAL PENALTIES AND 29 STATUTE OF LIMITATIONS

30 Sec. 32. Section 709.8, Code 2005, is amended to
31 read as follows:

32 709.8 LASCIVIOUS ACTS WITH A CHILD.

33 It is unlawful for any person ~~eighteen~~ sixteen
34 years of age or older to perform any of the following
35 acts with a child with or without the child's consent
36 unless married to each other, for the purpose of
37 arousing or satisfying the sexual desires of either of
38 them:

- 39 1. Fondle or touch the pubes or genitals of a
40 child.
- 41 2. Permit or cause a child to fondle or touch the
42 person's genitals or pubes.
- 43 3. Solicit a child to engage in a sex act or
44 solicit a person to arrange a sex act with a child.
- 45 4. Inflict pain or discomfort upon a child or
46 permit a child to inflict pain or discomfort on the
47 person.

48 Any person who violates a provision of this section
49 involving an act included in subsection 1 or 2 shall,
50 upon conviction, be guilty of a class ~~"D"~~ "C" felony.

~~1 A person who violates a provision of this section and
2 who is sentenced to a term of confinement shall also
3 be sentenced to an additional term of parole or work
4 release not to exceed two years. The board of parole
5 shall determine whether the person should be released
6 on parole or placed in a work release program. The
7 sentence of an additional term of parole or work
8 release supervision shall commence immediately upon
9 the expiration of the preceding sentence and shall be
10 under the terms and conditions as set out in chapter
11 906. Violations of parole or work release shall be
12 subject to the procedures set out in chapter 905 or
13 908 or rules adopted under those chapters. The
14 sentence of an additional term of parole or work
15 release shall be consecutive to the original term of
16 confinement. Any person who violates a provision of
17 this section involving an act included in subsection 3
18 or 4 shall, upon conviction, be guilty of a class "D"
19 felony.~~

20 Sec. 33. Section 802.2, Code 2005, is amended to
21 read as follows:

22 802.2 SEXUAL ABUSE -- FIRST, SECOND, OR THIRD
23 DEGREE.

24 1. An information or indictment for sexual abuse
25 in the first, second, or third degree committed on or
26 with a person who is under the age of eighteen years
27 shall be found within ten years after the person upon
28 whom the offense is committed attains eighteen years
29 of age, or if the identity of the person against whom
30 the information or indictment is sought is established
31 through the use of a DNA profile, an information or
32 indictment shall be found within three years from the
33 date the identity of the person is identified by the
34 person's DNA profile, whichever is later.

35 2. An information or indictment for any other
36 sexual abuse in the first, second, or third degree
37 shall be found within ten years after its commission,
38 or if the identity of the person against whom the
39 information or indictment is sought is established
40 through the use of a DNA profile, an information or
41 indictment shall be found within three years from the
42 date the identity of the person is identified by the
43 person's DNA profile, whichever is later.

44 3. As used in this section, "identified" means a
45 person's legal name is known and the person has been
46 determined to be the source of the DNA.

47 Sec. 34. Section 901.5, Code 2005, is amended by
48 adding the following new subsection:

49 NEW SUBSECTION. 13. In addition to any other
50 sentence or other penalty imposed against the

1 defendant, the court shall impose a special sentence
2 if required under section 903B.0A or 903B.0B.

3 Sec. 35. NEW SECTION. 902.15 ENHANCED PENALTY --
4 SEXUAL ABUSE OR LASCIVIOUS ACTS WITH A CHILD.

5 1. A person commits a class "A" felony if the
6 person commits a second or subsequent offense
7 involving any combination of the following offenses:

8 a. Sexual abuse in the second degree in violation
9 of section 709.3.

10 b. Sexual abuse in the third degree in violation
11 of section 709.4.

12 c. Lascivious acts with a child in violation of
13 section 709.8, subsection 1 or 2.

14 2. In determining if a violation charged is a
15 second or subsequent offense for purposes of criminal
16 sentencing in this section, each previous violation on
17 which conviction or deferral of judgment was entered
18 prior to the date of the violation charged shall be
19 considered and counted as a separate previous offense,
20 regardless of whether the previous offense occurred
21 before, on, or after the effective date of this Act.

22 Convictions or the equivalent of deferred judgments
23 for violations in any other states under statutes
24 substantially corresponding to the offenses listed in
25 subsection 1 shall be counted as previous offenses.
26 The courts shall judicially notice the statutes of
27 other states which define offenses substantially
28 equivalent to the offenses listed in subsection 1 and
29 can therefore be considered corresponding statutes.

30 Sec. 36. NEW SECTION. 903B.0A SPECIAL SENTENCE
31 -- CLASS "B" OR CLASS "C" FELONIES.

32 A person convicted of a class "C" felony or greater
33 offense under chapter 709, or a class "C" felony under
34 section 728.12, shall also be sentenced, in addition
35 to any other punishment provided by law, to a special
36 sentence committing the person into the custody of the
37 director of the Iowa department of corrections for the
38 rest of the person's life, with eligibility for parole
39 as provided in chapter 906. The special sentence
40 imposed under this section shall commence upon
41 completion of the sentence imposed under any
42 applicable criminal sentencing provisions for the
43 underlying criminal offense and the person shall begin
44 the sentence under supervision as if on parole. The
45 person shall be placed on the corrections continuum in
46 chapter 901B, and the terms and conditions of the
47 special sentence, including violations, shall be
48 subject to the same set of procedures set out in
49 chapters 901B, 905, 906, and chapter 908, and rules
50 adopted under those chapters for persons on parole

1 shall not be for a period greater than two years upon
2 any first revocation, and five years upon any second
3 or subsequent revocation. A special sentence shall be
4 considered a category "A" sentence for purposes of
5 calculating earned time under section 903A.2.

6 Sec. 37. NEW SECTION. 903B.0B SPECIAL SENTENCE
7 -- CLASS "D" FELONIES OR MISDEMEANORS.

8 A person convicted of a misdemeanor or a class "D"
9 felony offense under chapter 709, section 726.2, or
10 section 728.12 shall also be sentenced, in addition to
11 any other punishment provided by law, to a special
12 sentence committing the person into the custody of the
13 director of the Iowa department of corrections for a
14 period of ten years, with eligibility for parole as
15 provided in chapter 906. The special sentence imposed
16 under this section shall commence upon completion of
17 the sentence imposed under any applicable criminal
18 sentencing provisions for the underlying criminal
19 offense and the person shall begin the sentence under
20 supervision as if on parole. The person shall be
21 placed on the corrections continuum in chapter 901B,
22 and the terms and conditions of the special sentence,
23 including violations, shall be subject to the same set
24 of procedures set out in chapters 901B, 905, 906, and
25 908, and rules adopted under those chapters for
26 persons on parole. The revocation of release shall
27 not be for a period greater than two years upon any
28 first revocation, and five years upon any second or
29 subsequent revocation. A special sentence shall be
30 considered a category "A" sentence for purposes of
31 calculating earned time under section 903A.2.

32 Sec. 38. Section 903B.1, subsection 3, Code 2005,
33 is amended by striking the subsection.

34 Sec. 39. Section 906.15, unnumbered paragraph 1,
35 Code 2005, is amended to read as follows:

36 Unless sooner discharged, a person released on
37 parole shall be discharged when the person's term of
38 parole equals the period of imprisonment specified in
39 the person's sentence, less all time served in
40 confinement. Discharge from parole may be granted
41 prior to such time, when an early discharge is
42 appropriate. The board shall periodically review all
43 paroles, and when the board determines that any person
44 on parole is able and willing to fulfill the
45 obligations of a law-abiding citizen without further
46 supervision, the board shall discharge the person from
47 parole. A parole officer shall periodically review
48 all paroles assigned to the parole officer, and when
49 the parole officer determines that any person assigned
50 to the officer is able and willing to fulfill the

1 department of public safety for submission through the
2 state criminal history repository to the federal
3 bureau of investigation. The applicant shall
4 authorize release of the results of the criminal
5 history check to the domestic abuse or sexual assault
6 center. The applicant shall pay the actual cost of
7 the fingerprinting and criminal history check, if any.
8 Unless the criminal history check was completed within
9 the ninety calendar days prior to the date the
10 application is received by the domestic abuse or
11 sexual assault center, the center shall reject and
12 return the application to the applicant. The results
13 of a criminal history check conducted pursuant to this
14 subsection shall not be considered a public record
15 under chapter 22. For purposes of this section,
16 "domestic abuse or sexual assault center" means a
17 facility which is used to house victims of domestic
18 abuse or sexual assault, and is owned, operated, or
19 maintained by a nonprofit organization.

20 Sec. 42. NEW SECTION. 709.22 PREVENTION OF
21 FURTHER SEXUAL ASSAULT -- NOTIFICATION OF RIGHTS.

22 If a peace officer has reason to believe that a
23 sexual assault as defined in section 915.40 has
24 occurred, the officer shall use all reasonable means
25 to prevent further violence including but not limited
26 to the following:

27 1. If requested, remaining on the scene of the
28 alleged sexual assault as long as there is a danger to
29 the victim's physical safety without the presence of a
30 peace officer, including but not limited to staying in
31 the dwelling unit, or if unable to remain on the
32 scene, assisting the victim in leaving the residence.

33 2. Assisting a victim in obtaining medical
34 treatment necessitated by the sexual assault,
35 including providing assistance to the victim in
36 obtaining transportation to the emergency room of the
37 nearest hospital.

38 3. Providing a victim with immediate and adequate
39 notice of the victim's rights. The notice shall
40 consist of handing the victim a copy of the following
41 statement written in English and Spanish, asking the
42 victim to read the statement, and asking whether the
43 victim understands the rights:

44 "You have the right to ask the court for help with
45 any of the following on a temporary basis:

46 a. Keeping your attacker away from you, your home,
47 and your place of work.

48 b. The right to stay at your home without
49 interference from your attacker.

50 c. The right to seek a no-contact order under

1 section 709.20 or 915.22, if your attacker is arrested
2 for sexual assault.

3 You have the right to register as a victim with the
4 county attorney under section 915.12.

5 You have the right to file a complaint for threats,
6 assaults, or other related crimes.

7 You have the right to seek restitution against your
8 attacker for harm to you or your property.

9 You have the right to apply for victim
10 compensation.

11 You have the right to contact the county attorney
12 or local law enforcement to determine the status of
13 your case.

14 If you are in need of medical treatment, you have
15 the right to request that the officer present assist
16 you in obtaining transportation to the nearest
17 hospital or otherwise assist you.

18 You have the right to a sexual assault examination
19 performed at state expense.

20 If you believe that police protection is needed for
21 your physical safety, you have the right to request
22 that the officer present remain at the scene until you
23 and other affected parties can leave or until safety
24 is otherwise ensured."

25 The notice shall also contain the telephone numbers
26 of shelters, support groups, and crisis lines
27 operating in the area.

28 Sec. 43. Section 915.10, subsections 1 and 2, Code
29 2005, are amended to read as follows:

30 1. "Notification" means mailing by regular mail or
31 providing for hand delivery of appropriate information
32 or papers. However, this notification procedure does
33 not prohibit an office, agency, or department from
34 also providing appropriate information to a registered
35 victim by telephone, electronic mail, or other means.

36 2. "Registered" means having provided the county
37 attorney with the victim's written request for
38 registration and current mailing address and telephone
39 number. If an automated victim notification system is
40 implemented pursuant to section 915.10A, "registered"
41 also means having filed a request for registration
42 with the system.

43 Sec. 44. NEW SECTION. 915.10A AUTOMATED VICTIM
44 NOTIFICATION SYSTEM.

45 1. An automated victim notification system may be
46 utilized to assist public officials in informing crime
47 victims, the victim's family, or other interested
48 persons as provided in this subchapter and where
49 otherwise specifically provided. The system shall
50 disseminate the information to registered users

1 through telephonic, electronic, or other means of
2 access.

3 2. An office, agency, or department may satisfy a
4 notification obligation to registered victims required
5 by this subchapter through participation in the system
6 to the extent information is available for
7 dissemination through the system. Nothing in this
8 section shall relieve a notification obligation under
9 this subchapter due to the unavailability of
10 information for dissemination through the system.

11 3. Notwithstanding section 232.147, information
12 concerning juveniles charged with a felony offense
13 shall be released to the extent necessary to comply
14 with this section.

15 Sec. 45. Section 915.11, Code 2005, is amended to
16 read as follows:

17 915.11 INITIAL NOTIFICATION BY LAW ENFORCEMENT.

18 A local police department or county sheriff's
19 department shall advise a victim of the right to
20 register with the county attorney, and shall provide a
21 request-for-registration form to each victim. If an
22 automated victim notification system is available
23 pursuant to section 915.10A, a local police department
24 or county sheriff's department shall provide a
25 telephone number and website to each victim to
26 register with the system.

27 Sec. 46. Section 915.12, Code 2005, is amended to
28 read as follows:

29 915.12 REGISTRATION.

30 ~~1. The county attorney shall be the sole registrar~~
31 ~~of victims under this subchapter.~~

32 ~~2.~~ 1. A victim may register by filing a written
33 request-for-registration form with the county
34 attorney. The county attorney shall notify the
35 victims in writing and advise them of their
36 registration and rights under this subchapter.

37 ~~3.~~ The county attorney shall provide a registered
38 victim list to the offices, agencies, and departments
39 required to provide information under this subchapter
40 for notification purposes.

41 2. If an automated victim notification system, the
42 victim's family, is available pursuant to section
43 915.10A, a victim, the victim's family, or other
44 interested person may register with the system by
45 filing a request for registration through written,
46 telephonic, or electronic means.

47 ~~4.~~ 3. Notwithstanding chapter 22 or any other
48 contrary provision of law, ~~a victim's~~ the registration
49 of a victim, victim's family, or other interested
50 person shall be strictly maintained in a separate

1 confidential file or other confidential medium, and
2 shall be available only to the offices, agencies, and
3 departments required to provide information under this
4 subchapter.

5 Sec. 47. Section 915.29, Code 2005, is amended by
6 adding the following new unnumbered paragraph:

7 NEW UNNUMBERED PARAGRAPH. The notification
8 required pursuant to this section may occur through
9 the automated victim notification system referred to
10 in section 915.10A to the extent such information is
11 available for dissemination through the system.

12 Sec. 48. Section 915.45, Code 2005, is amended by
13 adding the following new unnumbered paragraph:

14 NEW UNNUMBERED PARAGRAPH. The notification
15 required pursuant to this section may occur through
16 the automated victim notification system referred to
17 in section 915.10A to the extent such information is
18 available for dissemination through the system.

19 DIVISION V

20 TASK FORCE

21 Sec. 49. SEX OFFENDER TREATMENT AND SUPERVISION
22 TASK FORCE.

23 1. The division of criminal and juvenile justice
24 planning shall establish a task force to study and
25 make periodic recommendations for treating and
26 supervising sex offenders in correctional institutions
27 and in the community. The task force shall file a
28 report with recommendations with the general assembly
29 by January 15, 2006. The task force shall study the
30 effectiveness of electronic monitoring and the
31 potential effects and costs associated with the
32 special sentence created in this Act. The task force
33 shall study risk assessment models created for sex
34 offenders. The task force shall also review this
35 state's efforts and the efforts of other states to
36 implement treatment programs and make recommendations
37 as to the best treatment options available for sex
38 offenders. The task force shall also develop a plan
39 to integrate state government databases for the
40 purpose of updating addresses of persons on the sex
41 offender registry.

42 2. Members of the task force shall include
43 representatives of the following state agencies and
44 organizations:

45 a. One representative of the department of human
46 services.

47 b. One representative of the department of public
48 safety.

49 c. One representative of the Iowa state sheriffs
50 and deputies association.

- 1 d. One representative of the Iowa county attorneys
- 2 association.
- 3 e. One representative of the department of
- 4 corrections.
- 5 f. One representative of the board of parole.
- 6 g. One representative of a judicial district
- 7 department of correctional services.
- 8 h. One representative of the department of
- 9 justice.
- 10 i. One representative of the state public
- 11 defender.
- 12 j. One representative of the Iowa coalition
- 13 against sexual assault.

14 DIVISION VI
15 STATE MANDATE

16 Sec. 50. IMPLEMENTATION OF ACT. Section 25B.2,
17 subsection 3, shall not apply to this Act."

18 2. Title page, by striking lines 1 through 5 and
19 inserting the following: "An Act relating to criminal
20 sentencing, victim notification, and the sex offender
21 registry, including establishing a special sentence
22 for certain offenders, requiring DNA testing of
23 certain offenders, requiring sex offender treatment in
24 order to accumulate earned time, establishing a sex
25 offender treatment and supervision task force,
26 providing penalties, and providing an effective
27 date.""

By KEITH A. KREIMAN

S-3199

1 Amend the amendment, S-3185, to House File 619, as
 2 amended, passed, and reprinted by the House, as
 3 follows:

4 1. Page 13, by inserting after line 19 the
 5 following:

6 "Sec. ____ . Section 903B.1, subsection 1, Code
 7 2005, is amended to read as follows:

8 1. A person who has been convicted of a serious
 9 sex offense ~~may shall, upon a first conviction and in~~
 10 addition to any other punishment provided by law, be
 11 required to undergo medroxyprogesterone acetate
 12 treatment as part of any conditions of release imposed
 13 by the court or the board of parole. The treatment
 14 prescribed in this section may utilize an approved
 15 pharmaceutical agent other than medroxyprogesterone
 16 acetate. ~~Upon a second or subsequent conviction, the~~
 17 ~~court or the board of parole shall require the person~~
 18 ~~to undergo medroxyprogesterone acetate or other~~
 19 ~~approved pharmaceutical agent treatment as a condition~~
 20 ~~of release, unless, after an appropriate assessment,~~
 21 ~~the court or board determines that the treatment would~~
 22 ~~not be effective. In determining whether a conviction~~
 23 ~~is a first or second conviction under this section, a~~
 24 ~~prior conviction for a criminal offense committed in~~
 25 ~~another jurisdiction which would constitute a~~
 26 ~~violation of section 709.3, subsection 2, if committed~~
 27 ~~in this state, shall be considered a conviction under~~
 28 ~~this section.~~ This section shall not apply if the
 29 person voluntarily undergoes a permanent surgical
 30 alternative approved by the court or the board of
 31 parole.

32 Sec. ____ . Section 903B.1, Code 2005, is amended by
 33 adding the following new subsection:

34 NEW SUBSECTION. 7. A person who administers
 35 medroxyprogesterone acetate or any other
 36 pharmaceutical agent shall not be liable for civil
 37 damages for administering such pharmaceutical agents
 38 pursuant to this chapter."

39 2. By renumbering as necessary.

By BOB BRUNKHORST
 DAVID JOHNSON
 STEVE KETTERING
 JERRY BEHN
 LARRY MCKIBBEN
 JEFF ANGELO
 PAUL MCKINLEY

JOHN PUTNEY
 RON WIECK
 PAT WARD
 DAVE MULDER
 BRAD ZAUN
 HUBERT M. HOUSER
 JAMES HAHN

HOUSE FILE 619

S-3203

1 Amend the amendment, S-3185, to House File 619, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 13, by inserting after line 22 the
5 following:

6 "Sec. ____ . Section 232.68, subsection 2, Code
7 2005, is amended by adding the following new
8 paragraph:

9 NEW PARAGRAPH. i. Cohabitation with a person on
10 the sex offender registry under chapter 692A in
11 violation of section 726.6."

12 2. Page 14, by inserting after line 12 the
13 following:

14 "Sec. ____ . Section 726.6, subsection 1, Code 2005,
15 is amended by adding the following new paragraph:

16 NEW PARAGRAPH. h. Cohabits with a person after
17 knowing the person is required to register or is on
18 the sex offender registry as a sex offender under
19 chapter 692A. However, this paragraph does not apply
20 to a person who is a parent, guardian, or a person
21 having custody or control over a child or a minor who
22 is required to register as a sex offender."

23 3. By renumbering as necessary.

By DAVID MILLER
JERRY BEHN

S-3203 FILED APRIL 28, 2005

S-3219

1 Amend House File 619, as amended, passed, and
2 reprinted by the House, as follows:

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

5 "DIVISION I
6 DNA PROFILING

7 Section 1. NEW SECTION. 81.1 DEFINITIONS.

8 As used in this chapter, unless the context
9 otherwise requires:

10 1. "DNA" means deoxyribonucleic acid.

11 2. "DNA databank" means the repository for DNA
12 samples obtained pursuant to section 81.4.

13 3. "DNA database" means the collection of DNA
14 profiles and DNA records.

15 4. "DNA profile" means the objective form of the
16 results of DNA analysis performed on a DNA sample.

17 The results of all DNA identification analysis on an
18 individual's DNA sample are also collectively referred
19 to as the DNA profile of an individual.

20 5. "DNA profiling" means the procedure established
21 by the division of criminal investigation, department
22 of public safety, for determining a person's genetic
23 identity.

24 6. "DNA record" means the DNA sample and DNA
25 profile, and other records in the DNA database and DNA
26 data bank used to identify a person.

27 7. "DNA sample" means a biological sample provided
28 by any person required to submit a DNA sample or a DNA
29 sample submitted for any other purpose under section
30 81.4.

31 8. "Person required to submit a DNA sample" means
32 a person convicted, adjudicated delinquent, receiving
33 a deferred judgment, or found not guilty by reason of
34 insanity of an offense requiring DNA profiling
35 pursuant to section 81.2. "Person required to submit
36 a DNA sample" also means a person determined to be a
37 sexually violent predator pursuant to section 229A.7.

38 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO
39 SUBMIT A DNA SAMPLE.

40 1. A person who receives a deferred judgment for a
41 felony or against whom a judgment or conviction for a
42 felony has been entered shall be required to submit a
43 DNA sample for DNA profiling pursuant to section 81.4.

44 2. A person determined to be a sexually violent
45 predator pursuant to chapter 229A shall be required to
46 submit a DNA sample for DNA profiling pursuant to
47 section 81.4 prior to discharge or placement in a
48 transitional release program.

49 3. A person found not guilty by reason of insanity
50 of an offense that requires DNA profiling shall be

S-3219

1 required to submit a DNA sample for DNA profiling
2 pursuant to section 81.4 as part of the person's
3 treatment management program.

4 4. A juvenile adjudicated delinquent of an offense
5 that requires DNA profiling of an adult offender shall
6 be required to submit a DNA sample for DNA profiling
7 pursuant to section 81.4 as part of the disposition of
8 the juvenile's case.

9 5. An offender placed on probation shall
10 immediately report to the judicial district department
11 of correctional services after sentencing so it can be
12 determined if the offender has been convicted of an
13 offense requiring DNA profiling. If it is determined
14 by the judicial district that DNA profiling is
15 required, the offender shall immediately submit a DNA
16 sample.

17 6. A person required to register as a sex
18 offender.

19 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA
20 DATABASE AND DNA DATABANK.

21 1. A state DNA database and a state DNA databank
22 are established under the control of the division of
23 criminal investigation, department of public safety.
24 The division of criminal investigation shall conduct
25 DNA profiling of a DNA sample submitted in accordance
26 with this section.

27 2. A DNA sample shall be submitted, and the
28 division of criminal investigation shall store and
29 maintain DNA records in the DNA database and DNA
30 databank for persons required to submit a DNA sample.

31 3. A DNA sample may be submitted, and the division
32 of criminal investigation shall store and maintain DNA
33 records in the DNA database and DNA databank for any
34 of the following:

- 35 a. Crime scene evidence and forensic casework.
- 36 b. A relative of a missing person.
- 37 c. An anonymous DNA profile used for forensic
38 validation, forensic protocol development, or quality
39 control purposes, or for the establishment of a
40 population statistics database.

41 4. A fingerprint record of a person required to
42 submit a DNA sample shall also be submitted to the
43 division of criminal investigation with the DNA sample
44 to verify the identity of the person required to
45 submit a DNA sample.

46 Sec. 4. NEW SECTION. 81.4 COLLECTING,
47 SUBMITTING, ANALYZING, IDENTIFYING, AND STORING DNA
48 SAMPLES AND DNA RECORDS.

49 1. The division of criminal investigation shall
50 adopt rules for the collection, submission, analysis,

1 identification, storage, and disposition of DNA
2 records.

3 2. A supervising agency having control, custody,
4 or jurisdiction over a person shall collect a DNA
5 sample from a person required to submit a DNA sample.
6 The supervising agency shall collect a DNA sample,
7 upon admittance to the pertinent institution or
8 facility, of the person required to submit a DNA
9 sample or at a determined date and time set by the
10 supervising agency. If a person required to submit a
11 DNA sample is confined at the time a DNA sample is
12 required, the person shall submit a DNA sample as soon
13 as practicable. If a person required to submit a DNA
14 sample is not confined after the person is required to
15 submit a DNA sample, the supervising agency shall
16 determine the date and time to collect the DNA sample.

17 3. A person required to submit a DNA sample who
18 refuses to submit a DNA sample may be subject to
19 contempt proceedings pursuant to chapter 665 until the
20 DNA sample is submitted.

21 4. The division of criminal investigation shall
22 conduct DNA profiling on a DNA sample or may contract
23 with a private entity to conduct the DNA profiling.

24 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL
25 LIABILITY -- LIMITATION.

26 A person who collects a DNA sample shall not be
27 civilly or criminally liable for the collection of the
28 DNA sample if the person performs the person's duties
29 in good faith and in a reasonable manner according to
30 generally accepted medical practices or in accordance
31 with the procedures set out in the administrative
32 rules of the department of public safety adopted
33 pursuant to section 81.4.

34 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

35 1. A person who knowingly or intentionally does
36 any of the following commits an aggravated
37 misdemeanor:

38 a. Discloses any part of a DNA record to a person
39 or agency that is not authorized by the division of
40 criminal investigation to have access to the DNA
41 record.

42 b. Uses or obtains a DNA record for a purpose
43 other than what is authorized under this chapter.

44 2. A person who knowingly or intentionally alters
45 or attempts to alter a DNA sample, falsifies the
46 source of a DNA sample, or materially alters a
47 collection container used to collect the DNA sample,
48 commits a class "D" felony.

49 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST
50 NOT INVALIDATED.

1 The detention, arrest, or conviction of a person
2 based upon a DNA database match is not invalidated if
3 it is determined that the DNA sample or DNA profile
4 was obtained or placed into the DNA database by
5 mistake or error.

6 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

7 1. A DNA record shall be considered a confidential
8 record and disclosure of a DNA record is only
9 authorized pursuant to this section.

10 2. Confidential DNA records under this section may
11 be released to the following agencies for law
12 enforcement identification purposes:

13 a. Any criminal or juvenile justice agency as
14 defined in section 692.1.

15 b. Any criminal or juvenile justice agency in
16 another jurisdiction that meets the definition of a
17 criminal or juvenile justice agency as defined in
18 section 692.1.

19 3. The division of criminal investigation shall
20 share the DNA record information with the appropriate
21 federal agencies for use in a national DNA database.

22 4. A DNA record or other forensic information
23 developed pursuant to this chapter may be released for
24 use in a criminal or juvenile delinquency proceeding
25 in which the state is a party and where the DNA record
26 or forensic information is relevant and material to
27 the subject of the proceeding. Such a record or
28 information may become part of a public transcript or
29 other public recording of such a proceeding.

30 5. A DNA record or other forensic information may
31 be released pursuant to a court order for criminal
32 defense purposes to a defendant, who shall have access
33 to DNA samples and DNA profiles related to the case in
34 which the defendant is charged.

35 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA
36 RECORDS.

37 1. A person whose DNA record has been included in
38 the DNA database or DNA databank established pursuant
39 to section 81.3 may request, in writing to the
40 division of criminal investigation, expungement of the
41 DNA record from the DNA database and DNA databank
42 based upon the person's conviction, adjudication, or
43 civil commitment which caused the submission of the
44 DNA sample being reversed on appeal and the case
45 dismissed. The written request shall contain a
46 certified copy of the final court order reversing the
47 conviction, adjudication, or civil commitment, and a
48 certified copy of the dismissal, and any other
49 information necessary to ascertain the validity of the
50 request.

1 2. The division of criminal investigation, upon
2 receipt of a written request that validates reversal
3 on appeal of a person's conviction, adjudication, or
4 commitment, and subsequent dismissal of the case, or
5 upon receipt of a written request by a person who
6 voluntarily submitted a DNA sample under section 81.3,
7 subsection 3, paragraph "b", or upon receipt of a
8 written request by a person who voluntarily submitted
9 a DNA sample pursuant to section 81.3, subsection 3,
10 paragraph "b", shall expunge all of the DNA records
11 and identifiable information of the person in the DNA
12 database and DNA databank. However, if the division
13 of criminal investigation determines that the person
14 is otherwise obligated to submit a DNA sample, the DNA
15 records shall not be expunged. If the division of
16 criminal investigation denies an expungement request,
17 the division shall notify the person requesting the
18 expungement of the decision not to expunge the DNA
19 record and the reason supporting its decision. The
20 division of criminal investigation decision is subject
21 to judicial review pursuant to chapter 17A. The
22 department of public safety shall adopt rules
23 governing the expungement procedure and a review
24 process.

25 3. The division of criminal investigation is not
26 required to expunge or destroy a DNA record pursuant
27 to this section, if expungement or destruction of the
28 DNA record would destroy evidence related to another
29 person.

30 Sec. 10. NEW SECTION. 81.10 DNA PROFILING AFTER
31 CONVICTION.

32 1. A defendant who has been convicted of a felony
33 and who has not been required to submit a DNA sample
34 for DNA profiling may make a motion to the court for
35 an order to require that DNA analysis be performed on
36 evidence collected in the case for which the person
37 stands convicted.

38 2. The motion shall state the following:

39 a. The specific crimes for which the defendant
40 stands convicted in this case.

41 b. The facts of the underlying case, as proven at
42 trial or admitted to during a guilty plea proceeding.

43 c. Whether any of the charges include sexual abuse
44 or involve sexual assault, and if so, whether a sexual
45 assault examination was conducted and evidence
46 preserved, if known.

47 d. Whether identity was at issue or contested by
48 the defendant.

49 e. Whether the defendant offered an alibi, and if
50 so, testimony corroborating the alibi and, from whom.

1 f. Whether eyewitness testimony was offered, and
2 if so from whom.

3 g. Whether any issues of police or prosecutor
4 misconduct have been raised in the past or are being
5 raised by the motion.

6 h. The type of inculpatory evidence admitted into
7 evidence at trial or admitted to during a guilty plea
8 proceeding.

9 i. Whether blood testing or other biological
10 evidence testing was conducted previously in
11 connection with the case and, if so, by whom and to
12 the result, if known.

13 j. What biological evidence exists and, if known,
14 the agency or laboratory storing the evidence that the
15 defendant seeks to have tested.

16 k. Why the requested analysis of DNA evidence is
17 material to the issue in the case and not merely
18 cumulative or impeaching.

19 l. Why the DNA evidence would have changed the
20 outcome of the trial or invalidated a guilty plea if
21 DNA profiling had been conducted prior to the
22 conviction.

23 3. A motion filed under this section shall be
24 filed in the county where the defendant was convicted,
25 and notice of the motion shall be served by certified
26 mail upon the county attorney and, if known, upon the
27 state, local agency, or laboratory holding evidence
28 described in subsection 2, paragraph "k". The county
29 attorney shall have sixty days to file an answer to
30 the motion.

31 4. Any DNA profiling of the defendant or other
32 biological evidence testing conducted by the state or
33 by the defendant shall be disclosed and the results of
34 such profiling or testing described in the motion or
35 answer.

36 5. If the evidence requested to be tested was
37 previously subjected to DNA or other biological
38 analysis by either party, the court may order the
39 disclosure of the results of such testing, including
40 laboratory reports, notes, and underlying data, to the
41 court and the parties.

42 6. The court may order a hearing on the motion to
43 determine if evidence should be subjected to DNA
44 analysis.

45 7. The court shall grant the motion if all of the
46 following apply:

47 a. The evidence subject to DNA testing is
48 available and in a condition that will permit
49 analysis.

50 b. A sufficient chain of custody has been

1 established for the evidence.

2 c. The identity of the person who committed the
3 crime for which the defendant was convicted was a
4 significant issue in the crime for which the defendant
5 was convicted.

6 d. The evidence subject to DNA analysis is
7 material to, and not merely cumulative or impeaching
8 of, evidence included in the trial record or admitted
9 to at a guilty plea proceeding.

10 e. DNA analysis of the evidence would raise a
11 reasonable probability that the defendant would not
12 have been convicted if DNA profiling had been
13 available at the time of the conviction and had been
14 conducted prior to the conviction.

15 8. Upon the court granting a motion filed pursuant
16 to this section, DNA analysis of evidence shall be
17 conducted within the guidelines generally accepted by
18 the scientific community. The defendant shall provide
19 DNA samples for testing if requested by the state.

20 9. Results of DNA analysis conducted pursuant to
21 this section shall be reported to the parties and to
22 the court and may be provided to the board of parole,
23 department of corrections, and criminal and juvenile
24 justice agencies, as defined in section 692.1, for use
25 in the course of investigations and prosecutions, and
26 for consideration in connection with requests for
27 parole, pardon, reprieve, and commutation. DNA
28 samples obtained pursuant to this section may be
29 included in the DNA databank, and DNA profiles and DNA
30 records developed pursuant to this section may be
31 included in the DNA database.

32 10. A criminal or juvenile justice agency, as
33 defined in section 692.1, shall maintain DNA samples
34 and evidence that could be tested for DNA for a period
35 of three years beyond the limitations for the
36 commencement of criminal actions as set forth in
37 chapter 802. This section does not create a cause of
38 action for damages or a presumption of spoliation in
39 the event evidence is no longer available for testing.

40 11. If the court determines a defendant who files
41 a motion under this section is indigent, the defendant
42 shall be entitled to appointment of counsel as
43 provided in chapter 815.

44 12. If the court determines after DNA analysis
45 ordered pursuant to this section that the results
46 indicate conclusively that the DNA profile of the
47 defendant matches the profile from the analyzed
48 evidence used against the defendant, the court may
49 order the defendant to pay the costs of these
50 proceedings, including costs of all testing, court

1 costs, and costs of court-appointed counsel, if any.

2 Sec. 11. Section 229A.7, Code 2005, is amended by
3 adding the following new subsection:

4 NEW SUBSECTION. 5A. If the court or jury
5 determines that the respondent is a sexually violent
6 predator, the court shall order the respondent to
7 submit a DNA sample for DNA profiling pursuant to
8 section 81.4.

9 Sec. 12. Section 232.52, Code 2005, is amended by
10 adding the following new subsection:

11 NEW SUBSECTION. 10. The court shall order a
12 juvenile adjudicated a delinquent for an offense that
13 requires DNA profiling under section 81.2 to submit a
14 DNA sample for DNA profiling pursuant to section 81.4.

15 Sec. 13. Section 669.14, Code 2005, is amended by
16 adding the following new subsection:

17 NEW SUBSECTION. 15. Any claim arising from or
18 related to the collection of a DNA sample for DNA
19 profiling pursuant to section 81.4 or a DNA profiling
20 procedure performed by the division of criminal
21 investigation, department of public safety.

22 Sec. 14. Section 901.5, subsection 8A, Code 2005,
23 is amended to read as follows:

24 8A. a. The court shall order DNA profiling of a
25 defendant convicted of an offense that requires
26 profiling under section ~~13.10~~ 81.2.

27 b. Notwithstanding section ~~13.10~~ 81.2, the court
28 may order the defendant to provide a ~~physical specimen~~
29 DNA sample to be submitted for DNA profiling if
30 appropriate. In determining the appropriateness of
31 ordering DNA profiling, the court shall consider the
32 deterrent effect of DNA profiling, the likelihood of
33 repeated offenses by the defendant, and the
34 seriousness of the offense.

35 Sec. 15. Section 906.4, unnumbered paragraph 3,
36 Code 2005, is amended to read as follows:

37 ~~Notwithstanding section 13.10, the~~ The board may
38 order the defendant to provide a physical specimen to
39 be submitted for DNA profiling as a condition of
40 parole or work release, if ~~appropriate~~ a DNA profile
41 has not been previously conducted pursuant to chapter
42 81. In determining the appropriateness of ordering
43 DNA profiling, the board shall consider the deterrent
44 effect of DNA profiling, the likelihood of repeated
45 offenses by the defendant, and the seriousness of the
46 offense.

47 Sec. 16. 2002 Iowa Acts, chapter 1080, is
48 repealed.

49 Sec. 17. Section 13.10, Code 2005, is repealed.

50 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE

1 PRIOR TO EFFECTIVE DATE OF THIS DIVISION OF THIS ACT.
2 A person convicted, adjudicated a delinquent, civilly
3 committed as a sexually violent predator, or found not
4 guilty by reason of insanity, prior to the effective
5 date of this Act, who would otherwise be required to
6 submit a DNA sample under this Act, and who is under
7 the custody, control, or jurisdiction of a supervising
8 agency, shall submit a DNA sample prior to being
9 released from the supervising agency's custody,
10 control, or jurisdiction.

11 Sec. 19. EFFECTIVE DATE. This division of this
12 Act, being deemed of immediate importance, takes
13 effect upon enactment.

14 DIVISION II

15 SEX OFFENDER REGISTRY AND TREATMENT

16 Sec. 20. Section 692A.1, subsection 8, Code 2005,
17 is amended to read as follows:

18 8. "Residence" means the place where a person
19 sleeps, which may include more than one location, and
20 may be mobile or transitory, including a shelter or
21 group home.

22 Sec. 21. Section 692A.2, Code 2005, is amended by
23 adding the following new subsection:

24 NEW SUBSECTION. 1A. If a person is required to
25 register for a period of ten years under subsection 1
26 and the period under subsection 1 has expired, the
27 person shall be required to remain on the registry if
28 the person has been sentenced to a special sentence as
29 required under section 903B.0A or 903B.0B, for a
30 period equal to the term of the special sentence.

31 Sec. 22. Section 692A.4, Code 2005, is amended to
32 read as follows:

33 692A.4 VERIFICATION OF ADDRESS AND TAKING OF
34 PHOTOGRAPH.

35 1. The address of a person required to register
36 under this chapter shall be verified annually as
37 follows:

38 a. On a date which falls within the month in which
39 the person was initially required to register, the
40 department shall mail a verification form to the last
41 reported address of the person. Verification forms
42 shall not be forwarded to the person who is required
43 to register under this chapter if the person no longer
44 resides at the address, but shall be returned to the
45 department.

46 b. The person shall complete and mail the
47 verification to the department within ten days of
48 receipt of the form.

49 c. The verification form shall be signed by the
50 person, and state the address at which the person

1 resides. If the person is in the process of changing
2 residences, the person shall state that fact as well
3 as the old and new addresses or places of residence.

4 2. Verification of address for a person who has
5 been convicted of an offense under the laws of this
6 state or of another state which would qualify the
7 person as a sexually violent predator shall be
8 accomplished in the same manner as in subsection 1,
9 except that the verification shall be done every three
10 months at times established by the department.

11 3. A photograph of a person required to register
12 under this chapter shall be updated, at a minimum,
13 annually. When the department mails the address
14 verification notice in subsection 1, the department
15 shall also enclose a form informing the person to
16 annually submit to being photographed by the sheriff
17 of the county of the person's residence within ten
18 days of receipt of the address verification form. The
19 sheriff shall send the updated photograph to the
20 department within ten days of the photograph being
21 taken and the department shall post the updated
22 photograph on the sex offender registry's web page.
23 The sheriff may require the person to submit to being
24 photographed by the sheriff more than once a year by
25 mailing another notice informing the person to submit
26 to being photographed.

27 Sec. 23. NEW SECTION. 692A.4A ELECTRONIC
28 MONITORING.

29 A person required to register under this chapter
30 who is placed on probation, parole, work release,
31 special sentence, or any other type of conditional
32 release, may be supervised by an electronic tracking
33 and monitoring system in addition to any other
34 conditions of supervision.

35 Sec. 24. Section 692A.5, subsection 1, Code 2005,
36 is amended by adding the following new paragraph:

37 NEW PARAGRAPH. i. Inform the person that the
38 person must, at a minimum, annually submit to being
39 photographed by the sheriff of the county of the
40 person's residence.

41 Sec. 25. Section 692A.13, subsection 3, Code 2005,
42 is amended to read as follows:

43 3. Any member of the public may contact a county
44 sheriff's office or police department to request
45 relevant information from the registry regarding a
46 specific person required to register under this
47 chapter. ~~The request for information shall be in~~
48 ~~writing, and~~ A person making a request for relevant
49 information may make the request by telephone, in
50 writing, or in person, and the request shall include

1 the name of the person and at least one of the
2 following identifiers pertaining to the person about
3 whom the information is sought:

- 4 a. The date of birth of the person.
- 5 b. The social security number of the person.
- 6 c. The address of the person.

7 A county sheriff or police department shall not
8 charge a fee relating to a request for relevant
9 information.

10 Sec. 26. Section 692A.13, subsection 2, paragraph
11 b, Code 2005, is amended to read as follows:

12 b. The general public, including public and
13 private agencies, organizations, public places, ~~public~~
14 ~~and private schools~~, child care facilities, religious
15 and youth organizations, neighbors, neighborhood
16 associations, community meetings, and employers.
17 Registry information may be distributed to the public
18 through printed materials, visual or audio press
19 releases, radio communications, or through a criminal
20 or juvenile justice agency's web page.

21 Sec. 27. Section 692A.13, Code 2005, is amended by
22 adding the following new subsection:

23 NEW SUBSECTION. 2A. When a person required to
24 register under this chapter moves into a school
25 district or moves within a school district, the county
26 sheriff of the county of the person's new residence
27 shall provide relevant information from the sex
28 offender registry to the administrative office of the
29 school district in which the person required to
30 register resides, and shall also provide relevant
31 information to any private school near the person's
32 residence.

33 Sec. 28. Section 692A.13, subsection 5, Code 2005,
34 is amended to read as follows:

35 5. Relevant information provided to the general
36 public may include the offender's name, address, a
37 photograph, locations frequented by the offender,
38 relevant criminal history information from the
39 registry, and any other relevant information.

40 Relevant information provided to the public shall not
41 include the identity of any victim. For purposes of
42 inclusion in the sex offender registry's web page or
43 dissemination to the general public, a conviction for
44 incest shall be disclosed as either a violation of
45 section 709.4 or 709.8.

46 Sec. 29. Section 903A.2, subsection 1, paragraph
47 a, Code 2005, is amended to read as follows:

48 a. Category "A" sentences are those sentences
49 which are not subject to a maximum accumulation of
50 earned time of fifteen percent of the total sentence

1 of confinement under section 902.12. To the extent
 2 provided in subsection 5, category "A" sentences also
 3 include life sentences imposed under section 902.1.
 4 An inmate of an institution under the control of the
 5 department of corrections who is serving a category
 6 "A" sentence is eligible for a reduction of sentence
 7 equal to one and two-tenths days for each day the
 8 inmate demonstrates good conduct and satisfactorily
 9 participates in any program or placement status
 10 identified by the director to earn the reduction. The
 11 programs include but are not limited to the following:

- 12 (1) Employment in the institution.
- 13 (2) Iowa state industries.
- 14 (3) An employment program established by the
15 director.
- 16 (4) A treatment program established by the
17 director.
- 18 (5) An inmate educational program approved by the
19 director.

20 However, an inmate required to participate in a sex
 21 offender treatment program shall not be eligible for a
 22 reduction of sentence unless the inmate participates
 23 in and completes a sex offender treatment program
 24 established by the director.

25 An inmate serving a category "A" sentence is
 26 eligible for an additional reduction of sentence of up
 27 to three hundred sixty-five days of the full term of
 28 the sentence of the inmate for exemplary acts. In
 29 accordance with section 903A.4, the director shall by
 30 policy identify what constitutes an exemplary act that
 31 may warrant an additional reduction of sentence.

32 DIVISION III

33 ENHANCED CRIMINAL PENALTIES AND

34 STATUTE OF LIMITATIONS

35 Sec. 30. Section 709.8, Code 2005, is amended to
 36 read as follows:

37 709.8 LASCIVIOUS ACTS WITH A CHILD.

38 It is unlawful for any person ~~eighteen~~ sixteen
 39 years of age or older to perform any of the following
 40 acts with a child with or without the child's consent
 41 unless married to each other, for the purpose of
 42 arousing or satisfying the sexual desires of either of
 43 them:

- 44 1. Fondle or touch the pubes or genitals of a
45 child.
- 46 2. Permit or cause a child to fondle or touch the
47 person's genitals or pubes.
- 48 3. Solicit a child to engage in a sex act or
49 solicit a person to arrange a sex act with a child.
- 50 4. Inflict pain or discomfort upon a child or

1 permit a child to inflict pain or discomfort on the
2 person.

3 Any person who violates a provision of this section
4 involving an act included in subsection 1 or 2 shall,
5 upon conviction, be guilty of a class "D" "C" felony.
6 ~~A person who violates a provision of this section and~~
7 ~~who is sentenced to a term of confinement shall also~~
8 ~~be sentenced to an additional term of parole or work~~
9 ~~release not to exceed two years. The board of parole~~
10 ~~shall determine whether the person should be released~~
11 ~~on parole or placed in a work release program. The~~
12 ~~sentence of an additional term of parole or work~~
13 ~~release supervision shall commence immediately upon~~
14 ~~the expiration of the preceding sentence and shall be~~
15 ~~under the terms and conditions as set out in chapter~~
16 ~~906. Violations of parole or work release shall be~~
17 ~~subject to the procedures set out in chapter 905 or~~
18 ~~908 or rules adopted under those chapters. The~~
19 ~~sentence of an additional term of parole or work~~
20 ~~release shall be consecutive to the original term of~~
21 ~~confinement. Any person who violates a provision of~~
22 this section involving an act included in subsection 3
23 or 4 shall, upon conviction, be guilty of a class "D"
24 felony.

25 Sec. 31. Section 802.2, Code 2005, is amended to
26 read as follows:

27 802.2 SEXUAL ABUSE -- FIRST, SECOND, OR THIRD
28 DEGREE.

29 1. An information or indictment for sexual abuse
30 in the first, second, or third degree committed on or
31 with a person who is under the age of eighteen years
32 shall be found within ten years after the person upon
33 whom the offense is committed attains eighteen years
34 of age, or if the identity of the person against whom
35 the information or indictment is sought is established
36 through the use of a DNA profile, an information or
37 indictment shall be found within three years from the
38 date the identity of the person is identified by the
39 person's DNA profile, whichever is later.

40 2. An information or indictment for any other
41 sexual abuse in the first, second, or third degree
42 shall be found within ten years after its commission,
43 or if the identity of the person against whom the
44 information or indictment is sought is established
45 through the use of a DNA profile, an information or
46 indictment shall be found within three years from the
47 date the identity of the person is identified by the
48 person's DNA profile, whichever is later.

49 3. As used in this section, "identified" means a
50 person's legal name is known and the person has been

1 determined to be the source of the DNA.

2 Sec. 32. Section 901.5, Code 2005, is amended by
3 adding the following new subsection:

4 NEW SUBSECTION. 13. In addition to any other
5 sentence or other penalty imposed against the
6 defendant, the court shall impose a special sentence
7 if required under section 903B.0A or 903B.0B.

8 Sec. 33. NEW SECTION. 902.15 ENHANCED PENALTY --
9 SEXUAL ABUSE OR LASCIVIOUS ACTS WITH A CHILD.

10 1. A person commits a class "A" felony if the
11 person commits a second or subsequent offense
12 involving any combination of the following offenses:

13 a. Sexual abuse in the second degree in violation
14 of section 709.3.

15 b. Sexual abuse in the third degree in violation
16 of section 709.4.

17 c. Lascivious acts with a child in violation of
18 section 709.8, subsection 1 or 2.

19 2. In determining if a violation charged is a
20 second or subsequent offense for purposes of criminal
21 sentencing in this section, each previous violation on
22 which conviction or deferral of judgment was entered
23 prior to the date of the violation charged shall be
24 considered and counted as a separate previous offense,
25 regardless of whether the previous offense occurred
26 before, on, or after the effective date of this Act.

27 Convictions or the equivalent of deferred judgments
28 for violations in any other states under statutes
29 substantially corresponding to the offenses listed in
30 subsection 1 shall be counted as previous offenses.
31 The courts shall judicially notice the statutes of
32 other states which define offenses substantially
33 equivalent to the offenses listed in subsection 1 and
34 can therefore be considered corresponding statutes.

35 Sec. 34. NEW SECTION. 903B.0A SPECIAL SENTENCE
36 -- CLASS "B" OR CLASS "C" FELONIES.

37 A person convicted of a class "C" felony or greater
38 offense under chapter 709, or a class "C" felony under
39 section 728.12, shall also be sentenced, in addition
40 to any other punishment provided by law, to a special
41 sentence committing the person into the custody of the
42 director of the Iowa department of corrections for the
43 rest of the person's life, with eligibility for parole
44 as provided in chapter 906. The special sentence
45 imposed under this section shall commence upon
46 completion of the sentence imposed under any
47 applicable criminal sentencing provisions for the
48 underlying criminal offense and the person shall begin
49 the sentence under supervision as if on parole. The
50 person shall be placed on the corrections continuum in

1 chapter 901B, and the terms and conditions of the
2 special sentence, including violations, shall be
3 subject to the same set of procedures set out in
4 chapters 901B, 905, 906, and chapter 908, and rules
5 adopted under those chapters for persons on parole
6 shall not be for a period greater than two years upon
7 any first revocation, and five years upon any second
8 or subsequent revocation. A special sentence shall be
9 considered a category "A" sentence for purposes of
10 calculating earned time under section 903A.2.

11 Sec. 35. NEW SECTION. 903B.0B SPECIAL SENTENCE
12 -- CLASS "D" FELONIES OR MISDEMEANORS.

13 A person convicted of a misdemeanor or a class "D"
14 felony offense under chapter 709, section 726.2, or
15 section 728.12 shall also be sentenced, in addition to
16 any other punishment provided by law, to a special
17 sentence committing the person into the custody of the
18 director of the Iowa department of corrections for a
19 period of ten years, with eligibility for parole as
20 provided in chapter 906. The special sentence imposed
21 under this section shall commence upon completion of
22 the sentence imposed under any applicable criminal
23 sentencing provisions for the underlying criminal
24 offense and the person shall begin the sentence under
25 supervision as if on parole. The person shall be
26 placed on the corrections continuum in chapter 901B,
27 and the terms and conditions of the special sentence,
28 including violations, shall be subject to the same set
29 of procedures set out in chapters 901B, 905, 906, and
30 908, and rules adopted under those chapters for
31 persons on parole. The revocation of release shall
32 not be for a period greater than two years upon any
33 first revocation, and five years upon any second or
34 subsequent revocation. A special sentence shall be
35 considered a category "A" sentence for purposes of
36 calculating earned time under section 903A.2.

37 Sec. 36. Section 903B.1, subsection 3, Code 2005,
38 is amended by striking the subsection.

39 Sec. 37. Section 906.15, unnumbered paragraph 1,
40 Code 2005, is amended to read as follows:

41 Unless sooner discharged, a person released on
42 parole shall be discharged when the person's term of
43 parole equals the period of imprisonment specified in
44 the person's sentence, less all time served in
45 confinement. Discharge from parole may be granted
46 prior to such time, when an early discharge is
47 appropriate. The board shall periodically review all
48 paroles, and when the board determines that any person
49 on parole is able and willing to fulfill the
50 obligations of a law-abiding citizen without further

1 supervision, the board shall discharge the person from
2 parole. A parole officer shall periodically review
3 all paroles assigned to the parole officer, and when
4 the parole officer determines that any person assigned
5 to the officer is able and willing to fulfill the
6 obligations of a law-abiding citizen without further
7 supervision, the officer may discharge the person from
8 parole after notification and approval of the district
9 director and notification of the board of parole. In
10 any event, discharge from parole shall terminate the
11 person's sentence. If a person has been sentenced to
12 a special sentence under section 903B.0A or 903B.0B,
13 the person may be discharged early from the sentence
14 in the same manner as any other person on parole.
15 However, a person convicted of a violation of section
16 709.3, 709.4, or 709.8 committed on or with a child,
17 or a person serving a sentence under section 902.12,
18 shall not be discharged from parole until the person's
19 term of parole equals the period of imprisonment
20 specified in the person's sentence, less all time
21 served in confinement.

22 Sec. 38. Section 908.5, Code 2005, is amended to
23 read as follows:

24 908.5 DISPOSITION.

25 1. If a violation of parole is established, the
26 administrative parole judge may continue the parole
27 with or without any modification of the conditions of
28 parole. The administrative parole judge may revoke
29 the parole and require the parolee to serve the
30 sentence originally imposed, or may revoke the parole
31 and reinstate the parolee's work release status.

32 2. If the person is serving a special sentence
33 under chapter 903B, the administrative parole judge
34 may revoke the release. Upon the revocation of
35 release, the person shall not serve the entire length
36 of the special sentence imposed, and the revocation
37 shall be for a period not to exceed two years in a
38 correctional institution upon a first revocation and
39 for a period not to exceed five years in a
40 correctional institution upon a second or subsequent
41 revocation.

42 3. The order of the administrative parole judge
43 shall contain findings of fact, conclusions of law,
44 and a disposition of the matter.

45 DIVISION IV

46 DEATH PENALTY

47 Sec. 39. Section 13B.4, Code 2005, is amended by
48 adding the following new subsection:

49 NEW SUBSECTION. 6A. The state public defender
50 shall perform all of the following duties with respect

1 to the appointment of counsel for indigent persons in
2 cases in which a sentence of death may be or is to be
3 imposed:

4 a. Provide or contract with attorneys for
5 appointment as lead counsel and cocounsel to provide
6 legal services in cases where a person is charged with
7 murder in the first degree, kidnapping, and sexual
8 abuse under section 902.15, and the state has given
9 notice of intent to seek the death penalty or in cases
10 in which a sentence of death is to be imposed.

11 b. Conduct or sponsor specialized training
12 programs for attorneys representing persons who may be
13 executed.

14 Sec. 40. Section 216A.133, Code 2005, is amended
15 by adding the following new subsection:

16 NEW SUBSECTION. 8. Review the effects of the
17 reinstatement of the death penalty on arrest,
18 prosecution, conviction, and incarceration rates; law
19 enforcement duties and ability to obtain evidence
20 necessary for arrests; court dockets and workload;
21 prison space; recidivism rates of persons charged with
22 crimes of violence against persons; and other aspects
23 of the criminal justice system. Based on the review
24 and other factors deemed relevant, the council shall
25 make findings and develop recommendations resulting
26 from those findings. Commencing January 1, 2007, the
27 council shall report its findings and any related
28 recommendations annually to the governor and to the
29 general assembly.

30 Sec. 41. NEW SECTION. 602.10111A QUALIFICATIONS
31 OF COUNSEL IN DEATH PENALTY CASES.

32 The supreme court shall prescribe rules which
33 establish minimum standards and procedures by which
34 attorneys may become qualified to provide legal
35 services as lead counsel in cases in which a sentence
36 of death may be or is to be imposed.

37 Sec. 42. NEW SECTION. 812A.1 PROCEDURE TO
38 DETERMINE SANITY OF CONDEMNED INMATE.

39 1. At any time prior to execution of an inmate
40 under section 902.1, if the director of the department
41 of corrections or the counsel for a person who is
42 under a sentence of execution has cause to believe
43 that the inmate is suffering from such a diseased or
44 deranged condition of the mind as to prevent the
45 defendant from knowing the nature and quality of the
46 act the defendant has been convicted of, or from
47 understanding that trial on the offense has taken
48 place and that execution proceedings are about to take
49 place, or to otherwise cause the defendant to lack the
50 capacity to understand the sentence which has been

1 imposed and to participate in any legal proceedings
2 relating to the sentence, the director or counsel may
3 file a request with the court that issued the warrant
4 for execution for a determination of the inmate's
5 sanity. If the district court determines that there
6 is not sufficient reason to believe that the inmate is
7 insane, the court shall enter an order denying the
8 request and shall state the grounds for denying the
9 request. If the court believes that there is
10 sufficient reason to believe that the inmate is
11 insane, the court shall suspend the execution and
12 conduct a hearing to determine the sanity of the
13 inmate.

14 2. At the hearing, the court shall determine the
15 issue of the inmate's sanity. Prior to the hearing,
16 the court shall appoint two licensed physicians or
17 licensed psychologists, or one licensed physician and
18 one licensed psychologist, who are qualified by
19 training and practice, for purposes of conducting a
20 psychiatric or psychological examination of the
21 inmate. The physicians or psychologists shall examine
22 the inmate and report any findings in writing to the
23 court within ten days after the order of examination
24 is issued. The inmate shall have the right to present
25 evidence and cross-examine any witnesses at the
26 hearing. Any statement made by the inmate during the
27 course of any examination provided for in this
28 section, whether or not the inmate consents to the
29 examination, shall not be admitted into evidence
30 against the inmate in any criminal proceeding for
31 purposes other than a determination of the inmate's
32 sanity.

33 3. If, at the conclusion of a hearing held
34 pursuant to this section, the court determines that
35 the inmate is sane, the court shall enter an order
36 setting a date for the inmate's execution, which shall
37 be carried into effect in the same manner as provided
38 in the original sentence. A copy of the order shall
39 be sent to the director of the department of
40 corrections and the governor.

41 4. If, at the conclusion of a hearing held
42 pursuant to this section, the court determines that
43 the inmate is insane, the court shall suspend the
44 execution until further order. At any time after
45 issuance of the order, if the court has sufficient
46 reason to believe that the inmate has become sane, the
47 court shall again determine the sanity of the inmate
48 as provided by this section. Proceedings pursuant to
49 this section may continue to be held at such times as
50 the court orders until it is either determined that

1 the inmate is sane or incurably insane.

2 Sec. 43. NEW SECTION. 814.28 REVIEW OF DEATH
3 SENTENCE.

4 1. In a case in which a sentence of death is
5 imposed, the supreme court shall automatically review
6 the judgment and sentence. The court's review of the
7 case shall be de novo. The case shall not be
8 transferred to the court of appeals.

9 2. A review by the supreme court of a judgment and
10 sentence imposing the punishment of death has priority
11 over all other criminal and other actions pending
12 before the supreme court.

13 3. The supreme court shall review the trial and
14 judgment, and shall separately review the sentencing
15 proceeding. Upon determining that errors did not
16 occur at the trial requiring reversal or modification
17 of the judgment, the supreme court shall proceed to
18 determine if the sentence of death is lawfully
19 imposed. In its review of the sentencing proceeding
20 the supreme court shall determine all of the
21 following:

22 a. Whether the sentence of death was imposed
23 capriciously or under the influence of prejudice or
24 other arbitrary factor.

25 b. Whether the special verdicts returned under
26 section 901.11 are supported by the evidence.

27 c. Whether the sentence of death is excessive or
28 disproportionate to the penalty imposed in similar
29 cases, considering both the crime and the defendant.

30 4. If the supreme court determines that the
31 sentence of death was not lawfully imposed, the court
32 shall set aside the sentence and shall remand the case
33 to the trial court for a second sentencing proceeding
34 to determine if the imposition of death is warranted.

35 5. If the supreme court affirms the judgment and
36 sentence of death, the clerk of the supreme court
37 shall certify the judgment of the supreme court under
38 the seal of the court to the clerk of the trial court.

39 Sec. 44. Section 815.10, Code 2005, is amended by
40 adding the following new subsection:

41 NEW SUBSECTION. 1A. If two attorneys have not
42 already been appointed pursuant to section 13B.4 or
43 13B.9, the court shall appoint, for each indigent
44 person who is charged with murder in the first degree
45 and in which a notice of intent to seek the death
46 penalty has been filed, two attorneys who are
47 qualified under section 602.10111A to represent the
48 person in the murder proceedings and in all state
49 legal proceedings which take place from the time the
50 person is indicted or arraigned until the person is

1 sentenced on the charge. In addition, if at any point
2 in federal postconviction proceedings an indigent
3 person is not afforded court-appointed counsel, the
4 state shall provide counsel to the person to present
5 any claims determined meritorious by the federal court
6 if the person is not otherwise represented by legal
7 counsel. Only private attorneys and public defenders
8 who are qualified to provide representation in cases
9 in which the death penalty may be imposed are eligible
10 for appointment or assignment to a case in which the
11 death penalty may be imposed.

12 Sec. 45. NEW SECTION. 901.11 MURDER PROCEEDINGS
13 -- REQUEST FOR DEATH PENALTY -- PENALTY PROCEEDINGS.

14 1. If a notice of intent to seek the death penalty
15 has been filed, objections to the imposition of the
16 death penalty based upon allegations that a defendant
17 was mentally retarded or mentally ill at the time of
18 the commission of the offense shall be raised within
19 the time provided for the filing of pretrial motions
20 under rule of criminal procedure 2.11, Iowa court
21 rules. The court may, for good cause shown, allow
22 late filing of the motion. Hearing on the motion
23 shall be held prior to trial and the burden of proof
24 shall be on the defendant to prove mental retardation
25 or mental illness by a preponderance of the evidence.
26 However, a rebuttable presumption of mental
27 retardation arises if a defendant has an intelligence
28 quotient of seventy or below. If the court finds that
29 the defendant is mentally retarded, the defendant, if
30 convicted of murder in the first degree, shall not be
31 sentenced to death but shall be sentenced to life
32 imprisonment in the manner provided in section 902.1,
33 subsection 1. A finding by the court that the
34 evidence presented by the defendant at the hearing
35 does not preclude the imposition of the death penalty
36 under this section and section 902.15 shall not
37 preclude the introduction of evidence of mental
38 retardation or mental illness during the penalty
39 proceeding. If the court finds that evidence of
40 mental retardation or mental illness does not preclude
41 imposition of the death penalty, evidence of mental
42 retardation or mental illness may be reviewed by the
43 jury in the penalty proceeding and the jury shall not
44 be informed of the finding in the initial proceeding
45 at any time during the penalty proceeding.

46 2. If at the trial on a charge of murder in the
47 first degree, the state intends to request that the
48 death penalty be imposed under section 902.1,
49 subsection 2, the prosecutor shall file a notice of
50 intent to seek the death penalty, listing the

1 additional factors enumerated under section 902.15
2 that the state intends to establish in support of
3 imposition of the death penalty, at the time of and as
4 part of the information or indictment filed in the
5 case.

6 3. If a notice of intent to seek the death penalty
7 has been filed, the trial shall be conducted in
8 bifurcated proceedings before the same trier of fact.
9 During the initial proceeding, the jury, or the court,
10 if the defendant waives the right to a jury trial,
11 shall decide only whether the defendant is guilty or
12 not guilty of murder in the first degree, kidnapping,
13 and sexual abuse.

14 a. If, in the initial proceeding, the court or
15 jury finds the defendant guilty of, or the defendant
16 pleads guilty to, an offense other than murder in the
17 first degree, kidnapping, and sexual abuse, the court
18 shall sentence the defendant in accordance with the
19 sentencing procedures set forth in rule of criminal
20 procedure 2.23, Iowa court rules, and chapters 901
21 through 909, which are applicable to the offense.

22 b. If the court or jury finds the defendant guilty
23 of, or the defendant pleads guilty to, murder in the
24 first degree, kidnapping, and sexual abuse but the
25 prosecuting attorney waives the death penalty, the
26 court shall sentence the defendant to life
27 imprisonment in accordance with the sentencing
28 procedures set forth in rule of criminal procedure
29 2.23, Iowa court rules, and chapters 901 through 909,
30 which are applicable to convictions of murder in the
31 first degree, kidnapping, and sexual abuse.

32 c. If the court or jury finds the defendant guilty
33 of murder in the first degree, kidnapping, and sexual
34 abuse, or a defendant enters a plea of guilty in the
35 initial proceeding, and the prosecuting attorney does
36 not waive imposition of the death penalty, a penalty
37 proceeding shall be held in the manner provided in
38 subsections 4 through 12.

39 4. No sooner than twenty-four hours after a
40 verdict of guilty or a plea of guilty to the charge of
41 murder in the first degree, kidnapping, and sexual
42 abuse is returned in the initial proceeding, a penalty
43 proceeding shall be held to determine whether the
44 defendant shall be sentenced to death or to life
45 imprisonment. The proceeding shall be conducted in
46 the trial court before the trial jury, or the court if
47 the defendant has waived the right to a jury trial or
48 has waived the right for the proceeding to be before
49 the trial jury. Both the state and the defendant
50 shall have the right to present opening statements at

1 the commencement of the penalty proceedings. In the
2 proceeding, evidence relevant to the existence of any
3 aggravating or mitigating circumstances may be
4 presented as follows:

5 a. The state or the defendant may present evidence
6 relevant to the conviction of murder in the first
7 degree and any of the additional factors enumerated in
8 section 902.15 and any aggravating circumstances other
9 than juvenile delinquency adjudications for offenses
10 which carry penalties equivalent to the penalties
11 imposed for simple or serious misdemeanors. The state
12 may introduce evidence of the actual harm caused by
13 the commission of the murder including, but not
14 limited to, evidence relating to the life of the
15 victim and the impact of the loss of the victim to the
16 victim's family and society.

17 b. The defendant may present evidence that the
18 defendant was mentally retarded at the time of the
19 commission of the offense. The burden of proof shall
20 be on the defendant to prove mental retardation by a
21 preponderance of the evidence. However, a rebuttable
22 presumption of mental retardation arises if a
23 defendant has an intelligence quotient of seventy or
24 below.

25 c. The state or the defendant may present evidence
26 relevant to any mitigating circumstances which may
27 exist. Mitigating circumstances may include the
28 following circumstances:

29 (1) The defendant was under the influence of an
30 extreme mental or emotional disturbance insufficient
31 to constitute a defense.

32 (2) The age of the defendant at the time of the
33 murder.

34 (3) The defendant's capacity to appreciate the
35 wrongfulness of the defendant's conduct and to conform
36 that conduct to the requirements of law was
37 significantly impaired as a result of a mental disease
38 or defect or mental retardation, but not to a degree
39 sufficient to constitute a defense.

40 (4) The defendant has no significant history of
41 prior adult criminal activity.

42 (5) The defendant acted under extreme duress or
43 under the substantial domination of another person.

44 (6) The defendant did not directly commit the
45 murder and the defendant did not intend to kill or
46 anticipate that lethal force would be used.

47 (7) Any other factor which is relevant to the
48 defendant's character or record or to the
49 circumstances of the offense.

50 d. The state and the defendant or the defendant's

1 counsel shall be permitted to present and cross-
2 examine witnesses and present arguments for or against
3 a sentence of death. Evidence regarding aggravating
4 and mitigating circumstances shall not be governed by
5 the rules governing admissibility of evidence, except
6 that introduction of evidence secured in violation of
7 the Constitution of the United States or of the
8 Constitution of the State of Iowa shall not be
9 permitted.

10 5. At the conclusion of presentation of evidence
11 in the penalty proceeding, the state and the defendant
12 or the defendant's counsel shall be permitted to make
13 closing arguments, including any rebuttal arguments,
14 in the same manner as in the initial proceeding and
15 the following issues shall be determined by the jury
16 or the court, if there is no jury:

17 a. Whether the aggravating circumstance or
18 circumstances outweigh any one or more mitigating
19 circumstances.

20 b. Whether the defendant shall be sentenced to
21 death.

22 6. A recommendation for a sentence of death shall
23 not be permitted if the recommendation is based on the
24 race, color, religious beliefs, national origin, or
25 sex of the defendant or any victim. After submission
26 of the issues, but prior to the return of a finding in
27 the penalty proceeding, if the matter is tried before
28 a jury, the court shall instruct the jury that in
29 considering whether a sentence of death is justified,
30 it shall not consider race, color, religious beliefs,
31 national origin, or sex of the defendant or of any
32 victim. The court shall further instruct the jury
33 that it shall not return a sentence of death unless it
34 concludes that such a sentence would be recommended no
35 matter what the race, color, religious beliefs,
36 national origin, or sex of the defendant or any victim
37 may be.

38 7. After submission of the issues, but prior to
39 the commencement of the jury deliberations in the
40 penalty proceeding, the court shall instruct the jury
41 that if the defendant is not sentenced to death, the
42 court is required by law to impose a sentence of
43 imprisonment until death without parole. The court
44 shall further instruct the jury that the sentence of
45 imprisonment until death without parole is required by
46 law if the jury fails to reach a unanimous verdict
47 recommending a sentence of death.

48 8. Concurrently with the return of the findings on
49 the issues submitted under subsection 5, the jury, or
50 the court if there is no jury, shall return special

1 verdicts as follows:

2 a. Which aggravating circumstances were
3 established and were considered in reaching the
4 verdict.

5 b. Which mitigating circumstances were established
6 and were considered in reaching the verdict returned
7 on the issue specified in subsection 5, paragraph "a".

8 9. If the jury, or the court if there is no jury,
9 returns a unanimous affirmative finding on each of the
10 issues submitted under subsection 5, paragraphs "a"
11 and "b", the court shall enter a judgment of
12 conviction and shall sentence the defendant to death
13 as provided in section 902.1, subsection 2.

14 10. However, if evidence that the defendant was
15 not a major participant in the commission of the
16 murder and that the defendant's conduct did not
17 manifest a reckless indifference to human life is
18 presented to the jury, or the court, if there is no
19 jury, the jury or the court shall also return a
20 special verdict on the issue. If the jury unanimously
21 determines, or the court, if there is no jury, finds
22 that a preponderance of evidence exists that shows
23 that the defendant was not a major participant in the
24 commission of the murder and that the defendant's
25 conduct did not manifest a reckless indifference to
26 human life, the court shall enter a judgment of
27 conviction and shall sentence the defendant to life
28 imprisonment as provided in section 902.1, subsection
29 1, even if the jury or the court returns unanimous
30 affirmative findings on each of the issues submitted
31 under subsection 5.

32 11. If the jury, or the court, if there is no
33 jury, returns a negative finding on any of the issues
34 submitted under subsection 5, paragraphs "a" and "b",
35 the court shall enter a judgment of conviction and
36 shall sentence the defendant to life imprisonment as
37 provided in section 902.1, subsection 1.

38 12. After a verdict has been rendered it shall be
39 recorded on the jury verdict form and shall be read
40 and recorded in open court. The jurors shall be
41 collectively asked by the court whether the verdict
42 returned is their true and correct verdict. Even
43 though no juror makes any declaration to the contrary,
44 the jury shall, if either party so requests, be polled
45 and each juror shall be separately asked whether the
46 verdict rendered by the jury foreperson is the juror's
47 true and correct verdict. If, upon either the
48 collective or the separate inquiry, any juror denies
49 that the verdict is the juror's verdict, the court
50 shall refuse to accept the verdict. The court may

1 direct inquiry or permit inquiry by counsel to
2 ascertain whether any juror has been subjected to
3 coercion or has become confused during the jury
4 deliberation process. The court may, as appropriate,
5 direct the jury to resume deliberation in the case.
6 If no disagreement on the verdict is expressed by any
7 of the jurors, the court shall discharge the jury.

8 13. This section shall not apply to a defendant
9 who was under the age of eighteen at the time the
10 offense was committed.

11 Sec. 46. Section 902.1, Code 2005, is amended to
12 read as follows:

13 902.1 CLASS "A" FELONY.

14 1. Upon Except as otherwise provided in subsection
15 2, upon a plea of guilty, a verdict of guilty, or a
16 special verdict upon which a judgment of conviction of
17 a class "A" felony may be rendered, the court shall
18 enter a judgment of conviction and shall commit the
19 defendant into the custody of the director of the Iowa
20 department of corrections for the rest of the
21 defendant's life. Nothing in the Iowa corrections
22 code pertaining to deferred judgment, deferred
23 sentence, suspended sentence, or reconsideration of
24 sentence applies to a sentence of life imprisonment
25 for a class "A" felony, and a person convicted of a
26 class "A" felony and sentenced to life imprisonment
27 shall not be released on parole unless the governor
28 commutes the sentence to a term of years.

29 2. Upon return of a plea or verdict of guilty to
30 the offense of murder in the first degree under
31 section 707.2, kidnapping, and sexual abuse, and a
32 return of a verdict in favor of a sentence of death in
33 a penalty proceeding conducted as provided in section
34 901.11, the court shall enter a judgment of conviction
35 and shall commit the defendant into the custody of the
36 director of the Iowa department of corrections. The
37 sentence shall be carried out by the administration of
38 a lethal injection pursuant to rules adopted by the
39 board of corrections. If a defendant, for whom a
40 warrant of execution is issued, is pregnant, the
41 execution shall not take place until after the
42 defendant is no longer pregnant. If a defendant, for
43 whom a warrant of execution is issued, is suffering
44 from such a diseased or deranged condition of the mind
45 as to prevent the defendant from knowing the nature
46 and quality of the act the defendant has been
47 convicted of, or from understanding that trial on the
48 offense has taken place and that execution proceedings
49 are about to take place, or otherwise causes the
50 defendant to lack the capacity to understand the

1 sentence which has been imposed and to participate in
2 any legal proceedings relating to the sentence, the
3 execution shall not take place until after the
4 defendant's capacity is restored. If the director of
5 the department of corrections or the defendant's
6 counsel files a request with the court which issued
7 the warrant of execution, alleging that the defendant
8 suffers from such a diseased or deranged condition, a
9 hearing on the matter shall be held in the manner
10 provided in section 812A.1. If a defendant was under
11 the age of eighteen at the time the offense was
12 committed, the defendant shall be sentenced as
13 provided in subsection 1. For the purposes of this
14 section, "lethal injection" means a continuous
15 intravenous injection of a lethal substance sufficient
16 to cause death.

17 Sec. 47. NEW SECTION. 902.15 FIRST DEGREE MURDER
18 -- ADDITIONAL FACTORS.

19 A person who commits murder in the first degree,
20 who is not mentally retarded or mentally ill, and who
21 is age eighteen or older at the time the offense is
22 committed, shall be eligible for a sentence of death
23 under section 902.1, subsection 2, if the person also
24 kidnaps and commits sexual abuse against the murder
25 victim who was a minor.

26 For purposes of this section, "mentally retarded"
27 means significant subaverage general intellectual
28 functioning accompanied by significant deficits or
29 impairments in adaptive functioning manifested in the
30 developmental period, but no later than the age of
31 eighteen years, and accompanied by deficits in
32 adaptive behavior.

33 For purposes of this section, "mentally ill" means
34 the condition of a person who is suffering from a
35 chronic and persistent serious mental disease or
36 disorder and who, by reason of that condition, lacks
37 sufficient judgment to make responsible decisions
38 regarding treatment and is reasonably likely to injure
39 the person's self or others who may come into contact
40 with the person if the person is allowed to remain at
41 liberty without treatment.

42 Sec. 48. NEW SECTION. 902.16 DATA COLLECTION FOR
43 DEATH PENALTY.

44 1. The supreme court shall collect data on all
45 murder charges in which the death penalty is or was
46 not waived, which are filed and processed in the
47 courts in this state. This data may be used by the
48 supreme court to determine whether death sentences
49 imposed are excessive or disproportionate, or under
50 the influence of prejudice as a result of racial

1 discrimination under section 814.28. The court shall
2 make this data available to litigants in death penalty
3 cases.

4 2. Data collected by public officials concerning
5 factors relevant to the imposition of the death
6 sentence shall be made publicly available.

7 Sec. 49. NEW SECTION. 903C.1 EXECUTIONS --
8 REFUSAL TO PERFORM.

9 An employee of the state who may lawfully perform,
10 assist, or participate in the execution of a person
11 pursuant to section 902.1, and rules adopted by the
12 department of corrections, shall not be required to
13 perform, assist, or participate in the execution.
14 State employees who refuse to perform, assist, or
15 participate in the execution of a person shall not be
16 discriminated against in any way, including, but not
17 limited to, employment, promotion, advancement,
18 transfer, licensing, education, training, or the
19 granting of any privileges or appointments because of
20 the refusal to perform, assist, or participate in the
21 execution.

22 Sec. 50. Section 904.105, Code 2005, is amended by
23 adding the following new subsection:

24 NEW SUBSECTION. 9A. Adopt rules pursuant to
25 chapter 17A pertaining to executions of persons
26 convicted of murder in the first degree. Rules
27 adopted shall include, but are not limited to, rules
28 permitting the witnessing of executions by members of
29 the public and the victim's family. Invitations to
30 witness an execution shall at least be extended to the
31 following representatives of the news media:

32 a. A representative from a wire service serving
33 Iowa.

34 b. A representative from a broadcasting network
35 serving Iowa.

36 c. A representative from a television station
37 located in Iowa.

38 d. A representative from a radio station located
39 in Iowa.

40 e. A representative from a daily newspaper
41 published in Iowa.

42 f. A representative from a weekly newspaper
43 published in Iowa.

44 g. A representative from the news media from the
45 community in which the condemned person resided, if
46 that community is located in Iowa.

47 Sec. 51. Rules of criminal procedure, Iowa court
48 rules, are amended by adding the following four
49 sections of this Act.

50 Sec. 52. NEW RULE. 2. DEATH PENALTY --

1 PROCEDURE.

2 2.____(1) If a notice of intent to seek the death
3 penalty has been filed, objections to the imposition
4 of the death penalty based upon allegations that a
5 defendant was mentally retarded at the time of the
6 commission of the offense shall be raised within the
7 time provided for the filing of pretrial motions under
8 R.Cr.P. 2.11, Iowa court rules. The court may, for
9 good cause shown, allow late filing of the motion.
10 Hearing on the motion shall be held prior to trial and
11 the burden of proof shall be on the defendant to prove
12 mental retardation by a preponderance of the evidence.
13 However, a rebuttable presumption of mental
14 retardation arises if a defendant has an intelligence
15 quotient of seventy or below. A finding of the court
16 that the evidence presented by the defendant at the
17 hearing does not preclude the imposition of the death
18 penalty under this rule and Iowa Code section 902.15
19 shall not preclude the introduction of evidence of
20 mental retardation during the penalty proceeding. If
21 the court finds that the evidence presented by the
22 defendant does not preclude the imposition of the
23 death penalty, evidence of mental retardation may be
24 reviewed by the jury during the penalty proceeding and
25 the jury shall not be informed of the finding in the
26 initial proceeding at any time during the penalty
27 proceeding.

28 2.____(2) Upon a finding or plea that a defendant
29 is guilty of murder in the first degree, kidnapping,
30 and sexual abuse in an initial proceeding, if a notice
31 of intent to seek the death penalty has been filed and
32 has not been waived, the court shall conduct a
33 separate penalty proceeding to determine whether the
34 defendant shall be sentenced to death or to life
35 imprisonment. The penalty proceeding shall be
36 conducted in the trial court before the trial jury, or
37 the court, if there is no jury, no sooner than twenty-
38 four hours after the return of the verdict or plea in
39 the initial proceeding. In the penalty proceeding,
40 additional evidence may be presented as to the
41 conviction for murder in the first degree, kidnapping,
42 and sexual abuse or any aggravating or mitigating
43 circumstance which may exist. Presentation of
44 evidence which is relevant to the existence of an
45 aggravating or mitigating circumstance shall not be
46 bound by the rules of evidence. This subsection does
47 not authorize the introduction of any evidence secured
48 in violation of the Constitution of the United States
49 or of the Constitution of the State of Iowa. The
50 state and the defendant or the defendant's counsel

1 shall be permitted to cross-examine witnesses and to
2 present arguments for or against a sentence of death.
3 2.____(3) On conclusion of the presentation of the
4 evidence in the penalty proceeding, the state and the
5 defendant or the defendant's counsel shall be
6 permitted to make closing arguments, including any
7 rebuttal arguments, in the same manner as in the
8 initial proceeding and the court shall submit each of
9 the following issues to the jury:

10 a. Whether one or more of those circumstances
11 outweigh any one or more mitigating circumstances.

12 b. Whether the defendant shall be sentenced to
13 death.

14 If the case is not tried to a jury, the court shall
15 determine the issues.

16 2.____(4) The state must prove the issue in rule 2.
17 ____ (3)(a) beyond a reasonable doubt, and the jury, or
18 the court if there is no jury, shall return a special
19 verdict of "yes" or "no" on each issue.

20 2.____(5) If the case is tried to a jury, the court
21 shall charge the jury that:

22 a. It shall answer any issue "yes" if it agrees
23 unanimously.

24 b. It shall answer any issue "no" if the jurors
25 unanimously agree that the answer is "no" or if the
26 jurors do not unanimously agree that the answer is
27 "yes".

28 2.____(6) Concurrently with the return of the
29 special verdicts under rule 2.____(4), the jury, or the
30 court if there is no jury, shall also return special
31 verdicts as follows:

32 a. Which aggravating circumstances were
33 established and were considered in reaching the
34 verdict returned on the issue specified in rule
35 2.____(3)(a).

36 b. Which mitigating circumstances were established
37 and were considered in reaching the verdict returned
38 on the issue specified in rule 2.____(3)(a).

39 2.____(7) If the jury, or the court, if there is no
40 jury, returns an affirmative finding on all applicable
41 issues, the court shall sentence the defendant to
42 death. If the jury or the court returns a negative
43 finding on any applicable issue, the court shall
44 sentence the defendant to the custody of the director
45 of the department of corrections for confinement for
46 the rest of the defendant's life.

47 2.____(8) After a verdict has been rendered it
48 shall be recorded on the jury verdict form and shall
49 be read and recorded in open court. The jurors shall
50 be collectively asked by the court whether the verdict

1 returned is their true and correct verdict. Even
2 though no juror makes any declaration to the contrary,
3 the jury shall, if either party so requests, be polled
4 and each juror shall be separately asked whether the
5 verdict rendered by the jury foreperson is the juror's
6 true and correct verdict. If, upon either the
7 collective or the separate inquiry, any juror denies
8 that the verdict is the juror's verdict, the court
9 shall refuse to accept the verdict. The court may
10 direct inquiry or permit inquiry by counsel to
11 ascertain whether any juror has been subjected to
12 coercion or has become confused during the jury
13 deliberation process. The court may, as appropriate,
14 direct the jury to resume deliberation in the case.
15 If no disagreement on the verdict is expressed by any
16 of the jurors, the court shall discharge the jury.

17 2.__(9) Provisions relating to deferred judgment,
18 deferred sentence, suspended sentence, reconsideration
19 of sentence, probation, parole, or work release
20 contained in Iowa Code chapters 901 through 909 do not
21 apply to a conviction of murder in the first degree,
22 kidnapping, and sexual abuse under Iowa Code section
23 902.15 if the defendant is sentenced to death.

24 Sec. 53. NEW RULE. 2.__(AUTOMATIC REVIEW --
25 STAY OF EXECUTION OF JUDGMENT.

26 2.__(1) A judgment of conviction and sentence of
27 death shall be reviewed automatically in the manner
28 provided in Iowa Code section 814.28, and the Iowa
29 supreme court has exclusive jurisdiction of the
30 review.

31 2.__(2) Upon entry of judgment and sentence of
32 death, the trial court shall prepare a complete record
33 and transcript of the action in the manner provided in
34 the rules of criminal procedure and shall docket the
35 record and transcript with the clerk of the supreme
36 court.

37 2.__(3) The execution of judgment of the trial
38 court is stayed as a matter of law from the time of
39 its entry until the judgment of the supreme court is
40 certified to and entered by the trial court. Upon
41 entry of a judgment of the supreme court which affirms
42 the conviction and sentence, the stay of execution of
43 judgment terminates as a matter of law.

44 2.__(4) All court costs required due to the
45 automatic preparation of the record and transcript,
46 docketing with the supreme court, and stay of
47 execution of judgment shall be assessed to the state.

48 Sec. 54. NEW RULE. 2.__(ISSUANCE OF WARRANT.

49 2.__(1) Upon entry by the trial court of the
50 judgment of the supreme court affirming a judgment and

1 sentence of death, a district judge shall within five
2 days of the entry issue a warrant under the seal of
3 the court for the execution of the sentence of death.
4 The warrant shall specifically set forth the offense
5 and the fact of conviction, shall state the judgment
6 and sentence of the court, shall state that the
7 judgment and sentence were affirmed by the supreme
8 court and the date of entry of judgment of the supreme
9 court in the trial court, and shall, subject to the
10 requirements of Iowa Code section 902.1, subsection 2,
11 specify a range of five days for execution of the
12 defendant which shall be not less than fifty nor more
13 than sixty days after the date of entry in the trial
14 court of the judgment of the supreme court affirming
15 the judgment and sentence of death. The warrant shall
16 be directed to the director of the department of
17 corrections commanding the director to cause the
18 warrant to be executed within the dates specified.
19 The trial court shall deliver the warrant to the
20 sheriff of the county in which judgment of conviction
21 was entered and the sheriff shall deliver the warrant
22 to the director of the department of corrections. The
23 director of the department of corrections shall
24 acknowledge receipt of the warrant and the defendant,
25 and the sheriff shall return the acknowledgment to the
26 office of the clerk of the trial court from which the
27 warrant was issued.

28 2.__(2) Immediately after issuance of a warrant
29 ordering a sentence of death, the clerk of the trial
30 court issuing the warrant shall transmit by certified
31 mail to the governor a copy of the indictment, the
32 plea, the verdict and special findings, the
33 affirmation of judgment and sentence by the supreme
34 court, and the complete transcript of the trial court.

35 2.__(3) Notwithstanding rule 2.__(1), if a
36 defendant, for whom a warrant of execution is issued,
37 is pregnant, the execution shall not take place until
38 after the defendant is no longer pregnant.
39 Notwithstanding rule 2.__(1), if a defendant, for
40 whom a warrant of execution is issued, is suffering
41 from such a diseased or deranged condition of the mind
42 as to prevent the defendant from knowing the nature
43 and quality of the act the defendant has been
44 convicted of, or from understanding that trial on the
45 offense has taken place and that execution proceedings
46 are about to take place, or to otherwise cause the
47 defendant to lack the capacity to understand the
48 sentence which has been imposed and to participate in
49 any legal proceedings relating to the sentence, the
50 execution shall not take place until after the

1 defendant is no longer suffering from the condition.

2 Sec. 55. NEW RULE. 2. EVIDENCE AT PENALTY

3 PROCEEDING WHERE DEATH SENTENCE REQUESTED.

4 2. (1) At a reasonable time before the
5 commencement of initial proceedings in a first degree
6 murder trial in which a sentence of death has been
7 requested, each party shall file and serve upon the
8 other party the following:

9 a. A list of all aggravating or mitigating
10 circumstances which the party intends to prove during
11 the sentencing proceedings.

12 b. The names of all persons whom the party intends
13 to call as witnesses during the sentencing
14 proceedings.

15 c. Notwithstanding rule 2.14, copies, or for
16 inspection purposes, the location, of all documents,
17 including books, papers, writings, drawings, graphs,
18 charts, photographs, telephone records, and other data
19 compilations from which information can be obtained,
20 or other objects which the party intends to offer into
21 evidence during the sentencing proceedings. If copies
22 are not supplied to opposing counsel, the party shall
23 make the items available for inspection and copying
24 without order of the court.

25 2. (2) In proceedings to determine whether the
26 sentence shall be death or life imprisonment, evidence
27 may be presented as to any matter which the trial
28 court deems relevant to the sentence, including but
29 not limited to the nature, circumstances, and manner
30 of completion of the murder, and the defendant's
31 character, background, history, and mental and
32 physical condition. The trial court shall admit any
33 relevant admissible evidence respecting any
34 aggravating or mitigating circumstances, if the party
35 has included the circumstance on a list provided
36 pursuant to this rule, or good cause is shown for the
37 failure to do so.

38 Sec. 56. EFFECTIVE DATE -- SEVERABILITY.

39 1. This division of this Act takes effect January
40 1, 2006, and applies to offenses committed on or after
41 that date.

42 2. If any provision of this division of this Act
43 or the application thereof to any person is invalid,
44 the invalidity shall not affect the provisions or
45 application of this division of this Act which can be
46 given effect without the invalid provisions or
47 application and to this end, the provisions of this
48 division of this Act are severable.

49 DIVISION V
50 VICTIM RIGHTS

1 Sec. 57. NEW SECTION. 235D.1 CRIMINAL HISTORY
2 CHECK -- APPLICANTS AT DOMESTIC ABUSE OR SEXUAL
3 ASSAULT CENTERS.

4 An applicant for employment at a domestic abuse or
5 sexual assault center shall be subject to a national
6 criminal history check through the federal bureau of
7 investigation. The domestic abuse or sexual assault
8 center shall request the criminal history check and
9 shall provide the applicant's fingerprints to the
10 department of public safety for submission through the
11 state criminal history repository to the federal
12 bureau of investigation. The applicant shall
13 authorize release of the results of the criminal
14 history check to the domestic abuse or sexual assault
15 center. The applicant shall pay the actual cost of
16 the fingerprinting and criminal history check, if any.
17 Unless the criminal history check was completed within
18 the ninety calendar days prior to the date the
19 application is received by the domestic abuse or
20 sexual assault center, the center shall reject and
21 return the application to the applicant. The results
22 of a criminal history check conducted pursuant to this
23 subsection shall not be considered a public record
24 under chapter 22. For purposes of this section,
25 "domestic abuse or sexual assault center" means a
26 facility which is used to house victims of domestic
27 abuse or sexual assault, and is owned, operated, or
28 maintained by a nonprofit organization.

29 Sec. 58. NEW SECTION. 709.22 PREVENTION OF
30 FURTHER SEXUAL ASSAULT -- NOTIFICATION OF RIGHTS.

31 If a peace officer has reason to believe that a
32 sexual assault as defined in section 915.40 has
33 occurred, the officer shall use all reasonable means
34 to prevent further violence including but not limited
35 to the following:

36 1. If requested, remaining on the scene of the
37 alleged sexual assault as long as there is a danger to
38 the victim's physical safety without the presence of a
39 peace officer, including but not limited to staying in
40 the dwelling unit, or if unable to remain on the
41 scene, assisting the victim in leaving the residence.

42 2. Assisting a victim in obtaining medical
43 treatment necessitated by the sexual assault,
44 including providing assistance to the victim in
45 obtaining transportation to the emergency room of the
46 nearest hospital.

47 3. Providing a victim with immediate and adequate
48 notice of the victim's rights. The notice shall
49 consist of handing the victim a copy of the following
50 statement written in English and Spanish, asking the

1 victim to read the statement, and asking whether the
2 victim understands the rights:

3 "You have the right to ask the court for help with
4 any of the following on a temporary basis:

5 a. Keeping your attacker away from you, your home,
6 and your place of work.

7 b. The right to stay at your home without
8 interference from your attacker.

9 c. The right to seek a no-contact order under
10 section 709.20 or 915.22, if your attacker is arrested
11 for sexual assault.

12 You have the right to register as a victim with the
13 county attorney under section 915.12.

14 You have the right to file a complaint for threats,
15 assaults, or other related crimes.

16 You have the right to seek restitution against your
17 attacker for harm to you or your property.

18 You have the right to apply for victim
19 compensation.

20 You have the right to contact the county attorney
21 or local law enforcement to determine the status of
22 your case.

23 If you are in need of medical treatment, you have
24 the right to request that the officer present assist
25 you in obtaining transportation to the nearest
26 hospital or otherwise assist you.

27 You have the right to a sexual assault examination
28 performed at state expense.

29 If you believe that police protection is needed for
30 your physical safety, you have the right to request
31 that the officer present remain at the scene until you
32 and other affected parties can leave or until safety
33 is otherwise ensured."

34 The notice shall also contain the telephone numbers
35 of shelters, support groups, and crisis lines
36 operating in the area.

37 Sec. 59. Section 915.10, subsections 1 and 2, Code
38 2005, are amended to read as follows:

39 1. "Notification" means mailing by regular mail or
40 providing for hand delivery of appropriate information
41 or papers. However, this notification procedure does
42 not prohibit an office, agency, or department from
43 also providing appropriate information to a registered
44 victim by telephone, electronic mail, or other means.

45 2. "Registered" means having provided the county
46 attorney with the victim's written request for
47 registration and current mailing address and telephone
48 number. If an automated victim notification system is
49 implemented pursuant to section 915.10A, "registered"
50 also means having filed a request for registration

1 with the system.

2 Sec. 60. NEW SECTION. 915.10A AUTOMATED VICTIM
3 NOTIFICATION SYSTEM.

4 1. An automated victim notification system may be
5 utilized to assist public officials in informing crime
6 victims, the victim's family, or other interested
7 persons as provided in this subchapter and where
8 otherwise specifically provided. The system shall
9 disseminate the information to registered users
10 through telephonic, electronic, or other means of
11 access.

12 2. An office, agency, or department may satisfy a
13 notification obligation to registered victims required
14 by this subchapter through participation in the system
15 to the extent information is available for
16 dissemination through the system. Nothing in this
17 section shall relieve a notification obligation under
18 this subchapter due to the unavailability of
19 information for dissemination through the system.

20 3. Notwithstanding section 232.147, information
21 concerning juveniles charged with a felony offense
22 shall be released to the extent necessary to comply
23 with this section.

24 Sec. 61. Section 915.11, Code 2005, is amended to
25 read as follows:

26 915.11 INITIAL NOTIFICATION BY LAW ENFORCEMENT.

27 A local police department or county sheriff's
28 department shall advise a victim of the right to
29 register with the county attorney, and shall provide a
30 request-for-registration form to each victim. If an
31 automated victim notification system is available
32 pursuant to section 915.10A, a local police department
33 or county sheriff's department shall provide a
34 telephone number and website to each victim to
35 register with the system.

36 Sec. 62. Section 915.12, Code 2005, is amended to
37 read as follows:

38 915.12 REGISTRATION.

39 ~~1. The county attorney shall be the sole registrar~~
40 ~~of victims under this subchapter.~~

41 ~~2.~~ 1. A victim may register by filing a written
42 request-for-registration form with the county
43 attorney. The county attorney shall notify the
44 victims in writing and advise them of their
45 registration and rights under this subchapter.

46 ~~3.~~ The county attorney shall provide a registered
47 victim list to the offices, agencies, and departments
48 required to provide information under this subchapter
49 for notification purposes.

50 2. If an automated victim notification system, the

1 victim's family, is available pursuant to section
2 915.10A, a victim, the victim's family, or other
3 interested person may register with the system by
4 filing a request for registration through written,
5 telephonic, or electronic means.

6 4. 3. Notwithstanding chapter 22 or any other
7 contrary provision of law, ~~a victim's~~ the registration
8 of a victim, victim's family, or other interested
9 person shall be strictly maintained in a separate
10 confidential file or other confidential medium, and
11 shall be available only to the offices, agencies, and
12 departments required to provide information under this
13 subchapter.

14 Sec. 63. Section 915.29, Code 2005, is amended by
15 adding the following new unnumbered paragraph:

16 NEW UNNUMBERED PARAGRAPH. The notification
17 required pursuant to this section may occur through
18 the automated victim notification system referred to
19 in section 915.10A to the extent such information is
20 available for dissemination through the system.

21 Sec. 64. Section 915.45, Code 2005, is amended by
22 adding the following new unnumbered paragraph:

23 NEW UNNUMBERED PARAGRAPH. The notification
24 required pursuant to this section may occur through
25 the automated victim notification system referred to
26 in section 915.10A to the extent such information is
27 available for dissemination through the system.

28 DIVISION VI

29 TASK FORCE

30 Sec. 65. SEX OFFENDER TREATMENT AND SUPERVISION
31 TASK FORCE.

32 1. The division of criminal and juvenile justice
33 planning shall establish a task force to study and
34 make periodic recommendations for treating and
35 supervising sex offenders in correctional institutions
36 and in the community. The task force shall file a
37 report with recommendations with the general assembly
38 by January 15, 2006. The task force shall study the
39 effectiveness of electronic monitoring and the
40 potential effects and costs associated with the
41 special sentence created in this Act. The task force
42 shall study risk assessment models created for sex
43 offenders. The task force shall also review this
44 state's efforts and the efforts of other states to
45 implement treatment programs and make recommendations
46 as to the best treatment options available for sex
47 offenders. The task force shall also develop a plan
48 to integrate state government databases for the
49 purpose of updating addresses of persons on the sex
50 offender registry.

- 1 2. Members of the task force shall include
- 2 representatives of the following state agencies and
- 3 organizations:
- 4 a. One representative of the department of human
- 5 services.
- 6 b. One representative of the department of public
- 7 safety.
- 8 c. One representative of the Iowa state sheriffs
- 9 and deputies association.
- 10 d. One representative of the Iowa county attorneys
- 11 association.
- 12 e. One representative of the department of
- 13 corrections.
- 14 f. One representative of the board of parole.
- 15 g. One representative of a judicial district
- 16 department of correctional services.
- 17 h. One representative of the department of
- 18 justice.
- 19 i. One representative of the state public
- 20 defender.
- 21 j. One representative of the Iowa coalition
- 22 against sexual assault.

DIVISION VII

STATE MANDATE

25 Sec. 66. IMPLEMENTATION OF ACT. Section 25B.2,
26 subsection 3, shall not apply to this Act."

27 2. Title page, by striking lines 1 through 5 and
28 inserting the following: "An Act relating to criminal
29 sentencing, victim notification, and the sex offender
30 registry, including making the death penalty
31 applicable to certain class "A" felons, establishing a
32 special sentence for certain offenders, requiring DNA
33 testing of certain offenders, requiring sex offender
34 treatment in order to accumulate earned time,
35 establishing a sex offender treatment and supervision
36 task force, providing penalties, and providing an
37 effective date."

By LARRY MCKIBBEN
 JEFF LAMBERTI
 JERRY BEHN
 JEFF ANGELO
 JAMES SEYMOUR
 PAUL MCKINLEY
 JOHN PUTNEY
 NANCY BOETTGER

RON WIECK
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 STEVE KETTERING
 JAMES HAHN
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 STEWART IVERSON, Jr.

S-3221

1 Amend the amendment, S-3219, to House File 619, as
 2 amended, passed, and reprinted by the House, as
 3 follows:

4 1. By striking page 1, line 1, through page 37,
 5 line 37, and inserting the following:

6 "Amend House File 619, as amended, passed, and
 7 reprinted by the House, as follows:

8 1. By striking everything after the enacting
 9 clause and inserting the following:

10 "DIVISION I
 11 DNA PROFILING

12 Section 1. NEW SECTION. 81.1 DEFINITIONS.

13 As used in this chapter, unless the context
 14 otherwise requires:

15 1. "DNA" means deoxyribonucleic acid.

16 2. "DNA databank" means the repository for DNA
 17 samples obtained pursuant to section 81.4.

18 3. "DNA database" means the collection of DNA
 19 profiles and DNA records.

20 4. "DNA profile" means the objective form of the
 21 results of DNA analysis performed on a DNA sample.
 22 The results of all DNA identification analysis on an
 23 individual's DNA sample are also collectively referred
 24 to as the DNA profile of an individual.

25 5. "DNA profiling" means the procedure established
 26 by the division of criminal investigation, department
 27 of public safety, for determining a person's genetic
 28 identity.

29 6. "DNA record" means the DNA sample and DNA
 30 profile, and other records in the DNA database and DNA
 31 data bank used to identify a person.

32 7. "DNA sample" means a biological sample provided
 33 by any person required to submit a DNA sample or a DNA
 34 sample submitted for any other purpose under section
 35 81.4.

36 8. "Person required to submit a DNA sample" means
 37 a person convicted, adjudicated delinquent, receiving
 38 a deferred judgment, or found not guilty by reason of
 39 insanity of an offense requiring DNA profiling
 40 pursuant to section 81.2. "Person required to submit
 41 a DNA sample" also means a person determined to be a
 42 sexually violent predator pursuant to section 229A.7.

43 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO
 44 SUBMIT A DNA SAMPLE.

45 1. A person who receives a deferred judgment for a
 46 felony or against whom a judgment or conviction for a
 47 felony has been entered shall be required to submit a
 48 DNA sample for DNA profiling pursuant to section 81.4.

49 2. A person determined to be a sexually violent
 50 predator pursuant to chapter 229A shall be required to

S-3221

1 submit a DNA sample for DNA profiling pursuant to
2 section 81.4 prior to discharge or placement in a
3 transitional release program.

4 3. A person found not guilty by reason of insanity
5 of an offense that requires DNA profiling shall be
6 required to submit a DNA sample for DNA profiling
7 pursuant to section 81.4 as part of the person's
8 treatment management program.

9 4. A juvenile adjudicated delinquent of an offense
10 that requires DNA profiling of an adult offender shall
11 be required to submit a DNA sample for DNA profiling
12 pursuant to section 81.4 as part of the disposition of
13 the juvenile's case.

14 5. An offender placed on probation shall
15 immediately report to the judicial district department
16 of correctional services after sentencing so it can be
17 determined if the offender has been convicted of an
18 offense requiring DNA profiling. If it is determined
19 by the judicial district that DNA profiling is
20 required, the offender shall immediately submit a DNA
21 sample.

22 6. A person required to register as a sex
23 offender.

24 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA
25 DATABASE AND DNA DATABANK.

26 1. A state DNA database and a state DNA databank
27 are established under the control of the division of
28 criminal investigation, department of public safety.
29 The division of criminal investigation shall conduct
30 DNA profiling of a DNA sample submitted in accordance
31 with this section.

32 2. A DNA sample shall be submitted, and the
33 division of criminal investigation shall store and
34 maintain DNA records in the DNA database and DNA
35 databank for persons required to submit a DNA sample.

36 3. A DNA sample may be submitted, and the division
37 of criminal investigation shall store and maintain DNA
38 records in the DNA database and DNA databank for any
39 of the following:

40 a. Crime scene evidence and forensic casework.

41 b. A relative of a missing person.

42 c. An anonymous DNA profile used for forensic
43 validation, forensic protocol development, or quality
44 control purposes, or for the establishment of a
45 population statistics database.

46 4. A fingerprint record of a person required to
47 submit a DNA sample shall also be submitted to the
48 division of criminal investigation with the DNA sample
49 to verify the identity of the person required to
50 submit a DNA sample.

1 Sec. 4. NEW SECTION. 81.4 COLLECTING,
2 SUBMITTING, ANALYZING, IDENTIFYING, AND STORING DNA
3 SAMPLES AND DNA RECORDS.

4 1. The division of criminal investigation shall
5 adopt rules for the collection, submission, analysis,
6 identification, storage, and disposition of DNA
7 records.

8 2. A supervising agency having control, custody,
9 or jurisdiction over a person shall collect a DNA
10 sample from a person required to submit a DNA sample.
11 The supervising agency shall collect a DNA sample,
12 upon admittance to the pertinent institution or
13 facility, of the person required to submit a DNA
14 sample or at a determined date and time set by the
15 supervising agency. If a person required to submit a
16 DNA sample is confined at the time a DNA sample is
17 required, the person shall submit a DNA sample as soon
18 as practicable. If a person required to submit a DNA
19 sample is not confined after the person is required to
20 submit a DNA sample, the supervising agency shall
21 determine the date and time to collect the DNA sample.

22 3. A person required to submit a DNA sample who
23 refuses to submit a DNA sample may be subject to
24 contempt proceedings pursuant to chapter 665 until the
25 DNA sample is submitted.

26 4. The division of criminal investigation shall
27 conduct DNA profiling on a DNA sample or may contract
28 with a private entity to conduct the DNA profiling.

29 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL
30 LIABILITY -- LIMITATION.

31 A person who collects a DNA sample shall not be
32 civilly or criminally liable for the collection of the
33 DNA sample if the person performs the person's duties
34 in good faith and in a reasonable manner according to
35 generally accepted medical practices or in accordance
36 with the procedures set out in the administrative
37 rules of the department of public safety adopted
38 pursuant to section 81.4.

39 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

40 1. A person who knowingly or intentionally does
41 any of the following commits an aggravated
42 misdemeanor:

43 a. Discloses any part of a DNA record to a person
44 or agency that is not authorized by the division of
45 criminal investigation to have access to the DNA
46 record.

47 b. Uses or obtains a DNA record for a purpose
48 other than what is authorized under this chapter.

49 2. A person who knowingly or intentionally alters
50 or attempts to alter a DNA sample, falsifies the

1 source of a DNA sample, or materially alters a
2 collection container used to collect the DNA sample,
3 commits a class "D" felony.

4 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST
5 NOT INVALIDATED.

6 The detention, arrest, or conviction of a person
7 based upon a DNA database match is not invalidated if
8 it is determined that the DNA sample or DNA profile
9 was obtained or placed into the DNA database by
10 mistake or error.

11 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

12 1. A DNA record shall be considered a confidential
13 record and disclosure of a DNA record is only
14 authorized pursuant to this section.

15 2. Confidential DNA records under this section may
16 be released to the following agencies for law
17 enforcement identification purposes:

18 a. Any criminal or juvenile justice agency as
19 defined in section 692.1.

20 b. Any criminal or juvenile justice agency in
21 another jurisdiction that meets the definition of a
22 criminal or juvenile justice agency as defined in
23 section 692.1.

24 3. The division of criminal investigation shall
25 share the DNA record information with the appropriate
26 federal agencies for use in a national DNA database.

27 4. A DNA record or other forensic information
28 developed pursuant to this chapter may be released for
29 use in a criminal or juvenile delinquency proceeding
30 in which the state is a party and where the DNA record
31 or forensic information is relevant and material to
32 the subject of the proceeding. Such a record or
33 information may become part of a public transcript or
34 other public recording of such a proceeding.

35 5. A DNA record or other forensic information may
36 be released pursuant to a court order for criminal
37 defense purposes to a defendant, who shall have access
38 to DNA samples and DNA profiles related to the case in
39 which the defendant is charged.

40 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA
41 RECORDS.

42 1. A person whose DNA record has been included in
43 the DNA database or DNA databank established pursuant
44 to section 81.3 may request, in writing to the
45 division of criminal investigation, expungement of the
46 DNA record from the DNA database and DNA databank
47 based upon the person's conviction, adjudication, or
48 civil commitment which caused the submission of the
49 DNA sample being reversed on appeal and the case
50 dismissed. The written request shall contain a

1 certified copy of the final court order reversing the
2 conviction, adjudication, or civil commitment, and a
3 certified copy of the dismissal, and any other
4 information necessary to ascertain the validity of the
5 request.

6 2. The division of criminal investigation, upon
7 receipt of a written request that validates reversal
8 on appeal of a person's conviction, adjudication, or
9 commitment, and subsequent dismissal of the case, or
10 upon receipt of a written request by a person who
11 voluntarily submitted a DNA sample under section 81.3,
12 subsection 3, paragraph "b", or upon receipt of a
13 written request by a person who voluntarily submitted
14 a DNA sample pursuant to section 81.3, subsection 3,
15 paragraph "b", shall expunge all of the DNA records
16 and identifiable information of the person in the DNA
17 database and DNA databank. However, if the division
18 of criminal investigation determines that the person
19 is otherwise obligated to submit a DNA sample, the DNA
20 records shall not be expunged. If the division of
21 criminal investigation denies an expungement request,
22 the division shall notify the person requesting the
23 expungement of the decision not to expunge the DNA
24 record and the reason supporting its decision. The
25 division of criminal investigation decision is subject
26 to judicial review pursuant to chapter 17A. The
27 department of public safety shall adopt rules
28 governing the expungement procedure and a review
29 process.

30 3. The division of criminal investigation is not
31 required to expunge or destroy a DNA record pursuant
32 to this section, if expungement or destruction of the
33 DNA record would destroy evidence related to another
34 person.

35 Sec. 10. NEW SECTION. 81.10 DNA PROFILING AFTER
36 CONVICTION.

37 1. A defendant who has been convicted of a felony
38 and who has not been required to submit a DNA sample
39 for DNA profiling may make a motion to the court for
40 an order to require that DNA analysis be performed on
41 evidence collected in the case for which the person
42 stands convicted.

43 2. The motion shall state the following:

44 a. The specific crimes for which the defendant
45 stands convicted in this case.

46 b. The facts of the underlying case, as proven at
47 trial or admitted to during a guilty plea proceeding.

48 c. Whether any of the charges include sexual abuse
49 or involve sexual assault, and if so, whether a sexual
50 assault examination was conducted and evidence

- 1 preserved, if known.
- 2 d. Whether identity was at issue or contested by
3 the defendant.
- 4 e. Whether the defendant offered an alibi, and if
5 so, testimony corroborating the alibi and, from whom.
- 6 f. Whether eyewitness testimony was offered, and
7 if so from whom.
- 8 g. Whether any issues of police or prosecutor
9 misconduct have been raised in the past or are being
10 raised by the motion.
- 11 h. The type of inculpatory evidence admitted into
12 evidence at trial or admitted to during a guilty plea
13 proceeding.
- 14 i. Whether blood testing or other biological
15 evidence testing was conducted previously in
16 connection with the case and, if so, by whom and to
17 the result, if known.
- 18 j. What biological evidence exists and, if known,
19 the agency or laboratory storing the evidence that the
20 defendant seeks to have tested.
- 21 k. Why the requested analysis of DNA evidence is
22 material to the issue in the case and not merely
23 cumulative or impeaching.
- 24 1. Why the DNA evidence would have changed the
25 outcome of the trial or invalidated a guilty plea if
26 DNA profiling had been conducted prior to the
27 conviction.
- 28 3. A motion filed under this section shall be
29 filed in the county where the defendant was convicted,
30 and notice of the motion shall be served by certified
31 mail upon the county attorney and, if known, upon the
32 state, local agency, or laboratory holding evidence
33 described in subsection 2, paragraph "k". The county
34 attorney shall have sixty days to file an answer to
35 the motion.
- 36 4. Any DNA profiling of the defendant or other
37 biological evidence testing conducted by the state or
38 by the defendant shall be disclosed and the results of
39 such profiling or testing described in the motion or
40 answer.
- 41 5. If the evidence requested to be tested was
42 previously subjected to DNA or other biological
43 analysis by either party, the court may order the
44 disclosure of the results of such testing, including
45 laboratory reports, notes, and underlying data, to the
46 court and the parties.
- 47 6. The court may order a hearing on the motion to
48 determine if evidence should be subjected to DNA
49 analysis.
- 50 7. The court shall grant the motion if all of the

1 following apply:

2 a. The evidence subject to DNA testing is
3 available and in a condition that will permit
4 analysis.

5 b. A sufficient chain of custody has been
6 established for the evidence.

7 c. The identity of the person who committed the
8 crime for which the defendant was convicted was a
9 significant issue in the crime for which the defendant
10 was convicted.

11 d. The evidence subject to DNA analysis is
12 material to, and not merely cumulative or impeaching
13 of, evidence included in the trial record or admitted
14 to at a guilty plea proceeding.

15 e. DNA analysis of the evidence would raise a
16 reasonable probability that the defendant would not
17 have been convicted if DNA profiling had been
18 available at the time of the conviction and had been
19 conducted prior to the conviction.

20 8. Upon the court granting a motion filed pursuant
21 to this section, DNA analysis of evidence shall be
22 conducted within the guidelines generally accepted by
23 the scientific community. The defendant shall provide
24 DNA samples for testing if requested by the state.

25 9. Results of DNA analysis conducted pursuant to
26 this section shall be reported to the parties and to
27 the court and may be provided to the board of parole,
28 department of corrections, and criminal and juvenile
29 justice agencies, as defined in section 692.1, for use
30 in the course of investigations and prosecutions, and
31 for consideration in connection with requests for
32 parole, pardon, reprieve, and commutation. DNA
33 samples obtained pursuant to this section may be
34 included in the DNA databank, and DNA profiles and DNA
35 records developed pursuant to this section may be
36 included in the DNA database.

37 10. A criminal or juvenile justice agency, as
38 defined in section 692.1, shall maintain DNA samples
39 and evidence that could be tested for DNA for a period
40 of three years beyond the limitations for the
41 commencement of criminal actions as set forth in
42 chapter 802. This section does not create a cause of
43 action for damages or a presumption of spoliation in
44 the event evidence is no longer available for testing.

45 11. If the court determines a defendant who files
46 a motion under this section is indigent, the defendant
47 shall be entitled to appointment of counsel as
48 provided in chapter 815.

49 12. If the court determines after DNA analysis
50 ordered pursuant to this section that the results

1 indicate conclusively that the DNA profile of the
2 defendant matches the profile from the analyzed
3 evidence used against the defendant, the court may
4 order the defendant to pay the costs of these
5 proceedings, including costs of all testing, court
6 costs, and costs of court-appointed counsel, if any.
7 Sec. 11. Section 229A.7, Code 2005, is amended by
8 adding the following new subsection:

9 NEW SUBSECTION. 5A. If the court or jury
10 determines that the respondent is a sexually violent
11 predator, the court shall order the respondent to
12 submit a DNA sample for DNA profiling pursuant to
13 section 81.4.

14 Sec. 12. Section 232.52, Code 2005, is amended by
15 adding the following new subsection:

16 NEW SUBSECTION. 10. The court shall order a
17 juvenile adjudicated a delinquent for an offense that
18 requires DNA profiling under section 81.2 to submit a
19 DNA sample for DNA profiling pursuant to section 81.4.

20 Sec. 13. Section 669.14, Code 2005, is amended by
21 adding the following new subsection:

22 NEW SUBSECTION. 15. Any claim arising from or
23 related to the collection of a DNA sample for DNA
24 profiling pursuant to section 81.4 or a DNA profiling
25 procedure performed by the division of criminal
26 investigation, department of public safety.

27 Sec. 14. Section 901.5, subsection 8A, Code 2005,
28 is amended to read as follows:

29 8A. a. The court shall order DNA profiling of a
30 defendant convicted of an offense that requires
31 profiling under section ~~13.10~~ 81.2.

32 b. Notwithstanding section ~~13.10~~ 81.2, the court
33 may order the defendant to provide a ~~physical specimen~~
34 DNA sample to be submitted for DNA profiling if
35 appropriate. In determining the appropriateness of
36 ordering DNA profiling, the court shall consider the
37 deterrent effect of DNA profiling, the likelihood of
38 repeated offenses by the defendant, and the
39 seriousness of the offense.

40 Sec. 15. Section 906.4, unnumbered paragraph 3,
41 Code 2005, is amended to read as follows:

42 ~~Notwithstanding section 13.10, the~~ The board may
43 order the defendant to provide a physical specimen to
44 be submitted for DNA profiling as a condition of
45 parole or work release, if ~~appropriate~~ a DNA profile
46 has not been previously conducted pursuant to chapter
47 81. In determining the appropriateness of ordering
48 DNA profiling, the board shall consider the deterrent
49 effect of DNA profiling, the likelihood of repeated
50 offenses by the defendant, and the seriousness of the

1 offense.

2 Sec. 16. 2002 Iowa Acts, chapter 1080, is

3 repealed.

4 Sec. 17. Section 13.10, Code 2005, is repealed.

5 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE
6 PRIOR TO EFFECTIVE DATE OF THIS DIVISION OF THIS ACT.

7 A person convicted, adjudicated a delinquent, civilly
8 committed as a sexually violent predator, or found not
9 guilty by reason of insanity, prior to the effective
10 date of this Act, who would otherwise be required to
11 submit a DNA sample under this Act, and who is under
12 the custody, control, or jurisdiction of a supervising
13 agency, shall submit a DNA sample prior to being
14 released from the supervising agency's custody,
15 control, or jurisdiction.

16 Sec. 19. EFFECTIVE DATE. This division of this
17 Act, being deemed of immediate importance, takes
18 effect upon enactment.

19 DIVISION II
20 SEX OFFENDER REGISTRY AND TREATMENT

21 Sec. 20. Section 692A.1, subsection 8, Code 2005,
22 is amended to read as follows:

23 8. "Residence" means the place where a person
24 sleeps, which may include more than one location, and
25 may be mobile or transitory, including a shelter or
26 group home.

27 Sec. 21. Section 692A.2, Code 2005, is amended by
28 adding the following new subsection:

29 NEW SUBSECTION. 1A. If a person is required to
30 register for a period of ten years under subsection 1
31 and the period under subsection 1 has expired, the
32 person shall be required to remain on the registry if
33 the person has been sentenced to a special sentence as
34 required under section 903B.0A or 903B.0B, for a
35 period equal to the term of the special sentence.

36 Sec. 22. Section 692A.4, Code 2005, is amended to
37 read as follows:

38 692A.4 VERIFICATION OF ADDRESS AND TAKING OF
39 PHOTOGRAPH.

40 1. The address of a person required to register
41 under this chapter shall be verified annually as
42 follows:

43 a. On a date which falls within the month in which
44 the person was initially required to register, the
45 department shall mail a verification form to the last
46 reported address of the person. Verification forms
47 shall not be forwarded to the person who is required
48 to register under this chapter if the person no longer
49 resides at the address, but shall be returned to the
50 department.

1 b. The person shall complete and mail the
2 verification to the department within ten days of
3 receipt of the form.

4 c. The verification form shall be signed by the
5 person, and state the address at which the person
6 resides. If the person is in the process of changing
7 residences, the person shall state that fact as well
8 as the old and new addresses or places of residence.

9 2. Verification of address for a person who has
10 been convicted of an offense under the laws of this
11 state or of another state which would qualify the
12 person as a sexually violent predator shall be
13 accomplished in the same manner as in subsection 1,
14 except that the verification shall be done every three
15 months at times established by the department.

16 3. A photograph of a person required to register
17 under this chapter shall be updated, at a minimum,
18 annually. When the department mails the address
19 verification notice in subsection 1, the department
20 shall also enclose a form informing the person to
21 annually submit to being photographed by the sheriff
22 of the county of the person's residence within ten
23 days of receipt of the address verification form. The
24 sheriff shall send the updated photograph to the
25 department within ten days of the photograph being
26 taken and the department shall post the updated
27 photograph on the sex offender registry's web page.
28 The sheriff may require the person to submit to being
29 photographed by the sheriff more than once a year by
30 mailing another notice informing the person to submit
31 to being photographed.

32 Sec. 23. NEW SECTION. 692A.4A ELECTRONIC
33 MONITORING.

34 A person required to register under this chapter
35 who is placed on probation, parole, work release,
36 special sentence, or any other type of conditional
37 release, may be supervised by an electronic tracking
38 and monitoring system in addition to any other
39 conditions of supervision.

40 Sec. 24. Section 692A.5, subsection 1, Code 2005,
41 is amended by adding the following new paragraph:

42 NEW PARAGRAPH. i. Inform the person that the
43 person must, at a minimum, annually submit to being
44 photographed by the sheriff of the county of the
45 person's residence.

46 Sec. 25. Section 692A.13, subsection 3, Code 2005,
47 is amended to read as follows:

48 3. Any member of the public may contact a county
49 sheriff's office or police department to request
50 relevant information from the registry regarding a

1 specific person required to register under this
2 chapter. ~~The request for information shall be in~~
3 ~~writing, and~~ A person making a request for relevant
4 information may make the request by telephone, in
5 writing, or in person, and the request shall include
6 the name of the person and at least one of the
7 following identifiers pertaining to the person about
8 whom the information is sought:

- 9 a. The date of birth of the person.
- 10 b. The social security number of the person.
- 11 c. The address of the person.

12 A county sheriff or police department shall not
13 charge a fee relating to a request for relevant
14 information.

15 Sec. 26. Section 692A.13, subsection 2, paragraph
16 b, Code 2005, is amended to read as follows:

17 b. The general public, including public and
18 private agencies, organizations, public places, ~~public~~
19 ~~and private schools,~~ child care facilities, religious
20 and youth organizations, neighbors, neighborhood
21 associations, community meetings, and employers.
22 Registry information may be distributed to the public
23 through printed materials, visual or audiopress
24 releases, radio communications, or through a criminal
25 or juvenile justice agency's web page.

26 Sec. 27. Section 692A.13, Code 2005, is amended by
27 adding the following new subsection:

28 NEW SUBSECTION. 2A. When a person required to
29 register under this chapter moves into a school
30 district or moves within a school district, the county
31 sheriff of the county of the person's new residence
32 shall provide relevant information from the sex
33 offender registry to the administrative office of the
34 school district in which the person required to
35 register resides, and shall also provide relevant
36 information to any private school near the person's
37 residence.

38 Sec. 28. Section 692A.13, subsection 5, Code 2005,
39 is amended to read as follows:

40 5. Relevant information provided to the general
41 public may include the offender's name, address, a
42 photograph, locations frequented by the offender,
43 relevant criminal history information from the
44 registry, and any other relevant information.
45 Relevant information provided to the public shall not
46 include the identity of any victim. For purposes of
47 inclusion in the sex offender registry's web page or
48 dissemination to the general public, a conviction for
49 incest shall be disclosed as either a violation of
50 section 709.4 or 709.8.

1 Sec. 29. Section 903A.2, subsection 1, paragraph
2 a, Code 2005, is amended to read as follows:

3 a. Category "A" sentences are those sentences
4 which are not subject to a maximum accumulation of
5 earned time of fifteen percent of the total sentence
6 of confinement under section 902.12. To the extent
7 provided in subsection 5, category "A" sentences also
8 include life sentences imposed under section 902.1.
9 An inmate of an institution under the control of the
10 department of corrections who is serving a category
11 "A" sentence is eligible for a reduction of sentence
12 equal to one and two-tenths days for each day the
13 inmate demonstrates good conduct and satisfactorily
14 participates in any program or placement status
15 identified by the director to earn the reduction. The
16 programs include but are not limited to the following:
17 (1) Employment in the institution.
18 (2) Iowa state industries.
19 (3) An employment program established by the
20 director.
21 (4) A treatment program established by the
22 director.
23 (5) An inmate educational program approved by the
24 director.

25 However, an inmate required to participate in a sex
26 offender treatment program shall not be eligible for a
27 reduction of sentence unless the inmate participates
28 in and completes a sex offender treatment program
29 established by the director.

30 An inmate serving a category "A" sentence is
31 eligible for an additional reduction of sentence of up
32 to three hundred sixty-five days of the full term of
33 the sentence of the inmate for exemplary acts. In
34 accordance with section 903A.4, the director shall by
35 policy identify what constitutes an exemplary act that
36 may warrant an additional reduction of sentence.

37 DIVISION III

38 ENHANCED CRIMINAL PENALTIES AND 39 STATUTE OF LIMITATIONS

40 Sec. 30. Section 709.8, Code 2005, is amended to
41 read as follows:

42 709.8 LASCIVIOUS ACTS WITH A CHILD.

43 It is unlawful for any person ~~eighteen~~ sixteen
44 years of age or older to perform any of the following
45 acts with a child with or without the child's consent
46 unless married to each other, for the purpose of
47 arousing or satisfying the sexual desires of either of
48 them:

49 1. Fondle or touch the pubes or genitals of a
50 child.

1 2. Permit or cause a child to fondle or touch the
2 person's genitals or pubes.

3 3. Solicit a child to engage in a sex act or
4 solicit a person to arrange a sex act with a child.

5 4. Inflict pain or discomfort upon a child or
6 permit a child to inflict pain or discomfort on the
7 person.

8 Any person who violates a provision of this section
9 involving an act included in subsection 1 or 2 shall,
10 upon conviction, be guilty of a class "D" "C" felony.
11 ~~A person who violates a provision of this section and~~
12 ~~who is sentenced to a term of confinement shall also~~
13 ~~be sentenced to an additional term of parole or work~~
14 ~~release not to exceed two years. The board of parole~~
15 ~~shall determine whether the person should be released~~
16 ~~on parole or placed in a work release program. The~~
17 ~~sentence of an additional term of parole or work~~
18 ~~release supervision shall commence immediately upon~~
19 ~~the expiration of the preceding sentence and shall be~~
20 ~~under the terms and conditions as set out in chapter~~
21 ~~906. Violations of parole or work release shall be~~
22 ~~subject to the procedures set out in chapter 905 or~~
23 ~~908 or rules adopted under those chapters. The~~
24 ~~sentence of an additional term of parole or work~~
25 ~~release shall be consecutive to the original term of~~
26 ~~confinement. Any person who violates a provision of~~
27 this section involving an act included in subsection 3
28 or 4 shall, upon conviction, be guilty of a class "D"
29 felony.

30 Sec. 31. Section 802.2, Code 2005, is amended to
31 read as follows:

32 802.2 SEXUAL ABUSE -- FIRST, SECOND, OR THIRD
33 DEGREE.

34 1. An information or indictment for sexual abuse
35 in the first, second, or third degree committed on or
36 with a person who is under the age of eighteen years
37 shall be found within ten years after the person upon
38 whom the offense is committed attains eighteen years
39 of age, or if the identity of the person against whom
40 the information or indictment is sought is established
41 through the use of a DNA profile, an information or
42 indictment shall be found within three years from the
43 date the identity of the person is identified by the
44 person's DNA profile, whichever is later.

45 2. An information or indictment for any other
46 sexual abuse in the first, second, or third degree
47 shall be found within ten years after its commission,
48 or if the identity of the person against whom the
49 information or indictment is sought is established
50 through the use of a DNA profile, an information or

1 indictment shall be found within three years from the
2 date the identity of the person is identified by the
3 person's DNA profile, whichever is later.

4 3. As used in this section, "identified" means a
5 person's legal name is known and the person has been
6 determined to be the source of the DNA.

7 Sec. 32. Section 901.5, Code 2005, is amended by
8 adding the following new subsection:

9 NEW SUBSECTION. 13. In addition to any other
10 sentence or other penalty imposed against the
11 defendant, the court shall impose a special sentence
12 if required under section 903B.0A or 903B.0B.

13 Sec. 33. NEW SECTION. 902.15 ENHANCED PENALTY --
14 SEXUAL ABUSE OR LASCIVIOUS ACTS WITH A CHILD.

15 1. A person commits a class "A" felony if the
16 person commits a second or subsequent offense
17 involving any combination of the following offenses:
18 a. Sexual abuse in the second degree in violation
19 of section 709.3.

20 b. Sexual abuse in the third degree in violation
21 of section 709.4.

22 c. Lascivious acts with a child in violation of
23 section 709.8, subsection 1 or 2.

24 2. In determining if a violation charged is a
25 second or subsequent offense for purposes of criminal
26 sentencing in this section, each previous violation on
27 which conviction or deferral of judgment was entered
28 prior to the date of the violation charged shall be
29 considered and counted as a separate previous offense,
30 regardless of whether the previous offense occurred
31 before, on, or after the effective date of this Act.
32 Convictions or the equivalent of deferred judgments
33 for violations in any other states under statutes
34 substantially corresponding to the offenses listed in
35 subsection 1 shall be counted as previous offenses.
36 The courts shall judicially notice the statutes of
37 other states which define offenses substantially
38 equivalent to the offenses listed in subsection 1 and
39 can therefore be considered corresponding statutes.

40 Sec. 34. NEW SECTION. 903B.0A SPECIAL SENTENCE
41 -- CLASS "B" OR CLASS "C" FELONIES.

42 A person convicted of a class "C" felony or greater
43 offense under chapter 709, or a class "C" felony under
44 section 728.12, shall also be sentenced, in addition
45 to any other punishment provided by law, to a special
46 sentence committing the person into the custody of the
47 director of the Iowa department of corrections for the
48 rest of the person's life, with eligibility for parole
49 as provided in chapter 906. The special sentence
50 imposed under this section shall commence upon

1 completion of the sentence imposed under any
2 applicable criminal sentencing provisions for the
3 underlying criminal offense and the person shall begin
4 the sentence under supervision as if on parole. The
5 person shall be placed on the corrections continuum in
6 chapter 901B, and the terms and conditions of the
7 special sentence, including violations, shall be
8 subject to the same set of procedures set out in
9 chapters 901B, 905, 906, and chapter 908, and rules
10 adopted under those chapters for persons on parole.
11 The revocation of release shall not be for a period
12 greater than two years upon any first revocation, and
13 five years upon any second or subsequent revocation.
14 A special sentence shall be considered a category "A"
15 sentence for purposes of calculating earned time under
16 section 903A.2.

17 Sec. 35. NEW SECTION. 903B.0B SPECIAL SENTENCE
18 -- CLASS "D" FELONIES OR MISDEMEANORS.

19 A person convicted of a misdemeanor or a class "D"
20 felony offense under chapter 709, section 726.2, or
21 section 728.12 shall also be sentenced, in addition to
22 any other punishment provided by law, to a special
23 sentence committing the person into the custody of the
24 director of the Iowa department of corrections for a
25 period of ten years, with eligibility for parole as
26 provided in chapter 906. The special sentence imposed
27 under this section shall commence upon completion of
28 the sentence imposed under any applicable criminal
29 sentencing provisions for the underlying criminal
30 offense and the person shall begin the sentence under
31 supervision as if on parole. The person shall be
32 placed on the corrections continuum in chapter 901B,
33 and the terms and conditions of the special sentence,
34 including violations, shall be subject to the same set
35 of procedures set out in chapters 901B, 905, 906, and
36 908, and rules adopted under those chapters for
37 persons on parole. The revocation of release shall
38 not be for a period greater than two years upon any
39 first revocation, and five years upon any second or
40 subsequent revocation. A special sentence shall be
41 considered a category "A" sentence for purposes of
42 calculating earned time under section 903A.2.

43 Sec. 36. Section 903B.1, subsection 3, Code 2005,
44 is amended by striking the subsection.

45 Sec. 37. Section 906.15, unnumbered paragraph 1,
46 Code 2005, is amended to read as follows:

47 Unless sooner discharged, a person released on
48 parole shall be discharged when the person's term of
49 parole equals the period of imprisonment specified in
50 the person's sentence, less all time served in

1 confinement. Discharge from parole may be granted
2 prior to such time, when an early discharge is
3 appropriate. The board shall periodically review all
4 paroles, and when the board determines that any person
5 on parole is able and willing to fulfill the
6 obligations of a law-abiding citizen without further
7 supervision, the board shall discharge the person from
8 parole. A parole officer shall periodically review
9 all paroles assigned to the parole officer, and when
10 the parole officer determines that any person assigned
11 to the officer is able and willing to fulfill the
12 obligations of a law-abiding citizen without further
13 supervision, the officer may discharge the person from
14 parole after notification and approval of the district
15 director and notification of the board of parole. In
16 any event, discharge from parole shall terminate the
17 person's sentence. If a person has been sentenced to
18 a special sentence under section 903B.0A or 903B.0B,
19 the person may be discharged early from the sentence
20 in the same manner as any other person on parole.
21 However, a person convicted of a violation of section
22 709.3, 709.4, or 709.8 committed on or with a child,
23 or a person serving a sentence under section 902.12,
24 shall not be discharged from parole until the person's
25 term of parole equals the period of imprisonment
26 specified in the person's sentence, less all time
27 served in confinement.

28 Sec. 38. Section 908.5, Code 2005, is amended to
29 read as follows:

30 908.5 DISPOSITION.

31 1. If a violation of parole is established, the
32 administrative parole judge may continue the parole
33 with or without any modification of the conditions of
34 parole. The administrative parole judge may revoke
35 the parole and require the parolee to serve the
36 sentence originally imposed, or may revoke the parole
37 and reinstate the parolee's work release status.

38 2. If the person is serving a special sentence
39 under chapter 903B, the administrative parole judge
40 may revoke the release. Upon the revocation of
41 release, the person shall not serve the entire length
42 of the special sentence imposed, and the revocation
43 shall be for a period not to exceed two years in a
44 correctional institution upon a first revocation and
45 for a period not to exceed five years in a
46 correctional institution upon a second or subsequent
47 revocation.

48 3. The order of the administrative parole judge
49 shall contain findings of fact, conclusions of law,
50 and a disposition of the matter.

DIVISION IV
DEATH PENALTY

1
2
3 Sec. 39. Section 13B.4, Code 2005, is amended by
4 adding the following new subsection:

5 NEW SUBSECTION. 6A. The state public defender
6 shall perform all of the following duties with respect
7 to the appointment of counsel for indigent persons in
8 cases in which a sentence of death may be or is to be
9 imposed:

10 a. Provide or contract with attorneys for
11 appointment as lead counsel and cocounsel to provide
12 legal services in cases where a person is charged with
13 murder in the first degree, kidnapping, and sexual
14 abuse under section 902.15, and the state has given
15 notice of intent to seek the death penalty or in cases
16 in which a sentence of death is to be imposed.

17 b. Conduct or sponsor specialized training
18 programs for attorneys representing persons who may be
19 executed.

20 Sec. 40. Section 216A.133, Code 2005, is amended
21 by adding the following new subsection:

22 NEW SUBSECTION. 8. Review the effects of the
23 reinstatement of the death penalty on arrest,
24 prosecution, conviction, and incarceration rates; law
25 enforcement duties and ability to obtain evidence
26 necessary for arrests; court dockets and workload;
27 prison space; recidivism rates of persons charged with
28 crimes of violence against persons; and other aspects
29 of the criminal justice system. Based on the review
30 and other factors deemed relevant, the council shall
31 make findings and develop recommendations resulting
32 from those findings. Commencing January 1, 2007, the
33 council shall report its findings and any related
34 recommendations annually to the governor and to the
35 general assembly.

36 Sec. 41. NEW SECTION. 602.10111A QUALIFICATIONS
37 OF COUNSEL IN DEATH PENALTY CASES.

38 The supreme court shall prescribe rules which
39 establish minimum standards and procedures by which
40 attorneys may become qualified to provide legal
41 services as lead counsel in cases in which a sentence
42 of death may be or is to be imposed.

43 Sec. 42. NEW SECTION. 812A.1 PROCEDURE TO
44 DETERMINE SANITY OF CONDEMNED INMATE.

45 1. At any time prior to execution of an inmate
46 under section 902.1, if the director of the department
47 of corrections or the counsel for a person who is
48 under a sentence of execution has cause to believe
49 that the inmate is suffering from such a diseased or
50 deranged condition of the mind as to prevent the

1 defendant from knowing the nature and quality of the
2 act the defendant has been convicted of, or from
3 understanding that trial on the offense has taken
4 place and that execution proceedings are about to take
5 place, or to otherwise cause the defendant to lack the
6 capacity to understand the sentence which has been
7 imposed and to participate in any legal proceedings
8 relating to the sentence, the director or counsel may
9 file a request with the court that issued the warrant
10 for execution for a determination of the inmate's
11 sanity. If the district court determines that there
12 is not sufficient reason to believe that the inmate is
13 insane, the court shall enter an order denying the
14 request and shall state the grounds for denying the
15 request. If the court believes that there is
16 sufficient reason to believe that the inmate is
17 insane, the court shall suspend the execution and
18 conduct a hearing to determine the sanity of the
19 inmate.

20 2. At the hearing, the court shall determine the
21 issue of the inmate's sanity. Prior to the hearing,
22 the court shall appoint two licensed physicians or
23 licensed psychologists, or one licensed physician and
24 one licensed psychologist, who are qualified by
25 training and practice, for purposes of conducting a
26 psychiatric or psychological examination of the
27 inmate. The physicians or psychologists shall examine
28 the inmate and report any findings in writing to the
29 court within ten days after the order of examination
30 is issued. The inmate shall have the right to present
31 evidence and cross-examine any witnesses at the
32 hearing. Any statement made by the inmate during the
33 course of any examination provided for in this
34 section, whether or not the inmate consents to the
35 examination, shall not be admitted into evidence
36 against the inmate in any criminal proceeding for
37 purposes other than a determination of the inmate's
38 sanity.

39 3. If, at the conclusion of a hearing held
40 pursuant to this section, the court determines that
41 the inmate is sane, the court shall enter an order
42 setting a date for the inmate's execution, which shall
43 be carried into effect in the same manner as provided
44 in the original sentence. A copy of the order shall
45 be sent to the director of the department of
46 corrections and the governor.

47 4. If, at the conclusion of a hearing held
48 pursuant to this section, the court determines that
49 the inmate is insane, the court shall suspend the
50 execution until further order. At any time after

1 issuance of the order, if the court has sufficient
2 reason to believe that the inmate has become sane, the
3 court shall again determine the sanity of the inmate
4 as provided by this section. Proceedings pursuant to
5 this section may continue to be held at such times as
6 the court orders until it is either determined that
7 the inmate is sane or incurably insane.

8 Sec. 43. NEW SECTION. 814.28 REVIEW OF DEATH
9 SENTENCE.

10 1. In a case in which a sentence of death is
11 imposed, the supreme court shall automatically review
12 the judgment and sentence. The court's review of the
13 case shall be de novo. The case shall not be
14 transferred to the court of appeals.

15 2. A review by the supreme court of a judgment and
16 sentence imposing the punishment of death has priority
17 over all other criminal and other actions pending
18 before the supreme court.

19 3. The supreme court shall review the trial and
20 judgment, and shall separately review the sentencing
21 proceeding. Upon determining that errors did not
22 occur at the trial requiring reversal or modification
23 of the judgment, the supreme court shall proceed to
24 determine if the sentence of death is lawfully
25 imposed. In its review of the sentencing proceeding
26 the supreme court shall determine all of the
27 following:

28 a. Whether the sentence of death was imposed
29 capriciously or under the influence of prejudice or
30 other arbitrary factor.

31 b. Whether the special verdicts returned under
32 section 901.11 are supported by the evidence.

33 c. Whether the sentence of death is excessive or
34 disproportionate to the penalty imposed in similar
35 cases, considering both the crime and the defendant.

36 4. If the supreme court determines that the
37 sentence of death was not lawfully imposed, the court
38 shall set aside the sentence and shall remand the case
39 to the trial court for a second sentencing proceeding
40 to determine if the imposition of death is warranted.

41 5. If the supreme court affirms the judgment and
42 sentence of death, the clerk of the supreme court
43 shall certify the judgment of the supreme court under
44 the seal of the court to the clerk of the trial court.

45 Sec. 44. Section 815.10, Code 2005, is amended by
46 adding the following new subsection:

47 NEW SUBSECTION. 1A. If two attorneys have not
48 already been appointed pursuant to section 13B.4 or
49 13B.9, the court shall appoint, for each indigent
50 person who is charged with murder in the first degree

1 and in which a notice of intent to seek the death
2 penalty has been filed, two attorneys who are
3 qualified under section 602.10111A to represent the
4 person in the murder proceedings and in all state
5 legal proceedings which take place from the time the
6 person is indicted or arraigned until the person is
7 sentenced on the charge. In addition, if at any point
8 in federal postconviction proceedings an indigent
9 person is not afforded court-appointed counsel, the
10 state shall provide counsel to the person to present
11 any claims determined meritorious by the federal court
12 if the person is not otherwise represented by legal
13 counsel. Only private attorneys and public defenders
14 who are qualified to provide representation in cases
15 in which the death penalty may be imposed are eligible
16 for appointment or assignment to a case in which the
17 death penalty may be imposed.

18 Sec. 45. NEW SECTION. 901.11 MURDER PROCEEDINGS
19 -- REQUEST FOR DEATH PENALTY -- PENALTY PROCEEDINGS.
20 1. If a notice of intent to seek the death penalty
21 has been filed, objections to the imposition of the
22 death penalty based upon allegations that a defendant
23 was mentally retarded or mentally ill at the time of
24 the commission of the offense shall be raised within
25 the time provided for the filing of pretrial motions
26 under rule of criminal procedure 2.11, Iowa court
27 rules. The court may, for good cause shown, allow
28 late filing of the motion. Hearing on the motion
29 shall be held prior to trial and the burden of proof
30 shall be on the defendant to prove mental retardation
31 or mental illness by a preponderance of the evidence.
32 However, a rebuttable presumption of mental
33 retardation arises if a defendant has an intelligence
34 quotient of seventy or below. If the court finds that
35 the defendant is mentally retarded, the defendant, if
36 convicted of murder in the first degree, shall not be
37 sentenced to death but shall be sentenced to life
38 imprisonment in the manner provided in section 902.1,
39 subsection 1. A finding by the court that the
40 evidence presented by the defendant at the hearing
41 does not preclude the imposition of the death penalty
42 under this section and section 902.15 shall not
43 preclude the introduction of evidence of mental
44 retardation or mental illness during the penalty
45 proceeding. If the court finds that evidence of
46 mental retardation or mental illness does not preclude
47 imposition of the death penalty, evidence of mental
48 retardation or mental illness may be reviewed by the
49 jury in the penalty proceeding and the jury shall not
50 be informed of the finding in the initial proceeding

1 at any time during the penalty proceeding.
2 2. If at the trial on a charge of murder in the
3 first degree, the state intends to request that the
4 death penalty be imposed under section 902.1,
5 subsection 2, the prosecutor shall file a notice of
6 intent to seek the death penalty, listing the
7 additional factors enumerated under section 902.15
8 that the state intends to establish in support of
9 imposition of the death penalty, at the time of and as
10 part of the information or indictment filed in the
11 case.
12 3. If a notice of intent to seek the death penalty
13 has been filed, the trial shall be conducted in
14 bifurcated proceedings before the same trier of fact.
15 During the initial proceeding, the jury, or the court,
16 if the defendant waives the right to a jury trial,
17 shall decide only whether the defendant is guilty or
18 not guilty of murder in the first degree, kidnapping,
19 and sexual abuse.
20 a. If, in the initial proceeding, the court or
21 jury finds the defendant guilty of, or the defendant
22 pleads guilty to, an offense other than murder in the
23 first degree, kidnapping, and sexual abuse, the court
24 shall sentence the defendant in accordance with the
25 sentencing procedures set forth in rule of criminal
26 procedure 2.23, Iowa court rules, and chapters 901
27 through 909, which are applicable to the offense.
28 b. If the court or jury finds the defendant guilty
29 of, or the defendant pleads guilty to, murder in the
30 first degree, kidnapping, and sexual abuse but the
31 prosecuting attorney waives the death penalty, the
32 court shall sentence the defendant to life
33 imprisonment in accordance with the sentencing
34 procedures set forth in rule of criminal procedure
35 2.23, Iowa court rules, and chapters 901 through 909,
36 which are applicable to convictions of murder in the
37 first degree, kidnapping, and sexual abuse.
38 c. If the court or jury finds the defendant guilty
39 of murder in the first degree, kidnapping, and sexual
40 abuse, or a defendant enters a plea of guilty in the
41 initial proceeding, and the prosecuting attorney does
42 not waive imposition of the death penalty, a penalty
43 proceeding shall be held in the manner provided in
44 subsections 4 through 12.
45 4. No sooner than twenty-four hours after a
46 verdict of guilty or a plea of guilty to the charge of
47 murder in the first degree, kidnapping, and sexual
48 abuse is returned in the initial proceeding, a penalty
49 proceeding shall be held to determine whether the
50 defendant shall be sentenced to death or to life

1 imprisonment. The proceeding shall be conducted in
2 the trial court before the trial jury, or the court if
3 the defendant has waived the right to a jury trial or
4 has waived the right for the proceeding to be before
5 the trial jury. Both the state and the defendant
6 shall have the right to present opening statements at
7 the commencement of the penalty proceedings. In the
8 proceeding, evidence relevant to the existence of any
9 aggravating or mitigating circumstances may be
10 presented as follows:

11 a. The state or the defendant may present evidence
12 relevant to the conviction of murder in the first
13 degree and any of the additional factors enumerated in
14 section 902.15 and any aggravating circumstances other
15 than juvenile delinquency adjudications for offenses
16 which carry penalties equivalent to the penalties
17 imposed for simple or serious misdemeanors. The state
18 may introduce evidence of the actual harm caused by
19 the commission of the murder including, but not
20 limited to, evidence relating to the life of the
21 victim and the impact of the loss of the victim to the
22 victim's family and society.

23 b. The defendant may present evidence that the
24 defendant was mentally retarded at the time of the
25 commission of the offense. The burden of proof shall
26 be on the defendant to prove mental retardation by a
27 preponderance of the evidence. However, a rebuttable
28 presumption of mental retardation arises if a
29 defendant has an intelligence quotient of seventy or
30 below.

31 c. The state or the defendant may present evidence
32 relevant to any mitigating circumstances which may
33 exist. Mitigating circumstances may include the
34 following circumstances:

35 (1) The defendant was under the influence of an
36 extreme mental or emotional disturbance insufficient
37 to constitute a defense.

38 (2) The age of the defendant at the time of the
39 murder.

40 (3) The defendant's capacity to appreciate the
41 wrongfulness of the defendant's conduct and to conform
42 that conduct to the requirements of law was
43 significantly impaired as a result of a mental disease
44 or defect or mental retardation, but not to a degree
45 sufficient to constitute a defense.

46 (4) The defendant has no significant history of
47 prior adult criminal activity.

48 (5) The defendant acted under extreme duress or
49 under the substantial domination of another person.

50 (6) The defendant did not directly commit the

1 murder and the defendant did not intend to kill or
2 anticipate that lethal force would be used.

3 (7) Any other factor which is relevant to the
4 defendant's character or record or to the
5 circumstances of the offense.

6 d. The state and the defendant or the defendant's
7 counsel shall be permitted to present and cross-
8 examine witnesses and present arguments for or against
9 a sentence of death. Evidence regarding aggravating
10 and mitigating circumstances shall not be governed by
11 the rules governing admissibility of evidence, except
12 that introduction of evidence secured in violation of
13 the Constitution of the United States or of the
14 Constitution of the State of Iowa shall not be
15 permitted.

16 5. At the conclusion of presentation of evidence
17 in the penalty proceeding, the state and the defendant
18 or the defendant's counsel shall be permitted to make
19 closing arguments, including any rebuttal arguments,
20 in the same manner as in the initial proceeding and
21 the following issues shall be determined by the jury
22 or the court, if there is no jury:

23 a. Whether the aggravating circumstance or
24 circumstances outweigh any one or more mitigating
25 circumstances.

26 b. Whether the defendant shall be sentenced to
27 death.

28 6. A recommendation for a sentence of death shall
29 not be permitted if the recommendation is based on the
30 race, color, religious beliefs, national origin, or
31 sex of the defendant or any victim. After submission
32 of the issues, but prior to the return of a finding in
33 the penalty proceeding, if the matter is tried before
34 a jury, the court shall instruct the jury that in
35 considering whether a sentence of death is justified,
36 it shall not consider race, color, religious beliefs,
37 national origin, or sex of the defendant or of any
38 victim. The court shall further instruct the jury
39 that it shall not return a sentence of death unless it
40 concludes that such a sentence would be recommended no
41 matter what the race, color, religious beliefs,
42 national origin, or sex of the defendant or any victim
43 may be.

44 7. After submission of the issues, but prior to
45 the commencement of the jury deliberations in the
46 penalty proceeding, the court shall instruct the jury
47 that if the defendant is not sentenced to death, the
48 court is required by law to impose a sentence of
49 imprisonment until death without parole. The court
50 shall further instruct the jury that the sentence of

1 imprisonment until death without parole is required by
2 law if the jury fails to reach a unanimous verdict
3 recommending a sentence of death.

4 8. Concurrently with the return of the findings on
5 the issues submitted under subsection 5, the jury, or
6 the court if there is no jury, shall return special
7 verdicts as follows:

8 a. Which aggravating circumstances were
9 established and were considered in reaching the
10 verdict.

11 b. Which mitigating circumstances were established
12 and were considered in reaching the verdict returned
13 on the issue specified in subsection 5, paragraph "a".

14 9. If the jury, or the court if there is no jury,
15 returns a unanimous affirmative finding on each of the
16 issues submitted under subsection 5, paragraphs "a"
17 and "b", the court shall enter a judgment of
18 conviction and shall sentence the defendant to death
19 as provided in section 902.1, subsection 2.

20 10. However, if evidence that the defendant was
21 not a major participant in the commission of the
22 murder and that the defendant's conduct did not
23 manifest a reckless indifference to human life is
24 presented to the jury, or the court, if there is no
25 jury, the jury or the court shall also return a
26 special verdict on the issue. If the jury unanimously
27 determines, or the court, if there is no jury, finds
28 that a preponderance of evidence exists that shows
29 that the defendant was not a major participant in the
30 commission of the murder and that the defendant's
31 conduct did not manifest a reckless indifference to
32 human life, the court shall enter a judgment of
33 conviction and shall sentence the defendant to life
34 imprisonment as provided in section 902.1, subsection
35 1, even if the jury or the court returns unanimous
36 affirmative findings on each of the issues submitted
37 under subsection 5.

38 11. If the jury, or the court, if there is no
39 jury, returns a negative finding on any of the issues
40 submitted under subsection 5, paragraphs "a" and "b",
41 the court shall enter a judgment of conviction and
42 shall sentence the defendant to life imprisonment as
43 provided in section 902.1, subsection 1.

44 12. After a verdict has been rendered it shall be
45 recorded on the jury verdict form and shall be read
46 and recorded in open court. The jurors shall be
47 collectively asked by the court whether the verdict
48 returned is their true and correct verdict. Even
49 though no juror makes any declaration to the contrary,
50 the jury shall, if either party so requests, be polled

1 and each juror shall be separately asked whether the
2 verdict rendered by the jury foreperson is the juror's
3 true and correct verdict. If, upon either the
4 collective or the separate inquiry, any juror denies
5 that the verdict is the juror's verdict, the court
6 shall refuse to accept the verdict. The court may
7 direct inquiry or permit inquiry by counsel to
8 ascertain whether any juror has been subjected to
9 coercion or has become confused during the jury
10 deliberation process. The court may, as appropriate,
11 direct the jury to resume deliberation in the case.
12 If no disagreement on the verdict is expressed by any
13 of the jurors, the court shall discharge the jury.

14 13. This section shall not apply to a defendant
15 who was under the age of eighteen at the time the
16 offense was committed.

17 Sec. 46. Section 902.1, Code 2005, is amended to
18 read as follows:

19 902.1 CLASS "A" FELONY.

20 1. Upon Except as otherwise provided in subsection
21 2, upon a plea of guilty, a verdict of guilty, or a
22 special verdict upon which a judgment of conviction of
23 a class "A" felony may be rendered, the court shall
24 enter a judgment of conviction and shall commit the
25 defendant into the custody of the director of the Iowa
26 department of corrections for the rest of the
27 defendant's life. Nothing in the Iowa corrections
28 code pertaining to deferred judgment, deferred
29 sentence, suspended sentence, or reconsideration of
30 sentence applies to a sentence of life imprisonment
31 for a class "A" felony, and a person convicted of a
32 class "A" felony and sentenced to life imprisonment
33 shall not be released on parole unless the governor
34 commutes the sentence to a term of years.

35 2. Upon return of a plea or verdict of guilty to
36 the offense of murder in the first degree under
37 section 707.2, kidnapping, and sexual abuse, and a
38 return of a verdict in favor of a sentence of death in
39 a penalty proceeding conducted as provided in section
40 901.11, the court shall enter a judgment of conviction
41 and shall commit the defendant into the custody of the
42 director of the Iowa department of corrections. The
43 sentence shall be carried out by the administration of
44 a lethal injection pursuant to rules adopted by the
45 board of corrections. If a defendant, for whom a
46 warrant of execution is issued, is pregnant, the
47 execution shall not take place until after the
48 defendant is no longer pregnant. If a defendant, for
49 whom a warrant of execution is issued, is suffering
50 from such a diseased or deranged condition of the mind

1 as to prevent the defendant from knowing the nature
2 and quality of the act the defendant has been
3 convicted of, or from understanding that trial on the
4 offense has taken place and that execution proceedings
5 are about to take place, or otherwise causes the
6 defendant to lack the capacity to understand the
7 sentence which has been imposed and to participate in
8 any legal proceedings relating to the sentence, the
9 execution shall not take place until after the
10 defendant's capacity is restored. If the director of
11 the department of corrections or the defendant's
12 counsel files a request with the court which issued
13 the warrant of execution, alleging that the defendant
14 suffers from such a diseased or deranged condition, a
15 hearing on the matter shall be held in the manner
16 provided in section 812A.1. If a defendant was under
17 the age of eighteen at the time the offense was
18 committed, the defendant shall be sentenced as
19 provided in subsection 1. For the purposes of this
20 section, "lethal injection" means a continuous
21 intravenous injection of a lethal substance sufficient
22 to cause death.

23 Sec. 47. NEW SECTION. 902.15 FIRST DEGREE MURDER
24 -- ADDITIONAL FACTORS.

25 A person who commits murder in the first degree,
26 who is not mentally retarded or mentally ill, and who
27 is age eighteen or older at the time the offense is
28 committed, shall be eligible for a sentence of death
29 under section 902.1, subsection 2, if the person also
30 kidnaps and commits sexual abuse against the murder
31 victim who was a minor.

32 For purposes of this section, "mentally retarded"
33 means significant subaverage general intellectual
34 functioning accompanied by significant deficits or
35 impairments in adaptive functioning manifested in the
36 developmental period, but no later than the age of
37 eighteen years, and accompanied by deficits in
38 adaptive behavior.

39 For purposes of this section, "mentally ill" means
40 the condition of a person who is suffering from a
41 chronic and persistent serious mental disease or
42 disorder and who, by reason of that condition, lacks
43 sufficient judgment to make responsible decisions
44 regarding treatment and is reasonably likely to injure
45 the person's self or others who may come into contact
46 with the person if the person is allowed to remain at
47 liberty without treatment.

48 Sec. 48. NEW SECTION. 902.16 DATA COLLECTION FOR
49 DEATH PENALTY.

50 1. The supreme court shall collect data on all

1 murder charges in which the death penalty is or was
2 not waived, which are filed and processed in the
3 courts in this state. This data may be used by the
4 supreme court to determine whether death sentences
5 imposed are excessive or disproportionate, or under
6 the influence of prejudice as a result of racial
7 discrimination under section 814.28. The court shall
8 make this data available to litigants in death penalty
9 cases.

10 2. Data collected by public officials concerning
11 factors relevant to the imposition of the death
12 sentence shall be made publicly available.

13 Sec. 49. NEW SECTION. 903C.1 EXECUTIONS --
14 REFUSAL TO PERFORM.

15 An employee of the state who may lawfully perform,
16 assist, or participate in the execution of a person
17 pursuant to section 902.1, and rules adopted by the
18 department of corrections, shall not be required to
19 perform, assist, or participate in the execution.
20 State employees who refuse to perform, assist, or
21 participate in the execution of a person shall not be
22 discriminated against in any way, including, but not
23 limited to, employment, promotion, advancement,
24 transfer, licensing, education, training, or the
25 granting of any privileges or appointments because of
26 the refusal to perform, assist, or participate in the
27 execution.

28 Sec. 50. Section 904.105, Code 2005, is amended by
29 adding the following new subsection:

30 NEW SUBSECTION. 9A. Adopt rules pursuant to
31 chapter 17A pertaining to executions of persons
32 convicted of murder in the first degree. Rules
33 adopted shall include, but are not limited to, rules
34 permitting the witnessing of executions by members of
35 the public and the victim's family. Invitations to
36 witness an execution shall at least be extended to the
37 following representatives of the news media:

38 a. A representative from a wire service serving
39 Iowa.

40 b. A representative from a broadcasting network
41 serving Iowa.

42 c. A representative from a television station
43 located in Iowa.

44 d. A representative from a radio station located
45 in Iowa.

46 e. A representative from a daily newspaper
47 published in Iowa.

48 f. A representative from a weekly newspaper
49 published in Iowa.

50 g. A representative from the news media from the

1 community in which the condemned person resided, if
2 that community is located in Iowa.

3 Sec. 51. Rules of criminal procedure, Iowa court
4 rules, are amended by adding the following four
5 sections of this Act.

6 Sec. 52. NEW RULE. 2. DEATH PENALTY --
7 PROCEDURE.

8 2.____(1) If a notice of intent to seek the death
9 penalty has been filed, objections to the imposition
10 of the death penalty based upon allegations that a
11 defendant was mentally retarded at the time of the
12 commission of the offense shall be raised within the
13 time provided for the filing of pretrial motions under
14 R.Cr.P. 2.11, Iowa court rules. The court may, for
15 good cause shown, allow late filing of the motion.
16 Hearing on the motion shall be held prior to trial and
17 the burden of proof shall be on the defendant to prove
18 mental retardation by a preponderance of the evidence.
19 However, a rebuttable presumption of mental
20 retardation arises if a defendant has an intelligence
21 quotient of seventy or below. A finding of the court
22 that the evidence presented by the defendant at the
23 hearing does not preclude the imposition of the death
24 penalty under this rule and Iowa Code section 902.15
25 shall not preclude the introduction of evidence of
26 mental retardation during the penalty proceeding. If
27 the court finds that the evidence presented by the
28 defendant does not preclude the imposition of the
29 death penalty, evidence of mental retardation may be
30 reviewed by the jury during the penalty proceeding and
31 the jury shall not be informed of the finding in the
32 initial proceeding at any time during the penalty
33 proceeding.

34 2.____(2) Upon a finding or plea that a defendant
35 is guilty of murder in the first degree, kidnapping,
36 and sexual abuse in an initial proceeding, if a notice
37 of intent to seek the death penalty has been filed and
38 has not been waived, the court shall conduct a
39 separate penalty proceeding to determine whether the
40 defendant shall be sentenced to death or to life
41 imprisonment. The penalty proceeding shall be
42 conducted in the trial court before the trial jury, or
43 the court, if there is no jury, no sooner than twenty-
44 four hours after the return of the verdict or plea in
45 the initial proceeding. In the penalty proceeding,
46 additional evidence may be presented as to the
47 conviction for murder in the first degree, kidnapping,
48 and sexual abuse or any aggravating or mitigating
49 circumstance which may exist. Presentation of
50 evidence which is relevant to the existence of an

1 aggravating or mitigating circumstance shall not be
2 bound by the rules of evidence. This subsection does
3 not authorize the introduction of any evidence secured
4 in violation of the Constitution of the United States
5 or of the Constitution of the State of Iowa. The
6 state and the defendant or the defendant's counsel
7 shall be permitted to cross-examine witnesses and to
8 present arguments for or against a sentence of death.

9 2.__(3) On conclusion of the presentation of the
10 evidence in the penalty proceeding, the state and the
11 defendant or the defendant's counsel shall be
12 permitted to make closing arguments, including any
13 rebuttal arguments, in the same manner as in the
14 initial proceeding and the court shall submit each of
15 the following issues to the jury:

16 a. Whether one or more of those circumstances
17 outweigh any one or more mitigating circumstances.

18 b. Whether the defendant shall be sentenced to
19 death.

20 If the case is not tried to a jury, the court shall
21 determine the issues.

22 2.__(4) The state must prove the issue in rule 2.
23 ____(3)(a) beyond a reasonable doubt, and the jury, or
24 the court if there is no jury, shall return a special
25 verdict of "yes" or "no" on each issue.

26 2.__(5) If the case is tried to a jury, the court
27 shall charge the jury that:

28 a. It shall answer any issue "yes" if it agrees
29 unanimously.

30 b. It shall answer any issue "no" if the jurors
31 unanimously agree that the answer is "no" or if the
32 jurors do not unanimously agree that the answer is
33 "yes".

34 2.__(6) Concurrently with the return of the
35 special verdicts under rule 2.__(4), the jury, or the
36 court if there is no jury, shall also return special
37 verdicts as follows:

38 a. Which aggravating circumstances were
39 established and were considered in reaching the
40 verdict returned on the issue specified in rule

41 2.__(3)(a).

42 b. Which mitigating circumstances were established
43 and were considered in reaching the verdict returned
44 on the issue specified in rule 2.__(3)(a).

45 2.__(7) If the jury, or the court, if there is no
46 jury, returns an affirmative finding on all applicable
47 issues, the court shall sentence the defendant to
48 death. If the jury or the court returns a negative
49 finding on any applicable issue, the court shall
50 sentence the defendant to the custody of the director

1 of the department of corrections for confinement for
2 the rest of the defendant's life.

3 2.____(8) After a verdict has been rendered it
4 shall be recorded on the jury verdict form and shall
5 be read and recorded in open court. The jurors shall
6 be collectively asked by the court whether the verdict
7 returned is their true and correct verdict. Even
8 though no juror makes any declaration to the contrary,
9 the jury shall, if either party so requests, be polled
10 and each juror shall be separately asked whether the
11 verdict rendered by the jury foreperson is the juror's
12 true and correct verdict. If, upon either the
13 collective or the separate inquiry, any juror denies
14 that the verdict is the juror's verdict, the court
15 shall refuse to accept the verdict. The court may
16 direct inquiry or permit inquiry by counsel to
17 ascertain whether any juror has been subjected to
18 coercion or has become confused during the jury
19 deliberation process. The court may, as appropriate,
20 direct the jury to resume deliberation in the case.
21 If no disagreement on the verdict is expressed by any
22 of the jurors, the court shall discharge the jury.

23 2.____(9) Provisions relating to deferred judgment,
24 deferred sentence, suspended sentence, reconsideration
25 of sentence, probation, parole, or work release
26 contained in Iowa Code chapters 901 through 909 do not
27 apply to a conviction of murder in the first degree,
28 kidnapping, and sexual abuse under Iowa Code section
29 902.15 if the defendant is sentenced to death.

30 Sec. 53. NEW RULE. 2.____ AUTOMATIC REVIEW --
31 STAY OF EXECUTION OF JUDGMENT.

32 2.____(1) A judgment of conviction and sentence of
33 death shall be reviewed automatically in the manner
34 provided in Iowa Code section 814.28, and the Iowa
35 supreme court has exclusive jurisdiction of the
36 review.

37 2.____(2) Upon entry of judgment and sentence of
38 death, the trial court shall prepare a complete record
39 and transcript of the action in the manner provided in
40 the rules of criminal procedure and shall docket the
41 record and transcript with the clerk of the supreme
42 court.

43 2.____(3) The execution of judgment of the trial
44 court is stayed as a matter of law from the time of
45 its entry until the judgment of the supreme court is
46 certified to and entered by the trial court. Upon
47 entry of a judgment of the supreme court which affirms
48 the conviction and sentence, the stay of execution of
49 judgment terminates as a matter of law.

50 2.____(4) All court costs required due to the

1 automatic preparation of the record and transcript,
2 docketing with the supreme court, and stay of
3 execution of judgment shall be assessed to the state.
4 Sec. 54. NEW RULE. 2. ISSUANCE OF WARRANT.
5 2. (1) Upon entry by the trial court of the
6 judgment of the supreme court affirming a judgment and
7 sentence of death, a district judge shall within five
8 days of the entry issue a warrant under the seal of
9 the court for the execution of the sentence of death.
10 The warrant shall specifically set forth the offense
11 and the fact of conviction, shall state the judgment
12 and sentence of the court, shall state that the
13 judgment and sentence were affirmed by the supreme
14 court and the date of entry of judgment of the supreme
15 court in the trial court, and shall, subject to the
16 requirements of Iowa Code section 902.1, subsection 2,
17 specify a range of five days for execution of the
18 defendant which shall be not less than fifty nor more
19 than sixty days after the date of entry in the trial
20 court of the judgment of the supreme court affirming
21 the judgment and sentence of death. The warrant shall
22 be directed to the director of the department of
23 corrections commanding the director to cause the
24 warrant to be executed within the dates specified.
25 The trial court shall deliver the warrant to the
26 sheriff of the county in which judgment of conviction
27 was entered and the sheriff shall deliver the warrant
28 to the director of the department of corrections. The
29 director of the department of corrections shall
30 acknowledge receipt of the warrant and the defendant,
31 and the sheriff shall return the acknowledgment to the
32 office of the clerk of the trial court from which the
33 warrant was issued.
34 2. (2) Immediately after issuance of a warrant
35 ordering a sentence of death, the clerk of the trial
36 court issuing the warrant shall transmit by certified
37 mail to the governor a copy of the indictment, the
38 plea, the verdict and special findings, the
39 affirmation of judgment and sentence by the supreme
40 court, and the complete transcript of the trial court.
41 2. (3) Notwithstanding rule 2. (1), if a
42 defendant, for whom a warrant of execution is issued,
43 is pregnant, the execution shall not take place until
44 after the defendant is no longer pregnant.
45 Notwithstanding rule 2. (1), if a defendant, for
46 whom a warrant of execution is issued, is suffering
47 from such a diseased or deranged condition of the mind
48 as to prevent the defendant from knowing the nature
49 and quality of the act the defendant has been
50 convicted of, or from understanding that trial on the

1 offense has taken place and that execution proceedings
2 are about to take place, or to otherwise cause the
3 defendant to lack the capacity to understand the
4 sentence which has been imposed and to participate in
5 any legal proceedings relating to the sentence, the
6 execution shall not take place until after the
7 defendant is no longer suffering from the condition.

8 Sec. 55. NEW RULE. 2. EVIDENCE AT PENALTY
9 PROCEEDING WHERE DEATH SENTENCE REQUESTED.

10 2. (1) At a reasonable time before the
11 commencement of initial proceedings in a first degree
12 murder trial in which a sentence of death has been
13 requested, each party shall file and serve upon the
14 other party the following:

15 a. A list of all aggravating or mitigating
16 circumstances which the party intends to prove during
17 the sentencing proceedings.

18 b. The names of all persons whom the party intends
19 to call as witnesses during the sentencing
20 proceedings.

21 c. Notwithstanding rule 2.14, copies, or for
22 inspection purposes, the location, of all documents,
23 including books, papers, writings, drawings, graphs,
24 charts, photographs, telephone records, and other data
25 compilations from which information can be obtained,
26 or other objects which the party intends to offer into
27 evidence during the sentencing proceedings. If copies
28 are not supplied to opposing counsel, the party shall
29 make the items available for inspection and copying
30 without order of the court.

31 2. (2) In proceedings to determine whether the
32 sentence shall be death or life imprisonment, evidence
33 may be presented as to any matter which the trial
34 court deems relevant to the sentence, including but
35 not limited to the nature, circumstances, and manner
36 of completion of the murder, and the defendant's
37 character, background, history, and mental and
38 physical condition. The trial court shall admit any
39 relevant admissible evidence respecting any
40 aggravating or mitigating circumstances, if the party
41 has included the circumstance on a list provided
42 pursuant to this rule, or good cause is shown for the
43 failure to do so.

44 Sec. 56. EFFECTIVE DATE -- SEVERABILITY.

45 1. This division of this Act takes effect January
46 1, 2006, and applies to offenses committed on or after
47 that date.

48 2. If any provision of this division of this Act
49 or the application thereof to any person is invalid,
50 the invalidity shall not affect the provisions or

1 application of this division of this Act which can be
2 given effect without the invalid provisions or
3 application and to this end, the provisions of this
4 division of this Act are severable.

5 DIVISION V
6 VICTIM RIGHTS

7 Sec. 57. NEW SECTION. 235D.1 CRIMINAL HISTORY
8 CHECK -- APPLICANTS AT DOMESTIC ABUSE OR SEXUAL
9 ASSAULT CENTERS.

10 An applicant for employment at a domestic abuse or
11 sexual assault center shall be subject to a national
12 criminal history check through the federal bureau of
13 investigation. The domestic abuse or sexual assault
14 center shall request the criminal history check and
15 shall provide the applicant's fingerprints to the
16 department of public safety for submission through the
17 state criminal history repository to the federal
18 bureau of investigation. The applicant shall
19 authorize release of the results of the criminal
20 history check to the domestic abuse or sexual assault
21 center. The applicant shall pay the actual cost of
22 the fingerprinting and criminal history check, if any.
23 Unless the criminal history check was completed within
24 the ninety calendar days prior to the date the
25 application is received by the domestic abuse or
26 sexual assault center, the center shall reject and
27 return the application to the applicant. The results
28 of a criminal history check conducted pursuant to this
29 subsection shall not be considered a public record
30 under chapter 22. For purposes of this section,
31 "domestic abuse or sexual assault center" means a
32 facility which is used to house victims of domestic
33 abuse or sexual assault, and is owned, operated, or
34 maintained by a nonprofit organization.

35 Sec. 58. NEW SECTION. 709.22 PREVENTION OF
36 FURTHER SEXUAL ASSAULT -- NOTIFICATION OF RIGHTS.

37 If a peace officer has reason to believe that a
38 sexual assault as defined in section 915.40 has
39 occurred, the officer shall use all reasonable means
40 to prevent further violence including but not limited
41 to the following:

42 1. If requested, remaining on the scene of the
43 alleged sexual assault as long as there is a danger to
44 the victim's physical safety without the presence of a
45 peace officer, including but not limited to staying in
46 the dwelling unit, or if unable to remain on the
47 scene, assisting the victim in leaving the residence.

48 2. Assisting a victim in obtaining medical
49 treatment necessitated by the sexual assault,
50 including providing assistance to the victim in

1 obtaining transportation to the emergency room of the
2 nearest hospital.

3 3. Providing a victim with immediate and adequate
4 notice of the victim's rights. The notice shall
5 consist of handing the victim a copy of the following
6 statement written in English and Spanish, asking the
7 victim to read the statement, and asking whether the
8 victim understands the rights:

9 "You have the right to ask the court for help with
10 any of the following on a temporary basis:

11 a. Keeping your attacker away from you, your home,
12 and your place of work.

13 b. The right to stay at your home without
14 interference from your attacker.

15 c. The right to seek a no-contact order under
16 section 709.20 or 915.22, if your attacker is arrested
17 for sexual assault.

18 You have the right to register as a victim with the
19 county attorney under section 915.12.

20 You have the right to file a complaint for threats,
21 assaults, or other related crimes.

22 You have the right to seek restitution against your
23 attacker for harm to you or your property.

24 You have the right to apply for victim
25 compensation.

26 You have the right to contact the county attorney
27 or local law enforcement to determine the status of
28 your case.

29 If you are in need of medical treatment, you have
30 the right to request that the officer present assist
31 you in obtaining transportation to the nearest
32 hospital or otherwise assist you.

33 You have the right to a sexual assault examination
34 performed at state expense.

35 If you believe that police protection is needed for
36 your physical safety, you have the right to request
37 that the officer present remain at the scene until you
38 and other affected parties can leave or until safety
39 is otherwise ensured."

40 The notice shall also contain the telephone numbers
41 of shelters, support groups, and crisis lines
42 operating in the area.

43 Sec. 59. Section 915.10, subsections 1 and 2, Code
44 2005, are amended to read as follows:

45 1. "Notification" means mailing by regular mail or
46 providing for hand delivery of appropriate information
47 or papers. However, this notification procedure does
48 not prohibit an office, agency, or department from
49 also providing appropriate information to a registered
50 victim by telephone, electronic mail, or other means.

1 2. "Registered" means having provided the county
2 attorney with the victim's written request for
3 registration and current mailing address and telephone
4 number. If an automated victim notification system is
5 implemented pursuant to section 915.10A, "registered"
6 also means having filed a request for registration
7 with the system.

8 Sec. 60. NEW SECTION. 915.10A AUTOMATED VICTIM
9 NOTIFICATION SYSTEM.

10 1. An automated victim notification system may be
11 utilized to assist public officials in informing crime
12 victims, the victim's family, or other interested
13 persons as provided in this subchapter and where
14 otherwise specifically provided. The system shall
15 disseminate the information to registered users
16 through telephonic, electronic, or other means of
17 access.

18 2. An office, agency, or department may satisfy a
19 notification obligation to registered victims required
20 by this subchapter through participation in the system
21 to the extent information is available for
22 dissemination through the system. Nothing in this
23 section shall relieve a notification obligation under
24 this subchapter due to the unavailability of
25 information for dissemination through the system.

26 3. Notwithstanding section 232.147, information
27 concerning juveniles charged with a felony offense
28 shall be released to the extent necessary to comply
29 with this section.

30 Sec. 61. Section 915.11, Code 2005, is amended to
31 read as follows:

32 915.11 INITIAL NOTIFICATION BY LAW ENFORCEMENT.

33 A local police department or county sheriff's
34 department shall advise a victim of the right to
35 register with the county attorney, and shall provide a
36 request-for-registration form to each victim. If an
37 automated victim notification system is available
38 pursuant to section 915.10A, a local police department
39 or county sheriff's department shall provide a
40 telephone number and website to each victim to
41 register with the system.

42 Sec. 62. Section 915.12, Code 2005, is amended to
43 read as follows:

44 915.12 REGISTRATION.

45 ~~1. The county attorney shall be the sole registrar~~
46 ~~of victims under this subchapter.~~

47 ~~2.~~ 1. A victim may register by filing a written
48 request-for-registration form with the county
49 attorney. The county attorney shall notify the
50 victims in writing and advise them of their

1 registration and rights under this subchapter.

2 3- The county attorney shall provide a registered
3 victim list to the offices, agencies, and departments
4 required to provide information under this subchapter
5 for notification purposes.

6 2. If an automated victim notification system, the
7 victim's family, is available pursuant to section
8 915.10A, a victim, the victim's family, or other
9 interested person may register with the system by
10 filing a request for registration through written,
11 telephonic, or electronic means.

12 4. 3. Notwithstanding chapter 22 or any other
13 contrary provision of law, ~~a victim's~~ the registration
14 of a victim, victim's family, or other interested
15 person shall be strictly maintained in a separate
16 confidential file or other confidential medium, and
17 shall be available only to the offices, agencies, and
18 departments required to provide information under this
19 subchapter.

20 Sec. 63. Section 915.29, Code 2005, is amended by
21 adding the following new unnumbered paragraph:

22 NEW UNNUMBERED PARAGRAPH. The notification
23 required pursuant to this section may occur through
24 the automated victim notification system referred to
25 in section 915.10A to the extent such information is
26 available for dissemination through the system.

27 Sec. 64. Section 915.45, Code 2005, is amended by
28 adding the following new unnumbered paragraph:

29 NEW UNNUMBERED PARAGRAPH. The notification
30 required pursuant to this section may occur through
31 the automated victim notification system referred to
32 in section 915.10A to the extent such information is
33 available for dissemination through the system.

34 DIVISION VI

35 TASK FORCE

36 Sec. 65. SEX OFFENDER TREATMENT AND SUPERVISION
37 TASK FORCE.

38 1. The division of criminal and juvenile justice
39 planning shall establish a task force to study and
40 make periodic recommendations for treating and
41 supervising sex offenders in correctional institutions
42 and in the community. The task force shall file a
43 report with recommendations with the general assembly
44 by January 15, 2006. The task force shall study the
45 effectiveness of electronic monitoring and the
46 potential effects and costs associated with the
47 special sentence created in this Act. The task force
48 shall study risk assessment models created for sex
49 offenders. The task force shall also review this
50 state's efforts and the efforts of other states to

1 implement treatment programs and make recommendations
2 as to the best treatment options available for sex
3 offenders. The task force shall also develop a plan
4 to integrate state government databases for the
5 purpose of updating addresses of persons on the sex
6 offender registry.

7 2. Members of the task force shall include
8 representatives of the following state agencies and
9 organizations:

10 a. One representative of the department of human
11 services.

12 b. One representative of the department of public
13 safety.

14 c. One representative of the Iowa state sheriffs
15 and deputies association.

16 d. One representative of the Iowa county attorneys
17 association.

18 e. One representative of the department of
19 corrections.

20 f. One representative of the board of parole.

21 g. One representative of a judicial district
22 department of correctional services.

23 h. One representative of the department of
24 justice.

25 i. One representative of the state public
26 defender.

27 j. One representative of the Iowa coalition
28 against sexual assault.

29 DIVISION VII

30 STATE MANDATE

31 Sec. 66. IMPLEMENTATION OF ACT. Section 25B.2,
32 subsection 3, shall not apply to this Act."

33 2. Title page, by striking lines 1 through 5 and
34 inserting the following: "An Act relating to criminal
35 sentencing, victim notification, and the sex offender
36 registry, including making the death penalty
37 applicable to certain class "A" felons, establishing a
38 special sentence for certain offenders, requiring DNA
39 testing of certain offenders, requiring sex offender
40 treatment in order to accumulate earned time,
41 establishing a sex offender treatment and supervision
42 task force, providing penalties, and providing
43 effective dates.""

By LARRY McKIBBEN

Fiscal Services Division
Legislative Services Agency
Fiscal Note

HF 619 - Sex Offender Registry, Supervision, and Data Base Task Force (LSB 2527 HV.1)

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Fiscal Note Version – Amendment S – 3185

Description

Amendment S – 3185 strikes everything after the enacting clause in HF 619. The amendment relates to persons convicted of criminal offenses requiring registration on the Sex Offender Registry, requiring additional offenders to submit a DNA sample for DNA profiling, requiring sex offender treatment plus an additional term of parole, enhancing penalties for certain sex offenses, establishing a Sex Offender Treatment and Supervision Task Force. The provisions related to DNA profiling take effect upon enactment of the legislation.

Background

1. Under current law, sex offenders who commit violations of Sections 709.2, 709.3, 709.4, and 709.11, Code of Iowa, must provide a DNA sample.
2. The Amendment requires the following offenders to submit a sample for DNA profiling: sexual predators, juveniles adjudicated as delinquent for offenses that require DNA profiling of an adult offender, those found not guilty by reason of insanity, those receiving a deferred judgment for a felony, or where a judgment for a felony has been entered, those offenders required to register on the Sex Offender Registry, and all felons. In FY 2004, there were 263 sex offenders released from prison of which, approximately 139 offenders had not had a DNA sample taken. There were 227 probation admissions for sex offenses of which, approximately 120 offenders had not provided a DNA sample.
3. In FY 2004, there were 212 juveniles adjudicated delinquent under the mandated offenses for DNA profiling, and 282 adults, including those with deferred judgments. The additional number of sexually violent predators who would be subject to providing a DNA sample under the Amendment is anticipated to be minimal. Insanity pleas are rare and are not likely to increase the number of samples taken.
4. DNA sampling of all felons will result in a significant expansion in the number of samples taken. For example, in FY 2004, 4,096 juveniles were adjudicated delinquent for felony offenses, and 8,479 adults were convicted of felony offenses.
5. The cost for a DNA collection kit, analysis of a DNA sample, and development of a DNA profile is approximately \$45 per sample. The Department of Public Safety (DPS) provides the DNA testing kits. The DPS estimates the cost for DNA testing of all felons to be \$1.1 million the first year, \$652,000 the second year, and \$480,000 in the third year. Costs include ongoing operating costs, such as additional staff and DNA test kits, plus one-time equipment costs, such as genetic analyzers. The cost is based on all felons currently on supervision providing a DNA sample, plus new felony convictions each fiscal year.
6. The Amendment imposes a graduated system of penalties for criminal offenses related to DNA profiling. The average State costs for one aggravated misdemeanor conviction ranges from \$1,100 to \$5,700. The average State costs for one Class D felony conviction ranges from \$2,800 to \$12,000. These costs will be incurred across multiple fiscal years while the offender is supervised in the correctional system.
7. The correctional and fiscal impacts of the new penalties related to DNA testing are not anticipated to be significant.
8. The Amendment permits certain defendants to make a motion to the court to require DNA analysis of evidence. This provision may cost \$2,300 per motion for court costs (\$1,300) and indigent defense (\$1,000). There will be a limited number of cases under this provision.
9. The Sex Offender Registry was created in 1995 by the Sex Offender Registry Act.

10. The current budget for the Sex Offender Registry is \$524,000, which includes 3.0 special agents and 5.0 civilian employees.
11. As of March 1, 2005, there were 6,427 offenders on the Sex Offender Registry. There are also 1,054 offenders registered as out-of-State offenders. An offender remains on the Registry for a minimum of ten years and in some instances, life-time registration is required.
12. As of March 30, 2005, there were 1,099 sex offenders in prison; 39 of these offenders violated the Sex Offender Registry requirements. Of the 1,099 offenders, 211 or 19.2% are repeat offenders. The previous incarceration may or may not have been for a sex crime.
13. The Amendment prohibits sex offenders from living within 1,000 feet of a school or day care center. There are 5,902 registered day care centers in Iowa. There are 1,532 public and 194 private schools in Iowa. The Amendment imposes an aggravated misdemeanor penalty for violating residency requirements.
14. Under the Amendment, offenders are not eligible for earned time reduction of sentence unless they participate in and complete a sex offender treatment program. Approximately 50.0% of sex offenders in prison refuse sex offender treatment and/or are released without supervision due to the expiration of their sentence while in prison. The current prison-based sex offender treatment program is 15 months.
15. In FY 2004, there were 35 misdemeanants sentenced to prison. The average length of stay for a misdemeanant sex offender is seven to 15 months. Since the length of the sex offender program is 15 months, misdemeanants are prevented from participating in the sex offender treatment program.
16. The current sex offender treatment budget for prison is \$693,000. The Department of Corrections (DOC) estimates an additional \$355,000 is required to meet current demand for treatment.
17. On March 1, 2005, there were 636 offenders under Community-Based Corrections (CBC) supervision in field services (parole, probation, interstate compacts, and pre-trial release). The Amendment permits the DOC and CBC District Directors to place offenders in field services on electronic monitoring.
18. Current treatment budgets in CBC are \$2.6 million. The DOC estimates an additional \$864,000 is required statewide to meet current demand for treatment, plus \$19,000 to treat aggravated misdemeanants. Cost for sex offender treatment is \$7.04 per day, per offender.
19. The Amendment enhances the penalty for lascivious acts with a child from a Class D to a Class C felony, for certain acts; the age of the offender is lowered from 18 to 16 years of age. Lowering the age of the offender is not anticipated to have a significant correctional or fiscal impact.
20. The Amendment creates a new Class A felony. If an offender commits a second or subsequent offense for sexual abuse in the second or third degree, or lascivious acts with a child, or any combination thereof, then the penalty is a Class A felony (life in prison).
21. Enhancing penalties increases the average length of stay in prison and the incarceration rate (number of offenders sentenced to prison). The average length of stay in prison for a sex offender is as follows: 7 months for serious misdemeanants, 15 months for aggravated misdemeanants, 32 months for Class D felons, and 61 months for Class C felons. This average includes earned time credit. The prison incarceration rate for sex offenders is as follows: 14.4% for aggravated misdemeanants, 51.5% for Class D felons, and 74.2 % for Class C felons.
22. The marginal cost per day for State prisons is \$13 per inmate.
23. The cost of a Parole/Probation Officer II is \$51,100. The cost of a Parole/Probation III is \$57,000.
24. The Amendment mandates that local law enforcement take certain actions if a peace officer believes that a sexual assault has occurred. The actions include remaining in the dwelling unit where the alleged assault occurred or assisting the victim in leaving the dwelling, assisting the victim in obtaining medical treatment, and providing notice to the victim of his or her rights. There may be additional costs at the local level due to increased staff time or office supplies (creating and printing a notice). These costs are anticipated to be minimal.
25. The Amendment permits the Victim Information and Notification Everyday (VINE) to be established. Implementation of the system is not mandated.

26. The VINE system is estimated to cost approximately \$493,000 statewide the first year, and approximately \$500,000 annually thereafter. This amount does not include any third-party vendors, where a software company charges a fee to provide access to the VINE system. This cost is estimated to be approximately \$120,000 statewide. This amount includes \$20,000 for access to the Iowa Corrections Offender Network (ICON) system used by the Department of Corrections (DOC). Federal funds may be available in future fiscal years to implement the system. However, funding availability is not known at this time.

Assumptions

1. FY 2004 offender-based convictions were used to estimate the number of future offenders.
2. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
3. The law will become effective July 1, 2005. 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 cost to re-work and enhance the Sex Offender Registry web site would be approximately \$25,000 to update the programming (one-time cost, including an e-mail list serve) and \$62,000 for an Information Technology Specialist 1 (web master). Within ten years, the Registry is estimated to double in size. The cost to maintain photos and addresses on the web site for the additional years under the Amendment requires the addition of two Information Technology Specialists and a Clerk Specialist. The cost for these positions is \$110,000.
5. An electronic monitoring bracelet based on radio frequency technology costs \$2.87 per day, per offender. (This bracelet monitors an offender in a specific area, such as their home.) A global positioning system (GPS) bracelet costs \$4.75 per day, per offender. (This bracelet monitors an offender throughout the community.) CBC District Directors will place all sex offenders in field services on electronic monitoring, contingent upon funding for bracelets and staff.
6. The Amendment creates a special sentence of a life term, with parole eligibility, for Class C and Class B felony convictions for any sexual abuse offense under Chapter 709, Code of Iowa, and sexual exploitation of a minor. Class D felony and misdemeanor offenders convicted of sexual exploitation of a minor, incest, or any sexual abuse under Chapter 709, Code of Iowa, will receive a special sentence of an additional term of parole of ten years. Offenders will serve time in prison or time on probation before these special sentences take effect. Therefore, the correctional impact first occurs in FY 2008, after the current sentence is served.
7. The legislation permits early discharge from the special sentence. Under current law, the Board of Parole does not usually discharge sex offenders early from supervision. This analysis assumes the Board will continue this practice and will not allow early discharge.
8. Life time parole calculations do not include information on Class B felons. The current length of stay in prison for these offenders is 141 months (11.75 years). They will not be released from prison to this new supervision for at least 11.75 years; which is beyond the scope of this analysis (ten years).
9. Under current law, certain sex offenders serve the entire sentence in prison and are not supervised in the community. A certain percentage of these offenders will return to prison whether or not the Amendment is enacted. These offenders and their return to prison are not included in this analysis.
10. Offenders who fail to comply with the new term of parole are revoked to prison for no more than two years for the first offense, and five years for the second or subsequent offenses. Offenders could be revoked more than once, under the proposed legislation. For the purpose of this analysis, offenders are revoked only once over the ten-year projection period.
11. Current return to prison rates were used to project the number of offenders who would be revoked to prison from the additional term of parole in the Amendment.
12. Offenders released under the additional term of parole, either life or ten years, may be electronically monitored under the Amendment. Offenders on electronic monitoring are

supervised at the intensive supervision level – no more than 30 offenders per Probation/Parole Officer (PPO III).

13. The Board of Parole will require additional resources, an Administrative Law Judge and a clerk, due to the increased workload associated with extended parole supervision.
14. Fiscal Year 2004 convictions are used for calculating the impact of increasing the penalty for lascivious acts with a child from a Class D felony to a Class C felony, for certain acts.
15. In calculating the impact of the new Class A felony, it is assumed these offenders are currently sentenced to prison for Class C felony convictions. Therefore, the correctional impact does not occur until the current Class C felony sentence is served. Using current length of stay data, the impact of the new Class A felony will occur in FY 2011.
16. In FY 2004, the following sex offenders were sentenced to prison: 4 serious misdemeanants, 31 aggravated misdemeanants, 51 Class D felons, and 89 Class C felons. Under current law, 25 of the Class D felons are receiving sex offender treatment. An additional 26 Class D felons are estimated to be in need of treatment. Of these, approximately 50.0% or 13 felons will accept treatment while the remaining 50.0% will refuse treatment.
17. Since misdemeanor sex offenders are not in prison long enough to participate in the sex offender treatment program, the DOC plans to create a shortened treatment program for these offenders to meet the current length of stay in prison. Follow-up treatment in CBC is required to complete the full program.
18. If all sex offenders in prison are required to participate in a sex offender treatment program in prison, the estimated cost increase is \$1.0 million. This includes \$355,000 for the current shortfall for sex offender treatment. The estimated \$1.0 million also includes \$645,000 for additional sex offender treatment plus increased operating costs related to increased length of stay for those who refuse treatment. Sex offenders only accrue earned time if they participate in treatment.
19. The Amendment requires the Criminal and Juvenile Justice Planning Division (CJJPD) of the Department of Human Rights to establish a Sex Offender Treatment and Supervision Task Force. The cost for staffing the Task Force is estimated to be \$75,000 annually. This amount includes additional staff time (a portion of a Statistical Research Analyst and a portion of a Justice Systems Analyst) plus supplies and support costs.

Correctional Impact

There may be a significant increase in convictions and incarcerations for the new aggravated misdemeanor term for the requirement that a person cannot reside within 1,000 feet of a public or nonpublic elementary or secondary school or child care facility. It is estimated that the 1,000 foot rule would place up to half of the State of Iowa off limits to housing for sex offenders. If no acceptable location in the community can be located, sex offenders granted parole may be required to remain in prison, which may increase the length of stay resulting in an increased prison population and correctional impact.

Under the provision of a special sentence of parole, there is no correctional impact in FY 2006 or FY 2007 because offenders are serving their term in prison or on probation. The chart below shows the estimated number of offenders who will receive a special sentence of parole of either life or ten years.

CBC - Additional Sentence to Parole

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>
Lifetime	0	0	0	0	176	359	536	716
Ten Years	0	0	298	599	901	1,204	1,507	1,810
	<u>0</u>	<u>0</u>	<u>298</u>	<u>599</u>	<u>1,077</u>	<u>1,563</u>	<u>2,043</u>	<u>2,526</u>

Under the provision of mandated treatment in prison plus the loss of earned time, Class D felons will serve 28 additional months in prison because they refused treatment. Under current law, they will serve 32 months in prison. Under this legislation, they will serve 60 months in

prison. Therefore, the correctional impact will occur in FY 2008, the third year after the effective date of this legislation.

There will be an increase in the number of sex offenders who will receive treatment in prison and CBC under the Amendment. This increase includes those offenders in prison who accept treatment, but need to complete treatment upon their release from prison. The increase also includes those offenders who are currently on correctional supervision.

The chart below shows the projected growth in the prison population under the Amendment. The increase is due to implementation of a new Class A felony, loss of earned time for refusing treatment, enhancement of certain provisions related to lascivious acts with a child, and the additional special sentence of parole.

Correctional Impact - Prison Population Increase

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Offenders	0	0	54	103	171	232	270	319

On an annual basis, there will be an estimated 13 additional offenders serving life in prison under the Amendment. These offenders would be serving a prison sentence for a lesser offense under current law; therefore, the correctional impact does not occur until the current sentence would be served. Using current length of stay data, the impact of the new Class A felony will occur in FY 2011.

There will be an estimated 45 new Class C felony convictions under the enhanced penalties for lascivious acts with a child. These offenders are Class D felons under current law. Approximately 74.2% of these offenders will be sentenced to prison as Class C felons, as compared to 51.5% of Class D felony sex offender convictions resulting in a prison sentence.

Regarding loss of earned time for refusing treatment, the impact on prisons after FY 2010 will be substantial as Class C offenders begin to lose earned time, and spend more time in prison.

Fiscal Impact

The overall fiscal impact of the Amendment for FY 2006 is estimated to be \$5.8 million and in FY 2007, costs are estimated to be \$6.3 million. Costs will continue to increase in future fiscal years due to anticipated increases in costs for the correctional system, prosecution, and defense.

Fiscal Impact

Department	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Board of Parole	\$ 0	\$ 106,000	\$ 106,000	\$ 106,000	\$ 106,000
Public Safety	1,276,000	824,000	652,000	652,000	652,000
Human Rights	75,000	75,000	75,000	75,000	75,000
Corrections	3,710,000	3,843,000	4,697,000	5,500,000	6,734,000
State Public Defender	354,000	709,000	729,000	784,000	949,000
Judicial Branch	19,000	38,000	38,000	38,000	38,000
Prosecution	354,000	709,000	729,000	784,000	949,000
Total Costs	\$ 5,788,000	\$ 6,304,000	\$ 7,026,000	\$ 7,939,000	\$ 9,503,000

Prosecution costs will be incurred by either the Office of the Attorney General or the general fund of the county where the offense occurred.

The fiscal impact does not include additional costs to the court system and prosecution and defense attorneys for any potential constitutional challenges. Each challenge may cost an

additional \$10,000 to the Attorney General's Office, \$10,000 to the State Public Defender's Office or the Indigent Defense Program, and \$42,000 for the Judicial Branch.

Sources

Department of Corrections
Department of Human Rights, Criminal Juvenile Justice Planning Division (CJJP)
Department of Public Safety
Judicial Branch
Office of the State Public Defender
Office of the Attorney General

/s/ Holly M. Lyons

April 28, 2005

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

S-3229

1 Amend the amendment, S-3185, to House File 619, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. By striking page 1, line 1, through page 22,
5 line 19, and inserting the following:

6 "Amend House File 619, as amended, passed, and
7 reprinted by the House, as follows:

8 1. By striking everything after the enacting
9 clause and inserting the following:

10 "DIVISION I
11 DNA PROFILING

12 Section 1. NEW SECTION. 81.1 DEFINITIONS.

13 As used in this chapter, unless the context
14 otherwise requires:

15 1. "DNA" means deoxyribonucleic acid.

16 2. "DNA databank" means the repository for DNA
17 samples obtained pursuant to section 81.4.

18 3. "DNA database" means the collection of DNA
19 profiles and DNA records.

20 4. "DNA profile" means the objective form of the
21 results of DNA analysis performed on a DNA sample.
22 The results of all DNA identification analysis on an
23 individual's DNA sample are also collectively referred
24 to as the DNA profile of an individual.

25 5. "DNA profiling" means the procedure established
26 by the division of criminal investigation, department
27 of public safety, for determining a person's genetic
28 identity.

29 6. "DNA record" means the DNA sample and DNA
30 profile, and other records in the DNA database and DNA
31 data bank used to identify a person.

32 7. "DNA sample" means a biological sample provided
33 by any person required to submit a DNA sample or a DNA
34 sample submitted for any other purpose under section
35 81.4.

36 8. "Person required to submit a DNA sample" means
37 a person convicted, adjudicated delinquent, receiving
38 a deferred judgment, or found not guilty by reason of
39 insanity of an offense requiring DNA profiling
40 pursuant to section 81.2. "Person required to submit
41 a DNA sample" also means a person determined to be a
42 sexually violent predator pursuant to section 229A.7.

43 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO
44 SUBMIT A DNA SAMPLE.

45 1. A person who receives a deferred judgment for a
46 felony or against whom a judgment or conviction for a
47 felony has been entered shall be required to submit a
48 DNA sample for DNA profiling pursuant to section 81.4.

49 2. A person determined to be a sexually violent
50 predator pursuant to chapter 229A shall be required to

S-3229

1 submit a DNA sample for DNA profiling pursuant to
2 section 81.4 prior to discharge or placement in a
3 transitional release program.

4 3. A person found not guilty by reason of insanity
5 of an offense that requires DNA profiling shall be
6 required to submit a DNA sample for DNA profiling
7 pursuant to section 81.4 as part of the person's
8 treatment management program.

9 4. A juvenile adjudicated delinquent of an offense
10 that requires DNA profiling of an adult offender shall
11 be required to submit a DNA sample for DNA profiling
12 pursuant to section 81.4 as part of the disposition of
13 the juvenile's case.

14 5. An offender placed on probation shall
15 immediately report to the judicial district department
16 of correctional services after sentencing so it can be
17 determined if the offender has been convicted of an
18 offense requiring DNA profiling. If it is determined
19 by the judicial district that DNA profiling is
20 required, the offender shall immediately submit a DNA
21 sample.

22 6. A person required to register as a sex
23 offender.

24 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA
25 DATABASE AND DNA DATABANK.

26 1. A state DNA database and a state DNA databank
27 are established under the control of the division of
28 criminal investigation, department of public safety.
29 The division of criminal investigation shall conduct
30 DNA profiling of a DNA sample submitted in accordance
31 with this section.

32 2. A DNA sample shall be submitted, and the
33 division of criminal investigation shall store and
34 maintain DNA records in the DNA database and DNA
35 databank for persons required to submit a DNA sample.

36 3. A DNA sample may be submitted, and the division
37 of criminal investigation shall store and maintain DNA
38 records in the DNA database and DNA databank for any
39 of the following:

- 40 a. Crime scene evidence and forensic casework.
- 41 b. A relative of a missing person.
- 42 c. An anonymous DNA profile used for forensic
43 validation, forensic protocol development, or quality
44 control purposes, or for the establishment of a
45 population statistics database.

46 4. A fingerprint record of a person required to
47 submit a DNA sample shall also be submitted to the
48 division of criminal investigation with the DNA sample
49 to verify the identity of the person required to
50 submit a DNA sample.

1 Sec. 4. NEW SECTION. 81.4 COLLECTING,
2 SUBMITTING, ANALYZING, IDENTIFYING, AND STORING DNA
3 SAMPLES AND DNA RECORDS.

4 1. The division of criminal investigation shall
5 adopt rules for the collection, submission, analysis,
6 identification, storage, and disposition of DNA
7 records.

8 2. A supervising agency having control, custody,
9 or jurisdiction over a person shall collect a DNA
10 sample from a person required to submit a DNA sample.
11 The supervising agency shall collect a DNA sample,
12 upon admittance to the pertinent institution or
13 facility, of the person required to submit a DNA
14 sample or at a determined date and time set by the
15 supervising agency. If a person required to submit a
16 DNA sample is confined at the time a DNA sample is
17 required, the person shall submit a DNA sample as soon
18 as practicable. If a person required to submit a DNA
19 sample is not confined after the person is required to
20 submit a DNA sample, the supervising agency shall
21 determine the date and time to collect the DNA sample.

22 3. A person required to submit a DNA sample who
23 refuses to submit a DNA sample may be subject to
24 contempt proceedings pursuant to chapter 665 until the
25 DNA sample is submitted.

26 4. The division of criminal investigation shall
27 conduct DNA profiling on a DNA sample or may contract
28 with a private entity to conduct the DNA profiling.

29 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL
30 LIABILITY -- LIMITATION.

31 A person who collects a DNA sample shall not be
32 civilly or criminally liable for the collection of the
33 DNA sample if the person performs the person's duties
34 in good faith and in a reasonable manner according to
35 generally accepted medical practices or in accordance
36 with the procedures set out in the administrative
37 rules of the department of public safety adopted
38 pursuant to section 81.4.

39 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

40 1. A person who knowingly or intentionally does
41 any of the following commits an aggravated
42 misdemeanor:

43 a. Discloses any part of a DNA record to a person
44 or agency that is not authorized by the division of
45 criminal investigation to have access to the DNA
46 record.

47 b. Uses or obtains a DNA record for a purpose
48 other than what is authorized under this chapter.

49 2. A person who knowingly or intentionally alters
50 or attempts to alter a DNA sample, falsifies the

1 source of a DNA sample, or materially alters a
2 collection container used to collect the DNA sample,
3 commits a class "D" felony.

4 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST
5 NOT INVALIDATED.

6 The detention, arrest, or conviction of a person
7 based upon a DNA database match is not invalidated if
8 it is determined that the DNA sample or DNA profile
9 was obtained or placed into the DNA database by
10 mistake or error.

11 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

12 1. A DNA record shall be considered a confidential
13 record and disclosure of a DNA record is only
14 authorized pursuant to this section.

15 2. Confidential DNA records under this section may
16 be released to the following agencies for law
17 enforcement identification purposes:

18 a. Any criminal or juvenile justice agency as
19 defined in section 692.1.

20 b. Any criminal or juvenile justice agency in
21 another jurisdiction that meets the definition of a
22 criminal or juvenile justice agency as defined in
23 section 692.1.

24 3. The division of criminal investigation shall
25 share the DNA record information with the appropriate
26 federal agencies for use in a national DNA database.

27 4. A DNA record or other forensic information
28 developed pursuant to this chapter may be released for
29 use in a criminal or juvenile delinquency proceeding
30 in which the state is a party and where the DNA record
31 or forensic information is relevant and material to
32 the subject of the proceeding. Such a record or
33 information may become part of a public transcript or
34 other public recording of such a proceeding.

35 5. A DNA record or other forensic information may
36 be released pursuant to a court order for criminal
37 defense purposes to a defendant, who shall have access
38 to DNA samples and DNA profiles related to the case in
39 which the defendant is charged.

40 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA
41 RECORDS.

42 1. A person whose DNA record has been included in
43 the DNA database or DNA databank established pursuant
44 to section 81.3 may request, in writing to the
45 division of criminal investigation, expungement of the
46 DNA record from the DNA database and DNA databank
47 based upon the person's conviction, adjudication, or
48 civil commitment which caused the submission of the
49 DNA sample being reversed on appeal and the case
50 dismissed. The written request shall contain a

1 certified copy of the final court order reversing the
2 conviction, adjudication, or civil commitment, and a
3 certified copy of the dismissal, and any other
4 information necessary to ascertain the validity of the
5 request.

6 2. The division of criminal investigation, upon
7 receipt of a written request that validates reversal
8 on appeal of a person's conviction, adjudication, or
9 commitment, and subsequent dismissal of the case, or
10 upon receipt of a written request by a person who
11 voluntarily submitted a DNA sample under section 81.3,
12 subsection 3, paragraph "b", or upon receipt of a
13 written request by a person who voluntarily submitted
14 a DNA sample pursuant to section 81.3, subsection 3,
15 paragraph "b", shall expunge all of the DNA records
16 and identifiable information of the person in the DNA
17 database and DNA databank. However, if the division
18 of criminal investigation determines that the person
19 is otherwise obligated to submit a DNA sample, the DNA
20 records shall not be expunged. If the division of
21 criminal investigation denies an expungement request,
22 the division shall notify the person requesting the
23 expungement of the decision not to expunge the DNA
24 record and the reason supporting its decision. The
25 division of criminal investigation decision is subject
26 to judicial review pursuant to chapter 17A. The
27 department of public safety shall adopt rules
28 governing the expungement procedure and a review
29 process.

30 3. The division of criminal investigation is not
31 required to expunge or destroy a DNA record pursuant
32 to this section, if expungement or destruction of the
33 DNA record would destroy evidence related to another
34 person.

35 Sec. 10. NEW SECTION. 81.10 DNA PROFILING AFTER
36 CONVICTION.

37 1. A defendant who has been convicted of a felony
38 and who has not been required to submit a DNA sample
39 for DNA profiling may make a motion to the court for
40 an order to require that DNA analysis be performed on
41 evidence collected in the case for which the person
42 stands convicted.

43 2. The motion shall state the following:

44 a. The specific crimes for which the defendant
45 stands convicted in this case.

46 b. The facts of the underlying case, as proven at
47 trial or admitted to during a guilty plea proceeding.

48 c. Whether any of the charges include sexual abuse
49 or involve sexual assault, and if so, whether a sexual
50 assault examination was conducted and evidence

1 preserved, if known.

2 d. Whether identity was at issue or contested by
3 the defendant.

4 e. Whether the defendant offered an alibi, and if
5 so, testimony corroborating the alibi and, from whom.

6 f. Whether eyewitness testimony was offered, and
7 if so from whom.

8 g. Whether any issues of police or prosecutor
9 misconduct have been raised in the past or are being
10 raised by the motion.

11 h. The type of inculpatory evidence admitted into
12 evidence at trial or admitted to during a guilty plea
13 proceeding.

14 i. Whether blood testing or other biological
15 evidence testing was conducted previously in
16 connection with the case and, if so, by whom and to
17 the result, if known.

18 j. What biological evidence exists and, if known,
19 the agency or laboratory storing the evidence that the
20 defendant seeks to have tested.

21 k. Why the requested analysis of DNA evidence is
22 material to the issue in the case and not merely
23 cumulative or impeaching.

24 l. Why the DNA evidence would have changed the
25 outcome of the trial or invalidated a guilty plea if
26 DNA profiling had been conducted prior to the
27 conviction.

28 3. A motion filed under this section shall be
29 filed in the county where the defendant was convicted,
30 and notice of the motion shall be served by certified
31 mail upon the county attorney and, if known, upon the
32 state, local agency, or laboratory holding evidence
33 described in subsection 2, paragraph "k". The county
34 attorney shall have sixty days to file an answer to
35 the motion.

36 4. Any DNA profiling of the defendant or other
37 biological evidence testing conducted by the state or
38 by the defendant shall be disclosed and the results of
39 such profiling or testing described in the motion or
40 answer.

41 5. If the evidence requested to be tested was
42 previously subjected to DNA or other biological
43 analysis by either party, the court may order the
44 disclosure of the results of such testing, including
45 laboratory reports, notes, and underlying data, to the
46 court and the parties.

47 6. The court may order a hearing on the motion to
48 determine if evidence should be subjected to DNA
49 analysis.

50 7. The court shall grant the motion if all of the

- 1 following apply:
- 2 a. The evidence subject to DNA testing is
3 available and in a condition that will permit
4 analysis.
- 5 b. A sufficient chain of custody has been
6 established for the evidence.
- 7 c. The identity of the person who committed the
8 crime for which the defendant was convicted was a
9 significant issue in the crime for which the defendant
10 was convicted.
- 11 d. The evidence subject to DNA analysis is
12 material to, and not merely cumulative or impeaching
13 of, evidence included in the trial record or admitted
14 to at a guilty plea proceeding.
- 15 e. DNA analysis of the evidence would raise a
16 reasonable probability that the defendant would not
17 have been convicted if DNA profiling had been
18 available at the time of the conviction and had been
19 conducted prior to the conviction.
- 20 8. Upon the court granting a motion filed pursuant
21 to this section, DNA analysis of evidence shall be
22 conducted within the guidelines generally accepted by
23 the scientific community. The defendant shall provide
24 DNA samples for testing if requested by the state.
- 25 9. Results of DNA analysis conducted pursuant to
26 this section shall be reported to the parties and to
27 the court and may be provided to the board of parole,
28 department of corrections, and criminal and juvenile
29 justice agencies, as defined in section 692.1, for use
30 in the course of investigations and prosecutions, and
31 for consideration in connection with requests for
32 parole, pardon, reprieve, and commutation. DNA
33 samples obtained pursuant to this section may be
34 included in the DNA databank, and DNA profiles and DNA
35 records developed pursuant to this section may be
36 included in the DNA database.
- 37 10. A criminal or juvenile justice agency, as
38 defined in section 692.1, shall maintain DNA samples
39 and evidence that could be tested for DNA for a period
40 of three years beyond the limitations for the
41 commencement of criminal actions as set forth in
42 chapter 802. This section does not create a cause of
43 action for damages or a presumption of spoliation in
44 the event evidence is no longer available for testing.
- 45 11. If the court determines a defendant who files
46 a motion under this section is indigent, the defendant
47 shall be entitled to appointment of counsel as
48 provided in chapter 815.
- 49 12. If the court determines after DNA analysis
50 ordered pursuant to this section that the results

1 indicate conclusively that the DNA profile of the
2 defendant matches the profile from the analyzed
3 evidence used against the defendant, the court may
4 order the defendant to pay the costs of these
5 proceedings, including costs of all testing, court
6 costs, and costs of court-appointed counsel, if any.

7 Sec. 11. Section 229A.7, Code 2005, is amended by
8 adding the following new subsection:

9 NEW SUBSECTION. 5A. If the court or jury
10 determines that the respondent is a sexually violent
11 predator, the court shall order the respondent to
12 submit a DNA sample for DNA profiling pursuant to
13 section 81.4.

14 Sec. 12. Section 232.52, Code 2005, is amended by
15 adding the following new subsection:

16 NEW SUBSECTION. 10. The court shall order a
17 juvenile adjudicated a delinquent for an offense that
18 requires DNA profiling under section 81.2 to submit a
19 DNA sample for DNA profiling pursuant to section 81.4.

20 Sec. 13. Section 669.14, Code 2005, is amended by
21 adding the following new subsection:

22 NEW SUBSECTION. 15. Any claim arising from or
23 related to the collection of a DNA sample for DNA
24 profiling pursuant to section 81.4 or a DNA profiling
25 procedure performed by the division of criminal
26 investigation, department of public safety.

27 Sec. 14. Section 901.5, subsection 8A, Code 2005,
28 is amended to read as follows:

29 8A. a. The court shall order DNA profiling of a
30 defendant convicted of an offense that requires
31 profiling under section ~~13.10~~ 81.2.

32 b. Notwithstanding section ~~13.10~~ 81.2, the court
33 may order the defendant to provide a ~~physical specimen~~
34 DNA sample to be submitted for DNA profiling if
35 appropriate. In determining the appropriateness of
36 ordering DNA profiling, the court shall consider the
37 deterrent effect of DNA profiling, the likelihood of
38 repeated offenses by the defendant, and the
39 seriousness of the offense.

40 Sec. 15. Section 906.4, unnumbered paragraph 3,
41 Code 2005, is amended to read as follows:

42 ~~Notwithstanding section 13.10, the~~ The board may
43 order the defendant to provide a physical specimen to
44 be submitted for DNA profiling as a condition of
45 parole or work release, if ~~appropriate~~ a DNA profile
46 has not been previously conducted pursuant to chapter
47 81. In determining the appropriateness of ordering
48 DNA profiling, the board shall consider the deterrent
49 effect of DNA profiling, the likelihood of repeated
50 offenses by the defendant, and the seriousness of the

1 offense.
 2 Sec. 16. 2002 Iowa Acts, chapter 1080, is
 3 repealed.
 4 Sec. 17. Section 13.10, Code 2005, is repealed.
 5 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE
 6 PRIOR TO EFFECTIVE DATE OF THIS DIVISION OF THIS ACT.
 7 A person convicted, adjudicated a delinquent, civilly
 8 committed as a sexually violent predator, or found not
 9 guilty by reason of insanity, prior to the effective
 10 date of this Act, who would otherwise be required to
 11 submit a DNA sample under this Act, and who is under
 12 the custody, control, or jurisdiction of a supervising
 13 agency, shall submit a DNA sample prior to being
 14 released from the supervising agency's custody,
 15 control, or jurisdiction.
 16 Sec. 19. EFFECTIVE DATE. This division of this
 17 Act, being deemed of immediate importance, takes
 18 effect upon enactment.

19 DIVISION II

20 SEX OFFENDER REGISTRY AND TREATMENT

21 Sec. 20. Section 232.68, subsection 2, Code 2005,
 22 is amended by adding the following new paragraph:

23 NEW PARAGRAPH. i. Cohabitation with a person on
 24 the sex offender registry under chapter 692A in
 25 violation of section 726.6.

26 Sec. 21. Section 692A.1, subsection 8, Code 2005,
 27 is amended to read as follows:

28 8. "Residence" means the place where a person
 29 sleeps, which may include more than one location, and
 30 may be mobile or transitory, including a shelter or
 31 group home.

32 Sec. 22. Section 692A.2, Code 2005, is amended by
 33 adding the following new subsection:

34 NEW SUBSECTION. 1A. If a person is required to
 35 register for a period of ten years under subsection 1
 36 and the period under subsection 1 has expired, the
 37 person shall be required to remain on the registry if
 38 the person has been sentenced to a special sentence as
 39 required under section 903B.0A or 903B.0B, for a
 40 period equal to the term of the special sentence.

41 Sec. 23. Section 692A.4, Code 2005, is amended to
 42 read as follows:

43 692A.4 VERIFICATION OF ADDRESS AND TAKING OF
 44 PHOTOGRAPH.

45 1. The address of a person required to register
 46 under this chapter shall be verified annually as
 47 follows:

48 a. On a date which falls within the month in which
 49 the person was initially required to register, the
 50 department shall mail a verification form to the last

1 reported address of the person. Verification forms
2 shall not be forwarded to the person who is required
3 to register under this chapter if the person no longer
4 resides at the address, but shall be returned to the
5 department.

6 b. The person shall complete and mail the
7 verification to the department within ten days of
8 receipt of the form.

9 c. The verification form shall be signed by the
10 person, and state the address at which the person
11 resides. If the person is in the process of changing
12 residences, the person shall state that fact as well
13 as the old and new addresses or places of residence.

14 2. Verification of address for a person who has
15 been convicted of an offense under the laws of this
16 state or of another state which would qualify the
17 person as a sexually violent predator shall be
18 accomplished in the same manner as in subsection 1,
19 except that the verification shall be done every three
20 months at times established by the department.

21 3. A photograph of a person required to register
22 under this chapter shall be updated, at a minimum,
23 annually. When the department mails the address
24 verification notice in subsection 1, the department
25 shall also enclose a form informing the person to
26 annually submit to being photographed by the sheriff
27 of the county of the person's residence within ten
28 days of receipt of the address verification form. The
29 sheriff shall send the updated photograph to the
30 department within ten days of the photograph being
31 taken and the department shall post the updated
32 photograph on the sex offender registry's web page.
33 The sheriff may require the person to submit to being
34 photographed by the sheriff more than once a year by
35 mailing another notice informing the person to submit
36 to being photographed.

37 Sec. 24. NEW SECTION. 692A.4A ELECTRONIC
38 MONITORING.

39 A person required to register under this chapter
40 who is placed on probation, parole, work release,
41 special sentence, or any other type of conditional
42 release, may be supervised by an electronic tracking
43 and monitoring system in addition to any other
44 conditions of supervision.

45 Sec. 25. Section 692A.5, subsection 1, Code 2005,
46 is amended by adding the following new paragraph:

47 NEW PARAGRAPH. i. Inform the person that the
48 person must, at a minimum, annually submit to being
49 photographed by the sheriff of the county of the
50 person's residence.

1 Sec. 26. Section 692A.13, subsection 3, Code 2005,
2 is amended to read as follows:

3 3. Any member of the public may contact a county
4 sheriff's office or police department to request
5 relevant information from the registry regarding a
6 specific person required to register under this
7 chapter. ~~The request for information shall be in~~
8 ~~writing, and~~ A person making a request for relevant
9 information may make the request by telephone, in
10 writing, or in person, and the request shall include
11 the name of the person and at least one of the
12 following identifiers pertaining to the person about
13 whom the information is sought:

- 14 a. The date of birth of the person.
15 b. The social security number of the person.
16 c. The address of the person.

17 A county sheriff or police department shall not
18 charge a fee relating to a request for relevant
19 information.

20 Sec. 27. Section 692A.13, subsection 2, paragraph
21 b, Code 2005, is amended to read as follows:

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

31 Sec. 28. Section 692A.13, Code 2005, is amended by
32 adding the following new subsection:

33 NEW SUBSECTION. 2A. When a person required to
34 register under this chapter moves into a school
35 district or moves within a school district, the county
36 sheriff of the county of the person's new residence
37 shall provide relevant information from the sex
38 offender registry to the administrative office of the
39 school district in which the person required to
40 register resides, and shall also provide relevant
41 information to any private school near the person's
42 residence.

43 Sec. 29. Section 692A.13, subsection 5, Code 2005,
44 is amended to read as follows:

45 5. Relevant information provided to the general
46 public may include the offender's name, address, a
47 photograph, locations frequented by the offender,
48 relevant criminal history information from the
49 registry, and any other relevant information.

50 Relevant information provided to the public shall not

1 include the identity of any victim. For purposes of
2 inclusion in the sex offender registry's web page or
3 dissemination to the general public, a conviction for
4 incest shall be disclosed as either a violation of
5 section 709.4 or 709.8.

6 Sec. 30. Section 726.6, subsection 1, Code 2005,
7 is amended by adding the following new paragraph:

8 NEW PARAGRAPH. h. Cohabits with a person after
9 knowing the person is required to register or is on
10 the sex offender registry as a sex offender under
11 chapter 692A. However, this paragraph does not apply
12 to a person who is a parent, guardian, or a person
13 having custody or control over a child or a minor who
14 is required to register as a sex offender.

15 Sec. 31. Section 903A.2, subsection 1, paragraph
16 a, Code 2005, is amended to read as follows:

17 a. Category "A" sentences are those sentences
18 which are not subject to a maximum accumulation of
19 earned time of fifteen percent of the total sentence
20 of confinement under section 902.12. To the extent
21 provided in subsection 5, category "A" sentences also
22 include life sentences imposed under section 902.1.
23 An inmate of an institution under the control of the
24 department of corrections who is serving a category
25 "A" sentence is eligible for a reduction of sentence
26 equal to one and two-tenths days for each day the
27 inmate demonstrates good conduct and satisfactorily
28 participates in any program or placement status
29 identified by the director to earn the reduction. The
30 programs include but are not limited to the following:

- 31 (1) Employment in the institution.
- 32 (2) Iowa state industries.
- 33 (3) An employment program established by the
34 director.
- 35 (4) A treatment program established by the
36 director.
- 37 (5) An inmate educational program approved by the
38 director.

39 However, an inmate required to participate in a sex
40 offender treatment program shall not be eligible for a
41 reduction of sentence unless the inmate participates
42 in and completes a sex offender treatment program
43 established by the director.

44 An inmate serving a category "A" sentence is
45 eligible for an additional reduction of sentence of up
46 to three hundred sixty-five days of the full term of
47 the sentence of the inmate for exemplary acts. In
48 accordance with section 903A.4, the director shall by
49 policy identify what constitutes an exemplary act that
50 may warrant an additional reduction of sentence.

DIVISION III
ENHANCED CRIMINAL PENALTIES AND
STATUTE OF LIMITATIONS

Sec. 32. Section 709.8, Code 2005, is amended to read as follows:

709.8 LASCIVIOUS ACTS WITH A CHILD.

It is unlawful for any person ~~eighteen~~ sixteen years of age or older to perform any of the following acts with a child with or without the child's consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the pubes or genitals of a child.

2. Permit or cause a child to fondle or touch the person's genitals or pubes.

3. Solicit a child to engage in a sex act or solicit a person to arrange a sex act with a child.

4. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person.

Any person who violates a provision of this section involving an act included in subsection 1 or 2 shall, upon conviction, be guilty of a class "D" "C" felony. ~~A person who violates a provision of this section and who is sentenced to a term of confinement shall also be sentenced to an additional term of parole or work release not to exceed two years. The board of parole shall determine whether the person should be released on parole or placed in a work release program. The sentence of an additional term of parole or work release supervision shall commence immediately upon the expiration of the preceding sentence and shall be under the terms and conditions as set out in chapter 906. Violations of parole or work release shall be subject to the procedures set out in chapter 905 or 908 or rules adopted under those chapters. The sentence of an additional term of parole or work release shall be consecutive to the original term of confinement.~~ Any person who violates a provision of this section involving an act included in subsection 3 or 4 shall, upon conviction, be guilty of a class "D" felony.

Sec. 33. Section 802.2, Code 2005, is amended to read as follows:

802.2 SEXUAL ABUSE -- FIRST, SECOND, OR THIRD DEGREE.

1. An information or indictment for sexual abuse in the first, second, or third degree committed on or with a person who is under the age of eighteen years

1 shall be found within ten years after the person upon
2 whom the offense is committed attains eighteen years
3 of age, or if the identity of the person against whom
4 the information or indictment is sought is established
5 through the use of a DNA profile, an information or
6 indictment shall be found within three years from the
7 date the identity of the person is identified by the
8 person's DNA profile, whichever is later.

9 2. An information or indictment for any other
10 sexual abuse in the first, second, or third degree
11 shall be found within ten years after its commission,
12 or if the identity of the person against whom the
13 information or indictment is sought is established
14 through the use of a DNA profile, an information or
15 indictment shall be found within three years from the
16 date the identity of the person is identified by the
17 person's DNA profile, whichever is later.

18 3. As used in this section, "identified" means a
19 person's legal name is known and the person has been
20 determined to be the source of the DNA.

21 Sec. 34. Section 901.5, Code 2005, is amended by
22 adding the following new subsection:

23 NEW SUBSECTION. 13. In addition to any other
24 sentence or other penalty imposed against the
25 defendant, the court shall impose a special sentence
26 if required under section 903B.0A or 903B.0B.

27 Sec. 35. NEW SECTION. 902.15 ENHANCED PENALTY --
28 SEXUAL ABUSE OR LASCIVIOUS ACTS WITH A CHILD.

29 1. A person commits a class "A" felony if the
30 person commits a second or subsequent offense
31 involving any combination of the following offenses:

32 a. Sexual abuse in the second degree in violation
33 of section 709.3.

34 b. Sexual abuse in the third degree in violation
35 of section 709.4.

36 c. Lascivious acts with a child in violation of
37 section 709.8, subsection 1 or 2.

38 2. In determining if a violation charged is a
39 second or subsequent offense for purposes of criminal
40 sentencing in this section, each previous violation on
41 which conviction or deferral of judgment was entered
42 prior to the date of the violation charged shall be
43 considered and counted as a separate previous offense,
44 regardless of whether the previous offense occurred
45 before, on, or after the effective date of this Act.
46 Convictions or the equivalent of deferred judgments
47 for violations in any other states under statutes
48 substantially corresponding to the offenses listed in
49 subsection 1 shall be counted as previous offenses.
50 The courts shall judicially notice the statutes of

1 other states which define offenses substantially
2 equivalent to the offenses listed in subsection 1 and
3 can therefore be considered corresponding statutes.

4 Sec. 36. NEW SECTION. 903B.0A SPECIAL SENTENCE
5 -- CLASS "B" OR CLASS "C" FELONIES.

6 A person convicted of a class "C" felony or greater
7 offense under chapter 709, or a class "C" felony under
8 section 728.12, shall also be sentenced, in addition
9 to any other punishment provided by law, to a special
10 sentence committing the person into the custody of the
11 director of the Iowa department of corrections for the
12 rest of the person's life, with eligibility for parole
13 as provided in chapter 906. The special sentence
14 imposed under this section shall commence upon
15 completion of the sentence imposed under any
16 applicable criminal sentencing provisions for the
17 underlying criminal offense and the person shall begin
18 the sentence under supervision as if on parole. The
19 person shall be placed on the corrections continuum in
20 chapter 901B, and the terms and conditions of the
21 special sentence, including violations, shall be
22 subject to the same set of procedures set out in
23 chapters 901B, 905, 906, and chapter 908, and rules
24 adopted under those chapters for persons on parole.
25 The revocation of release shall not be for a period
26 greater than two years upon any first revocation, and
27 five years upon any second or subsequent revocation.
28 A special sentence shall be considered a category "A"
29 sentence for purposes of calculating earned time under
30 section 903A.2.

31 Sec. 37. NEW SECTION. 903B.0B SPECIAL SENTENCE
32 -- CLASS "D" FELONIES OR MISDEMEANORS.

33 A person convicted of a misdemeanor or a class "D"
34 felony offense under chapter 709, section 726.2, or
35 section 728.12 shall also be sentenced, in addition to
36 any other punishment provided by law, to a special
37 sentence committing the person into the custody of the
38 director of the Iowa department of corrections for a
39 period of ten years, with eligibility for parole as
40 provided in chapter 906. The special sentence imposed
41 under this section shall commence upon completion of
42 the sentence imposed under any applicable criminal
43 sentencing provisions for the underlying criminal
44 offense and the person shall begin the sentence under
45 supervision as if on parole. The person shall be
46 placed on the corrections continuum in chapter 901B,
47 and the terms and conditions of the special sentence,
48 including violations, shall be subject to the same set
49 of procedures set out in chapters 901B, 905, 906, and
50 908, and rules adopted under those chapters for

1 persons on parole. The revocation of release shall
2 not be for a period greater than two years upon any
3 first revocation, and five years upon any second or
4 subsequent revocation. A special sentence shall be
5 considered a category "A" sentence for purposes of
6 calculating earned time under section 903A.2.

7 Sec. 38. Section 903B.1, subsection 3, Code 2005,
8 is amended by striking the subsection.

9 Sec. 39. Section 906.15, unnumbered paragraph 1,
10 Code 2005, is amended to read as follows:

11 Unless sooner discharged, a person released on
12 parole shall be discharged when the person's term of
13 parole equals the period of imprisonment specified in
14 the person's sentence, less all time served in
15 confinement. Discharge from parole may be granted
16 prior to such time, when an early discharge is
17 appropriate. The board shall periodically review all
18 paroles, and when the board determines that any person
19 on parole is able and willing to fulfill the
20 obligations of a law-abiding citizen without further
21 supervision, the board shall discharge the person from
22 parole. A parole officer shall periodically review
23 all paroles assigned to the parole officer, and when
24 the parole officer determines that any person assigned
25 to the officer is able and willing to fulfill the
26 obligations of a law-abiding citizen without further
27 supervision, the officer may discharge the person from
28 parole after notification and approval of the district
29 director and notification of the board of parole. In
30 any event, discharge from parole shall terminate the
31 person's sentence. If a person has been sentenced to
32 a special sentence under section 903B.0A or 903B.0B,
33 the person may be discharged early from the sentence
34 in the same manner as any other person on parole.
35 However, a person convicted of a violation of section
36 709.3, 709.4, or 709.8 committed on or with a child,
37 or a person serving a sentence under section 902.12,
38 shall not be discharged from parole until the person's
39 term of parole equals the period of imprisonment
40 specified in the person's sentence, less all time
41 served in confinement.

42 Sec. 40. Section 908.5, Code 2005, is amended to
43 read as follows:

44 908.5 DISPOSITION.

45 1. If a violation of parole is established, the
46 administrative parole judge may continue the parole
47 with or without any modification of the conditions of
48 parole. The administrative parole judge may revoke
49 the parole and require the parolee to serve the
50 sentence originally imposed, or may revoke the parole

1 and reinstate the parolee's work release status.

2 2. If the person is serving a special sentence
3 under chapter 903B, the administrative parole judge
4 may revoke the release. Upon the revocation of
5 release, the person shall not serve the entire length
6 of the special sentence imposed, and the revocation
7 shall be for a period not to exceed two years in a
8 correctional institution upon a first revocation and
9 for a period not to exceed five years in a
10 correctional institution upon a second or subsequent
11 revocation.

12 3. The order of the administrative parole judge
13 shall contain findings of fact, conclusions of law,
14 and a disposition of the matter.

15 DIVISION IV

16 VICTIM RIGHTS

17 Sec. 41. NEW SECTION. 235D.1 CRIMINAL HISTORY
18 CHECK -- APPLICANTS AT DOMESTIC ABUSE OR SEXUAL
19 ASSAULT CENTERS.

20 An applicant for employment at a domestic abuse or
21 sexual assault center shall be subject to a national
22 criminal history check through the federal bureau of
23 investigation. The domestic abuse or sexual assault
24 center shall request the criminal history check and
25 shall provide the applicant's fingerprints to the
26 department of public safety for submission through the
27 state criminal history repository to the federal
28 bureau of investigation. The applicant shall
29 authorize release of the results of the criminal
30 history check to the domestic abuse or sexual assault
31 center. The applicant shall pay the actual cost of
32 the fingerprinting and criminal history check, if any.
33 Unless the criminal history check was completed within
34 the ninety calendar days prior to the date the
35 application is received by the domestic abuse or
36 sexual assault center, the center shall reject and
37 return the application to the applicant. The results
38 of a criminal history check conducted pursuant to this
39 subsection shall not be considered a public record
40 under chapter 22. For purposes of this section,
41 "domestic abuse or sexual assault center" means a
42 facility which is used to house victims of domestic
43 abuse or sexual assault, and is owned, operated, or
44 maintained by a nonprofit organization.

45 Sec. 42. NEW SECTION. 709.22 PREVENTION OF
46 FURTHER SEXUAL ASSAULT -- NOTIFICATION OF RIGHTS.

47 If a peace officer has reason to believe that a
48 sexual assault as defined in section 915.40 has
49 occurred, the officer shall use all reasonable means
50 to prevent further violence including but not limited

1 to the following:

2 1. If requested, remaining on the scene of the
3 alleged sexual assault as long as there is a danger to
4 the victim's physical safety without the presence of a
5 peace officer, including but not limited to staying in
6 the dwelling unit, or if unable to remain on the
7 scene, assisting the victim in leaving the residence.

8 2. Assisting a victim in obtaining medical
9 treatment necessitated by the sexual assault,
10 including providing assistance to the victim in
11 obtaining transportation to the emergency room of the
12 nearest hospital.

13 3. Providing a victim with immediate and adequate
14 notice of the victim's rights. The notice shall
15 consist of handing the victim a copy of the following
16 statement written in English and Spanish, asking the
17 victim to read the statement, and asking whether the
18 victim understands the rights:

19 "You have the right to ask the court for help with
20 any of the following on a temporary basis:

21 a. Keeping your attacker away from you, your home,
22 and your place of work.

23 b. The right to stay at your home without
24 interference from your attacker.

25 c. The right to seek a no-contact order under
26 section 709.20 or 915.22, if your attacker is arrested
27 for sexual assault.

28 You have the right to register as a victim with the
29 county attorney under section 915.12.

30 You have the right to file a complaint for threats,
31 assaults, or other related crimes.

32 You have the right to seek restitution against your
33 attacker for harm to you or your property.

34 You have the right to apply for victim
35 compensation.

36 You have the right to contact the county attorney
37 or local law enforcement to determine the status of
38 your case.

39 If you are in need of medical treatment, you have
40 the right to request that the officer present assist
41 you in obtaining transportation to the nearest
42 hospital or otherwise assist you.

43 You have the right to a sexual assault examination
44 performed at state expense.

45 If you believe that police protection is needed for
46 your physical safety, you have the right to request
47 that the officer present remain at the scene until you
48 and other affected parties can leave or until safety
49 is otherwise ensured."

50 The notice shall also contain the telephone numbers

1 of shelters, support groups, and crisis lines
2 operating in the area.

3 Sec. 43. Section 915.10, subsections 1 and 2, Code
4 2005, are amended to read as follows:

5 1. "Notification" means mailing by regular mail or
6 providing for hand delivery of appropriate information
7 or papers. However, this notification procedure does
8 not prohibit an office, agency, or department from
9 also providing appropriate information to a registered
10 victim by telephone, electronic mail, or other means.

11 2. "Registered" means having provided the county
12 attorney with the victim's written request for
13 registration and current mailing address and telephone
14 number. If an automated victim notification system is
15 implemented pursuant to section 915.10A, "registered"
16 also means having filed a request for registration
17 with the system.

18 Sec. 44. NEW SECTION. 915.10A AUTOMATED VICTIM
19 NOTIFICATION SYSTEM.

20 1. An automated victim notification system may be
21 utilized to assist public officials in informing crime
22 victims, the victim's family, or other interested
23 persons as provided in this subchapter and where
24 otherwise specifically provided. The system shall
25 disseminate the information to registered users
26 through telephonic, electronic, or other means of
27 access.

28 2. An office, agency, or department may satisfy a
29 notification obligation to registered victims required
30 by this subchapter through participation in the system
31 to the extent information is available for
32 dissemination through the system. Nothing in this
33 section shall relieve a notification obligation under
34 this subchapter due to the unavailability of
35 information for dissemination through the system.

36 3. Notwithstanding section 232.147, information
37 concerning juveniles charged with a felony offense
38 shall be released to the extent necessary to comply
39 with this section.

40 Sec. 45. Section 915.11, Code 2005, is amended to
41 read as follows:

42 915.11 INITIAL NOTIFICATION BY LAW ENFORCEMENT.

43 A local police department or county sheriff's
44 department shall advise a victim of the right to
45 register with the county attorney, and shall provide a
46 request-for-registration form to each victim. If an
47 automated victim notification system is available
48 pursuant to section 915.10A, a local police department
49 or county sheriff's department shall provide a
50 telephone number and website to each victim to

1 register with the system.

2 Sec. 46. Section 915.12, Code 2005, is amended to
3 read as follows:

4 915.12 REGISTRATION.

5 ~~1. The county attorney shall be the sole registrar~~
6 ~~of victims under this subchapter.~~

7 ~~2.~~ 1. A victim may register by filing a written
8 request-for-registration form with the county
9 attorney. The county attorney shall notify the
10 victims in writing and advise them of their
11 registration and rights under this subchapter.

12 ~~3.~~ The county attorney shall provide a registered
13 victim list to the offices, agencies, and departments
14 required to provide information under this subchapter
15 for notification purposes.

16 2. If an automated victim notification system, the
17 victim's family, is available pursuant to section
18 915.10A, a victim, the victim's family, or other
19 interested person may register with the system by
20 filing a request for registration through written,
21 telephonic, or electronic means.

22 ~~4.~~ 3. Notwithstanding chapter 22 or any other
23 contrary provision of law, a victim's the registration
24 of a victim, victim's family, or other interested
25 person shall be strictly maintained in a separate
26 confidential file or other confidential medium, and
27 shall be available only to the offices, agencies, and
28 departments required to provide information under this
29 subchapter.

30 Sec. 47. Section 915.29, Code 2005, is amended by
31 adding the following new unnumbered paragraph:

32 NEW UNNUMBERED PARAGRAPH. The notification
33 required pursuant to this section may occur through
34 the automated victim notification system referred to
35 in section 915.10A to the extent such information is
36 available for dissemination through the system.

37 Sec. 48. Section 915.45, Code 2005, is amended by
38 adding the following new unnumbered paragraph:

39 NEW UNNUMBERED PARAGRAPH. The notification
40 required pursuant to this section may occur through
41 the automated victim notification system referred to
42 in section 915.10A to the extent such information is
43 available for dissemination through the system.

44 DIVISION V
45 TASK FORCE

46 Sec. 49. SEX OFFENDER TREATMENT AND SUPERVISION
47 TASK FORCE.

48 1. The division of criminal and juvenile justice
49 planning shall establish a task force to study and
50 make periodic recommendations for treating and

1 supervising sex offenders in correctional institutions
2 and in the community. The task force shall file a
3 report with recommendations with the general assembly
4 by January 15, 2006. The task force shall study the
5 effectiveness of electronic monitoring and the
6 potential effects and costs associated with the
7 special sentence created in this Act. The task force
8 shall study risk assessment models created for sex
9 offenders. The task force shall also review this
10 state's efforts and the efforts of other states to
11 implement treatment programs and make recommendations
12 as to the best treatment options available for sex
13 offenders. The task force shall also develop a plan
14 to integrate state government databases for the
15 purpose of updating addresses of persons on the sex
16 offender registry.

17 2. Members of the task force shall include
18 representatives of the following state agencies and
19 organizations:

20 a. One representative of the department of human
21 services.

22 b. One representative of the department of public
23 safety.

24 c. One representative of the Iowa state sheriffs
25 and deputies association.

26 d. One representative of the Iowa county attorneys
27 association.

28 e. One representative of the department of
29 corrections.

30 f. One representative of the board of parole.

31 g. One representative of a judicial district
32 department of correctional services.

33 h. One representative of the department of
34 justice.

35 i. One representative of the state public
36 defender.

37 j. One representative of the Iowa coalition
38 against sexual assault.

39 DIVISION VI

40 STATE MANDATE

41 Sec. 50. IMPLEMENTATION OF ACT. Section 25B.2,
42 subsection 3, shall not apply to this Act."

43 2. Title page, by striking lines 1 through 5 and
44 inserting the following: "An Act relating to criminal
45 sentencing, victim notification, and the sex offender
46 registry, by establishing a special sentence for
47 certain offenders, requiring DNA testing of certain
48 offenders and lengthening the time an information or
49 indictment may be found in certain offenses where DNA
50 evidence is available, requiring sex offender

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- 1 treatment in order to accumulate earned time,
- 2 restricting certain persons from residing with sex
- 3 offenders, establishing a sex offender treatment and
- 4 supervision task force, providing penalties, and
- 5 providing effective dates.""

By CHARLES W. LARSON, JR.
KEITH A. KREIMAN

S-3229 FILED MAY 3, 2005
RULED OUT OF ORDER

S-3238

1 Amend House File 619, as amended, passed, and
2 reprinted by the House, as follows:

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

5 "DIVISION I
6 DNA PROFILING

7 Section 1. NEW SECTION. 81.1 DEFINITIONS.

8 As used in this chapter, unless the context
9 otherwise requires:

10 1. "DNA" means deoxyribonucleic acid.

11 2. "DNA databank" means the repository for DNA
12 samples obtained pursuant to section 81.4.

13 3. "DNA database" means the collection of DNA
14 profiles and DNA records.

15 4. "DNA profile" means the objective form of the
16 results of DNA analysis performed on a DNA sample.
17 The results of all DNA identification analysis on an
18 individual's DNA sample are also collectively referred
19 to as the DNA profile of an individual.

20 5. "DNA profiling" means the procedure established
21 by the division of criminal investigation, department
22 of public safety, for determining a person's genetic
23 identity.

24 6. "DNA record" means the DNA sample and DNA
25 profile, and other records in the DNA database and DNA
26 data bank used to identify a person.

27 7. "DNA sample" means a biological sample provided
28 by any person required to submit a DNA sample or a DNA
29 sample submitted for any other purpose under section
30 81.4.

31 8. "Person required to submit a DNA sample" means
32 a person convicted, adjudicated delinquent, receiving
33 a deferred judgment, or found not guilty by reason of
34 insanity of an offense requiring DNA profiling
35 pursuant to section 81.2. "Person required to submit
36 a DNA sample" also means a person determined to be a
37 sexually violent predator pursuant to section 229A.7.

38 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO
39 SUBMIT A DNA SAMPLE.

40 1. A person who receives a deferred judgment for a
41 felony or against whom a judgment or conviction for a
42 felony has been entered shall be required to submit a
43 DNA sample for DNA profiling pursuant to section 81.4.

44 2. A person determined to be a sexually violent
45 predator pursuant to chapter 229A shall be required to
46 submit a DNA sample for DNA profiling pursuant to
47 section 81.4 prior to discharge or placement in a
48 transitional release program.

49 3. A person found not guilty by reason of insanity
50 of an offense that requires DNA profiling shall be

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1 required to submit a DNA sample for DNA profiling
2 pursuant to section 81.4 as part of the person's
3 treatment management program.

4 4. A juvenile adjudicated delinquent of an offense
5 that requires DNA profiling of an adult offender shall
6 be required to submit a DNA sample for DNA profiling
7 pursuant to section 81.4 as part of the disposition of
8 the juvenile's case.

9 5. An offender placed on probation shall
10 immediately report to the judicial district department
11 of correctional services after sentencing so it can be
12 determined if the offender has been convicted of an
13 offense requiring DNA profiling. If it is determined
14 by the judicial district that DNA profiling is
15 required, the offender shall immediately submit a DNA
16 sample.

17 6. A person required to register as a sex
18 offender.

19 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA
20 DATABASE AND DNA DATABANK.

21 1. A state DNA database and a state DNA databank
22 are established under the control of the division of
23 criminal investigation, department of public safety.
24 The division of criminal investigation shall conduct
25 DNA profiling of a DNA sample submitted in accordance
26 with this section.

27 2. A DNA sample shall be submitted, and the
28 division of criminal investigation shall store and
29 maintain DNA records in the DNA database and DNA
30 databank for persons required to submit a DNA sample.

31 3. A DNA sample may be submitted, and the division
32 of criminal investigation shall store and maintain DNA
33 records in the DNA database and DNA databank for any
34 of the following:

- 35 a. Crime scene evidence and forensic casework.
- 36 b. A relative of a missing person.
- 37 c. An anonymous DNA profile used for forensic
38 validation, forensic protocol development, or quality
39 control purposes, or for the establishment of a
40 population statistics database.

41 4. A fingerprint record of a person required to
42 submit a DNA sample shall also be submitted to the
43 division of criminal investigation with the DNA sample
44 to verify the identity of the person required to
45 submit a DNA sample.

46 Sec. 4. NEW SECTION. 81.4 COLLECTING,
47 SUBMITTING, ANALYZING, IDENTIFYING, AND STORING DNA
48 SAMPLES AND DNA RECORDS.

49 1. The division of criminal investigation shall
50 adopt rules for the collection, submission, analysis,

1 identification, storage, and disposition of DNA
2 records.

3 2. A supervising agency having control, custody,
4 or jurisdiction over a person shall collect a DNA
5 sample from a person required to submit a DNA sample.
6 The supervising agency shall collect a DNA sample,
7 upon admittance to the pertinent institution or
8 facility, of the person required to submit a DNA
9 sample or at a determined date and time set by the
10 supervising agency. If a person required to submit a
11 DNA sample is confined at the time a DNA sample is
12 required, the person shall submit a DNA sample as soon
13 as practicable. If a person required to submit a DNA
14 sample is not confined after the person is required to
15 submit a DNA sample, the supervising agency shall
16 determine the date and time to collect the DNA sample.

17 3. A person required to submit a DNA sample who
18 refuses to submit a DNA sample may be subject to
19 contempt proceedings pursuant to chapter 665 until the
20 DNA sample is submitted.

21 4. The division of criminal investigation shall
22 conduct DNA profiling on a DNA sample or may contract
23 with a private entity to conduct the DNA profiling.

24 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL
25 LIABILITY -- LIMITATION.

26 A person who collects a DNA sample shall not be
27 civilly or criminally liable for the collection of the
28 DNA sample if the person performs the person's duties
29 in good faith and in a reasonable manner according to
30 generally accepted medical practices or in accordance
31 with the procedures set out in the administrative
32 rules of the department of public safety adopted
33 pursuant to section 81.4.

34 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

35 1. A person who knowingly or intentionally does
36 any of the following commits an aggravated
37 misdemeanor:

38 a. Discloses any part of a DNA record to a person
39 or agency that is not authorized by the division of
40 criminal investigation to have access to the DNA
41 record.

42 b. Uses or obtains a DNA record for a purpose
43 other than what is authorized under this chapter.

44 2. A person who knowingly or intentionally alters
45 or attempts to alter a DNA sample, falsifies the
46 source of a DNA sample, or materially alters a
47 collection container used to collect the DNA sample,
48 commits a class "D" felony.

49 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST
50 NOT INVALIDATED.

1 The detention, arrest, or conviction of a person
2 based upon a DNA database match is not invalidated if
3 it is determined that the DNA sample or DNA profile
4 was obtained or placed into the DNA database by
5 mistake or error.

6 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

7 1. A DNA record shall be considered a confidential
8 record and disclosure of a DNA record is only
9 authorized pursuant to this section.

10 2. Confidential DNA records under this section may
11 be released to the following agencies for law
12 enforcement identification purposes:

13 a. Any criminal or juvenile justice agency as
14 defined in section 692.1.

15 b. Any criminal or juvenile justice agency in
16 another jurisdiction that meets the definition of a
17 criminal or juvenile justice agency as defined in
18 section 692.1.

19 3. The division of criminal investigation shall
20 share the DNA record information with the appropriate
21 federal agencies for use in a national DNA database.

22 4. A DNA record or other forensic information
23 developed pursuant to this chapter may be released for
24 use in a criminal or juvenile delinquency proceeding
25 in which the state is a party and where the DNA record
26 or forensic information is relevant and material to
27 the subject of the proceeding. Such a record or
28 information may become part of a public transcript or
29 other public recording of such a proceeding.

30 5. A DNA record or other forensic information may
31 be released pursuant to a court order for criminal
32 defense purposes to a defendant, who shall have access
33 to DNA samples and DNA profiles related to the case in
34 which the defendant is charged.

35 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA
36 RECORDS.

37 1. A person whose DNA record has been included in
38 the DNA database or DNA databank established pursuant
39 to section 81.3 may request, in writing to the
40 division of criminal investigation, expungement of the
41 DNA record from the DNA database and DNA databank
42 based upon the person's conviction, adjudication, or
43 civil commitment which caused the submission of the
44 DNA sample being reversed on appeal and the case
45 dismissed. The written request shall contain a
46 certified copy of the final court order reversing the
47 conviction, adjudication, or civil commitment, and a
48 certified copy of the dismissal, and any other
49 information necessary to ascertain the validity of the
50 request.

1 2. The division of criminal investigation, upon
2 receipt of a written request that validates reversal
3 on appeal of a person's conviction, adjudication, or
4 commitment, and subsequent dismissal of the case, or
5 upon receipt of a written request by a person who
6 voluntarily submitted a DNA sample under section 81.3,
7 subsection 3, paragraph "b", or upon receipt of a
8 written request by a person who voluntarily submitted
9 a DNA sample pursuant to section 81.3, subsection 3,
10 paragraph "b", shall expunge all of the DNA records
11 and identifiable information of the person in the DNA
12 database and DNA databank. However, if the division
13 of criminal investigation determines that the person
14 is otherwise obligated to submit a DNA sample, the DNA
15 records shall not be expunged. If the division of
16 criminal investigation denies an expungement request,
17 the division shall notify the person requesting the
18 expungement of the decision not to expunge the DNA
19 record and the reason supporting its decision. The
20 division of criminal investigation decision is subject
21 to judicial review pursuant to chapter 17A. The
22 department of public safety shall adopt rules
23 governing the expungement procedure and a review
24 process.

25 3. The division of criminal investigation is not
26 required to expunge or destroy a DNA record pursuant
27 to this section, if expungement or destruction of the
28 DNA record would destroy evidence related to another
29 person.

30 Sec. 10. NEW SECTION. 81.10 DNA PROFILING AFTER
31 CONVICTION.

32 1. A defendant who has been convicted of a felony
33 and who has not been required to submit a DNA sample
34 for DNA profiling may make a motion to the court for
35 an order to require that DNA analysis be performed on
36 evidence collected in the case for which the person
37 stands convicted.

38 2. The motion shall state the following:

39 a. The specific crimes for which the defendant
40 stands convicted in this case.

41 b. The facts of the underlying case, as proven at
42 trial or admitted to during a guilty plea proceeding.

43 c. Whether any of the charges include sexual abuse
44 or involve sexual assault, and if so, whether a sexual
45 assault examination was conducted and evidence
46 preserved, if known.

47 d. Whether identity was at issue or contested by
48 the defendant.

49 e. Whether the defendant offered an alibi, and if
50 so, testimony corroborating the alibi and, from whom.

1 f. Whether eyewitness testimony was offered, and
2 if so from whom.

3 g. Whether any issues of police or prosecutor
4 misconduct have been raised in the past or are being
5 raised by the motion.

6 h. The type of inculpatory evidence admitted into
7 evidence at trial or admitted to during a guilty plea
8 proceeding.

9 i. Whether blood testing or other biological
10 evidence testing was conducted previously in
11 connection with the case and, if so, by whom and to
12 the result, if known.

13 j. What biological evidence exists and, if known,
14 the agency or laboratory storing the evidence that the
15 defendant seeks to have tested.

16 k. Why the requested analysis of DNA evidence is
17 material to the issue in the case and not merely
18 cumulative or impeaching.

19 l. Why the DNA evidence would have changed the
20 outcome of the trial or invalidated a guilty plea if
21 DNA profiling had been conducted prior to the
22 conviction.

23 3. A motion filed under this section shall be
24 filed in the county where the defendant was convicted,
25 and notice of the motion shall be served by certified
26 mail upon the county attorney and, if known, upon the
27 state, local agency, or laboratory holding evidence
28 described in subsection 2, paragraph "k". The county
29 attorney shall have sixty days to file an answer to
30 the motion.

31 4. Any DNA profiling of the defendant or other
32 biological evidence testing conducted by the state or
33 by the defendant shall be disclosed and the results of
34 such profiling or testing described in the motion or
35 answer.

36 5. If the evidence requested to be tested was
37 previously subjected to DNA or other biological
38 analysis by either party, the court may order the
39 disclosure of the results of such testing, including
40 laboratory reports, notes, and underlying data, to the
41 court and the parties.

42 6. The court may order a hearing on the motion to
43 determine if evidence should be subjected to DNA
44 analysis.

45 7. The court shall grant the motion if all of the
46 following apply:

47 a. The evidence subject to DNA testing is
48 available and in a condition that will permit
49 analysis.

50 b. A sufficient chain of custody has been

1 established for the evidence.

2 c. The identity of the person who committed the
3 crime for which the defendant was convicted was a
4 significant issue in the crime for which the defendant
5 was convicted.

6 d. The evidence subject to DNA analysis is
7 material to, and not merely cumulative or impeaching
8 of, evidence included in the trial record or admitted
9 to at a guilty plea proceeding.

10 e. DNA analysis of the evidence would raise a
11 reasonable probability that the defendant would not
12 have been convicted if DNA profiling had been
13 available at the time of the conviction and had been
14 conducted prior to the conviction.

15 8. Upon the court granting a motion filed pursuant
16 to this section, DNA analysis of evidence shall be
17 conducted within the guidelines generally accepted by
18 the scientific community. The defendant shall provide
19 DNA samples for testing if requested by the state.

20 9. Results of DNA analysis conducted pursuant to
21 this section shall be reported to the parties and to
22 the court and may be provided to the board of parole,
23 department of corrections, and criminal and juvenile
24 justice agencies, as defined in section 692.1, for use
25 in the course of investigations and prosecutions, and
26 for consideration in connection with requests for
27 parole, pardon, reprieve, and commutation. DNA
28 samples obtained pursuant to this section may be
29 included in the DNA databank, and DNA profiles and DNA
30 records developed pursuant to this section may be
31 included in the DNA database.

32 10. A criminal or juvenile justice agency, as
33 defined in section 692.1, shall maintain DNA samples
34 and evidence that could be tested for DNA for a period
35 of three years beyond the limitations for the
36 commencement of criminal actions as set forth in
37 chapter 802. This section does not create a cause of
38 action for damages or a presumption of spoliation in
39 the event evidence is no longer available for testing.

40 11. If the court determines a defendant who files
41 a motion under this section is indigent, the defendant
42 shall be entitled to appointment of counsel as
43 provided in chapter 815.

44 12. If the court determines after DNA analysis
45 ordered pursuant to this section that the results
46 indicate conclusively that the DNA profile of the
47 defendant matches the profile from the analyzed
48 evidence used against the defendant, the court may
49 order the defendant to pay the costs of these
50 proceedings, including costs of all testing, court

1 costs, and costs of court-appointed counsel, if any.

2 Sec. 11. Section 229A.7, Code 2005, is amended by
3 adding the following new subsection:

4 NEW SUBSECTION. 5A. If the court or jury
5 determines that the respondent is a sexually violent
6 predator, the court shall order the respondent to
7 submit a DNA sample for DNA profiling pursuant to
8 section 81.4.

9 Sec. 12. Section 232.52, Code 2005, is amended by
10 adding the following new subsection:

11 NEW SUBSECTION. 10. The court shall order a
12 juvenile adjudicated a delinquent for an offense that
13 requires DNA profiling under section 81.2 to submit a
14 DNA sample for DNA profiling pursuant to section 81.4.

15 Sec. 13. Section 669.14, Code 2005, is amended by
16 adding the following new subsection:

17 NEW SUBSECTION. 15. Any claim arising from or
18 related to the collection of a DNA sample for DNA
19 profiling pursuant to section 81.4 or a DNA profiling
20 procedure performed by the division of criminal
21 investigation, department of public safety.

22 Sec. 14. Section 901.5, subsection 8A, Code 2005,
23 is amended to read as follows:

24 8A. a. The court shall order DNA profiling of a
25 defendant convicted of an offense that requires
26 profiling under section ~~13.10~~ 81.2.

27 b. Notwithstanding section ~~13.10~~ 81.2, the court
28 may order the defendant to provide a ~~physical specimen~~
29 DNA sample to be submitted for DNA profiling if
30 appropriate. In determining the appropriateness of
31 ordering DNA profiling, the court shall consider the
32 deterrent effect of DNA profiling, the likelihood of
33 repeated offenses by the defendant, and the
34 seriousness of the offense.

35 Sec. 15. Section 906.4, unnumbered paragraph 3,
36 Code 2005, is amended to read as follows:

37 ~~Notwithstanding section 13.10, the~~ The board may
38 order the defendant to provide a physical specimen to
39 be submitted for DNA profiling as a condition of
40 parole or work release, if ~~appropriate~~ a DNA profile
41 has not been previously conducted pursuant to chapter
42 81. In determining the appropriateness of ordering
43 DNA profiling, the board shall consider the deterrent
44 effect of DNA profiling, the likelihood of repeated
45 offenses by the defendant, and the seriousness of the
46 offense.

47 Sec. 16. 2002 Iowa Acts, chapter 1080, is
48 repealed.

49 Sec. 17. Section 13.10, Code 2005, is repealed.

50 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE

1 PRIOR TO EFFECTIVE DATE OF THIS DIVISION OF THIS ACT.
2 A person convicted, adjudicated a delinquent, civilly
3 committed as a sexually violent predator, or found not
4 guilty by reason of insanity, prior to the effective
5 date of this Act, who would otherwise be required to
6 submit a DNA sample under this Act, and who is under
7 the custody, control, or jurisdiction of a supervising
8 agency, shall submit a DNA sample prior to being
9 released from the supervising agency's custody,
10 control, or jurisdiction.

11 Sec. 19. EFFECTIVE DATE. This division of this
12 Act, being deemed of immediate importance, takes
13 effect upon enactment.

14 DIVISION II

15 SEX OFFENDER REGISTRY -- TREATMENT -- STUDY

16 Sec. 20. Section 232.68, subsection 2, Code 2005,
17 is amended by adding the following new paragraph:

18 NEW PARAGRAPH. i. Cohabitation with a person on
19 the sex offender registry under chapter 692A in
20 violation of section 726.6.

21 Sec. 21. Section 692A.1, subsection 8, Code 2005,
22 is amended to read as follows:

23 8. "Residence" means the place where a person
24 sleeps, which may include more than one location, and
25 may be mobile or transitory, including a shelter or
26 group home.

27 Sec. 22. Section 692A.2, Code 2005, is amended by
28 adding the following new subsection:

29 NEW SUBSECTION. 1A. If a person is required to
30 register for a period of ten years under subsection 1
31 and the period under subsection 1 has expired, the
32 person shall be required to remain on the registry if
33 the person has been sentenced to a special sentence as
34 required under section 903B.0A or 903B.0B, for a
35 period equal to the term of the special sentence.

36 Sec. 23. Section 692A.4, Code 2005, is amended to
37 read as follows:

38 692A.4 VERIFICATION OF ADDRESS AND TAKING OF
39 PHOTOGRAPH.

40 1. The address of a person required to register
41 under this chapter shall be verified annually as
42 follows:

43 a. On a date which falls within the month in which
44 the person was initially required to register, the
45 department shall mail a verification form to the last
46 reported address of the person. Verification forms
47 shall not be forwarded to the person who is required
48 to register under this chapter if the person no longer
49 resides at the address, but shall be returned to the
50 department.

1 b. The person shall complete and mail the
2 verification to the department within ten days of
3 receipt of the form.

4 c. The verification form shall be signed by the
5 person, and state the address at which the person
6 resides. If the person is in the process of changing
7 residences, the person shall state that fact as well
8 as the old and new addresses or places of residence.

9 2. Verification of address for a person who has
10 been convicted of an offense under the laws of this
11 state or of another state which would qualify the
12 person as a sexually violent predator shall be
13 accomplished in the same manner as in subsection 1,
14 except that the verification shall be done every three
15 months at times established by the department.

16 3. A photograph of a person required to register
17 under this chapter shall be updated, at a minimum,
18 annually. When the department mails the address
19 verification notice in subsection 1, the department
20 shall also enclose a form informing the person to
21 annually submit to being photographed by the sheriff
22 of the county of the person's residence within ten
23 days of receipt of the address verification form. The
24 sheriff shall send the updated photograph to the
25 department within ten days of the photograph being
26 taken and the department shall post the updated
27 photograph on the sex offender registry's web page.
28 The sheriff may require the person to submit to being
29 photographed by the sheriff more than once a year by
30 mailing another notice informing the person to submit
31 to being photographed.

32 Sec. 24. NEW SECTION. 692A.4A ELECTRONIC
33 MONITORING.

34 A person required to register under this chapter
35 who is placed on probation, parole, work release,
36 special sentence, or any other type of conditional
37 release, may be supervised by an electronic tracking
38 and monitoring system in addition to any other
39 conditions of supervision.

40 Sec. 25. Section 692A.5, subsection 1, Code 2005,
41 is amended by adding the following new paragraph:

42 NEW PARAGRAPH. i. Inform the person that the
43 person must, at a minimum, annually submit to being
44 photographed by the sheriff of the county of the
45 person's residence.

46 Sec. 26. Section 692A.13, subsection 3, Code 2005,
47 is amended to read as follows:

48 3. Any member of the public may contact a county
49 sheriff's office or police department to request
50 relevant information from the registry regarding a

1 specific person required to register under this
2 chapter. ~~The request for information shall be in~~
3 ~~writing, and~~ A person making a request for relevant
4 information may make the request by telephone, in
5 writing, or in person, and the request shall include
6 the name of the person and at least one of the
7 following identifiers pertaining to the person about
8 whom the information is sought:

- 9 a. The date of birth of the person.
- 10 b. The social security number of the person.
- 11 c. The address of the person.

12 A county sheriff or police department shall not
13 charge a fee relating to a request for relevant
14 information.

15 Sec. 27. Section 692A.13, subsection 2, paragraph
16 b, Code 2005, is amended to read as follows:

17 b. The general public, including public and
18 private agencies, organizations, public places, ~~public~~
19 ~~and private schools~~, child care facilities, religious
20 and youth organizations, neighbors, neighborhood
21 associations, community meetings, and employers.
22 Registry information may be distributed to the public
23 through printed materials, visual or audio press
24 releases, radio communications, or through a criminal
25 or juvenile justice agency's web page.

26 Sec. 28. Section 692A.13, Code 2005, is amended by
27 adding the following new subsection:

28 NEW SUBSECTION. 2A. When a person required to
29 register under this chapter moves into a school
30 district or moves within a school district, the county
31 sheriff of the county of the person's new residence
32 shall provide relevant information from the sex
33 offender registry to the administrative office of the
34 school district in which the person required to
35 register resides, and shall also provide relevant
36 information to any private school near the person's
37 residence.

38 Sec. 29. Section 692A.13, subsection 5, Code 2005,
39 is amended to read as follows:

40 5. Relevant information provided to the general
41 public may include the offender's name, address, a
42 photograph, locations frequented by the offender,
43 relevant criminal history information from the
44 registry, and any other relevant information.
45 Relevant information provided to the public shall not
46 include the identity of any victim. For purposes of
47 inclusion in the sex offender registry's web page or
48 dissemination to the general public, a conviction for
49 incest shall be disclosed as either a violation of
50 section 709.4 or 709.8.

1 Sec. 30. Section 726.6, subsection 1, Code 2005,
2 is amended by adding the following new paragraph:
3 NEW PARAGRAPH. h. Cohabits with a person after
4 knowing the person is required to register or is on
5 the sex offender registry as a sex offender under
6 chapter 692A. However, this paragraph does not apply
7 to a person who is a parent, guardian, or a person
8 having custody or control over a child or a minor who
9 is required to register as a sex offender.

10 Sec. 31. Section 903A.2, subsection 1, paragraph
11 a, Code 2005, is amended to read as follows:

12 a. Category "A" sentences are those sentences
13 which are not subject to a maximum accumulation of
14 earned time of fifteen percent of the total sentence
15 of confinement under section 902.12. To the extent
16 provided in subsection 5, category "A" sentences also
17 include life sentences imposed under section 902.1.
18 An inmate of an institution under the control of the
19 department of corrections who is serving a category
20 "A" sentence is eligible for a reduction of sentence
21 equal to one and two-tenths days for each day the
22 inmate demonstrates good conduct and satisfactorily
23 participates in any program or placement status
24 identified by the director to earn the reduction. The
25 programs include but are not limited to the following:

- 26 (1) Employment in the institution.
- 27 (2) Iowa state industries.
- 28 (3) An employment program established by the
29 director.
- 30 (4) A treatment program established by the
31 director.
- 32 (5) An inmate educational program approved by the
33 director.

34 However, an inmate required to participate in a sex
35 offender treatment program shall not be eligible for a
36 reduction of sentence unless the inmate participates
37 in and completes a sex offender treatment program
38 established by the director.

39 An inmate serving a category "A" sentence is
40 eligible for an additional reduction of sentence of up
41 to three hundred sixty-five days of the full term of
42 the sentence of the inmate for exemplary acts. In
43 accordance with section 903A.4, the director shall by
44 policy identify what constitutes an exemplary act that
45 may warrant an additional reduction of sentence.

46 Sec. 32. SEX OFFENDER INTERIM STUDY COMMITTEE.
47 The legislative council is requested to authorize a
48 study for the 2005 legislative interim on sexual
49 abuse-related criminal offenses and the sex offender
50 registry. The study recommendations and findings

1 shall include but are not limited to identifying
2 possible changes to sexual abuse-related offenses and
3 the sex offender registry. The study report,
4 including findings and recommendations, shall be
5 submitted to the general assembly for consideration
6 during the 2006 legislative session. The study shall
7 be conducted by a study committee consisting of up to
8 nine members of the general assembly. A chairperson
9 or co-chairpersons shall be designated by the
10 legislative council.

11 DIVISION III

12 ENHANCED CRIMINAL PENALTIES AND

13 STATUTE OF LIMITATIONS

14 Sec. 33. Section 709.8, Code 2005, is amended to
15 read as follows:

16 709.8 LASCIVIOUS ACTS WITH A CHILD.

17 It is unlawful for any person ~~eighteen~~ sixteen
18 years of age or older to perform any of the following
19 acts with a child with or without the child's consent
20 unless married to each other, for the purpose of
21 arousing or satisfying the sexual desires of either of
22 them:

- 23 1. Fondle or touch the pubes or genitals of a
24 child.
- 25 2. Permit or cause a child to fondle or touch the
26 person's genitals or pubes.
- 27 3. Solicit a child to engage in a sex act or
28 solicit a person to arrange a sex act with a child.
- 29 4. Inflict pain or discomfort upon a child or
30 permit a child to inflict pain or discomfort on the
31 person.

32 Any person who violates a provision of this section
33 involving an act included in subsection 1 or 2 shall,
34 upon conviction, be guilty of a class "D" "C" felony.
35 ~~A person who violates a provision of this section and~~
36 ~~who is sentenced to a term of confinement shall also~~
37 ~~be sentenced to an additional term of parole or work~~
38 ~~release not to exceed two years. The board of parole~~
39 ~~shall determine whether the person should be released~~
40 ~~on parole or placed in a work release program. The~~
41 ~~sentence of an additional term of parole or work~~
42 ~~release supervision shall commence immediately upon~~
43 ~~the expiration of the preceding sentence and shall be~~
44 ~~under the terms and conditions as set out in chapter~~
45 ~~906. Violations of parole or work release shall be~~
46 ~~subject to the procedures set out in chapter 905 or~~
47 ~~908 or rules adopted under those chapters. The~~
48 ~~sentence of an additional term of parole or work~~
49 ~~release shall be consecutive to the original term of~~
50 ~~confinement.~~ Any person who violates a provision of

1 this section involving an act included in subsection 3
2 or 4 shall, upon conviction, be guilty of a class "D"
3 felony.

4 Sec. 34. Section 802.2, Code 2005, is amended to
5 read as follows:

6 802.2 SEXUAL ABUSE -- FIRST, SECOND, OR THIRD
7 DEGREE.

8 1. An information or indictment for sexual abuse
9 in the first, second, or third degree committed on or
10 with a person who is under the age of eighteen years
11 shall be found within ten years after the person upon
12 whom the offense is committed attains eighteen years
13 of age, or if the identity of the person against whom
14 the information or indictment is sought is established
15 through the use of a DNA profile, an information or
16 indictment shall be found within three years from the
17 date the identity of the person is identified by the
18 person's DNA profile, whichever is later.

19 2. An information or indictment for any other
20 sexual abuse in the first, second, or third degree
21 shall be found within ten years after its commission,
22 or if the identity of the person against whom the
23 information or indictment is sought is established
24 through the use of a DNA profile, an information or
25 indictment shall be found within three years from the
26 date the identity of the person is identified by the
27 person's DNA profile, whichever is later.

28 3. As used in this section, "identified" means a
29 person's legal name is known and the person has been
30 determined to be the source of the DNA.

31 Sec. 35. Section 901.5, Code 2005, is amended by
32 adding the following new subsection:

33 NEW SUBSECTION. 13. In addition to any other
34 sentence or other penalty imposed against the
35 defendant, the court shall impose a special sentence
36 if required under section 903B.0A or 903B.0B.

37 Sec. 36. NEW SECTION. 902.15 ENHANCED PENALTY --
38 SEXUAL ABUSE OR LASCIVIOUS ACTS WITH A CHILD.

39 1. A person commits a class "A" felony if the
40 person commits a second or subsequent offense
41 involving any combination of the following offenses:

42 a. Sexual abuse in the second degree in violation
43 of section 709.3.

44 b. Sexual abuse in the third degree in violation
45 of section 709.4.

46 c. Lascivious acts with a child in violation of
47 section 709.8, subsection 1 or 2.

48 2. In determining if a violation charged is a
49 second or subsequent offense for purposes of criminal
50 sentencing in this section, each previous violation on

1 which conviction or deferral of judgment was entered
2 prior to the date of the violation charged shall be
3 considered and counted as a separate previous offense,
4 regardless of whether the previous offense occurred
5 before, on, or after the effective date of this Act.
6 Convictions or the equivalent of deferred judgments
7 for violations in any other states under statutes
8 substantially corresponding to the offenses listed in
9 subsection 1 shall be counted as previous offenses.
10 The courts shall judicially notice the statutes of
11 other states which define offenses substantially
12 equivalent to the offenses listed in subsection 1 and
13 can therefore be considered corresponding statutes.

14 Sec. 37. NEW SECTION. 903B.0A SPECIAL SENTENCE
15 -- CLASS "B" OR CLASS "C" FELONIES.

16 A person convicted of a class "C" felony or greater
17 offense under chapter 709, or a class "C" felony under
18 section 728.12, shall also be sentenced, in addition
19 to any other punishment provided by law, to a special
20 sentence committing the person into the custody of the
21 director of the Iowa department of corrections for the
22 rest of the person's life, with eligibility for parole
23 as provided in chapter 906. The special sentence
24 imposed under this section shall commence upon
25 completion of the sentence imposed under any
26 applicable criminal sentencing provisions for the
27 underlying criminal offense and the person shall begin
28 the sentence under supervision as if on parole. The
29 person shall be placed on the corrections continuum in
30 chapter 901B, and the terms and conditions of the
31 special sentence, including violations, shall be
32 subject to the same set of procedures set out in
33 chapters 901B, 905, 906, and chapter 908, and rules
34 adopted under those chapters for persons on parole.
35 The revocation of release shall not be for a period
36 greater than two years upon any first revocation, and
37 five years upon any second or subsequent revocation.
38 A special sentence shall be considered a category "A"
39 sentence for purposes of calculating earned time under
40 section 903A.2.

41 Sec. 38. NEW SECTION. 903B.0B SPECIAL SENTENCE
42 -- CLASS "D" FELONIES OR MISDEMEANORS.

43 A person convicted of a misdemeanor or a class "D"
44 felony offense under chapter 709, section 726.2, or
45 section 728.12 shall also be sentenced, in addition to
46 any other punishment provided by law, to a special
47 sentence committing the person into the custody of the
48 director of the Iowa department of corrections for a
49 period of ten years, with eligibility for parole as
50 provided in chapter 906. The special sentence imposed

1 under this section shall commence upon completion of
2 the sentence imposed under any applicable criminal
3 sentencing provisions for the underlying criminal
4 offense and the person shall begin the sentence under
5 supervision as if on parole. The person shall be
6 placed on the corrections continuum in chapter 901B,
7 and the terms and conditions of the special sentence,
8 including violations, shall be subject to the same set
9 of procedures set out in chapters 901B, 905, 906, and
10 908, and rules adopted under those chapters for
11 persons on parole. The revocation of release shall
12 not be for a period greater than two years upon any
13 first revocation, and five years upon any second or
14 subsequent revocation. A special sentence shall be
15 considered a category "A" sentence for purposes of
16 calculating earned time under section 903A.2.

17 Sec. 39. Section 903B.1, subsection 3, Code 2005,
18 is amended by striking the subsection.

19 Sec. 40. Section 906.15, unnumbered paragraph 1,
20 Code 2005, is amended to read as follows:

21 Unless sooner discharged, a person released on
22 parole shall be discharged when the person's term of
23 parole equals the period of imprisonment specified in
24 the person's sentence, less all time served in
25 confinement. Discharge from parole may be granted
26 prior to such time, when an early discharge is
27 appropriate. The board shall periodically review all
28 paroles, and when the board determines that any person
29 on parole is able and willing to fulfill the
30 obligations of a law-abiding citizen without further
31 supervision, the board shall discharge the person from
32 parole. A parole officer shall periodically review
33 all paroles assigned to the parole officer, and when
34 the parole officer determines that any person assigned
35 to the officer is able and willing to fulfill the
36 obligations of a law-abiding citizen without further
37 supervision, the officer may discharge the person from
38 parole after notification and approval of the district
39 director and notification of the board of parole. In
40 any event, discharge from parole shall terminate the
41 person's sentence. If a person has been sentenced to
42 a special sentence under section 903B.0A or 903B.0B,
43 the person may be discharged early from the sentence
44 in the same manner as any other person on parole.

45 However, a person convicted of a violation of section
46 709.3, 709.4, or 709.8 committed on or with a child,
47 or a person serving a sentence under section 902.12,
48 shall not be discharged from parole until the person's
49 term of parole equals the period of imprisonment
50 specified in the person's sentence, less all time

1 served in confinement.

2 Sec. 41. Section 908.5, Code 2005, is amended to
3 read as follows:

4 908.5 DISPOSITION.

5 1. If a violation of parole is established, the
6 administrative parole judge may continue the parole
7 with or without any modification of the conditions of
8 parole. The administrative parole judge may revoke
9 the parole and require the parolee to serve the
10 sentence originally imposed, or may revoke the parole
11 and reinstate the parolee's work release status.

12 2. If the person is serving a special sentence
13 under chapter 903B, the administrative parole judge
14 may revoke the release. Upon the revocation of
15 release, the person shall not serve the entire length
16 of the special sentence imposed, and the revocation
17 shall be for a period not to exceed two years in a
18 correctional institution upon a first revocation and
19 for a period not to exceed five years in a
20 correctional institution upon a second or subsequent
21 revocation.

22 3. The order of the administrative parole judge
23 shall contain findings of fact, conclusions of law,
24 and a disposition of the matter.

25 DIVISION IV

26 VICTIM RIGHTS

27 Sec. 42. NEW SECTION. 235D.1 CRIMINAL HISTORY
28 CHECK -- APPLICANTS AT DOMESTIC ABUSE OR SEXUAL
29 ASSAULT CENTERS.

30 An applicant for employment at a domestic abuse or
31 sexual assault center shall be subject to a national
32 criminal history check through the federal bureau of
33 investigation. The domestic abuse or sexual assault
34 center shall request the criminal history check and
35 shall provide the applicant's fingerprints to the
36 department of public safety for submission through the
37 state criminal history repository to the federal
38 bureau of investigation. The applicant shall
39 authorize release of the results of the criminal
40 history check to the domestic abuse or sexual assault
41 center. The applicant shall pay the actual cost of
42 the fingerprinting and criminal history check, if any.
43 Unless the criminal history check was completed within
44 the ninety calendar days prior to the date the
45 application is received by the domestic abuse or
46 sexual assault center, the center shall reject and
47 return the application to the applicant. The results
48 of a criminal history check conducted pursuant to this
49 subsection shall not be considered a public record
50 under chapter 22. For purposes of this section,

1 "domestic abuse or sexual assault center" means a
2 facility which is used to house victims of domestic
3 abuse or sexual assault, and is owned, operated, or
4 maintained by a nonprofit organization.

5 Sec. 43. NEW SECTION. 709.22 PREVENTION OF
6 FURTHER SEXUAL ASSAULT -- NOTIFICATION OF RIGHTS.

7 If a peace officer has reason to believe that a
8 sexual assault as defined in section 915.40 has
9 occurred, the officer shall use all reasonable means
10 to prevent further violence including but not limited
11 to the following:

12 1. If requested, remaining on the scene of the
13 alleged sexual assault as long as there is a danger to
14 the victim's physical safety without the presence of a
15 peace officer, including but not limited to staying in
16 the dwelling unit, or if unable to remain on the
17 scene, assisting the victim in leaving the residence.

18 2. Assisting a victim in obtaining medical
19 treatment necessitated by the sexual assault,
20 including providing assistance to the victim in
21 obtaining transportation to the emergency room of the
22 nearest hospital.

23 3. Providing a victim with immediate and adequate
24 notice of the victim's rights. The notice shall
25 consist of handing the victim a copy of the following
26 statement written in English and Spanish, asking the
27 victim to read the statement, and asking whether the
28 victim understands the rights:

29 "You have the right to ask the court for help with
30 any of the following on a temporary basis:

31 a. Keeping your attacker away from you, your home,
32 and your place of work.

33 b. The right to stay at your home without
34 interference from your attacker.

35 c. The right to seek a no-contact order under
36 section 709.20 or 915.22, if your attacker is arrested
37 for sexual assault.

38 You have the right to register as a victim with the
39 county attorney under section 915.12.

40 You have the right to file a complaint for threats,
41 assaults, or other related crimes.

42 You have the right to seek restitution against your
43 attacker for harm to you or your property.

44 You have the right to apply for victim
45 compensation.

46 You have the right to contact the county attorney
47 or local law enforcement to determine the status of
48 your case.

49 If you are in need of medical treatment, you have
50 the right to request that the officer present assist

1 you in obtaining transportation to the nearest
2 hospital or otherwise assist you.

3 You have the right to a sexual assault examination
4 performed at state expense.

5 If you believe that police protection is needed for
6 your physical safety, you have the right to request
7 that the officer present remain at the scene until you
8 and other affected parties can leave or until safety
9 is otherwise ensured."

10 The notice shall also contain the telephone numbers
11 of shelters, support groups, and crisis lines
12 operating in the area.

13 Sec. 44. Section 915.10, subsections 1 and 2, Code
14 2005, are amended to read as follows:

15 1. "Notification" means mailing by regular mail or
16 providing for hand delivery of appropriate information
17 or papers. However, this notification procedure does
18 not prohibit an office, agency, or department from
19 also providing appropriate information to a registered
20 victim by telephone, electronic mail, or other means.

21 2. "Registered" means having provided the county
22 attorney with the victim's written request for
23 registration and current mailing address and telephone
24 number. If an automated victim notification system is
25 implemented pursuant to section 915.10A, "registered"
26 also means having filed a request for registration
27 with the system.

28 Sec. 45. NEW SECTION. 915.10A AUTOMATED VICTIM
29 NOTIFICATION SYSTEM.

30 1. An automated victim notification system may be
31 utilized to assist public officials in informing crime
32 victims, the victim's family, or other interested
33 persons as provided in this subchapter and where
34 otherwise specifically provided. The system shall
35 disseminate the information to registered users
36 through telephonic, electronic, or other means of
37 access.

38 2. An office, agency, or department may satisfy a
39 notification obligation to registered victims required
40 by this subchapter through participation in the system
41 to the extent information is available for
42 dissemination through the system. Nothing in this
43 section shall relieve a notification obligation under
44 this subchapter due to the unavailability of
45 information for dissemination through the system.

46 3. Notwithstanding section 232.147, information
47 concerning juveniles charged with a felony offense
48 shall be released to the extent necessary to comply
49 with this section.

50 Sec. 46. Section 915.11, Code 2005, is amended to

1 read as follows:

2 915.11 INITIAL NOTIFICATION BY LAW ENFORCEMENT.

3 A local police department or county sheriff's
4 department shall advise a victim of the right to
5 register with the county attorney, and shall provide a
6 request-for-registration form to each victim. If an
7 automated victim notification system is available
8 pursuant to section 915.10A, a local police department
9 or county sheriff's department shall provide a
10 telephone number and website to each victim to
11 register with the system.

12 Sec. 47. Section 915.12, Code 2005, is amended to
13 read as follows:

14 915.12 REGISTRATION.

15 ~~1. The county attorney shall be the sole registrar~~
16 ~~of victims under this subchapter.~~

17 ~~2.~~ 1. A victim may register by filing a written
18 request-for-registration form with the county
19 attorney. The county attorney shall notify the
20 victims in writing and advise them of their
21 registration and rights under this subchapter.

22 ~~3.~~ The county attorney shall provide a registered
23 victim list to the offices, agencies, and departments
24 required to provide information under this subchapter
25 for notification purposes.

26 2. If an automated victim notification system, the
27 victim's family, is available pursuant to section
28 915.10A, a victim, the victim's family, or other
29 interested person may register with the system by
30 filing a request for registration through written,
31 telephonic, or electronic means.

32 ~~4.~~ 3. Notwithstanding chapter 22 or any other
33 contrary provision of law, ~~a victim's~~ the registration
34 of a victim, victim's family, or other interested
35 person shall be strictly maintained in a separate
36 confidential file or other confidential medium, and
37 shall be available only to the offices, agencies, and
38 departments required to provide information under this
39 subchapter.

40 Sec. 48. Section 915.29, Code 2005, is amended by
41 adding the following new unnumbered paragraph:

42 NEW UNNUMBERED PARAGRAPH. The notification
43 required pursuant to this section may occur through
44 the automated victim notification system referred to
45 in section 915.10A to the extent such information is
46 available for dissemination through the system.

47 Sec. 49. Section 915.45, Code 2005, is amended by
48 adding the following new unnumbered paragraph:

49 NEW UNNUMBERED PARAGRAPH. The notification
50 required pursuant to this section may occur through

1 the automated victim notification system referred to
2 in section 915.10A to the extent such information is
3 available for dissemination through the system.

DIVISION V

TASK FORCE

6 Sec. 50. SEX OFFENDER TREATMENT AND SUPERVISION
7 TASK FORCE.

8 1. The division of criminal and juvenile justice
9 planning shall establish a task force to study and
10 make periodic recommendations for treating and
11 supervising sex offenders in correctional institutions
12 and in the community. The task force shall file a
13 report with recommendations with the general assembly
14 by January 15, 2006. The task force shall study the
15 effectiveness of electronic monitoring and the
16 potential effects and costs associated with the
17 special sentence created in this Act. The task force
18 shall study risk assessment models created for sex
19 offenders. The task force shall also review this
20 state's efforts and the efforts of other states to
21 implement treatment programs and make recommendations
22 as to the best treatment options available for sex
23 offenders. The task force shall also develop a plan
24 to integrate state government databases for the
25 purpose of updating addresses of persons on the sex
26 offender registry.

27 2. Members of the task force shall include
28 representatives of the following state agencies and
29 organizations:

30 a. One representative of the department of human
31 services.

32 b. One representative of the department of public
33 safety.

34 c. One representative of the Iowa state sheriffs
35 and deputies association.

36 d. One representative of the Iowa county attorneys
37 association.

38 e. One representative of the department of
39 corrections.

40 f. One representative of the board of parole.

41 g. One representative of a judicial district
42 department of correctional services.

43 h. One representative of the department of
44 justice.

45 i. One representative of the state public
46 defender.

47 j. One representative of the Iowa coalition
48 against sexual assault.

DIVISION VI

STATE MANDATE

S-3238

Page 22

1 Sec. 51. IMPLEMENTATION OF ACT. Section 25B.2,
2 subsection 3, shall not apply to this Act."
3 2. Title page, by striking lines 1 through 5 and
4 inserting the following: "An Act relating to criminal
5 sentencing, victim notification, and the sex offender
6 registry, by establishing a special sentence for
7 certain offenders, requiring DNA testing of certain
8 offenders and lengthening the time an information or
9 indictment may be found in certain offenses where DNA
10 evidence is available, requiring sex offender
11 treatment in order to accumulate earned time,
12 restricting certain persons from residing with sex
13 offenders, establishing a sex offender treatment and
14 supervision task force, providing penalties, and
15 providing effective dates."

By ROBERT E. DVORSKY
CHARLES W. LARSON, JR.
NANCY BOETTGER
EUGENE S. FRAISE

WALLY E. HORN
LARRY MCKIBBEN
KEITH A. KREIMAN
DAVID MILLER

S-3238 FILED MAY 3, 2005
ADOPTED

HOUSE FILE 619

S-3242

1 Amend the amendment, S-3238, to House File 619, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. Page 12, by inserting after line 45 the
5 following:
6 "Sec. ____ . Section 903B.1, Code 2005, is amended
7 by adding the following new subsection:
8 NEW SUBSECTION. 7. A person who administers
9 medroxyprogesterone acetate or any other
10 pharmaceutical agent shall not be liable for civil
11 damages for administering such pharmaceutical agents
12 pursuant to this chapter."
13 2. By renumbering as necessary.

By BOB BRUNKHORST
BRAD ZAUN

S-3242 FILED MAY 3, 2005
ADOPTED

SENATE AMENDMENT TO
HOUSE FILE 619

H-1628

1 Amend House File 619, as amended, passed, and
2 reprinted by the House, as follows:

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

5 "DIVISION I
6 DNA PROFILING

7 Section 1. NEW SECTION. 81.1 DEFINITIONS.

8 As used in this chapter, unless the context
9 otherwise requires:

10 1. "DNA" means deoxyribonucleic acid.

11 2. "DNA databank" means the repository for DNA
12 samples obtained pursuant to section 81.4.

13 3. "DNA database" means the collection of DNA
14 profiles and DNA records.

15 4. "DNA profile" means the objective form of the
16 results of DNA analysis performed on a DNA sample.
17 The results of all DNA identification analysis on an
18 individual's DNA sample are also collectively referred
19 to as the DNA profile of an individual.

20 5. "DNA profiling" means the procedure established
21 by the division of criminal investigation, department
22 of public safety, for determining a person's genetic
23 identity.

24 6. "DNA record" means the DNA sample and DNA
25 profile, and other records in the DNA database and DNA
26 data bank used to identify a person.

27 7. "DNA sample" means a biological sample provided
28 by any person required to submit a DNA sample or a DNA
29 sample submitted for any other purpose under section
30 81.4.

31 8. "Person required to submit a DNA sample" means
32 a person convicted, adjudicated delinquent, receiving
33 a deferred judgment, or found not guilty by reason of
34 insanity of an offense requiring DNA profiling
35 pursuant to section 81.2. "Person required to submit
36 a DNA sample" also means a person determined to be a
37 sexually violent predator pursuant to section 229A.7.

38 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO
39 SUBMIT A DNA SAMPLE.

40 1. A person who receives a deferred judgment for a
41 felony or against whom a judgment or conviction for a
42 felony has been entered shall be required to submit a
43 DNA sample for DNA profiling pursuant to section 81.4.

44 2. A person determined to be a sexually violent
45 predator pursuant to chapter 229A shall be required to
46 submit a DNA sample for DNA profiling pursuant to
47 section 81.4 prior to discharge or placement in a
48 transitional release program.

49 3. A person found not guilty by reason of insanity
50 of an offense that requires DNA profiling shall be

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1 required to submit a DNA sample for DNA profiling
2 pursuant to section 81.4 as part of the person's
3 treatment management program.

4 4. A juvenile adjudicated delinquent of an offense
5 that requires DNA profiling of an adult offender shall
6 be required to submit a DNA sample for DNA profiling
7 pursuant to section 81.4 as part of the disposition of
8 the juvenile's case.

9 5. An offender placed on probation shall
10 immediately report to the judicial district department
11 of correctional services after sentencing so it can be
12 determined if the offender has been convicted of an
13 offense requiring DNA profiling. If it is determined
14 by the judicial district that DNA profiling is
15 required, the offender shall immediately submit a DNA
16 sample.

17 6. A person required to register as a sex
18 offender.

19 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA
20 DATABASE AND DNA DATABANK.

21 1. A state DNA database and a state DNA databank
22 are established under the control of the division of
23 criminal investigation, department of public safety.
24 The division of criminal investigation shall conduct
25 DNA profiling of a DNA sample submitted in accordance
26 with this section.

27 2. A DNA sample shall be submitted, and the
28 division of criminal investigation shall store and
29 maintain DNA records in the DNA database and DNA
30 databank for persons required to submit a DNA sample.

31 3. A DNA sample may be submitted, and the division
32 of criminal investigation shall store and maintain DNA
33 records in the DNA database and DNA databank for any
34 of the following:

35 a. Crime scene evidence and forensic casework.

36 b. A relative of a missing person.

37 c. An anonymous DNA profile used for forensic
38 validation, forensic protocol development, or quality
39 control purposes, or for the establishment of a
40 population statistics database.

41 4. A fingerprint record of a person required to
42 submit a DNA sample shall also be submitted to the
43 division of criminal investigation with the DNA sample
44 to verify the identity of the person required to
45 submit a DNA sample.

46 Sec. 4. NEW SECTION. 81.4 COLLECTING,
47 SUBMITTING, ANALYZING, IDENTIFYING, AND STORING DNA
48 SAMPLES AND DNA RECORDS.

49 1. The division of criminal investigation shall
50 adopt rules for the collection, submission, analysis,

1 identification, storage, and disposition of DNA
2 records.

3 2. A supervising agency having control, custody,
4 or jurisdiction over a person shall collect a DNA
5 sample from a person required to submit a DNA sample.
6 The supervising agency shall collect a DNA sample,
7 upon admittance to the pertinent institution or
8 facility, of the person required to submit a DNA
9 sample or at a determined date and time set by the
10 supervising agency. If a person required to submit a
11 DNA sample is confined at the time a DNA sample is
12 required, the person shall submit a DNA sample as soon
13 as practicable. If a person required to submit a DNA
14 sample is not confined after the person is required to
15 submit a DNA sample, the supervising agency shall
16 determine the date and time to collect the DNA sample.

17 3. A person required to submit a DNA sample who
18 refuses to submit a DNA sample may be subject to
19 contempt proceedings pursuant to chapter 665 until the
20 DNA sample is submitted.

21 4. The division of criminal investigation shall
22 conduct DNA profiling on a DNA sample or may contract
23 with a private entity to conduct the DNA profiling.

24 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL
25 LIABILITY -- LIMITATION.

26 A person who collects a DNA sample shall not be
27 civilly or criminally liable for the collection of the
28 DNA sample if the person performs the person's duties
29 in good faith and in a reasonable manner according to
30 generally accepted medical practices or in accordance
31 with the procedures set out in the administrative
32 rules of the department of public safety adopted
33 pursuant to section 81.4.

34 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

35 1. A person who knowingly or intentionally does
36 any of the following commits an aggravated
37 misdemeanor:

38 a. Discloses any part of a DNA record to a person
39 or agency that is not authorized by the division of
40 criminal investigation to have access to the DNA
41 record.

42 b. Uses or obtains a DNA record for a purpose
43 other than what is authorized under this chapter.

44 2. A person who knowingly or intentionally alters
45 or attempts to alter a DNA sample, falsifies the
46 source of a DNA sample, or materially alters a
47 collection container used to collect the DNA sample,
48 commits a class "D" felony.

49 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST
50 NOT INVALIDATED.

1 The detention, arrest, or conviction of a person
2 based upon a DNA database match is not invalidated if
3 it is determined that the DNA sample or DNA profile
4 was obtained or placed into the DNA database by
5 mistake or error.

6 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

7 1. A DNA record shall be considered a confidential
8 record and disclosure of a DNA record is only
9 authorized pursuant to this section.

10 2. Confidential DNA records under this section may
11 be released to the following agencies for law
12 enforcement identification purposes:

13 a. Any criminal or juvenile justice agency as
14 defined in section 692.1.

15 b. Any criminal or juvenile justice agency in
16 another jurisdiction that meets the definition of a
17 criminal or juvenile justice agency as defined in
18 section 692.1.

19 3. The division of criminal investigation shall
20 share the DNA record information with the appropriate
21 federal agencies for use in a national DNA database.

22 4. A DNA record or other forensic information
23 developed pursuant to this chapter may be released for
24 use in a criminal or juvenile delinquency proceeding
25 in which the state is a party and where the DNA record
26 or forensic information is relevant and material to
27 the subject of the proceeding. Such a record or
28 information may become part of a public transcript or
29 other public recording of such a proceeding.

30 5. A DNA record or other forensic information may
31 be released pursuant to a court order for criminal
32 defense purposes to a defendant, who shall have access
33 to DNA samples and DNA profiles related to the case in
34 which the defendant is charged.

35 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA
36 RECORDS.

37 1. A person whose DNA record has been included in
38 the DNA database or DNA databank established pursuant
39 to section 81.3 may request, in writing to the
40 division of criminal investigation, expungement of the
41 DNA record from the DNA database and DNA databank
42 based upon the person's conviction, adjudication, or
43 civil commitment which caused the submission of the
44 DNA sample being reversed on appeal and the case
45 dismissed. The written request shall contain a
46 certified copy of the final court order reversing the
47 conviction, adjudication, or civil commitment, and a
48 certified copy of the dismissal, and any other
49 information necessary to ascertain the validity of the
50 request.

1 2. The division of criminal investigation, upon
2 receipt of a written request that validates reversal
3 on appeal of a person's conviction, adjudication, or
4 commitment, and subsequent dismissal of the case, or
5 upon receipt of a written request by a person who
6 voluntarily submitted a DNA sample under section 81.3,
7 subsection 3, paragraph "b", or upon receipt of a
8 written request by a person who voluntarily submitted
9 a DNA sample pursuant to section 81.3, subsection 3,
10 paragraph "b", shall expunge all of the DNA records
11 and identifiable information of the person in the DNA
12 database and DNA databank. However, if the division
13 of criminal investigation determines that the person
14 is otherwise obligated to submit a DNA sample, the DNA
15 records shall not be expunged. If the division of
16 criminal investigation denies an expungement request,
17 the division shall notify the person requesting the
18 expungement of the decision not to expunge the DNA
19 record and the reason supporting its decision. The
20 division of criminal investigation decision is subject
21 to judicial review pursuant to chapter 17A. The
22 department of public safety shall adopt rules
23 governing the expungement procedure and a review
24 process.

25 3. The division of criminal investigation is not
26 required to expunge or destroy a DNA record pursuant
27 to this section, if expungement or destruction of the
28 DNA record would destroy evidence related to another
29 person.

30 Sec. 10. NEW SECTION. 81.10 DNA PROFILING AFTER
31 CONVICTION.

32 1. A defendant who has been convicted of a felony
33 and who has not been required to submit a DNA sample
34 for DNA profiling may make a motion to the court for
35 an order to require that DNA analysis be performed on
36 evidence collected in the case for which the person
37 stands convicted.

38 2. The motion shall state the following:

39 a. The specific crimes for which the defendant
40 stands convicted in this case.

41 b. The facts of the underlying case, as proven at
42 trial or admitted to during a guilty plea proceeding.

43 c. Whether any of the charges include sexual abuse
44 or involve sexual assault, and if so, whether a sexual
45 assault examination was conducted and evidence
46 preserved, if known.

47 d. Whether identity was at issue or contested by
48 the defendant.

49 e. Whether the defendant offered an alibi, and if
50 so, testimony corroborating the alibi and, from whom.

1 f. Whether eyewitness testimony was offered, and
2 if so from whom.

3 g. Whether any issues of police or prosecutor
4 misconduct have been raised in the past or are being
5 raised by the motion.

6 h. The type of inculpatory evidence admitted into
7 evidence at trial or admitted to during a guilty plea
8 proceeding.

9 i. Whether blood testing or other biological
10 evidence testing was conducted previously in
11 connection with the case and, if so, by whom and to
12 the result, if known.

13 j. What biological evidence exists and, if known,
14 the agency or laboratory storing the evidence that the
15 defendant seeks to have tested.

16 k. Why the requested analysis of DNA evidence is
17 material to the issue in the case and not merely
18 cumulative or impeaching.

19 l. Why the DNA evidence would have changed the
20 outcome of the trial or invalidated a guilty plea if
21 DNA profiling had been conducted prior to the
22 conviction.

23 3. A motion filed under this section shall be
24 filed in the county where the defendant was convicted,
25 and notice of the motion shall be served by certified
26 mail upon the county attorney and, if known, upon the
27 state, local agency, or laboratory holding evidence
28 described in subsection 2, paragraph "k". The county
29 attorney shall have sixty days to file an answer to
30 the motion.

31 4. Any DNA profiling of the defendant or other
32 biological evidence testing conducted by the state or
33 by the defendant shall be disclosed and the results of
34 such profiling or testing described in the motion or
35 answer.

36 5. If the evidence requested to be tested was
37 previously subjected to DNA or other biological
38 analysis by either party, the court may order the
39 disclosure of the results of such testing, including
40 laboratory reports, notes, and underlying data, to the
41 court and the parties.

42 6. The court may order a hearing on the motion to
43 determine if evidence should be subjected to DNA
44 analysis.

45 7. The court shall grant the motion if all of the
46 following apply:

47 a. The evidence subject to DNA testing is
48 available and in a condition that will permit
49 analysis.

50 b. A sufficient chain of custody has been

1 established for the evidence.

2 c. The identity of the person who committed the
3 crime for which the defendant was convicted was a
4 significant issue in the crime for which the defendant
5 was convicted.

6 d. The evidence subject to DNA analysis is
7 material to, and not merely cumulative or impeaching
8 of, evidence included in the trial record or admitted
9 to at a guilty plea proceeding.

10 e. DNA analysis of the evidence would raise a
11 reasonable probability that the defendant would not
12 have been convicted if DNA profiling had been
13 available at the time of the conviction and had been
14 conducted prior to the conviction.

15 8. Upon the court granting a motion filed pursuant
16 to this section, DNA analysis of evidence shall be
17 conducted within the guidelines generally accepted by
18 the scientific community. The defendant shall provide
19 DNA samples for testing if requested by the state.

20 9. Results of DNA analysis conducted pursuant to
21 this section shall be reported to the parties and to
22 the court and may be provided to the board of parole,
23 department of corrections, and criminal and juvenile
24 justice agencies, as defined in section 692.1, for use
25 in the course of investigations and prosecutions, and
26 for consideration in connection with requests for
27 parole, pardon, reprieve, and commutation. DNA
28 samples obtained pursuant to this section may be
29 included in the DNA databank, and DNA profiles and DNA
30 records developed pursuant to this section may be
31 included in the DNA database.

32 10. A criminal or juvenile justice agency, as
33 defined in section 692.1, shall maintain DNA samples
34 and evidence that could be tested for DNA for a period
35 of three years beyond the limitations for the
36 commencement of criminal actions as set forth in
37 chapter 802. This section does not create a cause of
38 action for damages or a presumption of spoliation in
39 the event evidence is no longer available for testing.

40 11. If the court determines a defendant who files
41 a motion under this section is indigent, the defendant
42 shall be entitled to appointment of counsel as
43 provided in chapter 815.

44 12. If the court determines after DNA analysis
45 ordered pursuant to this section that the results
46 indicate conclusively that the DNA profile of the
47 defendant matches the profile from the analyzed
48 evidence used against the defendant, the court may
49 order the defendant to pay the costs of these
50 proceedings, including costs of all testing, court

1 costs, and costs of court-appointed counsel, if any.

2 Sec. 11. Section 229A.7, Code 2005, is amended by
3 adding the following new subsection:

4 NEW SUBSECTION. 5A. If the court or jury
5 determines that the respondent is a sexually violent
6 predator, the court shall order the respondent to
7 submit a DNA sample for DNA profiling pursuant to
8 section 81.4.

9 Sec. 12. Section 232.52, Code 2005, is amended by
10 adding the following new subsection:

11 NEW SUBSECTION. 10. The court shall order a
12 juvenile adjudicated a delinquent for an offense that
13 requires DNA profiling under section 81.2 to submit a
14 DNA sample for DNA profiling pursuant to section 81.4.

15 Sec. 13. Section 669.14, Code 2005, is amended by
16 adding the following new subsection:

17 NEW SUBSECTION. 15. Any claim arising from or
18 related to the collection of a DNA sample for DNA
19 profiling pursuant to section 81.4 or a DNA profiling
20 procedure performed by the division of criminal
21 investigation, department of public safety.

22 Sec. 14. Section 901.5, subsection 8A, Code 2005,
23 is amended to read as follows:

24 8A. a. The court shall order DNA profiling of a
25 defendant convicted of an offense that requires
26 profiling under section ~~13.10~~ 81.2.

27 b. Notwithstanding section ~~13.10~~ 81.2, the court
28 may order the defendant to provide a ~~physical specimen~~
29 DNA sample to be submitted for DNA profiling if
30 appropriate. In determining the appropriateness of
31 ordering DNA profiling, the court shall consider the
32 deterrent effect of DNA profiling, the likelihood of
33 repeated offenses by the defendant, and the
34 seriousness of the offense.

35 Sec. 15. Section 906.4, unnumbered paragraph 3,
36 Code 2005, is amended to read as follows:

37 ~~Notwithstanding section 13.10, the~~ The board may
38 order the defendant to provide a physical specimen to
39 be submitted for DNA profiling as a condition of
40 parole or work release, if ~~appropriate~~ a DNA profile
41 has not been previously conducted pursuant to chapter
42 81. In determining the appropriateness of ordering
43 DNA profiling, the board shall consider the deterrent
44 effect of DNA profiling, the likelihood of repeated
45 offenses by the defendant, and the seriousness of the
46 offense.

47 Sec. 16. 2002 Iowa Acts, chapter 1080, is
48 repealed.

49 Sec. 17. Section 13.10, Code 2005, is repealed.

50 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE

1 PRIOR TO EFFECTIVE DATE OF THIS DIVISION OF THIS ACT.
2 A person convicted, adjudicated a delinquent, civilly
3 committed as a sexually violent predator, or found not
4 guilty by reason of insanity, prior to the effective
5 date of this Act, who would otherwise be required to
6 submit a DNA sample under this Act, and who is under
7 the custody, control, or jurisdiction of a supervising
8 agency, shall submit a DNA sample prior to being
9 released from the supervising agency's custody,
10 control, or jurisdiction.

11 Sec. 19. EFFECTIVE DATE. This division of this
12 Act, being deemed of immediate importance, takes
13 effect upon enactment.

14 DIVISION II

15 SEX OFFENDER REGISTRY -- TREATMENT -- STUDY

16 Sec. 20. Section 232.68, subsection 2, Code 2005,
17 is amended by adding the following new paragraph:

18 NEW PARAGRAPH. i. Cohabitation with a person on
19 the sex offender registry under chapter 692A in
20 violation of section 726.6.

21 Sec. 21. Section 692A.1, subsection 8, Code 2005,
22 is amended to read as follows:

23 8. "Residence" means the place where a person
24 sleeps, which may include more than one location, and
25 may be mobile or transitory, including a shelter or
26 group home.

27 Sec. 22. Section 692A.2, Code 2005, is amended by
28 adding the following new subsection:

29 NEW SUBSECTION. 1A. If a person is required to
30 register for a period of ten years under subsection 1
31 and the period under subsection 1 has expired, the
32 person shall be required to remain on the registry if
33 the person has been sentenced to a special sentence as
34 required under section 903B.0A or 903B.0B, for a
35 period equal to the term of the special sentence.

36 Sec. 23. Section 692A.4, Code 2005, is amended to
37 read as follows:

38 692A.4 VERIFICATION OF ADDRESS AND TAKING OF
39 PHOTOGRAPH.

40 1. The address of a person required to register
41 under this chapter shall be verified annually as
42 follows:

43 a. On a date which falls within the month in which
44 the person was initially required to register, the
45 department shall mail a verification form to the last
46 reported address of the person. Verification forms
47 shall not be forwarded to the person who is required
48 to register under this chapter if the person no longer
49 resides at the address, but shall be returned to the
50 department.

1 b. The person shall complete and mail the
2 verification to the department within ten days of
3 receipt of the form.

4 c. The verification form shall be signed by the
5 person, and state the address at which the person
6 resides. If the person is in the process of changing
7 residences, the person shall state that fact as well
8 as the old and new addresses or places of residence.

9 2. Verification of address for a person who has
10 been convicted of an offense under the laws of this
11 state or of another state which would qualify the
12 person as a sexually violent predator shall be
13 accomplished in the same manner as in subsection 1,
14 except that the verification shall be done every three
15 months at times established by the department.

16 3. A photograph of a person required to register
17 under this chapter shall be updated, at a minimum,
18 annually. When the department mails the address
19 verification notice in subsection 1, the department
20 shall also enclose a form informing the person to
21 annually submit to being photographed by the sheriff
22 of the county of the person's residence within ten
23 days of receipt of the address verification form. The
24 sheriff shall send the updated photograph to the
25 department within ten days of the photograph being
26 taken and the department shall post the updated
27 photograph on the sex offender registry's web page.
28 The sheriff may require the person to submit to being
29 photographed by the sheriff more than once a year by
30 mailing another notice informing the person to submit
31 to being photographed.

32 Sec. 24. NEW SECTION. 692A.4A ELECTRONIC
33 MONITORING.

34 A person required to register under this chapter
35 who is placed on probation, parole, work release,
36 special sentence, or any other type of conditional
37 release, may be supervised by an electronic tracking
38 and monitoring system in addition to any other
39 conditions of supervision.

40 Sec. 25. Section 692A.5, subsection 1, Code 2005,
41 is amended by adding the following new paragraph:

42 NEW PARAGRAPH. i. Inform the person that the
43 person must, at a minimum, annually submit to being
44 photographed by the sheriff of the county of the
45 person's residence.

46 Sec. 26. Section 692A.13, subsection 3, Code 2005,
47 is amended to read as follows:

48 3. Any member of the public may contact a county
49 sheriff's office or police department to request
50 relevant information from the registry regarding a

1 specific person required to register under this
2 chapter. ~~The request for information shall be in~~
3 ~~writing, and A person making a request for relevant~~
4 information may make the request by telephone, in
5 writing, or in person, and the request shall include
6 the name of the person and at least one of the
7 following identifiers pertaining to the person about
8 whom the information is sought:

- 9 a. The date of birth of the person.
- 10 b. The social security number of the person.
- 11 c. The address of the person.

12 A county sheriff or police department shall not
13 charge a fee relating to a request for relevant
14 information.

15 Sec. 27. Section 692A.13, subsection 2, paragraph
16 b, Code 2005, is amended to read as follows:

17 b. The general public, including public and
18 private agencies, organizations, public places, ~~public~~
19 ~~and private schools~~, child care facilities, religious
20 and youth organizations, neighbors, neighborhood
21 associations, community meetings, and employers.
22 Registry information may be distributed to the public
23 through printed materials, visual or audio press
24 releases, radio communications, or through a criminal
25 or juvenile justice agency's web page.

26 Sec. 28. Section 692A.13, Code 2005, is amended by
27 adding the following new subsection:

28 NEW SUBSECTION. 2A. When a person required to
29 register under this chapter moves into a school
30 district or moves within a school district, the county
31 sheriff of the county of the person's new residence
32 shall provide relevant information from the sex
33 offender registry to the administrative office of the
34 school district in which the person required to
35 register resides, and shall also provide relevant
36 information to any private school near the person's
37 residence.

38 Sec. 29. Section 692A.13, subsection 5, Code 2005,
39 is amended to read as follows:

40 5. Relevant information provided to the general
41 public may include the offender's name, address, a
42 photograph, locations frequented by the offender,
43 relevant criminal history information from the
44 registry, and any other relevant information.
45 Relevant information provided to the public shall not
46 include the identity of any victim. For purposes of
47 inclusion in the sex offender registry's web page or
48 dissemination to the general public, a conviction for
49 incest shall be disclosed as either a violation of
50 section 709.4 or 709.8.

1 Sec. 30. Section 726.6, subsection 1, Code 2005,
2 is amended by adding the following new paragraph:
3 NEW PARAGRAPH. h. Cohabits with a person after
4 knowing the person is required to register or is on
5 the sex offender registry as a sex offender under
6 chapter 692A. However, this paragraph does not apply
7 to a person who is a parent, guardian, or a person
8 having custody or control over a child or a minor who
9 is required to register as a sex offender.

10 Sec. 31. Section 903A.2, subsection 1, paragraph
11 a, Code 2005, is amended to read as follows:

12 a. Category "A" sentences are those sentences
13 which are not subject to a maximum accumulation of
14 earned time of fifteen percent of the total sentence
15 of confinement under section 902.12. To the extent
16 provided in subsection 5, category "A" sentences also
17 include life sentences imposed under section 902.1.
18 An inmate of an institution under the control of the
19 department of corrections who is serving a category
20 "A" sentence is eligible for a reduction of sentence
21 equal to one and two-tenths days for each day the
22 inmate demonstrates good conduct and satisfactorily
23 participates in any program or placement status
24 identified by the director to earn the reduction. The
25 programs include but are not limited to the following:

- 26 (1) Employment in the institution.
- 27 (2) Iowa state industries.
- 28 (3) An employment program established by the
29 director.
- 30 (4) A treatment program established by the
31 director.
- 32 (5) An inmate educational program approved by the
33 director.

34 However, an inmate required to participate in a sex
35 offender treatment program shall not be eligible for a
36 reduction of sentence unless the inmate participates
37 in and completes a sex offender treatment program
38 established by the director.

39 An inmate serving a category "A" sentence is
40 eligible for an additional reduction of sentence of up
41 to three hundred sixty-five days of the full term of
42 the sentence of the inmate for exemplary acts. In
43 accordance with section 903A.4, the director shall by
44 policy identify what constitutes an exemplary act that
45 may warrant an additional reduction of sentence.

46 Sec. 32. Section 903B.1, Code 2005, is amended by
47 adding the following new subsection:

48 NEW SUBSECTION. 7. A person who administers
49 medroxyprogesterone acetate or any other
50 pharmaceutical agent shall not be liable for civil

1 damages for administering such pharmaceutical agents
 2 pursuant to this chapter.
 3 Sec. 33. SEX OFFENDER INTERIM STUDY COMMITTEE.
 4 The legislative council is requested to authorize a
 5 study for the 2005 legislative interim on sexual
 6 abuse-related criminal offenses and the sex offender
 7 registry. The study recommendations and findings
 8 shall include but are not limited to identifying
 9 possible changes to sexual abuse-related offenses and
 10 the sex offender registry. The study report,
 11 including findings and recommendations, shall be
 12 submitted to the general assembly for consideration
 13 during the 2006 legislative session. The study shall
 14 be conducted by a study committee consisting of up to
 15 nine members of the general assembly. A chairperson
 16 or co-chairpersons shall be designated by the
 17 legislative council.

18 DIVISION III
 19 ENHANCED CRIMINAL PENALTIES AND
 20 STATUTE OF LIMITATIONS

21 Sec. 34. Section 709.8, Code 2005, is amended to
 22 read as follows:

23 709.8 LASCIVIOUS ACTS WITH A CHILD.

24 It is unlawful for any person ~~eighteen~~ sixteen
 25 years of age or older to perform any of the following
 26 acts with a child with or without the child's consent
 27 unless married to each other, for the purpose of
 28 arousing or satisfying the sexual desires of either of
 29 them:

- 30 1. Fondle or touch the pubes or genitals of a
 31 child.
- 32 2. Permit or cause a child to fondle or touch the
 33 person's genitals or pubes.
- 34 3. Solicit a child to engage in a sex act or
 35 solicit a person to arrange a sex act with a child.
- 36 4. Inflict pain or discomfort upon a child or
 37 permit a child to inflict pain or discomfort on the
 38 person.

39 Any person who violates a provision of this section
 40 involving an act included in subsection 1 or 2 shall,
 41 upon conviction, be guilty of a class ~~"D"~~ "C" felony.
 42 ~~A person who violates a provision of this section and~~
 43 ~~who is sentenced to a term of confinement shall also~~
 44 ~~be sentenced to an additional term of parole or work~~
 45 ~~release not to exceed two years. The board of parole~~
 46 ~~shall determine whether the person should be released~~
 47 ~~on parole or placed in a work release program. The~~
 48 ~~sentence of an additional term of parole or work~~
 49 ~~release supervision shall commence immediately upon~~
 50 ~~the expiration of the preceding sentence and shall be~~

~~1 under the terms and conditions as set out in chapter
2 906. Violations of parole or work release shall be
3 subject to the procedures set out in chapter 905 or
4 908 or rules adopted under those chapters. The
5 sentence of an additional term of parole or work
6 release shall be consecutive to the original term of
7 confinement. Any person who violates a provision of
8 this section involving an act included in subsection 3
9 or 4 shall, upon conviction, be guilty of a class "D"
10 felony.~~

11 Sec. 35. Section 802.2, Code 2005, is amended to
12 read as follows:

13 802.2 SEXUAL ABUSE -- FIRST, SECOND, OR THIRD
14 DEGREE.

15 1. An information or indictment for sexual abuse
16 in the first, second, or third degree committed on or
17 with a person who is under the age of eighteen years
18 shall be found within ten years after the person upon
19 whom the offense is committed attains eighteen years
20 of age, or if the identity of the person against whom
21 the information or indictment is sought is established
22 through the use of a DNA profile, an information or
23 indictment shall be found within three years from the
24 date the identity of the person is identified by the
25 person's DNA profile, whichever is later.

26 2. An information or indictment for any other
27 sexual abuse in the first, second, or third degree
28 shall be found within ten years after its commission,
29 or if the identity of the person against whom the
30 information or indictment is sought is established
31 through the use of a DNA profile, an information or
32 indictment shall be found within three years from the
33 date the identity of the person is identified by the
34 person's DNA profile, whichever is later.

35 3. As used in this section, "identified" means a
36 person's legal name is known and the person has been
37 determined to be the source of the DNA.

38 Sec. 36. Section 901.5, Code 2005, is amended by
39 adding the following new subsection:

40 NEW SUBSECTION. 13. In addition to any other
41 sentence or other penalty imposed against the
42 defendant, the court shall impose a special sentence
43 if required under section 903B.0A or 903B.0B.

44 Sec. 37. NEW SECTION. 902.15 ENHANCED PENALTY --
45 SEXUAL ABUSE OR LASCIVIOUS ACTS WITH A CHILD.

46 1. A person commits a class "A" felony if the
47 person commits a second or subsequent offense
48 involving any combination of the following offenses:

49 a. Sexual abuse in the second degree in violation
50 of section 709.3.

1 b. Sexual abuse in the third degree in violation
2 of section 709.4.

3 c. Lascivious acts with a child in violation of
4 section 709.8, subsection 1 or 2.

5 2. In determining if a violation charged is a
6 second or subsequent offense for purposes of criminal
7 sentencing in this section, each previous violation on
8 which conviction or deferral of judgment was entered
9 prior to the date of the violation charged shall be
10 considered and counted as a separate previous offense,
11 regardless of whether the previous offense occurred
12 before, on, or after the effective date of this Act.
13 Convictions or the equivalent of deferred judgments
14 for violations in any other states under statutes
15 substantially corresponding to the offenses listed in
16 subsection 1 shall be counted as previous offenses.
17 The courts shall judicially notice the statutes of
18 other states which define offenses substantially
19 equivalent to the offenses listed in subsection 1 and
20 can therefore be considered corresponding statutes.

21 Sec. 38. NEW SECTION. 903B.0A SPECIAL SENTENCE
22 -- CLASS "B" OR CLASS "C" FELONIES.

23 A person convicted of a class "C" felony or greater
24 offense under chapter 709, or a class "C" felony under
25 section 728.12, shall also be sentenced, in addition
26 to any other punishment provided by law, to a special
27 sentence committing the person into the custody of the
28 director of the Iowa department of corrections for the
29 rest of the person's life, with eligibility for parole
30 as provided in chapter 906. The special sentence
31 imposed under this section shall commence upon
32 completion of the sentence imposed under any
33 applicable criminal sentencing provisions for the
34 underlying criminal offense and the person shall begin
35 the sentence under supervision as if on parole. The
36 person shall be placed on the corrections continuum in
37 chapter 901B, and the terms and conditions of the
38 special sentence, including violations, shall be
39 subject to the same set of procedures set out in
40 chapters 901B, 905, 906, and chapter 908, and rules
41 adopted under those chapters for persons on parole.
42 The revocation of release shall not be for a period
43 greater than two years upon any first revocation, and
44 five years upon any second or subsequent revocation.
45 A special sentence shall be considered a category "A"
46 sentence for purposes of calculating earned time under
47 section 903A.2.

48 Sec. 39. NEW SECTION. 903B.0B SPECIAL SENTENCE
49 -- CLASS "D" FELONIES OR MISDEMEANORS.

50 A person convicted of a misdemeanor or a class "D"

1 felony offense under chapter 709, section 726.2, or
2 section 728.12 shall also be sentenced, in addition to
3 any other punishment provided by law, to a special
4 sentence committing the person into the custody of the
5 director of the Iowa department of corrections for a
6 period of ten years, with eligibility for parole as
7 provided in chapter 906. The special sentence imposed
8 under this section shall commence upon completion of
9 the sentence imposed under any applicable criminal
10 sentencing provisions for the underlying criminal
11 offense and the person shall begin the sentence under
12 supervision as if on parole. The person shall be
13 placed on the corrections continuum in chapter 901B,
14 and the terms and conditions of the special sentence,
15 including violations, shall be subject to the same set
16 of procedures set out in chapters 901B, 905, 906, and
17 908, and rules adopted under those chapters for
18 persons on parole. The revocation of release shall
19 not be for a period greater than two years upon any
20 first revocation, and five years upon any second or
21 subsequent revocation. A special sentence shall be
22 considered a category "A" sentence for purposes of
23 calculating earned time under section 903A.2.

24 Sec. 40. Section 903B.1, subsection 3, Code 2005,
25 is amended by striking the subsection.

26 Sec. 41. Section 906.15, unnumbered paragraph 1,
27 Code 2005, is amended to read as follows:

28 Unless sooner discharged, a person released on
29 parole shall be discharged when the person's term of
30 parole equals the period of imprisonment specified in
31 the person's sentence, less all time served in
32 confinement. Discharge from parole may be granted
33 prior to such time, when an early discharge is
34 appropriate. The board shall periodically review all
35 paroles, and when the board determines that any person
36 on parole is able and willing to fulfill the
37 obligations of a law-abiding citizen without further
38 supervision, the board shall discharge the person from
39 parole. A parole officer shall periodically review
40 all paroles assigned to the parole officer, and when
41 the parole officer determines that any person assigned
42 to the officer is able and willing to fulfill the
43 obligations of a law-abiding citizen without further
44 supervision, the officer may discharge the person from
45 parole after notification and approval of the district
46 director and notification of the board of parole. In
47 any event, discharge from parole shall terminate the
48 person's sentence. If a person has been sentenced to
49 a special sentence under section 903B.0A or 903B.0B,
50 the person may be discharged early from the sentence

1 in the same manner as any other person on parole.

2 However, a person convicted of a violation of section
3 709.3, 709.4, or 709.8 committed on or with a child,
4 or a person serving a sentence under section 902.12,
5 shall not be discharged from parole until the person's
6 term of parole equals the period of imprisonment
7 specified in the person's sentence, less all time
8 served in confinement.

9 Sec. 42. Section 908.5, Code 2005, is amended to
10 read as follows:

11 908.5 DISPOSITION.

12 1. If a violation of parole is established, the
13 administrative parole judge may continue the parole
14 with or without any modification of the conditions of
15 parole. The administrative parole judge may revoke
16 the parole and require the parolee to serve the
17 sentence originally imposed, or may revoke the parole
18 and reinstate the parolee's work release status.

19 2. If the person is serving a special sentence
20 under chapter 903B, the administrative parole judge
21 may revoke the release. Upon the revocation of
22 release, the person shall not serve the entire length
23 of the special sentence imposed, and the revocation
24 shall be for a period not to exceed two years in a
25 correctional institution upon a first revocation and
26 for a period not to exceed five years in a
27 correctional institution upon a second or subsequent
28 revocation.

29 3. The order of the administrative parole judge
30 shall contain findings of fact, conclusions of law,
31 and a disposition of the matter.

32 DIVISION IV

33 VICTIM RIGHTS

34 Sec. 43. NEW SECTION. 235D.1 CRIMINAL HISTORY
35 CHECK -- APPLICANTS AT DOMESTIC ABUSE OR SEXUAL
36 ASSAULT CENTERS.

37 An applicant for employment at a domestic abuse or
38 sexual assault center shall be subject to a national
39 criminal history check through the federal bureau of
40 investigation. The domestic abuse or sexual assault
41 center shall request the criminal history check and
42 shall provide the applicant's fingerprints to the
43 department of public safety for submission through the
44 state criminal history repository to the federal
45 bureau of investigation. The applicant shall
46 authorize release of the results of the criminal
47 history check to the domestic abuse or sexual assault
48 center. The applicant shall pay the actual cost of
49 the fingerprinting and criminal history check, if any.
50 Unless the criminal history check was completed within

1 the ninety calendar days prior to the date the
2 application is received by the domestic abuse or
3 sexual assault center, the center shall reject and
4 return the application to the applicant. The results
5 of a criminal history check conducted pursuant to this
6 subsection shall not be considered a public record
7 under chapter 22. For purposes of this section,
8 "domestic abuse or sexual assault center" means a
9 facility which is used to house victims of domestic
10 abuse or sexual assault, and is owned, operated, or
11 maintained by a nonprofit organization.

12 Sec. 44. NEW SECTION. 709.22 PREVENTION OF
13 FURTHER SEXUAL ASSAULT -- NOTIFICATION OF RIGHTS.

14 If a peace officer has reason to believe that a
15 sexual assault as defined in section 915.40 has
16 occurred, the officer shall use all reasonable means
17 to prevent further violence including but not limited
18 to the following:

19 1. If requested, remaining on the scene of the
20 alleged sexual assault as long as there is a danger to
21 the victim's physical safety without the presence of a
22 peace officer, including but not limited to staying in
23 the dwelling unit, or if unable to remain on the
24 scene, assisting the victim in leaving the residence.

25 2. Assisting a victim in obtaining medical
26 treatment necessitated by the sexual assault,
27 including providing assistance to the victim in
28 obtaining transportation to the emergency room of the
29 nearest hospital.

30 3. Providing a victim with immediate and adequate
31 notice of the victim's rights. The notice shall
32 consist of handing the victim a copy of the following
33 statement written in English and Spanish, asking the
34 victim to read the statement, and asking whether the
35 victim understands the rights:

36 "You have the right to ask the court for help with
37 any of the following on a temporary basis:

38 a. Keeping your attacker away from you, your home,
39 and your place of work.

40 b. The right to stay at your home without
41 interference from your attacker.

42 c. The right to seek a no-contact order under
43 section 709.22 or 915.22, if your attacker is arrested
44 for sexual assault.

45 You have the right to register as a victim with the
46 county attorney under section 915.12.

47 You have the right to file a complaint for threats,
48 assaults, or other related crimes.

49 You have the right to seek restitution against your
50 attacker for harm to you or your property.

1 You have the right to apply for victim
2 compensation.

3 You have the right to contact the county attorney
4 or local law enforcement to determine the status of
5 your case.

6 If you are in need of medical treatment, you have
7 the right to request that the officer present assist
8 you in obtaining transportation to the nearest
9 hospital or otherwise assist you.

10 You have the right to a sexual assault examination
11 performed at state expense.

12 If you believe that police protection is needed for
13 your physical safety, you have the right to request
14 that the officer present remain at the scene until you
15 and other affected parties can leave or until safety
16 is otherwise ensured."

17 The notice shall also contain the telephone numbers
18 of shelters, support groups, and crisis lines
19 operating in the area.

20 Sec. 45. Section 915.10, subsections 1 and 2, Code
21 2005, are amended to read as follows:

22 1. "Notification" means mailing by regular mail or
23 providing for hand delivery of appropriate information
24 or papers. However, this notification procedure does
25 not prohibit an office, agency, or department from
26 also providing appropriate information to a registered
27 victim by telephone, electronic mail, or other means.

28 2. "Registered" means having provided the county
29 attorney with the victim's written request for
30 registration and current mailing address and telephone
31 number. If an automated victim notification system is
32 implemented pursuant to section 915.10A, "registered"
33 also means having filed a request for registration
34 with the system.

35 Sec. 46. NEW SECTION. 915.10A AUTOMATED VICTIM
36 NOTIFICATION SYSTEM.

37 1. An automated victim notification system may be
38 utilized to assist public officials in informing crime
39 victims, the victim's family, or other interested
40 persons as provided in this subchapter and where
41 otherwise specifically provided. The system shall
42 disseminate the information to registered users
43 through telephonic, electronic, or other means of
44 access.

45 2. An office, agency, or department may satisfy a
46 notification obligation to registered victims required
47 by this subchapter through participation in the system
48 to the extent information is available for
49 dissemination through the system. Nothing in this
50 section shall relieve a notification obligation under

1 this subchapter due to the unavailability of
2 information for dissemination through the system.

3 3. Notwithstanding section 232.147, information
4 concerning juveniles charged with a felony offense
5 shall be released to the extent necessary to comply
6 with this section.

7 Sec. 47. Section 915.11, Code 2005, is amended to
8 read as follows:

9 915.11 INITIAL NOTIFICATION BY LAW ENFORCEMENT.

10 A local police department or county sheriff's
11 department shall advise a victim of the right to
12 register with the county attorney, and shall provide a
13 request-for-registration form to each victim. If an
14 automated victim notification system is available
15 pursuant to section 915.10A, a local police department
16 or county sheriff's department shall provide a
17 telephone number and website to each victim to
18 register with the system.

19 Sec. 48. Section 915.12, Code 2005, is amended to
20 read as follows:

21 915.12 REGISTRATION.

22 ~~1. The county attorney shall be the sole registrar~~
23 ~~of victims under this subchapter.~~

24 ~~2.~~ 1. A victim may register by filing a written
25 request-for-registration form with the county
26 attorney. The county attorney shall notify the
27 victims in writing and advise them of their
28 registration and rights under this subchapter.

29 ~~3.~~ The county attorney shall provide a registered
30 victim list to the offices, agencies, and departments
31 required to provide information under this subchapter
32 for notification purposes.

33 2. If an automated victim notification system, the
34 victim's family, is available pursuant to section
35 915.10A, a victim, the victim's family, or other
36 interested person may register with the system by
37 filing a request for registration through written,
38 telephonic, or electronic means.

39 ~~4.~~ 3. Notwithstanding chapter 22 or any other
40 contrary provision of law, ~~a victim's~~ the registration
41 of a victim, victim's family, or other interested
42 person shall be strictly maintained in a separate
43 confidential file or other confidential medium, and
44 shall be available only to the offices, agencies, and
45 departments required to provide information under this
46 subchapter.

47 Sec. 49. Section 915.29, Code 2005, is amended by
48 adding the following new unnumbered paragraph:

49 NEW UNNUMBERED PARAGRAPH. The notification
50 required pursuant to this section may occur through

1 the automated victim notification system referred to
2 in section 915.10A to the extent such information is
3 available for dissemination through the system.

4 Sec. 50. Section 915.45, Code 2005, is amended by
5 adding the following new unnumbered paragraph:

6 NEW UNNUMBERED PARAGRAPH. The notification
7 required pursuant to this section may occur through
8 the automated victim notification system referred to
9 in section 915.10A to the extent such information is
10 available for dissemination through the system.

11 DIVISION V

12 TASK FORCE

13 Sec. 51. SEX OFFENDER TREATMENT AND SUPERVISION
14 TASK FORCE.

15 1. The division of criminal and juvenile justice
16 planning shall establish a task force to study and
17 make periodic recommendations for treating and
18 supervising sex offenders in correctional institutions
19 and in the community. The task force shall file a
20 report with recommendations with the general assembly
21 by January 15, 2006. The task force shall study the
22 effectiveness of electronic monitoring and the
23 potential effects and costs associated with the
24 special sentence created in this Act. The task force
25 shall study risk assessment models created for sex
26 offenders. The task force shall also review this
27 state's efforts and the efforts of other states to
28 implement treatment programs and make recommendations
29 as to the best treatment options available for sex
30 offenders. The task force shall also develop a plan
31 to integrate state government databases for the
32 purpose of updating addresses of persons on the sex
33 offender registry.

34 2. Members of the task force shall include
35 representatives of the following state agencies and
36 organizations:

37 a. One representative of the department of human
38 services.

39 b. One representative of the department of public
40 safety.

41 c. One representative of the Iowa state sheriffs
42 and deputies association.

43 d. One representative of the Iowa county attorneys
44 association.

45 e. One representative of the department of
46 corrections.

47 f. One representative of the board of parole.

48 g. One representative of a judicial district
49 department of correctional services.

50 h. One representative of the department of

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1 justice.

2 i. One representative of the state public
3 defender.

4 j. One representative of the Iowa coalition
5 against sexual assault.

6

DIVISION VI

7

STATE MANDATE

8 Sec. 52. IMPLEMENTATION OF ACT. Section 25B.2,
9 subsection 3, shall not apply to this Act."

10 2. Title page, by striking lines 1 through 5 and
11 inserting the following: "An Act relating to criminal
12 sentencing, victim notification, and the sex offender
13 registry, by establishing a special sentence for
14 certain offenders, requiring DNA testing of certain
15 offenders and lengthening the time an information or
16 indictment may be found in certain offenses where DNA
17 evidence is available, requiring sex offender
18 treatment in order to accumulate earned time,
19 restricting certain persons from residing with sex
20 offenders, establishing a sex offender treatment and
21 supervision task force, providing penalties, and
22 providing effective dates."

RECEIVED FROM THE SENATE

H-1628 FILED MAY 5, 2005

**EIGHTY-FIRST GENERAL ASSEMBLY
2005 REGULAR SESSION
DAILY
HOUSE CLIP SHEET**

MAY 11, 2005

HOUSE FILE 619

H-1640

1 Amend the Senate amendment, H-1628, to House File
2 619, as amended, passed, and reprinted by the House,
3 as follows:
4 1. Page 5, by striking lines 4 through 7 and
5 inserting the following: "commitment, and subsequent
6 dismissal of the case, or upon receipt of a".
7 2. Page 9, line 28, by striking the word
8 "subsection" and inserting the following:
9 "subsections".
10 3. Page 9, by inserting after line 35 the
11 following:
12 "NEW SUBSECTION. 2A. If a person violates any of
13 the requirements of section 692A.4, the person shall
14 register for an additional ten years beginning from
15 the date the first registration period ends as
16 calculated under subsection 1 or from the date the
17 special sentence ends under subsection 1A if the
18 person received a special sentence, whichever is
19 longer."
20 4. Page 10, line 39, by inserting after the word
21 "supervision." the following: "However, if the person
22 committed a criminal offense against a minor, or an
23 aggravated offense, sexually violent offense, or other
24 relevant offense that involved a minor, the person
25 shall be supervised by an electronic tracking and
26 monitoring system in addition to any other conditions
27 of release."
28 5. Page 11, line 42, by inserting after the word
29 "photograph," the following: "the results of any risk
30 assessment,".
31 6. Page 11, by inserting after line 50 the
32 following:
33 "Sec. ____ . NEW SECTION. 692A.13A ASSESSMENT OF
34 RISK.
35 1. The department of corrections, the department
36 of human services, and the department of public safety
37 shall, in consultation with one another, develop
38 methods and procedures for the assessment of the risk
39 for persons required to register under this chapter on
40 or after the effective date of this division of this
41 Act, who have committed a criminal offense against a
42 minor, or an aggravated offense, sexually violent
43 offense, or other relevant offense that involved a
44 minor. The department of corrections, in consultation
45 with the department of human services, the department
46 of public safety, and the attorney general, shall
47 adopt rules relating to assessment procedures. The
48 assessment procedures shall include procedures for the
49 sharing of information between the department of
50 corrections, department of human services, the

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1 juvenile court, and the division of criminal
2 investigation of the department of public safety, as
3 well as the communication of the results of the risk
4 assessment to criminal and juvenile justice agencies.
5 The assignment of responsibility for the assessment of
6 risk shall be as follows:

7 a. The department of corrections or a judicial
8 district department of correctional services shall
9 perform the assessment of risk for persons who are
10 incarcerated in institutions under the control of the
11 director of the department of corrections, persons who
12 are under the supervision of the department of
13 corrections or a judicial district department of
14 correctional services, and persons who are under the
15 supervision or control of the department of
16 corrections or a judicial district department of
17 correctional services through an interstate compact.

18 b. The department of human services shall perform
19 the assessment of risk for persons who are confined in
20 institutions under the control of the director of
21 human services, persons who are under the supervision
22 of the department of human services, and persons who
23 are under the supervision or control of the department
24 of human services through an interstate compact.

25 c. The division of criminal investigation of the
26 department of public safety shall perform the
27 assessment of risk for persons who have moved to Iowa
28 but are not under the supervision of the department of
29 corrections, a judicial district department of
30 correctional services, or the department of human
31 services; federal parolees or probationers; persons
32 who have been released from a county jail but are not
33 under the supervision of the department of
34 corrections, a judicial district department of
35 correctional services, a juvenile court officer of the
36 judicial branch, or the department of human services;
37 and persons who are convicted and released by the
38 courts and are not incarcerated or placed under
39 supervision pursuant to the court's sentencing order.
40 Assessments of persons who have moved to Iowa and
41 persons on federal parole or probation shall be
42 performed on an expedited basis if the person was
43 classified as a person with a high degree of
44 likelihood of reoffending by the other jurisdiction or
45 the federal government.

46 d. A juvenile court officer shall perform the
47 assessment of risk for a juvenile who is adjudicated
48 delinquent for a criminal offense listed in section
49 692A.1 and who is under the juvenile court officer's
50 supervision.

1 2. The department of public safety shall be
2 responsible for disclosing the assessment of risk
3 information to a criminal or juvenile justice agency
4 for law enforcement, prosecution, or for public
5 notification purposes. The results of the assessment
6 of risk shall be disclosed as other relevant
7 information is disclosed under section 692A.13."

8 7. Page 12, line 9, by inserting after the word
9 "offender" the following: ", or to a person who is
10 married to and living with a person required to
11 register as a sex offender".

12 8. Page 18, by striking lines 9 through 11 and
13 inserting the following: "crime victim center as
14 defined in section 915.20A."

15 9. Page 19, by inserting after line 19 the
16 following:

17 "4. A peace officer is not civilly or criminally
18 liable for actions taken in good faith pursuant to
19 this section."

20 10. Page 20, lines 33 and 34, by striking the
21 words "the victim's family".

22 11. Page 21, by striking lines 35 and 36, and
23 inserting the following: "members of the general
24 assembly selected by the legislative council and
25 representatives of the following:

26 _____. One representative from the state department
27 of transportation.

28 _____. One representative of the Iowa civil
29 liberties union."

30 12. Page 22, by inserting after line 5 the
31 following:

"DIVISION

SEVERABILITY CLAUSE

34 Sec. _____. SEVERABILITY CLAUSE. If any provision
35 of this Act or its application to any person or
36 circumstance is held invalid, the invalidity does not
37 affect other provisions or application of this Act
38 which can be given effect without the invalid
39 provision or application, and to this end the
40 provisions of this Act are severable."

41 13. By renumbering as necessary.

By PAULSEN of Linn

Fiscal Services Division
Legislative Services Agency
Fiscal Note

HF 619 - Sex Offender Registry, Supervision, and Data Base Task Force (LSB 2527 HV.2)
Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)
Jennifer Acton (Phone: (515) 281-7846) (Jennifer.acton@legis.state.a.us)
Fiscal Note Version – Senate Amendment H – 1628

Description

Senate Amendment H – 1628 to House File 619 strikes everything after the enacting clause. The Senate Amendment relates to persons convicted of criminal offenses requiring registration on the Sex Offender Registry, requiring additional offenders to submit a DNA sample for DNA profiling, requiring sex offender treatment plus an additional term of parole, enhancing penalties for certain sex offenses, establishing a Sex Offender Treatment and Supervision Task Force. The provisions related to DNA profiling take effect upon enactment of the legislation.

Background

1. Under current law, sex offenders who commit violations of Sections 709.2, 709.3, 709.4, and 709.11, Code of Iowa, must provide a DNA sample.
2. The Senate Amendment requires the following offenders to submit a sample for DNA profiling: sexual predators, juveniles adjudicated as delinquent for offenses that require DNA profiling of an adult offender, those found not guilty by reason of insanity, those receiving a deferred judgment for a felony, or where a judgment for a felony has been entered, those offenders required to register on the Sex Offender Registry, and all felons. In FY 2004, there were 263 sex offenders released from prison of which, approximately 139 offenders had not had a DNA sample taken. There were 227 probation admissions for sex offenses of which, approximately 120 offenders had not provided a DNA sample.
3. In FY 2004, there were 212 juveniles adjudicated delinquent under the mandated offenses for DNA profiling, and 282 adults, including those with deferred judgments. The additional number of sexually violent predators who would be subject to providing a DNA sample under the Senate Amendment is anticipated to be minimal. Insanity pleas are rare and are not likely to increase the number of samples taken.
4. DNA sampling of all felons will result in a significant expansion in the number of samples taken. For example, in FY 2004, 4,096 juveniles were adjudicated delinquent for felony offenses, and 8,479 adults were convicted of felony offenses.
5. The cost for a DNA collection kit, analysis of a DNA sample, and development of a DNA profile is approximately \$45 per sample. The Department of Public Safety (DPS) provides the DNA testing kits. The DPS estimates the cost for DNA testing of all felons to be \$1.1 million the first year, \$652,000 the second year, and \$480,000 in the third year. Costs include ongoing operating costs, such as additional staff and DNA test kits, plus one-time equipment costs, such as genetic analyzers. The cost is based on all felons currently on supervision providing a DNA sample, plus new felony convictions each fiscal year.
6. The Senate Amendment imposes a graduated system of penalties for criminal offenses related to DNA profiling. The average State costs for one aggravated misdemeanor conviction ranges from \$1,100 to \$5,700. The average State costs for one Class D felony conviction ranges from \$2,800 to \$12,000. These costs will be incurred across multiple fiscal years while the offender is supervised in the correctional system.
7. The correctional and fiscal impacts of the new penalties related to DNA testing are not anticipated to be significant.
8. The Senate Amendment permits certain defendants to make a motion to the court to require DNA analysis of evidence. This provision may cost \$2,300 per motion for court costs (\$1,300) and indigent defense (\$1,000). There will be a limited number of cases under this provision.

9. The Sex Offender Registry was created in 1995 by the Sex Offender Registry Act.
10. The current budget for the Sex Offender Registry is \$524,000, which includes 3.0 special agents and 5.0 civilian employees.
11. As of March 1, 2005, there were 6,427 offenders on the Sex Offender Registry. There are also 1,054 offenders registered as out-of-State offenders. An offender remains on the Registry for a minimum of ten years and in some instances, life-time registration is required.
12. As of March 30, 2005, there were 1,099 sex offenders in prison; 39 of these offenders violated the Sex Offender Registry requirements. Of the 1,099 offenders, 211 or 19.2% are repeat offenders. The previous incarceration may or may not have been for a sex crime.
13. Under the Senate Amendment, offenders are not eligible for earned time reduction of sentence unless they participate in and complete a sex offender treatment program. Approximately 50.0% of sex offenders in prison refuse sex offender treatment and/or are released without supervision due to the expiration of their sentence while in prison. The current prison-based sex offender treatment program is 15 months.
14. In FY 2004, there were 35 misdemeanants sentenced to prison. The average length of stay for a misdemeanant sex offender is seven to 15 months. Since the length of the sex offender program is 15 months, misdemeanants are prevented from participating in the sex offender treatment program.
15. The current sex offender treatment budget for prison is \$693,000. The Department of Corrections (DOC) estimates an additional \$355,000 is required to meet current demand for treatment.
16. On March 1, 2005, there were 636 offenders under Community-Based Corrections (CBC) supervision in field services (parole, probation, interstate compacts, and pre-trial release). The Senate Amendment permits the DOC and CBC District Directors to place offenders in field services on electronic monitoring.
17. Current treatment budgets in CBC are \$2.6 million. The DOC estimates an additional \$864,000 is required statewide to meet current demand for treatment, plus \$19,000 to treat aggravated misdemeanants. Cost for sex offender treatment is \$7.04 per day, per offender.
18. The Senate Amendment enhances the penalty for lascivious acts with a child from a Class D to a Class C felony, for certain acts; the age of the offender is lowered from 18 to 16 years of age. Lowering the age of the offender is not anticipated to have a significant correctional or fiscal impact.
19. The Senate Amendment creates a new Class A felony. If an offender commits a second or subsequent offense for sexual abuse in the second or third degree, or lascivious acts with a child, or any combination thereof, then the penalty is a Class A felony (life in prison).
20. Enhancing penalties increases the average length of stay in prison and the incarceration rate (number of offenders sentenced to prison). The average length of stay in prison for a sex offender is as follows: 7 months for serious misdemeanants, 15 months for aggravated misdemeanants, 32 months for Class D felons, and 61 months for Class C felons. This average includes earned time credit. The prison incarceration rate for sex offenders is as follows: 14.4% for aggravated misdemeanants, 51.5% for Class D felons, and 74.2 % for Class C felons.
21. The marginal cost per day for State prisons is \$13 per inmate.
22. The cost of a Parole/Probation Officer II is \$51,100. The cost of a Parole/Probation III is \$57,000.
23. The Senate Amendment grants immunity from civil damages for those who administer hormonal intervention therapy. This provision has no correctional or fiscal impact.
24. The Senate Amendment requests the Legislative Council to authorize a Sex Offender Interim Study Committee. Costs are anticipated to be minimal.
25. The Senate Amendment expands the definition of child abuse to include cohabitation with someone on the Sex Offender Registry. Current law permits the Department of Human Services (DHS) to assess an allegation of child abuse based on a convicted sex offender residing in the home. The Senate Amendment may result in an increase in child abuse assessments. Juvenile Court actions may also increase. Those impacts are not anticipated to be significant.

Fiscal Services Division
Legislative Services Agency
Fiscal Note

HF 619 - Sex Offender Registry, Supervision, and Data Base Task Force (LSB 2527 HV.2)

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

Jennifer Acton (Phone: (515) 281-7846) (Jennifer.acton@legis.state.ia.us)

Fiscal Note Version – Senate Amendment H – 1628

Description

Senate Amendment H – 1628 to House File 619 strikes everything after the enacting clause. The Senate Amendment relates to persons convicted of criminal offenses requiring registration on the Sex Offender Registry, requiring additional offenders to submit a DNA sample for DNA profiling, requiring sex offender treatment plus an additional term of parole, enhancing penalties for certain sex offenses, establishing a Sex Offender Treatment and Supervision Task Force. The provisions related to DNA profiling take effect upon enactment of the legislation.

Background

1. Under current law, sex offenders who commit violations of Sections 709.2, 709.3, 709.4, and 709.11, Code of Iowa, must provide a DNA sample.
2. The Senate Amendment requires the following offenders to submit a sample for DNA profiling: sexual predators, juveniles adjudicated as delinquent for offenses that require DNA profiling of an adult offender, those found not guilty by reason of insanity, those receiving a deferred judgment for a felony, or where a judgment for a felony has been entered, those offenders required to register on the Sex Offender Registry, and all felons. In FY 2004, there were 263 sex offenders released from prison of which, approximately 139 offenders had not had a DNA sample taken. There were 227 probation admissions for sex offenses of which, approximately 120 offenders had not provided a DNA sample.
3. In FY 2004, there were 212 juveniles adjudicated delinquent under the mandated offenses for DNA profiling, and 282 adults, including those with deferred judgments. The additional number of sexually violent predators who would be subject to providing a DNA sample under the Senate Amendment is anticipated to be minimal. Insanity pleas are rare and are not likely to increase the number of samples taken.
4. DNA sampling of all felons will result in a significant expansion in the number of samples taken. For example, in FY 2004, 4,096 juveniles were adjudicated delinquent for felony offenses, and 8,479 adults were convicted of felony offenses.
5. The cost for a DNA collection kit, analysis of a DNA sample, and development of a DNA profile is approximately \$45 per sample. The Department of Public Safety (DPS) provides the DNA testing kits. The DPS estimates the cost for DNA testing of all felons to be \$1.1 million the first year, \$652,000 the second year, and \$480,000 in the third year. Costs include ongoing operating costs, such as additional staff and DNA test kits, plus one-time equipment costs, such as genetic analyzers. The cost is based on all felons currently on supervision providing a DNA sample, plus new felony convictions each fiscal year.
6. The Senate Amendment imposes a graduated system of penalties for criminal offenses related to DNA profiling. The average State costs for one aggravated misdemeanor conviction ranges from \$1,100 to \$5,700. The average State costs for one Class D felony conviction ranges from \$2,800 to \$12,000. These costs will be incurred across multiple fiscal years while the offender is supervised in the correctional system.
7. The correctional and fiscal impacts of the new penalties related to DNA testing are not anticipated to be significant.
8. The Senate Amendment permits certain defendants to make a motion to the court to require DNA analysis of evidence. This provision may cost \$2,300 per motion for court costs (\$1,300) and indigent defense (\$1,000). There will be a limited number of cases under this provision.

26. The Senate Amendment expands the definition of child endangerment to include cohabitation with a person after knowing that person is required to be on the Sex Offender Registry. Current law imposes a graduated system of penalties for child endangerment, ranging from an aggravated misdemeanor to a Class B felony. The Senate Amendment may increase convictions for child endangerment; however, that impact cannot be estimated.
27. The Senate Amendment mandates that local law enforcement take certain actions if a peace officer believes that a sexual assault has occurred. The actions include remaining in the dwelling unit where the alleged assault occurred or assisting the victim in leaving the dwelling, assisting the victim in obtaining medical treatment, and providing notice to the victim of his or her rights. There may be additional costs at the local level due to increased staff time or office supplies (creating and printing a notice). These costs are anticipated to be minimal.
28. The Senate Amendment permits the Victim Information and Notification Everyday (VINE) to be established. Implementation of the system is not mandated.
29. The VINE system is estimated to cost approximately \$493,000 statewide the first year, and approximately \$500,000 annually thereafter. This amount does not include any third-party vendors, where a software company charges a fee to provide access to the VINE system. This cost is estimated to be approximately \$120,000 statewide. This amount includes \$20,000 for access to the Iowa Corrections Offender Network (ICON) system used by the Department of Corrections (DOC). Federal funds may be available in future fiscal years to implement the system. However, funding availability is not known at this time.

Assumptions

1. FY 2004 offender-based convictions were used to estimate the number of future offenders.
2. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
3. The criminal sentencing enhancements will become effective July 1, 2005. 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 cost to re-work and enhance the Sex Offender Registry web site would be approximately \$25,000 to update the programming (one-time cost, including an e-mail list serve) and \$62,000 for an Information Technology Specialist 1 (web master). Within ten years, the Registry is estimated to double in size. The cost to maintain photos and addresses on the web site for the additional years under the Senate Amendment requires the addition of two Information Technology Specialists and a Clerk Specialist. The cost for these positions is \$110,000.
5. An electronic monitoring bracelet based on radio frequency technology costs \$2.87 per day, per offender. (This bracelet monitors an offender in a specific area, such as their home.) A global positioning system (GPS) bracelet costs \$4.75 per day, per offender. (This bracelet monitors an offender throughout the community.) CBC District Directors will place all sex offenders in field services on electronic monitoring, contingent upon funding for bracelets and staff.
6. The Senate Amendment creates a special sentence of a life term, with parole eligibility, for Class C and Class B felony convictions for any sexual abuse offense under Chapter 709, Code of Iowa, and sexual exploitation of a minor. Class D felony and misdemeanor offenders convicted of sexual exploitation of a minor, incest, or any sexual abuse under Chapter 709, Code of Iowa, will receive a special sentence of an additional term of parole of ten years. Offenders will serve time in prison or time on probation before these special sentences take effect. Therefore, the correctional impact first occurs in FY 2008, after the current sentence is served.
7. The legislation permits early discharge from the special sentence. Under current law, the Board of Parole does not usually discharge sex offenders early from supervision. This analysis assumes the Board will continue this practice and will not allow early discharge.
8. Life time parole calculations do not include information on Class B felons. The current length of stay in prison for these offenders is 141 months (11.75 years). They will not be

released from prison to this new supervision for at least 11.75 years; which is beyond the scope of this analysis (ten years).

9. Under current law, certain sex offenders serve the entire sentence in prison and are not supervised in the community. A certain percentage of these offenders will return to prison whether or not the Senate Amendment is enacted. These offenders and their return to prison are not included in this analysis.
10. Offenders who fail to comply with the new term of parole are revoked to prison for no more than two years for the first offense, and five years for the second or subsequent offenses. Offenders could be revoked more than once, under the proposed legislation. For the purpose of this analysis, offenders are revoked only once over the ten-year projection period.
11. Current return to prison rates were used to project the number of offenders who would be revoked to prison from the additional term of parole in the Senate Amendment.
12. Offenders released under the additional term of parole, either life or ten years, may be electronically monitored under the Senate Amendment. Offenders on electronic monitoring are supervised at the intensive supervision level – no more than 30 offenders per Probation/Parole Officer (PPO III).
13. The Board of Parole will require additional resources, an Administrative Law Judge and a clerk, due to the increased workload associated with extended parole supervision.
14. Fiscal Year 2004 convictions are used for calculating the impact of increasing the penalty for lascivious acts with a child from a Class D felony to a Class C felony, for certain acts.
15. In FY 2004, the following sex offenders were sentenced to prison: 4 serious misdemeanants, 31 aggravated misdemeanants, 51 Class D felons, and 89 Class C felons. Under current law, 25 of the Class D felons are receiving sex offender treatment. An additional 26 Class D felons are estimated to be in need of treatment. Of these, approximately 50.0% or 13 felons will accept treatment while the remaining 50.0% will refuse treatment.
16. Since misdemeanor sex offenders are not in prison long enough to participate in the sex offender treatment program, the DOC plans to create a shortened treatment program for these offenders to meet the current length of stay in prison. Follow-up treatment in CBC is required to complete the full program.
17. If all sex offenders in prison are required to participate in a sex offender treatment program in prison, the estimated cost increase is \$1.0 million. This includes \$355,000 for the current shortfall for sex offender treatment. The estimated \$1.0 million also includes \$645,000 for additional sex offender treatment plus increased operating costs related to increased length of stay for those who refuse treatment. Sex offenders only accrue earned time if they participate in treatment.
18. The Senate Amendment requires the Criminal and Juvenile Justice Planning Division (CJJPD) of the Department of Human Rights to establish a Sex Offender Treatment and Supervision Task Force. The cost for staffing the Task Force is estimated to be \$75,000 annually. This amount includes additional staff time (a portion of a Statistical Research Analyst and a portion of a Justice Systems Analyst) plus supplies and support costs.

Correctional Impact

Under the provision of a special sentence of parole, there is no correctional impact in FY 2006 or FY 2007 because offenders are serving their term in prison or on probation. The chart below shows the estimated number of offenders who will receive a special sentence of parole of either life or ten years.

CBC - Additional Sentence to Parole

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Lifetime	0	0	0	0	176	359	536	716
Ten Years	0	0	298	599	901	1,204	1,507	1,810
	0	0	298	599	1,077	1,563	2,043	2,526

Under the provision of mandated treatment in prison plus the loss of earned time, Class D felons will serve 28 additional months in prison because they refused treatment. Under current law, they will serve 32 months in prison. Under this legislation, they will serve 60 months in prison. Therefore, the correctional impact will occur in FY 2008, the third year after the effective date of this legislation.

There will be an increase in the number of sex offenders who will receive treatment in prison and CBC under the Senate Amendment. This increase includes those offenders in prison who accept treatment, but need to complete treatment upon their release from prison. The increase also includes those offenders who are currently on correctional supervision.

The chart below shows the projected growth in the prison population under the Senate Amendment. The increase is due to implementation of a new Class A felony, loss of earned time for refusing treatment, enhancement of certain provisions related to lascivious acts with a child, and the additional special sentence of parole.

Correctional Impact - Prison Population Increase

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>
Offenders	0	0	54	103	171	232	270	319

On an annual basis, there will be an estimated 13 additional offenders serving life in prison (new Class A felony) under the Senate Amendment. These offenders would be serving a prison sentence for a lesser offense under current law (Class C felony); therefore, the correctional impact does not occur until the current sentence would be served. Using current length of stay data, the impact of the new Class A felony will occur in FY 2011.

There will be an estimated 45 new Class C felony convictions under the enhanced penalties for lascivious acts with a child. These offenders are Class D felons under current law. Approximately 74.2% of these offenders will be sentenced to prison as Class C felons, as compared to 51.5% of Class D felony sex offender convictions resulting in a prison sentence.

Regarding loss of earned time for refusing treatment, the impact on prisons after FY 2010 will be substantial as Class C offenders begin to lose earned time, and spend more time in prison.

Fiscal Impact

The overall fiscal impact of the Senate Amendment for FY 2006 is estimated to be \$5.8 million and in FY 2007, costs are estimated to be \$6.3 million. Costs will continue to increase in future fiscal years due to anticipated increases in costs for the correctional system, prosecution, and defense.

Fiscal Impact

<u>Department</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Board of Parole	\$ 0	\$ 106,000	\$ 106,000	\$ 106,000	\$ 106,000
Public Safety	1,276,000	824,000	652,000	652,000	652,000
Human Rights	75,000	75,000	75,000	75,000	75,000
Corrections	3,710,000	3,843,000	4,697,000	5,500,000	6,734,000
State Public Defender	354,000	709,000	729,000	784,000	949,000
Judicial Branch	19,000	38,000	38,000	38,000	38,000
Prosecution	354,000	709,000	729,000	784,000	949,000
Total Costs	<u>\$ 5,788,000</u>	<u>\$ 6,304,000</u>	<u>\$ 7,026,000</u>	<u>\$ 7,939,000</u>	<u>\$ 9,503,000</u>

Prosecution costs will be incurred by either the Office of the Attorney General or the general fund of the county where the offense occurred.

The fiscal impact does not include additional costs to the court system and prosecution and defense attorneys for any potential constitutional challenges. Each challenge may cost an additional \$10,000 to the Attorney General's Office, \$10,000 to the State Public Defender's Office or the Indigent Defense Program, and \$42,000 for the Judicial Branch.

Sources

Department of Corrections
Department of Human Rights, Criminal Juvenile Justice Planning Division (CJJP)
Department of Public Safety
Judicial Branch
Office of the State Public Defender
Office of the Attorney General

Dennis C Prouty

May 5, 2005

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

Fiscal Services Division
Legislative Services Agency
Fiscal Note

HF 619 - Sex Offender Registry, Supervision, and Data Base Task Force (LSB 2527 HV.3)
Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)
Jennifer Acton (Phone: (515) 281-7846) (Jennifer.acton@legis.state.a.us)
Fiscal Note Version – House Amendment to the Senate Amendment to HF 619

Description

The House Amendment to the Senate Amendment makes changes to the Senate Amendment in relation to electronic monitoring and tracking and the Sex Offender Registry. Existing provisions of the Senate Amendment remain unchanged.

Background

1. Under current law, sex offenders who commit violations of Sections 709.2, 709.3, 709.4, and 709.11, Code of Iowa, must provide a DNA sample.
2. The Senate Amendment, as amended by the House, requires the following offenders to submit a sample for DNA profiling: sexual predators, juveniles adjudicated as delinquent for offenses that require DNA profiling of an adult offender, those found not guilty by reason of insanity, those receiving a deferred judgment for a felony, or where a judgment for a felony has been entered, those offenders required to register on the Sex Offender Registry, and all felons. In FY 2004, there were 263 sex offenders released from prison of which, approximately 139 offenders had not had a DNA sample taken. There were 227 probation admissions for sex offenses of which, approximately 120 offenders had not provided a DNA sample.
3. In FY 2004, there were 212 juveniles adjudicated delinquent under the mandated offenses for DNA profiling, and 282 adults, including those with deferred judgments. The additional number of sexually violent predators who would be subject to providing a DNA sample under the Senate Amendment is anticipated to be minimal. Insanity pleas are rare and are not likely to increase the number of samples taken.
4. DNA sampling of all felons will result in a significant expansion in the number of samples taken. For example, in FY 2004, 4,096 juveniles were adjudicated delinquent for felony offenses, and 8,479 adults were convicted of felony offenses.
5. The cost for a DNA collection kit, analysis of a DNA sample, and development of a DNA profile is approximately \$45 per sample. The Department of Public Safety (DPS) provides the DNA testing kits. The DPS estimates the cost for DNA testing of all felons to be \$1.1 million the first year, \$652,000 the second year, and \$480,000 in the third year. Costs include ongoing operating costs, such as additional staff and DNA test kits, plus one-time equipment costs, such as genetic analyzers. The cost is based on all felons currently on supervision providing a DNA sample, plus new felony convictions each fiscal year.
6. The Senate Amendment, as amended by the House, imposes a graduated system of penalties for criminal offenses related to DNA profiling. The average State costs for one aggravated misdemeanor conviction ranges from \$1,100 to \$5,700. The average State costs for one Class D felony conviction ranges from \$2,800 to \$12,000. These costs will be incurred across multiple fiscal years while the offender is supervised in the correctional system.
7. The correctional and fiscal impacts of the new penalties related to DNA testing are not anticipated to be significant.
8. The Senate Amendment, as amended by the House, permits certain defendants to make a motion to the court to require DNA analysis of evidence. This provision may cost \$2,300 per motion for court costs (\$1,300) and indigent defense (\$1,000). There will be a limited number of cases under this provision.
9. The Sex Offender Registry was created in 1995 by the Sex Offender Registry Act.

follows: 14.4% for aggravated misdemeanants, 51.5% for Class D felons, and 74.2 % for Class C felons.

23. The marginal cost per day for State prisons is \$13 per inmate.
24. The cost of a Parole/Probation Officer II is \$51,100. The cost of a Parole/Probation III is \$57,000.
25. The Senate Amendment, as amended by the House, grants immunity from civil damages for those who administer hormonal intervention therapy. This provision has no correctional or fiscal impact.
26. The Senate Amendment requests the Legislative Council to authorize a Sex Offender Interim Study Committee. The House Amendment to the Senate Amendment adds legislators and agencies to the Study Committee. Costs are anticipated to be minimal.
27. The Senate Amendment, as amended by the House, expands the definition of child abuse to include cohabitation with someone on the Sex Offender Registry. Current law permits the Department of Human Services (DHS) to assess an allegation of child abuse based on a convicted sex offender residing in the home. The Senate Amendment, as amended by the House, may result in an increase in child abuse assessments. Juvenile Court actions may also increase. Those impacts are not anticipated to be significant.
28. The Senate Amendment, as amended by the House, expands the definition of child endangerment to include cohabitation with a person after knowing that person is required to be on the Sex Offender Registry. Under the House Amendment, married couples are exempt from the definition of child endangerment. Current law imposes a graduated system of penalties for child endangerment, ranging from an aggravated misdemeanor to a Class B felony. The Senate Amendment may increase convictions for child endangerment; however, that impact cannot be estimated.
29. The Senate Amendment, as amended by the House, mandates that local law enforcement take certain actions if a peace officer believes that a sexual assault has occurred. The House amendment grants immunity to local law enforcement for actions taken in good faith under this section. The actions include remaining in the dwelling unit where the alleged assault occurred or assisting the victim in leaving the dwelling, assisting the victim in obtaining medical treatment, and providing notice to the victim of his or her rights. There may be additional costs at the local level due to increased staff time or office supplies (creating and printing a notice). These costs are anticipated to be minimal.
30. The Senate Amendment, as amended by the House, permits the Victim Information and Notification Everyday (VINE) to be established. Implementation of the system is not mandated.
31. The VINE system is estimated to cost approximately \$493,000 statewide the first year, and approximately \$500,000 annually thereafter. This amount does not include any third-party vendors, where a software company charges a fee to provide access to the VINE system. This cost is estimated to be approximately \$120,000 statewide. This amount includes \$20,000 for access to the Iowa Corrections Offender Network (ICON) system used by the Department of Corrections (DOC). Federal funds may be available in future fiscal years to implement the system. However, funding availability is not known at this time.

Assumptions

1. FY 2004 offender-based convictions were used to estimate the number of future offenders.
2. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
3. The criminal sentencing enhancements will become effective July 1, 2005. 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 cost to re-work and enhance the Sex Offender Registry web site would be approximately \$25,000 to update the programming (one-time cost, including an e-mail list serve) and \$62,000 for an Information Technology Specialist 1 (web master). Within ten years, the Registry is estimated to double in size. The cost to maintain photos and addresses on the web site for the additional years under the Senate Amendment requires

15. Current return to prison rates were used to project the number of offenders who would be revoked to prison from the additional term of parole.
16. Offenders released under the additional term of parole, either life or ten years, may be electronically monitored under the Senate Amendment. Offenders on electronic monitoring are supervised at the intensive supervision level – no more than 30 offenders per Probation/Parole Officer (PPO III). The number of offenders required to be electronically monitored will grow exponentially in future fiscal years.
17. The Board of Parole will require additional resources, an Administrative Law Judge and a clerk, due to the increased workload associated with extended parole supervision.
18. Fiscal Year 2004 convictions are used for calculating the impact of increasing the penalty for lascivious acts with a child from a Class D felony to a Class C felony, for certain acts.
19. In FY 2004, the following sex offenders were sentenced to prison: 4 serious misdemeanants, 31 aggravated misdemeanants, 51 Class D felons, and 89 Class C felons. Under current law, 25 of the Class D felons are receiving sex offender treatment. An additional 26 Class D felons are estimated to be in need of treatment. Of these, approximately 50.0% or 13 felons will accept treatment while the remaining 50.0% will refuse treatment.
20. Since misdemeanor sex offenders are not in prison long enough to participate in the sex offender treatment program, the DOC plans to create a shortened treatment program for these offenders to meet the current length of stay in prison. Follow-up treatment in CBC is required to complete the full program.
21. If all sex offenders in prison are required to participate in a sex offender treatment program in prison, the estimated cost increase is \$1.0 million. This includes \$355,000 for the current shortfall for sex offender treatment. The estimated \$1.0 million also includes \$645,000 for additional sex offender treatment plus increased operating costs related to increased length of stay for those who refuse treatment. Sex offenders only accrue earned time if they participate in treatment.
22. The Senate Amendment, as amended by the House, requires the Criminal and Juvenile Justice Planning Division (CJJPD) of the Department of Human Rights to establish a Sex Offender Treatment and Supervision Task Force. The cost for staffing the Task Force is estimated to be \$75,000 annually. This amount includes additional staff time (a portion of a Statistical Research Analyst and a portion of a Justice Systems Analyst) plus supplies and support costs.

Correctional Impact

Under the provision of a special sentence of parole, there is no correctional impact in FY 2006 or FY 2007 because offenders are serving their term in prison or on probation. The chart below shows the estimated number of offenders who will receive a special sentence of parole of either life or ten years.

CBC - Additional Sentence to Parole

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Lifetime	0	0	0	0	176	359	536	716
Ten Years	0	0	298	599	901	1,204	1,507	1,810
	0	0	298	599	1,077	1,563	2,043	2,526

Under the provision of mandated treatment in prison plus the loss of earned time, Class D felons will serve 28 additional months in prison because they refused treatment. Under current law, they will serve 32 months in prison. Under this legislation, they will serve 60 months in prison. Therefore, the correctional impact will occur in FY 2008, the third year after the effective date of this legislation.

There will be an increase in the number of sex offenders who will receive treatment in prison and CBC under the Senate Amendment, as amended by the House. This increase includes those offenders in prison who accept treatment, but need to complete treatment upon their

additional \$10,000 to the Attorney General's Office, \$10,000 to the State Public Defender's Office or the Indigent Defense Program, and \$42,000 for the Judicial Branch.

Sources

Department of Corrections
Department of Human Rights, Criminal Juvenile Justice Planning Division (CJJP)
Department of Public Safety
Judicial Branch
Office of the State Public Defender
Office of the Attorney General

/s/ Holly M. Lyons

May 11, 2005

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

**EIGHTY FIRST GENERAL ASSEMBLY
2005 REGULAR SESSION
DAILY
SENATE CLIP SHEET**

MAY 12, 2005

**HOUSE AMENDMENT TO SENATE AMENDMENT TO
HOUSE FILE 619**

S-3318

1 Amend the Senate amendment, H-1628, to House File
2 619, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 5, by striking lines 4 through 7 and
5 inserting the following: "commitment, and subsequent
6 dismissal of the case, or upon receipt of a".

7 2. Page 9, line 28, by striking the word
8 "subsection" and inserting the following:
9 "subsections".

10 3. Page 9, by inserting after line 35 the
11 following:

12 "NEW SUBSECTION. 2A. If a person violates any of
13 the requirements of section 692A.4, the person shall
14 register for an additional ten years beginning from
15 the date the first registration period ends as
16 calculated under subsection 1 or from the date the
17 special sentence ends under subsection 1A if the
18 person received a special sentence, whichever is
19 longer."

20 4. Page 10, line 39, by inserting after the word
21 "supervision." the following: "However, if the person
22 committed a criminal offense against a minor, or an
23 aggravated offense, sexually violent offense, or other
24 relevant offense that involved a minor, the person
25 shall be supervised by an electronic tracking and
26 monitoring system in addition to any other conditions
27 of release."

28 5. Page 11, line 42, by inserting after the word
29 "photograph," the following: "the results of any risk
30 assessment,".

31 6. Page 11, by inserting after line 50 the
32 following:

33 "Sec. ____ . NEW SECTION. 692A.13A ASSESSMENT OF
34 RISK.

35 1. The department of corrections, the department
36 of human services, and the department of public safety
37 shall, in consultation with one another, develop
38 methods and procedures for the assessment of the risk
39 for persons required to register under this chapter on
40 or after the effective date of this division of this
41 Act, who have committed a criminal offense against a
42 minor, or an aggravated offense, sexually violent
43 offense, or other relevant offense that involved a
44 minor. The department of corrections, in consultation
45 with the department of human services, the department
46 of public safety, and the attorney general, shall
47 adopt rules relating to assessment procedures. The
48 assessment procedures shall include procedures for the
49 sharing of information between the department of
50 corrections, department of human services, the

S-3318

1 juvenile court, and the division of criminal
2 investigation of the department of public safety, as
3 well as the communication of the results of the risk
4 assessment to criminal and juvenile justice agencies.
5 The assignment of responsibility for the assessment of
6 risk shall be as follows:

7 a. The department of corrections or a judicial
8 district department of correctional services shall
9 perform the assessment of risk for persons who are
10 incarcerated in institutions under the control of the
11 director of the department of corrections, persons who
12 are under the supervision of the department of
13 corrections or a judicial district department of
14 correctional services, and persons who are under the
15 supervision or control of the department of
16 corrections or a judicial district department of
17 correctional services through an interstate compact.

18 b. The department of human services shall perform
19 the assessment of risk for persons who are confined in
20 institutions under the control of the director of
21 human services, persons who are under the supervision
22 of the department of human services, and persons who
23 are under the supervision or control of the department
24 of human services through an interstate compact.

25 c. The division of criminal investigation of the
26 department of public safety shall perform the
27 assessment of risk for persons who have moved to Iowa
28 but are not under the supervision of the department of
29 corrections, a judicial district department of
30 correctional services, or the department of human
31 services; federal parolees or probationers; persons
32 who have been released from a county jail but are not
33 under the supervision of the department of
34 corrections, a judicial district department of
35 correctional services, a juvenile court officer of the
36 judicial branch, or the department of human services;
37 and persons who are convicted and released by the
38 courts and are not incarcerated or placed under
39 supervision pursuant to the court's sentencing order.
40 Assessments of persons who have moved to Iowa and
41 persons on federal parole or probation shall be
42 performed on an expedited basis if the person was
43 classified as a person with a high degree of
44 likelihood of reoffending by the other jurisdiction or
45 the federal government.

46 d. A juvenile court officer shall perform the
47 assessment of risk for a juvenile who is adjudicated
48 delinquent for a criminal offense listed in section
49 692A.1 and who is under the juvenile court officer's
50 supervision.

1 2. The department of public safety shall be
2 responsible for disclosing the assessment of risk
3 information to a criminal or juvenile justice agency
4 for law enforcement, prosecution, or for public
5 notification purposes. The results of the assessment
6 of risk shall be disclosed as other relevant
7 information is disclosed under section 692A.13."

8 7. Page 12, line 9, by inserting after the word
9 "offender" the following: ", or to a person who is
10 married to and living with a person required to
11 register as a sex offender".

12 8. Page 18, by striking lines 9 through 11 and
13 inserting the following: "crime victim center as
14 defined in section 915.20A."

15 9. Page 19, by inserting after line 19 the
16 following:

17 "4. A peace officer is not civilly or criminally
18 liable for actions taken in good faith pursuant to
19 this section."

20 10. Page 20, lines 33 and 34, by striking the
21 words ", the victim's family,".

22 11. Page 21, by striking lines 35 and 36, and
23 inserting the following: "members of the general
24 assembly selected by the legislative council and
25 representatives of the following:

26 _____. One representative from the state department
27 of transportation.

28 _____. One representative of the Iowa civil
29 liberties union."

30 12. Page 22, by inserting after line 5 the
31 following:

32 "DIVISION

33 SEVERABILITY CLAUSE

34 Sec. _____. SEVERABILITY CLAUSE. If any provision
35 of this Act or its application to any person or
36 circumstance is held invalid, the invalidity does not
37 affect other provisions or application of this Act
38 which can be given effect without the invalid
39 provision or application, and to this end the
40 provisions of this Act are severable."

41 13. By renumbering as necessary.

RECEIVED FROM THE HOUSE

HOUSE FILE 619

AN ACT

RELATING TO CRIMINAL SENTENCING, VICTIM NOTIFICATION, AND THE SEX OFFENDER REGISTRY, BY ESTABLISHING A SPECIAL SENTENCE FOR CERTAIN OFFENDERS, REQUIRING DNA TESTING OF CERTAIN OFFENDERS AND LENGTHENING THE TIME AN INFORMATION OR INDICTMENT MAY BE FOUND IN CERTAIN OFFENSES WHERE DNA EVIDENCE IS AVAILABLE, REQUIRING SEX OFFENDER TREATMENT IN ORDER TO ACCUMULATE EARNED TIME, RESTRICTING CERTAIN PERSONS FROM RESIDING WITH SEX OFFENDERS, ESTABLISHING A SEX OFFENDER TREATMENT AND SUPERVISION TASK FORCE, PROVIDING PENALTIES, AND PROVIDING EFFECTIVE DATES.

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

DIVISION I
DNA PROFILING

Section 1. NEW SECTION. 81.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "DNA" means deoxyribonucleic acid.
2. "DNA data bank" means the repository for DNA samples obtained pursuant to section 81.4.

3. "DNA database" means the collection of DNA profiles and DNA records.

4. "DNA profile" means the objective form of the results of DNA analysis performed on a DNA sample. The results of all DNA identification analysis on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

5. "DNA profiling" means the procedure established by the division of criminal investigation, department of public safety, for determining a person's genetic identity.

6. "DNA record" means the DNA sample and DNA profile, and other records in the DNA database and DNA data bank used to identify a person.

7. "DNA sample" means a biological sample provided by any person required to submit a DNA sample or a DNA sample submitted for any other purpose under section 81.4.

8. "Person required to submit a DNA sample" means a person convicted, adjudicated delinquent, receiving a deferred judgment, or found not guilty by reason of insanity of an offense requiring DNA profiling pursuant to section 81.2. "Person required to submit a DNA sample" also means a person determined to be a sexually violent predator pursuant to section 229A.7.

Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO SUBMIT A DNA SAMPLE.

1. A person who receives a deferred judgment for a felony or against whom a judgment or conviction for a felony has been entered shall be required to submit a DNA sample for DNA profiling pursuant to section 81.4.

2. A person determined to be a sexually violent predator pursuant to chapter 229A shall be required to submit a DNA sample for DNA profiling pursuant to section 81.4 prior to discharge or placement in a transitional release program.

3. A person found not guilty by reason of insanity of an offense that requires DNA profiling shall be required to submit a DNA sample for DNA profiling pursuant to section 81.4 as part of the person's treatment management program.

4. A juvenile adjudicated delinquent of an offense that requires DNA profiling of an adult offender shall be required to submit a DNA sample for DNA profiling pursuant to section 81.4 as part of the disposition of the juvenile's case.

5. An offender placed on probation shall immediately report to the judicial district department of correctional services after sentencing so it can be determined if the offender has been convicted of an offense requiring DNA profiling. If it is determined by the judicial district that DNA profiling is required, the offender shall immediately submit a DNA sample.

6. A person required to register as a sex offender.

Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA DATABASE AND DNA DATA BANK.

1. A state DNA database and a state DNA data bank are established under the control of the division of criminal investigation, department of public safety. The division of criminal investigation shall conduct DNA profiling of a DNA sample submitted in accordance with this section.

2. A DNA sample shall be submitted, and the division of criminal investigation shall store and maintain DNA records in the DNA database and DNA data bank for persons required to submit a DNA sample.

3. A DNA sample may be submitted, and the division of criminal investigation shall store and maintain DNA records in the DNA database and DNA data bank for any of the following:

- a. Crime scene evidence and forensic casework.
- b. A relative of a missing person.
- c. An anonymous DNA profile used for forensic validation, forensic protocol development, or quality control purposes, or for the establishment of a population statistics database.

4. A fingerprint record of a person required to submit a DNA sample shall also be submitted to the division of criminal investigation with the DNA sample to verify the identity of the person required to submit a DNA sample.

Sec. 4. NEW SECTION. 81.4 COLLECTING, SUBMITTING, ANALYZING, IDENTIFYING, AND STORING DNA SAMPLES AND DNA RECORDS.

1. The division of criminal investigation shall adopt rules for the collection, submission, analysis, identification, storage, and disposition of DNA records.

2. A supervising agency having control, custody, or jurisdiction over a person shall collect a DNA sample from a person required to submit a DNA sample. The supervising agency shall collect a DNA sample, upon admittance to the pertinent institution or facility, of the person required to submit a DNA sample or at a determined date and time set by the supervising agency. If a person required to submit a DNA sample is confined at the time a DNA sample is required, the person shall submit a DNA sample as soon as practicable. If a person required to submit a DNA sample is not confined after the person is required to submit a DNA sample, the supervising agency shall determine the date and time to collect the DNA sample.

3. A person required to submit a DNA sample who refuses to submit a DNA sample may be subject to contempt proceedings pursuant to chapter 665 until the DNA sample is submitted.

4. The division of criminal investigation shall conduct DNA profiling on a DNA sample or may contract with a private entity to conduct the DNA profiling.

Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL LIABILITY -- LIMITATION.

A person who collects a DNA sample shall not be civilly or criminally liable for the collection of the DNA sample if the person performs the person's duties in good faith and in a reasonable manner according to generally accepted medical practices or in accordance with the procedures set out in the administrative rules of the department of public safety adopted pursuant to section 81.4.

Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

1. A person who knowingly or intentionally does any of the following commits an aggravated misdemeanor:

a. Discloses any part of a DNA record to a person or agency that is not authorized by the division of criminal investigation to have access to the DNA record.

b. Uses or obtains a DNA record for a purpose other than what is authorized under this chapter.

2. A person who knowingly or intentionally alters or attempts to alter a DNA sample, falsifies the source of a DNA sample, or materially alters a collection container used to collect the DNA sample, commits a class "D" felony.

Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST NOT INVALIDATED.

The detention, arrest, or conviction of a person based upon a DNA database match is not invalidated if it is determined that the DNA sample or DNA profile was obtained or placed into the DNA database by mistake or error.

Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

1. A DNA record shall be considered a confidential record and disclosure of a DNA record is only authorized pursuant to this section.

2. Confidential DNA records under this section may be released to the following agencies for law enforcement identification purposes:

a. Any criminal or juvenile justice agency as defined in section 692.1.

b. Any criminal or juvenile justice agency in another jurisdiction that meets the definition of a criminal or juvenile justice agency as defined in section 692.1.

3. The division of criminal investigation shall share the DNA record information with the appropriate federal agencies for use in a national DNA database.

4. A DNA record or other forensic information developed pursuant to this chapter may be released for use in a criminal or juvenile delinquency proceeding in which the state is a party and where the DNA record or forensic information is

relevant and material to the subject of the proceeding. Such a record or information may become part of a public transcript or other public recording of such a proceeding.

5. A DNA record or other forensic information may be released pursuant to a court order for criminal defense purposes to a defendant, who shall have access to DNA samples and DNA profiles related to the case in which the defendant is charged.

Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA RECORDS.

1. A person whose DNA record has been included in the DNA database or DNA data bank established pursuant to section 81.3 may request, in writing to the division of criminal investigation, expungement of the DNA record from the DNA database and DNA data bank based upon the person's conviction, adjudication, or civil commitment which caused the submission of the DNA sample being reversed on appeal and the case dismissed. The written request shall contain a certified copy of the final court order reversing the conviction, adjudication, or civil commitment, and a certified copy of the dismissal, and any other information necessary to ascertain the validity of the request.

2. The division of criminal investigation, upon receipt of a written request that validates reversal on appeal of a person's conviction, adjudication, or commitment, and subsequent dismissal of the case, or upon receipt of a written request by a person who voluntarily submitted a DNA sample pursuant to section 81.3, subsection 3, paragraph "b", shall expunge all of the DNA records and identifiable information of the person in the DNA database and DNA data bank. However, if the division of criminal investigation determines that the person is otherwise obligated to submit a DNA sample, the DNA records shall not be expunged. If the division of criminal investigation denies an expungement request, the division shall notify the person requesting the expungement of the decision not to expunge the DNA record and the reason supporting its decision. The division of criminal

investigation decision is subject to judicial review pursuant to chapter 17A. The department of public safety shall adopt rules governing the expungement procedure and a review process.

3. The division of criminal investigation is not required to expunge or destroy a DNA record pursuant to this section, if expungement or destruction of the DNA record would destroy evidence related to another person.

Sec. 10. NEW SECTION. 81.10 DNA PROFILING AFTER CONVICTION.

1. A defendant who has been convicted of a felony and who has not been required to submit a DNA sample for DNA profiling may make a motion to the court for an order to require that DNA analysis be performed on evidence collected in the case for which the person stands convicted.

2. The motion shall state the following:

a. The specific crimes for which the defendant stands convicted in this case.

b. The facts of the underlying case, as proven at trial or admitted to during a guilty plea proceeding.

c. Whether any of the charges include sexual abuse or involve sexual assault, and if so, whether a sexual assault examination was conducted and evidence preserved, if known.

d. Whether identity was at issue or contested by the defendant.

e. Whether the defendant offered an alibi, and if so, testimony corroborating the alibi and, from whom.

f. Whether eyewitness testimony was offered, and if so from whom.

g. Whether any issues of police or prosecutor misconduct have been raised in the past or are being raised by the motion.

h. The type of inculpatory evidence admitted into evidence at trial or admitted to during a guilty plea proceeding.

i. Whether blood testing or other biological evidence testing was conducted previously in connection with the case and, if so, by whom and to the result, if known.

j. What biological evidence exists and, if known, the agency or laboratory storing the evidence that the defendant seeks to have tested.

k. Why the requested analysis of DNA evidence is material to the issue in the case and not merely cumulative or impeaching.

1. Why the DNA evidence would have changed the outcome of the trial or invalidated a guilty plea if DNA profiling had been conducted prior to the conviction.

3. A motion filed under this section shall be filed in the county where the defendant was convicted, and notice of the motion shall be served by certified mail upon the county attorney and, if known, upon the state, local agency, or laboratory holding evidence described in subsection 2, paragraph "k". The county attorney shall have sixty days to file an answer to the motion.

4. Any DNA profiling of the defendant or other biological evidence testing conducted by the state or by the defendant shall be disclosed and the results of such profiling or testing described in the motion or answer.

5. If the evidence requested to be tested was previously subjected to DNA or other biological analysis by either party, the court may order the disclosure of the results of such testing, including laboratory reports, notes, and underlying data, to the court and the parties.

6. The court may order a hearing on the motion to determine if evidence should be subjected to DNA analysis.

7. The court shall grant the motion if all of the following apply:

a. The evidence subject to DNA testing is available and in a condition that will permit analysis.

b. A sufficient chain of custody has been established for the evidence.

c. The identity of the person who committed the crime for which the defendant was convicted was a significant issue in the crime for which the defendant was convicted.

d. The evidence subject to DNA analysis is material to, and not merely cumulative or impeaching of, evidence included in the trial record or admitted to at a guilty plea proceeding.

e. DNA analysis of the evidence would raise a reasonable probability that the defendant would not have been convicted if DNA profiling had been available at the time of the conviction and had been conducted prior to the conviction.

8. Upon the court granting a motion filed pursuant to this section, DNA analysis of evidence shall be conducted within the guidelines generally accepted by the scientific community. The defendant shall provide DNA samples for testing if requested by the state.

9. Results of DNA analysis conducted pursuant to this section shall be reported to the parties and to the court and may be provided to the board of parole, department of corrections, and criminal and juvenile justice agencies, as defined in section 692.1, for use in the course of investigations and prosecutions, and for consideration in connection with requests for parole, pardon, reprieve, and commutation. DNA samples obtained pursuant to this section may be included in the DNA data bank, and DNA profiles and DNA records developed pursuant to this section may be included in the DNA database.

10. A criminal or juvenile justice agency, as defined in section 692.1, shall maintain DNA samples and evidence that could be tested for DNA for a period of three years beyond the limitations for the commencement of criminal actions as set forth in chapter 802. This section does not create a cause of action for damages or a presumption of spoliation in the event evidence is no longer available for testing.

11. If the court determines a defendant who files a motion under this section is indigent, the defendant shall be entitled to appointment of counsel as provided in chapter 815.

12. If the court determines after DNA analysis ordered pursuant to this section that the results indicate

conclusively that the DNA profile of the defendant matches the profile from the analyzed evidence used against the defendant, the court may order the defendant to pay the costs of these proceedings, including costs of all testing, court costs, and costs of court-appointed counsel, if any.

Sec. 11. Section 229A.7, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. If the court or jury determines that the respondent is a sexually violent predator, the court shall order the respondent to submit a DNA sample for DNA profiling pursuant to section 81.4.

Sec. 12. Section 232.52, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 10. The court shall order a juvenile adjudicated a delinquent for an offense that requires DNA profiling under section 81.2 to submit a DNA sample for DNA profiling pursuant to section 81.4.

Sec. 13. Section 669.14, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 15. Any claim arising from or related to the collection of a DNA sample for DNA profiling pursuant to section 81.4 or a DNA profiling procedure performed by the division of criminal investigation, department of public safety.

Sec. 14. Section 901.5, subsection 8A, Code 2005, is amended to read as follows:

8A. a. The court shall order DNA profiling of a defendant convicted of an offense that requires profiling under section ~~13-10~~ 81.2.

b. Notwithstanding section ~~13-10~~ 81.2, the court may order the defendant to provide a ~~physical-specimen~~ DNA sample to be submitted for DNA profiling if appropriate. In determining the appropriateness of ordering DNA profiling, the court shall consider the deterrent effect of DNA profiling, the likelihood of repeated offenses by the defendant, and the seriousness of the offense.

Sec. 15. Section 906.4, unnumbered paragraph 3, Code 2005, is amended to read as follows:

~~Notwithstanding section 13.10, the~~ The board may order the defendant to provide a physical specimen to be submitted for DNA profiling as a condition of parole or work release, if appropriate a DNA profile has not been previously conducted pursuant to chapter 81. In determining the appropriateness of ordering DNA profiling, the board shall consider the deterrent effect of DNA profiling, the likelihood of repeated offenses by the defendant, and the seriousness of the offense.

Sec. 16. 2002 Iowa Acts, chapter 1080, is repealed.

Sec. 17. Section 13.10, Code 2005, is repealed.

Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE PRIOR TO EFFECTIVE DATE OF THIS DIVISION OF THIS ACT. A person convicted, adjudicated a delinquent, civilly committed as a sexually violent predator, or found not guilty by reason of insanity, prior to the effective date of this Act, who would otherwise be required to submit a DNA sample under this Act, and who is under the custody, control, or jurisdiction of a supervising agency, shall submit a DNA sample prior to being released from the supervising agency's custody, control, or jurisdiction.

Sec. 19. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION II

SEX OFFENDER REGISTRY -- TREATMENT -- STUDY

Sec. 20. Section 232.68, subsection 2, Code 2005, is amended by adding the following new paragraph:

NEW PARAGRAPH. i. Cohabitation with a person on the sex offender registry under chapter 692A in violation of section 726.6.

Sec. 21. Section 692A.1, subsection 8, Code 2005, is amended to read as follows:

8. "Residence" means the place where a person sleeps, which may include more than one location, and may be mobile or transitory, including a shelter or group home.

Sec. 22. Section 692A.2, Code 2005, is amended by adding the following new subsections:

NEW SUBSECTION. 1A. If a person is required to register for a period of ten years under subsection 1 and the period under subsection 1 has expired, the person shall be required to remain on the registry if the person has been sentenced to a special sentence as required under section 903B.0A or 903B.0B, for a period equal to the term of the special sentence.

NEW SUBSECTION. 2A. If a person violates any of the requirements of section 692A.4, the person shall register for an additional ten years beginning from the date the first registration period ends as calculated under subsection 1 or from the date the special sentence ends under subsection 1A if the person received a special sentence, whichever is longer.

Sec. 23. Section 692A.4, Code 2005, is amended to read as follows:

692A.4 VERIFICATION OF ADDRESS AND TAKING OF PHOTOGRAPH.

1. The address of a person required to register under this chapter shall be verified annually as follows:

a. On a date which falls within the month in which the person was initially required to register, the department shall mail a verification form to the last reported address of the person. Verification forms shall not be forwarded to the person who is required to register under this chapter if the person no longer resides at the address, but shall be returned to the department.

b. The person shall complete and mail the verification to the department within ten days of receipt of the form.

c. The verification form shall be signed by the person, and state the address at which the person resides. If the person is in the process of changing residences, the person shall state that fact as well as the old and new addresses or places of residence.

2. Verification of address for a person who has been convicted of an offense under the laws of this state or of

another state which would qualify the person as a sexually violent predator shall be accomplished in the same manner as in subsection 1, except that the verification shall be done every three months at times established by the department.

3. A photograph of a person required to register under this chapter shall be updated, at a minimum, annually. When the department mails the address verification notice in subsection 1, the department shall also enclose a form informing the person to annually submit to being photographed by the sheriff of the county of the person's residence within ten days of receipt of the address verification form. The sheriff shall send the updated photograph to the department within ten days of the photograph being taken and the department shall post the updated photograph on the sex offender registry's web page. The sheriff may require the person to submit to being photographed by the sheriff more than once a year by mailing another notice informing the person to submit to being photographed.

Sec. 24. NEW SECTION. 692A.4A ELECTRONIC MONITORING.

A person required to register under this chapter who is placed on probation, parole, work release, special sentence, or any other type of conditional release, may be supervised by an electronic tracking and monitoring system in addition to any other conditions of supervision. However, if the person committed a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor, the person shall be supervised by an electronic tracking and monitoring system in addition to any other conditions of release.

Sec. 25. Section 692A.5, subsection 1, Code 2005, is amended by adding the following new paragraph:

NEW PARAGRAPH. i. Inform the person that the person must, at a minimum, annually submit to being photographed by the sheriff of the county of the person's residence.

Sec. 26. Section 692A.13, subsection 3, Code 2005, is amended to read as follows:

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

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

A county sheriff or police department shall not charge a fee relating to a request for relevant information.

Sec. 27. Section 692A.13, subsection 2, paragraph b, Code 2005, is amended to read as follows:

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

Sec. 28. Section 692A.13, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. When a person required to register under this chapter moves into a school district or moves within a school district, the county sheriff of the county of the person's new residence shall provide relevant information from the sex offender registry to the administrative office of the school district in which the person required to register resides, and shall also provide relevant information to any private school near the person's residence.

Sec. 29. Section 692A.13, subsection 5, Code 2005, is amended to read as follows:

5. Relevant information provided to the general public may include the offender's name, address, a photograph, the results of any risk assessment, locations frequented by the offender, relevant criminal history information from the registry, and any other relevant information. Relevant information provided to the public shall not include the identity of any victim. For purposes of inclusion in the sex offender registry's web page or dissemination to the general public, a conviction for incest shall be disclosed as either a violation of section 709.4 or 709.8.

Sec. 30. NEW SECTION. 692A.13A ASSESSMENT OF RISK.

1. The department of corrections, the department of human services, and the department of public safety shall, in consultation with one another, develop methods and procedures for the assessment of the risk for persons required to register under this chapter on or after the effective date of this division of this Act, who have committed a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor. The department of corrections, in consultation with the department of human services, the department of public safety, and the attorney general, shall adopt rules relating to assessment procedures. The assessment procedures shall include procedures for the sharing of information between the department of corrections, department of human services, the juvenile court, and the division of criminal investigation of the department of public safety, as well as the communication of the results of the risk assessment to criminal and juvenile justice agencies. The assignment of responsibility for the assessment of risk shall be as follows:

a. The department of corrections or a judicial district department of correctional services shall perform the assessment of risk for persons who are incarcerated in institutions under the control of the director of the department of corrections, persons who are under the supervision of the department of corrections or a judicial

district department of correctional services, and persons who are under the supervision or control of the department of corrections or a judicial district department of correctional services through an interstate compact.

b. The department of human services shall perform the assessment of risk for persons who are confined in institutions under the control of the director of human services, persons who are under the supervision of the department of human services, and persons who are under the supervision or control of the department of human services through an interstate compact.

c. The division of criminal investigation of the department of public safety shall perform the assessment of risk for persons who have moved to Iowa but are not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; federal parolees or probationers; persons who have been released from a county jail but are not under the supervision of the department of corrections, a judicial district department of correctional services, a juvenile court officer of the judicial branch, or the department of human services; and persons who are convicted and released by the courts and are not incarcerated or placed under supervision pursuant to the court's sentencing order. Assessments of persons who have moved to Iowa and persons on federal parole or probation shall be performed on an expedited basis if the person was classified as a person with a high degree of likelihood of reoffending by the other jurisdiction or the federal government.

d. A juvenile court officer shall perform the assessment of risk for a juvenile who is adjudicated delinquent for a criminal offense listed in section 692A.1 and who is under the juvenile court officer's supervision.

2. The department of public safety shall be responsible for disclosing the assessment of risk information to a criminal or juvenile justice agency for law enforcement;

prosecution, or for public notification purposes. The results of the assessment of risk shall be disclosed as other relevant information is disclosed under section 692A.13.

Sec. 31. Section 726.6, subsection 1, Code 2005, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. Cohabits with a person after knowing the person is required to register or is on the sex offender registry as a sex offender under chapter 692A. However, this paragraph does not apply to a person who is a parent, guardian, or a person having custody or control over a child or a minor who is required to register as a sex offender, or to a person who is married to and living with a person required to register as a sex offender.

Sec. 32. Section 903A.2, subsection 1, paragraph a, Code 2005, is amended to read as follows:

a. Category "A" sentences are those sentences which are not subject to a maximum accumulation of earned time of fifteen percent of the total sentence of confinement under section 902.12. To the extent provided in subsection 5, category "A" sentences also include life sentences imposed under section 902.1. An inmate of an institution under the control of the department of corrections who is serving a category "A" sentence is eligible for a reduction of sentence equal to one and two-tenths days for each day the inmate demonstrates good conduct and satisfactorily participates in any program or placement status identified by the director to earn the reduction. The programs include but are not limited to the following:

- (1) Employment in the institution.
- (2) Iowa state industries.
- (3) An employment program established by the director.
- (4) A treatment program established by the director.
- (5) An inmate educational program approved by the director.

However, an inmate required to participate in a sex offender treatment program shall not be eligible for a

reduction of sentence unless the inmate participates in and completes a sex offender treatment program established by the director.

An inmate serving a category "A" sentence is eligible for an additional reduction of sentence of up to three hundred sixty-five days of the full term of the sentence of the inmate for exemplary acts. In accordance with section 903A.4, the director shall by policy identify what constitutes an exemplary act that may warrant an additional reduction of sentence.

Sec. 33. Section 903B.1, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 7. A person who administers medroxyprogesterone acetate or any other pharmaceutical agent shall not be liable for civil damages for administering such pharmaceutical agents pursuant to this chapter.

Sec. 34. SEX OFFENDER INTERIM STUDY COMMITTEE. The legislative council is requested to authorize a study for the 2005 legislative interim on sexual abuse-related criminal offenses and the sex offender registry. The study recommendations and findings shall include but are not limited to identifying possible changes to sexual abuse-related offenses and the sex offender registry. The study report, including findings and recommendations, shall be submitted to the general assembly for consideration during the 2006 legislative session. The study shall be conducted by a study committee consisting of up to nine members of the general assembly. A chairperson or co-chairpersons shall be designated by the legislative council.

DIVISION III

ENHANCED CRIMINAL PENALTIES AND
STATUTE OF LIMITATIONS

Sec. 35. Section 709.8, Code 2005, is amended to read as follows:

709.8 LASCIVIOUS ACTS WITH A CHILD.

It is unlawful for any person ~~eighteen~~ sixteen years of age or older to perform any of the following acts with a child with or without the child's consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the pubes or genitals of a child.
2. Permit or cause a child to fondle or touch the person's genitals or pubes.
3. Solicit a child to engage in a sex act or solicit a person to arrange a sex act with a child.
4. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person.

Any person who violates a provision of this section involving an act included in subsection 1 or 2 shall, upon conviction, be guilty of a class "B" "C" felony. A person who violates a provision of this section and who is sentenced to a term of confinement shall also be sentenced to an additional term of parole or work release not to exceed two years. The board of parole shall determine whether the person should be released on parole or placed in a work release program. The sentence of an additional term of parole or work release supervision shall commence immediately upon the expiration of the preceding sentence and shall be under the terms and conditions as set out in chapter 906. Violations of parole or work release shall be subject to the procedures set out in chapter 905 or 908 or rules adopted under those chapters. The sentence of an additional term of parole or work release shall be consecutive to the original term of confinement. Any person who violates a provision of this section involving an act included in subsection 3 or 4 shall, upon conviction, be guilty of a class "D" felony.

Sec. 36. Section 802.2, Code 2005, is amended to read as follows:

802.2 SEXUAL ABUSE -- FIRST, SECOND, OR THIRD DEGREE.

1. An information or indictment for sexual abuse in the first, second, or third degree committed on or with a person

who is under the age of eighteen years shall be found within ten years after the person upon whom the offense is committed attains eighteen years of age, or if the identity of the person against whom the information or indictment is sought is established through the use of a DNA profile, an information or indictment shall be found within three years from the date the identity of the person is identified by the person's DNA profile, whichever is later.

2. An information or indictment for any other sexual abuse in the first, second, or third degree shall be found within ten years after its commission, or if the identity of the person against whom the information or indictment is sought is established through the use of a DNA profile, an information or indictment shall be found within three years from the date the identity of the person is identified by the person's DNA profile, whichever is later.

3. As used in this section, "identified" means a person's legal name is known and the person has been determined to be the source of the DNA.

Sec. 37. Section 901.5, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 13. In addition to any other sentence or other penalty imposed against the defendant, the court shall impose a special sentence if required under section 903B.0A or 903B.0B.

Sec. 38. NEW SECTION. 902.15 ENHANCED PENALTY -- SEXUAL ABUSE OR LASCIVIOUS ACTS WITH A CHILD.

1. A person commits a class "A" felony if the person commits a second or subsequent offense involving any combination of the following offenses:

- a. Sexual abuse in the second degree in violation of section 709.3.
- b. Sexual abuse in the third degree in violation of section 709.4.
- c. Lascivious acts with a child in violation of section 709.8, subsection 1 or 2.

2. In determining if a violation charged is a second or subsequent offense for purposes of criminal sentencing in this section, each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense, regardless of whether the previous offense occurred before, on, or after the effective date of this Act. Convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to the offenses listed in subsection 1 shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the offenses listed in subsection 1 and can therefore be considered corresponding statutes.

Sec. 39. NEW SECTION. 903B.0A SPECIAL SENTENCE -- CLASS "B" OR CLASS "C" FELONIES.

A person convicted of a class "C" felony or greater offense under chapter 709, or a class "C" felony under section 728.12, shall also be sentenced, in addition to any other punishment provided by law, to a special sentence committing the person into the custody of the director of the Iowa department of corrections for the rest of the person's life, with eligibility for parole as provided in chapter 906. The special sentence imposed under this section shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying criminal offense and the person shall begin the sentence under supervision as if on parole. The person shall be placed on the corrections continuum in chapter 901B, and the terms and conditions of the special sentence, including violations, shall be subject to the same set of procedures set out in chapters 901B, 905, 906, and chapter 908, and rules adopted under those chapters for persons on parole. The revocation of release shall not be for a period greater than two years upon any first revocation, and five years upon any second or

subsequent revocation. A special sentence shall be considered a category "A" sentence for purposes of calculating earned time under section 903A.2.

Sec. 40. NEW SECTION. 903B.0B SPECIAL SENTENCE -- CLASS "D" FELONIES OR MISDEMEANORS.

A person convicted of a misdemeanor or a class "D" felony offense under chapter 709, section 726.2, or section 728.12 shall also be sentenced, in addition to any other punishment provided by law, to a special sentence committing the person into the custody of the director of the Iowa department of corrections for a period of ten years, with eligibility for parole as provided in chapter 906. The special sentence imposed under this section shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying criminal offense and the person shall begin the sentence under supervision as if on parole. The person shall be placed on the corrections continuum in chapter 901B, and the terms and conditions of the special sentence, including violations, shall be subject to the same set of procedures set out in chapters 901B, 905, 906, and 908, and rules adopted under those chapters for persons on parole. The revocation of release shall not be for a period greater than two years upon any first revocation, and five years upon any second or subsequent revocation. A special sentence shall be considered a category "A" sentence for purposes of calculating earned time under section 903A.2.

Sec. 41. Section 903B.1, subsection 3, Code 2005, is amended by striking the subsection.

Sec. 42. Section 906.15, unnumbered paragraph 1, Code 2005, is amended to read as follows:

Unless sooner discharged, a person released on parole shall be discharged when the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement. Discharge from parole may be granted prior to such time, when an early discharge is appropriate. The board shall periodically review all paroles,

and when the board determines that any person on parole is able and willing to fulfill the obligations of a law-abiding citizen without further supervision, the board shall discharge the person from parole. A parole officer shall periodically review all paroles assigned to the parole officer, and when the parole officer determines that any person assigned to the officer is able and willing to fulfill the obligations of a law-abiding citizen without further supervision, the officer may discharge the person from parole after notification and approval of the district director and notification of the board of parole. In any event, discharge from parole shall terminate the person's sentence. If a person has been sentenced to a special sentence under section 903B.0A or 903B.0B, the person may be discharged early from the sentence in the same manner as any other person on parole. However, a person convicted of a violation of section 709.3, 709.4, or 709.8 committed on or with a child, or a person serving a sentence under section 902.12, shall not be discharged from parole until the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement.

Sec. 43. Section 908.5, Code 2005, is amended to read as follows:

908.5 DISPOSITION.

1. If a violation of parole is established, the administrative parole judge may continue the parole with or without any modification of the conditions of parole. The administrative parole judge may revoke the parole and require the parolee to serve the sentence originally imposed, or may revoke the parole and reinstate the parolee's work release status.

2. If the person is serving a special sentence under chapter 903B, the administrative parole judge may revoke the release. Upon the revocation of release, the person shall not serve the entire length of the special sentence imposed, and the revocation shall be for a period not to exceed two years

in a correctional institution upon a first revocation and for a period not to exceed five years in a correctional institution upon a second or subsequent revocation.

3. The order of the administrative parole judge shall contain findings of fact, conclusions of law, and a disposition of the matter.

DIVISION IV
VICTIM RIGHTS

Sec. 44. NEW SECTION. 235D.1 CRIMINAL HISTORY CHECK -- APPLICANTS AT DOMESTIC ABUSE OR SEXUAL ASSAULT CENTERS.

An applicant for employment at a domestic abuse or sexual assault center shall be subject to a national criminal history check through the federal bureau of investigation. The domestic abuse or sexual assault center shall request the criminal history check and shall provide the applicant's fingerprints to the department of public safety for submission through the state criminal history repository to the federal bureau of investigation. The applicant shall authorize release of the results of the criminal history check to the domestic abuse or sexual assault center. The applicant shall pay the actual cost of the fingerprinting and criminal history check, if any. Unless the criminal history check was completed within the ninety calendar days prior to the date the application is received by the domestic abuse or sexual assault center, the center shall reject and return the application to the applicant. The results of a criminal history check conducted pursuant to this subsection shall not be considered a public record under chapter 22. For purposes of this section, "domestic abuse or sexual assault center" means a crime victim center as defined in section 915.20A.

Sec. 45. NEW SECTION. 709.22 PREVENTION OF FURTHER SEXUAL ASSAULT -- NOTIFICATION OF RIGHTS.

If a peace officer has reason to believe that a sexual assault as defined in section 915.40 has occurred, the officer shall use all reasonable means to prevent further violence including but not limited to the following:

1. If requested, remaining on the scene of the alleged sexual assault as long as there is a danger to the victim's physical safety without the presence of a peace officer, including but not limited to staying in the dwelling unit, or if unable to remain on the scene, assisting the victim in leaving the residence.

2. Assisting a victim in obtaining medical treatment necessitated by the sexual assault, including providing assistance to the victim in obtaining transportation to the emergency room of the nearest hospital.

3. Providing a victim with immediate and adequate notice of the victim's rights. The notice shall consist of handing the victim a copy of the following statement written in English and Spanish, asking the victim to read the statement, and asking whether the victim understands the rights:

"You have the right to ask the court for help with any of the following on a temporary basis:

a. Keeping your attacker away from you, your home, and your place of work.

b. The right to stay at your home without interference from your attacker.

c. The right to seek a no-contact order under section 709.20 or 915.22, if your attacker is arrested for sexual assault.

You have the right to register as a victim with the county attorney under section 915.12.

You have the right to file a complaint for threats, assaults, or other related crimes.

You have the right to seek restitution against your attacker for harm to you or your property.

You have the right to apply for victim compensation.

You have the right to contact the county attorney or local law enforcement to determine the status of your case.

If you are in need of medical treatment, you have the right to request that the officer present assist you in obtaining transportation to the nearest hospital or otherwise assist you.

You have the right to a sexual assault examination performed at state expense.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and other affected parties can leave or until safety is otherwise ensured."

The notice shall also contain the telephone numbers of shelters, support groups, and crisis lines operating in the area.

4. A peace officer is not civilly or criminally liable for actions taken in good faith pursuant to this section.

Sec. 46. Section 915.10, subsections 1 and 2, Code 2005, are amended to read as follows:

1. "Notification" means mailing by regular mail or providing for hand delivery of appropriate information or papers. However, this notification procedure does not prohibit an office, agency, or department from also providing appropriate information to a registered victim by telephone, electronic mail, or other means.

2. "Registered" means having provided the county attorney with the victim's written request for registration and current mailing address and telephone number. If an automated victim notification system is implemented pursuant to section 915.10A, "registered" also means having filed a request for registration with the system.

Sec. 47. NEW SECTION. 915.10A AUTOMATED VICTIM NOTIFICATION SYSTEM.

1. An automated victim notification system may be utilized to assist public officials in informing crime victims, the victim's family, or other interested persons as provided in this subchapter and where otherwise specifically provided. The system shall disseminate the information to registered users through telephonic, electronic, or other means of access.

2. An office, agency, or department may satisfy a notification obligation to registered victims required by this subchapter through participation in the system to the extent information is available for dissemination through the system. Nothing in this section shall relieve a notification obligation under this subchapter due to the unavailability of information for dissemination through the system.

3. Notwithstanding section 232.147, information concerning juveniles charged with a felony offense shall be released to the extent necessary to comply with this section.

Sec. 48. Section 915.11, Code 2005, is amended to read as follows:

915.11 INITIAL NOTIFICATION BY LAW ENFORCEMENT.

A local police department or county sheriff's department shall advise a victim of the right to register with the county attorney, and shall provide a request-for-registration form to each victim. If an automated victim notification system is available pursuant to section 915.10A, a local police department or county sheriff's department shall provide a telephone number and website to each victim to register with the system.

Sec. 49. Section 915.12, Code 2005, is amended to read as follows:

915.12 REGISTRATION.

~~1. The county attorney shall be the sole registrar of victims under this subchapter.~~

~~2. 1.~~ A victim may register by filing a written request-for-registration form with the county attorney. The county attorney shall notify the victims in writing and advise them of their registration and rights under this subchapter.

~~3.~~ The county attorney shall provide a registered victim list to the offices, agencies, and departments required to provide information under this subchapter for notification purposes.

2. If an automated victim notification system is available pursuant to section 915.10A, a victim, the victim's family, or

other interested person may register with the system by filing a request for registration through written, telephonic, or electronic means.

~~4. 3.~~ Notwithstanding chapter 22 or any other contrary provision of law, ~~a victim's~~ the registration of a victim, victim's family, or other interested person shall be strictly maintained in a separate confidential file or other confidential medium, and shall be available only to the offices, agencies, and departments required to provide information under this subchapter.

Sec. 50. Section 915.29, Code 2005, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The notification required pursuant to this section may occur through the automated victim notification system referred to in section 915.10A to the extent such information is available for dissemination through the system.

Sec. 51. Section 915.45, Code 2005, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The notification required pursuant to this section may occur through the automated victim notification system referred to in section 915.10A to the extent such information is available for dissemination through the system.

DIVISION V
TASK FORCE

Sec. 52. SEX OFFENDER TREATMENT AND SUPERVISION TASK FORCE.

1. The division of criminal and juvenile justice planning shall establish a task force to study and make periodic recommendations for treating and supervising sex offenders in correctional institutions and in the community. The task force shall file a report with recommendations with the general assembly by January 15, 2006. The task force shall study the effectiveness of electronic monitoring and the potential effects and costs associated with the special

sentence created in this Act. The task force shall study risk assessment models created for sex offenders. The task force shall also review this state's efforts and the efforts of other states to implement treatment programs and make recommendations as to the best treatment options available for sex offenders. The task force shall also develop a plan to integrate state government databases for the purpose of updating addresses of persons on the sex offender registry.

2. Members of the task force shall include members of the general assembly selected by the legislative council and representatives of the following:

- a. One representative from the state department of transportation.
- b. One representative of the Iowa civil liberties union.
- c. One representative of the department of human services.
- d. One representative of the department of public safety.
- e. One representative of the Iowa state sheriffs and deputies association.
- f. One representative of the Iowa county attorneys association.
- g. One representative of the department of corrections.
- h. One representative of the board of parole.
- i. One representative of a judicial district department of correctional services.
- j. One representative of the department of justice.
- k. One representative of the state public defender.
- l. One representative of the Iowa coalition against sexual assault.

DIVISION VI
SEVERABILITY CLAUSE

Sec. 53. SEVERABILITY CLAUSE. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

DIVISION VII
STATE MANDATE

Sec. 54. IMPLEMENTATION OF ACT. Section 25B.2, subsection 3, shall not apply to this Act.

CHRISTOPHER C. RANTS
Speaker of the House

JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 619, Eighty-first General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved 6/14, 2005

THOMAS J. VILSACK
Governor