

Senate File 2356 - Introduced

SENATE FILE 2356
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 2147)

A BILL FOR

1 An Act relating to sexually violent predators, the accumulation
2 of earned time by offenders, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 229A.2, subsection 4, Code 2018, is
2 amended to read as follows:

3 4. "*Discharge*" means an unconditional discharge from the
4 sexually violent predator program. A person released from a
5 secure facility into a transitional release program or released
6 with ~~or without~~ supervision is not considered to be discharged.

7 Sec. 2. Section 229A.5B, subsection 1, unnumbered paragraph
8 1, Code 2018, is amended to read as follows:

9 A person who is detained pursuant to [section 229A.5](#) or is
10 subject to an order of civil commitment under [this chapter](#)
11 shall remain in custody unless released by court order or
12 discharged under [section 229A.8](#) or [229A.10](#). A person who has
13 been placed in a transitional release program or who is under
14 release with ~~or without~~ supervision is considered to be in
15 custody. A person in custody under [this chapter](#) shall not do
16 any of the following:

17 Sec. 3. Section 229A.5C, subsection 4, Code 2018, is amended
18 to read as follows:

19 4. A person who committed a public offense while in a
20 transitional release program or on release with ~~or without~~
21 supervision may be returned to a secure facility operated by
22 the department of human services upon completion of any term
23 of confinement that resulted from the commission of the public
24 offense.

25 Sec. 4. Section 229A.6A, subsection 1, paragraph d, Code
26 2018, is amended to read as follows:

27 *d.* To a facility for placement or treatment in a
28 transitional release program or for release with ~~or without~~
29 supervision. A transport order is not required under this
30 paragraph.

31 Sec. 5. Section 229A.7, subsection 7, Code 2018, is amended
32 to read as follows:

33 7. The control, care, and treatment of a person determined
34 to be a sexually violent predator shall be provided at a
35 facility operated by the department of human services. At all

1 times prior to placement in a transitional release program
2 or release with ~~or without~~ supervision, persons committed
3 for control, care, and treatment by the department of human
4 services pursuant to **this chapter** shall be kept in a secure
5 facility and those patients shall be segregated at all times
6 from any other patient under the supervision of the department
7 of human services. A person committed pursuant to **this chapter**
8 to the custody of the department of human services may be kept
9 in a facility or building separate from any other patient
10 under the supervision of the department of human services.
11 The department of human services may enter into a chapter
12 28E agreement with the department of corrections or other
13 appropriate agency in this state or another state for the
14 confinement of patients who have been determined to be sexually
15 violent predators. Patients who are in the custody of the
16 director of the department of corrections pursuant to a chapter
17 28E agreement and who have not been placed in a transitional
18 release program or released with ~~or without~~ supervision shall
19 be housed and managed separately from criminal offenders in
20 the custody of the director of the department of corrections,
21 and except for occasional instances of supervised incidental
22 contact, shall be segregated from those offenders.

23 Sec. 6. Section 229A.8, subsection 5, paragraph e,
24 subparagraph (2), Code 2018, is amended to read as follows:

25 (2) (a) If the committed person shows by a preponderance
26 of the evidence that a final hearing should be held on either
27 determination under subparagraph (1), subparagraph division (a)
28 or (b), or both, the court shall set a final hearing within
29 sixty days of the determination that a final hearing be held.

30 (b) The committed person may waive the sixty-day final
31 hearing requirement under subparagraph subdivision (a);
32 however, the committed person or the attorney for the committed
33 person may reassert a demand that the final hearing be held
34 within sixty days from the date of filing the demand with the
35 clerk of court.

1 (c) The final hearing may be continued upon request of
2 either party and a showing of good cause, or by the court
3 on its own motion in the due administration of justice, and
4 if the committed person is not substantially prejudiced. In
5 determining what constitutes good cause, the court shall
6 consider the length of the pretrial detention of the committed
7 person.

8 Sec. 7. Section 229A.8B, subsection 3, Code 2018, is amended
9 to read as follows:

10 3. Upon the return of the committed person to a secure
11 facility, the director of human services or the director's
12 designee shall notify the court that issued the ex parte order
13 that the absconder has been returned to a secure facility, and
14 the court shall set a hearing ~~within five days~~ to determine if
15 a violation occurred. If a court order was not issued, the
16 director or the director's designee shall contact the nearest
17 district court with jurisdiction to set a hearing to determine
18 whether a violation of the rules or directives occurred. The
19 court shall schedule a hearing ~~within five days of~~ after
20 receiving notice that the committed person has been returned
21 from the transitional release program to a secure facility.

22 Sec. 8. Section 229A.9A, Code 2018, is amended to read as
23 follows:

24 **229A.9A Release with ~~or without~~ supervision.**

25 1. In any proceeding under **section 229A.8**, the court may
26 order the committed person released with ~~or without~~ supervision
27 if any of the following apply:

28 a. The attorney general stipulates to the release with ~~or~~
29 ~~without~~ supervision.

30 b. The court or jury has determined that the person should
31 be ~~discharged~~ released from the ~~program~~ a secure facility or
32 a transitional release program, but the court has determined
33 the person suffers from a mental abnormality and it is in the
34 best interest of the community to order release with ~~or without~~
35 supervision before the committed person is discharged.

1 2. If release with ~~or without~~ supervision is ordered, the
2 department of human services shall prepare within sixty days of
3 the order of the court a release plan addressing the person's
4 needs for counseling, medication, community support services,
5 residential services, vocational services, alcohol or other
6 drug abuse treatment, sex offender treatment, or any other
7 treatment or supervision necessary.

8 3. The court shall set a hearing on the release plan
9 prepared by the department of human services before the
10 committed person is released from a secure facility or a
11 transitional release program.

12 4. If the court orders release with supervision, the court
13 shall order supervision by an agency with jurisdiction that
14 is familiar with the placement of criminal offenders in the
15 community. The agency with jurisdiction shall be responsible
16 for initiating proceedings for violations of the release plan
17 as provided in [section 229A.9B](#). ~~If the court orders release~~
18 ~~without supervision, the agency with jurisdiction shall also be~~
19 ~~responsible for initiating proceedings for any violations of~~
20 ~~the release plan as provided in [section 229A.9B](#).~~

21 5. A committed person may not petition the court for release
22 with ~~or without~~ supervision.

23 6. A committed person released with ~~or without~~ supervision
24 is not considered discharged from civil commitment under this
25 chapter.

26 7. After being released with ~~or without~~ supervision, the
27 person may petition the court for discharge as provided in
28 section 229A.8.

29 8. The court shall retain jurisdiction over the committed
30 person who has been released with ~~or without~~ supervision until
31 the person is discharged from the program. The department
32 of human services or a judicial district department of
33 correctional services shall not be held liable for any acts
34 committed by a committed person who has been ordered released
35 with ~~or without~~ supervision.

1 Sec. 9. Section 229A.9B, Code 2018, is amended to read as
2 follows:

3 **229A.9B Violations of release with ~~or without~~ supervision.**

4 1. If a committed person violates the release plan, the
5 agency with jurisdiction over the person may request the
6 district court to issue an emergency ex parte order directing
7 any law enforcement officer to take the person into custody
8 so that the person can be returned to a secure facility.
9 The request for an ex parte order may be made orally or by
10 telephone, but the original written request or a facsimile copy
11 of the request shall be filed with the clerk of court no later
12 than 4:30 p.m. on the next business day the office of the clerk
13 of court is open.

14 2. If a committed person has absconded in violation of the
15 conditions of the person's release plan, a presumption arises
16 that the person poses a risk to public safety. The department
17 of human services or contracting agency, in cooperation with
18 local law enforcement agencies, may make a public announcement
19 about the absconder. The public announcement may include a
20 description of the committed person, that the committed person
21 is on release with ~~or without~~ supervision from the sexually
22 violent predator program, and any other information pertinent
23 to public safety.

24 3. Upon the return of the committed person to a secure
25 facility, the director of human services or the director's
26 designee shall notify the court that issued the ex parte
27 order that the committed person has been returned to a secure
28 facility, and the court shall set hearing ~~within five days~~ to
29 determine if a violation occurred. If a court order was not
30 issued, the director or the director's designee shall contact
31 the nearest district court with jurisdiction to set a hearing
32 to determine whether a violation of the conditions of the
33 release plan occurred. The court shall schedule a hearing
34 ~~within five days of~~ after receiving notice that the committed
35 person has been returned to a secure facility.

1 4. At the hearing, the burden shall be upon the attorney
2 general to show by a preponderance of the evidence that a
3 violation of the release plan occurred.

4 5. If the court determines a violation occurred, the court
5 shall receive release recommendations from the department of
6 human services and either order that the committed person be
7 returned to release with ~~or without~~ supervision or placed
8 in a transitional release program, or be confined in a
9 secure facility. The court may impose further conditions
10 upon the committed person if returned to release with ~~or~~
11 ~~without~~ supervision or placed in the transitional release
12 program. If the court determines no violation occurred, the
13 committed person shall be returned to release with ~~or without~~
14 supervision.

15 Sec. 10. Section 229A.15, Code 2018, is amended to read as
16 follows:

17 **229A.15 Court records — sealed and opened by court order.**

18 1. Any Except as otherwise provided in this section, any
19 psychological reports, drug and alcohol reports, treatment
20 records, reports of any diagnostic center, medical records, or
21 victim impact statements which have been submitted to the court
22 or admitted into evidence under [this chapter](#) shall be part of
23 the record but shall be sealed and opened only on order of the
24 court.

25 2. The documents described in subsection 1 shall be
26 available to the prosecuting attorney or attorney general, the
27 committed person, and the attorney for the committed person
28 without an order of the court.

29 Sec. 11. Section 901A.2, subsection 6, Code 2018, is amended
30 to read as follows:

31 6. A person who has been placed in a transitional release
32 program, released with ~~or without~~ supervision, or discharged
33 pursuant to [chapter 229A](#), and who is subsequently convicted of
34 a sexually predatory offense or a sexually violent offense,
35 shall be sentenced to life in prison on the same terms as

1 a class "A" felon under [section 902.1](#), notwithstanding any
2 other provision of the Code to the contrary. The terms and
3 conditions applicable to sentences for class "A" felons under
4 chapters 901 through 909 shall apply to persons sentenced under
5 this subsection. However, if the person commits a sexually
6 violent offense which is a misdemeanor offense under chapter
7 709, the person shall be sentenced to life in prison, with
8 eligibility for parole as provided in [chapter 906](#).

9 Sec. 12. Section 903A.2, subsection 1, paragraph a,
10 subparagraph (2), Code 2018, is amended to read as follows:

11 (2) However, an inmate required to participate in a sex
12 offender treatment program shall not be eligible for a any
13 reduction of sentence ~~unless~~ until the inmate participates in
14 and completes a sex offender treatment program established by
15 the director.

16 Sec. 13. Section 903A.2, subsection 1, paragraph b,
17 subparagraph (2), Code 2018, is amended to read as follows:

18 (2) An inmate required to participate in a domestic abuse
19 treatment program shall not be eligible for a any reduction of
20 sentence ~~unless~~ until the inmate participates in and completes
21 a domestic abuse treatment program established by the director.

22 Sec. 14. Section 903A.3, subsection 1, Code 2018, is amended
23 to read as follows:

24 1. Upon finding that an inmate has violated an institutional
25 rule, has failed to complete a sex offender or domestic abuse
26 treatment program as specified in section 903A.2, or has
27 had an action or appeal dismissed under [section 610A.2](#), the
28 independent administrative law judge may order forfeiture of
29 any or all earned time accrued and not forfeited up to the
30 date of the violation by the inmate and may order forfeiture
31 of any or all earned time accrued and not forfeited up to
32 the date the action or appeal is dismissed, unless the court
33 entered such an order under [section 610A.3](#). The independent
34 administrative law judge has discretion within the guidelines
35 established pursuant to [section 903A.4](#), to determine the amount

1 of time that should be forfeited based upon the severity of the
2 violation. Prior violations by the inmate may be considered by
3 the administrative law judge in the decision.

4

EXPLANATION

5

The inclusion of this explanation does not constitute agreement with
6 the explanation's substance by the members of the general assembly.

6

7 This bill relates to sexually violent predators, the
8 accumulation of earned time by offenders, and providing
9 penalties.

10 The bill strikes a provision permitting a person committed
11 as a sexually violent predator under Code chapter 229A
12 (committed person) to be released from a secure facility or a
13 transitional release program without supervision. Currently, a
14 committed person may be released with or without supervision.

15 Current law provides that a final hearing on the status of
16 the committed person shall be held if a committed person shows
17 by a preponderance of the evidence that such a final hearing
18 should be held to determine either the mental abnormality
19 of the committed person has so changed that the person is
20 not likely to engage in predatory acts constituting sexually
21 violent offenses or the committed person is suitable for
22 placement in a transitional release program.

23 If the committed person proves by a preponderance of the
24 evidence that a final hearing should be held, current law
25 requires the court to set the final hearing within 60 days of
26 that determination. After the court's determination that a
27 final hearing should be held, the bill permits the committed
28 person to waive the requirement that a final hearing be held
29 within 60 days of the court's determination; however, the
30 committed person or the attorney for the committed person
31 may reassert a demand that a final hearing be held within 60
32 days from the date of filing the demand with the clerk of the
33 district court.

34 Currently, a committed person may be released to a
35 transitional release program. If the committed person absconds

1 from the transitional release program, current law requires
2 the court to set a hearing within five days of the committed
3 person's return to a secure facility in order to determine if a
4 violation occurred. The bill strikes the requirement that such
5 a hearing be held within five days of the committed person's
6 return to a secure facility.

7 Under the bill, if the court or jury has determined that a
8 committed person should be released from a secure facility or a
9 transitional release program, but the court has determined the
10 committed person suffers from a mental abnormality and it is
11 in the best interest of the community, the court shall release
12 the committed person with supervision prior to discharge.

13 Under current law, if the court or jury has determined that a
14 committed person should be discharged from the sexually violent
15 predator program, the court may release the committed person
16 with or without supervision prior to such discharge if the
17 court determines it is in the best interests of the community.

18 If a committed person is released with supervision, the
19 bill specifies that a judicial district of department of
20 correctional services shall not be held liable for any acts
21 of the committed person. Currently, the department of human
22 services is the only designated agency that is not liable for
23 the acts of a committed person released with supervision.

24 If a person is released with supervision, and the person
25 absconds in violation of the release plan, the bill strikes
26 the requirement that a hearing be held within five days of the
27 committed person's return to a secure facility in order to
28 determine if a violation occurred.

29 Under current law, any medical or treatment reports of
30 the committed person or victim impact statements which have
31 been submitted to the court or admitted into evidence shall
32 be sealed and opened only upon order of the court. The bill
33 specifies that the documents under seal shall be made available
34 to the prosecuting attorney, attorney general, committed
35 person, or attorney for the committed person without a court

1 order.

2 The bill specifies that an inmate committed to the
3 department of corrections who is required to participate in
4 a sex offender treatment program shall not be eligible for
5 any reduction of a category "A" sentence until the inmate
6 participates in and completes a sex offender treatment program.
7 Currently, such an inmate is not eligible for a reduction of
8 sentence unless the inmate participates in and completes a
9 sex offender treatment program. An inmate serving a category
10 "A" sentence is eligible to receive one and two-tenths
11 days for each day the inmate demonstrates good conduct and
12 satisfactorily participates in any program or placement status.

13 The bill specifies that an inmate committed to the
14 department of corrections who is required to participate in
15 a domestic abuse treatment program shall not be eligible for
16 any reduction of a category "B" sentence until the inmate
17 participates in and completes a domestic abuse treatment
18 program. Currently, such an inmate is not eligible for a
19 reduction of sentence unless the inmate participates in and
20 completes a domestic abuse treatment program. An inmate
21 serving a category "B" sentence is eligible for a reduction of
22 sentence equal to fifteen eighty-fifths of a day for each day
23 of good conduct by the inmate.

24 Upon a finding of an independent administrative law judge,
25 the bill specifies that an inmate committed to the department
26 of corrections may be ordered to forfeit any or all earned
27 time, if the inmate has failed to complete a sex offender or
28 domestic abuse treatment program as specified in Code section
29 903A.2.