

Senate File 448

SENATE FILE _____
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 360)
(SUCCESSOR TO SSB 1097)

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

A BILL FOR

1 An Act relating to criminal offenders and inmates including
2 credit for time served by operating=while=intoxicated
3 offenders, pretrial release guidelines, treatment and
4 education of inmates at various correctional facilities,
5 release of presentence reports, optional inmate treatment and
6 education provision, expansion of and appeals regarding earned
7 time credits, change to the inmate savings and inmate
8 telephone rebate fund, expansion of the accessibility of the
9 deferred judgment docket, payment of supervision fees, payment
10 of restitution, creating criminal offenses for persons under
11 the interstate compact for adult offender supervision,
12 creating a fund, providing for a fee, and providing penalties.
13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 1 Section 1. Section 321J.2, subsection 2, paragraph a,
1 2 subparagraph (1), Code 2003, is amended to read as follows:
1 3 (1) Imprisonment in the county jail for not less than
1 4 forty=eight hours, to be served as ordered by the court, less
1 5 credit for any time the person was confined in a jail or
1 6 detention facility following arrest or for any time the person
1 7 spent in a court=ordered operating=while=intoxicated program
1 8 that provides law enforcement security. However, the court,
1 9 in ordering service of the sentence and in its discretion, may
1 10 accommodate the defendant's work schedule.
1 11 Sec. 2. NEW SECTION. 811.2A PRETRIAL RELEASE.
1 12 A person who has been arrested and is released pursuant to
1 13 pretrial release guidelines and who is subsequently rearrested
1 14 for an offense greater than a serious misdemeanor while under
1 15 a plan of pretrial release shall not be eligible for another
1 16 release pursuant to pretrial release guidelines. However, the
1 17 person may be admitted to bail if eligible pursuant to section
1 18 811.1.
1 19 Sec. 3. Section 901.4, Code 2003, is amended to read as
1 20 follows:
1 21 901.4 PRESENTENCE INVESTIGATION REPORT CONFIDENTIAL ==
1 22 DISTRIBUTION.
1 23 The presentence investigation report is confidential and
1 24 the court shall provide safeguards to ensure its
1 25 confidentiality, including but not limited to sealing the
1 26 report, which may be opened only by further court order. At
1 27 least three days prior to the date set for sentencing, the
1 28 court shall serve all of the presentence investigation report
1 29 upon the defendant's attorney and the attorney for the state,
1 30 and the report shall remain confidential except upon court
1 31 order. However, the court may conceal the identity of the
1 32 person who provided confidential information. The report of a
1 33 medical examination or psychological or psychiatric evaluation
1 34 shall be made available to the attorney for the state and to
1 35 the defendant upon request. The reports are part of the
2 1 record but shall be sealed and opened only on order of the
2 2 court. If the defendant is committed to the custody of the
2 3 Iowa department of corrections and is not a class "A" felon, a
2 4 copy of the presentence investigation report shall be
2 5 forwarded to the director with the order of commitment by the
2 6 clerk of the district court and to the board of parole at the
2 7 time of commitment. The Pursuant to section 904.602, the
2 8 presentence investigation report may also be released by the
2 9 department of corrections or a judicial district department of
2 10 correctional services pursuant to section 904.602 to another
2 11 jurisdiction for the purpose of providing interstate probation
2 12 and parole compact services or evaluations, or to a substance

2 13 abuse or mental health services provider when referring a
2 14 defendant for services. The defendant or the defendant's
2 15 attorney may file with the presentence investigation report, a
2 16 denial or refutation of the allegations, or both, contained in
2 17 the report. The denial or refutation shall be included in the
2 18 report. If the person is sentenced for an offense which
2 19 requires registration under chapter 692A, the court shall
2 20 release the report to the department which is responsible
2 21 under section 692A.13A for performing the assessment of risk.

2 22 Sec. 4. Section 901B.1, subsection 1, paragraph c,
2 23 subparagraph (5), Code 2003, is amended to read as follows:
2 24 (5) A substance abuse treatment facility as established
2 25 and operated by the Iowa department of public health or the
2 26 department of corrections.

2 27 Sec. 5. Section 901B.1, subsection 3, unnumbered paragraph
2 28 1, Code 2003, is amended to read as follows:

2 29 Each judicial district and judicial district department of
2 30 correctional services shall, if sufficient funding is
2 31 available, implement an intermediate criminal sanctions

3 1 program by July 1, 2001. An intermediate criminal sanctions
3 2 program shall consist of only levels two, three, and sublevels
3 3 one and three of level four of the corrections continuum and
3 4 shall be operated in accordance with an intermediate criminal
3 5 sanctions plan adopted by the chief judge of the judicial
3 6 district and the director of the judicial district department
3 7 of correctional services. The plan adopted shall be designed
3 8 to reduce probation revocations to prison through the use of
3 9 incremental, community-based sanctions for probation
3 10 violations.

3 11 Sec. 6. Section 903A.2, subsection 1, paragraph a, Code
3 12 2003, is amended to read as follows:

3 13 a. Category "A" sentences are those sentences which are
3 14 not subject to a maximum accumulation of earned time of
3 15 fifteen percent of the total sentence of confinement under
3 16 section 902.12. To the extent provided in subsection 5,
3 17 category "A" sentences also include life sentences imposed
3 18 under section 902.1. An inmate of an institution under the
3 19 control of the department of corrections who is serving a
3 20 category "A" sentence is eligible for a reduction of sentence
3 21 equal to one and two-tenths days for each day the inmate
3 22 demonstrates good conduct and satisfactorily participates in
3 23 any program or placement status identified by the director to
3 24 earn the reduction. The programs include but are not limited
3 25 to the following:

- 3 26 (1) Employment in the institution.
- 3 27 (2) Iowa state industries.
- 3 28 (3) An employment program established by the director.
- 3 29 (4) A treatment program established by the director.
- 3 30 (5) An inmate educational program approved by the
3 31 director.

3 32 An inmate serving a category "A" sentence is eligible for
3 33 an additional reduction of sentence of up to three hundred
3 34 sixty-five days of the full term of the sentence of the inmate
3 35 for exemplary acts. In accordance with section 903A.4, the
3 36 director shall by policy identify what constitutes an
3 37 exemplary act that may warrant an additional reduction of
3 38 sentence.

3 39 Sec. 7. Section 903A.3, subsection 2, Code 2003, is
4 1 amended to read as follows:

4 2 2. The orders of the administrative law judge are subject
4 3 to appeal to the superintendent or warden of the institution,
4 4 or the superintendent's or warden's designee, who may either
4 5 affirm, modify, remand for correction of procedural errors, or
4 6 reverse an order. However, sanctions shall not be increased
4 7 on appeal. ~~A decision of the superintendent, warden, or~~
4 8 ~~designee is subject to review by the director of the Iowa~~
4 9 ~~department of corrections who may either affirm, modify,~~
4 10 ~~remand for correction of procedural errors, or reverse the~~
4 11 ~~decision. However, sanctions shall not be increased on~~
4 12 ~~review.~~

4 13 Sec. 8. Section 904.108, subsection 1, paragraph d, Code
4 14 2003, is amended to read as follows:

4 15 d. ~~Establish~~ If sufficient funding is available, establish
4 16 and maintain acceptable standards of treatment, training,
4 17 education, and rehabilitation in the various state penal and
4 18 corrective institutions which shall include habilitative
4 19 services and treatment for offenders with mental retardation.
4 20 For the purposes of this paragraph, "habilitative services and
4 21 treatment" means medical, mental health, social, educational,
4 22 counseling, and other services which will assist a person with
4 23 mental retardation to become self-reliant. ~~However, If~~

4 24 sufficient funding is available, the director may also provide
4 25 rehabilitative treatment and services to other persons who
4 26 require the services. The director shall identify all
4 27 individuals entering the correctional system who are persons
4 28 with mental retardation, as defined in section 222.2,
4 29 subsection 4. Identification shall be made by a qualified
4 30 professional in the area of mental retardation. In assigning
4 31 an offender with mental retardation, or an offender with an
4 32 inadequately developed intelligence or with impaired mental
4 33 abilities, to a correctional facility, the director shall
4 34 consider both the program needs and the security needs of the
4 35 offender. The director shall consult with the department of
5 1 human services in providing habilitative services and
5 2 treatment to offenders with mental illness or mental
5 3 retardation. The director may enter into agreements with the
5 4 department of human services to utilize mental health
5 5 institutions and share staff and resources for purposes of
5 6 providing habilitative services and treatment, as well as
5 7 providing other special needs programming. Any agreement to
5 8 utilize mental health institutions and to share staff and
5 9 resources shall provide that the costs of the habilitative
5 10 services and treatment shall be paid from state funds. Not
5 11 later than twenty days prior to entering into any agreement to
5 12 utilize mental health institution staff and resources, other
5 13 than the use of a building or facility, for purposes of
5 14 providing habilitative services and treatment, as well as
5 15 other special needs programming, the directors of the
5 16 departments of corrections and human services shall each
5 17 notify the chairpersons and ranking members of the joint
5 18 appropriations subcommittees that last handled the
5 19 appropriation for their respective departments of the pending
5 20 agreement. Use of a building or facility shall require
5 21 approval of the general assembly if the general assembly is in
5 22 session or, if the general assembly is not in session, the
5 23 legislative council may grant temporary authority, which shall
5 24 be subject to final approval of the general assembly during
5 25 the next succeeding legislative session.

5 26 Sec. 9. NEW SECTION. 904.117 INTERSTATE COMPACT FUND.
5 27 An interstate compact fund is established under the control
5 28 of the department. All interstate compact fees collected by
5 29 the department pursuant to section 907B.5 shall be deposited
5 30 into the fund and the moneys shall be used by the department
5 31 to offset the costs of complying with the interstate compact
5 32 for adult offender supervision in chapter 907B.

5 33 Notwithstanding section 8.33, moneys remaining in the fund at
5 34 the end of a fiscal year shall not revert to the general fund
5 35 of the state. Notwithstanding section 12C.7, interest and
6 1 earnings deposited in the fund shall be credited to the fund.

6 2 Sec. 10. Section 904.503, subsection 2, Code 2003, is
6 3 amended to read as follows:

6 4 2. When the director has cause to believe that an inmate
6 5 in a state correctional institution is mentally ill, the Iowa
6 6 department of corrections may cause the inmate to be
6 7 transferred to the Iowa medical and classification center, or
6 8 to another appropriate facility within the department, for
6 9 examination, diagnosis, or treatment. The inmate shall be
6 10 confined at that institution center or facility or a state
6 11 hospital for persons with mental illness until the expiration
6 12 of the inmate's sentence or until the inmate is pronounced in
6 13 good mental health. If the inmate is pronounced in good
6 14 mental health before the expiration of the inmate's sentence,
6 15 the inmate shall be returned to the state correctional
6 16 institution until the expiration of the inmate's sentence.

6 17 Sec. 11. Section 904.508, subsection 2, Code 2003, is
6 18 amended to read as follows:

6 19 2. The Pursuant to section 904.702, the director shall
6 20 establish and maintain an inmate savings fund in an interest=
6 21 bearing account for the deposit of all or part of an inmate's
6 22 allowances, as provided in section 904.702 and amounts sent to
6 23 the inmate from a source other than the department. All or
6 24 part of an inmate's allowances and amounts from a source other
6 25 than the department shall be deposited into the savings fund,
6 26 until the inmate's deposit is equal to the amount due the
6 27 inmate upon discharge, parole, or placement on work release,
6 28 one hundred dollars as provided in section 906.9. If an
6 29 inmate's deposits are equal this amount to or in excess of one
6 30 hundred dollars, the inmate may voluntarily withdraw from the
6 31 savings fund. The director shall notify the inmate of this
6 32 right to withdraw and shall provide the inmate with a written
6 33 request form to facilitate the withdrawal. If the inmate
6 34 withdraws and the inmate's deposits exceed the amount due as

6 35 provided in section 906.9, the director shall disburse the
7 1 excess amount as provided for allowances under section
7 2 904.702, except the director shall not deposit the excess
7 3 amount in the inmate savings fund. If the inmate chooses to
7 4 continue to participate in the savings fund, the inmate's
7 5 deposits shall be returned to the inmate upon discharge,
7 6 parole, or placement on work release. Otherwise, the inmate's
7 7 deposits shall be disposed of as provided in subsection 3. An
7 8 inmate's deposits into the savings fund may be used to provide
7 9 the money due the inmate upon discharge, parole, or placement
7 10 on work release, as required under section 906.9. Interest
7 11 earned from the savings fund shall be placed in a separate
7 12 account, and may be used for purchases approved by the
7 13 director to directly and collectively benefit inmates.

7 14 Sec. 12. Section 904.508A, Code 2003, is amended to read
7 15 as follows:

7 16 904.508A INMATE TELEPHONE ~~REBATE~~ FUND.

7 17 The department is authorized to establish and maintain an
7 18 inmate telephone rebate fund ~~in each institution~~ for the
7 19 deposit of moneys received for inmate telephone rebates. All
7 20 funds deposited in this fund shall be used for the benefit of
7 21 inmates. The director shall adopt rules providing for the
7 22 disbursement of moneys from the fund.

7 23 Sec. 13. Section 904.513, subsection 1, paragraph b,
7 24 subparagraph (4), Code 2003, is amended to read as follows:

7 25 (4) Assignment may also be made on the basis of the
7 26 offender's treatment program performance, as a disciplinary
7 27 measure, for medical needs, and for space availability at
7 28 community residential facilities. If there is insufficient
7 29 space at a community residential facility, the court may order
7 30 an offender to be released to the supervision of the judicial
7 31 district department of correctional services, ~~or held in jail,~~
7 32 or committed to the custody of the director of the department
7 33 of corrections for assignment to an appropriate correctional
7 34 facility until there is sufficient space at a community
7 35 residential facility.

8 1 Sec. 14. Section 904.702, unnumbered paragraph 1, Code
8 2 2003, is amended to read as follows:

8 3 If allowances are paid pursuant to section 904.701, the
8 4 director shall establish an inmate account, for deposit of
8 5 those allowances and for deposit of moneys sent to the inmate
8 6 from a source other than the department of corrections. The
8 7 director may deduct an amount, not to exceed ten percent of
8 8 the amount of the allowance, unless the inmate requests a
8 9 larger amount, to be deposited into the inmate savings fund as
8 10 required under section 904.508, subsection 2. In addition to
8 11 deducting a portion of the allowance, the director may also
8 12 deduct from an inmate account any amount sent to the inmate
8 13 from a source other than the department of corrections for
8 14 deposit in the inmate savings fund as required under section
8 15 904.508, subsection 2, until the amount in the fund equals the
8 16 amount due the inmate upon discharge, parole, or placement on
8 17 work release. The director shall deduct from the inmate
8 18 account an amount established by the inmate's restitution plan
8 19 of payment. The director shall also deduct from any remaining
8 20 account balance an amount sufficient to pay all or part of any
8 21 judgment against the inmate, including but not limited to
8 22 judgments for taxes and child support, and court costs and
8 23 fees assessed either as a result of the inmate's confinement
8 24 or amounts required to be paid under section 610A.1. Written
8 25 notice of the amount of the deduction shall be given to the
8 26 inmate, who shall have five days after receipt of the notice
8 27 to submit in writing any and all objections to the deduction
8 28 to the director, who shall consider the objections prior to
8 29 transmitting the deducted amount to the clerk of the district
8 30 court. The director need give only one notice for each action
8 31 or appeal under section 610A.1 for which periodic deductions
8 32 are to be made. The director shall next deduct from any
8 33 remaining account balance an amount sufficient to pay all or
8 34 part of any costs assessed against the inmate for misconduct
8 35 or damage to the property of others. The director may deduct
9 1 from the inmate's account an amount sufficient to pay for the
9 2 inmate's share of the costs of health services requested by
9 3 the inmate and for the treatment of injuries inflicted by the
9 4 inmate on the inmate or others. The director may deduct and
9 5 disburse an amount sufficient for industries' programs to
9 6 qualify under the eligibility requirements established in the
9 7 Justice Assistance Act of 1984, Pub. L. No. 98-473, including
9 8 an amount to pay all or part of the cost of the inmate's
9 9 incarceration. The director may pay all or any part of
9 10 remaining allowances paid pursuant to section 904.701 directly

9 11 to a dependent of the inmate, or may deposit the allowance to
9 12 the account of the inmate, or may deposit a portion and allow
9 13 the inmate a portion for the inmate's personal use.

9 14 Sec. 15. Section 905.7, unnumbered paragraph 1, Code 2003,
9 15 is amended to read as follows:

9 16 The Iowa department of corrections shall provide assistance
9 17 and support to the respective judicial districts to aid them
9 18 in complying with this chapter, and shall promulgate rules
9 19 pursuant to chapter 17A establishing guidelines in accordance
9 20 with and in furtherance of the purposes of this chapter. The
9 21 guidelines shall include, but need not be limited to,
9 22 requirements that each district department, if sufficient
9 23 funding is available:

9 24 Sec. 16. Section 907.4, Code 2003, is amended to read as
9 25 follows:

9 26 907.4 DEFERRED JUDGMENT DOCKET.

9 27 A deferment of judgment under section 907.3 shall be
9 28 reported promptly by the clerk of the district court, or the
9 29 clerk's designee, to the state court administrator for entry
9 30 in the deferred judgment docket. The docket shall contain a
9 31 permanent record of the deferred judgment including the name
9 32 and date of birth of the defendant, the district court docket
9 33 number, the nature of the offense, and the date of the
9 34 deferred judgment. Before granting deferred judgment in any
9 35 case, the court shall request of the state court administrator
10 1 a search of the deferred judgment docket and shall consider
10 2 any prior record of a deferred judgment against the defendant.
10 3 The permanent record provided for in this section is a
10 4 confidential record exempted from public access under section
10 5 22.7 and shall be available only to justices of the supreme
10 6 court, judges of the court of appeals, district judges,
10 7 district associate judges, judicial magistrates, clerks of the
10 8 district court, judicial district departments of correctional
10 9 services, and county attorneys requesting information pursuant
10 10 to this section, or the designee of a justice, judge,
10 11 magistrate, clerk, judicial district department of
10 12 correctional services, or county attorney.

10 13 Sec. 17. Section 907.9, subsections 1, 2, and 4, Code
10 14 2003, are amended to read as follows:

10 15 1. At any time that the court determines that the purposes
10 16 of probation have been fulfilled and the fees imposed under
10 17 section 905.14 have been paid ~~to or waived by the judicial~~
~~10 18 district department of correctional services or on condition~~
10 19 ~~that unpaid supervision fees be paid~~, the court may order the
10 20 discharge of a person from probation.

10 21 2. At any time that a probation officer determines that
10 22 the purposes of probation have been fulfilled and the fees
10 23 imposed under section 905.14 have been paid ~~to or waived by~~
~~10 24 the judicial district department of correctional services or~~
10 25 ~~on condition that unpaid supervision fees be paid~~, the officer
10 26 may order the discharge of a person from probation after
10 27 approval of the district director and notification of the
10 28 sentencing court and the county attorney who prosecuted the
10 29 case.

10 30 4. At the expiration of the period of probation and if the
10 31 fees imposed under section 905.14 have been paid ~~to or waived~~
~~10 32 by the judicial district department of correctional services~~
10 33 ~~or on condition that unpaid supervision fees be paid~~, the
10 34 court shall order the discharge of the person from probation,
10 35 and the court shall forward to the governor a recommendation
11 1 for or against restoration of citizenship rights to that
11 2 person. A person who has been discharged from probation shall
11 3 no longer be held to answer for the person's offense. Upon
11 4 discharge from probation, if judgment has been deferred under
11 5 section 907.3, the court's criminal record with reference to
11 6 the deferred judgment shall be expunged. The record
11 7 maintained by the state court administrator as required by
11 8 section 907.4 shall not be expunged. The court's record shall
11 9 not be expunged in any other circumstances.

11 10 Sec. 18. NEW SECTION. 907B.4 CRIMINAL OFFENSES.

11 11 1. A person on parole, probation, or who is under any
11 12 other form of correctional supervision in another compacting
11 13 state, shall not reside or remain in this state for a period
11 14 greater than three days in violation of the terms or rules of
11 15 the interstate compact for adult offender supervision.

11 16 2. A person accepted by this state under the interstate
11 17 compact for adult offender supervision shall provide a current
11 18 address to and register with the judicial district department
11 19 of correctional services in which the person resides. If a
11 20 person changes residences, the person shall notify the
11 21 person's probation or parole officer within three days of

11 22 changing residences.

11 23 3. A person accepted by this state under the interstate
11 24 compact for adult offender supervision shall not violate the
11 25 terms and conditions of supervision set by the judicial
11 26 district department of correctional services supervising the
11 27 person.

11 28 4. A person shall not knowingly provide materially false
11 29 information during an investigation to determine the
11 30 appropriateness of placement or acceptance under the
11 31 interstate compact for adult offender supervision.

11 32 5. A person who violates this section commits a serious
11 33 misdemeanor.

11 34 Sec. 19. NEW SECTION. 907B.5 INTERSTATE COMPACT FEE.

11 35 The department of corrections may assess a fee, not to
12 1 exceed one hundred dollars, for an application to transfer out
12 2 of the state under the interstate compact for adult offender
12 3 supervision. The fee may be waived by the department. The
12 4 moneys collected pursuant to this section shall be deposited
12 5 into the interstate compact fund established in section
12 6 904.117 and shall be used to offset the costs of complying
12 7 with the interstate compact for adult offender supervision.

12 8 Sec. 20. Section 910.3B, Code 2003, is amended to read as
12 9 follows:

12 10 910.3B RESTITUTION FOR DEATH OF VICTIM.

12 11 1. In all criminal cases in which the offender is
12 12 convicted of a felony in which the act or acts committed by
12 13 the offender caused the death of another person, in addition
12 14 to the amount determined to be payable and ordered to be paid
12 15 to a victim for pecuniary damages, as defined under section
12 16 910.1, and determined under section 910.3, the court shall
12 17 also order the offender to pay at least one hundred fifty
12 18 thousand dollars in restitution to the victim's estate if the
12 19 victim died testate. If the victim died intestate the court
12 20 shall order the offender to pay the restitution to the

12 21 victim's heirs at law as determined pursuant to section

12 22 633.210. The obligation to pay the additional amount shall
12 23 not be dischargeable in any proceeding under the federal
12 24 Bankruptcy Act. Payment of the additional amount shall have
12 25 the same priority as payment of a victim's pecuniary damages
12 26 under section 910.2, in the offender's plan for restitution.

12 27 2. An award under this section does not preclude or
12 28 supersede the right of a victim's estate or heirs at law to
12 29 bring a civil action against the offender for damages arising
12 30 out of the same facts or event. However, no evidence relating
12 31 to the entry of the judgment against the offender pursuant to
12 32 this section or the amount of the award ordered pursuant to
12 33 this section shall be permitted to be introduced in any civil
12 34 action for damages arising out of the same facts or event.

12 35 3. An offender who is ordered to pay a victim's estate or
13 1 heirs at law under this section is precluded from denying the
13 2 elements of the felony offense which resulted in the order for
13 3 payment in any subsequent civil action for damages arising out
13 4 of the same facts or event.

13 5 Sec. 21. Section 915.100, subsection 2, paragraph c, Code
13 6 2003, is amended to read as follows:

13 7 c. In cases where the act committed by an offender causes
13 8 the death of another person, in addition to the amount ordered
13 9 for payment of the victim's pecuniary damages, the court shall
13 10 also order the offender to pay at least one hundred fifty
13 11 thousand dollars in restitution to the victim's estate or
13 12 heirs at law, pursuant to the provisions of section 910.3B.

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