

FILED MAR 14 2005

SENATE FILE 383  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1029)

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

**A BILL FOR**

1 An Act relating to the penalty for sexual misconduct with  
2 offenders committed by an officer, employee, or agent of the  
3 department of corrections or a judicial district department of  
4 correctional services, and providing a penalty.

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

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SE 383

1 Section 1. Section 709.16, subsection 1, Code 2005, is  
2 amended to read as follows:

3 1. An officer, employee, contractor, vendor, volunteer, or  
4 agent of the department of corrections, or an officer,  
5 employee, or agent of a judicial district department of  
6 correctional services, who engages in a sex act with an  
7 individual committed to the custody of the department of  
8 corrections or a judicial district department of correctional  
9 services commits ~~an aggravated misdemeanor~~ a class "D" felony.

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EXPLANATION

11 This bill relates to sexual misconduct committed with a  
12 person in custody of the department of corrections or placed  
13 with the judicial district department of correctional  
14 services. The bill changes the criminal penalty for sexual  
15 misconduct committed by an employee, contractor, vendor,  
16 volunteer, or agent of the department of corrections or by an  
17 officer, employee, or agent of a judicial district department  
18 of correctional services from an aggravated misdemeanor to a  
19 class "D" felony.

20 An aggravated misdemeanor is punishable by confinement for  
21 no more than two years and a fine of at least \$500 but not  
22 more than \$5,000. A class "D" felony is punishable by  
23 confinement for no more than five years and a fine of at least  
24 \$750 but not more than \$7,500.

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**Fiscal Services Division**  
**Legislative Services Agency**  
**Fiscal Note**

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SF 383 - Sexual Misconduct by Correctional Officer (LSB 1169 SV)  
Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)  
Fiscal Note Version - New

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**Description**

Senate File 383 relates to sexual misconduct with offenders committed to the Department of Corrections (DOC) or a Community-Based Corrections (CBC) District Department. Under current law, if an officer, employee, contractor, vendor, volunteer, or agent of the DOC or CBC District Departments commits a sex act with an offender under the supervision of the corrections system, the penalty is an aggravated misdemeanor. Senate File 383 raises the penalty to a Class D felony.

**Factual Background**

1. On average, there are six offenders annually convicted of the current aggravated misdemeanor offense. Of these six offenders, one is sentenced to prison. The other five offenders receive some other sentence, such as probation. The person sentenced to prison will serve on average 6.1 months before being approved for parole.
2. Increasing the penalty to a Class D felony increases the length of stay in prison from 6.1 months to 24.3 months, for an increase of 298.4% in the average length of stay in prison.

**Assumptions**

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections policies and practices will not change over the projection period.
3. The law will become effective July 1, 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. Assuming current policies and practices remain stable, raising the penalty to a Class D felony will increase the incarceration rate to 50.0% of those convicted.

**Correctional Impact**

Two additional offenders will be sentenced to prison annually under SF 383. There will not be a significant correctional impact due to the low number of convictions and prison admissions. However, SF 383 will increase the prison population because of the significant increase in the average length of stay in prison.

**Fiscal Impact**

The additional cost to the State for the provisions in SF 383 is approximately \$32,000 annually. The additional costs are primarily due to the increase in the number of offenders sentenced to prison plus the increase in the average length of stay in prison.

**Sources**

Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Department of Corrections  
Judicial Branch  
Office of the State Public Defender

/s/ Holly M. Lyons

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March 15, 2005

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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.

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SENATE FILE 383

H-1349

1 Amend Senate File 383, as passed by the Senate, as  
2 follows:

3 1. Page 1, by striking lines 1 through 9, and  
4 inserting the following:

5 "Section 1. Section 709.16, Code 2005, is amended  
6 to read as follows:

7 709.16 SEXUAL MISCONDUCT WITH OFFENDERS AND  
8 JUVENILES.

9 1. An officer, employee, contractor, vendor,  
10 volunteer, or agent of the department of corrections,  
11 or an officer, employee, or agent of a judicial  
12 district department of correctional services, who  
13 engages in a sex act with an individual committed to  
14 the custody of the department of corrections or a  
15 judicial district department of correctional services  
16 commits ~~an aggravated misdemeanor~~ a class "D" felony.

17 2. An officer, employee, contractor, vendor,  
18 volunteer, or agent of a juvenile placement facility  
19 who engages in a sex act with a juvenile placed at  
20 such facility commits ~~an aggravated misdemeanor~~ a  
21 class "D" felony.

22 For purposes of this subsection, a "juvenile  
23 placement facility" means any of the following:

24 a. A child foster care facility licensed under  
25 section 237.4.

26 b. Institutions controlled by the department of  
27 human services listed in section 218.1.

28 c. Juvenile detention and juvenile shelter care  
29 homes approved under section 232.142.

30 d. Psychiatric medical institutions for children  
31 licensed under chapter 135H.

32 e. Substance abuse facilities as defined in  
33 section 125.2.

34 3. An officer, employee, contractor, vendor,  
35 volunteer, or agent of a county who engages in a sex  
36 act with a prisoner incarcerated in a county jail  
37 commits ~~an aggravated misdemeanor~~ a class "D" felony."

38 2. Title page, by striking lines 2 through 4 and  
39 inserting the following: "offenders and juveniles."

COMMITTEE ON PUBLIC SAFETY

BAUDLER of Adair, CHAIRPERSON

H-1349 FILED APRIL 11, 2005

McKibben Co-chair  
Kreiman Co-chair  
Zawn  
Hancock

Succeeded By  
SF/HF 383

SSB# 1029  
Judiciary

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED DEPARTMENT  
OF CORRECTIONS BILL)

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

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# STATE OF IOWA

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THOMAS J. VILSACK, GOVERNOR  
SALLY J. PEDERSON, LT. GOVERNOR  
Iowa Results Website ([www.resultsiowa.org](http://www.resultsiowa.org))

DEPARTMENT OF CORRECTIONS  
GARY D. MAYNARD, DIRECTOR  
Website ([www.doc.state.ia.us](http://www.doc.state.ia.us))

**DATE:** December 15, 2004

**TO:** Members of the General Assembly  
*Mary Benning*

**FROM:** Mary Benning, Legislative Liaison  
Department of Corrections – Legal/Policy

**RE:** **Dept. of Corrections Omnibus Bill**

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## **Dept. of Corrections Omnibus Bill**

**Section 1 (page 1, lines 1-12).** This suggested change increases the criminal penalty for sexual misconduct with an offender incarcerated with the department of corrections and/or under the supervision of a judicial district from an aggravated misdemeanor to a felony, by amending Iowa Code, Section 709.16. The State of Iowa is one of only three states in the country that has such a criminal sanction of a misdemeanor for such actions. As well, the State of Iowa recently received a \$1 million federal grant to address prison rape (both offender/offender and staff/offender) issues, which includes focusing attention on the seriousness of staff on offender sexual misconduct.

The mission of the Iowa Department of Corrections is to:  
**Protect the Public, the Employees, and the Offenders**