

SENATE FILE **2094**

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RIELLY, SCHOENJAHN, SENG,
SEYMOUR, STEWART, TINSMAN,
WARD, WARNSTADT, WIECK,
WOOD, ZAUN, and ZIEMAN

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

A BILL FOR

1 An Act relating to the criminal penalties for certain offenses
2 involving sexual abuse in the second degree, lascivious acts
3 with a child, and sexual exploitation, and establishing a duty
4 to inform law enforcement about a registered sex offender.

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

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JUDICIARY

SF 2094

1 Section 1. NEW SECTION. 692A.7A DUTY TO INFORM LAW
2 ENFORCEMENT -- PENALTY.

3 A person commits a class "D" felony if the person knows
4 that another person is required to register under this chapter
5 and that the other person is not in compliance with this
6 chapter or is eluding a law enforcement agency that is seeking
7 to find the other person, and the person does any of the
8 following acts:

9 1. Withholds information from or fails to notify a law
10 enforcement agency about the whereabouts of the other person.

11 2. Provides materially false information to a peace
12 officer about the other person.

13 3. Harbors the other person.

14 4. Conceals the other person.

15 Sec. 2. Section 902.9, unnumbered paragraph 1, Code 2005,
16 is amended to read as follows:

17 The maximum sentence for any person convicted of a felony
18 shall be that prescribed by statute or, if not prescribed by
19 statute, if other than a class "A" or class "B1" felony shall
20 be determined as follows:

21 Sec. 3. NEW SECTION. 902.9A CLASS "B1" FELONS.

22 A person convicted of a class "B1" felony shall be confined
23 for a term of years as ordered by the court at the time of
24 sentencing. The minimum term of confinement shall be twenty-
25 five years and the maximum term of confinement may be for the
26 rest of the defendant's life.

27 Sec. 4. NEW SECTION. 902.15 SEXUAL ABUSE, LASCIVIOUS
28 ACTS, OR SEXUAL EXPLOITATION -- ENHANCEMENT.

29 Notwithstanding the penalty for a violation of section
30 709.3, 709.8, or 728.12, if a person eighteen years of age or
31 older commits an offense against a child twelve years of age
32 or younger in violation of section 709.3, 709.8, or 728.12,
33 subsection 1, the person commits a class "B1" felony and shall
34 be denied parole or work release until the term of the
35 sentence ordered pursuant to section 902.9A has been served.

1 Sec. 5. Section 903A.2, subsection 1, unnumbered paragraph
2 1, Code Supplement 2005, is amended to read as follows:

3 Each inmate committed to the custody of the director of the
4 department of corrections is eligible to earn a reduction of
5 sentence, except as provided in paragraph "c", in the manner
6 provided in this section. For purposes of calculating the
7 amount of time by which an inmate's sentence may be reduced,
8 inmates shall be grouped into the following two three
9 sentencing categories:

10 Sec. 6. Section 903A.2, subsection 1, Code Supplement
11 2005, is amended by adding the following new paragraph:

12 NEW PARAGRAPH. c. Category "C" sentences are those
13 sentences which are classified as class "B1" felonies under
14 section 902.15. An inmate of an institution under the control
15 of the department of corrections who is serving a category "C"
16 sentence is not eligible for a reduction of sentence.

17 Sec. 7. Section 903A.7, Code 2005, is amended to read as
18 follows:

19 903A.7 SEPARATE SENTENCES.

20 Consecutive multiple sentences that are within the same
21 category under section 903A.2 shall be construed as one
22 continuous sentence for purposes of calculating reductions of
23 sentence for earned time. If a person is sentenced to serve
24 sentences of both multiple categories, category "C" sentences
25 shall be served before category "B" or "A" sentences are
26 served, category "B" sentences shall be served before category
27 "A" sentences are served, and earned time accrued against
28 category "C" sentences shall not be used to reduce category
29 "B" or "A" sentences, and earned time accrued against the
30 category "B" sentences shall not be used to reduce the
31 category "A" sentences. If an inmate serving a category "A"
32 sentence is sentenced to serve either a category "C" or "B"
33 sentence, the category "A" sentence shall be interrupted, and
34 no further earned time shall accrue against that sentence
35 until the category "C" or "B" sentence is completed.

1 Sec. 8. Section 903B.1, Code Supplement 2005, is amended
2 to read as follows:

3 903B.1 SPECIAL SENTENCE -- CLASS "B1", CLASS "B", OR CLASS
4 "C" FELONIES.

5 A person convicted of a class "C" felony or greater offense
6 under chapter 709, ~~or~~ a class "C" felony under section 728.12,
7 or a class "B1" felony under section 902.15, shall also be
8 sentenced, in addition to any other punishment provided by
9 law, to a special sentence committing the person into the
10 custody of the director of the Iowa department of corrections
11 for the rest of the person's life, with eligibility for parole
12 as provided in chapter 906. The special sentence imposed
13 under this section shall commence upon completion of the
14 sentence imposed under any applicable criminal sentencing
15 provisions for the underlying criminal offense and the person
16 shall begin the sentence under supervision as if on parole.
17 The person shall be placed on the corrections continuum in
18 chapter 901B, and the terms and conditions of the special
19 sentence, including violations, shall be subject to the same
20 set of procedures set out in chapters 901B, 905, 906, and
21 ~~chapter~~ 908, and rules adopted under those chapters for
22 persons on parole. The revocation of release shall not be for
23 a period greater than two years upon any first revocation, and
24 five years upon any second or subsequent revocation. A
25 special sentence shall be considered a category "A" sentence
26 for purposes of calculating earned time under section 903A.2.

27 Sec. 9. Section 907.3, subsection 1, paragraph a, Code
28 Supplement 2005, is amended to read as follows:

29 a. The offense is a violation of section 709.8 or 728.12,
30 subsection 1, and the child is twelve years of age or under.

31 EXPLANATION

32 This bill relates to the criminal penalties for sexual
33 abuse in the second degree, lascivious acts with a child, and
34 sexual exploitation, and requiring a duty to inform law
35 enforcement about a sex offender required to register.

1 The bill provides that a person commits a class "D" felony
2 if a person knows that a registered sex offender is not in
3 compliance with the sex offender registry Code chapter,
4 chapter 692A, or is eluding a law enforcement agency and does
5 any of the following: withholds information from or fails to
6 notify a law enforcement agency about the whereabouts of the
7 sex offender; provides materially false information to a peace
8 officer about the sex offender; or harbors or conceals a sex
9 offender.

10 The bill enhances the criminal penalties, by creating a new
11 class "B1" felony category, for sexual abuse in the second
12 degree (Code section 709.3), lascivious acts with a child
13 (Code section 709.8), and sexual exploitation of a minor (Code
14 section 728.12, subsection 1), for a person 18 years of age or
15 older who commits an offense against a child 12 years of age
16 or younger. A class "B1" felony is punishable by a minimum
17 term of confinement of 25 years and a maximum term of
18 confinement that may be for the rest of the person's life. A
19 person serving a class "B1" felony is not eligible to receive
20 earned time. A class "B1" felon is also not eligible for
21 parole or work release.

22 The bill also prohibits a person from receiving a suspended
23 sentence, deferred sentence, or deferred judgment, if the
24 person commits sexual exploitation of a minor involving a
25 child who is 12 years of age or younger. Current law
26 prohibits a person committing any sexual abuse in the second
27 degree or lascivious acts with a child involving a child 12
28 years of age or younger from receiving a suspended sentence,
29 deferred sentence, or deferred judgment.

30 The bill also provides that a person serving a class "B1"
31 sentence shall also serve a special sentence as provided in
32 Code section 903B.1. The special sentence provides, in
33 addition to any other punishment provided by law, that a
34 person be committed to the custody of the director of the Iowa
35 department of corrections for the rest of the person's life,

1 with eligibility for parole as provided in Code chapter 906.
2 Under the bill, the special sentence imposed shall commence
3 upon completion of the class "B1" felony sentence imposed and
4 the person shall begin the sentence under supervision as if on
5 parole. The bill provides the person shall be placed on the
6 corrections continuum in Code chapter 901B, and the terms and
7 conditions of the special sentence, including violations,
8 shall be subject to the same set of procedures set out in Code
9 chapters 901B, 905, 906, and 908, and rules adopted under
10 those chapters for persons on parole. The bill provides that
11 if such a person violates the conditions of release, the
12 revocation of release shall not be for a period greater than
13 two years upon any first revocation, and five years upon any
14 second or subsequent revocation. A person serving a special
15 sentence under the bill may be discharged early from the
16 sentence by the board of parole in the same manner as a person
17 on parole.

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Fiscal Services Division
Legislative Services Agency
Fiscal Note

SF 2094 - Sexual Offenses Against Children (LSB 5677 SS)
Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)
Fiscal Note Version – New
Requested by Senator Jeff Lamberti

Description

Senate File 2094 enhances the criminal penalty for sexual abuse in the second degree, lascivious acts with a child, and sexual exploitation of a minor by creating and imposing a new Class B1 felony for these offenses. The offender must be at least 18 years old and the victim must be 12 years old or younger. Conviction of a B1 felony is a sentence of 25 years to life in prison. Offenders convicted of the new B1 felony are not eligible for parole, work release, or earned time reduction of sentence. The Bill also imposes a Class D felony penalty for knowingly aiding a sex offender in not registering with the Sex Offender Registry.

Background

1. According to the Criminal and Juvenile Justice Planning Division of the Department of Human Rights, approximately 80.0% of victims of sex offenses knew the offender. Based on information in the Uniform Crime Reports provided by the Department of Public Safety, about 73.8% of all sex offenses occurred in the residence or home of the victim.
2. The Bill imposes a Class D felony for knowingly assisting an offender to not comply with the conditions of the Sex Offender Registry. The average State costs for one Class D felony conviction ranges from \$3,100 to \$12,100. The maximum costs will be incurred across multiple fiscal years while the offender is supervised in the correctional system, either in prison or the community. The correctional and fiscal impacts of the new Class D felony are not anticipated to be significant.
3. Enhancing penalties increases the average length of stay in prison and the incarceration rate (number of offenders sentenced to prison). The prison incarceration rate for sex offenders is 51.5% for Class D felons, 74.2% for Class C felons, and 90.4% for Class B felons. It is assumed the incarceration rate will be 100% for the new Class B1 felony.
4. Under current law, offenders convicted of sexual abuse in the second degree are sentenced to a Class B felony (25 years) and are required to serve at least 70.0% of the sentence in prison before being considered for parole. The average length of stay in prison for these offenders is 255 months (21.25 years) in prison. These offenders are not included in the correctional impact because their average length of stay (21.25 years) exceeds the scope of this analysis (10 years).
5. Under current law, offenders convicted of lascivious acts with a child are sentenced to either a Class D or Class C felony. In FY 2005, offenders convicted of the Class C felony served an average of 47 months (3.9 years) in prison. Offenders convicted of the Class D felony served an average of 21 months (1.8 years) in prison in FY 2005.
6. The penalties for sexual abuse in the second degree, lascivious acts with a child, and sexual exploitation of a minor were enhanced by the enactment of HF 619 (FY 2006 Sex Offender Act). Sentence disposition data and average length of stay in prison data will be impacted by the enhanced sentencing provisions of HF 619, so the data may be significantly different in FY 2006.
7. According to the Criminal and Juvenile Justice Planning Division, average time served prior to death for an inmate serving a life sentence in prison is 197 months (16.4 years) based on data from 1990 to October 2003. Average age at death is 57 years.

8. The current sex offender treatment budget for the Mount Pleasant Correctional Facility is approximately \$1.4 million. The Department of Corrections (DOC) estimates an additional \$250,000 is required to meet current demand for treatment. The DOC estimates treatment costs of \$60,000 for every 35 offenders admitted to treatment.
9. The current sex offender treatment, supervision, and electronic monitoring budget is approximately \$4.4 million for Community-Based Corrections (CBC) District Departments. The DOC estimates an additional \$2.2 million is required to meet current demand for treatment, supervision, and electronic monitoring of sex offenders using Global Positioning System (GPS) bracelets.
10. The marginal cost per day for State prisons is \$14.21 per inmate.

Assumptions

1. Fiscal Year 2005 offender-based convictions are used for estimating the number of future offenders. The estimates of the percentage of crimes that involved a child are based on prison intake information.
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, 2006. 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. There were 24 offenders convicted of second degree sexual abuse in FY 2005. It is assumed that 50.0% of these offenders had a child victim. Therefore, it is estimated there will be 12 new B1 felony convictions for this offense. However, the impact of this sentencing enhancement will be realized in FY 2028, because the current length of stay in prison is 21.25 years.
5. There were 90 offenders convicted of lascivious acts with a child. All of the victims were aged 12 or under. Therefore, it is estimated there will be 90 new B1 felony convictions for this offense. Under current law, 50.0% are convicted of Class D felonies while 50.0% are convicted of Class C felonies.
6. There were 10 offenders convicted of sexual exploitation of a minor. It is assumed 50.0% had a child victim. Therefore, there will be an estimated 5 new B1 felony convictions for this offense.
7. The DOC will offer, and a certain portion of the offenders sentenced under SF 2094 will accept, sex offender treatment in prison.

Correctional Impact

While there will be an estimated 107 offenders convicted annually of the new B1 felony, there will only be 34 new admissions to prison annually under SF 2094. There will be a corresponding decrease in admissions to Community-Based Corrections (CBC) probation supervision of 34 offenders annually.

Most of the 107 offenders are sentenced to prison under current law. Their length of stay in prison will be longer under SF 2094 than current law. The chart below shows the correctional impact on the prison population.

Correctional Impact - Prison Population Increase

	<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	17	54	102	159	235	330	424

By FY 2015, there will be an additional 615 offenders in prison. The impact on the prison population is more significant with the passage of time. Most of these offenders are already in

prison under current law. The correctional impact of this proposal becomes significant after the offender serves his current length of stay in prison, and then begins serving the additional years under SF 2094.

The correctional impact of the new Class D felony is not anticipated to be significant.

Fiscal Impact

The overall fiscal impact is estimated to be \$1.0 million in FY 2007 and \$2.1 million in FY 2008. The additional costs for the DOC include operating costs for housing more offenders, and treatment costs associated with housing more sex offenders. Costs will continue to increase in future fiscal years due to anticipated cost increases for the prison system, including operating and treatment costs.

Fiscal Impact

<u>Department</u>	<u>FY 2007</u>	<u>FY 2008</u>
State Public Defender	\$ 690,000	\$ 1,380,000
Judicial Branch	48,000	95,000
Corrections	293,000	590,000
	<u>\$ 1,031,000</u>	<u>\$ 2,065,000</u>

The fiscal impact of the new Class D felony is not anticipated to be significant.

Sources

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

/s/ Holly M. Lyons

February 13, 2006

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.

SENATE FILE 2094

S-5097

1 Amend Senate File 2094 as follows:
2 1. Page 1, line 6, by striking the words "or is"
3 and inserting the following: "and with the intent to
4 assist the other person in".
5 2. Page 1, line 7, by striking the words "and the
6 person".
7 3. Page 1, line 11, by striking the words
8 "materially false information" and inserting the
9 following: "information known to be materially
10 false".

By LARRY MCKIBBEN

S-5097 FILED MARCH 20, 2006

SENATE FILE 2094

S-5103

1 Amend Senate File 2094 as follows:
2 1. Page 1, line 6, by striking the words "or is"
3 and inserting the following: "and with the intent to
4 assist the other person in".
5 2. Page 1, line 7, by striking the words "and the
6 person".
7 3. Page 1, line 11, by striking the word
8 "Provides" and inserting the following: "Knowingly
9 provides".

By LARRY MCKIBBEN

S-5103 FILED MARCH 20, 2006

SENATE FILE 2094

BY LAMBERTI, McKIBBEN, ANGELO,
BEALL, BEHN, BLACK, BOETTGER,
BOLKCOM, CONNOLLY, COURTNEY,
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SEYMOUR, STEWART, TINSMAN,
WARD, WARNSTADT, WIECK,
WOOD, ZAUN, and ZIEMAN

(AS AMENDED AND PASSED BY THE SENATE MARCH 21, 2006)

_____ - New Language by the Senate
* - Language Stricken by the Senate

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

A BILL FOR

1 An Act relating to the criminal penalties for certain offenses
2 involving sexual abuse in the second degree, lascivious acts
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5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2094

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2 ENFORCEMENT -- PENALTY.

3 A person commits a class "D" felony if the person knows
4 that another person is required to register under this chapter
5 and that the other person is not in compliance with this
6 chapter and with the intent to assist the other person in

*7 eluding a law enforcement agency that is seeking to find the
8 other person, does any of the following acts:

9 1. Withholds information from or fails to notify a law
10 enforcement agency about the whereabouts of the other person.

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12 peace officer about the other person.

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15 Sec. 2. Section 902.9, unnumbered paragraph 1, Code 2005,
16 is amended to read as follows:

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18 shall be that prescribed by statute or, if not prescribed by
19 statute, if other than a class "A" or class "B1" felony shall
20 be determined as follows:

21 Sec. 3. NEW SECTION. 902.9A CLASS "B1" FELONS.

22 A person convicted of a class "B1" felony shall be confined
23 for a term of years as ordered by the court at the time of
24 sentencing. The minimum term of confinement shall be twenty-
25 five years and the maximum term of confinement may be for the
26 rest of the defendant's life.

27 Sec. 4. NEW SECTION. 902.15 SEXUAL ABUSE, LASCIVIOUS
28 ACTS, OR SEXUAL EXPLOITATION -- ENHANCEMENT.

29 Notwithstanding the penalty for a violation of section
30 709.3, 709.8, or 728.12, if a person eighteen years of age or
31 older commits an offense against a child twelve years of age
32 or younger in violation of section 709.3, 709.8, or 728.12,
33 subsection 1, the person commits a class "B1" felony and shall
34 be denied parole or work release until the term of the
35 sentence ordered pursuant to section 902.9A has been served.

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2 1, Code Supplement 2005, is amended to read as follows:

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4 department of corrections is eligible to earn a reduction of
5 sentence, except as provided in paragraph "c", in the manner
6 provided in this section. For purposes of calculating the
7 amount of time by which an inmate's sentence may be reduced,
8 inmates shall be grouped into the following ~~two~~ three
9 sentencing categories:

10 Sec. 6. Section 903A.2, subsection 1, Code Supplement
11 2005, is amended by adding the following new paragraph:

12 NEW PARAGRAPH. c. Category "C" sentences are those
13 sentences which are classified as class "B1" felonies under
14 section 902.15. An inmate of an institution under the control
15 of the department of corrections who is serving a category "C"
16 sentence is not eligible for a reduction of sentence.

17 Sec. 7. Section 903A.7, Code 2005, is amended to read as
18 follows:

19 903A.7 SEPARATE SENTENCES.

20 Consecutive multiple sentences that are within the same
21 category under section 903A.2 shall be construed as one
22 continuous sentence for purposes of calculating reductions of
23 sentence for earned time. If a person is sentenced to serve
24 sentences of both multiple categories, category "C" sentences
25 shall be served before category "B" or "A" sentences are
26 served, category "B" sentences shall be served before category
27 "A" sentences are served, and earned time accrued against
28 category "C" sentences shall not be used to reduce category
29 "B" or "A" sentences, and earned time accrued against the
30 category "B" sentences shall not be used to reduce the
31 category "A" sentences. If an inmate serving a category "A"
32 sentence is sentenced to serve either a category "C" or "B"
33 sentence, the category "A" sentence shall be interrupted, and
34 no further earned time shall accrue against that sentence
35 until the category "C" or "B" sentence is completed.

1 Sec. 8. Section 903B.1, Code Supplement 2005, is amended
2 to read as follows:

3 903B.1 SPECIAL SENTENCE -- CLASS "B1", CLASS "B", OR CLASS
4 "C" FELONIES.

5 A person convicted of a class "C" felony or greater offense
6 under chapter 709, ~~or~~ a class "C" felony under section 728.12,
7 or a class "B1" felony under section 902.15, shall also be
8 sentenced, in addition to any other punishment provided by
9 law, to a special sentence committing the person into the
10 custody of the director of the Iowa department of corrections.
11 for the rest of the person's life, with eligibility for parole
12 as provided in chapter 906. The special sentence imposed
13 under this section shall commence upon completion of the
14 sentence imposed under any applicable criminal sentencing
15 provisions for the underlying criminal offense and the person
16 shall begin the sentence under supervision as if on parole.
17 The person shall be placed on the corrections continuum in
18 chapter 901B, and the terms and conditions of the special
19 sentence, including violations, shall be subject to the same
20 set of procedures set out in chapters 901B, 905, 906, and
21 ~~chapter~~ 908, and rules adopted under those chapters for
22 persons on parole. The revocation of release shall not be for
23 a period greater than two years upon any first revocation, and
24 five years upon any second or subsequent revocation. A
25 special sentence shall be considered a category "A" sentence
26 for purposes of calculating earned time under section 903A.2.

27 Sec. 9. Section 907.3, subsection 1, paragraph a, Code
28 Supplement 2005, is amended to read as follows:

29 a. The offense is a violation of section 709.8 or 728.12,
30 subsection 1, and the child is twelve years of age or under.

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