

F I N A L R E P O R T

SENTENCING SUBCOMMITTEE

January, 1983

The Legislative Council approved the creation of the Sentencing Subcommittee of the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement, which is composed of ten members. The Subcommittee consists of the following members:

Senator Julia Gentleman, Co-chairperson
Representative Virginia Poffenberger, Co-chairperson
Senator C. Joseph Coleman
Senator Donald V. Doyle
Senator Elvie Dreeszen
Representative Daniel Jay
Representative Lyle Krewson
Representative Ralph Rosenberg
Representative Laverne Schroeder

At the Subcommittee's first meeting, held on September 14, 1982, the Subcommittee received the presentations of the following persons concerning sentencing proposals:

1. Justice Allen Donielson of the Iowa Court of Appeals, representing the Iowa Judges Association.
2. Dr. Daryl Fischer and Mr. Paul Stageberg, both of the Office for Criminal and Juvenile Justice Planning.
3. Mr. Donald Mason, representing the Iowa County Attorney's Association.
4. Dr. James McGaha, representing the MICAH Corporation.
5. Mr. James Carney, representing the Iowa State Bar Association.

At the second and final meeting held November 10, 1982, the Subcommittee reviewed the testimony of other groups who did not give oral presentations at the Subcommittee's first meeting, but who were asked to comment on last year's conference committee report on Senate File 268. The Subcommittee also deliberated on proposed bill drafts.

As a result of the testimony received and Subcommittee deliberation, the Subcommittee has recommended four proposed bill drafts which are attached to this report. The following is a listing of those drafts:

1. An Act relating to the reduction of sentences of inmates committed to the custody of the director of the Division of Adult Corrections of the Department of Social Services.

2. An Act relating to sentencing practices.

3. An Act relating to criminal offenses and providing for pre-trial and post-trial criminal procedures including postconviction procedures and sentences.

4. An Act relating to sentences of offenders.

While the Subcommittee recommends these bills for passage, it also recommends that the bills be scrutinized by the respective Standing Committees because of important and controversial policy issues contained in the bills.

PROPOSED SENATE/HOUSE FILE _____

BY (PROPOSED JUDICIARY COMMITTEE BILL
AND JUDICIARY AND LAW ENFORCEMENT
BILL BY THE SENTENCING JOINT SUB-
COMMITTEE)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the sentences of offenders.

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

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1 Section 1. Section 232.55, subsection 2, Code 1983, is
2 amended to read as follows:

3 2. The adjudication and disposition of a child and evidence
4 given in a proceeding under this division shall not be
5 admissible as evidence against the child in any subsequent
6 proceeding in any other court before or after reaching majority
7 except in a sentencing proceeding after conviction of a felony
8 or aggravated misdemeanor, and a presentence investigation
9 for these offenses may include information as to the
10 adjudication and disposition as evidenced by a proceeding
11 under this division.

12 Sec. 2. Section 246.39, unnumbered paragraph 2, Code 1983,
13 is amended to read as follows:

14 Any provision to the contrary notwithstanding, a person
15 serving a mandatory minimum sentence pursuant to section
16 204.406, 204.413, 902.7, 902.8, or 906.5 shall be entitled
17 to a reduction of the minimum sentence under this section.
18 However, reduction of sentence is subject to the maximum
19 limits which may be earned and applied to the reduction of
20 an offender's sentence pursuant to the rules adopted under
21 section 906.3, subsection 2.

22 Sec. 3. Section 246.41, Code 1983, is amended by adding
23 the following new unnumbered paragraphs:

24 NEW UNNUMBERED PARAGRAPH. If a forfeiture of reduction
25 of sentence is imposed pursuant to this section, the mandatory
26 minimum term of incarceration as defined by section 6,
27 subsection 1 of this Act, the time served before the inmate
28 is to be interviewed for parole pursuant to section 906.5,
29 and the time served before the inmate is eligible for release
30 because of the reduction of sentence shall be increased by
31 the amount of the forfeiture.

32 NEW UNNUMBERED PARAGRAPH. The director of the division
33 of adult corrections may restore all or any portion of
34 previously forfeited reduction of sentence and may readjust
35 the mandatory term of incarceration as defined by section

1 6, subsection 1 of this Act, the time served before the inmate
2 is interviewed for parole pursuant to section 906.5, and the
3 time served before the inmate is eligible for release because
4 of the reduction of sentence pursuant to section 245.39 or
5 245.43, or both, by the amount of the restored reduction of
6 sentence. Forfeited reduction of sentence may be restored
7 by the director for acts of heroism or for other
8 extraordinarily meritorious actions. The director shall
9 establish by rule the requirements as to which activities
10 may warrant the restoration of reduction of sentence and the
11 amount of the reduction to be restored.

12 Sec. 4. Chapter 901, Code 1983, is amended by adding the
13 following new section:

14 NEW SECTION. MANDATORY SUPERVISED RELEASE.

15 1. An offender who is released on parole or who is released
16 prior to the expiration of sentence as defined by subsection
17 4, because of the reduction of sentence pursuant to section
18 246.39 or 246.43, or both, shall be subject to supervision
19 by the department of social services for a term to be
20 determined by the board of parole subject to subsection 2.

21 2. However, the period of incarceration together with
22 the period of supervised release pursuant to subsection 1,
23 shall not exceed the limits for the respective offense fixed
24 by section 902.9 or section 903.1.

25 3. If an offender violates the conditions of supervised
26 release and the supervised release is revoked pursuant to
27 chapter 908, the offender shall be returned to the custody
28 of the director to serve the remaining unexpired portion of
29 the offender's sentence or until released by the board of
30 parole.

31 4. "Sentence" means the maximum period of incarceration
32 to which the offender has been sentenced pursuant to section
33 901.8, 902.9, 903.1, subsection 1, or the applicable sentencing
34 law for the offense for which the offender has been convicted.

35 Sec. 5. Section 902.7, Code 1983, is amended to read as

1 follows:

2 902.7 MINIMUM SENTENCE--USE OF A FIREARM DANGEROUS WEAPON.

3 At the trial of a person charged with participating in a
4 forcible felony, if the trier of fact finds beyond a reasonable
5 doubt that the person is guilty of a forcible felony and that
6 the person represented that he or she ~~was-in~~ had the immediate
7 possession and control of a ~~firearm~~ dangerous weapon, displayed
8 a ~~firearm~~ dangerous weapon in a threatening manner, or was
9 armed with a ~~firearm~~ dangerous weapon while participating
10 in the forcible felony, the convicted person shall serve a
11 minimum of five years of the sentence imposed by law. A
12 person sentenced pursuant to this section shall not be eligible
13 for parole until ~~he-or-she~~ the person has served the minimum
14 sentence of confinement imposed by this section.

15 Sec. 6. Chapter 906, Code 1983, is amended by adding the
16 following new section:

17 NEW SECTION. DEFINITIONS. As used in this chapter:

18 1. "Mandatory minimum term of incarceration" means the
19 shortest possible time of incarceration which an offender
20 shall serve prior to eligibility for release on parole.

21 2. "Supervised release" means the release of an offender
22 after the expiration of the term of incarceration but prior
23 to the expiration of the offender's sentence as defined by
24 section 4, subsection 4 of this Act.

25 Sec. 7. Section 906.1, Code 1983, is amended to read as
26 follows:

27 906.1 DEFINITION OF PAROLE. Parole is the release by
28 the board of parole, prior to the expiration of the sentence
29 as defined by section 4, subsection 4 of this Act, of a person
30 who has been committed to the custody of the ~~commissioner~~
31 director of social services the division of adult corrections,
32 by reason of the person's commission of a public offense ~~prior~~
33 ~~to the expiration of the person's term,~~ subject to supervision
34 by the department of social services and ~~on~~ to conditions
35 imposed by ~~the department~~ the board of parole pursuant to

1 section 906.3.

2 Sec. 8. Section 906.3, Code 1983, is amended to read as
3 follows:

4 906.3 AUTHORITY OF PAROLE BOARD.

5 1. The board of parole shall ~~promulgate-regulations~~ adopt
6 rules regarding a system of paroles and supervised release
7 from correctional institutions, and shall direct, control,
8 and supervise the administration of ~~such~~ the system of paroles
9 and supervised release. The board shall determine which of
10 those persons who have been committed to the custody of the
11 director of the division of adult corrections, by reason of
12 their conviction of a public offense, shall be released on
13 parole. The grant or denial of parole shall not be deemed
14 a contested case as defined in section 17A.2.

15 2. The board of parole shall adopt rules pursuant to
16 chapter 17A of the Code, as to the timing and frequency of
17 parole interviews and paroles, as to the shortest possible
18 time of incarceration which an offender shall serve prior
19 to eligibility for release on parole or by the reduction of
20 sentence pursuant to section 246.39 or 246.43, or both, and
21 as to the length and conditions of paroles and supervised
22 releases. These rules shall take into consideration the
23 offender's past conviction record including the number of
24 prior forcible felonies, nonforcible felonies, and aggravated
25 misdemeanors, the length of time since conviction for the
26 prior offenses, use of a dangerous weapon as defined by section
27 702.7 in the commission of the offense, and other relevant
28 factors.

29 Sec. 9. Section 906.5, Code 1983, is amended to read as
30 follows:

31 906.5 RECORD REVIEWED--ELIGIBILITY OF PRIOR-FORCIBLE-FELON
32 FOR-PAROLE--RULES.

33 1. Within one year after the commitment of any person
34 ~~other than a class-"A"-felon~~ to the custody of the director
35 of the division of adult corrections, a ~~member~~ designee of

1 the board shall interview the person. ~~Thereafter, at regular~~
2 ~~intervals, not to exceed one year, the~~ The board shall
3 interview the person and shall consider ~~his or her~~ the person's
4 prospects for parole if the person has served at least one-
5 third of the person's sentence unless the person is serving
6 a mandatory minimum term of incarceration pursuant to section
7 204.406, 204.413, 902.7, 902.8, or 906.5. If the person is
8 serving a mandatory minimum term of incarceration, that term
9 must be served before that person shall be interviewed and
10 considered for parole. At ~~such time~~ the interview, the board
11 shall consider all pertinent information regarding this person,
12 including the circumstances of the person's offense, any
13 presentence report which may be available, the previous social
14 history and criminal record of ~~such~~ the person, the person's
15 conduct, employment, and attitude in prison, and the reports
16 of ~~such~~ physical and mental examinations as which have been
17 made. This subsection applies to inmates in the custody of
18 the director of the division of adult corrections on or after
19 the effective date of this section.

20 2. If the person who is under consideration for parole
21 is serving a sentence for conviction of a felony and has a
22 criminal record of one or more prior convictions for a forcible
23 felony or a crime of a similar gravity in this or any other
24 state, parole shall be denied unless the defendant person
25 has served at least one-half of the maximum term of ~~his or~~
26 her the person's sentence.

27 3. Notwithstanding subsection 1, forfeiture of reduction
28 of sentence may increase the time served before an inmate
29 is eligible for an interview or parole by the board.

30 4. Every person while on parole or on supervised release
31 shall be under the supervision of the department of social
32 services, which shall prescribe ~~regulations~~ rules for governing
33 ~~persons on parole~~ those persons. The board may adopt other
34 rules not inconsistent with ~~the above~~ the Code or departmental
35 rules as it ~~may deem~~ deems proper or necessary for the

1 performance of its functions.

2 Sec. 10. Section 906.11, Code 1983, is amended to read
3 as follows:

4 906.11 ASSIGNMENT TO PAROLE OFFICER. A person released
5 on parole or placed on supervised release pursuant to section
6 4 of this Act, shall be assigned to a parole officer by the
7 chief parole officer. Both the person and ~~his-or-her~~ the
8 person's parole officer shall be furnished in writing with
9 the conditions of ~~his-or-her~~ parole or supervised release,
10 including a copy of the plan of restitution and the restitution
11 plan of payment, if any, and the ~~regulations~~ rules which the
12 person will be required to observe. The parole officer shall
13 explain these conditions and ~~regulations~~ rules to the person,
14 and supervise, assist, and counsel the person during the term
15 of ~~his-or-her~~ parole or supervised release.

16 Sec. 11. Section 906.12, Code 1983, is amended to read
17 as follows:

18 906.12 PAROLE OR SUPERVISED RELEASE OUTSIDE STATE
19 AUTHORIZED. The parole or supervised release may be to a
20 place outside the state when the board of parole shall
21 ~~determine~~ determines it to be to the best interest of the
22 state and the prisoner, under ~~such~~ rules as the board of
23 parole may impose.

24 Sec. 12. Section 906.13, Code 1983, is amended to read
25 as follows:

26 906.13 RECIPROCAL AGREEMENTS WITH OTHER STATES. The
27 governor of the state of Iowa ~~is hereby authorized and~~
28 ~~empowered to~~ may enter into compacts and agreements with other
29 states, through their duly constituted authorities, in
30 reference to reciprocal supervision of persons on parole,
31 supervised release, or probation and for the reciprocal return
32 of ~~such~~ the persons to the contracting states for violation
33 of the terms of their parole, supervised release, or probation.

34 Sec. 13. Section 906.15, Code 1983, is amended to read
35 as follows:

1 906.15 DISCHARGE FROM PAROLE OR SUPERVISED RELEASE.

2 Unless sooner discharged, a person released on parole or
3 supervised release shall be discharged when ~~his-or-her~~ the
4 person's respective term of parole or supervised release
5 equals the period of imprisonment specified in the person's
6 sentence, less all time served in confinement. Discharge
7 from parole may be granted prior to such time, when an early
8 discharge is appropriate. The board shall periodically review
9 all paroles, and when it ~~shall-determine~~ determines that any
10 person on parole is able and willing to fulfill the obligations
11 of a law-abiding citizen without further supervision, it shall
12 discharge the person from parole. In either event, discharge
13 from parole shall terminate the person's sentence. However,
14 the provisions of this section concerning discharge and early
15 discharge are subject to the term of mandatory supervised
16 release as provided in section 4 of this Act.

17 Sec. 14. Section 906.16, unnumbered paragraph 1, Code
18 1983, is amended to read as follows:

19 The time when a prisoner is on parole or supervised release
20 from the institution shall be held to apply upon the sentence
21 against the parolee prisoner even if the parole or supervised
22 release is subsequently revoked, except that the time when
23 the parolee prisoner is in violation of the terms of the
24 parole agreement or conditions of supervised release, shall
25 not apply upon the sentence.

26 Sec. 15. Section 906.17, Code 1983, is amended to read
27 as follows:

28 906.17 ALLEGED PAROLE OR SUPERVISED RELEASE VIOLATORS-
29 -REIMBURSEMENT TO COUNTIES FOR TEMPORARY CONFINEMENT. The
30 division of adult corrections shall reimburse a county for
31 the temporary confinement of alleged parole violators and
32 offenders who are alleged to be in violation of supervised
33 release. The amount to be reimbursed shall be determined
34 by multiplying the number of days so confined by the average
35 daily cost of confining a person in the county facility as

1 negotiated by the department. Payment shall be made upon
2 submission of a voucher executed by the sheriff and approved
3 by the director of the division of adult corrections. The
4 money shall be deposited in the county general fund to be
5 credited to the jail account.

6 Sec. 16. Section 907.3, unnumbered paragraph 1, Code 1983,
7 is amended to read as follows:

8 Pursuant to section 901.5, the trial court may, upon a
9 plea of guilty, a verdict of guilty, or a special verdict
10 upon which a judgment of conviction may be rendered, exer-
11 cise any of the options contained in subsections 1 and 2 of
12 this section. However, this section ~~shall~~ does not apply
13 to a forcible felony. Also, this section does not apply if
14 the defendant assaulted a peace officer or fire fighter while
15 the officer or fire fighter was engaged in the performance
16 of official duties, except that in misdemeanor cases persons
17 employed shall be eligible for work release.

18 Sec. 17. Section 907.3, subsection 1, paragraph e, Code
19 1983, is amended by striking the paragraph.

20 Sec. 18. Chapter 908, Code 1983, is amended by adding
21 the following new section:

22 NEW SECTION. SUPERVISED RELEASE. As used in this chapter,
23 "supervised release" means supervised release as defined by
24 section 6, subsection 2 of this Act.

25 Sec. 19. Section 908.1, Code 1983, is amended to read
26 as follows:

27 908.1 ARREST OF ALLEGED PAROLE VIOLATOR. A parole officer
28 having probable cause to believe that any person released
29 on parole or supervised release has violated the conditions
30 of ~~his-or-her~~ parole or supervised release, may arrest ~~such~~
31 the person, or the parole officer may make a complaint before
32 a magistrate, charging ~~such the violation, and if.~~ If it
33 appears from ~~such the~~ complaint, or from affidavits filed
34 with it, that there is probable cause to believe that ~~such~~
35 the person has violated the terms of ~~his-or-her~~ parole or

1 supervised release, the magistrate shall issue a warrant for
2 the arrest of ~~such~~ the person.

3 Sec. 20. Section 908.2, Code 1983, is amended to read
4 as follows:

5 908.2 INITIAL APPEARANCE. An officer making an arrest
6 of an alleged parole violator or alleged violator of supervised
7 release, shall take the arrested person before a magistrate
8 without unnecessary delay for an initial appearance. At that
9 time the alleged ~~parole~~ violator shall be furnished with a
10 written notice of the claimed violation, shall be advised
11 of ~~his-or-her~~ the right to appointed counsel under rule 26
12 of the rules of criminal procedure, and shall be given notice
13 that a hearing will take place and that its purpose is to
14 determine whether there is probable cause to believe that
15 ~~he-or-she~~ the alleged violator has committed a parole violation
16 or violation of supervised release.

17 The magistrate may order the alleged ~~parole~~ violator
18 confined in the county jail or may order the alleged ~~parole~~
19 violator released on bail under such terms and conditions
20 as the magistrate may require. Admittance to bail is
21 discretionary with the magistrate and is not a matter of
22 right.

23 Sec. 21. Section 908.3, Code 1983, is amended to read
24 as follows:

25 908.3 PLACE OF PROBABLE CAUSE HEARING. The probable cause
26 hearing shall be held in the same county as in which the
27 alleged parole violator ~~had-his-or-her-initial-appearance~~
28 or alleged violator of supervised release was being supervised
29 or in the county in which the alleged parole violation or
30 violation of supervised release occurred.

31 Sec. 22. Section 908.4, Code 1983, is amended to read
32 as follows:

33 908.4 PROBABLE CAUSE HEARING. At the probable cause
34 hearing, a liaison officer appointed pursuant to section 904.5
35 and who is an attorney shall determine whether there is

1 probable cause to believe that the alleged parole violator
2 has violated parole or that the alleged violator of supervised
3 release has violated supervised release. The alleged parole
4 violator shall be informed of the inculpatory evidence. The
5 alleged parole violator shall be given an opportunity to be
6 heard in person and to present witnesses and other evidence.
7 The alleged parole violator shall have the right to confront
8 and cross-examine adverse witnesses, except where the liaison
9 officer finds that a witness would be subjected to risk or
10 harm if the witness' identity were disclosed.

11 Sec. 23. Section 908.5, Code 1983, is amended to read
12 as follows:

13 908.5 WAIVER OF PROBABLE CAUSE HEARING. The alleged
14 parole violator or alleged violator of supervised release
15 may waive the probable cause hearing, in which event the
16 liaison officer shall proceed as upon a finding of probable
17 cause. Before accepting a waiver of hearing, the liaison
18 officer shall inform the alleged violator of the charge, of
19 the alleged violator's right to a hearing to determine whether
20 there is probable cause to believe that parole or supervised
21 release has been violated, and that if the hearing is waived,
22 the alleged violator will be committed to the custody of the
23 department of social services without further proceedings,
24 to await the determination of the parole board. The liaison
25 officer shall make a verbatim record of the proceedings in
26 which the hearing is waived.

27 Sec. 24. Section 908.6, Code 1983, is amended to read
28 as follows:

29 908.6 DISPOSITION BY LIAISON OFFICER. If it appears from
30 the evidence that there is no probable cause to believe that
31 the arrested person has violated the conditions of parole
32 or supervised release, the liaison officer shall order the
33 arrested person to be released from custody and continued
34 on parole or supervised release. If it appears that there
35 is probable cause to believe that the arrested person has

1 violated the conditions of parole or supervised release, the
2 liaison officer shall commit the arrested person to the custody
3 of the ~~department-of-social-services~~ director of the division
4 of adult corrections, and the procedure prescribed in section
5 901.7 shall apply to ~~such~~ the commitment; or the liaison
6 officer may recommend that the arrested person be admitted
7 to bail as provided in section 908.2. The liaison officer
8 shall make a summary of the testimony and other evidence
9 considered and a statement of the facts relied on as a basis
10 for the finding of probable cause or no probable cause, and
11 shall without delay forward them together with all documents
12 relating to the matter to the executive secretary of the
13 parole board. If the alleged ~~parole~~ violator has waived the
14 probable cause hearing, the verbatim record of that proceeding
15 shall be forwarded in lieu of the summary of evidence and
16 statement of facts.

17 Sec. 25. Section 908.7, Code 1983, is amended to read
18 as follows:

19 908.7 ACTION BY PAROLE BOARD. Upon a finding of probable
20 cause to believe that a parole violation or violation of
21 supervised release has occurred, the board of parole shall
22 proceed without unreasonable delay to hear the charge of
23 ~~parole~~ the violation. Upon receipt of the record prepared
24 and forwarded by the liaison officer, the board shall fix
25 a time and place for ~~such~~ the hearing and shall notify in
26 writing the alleged violator, the alleged violator's attorney
27 of record, if any, and the department of social services of
28 ~~such~~ the hearing and the claimed violation ~~of-parole~~. The
29 alleged violator shall be given an opportunity to be heard
30 by the board under ~~such~~ rules as the board ~~shall-adopt~~ adopts.
31 The inquiry shall be limited to the following two matters:

32 1. Did the alleged parole violation or violation of
33 supervised release actually occur?

34 2. If the violation did occur, should the violator's
35 parole or supervised release be revoked? If the board

1 determines that the parole or supervised release should be
2 revoked, it shall make an order revoking the parole or
3 supervised release. The board shall furnish the violator
4 with a written statement of the facts relied upon to establish
5 a violation and the reasons for revoking parole or supervised
6 release.

7 Sec. 26. Section 908.8, Code 1983, is amended to read
8 as follows:

9 908.8 PROCEEDING WITHOUT ARREST OR PROBABLE CAUSE. The
10 board of parole may receive from a parole officer a charge
11 or complaint of parole violation or violation of supervised
12 release against any parolee or person on supervised release,
13 and may proceed to a hearing on ~~such~~ the charge in any case
14 where the alleged violator has not been arrested or has been
15 arrested and discharged by the liaison officer on a finding
16 of no probable cause. The presence of the alleged violator
17 at ~~such~~ the hearing shall be secured by summons. A statement
18 of the charge against the alleged violator shall accompany
19 the summons, and the parole officer shall give the alleged
20 violator ~~such~~ assistance as ~~is~~ needed to get to the place
21 of the hearing. Travel expenses, if any, shall be paid by
22 the ~~board~~ department of social services. If the alleged
23 violator fails without good cause to appear as commanded by
24 the summons, ~~such~~ the failure shall be considered a violation
25 of the parole or supervised release, and the board may proceed
26 to revoke parole or supervised release. If the parole or
27 supervised release is revoked, the board shall issue a warrant
28 for the person's arrest and return to the custody of the
29 department of social services. Upon ~~his-or-her~~ the person's
30 return to custody, the board shall, upon request, give the
31 person an opportunity to present any matters in defense or
32 mitigation of the conduct.

33 Sec. 27. Section 908.9, Code 1983, is amended to read
34 as follows:

35 908.9 DISPOSITION OF VIOLATOR. If the parole of any

1 parole violator is revoked, the violator shall remain in the
2 custody of the ~~department-of-social-services~~ director of the
3 division of adult corrections under the terms of the parolee's
4 original commitment. If the supervised release of a violator
5 of supervised release is revoked, the offender shall serve
6 the remaining unexpired portion of the sentence or until
7 released by the board. If the parole of any parole violator
8 or the supervised release of any violator of supervised release
9 is not revoked, the board shall order ~~his-or-her~~ the violator's
10 release subject to the terms of ~~his-or-her~~ parole or supervised
11 release with any modifications that the board ~~shall-determine~~
12 determines are proper.

13 Sec. 28. Section 908.10, Code 1983, is amended to read
14 as follows:

15 908.10 CONVICTION OF OTHER OFFENSE AS VIOLATION. When
16 the alleged violation of parole or supervised release consists
17 of a conviction of a public offense in this or any other
18 state, ~~such~~ the conviction shall be proved by a certified
19 copy of the judgment of conviction, together with evidence
20 that the alleged violator is the person against whom the
21 judgment was rendered. Neither the liaison officer, court,
22 nor board of parole shall retry the facts underlying ~~such~~
23 the conviction.

24 Sec. 29. Rule of criminal procedure 6, subsection 6, Code
25 1983, is amended to read as follows:

26 6. ALLEGATIONS OF USE OF A ~~FIREARM~~ DANGEROUS WEAPON.
27 If the offense charged is one for which the defendant, if
28 convicted, will be subject by reason of the Code to ~~a-minimum~~
29 ~~sentence~~ an increased penalty because of use of a ~~firearm~~
30 dangerous weapon as defined by section 702.7, the allegation
31 of such use, if any, shall be contained in the indictment.
32 If use of a ~~firearm~~ dangerous weapon is alleged as provided
33 by this rule, and if the allegation is supported by the
34 evidence, the court shall submit to the jury a special
35 interrogatory concerning this matter, as provided in ~~R-Gr-P-~~

1 ~~21(2)~~ rule of criminal procedure 21, subsection 2.

2 Sec. 30. Rule of criminal procedure 21, subsection 2,
3 unnumbered paragraph 2, Code 1983, is amended to read as
4 follows:

5 Where a defendant is alleged to ~~be subject to the minimum~~
6 ~~sentence provisions of section 902.7, The Code (use of~~
7 ~~firearms)~~ have used a dangerous weapon as defined in section
8 702.7 in the commission of the offense, and the allegation
9 is supported by the evidence, the court shall submit a special
10 interrogatory concerning that matter to the jury.

11 Sec. 31. Rule of criminal procedure 22, subsection 3,
12 paragraph d, Code 1983, is amended to read as follows:

13 d. JUDGMENT ENTERED. If ~~no~~ sufficient cause is not shown
14 why judgment should not be pronounced, and none appears to
15 the court upon the record, judgment shall be rendered. Prior
16 to ~~such~~ rendition, counsel for the defendant, and the defendant
17 personally, shall be allowed to address the court where either
18 wishes to make a statement in mitigation of punishment. In
19 every case the court shall include in the judgment entry the
20 number of the particular section of the Code under which the
21 defendant is sentenced, a finding whether the defendant used
22 a dangerous weapon as defined in section 702.7, in the
23 commission of the offense or offenses for which the offender
24 is being sentenced or a finding, in an assault case, whether
25 the defendant assaulted a peace officer or a fire fighter
26 while the officer or fire fighter was engaged in the per-
27 formance of official duties. The court shall state on the
28 record its reason for selecting the particular sentence.

29 Sec. 32. Rule of criminal procedure 26, subsection 1,
30 Code 1983, is amended to read as follows:

31 1. REPRESENTATION. Every defendant who is an indigent
32 as defined in section 336A.4, ~~The Code, shall be~~ is entitled
33 to have counsel appointed to represent ~~him or her~~ the defendant
34 at every stage of the proceedings from the defendant's initial
35 appearance before the magistrate or the court through appeal,

1 including probation and, parole, and supervised release
2 revocation hearings, unless the defendant waives such
3 appointment.

4 Sec. 33. This Act, except sections 1, 8, and 33, and
5 except section 906.5, subsection 1, as amended by section
6 9 of this Act, takes effect July 1, 1983 and applies to inmates
7 sentenced for offenses committed on or after that date.

8 Inmate sentences for offenses committed before July 1, 1983
9 are subject to the applicable laws in effect before that date.

10 Section 8 of this Act takes effect January 1, 1984.

11 EXPLANATION

12 This bill makes a number of changes in the Code concern-
13 ing the sentencing of criminal offenders. Many of the changes
14 are related to parole and the board of parole.

15 The bill provides that an offender must be interviewed
16 and considered for parole if the inmate has served one-third
17 of the person's sentence unless the offender is serving a
18 mandatory minimum term of incarceration (pursuant to section
19 204.406, 204.413, 902.7, 902.8, or 906.5). An offender serving
20 a mandatory minimum term of incarceration must serve the
21 mandatory minimum term before consideration for parole.
22 Forfeiture of good and honor time may increase the time served
23 before eligibility for the parole interview.

24 Section 5 of the bill expands the mandatory minimum term
25 of incarceration of section 902.7 to include "dangerous
26 weapons." Dangerous weapon is defined in section 702.7.
27 Presently 902.7's mandatory minimum penalty only applies to
28 the immediate possession and control of, the arming with,
29 or the displaying of in a threatening manner, a "firearm"
30 in the commission of a forcible felony.

31 The bill provides for a period of supervised release
32 (similar to parole) for offenders who are released because
33 their sentences expire because of the accrual of good and
34 honor time.

35 Section 8 of the bill grants the parole board the authority

1 to promulgate rules to establish a "classified sentencing
2 structure" whereby a number of variables including offense
3 and offender characteristics would determine the length of
4 sentence served before eligibility for parole.

5 Section 16 of the bill limits the availability of deferred
6 judgments, deferred sentences, and suspended sentences for
7 certain persons who assaulted a peace officer or fire fighter
8 in the performance of official duties.

9 The effective date for this Act is July 1, 1983 with the
10 exception of sections 1, 8, and 33; and section 906.5, subsec-
11 tion 1, as amended by section 9 of this Act. Sections 1 and
12 33 take effect July 1, 1983. Section 8 takes effect January
13 1, 1984.

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PROPOSED SENATE/HOUSE FILE _____

BY (PROPOSED JUDICIARY COMMITTEE
BILL AND JUDICIARY AND LAW
ENFORCEMENT BILL BY THE
SENTENCING JOINT SUBCOMMITTEE)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to sentencing practices.

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

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1 Section 1. Sections 2 through 6 of this Act are enacted
2 as chapter 900 of the Code.

3 Sec. 2. NEW SECTION. COMMISSION ESTABLISHED. A commission
4 of thirteen members to be known as the sentencing evaluation
5 commission is established. Members of the commission shall
6 include the following:

7 1. The chief justice of the supreme court or the chief
8 justice's designee.

9 2. Two district court judges appointed by the majority
10 vote of the state judicial council.

11 3. One public defender appointed by the governor.

12 4. One county attorney appointed by the governor.

13 5. The director of the division of adult corrections of
14 the department of social services or the director's designee.

15 6. One representative of community corrections appointed
16 by the governor.

17 7. One practicing criminal trial defense attorney appointed
18 by the governor.

19 8. The attorney general of the state or the attorney
20 general's designee.

21 9. Four public members appointed by the governor who have
22 knowledge of penology or correctional institutions.

23 Sec. 3. NEW SECTION. LENGTH OF APPOINTMENT. Each voting
24 member of the commission shall be appointed for four years.
25 Each member shall continue to serve during that time as long
26 as the member occupies the position which made the member
27 eligible for the appointment. Each member shall continue
28 in office until a successor is appointed. Members are eligible
29 for reappointment, and appointment may be made to fill an
30 unexpired term.

31 Sec. 4. NEW SECTION. OFFICERS--MEETINGS. The commission
32 shall elect a chairperson and other officers it deems necessary
33 from among its membership. It shall meet on the call of the
34 chairperson or a majority of the members.

35 Sec. 5. NEW SECTION. DUTIES.

1 1. The commission shall study the impact of sentencing
2 laws and practices including but not limited to
3 noninstitutional sanctions such as fines, restitution, work
4 release, community-based correctional programs, probation,
5 deferred judgment, deferred sentence, and suspended sentences.

6 2. The commission shall make recommendations to the general
7 assembly at the beginning of each session and to the governor
8 regarding changes in the laws of sentencing, the criminal
9 code, criminal procedures, the rules of the department of
10 social services concerning correctional institutions, and
11 other aspects of sentencing.

12 Sec. 6. NEW SECTION. EXPENSES. Members of the commission
13 shall receive actual and reasonable expenses, including travel
14 at the state rate set forth in section 18.117. In addition
15 to the reimbursement for expenses, members of the commission
16 who are not officers or employees of state or local government
17 shall receive a per diem of forty dollars for each day in
18 which they are engaged in the performance of the duties of
19 the commission. The office of the supreme court administrator
20 and the office for planning and programming shall provide
21 necessary staff assistance to the commission in the performance
22 of its duties.

23 Sec. 7. Chapter 684, Code 1981, is amended by adding the
24 following new section:

25 NEW SECTION. RULES OF SENTENCING.

26 1. The supreme court may prescribe advisory rules to the
27 district court which establish:

28 a. The circumstances under which imprisonment of an
29 offender is proper.

30 b. Appropriate sanctions for offenders for whom
31 imprisonment is not proper, including but not limited to
32 noninstitutional sanctions such as fines, restitution, work
33 release, community service sentencing, community-based
34 correctional programs, probation, deferred judgment, deferred
35 sentence, and suspended sentence.

PROPOSED SENATE/HOUSE FILE _____

BY (PROPOSED JUDICIARY COMMITTEE
BILL AND JUDICIARY AND LAW EN-
FORCEMENT BILL BY THE SENTENC-
ING JOINT SUBCOMMITTEE)

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

A BILL FOR

1 An Act relating to the reduction of sentences of inmates
2 committed to the custody of the director of the division
3 of adult corrections of the department of social ser-
4 vices.

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

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1 Section 1. Sections 2 through 8 of this Act are enacted
2 as a new chapter of the Code.

3 Sec. 2. NEW SECTION. CONDUCT REVIEW. The commissioner
4 of social services shall appoint independent hearing officers
5 to review, as provided in section 4 of this Act, the conduct
6 of inmates in institutions under the department of social
7 services, division of adult corrections.

8 Sec. 3. NEW SECTION. GOOD CONDUCT TIME. Each inmate
9 of an institution under the department of social services,
10 division of adult corrections, is eligible for a reduction
11 of sentence pursuant to the rules of the department. The
12 reduction shall be not more than one day for each day of good
13 conduct of the inmate while committed to one of the division's
14 institutions. If the rules reduce the amount of sentence
15 reduction that may be earned for each day of good conduct,
16 the amount of sentence reduction already earned by an inmate
17 shall not be reduced retroactively, although it may be reduced
18 prospectively and may be subject to forfeiture pursuant to
19 section 4 of this Act. Computation of good conduct time is
20 subject to the following conditions:

21 1. Time served in jail or other facility, credited by
22 the clerk of court prior to actual placement in a correctional
23 institution, shall accrue for purposes of reduction of sentence
24 under this section.

25 2. Time spent during escape shall be forfeited for purposes
26 of reduction of sentence under this section. An inmate who
27 intentionally escapes may forfeit all good conduct time accrued
28 and not forfeited prior to the escape, unless the inmate
29 voluntarily surrenders.

30 3. Time between parole violation and incarceration shall
31 be forfeited for purposes of reduction of sentence under this
32 section.

33 4. Time spent during parole shall not accrue for purposes
34 of reduction of sentence under this section.

35 5. Good conduct time shall not accrue to an inmate while

1 serving a life sentence. However, good conduct time shall
2 accrue after an inmate's life sentence is commuted and shall
3 be computed as of the date of commutation, not the date of
4 commitment to the custody of the director.

5 6. Except in life sentences, good conduct time shall be
6 credited to the maximum sentence on a periodic basis.

7 Sec. 4. NEW SECTION. LOSS OR FORFEITURE OF GOOD CONDUCT
8 TIME.

9 1. Upon finding that an inmate has violated an
10 institutional rule, the independent hearing officer may order
11 forfeiture of any or all good conduct time earned and not
12 forfeited up to the date of the violation by the inmate.
13 The independent hearing officer has discretion within the
14 guidelines established pursuant to section 5 of this Act,
15 to determine the amount of time that should be forfeited based
16 upon the severity of the violation. Prior violations by the
17 inmate may be considered by the hearing officer in the
18 decision.

19 2. The orders of the hearing officer are subject to appeal
20 to the superintendent or warden of the institution who may
21 either affirm, modify, remand for correction of procedural
22 errors, or reverse an order. However, sanctions shall not
23 be increased on appeal. A decision of the superintendent
24 or warden is subject to review by the director of the division
25 of adult corrections who may either affirm, modify, remand
26 for correction of procedural errors, or reverse the decision.
27 However, sanctions shall not be increased on review.

28 3. The director of the division of adult corrections may
29 restore all or any portion of previously forfeited good conduct
30 time. Good conduct time forfeited may be restored by the
31 director for acts of heroism or for other extraordinarily
32 meritorious actions. The director shall establish by rule
33 the requirements as to which activities may warrant the
34 restoration of good conduct time and the amount of good conduct
35 time to be restored.

1 4. The inmate disciplinary procedure, including but not
2 limited to the method of forfeiting time pursuant to this
3 chapter, is not a contested case subject to chapter 17A.

4 Sec. 5. NEW SECTION. POLICIES AND PROCEDURES. The
5 director of the division of adult corrections shall develop
6 policy and procedural rules to implement sections 2 through
7 4 of this Act. The director shall establish rules specifying
8 what constitutes a day of good conduct. The rules may require
9 the inmate's employment in the institution, in Iowa state
10 industries, in an inmate employment program established by
11 the director, or may require the inmate to participate in
12 an educational program approved by the director, when such
13 employment or programs are available. The rules may specify
14 disciplinary offenses which may result in the loss of good
15 conduct time, and the amount of good conduct time which may
16 be lost as a result of each disciplinary offense.

17 Sec. 6. NEW SECTION. TIME TO BE SERVED--CREDIT. An
18 inmate shall not be discharged from the custody of the director
19 of the division of adult corrections until the inmate has
20 served the full term for which the inmate was sentenced, less
21 good conduct time earned and not forfeited, unless the inmate
22 is pardoned or otherwise legally released. Good conduct time
23 earned and not forfeited shall not apply to reduce a mandatory
24 minimum term of incarceration. An inmate shall be deemed
25 to be serving the sentence from the day on which the inmate
26 is received into the institution. However, if an inmate was
27 confined to a county jail or other correctional or mental
28 facility at any time prior to sentencing, or after sentencing
29 but prior to the case having been decided on appeal, because
30 of failure to furnish bail or because of being charged with
31 a nonbailable offense, the inmate shall be given credit for
32 the days already served upon the term of the sentence. The
33 clerk of the district court of the county from which the
34 inmate was sentenced, shall certify to the warden the number
35 of days so served.

1 An inmate shall not receive credit upon the inmate's
2 sentence for time spent in custody in another state resisting
3 return to Iowa following an escape, or for time served in
4 an institution or jail of another jurisdiction during any
5 period of time the person is receiving credit upon a sentence
6 of that other jurisdiction.

7 Sec. 7. NEW SECTION. GOOD AND HONOR TIME APPLICATION.
8 Sections 246.38, 246.39, 246.41, 246.42, 246.43, and 246.45,
9 as the sections appear in the 1983 Code, remain in effect
10 for inmates sentenced for offenses committed prior to July
11 1, 1983.

12 Sec. 8. NEW SECTION. SEPARATE SENTENCES. When an inmate
13 is committed under several convictions with consecutive
14 sentences, they shall be construed as one continuous sentence
15 in the granting or forfeiting of good conduct time.

16 Sec. 9. Section 663A.2, subsection 6, Code 1983, is amended
17 by striking the subsection and inserting in lieu thereof the
18 following:

19 6. The person's reduction of sentence pursuant to sections
20 2 through 8 of this Act has been unlawfully forfeited and
21 the person has exhausted the appeal procedure of section 4,
22 subsection 3 of this Act; or

23 Sec. 10. Section 901.6, Code 1983, is amended to read
24 as follows:

25 901.6 JUDGMENT ENTERED. If judgment is not deferred,
26 and no sufficient cause is shown why judgment should not be
27 pronounced and none appears to the court upon the record,
28 judgment shall be pronounced and entered. In every case in
29 which judgment is entered, the court shall include in the
30 judgment entry the number of the particular section of the
31 Code under which the defendant is sentenced and a statement
32 of the days credited pursuant to section ~~246-38~~ 6 of this
33 Act shall be incorporated into the sentence.

34 Sec. 11. Sections 246.38, 246.39, 246.41, 246.42, 246.43,
35 and 246.45, Code 1983, are repealed except they remain in

1 effect for persons sentenced for offenses committed prior
2 to July 1, 1983.

3 Sec. 12. Sections 2 through 6 and sections 8 through 11
4 of this Act apply only to inmates sentenced for offenses
5 committed after July 1, 1983.

6 EXPLANATION

7 This bill replaces the present "good and honor time" sec-
8 tions of the Code which reduce the length of sentences of
9 inmates sentenced to the custody of the director of the
10 division of adult corrections, with another system that rewards
11 good conduct of inmates. An attorney general's opinion (dated
12 November 29, 1977) indicates that the current good and honor
13 time sections of the Code, 246.39, 246.41, and 246.43, are
14 presently not being correctly followed with the possible ex-
15 ception of section 246.43, the honor time section (special
16 reduction section).

17 The bill takes effect July 1 following its enactment.

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PROPOSED HOUSE/SENATE FILE _____

BY (PROPOSED JUDICIARY COMMITTEE
BILL AND JUDICIARY AND LAW
ENFORCEMENT BILL BY THE
SENTENCING JOINT SUBCOMMITTEE)

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

A BILL FOR

1 An Act relating to criminal offenses and providing for pre-
2 trial and posttrial criminal procedures including post-
3 conviction procedures and sentences.

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

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1 Section 1. Section 217.14, Code 1983, is amended by add-
2 ing the following new subsection:

3 NEW SUBSECTION. 8. Inmates sentenced for any term by
4 a court of or in the United States, may be received for the
5 custody of the director and kept in pursuance of their
6 sentences. Inmates committed to the custody of the director
7 may be transferred to the federal bureau of prisons or to
8 another jurisdiction pursuant to the interstate corrections
9 compact. If an inmates objects, the transfer shall require
10 approval of the governor.

11 Sec. 2. Section 218.40, Code 1983, is amended to read
12 as follows:

13 218.40 SERVICES REQUIRED. Inmates of said institutions
14 subject to the provisions ~~hereinafter-provided~~ of this chapter,
15 may be required to render any proper and reasonable service
16 either in the institutions ~~proper~~ or in the industries
17 established in connection ~~therewith~~ with the institutions.
18 Inmates of the state's penal institutions may be required
19 to render hard labor suited to the inmates' strength and
20 attainments.

21 Sec. 3. Section 245.3, Code 1983, is amended to read as
22 follows:

23 245.3 SERVICE REQUIRED. The superintendent may, with
24 the approval of the state director, require any inmate to
25 perform any service including hard labor, suited to her
26 strength and attainments and ~~which-may-be~~ needed for the
27 benefit of the ~~reformatory~~ institution or for the welfare
28 of ~~such~~ the inmate.

29 Sec. 4. Section 246.31, Code 1983, is amended to read
30 as follows:

31 246.31 HARD LABOR AND SOLITARY IMPRISONMENT. All
32 commitments to either of ~~said~~ the institutions ~~must-be~~ are
33 at hard labor. Solitary imprisonment of prisoners shall not
34 be employed except for the purpose of discipline. An inmate
35 may be required to perform any service including hard labor,

1 suited to his strength and attainment and which may be needed
2 for the benefit of the reformatory or penitentiary or for
3 the welfare of the inmate.

4 Sec. 5. Section 331.778, subsection 2, Code 1983, is
5 amended to read as follows:

6 2. Before an attorney is appointed under section 68.8
7 or 222.22, chapter 232, section 908.2, rule of criminal pro-
8 cedure 8, or to represent a person charged with a crime in
9 this state, the court shall require the client or the client's
10 parent, guardian, or custodian to complete under oath a de-
11 tailed financial statement. If a client is granted assistance
12 at public expense, the financial statement shall be filed
13 in the client's court file and retained as a permanent part
14 of the file.

15 Sec. 6. Section 811.2, subsection 1, unnumbered paragraph
16 1, Code 1983, is amended to read as follows:

17 All bailable defendants shall be ordered released from
18 custody pending judgment on their personal recognizance, or
19 upon the execution of an unsecured appearance bond in an
20 amount specified by the magistrate unless in the magistrate
21 ~~determines-in-the-exercise-of-his-or-her~~ magistrate's
22 discretion, it is determined that such a release will not
23 reasonably assure the appearance of the defendant as required
24 or the defendant poses a significant threat to the property
25 or safety of another person. When such determination is made,
26 the magistrate shall, either in lieu of or in addition to
27 the above methods of release, impose the first of the following
28 conditions of release which will reasonably assure the
29 appearance of the person for trial and the safety of another
30 person or another person's property, or, if no single condition
31 gives that assurance, any combination of the following
32 conditions:

33 Sec. 7. Section 811.2, subsection 2, Code 1983, is amended
34 to read as follows:

35 2. DETERMINATION OF CONDITIONS. In determining which

1 conditions of release will reasonably assure the defendant's
2 appearance and the safety of another person or another person's
3 property, the magistrate shall, on the basis of available
4 information including the pretrial report, take into account
5 the nature and circumstances of the offense charged, the
6 defendant's family ties, employment, financial resources,
7 character, and mental condition, the length of ~~his-er-her~~
8 the defendant's residence in the community, the defendant's
9 record of convictions, and the defendant's record of appearance
10 at court proceedings or of flight to avoid prosecution or
11 failure to appear at court proceedings.

12 Sec. 8. Chapter 901, Code 1983, is amended by adding the
13 following new section:

14 NEW SECTION. INFORMATION FOR PAROLE BOARD. At the time
15 of committing a defendant to the custody of the director of
16 the division of adult corrections for incarceration, the trial
17 judge and prosecuting attorney shall, and the defense attorney
18 may, furnish the board of parole with a full statement of
19 their recommendations relating to release or parole.

20 Sec. 9. Section 901.2, Code 1983, is amended by adding
21 the following new unnumbered paragraph:

22 NEW UNNUMBERED PARAGRAPH. The purpose of the report by
23 the judicial district department of correctional services
24 is to provide the court pertinent information for purposes
25 of sentencing and to include suggestions for correctional
26 planning for use by correctional authorities subsequent to
27 sentencing.

28 Sec. 10. Section 901.4, Code 1983, is amended to read
29 as follows:

30 901.4 PRESENTENCE INVESTIGATION REPORT CONFIDENTIAL.
31 The presentence investigation report is confidential and the
32 court shall provide safeguards to ensure its confidentiality,
33 including but not limited to sealing the report, which may
34 be opened only by further court order. The At least three
35 days prior to the date set for sentencing, the court may,

1 ~~in-its-discretion,~~ shall make all of the presentence
2 investigation report ~~ex-parts-of-it~~ available ~~to-the-defendant,~~
3 ~~or-the-court-may-make-the-report-ex-parts-of-it-available~~
4 ~~while-concealing~~ for inspection to the defendant's attorney,
5 and to the attorney for the state. However, the court may
6 conceal from the defendant, from the defendant's attorney,
7 or from both, the identity of the person who provided
8 confidential information. The report of any medical
9 examination or psychological or psychiatric evaluation shall
10 be made available to the attorney for the state and to the
11 defendant upon request. Such reports ~~shall-be~~ are part of
12 the record but shall be sealed and opened only on order of
13 the court. ~~In-any-case-where~~ if the defendant is committed
14 to the custody of the division of adult corrections and is
15 not a class "A" felon, a copy of the presentence investigation
16 report shall be ~~sent~~ forwarded to the director with the order
17 of commitment by the clerk of the district court and to the
18 board of parole at the time of commitment. The defendant
19 or the defendant's attorney may file with the presentence
20 investigation report, a denial or refutation of the
21 allegations, or both, contained in the report. The denial
22 or refutation shall be included in the report.

23 Sec. 11. Section 901.6, Code 1983, is amended to read
24 as follows:

25 901.6 JUDGMENT ENTERED. If judgment is not deferred,
26 and no sufficient cause is shown why judgment should not be
27 pronounced and none appears to the court upon the record,
28 judgment shall be pronounced and entered. In every case in
29 which judgment is entered, the court shall include in the
30 judgment entry the number of the particular section of the
31 Code and the name of the offense under which the defendant
32 is sentenced and a statement of the days credited pursuant
33 to section 246.38 shall be incorporated into the sentence.

34 Sec. 12. Section 902.4, Code 1983, is amended to read
35 as follows:

1 902.4 RECONSIDERATION OF FELON'S SENTENCE. For a period
2 ~~of ninety~~ not less than thirty days nor more than one hundred
3 eighty days from the date when a person convicted of a felony,
4 other than a class "A" felony or a felony for which a minimum
5 sentence of confinement is imposed, begins to serve a sentence
6 of confinement, the court, on its own motion or on the
7 recommendation of either the commissioner of social services
8 or the director of the division of adult corrections, may
9 order the person to be returned to the court, at which time
10 the court may review its previous action and reaffirm it or
11 substitute for it any sentence permitted by law. The court's
12 final order in ~~any-such~~ the proceeding shall be delivered
13 to the defendant personally or by certified mail and a cer-
14 tified copy shall be sent by the clerk of court to the
15 institution from which the defendant is on temporary release.
16 ~~Such~~ The court's decision to take action or not to take action
17 is discretionary ~~with-the-court~~, and ~~its-decision-to-take~~
18 ~~such-action-or-not-to-take-such-action-is~~ not subject to
19 appeal. ~~The-provisions-of-this~~ This section notwithstanding,
20 for the purposes of appeal, a judgment of conviction of a
21 felony is a final judgment when pronounced. However, for
22 purposes of reconsideration of sentence, jurisdiction remains
23 with the sentencing court for one hundred eighty days from
24 the date of the conviction.

25 Sec. 13. Section 903.2, Code 1983, is amended to read
26 as follows:

27 903.2 RECONSIDERATION OF MISDEMEANANT'S SENTENCE. For
28 a period of thirty days from the date when a person convicted
29 of a misdemeanor begins to serve a sentence of confinement,
30 the court may order the person to be returned to the court,
31 at which time the court may review its previous action and
32 reaffirm it or substitute for it any sentence permitted by
33 law. The court's final order in ~~any-such~~ the proceeding shall
34 be delivered to the defendant personally or by certified mail
35 and a certified copy shall be sent by the clerk of court to

1 the institution from which the defendant is on temporary
 2 release. Such The court's decision to take action or not
 3 to take action is discretionary with-the-court and its-decision
 4 to-take-such-action-or-not-to-take-such-action is not subject
 5 to appeal. ~~The-provisions-of-this~~ This section
 6 notwithstanding, for the purposes of appeal a judgment of
 7 conviction is a final judgment when pronounced.

8 Sec. 14. Section 903.3, Code 1983, is amended to read
 9 as follows:

10 903.3 WORK RELEASE. The court may direct that a prisoner
 11 sentenced to confinement ~~for-ninety-days-or-less,-or-a-prisoner~~
 12 ~~who-has-served-all-but-ninety-days-or-less-of-his-or-her~~
 13 ~~sentence,~~ in a county jail, alternate jail facility, or
 14 community correctional residential treatment facility, be
 15 released from custody during specified hours, as provided
 16 by sections 356.26 to 356.35.

17 Sec. 15. Section 907.3, subsection 2, Code 1983, is amended
 18 to read as follows:

19 2. By record entry at the time of or after sentencing,
 20 the court may suspend the sentence and place the defendant
 21 on probation upon ~~such~~ terms and conditions as it ~~may-require~~
 22 requires including commitment to a county jail or county jail
 23 work release program or commitment to an alternate jail
 24 facility as specified in chapter 356A or a community
 25 correctional residential treatment facility ~~for-a-specific~~
 26 ~~number-of-days-to-be-followed-by-a-term-of-probation~~ as
 27 specified in section 907.7. A person so committed who has
 28 probation revoked shall be given credit for such time served.

29 Sec. 16. Section 907.6, Code 1983, is amended to read
 30 as follows:

31 907.6 CONDITIONS OF PROBATION--REGULATIONS. ~~The-court,~~
 32 ~~in-ordering-probation,-may-impose-any-reasonable-rules-and~~
 33 ~~conditions-which-will~~ Probationers are subject to the
 34 conditions established by the judicial district department
 35 of correctional services subject to the approval of the court,

1 and any additional reasonable conditions which the court may
2 impose to promote rehabilitation of the defendant and or
3 protection of the community, including. Conditions may in-
4 clude but are not limited to adherence-to-regulations-generally
5 applicable-to-persons-released-on-parole requiring unpaid
6 community service as allowed pursuant to section 907.13.

7 Sec. 17. Section 908.2, unnumbered paragraph 1, Code 1983,
8 is amended to read as follows:

9 An officer making an arrest of an alleged parole violator
10 shall take the arrested person before a magistrate without
11 unnecessary delay for an initial appearance. At that time
12 the alleged parole violator shall be furnished with a written
13 notice of the claimed violation, shall be advised of ~~his or~~
14 her the alleged violator's right to appointed counsel under
15 rule 26 of the rules of criminal procedure, and shall be asked
16 if the alleged violator desires legal counsel. If the alleged
17 violator desires legal counsel but is unable by reason of
18 indigency to employ any, the magistrate shall appoint defense
19 counsel pursuant to section 331.778. The alleged violator
20 shall also be given notice that a hearing will take place
21 and that its purpose is to determine whether there is probable
22 cause to believe that ~~he or she~~ the alleged violator has
23 committed a parole violation.

24 Sec. 18. Sections 217.22, 245.20, and 246.11, Code 1983,
25 are repealed.

26 Sec. 19. Sections 2 through 4 of this Act apply only to
27 inmates sentenced for offenses committed after the effective
28 date of this Act.

29 EXPLANATION

30 Sections 1 and 18 abolish the inmate transfer hearing board
31 and change the inmate transfer procedure.

32 Sections 2 through 4 of the bill clarify that inmates of
33 the state's correctional institutions may be required to
34 perform "hard labor".

35 Section 17, together with section 5, provides for

1 appointment of legal counsel for indigent persons accused
2 of parole violations.

3 Sections 6 and 7 of the bill codify the pretrial services
4 provided by the judicial districts' departments of correctional
5 services and provide additional guidelines and considerations
6 in the pretrial release decision.

7 Section 9 explains the purpose of the presentence report..

8 Section 10 provides that the presentence investigation
9 report is a confidential document that shall be sealed. The
10 section also provides for the inspection of the report by
11 the defendant's attorney and the attorney for the state, prior
12 to the date set for sentencing.

13 The bill takes effect July 1 following its enactment.

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