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Statehouse Update - 3/23/2003

by Marty Ryan, Legislative Director

It was the goodest of times; it was the baddest of times

The primary focus of this year's legislative agenda for the American Civil Liberties Union of Iowa is "meaningful" sentencing reform. It wasn't until a few weeks ago, well into the Iowa legislative session, that we saw any bills addressing the subject. Unfortunately, the ACLU-IA had very little to say about the creation of the bill. And it shows!

The bill most likely to advance through the legislative process is Senate File 422. The ACLU-IA and other non-government entities interested in sentencing reform were left totally out of the bill creation process.

There are quite a few good components of the bill (it contains 30 sections), but because of some overwhelmingly bad parts of the bill, the ACLU-IA Board of Directors has decided to oppose the bill as written.

The Good:

SF 422 eliminates determinate sentencing that affects many Class "D" felonies, making all Class "D" felonies subject to indeterminate terms, thereby allowing convicted Class "D" felons to be eligible for parole much sooner.

Mandatory minimum sentences for most drug offenses (primarily possession offenses) are repealed.

The bill creates the criminal offense of "robbery in the third degree." ACLU-IA never likes to see the creation of new crimes, but this is an exception. Under current law, a petty shoplifter who commits a simple assault upon exiting a store is subject to robbery in the second degree, which is punishable as an 85% Class "C" felony (15 yrs.). The new crime of third degree robbery is punishable as an aggravated misdemeanor.

A super Class "B" felony under current law carries a maximum sentence of 50 years, whereas a regular Class "B" felony carries a maximum term of 25 years. SF 422 reduces the super "B" from 50 years to 35 years. Not great, but not bad.

The Bad:

Because of a U.S. Supreme Court decision earlier this month (Connecticut Dept. Public Safety v. Doe, in which the Court ruled that a Connecticut statute requiring the public disclosure and public notice of "all" sex offenders - dangerous or not - did not violate principles of procedural due process), the bill eliminates the risk assessment procedure for sex offenders and places "all sex offenders" on the Dept. of Public Safety's web site. Actually, eliminating the risk assessment process, which was basically hocus pocus science, is good. But subjecting more sex offenders to public disclosure, particularly those who are least likely to offend again, could result in increased vigilantism, job discrimination, and other societal ills. Under current law, information in the sex offender registry is basically confidential and carries certain restrictions for dissemination. Under the provisions of SF 422, only the request for information from an individual is confidential.

The most ridiculous part of the bill is the process for reopening a sentence when a person has been convicted of a forcible felony (murder in the second degree, attempted murder, sexual abuse in the second degree, etc.). Although current law does not provide for a reopening of such sentences, SF 422 grants the discretion to do so to the county attorney in the county in which the person has been convicted. This isn't going to happen! Common sense dictates that a county attorney running for reelection will not be interested at any point in filing a motion to reduce the sentence of someone the county attorney sent away. Senate Study Bill 1138, the predecessor to SF 422, also contained a provision to reopen a sentence, but the onus was on the Dept. of Corrections and the Board of Parole. This makes more sense. DOC and the Parole Board are much more in tune to an inmate's progress of rehabilitation.

The Ugly:

The first 6 sections of the bill attempt to correct the disparities in current law between crack cocaine and powder cocaine, and related sentencing matters. It is fundamentally flawed. Much of the proposed change has not been thought out carefully.

Currently, possession of 1) more than 11 pounds of methamphetamine, amphetamine, or powder cocaine, 2) more than 2.2 pounds of heroin, or 3) more than 1.75 ounces of crack cocaine will result in being charged with a super Class "B" felony. The ratio between powder and crack cocaine is 100 to 1, the highest in the nation.

In an attempt to bring down the powder/crack ratio to 10 to 1, the thresholds for a super Class "B" felony have been proposed to be changed to

1) more than 1.1 pounds of methamphetamine, amphetamine, and powder cocaine, 2) no change in the amount of heroin (more than 2.2 pounds), and 3) no change in the amount of crack cocaine (more than 1.75 ounces). This appears to be moving in the wrong direction.

Without attempting to explain the amounts necessary to charge someone with a "regular" Class "B" felony, which is also somewhat ridiculous and without much reason, another example of ugliness can be demonstrated using current and proposed Class "C" felony amounts. Under current law it is a Class "C" felony for 1) possession of less

than .175 ounces of methamphetamine or amphetamine, 2) less than 3.5 ounces of heroin, 3) less than 17.5 ounces of cocaine, and 4) less than .175 ounces of crack.

SF 422 proposes no changes to Class "C" felony amounts for 1) possession of less than .175 ounces of methamphetamine, amphetamine, or crack, 2) no changes for possession of less than 3.5 ounces of heroin, but 3) changes the threshold amount of powder cocaine from less than 17.5 ounces to less than 3.5 ounces.

Look at those amounts again. Who has determined that this is sentencing reform?

Other bills to watch:

The ACLU-IA strongly supports passage of HF 402, a bill that makes the process of restoring voting rights to ex-felons less onerous than current practice. Please contact your state representative and urge your representative to vote in favor of House File 402.

Do not confuse HF 402 with Senate File 402. SF 402 is BAD! SF 402 is a bill proposed by the Attorney General's office that would change the rules of criminal evidence, allowing for "charges," convictions, and/or "accusations" of previous sex offenses to be admitted as evidence in the "prosecution" of certain sex crimes. This subject matter has been reported in every ACLU-IA Statehouse Update this year. [See archives at: <http://www.iowaclu.org/legislative/updates.asp>]

Remember! "House" File 402 - GOOD! "Senate" File 402 - BAD!

Dumb & dumber

A few weeks ago (ACLU-IA Statehouse Update, 3/8/03) we reported that the dumbest bill to ever face the Iowa Legislature would come out of the House Public Safety Committee. House Study Bill 218 became House File 552. It's a bill "prohibiting 'false' compartments in vehicles (as opposed to what? REAL compartments?)".

Now, you have to admit, that's pretty dumb. But a dumber bill has emerged. House File 650, if enacted, will allow city and county jails to charge an "administrative fee" (in addition to room & board fees) for "patting down and searching, booking, wristbanding, bathing, clothing, fingerprinting, photographing, medical and dental screening, document preparation, retrieval, updating, filing, court scheduling, warrant service and processing, inventorying of money and subsequent account creation, inventorying and storage of a prisoner's property and clothing," and, of course, "management and supervision."

So if you're ever arrested for something that might land you in the pokey some night, make sure the law enforcement officer searching you is patting you down quickly if getting paid by the hour. If you are not completely satisfied with your body cavity search, you should get a full refund.

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