

House Study Bill 29 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON HOLT)

A BILL FOR

1 An Act allowing certain operating-while-intoxicated offenders
2 to be sentenced as habitual offenders, and making penalties
3 applicable.

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

1 Section 1. Section 321J.2, subsection 5, unnumbered
2 paragraph 1, Code 2019, is amended to read as follows:

3 A third or subsequent offense is punishable by all of the
4 following:

5 Sec. 2. Section 321J.2, subsection 5, Code 2019, is amended
6 by adding the following new paragraph:

7 NEW PARAGRAPH. e. Notwithstanding the maximum sentence
8 set forth in paragraph "a", a person convicted of a third or
9 subsequent offense may be sentenced as an habitual offender
10 pursuant to sections 902.8 and 902.9 if the person qualifies as
11 an habitual offender as described in section 902.8.

12 EXPLANATION

13 The inclusion of this explanation does not constitute agreement with
14 the explanation's substance by the members of the general assembly.

15 Under current law, Code section 321J.2(2)(c) provides that a
16 third or subsequent operating-while-intoxicated (OWI) offense
17 is a class "D" felony and Code section 321J.4(4) requires the
18 department of transportation to revoke the driver's license of
19 a person convicted of a third or subsequent OWI offense for six
20 years. Code section 321J.2(5) sets forth the punishments for
21 persons convicted of a third OWI offense, including confinement
22 not to exceed five years with a mandatory minimum term of
23 30 days, assessment of a fine of between \$3,125 and \$9,375,
24 revocation of the person's driver's license for six years,
25 and assignment to substance abuse evaluation and treatment, a
26 course for drinking drivers, and a reality education substance
27 abuse prevention program. This bill specifies that the
28 punishments set forth under Code section 321J.2(5) apply to
29 persons convicted of a third or subsequent OWI offense.

30 Under current law, Code section 902.8 provides that an
31 habitual offender is any person convicted of a class "C" or
32 class "D" felony, who has twice before been convicted of
33 any felony. Under Code section 902.9, the maximum sentence
34 for an habitual offender is confinement for no more than 15
35 years, if the maximum sentence is not otherwise prescribed

1 by statute. The bill provides that a person convicted of a
2 third or subsequent OWI offense may be sentenced as an habitual
3 offender pursuant to Code sections 902.8 and 902.9 if the
4 person qualifies as an habitual offender as described in Code
5 section 902.8.

6 The bill, in part, is a response to the Iowa supreme court's
7 decision in *Noll v. Iowa Dist. Court for Muscatine Cty.*, 919
8 N.W.2d 232 (Iowa 2018), holding that the maximum and minimum
9 sentences set forth in Code section 321J.2(5) for a third OWI
10 offense represent the general assembly's intent to preclude
11 sentencing a person convicted of a third or subsequent OWI
12 offense as an habitual offender under Code sections 902.8 and
13 902.9 even though the person was previously convicted of at
14 least two felonies.