

Judiciary

FILED JAN 30 1992

SENATE FILE 2077

BY PATE

Passed Senate, Date _____ Passed House, Date _____

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

Approved _____

A BILL FOR

1 An Act creating criminal penalties pertaining to the use of
2 minors in drug and gang activities, establishing a mandatory
3 minimum term of confinement, and restricting deferral of
4 judgment or sentences and suspension of sentences.

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

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SF 2077

1 Section 1. Section 204.406, Code 1991, is amended by
2 adding the following new subsection:

3 NEW SUBSECTION. 4. It is unlawful for a person who is
4 eighteen years of age or older to act with, enter into a
5 common scheme or design with, conspire with, recruit or use a
6 person under the age of eighteen for the purpose of
7 delivering, distributing, or manufacturing a controlled
8 substance, a counterfeit substance, or a simulated controlled
9 substance. A person who violates this subsection with respect
10 to a controlled substance, counterfeit substance, or simulated
11 controlled substance classified in schedule I, II, III, IV, or
12 V is guilty of a class "B" felony, and shall and must serve a
13 minimum term of confinement of five years. The court shall
14 not defer or suspend any portion of the mandatory minimum term
15 of confinement, and shall not impose a fine in lieu of the
16 mandatory minimum term of confinement, although a fine may be
17 imposed in addition to a term of confinement.

18 Sec. 2. NEW SECTION. 723A.3 OFFENSE FOR INVOLVING A
19 MINOR -- MANDATORY MINIMUM SENTENCE.

20 It is unlawful for a person who is eighteen years of age or
21 older to act with, enter into a common scheme or design with,
22 conspire with, recruit or use a person under the age of
23 eighteen for the purpose of committing an offense pursuant to
24 section 723A.2. A person who violates this section is guilty
25 of a class "B" felony, and shall and must serve a minimum term
26 of confinement of five years. The court shall not defer or
27 suspend any portion of the mandatory minimum term of
28 confinement, and shall not impose a fine in lieu of the
29 mandatory minimum term of confinement, although a fine may be
30 imposed in addition to a term of confinement.

31 Sec. 3. Section 907.3, subsection 1, Code Supplement 1991,
32 is amended by adding the following new paragraphs:

33 NEW PARAGRAPH. i. The offense is a violation of section
34 204.406, subsection 4.

35 NEW PARAGRAPH. j. The offense is a violation of section

1 723A.3

2 Sec. 4. Section 907.3, subsection 2, Code Supplement 1991,
3 is amended to read as follows:

4 2. At the time of or after pronouncing judgment and with
5 the consent of the defendant, the court may defer the sentence
6 and assign the defendant to the judicial district department
7 of correctional services. However, the court shall not defer
8 the sentence for a violation of section 708.2A if the
9 defendant has previously received a deferred judgment or
10 sentence for a violation of section 708.2 or 708.2A which was
11 issued on a domestic abuse assault, or if similar relief was
12 granted anywhere in the United States concerning that
13 jurisdiction's statutes which substantially correspond to
14 domestic abuse assault as provided in section 708.2A, and the
15 court shall not defer a sentence for a violation of section
16 204.406, subsection 4, or section 723A.3. Upon a showing that
17 the defendant is not fulfilling the conditions of probation,
18 the court may revoke probation and impose any sentence
19 authorized by law. Before taking such action, the court shall
20 give the defendant an opportunity to be heard on any matter
21 relevant to the proposed action. Upon violation of the
22 conditions of probation, the court may proceed as provided in
23 chapter 908.

24 Sec. 5. Section 907.3, subsection 3, Code Supplement 1991,
25 is amended to read as follows:

26 3. By record entry at the time of or after sentencing, the
27 court may suspend the sentence and place the defendant on
28 probation upon such terms and conditions as it may require
29 including commitment to an alternate jail facility or a
30 community correctional residential treatment facility for a
31 specific number of days to be followed by a term of probation
32 as specified in section 907.7. A person so committed who has
33 probation revoked shall be given credit for such time served.
34 However, the court shall not suspend the minimum term of two
35 days imposed pursuant to section 708.2A, or the minimum term

1 of five years imposed by section 204.406, subsection 4, or
2 section 723A.3.

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EXPLANATION

4 The bill creates new criminal offenses concerning adults
5 who act with, enter into a common scheme or design with,
6 conspire with, recruit or use persons under the age of 18 to
7 deliver, distribute, or manufacture controlled substances,
8 counterfeit substances, or simulated controlled substances, or
9 to violate the criminal gang statute, section 723A.2. Under
10 the bill, the offenses are class "B" felonies, subject to a
11 mandatory minimum term of confinement of five years. The bill
12 prohibits entry of a deferred judgment or sentence, or
13 suspension of the mandatory minimum sentence. The bill also
14 prohibits entry of a fine in lieu of the mandatory minimum
15 sentence.

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