

*4/3/95 Refers to Judiciary*

FILED MAR 16 1995

SENATE FILE 397  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 199)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act providing for enhanced penalties for unlawful possession  
2 of controlled substances offenses and providing a conditional  
3 effective date.

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

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S.F. 397

1 Section 1. Section 124.401, subsection 3, Code 1995, is  
2 amended to read as follows:

3 3. a. It is unlawful for any person knowingly or  
4 intentionally to possess a controlled substance unless such  
5 substance was obtained directly from, or pursuant to, a valid  
6 prescription or order of a practitioner while acting in the  
7 course of the practitioner's professional practice, or except  
8 as otherwise authorized by this chapter. Any person who  
9 violates this subsection is guilty of a-serious an aggravated  
10 misdemeanor for the first offense, and a class "D" felony for  
11 the second and each subsequent offense if the second or  
12 subsequent offense occurs within six years of the previous  
13 offense. ~~If-the-controlled-substance-is-marijuana,-the~~  
14 ~~punishment-shall-be-by-imprisonment-in-the-county-jail-for-not~~  
15 ~~more-than-six-months-or-by-a-fine-of-not-more-than-one~~  
16 ~~thousand-dollars,-or-by-both-such-fine-and-imprisonment.--All~~  
17 ~~or-any-part-of-a-sentence-imposed-pursuant-to-this-section-may~~  
18 ~~be-suspended-and-the-person-placed-upon-probation-upon-such~~  
19 ~~terms-and-conditions-as-the-court-may-impose-including-the~~  
20 ~~active-participation-by-such-person-in-a-drug-treatment,-~~  
21 ~~rehabilitation-or-education-program-approved-by-the-court.~~  
22 b. Any person who possesses marijuana is guilty of a  
23 serious misdemeanor for the first offense, and is guilty of an  
24 aggravated misdemeanor for the second and each subsequent  
25 offense if the second or subsequent offense occurs within six  
26 years of the previous offense.

27 c. A person eighteen or older is guilty of an aggravated  
28 misdemeanor if the person knowingly or intentionally possesses  
29 any controlled substance in violation of this section in the  
30 presence of a minor.

31 Sec. 2. EFFECTIVE DATE. This Act shall not take effect  
32 unless an appropriation is enacted or the state's share of the  
33 cost is specified in accordance with section 25B.2, subsection  
34 3.

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EXPLANATION

1 This bill provides that a person who unlawfully possesses a  
2 controlled substance other than marijuana commits an  
3 aggravated misdemeanor for the first offense and a class "D"  
4 felony for each subsequent offense if the subsequent offense  
5 is committed within six years of the previous offense. The  
6 bill eliminates the six-month jail term and \$1,000 fine for  
7 possession of marijuana and makes possession of marijuana a  
8 serious misdemeanor for the first offense and an aggravated  
9 misdemeanor for each subsequent offense if the subsequent  
10 offense is committed within six years of the previous offense.  
11 The bill also makes it an aggravated misdemeanor for an adult  
12 to unlawfully possess a controlled substance in the presence  
13 of a minor.

14 The bill may contain a state mandate under chapter 25B and  
15 will not take effect unless an appropriation fully funding the  
16 cost to political subdivisions of complying with the bill or  
17 specifying the state's share of the cost of complying with the  
18 bill is enacted.

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**SENATE FILE 397  
FISCAL NOTE**

The estimate for Senate File 397 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 397 provides that a person who unlawfully possesses a controlled substance other than marijuana commits an aggravated misdemeanor for the first offense and a class "D" felony for each subsequent offense if the subsequent offense is committed within six years of the previous offense. The Bill eliminates the six-month jail term and \$1,000 fine for possession of marijuana, makes possession of marijuana a serious misdemeanor for the first offense and an aggravated misdemeanor for each subsequent offense, and makes it an aggravated misdemeanor for an adult to unlawfully possess a controlled substance in the presence of a minor.

Assumptions:

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections policies and practices will not change over the projection period.
3. Lag effects are assumed from the law's effective date to the date of first entry of affected offenders in the correctional system.
4. In FY 1992, there were 20 convictions for possession of marijuana-accomodation offense, 862 convictions for possession of marijuana, 1,345 convictions for possession of undefined drugs.
5. Of the total drug possession cases reported in the 1993 Iowa Uniform Crime Reports, 76.0% of the possession charges involved marijuana.
6. Sufficient information is not available to determine the number of subsequent offenses that may occur.

Fiscal Effect:

It is estimated that 20 convictions for possession of marijuana-accomodation offense, 1,673 convictions for possession of marijuana, and 534 convictions for possession of other drugs may occur each year due to the adoption of SF 397, resulting in the following correctional impact on prisons, Community-Based Corrections, and jail populations:

**Increase in Admissions to Prison**

Prison	FY 1996	FY 1997	FY 2000
Admissions	43	86	86
Population Increase	43	62	71

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**Increase in Admissions: Community-Based Corrections**

Facilities	FY 1996	FY 1997	FY 2000
Admissions	11	22	22
<b>Probation/Parole</b>			
Admissions	153	371	386
<b>Jails</b>			
	FY 1996	FY 1997	FY 2000
Admissions	- 22	- 44	- 44

The number of admissions to jail facilities is expected to decrease as a result of the adoption of SF 397.

**Fiscal Effect on the General Fund:**

Department of Corrections - The estimated cost increase to the Department is as follows:

Description	FY 1996	FY 1997	FY 2000
Prison	\$ 171,000	\$ 246,000	\$ 282,000
<b>Community-Based Corrections</b>			
Facilities	233,000	467,000	467,000
Probation/Parole	98,000	238,000	248,000
Total	<u>\$ 502,000</u>	<u>\$ 951,000</u>	<u>\$ 997,000</u>

NOTE: The average marginal cost per year for a prison inmate is estimated to be \$4,000. The FY 1994 average daily costs for an inmate to serve in a Community-Based Corrections facility was \$58.10 and \$1.76 for probation/parole.

Judicial Department - The cost to the State General Fund for each case tried at the District Court level is estimated to be \$7,600 and \$44,000 at the Appellate Court level.

**County Funding:**

The cost savings to counties is as follows:

	FY 1996	FY 1997	FY 2000
Jail	<u>\$ 34,000</u>	<u>\$ 67,000</u>	<u>\$ 67,000</u>

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NOTE: The FY 1994 average daily cost for an individual to serve a jail sentence was estimated to be \$51.07. The total cost savings provided is based on the assumption that the average length of stay is 30 days for each admission.

Sources:

Criminal Juvenile Justice Planning  
Department of Corrections  
Judicial Department

(LSB 1705SV, LAM)

FILED MARCH 23, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR