

FEB 5 1997

JUDICIARY

HOUSE FILE

162

BY KREIMAN

Passed House, Date _____ Passed Senate, Date _____

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

Approved _____

A BILL FOR

1 An Act prohibiting a court from deferring a judgment or deferring
2 or suspending a sentence for the offense of operating while
3 intoxicated.

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

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

HF 162

1 Section 1. Section 321J.2, subsections 2, 3, and 5, Code
2 1997, are amended to read as follows:

3 2. A person who violates this section commits:

4 a. A serious misdemeanor for the first offense and shall
5 be imprisoned in the county jail for not less than forty-eight
6 hours to be served as ordered by the court, less credit for
7 any time the person was confined in a jail or detention
8 facility following arrest, and assessed a fine of not less
9 than five hundred dollars nor more than one thousand dollars.

10 As an alternative to a portion or all of the fine, the court
11 may order the person to perform not more than two hundred
12 hours of unpaid community service. The court may accommodate
13 the sentence to the work schedule of the defendant.

14 b. An aggravated misdemeanor for a second offense and
15 shall be imprisoned in the county jail or community-based
16 correctional facility not less than seven days, ~~which-minimum~~
17 ~~term-cannot-be-suspended-notwithstanding-section-901.57,~~
18 ~~subsection-3-and-section-907.37-subsection-37,~~ and assessed a
19 fine of not less than seven hundred fifty dollars.

20 c. A class "D" felony for a third offense and each
21 subsequent offense and shall be imprisoned in the county jail
22 for a determinate sentence of not more than one year but not
23 less than thirty days, or committed to the custody of the
24 director of the department of corrections, and assessed a fine
25 of not less than seven hundred fifty dollars. ~~The-minimum~~
26 ~~jail-term-of-thirty-days-cannot-be-suspended-notwithstanding~~
27 ~~section-901.57-subsection-37-and-section-907.37-subsection-37,~~
28 ~~however7-the-person-sentenced-shall-receive-credit-for-any~~
29 ~~time-the-person-was-confined-in-a-jail-or-detention-facility~~
30 ~~following-arrest:--If-a-person-is-committed-to-the-custody-of~~
31 ~~the-director-of-the-department-of-corrections-pursuant-to-this~~
32 ~~paragraph-and-the-sentence-is-suspended7-the-sentencing-court~~
33 ~~shall-order-that-the-offender-serve-the-thirty-day-minimum~~
34 ~~term-in-the-county-jail:--If-the-sentence-which-commits-the~~
35 ~~person-to-the-custody-of-the-director-of-the-department-of~~

1 ~~corrections-is-later-imposed-by-the-court,-all-time-served-in~~
2 ~~a-county-jail-toward-the-thirty-day-minimum-term-shall-count~~
3 ~~as-time-served-toward-the-sentence-which-committed-the-person~~
4 ~~to-the-custody-of-the-director-of-the-department-of~~
5 ~~corrections.~~

6 2A. a. Notwithstanding the provisions of sections 901.5
7 and 907.3, the court shall not defer judgment or sentencing,
8 or suspend execution of any part of the minimum sentence
9 applicable to the defendant under subsection 2.

10 b. A person convicted of a second or subsequent offense
11 shall be ordered to undergo a substance abuse evaluation prior
12 to sentencing. If a person is convicted of a third or
13 subsequent offense or if the evaluation recommends treatment,
14 the offender may be committed to the custody of the director
15 of the department of corrections, ~~who,-if-the-sentence-is-not~~
16 ~~suspended,~~ shall assign the person to a facility pursuant to
17 section 904.513 or the offender may be committed to treatment
18 in the community under the provisions of section 907.6.

19 c. A minimum term of imprisonment in a county jail or
20 community-based correctional facility imposed on a person
21 convicted of a second or subsequent offense under paragraph
22 "b" or "c" shall be served on consecutive days. However, if
23 the sentencing court finds that service of the full minimum
24 term on consecutive days would work an undue hardship on the
25 person, or finds that sufficient jail space is not available
26 and is not reasonably expected to become available within four
27 months after sentencing to incarcerate the person serving the
28 minimum sentence on consecutive days, the court may order the
29 person to serve ~~not-less-than-forty-eight-consecutive-hours-of~~
30 ~~the minimum term and-to-perform-a-specified-number-of-hours-of~~
31 ~~unpaid-community-service-as-deemed-appropriate-by-the~~
32 ~~sentencing-court~~ in increments of forty-eight consecutive
33 hours.

34 3. No conviction for ~~deferred-judgment-for,~~ or plea of
35 guilty to ~~a violation of this section which occurred more~~

1 than six years prior to the date of the violation charged
2 shall be considered in determining that the violation charged
3 is a second, third, or subsequent offense. For the purpose of
4 determining if a violation charged is a second, third, or
5 subsequent offense, deferred judgments pursuant to prior
6 versions of section 907.3 for violations of this section and
7 convictions or the equivalent of deferred judgments for
8 violations in any other states under statutes substantially
9 corresponding to this section shall be counted as previous
10 offenses. The courts shall judicially notice the statutes of
11 other states which define offenses substantially equivalent to
12 the one defined in this section and can therefore be
13 considered corresponding statutes. Each previous violation on
14 which conviction or deferral of judgment was entered prior to
15 the date of the violation charged shall be considered and
16 counted as a separate previous offense.

17 5. The clerk of the district court shall immediately
18 certify to the department a true copy of each order entered
19 with respect to ~~deferral-of-judgment, deferral-of-sentence-or~~
20 pronouncement of judgment and sentence for a defendant under
21 this section.

22 Sec. 2. Section 321J.2, subsection 8, Code 1997, is
23 amended to read as follows:

24 8. The court shall order a defendant convicted of ~~or~~
25 ~~receiving-a-deferred-judgment-for~~ a violation of this section
26 to make restitution, in an amount not to exceed two thousand
27 dollars, for damages resulting directly from the violation.
28 An amount paid pursuant to this restitution order shall be
29 credited toward any adverse judgment in a subsequent civil
30 proceeding arising from the same occurrence. However, other
31 than establishing a credit, a restitution proceeding pursuant
32 to this section shall not be given evidentiary or preclusive
33 effect in a subsequent civil proceeding arising from the same
34 occurrence.

35 Sec. 3. Section 321J.3, subsection 2, Code 1997, is

1 amended to read as follows:

2 2. As a condition of a ~~suspended-sentence-or-portion-of~~
3 ~~sentence-for-a~~ second, ~~third,~~ or subsequent offense in
4 violation of section 321J.2, the court upon hearing may commit
5 the defendant for inpatient treatment of alcoholism or drug
6 addiction or dependency to any hospital, institution, or
7 community correctional facility in Iowa providing such
8 treatment. The time for which the defendant is committed for
9 treatment shall be credited against the defendant's sentence.
10 The court may prescribe the length of time for the evaluation
11 and treatment or it may request that the hospital to which the
12 person is committed immediately report to the court when the
13 person has received maximum benefit from the program of the
14 hospital or institution or has recovered from the person's
15 addiction, dependency, or tendency to chronically abuse
16 alcohol or drugs. A person committed under this section who
17 does not possess sufficient income or estate to make payment
18 of the costs of the treatment in whole or in part shall be
19 considered a state patient and the costs of treatment shall be
20 paid as provided in section 125.44.

21 Sec. 4. Section 321J.4, subsection 2, Code 1997, is
22 amended by striking the subsection.

23 Sec. 5. Section 321J.4, subsection 7, Code 1997, is
24 amended to read as follows:

25 7. On a conviction ~~for-or-as-a-condition-of-a-deferred~~
26 ~~judgment~~ for a violation of section 321J.2, the court may
27 order the defendant to install ignition interlock devices of a
28 type approved by the commissioner of public safety on all
29 motor vehicles owned or operated by the defendant which,
30 without tampering or the intervention of another person, would
31 prevent the defendant from operating the motor vehicle with an
32 alcohol concentration greater than a level set by rule of the
33 commissioner of public safety. The commissioner of public
34 safety shall adopt rules to approve certain ignition interlock
35 devices and the means of installation of the devices, and

1 shall establish the level of alcohol concentration beyond
2 which an ignition interlock device will not allow operation of
3 the motor vehicle in which it is installed. The order shall
4 remain in effect for a period of time as determined by the
5 court which shall not exceed the maximum term of imprisonment
6 which the court could have imposed according to the nature of
7 the violation. While the order is in effect, the defendant
8 shall not operate a motor vehicle which does not have an
9 approved ignition interlock device installed. If the
10 defendant's motor vehicle license or nonresident operating
11 privilege has been revoked, the department shall not issue a
12 temporary permit or a motor vehicle license to the person
13 without certification that approved ignition interlock devices
14 have been installed in all motor vehicles owned or operated by
15 the defendant while the order is in effect. A defendant who
16 fails within a reasonable time to comply with an order to
17 install an approved ignition interlock device may be declared
18 in contempt of court and punished accordingly. A person who
19 tampers with or circumvents an ignition interlock device
20 installed under a court order while an order is in effect
21 commits a serious misdemeanor.

22 Sec. 6. Section 321J.24, subsection 2, Code 1997, is
23 amended to read as follows:

24 2. A reality education substance abuse prevention program
25 is established in those judicial districts where the chief
26 judge of the judicial district authorizes participation in the
27 program. Upon a conviction or adjudication for a violation of
28 section 321J.2, ~~or the entry of a deferred judgment concerning~~
29 ~~a violation of section 321J.2~~, the court or juvenile court,
30 with the consent of the defendant or delinquent child, may
31 order a defendant who is sixteen years of age or older but
32 under the age of twenty-one or delinquent child who is sixteen
33 years of age or older to participate in the reality education
34 substance abuse prevention program as a term and condition of
35 probation or disposition in addition to any other term or

1 condition of probation or disposition required or authorized
2 by law. The court or juvenile court shall require the
3 defendant or delinquent child to abstain from consuming any
4 controlled substance, alcoholic liquor, wine, or beer before
5 reaching age twenty-one while participating in the program.

6 Sec. 7. Section 907.3, subsection 1, paragraph g, Code
7 1997, is amended to read as follows:

8 g. The offense is a violation of section 321J.2 and
9 ~~within-the-previous-six-years, the person has been convicted~~
10 ~~of a violation of that section or the person's driver's~~
11 ~~license has been revoked pursuant to section 321J.4, 321J.9,~~
12 ~~or 321J.12.~~

13 Sec. 8. Section 907.3, subsections 2 and 3, Code 1997, are
14 amended to read as follows:

15 2. At the time of or after pronouncing judgment and with
16 the consent of the defendant, the court may defer the sentence
17 and assign the defendant to the judicial district department
18 of correctional services. The court may assign the defendant
19 to supervision or services under section 901B.1 at the level
20 of sanctions which the district department determines to be
21 appropriate, if an intermediate criminal sanctions plan and
22 program has been adopted in the judicial district under
23 section 901B.1. However, the court shall not defer the
24 sentence for a violation of section any of the following:

25 a. Section 708.2A, if the defendant has previously
26 received a deferred judgment or sentence for a violation of
27 section 708.2 or 708.2A which was issued on a domestic abuse
28 assault, or if similar relief was granted anywhere in the
29 United States concerning that jurisdiction's statutes which
30 substantially correspond to domestic abuse assault as provided
31 in section 708.2A. ~~In addition, the court shall not defer a~~
32 ~~sentence if it is imposed for a conviction for or plea of~~
33 ~~guilty to a violation of section~~

34 b. Section 236.8 or for contempt pursuant to section 236.8
35 or 236.14.

1 c. Section 321J.2.

2 Upon a showing that the defendant is not fulfilling the
3 conditions of probation, the court may revoke probation and
4 impose any sentence authorized by law. Before taking such
5 action, the court shall give the defendant an opportunity to
6 be heard on any matter relevant to the proposed action. Upon
7 violation of the conditions of probation, the court may
8 proceed as provided in chapter 908.

9 3. By record entry at the time of or after sentencing, the
10 court may suspend the sentence and place the defendant on
11 probation upon such terms and conditions as it may require
12 including commitment to an alternate jail facility or a
13 community correctional residential treatment facility for a
14 specific number of days to be followed by a term of probation
15 as specified in section 907.7, or commitment of the defendant
16 to the judicial district department of correctional services
17 for supervision or services under section 901B.1 at the level
18 of sanctions which the district department determines to be
19 appropriate. A person so committed who has probation revoked
20 shall be given credit for such time served. However, the
21 court shall not suspend the any of the following sentences:

22 a. The minimum term of two days imposed pursuant to
23 section 708.2A, subsection 6, paragraph "a", or a sentence
24 imposed under section 708.2A, subsection 6, paragraph "b" ~~7~~ and
25 the court shall not suspend a.

26 b. A sentence imposed pursuant to section 236.8 or 236.14
27 for contempt.

28 c. The minimum sentence imposed pursuant to section
29 321J.2.

30 Sec. 9. IMPLEMENTATION OF ACT. Section 25B.2, subsection
31 3, shall not apply to this Act.

32 EXPLANATION

33 This bill amends Code section 907.5 to prohibit a court
34 from deferring a judgment or deferring or suspending a
35 sentence for an offense of operating while intoxicated. This

1 bill also makes conforming amendments to sections of chapter
2 321J to require a defendant to serve the minimum jail term and
3 to eliminate references to deferred judgments and suspended
4 sentences.

5 This bill may contain a state mandate as defined in Code
6 section 25B.3. The bill makes inapplicable Code section
7 25B.3, subsection 3, which would relieve a political
8 subdivision from complying with a state mandate if funding for
9 the cost of the state mandate is not provided or specified.
10 Therefore, political subdivisions are required to comply with
11 any state mandate included in this bill.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35