

JAN 20 1998
JUDICIARY

HOUSE FILE 2060
BY JENKINS, LAMBERTI, and
KREMER

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the criminal penalties applicable to certain
2 offenses, by increasing and adding penalties for certain drug
3 offenses and increasing the penalty applicable to the crime of
4 voluntary absence from custody.

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

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HF 2060

1 Section 1. Section 124.401, subsection 1, paragraph d,
2 Code Supplement 1997, is amended to read as follows:
3 d. Violation of this subsection, with respect to any other
4 controlled substances, counterfeit substances, or simulated
5 controlled substances classified in schedule IV or V is an
6 aggravated misdemeanor. However, violation of this subsection
7 involving fifty kilograms or less of marijuana, is a class "D"
8 felony, and in addition to the provisions of section 902.9,
9 subsection 4, shall be punished by a fine of not less than one
10 thousand dollars nor more than five seven thousand five
11 hundred dollars.

12 Sec. 2. Section 124.401, subsection 5, Code Supplement
13 1997, is amended to read as follows:

14 5. It is unlawful for any person knowingly or
15 intentionally to possess a controlled substance unless such
16 substance was obtained directly from, or pursuant to, a valid
17 prescription or order of a practitioner while acting in the
18 course of the practitioner's professional practice, or except
19 as otherwise authorized by this chapter. Any person who
20 violates this subsection is guilty of a serious misdemeanor
21 for a first offense. A person who commits a violation of this
22 subsection and who has previously been convicted of violating
23 this subsection is guilty of an aggravated misdemeanor. A
24 person who commits a violation of this subsection and has
25 previously been convicted two or more times of violating this
26 subsection is guilty of a class "D" felony.

27 PARAGRAPH DIVIDED. If the controlled substance is
28 marijuana, the punishment shall be by imprisonment in the
29 county jail for not more than six months or by a fine of not
30 more than one thousand dollars, or by both such fine and
31 imprisonment for a first offense. If the controlled substance
32 is marijuana and the person has been previously convicted of a
33 violation of this subsection in which the controlled substance
34 was marijuana, the punishment shall be as provided in section
35 903.1, subsection 1, paragraph "b". If the controlled

1 substance is marijuana and the person has been previously
2 convicted two or more times of a violation of this subsection
3 in which the controlled substance was marijuana, the person is
4 guilty of an aggravated misdemeanor.

5 PARAGRAPH DIVIDED. All or any part of a sentence imposed
6 pursuant to this ~~section~~ subsection may be suspended and the
7 person placed upon probation upon such terms and conditions as
8 the court may impose including the active participation by
9 such person in a drug treatment, rehabilitation or education
10 program approved by the court.

11 Sec. 3. Section 719.4, Code 1997, is amended to read as
12 follows:

13 719.4 ESCAPE OR ABSENCE FROM CUSTODY.

14 1. A person convicted of a felony, or charged with or
15 arrested for the commission of a felony, who intentionally
16 does either of the following commits a class "D" felony:

17 a. Intentionally escapes from a detention facility,
18 community-based correctional facility, or institution to which
19 the person has been committed by reason of the conviction,
20 charge, or arrest, or from the custody of any public officer
21 or employee to whom the person has been entrusted, ~~commits a~~
22 ~~class-"D"-felony.~~

23 b. Is knowingly and voluntarily absent from a place where
24 the person is required to be while the person is committed to
25 a detention facility, community-based correctional facility,
26 or institution.

27 2. A person convicted of, charged with, or arrested for a
28 misdemeanor, who intentionally does either of the following
29 commits a serious misdemeanor:

30 a. Intentionally escapes from a detention facility,
31 community-based correctional facility, or institution to which
32 the person has been committed by reason of the conviction,
33 charge, or arrest, or from the custody of any public officer
34 or employee to whom the person has been entrusted, ~~commits a~~
35 ~~serious-misdemeanor.~~

1 b. Is knowingly and voluntarily absent from a place where
2 the person is required to be while the person is committed to
3 a detention facility, community-based correctional facility,
4 or institution.

5 ~~3--A person who has been committed to an institution under~~
6 ~~the control of the Iowa department of corrections, to a~~
7 ~~community-based correctional facility, or to a jail or~~
8 ~~correctional institution, who knowingly and voluntarily is~~
9 ~~absent from a place where the person is required to be,~~
10 ~~commits a serious misdemeanor.~~

11 ~~4. 3. A person who flees from the state to avoid~~
12 ~~prosecution for a public offense which is a felony or~~
13 ~~aggravated misdemeanor commits a class "D" felony.~~

14 Sec. 4. Section 901.8, Code Supplement 1997, is amended to
15 read as follows:

16 901.8 CONSECUTIVE SENTENCES.

17 If a person is sentenced for two or more separate offenses,
18 the sentencing judge may order the second or further sentence
19 to begin at the expiration of the first or succeeding
20 sentence. If a person is sentenced for escape or voluntary
21 absence under section 719.4 or for a crime committed while
22 confined in a detention facility or penal institution, the
23 sentencing judge shall order the sentence to begin at the
24 expiration of any existing sentence. If the person is
25 presently in the custody of the director of the Iowa
26 department of corrections, the sentence shall be served at the
27 facility or institution in which the person is already
28 confined unless the person is transferred by the director.
29 Except as otherwise provided in section 903A.7, if consecutive
30 sentences are specified in the order of commitment, the
31 several terms shall be construed as one continuous term of
32 imprisonment.

33 EXPLANATION

34 This bill makes changes in the penalties applicable to
35 certain drug offenses and the crime of voluntary absence. The

1 maximum fine applicable to manufacture, possession, or
2 delivery, or possession with intent to manufacture, possess,
3 or deliver 50 kilograms or less of marijuana is increased from
4 \$5,000 to \$7,500.

5 The penalty applicable to unlawful possession of a
6 controlled substance is amended to provide for enhanced
7 penalties for persons with prior convictions of the same
8 offense. Currently, unlawful possession is punishable as a
9 serious misdemeanor. The bill would provide that a first
10 offense violation is a serious misdemeanor, a second offense
11 is an aggravated misdemeanor, and a third or subsequent
12 offense is a class "D" felony. If the controlled substance
13 was marijuana and the person had previously been convicted of
14 the same offense, the punishment will be the same as that
15 which generally applies to serious misdemeanors. If the
16 controlled substance was marijuana and the person has been
17 previously convicted two or more times of the same offense,
18 the person is guilty of an aggravated misdemeanor.

19 The voluntary absence from custody provisions are amended
20 to change the penalties applicable to persons who have been
21 convicted of, are charged with, or have been arrested for a
22 felony or misdemeanor offense and who are knowingly and
23 voluntarily absent from a place where the person is required
24 to be while that person is committed to a detention facility,
25 community-based correctional facility, or other institution,
26 or while the person is in the custody of any public officer or
27 employee with whom the person is entrusted. If the person was
28 arrested for, charged with, or convicted of a felony, the
29 penalty is increased from a serious misdemeanor to a class "D"
30 felony. The crime also is amended to include voluntary
31 absences committed while the person is in the custody of a
32 public officer or employee with whom the person has been
33 entrusted. The penalty applicable to voluntary absences of
34 persons convicted of a misdemeanor remains a serious
35 misdemeanor, but the crime now also includes voluntary

1 absences committed while the person is in the custody of a
2 public officer or employee with whom the person has been
3 entrusted. Section 901.8 is also amended to include voluntary
4 absence as a crime for which a consecutive sentence is
5 required.

6 The penalty applicable to a class "D" felony is
7 imprisonment of no more than five years, and a fine of at
8 least \$500 but not more than \$7,500. The penalty applicable
9 to an aggravated misdemeanor is imprisonment of no more than
10 two years and a fine of at least \$500 but not more than
11 \$5,000. The penalty applicable to a serious misdemeanor is a
12 fine of at least \$250 but not more than \$1,500 and possible
13 imprisonment not to exceed one year.

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