

3/24/98 Referred To: Judiciary

MAR 2 1998
Place On Calendar

HOUSE FILE 2504
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2060)

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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H.F. 2504

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 and persons convicted of violating this
7 subsection shall also perform not less than eighty hours of
8 unpaid community service. However, violation of this
9 subsection involving fifty kilograms or less of marijuana, is
10 a class "D" felony, and in addition to the provisions of
11 section 902.9, subsection 4, shall be punished by a fine of
12 not less than one thousand dollars nor more than five seven
13 thousand five hundred dollars and shall perform not less than
14 three hundred twenty hours of unpaid community service.

15 Sec. 2. Section 124.401, subsection 5, Code Supplement
16 1997, is amended to read as follows:

17 5. It is unlawful for any person knowingly or
18 intentionally to possess a controlled substance unless such
19 substance was obtained directly from, or pursuant to, a valid
20 prescription or order of a practitioner while acting in the
21 course of the practitioner's professional practice, or except
22 as otherwise authorized by this chapter. Any person who
23 violates this subsection is guilty of a serious misdemeanor
24 for a first offense and shall also perform not less than forty
25 hours of unpaid community service. A person who commits a
26 violation of this subsection and who has previously been
27 convicted of violating this subsection is guilty of an
28 aggravated misdemeanor and shall also perform not less than
29 eighty hours of unpaid community service. A person who
30 commits a violation of this subsection and has previously been
31 convicted two or more times of violating this subsection is
32 guilty of a class "D" felony and shall also perform not less
33 than three hundred twenty hours of unpaid community service.

34 PARAGRAPH DIVIDED. If the controlled substance is
35 marijuana, the punishment shall be by imprisonment in the

1 county jail for not more than six months or by a fine of not
2 more than one thousand dollars, or by both such fine and
3 imprisonment for a first offense and the person shall also
4 perform not less than forty hours of unpaid community service.
5 If the controlled substance is marijuana and the person has
6 been previously convicted of a violation of this subsection in
7 which the controlled substance was marijuana, the punishment
8 shall be as provided in section 903.1, subsection 1, paragraph
9 "b", and the person shall perform not less than sixty hours of
10 unpaid community service. If the controlled substance is
11 marijuana and the person has been previously convicted two or
12 more times of a violation of this subsection in which the
13 controlled substance was marijuana, the person is guilty of an
14 aggravated misdemeanor and shall perform not less than eighty
15 hours of unpaid community service.

16 PARAGRAPH DIVIDED. At Except for any mandatory community
17 service performance requirements, all or any part of a
18 sentence imposed pursuant to this section subsection may be
19 suspended and the person placed upon probation upon such terms
20 and conditions as the court may impose including the active
21 participation by such person in a drug treatment,
22 rehabilitation or education program approved by the court.

23 Sec. 3. Section 719.4, Code 1997, is amended to read as
24 follows:

25 719.4 ESCAPE OR ABSENCE FROM CUSTODY.

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

29 a. Intentionally escapes from a detention facility,
30 community-based correctional facility, or institution to which
31 the person has been committed by reason of the conviction,
32 charge, or arrest, or from the custody of any public officer
33 or employee to whom the person has been entrusted, ~~7-commits-a~~
34 class-"D"-felony.

35 b. Is knowingly and voluntarily absent from a place where

1 the person is required to be while the person is committed to
2 a detention facility, community-based correctional facility,
3 or institution.

4 2. A person convicted of, charged with, or arrested for a
5 misdemeanor, who intentionally does either of the following
6 commits a serious misdemeanor:

7 a. Intentionally escapes from a detention facility,
8 community-based correctional facility, or institution to which
9 the person has been committed by reason of the conviction,
10 charge, or arrest, or from the custody of any public officer
11 or employee to whom the person has been entrusted, commits a
12 serious misdemeanor.

13 b. Is knowingly and voluntarily absent from a place where
14 the person is required to be while the person is committed to
15 a detention facility, community-based correctional facility,
16 or institution.

17 ~~3.---A-person-who-has-been-committed-to-an-institution-under~~
18 ~~the-control-of-the-Iowa-department-of-corrections,-to-a~~
19 ~~community-based-correctional-facility,-or-to-a-jail-or~~
20 ~~correctional-institution,-who-knowingly-and-voluntarily-is~~
21 ~~absent-from-a-place-where-the-person-is-required-to-be,~~
22 ~~commits-a-serious-misdemeanor.~~

23 4. 3. A person who flees from the state to avoid
24 prosecution for a public offense which is a felony or
25 aggravated misdemeanor commits a class "D" felony.

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

28 901.8 CONSECUTIVE SENTENCES.

29 If a person is sentenced for two or more separate offenses,
30 the sentencing judge may order the second or further sentence
31 to begin at the expiration of the first or succeeding
32 sentence. If a person is sentenced for escape or voluntary
33 absence under section 719.4 or for a crime committed while
34 confined in a detention facility or penal institution, the
35 sentencing judge shall order the sentence to begin at the

1 expiration of any existing sentence. If the person is
2 presently in the custody of the director of the Iowa
3 department of corrections, the sentence shall be served at the
4 facility or institution in which the person is already
5 confined unless the person is transferred by the director.
6 Except as otherwise provided in section 903A.7, if consecutive
7 sentences are specified in the order of commitment, the
8 several terms shall be construed as one continuous term of
9 imprisonment.

10 Sec. 5. Section 902.6, Code 1997, is amended to read as
11 follows:

12 902.6 RELEASE.

13 A person who has been committed to the custody of the
14 director of the Iowa department of corrections shall remain in
15 custody until released by the order of the board of parole, in
16 accordance with the law governing paroles, or by order of the
17 judge after reconsideration of a felon's sentence pursuant to
18 section 902.4 or until the maximum term of the person's
19 confinement, as fixed by law, has been completed. However,
20 for purposes of calculating a person's maximum term of
21 confinement, the department of corrections shall not count any
22 time during which the person is not in custody or confinement
23 due to an escape or voluntary absence under section 719.4.

24 EXPLANATION

25 This bill makes changes in the penalties applicable to
26 certain drug offenses and the crime of voluntary absence. The
27 bill adds to the penalty applicable to manufacture, delivery,
28 or possession with the intent to deliver controlled substances
29 classified in schedule IV or V a requirement that the person
30 perform not less than eighty hours of unpaid community
31 service. The maximum fine applicable to manufacture,
32 possession, or delivery, or possession with intent to
33 manufacture, possess, or deliver 50 kilograms or less of
34 marijuana is increased from \$5,000 to \$7,500 and a requirement
35 that the person perform not less than three hundred twenty

1 hours of unpaid community service is added.

2 The penalty applicable to unlawful possession of a
3 controlled substance is amended to provide for enhanced
4 penalties for persons with prior convictions of the same
5 offense. Currently, unlawful possession is punishable as a
6 serious misdemeanor. The bill would provide that a first
7 offense violation is a serious misdemeanor, a second offense
8 is an aggravated misdemeanor, and a third or subsequent
9 offense is a class "D" felony. For each of the violations, a
10 mandatory minimum number of hours of unpaid community service
11 is added: forty hours for the serious misdemeanor, eighty
12 hours for the aggravated misdemeanor, and three hundred twenty
13 hours for the class "D" felony. If the controlled substance
14 was marijuana and the person had previously been convicted of
15 the same offense, the punishment will be the same as that
16 which generally applies to serious misdemeanors except that
17 the person is required to perform not less than sixty hours of
18 community service. If the controlled substance was marijuana
19 and the person has been previously convicted two or more times
20 of the same offense, the person is guilty of an aggravated
21 misdemeanor.

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

1 entrusted. The penalty applicable to voluntary absences of
2 persons convicted of a misdemeanor remains a serious
3 misdemeanor, but the crime now also includes voluntary
4 absences committed while the person is in the custody of a
5 public officer or employee with whom the person has been
6 entrusted. Section 901.8 is also amended to include voluntary
7 absence as a crime for which a consecutive sentence is
8 required.

9 Language is also added to prohibit the department of
10 corrections from counting any time during which a person is
11 not in custody due to an escape or a voluntary absence when
12 calculating a person's maximum term of confinement.

13 The penalty applicable to a class "D" felony is
14 imprisonment of no more than five years, and a fine of at
15 least \$500 but not more than \$7,500. The penalty applicable
16 to an aggravated misdemeanor is imprisonment of no more than
17 two years and a fine of at least \$500 but not more than
18 \$5,000. The penalty applicable to a serious misdemeanor is a
19 fine of at least \$250 but not more than \$1,500 and possible
20 imprisonment not to exceed one year.

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HOUSE FILE 2504

H-8180

1 Amend House File 2504 as follows:

2 1. Page 3, by inserting after line 25, the
3 following:

4 "Sec. . NEW SECTION. 804.7B

5 MULTIJURISDICTIONAL CONTROLLED SUBSTANCES LAW

6 ENFORCEMENT AGREEMENTS -- CONTIGUOUS COUNTIES.

7 1. A county which borders another state and any
8 political subdivision within that county may enter
9 into an agreement with a contiguous county, or a
10 political subdivision within that county, in that
11 other state for purposes of joint enforcement of the
12 drug and controlled substance laws in this state and
13 the contiguous state.

14 2. A law enforcement officer in a contiguous state
15 who meets the training and certification requirements
16 for peace officer status in that state shall be
17 authorized to make arrests and conduct other law
18 enforcement activities pursuant to an agreement
19 entered into under subsection 1, in the same manner as
20 a peace officer in this state. A law enforcement
21 officer who acts in accordance with an agreement
22 entered into pursuant to this section and in
23 conformance with the requirements of applicable Iowa
24 law shall have the same immunity from suit in this
25 state as a peace officer, as defined in section 801.4.
26 A law enforcement officer in a contiguous state, who
27 is acting pursuant to an agreement under subsection 1,
28 is not an agent or employee of the state of Iowa or
29 any political subdivision of the state, and the agency
30 or authority in the other state shall be liable for
31 any unlawful acts or omissions which arise out of the
32 arrests or law enforcement activities of that law
33 enforcement officer.

34 3. The provisions of subsections 1 and 2 shall not
35 apply unless the contiguous state has provided legal
36 authority for the political subdivisions in that state
37 to enter into agreements with other states, or
38 political subdivisions of other states, for purposes
39 of joint enforcement of the drug and controlled
40 substance laws in that state and other states. Any
41 agreements made under this section shall not exceed
42 any other jurisdictional limitations to which this
43 state, political subdivisions of this state, the
44 contiguous state, and political subdivision of the
45 contiguous state are subject."

46 2. Title page, line 2, by inserting after the
47 word "penalties" the following: "and providing for
48 multijurisdictional enforcement agreements".

49 3. By renumbering as necessary.

By LAMBERTI of Polk
WISE of Lee
MORELAND of Wapello

HOUSE FILE 2504

H-8169

1 Amend House File 2504 as follows:

2 1. Page 2, by inserting after line 22, the
3 following:

4 "Sec. 100. NEW SECTION. 200.23 ANHYDROUS AMMONIA
5 EQUIPMENT SECURITY AND SITE CLEANUP FUND.

6 1. As used in this section, "alliance" means the
7 governor's alliance on substance abuse.

8 2. An anhydrous ammonia equipment security and
9 cleanup fund is created in the state treasury under
10 the control of the head of the alliance. The fund is
11 composed of any moneys appropriated by the general
12 assembly and of any other moneys available to and
13 obtained or accepted by the alliance from the federal
14 government or private sources for placement in the
15 fund. Civil penalties collected for violations of
16 section 200.14 shall be deposited into the fund.
17 Proceeds from forfeited property shall be deposited
18 into the fund as provided in section 809A.17.

19 3. Moneys in the fund are subject to an annual
20 audit by the auditor of state. The fund is subject to
21 warrants written by the director of revenue and
22 finance, drawn upon the written requisition of the
23 head of the alliance.

24 4. Section 8.33 shall not apply to moneys in the
25 fund. Notwithstanding section 12C.7, moneys earned as
26 income, including as interest, from moneys in the fund
27 shall remain in the fund until expended as provided in
28 this section. The alliance shall not in any manner
29 directly or indirectly pledge the credit of the state.

30 5. Moneys in the fund shall be used for the
31 following purposes:

32 a. To assist owners of anhydrous ammonia equipment
33 in purchasing or installing devices necessary to
34 secure the equipment from intentional tampering,
35 including locks, lights, or fencing, according to
36 requirements established by the alliance in
37 cooperation with the department of public safety.

38 b. To reimburse counties for costs associated with
39 cleaning up clandestine laboratory sites as defined in
40 section 124C.1.

41 The moneys in the fund may be used on a cost-share
42 basis as determined practical by the alliance."

43 2. Page 3, by inserting after line 25 the
44 following:

45 "Sec. 200. Section 809A.17, subsection 5, Code
46 1997, is amended by adding the following new
47 paragraph:

48 NEW PARAGRAPH. e. Forfeited property used in
49 connection with a violation of section 200.14 shall be
50 deposited with the department of public safety to be

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Page 2

1 disposed of in accordance with the rules of the
2 department. However, the department shall distribute
3 not more than one thousand five hundred dollars per
4 forfeiture to the anhydrous ammonia equipment security
5 and cleanup fund created pursuant to section 200.23.
6 The department may dispose of the property by a
7 commercially reasonable public sale in order to carry
8 out this paragraph."

9 3. Page 4, by inserting after line 23 the
10 following:

11 "Sec. ____ . CONTINGENT APPLICABILITY. The
12 enactment of sections 100 and 200 of this Act shall be
13 contingent upon the enactment of 1997 Iowa Acts,
14 Senate File 2082."

15 4. Title page, line 4, by inserting after the
16 word "custody" the following: ", providing for the
17 allocation of moneys to support security needs and the
18 cleanup of clandestine laboratory sites, and providing
19 a contingent effective date".

By KREIMAN of Davis
RICHARDSON of Warren

H-8169 FILED MARCH 3, 1998

HOUSE FILE 2504

H-8164

1 Amend House File 2504 as follows:

2 1. Page 3, by inserting after line 25 the
3 following:

4 "Sec. _____. Section 811.2, subsection 1, Code 1997,
5 is amended by adding the following new unnumbered
6 paragraph:

7 NEW UNNUMBERED PARAGRAPH. Any bailable defendant
8 who is charged with unlawful possession, manufacture,
9 delivery, or distribution of a controlled substance or
10 other drug under chapter 124 or 125 and is ordered
11 released shall be required, as a condition of that
12 release, to submit to a substance abuse evaluation and
13 follow any recommendations proposed in the evaluation
14 for appropriate substance abuse treatment."

15 2. Title page, line 1, by inserting after the
16 word "penalties" the following: "and bail
17 requirements".

18 3. Title page, line 2, by inserting after the
19 word "penalties" the following: "and bail
20 conditions".

21 4. By numbering and renumbering as necessary.

By KREIMAN of Davis

H-8164 FILED MARCH 3, 1998

H-8266

1 Amend House File 2504, as follows:

- 2 1. Page 1, line 8, by inserting after the word
 3 "service" the following: "and shall be imprisoned in
 4 the county jail for not less than seven days".
- 5 2. Page 1, line 13, by inserting after the word
 6 "dollars" the following: ", imprisonment for not less
 7 than thirty days,".
- 8 3. Page 1, line 24, by inserting after the word
 9 "offense" the following: ", shall be imprisoned in
 10 the county jail for not less than forty-eight hours,".
- 11 4. Page 1, line 28, by inserting after the word
 12 "misdemeanor" the following: ", shall be imprisoned
 13 in the county jail for not less than seven days,".
- 14 5. Page 1, line 32, by inserting after the word
 15 "felony" the following: ", shall be imprisoned for
 16 not less than thirty days,".
- 17 6. Page 2, line 3, by inserting after the word
 18 "offense" the following: ", shall be imprisoned in
 19 the county jail for not less than forty-eight hours,".
- 20 7. Page 2, line 9, by inserting after the word
 21 "b" the following: ", except that the person shall
 22 be imprisoned in the county jail for not less than
 23 forty-eight hours".
- 24 8. Page 2, line 14, by inserting after the word
 25 "misdemeanor" the following: ", shall be imprisoned
 26 in the county jail for not less than seven days,".
- 27 9. Page 2, line 17, by inserting after the word
 28 "requirements" the following: "or any mandatory
 29 minimum term of imprisonment".

By KREIMAN of Davis

H-8266 FILED MARCH 5, 1998

HOUSE FILE 2504

H-8472

1 Amend the amendment, H-8180, to House File 2504, as
 2 follows:

- 3 1. Page 1, line 9, by striking the words "with a
 4 contiguous county" and inserting the following:
 5 "pursuant to chapter 28E with a county in a state
 6 bordering this state".
- 7 2. Page 1, lines 10 and 11, by striking the words
 8 "in that other state".
- 9 3. Page 1, line 20, by inserting after the word
 10 "state." the following: "A law enforcement officer
 11 who makes an arrest or conducts an activity in this
 12 state pursuant to an agreement entered into pursuant
 13 to subsection 1 shall immediately contact and
 14 cooperate with a law enforcement agency having
 15 jurisdiction over the area in which the arrest or
 16 activity has occurred."

By MORELAND of Wapello

H-8472 FILED MARCH 17, 1998

HOUSE FILE 2504

H-8210

1 Amend House File 2504, as follows:

- 2 1. Page 1, line 8, by inserting after the word
3 "service" the following: "and shall be imprisoned in
4 the county jail for not less than seven days".
- 5 2. Page 1, line 13, by inserting after the word
6 "dollars" the following: ", imprisonment for not less
7 than thirty days,".
- 8 3. Page 1, line 24, by inserting after the word
9 "offense" the following: ", shall be imprisoned in
10 the county jail for not less than forty-eight hours,".
- 11 4. Page 1, line 28, by inserting after the word
12 "misdemeanor" the following: ", shall be imprisoned
13 in the county jail for not less than seven days,".
- 14 5. Page 1, line 32, by inserting after the word
15 "felony" the following: ", shall be imprisoned for
16 not less than thirty days,".
- 17 6. Page 2, line 3, by inserting after the word
18 "offense" the following: ", shall be imprisoned in
19 the county jail for not less than forty-eight hours,".
- 20 7. Page 2, line 9, by inserting after the word
21 "'b'" the following: ", except that the person shall
22 be imprisoned in the county jail for not less than
23 forty-eight hours".
- 24 8. Page 2, line 14, by inserting after the word
25 "misdemeanor" the following: ", shall be imprisoned
26 in the county jail for not less than seven days,".
- 27 9. Page 2, line 17, by inserting after the word
28 "requirements" the following: "or any mandatory
29 minimum term of imprisonment".

By KREIMAN of Davis

H-8210 FILED MARCH 4, 1998

**HOUSE FILE 2504
FISCAL NOTE**

The estimate for House File 2504 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.

House File 2504 enhances the penalties for certain drug offenses and the crime of voluntary absence. The Bill adds a community service requirement to the penalty for certain offenses of manufacture, delivery, or possession with intent to deliver controlled substances and increases certain fines. The penalties for unlawful possession of a controlled substance is increased up to a Class D felony for subsequent offenses. Community service is added for each level of penalty.

The penalty for the crime of voluntary absence from custody is increased from a serious misdemeanor to a Class D felony for convicted felons. The penalty remains a serious misdemeanor for voluntarily absent misdemeanants. Language is added to prohibit the Department of Corrections from counting any time during which the person is not in custody due to escape or voluntary absence when calculating the persons's term of confinement.

ASSUMPTIONS

1. Charge, conviction, and sentencing patterns will remain stable over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections policies and practices will remain stable.
3. The law will become effective on July 1, 1998, and it will be six months before the first offender enters the correctional system.
4. Three aggravated misdemeanants and 190 Class D felons who currently are not required to do community service will receive community service sentences. Four more offenders will receive additional community service hours.
5. It is estimated that one case per year could receive the \$2,500 fine increase.
6. An estimated 232 persons will receive enhanced penalties annually. They are: 108 who have a prior conviction for possession of a controlled substance other than marijuana, 32 who have two or more prior convictions for possession of a controlled substance other than marijuana, 56 for possession of marijuana with one prior conviction, and 36 for possession of marijuana with two or more prior convictions.
7. The change in the penalty for voluntary absence will result in 253 Class D felonies that were previously serious misdemeanors. Those sentenced to prison will serve an additional six months.
8. The change in the voluntary absence penalty will result in 92 fewer jail admissions in FY 1999 and 184 fewer in the following years. The average jail sentence for these individuals is 55 days. The average cost per jail

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day statewide is \$55.

CORRECTIONAL IMPACT

House File 2504 is expected to result in a net increase to the prison population by 94 inmates in FY 1999, by 263 inmates in FY 2000, and by 380 inmates in FY 2003.

The number of jail days served will decrease by 5,060 in FY 1999, and by 10,120 in the following years.

FISCAL IMPACT

House File 2504 is expected to increase the costs for the prison system by approximately \$412,000 in FY 1999, by \$1.2 million in FY 2000, and by \$1.7 million in FY 2003.

The costs for county jails will be reduced by \$278,000 in FY 1999 and by \$557,000 in the following years.

SOURCES

Criminal and Juvenile Justice Planning Division,
Department of Human Rights
Department of Corrections

(LSB 3243hv, MDF)

FILED MARCH 11, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR