

JAN 20 1999

JUDICIARY

HOUSE FILE

118

BY RANTS, NELSON, and BARRY

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

A BILL FOR

1 An Act relating to the manufacture or delivery of
 2 methamphetamine, placing restrictions on bail, and providing
 3 penalties.

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 118

1 Section 1. Section 124.401, subsection 1, paragraph a,
2 subparagraph (2), subparagraph subdivision (d), Code 1999, is
3 amended by striking the subparagraph subdivision.

4 Sec. 2. Section 124.401, subsection 1, paragraph a,
5 subparagraph (2), subparagraph subdivision (f), Code 1999, is
6 amended to read as follows:

7 (f) Any compound, mixture, or preparation which contains
8 any quantity of any of the substances referred to in
9 subparagraph subdivisions (a) through ~~(e)~~ (d).

10 Sec. 3. Section 124.401, subsection 1, paragraph b,
11 subparagraph (7), Code 1999, is amended by striking the
12 subparagraph.

13 Sec. 4. Section 124.401, subsection 1, paragraph c,
14 subparagraph (6), Code 1999, is amended by striking the
15 subparagraph.

16 Sec. 5. Section 124.401, subsections 3 and 4, Code 1999,
17 are amended by striking the subsections.

18 Sec. 6. NEW SECTION. 124.401D MANUFACTURE OR DELIVERY OF
19 METHAMPHETAMINE.

20 1. It is unlawful for a person to manufacture a material,
21 compound, mixture, preparation, or substance that contains any
22 detectable amount of methamphetamine, its salts, isomers, or
23 salts of its isomers, or of counterfeit or simulated
24 methamphetamine, or to act with, or enter into a common scheme
25 or design with, or conspire with one or more persons to
26 manufacture a material, compound, mixture, preparation, or
27 substance that contains any detectable amount of
28 methamphetamine, its salts, isomers, or salts of its isomers,
29 or of counterfeit or simulated methamphetamine. A violation
30 of this subsection is a class "A" felony.

31 2. It is unlawful for a person to deliver, or possess with
32 the intent to deliver, a material, compound, mixture,
33 preparation, or substance that contains any detectable amount
34 of methamphetamine, its salts, isomers, or salts of its
35 isomers, or of counterfeit or simulated methamphetamine, or to

1 act with, or enter into a common scheme or design with, or
2 conspire with one or more persons to deliver or possess with
3 the intent to deliver a material, compound, mixture,
4 preparation, or substance that contains any detectable amount
5 of methamphetamine, its salts, isomers, or salts of its
6 isomers, or of counterfeit or simulated methamphetamine.

7 | a. If the violation involves more than five kilograms of a
8 material, compound, mixture, preparation, or substance
9 containing any detectable amount of methamphetamine, its
10 salts, isomers, or its salts of isomers, or of counterfeit or
11 simulated methamphetamine, the person commits a class "B"
12 felony, and notwithstanding section 902.9, subsection 1, shall
13 be punished by confinement for no more than fifty years and a
14 fine of not more than one million dollars.

15 | b. If the violation involves more than five grams but not
16 more than five kilograms of a material, compound, mixture,
17 preparation, or substance containing any detectable amount of
18 methamphetamine, its salts, isomers, or salts of its isomers,
19 or of counterfeit or simulated methamphetamine, the person
20 commits a class "B" felony, and in addition to the provisions
21 of section 902.9, subsection 1, shall be punished by a fine of
22 not less than five thousand dollars nor more than one hundred
23 thousand dollars.

24 | c. If the violation involves five grams or less of a
25 material, compound, mixture, preparation, or substance
26 containing any detectable amount of methamphetamine, its
27 salts, isomers, or salts of its isomers, or of counterfeit or
28 simulated methamphetamine, the person commits a class "C"
29 felony, and in addition to the provisions of section 902.9,
30 subsection 3, shall be punished by a fine of not less than one
31 thousand dollars nor more than fifty thousand dollars.

32 | d. (1) A person in the immediate possession or control of
33 a firearm while participating in a violation of this
34 subsection shall be sentenced to two times the term otherwise
35 imposed by law, and no such judgment, sentence, or part

1 thereof shall be deferred or suspended.

2 (2) A person in the immediate possession or control of an
3 offensive weapon, as defined in section 724.1, while
4 participating in a violation of this subsection, shall be
5 sentenced to three times the term otherwise imposed by law,
6 and no such judgment, sentence, or part thereof shall be
7 deferred or suspended.

8 3. It is unlawful for a person who is eighteen years of
9 age or older to manufacture and deliver any detectable amount
10 of methamphetamine, its salts, isomers, or salts of its
11 isomers, or of counterfeit or simulated methamphetamine, to a
12 person who is under eighteen years of age. A violation of
13 this subsection is a class "A" felony.

14 4. It is unlawful for any person to sell, distribute, or
15 make available any product containing ephedrine, its salts,
16 optical isomers, salts of optical isomers, or analogs of
17 ephedrine, or pseudoephedrine, its salts, optical isomers,
18 salts of optical isomers, or analogs of pseudoephedrine, if
19 the person knows, or should know, that the product may be used
20 as a precursor to any illegal substance or an intermediary to
21 any controlled substance. A violation of this subsection is a
22 serious misdemeanor.

23 5. It is unlawful for any person to possess any product
24 containing ephedrine, its salts, optical isomers, salts of
25 optical isomers, or analogs of ephedrine, or pseudoephedrine,
26 its salts, optical isomers, salts of optical isomers, or
27 analogs of pseudoephedrine, with the intent to use the product
28 as a precursor to any illegal substance or an intermediary to
29 any controlled substance. A violation of this subsection is a
30 class "D" felony.

31 6. If the same person commits two or more acts which are
32 in violation of subsection 2 and the acts occur in
33 approximately the same location or time period so that the
34 acts can be attributed to a single scheme, plan, or
35 conspiracy, the acts may be considered a single violation and

1 the weight of the methamphetamine, its salts, isomers, or
2 salts of its isomers, or any counterfeit or simulated
3 methamphetamine involved, may be combined for purposes of
4 charging the offender.

5 Sec. 7. Section 124.413, unnumbered paragraph 1, Code
6 1999, is amended to read as follows:

7 A person sentenced pursuant to section 124.401, subsection
8 1, paragraph "a", "b", "c", "e", or "f", or section 124.401D,
9 subsection 2, shall not be eligible for parole until the
10 person has served a minimum period of confinement of one-third
11 of the maximum indeterminate sentence prescribed by law.

12 Sec. 8. Section 155A.24, unnumbered paragraph 2, Code
13 1999, is amended to read as follows:

14 If the prescription drug is a controlled substance, the
15 person shall be punished pursuant to section 124.401,
16 subsection 1, or section 124.401D, subsection 2, and section
17 124.411.

18 Sec. 9. Section 232.8, subsection 1, paragraph c, Code
19 1999, is amended to read as follows:

20 c. Violations by a child, age sixteen or older, which
21 subject the child to the provisions of section 124.401,
22 subsection 1, paragraph "e" or "f", or violations of section
23 124.401D, subsection 2, paragraph "d", subparagraph (1) or
24 (2), or violations of section 723A.2 which involve a violation
25 of chapter 724, or violation of chapter 724 which constitutes
26 a felony, or violations which constitute a forcible felony are
27 excluded from the jurisdiction of the juvenile court and shall
28 be prosecuted as otherwise provided by law unless the court
29 transfers jurisdiction of the child to the juvenile court upon
30 motion and for good cause. A child over whom jurisdiction has
31 not been transferred to the juvenile court, and who is
32 convicted of a violation excluded from the jurisdiction of the
33 juvenile court under this paragraph, shall be sentenced
34 pursuant to section 124.401B, 902.9, or 903.1.
35 Notwithstanding any other provision of the Code to the

1 contrary, the court may accept from a child a plea of guilty,
2 or may instruct the jury on a lesser included offense to the
3 offense excluded from the jurisdiction of the juvenile court
4 under this section, in the same manner as regarding an adult.

5 Sec. 10. Section 232.22, subsection 1, paragraph e,
6 unnumbered paragraph 1, Code 1999, is amended to read as
7 follows:

8 There is probable cause to believe that the child has
9 committed a delinquent act involving manufacturing, delivery,
10 or possession with intent to deliver any of the following
11 controlled substances:

12 Sec. 11. Section 232.22, subsection 1, paragraph e,
13 subparagraph (3), Code 1999, is amended to read as follows:

14 (3) A mixture or substance containing methamphetamine, its
15 salts, isomers, or salts of its isomers, ~~or analogs of~~
16 ~~methamphetamine,~~ and if the act was committed by an adult, it
17 would be a violation of section ~~124.401, subsection 1~~
18 124.401D, subsection 1 or 2.

19 Sec. 12. Section 232.52, subsection 2, paragraph e, Code
20 1999, is amended to read as follows:

21 e. An order transferring the guardianship of the child,
22 subject to the continuing jurisdiction and custody of the
23 court for the purposes of section 232.54, to the director of
24 the department of human services for purposes of placement in
25 the state training school or other facility, provided that the
26 child is at least twelve years of age and the court finds the
27 placement to be in the best interests of the child or
28 necessary for the protection of the public, and that the child
29 has been found to have committed an act which is a forcible
30 felony, as defined in section 702.11, or a felony violation of
31 section sections 124.401, 124.401D, or chapter 707, or the
32 court finds any three of the following conditions exist:

33 Sec. 13. Section 723A.1, subsection 1, paragraph a, Code
34 1999, is amended to read as follows:

35 a. An offense constituting a violation of section 124.401

1 or 124.401D involving a controlled substance, a counterfeit
2 substance, or a simulated controlled substance.

3 Sec. 14. Section 811.1, subsections 1 and 2, Code 1999,
4 are amended to read as follows:

5 1. A defendant awaiting judgment of conviction and
6 sentencing following either a plea or verdict of guilty of a
7 class "A" felony, murder, any class "B" felony included in
8 section 707.6A, felonious assault, felonious child
9 endangerment, sexual abuse in the second degree, sexual abuse
10 in the third degree, kidnapping, robbery in the first degree,
11 arson in the first degree, or burglary in the first degree, or
12 any felony included in section 124.401, subsection 1,
13 paragraph "a", or any class "B" felony included in section
14 124.401D.

15 2. A defendant appealing a conviction of a class "A"
16 felony, murder, any class "B" felony included in section
17 707.6A, felonious assault, felonious child endangerment,
18 sexual abuse in the second degree, sexual abuse in the third
19 degree, kidnapping, robbery in the first degree, arson in the
20 first degree, or burglary in the first degree, any felony
21 included in section 124.401, subsection 1, paragraph "a", or a
22 violation of section 124.401, subsection 1, paragraph "b", or
23 any class "B" felony included in section 124.401D.

24 Sec. 15. Section 901.5, subsection 10, paragraph a, Code
25 1999, is amended to read as follows:

26 a. A controlled substance offense under section 124.401,
27 124.401A, 124.401D, 124.402, or 124.403.

28 Sec. 16. Section 901.10, subsection 2, Code 1999, is
29 amended to read as follows:

30 2. Notwithstanding subsection 1, if the sentence under
31 section 124.413 involves a methamphetamine offense under
32 ~~section 124.401, subsection 1, paragraph "a" or "b"~~ 124.401D,
33 subsection 2, paragraph "a" or "b", the court shall not grant
34 any reduction of sentence unless the defendant pleads guilty.
35 If the defendant pleads guilty, the court may, at its

1 discretion, reduce the mandatory minimum sentence by up to
2 one-third. If the defendant additionally cooperates in the
3 prosecution of other persons involved in the sale or use of
4 controlled substances, and if the prosecutor requests an
5 additional reduction in defendant's sentence because of such
6 cooperation, the court may grant a further reduction in
7 defendant's mandatory minimum sentence, up to one-half of the
8 remaining mandatory minimum sentence.

9 Sec. 17. Section 907.3, subsection 1, paragraph k, Code
10 1999, is amended to read as follow:

11 k. The offense is a violation of section ~~124.401~~
12 ~~subsection 1, paragraph "a" or "b", and the controlled~~
13 ~~substance is methamphetamine~~ 124.401D, subsection 1,
14 subsection 2, paragraph "a" or "b", or subsection 3.

15 Sec. 18. Section 907.3, subsection 2, paragraph e,
16 unnumbered paragraph 1, Code 1999, is amended to read as
17 follows:

18 The offense is a violation of section ~~124.401~~
19 ~~paragraph "a" or "b", and the controlled substance is~~
20 ~~methamphetamine~~ 124.401D, subsection 1, subsection 2,
21 paragraph "a" or "b", or subsection 3.

22 Sec. 19. Section 907.3, subsection 3, paragraph e, Code
23 1999, is amended to read as follows:

24 e. The offense is a violation of section ~~124.401~~
25 ~~subsection 1, paragraph "a" or "b", and the controlled~~
26 ~~substance is methamphetamine~~ 124.401D, subsection 1,
27 subsection 2, paragraph "a" or "b", or subsection 3.

28 EXPLANATION

29 This bill amends Code section 124.401, by removing the
30 penalties for manufacturing or delivery of methamphetamine
31 from Code section 124.401 and placing the penalties in new
32 Code section 124.401D. The bill changes the penalty for
33 manufacturing methamphetamine from either a class "B" or "C"
34 felony to a class "A" felony. The bill provides that a person
35 who is 18 years of age or older who manufactures and delivers

1 methamphetamine to a person who is under 18 years of age is
2 also guilty of a class "A" felony. A person who is convicted
3 of a class "A" felony must be sentenced to imprisonment for
4 the rest of the person's life.

5 The penalties for delivery of or possession with intent to
6 deliver have not been changed. Current law provides that for
7 delivery of or possession with intent to deliver more than
8 five kilograms of methamphetamine, a person commits a class
9 "B" felony which is punishable by imprisonment not to exceed
10 50 years and a fine of not more than \$1 million. If a person
11 delivers more than five grams but not more than five kilograms
12 that person commits a class "B" felony which is punishable by
13 imprisonment not to exceed 25 years and a fine of at least
14 \$5,000 but not more than \$100,000. If a person delivers five
15 grams or less the person commits a class "C" felony which is
16 punishable by imprisonment not to exceed 10 years and a fine
17 of at least \$1,000 but not more than \$50,000. Existing law
18 also enhances the penalty for a person who is convicted of
19 either delivery of or possession with intent to deliver
20 methamphetamine, if the person is in the immediate possession
21 of a firearm or offensive weapon. If the convicted person is
22 also in immediate possession of a firearm that person's
23 sentence shall be two times the term otherwise imposed, or if
24 that person is in possession of an offensive weapon that
25 person's sentence shall be three times the sentence otherwise
26 imposed.

27 The bill expands the list of offenses related to controlled
28 substances the juvenile court may consider when determining
29 whether to place a juvenile at a secured detention facility
30 before a trial on the merits of the case. The bill provides
31 that at the detention hearing, the court may consider whether
32 there is probable cause to believe the juvenile was involved
33 with the manufacture or delivery of a controlled substance.
34 Existing law only allows the court to consider whether there
35 is probable cause to believe the juvenile was in possession

1 with the intent to deliver a controlled substance. However,
2 other factors the court may consider in placing a juvenile at
3 detention include risk of harm to others, probability of
4 running away, or violation of conditions of release.

5 The bill also restricts a person's ability to post bond
6 when charged with and convicted of either manufacturing
7 methamphetamine or delivery of more than five grams of
8 methamphetamine. The bill requires that a person charged with
9 manufacturing or delivery of more than five grams of
10 methamphetamine go immediately to jail without bond if such
11 person pleads to the charge or is convicted at trial, and
12 remain in jail until sentencing. The bill also requires any
13 person sentenced to prison for manufacturing or delivery of
14 more than five grams of methamphetamine remain in prison
15 pending the final decision by a reviewing court on appeal.

16 Current law generally permits a person who pleads to a
17 change or is convicted at trial to post bond and remain out of
18 jail until the sentence has been imposed. If the person is
19 convicted of a crime at trial, is sentenced to jail or prison,
20 and appeals the case, current law ordinarily allows a person
21 to post another bond and remain free pending the final
22 decision by the reviewing court on appeal.

23 The bill amends Code sections 124.413, 155A.24,
24 232.8(1)(c), 232.22(1)(e), 232.52(2)(e), 723A.1, 901.5,
25 901.10, and 907.3 to correspond with the new section created
26 in this bill dealing with manufacture and delivery of
27 methamphetamine and the removal of the penalties for
28 manufacture and delivery of methamphetamine from Code section
29 124.401.

30
31
32
33
34
35

HOUSE FILE 118
FISCAL NOTE

The estimate for House File 118 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 118 amends Section 124.401, Code of Iowa, by removing the penalties for manufacturing or delivery of methamphetamine and placing the penalties in a new Code Section 124.401D. The Bill changes the penalty for manufacturing methamphetamine from either a Class B or C felony to a Class A felony. The Bill provides that a person who is 18 years of age or older who manufactures and delivers methamphetamine to a person who is under 18 years of age is also guilty of a Class A felony. The Bill expands the list of offenses related to controlled substances considered by the Juvenile Court. The Bill provides that at a juvenile detention hearing, the Court may consider whether there is probable cause to believe that a juvenile was involved with the manufacture and delivery of a controlled substance. This Bill also restricts a person's ability to post bond when charged with and convicted of either manufacturing methamphetamine or delivery of more than five grams of methamphetamine.

ASSUMPTIONS

1. Charge, conviction, and sentencing patterns in prisoner length of stay, revocation rates, and other correctional policies will remain constant throughout the projection period.
2. The law will become effective July 1, 1999, and there will be a six month lag as the first cases move through the system.
3. Based on FY 1999 admissions to prison and probation, an estimated 36 persons admitted to prison and 27 persons who would otherwise be admitted to probation per year would receive life sentences for manufacturing methamphetamine under the Bill.
4. An estimated four cases of methamphetamine manufacturing that would normally be handled in federal court would be handled in state court due to the Class A felony penalty.
5. One offender per year would receive a life sentence for distributing methamphetamine to a minor.
6. An estimated 68 life sentences per year would be imposed as a result of this Bill.
7. The marginal cost for adding an additional prison inmate is \$12 per day.
8. Additional prison beds will need to be added within the next ten years.
9. In FY 2000, 34 Class C felonies would be converted to Class A felonies. In FY 2001 and each year thereafter, 68 felonies that previously would have been Class C felonies would now be Class A felonies under this Bill.
10. The estimated indigent defense cost for a Class A felony is \$15,000. The estimated cost for a Class C felony is \$1,500. The conversion of Class C felonies to Class A felonies would be an increased indigent defense cost

of \$13,500 per case.

- 11. Costs for defense and prosecution are assumed to be similar.
- 12. Prosecutions will be handled by County Attorneys, and the costs will be paid by the counties.

CORRECTIONAL IMPACT

- 1. There is minimal correctional impact regarding admissions to juvenile detention.
- 2. The projected impact on the prison population is:

| | |
|---------|------------------------|
| FY 2000 | 16 additional inmates |
| FY 2001 | 47 additional inmates |
| FY 2004 | 232 additional inmates |
| FY 2008 | 504 additional inmates |

FISCAL IMPACT

The fiscal impact of House File 118 is as follows:

- 1. The fiscal impact regarding admissions to juvenile detention is anticipated to be minimal.
- 2. The estimated State General Fund fiscal impact is:

| | <u>FY 2000</u> | <u>FY 2001</u> | <u>FY 2004</u> |
|--------------------------------|------------------|--------------------|--------------------|
| Department of Corrections | \$ 70,000 | \$ 206,000 | \$1,000,000 |
| State Public Defender's Office | <u>460,000</u> | <u>920,000</u> | <u>920,000</u> |
| Total | <u>\$530,000</u> | <u>\$1,126,000</u> | <u>\$1,920,000</u> |

By FY 2008, 400 additional medium security beds will need to be added to the prison system. The projected construction costs are \$12.0 million. The one-time start-up costs are estimated at \$1.6 million. Annual operating costs are projected at \$6.2 million.

The estimated cost to the counties are:

| | <u>FY 2000</u> | <u>FY 2001</u> | <u>FY 2004</u> |
|--------------------------|----------------|----------------|----------------|
| County Attorney's Office | \$460,000 | \$ 920,000 | \$ 920,000 |

SOURCES

Attorney General
Criminal and Juvenile Justice Planning
Department of Corrections
Iowa Board of Parole
Public Defender

(LSB 1181yh, JDD)

FILED FEBRUARY 15, 1999

BY DENNIS PROUTY, FISCAL DIRECTOR