

FEB 24 2000
Place On Calendar

HOUSE FILE **2421**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2130)

Passed House, Date 3-8-00 (P. 606) Passed Senate, Date _____
Vote: Ayes 87 Nays 8 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act establishing a criminal offense related to drug
2 paraphernalia.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4

HOUSE FILE 2421

H-8170

1 Amend House File 2421 as follows:
2 1. Page 2, line 27, by inserting after the word
3 "substance" the following: "or used or intended to be
4 used for any other lawful purpose".
5 By BAUDLER of Adair

H-8170 FILED MARCH 3, 2000

Adopted
3-8-00 (P. 605)

HOUSE FILE 2421

H-8178

1 Amend House File 2421 as follows:
2 1. Page 1, line 23, by inserting after the word
3 "objects" the following: "illegally".
4 2. Page 1, line 24, by inserting after the word
5 "intended" the following: "illegal".
6 By BAUDLER of Adair

H-8178 FILED MARCH 6, 2000

Adopted
3/8/00
(P. 605)

HF-2421

1 propagating, cultivating, growing, harvesting, manufacturing,
2 compounding, converting, producing, processing, preparing,
3 testing, analyzing, packaging, repackaging, storing,
4 containing, concealing, injecting, ingesting, or inhaling of
5 tobacco or any other lawful substance.

6 e. Objects which have been rendered completely inoperable
7 or incapable of being used as drug paraphernalia.

8 4. In determining whether an object is drug paraphernalia,
9 the trier of fact may consider but is not limited to the
10 following:

11 (1) The proximity of the object in time and space to a
12 violation of chapter 124, 124A, 124B, or 453B.

13 (2) The existence of any residue of a controlled
14 substance.

15 (3) Instructions both oral or written that are provided
16 with the object concerning the use of the object.

17 (4) Descriptive materials accompanying the object which
18 explain or depict the use of the object.

19 (5) Advertising concerning the use of the object.

20 (6) The manner in which the object is displayed for sale.

21 (7) Whether the owner or person in possession of the
22 object is a legitimate supplier of similar or related items or
23 can lawfully sell tobacco products.

24 (8) The ratio of sales of the object to the total sales of
25 the business enterprise.

26 (9) The existence of a legitimate use of the object in the
27 community.

28 EXPLANATION

29 This bill creates a new criminal offense related to drug
30 paraphernalia.

31 The bill provides that a person shall not sell, give, use,
32 or possess drug paraphernalia. The bill generally defines
33 drug paraphernalia to include any object used, intended for
34 use, or designed for use in manufacturing, processing, or
35 ingesting a controlled substance. The bill excludes objects

1 used in combination with the lawful use of a controlled
2 substance. The bill also excludes objects that have
3 historically or customarily been used in manufacturing,
4 processing, or ingesting a lawful substance. The bill further
5 excludes objects that are used in the lawful research,
6 education, or testing of a controlled substance and excludes
7 objects that are inoperable or incapable of being used in
8 violation of this bill or objects that are used as evidence in
9 a case.

10 The bill provides that in determining whether an object is
11 drug paraphernalia, the court or jury if tried before a jury
12 may generally consider the proximity of the object to the
13 commission of a drug offense, whether residue of a controlled
14 substance exists on the object, whether the person in
15 possession of the object is a legitimate supplier of related
16 objects or is a tobacco products supplier, and whether a
17 legitimate use of the object exists in the community.

18 A person who commits a violation of this bill commits a
19 simple misdemeanor. A simple misdemeanor is punishable by
20 confinement for no more than 30 days or a fine of at least \$50
21 but not more than \$500 or by both.

22
23
24
25
26
27
28
29
30
31
32
33
34
35

HOUSE FILE 2421
FISCAL NOTE

The estimate for House File 2421 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 2421 creates a new criminal offense related to drug paraphernalia. The Bill provides that a person shall not give, sell, use, or possess drug paraphernalia. House File 2421 defines drug paraphernalia to include any object used, intended to be used, or designed for use in manufacturing, processing, or ingesting a controlled substance. The Bill excludes objects which are used in combination with the lawful use of a controlled substance. A person who commits a violation under House File 2421 commits a simple misdemeanor. The penalty for a simple misdemeanor is confinement for no more than 30 days in jail and/or a fine of at least \$50 but no more than \$500.

ASSUMPTIONS

1. The average daily operating cost for county jails is \$60. The marginal cost is \$14 per day. The number of jail sentences imposed and the average length of stay under House File 2421 is unknown.
2. The median cost for defending an indigent person charged with a simple misdemeanor is approximately \$200. It is unknown how many indigent persons will be charged under House File 2421.
3. The average time for a Clerk of Court's Office to process an uncontested simple misdemeanor is approximately ten minutes. The cost per case is approximately \$2.21. The number of uncontested simple misdemeanor cases processed under House File 2421 is unknown.
4. A contested simple misdemeanor will involve time for a district associate judge or magistrate, court attendant, and additional time in the Clerk of Court's Office. The cost ranges from \$71 to \$105, depending on whether a magistrate or district associate judge is involved. The number of contested simple misdemeanor cases filed under House File 2421 is unknown.
5. There were 10,325 convictions of controlled substances violations during calendar 1998. Any of these convictions could have potentially involved drug paraphernalia. It is unknown to what extent, if any, an additional simple misdemeanor conviction would have on imposed penalties and length of stay in county jails.
6. There were 5,380 controlled substances charges that were dismissed or resulted in acquittal during calendar 1998. There may have been other cases which the county attorneys elected not to pursue as charges, but under House File 2421, may be brought to court as simple misdemeanors. If the Bill results in more cases being brought successfully to trial, more simple misdemeanor convictions will occur.
7. According to the Justice Data Warehouse prototype (eight counties which comprise 70.0% of statewide caseloads), jail terms were imposed in approximately 10.0% of all simple misdemeanor convictions during FY 1993.

CORRECTIONAL IMPACT

Currently, the information is not available to determine the number of simple misdemeanor convictions under House File 2421. The Bill has the potential for increased convictions, which will impact county jails.

FISCAL IMPACT

House File 2421 is not expected to have any significant fiscal impact on the General Fund.

County jails may realize additional prisoners under House File 2421, due to additional convictions, but the actual impact cannot be determined due to insufficient information.

SOURCES

Criminal and Juvenile Justice Planning Division, Department of Human Rights
State Court Administrator's Office
Office of the State Public Defender
Department of Corrections
Iowa State Association of Counties

(LSB 5080hv, BAL)

FILED MARCH 6, 2000

BY DENNIS PROUTY, FISCAL DIRECTOR

5-30-00 *uary*

HOUSE FILE 2421
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2130)

(As Amended and Passed by the House, March 8, 2000)

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

A BILL FOR

1 An Act establishing a criminal offense related to drug
2 paraphernalia.

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

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21

House Amendments _____

HF 2421

1 Section 1. NEW SECTION. 124.414 DRUG PARAPHERNALIA.

2 As used in this section, "drug paraphernalia" means all
3 equipment, products, and materials of any kind which are used,
4 intended for use, or designed for use, in growing, harvesting,
5 compounding, converting, producing, processing, preparing,
6 analyzing, packaging, repackaging, storing, concealing,
7 containing, injecting, ingesting, inhaling, or otherwise
8 introducing into the human body a controlled substance.

9 1. "Drug paraphernalia" includes but is not limited to the
10 following objects:

11 a. Containers used as capsules, balloons, envelopes, and
12 other containers used for or designed for intended use in
13 packaging small quantities of a controlled substance.

14 b. Dilutents and adulterants such as quinine
15 hydrochloride, mannitol, mannite, dextrose, and lactose, used
16 for or designed for intended use in cutting a controlled
17 substance.

18 c. Growing kits such as kits used for or designed for
19 intended use in planting, propagating, cultivating, growing,
20 or harvesting of any species of plant which is a controlled
21 substance, or from which a controlled substance can be
22 derived.

23 d. Hypodermic syringes, needles, and other objects
24 illegally used for or designed for intended illegal use in
25 parenterally injecting a controlled substance into the human
26 body.

27 e. Items used for or designed for intended use in
28 ingesting, inhaling, or otherwise introducing marijuana,
29 cocaine, hashish, or hashish oil into the human body which
30 includes the following:

31 (1) Any pipe with or without a screen and any air-driven,
32 carburetor, chamber, electronic, water, or ice pipe or
33 chiller.

34 (2) Bongs.

35 (3) Cans.

- 1 (4) Carburetion tubes and devices.
2 (5) Chillumes.
3 (6) Cocaine vials.
4 (7) Miniature cocaine spoons.
5 (8) Punctured metal bowls.
6 (9) Roach clips or objects used to hold burning material
7 which has become too small to hold in the hand.
8 (10) Smoking or carburetion masks.
9 f. Isomerization devices peculiar to and marketed for use
10 or designed for intended use in increasing the potency of any
11 species of plant which is cannabis or a controlled substance.
12 g. Processing kits used for or designed for intended use
13 in manufacturing, compounding, converting, producing,
14 processing, or preparing a controlled substance.
15 h. Scales used for or designed for intended use in
16 weighing or measuring a controlled substance.
17 i. Separation gins and sifters used for or designed for
18 intended use in removing twigs and seeds from or cleaning or
19 refining marijuana.
20 j. Storage containers used for or designed for intended
21 use in storing or concealing a controlled substance.
22 2. It is unlawful to sell, give, use, or possess drug
23 paraphernalia. A person who violates this section commits a
24 simple misdemeanor.
25 3. This section does not apply to the following:
26 a. A person who sells, gives, uses, or possesses drug
27 paraphernalia which is used or intended to be used in
28 combination with the lawful use of a controlled substance or
29 used or intended to be used for any other lawful purpose.
30 b. A person who possesses drug paraphernalia for use as
31 evidence.
32 c. Objects that are marketed for use in the preparation,
33 compounding, packaging, labeling, or use of cannabis or other
34 controlled substances as an incident to lawful research,
35 education, teaching, or chemical analysis.

1 d. Objects that are marketed for, or historically and
2 customarily used in connection with, the planting,
3 propagating, cultivating, growing, harvesting, manufacturing,
4 compounding, converting, producing, processing, preparing,
5 testing, analyzing, packaging, repackaging, storing,
6 containing, concealing, injecting, ingesting, or inhaling of
7 tobacco or any other lawful substance.

8 e. Objects which have been rendered completely inoperable
9 or incapable of being used as drug paraphernalia.

10 4. In determining whether an object is drug paraphernalia,
11 the trier of fact may consider but is not limited to the
12 following:

13 (1) The proximity of the object in time and space to a
14 violation of chapter 124, 124A, 124B, or 453B.

15 (2) The existence of any residue of a controlled
16 substance.

17 (3) Instructions both oral or written that are provided
18 with the object concerning the use of the object.

19 (4) Descriptive materials accompanying the object which
20 explain or depict the use of the object.

21 (5) Advertising concerning the use of the object.

22 (6) The manner in which the object is displayed for sale.

23 (7) Whether the owner or person in possession of the
24 object is a legitimate supplier of similar or related items or
25 can lawfully sell tobacco products.

26 (8) The ratio of sales of the object to the total sales of
27 the business enterprise.

28 (9) The existence of a legitimate use of the object in the
29 community.

30

31

32

33

34

35