

Sukup, Chair

Larson

Baudler

Chapman

Meyer

HSB190

JUDICIARY

OK

S

573

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY CHAIR-
PERSON LARSON)

Passed House, Date _____

Passed Senate, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act to change the penalties applicable to the possession,
2 manufacture, or delivery of methamphetamine and other
3 controlled substances, relating to the possession or control
4 of adulterated or improperly labeled articles, providing for
5 the reopening of certain sentences, and providing for
6 restrictions on bail.

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

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

7/1/72

1 Section 13B.4, subsection 1, Code 1999, is
2 amended to read as follows:

3 1. The state public defender shall coordinate the
4 provision of legal representation of all indigents under
5 arrest or charged with a crime, on appeal in criminal cases,
6 and on appeal in proceedings to obtain postconviction relief
7 when ordered to do so by the district court in which the
8 judgment or order was issued, a reopening of a sentence
9 proceeding, and may provide for the representation of
10 indigents in proceedings instituted pursuant to chapter 908.
11 The state public defender shall not engage in the private
12 practice of law.

13 Sec. 2. Section 124.401, subsections 3 and 4, Code 1999,
14 are amended to read as follows:

15 3. ~~It is unlawful for any~~ A person to sell, distribute, or
16 make available who sells, distributes, or makes available any
17 product containing ephedrine any of the following commits a
18 serious misdemeanor, if the person knows that the product may
19 be used as a precursor to any illegal substance or an
20 intermediary to any controlled substance:

21 a. Ephedrine, its salts, optical isomers, salts of optical
22 isomers, or analogs of ephedrine, or pseudoephedrine.

23 b. Pseudoephedrine, its salts, optical isomers, salts of
24 optical isomers, or analogs of pseudoephedrine, if the person
25 knows, or should know, that the product may be used as a
26 precursor to any illegal substance or an intermediary to any
27 controlled substance.

28 c. Ether.

29 d. Anhydrous ammonia.

30 e. Red phosphorous.

31 f. Lithium.

32 g. Iodine.

33 h. Thionyl chloride.

34 i. Chloroform.

35 j. Palladium.

1093
190

- 1 k. Perchloric acid.
- 2 l. Tetrahydrofuran.
- 3 m. Ammonium chloride.
- 4 n. Liquid nitrogen.
- 5 o. Magnesium sulfate.

6 ~~A-person-who-violates-this-subsection-commits-a-serious~~
7 ~~misdemeanor.~~

8 4. ~~It-is-unlawful-for-any~~ A person to possess who
9 possesses any product containing ephedrine any of the
10 following commits a class "D" felony, if the person possesses
11 with the intent to use the product as a precursor to any
12 illegal substance or an intermediary to any controlled
13 substance:

14 a. Ephedrine, its salts, optical isomers, salts of optical
15 isomers, or analogs of ephedrine, or pseudoephedrine.

16 b. Pseudoephedrine, its salts, optical isomers, salts of
17 optical isomers, or analogs of pseudoephedrine, with the
18 intent to use the product as a precursor to any illegal
19 substance or an intermediary to any controlled substance.

- 20 c. Ether.
- 21 d. Anhydrous ammonia.
- 22 e. Red phosphorous.
- 23 f. Lithium.
- 24 g. Iodine.
- 25 h. Thionyl chloride.
- 26 i. Chloroform.
- 27 j. Palladium.

- 28 k. Perchloric acid.
- 29 l. Tetrahydrofuran.
- 30 m. Ammonium chloride.
- 31 n. Liquid nitrogen.

32 o. Magnesium sulfate. ~~A-person-who-violates-this~~
33 ~~subsection-commits-a-class-"D"-felony.~~

34 Sec. 3. Section 124.401, subsection 5, Code 1999, is
35 amended by adding the following new unnumbered paragraphs

1 after unnumbered paragraph 3:

2 NEW UNNUMBERED PARAGRAPH. If a person commits a violation
3 of this subsection, the court shall order the person to serve
4 not less than forty-eight hours in a county jail which may be
5 suspended, and shall place the person on probation upon such
6 terms and conditions as the court may impose. The terms and
7 conditions shall require submission to random drug testing and
8 shall specify that the person's probation officer may transfer
9 the person's placement to placement in jail for purposes of
10 serving the jail sentence specified in the court order without
11 further order or hearing.

12 NEW UNNUMBERED PARAGRAPH. If the controlled substance is
13 methamphetamine, its salts, isomers, or salts of its isomers,
14 the court shall order the person to serve not less than forty-
15 eight hours in a county jail which may be suspended, and may
16 place the person on intensive probation upon such terms and
17 conditions as the court may impose. The terms and conditions
18 shall require submission to random drug testing and shall
19 specify that the person's probation officer may assign the
20 person to a community-based correctional facility without
21 further court order for a period of six months or until
22 maximum benefits are achieved, whichever is earlier.

23 Sec. 4. NEW SECTION. 124.401D CONSPIRACY TO MANUFACTURE
24 FOR DELIVERY OR DELIVERY OR INTENT OR CONSPIRACY TO DELIVER
25 METHAMPHETAMINE TO A MINOR.

26 1. It is unlawful for a person eighteen years of age or
27 older to act with, or enter into a common scheme or design
28 with, or conspire with one or more persons to manufacture for
29 delivery to a person under eighteen years of age a material,
30 compound, mixture, preparation, or substance that contains any
31 detectable amount of methamphetamine, its salts, isomers, or
32 salts of its isomers.

33 A violation of this subsection is a felony punishable under
34 section 902.9, subsection 0B. A second or subsequent
35 violation of this subsection is a felony punishable under

10000
190

1 section 902.9, subsection 0A.

2 2. It is unlawful for a person eighteen years of age or
3 older to deliver, or possess with the intent to deliver to a
4 person under eighteen years of age, a material, compound,
5 mixture, preparation, or substance that contains any
6 detectable amount of methamphetamine, its salts, isomers, or
7 salts of its isomers, or to act with, or enter into a common
8 scheme or design with, or conspire with one or more persons to
9 deliver or possess with the intent to deliver to a person
10 under eighteen years of age a material, compound, mixture,
11 preparation, or substance that contains any detectable amount
12 of methamphetamine, its salts, isomers, or salts of its
13 isomers.

14 A violation of this subsection is a felony punishable under
15 section 902.9, subsection 0B. A second or subsequent
16 violation of this subsection is a felony punishable under
17 section 902.9, subsection 0A.

18 Sec. 5. NEW SECTION. 124.401E CERTAIN PENALTIES FOR
19 MANUFACTURING OR DELIVERY OF METHAMPHETAMINE.

20 1. If a court sentences a person for the person's first
21 conviction for delivery or possession with intent to deliver a
22 controlled substance under section 124.401, subsection 1,
23 paragraph "c", and if the controlled substance is
24 methamphetamine, its salts, isomers, or salts of its isomers,
25 the court may suspend the sentence, and the court may order
26 the person to complete a drug court program if a drug court
27 has been established in the county in which the person is
28 sentenced, or order the person to be confined in a residential ??
29 treatment facility for purposes of completion of a treatment
30 program, or order the person to be assigned to the judicial
31 district department of correctional services for a period of
32 one year or until maximum benefits are achieved, whichever is
33 earlier.

34 2. If a court sentences a person for a conviction of
35 manufacturing of a controlled substance under section 124.401,

1 subsection 1, paragraph "c", and if the controlled substance
2 is methamphetamine, its salts, isomers, or salts of its
3 isomers, the court may suspend the sentence, and the court may
4 order the person to complete a drug court program if a drug
5 court has been established in the county in which the person
6 is sentenced, or order the person to be confined in a
7 residential treatment facility for purposes of completion of a
8 treatment program, or order the person to be assigned to the
9 judicial district department of correctional services for a
10 period of one year or until maximum benefits are achieved,
11 whichever is earlier.

12 3. If a court sentences a person for the person's second
13 or subsequent conviction for delivery or possession with
14 intent to deliver a controlled substance under section
15 124.401, subsection 1, and the controlled substance is
16 methamphetamine, its salts, isomers, or salts of its isomers,
17 the court, in addition to any other authorized penalties,
18 shall sentence the person to imprisonment in accordance with
19 section 124.401, subsection 1, and the person shall serve the
20 minimum period of confinement as required by section 124.413.

21 Sec. 6. NEW SECTION. 124.401F PROHIBITIONS ON TAMPERING
22 WITH, POSSESSING, OR TRANSPORTING ANHYDROUS AMMONIA OR
23 ANHYDROUS AMMONIA EQUIPMENT.

24 1. A person shall not intentionally tamper with anhydrous
25 ammonia equipment. Tampering occurs when a person who is not
26 authorized by the owner of anhydrous ammonia equipment uses
27 the equipment in violation of a provision of this section. A
28 person shall not in any manner or for any purpose sell, fill,
29 refill, deliver, permit to be delivered, or use an anhydrous
30 ammonia container or receptacle, including for the storage of
31 any gas or compound, unless the person owns the container or
32 receptacle or is authorized to do so by the owner. A person
33 shall not possess or transport anhydrous ammonia in a
34 container or receptacle which is not authorized by the
35 secretary to hold anhydrous ammonia.

108
196

1 2. A person violating this section commits a serious
2 misdemeanor. In addition to the imposition of the serious
3 misdemeanor penalty, a person shall be subject to a civil
4 penalty of not more than one thousand five hundred dollars, if
5 the person does any of the following:

6 a. Intentionally tampers with anhydrous ammonia equipment.

7 b. Possesses or transports anhydrous ammonia in a
8 container or receptacle which is not authorized to hold
9 anhydrous ammonia according to rules adopted by the secretary.

10 3. A person tampering with anhydrous ammonia equipment in
11 violation of this section shall not have a cause of action
12 against the owner of the equipment, any person responsible for
13 the installation and maintenance of the equipment, or the
14 person lawfully selling the anhydrous ammonia for damages
15 arising out of the tampering.

16 Sec. 7. Section 189.16, Code 1999, is amended to read as
17 follows:

18 189.16 POSSESSION AND CONTROL OF ADULTERATED AND
19 IMPROPERLY LABELED ARTICLES.

20 1. Any Except as provided in subsection 2, a person having
21 in possession or under having control any of an article which
22 is adulterated or which is improperly labeled according to the
23 provisions of this subtitle~~7-excluding-chapters-2037-203A7~~
24 ~~203E7--203D7-2077--and-2087~~ shall be presumed to know its-true
25 character-and-name~~7--and-such~~ that the article is adulterated
26 or improperly labeled. A person's possession of an
27 adulterated or improperly labeled article shall be prima facie
28 evidence of-having-the-same-in-possession-with-intent that the
29 person intends to violate the provisions of this subtitle~~7~~
30 ~~excluding-chapters-2037-203A7-203E7-203D7-2077--and-208.~~

31 2. This section does not apply to the possession or
32 control of any of the following:

33 a. Grain by a person regulated under chapter 203, 203A,
34 203C, or 203D.

35 b. Mining materials including coal by a person regulated

1 under chapter 207 or 208.

2 c. A controlled substance as provided in chapter 124.

3 Sec. 8. Section 200.14, subsection 1A, Code 1999, is
4 amended to read as follows:

5 1A. Anhydrous ammonia equipment shall be installed and
6 maintained in a safe operating condition and in conformity
7 with rules adopted by the secretary. ~~A person shall not~~
8 ~~intentionally tamper with anhydrous ammonia equipment.~~
9 ~~Tampering occurs when a person who is not authorized by the~~
10 ~~owner of anhydrous ammonia equipment uses the equipment in~~
11 ~~violation of a provision of this chapter, including a rule~~
12 ~~adopted by the secretary. A person shall not in any manner or~~
13 ~~for any purpose sell, fill, refill, deliver, permit to be~~
14 ~~delivered, or use an anhydrous ammonia container or~~
15 ~~receptacle, including for the storage of any gas or compound,~~
16 ~~unless the person owns the container or receptacle or is~~
17 ~~authorized to do so by the owner. A person shall not possess~~
18 ~~or transport anhydrous ammonia in a container or receptacle~~
19 ~~which is not authorized by the secretary to hold anhydrous~~
20 ~~ammonia.~~

21 Sec. 9. Section 200.18, subsection 2, Code 1999, is
22 amended to read as follows:

23 2. A person violating this chapter or rules adopted by the
24 secretary pursuant to this chapter shall be guilty of a simple
25 misdemeanor. ~~In addition to the imposition of the simple~~
26 ~~misdemeanor penalty, a person violating section 200.14 shall~~
27 ~~be subject to a civil penalty of not more than one thousand~~
28 ~~five hundred dollars, if the person does any of the following:~~
29 However, a person who tampers with, possesses, or transports
30 anhydrous ammonia or anhydrous ammonia equipment commits a
31 serious misdemeanor under section 124.401F.

32 ~~a. Intentionally tampers with anhydrous ammonia equipment.~~

33 ~~b. Possesses or transports anhydrous ammonia in a~~
34 ~~container or receptacle which is not authorized to hold~~
35 ~~anhydrous ammonia according to rules adopted by the secretary.~~

1004
196

1 A-person-tampering-with-anhydrous-ammonia-equipment-in
2 violation-of-section-200.14-shall-not-have-a-cause-of-action
3 against-the-owner-of-the-equipment,-any-person-responsible-for
4 the-installation-and-maintenance-of-the-equipment,-or-the
5 person-lawfully-selling-the-anhydrous-ammonia-for-damages
6 arising-out-of-the-tampering-

7 Sec. 10. Section 811.1, subsections 1 and 2, Code 1999,
8 are amended to read as follows:

9 1. A defendant awaiting judgment of conviction and
10 sentencing following either a plea or verdict of guilty of a
11 class "A" felony, murder, any class "B" felony included in
12 section 707.6A, felonious assault, felonious child
13 endangerment, sexual abuse in the second degree, sexual abuse
14 in the third degree, kidnapping, robbery in the first degree,
15 arson in the first degree, or burglary in the first degree, or
16 any felony included in section 124.401, subsection 1,
17 paragraph "a" or "b", or a second or subsequent offense under
18 section 124.401, subsection 1, paragraph "c", or any felony
19 punishable under section 902.9, subsection 0A or 0B.

20 2. A defendant appealing a conviction of a class "A"
21 felony, murder, any class "B" felony included in section
22 707.6A, felonious assault, felonious child endangerment,
23 sexual abuse in the second degree, sexual abuse in the third
24 degree, kidnapping, robbery in the first degree, arson in the
25 first degree, or burglary in the first degree, any felony
26 included in section 124.401, subsection 1, paragraph "a", or a
27 violation-of-section-124.401,-subsection-1,-paragraph "b", or
28 a second or subsequent conviction under section 124.401,
29 subsection 1, paragraph "c", or any felony punishable under
30 section 902.9, subsection 0A or 0B.

31 Sec. 11. Section 901.2, unnumbered paragraph 3, Code 1999,
32 is amended to read as follows:

33 The court shall not order a presentence investigation when
34 the offense is a class "A" felony. If, however, the board of
35 parole determines that the Iowa medical and classification

1 center reception report for a class "A" felon is inadequate,
2 the board may request and shall be provided with additional
3 information from the appropriate judicial district department
4 of correctional services. The court shall order a presentence
5 investigation when the offense is any felony punishable under
6 section 902.9, subsection 0A or 0B, or a class "B", class "C",
7 or class "D" felony. A presentence investigation for any
8 felony punishable under section 902.9, subsection 0A or 0B, or
9 a class "B", class "C", or class "D" felony shall not be
10 waived. The court may order, with the consent of the
11 defendant, that the presentence investigation begin prior to
12 the acceptance of a plea of guilty, or prior to a verdict of
13 guilty. The court may order a presentence investigation when
14 the offense is an aggravated misdemeanor. The court may order
15 a presentence investigation when the offense is a serious
16 misdemeanor only upon a finding of exceptional circumstances
17 warranting an investigation. Notwithstanding section 901.3, a
18 presentence investigation ordered by the court for a serious
19 misdemeanor shall include information concerning only the
20 following:

21 Sec. 12. NEW SECTION. 901.5A REOPENING OF A SENTENCE. *

22 1. A defendant sentenced by the court to the custody of
23 the director of the department of corrections for an offense
24 punishable under section 902.9, subsection 0B, may have the
25 judgment and sentence entered under section 901.5 reopened for
26 resentencing if the following apply:

27 a. The county attorney from the county which prosecuted
28 the defendant files a motion to reopen the sentence of the
29 defendant based upon the defendant's cooperation in the
30 prosecution of other persons.

31 b. The court finds the defendant cooperated in the
32 prosecution of other persons.

33 2. Upon a finding by the court that the defendant
34 cooperated in the prosecution of other persons, the court may
35 reduce the maximum sentence imposed under the original

LEAD
190

1 sentencing order by two-thirds.

2 3. For purposes of calculating good conduct time under
3 section 903A.2, the sentencing date for a defendant whose
4 sentence has been reopened under this section shall be the
5 date of the original sentencing order.

6 4. The filing of a motion or the reopening of a sentence
7 under this section shall not constitute grounds to stay any
8 other court proceedings, or to toll or restart the time for
9 filing of any post-trial motion or any appeal.

10 5. The defendant may request appointment of counsel, if
11 eligible under section 815.10, prior to and during any
12 negotiations and proceedings pursuant to this section.

13 Sec. 13. Section 901.10, Code 1999, is amended to read as
14 follows:

15 901.10 IMPOSITION REDUCTION OF MANDATORY-MINIMUM
16 SENTENCES.

17 1. A court sentencing a person for the person's first
18 conviction under section 124.406, 124.413, or 902.7 may, at
19 its discretion, sentence the person to a term less than
20 provided by the statute if mitigating circumstances exist and
21 those circumstances are stated specifically in the record.

22 2. Notwithstanding subsection 1, if the sentence under
23 section 124.413 involves a methamphetamine offense under
24 section 124.401, subsection 1, paragraph "a" or "b", the court
25 shall not grant any reduction of sentence unless the defendant
26 pleads guilty. If the defendant pleads guilty, the court may,
27 at its discretion, reduce the mandatory minimum sentence by up
28 to one-third. If the defendant additionally cooperates in the
29 prosecution of other persons involved in the sale or use of
30 controlled substances, and if the prosecutor requests an
31 additional reduction in defendant's sentence because of such
32 cooperation, the court may grant a further reduction in
33 defendant's mandatory minimum sentence, up to one-half of the
34 remaining mandatory minimum sentence.

35 3. A court sentencing a person for the person's first

1 conviction under section 124.401D may, at its discretion,
2 sentence the person to a term less than the maximum term
3 provided under section 902.9, subsection 0B, if mitigating
4 circumstances exist and those circumstances are stated
5 specifically in the record. However, the court shall not
6 grant any reduction of sentence unless the defendant pleads
7 guilty. If the defendant pleads guilty, the court may, at its
8 discretion, reduce the maximum sentence by up to one-third.
9 If the defendant cooperates in the prosecution of other
10 persons involved in the sale or use of controlled substances,
11 and if the prosecutor requests an additional reduction in the
12 defendant's sentence because of such cooperation, the court
13 may grant a further reduction in the defendant's maximum
14 sentence.

15 3- 4. The state may appeal the discretionary decision on
16 the grounds that the stated mitigating circumstances do not
17 warrant a reduction of the sentence.

18 Sec. 14. Section 902.3, Code 1999, is amended to read as
19 follows:

20 902.3 INDETERMINATE SENTENCE.

21 When a judgment of conviction of a felony other than a
22 class "A" felony is entered against a person, the court, in
23 imposing a sentence of confinement, shall commit the person
24 into the custody of the director of the Iowa department of
25 corrections for an indeterminate term, the maximum length of
26 which shall not exceed the limits as fixed by ~~section-707-3-or~~
27 section 902.9, unless otherwise prescribed by statute, nor
28 shall the term be less than the minimum term imposed by law,
29 if a minimum sentence is provided. However, the court may
30 sentence a person convicted of a class "D" felony for a
31 violation of section 321J.2 to imprisonment for up to one year
32 in a county jail under section 902.9, subsection 4, and the
33 person shall not be under the custody of the director of the
34 Iowa department of corrections.

35 Sec. 15. NEW SECTION. 902.8A MINIMUM SENTENCE FOR

1090
190

1 CONSPIRING TO MANUFACTURE OR DELIVERY OF METHAMPHETAMINE TO A
2 MINOR.

3 A person who has been convicted under section 124.401D
4 shall not be eligible for parole until the person has served a
5 minimum term of confinement of ten years.

6 Sec. 16. Section 902.9, Code 1999, is amended by adding
7 the following new subsections:

8 NEW SUBSECTION. 0A. A felon sentenced for a second or
9 subsequent conviction for a violation of section 124.401D,
10 shall be confined for life but shall be eligible for parole.

11 NEW SUBSECTION. 0B. A felon sentenced for a first
12 conviction for a violation of section 124.401D, shall be
13 confined for no more than ninety-nine years.

14 Sec. 17. Section 903A.5, unnumbered paragraph 1, Code
15 1999, is amended to read as follows:

16 An inmate shall not be discharged from the custody of the
17 director of the Iowa department of corrections until the
18 inmate has served the full term for which the inmate was
19 sentenced, less good conduct time earned and not forfeited,
20 unless the inmate is pardoned or otherwise legally released.
21 Good conduct time earned and not forfeited shall apply to
22 reduce a mandatory minimum sentence being served pursuant to
23 section 124.406, 124.413, 902.7, 902.8, 902.8A, or 902.11. An
24 inmate shall be deemed to be serving the sentence from the day
25 on which the inmate is received into the institution.

26 However, if an inmate was confined to a county jail or other
27 correctional or mental facility at any time prior to
28 sentencing, or after sentencing but prior to the case having
29 been decided on appeal, because of failure to furnish bail or
30 because of being charged with a nonbailable offense, the
31 inmate shall be given credit for the days already served upon
32 the term of the sentence. The sheriff of the county in which
33 the inmate was confined shall certify to the clerk of the
34 district court from which the inmate was sentenced the number
35 of days so served. The clerk of the district court shall

1 forward a copy of the certification of the days served to the
2 warden.

3 Sec. 18. Section 906.5, subsection 1, unnumbered paragraph
4 1, Code 1999, is amended to read as follows:

5 The board shall establish and implement a plan by which the
6 board systematically reviews the status of each person who has
7 been committed to the custody of the director of the Iowa
8 department of corrections and considers the person's prospects
9 for parole or work release. The board at least annually shall
10 review the status of a person other than a class "A" felon, a
11 class "B" felon serving a sentence of more than twenty-five
12 years, or a felon serving an offense punishable under section
13 902.9, subsection 0A or 0B, or a felon serving a mandatory
14 minimum sentence other than a class "A" felon, and provide the
15 person with notice of the board's parole or work release
16 decision.

17 EXPLANATION

18 This bill makes various changes to methamphetamine or
19 controlled substance-related crimes.

20 PRECURSORS TO METHAMPHETAMINE. The bill amends Code
21 section 124.401, subsections 3 and 4, by expanding the list of
22 materials that a person may not distribute or possess if the
23 person knows that the materials may be used, or intends to use
24 them as a precursor to any illegal substance or controlled
25 substance. The materials added in this bill are commonly used
26 in the production of methamphetamine. A person violating the
27 provisions commits either a serious misdemeanor or a class "D"
28 felony.

29 POSSESSION OF CONTROLLED SUBSTANCES AND METHAMPHETAMINE.

30 The bill amends Code section 124.401(5) which relates to
31 misdemeanor possession of a controlled substance. The bill
32 provides that the court shall impose a minimum two-day jail
33 sentence which may be suspended, and shall place the person on
34 probation, impose random drug tests as a condition of
35 probation, and allow the person's probation officer to place

1052
190

1 the person in jail upon a violation of probation. If the
2 controlled substance is methamphetamine, the court may require
3 intensive probation which shall include random drug testing,
4 and shall allow for the placement of the person in a
5 community-based correctional facility by the person's
6 probation officer.

7 CONSPIRACY TO MANUFACTURE OR DELIVERY TO MINORS. The bill
8 creates new Code section 124.401D and makes changes in the
9 penalties applicable to a person 18 years of age or older to
10 the crimes of conspiring to manufacture for delivery, delivery
11 of, and possession with intent to deliver, or conspiracy to
12 deliver, methamphetamine to a person under 18 years of age.
13 The bill provides that a felony committed under new Code
14 section 124.401D, is punishable by a sentence for an
15 indeterminate term not to exceed 99 years. The court may
16 reduce the person's maximum sentence by one-third if
17 mitigating circumstances exist and the person pleads guilty.
18 After a finding by the court that mitigating circumstances
19 exist, the court may further reduce the remaining maximum
20 sentence if the defendant cooperates in the prosecution of
21 other persons. The bill provides that a person sentenced
22 under new Code section 124.401D must serve a mandatory minimum
23 sentence of 10 years of confinement before the person is
24 eligible for parole even if the sentence is reduced by
25 mitigating circumstances or the court finds the person
26 cooperated with the prosecution of others.

27 If a person commits a second or subsequent offense of
28 conspiracy to manufacture or delivery to a minor, the person
29 is sentenced to life in prison with the possibility of parole.
30 A person sentenced for a second or subsequent offense is not
31 eligible for a reduction in sentence pursuant to section
32 901.10.

33 The bill also provides the board of parole is not required
34 to annually review the status of a person sentenced to 99
35 years or sentenced to life with the possibility of parole.

1 REOPENING OF A SENTENCE. The bill provides for the
2 reopening of a person's 99-year sentence if the person chooses
3 to cooperate with the prosecution of another person. If the
4 county attorney's office that prosecuted the person files a
5 motion to reopen a person's sentence and the court finds the
6 person cooperated with the prosecution of another person, the
7 person's maximum sentence may be reduced by two-thirds. Only
8 a person sentenced to an indeterminate term not to exceed 99
9 years is eligible for the reopening of a sentence.

10 MANUFACTURE OR DELIVERY OF SMALL AMOUNTS OF
11 METHAMPHETAMINE. The bill creates new Code section 124.401E,
12 applying certain penalties for the manufacturing or delivery
13 of methamphetamine. If a person is convicted of delivery or
14 possessing with intent to deliver five grams or less of
15 methamphetamine on a first offense, the court has the
16 discretion to sentence the person to complete a drug court
17 program, if a drug court has been established, to order the
18 person into a residential treatment facility, or to assign the
19 person to a community-based correctional facility for a period
20 of up to one year. If a person is convicted of manufacturing
21 five grams or less of methamphetamine, the court may also
22 sentence the person to complete a drug court program, or order
23 the person into a residential treatment facility or assign the
24 person to a community-based correctional facility for a period
25 of up to one year. If a person is convicted of delivery of or
26 possession with intent to deliver methamphetamine for a second
27 or subsequent offense, the person shall serve a mandatory
28 prison sentence under sections 124.401 and 124.413 and such
29 sentence is determined by the amount of methamphetamine
30 involved in the delivery.

31 ADULTERATED OR IMPROPERLY LABELED ARTICLES. The bill
32 amends Code chapter 189 which applies to a number of chapters
33 regulating the safety and effectiveness of commodities and
34 products including agricultural products. Code section 189.16
35 provides that a person in possession or having control of an

1 article which is adulterated or which is improperly labeled as
2 required in those chapters is presumed to know that the
3 article is adulterated or mislabeled. It provides that a
4 person's possession of the article is prima facie evidence of
5 an intent to violate the law. The section does not apply to
6 grain in possession or control of persons in the grain trade
7 (such as grain dealers) or mining materials in possession or
8 control of persons in that industry. The bill provides that
9 Code chapter 189 also does not apply to persons in possession
10 or having control of a controlled substance regulated under
11 Code chapter 124. The bill also makes a number of changes in
12 Code section 189.16 in order to enhance its readability.

13 ANHYDROUS AMMONIA TAMPERING. The bill increases the
14 penalty applicable to tampering with anhydrous ammonia
15 equipment and illegal possession of anhydrous ammonia from a
16 simple misdemeanor to a serious misdemeanor.

17 BAIL RESTRICTIONS. The bill restricts a person's ability
18 to post a bond upon a conviction of or when appealing most
19 felony convictions under sections 124.401 and 124.401D for
20 manufacturing, distributing, or possessing with intent to
21 manufacture or distribute a controlled substance. However, a
22 person convicted of a first offense felony violation of
23 section 124.401, subsection 1, paragraph "c", is not subject
24 to any bail restrictions. Current law generally permits a
25 person awaiting sentencing or appealing a conviction to post a
26 bond and remain free pending the final decision in the case.

27 GENERAL CRIMINAL PENALTIES. A simple misdemeanor is
28 punishable by confinement for no more than 30 days or a fine
29 of at least \$50 but not more than \$100. A serious misdemeanor
30 is punishable by confinement for no more than one year and a
31 fine of at least \$250 but not more than \$1,500. An aggravated
32 misdemeanor is punishable by confinement for no more than two
33 years and a fine of at least \$500 but not more than \$5,000. A
34 class "D" felony is punishable by confinement for no more than
35 five years and a fine of at least \$500 but not more than

S.F. _____ H.F. _____

1 \$7,500. A class "C" felony is punishable by confinement for
2 no more than 10 years and a fine of at least \$500 but not more
3 than \$10,000. A class "B" felony is punishable by confinement
4 for no more than 25 years.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

REPRINTED

MAR 9 1999

Place On Calendar

HOUSE FILE 573
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 190)

Passed House, (P. 668) Date 3/15/99 Passed Senate, (P. 791) Date 3-25-99
Vote: Ayes 89 Nays 6 Vote: Ayes 42 Nays 5
Approved 4-6-99

A BILL FOR

1 An Act to change the penalties applicable to the possession,
2 manufacture, or delivery of methamphetamine and other
3 controlled substances, relating to the possession or control
4 of adulterated or improperly labeled articles, providing for
5 the reopening of certain sentences, and providing for
6 restrictions on bail.

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

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

HF 573

1 Section 1. Section 13B.4, subsection 1, Code 1999, is
2 amended to read as follows:

3 1. The state public defender shall coordinate the
4 provision of legal representation of all indigents under
5 arrest or charged with a crime, on appeal in criminal cases,
6 and on appeal in proceedings to obtain postconviction relief
7 when ordered to do so by the district court in which the
8 judgment or order was issued, a reopening of a sentence
9 proceeding, and may provide for the representation of
10 indigents in proceedings instituted pursuant to chapter 908.
11 The state public defender shall not engage in the private
12 practice of law.

13 Sec. 2. Section 124.401, subsections 3 and 4, Code 1999,
14 are amended to read as follows:

15 3. ~~It is unlawful for any~~ A person to sell, distribute, or
16 ~~make available~~ who sells, distributes, or makes available any
17 product containing ephedrine any of the following commits a
18 serious misdemeanor, if the person knows that the product may
19 be used to manufacture any controlled substance:

20 a. Ephedrine, its salts, optical isomers, salts of optical
21 isomers, or analogs of ephedrine, or pseudoephedrine.

22 b. Pseudoephedrine, its salts, optical isomers, salts of
23 optical isomers, or analogs of pseudoephedrine, if the person
24 knows, or should know, that the product may be used as a
25 precursor to any illegal substance or an intermediary to any
26 controlled substance.

27 c. Ethyl ether.

28 d. Anhydrous ammonia.

29 e. Red phosphorous.

30 f. Lithium.

31 g. Iodine.

32 h. Thionyl chloride.

33 i. Chloroform.

34 j. Palladium.

35 k. Perchloric acid.

1 l. Tetrahydrofuran.

2 m. Ammonium chloride.

3 n. Magnesium sulfate.

4 ~~A person who violates this subsection commits a serious~~
5 ~~misdemeanor.~~

6 4. ~~It is unlawful for any~~ A person to possess who
7 possesses any product containing ephedrine any of the
8 following commits a class "D" felony, if the person possesses
9 with the intent to use the product to manufacture any
10 controlled substance:

11 a. Ephedrine, its salts, optical isomers, salts of optical
12 isomers, or analogs of ephedrine, or pseudoephedrine.

13 b. Pseudoephedrine, its salts, optical isomers, salts of
14 optical isomers, or analogs of pseudoephedrine, with the
15 intent to use the product as a precursor to any illegal
16 substance or an intermediary to any controlled substance.

17 c. Ethyl ether.

18 d. Anhydrous ammonia.

19 e. Red phosphorous.

20 f. Lithium.

21 g. Iodine.

22 h. Thionyl chloride.

23 i. Chloroform.

24 j. Palladium.

25 k. Perchloric acid.

26 l. Tetrahydrofuran.

27 m. Ammonium chloride.

28 n. Magnesium sulfate. ~~A person who violates this~~
29 ~~subsection commits a class "D" felony.~~

30 Sec. 3. Section 124.401, subsection 5, Code 1999, is
31 amended by adding the following new unnumbered paragraphs
32 after unnumbered paragraph 3:

33 NEW UNNUMBERED PARAGRAPH. If a person commits a violation
34 of this subsection, the court shall order the person to serve
35 a term of imprisonment of not less than forty-eight hours.

1 Any sentence imposed may be suspended, and the court shall
2 place the person on probation upon such terms and conditions
3 as the court may impose. If the person is not sentenced to
4 confinement under the custody of the director of the
5 department of corrections, the terms and conditions of
6 probation shall require submission to random drug testing and
7 shall specify that the person's probation officer may transfer
8 the person's placement to any appropriate placement
9 permissible under the court order without further order or
10 hearing.

11 NEW UNNUMBERED PARAGRAPH. If the controlled substance is
12 methamphetamine, its salts, isomers, or salts of its isomers,
13 the court shall order the person to serve a term of
14 imprisonment of not less than forty-eight hours. Any sentence
15 imposed may be suspended, and the court shall place the person
16 on probation upon such terms and conditions as the court may
17 impose. The court may place the person on intensive
18 probation. However, the terms and conditions of probation
19 shall require submission to random drug testing and shall
20 specify that the person's probation officer may assign the
21 person to a community-based correctional facility without
22 further court order for a period of six months or until
23 maximum benefits are achieved, whichever is earlier.

24 Sec. 4. NEW SECTION. 124.401D CONSPIRACY TO MANUFACTURE
25 FOR DELIVERY OR DELIVERY OR INTENT OR CONSPIRACY TO DELIVER
26 METHAMPHETAMINE TO A MINOR.

27 1. It is unlawful for a person eighteen years of age or
28 older to act with, or enter into a common scheme or design
29 with, or conspire with one or more persons to manufacture for
30 delivery to a person under eighteen years of age a material,
31 compound, mixture, preparation, or substance that contains any
32 detectable amount of methamphetamine, its salts, isomers, or
33 salts of its isomers.

34 A violation of this subsection is a felony punishable under
35 section 902.9, subsection 0A. A second or subsequent

1 violation of this subsection is a class "A" felony.

2 2. It is unlawful for a person eighteen years of age or
3 older to deliver, or possess with the intent to deliver to a
4 person under eighteen years of age, a material, compound,
5 mixture, preparation, or substance that contains any
6 detectable amount of methamphetamine, its salts, isomers, or
7 salts of its isomers, or to act with, or enter into a common
8 scheme or design with, or conspire with one or more persons to
9 deliver or possess with the intent to deliver to a person
10 under eighteen years of age a material, compound, mixture,
11 preparation, or substance that contains any detectable amount
12 of methamphetamine, its salts, isomers, or salts of its
13 isomers.

14 A violation of this subsection is a felony punishable under
15 section 902.9, subsection 0A. A second or subsequent
16 violation of this subsection is a class "A" felony.

17 Sec. 5. NEW SECTION. 124.401E CERTAIN PENALTIES FOR
18 MANUFACTURING OR DELIVERY OF METHAMPHETAMINE.

19 1. If a court sentences a person for the person's first
20 conviction for delivery or possession with intent to deliver a
21 controlled substance under section 124.401, subsection 1,
22 paragraph "c", and if the controlled substance is
23 methamphetamine, its salts, isomers, or salts of its isomers,
24 the court may suspend the sentence, and the court may order
25 the person to complete a drug court program if a drug court
26 has been established in the county in which the person is
27 sentenced or order the person to be assigned to a community-
28 based correctional facility for a period of one year or until
29 maximum benefits are achieved, whichever is earlier.

30 2. If a court sentences a person for a conviction of
31 manufacturing of a controlled substance under section 124.401,
32 subsection 1, paragraph "c", and if the controlled substance
33 is methamphetamine, its salts, isomers, or salts of its
34 isomers, the court may suspend the sentence, and the court may
35 order the person to complete a drug court program if a drug

1 court has been established in the county in which the person
2 is sentenced, or order the person to be assigned to a
3 community-based correctional facility for a period of one year
4 or until maximum benefits are achieved, whichever is earlier.

5 3. If a court sentences a person for the person's second
6 or subsequent conviction for delivery or possession with
7 intent to deliver a controlled substance under section
8 124.401, subsection 1, and the controlled substance is
9 methamphetamine, its salts, isomers, or salts of its isomers,
10 the court, in addition to any other authorized penalties,
11 shall sentence the person to imprisonment in accordance with
12 section 124.401, subsection 1, and the person shall serve the
13 minimum period of confinement as required by section 124.413.

14 Sec. 6. NEW SECTION. 124.401F PROHIBITIONS ON TAMPERING
15 WITH, POSSESSING, OR TRANSPORTING ANHYDROUS AMMONIA OR
16 ANHYDROUS AMMONIA EQUIPMENT.

17 1. A person shall not intentionally tamper with anhydrous
18 ammonia equipment. Tampering occurs when a person who is not
19 authorized by the owner of anhydrous ammonia equipment uses
20 the equipment in violation of a provision of this section. A
21 person shall not in any manner or for any purpose sell, fill,
22 refill, deliver, permit to be delivered, or use an anhydrous
23 ammonia container or receptacle, including for the storage of
24 any gas or compound, unless the person owns the container or
25 receptacle or is authorized to do so by the owner. A person
26 shall not possess or transport anhydrous ammonia in a
27 container or receptacle which is not authorized by the
28 secretary to hold anhydrous ammonia.

29 2. A person violating this section commits a serious
30 misdemeanor. In addition to the imposition of the serious
31 misdemeanor penalty, a person shall be subject to a civil
32 penalty of not more than one thousand five hundred dollars, if
33 the person does any of the following:

- 34 a. Intentionally tampers with anhydrous ammonia equipment.
35 b. Possesses or transports anhydrous ammonia in a

1 container or receptacle which is not authorized to hold
2 anhydrous ammonia according to rules adopted by the secretary.
3 3. A person tampering with anhydrous ammonia equipment in
4 violation of this section shall not have a cause of action
5 against the owner of the equipment, any person responsible for
6 the installation and maintenance of the equipment, or the
7 person lawfully selling the anhydrous ammonia for damages
8 arising out of the tampering.

9 Sec. 7. Section 189.16, Code 1999, is amended to read as
10 follows:

11 189.16 POSSESSION AND CONTROL OF ADULTERATED AND
12 IMPROPERLY LABELED ARTICLES.

13 1. Any Except as provided in subsection 2, a person having
14 in possession or under having control any of an article which
15 is adulterated or which is improperly labeled according to the
16 provisions of this subtitle~~7-excluding-chapters-2037-203A7~~
17 ~~203C7-203D7-2077-and-2087~~ shall be presumed to know its-true
18 ~~character-and-name7-and-such~~ that the article is adulterated
19 or improperly labeled. A person's possession of an
20 adulterated or improperly labeled article shall be prima facie
21 evidence of-having-the-same-in-possession-with-intent that the
22 person intends to violate the provisions of this subtitle~~7~~
23 ~~excluding-chapters-2037-203A7-203C7-203D7-2077-and-208.~~

24 2. This section does not apply to the possession or
25 control of any of the following:

26 a. Grain by a person regulated under chapter 203, 203A,
27 203C, or 203D.

28 b. Mining materials including coal by a person regulated
29 under chapter 207 or 208.

30 c. A controlled substance as provided in chapter 124.

31 Sec. 8. Section 200.14, subsection 1A, Code 1999, is
32 amended to read as follows:

33 1A. Anhydrous ammonia equipment shall be installed and
34 maintained in a safe operating condition and in conformity
35 with rules adopted by the secretary. ~~A-person-shall-not~~

~~1 intentionally tamper with anhydrous ammonia equipment;
2 Tampering occurs when a person who is not authorized by the
3 owner of anhydrous ammonia equipment uses the equipment in
4 violation of a provision of this chapter, including a rule
5 adopted by the secretary. A person shall not in any manner or
6 for any purpose sell, fill, refill, deliver, permit to be
7 delivered, or use an anhydrous ammonia container or
8 receptacle, including for the storage of any gas or compound,
9 unless the person owns the container or receptacle or is
10 authorized to do so by the owner. A person shall not possess
11 or transport anhydrous ammonia in a container or receptacle
12 which is not authorized by the secretary to hold anhydrous
13 ammonia.~~

14 Sec. 9. Section 200.18, subsection 2, Code 1999, is
15 amended to read as follows:

16 2. A person violating this chapter or rules adopted by the
17 secretary pursuant to this chapter shall be guilty of a simple
18 misdemeanor. ~~In addition to the imposition of the simple
19 misdemeanor penalty, a person violating section 200.14 shall
20 be subject to a civil penalty of not more than one thousand
21 five hundred dollars, if the person does any of the following:~~
22 However, a person who tampers with, possesses, or transports
23 anhydrous ammonia or anhydrous ammonia equipment commits a
24 serious misdemeanor under section 124.401F.

25 a. ~~Intentionally tampers with anhydrous ammonia equipment.~~

26 b. ~~Possesses or transports anhydrous ammonia in a
27 container or receptacle which is not authorized to hold
28 anhydrous ammonia according to rules adopted by the secretary.~~

29 ~~A person tampering with anhydrous ammonia equipment in
30 violation of section 200.14 shall not have a cause of action
31 against the owner of the equipment, any person responsible for
32 the installation and maintenance of the equipment, or the
33 person lawfully selling the anhydrous ammonia for damages
34 arising out of the tampering.~~

35 Sec. 10. Section 811.1, subsections 1 and 2, Code 1999,

1 are amended to read as follows:

2 1. A defendant awaiting judgment of conviction and
3 sentencing following either a plea or verdict of guilty of a
4 class "A" felony, murder, any class "B" felony included in
5 section 707.6A, felonious assault, felonious child
6 endangerment, sexual abuse in the second degree, sexual abuse
7 in the third degree, kidnapping, robbery in the first degree,
8 arson in the first degree, or burglary in the first degree, or
9 any felony included in section 124.401, subsection 1,
10 paragraph "a" or "b", or a second or subsequent offense under
11 section 124.401, subsection 1, paragraph "c", or any felony
12 punishable under section 902.9, subsection 0A.

13 2. A defendant appealing a conviction of a class "A"
14 felony, murder, any class "B" felony included in section
15 707.6A, felonious assault, felonious child endangerment,
16 sexual abuse in the second degree, sexual abuse in the third
17 degree, kidnapping, robbery in the first degree, arson in the
18 first degree, or burglary in the first degree, any felony
19 included in section 124.401, subsection 1, paragraph "a", or a
20 ~~violation of section 124.401, subsection 1, paragraph "b",~~ or
21 a second or subsequent conviction under section 124.401,
22 subsection 1, paragraph "c", or any felony punishable under
23 section 902.9, subsection 0A.

24 Sec. 11. Section 811.2, subsection 1, Code 1999, is
25 amended by adding the following new unnumbered paragraph:

26 NEW UNNUMBERED PARAGRAPH. Any bailable defendant who is
27 charged with unlawful possession, manufacture, delivery, or
28 distribution of a controlled substance or other drug under
29 chapter 124 and is ordered released shall be required, as a
30 condition of that release, to submit to a substance abuse
31 evaluation and follow any recommendations proposed in the
32 evaluation for appropriate substance abuse treatment.

33 Sec. 12. Section 901.2, unnumbered paragraph 3, Code 1999,
34 is amended to read as follows:

35 The court shall not order a presentence investigation when

1 the offense is a class "A" felony. If, however, the board of
2 parole determines that the Iowa medical and classification
3 center reception report for a class "A" felon is inadequate,
4 the board may request and shall be provided with additional
5 information from the appropriate judicial district department
6 of correctional services. The court shall order a presentence
7 investigation when the offense is any felony punishable under
8 section 902.9, subsection 0A, or a class "B", class "C", or
9 class "D" felony. A presentence investigation for any felony
10 punishable under section 902.9, subsection 0A, or a class "B",
11 class "C", or class "D" felony shall not be waived. The court
12 may order, with the consent of the defendant, that the
13 presentence investigation begin prior to the acceptance of a
14 plea of guilty, or prior to a verdict of guilty. The court
15 may order a presentence investigation when the offense is an
16 aggravated misdemeanor. The court may order a presentence
17 investigation when the offense is a serious misdemeanor only
18 upon a finding of exceptional circumstances warranting an
19 investigation. Notwithstanding section 901.3, a presentence
20 investigation ordered by the court for a serious misdemeanor
21 shall include information concerning only the following:

22 Sec. 13. NEW SECTION. 901.5A REOPENING OF A SENTENCE.

23 1. A defendant sentenced by the court to the custody of
24 the director of the department of corrections for an offense
25 punishable under section 902.9, subsection 0A, may have the
26 judgment and sentence entered under section 901.5 reopened for
27 resentencing if the following apply:

28 a. The county attorney from the county which prosecuted
29 the defendant files a motion to reopen the sentence of the
30 defendant based upon the defendant's cooperation in the
31 prosecution of other persons.

32 b. The court finds the defendant cooperated in the
33 prosecution of other persons.

34 2. Upon a finding by the court that the defendant
35 cooperated in the prosecution of other persons, the court may

1 reduce the maximum sentence imposed under the original
2 sentencing order.

3 3. For purposes of calculating good conduct time under
4 section 903A.2, the sentencing date for a defendant whose
5 sentence has been reopened under this section shall be the
6 date of the original sentencing order.

7 4. The filing of a motion or the reopening of a sentence
8 under this section shall not constitute grounds to stay any
9 other court proceedings, or to toll or restart the time for
10 filing of any post-trial motion or any appeal.

11 5. The defendant may request appointment of counsel, if
12 eligible under section 815.10, prior to and during any
13 negotiations and proceedings pursuant to this section.

14 Sec. 14. Section 901.10, Code 1999, is amended to read as
15 follows:

16 901.10 ~~IMPOSITION~~ REDUCTION OF MANDATORY-MINIMUM
17 SENTENCES.

18 1. A court sentencing a person for the person's first
19 conviction under section 124.406, 124.413, or 902.7 may, at
20 its discretion, sentence the person to a term less than
21 provided by the statute if mitigating circumstances exist and
22 those circumstances are stated specifically in the record.

23 2. Notwithstanding subsection 1, if the sentence under
24 section 124.413 involves a methamphetamine offense under
25 section 124.401, subsection 1, paragraph "a" or "b", the court
26 shall not grant any reduction of sentence unless the defendant
27 pleads guilty. If the defendant pleads guilty, the court may,
28 at its discretion, reduce the mandatory minimum sentence by up
29 to one-third. If the defendant additionally cooperates in the
30 prosecution of other persons involved in the sale or use of
31 controlled substances, and if the prosecutor requests an
32 additional reduction in defendant's sentence because of such
33 cooperation, the court may grant a further reduction in
34 defendant's mandatory minimum sentence, up to one-half of the
35 remaining mandatory minimum sentence.

1 3. A court sentencing a person for the person's first
2 conviction under section 124.401D may, at its discretion,
3 sentence the person to a term less than the maximum term
4 provided under section 902.9, subsection 0A, if mitigating
5 circumstances exist and those circumstances are stated
6 specifically in the record. However, the court shall not
7 grant any reduction of sentence unless the defendant pleads
8 guilty. If the defendant pleads guilty, the court may, at its
9 discretion, reduce the maximum sentence by up to one-third.
10 If the defendant cooperates in the prosecution of other
11 persons involved in the sale or use of controlled substances,
12 and if the prosecutor requests an additional reduction in the
13 defendant's sentence because of such cooperation, the court
14 may grant a further reduction in the defendant's maximum
15 sentence.

16 3- 4. The state may appeal the discretionary decision on
17 the grounds that the stated mitigating circumstances do not
18 warrant a reduction of the sentence.

19 Sec. 15. Section 902.3, Code 1999, is amended to read as
20 follows:

21 902.3 INDETERMINATE SENTENCE.

22 When a judgment of conviction of a felony other than a
23 class "A" felony is entered against a person, the court, in
24 imposing a sentence of confinement, shall commit the person
25 into the custody of the director of the Iowa department of
26 corrections for an indeterminate term, the maximum length of
27 which shall not exceed the limits as fixed by ~~section-707-3-or~~
28 section 902.9, unless otherwise prescribed by statute, nor
29 shall the term be less than the minimum term imposed by law,
30 if a minimum sentence is provided. However, the court may
31 sentence a person convicted of a class "D" felony for a
32 violation of section 321J.2 to imprisonment for up to one year
33 in a county jail under section 902.9, subsection 4, and the
34 person shall not be under the custody of the director of the
35 Iowa department of corrections.

1 Sec. 16. NEW SECTION. 902.8A MINIMUM SENTENCE FOR
2 CONSPIRING TO MANUFACTURE OR DELIVERY OF METHAMPHETAMINE TO A
3 MINOR.

4 A person who has been convicted for a first violation under
5 section 124.401D shall not be eligible for parole until the
6 person has served a minimum term of confinement of ten years.

7 Sec. 17. Section 902.9, Code 1999, is amended by adding
8 the following new subsection:

9 NEW SUBSECTION. 0A. A felon sentenced for a first
10 conviction for a violation of section 124.401D, shall be
11 confined for no more than ninety-nine years.

12 Sec. 18. Section 903A.5, unnumbered paragraph 1, Code
13 1999, is amended to read as follows:

14 An inmate shall not be discharged from the custody of the
15 director of the Iowa department of corrections until the
16 inmate has served the full term for which the inmate was
17 sentenced, less good conduct time earned and not forfeited,
18 unless the inmate is pardoned or otherwise legally released.
19 Good conduct time earned and not forfeited shall apply to
20 reduce a mandatory minimum sentence being served pursuant to
21 section 124.406, 124.413, 902.7, 902.8, 902.8A, or 902.11. An
22 inmate shall be deemed to be serving the sentence from the day
23 on which the inmate is received into the institution.
24 However, if an inmate was confined to a county jail or other
25 correctional or mental facility at any time prior to
26 sentencing, or after sentencing but prior to the case having
27 been decided on appeal, because of failure to furnish bail or
28 because of being charged with a nonbailable offense, the
29 inmate shall be given credit for the days already served upon
30 the term of the sentence. The sheriff of the county in which
31 the inmate was confined shall certify to the clerk of the
32 district court from which the inmate was sentenced the number
33 of days so served. The clerk of the district court shall
34 forward a copy of the certification of the days served to the
35 warden.

1 Sec. 19. Section 906.5, subsection 1, unnumbered paragraph
2 1, Code 1999, is amended to read as follows:

3 The board shall establish and implement a plan by which the
4 board systematically reviews the status of each person who has
5 been committed to the custody of the director of the Iowa
6 department of corrections and considers the person's prospects
7 for parole or work release. The board at least annually shall
8 review the status of a person other than a class "A" felon, a
9 class "B" felon serving a sentence of more than twenty-five
10 years, or a felon serving an offense punishable under section
11 902.9, subsection 0A, or a felon serving a mandatory minimum
12 sentence other than a class "A" felon, and provide the person
13 with notice of the board's parole or work release decision.

14 EXPLANATION

15 This bill makes various changes to methamphetamine or
16 controlled substance-related crimes.

17 PRECURSORS TO METHAMPHETAMINE. The bill amends Code
18 section 124.401, subsections 3 and 4, by expanding the list of
19 materials that a person may not distribute or possess if the
20 person knows that the materials may be used, or intends to use
21 them to manufacture any controlled substance. The materials
22 added in this bill are commonly used in the production of
23 methamphetamine. A person violating the provisions commits
24 either a serious misdemeanor or a class "D" felony.

25 POSSESSION OF CONTROLLED SUBSTANCES AND METHAMPHETAMINE.
26 The bill amends Code section 124.401(5) which relates to
27 misdemeanor possession of a controlled substance. The bill
28 provides that the court shall impose a minimum two-day jail
29 sentence which may be suspended, and shall place the person on
30 probation, impose random drug tests as a condition of
31 probation, and allow the person's probation officer to place
32 the person in jail upon a violation of probation. If the
33 controlled substance is methamphetamine, the court may require
34 intensive probation which shall include random drug testing,
35 and shall allow for the placement of the person in a

1 community-based correctional facility by the person's
2 probation officer.

3 CONSPIRACY TO MANUFACTURE OR DELIVERY TO MINORS. The bill
4 creates new Code section 124.401D and makes changes in the
5 penalties applicable to a person 18 years of age or older to
6 the crimes of conspiring to manufacture for delivery, delivery
7 of, and possession with intent to deliver, or conspiracy to
8 deliver, methamphetamine to a person under 18 years of age.
9 The bill provides that a felony committed under new Code
10 section 124.401D, is punishable by a sentence for an
11 indeterminate term not to exceed 99 years. The court may
12 reduce the person's maximum sentence by one-third if
13 mitigating circumstances exist and the person pleads guilty.
14 After a finding by the court that mitigating circumstances
15 exist, the court may further reduce the remaining maximum
16 sentence if the defendant cooperates in the prosecution of
17 other persons. The bill provides that a person sentenced
18 under new Code section 124.401D must serve a mandatory minimum
19 sentence of 10 years of confinement before the person is
20 eligible for parole even if the sentence is reduced by
21 mitigating circumstances or the court finds the person
22 cooperated with the prosecution of others.

23 If a person commits a second or subsequent offense of
24 conspiracy to manufacture or deliver to a minor, the person
25 commits a class "A" felony.

26 The bill also provides that the board of parole is not
27 required to annually review the status of a person sentenced
28 to 99 years in prison.

29 REOPENING OF A SENTENCE. The bill provides for the
30 reopening of a person's 99-year sentence if the person chooses
31 to cooperate with the prosecution of another person. If the
32 county attorney's office that prosecuted the person files a
33 motion to reopen a person's sentence and the court finds the
34 person cooperated with the prosecution of another person, the
35 court may reduce the person's maximum sentence. Only a person

1 sentenced to an indeterminate term not to exceed 99 years is
2 eligible for the reopening of a sentence.

3 MANUFACTURE OR DELIVERY OF SMALL AMOUNTS OF
4 METHAMPHETAMINE. The bill creates new Code section 124.401E,
5 applying certain penalties for the manufacturing or delivery
6 of methamphetamine. If a person is convicted of delivery or
7 possessing with intent to deliver five grams or less of
8 methamphetamine on a first offense, the court has the
9 discretion to sentence the person to complete a drug court
10 program, if a drug court has been established, or to assign
11 the person to a community-based correctional facility for a
12 period of up to one year. If a person is convicted of
13 manufacturing five grams or less of methamphetamine, the court
14 may also sentence the person to complete a drug court program,
15 or assign the person to a community-based correctional
16 facility for a period of up to one year. If a person is
17 convicted of delivery of or possession with intent to deliver
18 methamphetamine for a second or subsequent offense, the person
19 shall serve a mandatory prison sentence under sections 124.401
20 and 124.413 and such sentence is determined by the amount of
21 methamphetamine involved in the delivery.

22 ADULTERATED OR IMPROPERLY LABELED ARTICLES. The bill
23 amends Code chapter 189 which applies to a number of chapters
24 regulating the safety and effectiveness of commodities and
25 products including agricultural products. Code section 189.16
26 provides that a person in possession or having control of an
27 article which is adulterated or which is improperly labeled as
28 required in those chapters is presumed to know that the
29 article is adulterated or mislabeled. It provides that a
30 person's possession of the article is prima facie evidence of
31 an intent to violate the law. The section does not apply to
32 grain in possession or control of persons in the grain trade
33 (such as grain dealers) or mining materials in possession or
34 control of persons in that industry. The bill provides that
35 Code chapter 189 also does not apply to persons in possession

1 or having control of a controlled substance regulated under
2 Code chapter 124. The bill also makes a number of changes in
3 Code section 189.16 in order to enhance its readability.

4 ANHYDROUS AMMONIA TAMPERING. The bill increases the
5 penalty applicable to tampering with anhydrous ammonia
6 equipment and illegal possession of anhydrous ammonia from a
7 simple misdemeanor to a serious misdemeanor.

8 BAIL RESTRICTIONS. The bill restricts a person's ability
9 to post a bond upon a conviction of or when appealing most
10 felony convictions under sections 124.401 and 124.401D for
11 manufacturing, distributing, or possessing with intent to
12 manufacture or distribute a controlled substance. However, a
13 person convicted of a first offense felony violation of
14 section 124.401, subsection 1, paragraph "c", is not subject
15 to any bail restrictions. Current law generally permits a
16 person awaiting sentencing or appealing a conviction to post a
17 bond and remain free pending the final decision in the case.

18 GENERAL CRIMINAL PENALTIES. A simple misdemeanor is
19 punishable by confinement for no more than 30 days or a fine
20 of at least \$50 but not more than \$100. A serious misdemeanor
21 is punishable by confinement for no more than one year and a
22 fine of at least \$250 but not more than \$1,500. An aggravated
23 misdemeanor is punishable by confinement for no more than two
24 years and a fine of at least \$500 but not more than \$5,000. A
25 class "D" felony is punishable by confinement for no more than
26 five years and a fine of at least \$500 but not more than
27 \$7,500. A class "C" felony is punishable by confinement for
28 no more than 10 years and a fine of at least \$500 but not more
29 than \$10,000. A class "B" felony is punishable by confinement
30 for no more than 25 years. A class "A" felony is punishable
31 by confinement for life without the possibility of parole.

32

33

34

35

HOUSE FILE 573
FISCAL NOTE

The estimate for House File 573 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 573 changes the penalties applicable to the possession, manufacture, or delivery of methamphetamine and other controlled substances, relating to the possession or control of adulterated or improperly labeled articles, providing for the reopening of certain sentences, and providing for restrictions on bail.

ASSUMPTIONS

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections policies and practices will not change over the projection period.
3. The law will become effective July 1, 1999. A lag effect of six months is assumed, from the law's effective date to the date of first entry of affected offenders into the correctional system.
4. This Bill will generate litigation for the next three to five years as defendants challenge various aspects of the new law and the mandatory penalties. The increased penalties will result in more trials because defendants have no incentive or less of an incentive to plead guilty.
5. The marginal cost for adding an additional prison inmate is \$12 a day.
6. Section 3. Community-based Corrections may require more resources to provide the mandatory drug testing under the Bill, and may experience an increase in offenders under intensive supervision and/or in residential treatment facilities. During FY 1997, there were 7,588 convictions for drug possession; of which 1,111 involved methamphetamines. Approximately, 1,337 of all convictions resulted in jail terms. Currently, judges may already sentence such offenders to a maximum one year in jail and then suspend the term.
7. Section 4. Currently, those who distribute to minors may be prosecuted under Section 124.406. During calendar years 1997-98, there were eight additional offenders placed on probation whose lead offense was a conviction under Section 124.406(1). There was one prison admission in which methamphetamines were distributed to minors. It is unknown if the person was also manufacturing methamphetamine. The Iowa County Attorneys Association indicates that they do not expect a large number of cases to

-2-

fall under the definition set forth in this section. One conviction per year will result in a 99-year prison term under the Bill (assuming the most severe penalty is imposed).

8. Section 5. Because judges may already assign offenders to probation and/or drug courts, the effect of this section is only to mandate prison for second or subsequent convictions of methamphetamine delivered or manufactured. It is anticipated that there will not be a significant impact on the prison population as a result of this provision.
9. Section 6, 8, and 9. These sections increase penalties from a simple misdemeanor to a serious misdemeanor. No correctional impact is foreseen from these changes. Charges and convictions for such offenses may increase in future years, as prosecutors, drug law enforcement task forces, and other system officials react to methamphetamine issues and activities.
10. Section 7. According to FY 1997 data, there were 16 convictions under the current simple misdemeanor provisions. These 16 convictions represent an estimated 75% of total statewide simple misdemeanor convictions during FY 1997. This resulted in approximately 21 convictions statewide. Given the low numbers of current convictions, this provision could have a significant correctional impact in the future.
11. Section 10. In FY 1997, there were 179 Class B felony drug convictions and 1,192 Class C felony drug convictions. Information regarding second or subsequent convictions is not available. Given the potential for a large number of cases to fall under this provision, and to the extent that such persons are now released pending sentencing or appeal, a significant correctional impact on the county jail system could be realized under the proposal.
12. The estimated cost for a Class A felony is \$15,000. The estimated cost of a Class B felony is \$3,750. The estimated cost of a Class C felony is \$1,500. The estimated cost for a Class D felony is \$1,200.

CORRECTIONAL IMPACT

1. The projected impact on the prison population is:

FY 2000	6 additional inmates
FY 2001	15 additional inmates
FY 2004	16 additional inmates
2. The impact on the Judicial Branch cannot be determined.
3. The impact to Community-based Corrections would be an increase in the number of offenders under intensive supervision and/or in residential treatment facilities. The actual impact cannot be determined due to insufficient information.
4. The number of people on probation would increase. However, the actual impact cannot be determined due to insufficient information.

5. The county jail system could realize a significant impact because currently, a large number of cases are released pending sentencing or appeal. The actual impact to the county jail system cannot be determined due to insufficient information.

FISCAL IMPACT

The estimated fiscal impact to the Public Defender's Office is:

FY 2000	\$ 16,800
FY 2001	\$ 47,100
FY 2004	\$ 47,100

The estimated General Fund fiscal impact to the Department of Correction's prison system is:

FY 2000	\$ 26,280
FY 2001	\$ 65,700
FY 2004	\$ 70,080

The estimated General Fund fiscal impact to Community-based Corrections to provide mandatory drug testing cannot be determined.

The estimated fiscal impact to County Attorney Offices is:

FY 2000	\$ 16,800
FY 2001	\$ 47,100
FY 2004	\$ 47,100

The estimated fiscal impact to the county jails cannot be determined.

SOURCES

Department of Corrections
Department of Human Rights (Criminal and Juvenile Justice Planning)
Judicial Department
Justice Department

(LSB 2094hv, JDD)

FILED MARCH 15, 1999

BY DENNIS PROUTY, FISCAL DIRECTOR

S-3/16/99 Judiciary
S-3/24/99 Amended/Do Pass to S-3/16/99

HOUSE FILE **573**

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 190)

(As Amended and Passed by the House, March 15, 1999)

Re (P. 909) Passed House, Date 3/29/99 Passed Senate, (P. 791) Date 3-25-99
Vote: Ayes 91 Nays 6 Vote: Ayes 42 Nays 5
Approved 4-6-99

A BILL FOR

1 An Act to change the penalties applicable to the possession,
2 manufacture, or delivery of methamphetamine and other
3 controlled substances, relating to the possession or control
4 of adulterated or improperly labeled articles, providing for
5 the reopening of certain sentences, and providing for
6 restrictions on bail.

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

- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20

1 Section 1. Section 13B.4, subsection 1, Code 1999, is
2 amended to read as follows:

3 1. The state public defender shall coordinate the
4 provision of legal representation of all indigents under
5 arrest or charged with a crime, on appeal in criminal cases,
6 and on appeal in proceedings to obtain postconviction relief
7 when ordered to do so by the district court in which the
8 judgment or order was issued, a reopening of a sentence
9 proceeding, and may provide for the representation of
10 indigents in proceedings instituted pursuant to chapter 908.
11 The state public defender shall not engage in the private
12 practice of law.

13 Sec. 2. Section 124.401, subsections 3 and 4, Code 1999,
14 are amended to read as follows:

15 3. ~~It is unlawful for any~~ A person to sell, distribute, or
16 ~~make available~~ who sells, distributes, or makes available any
17 product containing ephedrine any of the following commits a
18 serious misdemeanor, if the person knows that the product may
19 be used to manufacture any controlled substance:

- 20 a. Ephedrine, its salts, optical isomers, salts of optical
21 isomers, or analogs of ephedrine, ~~or pseudoephedrine.~~
- 22 b. Pseudoephedrine, its salts, optical isomers, salts of
23 optical isomers, or analogs of pseudoephedrine, ~~if the person~~
24 ~~knows, or should know, that the product may be used as a~~
25 ~~precursor to any illegal substance or an intermediary to any~~
26 ~~controlled substance.~~
- 27 c. Ethyl ether.
- 28 d. Anhydrous ammonia.
- 29 e. Red phosphorous.
- 30 f. Lithium.
- 31 g. Iodine.
- 32 h. Thionyl chloride.
- 33 i. Chloroform.
- 34 j. Palladium.
- 35 k. Perchloric acid.

1 l. Tetrahydrofuran.

2 m. Ammonium chloride.

3 n. Magnesium sulfate.

4 ~~A-person-who-violates-this-subsection-commits-a-serious~~
5 ~~misdemeanor.~~

6 4. ~~It-is-unlawful-for-any~~ A person to possess who
7 possesses any product containing ephedrine any of the
8 following commits a class "D" felony, if the person possesses
9 with the intent to use the product to manufacture any
10 controlled substance:

11 a. Ephedrine, its salts, optical isomers, salts of optical
12 isomers, or analogs of ephedrine, or pseudoephedrine.

13 b. Pseudoephedrine, its salts, optical isomers, salts of
14 optical isomers, or analogs of pseudoephedrine, with the
15 intent to use the product as a precursor to any illegal
16 substance or an intermediary to any controlled substance.

17 c. Ethyl ether.

18 d. Anhydrous ammonia.

19 e. Red phosphorous.

20 f. Lithium.

21 g. Iodine.

22 h. Thionyl chloride.

23 i. Chloroform.

24 j. Palladium.

25 k. Perchloric acid.

26 l. Tetrahydrofuran.

27 m. Ammonium chloride.

28 n. Magnesium sulfate. ~~A-person-who-violates-this~~
29 ~~subsection-commits-a-class-"D"-felony.~~

30 Sec. 3. Section 124.401, subsection 5, Code 1999, is
31 amended by adding the following new unnumbered paragraphs
32 after unnumbered paragraph 3:

33 NEW UNNUMBERED PARAGRAPH. If a person commits a violation
34 of this subsection, the court shall order the person to serve
35 a term of imprisonment of not less than forty-eight hours.

1 Any sentence imposed may be suspended, and the court shall
2 place the person on probation upon such terms and conditions
3 as the court may impose. If the person is not sentenced to
4 confinement under the custody of the director of the
5 department of corrections, the terms and conditions of
6 probation shall require submission to random drug testing and
7 shall specify that the person's probation officer may transfer
8 the person's placement to any appropriate placement
9 permissible under the court order without further order or
10 hearing.

11 NEW UNNUMBERED PARAGRAPH. If the controlled substance is
12 methamphetamine, its salts, isomers, or salts of its isomers,
13 the court shall order the person to serve a term of
14 imprisonment of not less than forty-eight hours. Any sentence
15 imposed may be suspended, and the court shall place the person
16 on probation upon such terms and conditions as the court may
17 impose. The court may place the person on intensive
18 probation. However, the terms and conditions of probation
19 shall require submission to random drug testing and shall
20 specify that the person's probation officer may assign the
21 person to a community-based correctional facility without
22 further court order for a period of six months or until
23 maximum benefits are achieved, whichever is earlier.

24 Sec. 4. NEW SECTION. 124.401D CONSPIRACY TO MANUFACTURE
25 FOR DELIVERY OR DELIVERY OR INTENT OR CONSPIRACY TO DELIVER
26 METHAMPHETAMINE TO A MINOR.

27 1. It is unlawful for a person eighteen years of age or
28 older to act with, or enter into a common scheme or design
29 with, or conspire with one or more persons to manufacture for
30 delivery to a person under eighteen years of age a material,
31 compound, mixture, preparation, or substance that contains any
32 detectable amount of methamphetamine, its salts, isomers, or
33 salts of its isomers.

34 A violation of this subsection is a felony punishable under
35 section 902.9, subsection 0A. A second or subsequent

1 violation of this subsection is a class "A" felony.

2 2. It is unlawful for a person eighteen years of age or
3 older to deliver, or possess with the intent to deliver to a
4 person under eighteen years of age, a material, compound,
5 mixture, preparation, or substance that contains any
6 detectable amount of methamphetamine, its salts, isomers, or
7 salts of its isomers, or to act with, or enter into a common
8 scheme or design with, or conspire with one or more persons to
9 deliver or possess with the intent to deliver to a person
10 under eighteen years of age a material, compound, mixture,
11 preparation, or substance that contains any detectable amount
12 of methamphetamine, its salts, isomers, or salts of its
13 isomers.

14 A violation of this subsection is a felony punishable under
15 section 902.9, subsection 0A. A second or subsequent
16 violation of this subsection is a class "A" felony.

17 Sec. 5. NEW SECTION. 124.401E CERTAIN PENALTIES FOR
18 MANUFACTURING OR DELIVERY OF METHAMPHETAMINE.

19 1. If a court sentences a person for the person's first
20 conviction for delivery or possession with intent to deliver a
21 controlled substance under section 124.401, subsection 1,
22 paragraph "c", and if the controlled substance is
23 methamphetamine, its salts, isomers, or salts of its isomers,
24 the court may suspend the sentence, and the court may order
25 the person to complete a drug court program if a drug court
26 has been established in the county in which the person is
27 sentenced or order the person to be assigned to a community-
28 based correctional facility for a period of one year or until
29 maximum benefits are achieved, whichever is earlier.

30 2. If a court sentences a person for a conviction of
31 manufacturing of a controlled substance under section 124.401,
32 subsection 1, paragraph "c", and if the controlled substance
33 is methamphetamine, its salts, isomers, or salts of its
34 isomers, the court may suspend the sentence, and the court may
35 order the person to complete a drug court program if a drug

1 court has been established in the county in which the person
2 is sentenced, or order the person to be assigned to a
3 community-based correctional facility for a period of one year
4 or until maximum benefits are achieved, whichever is earlier.

5 3. If a court sentences a person for the person's second
6 or subsequent conviction for delivery or possession with
7 intent to deliver a controlled substance under section
8 124.401, subsection 1, and the controlled substance is
9 methamphetamine, its salts, isomers, or salts of its isomers,
10 the court, in addition to any other authorized penalties,
11 shall sentence the person to imprisonment in accordance with
12 section 124.401, subsection 1, and the person shall serve the
13 minimum period of confinement as required by section 124.413.

14 Sec. 6. NEW SECTION. 124.401F PROHIBITIONS ON TAMPERING
15 WITH, POSSESSING, OR TRANSPORTING ANHYDROUS AMMONIA OR
16 ANHYDROUS AMMONIA EQUIPMENT.

17 1. A person shall not intentionally tamper with anhydrous
18 ammonia equipment. Tampering occurs when a person who is not
19 authorized by the owner of anhydrous ammonia equipment uses
20 the equipment in violation of a provision of this section. A
21 person shall not in any manner or for any purpose sell, fill,
22 refill, deliver, permit to be delivered, or use an anhydrous
23 ammonia container or receptacle, including for the storage of
24 any gas or compound, unless the person owns the container or
25 receptacle or is authorized to do so by the owner. A person
26 shall not possess or transport anhydrous ammonia in a
27 container or receptacle which is not authorized by the
28 secretary of agriculture to hold anhydrous ammonia.

29 2. A person violating this section commits a serious
30 misdemeanor. In addition to the imposition of the serious
31 misdemeanor penalty, a person shall be subject to a civil
32 penalty of not more than one thousand five hundred dollars, if
33 the person does any of the following:

- 34 a. Intentionally tampers with anhydrous ammonia equipment.
35 b. Possesses or transports anhydrous ammonia in a

1 container or receptacle which is not authorized to hold
2 anhydrous ammonia according to rules adopted by the secretary.
3 3. A person tampering with anhydrous ammonia equipment in
4 violation of this section shall not have a cause of action
5 against the owner of the equipment, any person responsible for
6 the installation and maintenance of the equipment, or the
7 person lawfully selling the anhydrous ammonia for damages
8 arising out of the tampering.

9 Sec. 7. Section 189.16, Code 1999, is amended to read as
10 follows:

11 189.16 POSSESSION AND CONTROL OF ADULTERATED AND
12 IMPROPERLY LABELED ARTICLES.

13 1. Any Except as provided in subsection 2, a person having
14 in possession or under having control any of an article which
15 is adulterated or which is improperly labeled according to the
16 provisions of this subtitle, excluding chapters 203, 203A,
17 203C, 203D, 207, and 208, shall be presumed to know its true
18 character and name, and such that the article is adulterated
19 or improperly labeled. A person's possession of an
20 adulterated or improperly labeled article shall be prima facie
21 evidence of having the same in possession with intent that the
22 person intends to violate the provisions of this subtitle,
23 excluding chapters 203, 203A, 203C, 203D, 207, and 208.

24 2. This section does not apply to the possession or
25 control of any of the following:

26 a. Grain by a person regulated under chapter 203, 203A,
27 203C, or 203D.

28 b. Mining materials including coal by a person regulated
29 under chapter 207 or 208.

30 c. A controlled substance as provided in chapter 124.

31 Sec. 8. Section 200.14, subsection 1A, Code 1999, is
32 amended to read as follows:

33 1A. Anhydrous ammonia equipment shall be installed and
34 maintained in a safe operating condition and in conformity
35 with rules adopted by the secretary. ~~A person shall not~~

~~1 intentionally tamper with anhydrous ammonia equipment.
2 Tampering occurs when a person who is not authorized by the
3 owner of anhydrous ammonia equipment uses the equipment in
4 violation of a provision of this chapter, including a rule
5 adopted by the secretary. A person shall not in any manner or
6 for any purpose sell, fill, refill, deliver, permit to be
7 delivered, or use an anhydrous ammonia container or
8 receptacle, including for the storage of any gas or compound,
9 unless the person owns the container or receptacle or is
10 authorized to do so by the owner. A person shall not possess
11 or transport anhydrous ammonia in a container or receptacle
12 which is not authorized by the secretary to hold anhydrous
13 ammonia.~~

14 Sec. 9. Section 200.18, subsection 2, Code 1999, is
15 amended to read as follows:

16 2. A person violating this chapter or rules adopted by the
17 secretary pursuant to this chapter shall be guilty of a simple
18 misdemeanor. ~~In addition to the imposition of the simple
19 misdemeanor penalty, a person violating section 200.14 shall
20 be subject to a civil penalty of not more than one thousand
21 five hundred dollars, if the person does any of the following:~~
22 However, a person who tampers with, possesses, or transports
23 anhydrous ammonia or anhydrous ammonia equipment commits a
24 serious misdemeanor under section 124.401F.

25 ~~a. Intentionally tampers with anhydrous ammonia equipment.~~

26 ~~b. Possesses or transports anhydrous ammonia in a
27 container or receptacle which is not authorized to hold
28 anhydrous ammonia according to rules adopted by the secretary.~~

29 ~~A person tampering with anhydrous ammonia equipment in
30 violation of section 200.14 shall not have a cause of action
31 against the owner of the equipment, any person responsible for
32 the installation and maintenance of the equipment, or the
33 person lawfully selling the anhydrous ammonia for damages
34 arising out of the tampering.~~

35 Sec. 10. Section 811.1, subsections 1 and 2, Code 1999,

1 are amended to read as follows:

2 1. A defendant awaiting judgment of conviction and
3 sentencing following either a plea or verdict of guilty of a
4 class "A" felony, murder, any class "B" felony included in
5 section 707.6A, felonious assault, felonious child
6 endangerment, sexual abuse in the second degree, sexual abuse
7 in the third degree, kidnapping, robbery in the first degree,
8 arson in the first degree, or burglary in the first degree, or
9 any felony included in section 124.401, subsection 1,
10 paragraph "a" or "b", or a second or subsequent offense under
11 section 124.401, subsection 1, paragraph "c", or any felony
12 punishable under section 902.9, subsection 0A.

13 2. A defendant appealing a conviction of a class "A"
14 felony, murder, any class "B" felony included in section
15 707.6A, felonious assault, felonious child endangerment,
16 sexual abuse in the second degree, sexual abuse in the third
17 degree, kidnapping, robbery in the first degree, arson in the
18 first degree, or burglary in the first degree, any felony
19 included in section 124.401, subsection 1, paragraph "a", or a
20 ~~violation of section 124.401, subsection 1, paragraph "b", or~~
21 a second or subsequent conviction under section 124.401,
22 subsection 1, paragraph "c", or any felony punishable under
23 section 902.9, subsection 0A.

24 Sec. 11. Section 811.2, subsection 1, Code 1999, is
25 amended by adding the following new unnumbered paragraph:

26 NEW UNNUMBERED PARAGRAPH. Any bailable defendant who is
27 charged with unlawful possession, manufacture, delivery, or
28 distribution of a controlled substance or other drug under
29 chapter 124 and is ordered released shall be required, as a
30 condition of that release, to submit to a substance abuse
31 evaluation and follow any recommendations proposed in the
32 evaluation for appropriate substance abuse treatment.

33 Sec. 12. Section 901.2, unnumbered paragraph 3, Code 1999,
34 is amended to read as follows:

35 The court shall not order a presentence investigation when

1 the offense is a class "A" felony. If, however, the board of
2 parole determines that the Iowa medical and classification
3 center reception report for a class "A" felon is inadequate,
4 the board may request and shall be provided with additional
5 information from the appropriate judicial district department
6 of correctional services. The court shall order a presentence
7 investigation when the offense is any felony punishable under
8 section 902.9, subsection 0A, or a class "B", class "C", or
9 class "D" felony. A presentence investigation for any felony
10 punishable under section 902.9, subsection 0A, or a class "B",
11 class "C", or class "D" felony shall not be waived. The court
12 may order, with the consent of the defendant, that the
13 presentence investigation begin prior to the acceptance of a
14 plea of guilty, or prior to a verdict of guilty. The court
15 may order a presentence investigation when the offense is an
16 aggravated misdemeanor. The court may order a presentence
17 investigation when the offense is a serious misdemeanor only
18 upon a finding of exceptional circumstances warranting an
19 investigation. Notwithstanding section 901.3, a presentence
20 investigation ordered by the court for a serious misdemeanor
21 shall include information concerning only the following:

22 Sec. 13. NEW SECTION. 901.5A REOPENING OF A SENTENCE.

23 1. A defendant sentenced by the court to the custody of
24 the director of the department of corrections for an offense
25 punishable under section 902.9, subsection 0A, may have the
26 judgment and sentence entered under section 901.5 reopened for
27 resentencing if the following apply:

28 a. The county attorney from the county which prosecuted
29 the defendant files a motion to reopen the sentence of the
30 defendant based upon the defendant's cooperation in the
31 prosecution of other persons.

32 b. The court finds the defendant cooperated in the
33 prosecution of other persons.

34 2. Upon a finding by the court that the defendant
35 cooperated in the prosecution of other persons, the court may

1 reduce the maximum sentence imposed under the original
2 sentencing order.

3 3. For purposes of calculating good conduct time under
4 section 903A.2, the sentencing date for a defendant whose
5 sentence has been reopened under this section shall be the
6 date of the original sentencing order.

7 4. The filing of a motion or the reopening of a sentence
8 under this section shall not constitute grounds to stay any
9 other court proceedings, or to toll or restart the time for
10 filing of any post-trial motion or any appeal.

11 5. The defendant may request appointment of counsel, if
12 eligible under section 815.10, prior to and during any
13 negotiations and proceedings pursuant to this section.

14 Sec. 14. Section 901.10, Code 1999, is amended to read as
15 follows:

16 901.10 IMPOSITION REDUCTION OF MANDATORY-MINIMUM
17 SENTENCES.

18 1. A court sentencing a person for the person's first
19 conviction under section 124.406, 124.413, or 902.7 may, at
20 its discretion, sentence the person to a term less than
21 provided by the statute if mitigating circumstances exist and
22 those circumstances are stated specifically in the record.

23 2. Notwithstanding subsection 1, if the sentence under
24 section 124.413 involves a methamphetamine offense under
25 section 124.401, subsection 1, paragraph "a" or "b", the court
26 shall not grant any reduction of sentence unless the defendant
27 pleads guilty. If the defendant pleads guilty, the court may,
28 at its discretion, reduce the mandatory minimum sentence by up
29 to one-third. If the defendant additionally cooperates in the
30 prosecution of other persons involved in the sale or use of
31 controlled substances, and if the prosecutor requests an
32 additional reduction in defendant's sentence because of such
33 cooperation, the court may grant a further reduction in
34 defendant's mandatory minimum sentence, up to one-half of the
35 remaining mandatory minimum sentence.

1 3. A court sentencing a person for the person's first
2 conviction under section 124.401D may, at its discretion,
3 sentence the person to a term less than the maximum term
4 provided under section 902.9, subsection 0A, if mitigating
5 circumstances exist and those circumstances are stated
6 specifically in the record. However, the court shall not
7 grant any reduction of sentence unless the defendant pleads
8 guilty. If the defendant pleads guilty, the court may, at its
9 discretion, reduce the maximum sentence by up to one-third.
10 If the defendant cooperates in the prosecution of other
11 persons involved in the sale or use of controlled substances,
12 and if the prosecutor requests an additional reduction in the
13 defendant's sentence because of such cooperation, the court
14 may grant a further reduction in the defendant's maximum
15 sentence.

16 3: 4. The state may appeal the discretionary decision on
17 the grounds that the stated mitigating circumstances do not
18 warrant a reduction of the sentence.

19 Sec. 15. Section 902.3, Code 1999, is amended to read as
20 follows:

21 902.3 INDETERMINATE SENTENCE.

22 When a judgment of conviction of a felony other than a
23 class "A" felony is entered against a person, the court, in
24 imposing a sentence of confinement, shall commit the person
25 into the custody of the director of the Iowa department of
26 corrections for an indeterminate term, the maximum length of
27 which shall not exceed the limits as fixed by ~~section-707-3-or~~
28 section 902.9, unless otherwise prescribed by statute, nor
29 shall the term be less than the minimum term imposed by law,
30 if a minimum sentence is provided. However, the court may
31 sentence a person convicted of a class "D" felony for a
32 violation of section 321J.2 to imprisonment for up to one year
33 in a county jail under section 902.9, subsection 4, and the
34 person shall not be under the custody of the director of the
35 Iowa department of corrections.

1 Sec. 16. NEW SECTION. 902.8A MINIMUM SENTENCE FOR
2 CONSPIRING TO MANUFACTURE OR DELIVERY OF METHAMPHETAMINE TO A
3 MINOR.

4 A person who has been convicted for a first violation under
5 section 124.401D shall not be eligible for parole until the
6 person has served a minimum term of confinement of ten years.

7 Sec. 17. Section 902.9, Code 1999, is amended by adding
8 the following new subsection:

9 NEW SUBSECTION. 0A. A felon sentenced for a first
10 conviction for a violation of section 124.401D, shall be
11 confined for no more than ninety-nine years.

12 Sec. 18. Section 903A.5, unnumbered paragraph 1, Code
13 1999, is amended to read as follows:

14 An inmate shall not be discharged from the custody of the
15 director of the Iowa department of corrections until the
16 inmate has served the full term for which the inmate was
17 sentenced, less good conduct time earned and not forfeited,
18 unless the inmate is pardoned or otherwise legally released.
19 Good conduct time earned and not forfeited shall apply to
20 reduce a mandatory minimum sentence being served pursuant to
21 section 124.406, 124.413, 902.7, 902.8, 902.8A, or 902.11. An
22 inmate shall be deemed to be serving the sentence from the day
23 on which the inmate is received into the institution.

24 However, if an inmate was confined to a county jail or other
25 correctional or mental facility at any time prior to
26 sentencing, or after sentencing but prior to the case having
27 been decided on appeal, because of failure to furnish bail or
28 because of being charged with a nonbailable offense, the
29 inmate shall be given credit for the days already served upon
30 the term of the sentence. The sheriff of the county in which
31 the inmate was confined shall certify to the clerk of the
32 district court from which the inmate was sentenced the number
33 of days so served. The clerk of the district court shall
34 forward a copy of the certification of the days served to the
35 warden.

1 Sec. 19. Section 906.5, subsection 1, unnumbered paragraph
2 1, Code 1999, is amended to read as follows:

3 The board shall establish and implement a plan by which the
4 board systematically reviews the status of each person who has
5 been committed to the custody of the director of the Iowa
6 department of corrections and considers the person's prospects
7 for parole or work release. The board at least annually shall
8 review the status of a person other than a class "A" felon, a
9 class "B" felon serving a sentence of more than twenty-five
10 years, or a felon serving an offense punishable under section
11 902.9, subsection 0A, or a felon serving a mandatory minimum
12 sentence other than a class "A" felon, and provide the person
13 with notice of the board's parole or work release decision.

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

SENATE AMENDMENT TO HOUSE FILE 573

H-1259

- 1 Amend House File 573 as amended, passed, and
- 2 reprinted by the House as follows:
- 3 1. Page 1, line 13, by striking the words and
- 4 figures "subsections 3 and 4" and inserting the
- 5 following: "subsection 4".
- 6 2. Page 1, line 14, by striking the words "are
- 7 amended" and inserting the following: "is amended".
- 8 3. By striking page 1, line 15, through page 2,
- 9 line 5.
- 10 4. Page 3, by striking lines 6 through 10, and
- 11 inserting the following: "probation shall require
- 12 submission to random drug testing. If the person
- 13 fails a drug test, the court may transfer the person's
- 14 placement to any appropriate placement permissible
- 15 under the court order."
- 16 5. Page 3, by striking lines 19 through 23, and
- 17 inserting the following: "shall require submission to
- 18 random drug testing. If the person fails a drug test,
- 19 the court may transfer the person's placement to any
- 20 appropriate placement permissible under the court
- 21 order."
- 22 6. By renumbering, relettering, or redesignating
- 23 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-1259 FILED MARCH 25, 1999

*3/29/99 House Concurred
p. 908*

HOUSE FILE 573

H-1065

- 1 Amend House File 573 as follows:
 - 2 1. Page 5, line 28, by inserting after the word
 - 3 "secretary" the following: "of agriculture".
- By BAUDLER of Adair

H-1065 FILED MARCH 9, 1999

*Adopted
3/15/99 (p. 667)*

HOUSE FILE 573

S-3145

- 1 Amend House File 573 as amended, passed, and
2 reprinted by the House as follows:
3 1. Page 1, line 13, by striking the words and
4 figures "subsections 3 and 4" and inserting the
5 following: "subsection 4".
6 2. Page 1, line 14, by striking the words "are
7 amended" and inserting the following: "is amended".
8 3. By striking page 1, line 15, through page 2,
9 line 5.
10 4. Page 3, by striking lines 6 through 10, and
11 inserting the following: "probation shall require
12 submission to random drug testing. If the person
13 fails a drug test, the court may transfer the person's
14 placement to any appropriate placement permissible
15 under the court order."
16 5. Page 3, by striking lines 19 through 23, and
17 inserting the following: "shall require submission to
18 random drug testing. If the person fails a drug test,
19 the court may transfer the person's placement to any
20 appropriate placement permissible under the court
21 order."
22 6. By renumbering, relettering, or redesignating
23 and correcting internal references as necessary.

By COMMITTEE ON JUDICIARY
ANDY McKEAN, Chairperson

S-3145 FILED MARCH 24, 1999

*adopted**3/25/99**(p. 791)*

AN ACT

TO CHANGE THE PENALTIES APPLICABLE TO THE POSSESSION, MANUFACTURE, OR DELIVERY OF METHAMPHETAMINE AND OTHER CONTROLLED SUBSTANCES, RELATING TO THE POSSESSION OR CONTROL OF ADULTERATED OR IMPROPERLY LABELED ARTICLES, PROVIDING FOR THE REOPENING OF CERTAIN SENTENCES, AND PROVIDING FOR RESTRICTIONS ON BAIL.

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

Section 1. Section 13B.4, subsection 1, Code 1999, is amended to read as follows:

1. The state public defender shall coordinate the provision of legal representation of all indigents under arrest or charged with a crime, on appeal in criminal cases, and on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, a reopening of a sentence proceeding, and may provide for the representation of indigents in proceedings instituted pursuant to chapter 908. The state public defender shall not engage in the private practice of law.

Sec. 2. Section 124.401, subsection 4, Code 1999, is amended to read as follows:

4. It is unlawful for any A person to possess who possesses any product containing ephedrine any of the following commits a class "D" felony, if the person possesses with the intent to use the product to manufacture any controlled substance:

a. Ephedrine, its salts, optical isomers, salts of optical isomers, or analogs of ephedrine, ~~or pseudoephedrine.~~

b. Pseudoephedrine, its salts, optical isomers, salts of optical isomers, or analogs of pseudoephedrine, ~~with the intent to use the product as a precursor to any illegal substance or an intermediary to any controlled substance.~~

c. Ethyl ether.

d. Anhydrous ammonia.

e. Red phosphorous.

f. Lithium.

g. Iodine.

h. Thionyl chloride.

i. Chloroform.

j. Palladium.

k. Perchloric acid.

l. Tetrahydrofuran.

m. Ammonium chloride.

n. Magnesium sulfate. ~~A person who violates this subsection commits a class "B" felony.~~

Sec. 3. Section 124.401, subsection 5, Code 1999, is amended by adding the following new unnumbered paragraphs after unnumbered paragraph 3:

NEW UNNUMBERED PARAGRAPH. If a person commits a violation of this subsection, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. If the person is not sentenced to confinement under the custody of the director of the department of corrections, the terms and conditions of probation shall require submission to random drug testing. If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.

NEW UNNUMBERED PARAGRAPH. If the controlled substance is methamphetamine, its salts, isomers, or salts of its isomers, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. The court may place the person on intensive probation. However, the terms and conditions of probation shall require submission to random drug testing. If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.

Sec. 4. NEW SECTION. 124.401D CONSPIRACY TO MANUFACTURE FOR DELIVERY OR DELIVERY OR INTENT OR CONSPIRACY TO DELIVER METHAMPHETAMINE TO A MINOR.

1. It is unlawful for a person eighteen years of age or older to act with, or enter into a common scheme or design with, or conspire with one or more persons to manufacture for delivery to a person under eighteen years of age a material, compound, mixture, preparation, or substance that contains any detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

A violation of this subsection is a felony punishable under section 902.9, subsection 0A. A second or subsequent violation of this subsection is a class "A" felony.

2. It is unlawful for a person eighteen years of age or older to deliver, or possess with the intent to deliver to a person under eighteen years of age, a material, compound, mixture, preparation, or substance that contains any detectable amount of methamphetamine, its salts, isomers, or salts of its isomers, or to act with, or enter into a common scheme or design with, or conspire with one or more persons to deliver or possess with the intent to deliver to a person under eighteen years of age a material, compound, mixture, preparation, or substance that contains any detectable amount

of methamphetamine, its salts, isomers, or salts of its isomers.

A violation of this subsection is a felony punishable under section 902.9, subsection 0A. A second or subsequent violation of this subsection is a class "A" felony.

Sec. 5. NEW SECTION. 124.401E CERTAIN PENALTIES FOR MANUFACTURING OR DELIVERY OF METHAMPHETAMINE.

1. If a court sentences a person for the person's first conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, paragraph "c", and if the controlled substance is methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

2. If a court sentences a person for a conviction of manufacturing of a controlled substance under section 124.401, subsection 1, paragraph "c", and if the controlled substance is methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced, or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

3. If a court sentences a person for the person's second or subsequent conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, and the controlled substance is methamphetamine, its salts, isomers, or salts of its isomers, the court, in addition to any other authorized penalties, shall sentence the person to imprisonment in accordance with

section 124.401, subsection 1, and the person shall serve the minimum period of confinement as required by section 124.413.

Sec. 6. NEW SECTION. 124.401F PROHIBITIONS ON TAMPERING WITH, POSSESSING, OR TRANSPORTING ANHYDROUS AMMONIA OR ANHYDROUS AMMONIA EQUIPMENT.

1. A person shall not intentionally tamper with anhydrous ammonia equipment. Tampering occurs when a person who is not authorized by the owner of anhydrous ammonia equipment uses the equipment in violation of a provision of this section. A person shall not in any manner or for any purpose sell, fill, refill, deliver, permit to be delivered, or use an anhydrous ammonia container or receptacle, including for the storage of any gas or compound, unless the person owns the container or receptacle or is authorized to do so by the owner. A person shall not possess or transport anhydrous ammonia in a container or receptacle which is not authorized by the secretary to hold anhydrous ammonia.

2. A person violating this section commits a serious misdemeanor. In addition to the imposition of the serious misdemeanor penalty, a person shall be subject to a civil penalty of not more than one thousand five hundred dollars, if the person does any of the following:

- a. Intentionally tampers with anhydrous ammonia equipment.
- b. Possesses or transports anhydrous ammonia in a container or receptacle which is not authorized to hold anhydrous ammonia according to rules adopted by the secretary.

3. A person tampering with anhydrous ammonia equipment in violation of this section shall not have a cause of action against the owner of the equipment, any person responsible for the installation and maintenance of the equipment, or the person lawfully selling the anhydrous ammonia for damages arising out of the tampering.

Sec. 7. Section 189.16, Code 1999, is amended to read as follows:

189.16 POSSESSION AND CONTROL OF ADULTERATED AND IMPROPERLY LABELED ARTICLES.

1. Any Except as provided in subsection 2, a person having in possession or under having control any of an article which is adulterated or which is improperly labeled according to the provisions of this subtitle, excluding chapters 203, 203A, 203E, 203B, 207, and 208, shall be presumed to know its true character and name, and such that the article is adulterated or improperly labeled. A person's possession of an adulterated or improperly labeled article shall be prima facie evidence of having the same in possession with intent that the person intends to violate the provisions of this subtitle, excluding chapters 203, 203A, 203E, 203B, 207, and 208.

2. This section does not apply to the possession or control of any of the following:

- a. Grain by a person regulated under chapter 203, 203A, 203C, or 203D.
- b. Mining materials including coal by a person regulated under chapter 207 or 208.
- c. A controlled substance as provided in chapter 124.

Sec. 8. Section 200.14, subsection 1A, Code 1999, is amended to read as follows:

1A. Anhydrous ammonia equipment shall be installed and maintained in a safe operating condition and in conformity with rules adopted by the secretary. ~~A person shall not intentionally tamper with anhydrous ammonia equipment. Tampering occurs when a person who is not authorized by the owner of anhydrous ammonia equipment uses the equipment in violation of a provision of this chapter, including a rule adopted by the secretary. A person shall not in any manner or for any purpose sell, fill, refill, deliver, permit to be delivered, or use an anhydrous ammonia container or receptacle, including for the storage of any gas or compound, unless the person owns the container or receptacle or is authorized to do so by the owner. A person shall not possess~~

~~transport anhydrous ammonia in a container or receptacle which is not authorized by the secretary to hold anhydrous ammonia.~~

Sec. 9. Section 200.18, subsection 2, Code 1999, is amended to read as follows:

2. A person violating this chapter or rules adopted by the secretary pursuant to this chapter shall be guilty of a simple misdemeanor. ~~In addition to the imposition of the simple misdemeanor penalty, a person violating section 200.14 shall be subject to a civil penalty of not more than one thousand five hundred dollars, if the person does any of the following:~~ However, a person who tampers with, possesses, or transports anhydrous ammonia or anhydrous ammonia equipment commits a serious misdemeanor under section 124.401F.

~~a. Intentionally tampers with anhydrous ammonia equipment.~~
~~b. Possesses or transports anhydrous ammonia in a container or receptacle which is not adopted by the secretary.~~
~~c. A person tampering with anhydrous ammonia equipment in violation of section 200.14 shall not have a cause of action against the owner of the equipment, any person responsible for the installation and maintenance of the equipment, or the person lawfully selling the anhydrous ammonia for damages arising out of the tampering.~~

Sec. 10. Section 811.1, subsections 1 and 2, Code 1999, are amended to read as follows:

1. A defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of a class "A" felony, murder, any class "B" felony included in section 707.6A, felonious assault, felonious child endangerment, sexual abuse in the second degree, sexual abuse in the third degree, kidnapping, robbery in the first degree, arson in the first degree, or burglary in the first degree, or any felony included in section 124.401, subsection 1, paragraph "a" or "b", or a second or subsequent offense under

section 124.401, subsection 1, paragraph "c", or any felony punishable under section 902.9, subsection 0A.

2. A defendant appealing a conviction of a class "A" felony, murder, any class "B" felony included in section 707.6A, felonious assault, felonious child endangerment, sexual abuse in the second degree, sexual abuse in the third degree, kidnapping, robbery in the first degree, arson in the first degree, or burglary in the first degree, any felony included in section 124.401, subsection 1, paragraph "a", or a violation of section 124.401, subsection 1, paragraph "b", or a second or subsequent conviction under section 124.401, subsection 1, paragraph "c", or any felony punishable under section 902.9, subsection 0A.

Sec. 11. Section 811.2, subsection 1, Code 1999, is amended by adding the following new unnumbered paragraph:

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

Sec. 12. Section 901.2, unnumbered paragraph 3, Code 1999, is amended to read as follows:

The court shall not order a presentence investigation when the offense is a class "A" felony. If, however, the board of parole determines that the Iowa medical and classification center reception report for a class "A" felon is inadequate, the board may request and shall be provided with additional information from the appropriate judicial district department of correctional services. The court shall order a presentence investigation when the offense is any felony punishable under section 902.9, subsection 0A, or a class "B", class "C", or class "D" felony. A presentence investigation for any felony punishable under section 902.9, subsection 0A, or a class "B",

class "C", or class "D" felony shall not be waived. The court may order, with the consent of the defendant, that the presentence investigation begin prior to the acceptance of a plea of guilty, or prior to a verdict of guilty. The court may order a presentence investigation when the offense is an aggravated misdemeanor. The court may order a presentence investigation when the offense is a serious misdemeanor only upon a finding of exceptional circumstances warranting an investigation. Notwithstanding section 901.3, a presentence investigation ordered by the court for a serious misdemeanor shall include information concerning only the following:

Sec. 13. NEW SECTION. 901.5A REOPENING OF A SENTENCE.

1. A defendant sentenced by the court to the custody of the director of the department of corrections for an offense punishable under section 902.9, subsection 0A, may have the judgment and sentence entered under section 901.5 reopened for resentencing if the following apply:

a. The county attorney from the county which prosecuted the defendant files a motion to reopen the sentence of the defendant based upon the defendant's cooperation in the prosecution of other persons.

b. The court finds the defendant cooperated in the prosecution of other persons.

2. Upon a finding by the court that the defendant cooperated in the prosecution of other persons, the court may reduce the maximum sentence imposed under the original sentencing order.

3. For purposes of calculating good conduct time under section 903A.2, the sentencing date for a defendant whose sentence has been reopened under this section shall be the date of the original sentencing order.

4. The filing of a motion or the reopening of a sentence under this section shall not constitute grounds to stay any other court proceedings, or to toll or restart the time for filing of any post-trial motion or any appeal.

5. The defendant may request appointment of counsel, if eligible under section 815.10, prior to and during any negotiations and proceedings pursuant to this section.

Sec. 14. Section 901.10, Code 1999, is amended to read as follows:

901.10 IMPOSITION REDUCTION OF MANDATORY-MINIMUM SENTENCES.

1. A court sentencing a person for the person's first conviction under section 124.406, 124.413, or 902.7 may, at its discretion, sentence the person to a term less than provided by the statute if mitigating circumstances exist and those circumstances are stated specifically in the record.

2. Notwithstanding subsection 1, if the sentence under section 124.413 involves a methamphetamine offense under section 124.401, subsection 1, paragraph "a" or "b", the court shall not grant any reduction of sentence unless the defendant pleads guilty. If the defendant pleads guilty, the court may, at its discretion, reduce the mandatory minimum sentence by up to one-third. If the defendant additionally cooperates in the prosecution of other persons involved in the sale or use of controlled substances, and if the prosecutor requests an additional reduction in defendant's sentence because of such cooperation, the court may grant a further reduction in defendant's mandatory minimum sentence, up to one-half of the remaining mandatory minimum sentence.

3. A court sentencing a person for the person's first conviction under section 124.401D may, at its discretion, sentence the person to a term less than the maximum term provided under section 902.9, subsection 0A, if mitigating circumstances exist and those circumstances are stated specifically in the record. However, the court shall not grant any reduction of sentence unless the defendant pleads guilty. If the defendant pleads guilty, the court may, at its discretion, reduce the maximum sentence by up to one-third. If the defendant cooperates in the prosecution of other

persons involved in the sale or use of controlled substances, and if the prosecutor requests an additional reduction in the defendant's sentence because of such cooperation, the court may grant a further reduction in the defendant's maximum sentence.

3- 4. The state may appeal the discretionary decision on the grounds that the stated mitigating circumstances do not warrant a reduction of the sentence.

Sec. 15. Section 902.3, Code 1999, is amended to read as follows:

902.3 INDETERMINATE SENTENCE.

When a judgment of conviction of a felony other than a class "A" felony is entered against a person, the court, in imposing a sentence of confinement, shall commit the person into the custody of the director of the Iowa department of corrections for an indeterminate term, the maximum length of which shall not exceed the limits as fixed by ~~section 907.3~~ or section 902.9, unless otherwise prescribed by statute, nor shall the term be less than the minimum term imposed by law, if a minimum sentence is provided. However, the court may sentence a person convicted of a class "D" felony for a violation of section 321J.2 to imprisonment for up to one year in a county jail under section 902.9, subsection 4, and the person shall not be under the custody of the director of the Iowa department of corrections.

Sec. 16. NEW SECTION. 902.8A MINIMUM SENTENCE FOR CONSPIRING TO MANUFACTURE OR DELIVERY OF METHAMPHETAMINE TO A MINOR.

A person who has been convicted for a first violation under section 124.401D shall not be eligible for parole until the person has served a minimum term of confinement of ten years.

Sec. 17. Section 902.9, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 0A. A felon sentenced for a first conviction for a violation of section 124.401D, shall be confined for no more than ninety-nine years.

Sec. 18. Section 903A.5, unnumbered paragraph 1, Code 1999, is amended to read as follows:

An inmate shall not be discharged from the custody of the director of the Iowa department of corrections until the inmate has served the full term for which the inmate was sentenced, less good conduct time earned and not forfeited, unless the inmate is pardoned or otherwise legally released. Good conduct time earned and not forfeited shall apply to reduce a mandatory minimum sentence being served pursuant to section 124.406, 124.413, 902.7, 902.8, 902.8A, or 902.11. An inmate shall be deemed to be serving the sentence from the day on which the inmate is received into the institution. However, if an inmate was confined to a county jail or other correctional or mental facility at any time prior to sentencing, or after sentencing but prior to the case having been decided on appeal, because of failure to furnish bail or because of being charged with a nonbailable offense, the inmate shall be given credit for the days already served upon the term of the sentence. The sheriff of the county in which the inmate was confined shall certify to the clerk of the district court from which the inmate was sentenced the number of days so served. The clerk of the district court shall forward a copy of the certification of the days served to the warden.

Sec. 19. Section 906.5, subsection 1, unnumbered paragraph 1, Code 1999, is amended to read as follows:

The board shall establish and implement a plan by which the board systematically reviews the status of each person who has been committed to the custody of the director of the Iowa department of corrections and considers the person's prospects for parole or work release. The board at least annually shall review the status of a person other than a class "A" felon, a class "B" felon serving a sentence of more than twenty-five years, or a felon serving an offense punishable under section 902.9, subsection 0A, or a felon serving a mandatory minimum

House File 573, p. 13

sentence other than a class "A" felon, and provide the person with notice of the board's parole or work release decision.

RON J. CORBETT
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 573, Seventy-eighth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved *April 6*, 1999

THOMAS J. VILSACK
Governor