

House Study Bill 217

Bill Text

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1 1 Section 1. Section [321J.2](#), subsection 2, paragraph c, Code
1 2 2001, is amended to read as follows:

1 3 c. A class "D" felony for a third offense and each
1 4 subsequent offense, and shall be imprisoned in the county jail
1 5 for a determinate sentence of not more than one year but not
1 6 less than thirty days, or committed to the custody of the
1 7 director of the department of corrections for not more than
1 8 five years but not less than thirty days, and assessed a fine
1 9 of not less than two thousand five hundred dollars nor more
1 10 than seven thousand five hundred dollars. A person convicted
1 11 of a third or subsequent offense may be committed to the
1 12 custody of the director of the department of corrections, who
1 13 shall assign the person to a facility pursuant to section
1 14 904.513 or the offender may be committed to treatment in the
1 15 community under the provisions of section 907.6.

1 16 Sec. 2. Section [321J.2](#), subsection 3, paragraph a,
1 17 unnumbered paragraph 1, Code 2001, is amended to read as
1 18 follows:
1 19

~~Notwithstanding~~

~~In accordance with~~ the provisions of
1 20 sections 901.5 and 907.3, the court shall not

~~defer judgment~~

1 21

~~or sentencing, or~~

~~suspend execution of any mandatory minimum~~
1 22 sentence of incarceration applicable to the defendant under
1 23 subsection 2

~~, and~~

~~;~~ furthermore, the court shall not defer
1 24 judgment or sentencing and shall not suspend execution of any
1 25 other part of a sentence not involving incarceration imposed
1 26 pursuant to subsection 2, if any of the following apply:

1 27

EXPLANATION

1 28 This bill addresses an issue raised in the case of State v.
1 29 Iowa District Court for Mahaska County, 620 N.W.2d 271 (Iowa
1 30 2000). The court in Mahaska County held that Code section
1 31 321J.2, subsection 2, paragraph "c", requires a mandatory
1 32 period of incarceration for a third or subsequent operating
1 33 while intoxicated (OWI) offense only for sentences of
1 34 imprisonment in the county jail and not for sentences of
1 35 commitment to the department of corrections.

2 1 The bill amends Code section 321J.2 to provide that persons
2 2 sentenced to commitment to the custody of the director of the
2 3 department of corrections for a third or subsequent OWI
2 4 offense shall be so committed for but not more than five years
2 5 but not less than 30 days. The bill also amends Code section
2 6 321J.2 to provide that the provisions regarding deferred
2 7 judgments and sentences and suspension of execution of
2 8 sentences for OWI offenses in Code section 321J.2 are
2 9 otherwise in accordance with provisions in Code sections 901.5

2 10 and 907.3.
2 11 LSB 3282HC 79
2 12 nh/pj/5