

MAR 2 2004

JUDICIARY

HOUSE FILE 2411

BY PAULSEN

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act defining the term "possession" for purposes of a criminal  
2 case.

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

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1 Section 1. Section 124.101, Code 2003, is amended by  
2 adding the following new subsection:

3 NEW SUBSECTION. 22A. "Possess" or "possession" means as  
4 defined in section 702.13A.

5 Sec. 2. Section 124A.2, Code 2003, is amended by adding  
6 the following new subsection:

7 NEW SUBSECTION. 5. "Possess" means the same as defined in  
8 section 702.13A.

9 Sec. 3. NEW SECTION. 702.13A POSSESSION.

10 "Possess" or "possession" means having knowledge of the  
11 presence and nature of an object or substance and having  
12 either actual or constructive possession of the object or  
13 substance. Possession may be sole or joint. A person may be  
14 in possession of an object or substance without having a  
15 proprietary interest in the object or substance or a right to  
16 possess the object or substance.

17 1. A person has "actual possession" when a person has  
18 direct physical control of an object or substance on the  
19 person or within reach and convenient control.

20 2. A person has "constructive possession" when a person is  
21 not in actual possession, but has knowledge of the presence  
22 and nature of an object or substance and has the power and  
23 intent to exercise control over the object or substance,  
24 either directly or through another person. Constructive  
25 possession may be inferred, and no further proof of knowledge  
26 or intent is required, when an object or substance is found in  
27 a place exclusively accessible to the person. When a person  
28 does not have exclusive access to the place where the object  
29 or substance is found, a trier of fact may determine a  
30 person's knowledge and intent from the totality of the  
31 circumstances, including the person's proximity to the object  
32 or substance, the person's access to the area where it is  
33 found, whether it is in plain view, any incriminating  
34 statements or actions by the person, whether the object or  
35 substance is found in or near the person's belongings, and any

1 other relevant circumstances. In the context of possession of  
2 controlled substances, a trier of fact may also consider the  
3 person's possession of drug paraphernalia and evidence of  
4 recent drug use by the person and any other relevant  
5 circumstances.

6 EXPLANATION

7 This bill defines the term "possess" or "possession" for  
8 purposes of a criminal case to mean having knowledge of the  
9 presence and nature of an object or substance and having  
10 either actual or constructive possession of the object or  
11 substance. Possession may be sole or joint. Under the bill,  
12 a person may be in possession of an object or substance  
13 without having a proprietary interest in the object or  
14 substance or a right to possess the object or substance.

15 The bill defines "actual possession" to mean when a person  
16 has direct physical control of an object or substance on the  
17 person or within reach and convenient control of the person.

18 The bill defines "constructive possession" to mean when a  
19 person is not in actual possession, but has knowledge of the  
20 presence and nature of an object or substance and has the  
21 power and intent to exercise control over the object or  
22 substance, either directly or through another person.  
23 Constructive possession may be inferred, and no further proof  
24 of knowledge or intent is required, when an object or  
25 substance is found in a place exclusively accessible to the  
26 person. The bill provides that when a person does not have  
27 exclusive access to the place where the object or substance is  
28 found, a trier of fact may determine a person's knowledge and  
29 intent from the totality of the circumstances, including the  
30 person's proximity to the object or substance, the person's  
31 access to the area where it is found, whether it is in plain  
32 view, any incriminating statements or actions by the person,  
33 whether the object or substance is found in or near the  
34 person's belongings, and any other relevant circumstances. In  
35 the context of possession of controlled substances, a trier of

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1 fact may also consider the person's possession of drug  
2 paraphernalia and evidence of recent drug use by the person  
3 and any other relevant circumstances.

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