

MAR 15 2005  
Place On Calendar

HOUSE FILE 778  
BY COMMITTEE ON PUBLIC SAFETY

(SUCCESSOR TO HSB 46)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act expanding the criminal offense of possessing contraband in  
2 correctional institutions to include possessing contraband in  
3 a secure facility for the detention or custody of juveniles, a  
4 detention facility, or a jail, and providing a penalty.

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

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HE-778

1 Section 1. Section 719.7, Code 2005, is amended to read as  
2 follows:

3 719.7 POSSESSING CONTRABAND.

4 1. "Contraband" includes but is not limited to any of the  
5 following:

6 a. A controlled substance or a simulated or counterfeit  
7 controlled substance, hypodermic syringe, or intoxicating  
8 beverage.

9 b. A dangerous weapon, offensive weapon, pneumatic gun,  
10 stun gun, firearm ammunition, knife of any length or any other  
11 cutting device, explosive or incendiary material, instrument,  
12 device, or other material fashioned in such a manner as to be  
13 capable of inflicting death or injury.

14 c. Rope, ladder components, key or key pattern, metal  
15 file, instrument, device, or other material designed or  
16 intended to facilitate escape of an inmate.

17 2. The sheriff may x-ray a person committed to the jail,  
18 or the department of corrections may x-ray a person under the  
19 control of the department, if there is reason to believe that  
20 the person is in possession of contraband. A licensed  
21 physician or x-ray technician under the supervision of a  
22 licensed physician must x-ray the person.

23 3. A person commits the offense of possessing contraband  
24 if the person, not authorized by law, does any of the  
25 following:

26 a. Knowingly introduces contraband into, or onto, the  
27 grounds of a secure facility for the detention or custody of  
28 juveniles, detention facility, jail, correctional institution,  
29 or institution under the management of the department of  
30 corrections.

31 b. Knowingly conveys contraband to any person confined in  
32 a secure facility for the detention or custody of juveniles,  
33 detention facility, jail, correctional institution, or  
34 institution under the management of the department of  
35 corrections.

1 c. Knowingly makes, obtains, or possesses contraband while  
2 confined in a secure facility for the detention or custody of  
3 juveniles, detention facility, jail, correctional institution,  
4 or institution under the management of the department of  
5 corrections, or while being transported or moved incidental to  
6 confinement.

7 4. A person who possesses contraband or fails to report an  
8 offense of possessing contraband commits the following:

9 a. A class "C" felony for the possession of contraband if  
10 the contraband is of the type described in subsection 1,  
11 paragraph "b".

12 b. A class "D" felony for the possession of contraband if  
13 the contraband is any other type of contraband.

14 c. An aggravated misdemeanor for failing to report a known  
15 violation or attempted violation of this section to an  
16 official or officer at a secure facility for the detention or  
17 custody of juveniles, detention facility, jail, correctional  
18 institution, or institution under the management of the  
19 department of corrections.

20 5. Nothing in this section is intended to limit the  
21 authority of the administrator of any secure facility for the  
22 detention or custody of juveniles, detention facility, jail,  
23 correctional institution, or institution under the management  
24 of the department of corrections to prescribe or enforce rules  
25 concerning the definition of contraband, and the  
26 transportation, making, or possession of substances, devices,  
27 instruments, materials, or other items ~~in-the-institutions~~.

28 Sec. 2. Section 911.3, subsection 1, paragraph b, Code  
29 2005, is amended to read as follows:

30 b. Section 719.7, 719.8, 725.1, 725.2, or 725.3.

31 EXPLANATION

32 This bill expands the definition of the criminal offense of  
33 possessing contraband in correctional institutions to include  
34 possessing such contraband in a secure facility for the  
35 detention or custody of juveniles, a detention facility, or a

1 jail.

2 Contraband is defined to include controlled substances,  
3 intoxicating beverages, weapons, explosives, knives, or other  
4 cutting devices, or other items that may be fashioned to cause  
5 death or injury, or items that may be used to facilitate an  
6 escape.

7 Possessing contraband under the bill and in current law is  
8 committed when a person without legal authorization to do so  
9 attempts to bring contraband into, or makes or possesses  
10 contraband within, a correctional institution, secure facility  
11 for the detention or custody of juveniles, detention facility,  
12 or jail. If the contraband is a weapon or other item which  
13 may be fashioned to cause death or injury, the person commits  
14 a class "C" felony. Any other contraband offense subjects the  
15 person to a class "D" felony.

16 The bill requires a person to report the offense of  
17 possessing contraband or any attempt of possessing such  
18 contraband to an official or officer at a secure facility for  
19 the detention or custody of juveniles, detention facility, or  
20 jail. Current law requires the same reporting requirement at  
21 correctional institutions. Failure to report is an aggravated  
22 misdemeanor.

23 The bill also authorizes the sheriff to x-ray a person  
24 committed to the jail to determine if the person possesses  
25 contraband. Current law authorizes the department of  
26 corrections to x-ray a person under the control of the  
27 department.

28 The bill provides that a law enforcement initiative  
29 surcharge in the amount of \$125 shall also be assessed upon a  
30 conviction or deferred judgment for possessing contraband  
31 under Code section 719.7. The surcharge is deposited in the  
32 general fund of the state.

33 A class "C" felony is punishable by confinement for no more  
34 than 10 years and a fine of at least \$1,000 but not more than  
35 \$10,000. A class "D" felony is punishable by confinement for

1 no more than five years and a fine of at least \$750 but not  
2 more than \$7,500. An aggravated misdemeanor is punishable by  
3 confinement for no more than two years and a fine of at least  
4 \$500 but not more than \$5,000.

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**Fiscal Services Division**  
**Legislative Services Agency**  
**Fiscal Note**

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HF 778 - Jail Contraband (LSB 1067 HV)

Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)

Fiscal Note Version – New

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**Description**

House File 778 expands the definition of the criminal offense of possessing contraband in correctional institutions to include possessing such contraband in a secure facility for the detention or custody of juveniles, a detention facility, or a jail. The Bill also imposes the \$125.00 law enforcement initiative surcharge on offenders convicted of possessing contraband.

**Factual Background**

1. In FY 2004, there were 33 charges for possession of contraband (Class D felony) and one failure to report the possession of contraband (aggravated misdemeanor). The conviction rate was 50.0%.
2. There are 97 jails operating in Iowa, 10 juvenile detention facilities, and 15 city holding facilities that would be covered under HF 778.
3. The State's cost for one new Class D felony conviction ranges from \$2,800 to \$12,000. This amount includes court costs, indigent defense, and supervision in the State corrections system, if applicable.
4. The prison incarceration rate for a Class D felony conviction is 42.3% for public order offenses. The average length of stay in prison is 13.0 months.
5. The jail incarceration rate for an aggravated misdemeanor conviction is 56.0% for public order offenses.
6. The marginal cost for county jail operations is approximately \$15.00 per day.
7. The collection rate for the law enforcement initiative surcharge is 20.5%. Receipts generated by the surcharge are deposited into the State General Fund.

**Assumptions**

1. The law will become effective July 1, 2005. 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.
2. Juveniles who possess contraband will not be waived to adult court.
3. If each facility had a minimum of one charge per year, with a 50.0% conviction rate, there will be 60 new Class D felony convictions per year under HF 778. Using current incarceration rates, 26 of these offenders would be sentenced to prison while 34 offenders would be sentenced to probation.
4. The jail incarceration rate for a Class D felony conviction may be similar to the jail incarceration rate for an aggravated misdemeanor conviction.

**Correctional Impact**

During FY 2006, there will be 30 new Class D felony convictions under HF 778. Of these, 13 offenders will be sentenced to prison while 17 offenders will receive probation. During FY 2007, there will be 60 new Class D felony convictions. Of these, 26 offenders will be sent to prison and 34 will be placed on probation.

The prison population will increase by 13 offenders in FY 2006, 28 offenders in FY 2007, and 29 offenders by FY 2010.

Of the 34 offenders annually sentenced to probation, 19 may be held in county jails for approximately 28 days each.

## **Fiscal Impact**

The estimated fiscal impact of HF 778 to the State General Fund is an increase in expenditures of approximately \$88,000 in FY 2006. The estimated fiscal impact in FY 2007 is approximately \$298,000.

The cost increase is significantly higher in the second year due to the average length of stay on supervision. New offenders will be placed on supervision, either prison or probation, while offenders from the previous year remain on supervision.

If 19 offenders annually are held in county jails for 28 days each, the increase in county jails is anticipated to be approximately \$8,000.

The above estimates are based upon one charge per year, per facility. Charging practices depend upon the county sheriffs and attorneys. If some facilities deal with more than one contraband incident per year, the correctional and fiscal impact will be greater than indicated in this fiscal note. If some facilities deal with less than one contraband incident per year, the correctional and fiscal impact will be less than indicated in this fiscal note.

The new revenue generated by imposing the law enforcement surcharge on contraband offenses is estimated to be no more than \$2,000 annually.

## **Sources**

Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Department of Corrections  
Office of the State Public Defender  
Judicial Branch

/s/ Holly M. Lyons

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March 16, 2005

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

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McCarthy, chair  
Tjepkos  
Lyham

0778

HSB 46

PUBLIC SAFETY

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED ATTORNEY GENERAL BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
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THOMAS J. MILLER  
ATTORNEY GENERAL

## Department of Justice

ADDRESS REPLY TO:  
HOOVER BUILDING  
DES MOINES, IOWA 50319  
TELEPHONE: 515/281-5164  
FACSIMILE: 515/281-4209

### MEMORANDUM

TO: Members of the General Assembly  
FROM: Brian Meyer, Legislative Liaison  
DATE: December 15, 2004  
SUBJECT: Possession of Contraband in Secured Facilities

**Overview** This proposal would expand the criminal offense of possessing contraband in correctional institutions to include possessing contraband in a jail or a secure facility for the detention or custody of juveniles. The Iowa State Sheriffs and Deputies Association supports this bill. It passed the Senate in 2004, 49-0.

**Present law** Current law provides that it is a crime to introduce contraband into jails or juvenile detention facilities, but not to possess the contraband.

**State v. Mitchell** (Iowa Supreme Court Case) concluded that county jails in which contraband was possessed was a "detention facility" and not a "correctional institution" and therefore the defendant's guilty plea to the offense of possessing contraband in a "correctional institution" lacked a factual basis. As a result, the defendant was entitled to have his conviction vacated and the charge dismissed.

Possession and use of contraband items within jails or juvenile detention facilities poses a serious security and safety threat.

Contraband is defined as items such as knives, razors, intoxicants, or other items that may be fashioned to cause death or injury, or items that may be used to facilitate an escape.

### **Proposed change**

This proposal would expand the criminal offense of possessing contraband in correctional institutions to include possessing contraband in a jail or a secure facility for the detention or custody of juveniles.