

# Senate Study Bill 1203

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON KREIMAN)

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

## A BILL FOR

1 An Act relating to criminal law by making changes to existing  
2 criminal offenses, adding new criminal offenses, relating to  
3 deferred judgments and expunged records, and making penalties  
4 applicable.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
6 TLSB 1462SC 83  
7 jm/nh/5

PAG LIN

1 1 Section 1. Section 123.46, Code 2009, is amended to read  
1 2 as follows:  
1 3 123.46 CONSUMPTION OR INTOXICATION IN PUBLIC PLACES ==  
1 4 NOTIFICATIONS == CHEMICAL TESTS == ~~EXONERATION~~ EXPUNGED  
1 5 RECORD.  
1 6 1. As used in this section, unless the context otherwise  
1 7 requires:  
1 8 a. "Arrest" means the same as defined in section 804.5 and  
1 9 includes taking into custody pursuant to section 232.19.  
1 10 b. "Chemical test" means a test of a person's blood,  
1 11 breath, or urine to determine the percentage of alcohol  
1 12 present by a qualified person using devices and methods  
1 13 approved by the commissioner of public safety.  
1 14 c. "Controlled substance" means a substance or compound  
1 15 listed in section 124.204 or 124.206.  
1 16 d. "Expunged" means the segregation of a court's criminal  
1 17 record with reference to a violation of this section in an  
1 18 area or database which is secured from public access.  
1 19 e. "Inhalant" means any substance which, if inhaled,  
1 20 causes intoxication.  
1 21 e. ~~f.~~ "Peace officer" means the same as defined in  
1 22 section 801.4.  
1 23 d. ~~g.~~ "School" means a public or private school or that  
1 24 portion of a public or private school which provides teaching  
1 25 for any grade from kindergarten through grade twelve.  
1 26 2. a. A person shall not use or consume alcoholic liquor,  
1 27 wine, or beer upon the public streets or highways. A person  
1 28 shall not use or consume alcoholic liquor in any public place  
1 29 except premises covered by a liquor control license. A person  
1 30 shall not possess or consume alcoholic liquors, wine, or beer  
1 31 on public school property or while attending a public or  
1 32 private school-related function. A person shall not be  
1 33 intoxicated ~~or simulate intoxication~~ in a public place. A  
1 34 person violating this subsection is guilty of a simple  
1 35 misdemeanor.  
2 1 ~~3.~~ b. When If a peace officer arrests a person on a  
2 2 charge of public intoxication under this section when  
2 3 intoxication by alcohol is alleged, the peace officer shall  
2 4 inform the person that the person may have a chemical test  
2 5 administered at the person's own expense. If a device  
2 6 approved by the commissioner of public safety for testing a  
2 7 sample of a person's breath to determine the person's blood  
2 8 alcohol concentration is available, that is the only test that  
2 9 need be offered the person arrested. In a prosecution for  
2 10 public intoxication pursuant to this subsection, evidence of  
2 11 the results of a chemical test performed under this subsection  
2 12 is admissible upon proof of a proper foundation. The  
2 13 percentage of alcohol present in a person's blood, breath, or  
2 14 urine established by the results of a chemical test performed  
2 15 within two hours after the person's arrest on a charge of  
2 16 public intoxication is presumed to be the percentage of

2 17 alcohol present at the time of arrest.

2 18 3. a. A person shall not use or consume a controlled  
2 19 substance or intentionally inhale or consume an inhalant upon  
2 20 the public streets or highways. A person shall not use or  
2 21 consume a controlled substance or intentionally inhale or  
2 22 consume an inhalant in a public place. A person shall not be  
2 23 intoxicated by a controlled substance or by intentional  
2 24 inhalation or consumption of an inhalant in a public place. A  
2 25 person violating this subsection is guilty of a simple  
2 26 misdemeanor.

2 27 b. If a peace officer arrests a person on a charge of  
2 28 public intoxication under this section when intoxication by a  
2 29 controlled substance or inhalant is alleged, the peace officer  
2 30 shall inform the person that the person may have a chemical  
2 31 test of the person's blood or urine administered at the  
2 32 person's own expense. In a prosecution for public  
2 33 intoxication pursuant to this subsection, evidence of the  
2 34 results of a chemical test performed under this subsection is  
2 35 admissible upon proof of a proper foundation. The percentage  
3 1 of a controlled substance or inhalant present in a person's  
3 2 blood or urine established by the results of a chemical test  
3 3 performed within two hours after the person's arrest on a  
3 4 charge of public intoxication is presumed to be the percentage  
3 5 of a controlled substance or inhalant present at the time of  
3 6 arrest.

3 7 4. a. A peace officer shall make a reasonable effort to  
3 8 identify a person under the age of eighteen who violates this  
3 9 section and, if the person is not referred to juvenile court,  
3 10 the law enforcement agency of which the peace officer is an  
3 11 employee shall make a reasonable attempt to notify the  
3 12 person's custodial parent or legal guardian of the violation,  
3 13 whether or not the person is taken into custody, unless the  
3 14 officer has reasonable grounds to believe that notification is  
3 15 not in the best interests of the person or will endanger that  
3 16 person.

3 17 b. The peace officer shall also make a reasonable effort  
3 18 to identify the elementary or secondary school which the  
3 19 person attends if the person is enrolled in elementary or  
3 20 secondary school and to notify the superintendent or the  
3 21 superintendent's designee of the school which the person  
3 22 attends, or the authorities in charge of the nonpublic school  
3 23 which the person attends, of the violation. If the person is  
3 24 taken into custody, the peace officer shall notify a juvenile  
3 25 court officer who shall make a reasonable effort to identify  
3 26 the elementary or secondary school the person attends, if any,  
3 27 and to notify the superintendent of the school district or the  
3 28 superintendent's designee, or the authorities in charge of the  
3 29 nonpublic school, of the violation. A reasonable attempt to  
3 30 notify the person includes, but is not limited to, a telephone  
3 31 call or notice by first-class mail.

3 32 5. a. Upon the expiration of two years following  
3 33 conviction for a violation of this section, a person may  
3 34 petition the court to ~~exonerate the person~~ expunge the record  
3 35 of the conviction, and if the person has had no other criminal  
4 1 convictions, other than simple misdemeanor violations of  
4 2 chapter 321 during the two-year period, ~~the person shall be~~  
4 3 ~~deemed exonerated of the offense as a matter of law~~ the record  
4 4 ~~of conviction shall be expunged.~~ The court shall enter an  
4 5 ~~order exonerating the person of the conviction, and ordering~~  
4 6 ~~that the record of the conviction be expunged by the clerk of~~  
4 7 ~~the district court.~~

4 8 b. An expunged record is a confidential record unavailable  
4 9 for examination and copying by members of the public. The  
4 10 expunged record shall be made available to persons as provided  
4 11 in section 907.4.

4 12 6. A person does not commit a violation of subsection 4 if  
4 13 the controlled substance, inhalant, or other substance used,  
4 14 inhaled, or consumed, was prescribed for the person and was  
4 15 used, inhaled, or consumed in accordance with the directions  
4 16 of a practitioner as defined in section 155A.3 or if such  
4 17 substance was dispensed by a pharmacist without a prescription  
4 18 pursuant to the rules of the board of pharmacy.

4 19 Sec. 2. Section 147.111, Code 2009, is amended to read as  
4 20 follows:

4 21 147.111 REPORT OF TREATMENT OF WOUNDS AND OTHER INJURIES.

4 22 ~~Any~~ A person licensed under the provisions of this subtitle  
4 23 ~~or certified under the provisions of chapter 147A who shall~~  
4 24 ~~administer~~ administers any treatment to any person suffering a  
4 25 gunshot or stab wound or other serious injury, as defined in  
4 26 section 702.18, which appears to have been received in  
4 27 connection with the commission of a criminal offense including

4 28 the criminal offense of homicide or serious injury by vehicle  
4 29 as provided in section 707.6A, or to whom an application is  
4 30 made for treatment of any nature because of any such gunshot  
4 31 or stab wound or other serious injury, as defined in section  
4 32 702.18, shall at once but not later than twelve hours  
4 33 thereafter, report that fact to the law enforcement agency  
4 34 within whose jurisdiction the treatment was administered or an  
4 35 application therefor for treatment was made, or if  
5 1 ascertainable, to the law enforcement agency in whose  
5 2 jurisdiction the gunshot or stab wound or other serious injury  
5 3 occurred, stating the name of such person, the person's  
5 4 residence if ascertainable, and giving a brief description of  
5 5 the gunshot or stab wound or other serious injury. Any  
5 6 provision of law or rule of evidence relative to confidential  
5 7 communications is suspended insofar as the provisions of this  
5 8 section are concerned.

5 9 Sec. 3. Section 232.51, Code 2009, is amended to read as  
5 10 follows:

5 11 232.51 DISPOSITION OF CHILD WITH MENTAL ILLNESS OR MENTAL  
5 12 RETARDATION.

5 13 If the evidence received at an adjudicatory or a  
5 14 dispositional hearing indicates that the child is mentally  
5 15 ill, the court may direct the juvenile court officer or the  
5 16 department to initiate proceedings or to assist the child's  
5 17 parent or guardian to initiate civil commitment proceedings in  
5 18 the juvenile court. These proceedings in the juvenile court  
5 19 shall adhere to the requirements of chapter 229. If the  
5 20 evidence received at an adjudicatory or a dispositional  
5 21 hearing indicates that the child is mentally retarded, the  
5 22 court may direct the juvenile court officer or the department  
5 23 to initiate proceedings or to assist the child's parent or  
5 24 guardian to initiate civil commitment proceedings in the  
5 25 juvenile court. These proceedings shall adhere to the  
5 26 requirements of chapter 222. ~~If the child is committed as a~~  
~~5 27 child with mental illness or mental retardation, any order~~  
~~5 28 adjudicating the child to have committed a delinquent act~~  
~~5 29 shall be set aside and the petition shall be dismissed.~~

5 30 Sec. 4. Section 236.2, subsection 2, paragraph c, Code  
5 31 2009, is amended to read as follows:

5 32 c. The assault is between persons who are parents of the  
5 33 same ~~minor~~ child, regardless of whether they have been married  
5 34 or have lived together at any time.

5 35 Sec. 5. Section 701.11, Code 2009, is amended to read as  
6 1 follows:

6 2 701.11 EVIDENCE OF SIMILAR OFFENSES == SEXUAL ABUSE.

6 3 1. In a criminal prosecution in which a defendant has been  
6 4 charged with sexual abuse, evidence of the defendant's  
6 5 commission of another sexual abuse is admissible and may be  
6 6 considered for its bearing on any matter for which the  
6 7 evidence is relevant. ~~This evidence, though relevant, may be~~  
~~6 8 excluded if the probative value of the evidence is~~  
~~6 9 substantially outweighed by the danger of unfair prejudice,~~  
~~6 10 confusion of the issues, or misleading the jury, or by~~  
~~6 11 considerations of undue delay, waste of time, or needless~~  
~~6 12 presentation of cumulative evidence.~~ This evidence is not  
6 13 admissible unless the state presents clear proof of the  
6 14 commission of the prior act of sexual abuse.

6 15 2. If the prosecution intends to offer evidence pursuant  
6 16 to this section, the prosecution shall disclose such evidence  
6 17 to the defendant, including statements of witnesses or a  
6 18 summary of the substance of any testimony that is expected to  
6 19 be offered, ten days prior to the scheduled date of trial.  
6 20 The court may for good cause shown permit disclosure less than  
6 21 ten days prior to the scheduled date of trial.

6 22 3. For purposes of this section, "sexual abuse" means any  
6 23 ~~commission of or conviction for a crime defined in chapter 709~~  
6 24 ~~aggravated offense, criminal offense against a minor, sexual~~  
6 25 ~~exploitation, or other relevant offense as those terms are~~  
6 26 ~~defined in section 692A.1.~~ "Sexual abuse" also means any  
6 27 commission of or conviction for a crime in another  
6 28 jurisdiction under a statute that is substantially similar to  
6 29 any ~~crime defined in chapter 709 aggravated offense, criminal~~  
6 30 ~~offense against a minor, sexual exploitation, or other~~  
6 31 ~~relevant offense as those terms are defined in section 692A.1.~~

6 32 Sec. 6. Section 709.21, subsection 3, Code 2009, is  
6 33 amended to read as follows:

6 34 3. A person who violates or attempts to violate this  
6 35 section commits a serious misdemeanor.

7 1 Sec. 7. NEW SECTION. 709.23 FORCED SEX ACT == CHILD OR  
7 2 MINOR.

7 3 1. A person eighteen years of age or older who, for the

7 4 purpose of arousing or satisfying the sexual desires of any  
7 5 person, forces, coerces, solicits, or uses a position of  
7 6 authority to persuade two or more minors to engage in a sex  
7 7 act, where at least one of the participants is a child under  
7 8 the age of twelve, is guilty of a class "C" felony.

7 9 2. A person eighteen years of age or older who, for the  
7 10 purpose of arousing or satisfying the sexual desires of any  
7 11 person, forces, coerces, solicits, or uses a position of  
7 12 authority to persuade two or more minors to engage in a sex  
7 13 act, where at least one of the participants is a child twelve  
7 14 or thirteen years of age, is guilty of a class "D" felony.

7 15 3. A person eighteen years of age or older who, for the  
7 16 purpose of arousing or satisfying the sexual desires of any  
7 17 person, forces, coerces, solicits, or uses a position of  
7 18 authority to persuade a child to use an artificial or  
7 19 substitute sexual organ to contact the child's genitalia or  
7 20 anus, is guilty of a class "D" felony.

7 21 4. The act of forcing, coercing, soliciting, or persuading  
7 22 minors or children to engage in a sex act constitutes a  
7 23 separate offense for each minor or child forced, coerced,  
7 24 solicited, or persuaded.

7 25 Sec. 8. Section 719.1, subsections 1 and 2, Code 2009, are  
7 26 amended to read as follows:

7 27 1. A person who knowingly resists or obstructs anyone  
7 28 known by the person to be a peace officer, emergency medical  
7 29 care provider under chapter 147A, or fire fighter, whether  
7 30 paid or volunteer, in the performance of any act which is  
7 31 within the scope of the lawful duty or authority of that  
7 32 officer, emergency medical care provider under chapter 147A,  
7 33 or fire fighter, whether paid or volunteer, or who knowingly  
7 34 resists or obstructs the service or execution by any  
7 35 authorized person of any civil or criminal process or order of  
8 1 any court, commits a simple misdemeanor. In addition to any  
8 2 other penalties, the punishment imposed for a violation of  
8 3 this subsection shall include assessment of a fine of not less  
8 4 than two hundred fifty dollars. However, if a person commits  
8 5 an interference with official acts, as defined in this  
8 6 subsection, ~~and in so doing inflicts which results in~~ bodily  
8 7 injury ~~other than serious injury~~, that person commits an  
8 8 aggravated misdemeanor. If a person commits an interference  
8 9 with official acts, as defined in this subsection, ~~and in so~~  
~~8 10 doing inflicts or attempts to inflict which results in~~ serious  
8 11 injury, or displays a dangerous weapon, as defined in section  
8 12 702.7, or is armed with a firearm, that person commits a class  
8 13 "D" felony.

8 14 2. A person under the custody, control, or supervision of  
8 15 the department of corrections who knowingly resists,  
8 16 obstructs, or interferes with a correctional officer, agent,  
8 17 employee, or contractor, whether paid or volunteer, in the  
8 18 performance of the person's official duties, commits a serious  
8 19 misdemeanor. If a person violates this subsection and in so  
8 20 doing commits an assault, as defined in section 708.1, the  
8 21 person commits an aggravated misdemeanor. If a person  
8 22 violates this subsection and ~~in so doing inflicts or attempts~~  
~~8 23 to inflict the violation results in~~ bodily injury ~~other than~~  
~~8 24 serious injury~~ to another, displays a dangerous weapon, as  
8 25 defined in section 702.7, or is armed with a firearm, the  
8 26 person commits a class "D" felony. If a person violates this  
8 27 subsection and uses or attempts to use a dangerous weapon, as  
8 28 defined in section 702.7, or ~~inflicts the violation results in~~  
8 29 serious injury to another, the person commits a class "C"  
8 30 felony.

8 31 Sec. 9. Section 728.5, Code 2009, is amended to read as  
8 32 follows:

8 33 728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN ESTABLISHMENTS.

8 34 1. An owner, manager, or person who exercises direct  
8 35 control over a place of business required to obtain a sales  
9 1 tax permit shall be guilty of a serious misdemeanor under any  
9 2 of the following circumstances:

9 3 1- a. If such person allows or permits the actual or  
9 4 simulated public performance of any sex act upon or in such  
9 5 place of business.

9 6 2- b. If such person allows or permits the exposure of  
9 7 the genitals or buttocks or female breast of any person who  
9 8 acts as a waiter or waitress.

9 9 3- c. If such person allows or permits the exposure of  
9 10 the genitals or female breast nipple of any person who acts as  
9 11 an entertainer, whether or not the owner of the place of  
9 12 business in which the activity is performed employs or pays  
9 13 any compensation to such person to perform such activity.

9 14 4- d. If such person allows or permits any person to

9 15 remain in or upon the place of business who exposes to public  
9 16 view the person's genitals, pubic hair, or anus.

9 17 ~~5. e.~~ If such person advertises that any activity  
9 18 prohibited by this section is allowed or permitted in such  
9 19 place of business.

9 20 ~~6. f.~~ If such person allows or permits a minor to engage  
9 21 in or otherwise perform in a live act intended to arouse or  
9 22 satisfy the sexual desires or appeal to the prurient interests  
9 23 of patrons.

9 24 2. However, if such person allows or permits a minor to  
9 25 participate in any act included in ~~subsections 1 through 4~~  
9 26 subsection 1, paragraphs "a" through "d", the person shall be  
9 27 guilty of an aggravated misdemeanor.

9 28 ~~3. The Except for subsection 1, paragraph "f", the~~  
9 29 provisions of this section shall not apply to a theater,  
9 30 concert hall, art center, museum, or similar establishment  
9 31 which is primarily devoted to the arts or theatrical  
9 32 performances and in which any of the circumstances contained  
9 33 in this section were permitted or allowed as part of such art  
9 34 exhibits or performances.

9 35 Sec. 10. Section 728.8, Code 2009, is amended to read as  
10 1 follows:  
10 2 728.8 SUSPENSION OF LICENSES OR PERMITS.  
10 3 Any person who knowingly permits a violation of section  
10 4 728.2, 728.3, or 728.5, subsection ~~6 1,~~ paragraph "f", to  
10 5 occur on premises under the person's control shall have all  
10 6 permits and licenses issued to the person under state or local  
10 7 law as a prerequisite for doing business on such premises  
10 8 revoked for a period of six months. The county attorney shall  
10 9 notify all agencies responsible for issuing licenses and  
10 10 permits of any conviction under section 728.2, 728.3, or  
10 11 728.5, subsection ~~6 1,~~ paragraph "f".

10 12 Sec. 11. Section 728.12, subsection 1, Code 2009, is  
10 13 amended to read as follows:  
10 14 1. It shall be unlawful to employ, use, persuade, induce,  
10 15 entice, coerce, solicit, knowingly permit, or otherwise cause  
10 16 or attempt to cause a minor, or a person reasonably believed  
10 17 to be a minor, to engage in a prohibited sexual act or in the  
10 18 simulation of a prohibited sexual act. A person must know, or  
10 19 have reason to know, or intend that the act or simulated act  
10 20 may be photographed, filmed, or otherwise preserved in a  
10 21 negative, slide, book, magazine, computer, computer disk, or  
10 22 other print or visual medium, or be preserved in an  
10 23 electronic, magnetic, or optical storage system, or in any  
10 24 other type of storage system. A person who commits a  
10 25 violation of this subsection commits a class "C" felony.  
10 26 Notwithstanding section 902.9, the court may assess a fine of  
10 27 not more than fifty thousand dollars for each offense under  
10 28 this subsection in addition to imposing any other authorized  
10 29 sentence.

10 30 Sec. 12. Section 907.1, Code 2009, is amended by adding  
10 31 the following new subsection:  
10 32 NEW SUBSECTION. 2A. "Expunged" means the court's criminal  
10 33 record with reference to a deferred judgment has been  
10 34 segregated in an area or database which is secured from public  
10 35 access.

11 1 Sec. 13. Section 907.4, Code 2009, is amended to read as  
11 2 follows:  
11 3 907.4 DEFERRED JUDGMENT DOCKET.  
11 4 1. A deferment of judgment under section 907.3 shall be  
11 5 entered promptly by the clerk of the district court, or the  
11 6 clerk's designee, into the deferred judgment database of the  
11 7 state, which shall serve as the deferred judgment docket. The  
11 8 deferred judgment docket shall be maintained by the state  
11 9 court administrator and shall not be destroyed. The docket  
11 10 shall contain a permanent record of the deferred judgment  
11 11 including the name and date of birth of the defendant, the  
11 12 district court docket number, the nature of the offense, and  
11 13 the date of the deferred judgment. Before granting deferred  
11 14 judgment in any case, the court shall search the deferred  
11 15 judgment docket and shall consider any prior record of a  
11 16 deferred judgment against the defendant.

11 17 2. The permanent record provided for in ~~this section~~  
11 18 subsection 1 is a confidential record exempted from public  
11 19 access under section 22.7 and shall be available only to  
11 20 justices of the supreme court, judges of the court of appeals,  
11 21 district judges, district associate judges, judicial  
11 22 magistrates, clerks of the district court, judicial district  
11 23 departments of correctional services, county attorneys, and  
11 24 the department of corrections requesting information pursuant  
11 25 to this section, or the designee of a justice, judge,

11 26 magistrate, clerk, judicial district department of  
11 27 correctional services, or county attorney, or department.  
11 28 Sec. 14. Section 907.9, subsection 4, Code 2009, is  
11 29 amended to read as follows:

11 30 4. At the expiration of the period of probation if the  
11 31 fees imposed under section 905.14 and court debt collected  
11 32 pursuant to section 602.8107 have been paid, the court shall  
11 33 order the discharge of the person from probation. If portions  
11 34 of the court debt remain unpaid, the person shall establish a  
11 35 payment plan with the clerk of the district court or the  
12 1 county attorney prior to the discharge. The court shall  
12 2 forward to the governor a recommendation for or against  
12 3 restoration of citizenship rights to that person upon  
12 4 discharge. A person who has been discharged from probation  
12 5 shall no longer be held to answer for the person's offense.

12 6 4A. Upon discharge from probation, if judgment has been  
12 7 deferred under section 907.3, the court's criminal record with  
12 8 reference to the deferred judgment shall be expunged. The  
~~12 9 record maintained by the state court administrator as required~~  
~~12 10 by section 907.4 shall not be expunged. The expunged record~~  
~~12 11 is a confidential record exempt from public access under~~  
~~12 12 section 22.7 but shall be made available by the clerk of the~~  
~~12 13 district court, upon request and without court order, to an~~  
~~12 14 agency or person granted access to the deferred docket under~~  
~~12 15 section 907.4.~~ The court's record shall not be expunged in  
12 16 any other circumstances unless otherwise authorized by law.

12 17 Sec. 15. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
12 18 3, shall not apply to this Act.

12 19 EXPLANATION

12 20 This bill makes changes to criminal offenses, adds new  
12 21 criminal offenses, relates to deferred judgments and expunged  
12 22 records, and makes penalties applicable.

12 23 The amendment to Code section 123.46 provides that a person  
12 24 shall not use or consume a controlled substance or  
12 25 intentionally inhale or consume an inhalant upon the public  
12 26 streets or highways. The bill also prohibits a person from  
12 27 using or consuming a controlled substance or intentionally  
12 28 inhaling or consuming an inhalant in a public place or being  
12 29 intoxicated by such a controlled substance or inhalant in a  
12 30 public place. The bill requires a peace officer to inform the  
12 31 person that the person may have a chemical test of the  
12 32 person's blood or urine administered at the person's own  
12 33 expense to determine the percentage of a controlled substance  
12 34 or inhalant present in a person's blood or urine.

12 35 The bill defines "controlled substance" to mean a schedule  
13 1 I or II substance or compound listed in Code section 124.204  
13 2 or 124.206. The bill also defines "inhalant" to mean any  
13 3 substance which, if inhaled, causes intoxication.

13 4 The bill strikes a provision making it unlawful to simulate  
13 5 intoxication in a public place.

13 6 The bill also provides that a person does not violate Code  
13 7 section 123.46 if the controlled substance, inhalant, or other  
13 8 substance used, consumed, or inhaled, was prescribed for the  
13 9 person and was used, consumed, or inhaled in accordance with  
13 10 the directions of a medical practitioner as defined in Code  
13 11 chapter 155A or if the substance was dispensed by a pharmacist  
13 12 without a prescription pursuant to the rules of the board of  
13 13 pharmacy.

13 14 The amendment to Code section 123.46 also changes  
13 15 provisions relating to expunging the record of conviction for  
13 16 public intoxication after two years. The bill defines  
13 17 "expunged" to mean the segregation of a court's criminal  
13 18 record with reference to a public intoxication violation in an  
13 19 area or database which is secured from public access. Under  
13 20 the bill, two years after a conviction for public intoxication  
13 21 a person may petition the court to expunge the record of the  
13 22 conviction, and under some circumstances the record or  
13 23 conviction may be expunged. Currently, a person may petition  
13 24 the court to exonerate the person and have the court enter an  
13 25 order exonerating the person as a matter of law.

13 26 A person who violates Code section 123.46 commits a simple  
13 27 misdemeanor.

13 28 The bill amends Code section 147.111 relating to reporting  
13 29 the treatment of serious wounds to a law enforcement agency.

13 30 The bill specifies that a first responder, an emergency  
13 31 medical care provider, or any other person certified under  
13 32 Code chapter 147A is required to report the treatment of any  
13 33 gunshot or stab wound, or any other serious injury, to the  
13 34 local law enforcement agency, if such an injury is received in  
13 35 connection with the commission of a criminal offense. Current  
14 1 law specifies that a person licensed under Code chapters 147

14 2 through 158 is required to report such serious injuries  
14 3 received in connection with a criminal offense to a local law  
14 4 enforcement agency if treatment is administered.

14 5 The amendment to Code section 147.111 also specifies that  
14 6 serious injuries received in connection with the criminal  
14 7 offense of homicide or serious injury by vehicle are to be  
14 8 reported to the local law enforcement agency.

14 9 Under the bill and in current law, Code section 147.111  
14 10 suspends any law or rule relating to confidential information  
14 11 in order to effectuate the reporting of a serious wound  
14 12 received from the commission of a criminal offense.

14 13 A person who violates Code section 147.111 commits a simple  
14 14 misdemeanor as provided in Code section 147.113.

14 15 The amendment to Code section 232.51 strikes a provision  
14 16 permitting an order adjudicating a child to have committed a  
14 17 delinquent act to be set aside if the child is committed as a  
14 18 child with mental illness or mental retardation.

14 19 The amendment to Code section 236.2 specifies that a person  
14 20 commits domestic abuse if the assault is between persons who  
14 21 are parents of the same child. Currently, the law specifies  
14 22 that the parents be the parents of the same minor child.

14 23 The amendment to Code section 701.11 strikes a provision  
14 24 relating to the admissibility of evidence in a criminal  
14 25 prosecution involving sexual abuse. The bill also defines  
14 26 "sexual abuse" to mean an aggravated offense, criminal offense  
14 27 against a minor, sexual exploitation, or other relevant  
14 28 offense as defined in Code section 692A.1. Current law  
14 29 defines "sexual abuse" to mean a violation of Code chapter 709  
14 30 (sexual abuse).

14 31 The amendment to Code section 709.21 provides that any  
14 32 person who attempts to commit invasion of privacy also commits  
14 33 a serious misdemeanor.

14 34 New Code section 709.23 creates a criminal offense  
14 35 involving a forced sex act.

15 1 Code section 709.23 prohibits a person 18 years of age or  
15 2 older, for the purpose of arousing or satisfying the sexual  
15 3 desires of any person, forces, coerces, solicits, or uses a  
15 4 position of authority to persuade two or more minors to engage  
15 5 in a sex act, where at least one of the participants is a  
15 6 child under the age of 12. A person who violates the  
15 7 provision commits a class "C" felony.

15 8 Code section 709.23 also prohibits a person 18 years of age  
15 9 or older who, for the purpose of arousing or satisfying the  
15 10 sexual desires of any person, forces, coerces, solicits, or  
15 11 uses a position of authority to persuade two or more minors to  
15 12 engage in a sex act, where at least one of the participants is  
15 13 a child 12 or 13 years of age. A person who violates the  
15 14 provision commits a class "D" felony.

15 15 The new Code section also prohibits a person 18 years of  
15 16 age or older who, for the purpose of arousing or satisfying  
15 17 the sexual desires of any person, forces, coerces, solicits,  
15 18 or uses a position of authority to persuade a child to use an  
15 19 artificial or substitute sexual organ to contact the child's  
15 20 genitalia or anus. A person who violates the provision  
15 21 commits a class "D" felony.

15 22 The amendment to Code section 719.1 provides that a person  
15 23 commits the offense of interference with official acts if the  
15 24 violation results in bodily or serious injury to a peace  
15 25 officer, emergency medical care provider, correctional  
15 26 officer, or other member of a protected class under Code  
15 27 section 719.1.

15 28 Current law provides that a person commits the offense of  
15 29 interference with official acts if the person inflicts or  
15 30 attempts to inflict bodily or serious injury.

15 31 The amendment to Code section 719.1 also provides that if a  
15 32 person commits interference with official acts that results in  
15 33 bodily injury to a member of a protected class, the person  
15 34 commits an aggravated misdemeanor if the injury is to a peace  
15 35 officer or emergency medical officer, or a class "D" felony if  
16 1 the injury is to a correctional officer.

16 2 If a person commits interference with official acts that  
16 3 results in serious injury, the person commits a class "D"  
16 4 felony if the injury is to a peace officer or emergency  
16 5 medical officer, or a class "C" felony if the injury is to a  
16 6 correctional officer.

16 7 The amendment to Code section 728.5 provides that a person  
16 8 commits an aggravated misdemeanor for permitting public  
16 9 indecent exposure in a theater, concert hall, art center,  
16 10 museum, or similar establishment which is primarily devoted to  
16 11 the arts if such person allows or permits a minor to engage in  
16 12 a live act intended to arouse or satisfy the sexual desires or

16 13 appeal to the prurient interests of patrons.  
16 14 The amendment to Code section 728.12(1) provides that a  
16 15 person commits sexual exploitation of a minor if the victim is  
16 16 reasonably believed to be a minor by the perpetrator.  
16 17 The amendments to Code sections 907.1, 907.4, and 907.9  
16 18 relate to deferred judgment criminal records.  
16 19 The bill defines "expunged" to mean the court's criminal  
16 20 record with reference to a deferred judgment has been  
16 21 segregated into a separate area or database which is secured  
16 22 from public access. The expunged record is a confidential  
16 23 record exempt from public access, but shall be made available  
16 24 by the clerk of the district court, upon request and without  
16 25 court order, to the agencies or persons granted access to the  
16 26 deferred judgment docket under Code section 907.4.  
16 27 Currently, the court's criminal record relating to a  
16 28 deferred judgment is expunged, but a record of the deferred  
16 29 judgment is made permanent in the deferred judgment docket.  
16 30 The permanent record in the deferred judgment docket under  
16 31 current law includes the name and date of birth of the  
16 32 defendant, the district court docket number, the nature of the  
16 33 offense, and the date of the deferred judgment.  
16 34 The bill also strikes a provision in Code section 907.9  
16 35 requiring the state court administrator to maintain deferred  
17 1 judgment records and moves the provision to Code section  
17 2 907.4.  
17 3 The bill also provides that the court's record shall not be  
17 4 expunged unless otherwise authorized by law. Current law  
17 5 authorizes criminal records to be expunged under Code sections  
17 6 123.46, 321.211A, and 321.385A.  
17 7 The bill may include a state mandate as defined in Code  
17 8 section 25B.3. The bill makes inapplicable Code section  
17 9 25B.2, subsection 3, which would relieve a political  
17 10 subdivision from complying with a state mandate if funding for  
17 11 the cost of the state mandate is not provided or specified.  
17 12 Therefore, political subdivisions are required to comply with  
17 13 any state mandate included in the bill.  
17 14 LSB 1462SC 83  
17 15 jm/nh/5