

House Study Bill 654 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
PUBLIC SAFETY BILL BY
CHAIRPERSON BAUDLER)

A BILL FOR

1 An Act relating to the possession of a controlled substance and
2 providing penalties.

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

1 Section 1. Section 124.401, subsection 5, Code 2018, is
2 amended to read as follows:

3 5. a. (1) It is unlawful for any person knowingly or
4 intentionally to possess a controlled substance unless such
5 substance was obtained directly from, or pursuant to, a valid
6 prescription or order of a practitioner while acting in the
7 course of the practitioner's professional practice, or except
8 as otherwise authorized by **this chapter**. Any person who
9 violates **this subsection** is guilty of a serious misdemeanor
10 for a first offense. A person who commits a violation of
11 this subsection and who has previously been convicted of
12 violating **this chapter** or **chapter 124B** or **453B**, or chapter
13 124A as it existed prior to July 1, 2017, is guilty of an
14 aggravated misdemeanor. A person who commits a violation of
15 this subsection and has previously been convicted two or more
16 times of violating **this chapter** or **chapter 124B** or **453B**, or
17 chapter 124A as it existed prior to July 1, 2017, is guilty of a
18 class "D" felony.

19 (2) If the controlled substance is marijuana, the
20 punishment shall be by imprisonment in the county jail for
21 not more than six months or by a fine of not more than one
22 thousand dollars, or by both such fine and imprisonment for a
23 first offense. If the controlled substance is marijuana and
24 the person has been previously convicted of a violation of this
25 subsection in which the controlled substance was marijuana, the
26 punishment shall be as provided in section 903.1, subsection
27 1, paragraph "b". If the controlled substance is marijuana
28 and the person has been previously convicted two or more times
29 of a violation of **this subsection** in which the controlled
30 substance was marijuana, the person is guilty of an aggravated
31 misdemeanor.

32 (3) Convictions or the equivalent of deferred judgments for
33 violations in any other states under statutes substantially
34 corresponding to this paragraph "a" shall be counted as previous
35 offenses. The courts shall judicially notice the statutes of

1 other states which define offenses substantially equivalent to
2 the offenses defined in this paragraph "a" and can therefore
3 be considered corresponding statutes. Each previous violation
4 on which conviction or deferral of judgment was entered prior
5 to the date of the violation charged shall be considered and
6 counted as a separate previous offense.

7 c. All or any part of a sentence imposed pursuant to
8 this subsection may be suspended and the person placed upon
9 probation upon such terms and conditions as the court may
10 impose including the active participation by such person in a
11 drug treatment, rehabilitation or education program approved
12 by the court.

13 d. If a person commits a violation of **this subsection**, the
14 court shall order the person to serve a term of imprisonment of
15 not less than forty-eight hours. Any sentence imposed may be
16 suspended, and the court shall place the person on probation
17 upon such terms and conditions as the court may impose. If
18 the person is not sentenced to confinement under the custody
19 of the director of the department of corrections, the terms
20 and conditions of probation shall require submission to random
21 drug testing. If the person fails a drug test, the court may
22 transfer the person's placement to any appropriate placement
23 permissible under the court order.

24 e. If the controlled substance is amphetamine, its salts,
25 isomers, or salts of its isomers, or methamphetamine, its
26 salts, isomers, or salts of its isomers, the court shall order
27 the person to serve a term of imprisonment of not less than
28 forty-eight hours. Any sentence imposed may be suspended,
29 and the court shall place the person on probation upon such
30 terms and conditions as the court may impose. The court may
31 place the person on intensive probation. However, the terms
32 and conditions of probation shall require submission to random
33 drug testing. If the person fails a drug test, the court may
34 transfer the person's placement to any appropriate placement
35 permissible under the court order.

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EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

This bill relates to the possession of a controlled substance.

Currently, if a person commits a first offense possession of a controlled substance the person commits a serious misdemeanor. If a person commits a second offense possession of a controlled substance and the person has previously been convicted of violating Code chapter 124 (controlled substances), Code chapter 124B (precursor substances), Code chapter 453B (excise tax on unlawful dealing), or Code chapter 124A (imitation controlled substances as it existed on July 1, 2017), the person commits an aggravated misdemeanor.

Currently, if a person commits a first offense possession of marijuana, the offense is punishable by imprisonment in the county jail for not more than six months or by a fine of not more than \$1,000, or by both. If a person commits a second offense possession of marijuana, the person commits a serious misdemeanor, and if a person commits a third or subsequent offense possession of marijuana, the person commits an aggravated misdemeanor.

The bill makes convictions or the equivalent of deferred judgments for violations in any other state count as a previous offense if the violation in the other state substantially corresponds with possession of controlled substance violations in this state, thus making a person with a conviction in another state more likely to be subject to enhanced penalties for possession of a controlled substance in this state under Code section 124.401(5), as amended by the bill. The bill specifies that the court shall judicially notice the statutes of other states which define offenses substantially equivalent to possession of a controlled substance.