

124.401 Prohibited acts -- manufacturers --
possessors -- counterfeit substances -- simulated controlled
substances -- penalties.

1. ~~Manufacture, delivery, possession with intent to~~
~~manufacture or deliver or conspire to.~~

a. i. [Prohibited acts] Except as authorized by this
chapter, it is unlawful for any person to manufacture, deliver,
or possess with the intent to manufacture or deliver, a
controlled substance, a counterfeit substance, or a simulated
controlled substance, or to act with, enter into a common scheme
or design with, or conspire, as defined in section 706.1, with
one or more other persons to manufacture, deliver, or possess
with the intent to manufacture or deliver a controlled
substance, a counterfeit substance, or a simulated controlled
substance.

ii. [Aggregation of weights] If the same person
commits two or more acts which are in violation of section
124.401, subsection 1, paragraph "a", subparagraph "i" ~~this~~
~~subsection~~ and the acts occur in approximately the same location
or time period so that the acts can be attributed to a single
scheme, plan, or conspiracy, the acts may be considered a single
violation and the weight of the controlled substances,
counterfeit substances, or simulated controlled substances
involved may be combined for purposes of charging the offender.

ab. ~~Penalties. Except as otherwise provided in sections~~
124.406 and 124.410, any person who violates section 124.401,
subsection 1, paragraph "a" shall be sentenced as follows:

i. [Hybrid class "B" felony] In the case of a violation
of section 124.401, subsection 1, paragraph "a" involving:
~~A violation of this subsection, with respect to the following~~
~~controlled substances, counterfeit substances, or simulated~~
~~controlled substances is a class "B" felony, and notwithstanding~~
~~section 902.9, subsection 2, shall be punished notwithstanding~~
~~section 902.9, subsection 2~~
by confinement for no more than fifty years and a fine of not
more than one million dollars. This sentence, including the
fine, may be suspended or deferred pursuant to section 907.3.:

The following quantities of controlled substances, counterfeit
substances, or simulated controlled substances are included in
this subsection as a class "B" felony:

(1) More than one kilogram of a mixture or substance containing a detectable amount of heroin;;

(2) More than five hundred grams of a mixture or substance containing a detectable amount of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine and their salts have been removed;;

(b) Cocaine, its salts, optical and geometric isomers, or salts of isomers;;

(c) Ecgonine, its derivatives, their salts, isomers, or salts of isomers;;

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph "ii", subdivisions (2), lines (a) through (c);;

(3) More than fifty grams of a mixture or substance described in subparagraph subdivision (2) which contains cocaine base;;

(4) More than one hundred grams of phencyclidine (PCP) or one kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);;

(5) More than ten grams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);;

(6) More than one thousand kilograms of a mixture or substance containing a detectable amount of marijuana;;

(7) More than five kilograms of a mixture or substance containing a detectable amount of any of the following:

(a) Methamphetamine, its salts, isomers, or salts of isomers;;

(b) Amphetamine, its salts, isomers, and salts of isomers;;

(c) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivision (7), lines (a) and (b);;

such person commits a class "B" felony and notwithstanding section 902.9, subsection 2, shall be punished by confinement for no more than fifty years and a fine of not more than one million dollars. Pursuant to section 907.3, the court may not

defer judgment, defer the sentence, or suspend the sentence for a violation under section 124.401, paragraph "b", subparagraph "i" if the controlled substance is methamphetamine.

A person sentenced for a violation under section 124.401, paragraph "b", subparagraph "i" shall not be eligible for parole until the person has served a minimum period of confinement of one-third of the maximum indeterminate sentence prescribed by law. This mandatory minimum sentence shall not apply if the offense is found to be an accommodation pursuant to section 124.403, the controlled substance is marijuana, or the court, at its discretion, sentences the person to a shorter term pursuant to section 901.10. Earned time accrued and not forfeited shall apply to reduce a mandatory minimum sentence being served for a violation of section 124.401, subsection 1, paragraph "b", subparagraph "i", as set forth in section 903A.5.

iiB. .—[Class "B" fFelony] —In the case of a violation of section 124.401, subsection 1, paragraph "a" involving:

~~A Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "B" felony, and, in addition to the provisions of section 902.9, subsection 2, shall be punished by a fine of not less than five thousand dollars nor more than one hundred thousand dollars, unless the fine is suspended or deferred in accordance with section 907.3.:~~

~~The following quantities of controlled substances, counterfeit substances, or simulated controlled substances are included in this subsection as a class "B" felony:~~

(1) More than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of heroin;~~;~~

(2) More than one hundred grams but not more than five hundred grams of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine and their salts have been removed;~~;~~

(b) Cocaine, its salts, optical and geometric isomers, or salts of isomers;~~;~~

(c) Ecgonine, its derivatives, their salts, isomers, or salts of isomers;~~;~~

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivision (2), lines (a) through (c).

(3) More than ten grams but not more than fifty grams of a mixture or substance described in subparagraph "ii", subdivision (2) which contains cocaine base;—

(4) More than ten grams but not more than one hundred grams of phencyclidine (PCP) or more than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of phencyclidine (PCP);—

(5) Not more than ten grams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);—

(6) More than one hundred kilograms but not more than one thousand kilograms of marijuana;—

(7) More than five grams but not more than five kilograms of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, or any compound, mixture, or preparation which contains any quantity or detectable amount of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine;—

(8) More than five grams but not more than five kilograms of amphetamine, its salts, isomers, or salts of isomers, or any compound, mixture, or preparation which contains any quantity or detectable amount of amphetamine, its salts, isomers, or salts of isomers;—

such person commits a class "B" felony, and in addition to the provisions of section 902.9, subsection 2, shall be punished by a fine of not less than five thousand dollars nor more than one hundred thousand dollars. Pursuant to section 907.3, the court may not defer judgment, defer the sentence, or suspend the sentence for a violation under section 124.401, paragraph "b", subparagraph "ii" if the controlled substance is methamphetamine.

A person sentenced for a violation under section 124.401, paragraph "b", subparagraph "ii" shall not be eligible for parole until the person has served a minimum period of

confinement of one-third of the maximum indeterminate sentence prescribed by law. This mandatory minimum sentence shall not apply if the offense is found to be an accommodation pursuant to section 124.403, the controlled substance is marijuana, or the court, at its discretion, sentences the person to a shorter term pursuant to section 901.10. Earned time accrued and not forfeited shall apply to reduce a mandatory minimum sentence being served for a violation of section 124.401, subsection 1, paragraph "b", subparagraph "ii", as set forth in section 903A.5.

iiie.- [Class "C" fFelony] -In the case of a violation of section 124.401, subsection 1, paragraph "a" involving:
A ~~Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "C" felony, and in addition to the provisions of section 902.9, subsection 4, shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars, unless the fine is suspended or deferred in accordance with section 907.3.-~~

The following quantities of controlled substances, counterfeit substances, or simulated controlled substances are included in this subsection as a class "C" felony:-

_____ (1) One hundred grams or less of a mixture or substance containing a detectable amount of heroin;:-

_____ (2) One hundred grams or less of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine and their salts have been removed;:-

(b) Cocaine, its salts, optical and geometric isomers, or salts of isomers;:-

(c) Ecgonine, its derivatives, their salts, isomers, or salts of isomers;:-

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (2), lines (a) through (c);:-

_____ (3) Ten grams or less of a mixture or substance described in subparagraph subdivision (2) which contains cocaine base;:-

~~_____ (4) Ten grams or less of phencyclidine (PCP) or one hundred grams or less of a mixture or substance containing a detectable amount of phencyclidine (PCP);-~~

~~_____ (5) More than fifty kilograms but not more than one hundred kilograms of marijuana;-~~

~~_____ (6) Five grams or less of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, or any compound, mixture, or preparation which contains any quantity or detectable amount of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine;-~~

~~_____ (7) Five grams or less of amphetamine, its salts, isomers, or salts of isomers, or any compound, mixture, or preparation which contains any quantity or detectable amount of amphetamine, its salts, isomers, or salts of isomers. —The court shall sentence a person convicted under this subparagraph in accordance with section 124.XXX below [beginning "certain penalties for manufacturing or delivery of amphetamine or methamphetamine"]~~

(8) Any other controlled substance, counterfeit substance, or simulated controlled substance classified in schedule I, II, or III;-

such person commits a class "C" felony, and in addition to the provisions of section 902.9, subsection 4, shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars.

A person sentenced for a violation under section 124.401, paragraph "b", subparagraph "iii" shall not be eligible for parole until the person has served a minimum period of confinement of one-third of the maximum indeterminate sentence prescribed by law. This mandatory minimum sentence shall not apply if the offense is found to be an accommodation pursuant to section 124.403, the controlled substance is marijuana, or the court, at its discretion, sentences the person to a shorter term pursuant to section 901.10. Earned time accrued and not forfeited shall apply to reduce a mandatory minimum sentence being served for a violation of section 124.401, subsection 1,

paragraph "b", subparagraph "iii", as set forth in section 903A.5.

ivd. — [Class "D" fFelony and aAggravated mMisdemeanor] A VVviolation of section 124.401, subsection 1, paragraph "a", this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in schedule IV or V is an aggravated misdemeanor. — However, violation of this section 124.401, subsection 1, paragraph "a" subsection involving fifty kilograms or less of marijuana or involving flunitrazepam is a class "D" felony.

c. Arson. Pursuant to section 712.1, subsection 2, causing a fire or explosion that damages or destroys property while manufacturing or attempting to manufacture a controlled substance in violation of section 124.401, subsection 1 is arson. Even if a person who owns property which the defendant intends to destroy or damage, or which the defendant knowingly endangers, consents to the defendant's act, and even if an insurer has not been exposed fraudulently to any risk, and even if the act was done in such a way as not to unreasonably endanger the life or property of any person, the act constitutes arson. Arson as defined herein and in section 712.1, subsection 2 shall be punished pursuant to chapter 712.

e. [Firearm Enhancement] A person in the immediate possession or control of a firearm while participating in a violation of this subsection shall be sentenced to two times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

f. [Enhancement offensive weapon] A person in the immediate possession or control of an offensive weapon, as defined in section 724.1, while participating in a violation of this subsection, shall be sentenced to three times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended

2. If the same person commits two or more acts which are in violation of subsection 1 and the acts occur in approximately the same location or time period so that the acts can be attributed to a single scheme, plan, or conspiracy, the acts may

~~be considered a single violation and the weight of the controlled substances, counterfeit substances, or simulated controlled substances involved may be combined for purposes of charging the offender.~~

23. Precursor substances.

~~a. [Salee] or distribution of precursor substances containing ephedrine or pseudoephedrine.] It is unlawful for any person to sell, distribute, or make available any product containing ephedrine, its salts, optical isomers, salts of optical isomers, or analogs of ephedrine, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, or analogs of pseudoephedrine, if the person knows, or should know, that the product may be used as a precursor to any illegal substance or an intermediary to any controlled substance. A person who violates section 124.401, subsection 2, paragraph "a" ~~this subsection~~ commits a serious misdemeanor~~

~~b.4. [Possession of certain ephedrineprecursors with intent to manufacture.] A person who possesses any product containing any of the following commits a class "D" felony, if the person possesses with the intent that the product be used to manufacture any controlled substance commits a class "D" felony:~~

~~Possession of a product containing any of the following is included in the above section:~~

~~(1) a. Ephedrine, its salts, optical isomers, salts of optical isomers, or analogs of ephedrine.~~

~~(2) b. Pseudoephedrine, its salts, optical isomers, salts of optical isomers, or analogs of pseudoephedrine.~~

~~(3) c. Ethyl ether.~~

~~(4) d. Anhydrous ammonia.~~

~~(5) e. Red phosphorous.~~

~~(6) f. Lithium.~~

~~(7) g. Iodine.~~

~~(8) h. Thionyl chloride.~~

~~(9) i. Chloroform.~~

~~(10) j. Palladium.~~

~~(11) k. Perchloric acid.~~

~~(12) l. Tetrahydrofuran.~~

~~(13) m. Ammonium chloride.~~

~~(14) n. Magnesium sulfate.~~

35. ~~{Possession of a controlled substance.}~~

a. —Possession of a controlled substance generally prohibited. —It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter.

b. Penalties — Generally

(i) — Penalties -- Possession of a controlled substance other than marijuana.

.i. [First offense] Except as provided below, a person who violates section 124, subsection 3, paragraph "a" is guilty of a serious misdemeanor for a first offense.

.ii. [Second offense] Except as provided below, a person who violates section 124, subsection 3, paragraph "a" and who has previously been convicted of violating this chapter or chapter 124A, 124B, or 453B is guilty of an aggravated misdemeanor.

.iii. [Third or subsequent offense] Except as provided below, a person who violates section 124, subsection 3, paragraph "a" and who has previously been convicted two or more times of violating this chapter or chapter 124A, 124B, or 453B is guilty of a class "D" felony.

c. Penalties -- Possession of marijuana.

i. [First offense] If the person violates section 124, subsection 3, paragraph "a" in which the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment for a first offense.

ii. [Second offense] If the person violates section 124, subsection 3, paragraph "a" in which the controlled substance is marijuana, and the person has been previously convicted of a violation under section 124, subsection 3, paragraph "a" in which the controlled substance was marijuana, the person is guilty of a serious misdemeanor and shall be punished as provided in section 903.1, subsection 1, paragraph "b".

.iii. [Third or subsequent offense] If the person violates section 124, subsection 3, paragraph "a" in which the controlled substance is marijuana, and the person has been

previously convicted two or more times of a violation of section 124.401, subsection 3, paragraph "a" in which the controlled substance was marijuana, the person is guilty of an aggravated misdemeanor.

d. If a person commits a violation of this subsection, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours.

~~(ii) All orll or any part of a sentence imposed pursuant to this subsection this subsection may be suspended and the person placed upon probation, and the court shall place the person on prebatien upon such terms and conditions as the court may impose, including the active participation by such person in a drug treatment, rehabilitation or education program approved by the court. If the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may place the person on intensive probation.~~

If a person commits a violation of this subsection, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. —

~~(iii) If the person is not sentenced to confinement under the custody of the director of the department of corrections, the terms and conditions of probation shall require submission to random drug testing. —If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.~~

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

~~e.~~

Penalties — Possession of a controlled substance other than marijuana.

(i) First offense. — Except as provided below, a person who commits a violation of subparagraph (a) is guilty of a serious misdemeanor for a first offense.

(ii) Second offense. — Except as provided below, a person who commits a violation of subparagraph (a) and who has previously been convicted of violating this chapter or chapter 124A, 124B, or 453B is guilty of an aggravated misdemeanor.

(iii) Third or subsequent offense. — Except as provided below, a person who commits a violation of subparagraph (a) and has previously been convicted two or more times of violating this chapter or chapter 124A, 124B, or 453B is guilty of a class "D" felony.

d. Penalties — Possession of marijuana.

(i) First offense. — If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment for a first offense.

(ii) Second offense. — If the controlled substance is marijuana and the person has been previously convicted of a violation under subparagraph (a) in which the controlled substance was marijuana, the person is guilty of a serious misdemeanor and shall be punished as provided in section 903.1, subsection 1, paragraph "b". — If the previous violation of subparagraph (a) involved a controlled substance other than marijuana, then the person shall be guilty of an aggravated misdemeanor as provided in subparagraph (c)(ii).

(iii) Third or subsequent offense. — If the controlled substance is marijuana and the person has been previously been convicted two or more times of a violation of subparagraph (a) in which the controlled substance was marijuana, the person is guilty of an aggravated misdemeanor. — If the previous violations of subparagraph (a) involved a controlled substance other than marijuana, then the person shall be guilty of a class "D" felony as provided in subparagraph (c)(iii).

—Any person who violates this subsection is guilty of a serious misdemeanor for a first offense. — A person who commits a violation of this subsection and who has previously been convicted of violating this chapter or chapter 124A, 124B, or 453B is guilty of an aggravated misdemeanor. — A person who commits a violation of this subsection and has previously been convicted two or more times of violating this chapter or chapter 124A, 124B, or 453B is guilty of a class "D" felony.

~~If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment for a first offense. If the controlled substance is marijuana and the person has been previously convicted of a violation of this subsection in which the controlled substance was marijuana, the punishment shall be as provided in section 903.1, subsection 1, paragraph "b". If the controlled substance is marijuana and the person has been previously convicted two or more times of a violation of this subsection in which the controlled substance was marijuana, the person is guilty of an aggravated misdemeanor~~

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

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

~~If the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court shall order the person to serve a term of imprisonment of not less than forty eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. The court may place the person on intensive probation.~~

~~However, the terms and conditions of probation shall require submission to random drug testing. If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.~~

~~124.401A ENHANCED PENALTY FOR MANUFACTURE OR
DISTRIBUTION TO PERSONS ON CERTAIN REAL PROPERTY.~~

~~In addition to any other penalties provided in this chapter, a person who is eighteen years of age or older who unlawfully manufactures with intent to distribute, distributes, or possesses with intent to distribute a substance or counterfeit substance listed in schedule I, II, or III, or a simulated controlled substance represented to be a controlled substance classified in schedule I, II, or III, to another person who is eighteen years of age or older in or on, or within one thousand feet of the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, may be sentenced up to an additional term of confinement of five years.~~

~~124.401B POSSESSION OF CONTROLLED SUBSTANCES ON
CERTAIN REAL PROPERTY — ADDITIONAL PENALTY.~~

~~In addition to any other penalties provided in this chapter or another chapter, a person who unlawfully possesses a substance listed in schedule I, II, or III, or a simulated controlled substance represented to be a controlled substance classified in schedule I, II, or III, in or on, or within one thousand feet of the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, may be sentenced to one hundred hours of community service work for a public agency or a nonprofit charitable organization. The court shall provide the offender with a written statement of the terms and monitoring provisions of the community service.~~

~~124.401C MANUFACTURING METHAMPHETAMINE IN PRESENCE OF
MINORS.~~

~~1. In addition to any other penalties provided in this chapter, a person who is eighteen years of age or older and who either directly or by extraction from natural substances, or independently by means of chemical processes, or both, unlawfully manufactures methamphetamine, its salts, isomers, or salts of its isomers in the presence of a minor shall be sentenced up to an additional term of confinement of five years. However, the additional term of confinement shall not be imposed on a person who has been convicted and sentenced for a child endangerment offense under section 726.6, subsection 1, paragraph "g", arising from the same facts.~~

~~2. For purposes of this section, the term "in the presence of a minor" shall mean, but is not limited to, any of the following:~~

~~a. When a minor is physically present during the activity.~~

~~b. When the activity is conducted in the residence of a minor.~~

~~c. When the activity is conducted in a building where minors can reasonably be expected to be present.~~

~~d. When the activity is conducted in a room offered to the public for overnight accommodation.~~

~~e. When the activity is conducted in any multiple unit residential building.~~

~~124.401D CONSPIRACY TO MANUFACTURE FOR DELIVERY OR~~

~~DELIVERY OR INTENT OR CONSPIRACY TO DELIVER AMPHETAMINE OR METHAMPHETAMINE TO A MINOR.~~

~~1. It is unlawful for a person eighteen years of age or older to act with, or enter into a common scheme or design with, or conspire with one or more persons to manufacture for delivery to a person under eighteen years of age a material, compound, mixture, preparation, or substance that contains any detectable amount of amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers.~~

~~A violation of this subsection is a felony punishable under section 902.9, subsection 1. A second or subsequent violation of this subsection is a class "A" felony.~~

~~2. It is unlawful for a person eighteen years of age or older to deliver, or possess with the intent to deliver to a person under eighteen years of age, a material, compound, mixture, preparation, or substance that contains any detectable amount of amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, or to act with, or enter into a common scheme or design with, or conspire with one or more persons to deliver or possess with the intent to deliver to a person under eighteen years of age a material, compound, mixture, preparation, or substance that contains any detectable amount of amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers.~~

~~_____ A violation of this subsection is a felony punishable under section 902.9, subsection 1. A second or subsequent violation of this subsection is a class "A" felony.~~

~~124.401E CERTAIN PENALTIES FOR MANUFACTURING OR DELIVERY OF AMPHETAMINE OR METHAMPHETAMINE.~~

~~_____ 1. If a court sentences a person for the person's first conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, paragraph "c", and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced or order the person to be assigned to a community based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.~~

~~_____ 2. If a court sentences a person for a conviction of manufacturing of a controlled substance under section 124.401, subsection 1, paragraph "c", and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced, or order the person to be assigned to a community based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.~~

~~_____ 3. If a court sentences a person for the person's second or subsequent conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, and the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court, in addition to any other authorized penalties, shall sentence the person to imprisonment in accordance with section 124.401, subsection 1, and the person shall serve the minimum period of confinement as required by section 124.413.~~

124.401A ACCOMODATION OFFENSE.

~~In a prosecution for unlawful delivery or possession with intent to deliver marijuana, if the prosecution proves that the defendant violated the provisions of section 124.401, subsection 1, by proving that the defendant delivered or possessed with intent to deliver one half ounce or less of marijuana which was not offered for sale, the defendant is guilty of an accomodation offense and rather than being sentenced as if convicted for a violation of section 124.401, subsection 1, paragraph "d", shall be sentenced as if convicted of a violation of section 124.401, subsection 5. An acommodation offense may be proved as an included offense under a charge of delivering or possessing with the intent to deliver marijuana in violation of section 124.401, subsection 1. This section does not apply to hashish, hashish oil, or other derivatives of marijuana as defined in section 124.101, subsection 19.~~

124.402~~1BF~~ —Prohibitions on tampering with, possessing, ~~or transporting anhydrous ammonia or anhydrous ammonia equipment.~~

1. A person shall not intentionally tamper with anhydrous ammonia equipment. Tampering occurs when a person who is not authorized by the owner of anhydrous ammonia equipment uses the equipment in violation of a provision of this section. A person shall not in any manner or for any purpose sell, fill, refill, deliver, permit to be delivered, or use an anhydrous ammonia container or receptacle, including for the storage of any gas or compound, unless the person owns the container or receptacle or is authorized to do so by the owner. A person shall not possess or transport anhydrous ammonia in a container or receptacle which is not authorized by the secretary of agriculture to hold anhydrous ammonia.

2. A person violating this section commits a serious misdemeanor. —In addition to the imposition of the serious misdemeanor penalty, a person shall be subject to a civil penalty of not more than one thousand five hundred dollars, if the person does any of the following:

- a. Intentionally tampers with anhydrous ammonia equipment.
- b. Possesses or transports anhydrous ammonia in a container or receptacle which is not authorized to hold

anhydrous ammonia according to rules adopted by the secretary of agriculture.

3. A person tampering with anhydrous ammonia equipment in violation of this section shall not have a cause of action against the owner of the equipment, any person responsible for the installation and maintenance of the equipment, or the person lawfully selling the anhydrous ammonia for damages arising out of the tampering.

124.403 Accommodation offense.

In a prosecution for unlawful delivery or possession with intent to deliver marijuana, if the prosecution proves that the defendant violated the provisions of section 124.401, subsection 1, by proving that the defendant delivered or possessed with intent to deliver one-half ounce or less of marijuana which was not offered for sale, the defendant is guilty of an accommodation offense and rather than being sentenced as if convicted for a violation of section 124.401, subsection 1, paragraph "b", subparagraph "iv" shall be sentenced as if convicted of a violation of section 124.401, subsection 3. An accommodation offense may be proved as an included offense under a charge of delivering or possessing with the intent to deliver marijuana in violation of section 124.401, subsection 1. This section does not apply to hashish, hashish oil, or other derivatives of marijuana as defined in section 124.101, subsection 19.

124.4042 Prohibited acts -- distributors --
registrants -- proprietors -- penalties.

1. It is unlawful for any person:

a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 124.308;

b. Who is a registrant, to manufacture a controlled substance not authorized by the registration, or to distribute or dispense a controlled substance not authorized by the registration to another registrant or other authorized person;

c. To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter;

d. To refuse an entry into any premises during reasonable business hours for any inspection authorized by this chapter; or

e. Knowingly to keep or permit the keeping or to maintain any premises, store, shop, warehouse, dwelling, temporary, or permanent building, vehicle, boat, aircraft, or other temporary or permanent structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping, possessing or selling them in violation of this chapter.

2. Any person who violates subsection 1 of this ~~section of this section~~, or who acts with, enters into a common scheme or design with, or conspires with one or more other persons to violate ~~subsection 1 of this section of this section~~, is guilty of a public offense and upon conviction:

a. Of a violation of paragraphs "a", "b", "d", or "e" shall be an aggravated misdemeanor.

b. Of a violation of paragraph "c" shall be a serious misdemeanor.

124.4053 ~~P~~rohibited acts -- controlled substances,
~~distribution, use, possession -- records and information~~
--
~~penalties.~~

1. It is unlawful for any person knowingly or intentionally:

a. To distribute as a registrant a controlled substance classified in schedules I or II, except pursuant to an order form as required by section 124.307;

b. To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

d. To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or

e. To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

2. —Any person who violates this section, or who acts with, enters into a common scheme or design with, or conspires with one or more other persons to violate this section, is guilty of a serious misdemeanor.

~~124.404 PENALTIES UNDER OTHER LAWS.~~

~~Any penalty imposed for violation of this division shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.~~

~~124.405 BAR TO PROSECUTION.~~

~~If a violation of this chapter is a violation of a federal law or the law of another state, the conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.~~

124.4064. Prohibited acts -- offenses involving a person under eighteen years of age.

1. Manufacturing Methamphetamine in the Presence of Minors.

a. In addition to any other penalties provided in this chapter, a person who is eighteen years of age or older and who either directly or by extraction from natural substances, or

independently by means of chemical processes, or both, unlawfully manufactures methamphetamine, its salts, isomers, or salts of its isomers in the presence of a minor shall be sentenced up to an additional term of confinement of five years. However, the additional term of confinement shall not be imposed on a person who has been convicted and sentenced for a child endangerment offense under section 726.6, subsection 1, paragraph "g", arising from the same facts.

b. For purposes of this section, the term "in the presence of a minor" shall mean, but is not limited to, any of the following:

(i) When a minor is physically present during the activity.

(ii) When the activity is conducted in the residence of a minor.

(iii) When the activity is conducted in a building where minors can reasonably be expected to be present.

(iv) When the activity is conducted in a room offered to the public for overnight accommodation.

(v) When the activity is conducted in any multiple-unit residential building.

12. Conspiracy to m-Manufacture for dDelivery or dDelivery or iIntent or cConspiracy to dDeliver aAmphetamine or mMethamphetamine to a mMinor.

a. It is unlawful for a person eighteen years of age or older to act with, or enter into a common scheme or design with, or conspire with one or more persons to manufacture for delivery to a person under eighteen years of age a material, compound, mixture, preparation, or substance that contains any detectable amount of amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers.

A violation of this section 124.406, subsection 1, paragraph "a" is a felony punishable under section 902.9, subsection 1. A court sentencing a person for the person's first conviction under section 124.406, subsection 1, paragraph "a" may, at its discretion, sentence the person to a term less than the maximum term provided under section 902.9, subsection 1, if the requirements set forth in section 901.10, subsection 3 are satisfied. Pursuant to section 902.8A, a person who has been convicted for a first violation under section 124.406, subsection 1, paragraph "a" shall not be eligible for parole until the person has served a minimum term of confinement of ten years.

Earned time accrued and not forfeited shall apply to reduce a mandatory minimum sentence being served pursuant to section 124.406, subsection 1, paragraph "a" as set forth in section 903A.5.

—A second or subsequent violation of section 124.406, subsection 1, paragraph "a" ~~this subsection~~ is a class "A" felony.

A defendant sentenced by the court to the custody of the director of the department of corrections for an offense under section 124.406, subsection 1, paragraph "a" may have the judgment and sentence entered under section 901.5 reopened for resentencing based on the defendant's cooperation if the requirements set forth in section 901.5A are satisfied.

b. It is unlawful for a person eighteen years of age or older to deliver, or possess with the intent to deliver to a person under eighteen years of age, a material, compound, mixture, preparation, or substance that contains any detectable amount of amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, or to act with, or enter into a common scheme or design with, or conspire with one or more persons to deliver or possess with the intent to deliver to a person under eighteen years of age a material, compound, mixture, preparation, or substance that contains any detectable amount of amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers.

A violation of ~~this~~ section 124.406, subsection 1, paragraph "b" is a felony punishable under section 902.9, subsection 1. —A court sentencing a person for the person's first conviction under section 124.406, subsection 1, paragraph "b" may, at its discretion, sentence the person to a term less than the maximum term provided under section 902.9, subsection 1, if the requirements set forth in section 901.10, subsection 3 are satisfied. Pursuant to section 902.8A, a person who has been convicted for a first violation under section 124.406, subsection 1, paragraph "b" shall not be eligible for parole until the person has served a minimum term of confinement of ten years.

Earned time accrued and not forfeited shall apply to reduce a mandatory minimum sentence being served pursuant to section 124.406, subsection 1, paragraph "b" as set forth in section 903A.5.

A second or subsequent violation of section 124.406, subsection 1, paragraph "b" ~~this subsection~~ is a class "A" felony.

A defendant sentenced by the court to the custody of the director of the department of corrections for an offense under section 124.406, subsection 1, paragraph "b" may have the judgment and sentence entered under section 901.5 reopened for resentencing based on the defendant's cooperation if the requirements set forth in section 901.5A are satisfied.

23. Distribution to pPerson under aAge eEighteen.

124.406 DISTRIBUTION TO PERSON UNDER AGE EIGHTEEN.

a1. a. A person who is eighteen years of age or older who:+

(i.) a. Unlawfully distributes or possesses with intent to distribute a substance listed in schedule I or II to a person under eighteen years of age commits a class "B" felony and shall serve a minimum term of confinement of five years. However, if the substance was distributed in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, the person shall serve a minimum term of confinement of ten years. A court sentencing a person for the person's first conviction under section 124.406, subsection 2, paragraph "a", subparagraph "i" may, at its discretion, sentence the person to a term less than the applicable mandatory minimum sentence if the requirements set forth in section 901.10 are satisfied.

(ii.) b. Unlawfully distributes or possesses with the intent to distribute a controlled substance listed in schedule III to a person under eighteen years of age who is at least three years younger than the violator commits a class "C" felony.

(iii.) c. Unlawfully distributes a controlled substance listed in schedule IV or V to a person under eighteen years of age who is at least three years younger than the violator commits an aggravated misdemeanor.

b2. A person who is eighteen years of age or older who:

~~—(i.)a.~~ Unlawfully distributes or possesses with the intent to distribute a counterfeit substance listed in schedule I or II, or a simulated controlled substance represented to be a substance classified in schedule I or II, to a person under eighteen years of age commits a class "B" felony. However, if the substance was distributed in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, the person shall serve a minimum term of confinement of ten years.

A court sentencing a person for the person's first conviction under section 124.406, subsection 2, paragraph "b", subparagraph "i" may, at its discretion, sentence the person to a term less than the applicable mandatory minimum sentence if the requirements set forth in section 901.10 are satisfied.

~~—(ii.)b.~~ Unlawfully distributes or possesses with intent to ~~—~~distribute a counterfeit substance listed in schedule III, or a simulated controlled substance represented to be any substance listed in schedule III, to a person under eighteen years of age who is at least three years younger than the violator commits a class "C" felony.

~~—(iii.)c.~~ Unlawfully distributes a counterfeit substance listed in schedule IV or V, or a simulated controlled substance represented to be a substance listed in schedule IV or V, to a person under eighteen years of age who is at least three years younger than the violator commits an aggravated misdemeanor.

~~c.3-~~ It is unlawful for a person to deliver a controlled substance to another person in order to act with, enter into a common scheme or design with, conspire with, or recruit the other person for the purpose of delivering a controlled substance to one or more persons under eighteen years of age.— A person who violates this section 124.406, subsection 2, paragraph "c" subsection with respect to a controlled substance classified in schedule I, II, III, IV, or V is guilty of a class "D" felony.

~~—34. Use of pPersons under aAge eEighteen in the dDrug tTrade.~~

~~124.406A USE OF PERSONS UNDER AGE EIGHTEEN IN THE DRUG TRADE.~~

—It is unlawful for a person who is eighteen years of age or older to conspire with or recruit a person under the age of eighteen for the purpose of delivering or manufacturing a controlled substance classified in schedules I through IV. A person violating ~~this~~ section 124.406, subsection 3 commits a class "C" felony.

4. *Child endangerment.* Pursuant to section 726.6, subsection 1, paragraph "g", a person who is the parent, guardian, or person having custody or control over a child or a minor under the age of eighteen with a mental or physical disability, or a person who is a member of the household in which a child or such a minor resides, commits child endangerment when the person knowingly permits a child or minor to be present at a location where amphetamine, its salts, isomers, or salts of isomers, or methamphetamine, its salts, isomers, or salts of isomers, is manufactured in violation of section 124.401, subsection 1 or where a product is possessed in violation of section 124.401, subsection 2, paragraph "b". A person who violates section 124.406, subsection 4 shall be sentenced according to section 726.6.

55. *Parental and School Notification -- Persons under Eighteen Years of Age.*

—A peace officer shall make a reasonable effort to identify a person under the age of eighteen discovered to be in possession of a controlled substance, counterfeit substance, or simulated controlled substance in violation of this chapter, and if the person is not referred to juvenile court, the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person's custodial parent or legal guardian of such possession, whether or not the person is arrested, unless the officer has reasonable grounds to believe that such notification is not in the best interests of the person or will endanger that person. If the person is taken into custody, the peace officer shall notify a juvenile court officer who shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district, the superintendent's designee, or the authorities in charge of the nonpublic school of the taking into custody. A reasonable attempt to notify the person includes but is not limited to a telephone call or notice by first-class mail.

124.407 Prohibited acts -- gatherings where controlled substance §

unlawfully used -- penalties.

It is unlawful for any person to sponsor, promote, or aid, or assist in the sponsoring or promoting of a meeting, gathering, or assemblage with the knowledge or intent that a controlled substance be there distributed, used or possessed, in violation of this chapter.

Any person who violates this section and where the controlled substance is any one other than marijuana is guilty of a class "D" felony.

Any person who violates this section, and where the controlled substance is marijuana only, is guilty of a serious misdemeanor.

The district court shall grant an injunction barring a meeting, gathering, or assemblage if upon hearing the court finds that the sponsors or promoters of the meeting, gathering, or assemblage have not taken reasonable means to prevent the unlawful distribution, use or possession of a controlled substance. Further injunctive relief may be granted against all persons furnishing goods or services to such meeting, gathering, or assemblage.

The district court may, upon application and a showing of one or more of the grounds provided in section 639.3, grant to the state or governmental subdivision thereof a writ of attachment, ex parte, without bond, in an amount necessary to secure the payment of any fine that may be imposed and the payment of costs. The reasonable expense to the state and governmental subdivisions thereof to provide the necessary law enforcement resulting from a meeting, gathering or assemblage held in violation of this section may be taxed as costs in the criminal action.

~~124.408 JOINT CRIMINAL TRIALS.~~

~~Information, indictments, trial, and sentencing for violations of this chapter may allege any number of violations of their provisions against one person and join one or more persons as defendants who it is alleged violated the same provisions in the same transaction or series of transactions and which involve common questions of law and fact. The several charges shall be set out in separate counts and each accused person shall be convicted or acquitted upon each count by separate verdict. Each accused person shall thereafter be sentenced upon each verdict of guilty. The court may consider such separate verdicts of guilty returned at the same time as one offense for the purpose of sentencing as provided in this chapter. The court may grant a severance and separate trial to any accused person jointly charged or indicted if it appears that substantial injustice would result to such accused person unless a separate trial was granted.~~

~~124.409—CONDITIONAL DISCHARGE, COMMITMENT FOR
TREATMENT, AND PROBATION.~~

~~Whenever the court finds that a person who is charged with a violation of section 124.401 and who consents thereto, or who has entered a plea of guilty to or been found guilty of a violation of that section, is addicted to, dependent upon, or a chronic abuser of any controlled substance and that such person will be aided by proper medical treatment and rehabilitative services, it may order that the person be committed as an inpatient or out-patient to a facility licensed by the Iowa department of public health for medical treatment and rehabilitative services. A person committed under this subsection who is not possessed of sufficient income or estate to enable the person to make payment of the costs of such treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44. The determination of ability to pay shall be made by the court. The court shall require the patient, or the patient's parent, guardian, or custodian to complete under oath a detailed financial statement.~~

~~The court may enter appropriate orders requiring the patient or those legally liable for the patient's support to reimburse the state with the costs, or any part thereof. In order to obtain the most effective results from such medical treatment and rehabilitative services, the court may commit the person to the custody of a public or private agency or any other responsible person and impose other conditions upon the commitment as is necessary to insure compliance with the court's~~

~~order and to insure that the person will not, during the period of treatment and rehabilitation, again violate a provision of this chapter. If it is established thereafter to the satisfaction of the court that the person has again violated a provision of this chapter, the person may be returned to custody or sentenced upon conviction as provided by law. The public or private agency or responsible person to whom the accused person was committed by the court shall immediately report to the court when the person has received maximum benefit from the program or has recovered from addiction, dependency, or tendency to chronically abuse any controlled substance. The person shall then be returned to the court for disposition of the case. If the person has been charged or indicted, but not convicted, such charge shall proceed to trial or final disposition. If the person has been convicted or is thereafter convicted, the court shall sentence the person as provided by law but may remit all or any part of the sentence and place the person on probation upon terms and conditions as the court may prescribe.~~

~~124.410 ACCOMMODATION OFFENSE.~~

~~In a prosecution for unlawful delivery or possession with intent to deliver marijuana, if the prosecution proves that the defendant violated the provisions of section 124.401, subsection 1, by proving that the defendant delivered or possessed with intent to deliver one half ounce or less of marijuana which was not offered for sale, the defendant is guilty of an accommodation offense and rather than being sentenced as if convicted for a violation of section 124.401, subsection 1, paragraph "d", shall be sentenced as if convicted of a violation of section 124.401, subsection 5. An accommodation offense may be proved as an included offense under a charge of delivering or possessing with the intent to deliver marijuana in violation of section 124.401, subsection 1. This section does not apply to hashish, hashish oil, or other derivatives of marijuana as defined in section 124.101, subsection 19.~~

~~124.411 SECOND OR SUBSEQUENT OFFENSES.~~

~~1. Any person convicted of a second or subsequent offense under this chapter, may be punished by imprisonment for a period not to exceed three times the term otherwise authorized, or fined not more than three times the amount~~

~~otherwise authorized, or punished by both such imprisonment and fine.~~

~~2. For purposes of this section, an offense is considered a second or subsequent offense, if, prior to the person's having been convicted of the offense, the offender has ever been convicted under this chapter or under any state or federal statute relating to narcotic drugs or cocaine, marijuana, depressant, stimulant, or hallucinogenic drugs.~~

~~3. This section does not apply to offenses under section 124.401, subsection 5.~~

~~124.412 NOTICE OF CONVICTION.~~

~~If a person enters a plea of guilty to, or forfeits bail or collateral deposited to secure the person's appearance in court, and such forfeiture is not vacated, or if a person is found guilty upon an indictment or information alleging a violation of this chapter, a copy of the minutes attached to the indictment returned by the grand jury, or to the county attorney's information, a copy of the judgment and sentence, and a copy of the opinion of the judge if one is filed, shall be sent by the clerk of the district court or the judge to the state department of transportation and to any state board or officer by whom the convicted person has been licensed or registered to practice the person's profession or carry on the person's business.~~

~~On the conviction of a person, the court may suspend or revoke the license or registration of the convicted defendant to practice the defendant's profession or carry on the defendant's business. On the application of a person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, the board or officer may reinstate the license or registration.~~

~~124.413 MANDATORY MINIMUM SENTENCE.~~

~~A person sentenced pursuant to section 124.401, subsection 1, paragraph "a", "b", "c", "e", or "f", shall not be eligible for parole until the person has served a minimum period of confinement of one third of the maximum indeterminate sentence prescribed by law.~~

~~This section shall not apply if:~~

~~1. The offense is found to be an accommodation pursuant to section 124.410; or~~

~~2. The controlled substance is marijuana.~~

124.40814 Prohibited acts -- drug paraphernalia.

1. a. As used in this section, "drug paraphernalia" means all equipment, products, or materials of any kind used or attempted to be used in combination with a controlled substance, except those items used in combination with the lawful use of a controlled substance, to knowingly or intentionally and primarily do any of the following:

(1) Manufacture a controlled substance.

(2) Inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(3) Test the strength, effectiveness, or purity of a controlled substance.

(4) Enhance the effect of a controlled substance.

b. "Drug paraphernalia" does not include hypodermic needles or syringes if manufactured, delivered, sold, or possessed for a lawful purpose.

2. It is unlawful for any person to knowingly or intentionally manufacture, deliver, sell, or possess drug paraphernalia.

3. A person who violates this section commits a simple misdemeanor.

~~124.415 PARENTAL AND SCHOOL NOTIFICATION -- PERSONS UNDER EIGHTEEN YEARS OF AGE.~~

~~A peace officer shall make a reasonable effort to identify a person under the age of eighteen discovered to be in possession of a controlled substance, counterfeit substance, or simulated controlled substance in violation of this chapter, and if the person is not referred to juvenile court, the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person's custodial parent or legal guardian of such possession, whether or not the person is arrested, unless the officer has reasonable grounds to~~

~~believe that such notification is not in the best interests of the person or will endanger that person. If the person is taken into custody, the peace officer shall notify a juvenile court officer who shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district, the superintendent's designee, or the authorities in charge of the nonpublic school of the taking into custody. A reasonable attempt to notify the person includes but is not limited to a telephone call or notice by first class mail.~~

~~124.416 EXCEPTION TO RESTRICTIONS ON BAIL.~~

~~Notwithstanding section 811.1, the court, after making the finding required by section 811.1, subsection 3, may admit a person convicted of a violation of section 124.401, subsection 2, or of a violation of section 124.406, to bail if the prosecuting attorney in the action and the defendant's counsel jointly petition the court to admit the person to bail.~~

124.409XXX PprocedDECure

1. Bar to pProsecution.

~~—If a violation of this chapter is a violation of a federal law or the law of another state, the conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.~~

2. Joint cCriminal tTrials.

~~Information, indictments, trial, and sentencing for violations of this chapter may allege any number of violations of their provisions against one person and join one or more persons as defendants who it is alleged violated the same provisions in the same transaction or series of transactions and which involve common questions of law and fact. The several charges shall be set out in separate counts and each accused person shall be convicted or acquitted upon each count by separate verdict. —Each accused person shall thereafter be sentencedbe sentenced upon each verdict of guilty. —The court may consider such separate verdicts of guilty returned at the same time as one offense for the purpose of sentencing as provided in this chapter. —The court may grant a severance and separate trial to any accused person jointly charged or indicted if it appears that substantial injustice would result to such accused person unless a separate trial was granted.~~

3. Bail and restrictions.

a. ~~In accordance with~~Pursuant to section 811.1, subsection ~~(1)~~, a defendant shall not be admitted to bail while awaiting judgment of conviction and sentencing following either a plea or verdict of guilty ~~for~~ of a:

(i) a felony included in section 124.401, subsection ~~(1)~~, paragraph "~~b~~"a, subparagraph "i";

(ii) a felony included in section 124.401, subsection ~~(1)~~, paragraph "~~b~~", subparagraph "ii"; or

(iii) a second or subsequent felony included in section 124.401, subsection ~~(1)~~, paragraph "b", subparagraph "iii" ~~(e)~~.

b. In accordance with section 811.1, subsection ~~(22)~~, a defendant appealing a conviction of the following criminal acts shall not be admitted to bail:

(i) a felony included in section 124.401, subsection 1, paragraph "b", subparagraph "i" ~~(1)~~ (a);

(ii) a felony included in section 124.401, subsection 1, paragraph "b", subparagraph "ii" ~~(1)~~ (b); or

(iii) a second or subsequent felony included in section 124.401, subsection ~~(1)~~, paragraph "b", subparagraph "iii" ~~(e)~~.

c. In accordance with section 811.1, subsection 3, notwithstanding paragraphs "a" and "b", a defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of, or appealing a conviction of, a felony offense under chapter 124 not provided for in paragraph "a" or "b" is presumed to be ineligible to be admitted to bail unless the court determines that such release reasonably will not result in the person failing to appear as required and will not jeopardize the personal safety of another person or persons.

~~de.~~ Exception to restrictions on bail. Notwithstanding section 811.1, the court, after making the finding required by section 811.1, subsection 3, may admit a person convicted of a violation of section 124.401, subsection 1, paragraph "a", subparagraph "ii"², or of a violation of ~~ef~~ a violation of section 124.406, subsection 2, ~~---~~ to bail if the prosecuting attorney in the action and the defendant's counsel jointly petition the court to admit the person to bail.

124.410XXX SENTENCING Penalties -- aggravation, mitigation of

1. *Penalties under oOther lLaws.* Any penalty imposed for violation of this ~~chapter~~ division shall be in addition to, and

not in lieu of, any civil or administrative penalty or sanction otherwise authorized.

2. Mandatory Minimum Sentence.

a. A person sentenced pursuant to section 124.401, subsection 1, paragraph "a", "b", "c", "e", or "f", shall not be eligible for parole until the person has served a minimum period of confinement of one third of the maximum indeterminate sentence prescribed by law.

b. This section shall not apply if:

i. The offense is found to be an accommodation pursuant to section 124.410; or

ii. The controlled substance is marijuana.

iii. Section 901.10 applies.

3. Second or Subsequent Offense.

a. Any person convicted of a second or subsequent offense under this chapter, may be punished by imprisonment for a period not to exceed three times the term otherwise authorized, or fined not more than three times the amount otherwise authorized, or punished by both such imprisonment and fine.

b. For purposes of this section, an offense is considered a second or subsequent offense, if, prior to the person's having been convicted of the offense, the offender has ever been convicted under this chapter or under any state or federal statute relating to narcotic drugs or cocaine, marijuana, depressant, stimulant, or hallucinogenic drugs.

3. This section does not apply to offenses under section 124.401, subsection 5.

2. Certain penalties for manufacturing or delivery of amphetamine or methamphetamine.

a. If a court sentences a person for the person's first conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, paragraph "b", subparagraph "iii", and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

b. If a court sentences a person for a conviction of

manufacturing of a controlled substance under section 124.401, subsection 1, paragraph "b", subparagraph "iii", and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced, or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

c. If a court sentences a person for the person's second or subsequent conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, and the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court, in addition to any other authorized penalties, shall sentence the person to imprisonment in accordance with section 124.401, subsection 1, and the person shall serve the minimum period of confinement as required by section 124.401, subsection 1.

34. *Enhancement of sentences.*

a. *Second or subsequent offense.*

i. Any person convicted of a second or subsequent offense under this chapter, may be punished by imprisonment for a period not to exceed three times the term otherwise authorized, or fined not more than three times the amount otherwise authorized, or punished by both such imprisonment and fine.

ii. For purposes of section 124.410, subsection 3, paragraph "a", an offense is considered a second or subsequent offense, if, prior to the person's having been convicted of the offense, the offender has ever been convicted under this chapter or under any state or federal statute relating to narcotic drugs or cocaine, marijuana, depressant, stimulant, or hallucinogenic drugs.

iii. This enhancement does not apply to offenses under section 124.401, subsection 3.

iv. An allegation of a prior conviction under section 124.410, subsection 3, paragraph "a" must be charged in an indictment or information consistent with Iowa Rule of

Criminal Procedure 2.6, subsection 5, submitted to a jury, and proven beyond a reasonable doubt.

b. Possession or control of a firearm. A person in the immediate possession or control of a firearm while participating in a violation of subsection 124.401, subsection 1 shall be sentenced to two times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

A person sentenced for such a violation shall not be eligible for parole until the person has served a minimum period of confinement of one-third of the maximum indeterminate sentence prescribed by law. This mandatory minimum sentence shall not apply if the offense is found to be an accommodation pursuant to section 124.403, the controlled substance is marijuana, or the court, at its discretion, sentences the person to a shorter term pursuant to section 901.10. Earned time accrued and not forfeited shall apply to reduce a mandatory minimum sentence being served pursuant to section 124.410, subsection 3, paragraph "b" as set forth in section 903A.5.

If the person violates section 124.410, subsection 3, paragraph "b" while in a weapons free zone as defined in section 724.4A, subsection 1, the person shall be subject to the fine imposed under section 724.4A, subsection 2.

Violations by a child, aged sixteen or older, which subject the child to the provisions of section 124.410, subsection 3, paragraph "b" shall be prosecuted and sentenced pursuant to section 232.8. As prescribed by section 232.45, subsection 14, if a child who is alleged to have violated section 124.410, subsection 3, paragraph "b" is waived to district court for prosecution, the mandatory minimum sentence provided herein shall not be imposed if a conviction is had; however, each child convicted of such an offense shall be confined for not less than thirty days in a secure facility. Upon application of a child charged or convicted under the authority of section 232.45, subsection 14, the district court shall order the records in the case to be sealed if the requirements set forth in section 232.45, subsection 14, paragraph "a" and "b" are satisfied.

An allegation under section 124.410, subsection 3, paragraph "b" shall be charged in an indictment or information consistent with Iowa Rule of Criminal Procedure 2.6, subsection 6, submitted to a jury, and proven beyond a reasonable doubt.

c. Possession or control of an offensive weapon. A person in the immediate possession or control of an offensive weapon,

as defined in section 724.1, while participating in a violation of section 124.401, subsection 1 shall be sentenced to three times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

A person sentenced for such a violation shall not be eligible for parole until the person has served a minimum period of confinement of one-third of the maximum indeterminate sentence prescribed by law. This mandatory minimum sentence shall not apply if the offense is found to be an accommodation pursuant to section 124.403, the controlled substance is marijuana, or the court, at its discretion, sentences the person to a shorter term pursuant to section 901.10. Earned time accrued and not forfeited shall apply to reduce a mandatory minimum sentence being served pursuant to section 124.410, subsection 3, paragraph "c" as set forth in section 903A.5.

If the person violates section 124.410, subsection 3, paragraph "c" while in a weapons free zone as defined in section 724.4A, subsection 1, the person shall be subject to the fine imposed under section 724.4A, subsection 2.

Violations by a child, aged sixteen or older, which subject the child to the provisions of section 124.410, subsection 3, paragraph "c" shall be prosecuted pursuant to section 232.8. As prescribed by section 232.45, subsection 14, if a child who is alleged to have violated section 124.410, subsection 3, paragraph "c" is waived to district court for prosecution, the mandatory minimum sentence provided herein shall not be imposed if a conviction is had; however, each child convicted of such an offense shall be confined for not less than thirty days in a secure facility. Upon application of a child charged or convicted under the authority of section 232.45, subsection 14, the district court shall order the records in the case to be sealed if the requirements set forth in section 232.45, subsection 14, paragraph "a" and "b" are satisfied.

An allegation under section 124.410, subsection 3, paragraph "c" must be charged in an indictment or information consistent with Iowa Rule of Criminal Procedure 2.6, subsection 6, submitted to a jury, and proven beyond a reasonable doubt.

a. Firearms. A person in the immediate possession or control of a firearm while participating in a violation of subsection 124.401(1) shall be sentenced to two times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

b. Offensive weapons. A person in the immediate possession or control of an offensive weapon, as defined in section 724.1, while participating in a violation of subsection 124.401(1) shall be sentenced to three times the term otherwise

imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended

d. Manufacturing methamphetamine in the presence of minors.

i. In addition to any other penalties provided in this chapter, a person who is eighteen years of age or older and who either directly or by extraction from natural substances, or independently by means of chemical processes, or both, unlawfully manufactures methamphetamine, its salts, isomers, or salts of its isomers in the presence of a minor shall be sentenced up to an additional term of confinement of five years. However, the additional term of confinement shall not be imposed on a person who has been convicted and sentenced for a child endangerment offense under section 726.6, subsection 1, paragraph "g", arising from the same facts.

ii. For purposes of section 124.410, subsection 3, paragraph "d", the term "in the presence of a minor" shall mean, but is not limited to, any of the following:

(1) When a minor is physically present during the activity.

(2) When the activity is conducted in the residence of a minor.

(3) When the activity is conducted in a building where minors can reasonably be expected to be present.

(4) When the activity is conducted in a room offered to the public for overnight accommodation.

(5) When the activity is conducted in any multiple-unit residential building.

iii. Any fact alleged under section 124.410, subsection 3, paragraph "d" that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.

e.

e. School or public recreation zone.

(i). [Enhanced penalty for Manufacture or or distribution —to persons on certain real property]— In addition to any other penalties provided in this chapter, a person who is eighteen years of age or older who unlawfully manufactures with intent to distribute, distributes, or possesses with intent to distribute a substance or counterfeit substance listed in schedule I, II, or III, or a simulated controlled substance represented to be a controlled substance classified in schedule I, II, or III, to another person who is

eighteen years of age or older in or on, or within one thousand feet of the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school — bus, may be sentenced up to an additional term of confinement of five years.

Any fact alleged under section 124.410, subsection 3, paragraph "e", subparagraph "i" that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.

~~(ii).~~ [Enhanced penalty for possession of controlled substances on certain real property.] In addition to any other penalties provided in this chapter or another chapter, a person who unlawfully possesses a substance listed in schedule I, II, or III, or a simulated controlled substance represented to be a controlled substance classified in schedule I, II, or III, in or on, or within one thousand feet of the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, may be sentenced to one hundred hours of community service work for a public agency or a nonprofit charitable organization. The court shall provide the offender with a written statement of the terms and monitoring provisions of the community service.

Any fact alleged under section 124.410, subsection 3, paragraph "e", subparagraph "ii" that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.

~~5. Certain Penalties for Manufacturing or Delivery of Amphetamine or Methamphetamine.~~

~~a. If a court sentences a person for the person's first conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, paragraph "c", and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.~~

~~b. If a court sentences a person for a conviction of~~

manufacturing of a controlled substance under section 124.401, subsection 1, paragraph "c", and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced, or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

c. If a court sentences a person for the person's second or subsequent conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, and the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court, in addition to any other authorized penalties, shall sentence the person to imprisonment in accordance with section 124.401, subsection 1, and the person shall serve the minimum period of confinement as required by [subsection 2 of this section].

46. Conditional dDischarge, cCommitment for tTreatment, and pProbation.

Whenever the court finds that a person who is charged with a violation of section 124.401 and who consents thereto, or who has entered a plea of guilty to or been found guilty of a violation of that section, is addicted to, dependent upon, or a chronic abuser of any controlled substance and that such person will be aided by proper medical treatment and rehabilitative services, it may order that the person be committed as an in-patient or out-patient to a facility licensed by the Iowa department of public health for medical treatment and rehabilitative services. A person committed under this subsection ~~this~~ ~~subsection~~ who is not possessed of sufficient income or estate to enable the person to make payment of the costs of such treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44. The determination of ability to pay shall be made by the court. The court shall require the patient, or the patient's parent, guardian, or custodian to complete under oath a detailed financial statement.

The court may enter appropriate orders requiring the patient or those legally liable for the patient's support to reimburse the state with the costs, or any part thereof. In order to obtain the most effective results from such medical

treatment and rehabilitative services, the court may commit the person to the custody of a public or private agency or any other responsible person and impose other conditions upon the commitment as is necessary to insure compliance with the court's order and to insure that the person will not, during the period of treatment and rehabilitation, again violate a provision of this chapter. If it is established thereafter to the satisfaction of the court that the person has again violated a provision of this chapter, the person may be returned to custody or sentenced upon conviction as provided by law. The public or private agency or responsible person to whom the accused person was committed by the court shall immediately report to the court when the person has received maximum benefit from the program or has recovered from addiction, dependency, or tendency to chronically abuse any controlled substance. The person shall then be returned to the court for disposition of the case. If the person has been charged or indicted, but not convicted, such charge shall proceed to trial or final disposition. If the person has been convicted or is thereafter convicted, the court shall sentence the person as provided by law but may remit all or any part of the sentence and place the person on probation upon terms and conditions as the court may prescribe.

—————57. *Surcharges.* A court sentencing a person convicted under this chapter shall, in addition to other criminal penalties, impose the following:

a. A criminal penalty surcharge in accordance with section 911.1;

b. A D.A.R.E.-drug abuse resistance education surcharge in accordance with section 911.2;

c. A law enforcement initiative surcharged in accordance with section 911.3.

The surcharges required by this section and sections 911.1, 911.2, and 911.3 are not a part of or subject to the maximums set in this chapter or section 902.9.

—————68. *Driver's License Suspension.* Pursuant to section 901.5, subsection 10, a court sentencing a person convicted under ~~section 124.401, 124.4042, or 124.405, or 124.410, subsection 3, paragraph "e", subparagraph "i" 3~~ of this chapter shall, in addition to any sentence imposed pursuant to chapter 902 or 903, ~~other criminal penalties~~ order the state department of transportation to ~~, revoke the defendant's driver's license and/or the motor vehicle operating privileges of a person convicted of certain drug related offenses~~ for a

period of one hundred eighty ~~(180)~~ days, or to delay the issuance of a driver's license for one hundred eighty days after the person is first eligible if the defendant has not been issued a driver's license, and shall send a copy of the order in addition to the notice of conviction required under section 124.410, subsection 10, to the state department of transportation. ~~in accordance with 901.5(10).~~

79. DNA sSample. Pursuant to section 901.5, subsection 8A, paragraph "a", if the defendant is convicted of a crime under this chapter that requires profiling under section 81.2, the court shall order DNA profiling of the defendant. Pursuant to section 901.5, subsection 8A, paragraph "b", notwithstanding section 81.2, the court may order the defendant to provide a DNA sample to be submitted for DNA profiling if appropriate. In determining the appropriateness of ordering DNA profiling, the court shall consider the deterrent effect of DNA profiling, the likelihood of repeated offenses by the defendant, and the seriousness of the offense. A court sentencing a person convicted under this chapter shall, in addition to other criminal penalties, order the convicted person to provide a DNA sample in accordance with sections 81.2 and 901.5(8A).

810. Denial of fFederal and sState bBenefits. Pursuant to section 901.5, subsections 11 and 12, in addition to any sentence or other penalty imposed against the defendant for an offense under this chapter, ~~the~~ court shall consider the federal and state provisions regarding the denial of state and federal benefits and may enter an order specifying the range and scope of benefits to be denied the defendant consistent section 901.5, subsections 11 and 12. ~~section 901.5(11) and (12) with regard to denial of federal and state benefits when sentencing a person convicted under this chapter.~~

9. Property subject to forfeiture. Pursuant to section 809A.4, the following are subject to forfeiture:

a. All controlled substances, raw materials, controlled substance analogs, counterfeit controlled substances, imitation controlled substances, or precursor substances, that have been manufactured, distributed, dispensed, possessed, or acquired in violation of the laws of this state.

b. i. All property, except as provided in subparagraph "ii", including the whole of any lot or tract of land and any appurtenances or improvements to real property, including

homesteads that are otherwise exempt from judicial sale pursuant to section 561.16, that is either:

(1) Furnished or intended to be furnished by a person in an exchange that constitutes conduct giving rise to forfeiture.

(2) Used or intended to be used in any manner or part to facilitate conduct giving rise to forfeiture.

ii. If the only conduct giving rise to forfeiture is a violation of section 124.401, subsection 3, real property is not subject to forfeiture and other property subject to forfeiture pursuant to subparagraph "i", subdivision (2), may be forfeited only pursuant to section 809A.14.

c. All proceeds of any conduct giving rise to forfeiture.

d. All weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture.

e. Any interest or security in, claim against, or property or contractual right of any kind affording a source of control over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct or through conduct giving rise to forfeiture.

f. i. Any property of a person up to the value of property which is either of the following:

(1) Described in paragraph "b" that the person owned or possessed for the purpose of a use described in paragraph "b".

(2) Described in paragraph "c" and is proceeds of conduct engaged in by the person or for which the person is criminally responsible.

ii. Property described in paragraph "f" may be seized for forfeiture pursuant to a constructive seizure or an actual seizure pursuant to section 809A.6. Actual seizure may only be done pursuant to a seizure warrant issued on a showing, in addition to the showing of probable cause for the forfeiture of the subject property, that the subject property is not available for seizure for reasons described in section 809A.15, subsection 1, and that the value of the property to be seized is not greater than the total value of the subject property, or pursuant to a constructive seizure. If property of a defendant up to the total value of all interests in the subject property is not seized prior to final judgment in an action under this

section, the remaining balance shall be ordered forfeited as a personal judgment against the defendant.

g. As used in this section, "facilitate" means to have a substantial connection between the property and the conduct giving rise to forfeiture.

1011. Notice of conviction. If a person enters a plea of guilty to, or forfeits bail or collateral deposited to secure the person's appearance in court, and such forfeiture is not vacated, or if a person is found guilty upon an indictment or information alleging a violation of this chapter, a copy of the minutes attached to the indictment returned by the grand jury, or to the county attorney's information, a copy of the judgment and sentence, and a copy of the opinion of the judge if one is filed, shall be sent by the clerk of the district court or the judge to the state department of transportation and to any state board or officer by whom the convicted person has been licensed or registered to practice the person's profession or carry on the person's business.

—On the conviction of a person, the court may suspend or revoke the license or registration of the convicted defendant to practice the defendant's profession or carry on the defendant's business. —On the application of a person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, the board or officer may reinstate the license or registration.

~~124A.4 OFFENSES AND PENALTIES.~~

~~1. It is unlawful for a person to manufacture, deliver, or possess with intent to deliver, an imitation controlled substance. Except as provided in subsection 3, a person who violates this subsection is guilty of an aggravated misdemeanor.~~

~~2. It is unlawful for a person to publish or to post or distribute in a public place, an advertisement or solicitation, if the person knows or reasonably should know the advertisement or solicitation is to promote the distribution of imitation controlled substances. A person who violates this subsection is guilty of a serious misdemeanor.~~

~~3. A person who is eighteen years of age or older who violates this section by delivering an imitation controlled substance to a person under eighteen years of age who is at least three years younger than the violator is guilty of a class "D" felony.~~

~~124B.9 SALE, TRANSFER, FURNISHING, OR RECEIPT FOR UNLAWFUL PURPOSE PENALTY.~~

~~1. A person who sells, transfers, or otherwise furnishes a precursor substance with knowledge or the intent that the recipient will use the precursor substance to unlawfully manufacture a controlled substance commits a class "C" felony.~~

~~2. A person who receives a precursor substance with the intent that the substance be used unlawfully to manufacture a controlled substance commits a class "C" felony.~~