

DEPARTMENT: IOWA DEPARTMENT OF PUBLIC SAFETY

Proposal #	Title	Summary
	Hemp affirmative defense	<p><u>Background (e.g. current law or status):</u> Legalizing hemp in Iowa brought several unintended consequences, including making investigation and prosecution of marijuana possession cases significantly more difficult and, in some instances, impossible. As one county attorney in Nebraska commented on its similar law, the hemp laws “accidentally” legalized marijuana in small quantities.</p> <p>When Iowa legalized hemp in 2019, as implemented in 2020, the law set limits on how much total-THC could be allowed in the hemp plants grown and transported in Iowa. Law enforcement has already been confronted with suspected marijuana in which the person in possession claims it is legal hemp rather than illegal marijuana. Using human senses, hemp is indistinguishable from marijuana, and it takes sophisticated technology to quantify the amount of THC present. The lab currently has minimal capabilities to perform analysis of plant material specimens to determine THC concentration.</p> <p>Prior to the legalization of hemp, the DCI Lab could simply indicate the plant was cannabis and thus illegal without running extensive tests. Under the current state of the law, the burden is upon the state to prove the cannabis seized is above the allowable 0.3% total-THC, requiring significant, if not impossible, testing on all marijuana arrests made in the state. The current testing capabilities and volume of cases substantially limit the DCI Lab’s ability to complete the anticipated testing. It is anticipated that marijuana charges will be dismissed due to the lack of testing capacity, leading to the “accidental” legalization of marijuana in small quantities.</p> <p><u>Solution:</u> Amend Iowa Code § 124.401 to provide that the possession of a cannabis product of 0.3% total-THC or less (hemp) is an affirmative defense to a violation of the act. The proposed amendment would shift the burden to the defendant to prove the possessed cannabis is legal hemp rather than illegal marijuana. This burden shifting would still require the state to prove the substance possessed contained THC without requiring quantification.</p> <p><u>Goal:</u> To maintain the current ability to investigate, charge, and prosecute persons in possession of marijuana.</p>

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		<p><u>Fiscal and Jobs Impact:</u></p> <p>Failure to implement the suggested affirmative defense will cost the State significant money as it attempts to keep up with marijuana testing. Implementing the affirmative defense will have no fiscal impact to the state.</p> <p><u>Has proposal been pre-cleared before? If so, prior legislative history?</u></p> <p>No.</p> <p>Several states such as Missouri (Mo. Ann. Stat. § 579.015), Virginia (Virginia Code § 3.2-4113), Maine (Me. Rev. Stat. tit. 17-A, § 1107-A), Minnesota (Minn. Stat. Ann. § 18K.08), and Arizona (Ariz. Rev. Stat. Ann. § 3-320) implemented substantially similar affirmative defense provisions in response to the same issue.</p>
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