

MAR 3 2006  
Place On Calendar

HOUSE FILE 2642  
BY COMMITTEE ON PUBLIC SAFETY

(SUCCESSOR TO HF 778)  
(SUCCESSOR TO HSB 46)

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

**A BILL FOR**

1 An Act expanding the criminal offense of possessing contraband in  
2 correctional institutions to include possessing contraband in  
3 a secure facility for the detention or custody of juveniles, a  
4 detention facility, or a jail, and providing a penalty.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
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HF  
2642

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

3 719.7 POSSESSING CONTRABAND.

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

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

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

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

17 ~~2. The department of corrections may x-ray a person under~~  
18 ~~the control of the department~~ A person committed to a secure  
19 facility for the detention or custody of juveniles, a  
20 detention facility, a jail, a correctional institution, or an  
21 institution under the management of the department of  
22 corrections, may be submitted to an x-ray examination by the  
23 facility or institution if there is reason to believe that the  
24 person is in possession of contraband. A licensed physician  
25 or x-ray technician under the supervision of a licensed  
26 physician must x-ray the person.

27 3. A person commits the offense of possessing contraband  
28 if the person, not authorized by law, does any of the  
29 following:

30 a. Knowingly introduces contraband into, or onto, the  
31 grounds of a secure facility for the detention or custody of  
32 juveniles, detention facility, jail, correctional institution,  
33 or institution under the management of the department of  
34 corrections.

35 b. Knowingly conveys contraband to any person confined in

1 a secure facility for the detention or custody of juveniles,  
2 detention facility, jail, correctional institution, or  
3 institution under the management of the department of  
4 corrections.

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

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

13 a. A class "C" felony for the possession of contraband if  
14 the contraband is of the type described in subsection 1,  
15 paragraph "b".

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

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

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

32 6. As used in this section, "jail" means a county or  
33 municipal jail.

34 Sec. 2. Section 911.3, subsection 1, paragraph b, Code  
35 2005, is amended to read as follows:

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

2 EXPLANATION

3 This bill expands the definition of the criminal offense of  
4 possessing contraband in correctional institutions to include  
5 possessing such contraband in a secure facility for the  
6 detention or custody of juveniles, a detention facility, or a  
7 jail.

8 Contraband is defined to include controlled substances,  
9 intoxicating beverages, weapons, explosives, knives, or other  
10 cutting devices, or other items that may be fashioned to cause  
11 death or injury, or items that may be used to facilitate an  
12 escape.

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

22 The bill requires a person to report the offense of  
23 possessing contraband or any attempt of possessing such  
24 contraband to an official or officer at a secure facility for  
25 the detention or custody of juveniles, detention facility, or  
26 jail. Current law requires the same reporting requirement at  
27 correctional institutions. Failure to report is an aggravated  
28 misdemeanor.

29 Under the bill, a person committed to a secure facility for  
30 the custody of juveniles, a detention facility, a jail, or a  
31 correctional institution may be required to submit to an x-ray  
32 examination by the facility or institution. Current law  
33 authorizes the department of corrections to x-ray a person  
34 under the control of the department.

35 The bill provides that a law enforcement initiative

1 surcharge in the amount of \$125 shall also be assessed upon a  
2 conviction or deferred judgment for possessing contraband  
3 under Code section 719.7. The surcharge is deposited in the  
4 general fund of the state.

5 A class "C" felony is punishable by confinement for no more  
6 than 10 years and a fine of at least \$1,000 but not more than  
7 \$10,000. A class "D" felony is punishable by confinement for  
8 no more than five years and a fine of at least \$750 but not  
9 more than \$7,500. An aggravated misdemeanor is punishable by  
10 confinement for no more than two years and a fine of at least  
11 \$500 but not more than \$5,000.

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

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HF 2642 - Jail Contraband (LSB 6558 HV)

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

Fiscal Note Version – New

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**Description**

House File 2642 expands the definition of the criminal offense of possessing contraband in correctional institutions to include possessing such contraband in a secure facility for the detention or custody of juveniles, a detention facility, or a jail. The Bill also imposes the \$125 law enforcement initiative surcharge on offenders convicted of possessing contraband.

**Factual Background**

1. Under current law, a graduated system of penalties is imposed for possessing different types of contraband. The penalties range from an aggravated misdemeanor to a Class C felony.
2. In FY 2005, there were 41 charges for possession of contraband (Class D felony) and one failure to report the possession of contraband (aggravated misdemeanor). The conviction rate was 52.0%. Only 33.0% were convicted as charged. There were no convictions for the Class C felony.
3. The prison incarceration rate for a Class D felony conviction is 42.3% for public order offenses. The average length of stay in prison is 12 months. Those paroled from prison serve 14 months on average. Class D felons who receive probation serve 31 months on average.
4. Offenders convicted of an aggravated misdemeanor serve 25 months on average. The jail incarceration rate for an aggravated misdemeanor conviction is 56.0% for public order offenses. The average length of stay in jail is 28 days.
5. There are 97 jails operating in Iowa, 11 juvenile detention facilities, and 12 city holding facilities that would be covered under HF 2642.
6. The State's cost for one new Class D felony conviction ranges from \$3,100 to \$12,100. This amount includes court costs, indigent defense, and supervision in the State corrections system, if applicable.
7. The State's cost for one new aggravated misdemeanor conviction ranges from \$1,600 to \$6,100. This amount includes court costs, indigent defense, and supervision in the State corrections system, if applicable.
8. The maximum costs for an aggravated misdemeanor or a Class D felony conviction will be incurred across multiple fiscal years while the offender is supervised in the corrections system, either in the prison or the community.
9. The marginal cost for county jail operations is approximately \$15 per day.
10. The collection rate for the law enforcement initiative surcharge is 26.1%. Receipts generated by the surcharge are deposited into the State General Fund.

**Assumptions**

1. The law will become effective July 1, 2006. A lag effect of six months is assumed, from the law's effective date to the date of first entry of affected offenders into the correctional system.
2. Juveniles who possess contraband will not be waived to adult court.

3. If each facility had a minimum of one charge per year, with a 52.0% conviction rate, there will be 62 new convictions per year under HF 2642. Of these, 20 offenders (33.0%) would be convicted of a Class D felony. Using current incarceration rates, eight of these offenders would be sentenced to prison while 12 offenders would be sentenced to probation.
4. The jail incarceration rate for a Class D felony conviction may be similar to the jail incarceration rate for an aggravated misdemeanor conviction.

### **Correctional Impact**

During FY 2007, there will be 31 new convictions. There will be 10 new Class D felony convictions under HF 2642. Of these, four offenders will be sentenced to prison while six offenders will receive probation. There will be 21 new aggravated misdemeanor convictions that will receive probation. Of these, 12 will serve time in the county jail; each offender will serve 28 days on average.

During FY 2008, there will be 62 new convictions. There will be 20 new Class D felony convictions. Of these, eight offenders will be sent to prison and 12 will be placed on probation. During FY 2008, there will be 42 new aggravated misdemeanor convictions. Of these, 24 will serve time in the county jail; each offender will serve 28 days on average.

The prison population will increase by four offenders in FY 2007 and eight offenders each year thereafter.

### **Fiscal Impact**

The fiscal impact of HF 2642 to the State General Fund is an increase in expenditures of approximately \$56,000 in FY 2007 and approximately \$183,000 in FY 2008.

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

If 24 offenders annually are held in county jails for 28 days each, the increase in county jail operating costs is anticipated to be approximately \$10,000.

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

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

### **Sources**

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

\_\_\_\_\_  
/s/ Holly M. Lyons

March 8, 2006

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

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HSB 46

PUBLIC SAFETY

McCarthy, chair  
Tjepkos  
Lykam

SENATE/HOUSE FILE SE 02642  
BY (PROPOSED ATTORNEY GENERAL BILL)

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

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

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

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

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

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

1 c. Knowingly makes, obtains, or possesses contraband while  
2 confined in a secure facility for the detention or custody of  
3 juveniles, detention facility, jail, correctional institution,  
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11 paragraph "b".

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13 the contraband is any other type of contraband.

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

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

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10 contraband within, a correctional institution, secure facility  
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12 or jail. If the contraband is a weapon or other item which  
13 may be fashioned to cause death or injury, the person commits  
14 a class "C" felony. Any other contraband offense subjects the  
15 person to a class "D" felony.

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17 possessing contraband or any attempt of possessing such  
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19 the detention or custody of juveniles, detention facility, or  
20 jail. Current law requires the same reporting requirement at  
21 correctional institutions. Failure to report is an aggravated  
22 misdemeanor.

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

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29 surcharge in the amount of \$125 shall also be assessed upon a  
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31 under Code section 719.7. The surcharge is deposited in the  
32 general fund of the state.

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34 than 10 years and a fine of at least \$1,000 but not more than  
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THOMAS J. MILLER  
ATTORNEY GENERAL

## Department of Justice

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

### MEMORANDUM

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

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

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

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

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

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

### **Proposed change**

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