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JUDICIARY

HOUSE FILE 51  
BY ALONS

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

**A BILL FOR**

1 An Act changing the criminal penalties relating to possession,  
2 manufacture, or delivery of cocaine and heroin.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 51

1 Section 1. Section 124.401, subsection 5, unnumbered  
2 paragraph 5, Code 2001, is amended to read as follows:

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

16 Sec. 2. Section 124.401D, Code 2001, is amended to read as  
17 follows:

18 124.401D CONSPIRACY TO MANUFACTURE FOR DELIVERY OR  
19 DELIVERY OR INTENT OR CONSPIRACY TO DELIVER AMPHETAMINE, ~~OR~~  
20 METHAMPHETAMINE, COCAINE, OR HEROIN TO A MINOR.

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

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

32 2. It is unlawful for a person eighteen years of age or  
33 older to deliver, or possess with the intent to deliver to a  
34 person under eighteen years of age, a material, compound,  
35 mixture, preparation, or substance that contains any

1 detectable amount of amphetamine, its salts, isomers, or salts  
2 of its isomers, ~~or~~ methamphetamine, its salts, isomers, or  
3 salts of its isomers, cocaine, or heroin, or to act with, or  
4 enter into a common scheme or design with, or conspire with  
5 one or more persons to deliver or possess with the intent to  
6 deliver to a person under eighteen years of age a material,  
7 compound, mixture, preparation, or substance that contains any  
8 detectable amount of amphetamine, its salts, isomers, or salts  
9 of its isomers, ~~or~~ methamphetamine, its salts, isomers, or  
10 salts of its isomers, cocaine, or heroin.

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

14 Sec. 3. Section 124.401E, Code 2001, is amended to read as  
15 follows:

16 124.401E CERTAIN PENALTIES FOR MANUFACTURING OR DELIVERY  
17 OF AMPHETAMINE, ~~OR~~ METHAMPHETAMINE, COCAINE, OR HEROIN.

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

31 2. If a court sentences a person for a conviction of  
32 manufacturing of a controlled substance under section 124.401,  
33 subsection 1, paragraph "c", and if the controlled substance  
34 is amphetamine, its salts, isomers, or salts of its isomers,  
35 ~~or~~ methamphetamine, its salts, isomers, or salts of its

1 isomers, cocaine, or heroin, the court may suspend the  
2 sentence, and the court may order the person to complete a  
3 drug court program if a drug court has been established in the  
4 county in which the person is sentenced, or order the person  
5 to be assigned to a community-based correctional facility for  
6 a period of one year or until maximum benefits are achieved,  
7 whichever is earlier.

8 3. If a court sentences a person for the person's second  
9 or subsequent conviction for delivery or possession with  
10 intent to deliver a controlled substance under section  
11 124.401, subsection 1, and the controlled substance is  
12 amphetamine, its salts, isomers, or salts of its isomers, or  
13 methamphetamine, its salts, isomers, or salts of its isomers,  
14 cocaine, or heroin, the court, in addition to any other  
15 authorized penalties, shall sentence the person to  
16 imprisonment in accordance with section 124.401, subsection 1,  
17 and the person shall serve the minimum period of confinement  
18 as required by section 124.413.

19 Sec. 4. Section 901.10, subsection 2, Code 2001, is  
20 amended to read as follows:

21 2. Notwithstanding subsection 1, if the sentence under  
22 section 124.413 involves an amphetamine, or methamphetamine,  
23 cocaine, or heroin offense under section 124.401, subsection  
24 1, paragraph "a" or "b", the court shall not grant any  
25 reduction of sentence unless the defendant pleads guilty. If  
26 the defendant pleads guilty, the court may, at its discretion,  
27 reduce the mandatory minimum sentence by up to one-third. If  
28 the defendant additionally cooperates in the prosecution of  
29 other persons involved in the sale or use of controlled  
30 substances, and if the prosecutor requests an additional  
31 reduction in the defendant's sentence because of such  
32 cooperation, the court may grant a further reduction in the  
33 defendant's mandatory minimum sentence, up to one-half of the  
34 remaining mandatory minimum sentence.

35 EXPLANATION

1 This bill makes various changes to cocaine-related and  
2 heroin-related crimes.

3 The bill amends Code section 124.401, subsection 5, which  
4 relates to misdemeanor possession of a controlled substance.  
5 The bill provides that the court shall impose for a cocaine or  
6 heroin offense a minimum two-day jail sentence which may be  
7 suspended, and shall place the person on probation, impose  
8 random drug tests as a condition of probation, and allow the  
9 person's probation officer to place the person in jail upon a  
10 violation of probation. If the controlled substance is  
11 cocaine or heroin, the court may require intensive probation  
12 which shall include random drug testing.

13 The bill amends Code section 124.401D and makes changes in  
14 the penalties applicable to a person 18 years of age or older  
15 to the crimes of conspiring to manufacture for delivery,  
16 delivery of, and possession with intent to deliver, or  
17 conspiracy to deliver, cocaine or heroin to a person under 18  
18 years of age. The bill provides that a felony committed under  
19 Code section 124.401D is punishable by a sentence for an  
20 indeterminate term not to exceed 99 years. The court may  
21 reduce the person's maximum sentence by one-third if  
22 mitigating circumstances exist and the person pleads guilty.  
23 After a finding by the court that mitigating circumstances  
24 exist, the court may further reduce the remaining maximum  
25 sentence if the defendant cooperates in the prosecution of  
26 other persons. The bill provides that a person sentenced  
27 under Code section 124.401D must serve a mandatory minimum  
28 sentence of 10 years of confinement before the person is  
29 eligible for parole even if the sentence is reduced by  
30 mitigating circumstances or the court finds the person  
31 cooperated with the prosecution of others. If a person  
32 commits a second or subsequent offense of conspiracy to  
33 manufacture or deliver to a minor, the person commits a class  
34 "A" felony.

35 The bill amends Code section 124.401E applying certain

1 penalties for the manufacturing or delivery of cocaine or  
2 heroin. If a person is convicted of delivery or possessing  
3 with intent to deliver 500 grams or less of cocaine or 100  
4 grams or less of heroin on a first offense, the court has the  
5 discretion to sentence the person to complete a drug court  
6 program, if a drug court has been established, or to assign  
7 the person to a community-based correctional facility for a  
8 period of up to one year. If a person is convicted of  
9 manufacturing 500 grams or less of cocaine or 100 grams or  
10 less of heroin, the court may also sentence the person to  
11 complete a drug court program, or assign the person to a  
12 community-based correctional facility for a period of up to  
13 one year. If a person is convicted of delivery of or  
14 possession with intent to deliver cocaine or heroin for a  
15 second or subsequent offense, the person shall serve a  
16 mandatory prison sentence under Code sections 124.401 and  
17 124.413 and such sentence is determined by the amount of  
18 cocaine or heroin involved in the delivery.

19 The bill restricts a person's ability to post a bond upon a  
20 conviction of or when appealing a felony conviction for  
21 manufacturing, distributing, or possessing with intent to  
22 manufacture or distribute cocaine or heroin. Current law  
23 generally permits a person awaiting sentencing or appealing a  
24 conviction to post a bond and remain free pending the final  
25 decision in the case.

26 A serious misdemeanor is punishable by confinement for no  
27 more than one year and a fine of at least \$250 but not more  
28 than \$1,500. An aggravated misdemeanor is punishable by  
29 confinement for no more than two years and a fine of at least  
30 \$500 but not more than \$5,000. A class "D" felony is  
31 punishable by confinement for no more than five years and a  
32 fine of at least \$750 but not more than \$7,500. A class "C"  
33 felony is punishable by confinement for no more than 10 years  
34 and a fine of at least \$1,000 but not more than \$10,000. A  
35 class "B" felony is punishable by confinement for no more than

1 25 years. A class "A" felony is punishable by confinement for  
2 life without the possibility of parole.

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