

Barry, Chair
Eichhorn
Trennel

HSB 217

HOUSE FILE _____ S: JUDICIARY
SF (HF) 646
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON LARSON)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to mandatory minimum sentences of incarceration
2 for third or subsequent operating while intoxicated
3 violations.

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

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1 Section 1. Section 321J.2, subsection 2, paragraph c, Code
2 2001, is amended to read as follows:

3 c. A class "D" felony for a third offense and each
4 subsequent offense, and shall be imprisoned in the county jail
5 for a determinate sentence of not more than one year but not
6 less than thirty days, or committed to the custody of the
7 director of the department of corrections for not more than
8 five years but not less than thirty days, and assessed a fine
9 of not less than two thousand five hundred dollars nor more
10 than seven thousand five hundred dollars. A person convicted
11 of a third or subsequent offense may be committed to the
12 custody of the director of the department of corrections, who
13 shall assign the person to a facility pursuant to section
14 904.513 or the offender may be committed to treatment in the
15 community under the provisions of section 907.6.

16 Sec. 2. Section 321J.2, subsection 3, paragraph a,
17 unnumbered paragraph 1, Code 2001, is amended to read as
18 follows:

19 Notwithstanding In accordance with the provisions of
20 sections 901.5 and 907.3, the court shall not ~~defer-judgment~~
21 ~~or-sentencing~~, ~~or~~ suspend execution of any mandatory minimum
22 sentence of incarceration applicable to the defendant under
23 subsection 2, and; furthermore, the court shall not defer
24 judgment or sentencing and shall not suspend execution of any
25 other part of a sentence not involving incarceration imposed
26 pursuant to subsection 2, if any of the following apply:

27 EXPLANATION

28 This bill addresses an issue raised in the case of State v.
29 Iowa District Court for Mahaska County, 620 N.W.2d 271 (Iowa
30 2000). The court in Mahaska County held that Code section
31 321J.2, subsection 2, paragraph "c", requires a mandatory
32 period of incarceration for a third or subsequent operating
33 while intoxicated (OWI) offense only for sentences of
34 imprisonment in the county jail and not for sentences of
35 commitment to the department of corrections.

1 The bill amends Code section 321J.2 to provide that persons
 2 sentenced to commitment to the custody of the director of the
 3 department of corrections for a third or subsequent OWI
 4 offense shall be so committed for but not more than five years
 5 but not less than 30 days. The bill also amends Code section
 6 321J.2 to provide that the provisions regarding deferred
 7 judgments and sentences and suspension of execution of
 8 sentences for OWI offenses in Code section 321J.2 are
 9 otherwise in accordance with provisions in Code sections 901.5
 10 and 907.3.

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4/1/01 Rereferred To: Judiciary

MAR 19 2001
Place On Calendar

HOUSE FILE 646
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 217)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to sentences of incarceration for third or
2 subsequent operating while intoxicated violations.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 646

1 Section 1. Section 321J.2, subsection 2, paragraph c, Code
2 2001, is amended by striking the paragraph and inserting in
3 lieu thereof the following:

4 c. A class "D" felony for a third offense and each
5 subsequent offense, and shall be committed to the custody of
6 the director of the department of corrections, confined for
7 not more than five years but not less than thirty days, and
8 assessed a fine of not less than two thousand five hundred
9 dollars nor more than seven thousand five hundred dollars. If
10 a person's sentence of commitment to the custody of the
11 director of the department of corrections is not suspended,
12 the person shall be assigned to a facility pursuant to section
13 904.513 or committed to treatment in the community under
14 section 907.6. If a person's sentence of commitment to the
15 custody of the director of the department of corrections is
16 suspended, the sentencing court shall order that the offender
17 serve not less than thirty days but not more than one year in
18 the county jail.

19 EXPLANATION

20 This bill addresses an issue raised in the case of State v.
21 Iowa District Court for Mahaska County, 620 N.W.2d 271 (Iowa
22 2000) and makes an additional change for sentencing persons
23 who have committed a third or subsequent operating while
24 intoxicated (OWI) offense. The court in Mahaska County held
25 that Code section 321J.2, subsection 2, paragraph "c",
26 requires a mandatory period of incarceration for a third or
27 subsequent offense only for sentences of imprisonment in the
28 county jail and not for sentences of commitment to the
29 department of corrections.

30 The bill amends Code section 321J.2 to provide that persons
31 who commit a third or subsequent OWI offense shall be
32 committed to the custody of the director of the department of
33 corrections, confined for not more than five years but not
34 less than 30 days, and assessed a fine of not less than \$2,500
35 nor more than \$7,500. The bill also provides that such

1 persons shall be assigned to an OWI violator treatment
2 facility or committed to treatment in the community if their
3 sentence is not suspended, or ordered to serve at least 30
4 days but not more than one year in the county jail if their
5 sentence is suspended.

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HOUSE FILE 646

H-1295

- 1 Amend House File 646 as follows:
- 2 1. Page 1, lines 6 and 7, by striking the words
- 3 "corrections, confined for not more than five years
- 4 but not less than thirty days" and inserting the
- 5 following: "corrections for an indeterminate term not
- 6 to exceed five years".
- 7 2. Page 1, line 9, by inserting after the words
- 8 "hundred dollars." the following: "A person convicted
- 9 of a third or subsequent offense shall be confined for
- 10 a mandatory minimum of thirty days."
- 11 3. Page 1, lines 13 and 14, by striking the words
- 12 "or committed to treatment in the community under
- 13 section 907.6".
- 14 4. Page 1, line 18, by inserting after the word
- 15 "jail" the following: ", and may commit the offender
- 16 to treatment in the community under section 907.6".
- 17 5. Page 1, by inserting after line 18 the
- 18 following:
- 19 "Sec. _____. Section 902.3, Code 2001, is amended to
- 20 read as follows:
- 21 902.3 INDETERMINATE SENTENCE.
- 22 When a judgment of conviction of a felony other
- 23 than a class "A" felony is entered against a person,
- 24 the court, in imposing a sentence of confinement,
- 25 shall commit the person into the custody of the
- 26 director of the Iowa department of corrections for an
- 27 indeterminate term, the maximum length of which shall
- 28 not exceed the limits as fixed by section 902.9,
- 29 unless otherwise prescribed by statute, nor shall the
- 30 term be less than the minimum term imposed by law, if
- 31 a minimum sentence is provided. However, if the court
- 32 may sentence a person convicted of a class "D" felony
- 33 for a violation of section 321J.2 to imprisonment for
- 34 up to one year in a county jail under section 902.9,
- 35 subsection 5, and the person shall not be under the
- 36 custody of the director of the Iowa department of
- 37 corrections suspends an offender's sentence of
- 38 commitment to the custody of the director of the
- 39 department of corrections under section 321J.2,
- 40 subsection 2, paragraph "c", the court shall order the
- 41 offender to serve time in the county jail as provided
- 42 in section 321J.2, subsection 2, paragraph "c",
- 43 notwithstanding any provision to the contrary in
- 44 section 903.4.
- 45 Sec. _____. Section 902.9, subsection 5, Code 2001,
- 46 is amended to read as follows:
- 47 5. A class "D" felon, not an habitual offender,
- 48 shall be confined for no more than five years, and in
- 49 addition shall be sentenced to a fine of at least
- 50 seven hundred fifty dollars but not more than seven

H-1295

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Page 2

1 thousand five hundred dollars. ~~A class "D" felon,~~
2 ~~such felony being for a violation of section 321J.2,~~
3 ~~may be sentenced to imprisonment for up to one year in~~
4 ~~the county jail."~~

5 6. By renumbering as necessary.

By TREMMEL of Wapello

H-1295 FILED MARCH 21, 2001

HOUSE FILE 646

H-1408

- 1 Amend House File 646 as follows:
2 1. Page 1, by inserting before line 1 the
3 following:
4 "Section 1. Section 321J.2, subsection 1,
5 paragraph b, Code 2001, is amended to read as follows:
6 b. While having an alcohol concentration of ~~.10~~
7 .08 or more."
8 2. Page 1, by inserting after line 18 the
9 following:
10 "Sec. _____. Section 321J.6, subsection 1, paragraph
11 g, Code 2001, is amended to read as follows:
12 g. The preliminary breath screening test was
13 administered and it indicated an alcohol concentration
14 of .02 or more but less than ~~.10~~ .08 and the person is
15 under the age of twenty-one.
16 Sec. _____. Section 321J.12, subsection 5, Code
17 2001, is amended to read as follows:
18 5. Upon certification, subject to penalty of
19 perjury, by the peace officer that there existed
20 reasonable grounds to believe that the person had been
21 operating a motor vehicle in violation of section
22 321J.2A, that there existed one or more of the
23 necessary conditions for chemical testing described in
24 section 321J.6, subsection 1, and that the person
25 submitted to chemical testing and the test results
26 indicated an alcohol concentration ~~as defined in~~
27 ~~section 321J.1~~ of .02 or more but less than ~~.10~~ .08,
28 the department shall revoke the person's driver's
29 license or operating privilege for a period of sixty
30 days if the person has had no previous revocation
31 under this chapter, and for a period of ninety days if
32 the person has had a previous revocation under this
33 chapter.
34 Sec. _____. IMPLEMENTATION OF ACT. Section 25B.2,
35 subsection 3, shall not apply to this Act."
36 3. Title page, lines 1 and 2, by striking the
37 words "sentences of incarceration for third or
38 subsequent".
39 4. By renumbering as necessary.

By RAECKER of Polk
GRUNDBERG of Polk
KREIMAN of Davis

H-1408 FILED APRIL 2, 2001

**HOUSE FILE 646
FISCAL NOTE**

The estimate for **Amendment H-1295 to House File 646** is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Amendment H-1295 to House File 646 clarifies existing sentencing options for Operating While Intoxicated (OWI) third and subsequent offense convictions. The amendment also requires all offenders convicted of OWI third and subsequent offenses who are revoked, to be revoked to State prisons rather than county jails. Admendment H-1295 to House File 646 requires all offenders convicted of OWI third and subsequent offenses to be incarcerated for at least 30 days, either in county jails or the State prison system. The Supreme Court has held there is no mandatory minimum term for OWI third and subsequent offenders that are sentenced to the Iowa Department of Corrections. This ruling places Iowa in noncompliance with federal law regarding highways funds. Given the Supreme Court Opinion, if no change is made to Iowa's laws, \$3.0 million of federal highway construction money currently received by the Iowa Department of Transportation will be transferred to the Iowa Department of Public Safety for highway safety projects. Amendment H-1295 to HF 646 amends Iowa law to comply with federal regulations. It also amends sentencing options for OWI third or subsequent offenses.

ASSUMPTIONS

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections' practices and policies will not change over the projection period.
3. The law will become effective July 1, 2001. A lag effect of six months is assumed, from the effective date of the change in the law to the date of first entry of affected offenders into the correctional system.
4. The analysis is based on information obtained from the Justice Data Warehouse, which includes statewide court information. The analysis is also based on detailed review of individual OWI third offense case records in the Justice Data Warehouse for December 2000. Conviction and penalty information is based on FY 2000 data.
5. There were 1,240 offenders convicted of OWI third offense during FY 2000. Of these, 608 were sentenced to prison and 397 were sentenced to jail; 235 offenders did not receive incarceration. These offenders are under community-based supervision (probation) but have not received a term of confinement as part of their sentence.
6. There will be 235 offenders annually who will receive a jail term under Amendment H-1295. This assumes that judges who are currently using the least restrictive sanction available under current law (no confinement time) will continue to use the least restrictive sanction available under Amendment H-1295 (mandatory minimum jail term). The average time served

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- in county jails is 39 days, based on average jail time served during FY 2000.
7. The revocation rate is 7.8%, based on the number of OWI third and subsequent offense revocations to prison in FY 2000, and the number of probationers with suspended prison terms in December 2000. Length of stay in jail following revocation was estimated at 60 days, based on information provided by local Community-Based Corrections (CBC) officials.
 8. Admissions to State prison assumes that the number of offenders currently being revoked to county jail, will now be revoked to State prison pending bed space availability for placement in a CBC OWI treatment facility. Length of stay for these offenders is based on FY 2000 data. However, because demand for OWI treatment will increase under Amendment H-1295 to House File 646, more offenders may have to wait in State prison for a longer time period, pending space availability in a CBC OWI treatment facility. To the extent this occurs, the correctional impact may be larger than indicated in this fiscal note.
 9. Current law provides that mandatory minimum terms for OWI third offense inmates may serve the confinement term in a CBC treatment facility. It is assumed this practice meets the definition of "confinement" under federal law.
 10. The marginal cost per day for State prisons is \$16 per inmate. The average length of stay for OWI offenders is three months in prison, pending OWI treatment program placement. The marginal cost per day for CBC OWI treatment facilities is \$18. The average length of stay in a CBC OWI treatment program is four to six months.
 11. There are 1,368 CBC facility beds statewide. Of these, approximately 290 beds are dedicated to the OWI treatment program. On March 21, 2001, there were 287 OWI offenders in the facility-based OWI treatment program while 63 OWI offenders were waiting to enter the facilities. These 63 offenders may be under community-based supervision, or waiting in prison or jail. The facility-based OWI treatment program is operating at full capacity under current law.
 12. People who complete the OWI treatment program are paroled from the CBC facilities. No costs are associated with this parole, since under current law, these offenders are on probation. The marginal cost per day for parole or probation is \$1.55 per offender.
 13. The marginal cost per day for county jails is \$25. The average length of stay for OWI offenders currently serving a mandatory minimum jail term is 39 days. The average length of stay for OWI offenders revoked to jail is estimated to be 60 days.

CORRECTIONAL IMPACT

There will be 11 people sentenced to prison during FY 2002. The prison population will only increase by 3 inmates since the offenders will serve a short prison term (90 days on average). There will be 21 people sentenced to prison during FY 2003, and each year thereafter. The prison population will only increase by 5 inmates during FY 2003, and each year thereafter.

Admissions to Community-Based Corrections (CBC) facilities will increase by 11 during FY 2002. Future admissions will increase by 21 annually. This will increase the need for additional OWI treatment beds.

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Admissions to county jails are expected to increase by 107 during FY 2002. Future admissions are expected to increase by 214 annually. This figure assumes the 235 offenders currently receiving no confinement at conviction, will receive jail time. This figure also assumes that 21 offenders currently revoked to jail, will be revoked to prison.

FISCAL IMPACT**FEDERAL FUNDS IMPACT**

Amendment H-1295 to House File 646 will bring Iowa into compliance with federal law so that federal highway construction funds will remain with the Iowa Department of Transportation and will not be transferred to the Iowa Department of Public Safety to be used for highway safety projects.

STATE GENERAL FUND IMPACT

State prison costs are estimated to increase by \$18,000 during FY 2002. FY 2003 costs are estimated to increase by \$29,000.

Community-Based Corrections (CBC) facility costs for the OWI treatment program are estimated to increase by \$30,000 during FY 2002. FY 2003 costs are estimated to increase by \$57,000. These estimates do not include costs for construction of additional CBC beds, if required.

Amendment H-1295 to House File 646 is not expected to have an impact on the Board of Parole, court system, or indigent defense costs.

LOCAL GOVERNMENT IMPACT

Local government costs for county jail operations are estimated to increase by \$99,000 during FY 2002. FY 2003 costs are estimated to increase by \$198,000, and each year thereafter.

SOURCES

Criminal and Juvenile Justice Planning Division, Department of Human Rights
Department of Corrections
Parole Board
State Public Defender's Office
United States Department of Transportation
Department of Public Safety
Supreme Court of Iowa

(LSB 3282HV.2, BAL)

FILED MARCH 26, 2001

BY DENNIS PROUTY, FISCAL DIRECTOR

**HOUSE FILE 646
FISCAL NOTE**

The estimate for **House File 646** is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 646 addresses an issue raised in the Supreme Court case of State v. Iowa District Court for Mahaska County, 620 N.W.2d 271 (Iowa 2000) and makes an additional change for sentencing persons who have committed a third or subsequent Operating While Intoxicated (OWI) offense. The Supreme Court held there is no mandatory minimum term for OWI third and subsequent offenders that are sentenced to the Iowa Department of Corrections. This ruling places Iowa in noncompliance with federal law regarding federal highway funding. As a result of the Supreme Court Opinion, if no change is made to Iowa's laws, \$3.0 million in federal highway construction money currently received by the Iowa Department of Transportation will be transferred to the Iowa Department of Public Safety for highway safety projects. The Bill amends Iowa law to comply with federal regulations. The Bill also amends sentencing options for OWI third or subsequent offenses.

ASSUMPTIONS

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections' practices and policies will not change over the projection period.
3. The law will become effective July 1, 2001. A lag effect of six months is assumed, from the effective date of the change in the law to the date of first entry of affected offenders into the correctional system.
4. The analysis is based on information obtained from the Justice Data Warehouse, which includes statewide court information. The analysis is also based on detailed review of individual OWI third offense case records in the Justice Data Warehouse for December 2000. Conviction and penalty information is based on FY 2000 data.
5. There were 1,240 offenders convicted of OWI third offense during FY 2000. Of these, 608 were sentenced to prison and 397 were sentenced to jail; 235 offenders did not receive incarceration. These offenders are under community-based supervision (probation) but have not received a term of confinement as part of their sentence.
6. House File 646 provides that a jail sentence is no longer an option for a felony conviction of OWI third offense. The impact on local jails represents those people who are currently serving mandatory jail terms at sentencing, plus an estimated number of offenders who are revoked to jail.
7. Of the 397 convicted offenders who were sentenced to jail in FY 2000, 274 (69.0%) offenders received a sentence of probation following their jail stay. If they fail their probation, they are revoked to jail. The remaining 31.0% of the offenders (123 offenders) who served a jail term,

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- received a suspended prison term. If they fail probation, they are revoked to State prison. The analysis of December 2000 Justice Data Warehouse cases found no cases in which all of the jail term was suspended. All of the 397 convicted offenders served a term of confinement.
8. The revocation rate for those offenders currently sentenced to jail is 7.8%, based on the number of OWI third and subsequent offense revocations to prison in FY 2000, and the number of probationers with suspended prison terms in December 2000. Using this revocation rate there are 21 offenders annually (274 offenders x 7.8%) now being revoked to jail who will be revoked to prison under House File 646.
 9. Admissions to State prison assumes the estimated number of offenders who will be sent to prison before being transferred to a Community-Based Corrections (CBC) OWI treatment facility is 213, based on current practice, plus 21 offenders who will be revoked to prison rather than jail, and an estimated 43 offenders annually revoked to prison after failing the CBC OWI treatment program (6.7% revocation rate). Length of stay is based on FY 2000 data. However, because demand for OWI treatment will increase under House File 646, more offenders may have to wait in State prison for a longer time period, pending space availability in a CBC OWI treatment facility. To the extent this occurs, the correctional impact may be larger than indicated in this fiscal note.
 10. Current law provides that mandatory minimum terms for OWI third offense inmates may serve the confinement term in a CBC treatment facility. It is assumed this practice meets the definition of "confinement" under federal law.
 11. Judges may interpret the sentencing options in House File 646 as permitting a sentence for convicted OWI third offense as 30 days in prison; five years in prison; or any number of days, months, or years up to the five-year maximum term allowed. If this occurs, there may be further changes in the sentencing of people convicted of OWI third offense, beyond what is anticipated by this fiscal note.
 12. The marginal cost per day for State prisons is \$16 per inmate. The average length of stay for OWI offenders is three months in prison, pending OWI treatment program placement. The marginal cost per day for CBC OWI treatment facilities is \$18. The average length of stay in a CBC OWI treatment program is four to six months.
 13. There are 1,368 CBC facility beds statewide. Of these, approximately 290 beds are dedicated to the OWI treatment program. On March 21, 2001, there were 287 OWI offenders in the facility-based OWI treatment program while 63 OWI offenders were waiting to enter the facilities. These 63 offenders may be under community-based supervision, or waiting in prison or jail. The facility-based OWI treatment program is operating at full capacity under current law.
 14. Construction of additional CBC beds is estimated to cost \$22,000 per bed.
 15. Offenders who complete the OWI treatment program are paroled from the CBC facilities. No costs are associated with this parole, since under current law, these offenders are on probation. The marginal cost per day for parole or probation is \$1.55 per offender.
 16. The marginal cost per day for county jails is \$25. The average length of stay for OWI offenders currently serving a mandatory minimum jail term is 39 days. The average length of stay for OWI offenders revoked to jail is estimated to be 60 days.

CORRECTIONAL IMPACT

There will be 139 offenders sentenced to prison during FY 2002. The prison population will only increase by 51 inmates since the offenders will serve a short prison term (90 days on average). There will be 277 people sentenced to prison during FY 2003, and each year thereafter. The prison population will only increase by 102 inmates during FY 2003, and each year thereafter.

Admissions to CBC facilities will increase by 327 during FY 2002. Future admissions will increase by 653 annually. This will result in additional beds being constructed, since the annual number sentenced is 653 offenders while current capacity is 290 beds. Assuming an average length of stay of four to six months, 327 additional beds will need to be built.

Admissions to county jails are expected to decrease by 209 during FY 2002. Future admissions are expected to decrease by 418 annually.

FISCAL IMPACT

The fiscal impact of House File 646 is as follows:

FEDERAL FUNDS IMPACT

House File 646 will bring Iowa into compliance with federal law so that federal highway construction funds will remain with the Iowa Department of Transportation and will not be transferred to the Iowa Department of Public Safety to be used for highway safety projects.

STATE GENERAL FUND IMPACT

State prison costs are estimated to increase by \$298,000 in FY 2002. FY 2003 costs are estimated to increase by \$596,000.

Community-Based Corrections facility operating costs for the OWI treatment program are estimated to increase by \$883,000 during FY 2002. FY 2003 costs are estimated to increase by \$1.76 million. These estimates do not include costs for construction of additional CBC beds. The additional costs for construction of 327 OWI treatment beds is estimated to be \$7.2 million. This cost excludes the purchase of land, if land is required.

House File 646 is not expected to have an impact on the Board of Parole, court system, or indigent defense costs.

LOCAL GOVERNMENT IMPACT

Local government costs for county jail operations are estimated to decrease by \$209,000 in FY 2002 and \$418,000 in FY 2003.

SOURCES

Criminal and Juvenile Justice Planning Division, Department of Human Rights
Department of Corrections
Parole Board
Office of the Attorney General
State Public Defender's Office
United States Department of Transportation
Department of Public Safety
Supreme Court of Iowa

(LSB 3282HV, BAL)

FILED MARCH 28, 2001

BY DENNIS PROUTY, FISCAL DIRECTOR