

Shey, Chair

HSB 580

JUDICIARY

Richard
Kernul

2230

HOUSE FILE _____
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 sentences of incarceration for third or
2 subsequent operating-while-intoxicated motor vehicle offenses.
3 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 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 for an
7 indeterminate term not to exceed five years, shall be confined
8 for a mandatory minimum term of thirty days, and shall be
9 assessed a fine of not less than two thousand five hundred
10 dollars nor more than seven thousand five hundred dollars.

11 (1) If the court does not suspend a person's sentence
12 under this paragraph "c", the person shall be assigned to a
13 facility pursuant to section 904.513.

14 (2) If the court suspends a person's sentence under this
15 paragraph "c", the court shall commit the person to the
16 custody of the director of the department of corrections and
17 order the person to serve not less than thirty days nor more
18 than one year in the county jail, and the person may be
19 committed to treatment in the community under section 907.6.

20 Sec. 2. Section 902.3, Code 2001, is amended to read as
21 follows:

22 902.3 INDETERMINATE SENTENCE.

23 When a judgment of conviction of a felony other than a
24 class "A" felony is entered against a person, the court, in
25 imposing a sentence of confinement, shall commit the person
26 into the custody of the director of the Iowa department of
27 corrections for an indeterminate term, the maximum length of
28 which shall not exceed the limits as fixed by section 902.9,
29 unless otherwise prescribed by statute, nor shall the term be
30 less than the minimum term imposed by law, if a minimum
31 sentence is provided. However, if the court may-sentence-a
32 ~~person-convicted-of-a-class-"D"-felony-for-a-violation-of~~
33 ~~section-321J-2-to-imprisonment-for-up-to-one-year-in-a-county~~
34 ~~jail-under-section-902-9-subsection-5, and the person shall~~
35 ~~not-be-under-the-custody-of-the-director-of-the-Iowa~~

1 ~~department-of-corrections~~ suspends a person's sentence under
 2 section 321J.2, subsection 2, paragraph "c", the court shall
 3 order the offender to serve time in the county jail as
 4 provided in section 321J.2, subsection 2, paragraph "c",
 5 notwithstanding any provision to the contrary in section
 6 903.4.

7 Sec. 3. Section 902.9, subsection 5, Code Supplement 2001,
 8 is amended to read as follows:

9 5. A class "D" felon, not an habitual offender, shall be
 10 confined for no more than five years, and in addition shall be
 11 sentenced to a fine of at least seven hundred fifty dollars
 12 but not more than seven thousand five hundred dollars. A
 13 ~~class-"D"-felon, such-felony-being-for-a-violation-of-section~~
 14 ~~321J.2, may-be-sentenced-to-imprisonment-for-up-to-one-year-in~~
 15 ~~the-county-jail;~~

16 EXPLANATION

17 This bill provides that persons who commit a third or
 18 subsequent operating-while-intoxicated (OWI) offense shall be
 19 committed to the custody of the director of the department of
 20 corrections for an indeterminate term not to exceed five years
 21 with a mandatory minimum term of confinement of 30 days, and
 22 assessed a fine of not less than \$2,500 nor more than \$7,500.
 23 The bill also provides that if the court does not suspend the
 24 person's sentence, the person shall be assigned to an OWI
 25 treatment facility. If the court suspends the person's
 26 sentence, the court shall commit the person to the custody of
 27 the director of the department of corrections, and shall order
 28 the person to serve at least 30 days but not more than one
 29 year in the county jail, and the person may be committed to
 30 treatment in the community.

31 The bill addresses the case of State v. Iowa District Court
 32 for Mahaska County, 620 N.W.2d 271 (Iowa 2000). In that case,
 33 the Iowa Supreme Court held that Code section 321J.2,
 34 subsection 2, paragraph "c", requires a mandatory minimum
 35 period of incarceration for a third or subsequent offense for

S.F. _____ ^{HSB}_{H.F.} 580

1 imprisonment in the county jail only, but not for commitment
2 to the department of corrections.

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S-2/15/02 Judiciary
S-3/11/02 Do Pass

FEB 6 2002
Place On Calendar

HOUSE FILE 2230
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 580)

Passed House, Date ^(P. 355) 2/14/01 Passed Senate, Date ^(P. 643) 3-18-02
Vote: Ayes 93 Nays 0 Vote: Ayes 45 Nays 0
Approved March 29, 2002

A BILL FOR

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2 subsequent operating-while-intoxicated motor vehicle offenses.
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HF 2230

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2 2001, is amended by striking the paragraph and inserting in
3 lieu thereof the following:

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5 subsequent offense, and shall be committed to the custody of
6 the director of the department of corrections for an
7 indeterminate term not to exceed five years, shall be confined
8 for a mandatory minimum term of thirty days, and shall be
9 assessed a fine of not less than two thousand five hundred
10 dollars nor more than seven thousand five hundred dollars.

11 (1) If the court does not suspend a person's sentence of
12 commitment to the custody of the director of the department of
13 corrections under this paragraph "c", the person shall be
14 assigned to a facility pursuant to section 904.513.

15 (2) If the court suspends a person's sentence of
16 commitment to the custody of the director of the department of
17 corrections under this paragraph "c", the court shall order
18 the person to serve not less than thirty days nor more than
19 one year in the county jail, and the person may be committed
20 to treatment in the community under section 907.6.

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22 follows:

23 902.3 INDETERMINATE SENTENCE.

24 When a judgment of conviction of a felony other than a
25 class "A" felony is entered against a person, the court, in
26 imposing a sentence of confinement, shall commit the person
27 into the custody of the director of the Iowa department of
28 corrections for an indeterminate term, the maximum length of
29 which shall not exceed the limits as fixed by section 902.9,
30 unless otherwise prescribed by statute, nor shall the term be
31 less than the minimum term imposed by law, if a minimum
32 sentence is provided. However, if the court ~~may-sentence-a~~
33 ~~person-convicted-of-a-class-"D"-felony-for-a-violation-of~~
34 ~~section-321J.2-to-imprisonment-for-up-to-one-year-in-a-county~~
35 ~~jail-under-section-902.9,subsection-5, and-the-person-shall~~

1 ~~not-be-under-the-custody-of-the-director-of-the-iowa~~
 2 ~~department-of-corrections~~ suspends a person's sentence under
 3 section 321J.2, subsection 2, paragraph "c", the court shall
 4 order the offender to serve time in the county jail as
 5 provided in section 321J.2, subsection 2, paragraph "c",
 6 notwithstanding any provision to the contrary in section
 7 903.4.

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 9 is amended to read as follows:

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 14 ~~class-"D"-felon, such-felony-being-for-a-violation-of-section~~
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 16 ~~the-county-jail.~~

17 EXPLANATION

18 This bill provides that persons who commit a third or
 19 subsequent operating-while-intoxicated (OWI) offense shall be
 20 committed to the custody of the director of the department of
 21 corrections for an indeterminate term not to exceed five years
 22 with a mandatory minimum term of confinement of 30 days, and
 23 assessed a fine of not less than \$2,500 nor more than \$7,500.
 24 The bill also provides that if the court does not suspend the
 25 person's sentence of commitment to the custody of the director
 26 of the department of corrections, the person shall be assigned
 27 to an OWI treatment facility. If the court suspends the
 28 person's sentence of commitment to the custody of the director
 29 of the department of corrections, the court shall order the
 30 person to serve at least 30 days but not more than one year in
 31 the county jail, and the person may be committed to treatment
 32 in the community.

33 The bill addresses the case of State v. Iowa District Court
 34 for Mahaska County, 620 N.W.2d 271 (Iowa 2000). In that case,
 35 the Iowa Supreme Court held that Code section 321J.2,

1 subsection 2, paragraph "c", requires a mandatory minimum
2 period of incarceration for a third or subsequent offense for
3 imprisonment in the county jail only, but not for commitment
4 to the department of corrections.

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Legislative Fiscal Bureau

Fiscal Note

HF 2230 - OWI Third Offenses (LSB 5332 HV)

Analyst: Beth Lenstra (Phone: (515) 281-6301) (Beth.Lenstra@legis.state.ia.us)

Fiscal Note Version — New

Description

House File 2230 requires all offenders convicted of Operating While Intoxicated (OWI) third and subsequent offenses to be incarcerated for at least 30 days, either in county jails or the State prison system. The Bill also requires all offenders convicted of OWI third and subsequent offenses who are revoked, to be revoked to State prisons rather than county jails. 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 highway funds. During FY 2002, \$3.37 million of federal highway money was transferred from the Iowa Department of Transportation to the Iowa Department of Public Safety for alcohol counter-measures due to Iowa's noncompliance. Approximately \$6.74 million will be transferred from the Department of Transportation to the Department of Public Safety in FY 2003, if Iowa's law regarding mandatory minimum confinement terms for OWI third and subsequent offenses is not amended. House File 2230 amends Iowa law to comply with these 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, 2002. 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. Conviction and penalty information is based on FY 2001 data.
5. There were 1,108 offenders convicted of OWI third offense during FY 2001. Of these, 394 were sentenced to jail, 533 were sentenced to prison, and 25 were sentenced to Community-Based Corrections (CBC) residential treatment facilities.
6. There were 156 convicted offenders who did not receive incarceration, nor were they credited for time served in jail prior to conviction. These offenders are under CBC supervision (probation) but have not received a term of confinement as part of their sentence.
7. There were 41 offenders convicted of OWI third offense in FY 2001 who received a sentence of jail only. They did not receive a probation sentence. Under the Bill, a sentence of jail time only is no longer possible. It is assumed that judges currently using this sentencing option will, in the future, impose the jail term plus a probation sentence of no more than 24 months.
8. There will be 156 offenders annually who will receive a jail term under HF 2230. This assumes that judges who are currently using the least restrictive sanction under current law (no confinement time) will continue to use the least restrictive sanction available under this Bill (mandatory minimum jail term). The average time served in county jails is 45 days, based on FY 2001 data. The offenders will receive a probation sentence with a jail sentence.

9. The revocation rate is 6.8%, based on the number of OWI third and subsequent offense revocations to prison in FY 2001. There were 245 OWI third offense offenders granted probation with a suspended jail term in FY 2001. Applying the 6.8% revocation rate results in 17 offenders being sent to prison rather than jail. The average length of stay in jail following revocation is 55 days, based on FY 2001 data.
10. 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 residential treatment facility. Average length of stay in prison is two months, based on FY 2001 data. However, because demand for OWI treatment will increase under this Bill, more offenders may have to wait in State prison for a longer time period, pending space availability in a CBC OWI residential treatment facility. To the extent that this occurs, the correctional impact may be larger than indicated in this fiscal note.
11. Current law provides that mandatory minimum terms for OWI third offense inmates may serve the confinement term in a CBC residential treatment facility. It is assumed this practice meets the definition of "confinement" under federal law.
12. The marginal cost per day for State prisons is \$16 per inmate. The average length of stay for OWI offenders is two months in prison, pending OWI treatment program placement.
13. The marginal cost per day for CBC OWI residential treatment facilities is \$18 per offender. The average length of stay is four to six months in the facility.
14. There are 1,404 CBC facility beds statewide. Of these, approximately 325 beds are dedicated to the OWI residential treatment program. On January 23, 2002, there were 252 OWI offenders in the facility-based OWI treatment program while 42 offenders were waiting to enter the facilities. These offenders may be under CBC supervision, or waiting in prison or jail. The facility-based OWI treatment program is operating at full capacity under current law.
15. Offenders who complete the OWI treatment program are paroled from the facilities. No costs are associated with this parole, since under current law, these offenders are on probation.
16. Offenders who are currently receiving a sentence of jail only, will continue to receive a jail term plus 12 months of probation supervision. The marginal cost per day for parole or probation is \$1.55 per offender. It is assumed that these offenders will be required to attend substance abuse treatment, either at their own expense or through Iowa's substance abuse managed care system. The average cost per client for substance abuse treatment is \$1,200.
17. The marginal cost per day for county jails ranges from \$15 to \$25. The average length of stay for OWI offenders currently serving a mandatory minimum jail term is 45 days. The average length of stay for OWI offenders revoked to jail is 55 days.
18. The State reimburses counties for holding parole, work release and OWI inmates in county jails pending revocation hearings to prison. This "county confinement" appropriation is included in the Justice System Appropriations Bill. The State does not reimburse counties for holding probation violators in local jails. Under current law, the State does not reimburse counties for holding OWI third offenders whose sentences are suspended and placed on probation, and then revoked to jail.

Correctional Impact

There will be eight people admitted to prison during FY 2003. The prison population will only increase by three inmates since the offenders will serve a short prison term (60 days on average). There will be 17 people admitted to prison during FY 2004, and each year thereafter. The prison population will only increase by three inmates during FY 2004, and each year thereafter.

Admissions to CBC facilities will increase by eight during FY 2003. Future admissions will increase by 17 annually. This will increase the number of offenders on waiting lists that will increase the need for additional OWI treatment beds.

Admissions to CBC probation supervision will increase by 20 during FY 2003. Future admissions will increase by 41 offenders annually.

Admissions to county jails are expected to increase by 70 during FY 2002. Future admissions are expected to increase by 139 annually. This figure assumes the 156 offenders currently receiving no confinement at conviction will receive jail time. This figure also assumes that 17 offenders currently being revoked to jail will be revoked to prison.

Fiscal Impact

Federal Funds Impact

House File 2230 will bring Iowa into compliance with federal law so that approximately \$6.74 million in federal highway funds will remain with the Iowa Department of Transportation during FY 2003 and will not be transferred to the Iowa Department of Public Safety to be used for alcohol counter-measures.

General Fund Impact

House File 2230 will result in a General Fund cost of \$77,000 in FY 2003 and \$150,000 in FY 2004. The cost breakdown follows:

1. Total correctional system costs are estimated to be \$52,000 during FY 2003 and \$100,000 in FY 2004, as follows:
 - a. State prison costs are estimated to increase by \$18,000 during FY 2003, and annually thereafter.
 - b. CBC facility costs for the OWI treatment program are estimated to increase by \$22,000 during FY 2003. The FY 2004 costs are estimated to increase by \$46,000. These estimates do not include costs for construction of additional CBC beds, if required.
 - c. CBC supervision costs are estimated to increase by \$12,000 during FY 2003. The FY 2004 costs are estimated to increase by \$36,000.
2. Additionally, HF 2230 is expected to increase substance abuse treatment costs by \$25,000 in FY 2003 and \$50,000 in FY 2004 to the Department of Health.
3. House File 2230 is not expected to have an impact on the Board of Parole, court system, indigent defense costs, or the county confinement account.

Local Government Impact

Local government costs for county jail operations are estimated to increase by a range of \$60,000 to \$99,000 during FY 2003. For FY 2004 costs are estimated to increase by a range of \$119,000 to \$199,000.

Sources

Department of Corrections
Department of Transportation
Department of Human Rights, Criminal and Juvenile Justice Planning Division
Supreme Court of Iowa
United States Department of Transportation

/s/ Dennis C Prouty

February 12, 2002

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 Legislative Fiscal Bureau to members of the Legislature upon request.

HOUSE FILE 2230

AN ACT

RELATING TO SENTENCES OF INCARCERATION FOR THIRD OR SUBSEQUENT
OPERATING-WHILE-INTOXICATED MOTOR VEHICLE OFFENSES.

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

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

c. A class "D" felony for a third offense and each subsequent offense, and shall be committed to the custody of the director of the department of corrections for an indeterminate term not to exceed five years, shall be confined for a mandatory minimum term of thirty days, and shall be assessed a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars.

(1) If the court does not suspend a person's sentence of commitment to the custody of the director of the department of corrections under this paragraph "c", the person shall be assigned to a facility pursuant to section 904.513.

(2) If the court suspends a person's sentence of commitment to the custody of the director of the department of corrections under this paragraph "c", the court shall order the person to serve not less than thirty days nor more than one year in the county jail, and the person may be committed to treatment in the community under section 907.6.

Sec. 2. Section 902.3, Code 2001, is amended to read as follows:

902.3 INDETERMINATE SENTENCE.

When a judgment of conviction of a felony other than a class "A" felony is entered against a person, the court, in imposing a sentence of confinement, shall commit the person into the custody of the director of the Iowa department of corrections for an indeterminate term, the maximum length of which shall not exceed the limits as fixed by section 902.9, unless otherwise prescribed by statute, nor shall the term be less than the minimum term imposed by law, if a minimum sentence is provided. However, if the court may sentence a person convicted of a class "B" felony for a violation of section 321J.2 to imprisonment for up to one year in a county jail under section 902.9, subsection 5, and the person shall not be under the custody of the director of the Iowa department of corrections suspends a person's sentence under section 321J.2, subsection 2, paragraph "c", the court shall order the offender to serve time in the county jail as provided in section 321J.2, subsection 2, paragraph "c", notwithstanding any provision to the contrary in section 903.4.

Sec. 3. Section 902.9, subsection 5, Code Supplement 2001, is amended to read as follows:

5. A class "D" felon, not an habitual offender, shall be confined for no more than five years, and in addition shall be sentenced to a fine of at least seven hundred fifty dollars but not more than seven thousand five hundred dollars. A ~~class "B" felony, such felony being for a violation of section~~

~~3218-27-may-be-sentenced-to-imprisonment-for-up-to-one-year-in
the-county-jail-~~

BRENT SIEGRIST
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and
is known as House File 2230, Seventy-ninth General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved March 29, 2002

THOMAS J. VILSACK
Governor