

MAR 28 2002
JUDICIARY

HOUSE FILE 2600
BY FORD

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

A BILL FOR

1 An Act relating to operating-while-intoxicated and homicide by
2 vehicle offenses and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

HF 2600

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

3 b. While having an alcohol concentration of ± 10 .08 or
4 more.

5 Sec. 2. Section 321J.2, subsection 2, paragraph c, Code
6 2001, is amended by striking the paragraph and inserting in
7 lieu thereof the following:

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

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

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

24 Sec. 3. Section 321J.4, subsection 6, Code 2001, is
25 amended to read as follows:

26 6. Upon a plea or verdict of guilty of a violation of
27 section 321J.2 which involved a death, the court shall
28 determine in open court, from consideration of the information
29 in the file and any other evidence the parties may submit,
30 whether a death occurred and, if so, whether the defendant's
31 conduct in violation of section 321J.2 caused the death. If
32 the court so determines, the court shall order the department
33 to revoke the defendant's driver's license or nonresident
34 operating privilege for a period of six years in addition to
35 any other period of suspension or revocation. The defendant

1 shall not be eligible for any temporary restricted license for
2 at least two years after the revocation. The defendant shall
3 surrender to the court any Iowa license or permit and the
4 court shall forward it to the department with a copy of the
5 order for revocation.

6 Sec. 4. Section 321J.6, subsection 1, paragraph g, Code
7 2001, is amended to read as follows:

8 g. The preliminary breath screening test was administered
9 and it indicated an alcohol concentration of .02 or more but
10 less than ~~+.10~~ .08 and the person is under the age of twenty-
11 one.

12 Sec. 5. Section 321J.12, subsection 5, Code Supplement
13 2001, is amended to read as follows:

14 5. Upon certification, subject to penalty of perjury, by
15 the peace officer that there existed reasonable grounds to
16 believe that the person had been operating a motor vehicle in
17 violation of section 321J.2A, that there existed one or more
18 of the necessary conditions for chemical testing described in
19 section 321J.6, subsection 1, and that the person submitted to
20 chemical testing and the test results indicated an alcohol
21 concentration ~~as defined in section 321J.1~~ of .02 or more but
22 less than ~~+.10~~ .08, the department shall revoke the person's
23 driver's license or operating privilege for a period of sixty
24 days if the person has had no previous revocation under this
25 chapter, and for a period of ninety days if the person has had
26 a previous revocation under this chapter.

27 Sec. 6. Section 707.6A, subsections 1 and 7, Code 2001,
28 are amended to read as follows:

29 1. a. A person who has not been previously convicted of
30 an operating-while-intoxicated offense in violation of section
31 321J.2 commits a class "B" "C" felony when the person
32 unintentionally causes the death of another by operating a
33 motor vehicle while intoxicated, as prohibited by section
34 321J.2. The maximum sentence for a person convicted under
35 this paragraph shall be a period of confinement of not more

1 than ten years. Upon a plea or verdict of guilty of a
2 violation of this subsection, the court shall do the
3 following:

4 b. A person who has been previously convicted of an
5 operating-while-intoxicated offense in violation of section
6 321J.2 commits a class "B" felony when the person
7 unintentionally causes the death of another by operating a
8 motor vehicle while intoxicated, as prohibited by section
9 321J.2, and shall serve a minimum term of confinement of five
10 years.

11 c. A person who has been previously convicted of two or
12 more operating-while-intoxicated offenses in violation of
13 section 321J.2 commits a class "B" felony when the person
14 unintentionally causes the death of another by operating a
15 motor vehicle while intoxicated, as prohibited by section
16 321J.2, and shall serve a minimum term of confinement of seven
17 years.

18 d. Upon a plea or verdict of guilty of a violation of this
19 subsection, the court shall do all of the following:

20 a- (1) Order the state department of transportation to
21 revoke the defendant's driver's license or nonresident
22 operating privileges for a period of six years. The defendant
23 shall surrender to the court any Iowa license or permit and
24 the court shall forward the license or permit to the
25 department with a copy of the revocation order. The defendant
26 shall not be eligible for a temporary restricted license for
27 at least two years after the revocation.

28 b- (2) Order the defendant, at the defendant's expense, to
29 do the following:

30 {1} (a) Enroll, attend, and satisfactorily complete a
31 course for drinking drivers, as provided in section 321J.22.

32 {2} (b) Submit to evaluation and treatment or
33 rehabilitation services.

34 e- (3) A driver's license or nonresident operating
35 privilege shall not be reinstated until proof of completion of

1 the requirements of paragraph-"b" subparagraph (2) is
2 presented to the department.

3 ~~d-~~ (4) Where the program is available and appropriate for
4 the defendant, the court shall also order the defendant to
5 participate in a reality education substance abuse prevention
6 program as provided in section 321J.24.

7 7. Notwithstanding the provisions of sections 901.5 and
8 907.3, the court shall not defer judgment or sentencing, or
9 suspend execution of any part of the sentence applicable to
10 the defendant for a violation of subsection 1, paragraph "b"
11 or "c", or for a violation of subsection 4 involving the
12 operation of a motor vehicle while intoxicated.

13 Sec. 7. Section 902.3, Code 2001, is amended to read as
14 follows:

15 902.3 INDETERMINATE SENTENCE.

16 When a judgment of conviction of a felony other than a
17 class "A" felony is entered against a person, the court, in
18 imposing a sentence of confinement, shall commit the person
19 into the custody of the director of the Iowa department of
20 corrections for an indeterminate term, the maximum length of
21 which shall not exceed the limits as fixed by section 902.9,
22 unless otherwise prescribed by statute, nor shall the term be
23 less than the minimum term imposed by law, if a minimum
24 sentence is provided. However, if the court may-sentence-a
25 person-convicted-of-a-class-"B"-felony-for-a-violation-of
26 section-321J.2-to-imprisonment-for-up-to-one-year-in-a-county
27 jail-under-section-902.9,-subsection-5,-and-the-person-shall
28 not-be-under-the-custody-of-the-director-of-the-Iowa
29 department-of-corrections suspends a person's sentence under
30 section 321J.2, subsection 2, paragraph "c", the court shall
31 order the offender to serve time in the county jail as
32 provided in section 321J.2, subsection 2, paragraph "c",
33 notwithstanding any provision to the contrary in section
34 903.4.

35 Sec. 8. Section 902.9, subsection 5, Code Supplement 2001,

1 is amended to read as follows:

2 5. A class "D" felon, not an habitual offender, shall be
3 confined for no more than five years, and in addition shall be
4 sentenced to a fine of at least seven hundred fifty dollars
5 but not more than seven thousand five hundred dollars. A
6 ~~class "D" felon, such felony being for a violation of section~~
7 ~~321J.2, may be sentenced to imprisonment for up to one year in~~
8 ~~the county jail.~~

9 Sec. 9. Section 907.3, subsection 1, paragraph j, Code
10 Supplement 2001, is amended to read as follows:

11 j. The offense is a violation of section 707.6A,
12 subsection 1, paragraph "b" or "c"; or a violation of section
13 707.6A, subsection 4, involving operation of a motor vehicle
14 while intoxicated.

15 Sec. 10. Section 907.3, subsection 2, paragraph d, Code
16 Supplement 2001, is amended to read as follows:

17 d. Section 707.6A, subsection 1, paragraph "b" or "c"; or
18 section 707.6A, subsection 4, involving operation of a motor
19 vehicle while intoxicated.

20 Sec. 11. Section 907.3, subsection 3, paragraph d, Code
21 Supplement 2001, is amended to read as follows:

22 d. A sentence imposed pursuant to section 707.6A,
23 subsection 1, paragraph "b" or "c"; or section 707.6A,
24 subsection 4, involving operation of a motor vehicle while
25 intoxicated.

26 Sec. 12. IMPLEMENTATION OF ACT. Section 25B.2, subsection
27 3, shall not apply to this Act.

28 EXPLANATION

29 This bill provides for a number of changes to Iowa's
30 operating-while-intoxicated law.

31 The bill changes the limit for blood alcohol concentration
32 (BAC) while driving a motor vehicle from .10 BAC to .08 BAC.
33 Under the bill, a person who drives with .08 BAC or higher
34 would violate Code section 321J.2, the operating-while-
35 intoxicated statute.

1 The bill provides that persons who commit a third or
2 subsequent operating-while-intoxicated (OWI) offense shall be
3 committed to the custody of the director of the department of
4 corrections for an indeterminate term not to exceed five years
5 with a mandatory minimum term of confinement of 30 days, and
6 assessed a fine of not less than \$2,500 nor more than \$7,500.
7 The bill also provides that if the court does not suspend the
8 person's sentence, the person shall be assigned to an OWI
9 treatment facility. If the court suspends the person's
10 sentence, the court shall commit the person to the custody of
11 the director of the department of corrections, and shall order
12 the person to serve at least 30 days but not more than one
13 year in the county jail, and the person may be committed to
14 treatment in the community. The bill addresses the case of
15 State v. Iowa District Court for Mahaska County, 620 N.W.2d
16 271 (Iowa 2000), in which the Iowa supreme court held that
17 Code section 321J.2, subsection 2, paragraph "c", requires a
18 mandatory minimum period of incarceration for a third or
19 subsequent offense for imprisonment in the county jail only,
20 but not for commitment to the department of corrections.

21 The bill also provides that upon a plea or verdict of
22 guilty of an operating-while-intoxicated offense in which the
23 court has determined the defendant's conduct resulted in a
24 death, in addition to any other period of suspension or
25 revocation, the court shall order the state department of
26 transportation to revoke the defendant's driver's license for
27 a period of six years in addition to any other period of
28 suspension or revocation.

29 The bill provides that a person who has not previously been
30 convicted of an operating-while-intoxicated offense commits a
31 class "C" felony when the person unintentionally causes the
32 death of another by operating a motor vehicle while
33 intoxicated, and shall serve a maximum sentence of 10 years.
34 The bill further provides that a person who has previously
35 been convicted of an operating-while-intoxicated offense

1 commits a class "B" felony when the person unintentionally
2 causes the death of another by operating a motor vehicle while
3 intoxicated, and shall serve a minimum term of confinement of
4 five years, and that a person who has previously been
5 convicted of two or more operating-while-intoxicated offenses
6 also commits a class "B" felony when the person
7 unintentionally causes the death of another by operating a
8 motor vehicle while intoxicated, but shall serve a minimum
9 term of confinement of seven years.

10 A class "B" felony is punishable by confinement for no more
11 than 25 years. A class "C" felony is punishable by
12 confinement for no more than 10 years and a fine of at least
13 \$1,000 but not more than \$10,000.

14 The bill may include a state mandate as defined in Code
15 section 25B.3. The bill makes inapplicable Code section
16 25B.2, subsection 3, which would relieve a political
17 subdivision from complying with a state mandate if funding for
18 the cost of the state mandate is not provided or specified.
19 Therefore, political subdivisions are required to comply with
20 any state mandate included in the bill.

21
22
23
24
25
26
27
28
29
30
31
32
33
34
35