

H. 3/7/02 Judiciary  
A-3/5/02 Do Pass

FILED FEB 7 2002

SENATE FILE 2144  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 159)

Passed Senate, Date (p. 528) 3-6-02 Passed House, Date \_\_\_\_\_  
Vote: Ayes 48 Nays 1 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act providing for a .08 blood alcohol concentration limit for  
2 motor vehicle operating while intoxicated offenses.

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

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**SENATE FILE 2144**  
S-5104  
1 Amend Senate File 2144 as follows:  
2 1. Page 1, line 3, by striking the figure ".08"  
3 and inserting the following: ".05".  
4 2. Page 1, line 9, by striking the figure ".08"  
5 and inserting the following: ".05".  
6 3. Page 1, line 21, by striking the figure ".08"  
7 and inserting the following: ".05".  
8 4. Title page, line 1, by striking the figure  
9 ".08" and inserting the following: ".05".  
W/D 3-6-02 (p. 526) By STEVEN D. HANSEN  
S-5104 FILED MARCH 4, 2002

SF 2144

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 ~~not less than~~ .08 or  
4 more.

5 Sec. 2. Section 321J.6, subsection 1, paragraph g, Code  
6 2001, is amended to read as follows:

7 g. The preliminary breath screening test was administered  
8 and it indicated an alcohol concentration of .02 or more but  
9 less than ~~not less than~~ .08 and the person is under the age of twenty-  
10 one.

11 Sec. 3. Section 321J.12, subsection 5, Code Supplement  
12 2001, is amended to read as follows:

13 5. Upon certification, subject to penalty of perjury, by  
14 the peace officer that there existed reasonable grounds to  
15 believe that the person had been operating a motor vehicle in  
16 violation of section 321J.2A, that there existed one or more  
17 of the necessary conditions for chemical testing described in  
18 section 321J.6, subsection 1, and that the person submitted to  
19 chemical testing and the test results indicated an alcohol  
20 concentration ~~as defined in section 321J.1~~ of .02 or more but  
21 less than ~~not less than~~ .08, the department shall revoke the person's  
22 driver's license or operating privilege for a period of sixty  
23 days if the person has had no previous revocation under this  
24 chapter, and for a period of ninety days if the person has had  
25 a previous revocation under this chapter.

26 Sec. 4. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
27 3, shall not apply to this Act.

28 EXPLANATION

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

34 The bill may include a state mandate as defined in Code  
35 section 25B.3. The bill makes inapplicable Code section

1 25B.2, subsection 3, which would relieve a political  
2 subdivision from complying with a state mandate if funding for  
3 the cost of the state mandate is not provided or specified.  
4 Therefore, political subdivisions are required to comply with  
5 any state mandate included in the bill.

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SENATE FILE 2144

S-5108

- 1 Amend Senate File 2144 as follows:
- 2 1. Page 1, by inserting after line 27, the
- 3 following:
- 4 "Sec. \_\_\_\_\_ EFFECTIVE DATE. This Act takes effect
- 5 July 1, 2003."
- 6 2. Title page, line 2, by inserting after the
- 7 word "offenses" the following: "and providing an
- 8 effective date".

By STEVEN D. HANSEN

S-5108 FILED MARCH 5, 2002

*Lost*  
3/6/02 (p.528)

## SENATE FILE 2144

S-5125

Amend Senate File 2144 as follows:

1. Page 1, by inserting before line 1 the following:

4 "Section 1. NEW SECTION. 123.49A BREATHALYZER  
5 TESTS.

6 An establishment that holds a class "A", class "B",  
7 or class "C" liquor control license shall provide a  
8 breathalyzer test for public use at a charge not to  
9 exceed three dollars per test. A licensee shall be  
10 immune from liability in any civil or criminal action  
11 arising out of the results of a test provided pursuant  
12 to this section and such results shall not be  
13 admissible in a court of law.

14 Sec. 2. Section 307.44, Code 2001, is amended to  
15 read as follows:

16 307.44 USE OF FEDERAL MONEYS ~~--- COOPERATION.~~

17 1. If funds are allotted or appropriated by the  
18 government of the United States for the improvement of  
19 transportation facilities and services in this state,  
20 the department may cooperate with the government of  
21 the United States, and any agency or department  
22 thereof, in the planning, acquisition, contract  
23 letting, construction, improvement, maintenance, and  
24 operation of transportation facilities and services in  
25 this state; may comply with the federal statutes and  
26 rules; and may cooperate with the federal government  
27 in the expenditure of the federal funds.

28 In order to avoid delays, payment for the street  
29 and highway projects or improvements constructed in  
30 cooperation with the federal government may be  
31 advanced from the primary road fund.

32 2. If any portion of the funds allotted or  
33 appropriated as described in subsection 1 are  
34 available for public safety purposes, the department  
35 shall use a portion of such funds to subsidize costs  
36 related to the purchase, use, and maintenance of  
37 breathalyzer testing equipment in establishments that  
38 hold a class "A", class "B", or class "C" liquor  
39 control license pursuant to chapter 123."

40 2. Title page, line 2, by inserting after the  
41 word "offenses" the following: "and providing for  
42 breathalyzer tests in certain drinking  
43 establishments".

44 3. By renumbering as necessary.

By DAVID MILLER

S-5125 FILED MARCH 6, 2002

WITHDRAWN

(p. 527)

## SENATE FILE 2144

H-8335

1 Amend Senate File 2144, as passed by the Senate, as  
2 follows:

3 1. Page 1, by inserting after line 4, the  
4 following:

5 "Sec. \_\_\_\_ . Section 321J.2, Code 2001, is amended  
6 by adding the following new subsection:

7 NEW SUBSECTION. 2A. a. Notwithstanding  
8 subsection 2, paragraph "a", or any other provision of  
9 this chapter to the contrary, a person who violates  
10 subsection 1, paragraph "b", whose alcohol  
11 concentration established by the results of an  
12 analysis of a specimen of the person's blood, breath,  
13 or urine withdrawn in accordance with this chapter  
14 exceeds .08 but is less than .10, commits a serious  
15 misdemeanor for the first offense, punishable solely  
16 by all of the following:

17 (1) Imprisonment in the county jail for up to  
18 forty-eight hours, to be served as ordered by the  
19 court, less credit for any time the person was  
20 confined in a jail or detention facility following  
21 arrest. However, the court, in ordering service of  
22 the sentence and in its discretion, may accommodate  
23 the person's work schedule.

24 (2) Assessment of a fine of five hundred dollars.  
25 As an alternative to a portion or all of the fine, the  
26 court may order the person to perform unpaid community  
27 service.

28 (3) Revocation of the person's driver's license  
29 for a maximum period of thirty days. Notwithstanding  
30 any provision of the Code to the contrary, there shall  
31 be no minimum period of ineligibility for such a  
32 revocation.

33 b. This subsection shall not apply to a person who  
34 is under the age of twenty-one who operates a motor  
35 vehicle while having an alcohol concentration of .02  
36 or more pursuant to section 321J.2A, to a person who  
37 revokes the person's implied consent pursuant to  
38 section 321J.6, or to a person who is convicted of or  
39 pleads guilty to a violation of section 707.6A.

40 Sec. \_\_\_\_ . Section 321J.4, subsection 1, Code 2001,  
41 is amended to read as follows:

42 1. ~~If~~ Except as provided in section 321J.2,  
43 subsection 2A, paragraph "a", subparagraph (3), if a  
44 defendant is convicted of a violation of section  
45 321J.2 and the defendant's driver's license or  
46 nonresident operating privilege has not been revoked  
47 under section 321J.9 or 321J.12 for the occurrence  
48 from which the arrest arose, the department shall  
49 revoke the defendant's driver's license or nonresident  
50 operating privilege for one hundred eighty days if the

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Page 2

1 defendant has had no previous conviction or revocation  
 2 under this chapter. The defendant shall not be  
 3 eligible for any temporary restricted license for at  
 4 least thirty days after the effective date of the  
 5 revocation if a test was obtained, and for at least  
 6 ninety days if a test was refused. If the defendant  
 7 is under the age of twenty-one, the defendant shall  
 8 not be eligible for a temporary restricted license for  
 9 at least sixty days after the effective date of  
 10 revocation.

11 Sec. \_\_\_\_ . Section 321J.4B, subsection 5, paragraph  
 12 d, Code 2001, is amended to read as follows:

13 d. The period of impoundment or immobilization of  
 14 a motor vehicle under this section shall be the period  
 15 of license revocation imposed upon the person  
 16 convicted of the offense or one hundred eighty days,  
 17 whichever period is longer. However, for violations  
 18 described in section 321J.2, subsection 2A, paragraph  
 19 "a", subparagraph (3), the period of impoundment or  
 20 immobilization of a motor vehicle shall be the period  
 21 of license revocation imposed upon the person  
 22 convicted of the offense. The impoundment or  
 23 immobilization period shall commence on the day that  
 24 the vehicle is first impounded or immobilized."

25 2. Page 1, by inserting after line 10 the  
 26 following:

27 "Sec. \_\_\_\_ . Section 321J.12, subsection 1,  
 28 paragraph "a", Code Supplement 2001, is amended to  
 29 read as follows:

30 a. One hundred eighty days if the person has had  
 31 no revocation under this chapter, except as provided  
 32 in section 321J.2, subsection 2A, paragraph "a",  
 33 subparagraph (3)."

34 3. Title page, line 1, by striking the words  
 35 "providing for" and inserting the following:  
 36 "relating to".

37 4. By renumbering as necessary.

By CHIODO of Polk	BRUNKHORST of Bremer
HANSEN of Pottawattamie	WARNSTADT of Woodbury
SIEVERS of Scott	MERTZ of Kossuth
BODDICKER of Cedar	BROERS of Cerro Gordo
KETTERING of Sac	FORD of Polk
HORBACH of Tama	SHOULTZ of Black Hawk
MYERS of Johnson	

H-8335 FILED MARCH 19, 2002

SENATE FILE 2144

H-8396

1 Amend Senate File 2144, as passed by the Senate, as  
2 follows:  
3 1. Page 1, by inserting after line 27 the  
4 following:  
5 "Sec. \_\_\_\_ . STUDY. The criminal and juvenile  
6 justice planning division of the department of human  
7 rights shall conduct a study on the relationship  
8 between the effect of the .08 blood alcohol  
9 concentration limit for motor vehicle operating-while-  
10 intoxicated offenses and the number of persons stopped  
11 and arrested for such offenses. The report shall  
12 include data on the ratio of minority persons involved  
13 in such stops and arrests versus the general  
14 population. The criminal and juvenile justice  
15 planning division shall submit a report of its  
16 findings to the general assembly by January 12, 2004."  
17 2. By renumbering as necessary.

By KREIMAN of Davis  
FORD of Polk

H-8396 FILED MARCH 20, 2002

SENATE FILE 2144

H-8318

1 Amend Senate File 2144, as passed by the Senate, as  
2 follows:  
3 1. Page 1, by inserting after line 27, the  
4 following:  
5 "Sec. \_\_\_\_ . EFFECTIVE DATE. This Act takes effect  
6 September 30, 2004."  
7 2. Title page, line 2, by inserting after the  
8 word "offenses" the following: "and providing for an  
9 effective date".  
10 3. By renumbering as necessary.  
By CHIODO of Polk HORBACH of Tama  
SIEVERS of Scott DOTZLER of Black Hawk  
BODDICKER of Cedar MERTZ of Kossuth  
KETTERING of Sac  
H-8318 FILED MARCH 18, 2002

**SENATE FILE 2144**

**H-8550**

1 Amend the amendment, H-8335, to Senate File 2144,  
2 as passed by the Senate, as follows:  
3 1. Page 1, line 29, by striking the word "thirty"  
4 and inserting the following: "ninety".

**By** CHIODO of Polk

**H-8550** FILED APRIL 9, 2002

**SENATE FILE 2144**

**H-8556**

1 Amend the amendment, H-8335, to Senate File 2144,  
2 as passed by the Senate, as follows:  
3 1. Page 1, lines 31 and 32, by striking the words  
4 "such a revocation" and inserting the following: "a  
5 temporary restricted license".

**By** CHIODO of Polk

**H-8556** FILED APRIL 9, 2002

**SENATE FILE 2144**

**H-8563**

1 Amend the House amendment, H-8318, to Senate File  
2 2144, as passed by the Senate, as follows:  
3 1. Page 1, line 6, by striking the figure "2004"  
4 and inserting the following: "2003".

**By** CHIODO of Polk

**H-8563** FILED APRIL 9, 2002

## SENATE FILE 2144

H-8567

1 Amend Senate File 2144, as passed by the Senate, as  
2 follows:

3 1. Page 1, by inserting after line 4, the  
4 following:

5 "Sec. \_\_\_\_ Section 321J.2, subsection 2, paragraph  
6 a, subparagraphs (1) through (4), Code 2001, are  
7 amended to read as follows:

8 (1) Imprisonment in the county jail for ~~not less~~  
9 ~~than forty-eight hours~~ up to seventy-two hours, to be  
10 served as ordered by the court, less credit for any  
11 time the person was confined in a jail or detention  
12 facility following arrest. However, the court, in  
13 ordering service of the sentence and in its  
14 discretion, may accommodate the defendant's work  
15 schedule.

16 (2) Assessment of a fine of up to one thousand  
17 five hundred dollars. ~~However, in the discretion of~~  
18 ~~the court, if no personal or property injury has~~  
19 ~~resulted from the defendant's actions, the court may~~  
20 ~~waive up to five hundred dollars of the fine when the~~  
21 ~~defendant presents to the court at the end of the~~  
22 ~~minimum period of ineligibility, a temporary~~  
23 ~~restricted license issued pursuant to 321J.20. As an~~  
24 alternative to a portion or all of the fine, the court  
25 may order the person to perform unpaid community  
26 service.

27 (3) Revocation of the person's driver's license  
28 pursuant to ~~section 321J.4, subsection 1, section~~  
29 ~~321J.9, or section 321J.12, which includes a minimum~~  
30 ~~revocation period of one hundred eighty days,~~  
31 ~~including a minimum period of ineligibility for a~~  
32 ~~temporary restricted license of thirty days, and may~~  
33 ~~involve a revocation period of one year for a~~  
34 mandatory period of ninety days, with no period of  
35 ineligibility for a temporary restricted license.

36 ~~(4) Assignment to substance abuse evaluation and~~  
37 ~~treatment, a course for drinking drivers, and, if~~  
38 ~~available and appropriate, a reality education~~  
39 ~~substance abuse prevention program pursuant to~~  
40 ~~subsection 3.~~

41 Sec. \_\_\_\_ Section 321J.2, Code 2001, is amended by  
42 adding the following new subsection:

43 NEW SUBSECTION. 2A. Notwithstanding subsection 2,  
44 paragraph "a", or any other provision of this chapter  
45 to the contrary, a person who violates subsection 1,  
46 paragraph "b", whose alcohol concentration established  
47 by the results of an analysis of a specimen of the  
48 person's blood, breath, or urine withdrawn in  
49 accordance with this chapter is .15 or more, commits a  
50 serious misdemeanor for the first offense punishable

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Page 2

1 by all of the following:

2 a. Imprisonment in the county jail of not less  
3 than forty-eight hours, to be served as ordered by the  
4 court, less credit for any time the person was  
5 confined in a jail or detention facility following  
6 arrest. However, the court, in ordering service of  
7 the sentence and in its discretion, may accommodate  
8 the defendant's work schedule.

9 b. Assessment of a fine of not less than one  
10 thousand dollars nor more than one thousand five  
11 hundred dollars. However, in the discretion of the  
12 court, if no personal or property injury has resulted  
13 from the defendant's actions, the court may waive up  
14 to five hundred dollars of the fine when the defendant  
15 presents to the court at the end of the minimum period  
16 of ineligibility, a temporary restricted license  
17 issued pursuant to section 321J.20. As an alternative  
18 to a portion or all of the fine, the court may order  
19 the person to perform unpaid community service.

20 c. Revocation of the person's driver's license  
21 pursuant to section 321J.4, subsection 1, section  
22 321J.9, or section 321J.12, which includes a minimum  
23 revocation period of one hundred eighty days,  
24 including a minimum period of ineligibility for a  
25 temporary restricted license of thirty days, and may  
26 involve a revocation period of one year.

27 d. Assignment to substance abuse evaluation and  
28 treatment, a course for drinking drivers, and, if  
29 available and appropriate, a reality education  
30 substance abuse prevention program pursuant to  
31 subsection 3.

32 e. This subsection is repealed June 30, 2003.

33 Sec. 100. Section 321J.2, Code 2001, is amended by  
34 adding the following new subsection:

35 NEW SUBSECTION. 2B. Notwithstanding subsection 2,  
36 paragraph "a", or any other provision of this chapter  
37 to the contrary, a person who violates subsection 1,  
38 paragraph "b", whose alcohol concentration established  
39 by the results of an analysis of a specimen of the  
40 person's blood, breath, or urine withdrawn in  
41 accordance with this chapter is .10 or more, commits a  
42 serious misdemeanor for the first offense, punishable  
43 by all of the following:

44 a. Imprisonment in the county jail of not less  
45 than forty-eight hours, to be served as ordered by the  
46 court, less credit for any time the person was  
47 confined in a jail or detention facility following  
48 arrest. However, the court, in ordering service of  
49 the sentence and in its discretion, may accommodate  
50 the defendant's work schedule.

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Page 3

1 b. Assessment of a fine of not less than one  
2 thousand dollars nor more than one thousand five  
3 hundred dollars. However, in the discretion of the  
4 court, if no personal or property injury has resulted  
5 from the defendant's actions, the court may waive up  
6 to five hundred dollars of the fine when the defendant  
7 presents to the court at the end of the minimum period  
8 of ineligibility, a temporary restricted license  
9 issued pursuant to section 321J.20. As an alternative  
10 to a portion or all of the fine, the court may order  
11 the person to perform unpaid community service.

12 c. Revocation of the person's driver's license  
13 pursuant to section 321J.4, subsection 4, section  
14 321J.9, or section 321J.12, which includes a minimum  
15 revocation period of one hundred eighty days,  
16 including a minimum period of ineligibility for a  
17 temporary restricted license of thirty days, and may  
18 involve a revocation period of one year.

19 d. Assignment to substance abuse evaluation and  
20 treatment, a course for drinking drivers, and, if  
21 available and appropriate, a reality education  
22 substance abuse prevention program pursuant to  
23 subsection 3.

24 Sec. \_\_\_\_\_. Section 321J.2, subsection 3, paragraph  
25 a, unnumbered paragraph 1, Code 2001, is amended to  
26 read as follows:

27 Notwithstanding the provisions of sections 901.5  
28 and 907.3, the court shall not defer judgment or  
29 sentencing, or suspend execution of any mandatory  
30 minimum sentence of incarceration applicable to the  
31 defendant under subsection 2 or 2A, and shall not  
32 suspend execution of any other part of a sentence not  
33 involving incarceration imposed pursuant to subsection  
34 2 or 2A, if any of the following apply:

35 Sec. \_\_\_\_\_. Section 321J.2, subsection 3, paragraphs  
36 b and c, Code 2001, are amended to read as follows:

37 b. All Except for persons convicted of a first  
38 offense pursuant to subsection 2, paragraph "a",  
39 persons convicted of an offense under subsection 2  
40 shall be ordered, at the person's expense, to undergo,  
41 prior to sentencing, a substance abuse evaluation.

42 c. Where the program is available and is  
43 appropriate for the convicted person, a person  
44 convicted of an offense under subsection 2 shall be  
45 ordered to participate in a reality education  
46 substance abuse prevention program as provided in  
47 section 321J.24. This paragraph shall not apply to a  
48 person convicted of a first offense pursuant to  
49 section 2, paragraph "a".

50 Sec. \_\_\_\_\_. Section 321J.3, subsection 1, paragraph

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Page 4

1 a, Code 2001, is amended to read as follows:

2 a. In addition to orders issued pursuant to  
3 section 321J.2, subsection 3, and section 321J.17, the  
4 court shall order any defendant convicted under  
5 section 321J.2 to follow the recommendations proposed  
6 in the substance abuse evaluation for appropriate  
7 substance abuse treatment for the defendant. Court-  
8 ordered substance abuse treatment is subject to the  
9 periodic reporting requirements of section 125.86.  
10 This paragraph shall not apply to a defendant  
11 convicted of a first offense pursuant to section  
12 321J.2, subsection 2, paragraph "a".

13 Sec. \_\_\_\_\_. Section 321J.4, subsection 1, Code 2001,  
14 is amended to read as follows:

15 1. ~~If~~ Except as provided in section 321J.2,  
16 subsection 2, paragraph "a", subparagraph (3), if a  
17 defendant is convicted of a violation of section  
18 321J.2 and the defendant's driver's license or  
19 nonresident operating privilege has not been revoked  
20 under section 321J.9 or 321J.12 for the occurrence  
21 from which the arrest arose, the department shall  
22 revoke the defendant's driver's license or nonresident  
23 operating privilege for one hundred eighty days if the  
24 defendant has had no previous conviction or revocation  
25 under this chapter. The defendant shall not be  
26 eligible for any temporary restricted license for at  
27 least thirty days after the effective date of the  
28 revocation if a test was obtained, and for at least  
29 ninety days if a test was refused. If the defendant  
30 is under the age of twenty-one, the defendant shall  
31 not be eligible for a temporary restricted license for  
32 at least sixty days after the effective date of  
33 revocation.

34 Sec. \_\_\_\_\_. Section 321J.4B, subsection 5, paragraph  
35 d, Code 2001, is amended to read as follows:

36 d. The period of impoundment or immobilization of  
37 a motor vehicle under this section shall be the period  
38 of license revocation imposed upon the person  
39 convicted of the offense or one hundred eighty days,  
40 whichever period is longer. However, for violations  
41 described in section 321J.2, subsection 2, paragraph  
42 "a", the period of impoundment or immobilization of a  
43 motor vehicle shall be the mandatory ninety-day period  
44 of license revocation. The impoundment or  
45 immobilization period shall commence on the day that  
46 the vehicle is first impounded or immobilized."

47 2. Page 1, by inserting after line 10 the  
48 following:

49 "Sec. \_\_\_\_\_. Section 321J.12, subsection 1,  
50 paragraph a, Code Supplement 2001, is amended to read

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Page 5

1 as follows:

2 a. One hundred eighty days if the person has had  
3 no revocation under this chapter, except as provided  
4 in section 321J.2, subsection 2, paragraph "a",  
5 subparagraph (3)."

6 3. Page 1, by inserting after line 25 the  
7 following:

8 "Sec. \_\_\_\_ . Section 321J.17, subsection 2, Code  
9 2001, is amended by adding the following new  
10 unnumbered paragraph:

11 NEW UNNUMBERED PARAGRAPH. This subsection shall  
12 not apply to a person convicted of a first offense  
13 pursuant to section 321J.2, subsection 2, paragraph  
14 "a".

15 Sec. \_\_\_\_ . Section 321J.24, subsection 2, Code  
16 2001, is amended to read as follows:

17 2. A reality education substance abuse prevention  
18 program is established in those judicial districts  
19 where the chief judge of the judicial district  
20 authorizes participation in the program. Upon a  
21 conviction or adjudication for a violation of section  
22 321J.2, or the entry of a deferred judgment concerning  
23 a violation of section 321J.2, the court or juvenile  
24 court may order participation in the reality education  
25 substance abuse prevention program as a term and  
26 condition of probation or disposition in addition to  
27 any other term or condition of probation or  
28 disposition required or authorized by law. The court  
29 or juvenile court shall require the defendant or  
30 delinquent child to abstain from consuming any  
31 controlled substance, alcoholic liquor, wine, or beer  
32 while participating in the program. This subsection  
33 shall not apply to a conviction or adjudication  
34 pursuant to section 321J.2, subsection 2, paragraph  
35 "a"."

36 4. Page 1, by inserting after line 27 the  
37 following:

38 "Sec. \_\_\_\_ . FUTURE EFFECTIVE DATE. Section 100 of  
39 this Act shall take effect July 1, 2003."

40 5. Title page, line 1, by striking the words  
41 "providing for a .08 blood alcohol concentration limit  
42 for" and inserting the following: "relating to".

43 6. Title page, line 2, by inserting after the  
44 word "offenses" the following: ", and providing an  
45 effective date".

46 7. By renumbering as necessary.

By HORBACH of Tama

KETTERING of Sac

DOTZLER of Black Hawk

CHIODO of Polk

BRUNKHORST of Bremer

HEATON of Henry

HANSEN of Pottawattamie

TYRRELL of Iowa

ELGIN of Linn

MERTZ of Kossuth

H-8567 FILED APRIL 9, 2002

**SENATE FILE 2144****H-8572**

1 Amend Senate File 2144, as passed by the Senate, as  
2 follows:

3 1. Page 1, line 3, by striking the figure ".08"  
4 and inserting the following: ".02".

5 2. Page 1, by striking lines 8 through 10 and  
6 inserting the following: "and it indicated an alcohol  
7 concentration of .02 or more ~~but less than .10~~ and the  
8 person is under the age of twenty-one".

9 3. Page 1, by striking lines 20 and 21 and  
10 inserting the following: "concentration ~~as defined in~~  
11 ~~section 321J.1~~ of .02 or more ~~but less than .10~~, the  
12 department shall revoke the person's".

13 4. Title page, line 1, by striking the figure  
14 ".08" and inserting the following: ".02".

By CHIODO of Polk

**H-8572** FILED APRIL 9, 2002**SENATE FILE 2144****H-8587**

1 Amend Senate File 2144, as passed by the Senate, as  
2 follows:

3 1. Page 1, by inserting after line 4 the  
4 following:

5 "Sec. \_\_\_\_ . Section 321J.2, subsection 2, Code  
6 2001, is amended by adding the following new  
7 unnumbered paragraph:

8 NEW UNNUMBERED PARAGRAPH. Except in cases where  
9 the court orders a defendant to a substance abuse  
10 treatment program, a defendant sentenced pursuant to  
11 subsection 2, paragraph "a", shall not be subject to  
12 supervised probation. The judicial district  
13 department of correctional services shall be  
14 reimbursed for administrative costs, including  
15 pretrial evaluation fees involved in substance abuse  
16 evaluations conducted by the judicial district  
17 department of correctional services."

18 2. By renumbering, redesignating, and correcting  
19 internal references as necessary.

By KETTERING of Sac

**H-8587** FILED APRIL 9, 2002

# Legislative Fiscal Bureau

## Fiscal Note

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SF 2144 – OWI, Blood Alcohol Content Reduction (LSB 6706 SV)

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Fiscal Note Version – New

Requested by Senator Andrew McKean and Senator David Miller

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### Description

Senate File 2144 changes the limit for blood alcohol concentration while driving a motor vehicle from .10 percent to .08 percent. Under the Bill, a person who drives with a .08 blood alcohol concentration or higher would violate Section 321J.2, Code of Iowa, the operating while intoxicated (OWI) statute.

### 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. There is a six-month lag time from the effective date (July 1, 2002) of the proposed legislation to the date of first entry of affected offenders into the correctional system.
4. Based on a four-state analysis by the National Highway Traffic Safety Administration (NHTSA), there will be a 4.0% increase in OWI convictions, and a 7.0% reduction in convictions for vehicular homicides and serious injury OWIs.
5. Average jail terms are based on the average jail term imposed for OWI violations.
6. 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. Prison admission data from the Adult Corrections Information System was also used.
7. The median cost per case for indigent defense for an OWI First is \$500, an OWI Second is \$1,000, an OWI Third is \$1,000, a Serious Injury OWI is \$1,000, and a Vehicular Homicide OWI is \$3,000. Approximately 50% of all OWI First offense convictions are indigent, while 100% of OWI Second and Third offense convictions are indigent.
8. The marginal cost per day for state prisons is \$16 per offender. The average length of stay for new admissions for an OWI Third conviction is 2 months, a Vehicular Homicide conviction is 87 months, and a Serious Injury OWI conviction is 25 months. The average length of stay for re-admissions for an OWI Third conviction is 11 months, a Vehicular Homicide conviction is 27 months, and a Serious Injury OWI conviction is 11 months.
9. The marginal cost per day for probation or parole is \$1.55 per offender. The average length for an OWI First is 11.8 months, an OWI Second is 12.3 months, and an OWI Third is 24 months.
10. The marginal cost per day for Community-Based Corrections (CBC) residential facilities is \$18 per offender, with an average length of stay of four to six months.
11. 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.
12. It is assumed that OWI Second and OWI Third 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.

13. The average cost for a jury trial for 1.5 days for an OWI Second, an OWI Third, a Serious Injury OWI, and a Vehicular Homicide OWI is \$390.
14. The average cost for an OWI First case ranges from \$70 to \$75 without a jury trial.
15. The average cost for an OWI Second case ranges from \$70 to \$75 without a jury trial, and \$460 to \$465 with a jury trial.
16. The average cost for an OWI Third case, Serious Injury OWI case, and Vehicular Homicide case is approximately \$200 without a jury trial, and \$600 with a jury trial.
17. Average length of stay in county jail for an OWI First is seven days.
18. Average length of stay in county jail for an OWI Second is 16 days.
19. Average length of stay in county jail for an OWI Third is 55 days.
20. The marginal cost per day for county jails is \$15 to \$25.

### **CORRECTIONAL IMPACT**

During the first year, the proposed legislation will cause an additional 184 OWI First convictions (serious misdemeanor), 55 OWI Second convictions (aggravated misdemeanor), and 22 OWI Third convictions (Class D felony). During the second year (annualized impact), there will be 367 OWI First convictions, 109 OWI Second convictions, and 44 OWI Third convictions. Also during the second year, there will be one less Vehicular Homicide OWI conviction (Class B) and one less Serious Injury OWI conviction (Class D).

During FY 2003, there will be an additional 260 people convicted under the proposed legislation. These 260 convicted offenders will be sentenced as follows: 5 to prison, 13 to CBC facilities, 162 to probation, and 182 to jail. Certain offenders will receive a split sentence of jail and probation.

During FY 2004 (annualized impact), there will be 519 people convicted under the proposed legislation. These 519 convicted offenders will be sentenced as follows: 10 to prison, 24 to CBC facilities, 323 to probation, and 363 to jail. Certain offenders will receive a split sentence of jail and probation.

Admissions to the State prison will increase by five during FY 2003, and ten new admissions each year thereafter. The prison population will not change during FY 2003. It will decrease by two during 2004, and will decrease by three in FY 2007.

Admissions to CBC facilities will increase by 13 during FY 2003, and 24 new admissions each year thereafter. This will increase the number of offenders on waiting lists, which will increase the need for additional OWI treatment beds. Admissions to street supervision will increase by 162 during FY 2003, and 323 each year thereafter.

Admissions to county jails will increase by 182 during FY 2003, and 363 new admissions each year thereafter.

### **FISCAL IMPACT**

The estimated fiscal impact of SF 2144 is expected to result in increased costs to the State General Fund and to local governments as follows:

#### **State General Fund Impact**

Total costs are estimated to be \$426,000 during FY 2003 and \$852,000 in FY 2004. The cost breakdown is as follows:

- State prison costs are estimated to increase by \$5,000 during FY 2003 and \$10,000 during FY 2004.
- CBC facility costs for the OWI treatment program are estimated to increase by \$35,000 during FY 2003 and \$65,000 during FY 2004. These estimates do not include construction of additional CBC beds, if required.

- Probation and parole costs are estimated to increase by \$145,000 during FY 2003 and \$300,000 during FY 2004.
- Court costs are estimated to increase by \$26,000 during FY 2003 and \$52,000 during FY 2004.
- Indigent defense costs are estimated to increase by \$123,000 during FY 2003 and \$241,000 during FY 2004.
- Substance abuse treatment costs are expected to increase by \$92,000 in FY 2003 and \$184,000 in 2004.

### **Local Government Impact**

Local governments will experience increased costs for operating jails under SF 2144. Total statewide costs for local jails on an annual basis are estimated to be \$66,000 to \$111,000 more than current law. The breakdown is as follows:

- 253 additional admissions for OWI First convictions, with an average length of stay of 7 days = 1,771 additional jail days.
- 87 additional admissions for OWI Second convictions, with an average length of stay of 16 days = 1,392 additional jail days.
- 23 additional admissions for OWI Third convictions, with an average length of stay of 55 days = 1,265 additional jail days.

There is an annual increase in jail days of 4,428 that results in an increase of \$66,000 (4,428 x \$15.00) to \$111,000 (4,428 days x \$25.00).

### **Federal Funds Impact**

If Iowa adopts the .08 blood alcohol concentration law by October 1, 2003 (Federal Fiscal Year (FFY) 2004), the State will continue to receive their annual portion of federal highway funds. That amount is currently \$235.0 million. If Iowa does not adopt the .08 blood alcohol concentration law by October 1, 2003 (FFY 2004), federal highway funds to Iowa will be withheld in the projected amounts listed below. The amounts are based on the existing level of funding of \$235.0 million. If Iowa adopts the .08 blood alcohol concentration law by September 30, 2007, however, any of the following funds previously withheld would be reimbursed:

#### **Sanctions**

- 2.0% (\$4.7 million) would be withheld on October 1, 2003 (FFY 2004 funds):
  - \$3.1 million from the State
  - \$1.6 million from cities and counties
- 4.0% (\$9.4 million) would be withheld on October 1, 2004 (FFY 2005 funds):
  - \$6.3 million from the State
  - \$3.1 million from cities and counties
- 6.0% (\$14.0 million) would be withheld on October 1, 2005 (FFY 2006 funds):
  - \$9.4 million from the State
  - \$4.6 million from cities and counties

8.0% (\$18.7 million) would be withheld on October 1, 2006 (FFY 2007 funds):

- \$12.5 million from the State
- \$6.2 million from cities and counties

### ***Incentives***

If Iowa adopts the .08 blood alcohol concentration law by October 1, 2002 (FFY 2003), Iowa would become eligible for an incentive grant in FFY 2003. Depending on the number of states with a .08 blood alcohol concentration law, on October 1, 2002, the Department of Transportation could receive between \$1.4 million and \$2.4 million. The money is restricted to highway-related projects, including safety programs, under 23 U.S.C. No State matching funds are required for the grant.

If Iowa does not adopt the .08 blood alcohol concentration law by October 1, 2002, the State is not eligible for the incentive grant. The incentive program sunsets on September 30, 2003, however, Congress could authorize additional years through reauthorization of the Transportation Equity Act of the 21<sup>st</sup> Century (TEA-21), which takes effect on October 1, 2003.

As of October 2001, 27 states, the District of Columbia, and Puerto Rico have adopted .08, and have received incentive grants. As of December 2001, eight states have introduced legislation to adopt .08. As more states become eligible for the grants, the amount received by each state decreases.

### **Sources**

Department of Human Rights (CJJP)  
Department of Transportation  
Department of Corrections  
Supreme Court  
State Public Defender's Office

/s/ Dennis C Prouty

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February 18, 2002

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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 Legislative Fiscal Bureau to members of the Legislature upon request.

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