

**TABLE C: Penalties Under Iowa Law for Manufacturing, Delivering, or Possessing with the Intent to Deliver a Controlled Substance, a Counterfeit Substance or a Simulated Controlled Substance**

<b>GENERAL OFFENSE MISDEMEANOR CLASSIFICATION</b>	<b>SPECIAL CLASS "B" FELONY - §124.401(1)(a)<sup>1</sup></b>	<b>SPECIAL CLASS "B" FELONY - §124.401(1)(b)<sup>1</sup></b>	<b>SPECIAL CLASS "C" FELONY - §124.401(1)(c)<sup>1</sup></b>	<b>SPECIAL CLASS "D" FELONY - §124.401(1)(d)</b>	<b>AGGRAVATED MISDEMEANOR - §124.401(1)(d)</b>	<b>SPECIAL CLASS SERIOUS - §124.401</b>
<b>PENALTY</b>	not greater than 50 years and a fine of not greater than \$1,000,000	not greater than 25 years and a fine of not less than \$5,000 and not greater than \$100,000 <sup>2</sup>	not greater than 10 years and a fine of not less than \$1,000 and not greater than \$50,000 <sup>2</sup>	not greater than 5 years and a fine of not less than \$750.00 and not greater than \$7,500 <sup>2</sup>	not greater than 2 years or a fine of not less than \$500 and not greater than \$5,000 or both	Not greater than 6 months or a fine of not greater than \$1,000 or both <sup>3</sup>
<b>SUBSTANCE</b>						
<b>LSD</b>	greater than 10g	not greater than 10g				
<b>COCAINE BASE "CRACK"</b>	greater than 50g	greater than 10g but not greater than 50g	less than or equal to 10g			
<b>COCAINE</b>	greater than 500g	greater than 100g but not greater than 500g	less than or equal to 100g			
<b>PCP (PURE)</b>	greater than 100g	greater than 10g but not greater than 100g	less than or equal to 10g			
<b>PCP (MIXED)</b>	greater than 1kg	greater than 100g but not greater than 1kg	less than or equal to 100g			
<b>HEROIN</b>	greater than 1kg	greater than 100g but not greater than 1kg	less than or equal to 100g			
<b>MARIJUANA</b>	greater than 1,000kg	greater than 100kg but not greater than 1000kg	greater than 50kg but not greater than 100kg	less than 50 kg		less than or equal to 1/2oz (not offered for sale)
<b>METHAMPHETAMINE AMPHETAMINE</b>	greater than 5kg <sup>4</sup>	greater than 5g but not greater than 5kg	less than or equal to 5g <sup>5</sup>			
<b>SALVIA DIVINORUM</b>					any amount	
<b>SYNTHETIC CANNABINOIDS</b>					any amount	
<b>SYNTHETIC CATHINONES</b>					any amount	
<b>OTHER SCHEDULE I, II, AND III SUBSTANCES<sup>6</sup></b>			any amount			
<b>SCHEDULE IV AND V SUBSTANCES<sup>7</sup></b>					any amount	

1: These are non-bailable offenses after conviction and while awaiting appeal. Iowa Code § 811.1(2).

Note: must be a second or subsequent offense of § 124.401(1)(c) to qualify as non-bailable.

2: Note that the Iowa Supreme Court has determined that the minimum fines set out for violations of §124.401(1) may be suspended or deferred under chapter 907 of the Iowa Code. *State v. Grey*, 514 N.W.2d 78 (Iowa 1994).

3: This is the accommodation offense. It only includes delivery and possession with intent to deliver less than or equal to 1/2 ounce of marijuana, which was NOT offered for sale. Manufacturing marijuana is not included. An offender under this subsection is sentenced as if convicted of § 124.401(5) (possession of marijuana).

4: Deferred judgments, deferred sentences, and suspended sentences are NOT available in these instances when the substance is methamphetamine. Iowa Code § 907.3(1), (2) & (3).

5: If first offense for amphetamine or methamphetamine, then sentence may be suspended and defendant ordered to drug court or community based corrections for 1 year or until maximum benefits. §124.401E

6: Examples of other Schedule I, II and III controlled substances include mescaline, morphine, fentanyl, hashish, hashish oil, methaqualone, Seconal, Nembutal. *State v. Kaufman*, 265 N.W.2d 610 (Iowa 1978).

7: Examples of Schedule IV and V controlled substances include phenobarbital, Tylenol with codeine, meprobamate, Valium and ephedrine.

## PENALTIES UNDER IOWA LAW FOR POSSESSION OF CONTROLLED SUBSTANCES

### § 124.401(5) (Includes minimum imprisonment of 48 hours, which can be suspended)

Note: The reduced penalties for marijuana would appear to apply only if the present offense and all previous convictions were for marijuana, otherwise the penalties for the "other than marijuana" would apply. Convictions for violations of Chapters 124, 124A, 1245B, and 453B can be used to enhance second and subsequent offenses in the "other than marijuana" category.

	Marijuana	Other than Marijuana
First Offense	6 mo., \$1,000 fine	Serious Misdemeanor
Second Offense	Serious Misdemeanor	Aggravated Misdemeanor
Third or greater offense	Aggravated Misdemeanor	Class "D" Felony

**AGGREGATION OF WEIGHTS** Iowa Code § 124.401(2)--If the same person commits 2 or more acts which are in violation of § 124.401(1) and the acts occur in approximately the same location or time period so that the acts can be attributed to a single scheme, plan or conspiracy, the acts may be considered a single violation and the weight of the controlled substances involved may be combined for purposes of charging the offender and enhancing the criminal penalties. This is done at the discretion of the prosecutor. *State v. Robinson*, 506 N.W.2d 769 (Iowa 1993).

**FIREARM AND OFFENSIVE WEAPON ENHANCEMENT** Iowa Code § 124.401(1)(e) and (f)--If in the immediate possession of a firearm while participating in a violation of § 124.401(1), the penalty shall be 2 times the term otherwise imposed or granted. If in the immediate possession or control of an offensive weapon while participating in a violation of § 124.401(1), the penalty shall be 3 times the term imposed by law. A judgment or sentence under the firearm or offensive weapon enhancement cannot be deferred or suspended. *State v. Goodson*, 503 N.W.2d 395 (Iowa 1993).

**SCHOOL OR PUBLIC RECREATION ZONE ENHANCEMENT** Iowa Code § 124.401A and § 124.401B--If convicted of distributing or possessing with the intent to distribute a Schedule I, II, or III controlled substance (includes both a counterfeit and a simulated controlled substance) to a person greater than or equal to 18 years, and the offense is within 1000 feet of a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, then the offender may be sentenced to an additional term of 5 years (§ 124.401A). If convicted of possessing a Schedule I, II, or III controlled substance (includes a simulated controlled substance, but the "counterfeit substance" language was omitted from the statute) and the offense is within 1000 feet of a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, then the offender may be sentenced to an additional penalty of 100 hours of community service work for a public agency or a nonprofit charitable organization (§ 124.401B).

**MANUFACTURING METHAMPHETAMINE IN PRESENCE OF A MINOR** Iowa Code § 124.401C--If someone greater than or equal to 18 years manufactures methamphetamine 1) in the physical presence of a minor; 2) at the residence of a minor; 3) in a building where a minor might reasonably be present; 4) in a public accommodation (hotel, motel, etc.); or 5) in a multi- unit dwelling (apartment, condo, duplex, etc.), they shall be sentenced to an additional 5 years imprisonment.

*MANUFACTURING OR DELIVERY OF AMPHETAMINE OR METHAMPHETAMINE TO A MINOR* Iowa Code § 124.401D--If someone greater than or equal to 18 years delivers, possesses with the intent to deliver, conspires to deliver or possess with intent to deliver, or conspires to manufacture methamphetamine for delivery to someone < 18 years: 1st offense = 99 years; 2nd or subsequent offense = Class "A" felony (life imprisonment). § 902.9(1)(a). If 1st offense, then not eligible for parole until a minimum of 10 years served. § 902.8A.

*TAMPERING WITH, POSSESSING OR TRANSPORTING ANHYDROUS AMMONIA* Iowa Code § 124.401F--It is a serious misdemeanor to tamper with anhydrous ammonia equipment, or to possess or transport anhydrous ammonia in a container not approved by the secretary of agriculture. A civil penalty of not more than \$1500 may also be imposed.

*SECOND OR SUBSEQUENT OFFENSES* Iowa Code § 124.411(1)--If previously convicted of any state or federal drug statute, and subsequently convicted under Chapter 124, that person may be imprisoned for a period not to exceed 3 times the term otherwise authorized, or that person may be fined not more than 3 times the amount otherwise authorized, or both. The enhancement may be less than the triple amount and it also multiplies any other enhancements (such as the firearm enhancement) that may be imposed. *State v. Rodgers*, 560 N.W.2d 585 (Iowa 1997). Does not apply to violations of § 124.401(5).

*MANDATORY MINIMUM SENTENCE* Iowa Code § 124.413 (in reality a limitation on eligibility for parole)--A person sentenced pursuant to § 124.401(1)(a),(b),(c),(e) or (f), shall not be eligible for parole until the person has served a minimum period of confinement of one-third of the maximum indeterminate sentence prescribed by law. This provision does not apply to marijuana, Schedule IV or V controlled substances under § 124.401(1)(d). If this is a first offense under § 124.413, the court may, at its discretion, sentence the person to a term less than provided for by statute if mitigating circumstances exist and those circumstances are stated specifically on the record. (See § 901.10.) Probation is still a possibility. *State v. Farley*, 351 N.W.2d 537 (Iowa 1989); *State v. Draper*, 457 N.W.2d 600 (Iowa 1990); *Kinnersley v. State*, 494 N.W.2d 698 (Iowa 1993).

*RESTRICTION ON THE REDUCTION OF A MANDATORY MINIMUM SENTENCE* Iowa Code § 901.10(2)--A person convicted of an amphetamine or a methamphetamine offense under § 124.401(1)(a) or (b), (i.e., greater than 5 grams), is not eligible for a reduction of the mandatory minimum period of confinement imposed pursuant to § 124.413, unless the person pleads guilty, and then, the mandatory minimum may only be reduced by a maximum of one-third. In addition, if the defendant cooperates with the prosecution of others AND the prosecutor recommends it, the court may reduce the remaining mandatory minimum sentence by up to one-half. If the violation is for § 124.401D, the same applies, but there is apparently no "one half" limit on reduction if the prosecutor requests further reduction.

*RECONSIDERATION OF FELONY SENTENCE* Iowa Code § 902.4--The District Court retains jurisdiction for a period of ninety (90) days to reconsider a felon's sentence (other than a Class A felony or for which a mandatory minimum is imposed). The Court shall not disclose its decision to reconsider or not to reconsider until the date reconsideration is ordered, or the 90 day period for reconsideration is past. If an individual is sentenced for a violation of § 124.401 and § 124.413, he would not be eligible for reconsideration. *State v. Canas*, 571 N.W.2d 20 (Iowa 1997). However, if it is a first offense and the mandatory minimum is not imposed (see above), then the Court may reconsider.

*REOPENING OF 99 YEAR SENTENCE* Iowa Code § 901.5A--The Court may reopen a 99 year sentence if the prosecutor requests it and the Court finds that the defendant cooperated in the prosecution of others. Any reduction in sentence is based on § 901.10(3). Reopening of the sentence does NOT toll or stay any other proceedings or time deadlines.

*COMMITMENT FOR TREATMENT* Iowa Code § 124.409--When someone is charged under §124.401 and they consent thereto, or upon a conviction of §124.401, the Court may find that someone is addicted to, dependent upon, or a chronic abuser of controlled substances, and the Court may order commitment for treatment and rehabilitation. If successful at rehabilitation, the Court may remit all or part of the sentence and place the individual on probation.

*POSSESSION OF CERTAIN SUBSTANCES WITH INTENT TO MANUFACTURE* Iowa Code § 124.401(4)--It is a Class "D" felony to possess the following with the intent to manufacture a controlled substance: ephedrine, pseudoephedrine, ethyl ether, anhydrous ammonia, red phosphorous, lithium, iodine, thionyl chloride, chloroform, palladium, perchloric acid, tetrahydrofuran, ammonium chloride and magnesium sulfate.

*POSSESSION OF A CONTROLLED SUBSTANCE* Iowa Code § 124.401(5)--A first offense conviction for possession of any controlled substance (except marijuana) is a serious misdemeanor with a fine of at least \$250, but not more than \$1,500; in addition, the court may order imprisonment up to one year. Maximum penalty for a first offense conviction for possession of marijuana is imprisonment for 6 months and/or a \$1,000 fine. All or part of the sentence may be suspended and the person placed on probation, with conditions that may include participation in a drug treatment, rehabilitation or education program. If first offense, sentence may be deferred. (See § 124.409.) For second and subsequent offenses, see chart on previous page. Aggravated misdemeanors are punishable by a fine of at least \$500, but not more than \$5,000; in addition, the court may order imprisonment up to two years. A Class "D" Felony is punishable by an indeterminate term of imprisonment of not more than 5 years, and in addition, is punishable by a fine of at least \$500, but not more than \$7,500.

*DRUG PARAPHERNALIA* Iowa Code § 124.414--It is a simple misdemeanor for any person to knowingly or intentionally manufacture, deliver, sell, or possess drug paraphernalia. Drug paraphernalia is defined as all equipment, products, or materials of any kind used or attempted to be used in combination with a controlled substance, to knowingly and intentionally and primarily:

1. manufacture a controlled substance;
2. inject, ingest, inhale, or otherwise introduce into the human body a controlled substance;
3. test the strength, effectiveness, or purity of a controlled substance;
4. enhance the effect of a controlled substance. There is an exception for items used with lawful controlled substances and hypodermic needles or syringes used for a lawful purpose.

*DISTRIBUTION TO MINORS* Iowa Code § 124.406

1. If someone greater than or equal to 18 years distributes or possesses with the intent to distribute a Schedule I or II controlled substance to someone less than 18 years, the offense is a Class "B" Felony and the person shall serve a minimum 5 years. If it is a counterfeit or a simulated controlled substance, then no minimum 5 years. However, in either case, if the offense occurs within a school or a public recreation zone, then the person shall serve a minimum 10 years.
2. If someone greater than or equal to 18 years distributes or possesses with the intent to distribute a Schedule III controlled substance (includes a counterfeit or a simulated controlled substance) to someone less than 18 years and there is greater than or equal to 3 years difference, the offense is a Class "C" Felony.
3. If someone greater than or equal to 18 years distributes a Schedule IV or V controlled substance (includes a counterfeit or a simulated controlled substance) to someone less than 18 years and there is greater than or equal to 3 years difference, the offense is an Aggravated Misdemeanor.
4. If someone delivers a controlled substance to another in order to act with, enter into a common scheme or design with, conspire with, or recruit that other person to deliver any Schedule I, II, III, IV, or V controlled substance to someone less than 18 years, the offense is a Class "D" Felony.
5. A court sentencing a person for the first time under § 124.406 may, at its discretion, sentence the person to a term less than provided for by statute if mitigating circumstances exist and those circumstances are stated specifically on the record. (See § 901.10.)\

*RECRUITMENT OF MINORS* Iowa Code § 124.406A--If someone greater than or equal to 18 years conspires with or recruits someone less than 18 years to deliver or manufacture a Schedule I through IV controlled substance, the offense is a Class "C" Felony.

*GATHERINGS WHERE CONTROLLED SUBSTANCES UNLAWFULLY USED* Iowa Code § 124.407--It is unlawful for any person to sponsor, promote or aid, or assist in a meeting, gathering, or assemblage with the knowledge or intent that a controlled substance be distributed, used or possessed there. If it is anything other than marijuana, it is a Class "D" Felony. If it is marijuana, it is a Serious Misdemeanor. Injunctions may also be issued.

*DATE RAPE DRUG PENALTIES* Iowa Code § 709.4(3)--It is Sex Abuse in the Third Degree (a Class "C" Felony) when an individual performs a sex act on a person who is under the influence of a controlled substance, including flunitrazepam (Rohypnol), and 1) the controlled substance prevents the victim from consenting, and 2) the accused knows or should reasonably know that the victim is under the influence of the controlled substance.

*GAMMA-HYDROXYBUTYRATE (GHB)* Iowa Code § 126.27--Unless covered by a legitimate prescription, it is unlawful to possess gamma-hydroxybutyrate (an Aggravated Misdemeanor). Furthermore, it is an Aggravated Misdemeanor to distribute or possess with the intent to distribute gamma-hydroxybutyrate when it is intended to promote its unlawful use, or it is known that the other will use it for unlawful purposes.

**DRIVER'S LICENSE SUSPENSION** Iowa Code § 901.5(10)--The court shall order the D.O.T. to revoke the driver's license and/or the operating privileges of a person convicted of certain drug related offenses for a period of one hundred eighty (180) days. If the license or operating privileges are already under suspension or revocation, then the 180 days begins after all other suspensions or revocations have expired. The triggering offenses include violations of § 124.401, § 124.401A, § 124.402, § 124.403, § 126.3, and Chapter 453B. This provision does not violate "Due Process" or "Equal Protection." *State v. Bell*, 572 N.W.2d 910 (Iowa 1997). The Iowa Supreme Court has also ruled that the revocation is mandatory. *State v. Klein*, 574 N.W.2d 347 (Iowa 1997).

**DENIAL OF FEDERAL AND STATE BENEFITS** Iowa Code § 901.5(11)--The Court shall consider 21 U.S.C.A. § 862 (see below), and may order the denial of federal benefits, such as school loans, grants, contracts, professional or commercial licenses. Does not include retirement, welfare, Social Security, health, disability, veterans benefits, public housing, or similar benefits. For any violation of Chapter 124, the Court shall consider the denial of state benefits and may order their denial comparable to the federal benefits. Iowa Code § 901.5(12).

<b>DENIAL OF FEDERAL BENEFITS TO DRUG TRAFFICKERS AND POSESSORS</b>		
	<b>Drug Traffickers</b>	<b>Drug Possessors</b>
<b>First Offense</b>	ineligible for any or all federal benefits for up to 5 years	1) ineligible for any or all federal benefits for up to 1 year; and/or 2) successfully complete an approved drug treatment program with periodic future testing; and/or 3) perform appropriate community service
<b>Second Offense</b>	ineligible for any or all federal benefits for up to 10 years	1) ineligible for any or all federal benefits for up to 5 years; and/or 2) successfully complete an approved drug treatment program with periodic future testing; and/or 3) perform appropriate community service
<b>Third or Greater Offense</b>	permanently ineligible for all federal benefits	N/A

NOTE: The period of ineligibility referred to above may be suspended if the individual has completed a supervised drug rehabilitation program or otherwise has been rehabilitated. These penalties do not apply to any individual who cooperates or testifies for the government.

**CONTROLLED SUBSTANCE TAX STAMP** Iowa Code Chapter 453B--If certain minimum levels of various controlled substances are possessed, then a tax is due according to the schedule below. If the tax is not paid when first due, there is an immediate 100% penalty also assessed. In addition, it is a Class "D" Felony, punishable by an indeterminate term of imprisonment of not more than 5 years, and in addition, punishable by a fine of at least \$500, but not more than \$7,500, for failure to properly affix the tax stamp to the controlled substances.

Taxable Substance	Unprocessed Marijuana Plants	Processed Marijuana	Other Than Marijuana	
			Sold by weight	Sold by dosage unit
Minimum Triggering Amount	1 plant	42 1/2 grams	7 grams	10 dosage units
Tax Rate	\$750 per plant	\$5 per gram or portion thereof	\$250 per gram or portion thereof	\$400 per 10 units or portion thereof