

JRC

Justice Reform Consortium



SPECIAL April 16, 2013

VETO ALERT

We need YOU to write letters, send emails, and make phone calls to Governor Branstad asking him to veto [SF 384](#), a bill relating to “removing or attempting to remove a communication or control device from the possession of a peace officer or correctional officer, interference with official acts, and providing penalties.” Please send your letter, email, or make your telephone call prior to Thursday evening.

The problem with this bill is not the first part, which pertains to the removal of a radio from a peace officer, including a correctional officer, but the second part of the bill that changes the law relating to “interference with official acts.”

This bill passed the Iowa Senate by a vote of 50-0 on April 1. You can view the Senate’s debate on this bill here: <http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=senate&Service=ArchiveBill&vid=591&offset=1902&iDate=2013-04-01&hbill=SF384>

SF 384 passed the House by a vote of 77-17 on April 10. You can watch the House debate by clicking on the following two links:

<http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=Billinfo&Service=ArchiveBill&vid=622&offset=5580&iDate=2013-04-10&hbill=HF557>

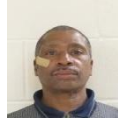
<http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=Billinfo&Service=ArchiveBill&vid=622&offset=6212&iDate=2013-04-10&hbill=SF384>

The following is one of the cases, (State v. Dudley, Iowa Court of Appeals, 2012) that led to Special Interest Groups (the Iowa Peace Officers Association’s, Iowa County Attorneys Association, and others) desire to change the law:

At about 1:00 a.m. on September 18, 2010, Mason City police officer Joshua Eernisse was in a marked patrol car and wearing his uniform. While he and student intern Dustin

Hodson were investigating another call, they observed the defendant, McKinley Dudley Jr., riding a bicycle without a headlight.

Officer Eernisse parked his vehicle in a parking lot, got out, and asked Dudley to come over to the patrol car as he intended to inform Dudley it was against city ordinance to ride



a bicycle without a headlight. Dudley turned his bicycle and started to ride toward the officer. Officer Eernisse asked Dudley to stop and talk. Dudley approached the officer, but continued riding. Officer Eernisse stated, "police, stop" and when Dudley continued to ride, the officer yelled "stop." Officer Eernisse grabbed Dudley's arm. Dudley kept riding. Officer Eernisse tackled Dudley off the bike and in doing so suffered an abrasion to his right knee. Officer Eernisse then placed Dudley in handcuffs and searched him, finding marijuana and methamphetamine.

Dudley was subsequently charged with possession of methamphetamine, third or subsequent offense as a habitual offender; possession of marijuana, third or subsequent offense as a habitual offender; *interference with official acts resulting in injury*; and public intoxication.

http://scholar.google.com/scholar_case?case=16378655047343570352&q=%22interference+with+official+acts%22++%22inflicts%22&hl=en&as_sdt=4,16&as_vis=1

One of the reasons why the Iowa Supreme Court vacated Dudley's charge of "interference with official acts *resulting in* injury" is that the crime didn't exist at the time he was charged. In Dudley's case, "the jury requested a definition of "inflict" and the court told the jury to "refer generally to the jury instructions as a whole for guidance." Instruction No. 18 accurately states the State must prove the defendant "inflicted a bodily injury." The correct name of the crime should have been interference with an official act, *inflicting* bodily injury."

TALKING POINTS:

- It is expected that "this Bill will have a disproportionate impact on minorities because approximately 34.2% of offenders convicted under the Bill's provisions related to interference with official acts may be minorities."
- The third section of the bill is not necessary. Unfortunately, the governor must veto the entire bill. But it's best to have the first part of the bill re-introduced, either next year as a new bill, or as a leadership bill, and that can be done if the governor agrees to veto SF 384.

Governor Branstad's contact information is as follows:

The Honorable Terry Branstad
Governor of the State of Iowa

1007 East Grand Ave.
Des Moines, Iowa 50319

Phone: 515.281.5211

Or, to send an email: <https://governor.iowa.gov/constituent-services/register-opinion/>

Dear Governor Branstad:

I am requesting that you veto [Senate File 384](#), a bill relating to “removing or attempting to remove a communication or control device from the possession of a peace officer or correctional officer, interference with official acts, and providing penalties”.

A minority impact statement, which is part of a fiscal note attached to SF 384, states that “it is expected that this Bill will have a disproportionate impact on minorities because approximately 34.2% of offenders convicted under the Bill’s provisions related to interference with official acts may be minorities.”

The bill is not necessary. There are other charges a defendant may face if, in the course of interfering with official acts, the person causes bodily injury or serious injury to a peace officer. As written, section 3 of the bill lacks scienter, or the level of intent needed to commit a crime.

I believe that the first two sections of the bill are worthy of your signature, but I also understand that the bill must be vetoed in its entirety. There is still time in this legislative session for a leadership bill to re-enact the first two sections of SF 384.

Thank you for considering this request.

Respectfully,

A sample letter might look like:

On Sunday, April 14, 2013, the Des Moines Register gave the Iowa Legislature a thistle with a headline that read:

Roses and Thistles: This might explain why Iowa has so many blacks in prison

A **thistle** to the **Iowa Legislature** for asking a question but ignoring the answer. The House and Senate both passed a bill that increases the penalty for interference with the

official duties of a law officer that results in an injury to the officer. The tougher penalty likely will have a disproportionate impact on minorities in Iowa. Lawmakers know that because the Legislative Services Agency was specifically asked to prepare minority-impact statement on the bill due to Iowa's sorry record of locking up blacks at a higher rate proportionally than whites. Yet, the bill sailed through the Senate 50-0. At least the House seriously debated the race implications before it passed the bill. Lawmakers might as well not ask for reports on the impact of their actions if they do not intend to take seriously the results.

This is the Iowa law on Minority Impact Statements:

2.56 Correctional impact statements.

1. Prior to debate on the floor of a chamber of the general assembly, a correctional impact statement shall be attached to any bill, joint resolution, or amendment which proposes a change in the law which creates a public offense, significantly changes an existing public offense or the penalty for an existing offense, or changes existing sentencing, parole, or probation procedures. The statement shall include information concerning the estimated number of criminal cases per year that the legislation will impact, the fiscal impact of confining persons pursuant to the legislation, the impact of the legislation on minorities, the impact of the legislation upon existing correctional institutions, community-based correctional facilities and services, and jails, the likelihood that the legislation may create a need for additional prison capacity, and other relevant matters. The statement shall be factual and shall, if possible, provide a reasonable estimate of both the immediate effect and the long-range impact upon prison capacity.

...
5. The legislative services agency, in cooperation with the division of criminal and juvenile justice planning of the department of human rights, shall develop a protocol for analyzing the impact of the legislation on minorities.

Here is a link to the Correctional Impact Statement (which includes the Minority Impact Statement on Pages 3 & 4) that is attached to Senate File 384:

https://www.legis.iowa.gov/DOCS/FiscalNotes/85_1927SVv1_FN.pdf