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SENATE FILE 503  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 194)

Passed Senate, Date 3/26/97 (p. 832) Passed House, Date 4-10-97 (P. 1167)  
Vote: Ayes 42 Nays 3 Vote: Ayes 93 Nays 1  
Approved May 7, 1997

A BILL FOR

1 An Act relating to criminal justice, by providing for enhanced  
2 punishment for manufacturing methamphetamine in the presence  
3 of minors, providing restrictions on public nudity and actual  
4 or simulated public performance of sex acts in certain  
5 establishments, providing for abatement of nuisance created by  
6 certain establishments which allow or permit public nudity or  
7 actual or simulated public performances of sex acts in their  
8 establishment, making changes relating to permits and rights  
9 to carry and acquire weapons, providing for hormonal  
10 intervention therapy for persons convicted of certain sex  
11 offenses, authorizing probation supervision and revocation by  
12 administrative parole and probation judges in the sixth  
13 judicial district, providing restitution for death of a victim  
14 of a crime, and providing penalties and an effective date.

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

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1 Section 1. NEW SECTION. 124.401C MANUFACTURING  
2 METHAMPHETAMINE IN PRESENCE OF MINORS.

3 1. In addition to any other penalties provided in this  
4 chapter, a person who is eighteen years of age or older and  
5 who either directly or by extraction from natural substances,  
6 or independently by means of chemical processes, or both,  
7 unlawfully manufactures methamphetamine, its salts, isomers,  
8 and salts of its isomers in the presence of a minor shall be  
9 sentenced up to an additional term of confinement of five  
10 years.

11 2. For purposes of this section, the term "in the presence  
12 of a minor" shall mean any of the following:

13 a. When a minor is physically present during the activity.

14 b. When the activity is conducted in the residence of a  
15 minor.

16 c. When the activity is conducted in a residence where  
17 minors can reasonably be expected to be present.

18 d. When the activity is conducted in a room offered to the  
19 public for overnight accommodation.

20 Sec. 2. Section 657.2, Code 1997, is amended by adding the  
21 following new subsection:

22 NEW SUBSECTION. 14. A violation of section 728.4 or 728.5  
23 or the knowing dissemination or exhibition of obscene material  
24 as defined in section 728.1 to a minor from a place of  
25 business.

26 Sec. 3. Section 724.8, Code 1997, is amended by adding the  
27 following new subsection:

28 NEW SUBSECTION. 7. The person is not the subject of a  
29 restraining order or protective order.

30 Sec. 4. Section 724.13, Code 1997, is amended to read as  
31 follows:

32 724.13 REVOCATION OF PERMIT TO CARRY WEAPONS.

33 The issuing officer ~~may~~ shall revoke any permit to carry  
34 weapons when the officer learns that any of the conditions  
35 required for the issuance of that permit as stated in sections

1 724.6 to through 724.10 have ceased to exist, or when the  
2 officer learns that that permit was improperly issued. When  
3 the issuing officer revokes a permit, the officer shall notify  
4 the permit holder of such revocation on a form prescribed and  
5 published by the commissioner of public safety, and shall  
6 forward a copy of the form to the commissioner of public  
7 safety. From the time the permit holder receives notice of  
8 revocation, the permit shall cease to have any force or  
9 effect. Permit revocations may be reviewed by writ of  
10 certiorari.

11 Sec. 5. Section 724.15, subsection 1, Code 1997, is  
12 amended by adding the following new paragraph:

13 NEW PARAGRAPH. g. The person is not the subject of a  
14 restraining order or protective order.

15 Sec. 6. Section 724.15, subsection 3, Code 1997, is  
16 amended to read as follows:

17 3. The annual permit to acquire pistols or revolvers shall  
18 authorize the permit holder to acquire one or more pistols or  
19 revolvers during the period that the permit remains valid. If  
20 the issuing officer determines that the applicant has become  
21 disqualified under the provisions of subsection 1, the issuing  
22 officer ~~may~~ shall immediately invalidate the permit. When the  
23 issuing officer invalidates a permit, the officer shall notify  
24 the permit holder of the invalidation on a form prescribed and  
25 published by the commissioner of public safety. Upon receipt  
26 of the notice of invalidation by the permit holder, the permit  
27 shall cease to have any force or effect. Decisions of an  
28 issuing officer to invalidate a permit may be reviewed by the  
29 district court and any appellate court which may review the  
30 district court decision, pursuant to a writ of certiorari.

31 Sec. 7. Section 728.1, Code 1997, is amended by adding the  
32 following new subsection:

33 NEW SUBSECTION. 5A. "Place of business" means the  
34 premises of a business required to obtain a sales tax permit  
35 pursuant to chapter 422, the premises of a nonprofit or not-

1 for-profit organization, and the premises of an establishment  
2 which is open to the public at large or where entrance is  
3 limited by a cover charge or membership requirement.

4 Sec. 8. Section 728.4, Code 1997, is amended to read as  
5 follows:

6 728.4 RENTAL OR SALE OF HARD-CORE PORNOGRAPHY.

7 A person who knowingly rents, exhibits, disseminates,  
8 sells, or offers for rental or sale material depicting  
9 patently offensive representations of oral, anal, or vaginal  
10 intercourse, actual or simulated, involving humans, or  
11 depicting patently offensive representations of masturbation,  
12 excretory functions, or bestiality, or lewd exhibition of the  
13 genitals, which the average adult taking the material as a  
14 whole in applying statewide contemporary community standards  
15 would find appeals to the prurient interest; and which  
16 material, taken as a whole, lacks serious literary,  
17 scientific, political, or artistic value, ~~upon conviction~~ is  
18 guilty of an aggravated misdemeanor. However, second and  
19 subsequent violations of this section by a person who has been  
20 previously convicted of violating this section are class "D"  
21 felonies. Charges under this section may only be brought by a  
22 county attorney or by the attorney general.

23 Sec. 9. Section 728.5, Code 1997, is amended to read as  
24 follows:

25 728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN ESTABLISHMENTS.

26 ~~A holder of a liquor license or beer permit or any~~ An  
27 owner, manager, or person who exercises direct control over  
28 ~~any licensed premises defined in section 123.37, subsection 20~~  
29 a place of business required to obtain a sales tax permit  
30 shall be guilty of a serious misdemeanor under any of the  
31 following circumstances:

32 1. If such person ~~allow~~ allows or ~~permit~~ permits the  
33 actual or simulated public performance of any sex act upon or  
34 in such ~~licensed premises~~ place of business.

35 2. If such person ~~allow~~ allows or ~~permit~~ permits the

1 exposure of the genitals or buttocks or female breast of any  
2 person who acts as a waiter or waitress.

3 3. If such person ~~allow~~ allows or ~~permit~~ permits the  
4 exposure of the genitals or female breast nipple of any person  
5 who acts as an entertainer, whether or not the owner of the  
6 ~~licensed-premises~~ place of business in which the activity is  
7 performed employs or pays any compensation to such person to  
8 perform such activity.

9 4. If such person ~~allow~~ allows or ~~permit~~ permits any  
10 person to remain in or upon the ~~licensed-premises~~ place of  
11 business who exposes to public view the person's genitals,  
12 pubic hair, or anus.

13 ~~5.--if-such-person-allow-or-permit-the-displaying-of-moving~~  
14 ~~pictures,-films,-or-pictures-depicting-any-sex-act-or-the~~  
15 ~~display-of-the-pubic-hair,-anus,-or-genitals-upon-or-in-such~~  
16 ~~licensed-premises.~~

17 6 5. If such person advertises that any activity  
18 prohibited by this section is allowed or permitted in such  
19 ~~licensed-premises~~ place of business.

20 7 6. If such person allows or permits a minor to engage in  
21 or otherwise perform in a live act intended to arouse or  
22 satisfy the sexual desires or appeal to the prurient interests  
23 of patrons. However, if such person allows or permits a minor  
24 to participate in any act included in subsections 1 through 4,  
25 the person shall be guilty of an aggravated misdemeanor.

26 In addition, a holder of a liquor license or beer permit or  
27 an owner, manager, or person who exercises direct control over  
28 any licensed premises defined in section 123.3, subsection 20,  
29 shall be guilty of a serious misdemeanor if such person allows  
30 or permits the displaying of moving pictures, films, or  
31 pictures depicting any sex act or the displaying of the pubic  
32 hair, anus, or genitals upon or in such licensed premises.

33 ~~Provided-that-the~~ The provisions of this section shall not  
34 apply to a theater, concert hall, art center, museum, or  
35 similar establishment which is primarily devoted to the arts

1 or theatrical performances and in which any of the  
2 circumstances contained in this section were permitted or  
3 allowed as part of such art exhibits or performances.

4 Sec. 10. Section 728.8, Code 1997, is amended to read as  
5 follows:

6 728.8 SUSPENSION OF LICENSES OR PERMITS.

7 Any person who knowingly permits a violation of section  
8 728.2, 728.3, or 728.5, subsection 7 6, to occur on premises  
9 under the person's control shall have all permits and licenses  
10 issued to the person under state or local law as a  
11 prerequisite for doing business on such premises revoked for a  
12 period of six months. The county attorney shall notify all  
13 agencies responsible for issuing licenses and permits of any  
14 conviction under section 728.2, 728.3, or 728.5, subsection 7  
15 6.

16 Sec. 11. NEW SECTION. 728.16 PUBLIC NUISANCE.

17 A person who violates section 728.4 or 728.5 or who  
18 knowingly disseminates or exhibits obscene material to a minor  
19 from a place of business operates a public nuisance subject to  
20 the provisions of chapter 657.

21 Sec. 12. Section 901.2, Code 1997, is amended by adding  
22 the following new subsection:

23 NEW SUBSECTION. 4. If the person has been convicted of a  
24 serious sex offense as defined in section 903B.1, subsection  
25 3, a plan for initiation of medroxyprogesterone acetate  
26 treatment in the manner provided in that section.

27 Sec. 13. NEW SECTION. 903B.1 HORMONAL INTERVENTION  
28 THERAPY -- CERTAIN SEX OFFENSES.

29 1. A person who has been convicted of a serious sex  
30 offense may, upon a first conviction and in addition to any  
31 other punishment provided by law, be required to undergo  
32 medroxyprogesterone acetate treatment as part of any  
33 conditions of release imposed by the court or the board of  
34 parole. Upon a second or subsequent conviction, the court or  
35 the board of parole shall require the person to undergo

1 medroxyprogesterone acetate treatment as a condition of  
2 release. This section shall not apply if the person  
3 voluntarily undergoes a permanent surgical alternative  
4 approved by the court or the board of parole.

5 2. If a person is placed on probation and is not in  
6 confinement at the time of sentencing, the presentence  
7 investigation shall include a plan for initiation of treatment  
8 as soon as is reasonably possible after the person is  
9 sentenced. If the person is in confinement prior to release  
10 on probation or parole, treatment shall commence prior to the  
11 release of the person from confinement. Conviction of a  
12 serious sex offense shall constitute exceptional circumstances  
13 warranting a presentence investigation under section 901.2.

14 3. For purposes of this section, a "serious sex offense"  
15 means any of the following offenses:

16 a. Sexual abuse in the first degree, in violation of  
17 section 709.2.

18 b. Sexual abuse in the second degree, in violation of  
19 section 709.3.

20 c. Sexual abuse in the third degree, in violation of  
21 section 709.4.

22 d. Lascivious acts with a child, in violation of section  
23 709.8.

24 e. Assault with intent, in violation of section 709.11.

25 f. Indecent contact with a minor, in violation of section  
26 709.12.

27 g. Lascivious conduct with a minor, in violation of  
28 section 709.14.

29 h. Sexual exploitation by a counselor in violation of  
30 section 709.15.

31 i. Sexual exploitation of a minor, in violation of section  
32 728.12.

33 4. The department of corrections, in consultation with the  
34 board of parole, shall adopt rules which provide for the  
35 initiation of medroxyprogesterone acetate treatment prior to

1 the parole or work release of a person who has been convicted  
2 of a serious sex offense and who is required to undergo  
3 treatment as a condition of release by the board of parole.  
4 The department's rules shall also establish standards for the  
5 supervision of the treatment by the judicial district  
6 department of correctional services during the period of  
7 release. Each district department of correctional services  
8 shall adopt policies and procedures which provide for the  
9 initiation or continuation of medroxyprogesterone acetate  
10 treatment as a condition of release for each person who is  
11 required to undergo the treatment by the court or the board of  
12 parole. The board of parole shall, in consultation with the  
13 department of corrections, adopt rules which relate to  
14 initiation or continuation of medroxyprogesterone acetate  
15 treatment as a condition of any parole or work release.

16 Sec. 14. Section 907.2, unnumbered paragraph 2, Code 1997,  
17 is amended to read as follows:

18 Probation officers employed by the judicial district  
19 department of correctional services, while performing the  
20 duties prescribed by that department, are peace officers.  
21 Probation officers shall investigate all persons referred to  
22 them for investigation by the director of the judicial  
23 district department of correctional services which employs  
24 them. They shall furnish to each person released under their  
25 supervision or committed to a community corrections  
26 residential facility operated by the judicial district  
27 department of correctional services, a written statement of  
28 the conditions of probation or commitment. They shall keep  
29 informed of each person's conduct and condition and shall use  
30 all suitable methods prescribed by the judicial district  
31 department of correctional services to aid and encourage the  
32 person to bring about improvements in the person's conduct and  
33 condition. Probation officers shall keep records of their  
34 work and, unless section 907.8A applies, shall make reports to  
35 the court when alleged violations occur and within no less

1 than thirty days before the period of probation will expire.  
2 If section 907.8A applies, the probation officers shall make  
3 the reports of alleged violations to the administrative parole  
4 and probation judge within no less than thirty days before the  
5 period of probation will expire. Probation officers shall  
6 coordinate their work with other social welfare agencies which  
7 offer services of a corrective nature operating in the area to  
8 which they are assigned.

9 Sec. 15. Section 907.7, unnumbered paragraphs 1 and 2,  
10 Code 1997, are amended to read as follows:

11 The length of the probation shall be for such term as the  
12 court ~~may~~ shall fix but not to exceed five years if the  
13 offense is a felony or not to exceed two years if the offense  
14 is a misdemeanor.

15 The length of the probation shall not be less than one year  
16 if the offense is a misdemeanor and shall not be less than two  
17 years if the offense is a felony. However, the court or the  
18 administrative parole and probation judge, if section 907.8A  
19 applies, may subsequently reduce the length of the probation  
20 if the court or the administrative parole and probation judge  
21 determines that the purposes of probation have been fulfilled.  
22 The purposes of probation are to provide maximum opportunity  
23 for the rehabilitation of the defendant and to protect the  
24 community from further offenses by the defendant and others.

25 Sec. 16. Section 907.8, unnumbered paragraph 3, Code 1997,  
26 is amended to read as follows:

27 ~~Jurisdiction of~~ Except as otherwise provided in section  
28 907.8A, the court shall retain jurisdiction over these persons  
29 ~~shall remain with the sentencing court.~~ Jurisdiction may be  
30 transferred to a court in another jurisdiction, or to the  
31 administrative parole and probation judge under section  
32 907.8A, if a person's probation supervision is transferred to  
33 a judicial district department of correctional services in a  
34 district other than the district in which the person was  
35 sentenced.

1     Sec. 17. NEW SECTION. 907.8A SIXTH JUDICIAL DISTRICT --  
2 DETERMINATION OF ISSUES DURING PROBATIONARY PERIOD.

3     1. Except for those persons who are granted a deferred  
4 judgment or deferred sentence, for each adult, and each  
5 juvenile who has been prosecuted, convicted, and sentenced as  
6 an adult, who is released on probation by the court in the  
7 sixth judicial district, the jurisdiction of the sentencing  
8 court shall cease upon approval by the sentencing court of the  
9 conditions established by the judicial district department of  
10 correctional services. If a person is granted a deferred  
11 judgment or deferred sentence, jurisdiction shall be retained  
12 by the court.

13    2. All issues relating to whether the probationer has  
14 violated or fulfilled the terms and conditions of probation,  
15 including but not limited to express violations of a specific  
16 term of probation, new violations of the law, and changes of  
17 the term of probation as provided in sections 907.7, 908.11,  
18 and 910.4, which would otherwise be determined by the court,  
19 shall be determined instead by an administrative parole and  
20 probation judge. The administrative parole and probation  
21 judge, who shall be an attorney, shall be appointed by the  
22 board of parole, notwithstanding chapter 17A. The costs of  
23 employing the administrative parole and probation judge shall  
24 be borne by the board of parole.

25    A probation hearing conducted by an administrative parole  
26 and probation judge shall be conducted in the same manner as  
27 hearings regarding revocations or modifications of or  
28 discharge from parole. The hearing may be conducted  
29 electronically. The probation officer shall notify the county  
30 attorney at least five days prior to any probation hearing.  
31 The interests of the state shall be represented by the  
32 probation officer at the probation hearing, unless the county  
33 attorney or the county attorney's designee elects to assist  
34 the probation officer. The board of parole, the department of  
35 corrections, and the clerk of the district court in the sixth

1 judicial district shall devise and implement a system for the  
2 filing of documents and records of probation hearings  
3 conducted under this section. The system shall allow for the  
4 electronic filing of records and documents where electronic  
5 filing is practicable.

6 3. Appeals from orders of the administrative parole and  
7 probation judge which pertain to the revocations or  
8 modifications of or discharge from probation shall be  
9 conducted in the manner provided in rules adopted by the board  
10 of parole.

11 Sec. 18. Section 907.9, Code 1997, is amended to read as  
12 follows:

13 907.9 DISCHARGE FROM PROBATION.

14 1. At Except as otherwise provided in section 907.8A, at  
15 any time that the court determines that the purposes of  
16 probation have been fulfilled, the court may order the  
17 discharge of a person from probation.

18 2. At any time that a probation officer determines that  
19 the purposes of probation have been fulfilled, the officer may  
20 order the discharge of a person from probation after approval  
21 of the district director, and notification of the sentencing  
22 court, the administrative parole and probation judge if  
23 section 907.8A applies, and the county attorney who prosecuted  
24 the case.

25 3. ~~The sentencing judge, unless the judge is no longer~~  
26 ~~serving or is otherwise unable to, or, if section 907.8A~~  
27 ~~applies, the administrative parole and probation judge, may~~  
28 order a hearing on its own motion, or shall order a hearing  
29 upon the request of the county attorney, for review of such  
30 discharge. If the sentencing judge is no longer serving or  
31 unable to order such hearing, the chief judge of the district  
32 or the chief judge's designee shall order any hearing pursuant  
33 to this section, if section 907.8A does not apply. Following  
34 the hearing, the court or the administrative parole and  
35 probation judge shall approve or rescind such discharge. If a

1 hearing is not ordered within thirty days after notification  
2 by the probation officer, the person shall be discharged and  
3 the probation officer shall notify the state court  
4 administrator of such discharge.

5 4. At the expiration of the period of probation, ~~in-cases~~  
6 ~~where-the-court-fixes-the-term-of-probation,~~ the court or, if  
7 section 907.8A applies, the administrative parole and  
8 probation judge, shall order the discharge of the person from  
9 probation, and the court or administrative parole and  
10 probation judge shall forward to the governor a recommendation  
11 for or against restoration of citizenship rights to that  
12 person. A person who has been discharged from probation shall  
13 no longer be held to answer for the person's offense. Upon  
14 discharge from probation, if judgment has been deferred under  
15 section 907.3, the court's criminal record with reference to  
16 the deferred judgment shall be expunged. The record  
17 maintained by the state court administrator as required by  
18 section 907.4 shall not be expunged. The court's record shall  
19 not be expunged in any other circumstances.

20 5. A probation officer or the director of the judicial  
21 district department of correctional services who acts in  
22 compliance with this section is acting in the course of the  
23 person's official duty and is not personally liable, either  
24 civilly or criminally, for the acts of a person discharged  
25 from probation by the officer after such discharge, unless the  
26 discharge constitutes willful disregard of the person's duty.

27 Sec. 19. Section 908.11, Code 1997, is amended to read as  
28 follows:

29 908.11 VIOLATION OF PROBATION.

30 1. A probation officer or the judicial district department  
31 of correctional services having probable cause to believe that  
32 any person released on probation has violated the conditions  
33 of probation shall proceed by arrest or summons as in the case  
34 of a parole violation.

35 2. The Except as otherwise provided in sections 907.8 and

1 907.8A, the functions of the liaison officer and the board of  
2 parole shall be performed by the judge or magistrate who  
3 placed the alleged violator on probation if that judge or  
4 magistrate is available, otherwise by another judge or  
5 magistrate who would have had jurisdiction to try the original  
6 offense.

7 3. If the probation officer proceeds by arrest and section  
8 907.8A does not apply, any magistrate may receive the  
9 complaint, issue an arrest warrant, or conduct the initial  
10 appearance and probable cause hearing if it is not convenient  
11 for the judge who placed the alleged violator on probation to  
12 do so. The initial appearance, probable cause hearing, and  
13 probation revocation hearing, or any of them, may at the  
14 discretion of the court be merged into a single hearing when  
15 it appears that the alleged violator will not be prejudiced  
16 thereby by the merger.

17 4. If the person who is believed to have violated the  
18 conditions of probation was sentenced and placed on probation  
19 in the sixth judicial district under section 907.8A, or  
20 jurisdiction over the person was transferred to the sixth  
21 judicial district as a result of transfer of the person's  
22 probation supervision, the functions of the liaison officer  
23 and the board of parole shall be performed by the  
24 administrative parole and probation judge as provided in  
25 section 907.8A.

26 5. If the probation officer proceeds by arrest and section  
27 907.8A applies, the administrative parole and probation judge  
28 may receive the complaint, issue an arrest warrant, or conduct  
29 the initial appearance and probable cause hearing. The  
30 initial appearance, probable cause hearing, and probation  
31 revocation hearing, or any of them, may, at the discretion of  
32 the administrative parole and probation judge, be merged into  
33 a single hearing when it appears that the alleged violator  
34 will not be prejudiced by the merger.

35 6. If the violation is established, the court or the

1 administrative parole and probation judge may continue the  
2 probation with or without an alteration of the conditions of  
3 probation. If the defendant is an adult the court may hold  
4 the defendant in contempt of court and sentence the defendant  
5 to a jail term while continuing the probation, order the  
6 defendant to be placed in a violator facility established  
7 pursuant to section 904.207 while continuing the probation, or  
8 revoke the probation and require the defendant to serve the  
9 sentence imposed or any lesser sentence, and, if imposition of  
10 sentence was deferred, may impose any sentence which might  
11 originally have been imposed. The administrative parole and  
12 probation judge may revoke the probation and require the  
13 defendant to serve the sentence which was originally imposed.  
14 The administrative parole and probation judge may grant credit  
15 against the sentence, for any time served while the defendant  
16 was on probation. The order of the administrative parole and  
17 probation judge shall become a final decision, unless the  
18 defendant appeals the decision to the board of parole within  
19 the time provided in rules adopted by the board. The appeal  
20 shall be conducted pursuant to rules adopted by the board and  
21 the record on appeal shall be the record made at the hearing  
22 conducted by the administrative parole and probation judge.

23 Sec. 20. NEW SECTION. 910.3B RESTITUTION FOR DEATH OF  
24 VICTIM.

25 1. In all criminal cases in which the offender is  
26 convicted of a felony in which the act or acts committed by  
27 the offender caused the death of another person, in addition  
28 to the amount determined to be payable and ordered to be paid  
29 to a victim for pecuniary damages, as defined under section  
30 910.1, and determined under section 910.3, the court shall  
31 also order the offender to pay one hundred fifty thousand  
32 dollars in restitution to the victim's estate. Payment of the  
33 additional amount shall have the same priority as payment of a  
34 victim's pecuniary damages under section 910.2, in the  
35 offender's plan for restitution.

1 2. An award under this section does not preclude or  
2 supersede the right of a victim's estate to bring a civil  
3 action against the offender for damages arising out of the  
4 same facts or event.

5 3. An offender who is ordered to pay a victim's estate  
6 under this section is precluded from denying the elements of  
7 the felony offense which resulted in the order for payment in  
8 any subsequent civil action for damages arising out of the  
9 same facts or event.

10 Sec. 21. Sections 906.16, 908.4, 908.5, 908.6, 908.7,  
11 908.10, and 908.10A, Code 1997, are amended by striking from  
12 the sections the words "administrative parole judge" and  
13 inserting in lieu thereof the words "administrative parole and  
14 probation judge".

15 Sec. 22. EFFECTIVE DATE. Sections 2 and 7 through 11 of  
16 this Act, being deemed of immediate importance, take effect  
17 upon enactment.

18 EXPLANATION

19 This bill makes a variety of changes relating to criminal  
20 justice. A new section 124.401C is created to provide for an  
21 additional penalty of five years of confinement for persons  
22 who manufacture methamphetamine, its salts, isomers, or salts  
23 of isomers, in the presence of a minor, in the residence of a  
24 minor, in a residence where minors can reasonably be expected  
25 to be present, or in a room offered to the public for  
26 overnight accommodation.

27 Code section 657.2, which lists several items deemed to be  
28 nuisances, is amended to include violations of prohibitions  
29 against the rental or sale of hard-core pornography and  
30 prohibitions against public indecent exposure in certain  
31 establishments and the knowing dissemination or exhibition of  
32 obscene material to a minor from a place of business.

33 Code section 724.8 is amended to prohibit persons who are  
34 subjects of a restraining order or protective order from being  
35 eligible for professional or nonprofessional permits to carry

1 weapons. Code section 724.13 is amended to require revocation  
2 of any permits if any of the conditions required for issuance  
3 of the permit have ceased to exist. Currently, revocation is  
4 discretionary on the part of the issuing officer. Code  
5 section 724.15 is amended to prohibit persons who are subjects  
6 of a restraining order or protective order from being eligible  
7 for an annual permit to own a pistol or revolver and to  
8 provide procedures for issuing officers to follow in  
9 invalidating permits.

10 The obscenity chapter, Code chapter 728, is amended to  
11 prohibit the exhibition or dissemination of hard-core  
12 pornography, in addition to the existing prohibition against  
13 the rental or sale of such pornography, and to prohibit any  
14 place of business which is required to obtain a sales tax  
15 permit to allow or permit, within the establishment, the  
16 actual or simulated public performance of any sex act; the  
17 exposure of genitals, buttocks, or female breasts of any  
18 waiter or waitress; the exposure of genitals or female breast  
19 nipples of any entertainer; persons who expose their genitals,  
20 pubic hair, or anus to remain within the establishment; or a  
21 minor to engage or perform in a live act in a manner intended  
22 to arouse or satisfy the sexual desires or prurient interests  
23 of patrons, to engage in simulated or actual performance of  
24 sex acts, or to expose their genitals, buttocks, female  
25 breasts, pubic hair, or anus. The advertisement that any  
26 prohibited activity is permitted within the place of business  
27 is also prohibited. Holders of liquor licenses or beer  
28 permits or the owners, managers, or persons exercising direct  
29 control over licensed premises are also prohibited from  
30 allowing or permitting the display of moving pictures, films,  
31 or pictures depicting any sex act or displaying pubic hair,  
32 anus, or genitals upon or in the licensed premises.  
33 Violations of the new requirements for businesses required to  
34 obtain sales tax permits will result in six-month suspensions  
35 of all permits and licenses issued as a prerequisite to doing

1 business. The bill creates new Code section 728.16, which  
2 provides that persons who operate places of business in  
3 violation of the new requirements or who knowingly disseminate  
4 or exhibit obscene material to a minor are deemed to be  
5 operating a public nuisance under chapter 657. All of the new  
6 obscenity and public nuisance changes are effective upon  
7 enactment of this bill.

8 The bill creates new Code section 903B.1, which provides  
9 that persons who are convicted of certain enumerated "serious  
10 sex offenses" may, on a first conviction, and shall, on a  
11 second or subsequent conviction, be required to undergo  
12 hormonal intervention therapy by the court or board of parole.  
13 If the person has been confined, the treatment is to commence  
14 before the person is released. If the person was not confined  
15 at the time of sentencing, a plan for commencement of  
16 treatment is to be developed and included in the presentence  
17 investigation report. "Serious sex offenses" include sexual  
18 abuse in the first, second, or third degree, lascivious acts  
19 with a child, assault with intent to commit sexual abuse,  
20 sexual exploitation by a counselor, and sexual exploitation of  
21 a minor.

22 The bill authorizes probation supervision and revocation  
23 functions to be performed in the sixth judicial district by  
24 administrative parole and probation judges for persons for  
25 whom the court has suspended sentence. Under the provisions,  
26 the jurisdiction of the court over adults, and juveniles  
27 sentenced as adults, who have been granted probation,  
28 terminates once the conditions of probation are approved. All  
29 subsequent hearings regarding the probation are to be  
30 conducted by an administrative parole and probation judge who  
31 is to be appointed by the board of parole. Decisions of the  
32 administrative parole and probation judge may be appealed to  
33 the board of parole. If probation is transferred,  
34 jurisdiction over the person is also transferred to the sixth  
35 judicial district. For persons who received deferred

1 judgments or sentences, jurisdiction remains with the court  
2 until a sentence is imposed or probation discharged.

3 The bill also provides for payment of \$150,000 by an  
4 offender, in addition to any orders for restitution for  
5 pecuniary damages, to the estates of persons whose deaths are  
6 caused by the offender's felonious criminal acts. The order  
7 for payment of \$150,000 in the criminal case will not preclude  
8 or prevent the victim's estate from pursuing civil remedies  
9 for damages arising out of the same facts or event. An  
10 offender who is ordered to make the \$150,000 payment is  
11 estopped from denying the elements of the felony offense which  
12 caused the victim's death in any subsequent civil proceedings  
13 for damages arising out of the same facts or event.

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**SENATE FILE 503  
FISCAL NOTE**

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The estimate for **Senate File 503**, as passed by the Senate, is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement 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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Senate File 503, as passed by the Senate, increases the penalty for persons manufacturing methamphetamine in the presence of a minor; increases the penalty for escapes by prison and jail inmates and by community-based corrections clients; creates a penalty for possessing or providing contraband to jail and prison inmates; prohibits renting or selling hard-core pornography in certain establishments; prohibits indecent exposure and nudity in certain establishments; permits hormonal intervention therapy (temporary chemical castration) for certain first-time sex offenders and requires the therapy after the second or subsequent conviction for certain serious sex offenses; provides for a probation revocation hearing pilot project in the Sixth Community-Based Corrections District; and requires payment of \$1.0 million by an offender who causes another's death during the commission of a felony to the victim's estate.

**ASSUMPTIONS**

1. Current charge, conviction, and sentencing patterns will remain constant.
2. Inmate length of stay and other policies will remain constant.
3. The increased penalties for manufacture of methamphetamine in the presence of a minor will affect 13 offenders per year, increasing their prison stay by five months.
4. The increased penalty for disseminating or exhibiting obscene material to a minor affects three or fewer offenders per year and will not impact the correctional system.
5. The Justice System Appropriations Bill appropriates \$56,000 for the probation revocation hearing pilot project. The project will continue for at least two years.
6. The marginal annual cost for adding one more inmate to the prison system is \$4,380.
7. There are 616 sex offenders who could qualify for hormonal intervention therapy. The Department of Corrections estimates half of the eligible offenders will participate in the program. The cost of the required psychiatric evaluation is \$275; medication costs are \$20 per week; administration of the medication at a clinic or medical facility is \$35 per week; laboratory tests monitoring the drug effects cost \$40 per quarter. Program implementation will require a three year phase-in.
8. One person every two years will be convicted of a Class C felony for introducing contraband to a prison, jail, or detention facility. The Attorney General estimates that 1.25% of the approximately 2,000 inmates who violate the Department of Corrections contraband rules annually will be prosecuted and convicted. The average cost per case handled by a

public defender is \$434, and it is assumed the Attorney General will incur the same costs.

### CORRECTIONAL IMPACT

The Bill is projected to increase the prison population by the following amounts:

	Escapes	Contraband	Methamphetamine Manufacturing	Total
FY 1998	64	1	0	65
FY 1999	210	9	0	219
FY 2002	336	13	2	351

### FISCAL IMPACT

The total costs to the General Fund for this Bill are estimated to be \$688,000 in FY 1998, \$1.7 million in FY 1999, and \$2.6 million in FY 2002.

The costs to the Department of Corrections for incarcerating the additional inmates are distributed as follows:

	Escapes	Contraband	Methamphetamine Manufacturing	Total
FY 1998	\$ 280,000	\$ 4,000	\$ 0	\$ 284,000
FY 1999	920,000	39,000	0	959,000
FY 2002	1,472,000	57,000	9,000	1,538,000

Other specific costs increased by the Bill include:

	Public Defender- Contraband	Attorney General- Contraband	DOC-Hormonal Intervention Therapy	Probation Revocation Pilot Proj.
FY 1998	\$ 5,000	\$ 5,000	\$ 338,000	\$ 56,000
FY 1999	9,000	9,000	677,000	56,000
FY 2002	9,000	9,000	1,015,000	

### SOURCES

Criminal and Juvenile Justice Planning Division,  
Department of Human Rights  
Department of Corrections  
Office of the Public Defender  
Department of Justice  
Judicial Branch

(LSB 1514sv.2, MDF)

FILED APRIL 2, 1997

BY DENNIS PROUTY, FISCAL DIRECTOR

**SENATE FILE 503  
FISCAL NOTE**

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The estimate for **Senate File 503, as amended by Amendment S-3466**, is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement 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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Senate File 503, as amended by Amendment S-3466, increases the penalty for persons manufacturing methamphetamine in the presence of a minor, prohibits indecent exposure and nudity in certain establishments, provides for a probation revocation hearing pilot project in the Sixth Community-Based Corrections District, and requires payment of \$150,000 by an offender who causes another's death during the commission of a felony to the victim's estate.

**ASSUMPTIONS**

1. Current charge, conviction, and sentencing patterns will remain constant.
2. Inmate length of stay and other policies will remain constant.
3. The increased penalties for manufacture of methamphetamine in the presence of a minor will affect 13 offenders per year, increasing their prison stay by five months.
4. The Justice System Appropriations Bill appropriates \$56,000 for the probation revocation hearing pilot project.

**CORRECTIONAL IMPACT**

The prison population is projected to increase by two inmates by FY 2002 because of the changes in this Bill.

**FISCAL IMPACT**

The probation revocation hearing pilot project is budgeted at \$56,000 in FY 1998. Otherwise, the changes in this Bill are not expected to have a significant fiscal impact.

**SOURCES**

Criminal and Juvenile Justice Planning Division,  
Department of Human Rights  
Department of Justice  
Judicial Branch

(LSB 1514SV.3, MDF)

FILED APRIL 14, 1997

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 503  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 194)

(AS AMENDED AND PASSED BY THE SENATE MARCH 26, 1997)

\_\_\_\_\_ - New Language by the Senate  
\* - Language Stricken by the Senate (P.1167)

Passed Senate, Date \_\_\_\_\_ Passed House, Date 4-10-97

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes 93 Nays 1

Approved May 7, 1997

**A BILL FOR**

1 An Act relating to criminal justice, by providing for enhanced  
2 punishment for manufacturing methamphetamine in the presence  
3 of minors, providing restrictions on public nudity and actual  
4 or simulated public performance of sex acts in certain  
5 establishments, making changes related to escape and voluntary  
6 absence from custody or a correctional facility, establishing  
7 the offense of promoting or possessing contraband in prisons,  
8 jails, and juvenile facilities, providing for abatement of  
9 nuisance created by certain establishments which allow or  
10 permit public nudity or actual or simulated public  
11 performances of sex acts in their establishment, providing for  
12 hormonal intervention therapy for persons convicted of certain  
13 sex offenses, imposing consecutive sentences for escapes from  
14 or crimes committed while confined in detention facilities or  
15 penal institutions, authorizing probation supervision and  
16 revocation by administrative parole and probation judges in  
17 the sixth judicial district, making changes related to work  
18 programs for inmates and criminal defendants, providing  
19 restitution for death of a victim of a crime, and providing

1 penalties and an effective date.

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

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1 Section 1. NEW SECTION. 124.401C MANUFACTURING  
2 METHAMPHETAMINE IN PRESENCE OF MINORS.

3 1. In addition to any other penalties provided in this  
4 chapter, a person who is eighteen years of age or older and  
5 who either directly or by extraction from natural substances,  
6 or independently by means of chemical processes, or both,  
7 unlawfully manufactures methamphetamine, its salts, isomers,  
8 and salts of its isomers in the presence of a minor shall be  
9 sentenced up to an additional term of confinement of five  
10 years. The person shall also be required to undergo an  
11 assessment to determine whether the person is addicted to  
12 methamphetamine or other controlled substances, which shall  
13 include the examination and testing of hair samples from the  
14 person. If the assessment reveals that the person is addicted  
15 to methamphetamine or other controlled substances, the person  
16 shall, as part of the person's sentence, be required to  
17 participate in no less than two years of substance abuse  
18 treatment, which may be conducted on an outpatient basis.

19 2. For purposes of this section, the term "in the presence  
20 of a minor" shall mean any of the following:

21 a. When a minor is physically present during the activity.

22 b. When the activity is conducted in the residence of a  
23 minor.

24 c. When the activity is conducted in a residence where  
25 minors can reasonably be expected to be present.

26 d. When the activity is conducted in a room offered to the  
27 public for overnight accommodation.

28 Sec. 2. Section 657.2, Code 1997, is amended by adding the  
29 following new subsection:

30 NEW SUBSECTION. 14. A violation of section 728.4 or 728.5  
31 or the knowing dissemination or exhibition of obscene material  
32 as defined in section 728.1 to a minor from a place of  
33 business.

34 Sec. 3. Section 669.2, subsection 4, unnumbered paragraph  
35 1, Code 1997, is amended to read as follows:

1 "Employee of the state" includes any one or more officers,  
2 agents, or employees of the state or any state agency,  
3 including members of the general assembly, and persons acting  
4 on behalf of the state or any state agency in any official  
5 capacity, temporarily or permanently in the service of the  
6 state of Iowa, whether with or without compensation, but does  
7 not include a contractor doing business with the state.  
8 Professional personnel, including physicians, osteopathic  
9 physicians and surgeons, osteopathic physicians, optometrists,  
10 dentists, nurses, physician assistants, and other medical  
11 personnel, who render services to patients or inmates of state  
12 institutions under the jurisdiction of the department of human  
13 services, and employees of the commission of veterans affairs,  
14 or the Iowa department of corrections are to be considered  
15 employees of the state, whether the personnel are employed on  
16 a full-time basis or render services on a part-time basis on a  
17 fee schedule or other arrangement. Criminal defendants while  
18 performing unpaid community service ordered by the district  
19 court, board of parole, or judicial district department of  
20 correctional services, ~~or an inmate~~ inmates providing services  
21 pursuant to ~~a chapter-28E~~ an agreement entered into pursuant  
22 to section 904.703, and persons providing supervision,  
23 security, or transportation for inmates or criminal defendants  
24 who are providing the services, are to be considered employees  
25 of the state.

26 Sec. 4. Section 719.4, subsections 1 and 2, Code 1997, are  
27 amended by striking the subsections and inserting in lieu  
28 thereof the following:

- 29 1. As used in this section, "escape" means either of the  
30 following:  
31 a. To depart from detention or custody in a secure  
32 facility for the detention or custody of juveniles or from  
33 custody or from a jail, detention facility, community-based  
34 corrections facility, correctional facility, or institution to  
35 which the person has been committed by reason of the

1 conviction, charge, or arrest, or from the custody of any  
2 public officer or employee to whom the person has been  
3 entrusted, when the person knows that the person is not  
4 permitted to leave custody or the correctional facility.

5 b. Failure to return to a secure facility for the  
6 detention or custody of juveniles or a jail, detention  
7 facility, community-based corrections facility, correctional  
8 facility, or institution to which the person has been  
9 committed by reason of the conviction, charge, or arrest, or  
10 from the custody of any public officer or employee to whom the  
11 person has been entrusted, following a temporary leave granted  
12 for a specific purpose or for a limited period of time.

13 2. a. A person convicted of a felony, or charged with or  
14 arrested for the commission of a felony who intentionally  
15 escapes commits a class "C" felony.

16 b. A person convicted of, charged with, or arrested for a  
17 misdemeanor who intentionally escapes commits an aggravated  
18 misdemeanor.

19 Sec. 5. Section 719.7, Code 1997, is amended by striking  
20 the section and inserting in lieu thereof the following:

21 719.7 PROMOTING OR POSSESSING CONTRABAND.

22 1. "Contraband" includes but is not limited to any of the  
23 following:

24 a. A controlled substance or a simulated or counterfeit  
25 controlled substance, hypodermic syringe, or intoxicant.

26 b. A dangerous weapon, offensive weapon, pneumatic gun,  
27 stun gun, firearm ammunition, explosive or incendiary  
28 material, or other material fashioned in such a manner as to  
29 be capable of inflicting death or injury.

30 c. Rope, ladder components, key or key pattern, metal  
31 file, or other instrument or device designed or intended to  
32 facilitate escape of an inmate.

33 2. The sheriff, department of corrections, or department  
34 of human services may x-ray a person under the control of the  
35 department if there is reason to believe that the person is in

1 possession of contraband. A licensed physician or x-ray  
2 technician under the supervision of a licensed physician must  
3 x-ray the person.

4 3. A person commits the offense of promoting or possessing  
5 contraband if the person, not authorized by law, does any of  
6 the following:

7 a. Knowingly introduces contraband into, or onto the  
8 grounds of, a secure facility for the detention or custody of  
9 juveniles or a jail, detention facility, correctional  
10 institution, or institution under the management of the  
11 department of corrections.

12 b. Knowingly conveys contraband to any person confined in  
13 a secure facility for the detention or custody of juveniles,  
14 jail, detention facility, correctional institution, or  
15 institution under the management of the department of  
16 corrections.

17 c. Knowingly makes, obtains, or possesses contraband while  
18 confined in a secure facility for the detention or custody of  
19 juveniles, jail, detention facility, correctional institution,  
20 or institution under the management of the department of  
21 corrections or while being transported or moved incidental to  
22 confinement.

23 4. A person who promotes or possesses contraband or fails  
24 to report an offense of promoting or possessing contraband  
25 commits the following:

26 a. A class "C" felony if the contraband is of the type  
27 described in subsection 1, paragraph "b".

28 b. A class "D" felony if the contraband is any other type  
29 of contraband.

30 c. An aggravated misdemeanor for failing to report a known  
31 violation or attempted violation of this section to an  
32 official or officer at the secure facility for the detention  
33 or custody of juveniles, jail, detention facility,  
34 correctional institution, or institution under the management  
35 of the department of corrections.

1 5. Nothing in this section is intended to limit the  
2 authority of the administrator of any secure facility for the  
3 detention or custody of juveniles, jail, detention facility,  
4 correctional institution, or institution under the management  
5 of the department of corrections to prescribe or enforce rules  
6 concerning the definition of contraband, and the  
7 transportation, making, or possession of substances, objects,  
8 materials, or items in the institutions or facilities.

\* 9 Sec. 6. Section 728.1, Code 1997, is amended by adding the  
10 following new subsection:

11 NEW SUBSECTION. 5A. "Place of business" means the  
12 premises of a business required to obtain a sales tax permit  
13 pursuant to chapter 422, the premises of a nonprofit or not-  
14 for-profit organization, and the premises of an establishment  
15 which is open to the public at large or where entrance is  
16 limited by a cover charge or membership requirement.

17 Sec. 7. Section 728.4, Code 1997, is amended to read as  
18 follows:

19 728.4 RENTAL OR SALE OF HARD-CORE PORNOGRAPHY.

20 A person who knowingly rents, exhibits, disseminates,  
21 sells, or offers for rental or sale material depicting  
22 patently offensive representations of oral, anal, or vaginal  
23 intercourse, actual or simulated, involving humans, or  
24 depicting patently offensive representations of masturbation,  
25 excretory functions, or bestiality, or lewd exhibition of the  
26 genitals, which the average adult taking the material as a  
27 whole in applying statewide contemporary community standards  
28 would find appeals to the prurient interest; and which  
29 material, taken as a whole, lacks serious literary,  
30 scientific, political, or artistic value, upon-conviction is  
31 guilty of an aggravated misdemeanor. However, second and  
32 subsequent violations of this section by a person who has been  
33 previously convicted of violating this section are class "D"  
34 felonies. Charges under this section may only be brought by a  
35 county attorney or by the attorney general.

1 Sec. 8. Section 728.5, Code 1997, is amended to read as  
2 follows:

3 728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN ESTABLISHMENTS.

4 ~~A-holder-of-a-liquor-license-or-beer-permit-or-any~~ An  
5 owner, manager, or person who exercises direct control over  
6 ~~any-licensed-premises-defined-in-section-123.37-subsection-20~~  
7 a place of business required to obtain a sales tax permit  
8 shall be guilty of a serious misdemeanor under any of the  
9 following circumstances:

10 1. If such person ~~allow~~ allows or ~~permit~~ permits the  
11 actual or simulated public performance of any sex act upon or  
12 in such ~~licensed-premises~~ place of business.

13 2. If such person ~~allow~~ allows or ~~permit~~ permits the  
14 exposure of the genitals or buttocks or female breast of any  
15 person who acts as a waiter or waitress.

16 3. If such person ~~allow~~ allows or ~~permit~~ permits the  
17 exposure of the genitals or female breast nipple of any person  
18 who acts as an entertainer, whether or not the owner of the  
19 ~~licensed-premises~~ place of business in which the activity is  
20 performed employs or pays any compensation to such person to  
21 perform such activity.

22 4. If such person ~~allow~~ allows or ~~permit~~ permits any  
23 person to remain in or upon the ~~licensed-premises~~ place of  
24 business who exposes to public view the person's genitals,  
25 pubic hair, or anus.

26 ~~5.--If-such-person-allow-or-permit-the-displaying-of-moving~~  
27 ~~pictures,-films,-or-pictures-depicting-any-sex-act-or-the~~  
28 ~~display-of-the-pubic-hair,-anus,-or-genitals-upon-or-in-such~~  
29 ~~licensed-premises-~~

30 6 5. If such person advertises that any activity  
31 prohibited by this section is allowed or permitted in such  
32 ~~licensed-premises~~ place of business.

33 7 6. If such person allows or permits a minor to engage in  
34 or otherwise perform in a live act intended to arouse or  
35 satisfy the sexual desires or appeal to the prurient interests

1 of patrons. However, if such person allows or permits a minor  
2 to participate in any act included in subsections 1 through 4,  
3 the person shall be guilty of an aggravated misdemeanor.

4 In addition, a holder of a liquor license or beer permit or  
5 an owner, manager, or person who exercises direct control over  
6 any licensed premises defined in section 123.3, subsection 20,  
7 shall be guilty of a serious misdemeanor if such person allows  
8 or permits the displaying of moving pictures, films, or  
9 pictures depicting any sex act or the displaying of the pubic  
10 hair, anus, or genitals upon or in such licensed premises.

11 ~~Provided-that-the~~ The provisions of this section shall not  
12 apply to a theater, concert hall, art center, museum, or  
13 similar establishment which is primarily devoted to the arts  
14 or theatrical performances and in which any of the  
15 circumstances contained in this section were permitted or  
16 allowed as part of such art exhibits or performances.

17 Sec. 9. Section 728.8, Code 1997, is amended to read as  
18 follows:

19 728.8 SUSPENSION OF LICENSES OR PERMITS.

20 Any person who knowingly permits a violation of section  
21 728.2, 728.3, or 728.5, subsection 7 6, to occur on premises  
22 under the person's control shall have all permits and licenses  
23 issued to the person under state or local law as a  
24 prerequisite for doing business on such premises revoked for a  
25 period of six months. The county attorney shall notify all  
26 agencies responsible for issuing licenses and permits of any  
27 conviction under section 728.2, 728.3, or 728.5, subsection 7  
28 6.

29 Sec. 10. NEW SECTION. 728.16 PUBLIC NUISANCE.

30 A person who violates section 728.4 or 728.5 or who  
31 knowingly disseminates or exhibits obscene material to a minor  
32 from a place of business operates a public nuisance subject to  
33 the provisions of chapter 657.

34 Sec. 11. Section 901.2, Code 1997, is amended by adding  
35 the following new subsection:

1 NEW SUBSECTION. 4. If the person has been convicted of a  
2 serious sex offense as defined in section 903B.1, subsection  
3 3, a plan for initiation of medroxyprogesterone acetate  
4 treatment in the manner provided in that section.

5 Sec. 12. Section 901.8, Code 1997, is amended to read as  
6 follows:

7 901.8 CONSECUTIVE SENTENCES.

8 If a person is sentenced for two or more separate offenses,  
9 the sentencing judge may order the second or further sentence  
10 to begin at the expiration of the first or succeeding  
11 sentence. If a person is sentenced for escape under section  
12 719.4 or for a crime committed while confined in a detention  
13 facility or penal institution, the ~~sentencing-judge-shall~~  
14 ~~order-the~~ sentence to shall begin at the expiration of and  
15 shall run consecutively to any existing sentence. If the  
16 person is presently in the custody of the director of the Iowa  
17 department of corrections, the sentence shall be served at the  
18 facility or institution in which the person is already  
19 confined unless the person is transferred by the director. If  
20 consecutive sentences are required under this section or are  
21 specified in the order of commitment, the several terms shall  
22 be construed as one continuous term of imprisonment.

23 Sec. 13. NEW SECTION. 903B.1 HORMONAL INTERVENTION  
24 THERAPY -- CERTAIN SEX OFFENSES.

25 1. A person who has been convicted of a serious sex  
26 offense shall be evaluated by a psychiatrist who specializes  
27 in the treatment of sexual disorders to determine what, if  
28 any, forms of treatment may be appropriate under the  
29 circumstances for the particular individual. If the  
30 evaluation so recommends, the person may, upon a first  
31 conviction and in addition to any other punishment provided by  
32 law, be required to undergo medroxyprogesterone acetate  
33 treatment as part of any conditions of release imposed by the  
34 court or the board of parole. Upon a second or subsequent  
35 conviction and a recommendation in favor of

1 medroxyprogesterone acetate treatment by a psychiatrist who  
2 specializes in the treatment of sexual disorders, the court or  
3 the board of parole shall require the person to undergo  
4 medroxyprogesterone acetate treatment as a condition of  
5 release. This section shall not apply if the person  
6 voluntarily undergoes a permanent surgical alternative  
7 approved by the court or the board of parole.

8 2. If a person is placed on probation and is not in  
9 confinement at the time of sentencing, the presentence  
10 investigation shall include a plan for formal supervision and  
11 treatment of any diagnosed sexual disorder, which may include  
12 but is not limited to medroxyprogesterone acetate treatment,  
13 as soon as is reasonably possible after the person is  
14 sentenced. If the person is in confinement prior to release  
15 on probation or parole, a plan for treatment of any diagnosed  
16 sexual disorder, which may include but is not limited to  
17 medroxyprogesterone acetate treatment, shall be established  
18 for the inmate and treatment shall commence prior to the  
19 release of the person from confinement and shall be monitored  
20 as part of the formal probation or parole supervision which is  
21 performed by the person's probation or parole officer.

22 Conviction of a serious sex offense shall constitute  
23 exceptional circumstances warranting a presentence  
24 investigation under section 901.2.

25 3. For purposes of this section, a "serious sex offense"  
26 means any of the following offenses:

27 a. Sexual abuse in the first degree, in violation of  
28 section 709.2.

29 b. Sexual abuse in the second degree, in violation of  
30 section 709.3.

31 c. Sexual abuse in the third degree, in violation of  
32 section 709.4.

33 d. Lascivious acts with a child, in violation of section  
34 709.8.

35 e. Assault with intent, in violation of section 709.11.

1 f. Indecent contact with a minor, in violation of section  
2 709.12.

3 g. Lascivious conduct with a minor, in violation of  
4 section 709.14.

5 h. Sexual exploitation by a counselor in violation of  
6 section 709.15.

7 i. Sexual exploitation of a minor, in violation of section  
8 728.12.

9 4. The department of corrections, in consultation with the  
10 board of parole, shall adopt rules which provide for the  
11 initiation of medroxyprogesterone acetate treatment prior to  
12 the parole or work release of a person who has been convicted  
13 of a serious sex offense and who is required to undergo  
14 treatment as a condition of release by the board of parole.  
15 The department's rules shall also establish standards for the  
16 supervision of the treatment by the judicial district  
17 department of correctional services during the period of  
18 release. Each district department of correctional services  
19 shall adopt policies and procedures which provide for the  
20 initiation or continuation of medroxyprogesterone acetate  
21 treatment as a condition of release for each person who is  
22 required to undergo the treatment by the court or the board of  
23 parole. The board of parole shall, in consultation with the  
24 department of corrections, adopt rules which relate to  
25 initiation or continuation of medroxyprogesterone acetate  
26 treatment as a condition of any parole or work release.

27 Sec. 14. Section 904.703, unnumbered paragraph 1, Code  
28 1997, is amended to read as follows:

29 Inmates shall work on state account in the maintenance of  
30 state institutions, in the erection, repair, authorized  
31 demolition, or operation of buildings and works used in  
32 connection with the institutions, and in industries  
33 established and maintained in connection with the institutions  
34 by the director. The director shall encourage the making of  
35 agreements, including agreements under chapter 28E, with

1 departments and agencies of the state or its political  
2 subdivisions to provide products or services under an inmate  
3 work program to the departments and, agencies, and political  
4 subdivisions. The director may implement an inmate work  
5 program for trustworthy inmates of state correctional  
6 institutions, under proper supervision, whether at work  
7 centers located outside the state correctional institutions or  
8 in construction or maintenance work at public or charitable  
9 facilities and for other agencies of state, county, or local  
10 government. The supervision, security, and transportation of,  
11 and allowances paid to inmates used in public service projects  
12 shall be provided pursuant to agreements made by the director  
13 and the agency for which the work is done. Housing and  
14 maintenance shall also be provided pursuant to the agreement  
15 unless the inmate is housed and maintained in the correctional  
16 facility. All such work, including but not limited to that  
17 provided in this section, shall have as its primary purpose  
18 the development of attitudes, skills, and habit patterns which  
19 are conducive to inmate rehabilitation. The director may  
20 adopt rules allowing inmates participating in an inmate work  
21 program to receive educational or vocational training outside  
22 the state correctional institutions and away from the work  
23 centers or public or charitable facilities used under a  
24 program.

25 Sec. 15. Section 904.703, unnumbered paragraph 3, Code  
26 1997, is amended by striking the paragraph.

27 Sec. 16. Section 907.2, unnumbered paragraph 2, Code 1997,  
28 is amended to read as follows:

29 Probation officers employed by the judicial district  
30 department of correctional services, while performing the  
31 duties prescribed by that department, are peace officers.  
32 Probation officers shall investigate all persons referred to  
33 them for investigation by the director of the judicial  
34 district department of correctional services which employs  
35 them. They shall furnish to each person released under their

1 supervision or committed to a community corrections  
2 residential facility operated by the judicial district  
3 department of correctional services, a written statement of  
4 the conditions of probation or commitment. They shall keep  
5 informed of each person's conduct and condition and shall use  
6 all suitable methods prescribed by the judicial district  
7 department of correctional services to aid and encourage the  
8 person to bring about improvements in the person's conduct and  
9 condition. Probation officers shall keep records of their  
10 work and, unless section 907.8A applies, shall make reports to  
11 the court when alleged violations occur and within no less  
12 than thirty days before the period of probation will expire.  
13 If section 907.8A applies, the probation officers shall make  
14 the reports of alleged violations to the administrative parole  
15 and probation judge within no less than thirty days before the  
16 period of probation will expire. Probation officers shall  
17 coordinate their work with other social welfare agencies which  
18 offer services of a corrective nature operating in the area to  
19 which they are assigned.

20 Sec. 17. Section 907.7, unnumbered paragraphs 1 and 2,  
21 Code 1997, are amended to read as follows:

22 The length of the probation shall be for such term as the  
23 court ~~may~~ shall fix but not to exceed five years if the  
24 offense is a felony or not to exceed two years if the offense  
25 is a misdemeanor.

26 The length of the probation shall not be less than one year  
27 if the offense is a misdemeanor and shall not be less than two  
28 years if the offense is a felony. However, the court or the  
29 administrative parole and probation judge, if section 907.8A  
30 applies, may subsequently reduce the length of the probation  
31 if the court or the administrative parole and probation judge  
32 determines that the purposes of probation have been fulfilled.  
33 The purposes of probation are to provide maximum opportunity  
34 for the rehabilitation of the defendant and to protect the  
35 community from further offenses by the defendant and others.

1 Sec. 18. Section 907.8, unnumbered paragraph 3, Code 1997,  
2 is amended to read as follows:

3 ~~Jurisdiction-of~~ Except as otherwise provided in section  
4 907.8A, the court shall retain jurisdiction over these persons  
5 ~~shall-remain-with-the-sentencing-court.~~ Jurisdiction may be  
6 transferred to a court in another jurisdiction, or to the  
7 administrative parole and probation judge under section  
8 907.8A, if a person's probation supervision is transferred to  
9 a judicial district department of correctional services in a  
10 district other than the district in which the person was  
11 sentenced.

12 Sec. 19. NEW SECTION. 907.8A SIXTH JUDICIAL DISTRICT --  
13 DETERMINATION OF ISSUES DURING PROBATIONARY PERIOD.

14 1. Except for those persons who are granted a deferred  
15 judgment or deferred sentence, for each adult, and each  
16 juvenile who has been prosecuted, convicted, and sentenced as  
17 an adult, who is released on probation by the court in the  
18 sixth judicial district, the jurisdiction of the sentencing  
19 court shall cease upon approval by the sentencing court of the  
20 conditions established by the judicial district department of  
21 correctional services. If a person is granted a deferred  
22 judgment or deferred sentence, jurisdiction shall be retained  
23 by the court.

24 2. All issues relating to whether the probationer has  
25 violated or fulfilled the terms and conditions of probation,  
26 including but not limited to express violations of a specific  
27 term of probation, new violations of the law, and changes of  
28 the term of probation as provided in sections 907.7, 908.11,  
29 and 910.4, which would otherwise be determined by the court,  
30 shall be determined instead by an administrative parole and  
31 probation judge. The administrative parole and probation  
32 judge, who shall be an attorney, shall be appointed by the  
33 board of parole, notwithstanding chapter 17A. The costs of  
34 employing the administrative parole and probation judge shall  
35 be borne by the board of parole.

1 A probation hearing conducted by an administrative parole  
2 and probation judge shall be conducted in the same manner as  
3 hearings regarding revocations or modifications of or  
4 discharge from parole. The hearing may be conducted  
5 electronically. The probation officer shall notify the county  
6 attorney at least five days prior to any probation hearing.  
7 The interests of the state shall be represented by the  
8 probation officer at the probation hearing, unless the county  
9 attorney or the county attorney's designee elects to assist  
10 the probation officer. The board of parole, the department of  
11 corrections, and the clerk of the district court in the sixth  
12 judicial district shall devise and implement a system for the  
13 filing of documents and records of probation hearings  
14 conducted under this section. The system shall allow for the  
15 electronic filing of records and documents where electronic  
16 filing is practicable.

17 3. Appeals from orders of the administrative parole and  
18 probation judge which pertain to the revocations or  
19 modifications of or discharge from probation shall be  
20 conducted in the manner provided in rules adopted by the board  
21 of parole.

22 Sec. 20. Section 907.9, Code 1997, is amended to read as  
23 follows:

24 907.9 DISCHARGE FROM PROBATION.

25 1. At Except as otherwise provided in section 907.8A, at  
26 any time that the court determines that the purposes of  
27 probation have been fulfilled, the court may order the  
28 discharge of a person from probation.

29 2. At any time that a probation officer determines that  
30 the purposes of probation have been fulfilled, the officer may  
31 order the discharge of a person from probation after approval  
32 of the district director, and notification of the sentencing  
33 court, the administrative parole and probation judge if  
34 section 907.8A applies, and the county attorney who prosecuted  
35 the case.

1     3. The sentencing judge, ~~unless the judge is no longer~~  
2 ~~serving or is otherwise unable to,~~ or, if section 907.8A  
3 applies, the administrative parole and probation judge, may  
4 order a hearing on its own motion, or shall order a hearing  
5 upon the request of the county attorney, for review of such  
6 discharge. If the sentencing judge is no longer serving or  
7 unable to order such hearing, the chief judge of the district  
8 or the chief judge's designee shall order any hearing pursuant  
9 to this section, if section 907.8A does not apply. Following  
10 the hearing, the court or the administrative parole and  
11 probation judge shall approve or rescind such discharge. If a  
12 hearing is not ordered within thirty days after notification  
13 by the probation officer, the person shall be discharged and  
14 the probation officer shall notify the state court  
15 administrator of such discharge.

16     4. At the expiration of the period of probation, ~~in cases~~  
17 ~~where the court fixes the term of probation,~~ the court or, if  
18 section 907.8A applies, the administrative parole and  
19 probation judge, shall order the discharge of the person from  
20 probation, and the court or administrative parole and  
21 probation judge shall forward to the governor a recommendation  
22 for or against restoration of citizenship rights to that  
23 person. A person who has been discharged from probation shall  
24 no longer be held to answer for the person's offense. Upon  
25 discharge from probation, if judgment has been deferred under  
26 section 907.3, the court's criminal record with reference to  
27 the deferred judgment shall be expunged. The record  
28 maintained by the state court administrator as required by  
29 section 907.4 shall not be expunged. The court's record shall  
30 not be expunged in any other circumstances.

31     5. A probation officer or the director of the judicial  
32 district department of correctional services who acts in  
33 compliance with this section is acting in the course of the  
34 person's official duty and is not personally liable, either  
35 civilly or criminally, for the acts of a person discharged

1 from probation by the officer after such discharge, unless the  
2 discharge constitutes willful disregard of the person's duty.

3 Sec. 21. Section 908.11, Code 1997, is amended to read as  
4 follows:

5 908.11 VIOLATION OF PROBATION.

6 1. A probation officer or the judicial district department  
7 of correctional services having probable cause to believe that  
8 any person released on probation has violated the conditions  
9 of probation shall proceed by arrest or summons as in the case  
10 of a parole violation.

11 2. The Except as otherwise provided in sections 907.8 and  
12 907.8A, the functions of the liaison officer and the board of  
13 parole shall be performed by the judge or magistrate who  
14 placed the alleged violator on probation if that judge or  
15 magistrate is available, otherwise by another judge or  
16 magistrate who would have had jurisdiction to try the original  
17 offense.

18 3. If the probation officer proceeds by arrest and section  
19 907.8A does not apply, any magistrate may receive the  
20 complaint, issue an arrest warrant, or conduct the initial  
21 appearance and probable cause hearing if it is not convenient  
22 for the judge who placed the alleged violator on probation to  
23 do so. The initial appearance, probable cause hearing, and  
24 probation revocation hearing, or any of them, may at the  
25 discretion of the court be merged into a single hearing when  
26 it appears that the alleged violator will not be prejudiced  
27 thereby by the merger.

28 4. If the person who is believed to have violated the  
29 conditions of probation was sentenced and placed on probation  
30 in the sixth judicial district under section 907.8A, or  
31 jurisdiction over the person was transferred to the sixth  
32 judicial district as a result of transfer of the person's  
33 probation supervision, the functions of the liaison officer  
34 and the board of parole shall be performed by the  
35 administrative parole and probation judge as provided in

1 section 907.8A.

2 5. If the probation officer proceeds by arrest and section  
3 907.8A applies, the administrative parole and probation judge  
4 may receive the complaint, issue an arrest warrant, or conduct  
5 the initial appearance and probable cause hearing. The  
6 initial appearance, probable cause hearing, and probation  
7 revocation hearing, or any of them, may, at the discretion of  
8 the administrative parole and probation judge, be merged into  
9 a single hearing when it appears that the alleged violator  
10 will not be prejudiced by the merger.

11 6. If the violation is established, the court or the  
12 administrative parole and probation judge may continue the  
13 probation with or without an alteration of the conditions of  
14 probation. If the defendant is an adult the court may hold  
15 the defendant in contempt of court and sentence the defendant  
16 to a jail term while continuing the probation, order the  
17 defendant to be placed in a violator facility established  
18 pursuant to section 904.207 while continuing the probation, or  
19 revoke the probation and require the defendant to serve the  
20 sentence imposed or any lesser sentence, and, if imposition of  
21 sentence was deferred, may impose any sentence which might  
22 originally have been imposed. The administrative parole and  
23 probation judge may revoke the probation and require the  
24 defendant to serve the sentence which was originally imposed.  
25 The administrative parole and probation judge may grant credit  
26 against the sentence, for any time served while the defendant  
27 was on probation. The order of the administrative parole and  
28 probation judge shall become a final decision, unless the  
29 defendant appeals the decision to the board of parole within  
30 the time provided in rules adopted by the board. The appeal  
31 shall be conducted pursuant to rules adopted by the board and  
32 the record on appeal shall be the record made at the hearing  
33 conducted by the administrative parole and probation judge.

34 Sec. 22. NEW SECTION. 910.3B RESTITUTION FOR DEATH OF  
35 VICTIM.

1 1. In all criminal cases in which the offender is  
2 convicted of a felony in which the act or acts committed by  
3 the offender caused the death of another person, in addition  
4 to the amount determined to be payable and ordered to be paid  
5 to a victim for pecuniary damages, as defined under section  
6 910.1, and determined under section 910.3, the court shall  
7 also order the offender to pay one million dollars in  
8 restitution to the victim's estate. The obligation to pay the  
9 additional amount shall not be dischargeable in any proceeding  
10 under the federal Bankruptcy Act. Payment of the additional  
11 amount shall have the same priority as payment of a victim's  
12 pecuniary damages under section 910.2, in the offender's plan  
13 for restitution.

14 2. An award under this section does not preclude or  
15 supersede the right of a victim's estate to bring a civil  
16 action against the offender for damages arising out of the  
17 same facts or event.

18 3. An offender who is ordered to pay a victim's estate  
19 under this section is precluded from denying the elements of  
20 the felony offense which resulted in the order for payment in  
21 any subsequent civil action for damages arising out of the  
22 same facts or event.

23 Sec. 23. Sections 906.16, 908.4, 908.5, 908.6, 908.7,  
24 908.10, and 908.10A, Code 1997, are amended by striking from  
25 the sections the words "administrative parole judge" and  
26 inserting in lieu thereof the words "administrative parole and  
27 probation judge".

28 Sec. 24. Section 719.8, Code 1997, is repealed.

29 Sec. 25. EFFECTIVE DATE. Sections 2 and 6 through 10 of  
30 this Act, being deemed of immediate importance, take effect  
31 upon enactment.

32  
33  
34  
35

## SENATE FILE 503

S-3188

- 1 Amend Senate File 503 as follows:  
 2 1. Page 1, by inserting after line 25 the  
 3 following:  
 4 "Sec. \_\_\_\_ . Section 702.11, Code 1997, is amended  
 5 to read as follows:  
 6 702.11 FORCIBLE FELONY.  
 7 A "forcible felony" is any felonious child  
 8 endangerment, assault, murder, sexual abuse,  
 9 kidnapping, robbery, arson in the first degree, or  
 10 burglary in the first degree. However, sexual abuse  
 11 in the third degree committed between spouses, sexual  
 12 abuse in violation of section 709.4, subsection 2,  
 13 paragraph "c", subparagraph (4), or sexual  
 14 exploitation by a counselor or therapist in violation  
 15 of section 709.15, or sexual exploitation by a law  
 16 enforcement officer in violation of section 709.15A,  
 17 is not a "forcible felony".  
 18 Sec. \_\_\_\_ . NEW SECTION. 709.15A SEXUAL  
 19 EXPLOITATION BY A LAW ENFORCEMENT OFFICER -- PENALTY.  
 20 1. A law enforcement officer commits a class "D"  
 21 felony when the officer sexually exploits a person who  
 22 is the victim of, a suspect in, or a witness to a  
 23 criminal act or other activity which the officer is  
 24 investigating or to which the officer is responding.  
 25 2. For purposes of this section, "law enforcement  
 26 officer" means a peace officer employed by the state  
 27 or a political subdivision of the state.  
 28 3. For purposes of this section, "sexually  
 29 exploits" means engaging in conduct that is for the  
 30 purpose of arousing or satisfying the sexual desire of  
 31 the law enforcement officer or other participant and  
 32 includes but is not limited to kissing; touching of  
 33 the clothed or unclothed inner thigh, breast, groin,  
 34 buttock, anus, pubes, or genitals; or a sex act as  
 35 defined in section 702.17."  
 36 2. By renumbering as necessary.

By JIM LIND  
 ELAINE SZYMONIAK

S-3188 FILED MARCH 20, 1997  
 WITHDRAWN 3/26/97 (p. 823)

## SENATE FILE 503

S-3154

- 1 Amend Senate File 503 as follows:  
 2 1. By striking page 13, line 23, through page 14,  
 3 line 9.  
 4 2. Title page, lines 13 and 14, by striking the  
 5 words "providing restitution for death of a victim of  
 6 a crime,".  
 7 3. By renumbering as necessary.

By TOM VILSACK

S-3154 FILED MARCH 18, 1997  
 Lost (p. 827) 3/26/97

SENATE FILE 503

S-3210

- 1 Amend Senate File 503 as follows
- 2 1. Page 6, line 7, by inserting after the word
- 3 "initiation" the following: "and formal supervision".
- 4 2. Page 6, line 11, by inserting after the word
- 5 "confinement" the following: "and shall be monitored
- 6 as part of the formal probation or parole supervision
- 7 which is performed by the person's probation or parole
- 8 officer".

By LARRY McKIBBEN  
TOM VILSACK

S-3210 FILED MARCH 24, 1997

*0/03/26/97 (p. 826)*

SENATE FILE 503

S-3226

- 1 Amend Senate File 503 as follows:
- 2 1. By striking page 1, line 26, through page 2,
- 3 line 30.
- 4 2. Title page, by striking lines 8 and 9, and
- 5 inserting the following: "establishment, providing
- 6 for hormonal".
- 7 3. By renumbering as necessary.

By ALLEN BORLAUG  
JEFF ANGELO

PATRICK J. DELUHERY  
TOM FLYNN

S-3226 FILED MARCH 25, 1997

*Adopted 3/26/97 (p. 825)*

SENATE FILE 503

S-3227

- 1 Amend Senate File 503 as follows:
- 2 1. By striking page 5, line 21 through page 7,
- 3 line 15.
- 4 2. Title page, lines 9 through 11, by striking
- 5 the words "providing for hormonal intervention therapy
- 6 for persons convicted of certain sex offenses,".

By MATT McCOY

S-3227 FILED MARCH 25, 1997

*Lost 3/26/97 (p. 826)*

## SENATE FILE 503

S-3253

1 Amend Senate File 503 as follows:

2 1. Page 7, by inserting after line 15 the  
3 following:

4 "Sec. \_\_\_\_\_. Section 904.705, unnumbered paragraph  
5 2, Code 1997, is amended to read as follows:

6 The director ~~may~~ shall with the assistance of the  
7 department of natural resources establish and operate  
8 forestry nurseries on state-owned land under the  
9 control of the department. Residents of the adult  
10 correctional institutions shall provide the labor for  
11 the operation. Nursery stock shall be sold in  
12 accordance with the rules of the natural resource  
13 commission. The department shall pay the costs of  
14 establishing and operating the forestry nurseries out  
15 of the revolving farm fund created in section 904.706.  
16 The department of natural resources shall pay the  
17 costs of transporting, sorting, and distributing  
18 nursery stock to and from or on state-owned land under  
19 the control of the department of natural resources.  
20 Receipts from the sale of nursery stock produced under  
21 this section shall be divided between the department  
22 and the department of natural resources in direct  
23 proportion to their respective costs as a percentage  
24 of the total costs. The department shall deposit its  
25 receipts in the revolving farm fund created in section  
26 904.706.

27 Sec. \_\_\_\_\_. Section 904.706, unnumbered paragraph 1,  
28 Code 1997, is amended to read as follows:

29 A revolving farm fund is created in the state  
30 treasury in which the department shall deposit  
31 receipts from agricultural products, nursery stock,  
32 agricultural land rentals, and the sale of livestock.  
33 ~~However, before~~ Before any agricultural operation is  
34 phased out, the department which proposes to  
35 discontinue this operation shall notify and receive  
36 the permission of the governor, chairpersons and  
37 ranking members of the house and senate appropriations  
38 committees, and cochairpersons and ranking members of  
39 the subcommittee in the senate and house of  
40 representatives which has handled the appropriation  
41 for this department in the past session of the general  
42 assembly. Before the department sells farmland under  
43 the control of the department, the director shall  
44 notify and receive the permission of the governor,  
45 chairpersons and ranking members of the house and  
46 senate appropriations committees, and cochairpersons  
47 and ranking members of the joint appropriations  
48 subcommittee that handled the appropriation for the  
49 department during the past session of the general  
50 assembly. No sale or discontinuance of operations

S-3253

S-3253

Page 2

1 shall cause the level of activity or inmate  
2 participation to fall below the level of activity or  
3 participation which was in effect on January 1, 1997.

4 The department may pay from the fund for the  
5 operation, maintenance, and improvement of farms and  
6 agricultural or nursery property under the control of  
7 the department. A purchase order for five thousand  
8 dollars or less payable from the fund is exempt from  
9 the general purchasing requirements of chapter 18.  
10 Notwithstanding section 8.33, unencumbered or  
11 unobligated receipts in the revolving farm fund at the  
12 end of a fiscal year shall not revert to the general  
13 fund of the state."

14 2. Title page, line 11, by inserting after the  
15 word "offenses," the following: "by providing for the  
16 maintenance of the forestry nursery and prison farm  
17 programs,".

18 3. By numbering, renumbering, and changing  
19 internal references as necessary.

By EUGENE FRAISE  
STEVEN D. HANSEN  
ROBERT DVORSKY  
JOHNIE HAMMOND

TOM VILSACK  
DENNIS H. BLACK  
PATTY JUDGE

S-3253 FILED MARCH 26, 1997  
RULED OUT OF ORDER (p. 827)

## SENATE FILE 503

S-3255

1 Amend Senate File 503 as follows:

2 1. Page 1, by inserting after line 19 the

3 following:

4 "Sec. \_\_\_\_ . NEW SECTION. 453A.36A CIGARETTES AND  
5 OTHER TOBACCO PRODUCTS -- ADVERTISING, PROMOTIONAL  
6 LIMITATIONS.

7 1. It is unlawful for any person to advertise on  
8 any advertising device cigarettes or other tobacco  
9 products within one thousand feet of any playground,  
10 school, high school, or other facility when such  
11 facility is being used primarily by persons under age  
12 eighteen for recreational, educational, or other  
13 purposes.

14 2. Any advertising of cigarettes or tobacco  
15 products on advertising devices in this state, no  
16 matter where located, including but not limited to  
17 advertising devices located on public transportation  
18 or at the point-of-sale, shall be in black and white  
19 text only.

20 3. Use of the brand name or logo of a cigarette or  
21 tobacco product shall not be used in the promotion of  
22 any sport or entertainment event held in this state.  
23 However, the corporate name of a manufacturer,  
24 distributor, wholesaler, retailer, or distributing  
25 agent may be used in the promotion of such an event.

26 4. A person who violates this section is guilty of  
27 a serious misdemeanor."

28 2. Title page, line 3, by inserting after the  
29 word "minors," the following: "providing for  
30 restrictions on advertising related to cigarettes and  
31 tobacco products,".

32 3. By renumbering as necessary.

By JOHNIE HAMMOND  
ROBERT DVORSKY

S-3255 FILED MARCH 26, 1997  
RULED OUT OF ORDER (p. 822)

## SENATE FILE 503

S-3254

- 1 Amend the amendment, S-3188, to Senate File 503 as  
2 follows:
- 3 1. Page 1, lines 15 and 16, by striking the words  
4 "law enforcement officer" and inserting the following:  
5 "public official".
- 6 2. Page 1, line 19, by striking the words "LAW  
7 ENFORCEMENT OFFICER" and inserting the following:  
8 "PUBLIC OFFICIAL".
- 9 3. Page 1, line 20, by striking the words "law  
10 enforcement officer" and inserting the following:  
11 "public official".
- 12 4. Page 1, line 21, by striking the word  
13 "officer" and inserting the following: "official".
- 14 5. Page 1, line 23, by striking the word  
15 "officer" and inserting the following: "official".
- 16 6. Page 1, line 24, by striking the word  
17 "officer" and inserting the following: "official".
- 18 7. Page 1, lines 25 and 26, by striking the words  
19 "'law enforcement officer" means a peace officer" and  
20 inserting the following: "'public official" means a  
21 person who serves or is".
- 22 8. Page 1, line 31, by striking the words "law  
23 enforcement officer" and inserting the following:  
24 "public official".

By JERRY BEHN  
ALLEN BORLAUG

S-3254 FILED MARCH 26, 1997  
RULED OUT OF ORDER (p. 823)

## SENATE FILE 503

S-3256

1 Amend Senate File 503 as follows:

2 1. Page 1, by inserting after line 19 the  
3 following:

4 "Sec. \_\_\_\_ . Section 453A.39, Code 1997, is amended  
5 to read as follows:

6 453A.39 TOBACCO PRODUCT AND CIGARETTE SAMPLES --  
7 RESTRICTIONS----ADMINISTRATION PROHIBITION.

8 1. A manufacturer, distributor, wholesaler,  
9 retailer, or distributing agent or agent thereof shall  
10 not give away cigarettes or tobacco products at any  
11 time in connection with the manufacturer's,  
12 distributor's, wholesaler's, retailer's, or  
13 distributing agent's business or for promotion of the  
14 business or product, ~~except as provided in subsection~~  
15 2.

16 ~~2. a. A manufacturer, distributor, wholesaler,~~  
17 ~~retailer, or distributing agent or agent thereof shall~~  
18 ~~not give away any cigarettes or tobacco products to~~  
19 ~~any person under eighteen years of age, or within five~~  
20 ~~hundred feet of any playground, school, high school,~~  
21 ~~or other facility when such facility is being used~~  
22 ~~primarily by persons under age eighteen for~~  
23 ~~recreational, educational, or other purposes.~~

24 ~~b. Proof of age shall be required if a reasonable~~  
25 ~~person could conclude on the basis of outward~~  
26 ~~appearance that a prospective recipient of a sample~~  
27 ~~may be under eighteen years of age.~~

28 ~~c. Persons engaged in sampling shall secure stocks~~  
29 ~~of samples in safe locations in order to avoid~~  
30 ~~inadvertent distribution of samples contrary to the~~  
31 ~~provisions of this section.~~

32 ~~d. Sampling shall cease at a particular location~~  
33 ~~when circumstances arise that make it apparent that~~  
34 ~~sampling cannot continue in a manner consistent with~~  
35 ~~the provisions of this section, however, sampling may~~  
36 ~~resume at that location when such circumstances abate.~~

37 ~~e. All cigarette samples shall be shipped to a~~  
38 ~~distributor that has a permit to stamp cigarettes or~~  
39 ~~little cigars with Iowa tax. The manufacturer~~  
40 ~~shipping samples under this section shall send an~~  
41 ~~affidavit to the director stating the quantity and to~~  
42 ~~whom the samples were shipped. The distributor~~  
43 ~~receiving the shipment shall send an affidavit to the~~  
44 ~~director stating the quantity and from whom the~~  
45 ~~samples were shipped. These affidavits shall be duly~~  
46 ~~notarized and submitted to the director at time of~~  
47 ~~shipment and receipt of the samples. The distributor~~  
48 ~~shall pay the tax on samples by separate remittance~~  
49 ~~along with the affidavit."~~

50 2. Title page, line 3, by inserting after the

S-3256

- 1 word "minors," the following: "prohibiting the giving
- 2 away of tobacco products and cigarette samples,".
- 3 3. By renumbering as necessary.

By JOHNIE HAMMOND  
ROBERT DVORSKY

S-3256 FILED MARCH 26, 1997  
RULED OUT OF ORDER (p. 823)

SENATE FILE 503

S-3245

- 1 Amend Senate File 503 as follows:
- 2 1. Page 14, by inserting after line 14 the
- 3 following:
- 4 "Sec. \_\_\_\_ . DEPARTMENT OF CORRECTIONS --
- 5 SUPERMAXIMUM SECURITY CORRECTIONAL FACILITY -- REQUEST
- 6 FOR PROPOSALS. The department of corrections shall
- 7 issue a request for proposals for the construction of
- 8 a supermaximum security correctional facility at the
- 9 Fort Madison correctional facility, which would only
- 10 be constructed if the proposal is accepted. The
- 11 department of corrections shall include specifications
- 12 concerning the number of correctional beds in the
- 13 request for proposals and issue the request for
- 14 proposals in such a manner that responses are due and
- 15 shall be included in a report submitted by the
- 16 department to the general assembly on or before
- 17 January 12, 1998. The department of corrections shall
- 18 not accept a proposal received in accordance with this
- 19 section without specific authorization through the
- 20 enactment of legislation to fund the proposal."
- 21 2. Title page, line 14, by inserting after the
- 22 word "crime," the following: "authorizing a request
- 23 for proposals concerning the construction of a
- 24 supermaximum security correctional facility at Fort
- 25 Madison,".
- 26 3. By renumbering as necessary.

By STEVEN D. HANSEN  
EUGENE FRAISE  
TOM VILSACK

S-3245 FILED MARCH 26, 1997  
RULED OUT OF ORDER (p. 828)

SENATE FILE 503

S-3244

- 1 Amend Senate File 503 as follows:
- 2 1. Page 13, line 31, by striking the words "one
- 3 hundred fifty thousand" and inserting the following:
- 4 "one million".
- 5 2. Page 13, line 32, by inserting after the word
- 6 "estate." the following: "The obligation to pay the
- 7 additional amount shall not be dischargeable in any
- 8 proceeding under the federal Bankruptcy Act."

By STEVEN D. HANSEN

S-3244 FILED MARCH 26, 1997  
ADOPTED (p. 828)

## SENATE FILE 503

S-3257

1 Amend Senate File 503 as follows:  
2 1. Page 1, by inserting after line 19 the  
3 following:  
4 Sec. \_\_\_\_ . Section 453A.36, subsection 6, Code  
5 1997, is amended to read as follows:  
6 6. Unless otherwise provided in this subsection,  
7 any sales of cigarettes or tobacco products shall be  
8 made in a direct, face-to-face exchange. Any sales of  
9 cigarettes or tobacco products made through a  
10 cigarette vending machine or through a self-service  
11 display are subject to rules and penalties relative to  
12 retail sales of cigarettes and tobacco products  
13 provided for in this chapter. No cigarettes shall be  
14 sold through any cigarette vending machine or through  
15 a self-service display unless the cigarettes have been  
16 properly stamped or metered as provided by this  
17 division, and in case of violation of this provision,  
18 the permit of the dealer authorizing retail sales of  
19 cigarettes shall be canceled. Payment of the license  
20 fee as provided in section 453A.13 authorizes a  
21 cigarette vendor to sell cigarettes or tobacco  
22 products through vending machines, ~~provided that the~~  
23 ~~following conditions are met:--the machines are~~  
24 ~~located in places where the machines are under the~~  
25 ~~supervision of a person of legal age who is~~  
26 ~~responsible for prevention of purchase by minors from~~  
27 ~~the machines; the machines are equipped with a lock-~~  
28 ~~out device under the control of a person of legal age~~  
29 ~~who shall directly regulate the sale of items through~~  
30 ~~the machines, and which shall include a mechanism to~~  
31 ~~prevent the machines from functioning if the power~~  
32 ~~source for the lock-out device fails or if the lock-~~  
33 ~~out device is disabled, and a mechanism to ensure that~~  
34 ~~only one pack of cigarettes or one tobacco product is~~  
35 ~~dispensed at a time; and the location where the~~  
36 ~~machines are placed is covered by a local retail~~  
37 ~~permit or self-service displays.~~ However, a lock-out  
38 ~~device is not required for machines operated in the~~  
39 ~~following locations, if the machines are not to be~~  
40 ~~placed in a doorway or other area readily accessible~~  
41 ~~to minors:--a commercial establishment holding a class~~  
42 ~~"C" liquor license or a class "B" beer permit under~~  
43 ~~chapter 123, if the establishment is not also licensed~~  
44 ~~as a food service establishment under chapter 137B; a~~  
45 ~~private facility not open to the public; or a~~  
46 ~~workplace not open to the public.~~ However, cigarettes  
47 or tobacco products shall not be sold through a  
48 vending machine or through a self-service display  
49 unless the vending machine or self-service display is  
50 located in a place where the retailer ensures that no

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1 person younger than eighteen years of age is present  
 2 or permitted to enter at any time. This section does  
 3 not require a retail licensee to buy a cigarette  
 4 vendor's permit if the retail licensee is in fact the  
 5 owner of the cigarette vending machines and the  
 6 machines are operated in the location described in the  
 7 retail permit. A city or county may directly enforce  
 8 this subsection. Notwithstanding chapter 602, any  
 9 finances collected as a result of enforcement of this  
 10 subsection by a city or county shall be retained by  
 11 the city or county."

12 2. Title page, line 3, by inserting after the  
 13 word "minors," the following: "providing for  
 14 restrictions on the sale of cigarettes and tobacco  
 15 products through vending machines and to minors,".

By JOHNIE HAMMOND  
 ROBERT DVORSKY

S-3257 FILED MARCH 26, 1997  
 RULED OUT OF ORDER (p. 823)

## SENATE FILE 503

S-3258

1 Amend Senate File 503, as follows:

2 1. Page 5, line 30, by inserting after the word  
 3 "offense" the following: "shall be evaluated by a  
 4 psychiatrist who specializes in the treatment of  
 5 sexual disorders to determine what, if any, forms of  
 6 treatment may be appropriate under the circumstances  
 7 for the particular individual. If the evaluation so  
 8 recommends, the person".

9 2. Page 5, line 34, by inserting after the word  
 10 "conviction" the following: "and a recommendation in  
 11 favor of medroxyprogesterone acetate treatment by a  
 12 psychiatrist who specializes in the treatment of  
 13 sexual disorders".

14 3. Page 6, line 7, by striking the words  
 15 "initiation of treatment" and inserting the following:  
 16 "treatment of any diagnosed sexual disorder, which may  
 17 include but is not limited to medroxyprogesterone  
 18 acetate treatment,".

19 4. Page 6, line 10, by inserting after the word  
 20 "parole," the following: "a plan for treatment of any  
 21 diagnosed sexual disorder, which may include but is  
 22 not limited to medroxyprogesterone acetate treatment,  
 23 shall be established for the inmate and".

By ELAINE SZYMONIAK

S-3258 FILED MARCH 26, 1997  
 ADOPTED, MOTION TO RECONSIDER, ADOPTED  
 (p. 826, p. 830, p. 830)

## SENATE FILE 503

S-3261

1 Amend Senate File 503 as follows:

2 1. Page 1, by inserting after line 19 the  
3 following:

4 "Sec. \_\_\_\_\_. Section 331.302, subsection 2, Code  
5 1997, is amended to read as follows:

6 2. A county shall not provide a penalty in excess  
7 of a one hundred dollar fine or in excess of thirty  
8 days imprisonment for the violation of an ordinance.  
9 The criminal penalty surcharge required by section  
10 911.2 and the jail, courthouse security, and detention  
11 facility surcharge required by section 911A.2 shall be  
12 added to a county fine and ~~is~~ are not a part of the  
13 county's penalty.

14 Sec. \_\_\_\_\_. Section 364.3, subsection 2, Code 1997,  
15 is amended to read as follows:

16 2. A city shall not provide a penalty in excess of  
17 a one hundred dollar fine or in excess of thirty days  
18 imprisonment for the violation of an ordinance. An  
19 amount equal to ten percent of all fines collected by  
20 cities shall be deposited in the account established  
21 in section 602.8108. However, one hundred percent of  
22 all fines collected by a city pursuant to section  
23 321.236, subsection 1, shall be retained by the city.  
24 The criminal penalty surcharge required by section  
25 911.2 and the jail, courthouse security, and detention  
26 facility surcharge required by section 911A.2 shall be  
27 added to a city fine and ~~is~~ are not a part of the  
28 city's penalty.

29 Sec. \_\_\_\_\_. Section 602.8107, subsection 2,  
30 paragraph b, Code 1997, is amended to read as follows:

31 b. Fines or penalties and ~~criminal-penalty~~  
32 surcharges.

33 Sec. \_\_\_\_\_. Section 602.8107, subsection 4,  
34 unnumbered paragraph 2, Code 1997, is amended to read  
35 as follows:

36 This subsection does not apply to amounts collected  
37 for victim restitution, the victim compensation fund,  
38 criminal penalty surcharge, jail, courthouse security,  
39 and detention facility surcharge, or amounts collected  
40 as a result of procedures initiated under subsection 5  
41 or under section 421.17, subsection 25."

42 2. Page 5, by inserting after line 20 the  
43 following:

44 "Sec. \_\_\_\_\_. Section 805.8, subsection 1, Code 1997,  
45 is amended to read as follows:

46 1. APPLICATION. Except as otherwise indicated,  
47 violations of sections of the Code specified in this  
48 section are scheduled violations, and the scheduled  
49 fine for each of those violations is as provided in  
50 this section, whether the violation is of state law or

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1 of a county or city ordinance. The criminal penalty  
2 surcharge required by section 911.2 and the jail,  
3 courthouse security, and detention facility surcharge  
4 required by section 911A.2 shall be added to the  
5 scheduled fine.

6 Sec. \_\_\_\_\_. Section 805.8, subsection 11, unnumbered  
7 paragraph 1, Code 1997, is amended to read as follows:

8 For violations of section 142B.6 or 453A.2,  
9 subsection 2, the scheduled fine is twenty-five  
10 dollars, and is a civil penalty, and the criminal  
11 penalty surcharge under section 911.2 and the jail,  
12 courthouse security, and detention facility surcharge  
13 under section 911A.2 shall not be added to the  
14 penalty, and the court costs pursuant to section  
15 805.9, subsection 6, shall not be imposed. If the  
16 civil penalty assessed for a violation of section  
17 142B.6 is not paid in a timely manner, a citation  
18 shall be issued for the violation in the manner  
19 provided in section 804.1. However, a person under  
20 age eighteen shall not be detained in a secure  
21 facility for failure to pay the civil penalty. The  
22 complainant shall not be charged a filing fee."

23 3. Page 5, by inserting after line 26 the  
24 following:

25 "Sec. \_\_\_\_\_. Section 902.9, unnumbered paragraph 2,  
26 Code 1997, is amended to read as follows:

27 The criminal penalty surcharge required by section  
28 911.2 and the jail, courthouse security, and detention  
29 facility surcharge required by section 911A.2 shall be  
30 added to a fine imposed on a class "C" or class "D"  
31 felon, as provided by ~~that section~~ those sections, and  
32 ~~is~~ are not a part of or subject to the maximums set in  
33 this section.

34 Sec. \_\_\_\_\_. Section 903.1, subsection 4, Code 1997,  
35 is amended to read as follows:

36 4. The criminal penalty surcharge required by  
37 section 911.2 and the jail, courthouse security, and  
38 detention facility surcharge required by section  
39 911A.2 shall be added to a fine imposed on a  
40 misdemeanor, and ~~is~~ are not a part of or subject to  
41 the maximums set in this section."

42 4. Page 7, by inserting after line 15 the  
43 following:

44 "Sec. 101. NEW SECTION. 905A.1 DEFINITIONS.

45 For the purposes of this chapter, unless the  
46 context otherwise requires:

47 1. "Division" means the division of criminal and  
48 juvenile justice planning of the department of human  
49 rights.

50 2. "Government" means a community-based

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1 correctional program as defined in section 905.1, or a  
2 city, school district or accredited nonpublic school,  
3 or county which expends funds for incarceration or  
4 supervision of individuals charged with or convicted  
5 of a felony, an aggravated misdemeanor, or a serious  
6 misdemeanor, or for crime prevention activities.

7 3. "Judicial election district" means a judicial  
8 election district described in section 602.6109.

9 Sec. 102. NEW SECTION. 905A.2 LOCAL CORRECTIONS  
10 INFRASTRUCTURE GRANT PROGRAM.

11 1. A local corrections infrastructure grant  
12 program is created in the division. The division  
13 shall adopt rules pursuant to chapter 17A as necessary  
14 to administer the program in accordance with this  
15 chapter. The rules shall include but are not limited  
16 to provisions for auditing of grant expenditures.

17 2. The division shall develop a request for  
18 proposals for the grant program and assist judicial  
19 election districts in developing proposals in response  
20 to the request. The division shall not accept more  
21 than one proposal from a judicial election district  
22 for each of the grant groupings. For the fiscal year  
23 beginning July 1, 1998, grants shall be awarded in  
24 accordance with this chapter in the following two  
25 groupings:

26 a. Twenty-five million dollars to one or more  
27 governments or groups of governments in judicial  
28 election districts, divided proportionately according  
29 to the judicial election districts' relative  
30 proportion of the state's general population.

31 b. Nine million dollars to one or more governments  
32 or groups of governments representing judicial  
33 election districts, awarded according to criteria  
34 developed by the task force established pursuant to  
35 section 905A.3 based upon the relative amount of  
36 criminal activity in the judicial election district,  
37 the innovative nature of the proposal submitted by the  
38 government or group of governments, and the statewide  
39 need for the project proposed to be developed.

40 3. A proposal for a grant under this section is  
41 subject to all of the following conditions:

42 a. A judicial election district may combine with  
43 one or more other judicial election districts in  
44 developing a proposal or may propose a joint project  
45 in separate proposals.

46 b. A proposal shall be for one or more  
47 infrastructure or school-based crime prevention  
48 projects or combination of projects relating to one or  
49 more of the following purposes:

50 (1) A county jail.

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1 (2) A regional or multicounty jail.

2 (3) A county juvenile detention or shelter care  
3 home, including retirement of outstanding debt for  
4 such a home.

5 (4) A regional or multicounty juvenile detention  
6 or shelter care home.

7 (5) A community-based correctional program  
8 facility.

9 (6) A school-based crime prevention program.

10 c. Grant moneys under this chapter shall not be  
11 used for purposes other than infrastructure.

12 d. The division may accept or reject a proposal in  
13 whole or in part.

14 e. A proposal must address the need for the  
15 proposed project, degree of urgency for the project,  
16 location of the project, provisions for the  
17 governments within the judicial election district to  
18 access the project, and the performance measures to be  
19 used to evaluate the project.

20 f. The submission date for proposals under  
21 subsection 2, paragraph "a" shall be on or before  
22 February 16, 1998, and the submission date for  
23 proposals under subsection 2, paragraph "b" shall be  
24 on or before April 17, 1998. However, for good cause  
25 shown, the division may extend the submission date for  
26 proposals under subsection 2, paragraph "a". It is  
27 the intent of the general assembly that the grant  
28 award process be complete by June 30, 1998, and awards  
29 made in the fiscal year beginning July 1, 1998.  
30 However, the division may delay final approval of a  
31 grant proposal which is approved in part while full  
32 approval of the proposal is pending.

33 4. The office of the attorney general, the  
34 department of education, and the university of  
35 northern Iowa's criminology program shall work with  
36 the division in implementing a public planning process  
37 to assist the governments in judicial election  
38 districts in developing a proposal, developing  
39 technical assistance materials for the grant program,  
40 developing the request for proposals, developing  
41 proposed scoring tools, and producing model  
42 performance measures and other evaluation processes  
43 for grant program projects. The public planning  
44 process shall include but is not limited to public  
45 meetings in each of the judicial election districts.

46 Sec. 103. NEW SECTION. 905A.3 TASK FORCE.

47 1. The division shall establish and convene a  
48 local corrections infrastructure grant program task  
49 force to assist the division in scoring and evaluating  
50 grant proposals and other assistance deemed necessary

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1 by the division.

2 2. The membership of the task force shall include  
3 but is not limited to representatives of the  
4 following:

5 a. County sheriffs.

6 b. Police chiefs.

7 c. Office of the attorney general.

8 d. District judges.

9 e. Juvenile court judges.

10 f. Probation officers.

11 g. Juvenile court officers.

12 h. County supervisors.

13 i. City council members.

14 j. Criminal and juvenile justice planning advisory  
15 council.

16 k. Juvenile services providers.

17 l. Community-based correctional programs.

18 m. County attorneys.

19 n. The Iowa state police association.

20 o. Local school officials.

21 p. Other members deemed necessary by the division  
22 or task force.

23 3. Members of the task force are eligible for  
24 reimbursement of actual and necessary expenses  
25 incurred in the performance of their official duties.  
26 The task force shall elect a chairperson and other  
27 officers deemed necessary by the task force.

28 Sec. 104. NEW SECTION. 905A.4 PAYMENT OF GRANTS.

29 A grant awarded under section 905A.2 shall be paid  
30 from the proceeds of bonds issued under section 16.177  
31 or other moneys available to the division. A project  
32 approved by the division for a grant under this  
33 chapter is deemed to be approved by the general  
34 assembly for purposes of issuing bonds under section  
35 16.177. The department of corrections shall pledge  
36 amounts in the Iowa prison infrastructure fund  
37 established under section 602.8108A as security for  
38 the payment of principal of, premium, if any, and  
39 interest on the bonds."

40 5. Page 11, by inserting after line 26 the  
41 following:

42 "Sec. \_\_\_\_ . NEW SECTION. 907.14 PAYMENT IN LIEU  
43 OF FINE.

44 When the court has deferred judgment the court may  
45 order the defendant to pay an amount in lieu of a fine  
46 in a case where a minimum fine would otherwise be  
47 ordered. Payments in lieu of fines shall be ordered,  
48 enforced, and administered as fines under chapter  
49 909."

50 6. Page 13, by inserting after line 22 the

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1 following:

2 "Sec. \_\_\_\_\_. Section 909.3, Code 1997, is amended by  
3 adding the following new subsection:

4 NEW SUBSECTION. 3. If the court orders a fine to  
5 be paid as provided by subsection 2, the court shall  
6 require the defendant to execute a mandatory wage  
7 assignment that would ensure payment of the fine  
8 within twelve months of the date the wage assignment  
9 becomes effective. The wage assignment shall be  
10 enforced if the defendant fails to make payment as  
11 provided in subsection 2.

12 A mandatory wage assignment executed pursuant to  
13 this section is not subject to the limitation on  
14 garnishment provided in sections 537.5105 and 642.21,  
15 and is not subject to the limitation on assignment of  
16 benefits under chapter 96 as provided in section  
17 96.15. However, a wage assignment executed under this  
18 subsection shall be enforced only after an order for  
19 income withholding pursuant to chapter 252D or a  
20 court-ordered wage assignment for purposes of support  
21 is entered and enforced. A wage assignment executed  
22 under this subsection shall be limited as specified in  
23 15 U.S.C. § 1673(b).

24 Sec. \_\_\_\_\_. Section 909.8, Code 1997, is amended to  
25 read as follows:

26 909.8 PAYMENT AND COLLECTION PROVISIONS APPLY TO  
27 ~~CRIMINAL-PENALTY-SURCHARGE~~ SURCHARGES.

28 The provisions of this chapter governing the  
29 payment and collection of a fine, except section  
30 909.3A, also apply to the payment and collection of a  
31 criminal penalty surcharge imposed pursuant to chapter  
32 911 and the jail, courthouse security, and detention  
33 facility surcharge imposed pursuant to section 911A.2.

34 Sec. \_\_\_\_\_. Section 909.10, subsection 1, Code 1997,  
35 is amended to read as follows:

36 1. As used in this section, unless the context  
37 otherwise requires, "delinquent amounts" means a fine,  
38 court-imposed court costs in a criminal proceeding, or  
39 criminal surcharge imposed pursuant to section 911.2,  
40 or jail, courthouse security, and detention facility  
41 surcharge imposed pursuant to section 911A.2, which  
42 remains unpaid after two years from the date that the  
43 fine, court costs, or surcharge was imposed, and which  
44 is not collected by the county attorney pursuant to  
45 section 602.8107. However, if the fine may be paid in  
46 installments pursuant to section 909.3, the fine is  
47 not a delinquent amount unless the installment remains  
48 unpaid after two years from the date the installment  
49 was due."

50 7. Page 14, by inserting after line 9 the

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1 following:

2 "Sec. \_\_\_\_ . NEW SECTION. 911A.1 JAIL, COURTHOUSE  
3 SECURITY, AND DETENTION FACILITY SURCHARGE  
4 ESTABLISHED.

5 A jail, courthouse security, and detention facility  
6 surcharge shall be levied against certain law  
7 violators as provided in section 911A.2. The  
8 surcharge shall be used as provided in section 911A.3.

9 Sec. \_\_\_\_ . NEW SECTION. 911A.2 SURCHARGE.

10 When a court imposes a fine or forfeiture for a  
11 violation of a state law, or of a city or county  
12 ordinance except an ordinance regulating the parking  
13 of motor vehicles, the court shall assess an  
14 additional penalty in the form of a surcharge equal to  
15 ten dollars. In the event of multiple offenses, the  
16 surcharge shall be based upon the total number of  
17 offenses. When a fine or forfeiture is suspended in  
18 whole or in part, the surcharge shall not be reduced.

19 The surcharge is subject to the provisions of  
20 chapter 909 governing the payment and collection of  
21 fines, as provided in section 909.8.

22 Sec. \_\_\_\_ . NEW SECTION. 911A.3 DISPOSITION OF  
23 SURCHARGE.

24 1. When a court assesses a surcharge under section  
25 911A.2, notwithstanding any other provision of the  
26 Code to the contrary, proceeds from the surcharge  
27 shall be appropriated and transferred to the treasurer  
28 of the county in which the citation was issued to be  
29 deposited in the county general fund and used only for  
30 courthouse security and the improvement, expansion,  
31 operation, or construction of a jail or juvenile  
32 detention facility.

33 2. At any time and for the purposes specified in  
34 subsection 1, a county may transfer proceeds received  
35 and deposited pursuant to this section to a contiguous  
36 county or a county that has a relationship with the  
37 transferring county concerning the use of a jail or  
38 juvenile detention facility in the recipient county.

39 Sec. 201. GRANT PROGRAM IMPLEMENTATION. There is  
40 appropriated from the general fund of the state to the  
41 department of human rights, division of criminal and  
42 juvenile justice planning, for the fiscal year  
43 beginning July 1, 1997, and ending June 30, 1998, the  
44 following amount, or so much thereof as is necessary,  
45 to be used for the purposes designated:

46 For technical assistance and staffing associated  
47 with the development of the local corrections  
48 infrastructure grant program enacted by this Act,  
49 including salaries, support, maintenance,  
50 miscellaneous purposes, and for not more than the

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1 following full-time equivalent positions:

2 .....	\$	200,000
3 .....	FTEs	2.00"

4 8. Page 14, line 15, by striking the words and  
5 figures "2 and 7 through 11" and inserting the  
6 following: "2, 7 through 11, 101 through 104, and  
7 201".

8 9. Title page, line 14, by inserting after the  
9 word "crime," the following: "creating a local  
10 corrections infrastructure grant program, authorizing  
11 the use of bonding, making appropriations, imposing a  
12 civil penalty for certain motor vehicle license  
13 revocations, imposing a surcharge on criminal fines  
14 and forfeitures, providing for mandatory wage  
15 assignment for certain delinquent fines,".

By PATRICK J. DELUHERY

JOHN P. KIBBIE

MIKE CONNOLLY

EUGENE FRAISE

ELAINE SZYMONIAK

MATT McCOY

BILL FINK

JOHNIE HAMMOND

TOM FLYNN

DENNIS BLACK

MARY NEUHAUSER

DON E. GETTINGS

STEVEN D. HANSEN

TOM VILSACK

ROD HALVORSON

PATTY JUDGE

ROBERT DVORSKY

WILLIAM D. PALMER

MICHAEL E. GRONSTAL

WALLY HORN

DICK L. DEARDEN

S-3261 FILED MARCH 26, 1997

RULED OUT OF ORDER (p. 823)

## SENATE FILE 503

S-3263

1 Amend Senate File 503 as follows:

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

4 "Sec. \_\_\_\_\_. Section 719.4, subsections 1 and 2,  
5 Code 1997, are amended by striking the subsections and  
6 inserting in lieu thereof the following:

7 1. As used in this section, "escape" means either  
8 of the following:

9 a. To depart from detention or custody in a secure  
10 facility for the detention or custody of juveniles or  
11 from custody or from a jail, detention facility,  
12 community-based corrections facility, correctional  
13 facility, or institution to which the person has been  
14 committed by reason of the conviction, charge, or  
15 arrest, or from the custody of any public officer or  
16 employee to whom the person has been entrusted, when  
17 the person knows that the person is not permitted to  
18 leave custody or the correctional facility.

19 b. Failure to return to a secure facility for the  
20 detention or custody of juveniles or a jail, detention  
21 facility, community-based corrections facility,  
22 correctional facility, or institution to which the  
23 person has been committed by reason of the conviction,  
24 charge, or arrest, or from the custody of any public  
25 officer or employee to whom the person has been  
26 entrusted, following a temporary leave granted for a  
27 specific purpose or for a limited period of time.

28 2. a. A person convicted of a felony, or charged  
29 with or arrested for the commission of a felony who  
30 intentionally escapes commits a class "C" felony.

31 b. A person convicted of, charged with, or  
32 arrested for a misdemeanor who intentionally escapes  
33 commits an aggravated misdemeanor.

34 Sec. \_\_\_\_\_. Section 719.7, Code 1997, is amended by  
35 striking the section and inserting in lieu thereof the  
36 following:

37 719.7 PROMOTING OR POSSESSING CONTRABAND.

38 1. "Contraband" includes but is not limited to any  
39 of the following:

40 a. A controlled substance or a simulated or  
41 counterfeit controlled substance, hypodermic syringe,  
42 or intoxicant.

43 b. A dangerous weapon, offensive weapon, pneumatic  
44 gun, stun gun, firearm ammunition, explosive or  
45 incendiary material, or other material fashioned in  
46 such a manner as to be capable of inflicting death or  
47 injury.

48 c. Rope, ladder components, key or key pattern,  
49 metal file, or other instrument or device designed or  
50 intended to facilitate escape of an inmate.

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1 2. The sheriff, department of corrections, or  
2 department of human services may x-ray a person under  
3 the control of the department if there is reason to  
4 believe that the person is in possession of  
5 contraband. A licensed physician or x-ray technician  
6 under the supervision of a licensed physician must x-  
7 ray the person.

8 3. A person commits the offense of promoting or  
9 possessing contraband if the person, not authorized by  
10 law, does any of the following:

11 a. Knowingly introduces contraband into, or onto  
12 the grounds of, a secure facility for the detention or  
13 custody of juveniles or a jail, detention facility,  
14 correctional institution, or institution under the  
15 management of the department of corrections.

16 b. Knowingly conveys contraband to any person  
17 confined in a secure facility for the detention or  
18 custody of juveniles, jail, detention facility,  
19 correctional institution, or institution under the  
20 management of the department of corrections.

21 c. Knowingly makes, obtains, or possesses  
22 contraband while confined in a secure facility for the  
23 detention or custody of juveniles, jail, detention  
24 facility, correctional institution, or institution  
25 under the management of the department of corrections  
26 or while being transported or moved incidental to  
27 confinement.

28 4. A person who promotes or possesses contraband  
29 or fails to report an offense of promoting or  
30 possessing contraband commits the following:

31 a. A class "C" felony if the contraband is of the  
32 type described in subsection 1, paragraph "b".

33 b. A class "D" felony if the contraband is any  
34 other type of contraband.

35 c. An aggravated misdemeanor for failing to report  
36 a known violation or attempted violation of this  
37 section to an official or officer at the secure  
38 facility for the detention or custody of juveniles,  
39 jail, detention facility, correctional institution, or  
40 institution under the management of the department of  
41 corrections.

42 5. Nothing in this section is intended to limit  
43 the authority of the administrator of any secure  
44 facility for the detention or custody of juveniles,  
45 jail, detention facility, correctional institution, or  
46 institution under the management of the department of  
47 corrections to prescribe or enforce rules concerning  
48 the definition of contraband, and the transportation,  
49 making, or possession of substances, objects,  
50 materials, or items in the institutions or

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1 facilities."  
2 2. Page 14, by inserting after line 14 the  
3 following:  
4 "Sec. \_\_\_\_ . Section 719.8, Code 1997, is repealed."  
5 3. Title page, line 5, by inserting after the  
6 word "establishments," the following: "making changes  
7 related to escape and voluntary absence from custody  
8 or a correctional facility, establishing the offense  
9 of promoting or possessing contraband in prisons,  
10 jails, and juvenile facilities,".  
11 4. By renumbering as necessary.

By MARY NEUHAUSER

S-3263 FILED MARCH 26, 1997  
LOST, MOTION TO RECONSIDER, ADOPTED

(p. 824, p. 830, p. 831)

## SENATE FILE 503

S-3259

- 1 Amend Senate File 503 as follows:  
2 1. Page 1, by inserting after line 19 the  
3 following:  
4 "Sec. \_\_\_\_\_. Section 142B.6, unnumbered paragraph 3,  
5 Code 1997, is amended by striking the paragraph."  
6 2. Page 14, by inserting after line 14 the  
7 following:  
8 "Sec. \_\_\_\_\_. Section 453A.56, Code 1997, is  
9 repealed."  
10 3. Title page, line 3, by inserting after the  
11 word "minors," the following: "providing for  
12 application of local laws and regulations to cigarette  
13 and tobacco products,".  
14 4. By renumbering as necessary.

By JOHNIE HAMMOND  
ROBERT DVORSKY

S-3259 FILED MARCH 26, 1997  
RULED OUT OF ORDER (p. 823)

## SENATE FILE 503

S-3260

- 1 Amend Senate File 503 as follows:  
2 1. Page 1, line 10, by inserting after the word  
3 "years." the following: "The person shall also be  
4 required to undergo an assessment to determine whether  
5 the person is addicted to methamphetamine or other  
6 controlled substances, which shall include the  
7 examination and testing of hair samples from the  
8 person. If the assessment reveals that the person is  
9 addicted to methamphetamine or other controlled  
10 substances, the person shall, as part of the person's  
11 sentence, be required to participate in no less than  
12 two years of substance abuse treatment, which may be  
13 conducted on an outpatient basis."

By ELAINE SZYMONIAK

S-3260 FILED MARCH 26, 1997  
ADOPTED (p. 821)

## SENATE FILE 503

S-3265

1 Amend Senate File 503 as follows:

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

4 "Sec. \_\_\_\_ . Section 669.2, subsection 4, unnumbered  
5 paragraph 1, Code 1997, is amended to read as follows:  
6 "Employee of the state" includes any one or more  
7 officers, agents, or employees of the state or any  
8 state agency, including members of the general  
9 assembly, and persons acting on behalf of the state or  
10 any state agency in any official capacity, temporarily  
11 or permanently in the service of the state of Iowa,  
12 whether with or without compensation, but does not  
13 include a contractor doing business with the state.  
14 Professional personnel, including physicians,  
15 osteopathic physicians and surgeons, osteopathic  
16 physicians, optometrists, dentists, nurses, physician  
17 assistants, and other medical personnel, who render  
18 services to patients or inmates of state institutions  
19 under the jurisdiction of the department of human  
20 services, and employees of the commission of veterans  
21 affairs, or the Iowa department of corrections are to  
22 be considered employees of the state, whether the  
23 personnel are employed on a full-time basis or render  
24 services on a part-time basis on a fee schedule or  
25 other arrangement. Criminal defendants while  
26 performing unpaid community service ordered by the  
27 district court, board of parole, or judicial district  
28 department of correctional services, ~~or-an-inmate~~  
29 inmates providing services pursuant to a chapter-28E  
30 an agreement entered into pursuant to section 904.703,  
31 and persons providing supervision, security, or  
32 transportation for inmates or criminal defendants who  
33 are providing the services, are to be considered  
34 employees of the state."

35 2. Page 7, by inserting after line 15 the  
36 following:

37 "Sec. \_\_\_\_ . Section 904.703, unnumbered paragraph  
38 1, Code 1997, is amended to read as follows:  
39 Inmates shall work on state account in the  
40 maintenance of state institutions, in the erection,  
41 repair, authorized demolition, or operation of  
42 buildings and works used in connection with the  
43 institutions, and in industries established and  
44 maintained in connection with the institutions by the  
45 director. The director shall encourage the making of  
46 agreements, including agreements under chapter 28E,  
47 with departments and agencies of the state or its  
48 political subdivisions to provide products or services  
49 under an inmate work program to the departments and,  
50 agencies, and political subdivisions. The director

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1 may implement an inmate work program for trustworthy  
2 inmates of state correctional institutions, under  
3 proper supervision, whether at work centers located  
4 outside the state correctional institutions or in  
5 construction or maintenance work at public or  
6 charitable facilities and for other agencies of state,  
7 county, or local government. The supervision,  
8 security, and transportation of, and allowances paid  
9 to inmates used in public service projects shall be  
10 provided pursuant to agreements made by the director  
11 and the agency for which the work is done. Housing  
12 and maintenance shall also be provided pursuant to the  
13 agreement unless the inmate is housed and maintained  
14 in the correctional facility. All such work,  
15 including but not limited to that provided in this  
16 section, shall have as its primary purpose the  
17 development of attitudes, skills, and habit patterns  
18 which are conducive to inmate rehabilitation. The  
19 director may adopt rules allowing inmates  
20 participating in an inmate work program to receive  
21 educational or vocational training outside the state  
22 correctional institutions and away from the work  
23 centers or public or charitable facilities used under  
24 a program.

25 Sec.     . Section 904.703, unnumbered paragraph 3,  
26 Code 1997, is amended by striking the paragraph."

27 3. Title page, line 13, by inserting after the  
28 word "district," the following: "making changes  
29 related to work programs for inmates and criminal  
30 defendants,".

By MARY NEUHAUSER

S-3265 FILED MARCH 26, 1997

ADOPTED (p. 825)

## SENATE FILE 503

S-3268

- 1 Amend Senate File 503, as follows:  
2 1. Page 1, by inserting after line 19 the  
3 following:  
4 "\_\_\_\_. A county attorney, or a county attorney's  
5 designee, upon the filing of an indictment or  
6 information alleging that the person has unlawfully  
7 manufactured methamphetamine, its salts, isomers, and  
8 salts of its isomers in the presence of a minor, shall  
9 file a petition under section 232.87 alleging that the  
10 minor is a child in need of assistance.  
11 Sec. \_\_\_\_\_. Section 232.69, Code 1997, is amended by  
12 adding the following new subsection:  
13 NEW SUBSECTION. 4. In addition to any other  
14 training required by law, a social worker employed by  
15 a public or private agency or institution whose duties  
16 include providing services to children who have been  
17 exposed to or are addicted to methamphetamine or other  
18 controlled substances, shall receive specialized  
19 training on the issue of substance abuse, addiction,  
20 and environmental evidence of substance abuse and  
21 addiction in children.  
22 Sec. \_\_\_\_\_. Section 232.98, subsection 1, unnumbered  
23 paragraph 1, Code 1997, is amended to read as follows:  
24 Except as provided in section 232.78, subsection 4,  
25 a physical or mental examination of the child may be  
26 ordered only after the filing of a petition pursuant  
27 to section 232.87 and after a hearing to determine  
28 whether an examination is necessary to determine the  
29 child's physical or mental condition. The court may  
30 consider chemical dependency as either a physical or  
31 mental condition and may consider a chemical  
32 dependency evaluation as either a physical or mental  
33 examination. If the petition concerns a child who was  
34 present at the time of or at a location at which  
35 methamphetamine, its salts, isomers, and salts of its  
36 isomers, was being unlawfully manufactured, an  
37 examination of the child, including testing of hair  
38 samples and an assessment of any physiological damage  
39 which may have resulted from exposure to the chemical  
40 substances used or produced in the manufacturing  
41 process, shall be conducted."  
42 2. Title page, line 3, by inserting after the  
43 word "minors" the following: "and assessment and  
44 intervention procedures applicable to those minors".  
45 3. By numbering as necessary.

By ELAINE SZYMONIAK

S-3268 FILED MARCH 26, 1997

LOST (p. 822)

## SENATE FILE 503

S-3267

1 Amend Senate File 503 as follows:

2 1. Page 5, by inserting after line 26 the  
3 following:

4 "Sec. \_\_\_\_ . Section 901.8, Code 1997, is amended to  
5 read as follows:

6 901.8 CONSECUTIVE SENTENCES.

7 If a person is sentenced for two or more separate  
8 offenses, the sentencing judge may order the second or  
9 further sentence to begin at the expiration of the  
10 first or succeeding sentence. If a person is  
11 sentenced for escape under section 719.4 or for a  
12 crime committed while confined in a detention facility  
13 or penal institution, the ~~sentencing judge shall order~~  
14 ~~the sentence to shall~~ begin at the expiration of and  
15 shall run consecutively to any existing sentence. If  
16 the person is presently in the custody of the director  
17 of the Iowa department of corrections, the sentence  
18 shall be served at the facility or institution in  
19 which the person is already confined unless the person  
20 is transferred by the director. If consecutive  
21 sentences are required under this section or are  
22 specified in the order of commitment, the several  
23 terms shall be construed as one continuous term of  
24 imprisonment."

25 2. Title page, line 11, by inserting after the  
26 words "offenses," the following: "imposing  
27 consecutive sentences for escapes from or crimes  
28 committed while confined in detention facilities or  
29 penal institutions,".

By MARY NEUHAUSER

S-3267 FILED MARCH 26, 1997

ADOPTED (p. 826)

## SENATE FILE 503

S-3269

1 Amend Senate File 503 as follows:

2 1. Page 5, by inserting after line 26, the  
3 following:

4 "Sec. \_\_\_\_ . NEW SECTION. 901.11 CONDITIONS OF  
5 COMMITMENT TO CORRECTIONAL INSTITUTION.

6 In addition to any other terms and conditions that  
7 the court may impose, for persons who are convicted of  
8 an offense which is punishable by a sentence of  
9 confinement of more than one year, and who receive a  
10 sentence of confinement of more than one year, the  
11 court shall order that the person do all of the  
12 following prior to discharge of the person's sentence:

13 1. Complete at least thirty hours per week of hard  
14 labor, as defined under section 904.701, which is  
15 designed to demonstrate the person's ability to assume  
16 responsibility, work hard, and to complete projects.

17 2. Complete minimum educational competencies,  
18 commensurate with the person's abilities, which may  
19 include but is not limited to obtaining a high school  
20 equivalency diploma under chapter 259A.

21 3. If the person has children, attend and  
22 successfully complete parenting training programs.

23 4. Participate in vocational training.

24 5. Complete any applicable treatment programs,  
25 including but not limited to sex offender and  
26 substance abuse treatment.

27 6. Participate in team sports."

28 2. Page 7, by inserting after line 15, the  
29 following:

30 "Sec. \_\_\_\_ . NEW SECTION. 904.517 RESTORATIVE  
31 JUSTICE.

32 A person who has been committed to the custody of  
33 the director of the department of corrections for an  
34 offense for which the maximum penalty is ten years or  
35 more may enroll in a program of restorative justice  
36 established by the department. The program shall be  
37 designed to help the inmate to earn compensation which  
38 would enable the inmate to repay any amounts owed by  
39 the inmate as a result of the commission of the  
40 offense and to benefit other inmates within the  
41 institutions. The program may include, but is not  
42 limited to, programs which lead to the attainment of  
43 specific competencies in teaching, computer use, or  
44 specific vocational skills; programs which cause the  
45 inmate to direct or lead discussion groups on positive  
46 social skills, including, but not limited to, good  
47 grooming, language skills, and job interviewing; and  
48 programs which involve the inmate in contributing to  
49 the physical improvement of the institution in which  
50 the inmate resides."

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1 3. Title page, line 3, by inserting after the  
2 word "minors," the following: "providing enhanced  
3 conditions of release for persons sentenced to  
4 confinement of more than one year, providing for a  
5 restorative justice program,".

6 4. By numbering, renumbering, and changing  
7 internal references as necessary.

By JOHNIE HAMMOND  
ROBERT E. DVORSKY

S-3269 FILED MARCH 26, 1997

LOST (p. 829)

## SENATE FILE 503

S-3271

1 Amend Senate File 503 as follows:

2 1. Page 5, by inserting after line 26 the  
3 following:

4 "Sec. \_\_\_\_\_. Section 901A.2, subsection 3, Code  
5 1997, is amended by striking the subsection.

6 Sec. \_\_\_\_\_. Section 901A.2, subsection 4, Code 1997,  
7 is amended to read as follows:

8 4. A person convicted of a sexually predatory  
9 offense which is a felony, who has previously been  
10 ~~sentenced under subsection 3~~ convicted of a sexually  
11 predatory offense, shall be sentenced to life in  
12 prison on the same terms as a class "A" felon under  
13 section 902.1, notwithstanding any other provision of  
14 the Code to the contrary. In order for a person to be  
15 sentenced under this subsection, the prosecuting  
16 attorney shall allege and prove that this section is  
17 applicable to the person."

18 2. Title page, line 9, by inserting after the  
19 words "providing for" the following: "enhancement of  
20 penalties and".

By TOM VILSACK

S-3271 FILED MARCH 26, 1997

LOST (p. 830)

## SENATE FILE 503

S-3272

1 Amend the amendment, S-3258, to Senate File 503 as  
2 follows

3 1. Page 1, line 16, by inserting before the word  
4 "treatment" the following: "formal supervision and".

5 2. Page 1, by inserting after line 23 the  
6 following:

7 "\_\_\_\_\_. Page 6, line 11, by inserting after the  
8 word "confinement" the following: "and shall be  
9 monitored as part of the formal probation or parole  
10 supervision which is performed by the person's  
11 probation or parole officer"."

By LARRY MCKIBBEN  
TOM VILSACK

S-3272 FILED MARCH 26, 1997

ADOPTED (p. 830)

HOUSE AMENDMENT TO  
SENATE FILE 503

S-3466

1 Amend Senate File 503, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. By striking everything after the enacting  
4 clause and inserting the following:

5 "Section 1. NEW SECTION. 124.401C MANUFACTURING  
6 METHAMPHETAMINE IN PRESENCE OF MINORS.

7 1. In addition to any other penalties provided in  
8 this chapter, a person who is eighteen years of age or  
9 older and who either directly or by extraction from  
10 natural substances, or independently by means of  
11 chemical processes, or both, unlawfully manufactures  
12 methamphetamine, its salts, isomers, and salts of its  
13 isomers in the presence of a minor shall be sentenced  
14 up to an additional term of confinement of five years.

15 2. For purposes of this section, the term "in the  
16 presence of a minor" shall mean, but is not limited  
17 to, any of the following:

18 a. When a minor is physically present during the  
19 activity.

20 b. When the activity is conducted in the residence  
21 of a minor.

22 c. When the activity is conducted in a building  
23 where minors can reasonably be expected to be present.

24 d. When the activity is conducted in a room  
25 offered to the public for overnight accommodation.

26 e. When the activity is conducted in any multiple-  
27 unit residential building.

28 Sec. 2. Section 728.1, Code 1997, is amended by  
29 adding the following new subsection:

30 NEW SUBSECTION. 5A. "Place of business" means the  
31 premises of a business required to obtain a sales tax  
32 permit pursuant to chapter 422, the premises of a  
33 nonprofit or not-for-profit organization, and the  
34 premises of an establishment which is open to the  
35 public at large or where entrance is limited by a  
36 cover charge or membership requirement.

37 Sec. 3. Section 728.5, Code 1997, is amended to  
38 read as follows:

39 728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN  
40 ESTABLISHMENTS.

41 ~~A-holder-of-a-liquor-license-or-beer-permit-or-any~~  
42 An owner, manager, or person who exercises direct  
43 control over any licensed premises defined in section  
44 123.37-subsection-20 a place of business required to  
45 obtain a sales tax permit shall be guilty of a serious  
46 misdemeanor under any of the following circumstances:

47 1. If such person ~~allow~~ allows or ~~permit~~ permits  
48 the actual or simulated public performance of any sex  
49 act upon or in such ~~licensed-premises~~ place of  
50 business.

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1 2. If such person allow allows or permit permits  
 2 the exposure of the genitals or buttocks or female  
 3 breast of any person who acts as a waiter or waitress.

4 3. If such person allow allows or permit permits  
 5 the exposure of the genitals or female breast nipple  
 6 of any person who acts as an entertainer, whether or  
 7 not the owner of the licensed-premises place of  
 8 business in which the activity is performed employs or  
 9 pays any compensation to such person to perform such  
 10 activity.

11 4. If such person allow allows or permit permits  
 12 any person to remain in or upon the licensed-premises  
 13 place of business who exposes to public view the  
 14 person's genitals, pubic hair, or anus.

15 ~~5. If such person allow or permit the displaying~~  
 16 ~~of moving pictures, films, or pictures depicting any~~  
 17 ~~sex act or the display of the pubic hair, anus, or~~  
 18 ~~genitals upon or in such licensed premises.~~

19 5. If such person advertises that any activity  
 20 prohibited by this section is allowed or permitted in  
 21 such licensed-premises place of business.

22 6. If such person allows or permits a minor to  
 23 engage in or otherwise perform in a live act intended  
 24 to arouse or satisfy the sexual desires or appeal to  
 25 the prurient interests of patrons. However, if such  
 26 person allows or permits a minor to participate in any  
 27 act included in subsections 1 through 4, the person  
 28 shall be guilty of an aggravated misdemeanor.

29 ~~Provided that the~~ The provisions of this section  
 30 shall not apply to a theater, concert hall, art  
 31 center, museum, or similar establishment which is  
 32 primarily devoted to the arts or theatrical  
 33 performances and in which any of the circumstances  
 34 contained in this section were permitted or allowed as  
 35 part of such art exhibits or performances.

36 Sec. 4. Section 728.8, Code 1997, is amended to  
 37 read as follows:

38 728.8 SUSPENSION OF LICENSES OR PERMITS.

39 Any person who knowingly permits a violation of  
 40 section 728.2, 728.3, or 728.5, subsection 7 6, to  
 41 occur on premises under the person's control shall  
 42 have all permits and licenses issued to the person  
 43 under state or local law as a prerequisite for doing  
 44 business on such premises revoked for a period of six  
 45 months. The county attorney shall notify all agencies  
 46 responsible for issuing licenses and permits of any  
 47 conviction under section 728.2, 728.3, or 728.5,  
 48 subsection 7 6.

49 Sec. 5. Section 907.2, unnumbered paragraph 2,  
 50 Code 1997, is amended to read as follows:

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1 Probation officers employed by the judicial  
2 district department of correctional services, while  
3 performing the duties prescribed by that department,  
4 are peace officers. Probation officers shall  
5 investigate all persons referred to them for  
6 investigation by the director of the judicial district  
7 department of correctional services which employs  
8 them. They shall furnish to each person released  
9 under their supervision or committed to a community  
10 corrections residential facility operated by the  
11 judicial district department of correctional services,  
12 a written statement of the conditions of probation or  
13 commitment. They shall keep informed of each person's  
14 conduct and condition and shall use all suitable  
15 methods prescribed by the judicial district department  
16 of correctional services to aid and encourage the  
17 person to bring about improvements in the person's  
18 conduct and condition. Probation officers shall keep  
19 records of their work and, unless section 907.8A  
20 applies, shall make reports to the court when alleged  
21 violations occur and within no less than thirty days  
22 before the period of probation will expire. If  
23 section 907.8A applies, the probation officers shall  
24 make the reports of alleged violations to the  
25 administrative parole and probation judge within no  
26 less than thirty days before the period of probation  
27 will expire. Probation officers shall coordinate  
28 their work with other social welfare agencies which  
29 offer services of a corrective nature operating in the  
30 area to which they are assigned.

31 Sec. 6. Section 907.7, unnumbered paragraphs 1 and  
32 2, Code 1997, are amended to read as follows:

33 The length of the probation shall be for such term  
34 as the court may shall fix but not to exceed five  
35 years if the offense is a felony or not to exceed two  
36 years if the offense is a misdemeanor.

37 The length of the probation shall not be less than  
38 one year if the offense is a misdemeanor and shall not  
39 be less than two years if the offense is a felony.

40 However, the court or the administrative parole and  
41 probation judge, if section 907.8A applies, may  
42 subsequently reduce the length of the probation if the  
43 court or the administrative parole and probation judge  
44 determines that the purposes of probation have been  
45 fulfilled. The purposes of probation are to provide  
46 maximum opportunity for the rehabilitation of the  
47 defendant and to protect the community from further  
48 offenses by the defendant and others.

49 Sec. 7. Section 907.8, unnumbered paragraph 3,  
50 Code 1997, is amended to read as follows:

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1 Jurisdiction-of Except as otherwise provided in  
2 section 907.8A, the court shall retain jurisdiction  
3 over these persons ~~shall remain with the sentencing~~  
4 court. Jurisdiction may be transferred to a court in  
5 another jurisdiction, or to the administrative parole  
6 and probation judge under section 907.8A, if a  
7 person's probation supervision is transferred to a  
8 judicial district department of correctional services  
9 in a district other than the district in which the  
10 person was sentenced.

11 Sec. 8. NEW SECTION. 907.8A SIXTH JUDICIAL  
12 DISTRICT -- DETERMINATION OF ISSUES DURING  
13 PROBATIONARY PERIOD.

14 1. Except for those persons who are granted a  
15 deferred judgment or deferred sentence, for each  
16 adult, and each juvenile who has been prosecuted,  
17 convicted, and sentenced as an adult, who is released  
18 on probation by the court in the sixth judicial  
19 district, the jurisdiction of the sentencing court  
20 shall cease upon approval by the sentencing court of  
21 the conditions established by the judicial district  
22 department of correctional services. If a person is  
23 granted a deferred judgment or deferred sentence,  
24 jurisdiction shall be retained by the court.

25 2. All issues relating to whether the probationer  
26 has violated or fulfilled the terms and conditions of  
27 probation, including but not limited to express  
28 violations of a specific term of probation, new  
29 violations of the law, and changes of the term of  
30 probation as provided in sections 907.7, 908.11, and  
31 910.4, which would otherwise be determined by the  
32 court, shall be determined instead by an  
33 administrative parole and probation judge. The  
34 administrative parole and probation judge, who shall  
35 be an attorney, shall be appointed by the board of  
36 parole, notwithstanding chapter 17A. The costs of  
37 employing the administrative parole and probation  
38 judge shall be borne by the board of parole.

39 A probation hearing conducted by an administrative  
40 parole and probation judge shall be conducted in the  
41 same manner as hearings regarding revocations or  
42 modifications of or discharge from parole. The  
43 hearing may be conducted electronically. The  
44 probation officer shall notify the county attorney at  
45 least five days prior to any probation hearing. The  
46 interests of the state shall be represented by the  
47 probation officer at the probation hearing, unless the  
48 county attorney or the county attorney's designee  
49 elects to assist the probation officer. The board of  
50 parole, the department of corrections, and the clerk

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1 of the district court in the sixth judicial district  
2 shall devise and implement a system for the filing of  
3 documents and records of probation hearings conducted  
4 under this section. The system shall allow for the  
5 electronic filing of records and documents where  
6 electronic filing is practicable.

7 3. Appeals from orders of the administrative  
8 parole and probation judge which pertain to the  
9 revocations or modifications of or discharge from  
10 probation shall be conducted in the manner provided in  
11 rules adopted by the board of parole.

12 Sec. 9. Section 907.9, Code 1997, is amended to  
13 read as follows:

14 907.9 DISCHARGE FROM PROBATION.

15 1. At Except as otherwise provided in section  
16 907.8A, at any time that the court determines that the  
17 purposes of probation have been fulfilled, the court  
18 may order the discharge of a person from probation.

19 2. At any time that a probation officer determines  
20 that the purposes of probation have been fulfilled,  
21 the officer may order the discharge of a person from  
22 probation after approval of the district director, and  
23 notification of the sentencing court, the  
24 administrative parole and probation judge if section  
25 907.8A applies, and the county attorney who prosecuted  
26 the case.

27 3. ~~The sentencing judge, unless the judge is no~~  
28 ~~longer serving or is otherwise unable to, or, if~~  
29 ~~section 907.8A applies, the administrative parole and~~  
30 ~~probation judge, may order a hearing on its own~~  
31 ~~motion, or shall order a hearing upon the request of~~  
32 ~~the county attorney, for review of such discharge. If~~  
33 ~~the sentencing judge is no longer serving or unable to~~  
34 ~~order such hearing, the chief judge of the district or~~  
35 ~~the chief judge's designee shall order any hearing~~  
36 ~~pursuant to this section, if section 907.8A does not~~  
37 ~~apply. Following the hearing, the court or the~~  
38 ~~administrative parole and probation judge shall~~  
39 ~~approve or rescind such discharge. If a hearing is~~  
40 ~~not ordered within thirty days after notification by~~  
41 ~~the probation officer, the person shall be discharged~~  
42 ~~and the probation officer shall notify the state court~~  
43 ~~administrator of such discharge.~~

44 4. ~~At the expiration of the period of probation,~~  
45 ~~in cases where the court fixes the term of probation,~~  
46 ~~the court or, if section 907.8A applies, the~~  
47 ~~administrative parole and probation judge, shall order~~  
48 ~~the discharge of the person from probation, and the~~  
49 ~~court or administrative parole and probation judge~~  
50 ~~shall forward to the governor a recommendation for or~~

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1 against restoration of citizenship rights to that  
2 person. A person who has been discharged from  
3 probation shall no longer be held to answer for the  
4 person's offense. Upon discharge from probation, if  
5 judgment has been deferred under section 907.3, the  
6 court's criminal record with reference to the deferred  
7 judgment shall be expunged. The record maintained by  
8 the state court administrator as required by section  
9 907.4 shall not be expunged. The court's record shall  
10 not be expunged in any other circumstances.

11 5. A probation officer or the director of the  
12 judicial district department of correctional services  
13 who acts in compliance with this section is acting in  
14 the course of the person's official duty and is not  
15 personally liable, either civilly or criminally, for  
16 the acts of a person discharged from probation by the  
17 officer after such discharge, unless the discharge  
18 constitutes willful disregard of the person's duty.

19 Sec. 10. Section 908.11, Code 1997, is amended to  
20 read as follows:

21 908.11 VIOLATION OF PROBATION.

22 1. A probation officer or the judicial district  
23 department of correctional services having probable  
24 cause to believe that any person released on probation  
25 has violated the conditions of probation shall proceed  
26 by arrest or summons as in the case of a parole  
27 violation.

28 2. The Except as otherwise provided in sections  
29 907.8 and 907.8A, the functions of the liaison officer  
30 and the board of parole shall be performed by the  
31 judge or magistrate who placed the alleged violator on  
32 probation if that judge or magistrate is available,  
33 otherwise by another judge or magistrate who would  
34 have had jurisdiction to try the original offense.

35 3. If the probation officer proceeds by arrest and  
36 section 907.8A does not apply, any magistrate may  
37 receive the complaint, issue an arrest warrant, or  
38 conduct the initial appearance and probable cause  
39 hearing if it is not convenient for the judge who  
40 placed the alleged violator on probation to do so.  
41 The initial appearance, probable cause hearing, and  
42 probation revocation hearing, or any of them, may at  
43 the discretion of the court be merged into a single  
44 hearing when it appears that the alleged violator will  
45 not be prejudiced thereby by the merger.

46 4. If the person who is believed to have violated  
47 the conditions of probation was sentenced and placed  
48 on probation in the sixth judicial district under  
49 section 907.8A, or jurisdiction over the person was  
50 transferred to the sixth judicial district as a result

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1 of transfer of the person's probation supervision, the  
2 functions of the liaison officer and the board of  
3 parole shall be performed by the administrative parole  
4 and probation judge as provided in section 907.8A.

5 5. If the probation officer proceeds by arrest and  
6 section 907.8A applies, the administrative parole and  
7 probation judge may receive the complaint, issue an  
8 arrest warrant, or conduct the initial appearance and  
9 probable cause hearing. The initial appearance,  
10 probable cause hearing, and probation revocation  
11 hearing, or any of them, may, at the discretion of the  
12 administrative parole and probation judge, be merged  
13 into a single hearing when it appears that the alleged  
14 violator will not be prejudiced by the merger.

15 6. If the violation is established, the court or  
16 the administrative parole and probation judge may  
17 continue the probation with or without an alteration  
18 of the conditions of probation. If the defendant is  
19 an adult the court may hold the defendant in contempt  
20 of court and sentence the defendant to a jail term  
21 while continuing the probation, order the defendant to  
22 be placed in a violator facility established pursuant  
23 to section 904.207 while continuing the probation, or  
24 revoke the probation and require the defendant to  
25 serve the sentence imposed or any lesser sentence,  
26 and, if imposition of sentence was deferred, may  
27 impose any sentence which might originally have been  
28 imposed. The administrative parole and probation  
29 judge may revoke the probation and require the  
30 defendant to serve the sentence which was originally  
31 imposed. The administrative parole and probation  
32 judge may grant credit against the sentence, for any  
33 time served while the defendant was on probation. The  
34 order of the administrative parole and probation judge  
35 shall become a final decision, unless the defendant  
36 appeals the decision to the board of parole within the  
37 time provided in rules adopted by the board. The  
38 appeal shall be conducted pursuant to rules adopted by  
39 the board and the record on appeal shall be the record  
40 made at the hearing conducted by the administrative  
41 parole and probation judge.

42 Sec. 11. NEW SECTION. 910.3B RESTITUTION FOR  
43 DEATH OF VICTIM.

44 1. In all criminal cases in which the offender is  
45 convicted of a felony in which the act or acts  
46 committed by the offender caused the death of another  
47 person, in addition to the amount determined to be  
48 payable and ordered to be paid to a victim for  
49 pecuniary damages, as defined under section 910.1, and  
50 determined under section 910.3, the court shall also

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1 order the offender to pay at least one hundred fifty  
 2 thousand dollars in restitution to the victim's  
 3 estate. The obligation to pay the additional amount  
 4 shall not be dischargeable in any proceeding under the  
 5 federal Bankruptcy Act. Payment of the additional  
 6 amount shall have the same priority as payment of a  
 7 victim's pecuniary damages under section 910.2, in the  
 8 offender's plan for restitution.

9 2. An award under this section does not preclude  
 10 or supersede the right of a victim's estate to bring a  
 11 civil action against the offender for damages arising  
 12 out of the same facts or event. However, no evidence  
 13 relating to the entry of the judgment against the  
 14 offender pursuant to this section or the amount of the  
 15 award ordered pursuant to this section, shall be  
 16 permitted to be introduced in any civil action for  
 17 damages arising out of the same facts or event.

18 3. An offender who is ordered to pay a victim's  
 19 estate under this section is precluded from denying  
 20 the elements of the felony offense which resulted in  
 21 the order for payment in any subsequent civil action  
 22 for damages arising out of the same facts or event.

23 Sec. 12. Sections 906.16, 908.4, 908.5, 908.6,  
 24 908.7, 908.10, and 908.10A, Code 1997, are amended by  
 25 striking from the sections the words "administrative  
 26 parole judge" and inserting in lieu thereof the words  
 27 "administrative parole and probation judge".

28 Sec. 13. EFFECTIVE DATE. Sections 2 through 4 of  
 29 this Act, being deemed of immediate importance, take  
 30 effect upon enactment."

31 2. Title page 1, by striking lines 5 through 15  
 32 and inserting the following: "establishments,  
 33 authorizing probation supervision and".

34 3. Title page 1, by striking lines 17 and 18 and  
 35 inserting the following: "the sixth judicial  
 36 district, providing".

RECEIVED FROM THE HOUSE

S-3466 FILED APRIL 10, 1997

*Senate concurred 4/23/97 (p.1375)*

## SENATE FILE 503

S-3631

1 Amend the House amendment, S-3466, to Senate File  
 2 503, as amended, passed, and reprinted by the Senate,  
 3 as follows:

4 1. By striking page 1, line 28, through page 2,  
 5 line 48.

6 2. Page 8, by striking lines 28 through 30.

7 3. Page 8, line 31, by striking the figure "5"  
 8 and inserting the following: "3".

9 4. Page 8, line 32, by striking the word  
 10 "establishments" and inserting the following: "of  
 11 minors".

12 5. By renumbering as necessary.

By JACK RIFE

JOHN P. KIBBIE

MARY A. LUNDBY

MARY NEUHAUSER

S-3631 FILED APRIL 21, 1997

*Senat 4/22/97 (p.1334)*

## SENATE FILE 503

S-3714

1 Amend the House amendment, S-3466, to Senate File  
2 503, as amended, passed, and reprinted by the Senate,  
3 as follows:

4 1. By striking page 1, line 28, through page 2,  
5 line 48, and inserting the following:

6 "Sec. \_\_\_\_ . NEW SECTION. 728.5A PHYSICAL CONTACT  
7 IN CERTAIN NUDE PERFORMANCES OR ACTIVITIES.

8 1. An owner, manager, or person who exercises  
9 direct control over a place of business required to  
10 obtain a sales tax permit commits a serious  
11 misdemeanor if the person allows a patron of the  
12 business and an employee or performer to physically  
13 touch or fondle one another at the place of business  
14 under any of the following circumstances:

15 a. The employee or performer is engaged in the  
16 actual or simulated public performance of any sex act  
17 upon the premises of or in the place of business.

18 b. The employee or performer exposes the person's  
19 genitals or buttocks or female breast while the  
20 employee or performer acts as a waiter or waitress at  
21 the place of business.

22 c. The employee or performer exposes the person's  
23 genitals or female breast nipple while acting as an  
24 entertainer, whether or not the owner of the place of  
25 business in which the activity is performed employs or  
26 pays any compensation to the employee or performer for  
27 the performance of the activity.

28 d. The owner, manager, or person who exercises  
29 direct control over the place of business allows or  
30 permits any employee or performer to remain in or upon  
31 the premises of the place of business if the person  
32 exposes to public view the person's genitals, pubic  
33 hair, or anus.

34 2. An owner, manager, or person who exercises  
35 direct control over a place of business required to  
36 obtain a sales tax permit commits an aggravated  
37 misdemeanor if the person allows or permits a minor to  
38 engage in or otherwise perform in a live act intended  
39 to arouse or satisfy the sexual desires or appeal to  
40 the purient interests of patrons and allows a patron  
41 and the minor to physically touch or fondle one  
42 another.

43 3. This section shall not apply to a theater,  
44 concert hall, art center, museum, or similar  
45 establishment which is primarily devoted to the arts  
46 or theatrical performances and in which any of the  
47 circumstances contained in this section were permitted  
48 or allowed as part of an art exhibit or performance."

49 2. Page 8, by striking lines 28 through 30.

50 3. By renumbering as necessary.

By BILL FINK

S-3714 FILED APRIL 23, 1997

LOST (p. 1375)

S-3713

1 Amend the House Amendment S-3466, to Senate File  
2 503, as amended, passed, and reprinted by the Senate,  
3 as follows:

4 1. By striking page 1, line 28, through page 2,  
5 line 48, and inserting the following:

6 "Sec. \_\_\_\_ . NEW SECTION. 728.5A ADMITTING MINORS  
7 TO PREMISES WHICH PERMIT CERTAIN NUDE PERFORMANCES OR  
8 ACTIVITIES.

9 1. An owner, manager, or person who exercises  
10 direct control over a place of business required to  
11 obtain a sales tax permit commits a serious  
12 misdemeanor if the person admits or allows a minor to  
13 enter the business premises and any of the following  
14 circumstances apply:

15 a. The person allows or permits the actual or  
16 simulated public performance of any sex act upon the  
17 premises of or in the place of business.

18 b. The person allows or permits the exposure of  
19 the genitals or buttocks or female breast of any  
20 person who acts as a waiter or waitress at the place  
21 of business.

22 c. The person allows or permits the exposure of  
23 the genitals or female breast nipple of any person who  
24 acts as an entertainer, whether or not the owner of  
25 the place of business in which the activity is  
26 performed employs or pays any compensation to the  
27 person for the performance of the activity.

28 d. The person allows or permits any person to  
29 remain in or upon the premises of the place of  
30 business if the person exposes to public view the  
31 person's genitals, pubic hair, or anus.

32 e. The person advertises that any of the  
33 activities described in paragraphs "a" through "d" are  
34 allowed or permitted in the place of business.

35 2. An owner, manager, or person who exercises  
36 direct control over a place of business required to  
37 obtain a sales tax permit commits a serious  
38 misdemeanor if the person allows or permits a minor to  
39 engage in or otherwise perform in a live act intended  
40 to arouse or satisfy the sexual desires or appeal to  
41 the purient interests of patrons. However, if the  
42 person allows or permits a minor to participate in any  
43 act included in paragraphs "a" through "d", the person  
44 commits an aggravated misdemeanor.

45 3. This section shall not apply to a theater,  
46 concert hall, art center, museum, or similar  
47 establishment which is primarily devoted to the arts  
48 or theatrical performances and in which any of the  
49 circumstances contained in this section were permitted  
50 or allowed as part of an art exhibit or performance."

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1 2. Page 8, by striking lines 28 through 30.

2 3. By renumbering as necessary.

By BILL FINK  
JOHNIE HAMMOND  
MARY NEUHAUSER

PATRICIA HARPER  
JOHN P. KIBBIE

S-3713 FILED APRIL 23, 1997

LOST (p. 1374)

**SENATE FILE 503  
FISCAL NOTE**

REQ. BY SENATOR MCKIBBEN

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The estimate for Senate File 503 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement 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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Senate File 503 increases the penalty for persons manufacturing methamphetamine in the presence of a minor, prohibits renting or selling hard-core pornography in certain establishments, prohibits indecent exposure and nudity in certain establishments, requires hormonal intervention therapy (chemical castration) after the second or subsequent conviction for certain serious sex offenses, provides for a probation revocation hearing pilot project in the Sixth Community-Based Corrections District, and requires payment of \$150,000 by an offender who causes another's death during the commission of a felony to the victim's estate.

**ASSUMPTIONS**

1. Current charge, conviction, and sentencing patterns will remain constant.
2. Inmate length of stay and other policies will remain constant.
3. The increase penalties for manufacture of methamphetamine in the presence of a minor will affect 13 offenders per year, increasing their prison stay by five months.
4. No data is available at this time to estimate the costs or effects of the hormonal intervention therapy.
5. The increased penalty for disseminating or exhibiting obscene material to a minor affects three or fewer offenders per year and will not impact the correctional system.
6. The Justice System Appropriations Bill appropriates \$56,000 for the probation revocation hearing pilot project.

**CORRECTIONAL IMPACT**

The prison population is projected to increase by two inmates by FY 2002 because of the changes in this Bill.

**FISCAL IMPACT**

The probation revocation hearing pilot project is budgeted at \$56,000 in FY 1998. Otherwise, the changes in this Bill are not expected to have a significant fiscal impact.

**SOURCES**

Criminal and Juvenile Justice Planning Division,  
Department of Human Rights  
Department of Justice

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Judicial Branch

(LSB 1514sv, MDF)

FILED MARCH 26, 1997

BY DENNIS PROUTY, FISCAL DIRECTOR

## SENATE FILE 503

H-1569

1 Amend Senate File 503, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. By striking everything after the enacting  
4 clause and inserting the following:

5 "Section 1. NEW SECTION. 124.401C MANUFACTURING  
6 METHAMPHETAMINE IN PRESENCE OF MINORS.

7 1. In addition to any other penalties provided in  
8 this chapter, a person who is eighteen years of age or  
9 older and who either directly or by extraction from  
10 natural substances, or independently by means of  
11 chemical processes, or both, unlawfully manufactures  
12 methamphetamine, its salts, isomers, and salts of its  
13 isomers in the presence of a minor shall be sentenced  
14 up to an additional term of confinement of five years.

15 2. For purposes of this section, the term "in the  
16 presence of a minor" shall mean any of the following:

17 a. When a minor is physically present during the  
18 activity.

19 b. When the activity is conducted in the residence  
20 of a minor.

21 c. When the activity is conducted in a residence  
22 where minors can reasonably be expected to be present.

23 d. When the activity is conducted in a room  
24 offered to the public for overnight accommodation.

25 Sec. 2. Section 728.1, Code 1997, is amended by  
26 adding the following new subsection:

27 NEW SUBSECTION. 5A. "Place of business" means the  
28 premises of a business required to obtain a sales tax  
29 permit pursuant to chapter 422, the premises of a  
30 nonprofit or not-for-profit organization, and the  
31 premises of an establishment which is open to the  
32 public at large or where entrance is limited by a  
33 cover charge or membership requirement.

34 Sec. 3. Section 728.5, Code 1997, is amended to  
35 read as follows:

36 728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN  
37 ESTABLISHMENTS.

38 ~~A holder of a liquor license or beer permit or any~~  
39 ~~An owner, manager, or person who exercises direct~~  
40 ~~control over any licensed premises defined in section~~  
41 ~~123.37, subsection 20 a place of business required to~~  
42 ~~obtain a sales tax permit shall be guilty of a serious~~  
43 ~~misdemeanor under any of the following circumstances:~~

44 1. If such person ~~allow~~ allows or ~~permit~~ permits  
45 the actual or simulated public performance of any sex  
46 act upon or in such ~~licensed premises~~ place of  
47 business.

48 2. If such person ~~allow~~ allows or ~~permit~~ permits  
49 the exposure of the genitals or buttocks or female  
50 breast of any person who acts as a waiter or waitress.

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1 3. If such person ~~allow~~ allows or ~~permit~~ permits  
 2 the exposure of the genitals or female breast nipple  
 3 of any person who acts as an entertainer, whether or  
 4 not the owner of the ~~licensed-premises~~ place of  
 5 business in which the activity is performed employs or  
 6 pays any compensation to such person to perform such  
 7 activity.

8 4. If such person ~~allow~~ allows or ~~permit~~ permits  
 9 any person to remain in or upon the ~~licensed-premises~~  
 10 place of business who exposes to public view the  
 11 person's genitals, pubic hair, or anus.

12 ~~5.---if-such-person-allow-or-permit-the-displaying~~  
 13 ~~of-moving-pictures,-films,-or-pictures-depicting-any~~  
 14 ~~sex-act-or-the-display-of-the-pubic-hair,-anus,-or~~  
 15 ~~genitals-upon-or-in-such-licensed-premises.~~

16 6 5. If such person advertises that any activity  
 17 prohibited by this section is allowed or permitted in  
 18 such ~~licensed-premises~~ place of business.

19 7 6. If such person allows or permits a minor to  
 20 engage in or otherwise perform in a live act intended  
 21 to arouse or satisfy the sexual desires or appeal to  
 22 the prurient interests of patrons. However, if such  
 23 person allows or permits a minor to participate in any  
 24 act included in subsections 1 through 4, the person  
 25 shall be guilty of an aggravated misdemeanor.

26 ~~Provided-that-the~~ The provisions of this section  
 27 shall not apply to a theater, concert hall, art  
 28 center, museum, or similar establishment which is  
 29 primarily devoted to the arts or theatrical  
 30 performances and in which any of the circumstances  
 31 contained in this section were permitted or allowed as  
 32 part of such art exhibits or performances.

33 Sec. 4. Section 728.8, Code 1997, is amended to  
 34 read as follows:

35 728.8 SUSPENSION OF LICENSES OR PERMITS.

36 Any person who knowingly permits a violation of  
 37 section 728.2, 728.3, or 728.5, subsection 7 6, to  
 38 occur on premises under the person's control shall  
 39 have all permits and licenses issued to the person  
 40 under state or local law as a prerequisite for doing  
 41 business on such premises revoked for a period of six  
 42 months. The county attorney shall notify all agencies  
 43 responsible for issuing licenses and permits of any  
 44 conviction under section 728.2, 728.3, or 728.5,  
 45 subsection 7 6.

46 Sec. 5. Section 907.2, unnumbered paragraph 2,  
 47 Code 1997, is amended to read as follows:

48 Probation officers employed by the judicial  
 49 district department of correctional services, while  
 50 performing the duties prescribed by that department,

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1 are peace officers. Probation officers shall  
2 investigate all persons referred to them for  
3 investigation by the director of the judicial district  
4 department of correctional services which employs  
5 them. They shall furnish to each person released  
6 under their supervision or committed to a community  
7 corrections residential facility operated by the  
8 judicial district department of correctional services,  
9 a written statement of the conditions of probation or  
10 commitment. They shall keep informed of each person's  
11 conduct and condition and shall use all suitable  
12 methods prescribed by the judicial district department  
13 of correctional services to aid and encourage the  
14 person to bring about improvements in the person's  
15 conduct and condition. Probation officers shall keep  
16 records of their work and, unless section 907.8A  
17 applies, shall make reports to the court when alleged  
18 violations occur and within no less than thirty days  
19 before the period of probation will expire. If  
20 section 907.8A applies, the probation officers shall  
21 make the reports of alleged violations to the  
22 administrative parole and probation judge within no  
23 less than thirty days before the period of probation  
24 will expire. Probation officers shall coordinate  
25 their work with other social welfare agencies which  
26 offer services of a corrective nature operating in the  
27 area to which they are assigned.

28 Sec. 6. Section 907.7, unnumbered paragraphs 1 and  
29 2, Code 1997, are amended to read as follows:

30 The length of the probation shall be for such term  
31 as the court may shall fix but not to exceed five  
32 years if the offense is a felony or not to exceed two  
33 years if the offense is a misdemeanor.

34 The length of the probation shall not be less than  
35 one year if the offense is a misdemeanor and shall not  
36 be less than two years if the offense is a felony.  
37 However, the court or the administrative parole and  
38 probation judge, if section 907.8A applies, may  
39 subsequently reduce the length of the probation if the  
40 court or the administrative parole and probation judge  
41 determines that the purposes of probation have been  
42 fulfilled. The purposes of probation are to provide  
43 maximum opportunity for the rehabilitation of the  
44 defendant and to protect the community from further  
45 offenses by the defendant and others.

46 Sec. 7. Section 907.8, unnumbered paragraph 3,  
47 Code 1997, is amended to read as follows:

48 Jurisdiction-of Except as otherwise provided in  
49 section 907.8A, the court shall retain jurisdiction  
50 over these persons shall-remain-with-the-sentencing

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1 court. Jurisdiction may be transferred to a court in  
2 another jurisdiction, or to the administrative parole  
3 and probation judge under section 907.8A, if a  
4 person's probation supervision is transferred to a  
5 judicial district department of correctional services  
6 in a district other than the district in which the  
7 person was sentenced.

8 Sec. 8. NEW SECTION. 907.8A SIXTH JUDICIAL  
9 DISTRICT -- DETERMINATION OF ISSUES DURING  
10 PROBATIONARY PERIOD.

11 1. Except for those persons who are granted a  
12 deferred judgment or deferred sentence, for each  
13 adult, and each juvenile who has been prosecuted,  
14 convicted, and sentenced as an adult, who is released  
15 on probation by the court in the sixth judicial  
16 district, the jurisdiction of the sentencing court  
17 shall cease upon approval by the sentencing court of  
18 the conditions established by the judicial district  
19 department of correctional services. If a person is  
20 granted a deferred judgment or deferred sentence,  
21 jurisdiction shall be retained by the court.

22 2. All issues relating to whether the probationer  
23 has violated or fulfilled the terms and conditions of  
24 probation, including but not limited to express  
25 violations of a specific term of probation, new  
26 violations of the law, and changes of the term of  
27 probation as provided in sections 907.7, 908.11, and  
28 910.4, which would otherwise be determined by the  
29 court, shall be determined instead by an  
30 administrative parole and probation judge. The  
31 administrative parole and probation judge, who shall  
32 be an attorney, shall be appointed by the board of  
33 parole, notwithstanding chapter 17A. The costs of  
34 employing the administrative parole and probation  
35 judge shall be borne by the board of parole.

36 A probation hearing conducted by an administrative  
37 parole and probation judge shall be conducted in the  
38 same manner as hearings regarding revocations or  
39 modifications of or discharge from parole. The  
40 hearing may be conducted electronically. The  
41 probation officer shall notify the county attorney at  
42 least five days prior to any probation hearing. The  
43 interests of the state shall be represented by the  
44 probation officer at the probation hearing, unless the  
45 county attorney or the county attorney's designee  
46 elects to assist the probation officer. The board of  
47 parole, the department of corrections, and the clerk  
48 of the district court in the sixth judicial district  
49 shall devise and implement a system for the filing of  
50 documents and records of probation hearings conducted

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1 under this section. The system shall allow for the  
2 electronic filing of records and documents where  
3 electronic filing is practicable.

4 3. Appeals from orders of the administrative  
5 parole and probation judge which pertain to the  
6 revocations or modifications of or discharge from  
7 probation shall be conducted in the manner provided in  
8 rules adopted by the board of parole.

9 Sec. 9. Section 907.9, Code 1997, is amended to  
10 read as follows:

11 907.9 DISCHARGE FROM PROBATION.

12 1. At Except as otherwise provided in section  
13 907.8A, at any time that the court determines that the  
14 purposes of probation have been fulfilled, the court  
15 may order the discharge of a person from probation.

16 2. At any time that a probation officer determines  
17 that the purposes of probation have been fulfilled,  
18 the officer may order the discharge of a person from  
19 probation after approval of the district director, and  
20 notification of the sentencing court, the  
21 administrative parole and probation judge if section  
22 907.8A applies, and the county attorney who prosecuted  
23 the case.

24 3. ~~The sentencing judge, unless the judge is no~~  
25 ~~longer serving or is otherwise unable to, or, if~~  
26 section 907.8A applies, the administrative parole and  
27 probation judge, may order a hearing on its own  
28 motion, or shall order a hearing upon the request of  
29 the county attorney, for review of such discharge. If  
30 the sentencing judge is no longer serving or unable to  
31 order such hearing, the chief judge of the district or  
32 the chief judge's designee shall order any hearing  
33 pursuant to this section, if section 907.8A does not  
34 apply. Following the hearing, the court or the  
35 administrative parole and probation judge shall  
36 approve or rescind such discharge. If a hearing is  
37 not ordered within thirty days after notification by  
38 the probation officer, the person shall be discharged  
39 and the probation officer shall notify the state court  
40 administrator of such discharge.

41 4. At the expiration of the period of probation,  
42 ~~in cases where the court fixes the term of probation,~~  
43 the court or, if section 907.8A applies, the  
44 administrative parole and probation judge, shall order  
45 the discharge of the person from probation, and the  
46 court or administrative parole and probation judge  
47 shall forward to the governor a recommendation for or  
48 against restoration of citizenship rights to that  
49 person. A person who has been discharged from  
50 probation shall no longer be held to answer for the

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1 person's offense. Upon discharge from probation, if  
2 judgment has been deferred under section 907.3, the  
3 court's criminal record with reference to the deferred  
4 judgment shall be expunged. The record maintained by  
5 the state court administrator as required by section  
6 907.4 shall not be expunged. The court's record shall  
7 not be expunged in any other circumstances.

8 5. A probation officer or the director of the  
9 judicial district department of correctional services  
10 who acts in compliance with this section is acting in  
11 the course of the person's official duty and is not  
12 personally liable, either civilly or criminally, for  
13 the acts of a person discharged from probation by the  
14 officer after such discharge, unless the discharge  
15 constitutes willful disregard of the person's duty.

16 Sec. 10. Section 908.11, Code 1997, is amended to  
17 read as follows:

18 908.11 VIOLATION OF PROBATION.

19 1. A probation officer or the judicial district  
20 department of correctional services having probable  
21 cause to believe that any person released on probation  
22 has violated the conditions of probation shall proceed  
23 by arrest or summons as in the case of a parole  
24 violation.

25 2. The Except as otherwise provided in sections  
26 907.8 and 907.8A, the functions of the liaison officer  
27 and the board of parole shall be performed by the  
28 judge or magistrate who placed the alleged violator on  
29 probation if that judge or magistrate is available,  
30 otherwise by another judge or magistrate who would  
31 have had jurisdiction to try the original offense.

32 3. If the probation officer proceeds by arrest and  
33 section 907.8A does not apply, any magistrate may  
34 receive the complaint, issue an arrest warrant, or  
35 conduct the initial appearance and probable cause  
36 hearing if it is not convenient for the judge who  
37 placed the alleged violator on probation to do so.  
38 The initial appearance, probable cause hearing, and  
39 probation revocation hearing, or any of them, may at  
40 the discretion of the court be merged into a single  
41 hearing when it appears that the alleged violator will  
42 not be prejudiced thereby by the merger.

43 4. If the person who is believed to have violated  
44 the conditions of probation was sentenced and placed  
45 on probation in the sixth judicial district under  
46 section 907.8A, or jurisdiction over the person was  
47 transferred to the sixth judicial district as a result  
48 of transfer of the person's probation supervision, the  
49 functions of the liaison officer and the board of  
50 parole shall be performed by the administrative parole

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1 and probation judge as provided in section 907.8A.  
2 5. If the probation officer proceeds by arrest and  
3 section 907.8A applies, the administrative parole and  
4 probation judge may receive the complaint, issue an  
5 arrest warrant, or conduct the initial appearance and  
6 probable cause hearing. The initial appearance,  
7 probable cause hearing, and probation revocation  
8 hearing, or any of them, may, at the discretion of the  
9 administrative parole and probation judge, be merged  
10 into a single hearing when it appears that the alleged  
11 violation will not be prejudiced by the merger.

12 6. If the violation is established, the court or  
13 the administrative parole and probation judge may  
14 continue the probation with or without an alteration  
15 of the conditions of probation. If the defendant is  
16 an adult the court may hold the defendant in contempt  
17 of court and sentence the defendant to a jail term  
18 while continuing the probation, order the defendant to  
19 be placed in a violator facility established pursuant  
20 to section 904.207 while continuing the probation, or  
21 revoke the probation and require the defendant to  
22 serve the sentence imposed or any lesser sentence,  
23 and, if imposition of sentence was deferred, may  
24 impose any sentence which might originally have been  
25 imposed. The administrative parole and probation  
26 judge may revoke the probation and require the  
27 defendant to serve the sentence which was originally  
28 imposed. The administrative parole and probation  
29 judge may grant credit against the sentence, for any  
30 time served while the defendant was on probation. The  
31 order of the administrative parole and probation judge  
32 shall become a final decision, unless the defendant  
33 appeals the decision to the board of parole within the  
34 time provided in rules adopted by the board. The  
35 appeal shall be conducted pursuant to rules adopted by  
36 the board and the record on appeal shall be the record  
37 made at the hearing conducted by the administrative  
38 parole and probation judge.

39 Sec. 11. NEW SECTION. 910.3B RESTITUTION FOR  
40 DEATH OF VICTIM.

41 1. In all criminal cases in which the offender is  
42 convicted of a felony in which the act or acts  
43 committed by the offender caused the death of another  
44 person, in addition to the amount determined to be  
45 payable and ordered to be paid to a victim for  
46 pecuniary damages, as defined under section 910.1, and  
47 determined under section 910.3, the court shall also  
48 order the offender to pay one million dollars in  
49 restitution to the victim's estate. The obligation to  
50 pay the additional amount shall not be dischargeable

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1 in any proceeding under the federal Bankruptcy Act.  
2 Payment of the additional amount shall have the same  
3 priority as payment of a victim's pecuniary damages  
4 under section 910.2, in the offender's plan for  
5 restitution.

6 2. An award under this section does not preclude  
7 or supersede the right of a victim's estate to bring a  
8 civil action against the offender for damages arising  
9 out of the same facts or event.

10 3. An offender who is ordered to pay a victim's  
11 estate under this section is precluded from denying  
12 the elements of the felony offense which resulted in  
13 the order for payment in any subsequent civil action  
14 for damages arising out of the same facts or event.

15 Sec. 12. Sections 906.16, 908.4, 908.5, 908.6,  
16 908.7, 908.10, and 908.10A, Code 1997, are amended by  
17 striking from the sections the words "administrative  
18 parole judge" and inserting in lieu thereof the words  
19 "administrative parole and probation judge".

20 Sec. 13. EFFECTIVE DATE. Sections 2 through 4 of  
21 this Act, being deemed of immediate importance, take  
22 effect upon enactment."

23 2. Title page 1, by striking lines 5 through 15  
24 and inserting the following: "establishments,  
25 authorizing probation supervision and".

26 3. Title page 1, by striking lines 17 and 18 and  
27 inserting the following: "the sixth judicial  
28 district, providing".

By COMMITTEE ON JUDICIARY  
LAMBERTI of Polk, Chairperson

H-1569 FILED APRIL 7, 1997

*Adopted 4-10-97*  
*(R1164)*

## SENATE FILE 503

H-1607

1 Amend the amendment, H-1569, to Senate File 503, as  
2 amended, passed, and reprinted by the Senate, as  
3 follows:

4 1. Page 1, by inserting after line 24 the  
5 following:

6 "Sec. \_\_\_\_\_. Section 598.41, subsection 1, paragraph  
7 b, Code 1997, is amended to read as follows:

8 b. Notwithstanding paragraph "a", if the court  
9 finds that a history of domestic abuse exists as  
10 specified in subsection 3, paragraph "j", a rebuttable  
11 presumption against the awarding of joint custody  
12 exists.

13 Sec. \_\_\_\_\_. Section 598.41, subsection 3, paragraph  
14 j, Code 1997, is amended to read as follows:

15 j. Whether a history of domestic abuse, as defined  
16 in section 236.2, exists. In determining whether a  
17 history of domestic abuse exists, the court's  
18 consideration shall include, but is not limited to,  
19 commencement of an action pursuant to section 236.3,  
20 the issuance of a protective order against the parent  
21 or the issuance of a court order or consent agreement  
22 pursuant to section 236.5, the issuance of an  
23 emergency order pursuant to section 236.6, the holding  
24 of a parent in contempt pursuant to section 236.8, the  
25 response of a peace officer to the scene of alleged  
26 domestic abuse or the arrest of a parent following  
27 response to a report of alleged domestic abuse, or a  
28 conviction for domestic abuse assault pursuant to  
29 section 708.2A. In reviewing any history of domestic  
30 abuse to make a determination under this paragraph,  
31 the court shall also consider any pattern of domestic  
32 abuse and shall identify the primary physical  
33 aggressor, as described in section 236.12, subsection  
34 3, in any instance."

35 2. Page 8, line 24, by inserting after the word  
36 "establishments," the following: "permitting patterns  
37 of domestic abuse and the identity of the primary  
38 physical aggressor to be considered as part of a  
39 determination of a history of domestic abuse,".

40 3. By numbering and renumbering as necessary.

By JOCHUM of Dubuque

H-1607 FILED APRIL 8, 1997

*Nat Hermone*

## SENATE FILE 503

H-1667

1 Amend the amendment, H-1569, to Senate File 503, as  
 2 amended, passed, and reprinted by the Senate, as  
 3 follows:  
 4 1. Page 8, line 9, by inserting after the word  
 5 "event." the following: "However, no evidence  
 6 relating to the entry of the judgment against the  
 7 offender pursuant to this section or the amount of the  
 8 award ordered pursuant to this section, shall be  
 9 permitted to be introduced in any civil action for  
 10 damages arising out of the same facts or event."  
 By MILLAGE of Scott

H-1667 FILED APRIL 9, 1997

*Adapted 4-10-97**(p.1166)*

## SENATE FILE 503

H-1668

1 Amend the amendment, H-1569, to Senate File 503, as  
 2 amended, passed, and reprinted by the Senate, as  
 3 follows:  
 4 1. Page 1, line 16, by inserting after the word  
 5 "mean" the following: ", but is not limited to,".  
 6 2. Page 1, line 21, by striking the word  
 7 "residence" and inserting the following: "building".  
 8 3. Page 1, by inserting after line 24 the  
 9 following:  
 10 "e. When the activity is conducted in any  
 11 multiple-unit residential building."  
 By LAMBERTI of Polk  
 KREIMAN of Davis

H-1668 FILED APRIL 9, 1997

*Adapted 4-10-97**(p.1164)*

## SENATE FILE 503

H-1674

1 Amend the amendment, H-1569, to Senate File 503, as  
 2 amended, passed, and reprinted by the Senate, as  
 3 follows:  
 4 1. Page 7, line 48, by striking the words "one  
 5 million" and inserting the following: "at least one  
 6 hundred fifty thousand".

By KREIMAN of Davis  
 LAMBERTI of Polk

H-1674 FILED APRIL 9, 1997

*Adapted 4-10-97**(p.1166)*

McKibben, Chair

SSB 194

Boettger  
Hansen

Judiciary

SENATE/HOUSE FILE HF 503  
BY (PROPOSED GOVERNOR'S BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to criminal justice, by providing for enhanced  
2 punishment for manufacturing methamphetamine in the presence  
3 of minors, providing restrictions on public nudity and actual  
4 or simulated public performance of sex acts in certain  
5 establishments, providing for abatement of nuisance created by  
6 certain establishments which allow or permit public nudity or  
7 actual or simulated public performances of sex acts in their  
8 establishment, making changes relating to permits and rights  
9 to carry and acquire weapons, providing for hormonal  
10 intervention therapy for persons convicted of certain sex  
11 offenses, authorizing probation supervision and revocation by  
12 administrative parole and probation judges in the sixth  
13 judicial district, and providing penalties and an effective  
14 date.

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

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25

1 Section 1. NEW SECTION. 124.401C MANUFACTURING  
2 METHAMPHETAMINE IN PRESENCE OF MINORS.

3 1. In addition to any other penalties provided in this  
4 chapter, a person who is eighteen years of age or older and  
5 who either directly or by extraction from natural substances,  
6 or independently by means of chemical processes, or both,  
7 unlawfully manufactures methamphetamine, its salts, isomers,  
8 and salts of its isomers in the presence of a minor shall be  
9 sentenced up to an additional term of confinement of five  
10 years.

11 2. For purposes of this section, the term "in the presence  
12 of a minor" shall mean any of the following:

13 a. When a minor is physically present during the activity.

14 b. When the activity is conducted in the residence of a  
15 minor.

16 c. When the activity is conducted in a residence where  
17 minors can reasonably be expected to be present.

18 d. When the activity is conducted in a room offered to the  
19 public for overnight accommodation.

20 Sec. 2. Section 657.2, Code 1997, is amended by adding the  
21 following new subsection:

22 NEW SUBSECTION. 14. A violation of section 728.4 or 728.5  
23 or the knowing dissemination or exhibition of obscene material  
24 as defined in section 728.1 to a minor from a place of  
25 business.

26 Sec. 3. Section 724.8, Code 1997, is amended by adding the  
27 following new subsection:

28 NEW SUBSECTION. 7. The person is not the subject of a  
29 restraining order or protective order.

30 Sec. 4. Section 724.13, Code 1997, is amended to read as  
31 follows:

32 724.13 REVOCATION OF PERMIT TO CARRY WEAPONS.

33 The issuing officer ~~may~~ shall revoke any permit to carry  
34 weapons when the officer learns that any of the conditions  
35 required for the issuance of that permit as stated in sections

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1 724.6 ~~to~~ through 724.10 have ceased to exist, or when the  
2 officer learns that that permit was improperly issued. When  
3 the issuing officer revokes a permit, the officer shall notify  
4 the permit holder of such revocation on a form prescribed and  
5 published by the commissioner of public safety, and shall  
6 forward a copy of the form to the commissioner of public  
7 safety. From the time the permit holder receives notice of  
8 revocation, the permit shall cease to have any force or  
9 effect. Permit revocations may be reviewed by writ of  
10 certiorari.

11 Sec. 5. Section 724.15, subsection 1, Code 1997, is  
12 amended by adding the following new paragraph:

13 NEW PARAGRAPH. g. The person is not the subject of a  
14 restraining order or protective order.

15 Sec. 6. Section 724.15, subsection 3, Code 1997, is  
16 amended to read as follows:

17 3. The annual permit to acquire pistols or revolvers shall  
18 authorize the permit holder to acquire one or more pistols or  
19 revolvers during the period that the permit remains valid. If  
20 the issuing officer determines that the applicant has become  
21 disqualified under the provisions of subsection 1, the issuing  
22 officer ~~may~~ shall immediately invalidate the permit. When the  
23 issuing officer invalidates a permit, the officer shall notify  
24 the permit holder of the invalidation on a form prescribed and  
25 published by the commissioner of public safety. Upon receipt  
26 of the notice of invalidation by the permit holder, the permit  
27 shall cease to have any force or effect. Decisions of an  
28 issuing officer to invalidate a permit may be reviewed by the  
29 district court and any appellate court which may review the  
30 district court decision, pursuant to a writ of certiorari.

31 Sec. 7. Section 728.1, Code 1997, is amended by adding the  
32 following new subsection:

33 NEW SUBSECTION. 5A. "Place of business" means the  
34 premises of a business required to obtain a sales tax permit  
35 pursuant to chapter 422, the premises of a nonprofit or not-

1 for-profit organization, and the premises of an establishment  
2 which is open to the public at large or where entrance is  
3 limited by a cover charge or membership requirement.

4 Sec. 8. Section 728.4, Code 1997, is amended to read as  
5 follows:

6 728.4 RENTAL OR SALE OF HARD-CORE PORNOGRAPHY.

7 A person who knowingly rents, exhibits, disseminates,  
8 sells, or offers for rental or sale material depicting  
9 patently offensive representations of oral, anal, or vaginal  
10 intercourse, actual or simulated, involving humans, or  
11 depicting patently offensive representations of masturbation,  
12 excretory functions, or bestiality, or lewd exhibition of the  
13 genitals, which the average adult taking the material as a  
14 whole in applying statewide contemporary community standards  
15 would find appeals to the prurient interest; and which  
16 material, taken as a whole, lacks serious literary,  
17 scientific, political, or artistic value, upon-conviction is  
18 guilty of an aggravated misdemeanor. However, second and  
19 subsequent violations of this section by a person who has been  
20 previously convicted of violating this section are class "D"  
21 felonies. Charges under this section may only be brought by a  
22 county attorney or by the attorney general.

23 Sec. 9. Section 728.5, Code 1997, is amended to read as  
24 follows:

25 728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN ESTABLISHMENTS.

26 ~~A-holder-of-a-liquor-license-or-beer-permit-or-any~~ An  
27 owner, manager, or person who exercises direct control over  
28 ~~any-licensed-premises-defined-in-section-123.3,-subsection-20~~  
29 a place of business required to obtain a sales tax permit  
30 shall be guilty of a serious misdemeanor under any of the  
31 following circumstances:

32 1. If such person ~~allow~~ allows or ~~permit~~ permits the  
33 actual or simulated public performance of any sex act upon or  
34 in such ~~licensed-premises~~ place of business.

35 2. If such person ~~allow~~ allows or ~~permit~~ permits the

*Handwritten initials and date:*  
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1 exposure of the genitals or buttocks or female breast of any  
2 person who acts as a waiter or waitress.

3 3. If such person ~~allow~~ allows or ~~permit~~ permits the  
4 exposure of the genitals or female breast nipple of any person  
5 who acts as an entertainer, whether or not the owner of the  
6 ~~licensed-premises~~ place of business in which the activity is  
7 performed employs or pays any compensation to such person to  
8 perform such activity.

9 4. If such person ~~allow~~ allows or ~~permit~~ permits any  
10 person to remain in or upon the ~~licensed-premises~~ place of  
11 business who exposes to public view the person's genitals,  
12 pubic hair, or anus.

13 ~~5. If such person allow or permit the displaying of moving~~  
14 ~~pictures, films, or pictures depicting any sex act or the~~  
15 ~~display of the pubic hair, anus, or genitals upon or in such~~  
16 ~~licensed premises.~~

17 6 5. If such person advertises that any activity  
18 prohibited by this section is allowed or permitted in such  
19 ~~licensed-premises~~ place of business.

20 7 6. If such person allows or permits a minor to engage in  
21 or otherwise perform in a live act intended to arouse or  
22 satisfy the sexual desires or appeal to the prurient interests  
23 of patrons. However, if such person allows or permits a minor  
24 to participate in any act included in subsections 1 through 4,  
25 the person shall be guilty of an aggravated misdemeanor.

26 In addition, a holder of a liquor license or beer permit or  
27 an owner, manager, or person who exercises direct control over  
28 any licensed premises defined in section 123.3, subsection 20,  
29 shall be guilty of a serious misdemeanor if such person allows  
30 or permits the displaying of moving pictures, films, or  
31 pictures depicting any sex act or the displaying of the pubic  
32 hair, anus, or genitals upon or in such licensed premises.

33 ~~Provided that the~~ The provisions of this section shall not  
34 apply to a theater, concert hall, art center, museum, or  
35 similar establishment which is primarily devoted to the arts

1 or theatrical performances and in which any of the  
2 circumstances contained in this section were permitted or  
3 allowed as part of such art exhibits or performances.

4 Sec. 10. Section 728.8, Code 1997, is amended to read as  
5 follows:

6 728.8 SUSPENSION OF LICENSES OR PERMITS.

7 Any person who knowingly permits a violation of section  
8 728.2, 728.3, or 728.5, subsection 7 6, to occur on premises  
9 under the person's control shall have all permits and licenses  
10 issued to the person under state or local law as a  
11 prerequisite for doing business on such premises revoked for a  
12 period of six months. The county attorney shall notify all  
13 agencies responsible for issuing licenses and permits of any  
14 conviction under section 728.2, 728.3, or 728.5, subsection 7  
15 6.

16 Sec. 11. NEW SECTION. 728.16 PUBLIC NUISANCE.

17 A person who violates section 728.4 or 728.5 or who  
18 knowingly disseminates or exhibits obscene material to a minor  
19 from a place of business operates a public nuisance subject to  
20 the provisions of chapter 657.

21 Sec. 12. Section 901.2, Code 1997, is amended by adding  
22 the following new subsection:

23 NEW SUBSECTION. 4. If the person has been convicted of a  
24 serious sex offense as defined in section 903B.1, subsection  
25 3, a plan for initiation of medroxyprogesterone acetate  
26 treatment in the manner provided in that section.

27 Sec. 13. NEW SECTION. 903B.1 HORMONAL INTERVENTION  
28 THERAPY -- CERTAIN SEX OFFENSES.

29 1. A person who has been convicted of a serious sex  
30 offense may, upon a first conviction and in addition to any  
31 other punishment provided by law, be required to undergo  
32 medroxyprogesterone acetate treatment as part of any  
33 conditions of release imposed by the court or the board of  
34 parole. Upon a second or subsequent conviction, the court or  
35 the board of parole shall require the person to undergo

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1 medroxyprogesterone acetate treatment as a condition of  
2 release. This section shall not apply if the person  
3 voluntarily undergoes a permanent surgical alternative  
4 approved by the court or the board of parole.

5 2. If a person is placed on probation and is not in  
6 confinement at the time of sentencing, the presentence  
7 investigation shall include a plan for initiation of treatment  
8 as soon as is reasonably possible after the person is  
9 sentenced. If the person is in confinement prior to release  
10 on probation or parole, treatment shall commence prior to the  
11 release of the person from confinement. Conviction of a  
12 serious sex offense shall constitute exceptional circumstances  
13 warranting a presentence investigation under section 901.2.

14 3. For purposes of this section, a "serious sex offense"  
15 means any of the following offenses in which the victim was a  
16 child who was, at the time the offense was committed, twelve  
17 years of age or younger:

18 a. Sexual abuse in the first degree, in violation of  
19 section 709.2.

20 b. Sexual abuse in the second degree, in violation of  
21 section 709.3.

22 c. Sexual abuse in the third degree, in violation of  
23 section 709.4.

24 d. Lascivious acts with a child, in violation of section  
25 709.8.

26 e. Assault with intent, in violation of section 709.11.

27 f. Indecent contact with a minor, in violation of section  
28 709.12.

29 g. Lascivious conduct with a minor, in violation of  
30 section 709.14.

31 h. Sexual exploitation by a counselor in violation of  
32 section 709.15.

33 i. Sexual exploitation of a minor, in violation of section  
34 728.12.

35 4. The department of corrections, in consultation with the

1 board of parole, shall adopt rules which provide for the  
2 initiation of medroxyprogesterone acetate treatment prior to  
3 the parole or work release of a person who has been convicted  
4 of a serious sex offense and who is required to undergo  
5 treatment as a condition of release by the board of parole.  
6 The department's rules shall also establish standards for the  
7 supervision of the treatment by the judicial district  
8 department of correctional services during the period of  
9 release. Each district department of correctional services  
10 shall adopt policies and procedures which provide for the  
11 initiation or continuation of medroxyprogesterone acetate  
12 treatment as a condition of release for each person who is  
13 required to undergo the treatment by the court or the board of  
14 parole. The board of parole shall, in consultation with the  
15 department of corrections, adopt rules which relate to  
16 initiation or continuation of medroxyprogesterone acetate  
17 treatment as a condition of any parole or work release.

18 Sec. 14. Section 907.2, unnumbered paragraph 2, Code 1997,  
19 is amended to read as follows:

20 Probation officers employed by the judicial district  
21 department of correctional services, while performing the  
22 duties prescribed by that department, are peace officers.  
23 Probation officers shall investigate all persons referred to  
24 them for investigation by the director of the judicial  
25 district department of correctional services which employs  
26 them. They shall furnish to each person released under their  
27 supervision or committed to a community corrections  
28 residential facility operated by the judicial district  
29 department of correctional services, a written statement of  
30 the conditions of probation or commitment. They shall keep  
31 informed of each person's conduct and condition and shall use  
32 all suitable methods prescribed by the judicial district  
33 department of correctional services to aid and encourage the  
34 person to bring about improvements in the person's conduct and  
35 condition. Probation officers shall keep records of their

1 work and, unless section 907.8A applies, shall make reports to  
2 the court when alleged violations occur and within no less  
3 than thirty days before the period of probation will expire.  
4 If section 907.8A applies, the probation officers shall make  
5 the reports of alleged violations to the administrative  
6 probation judge within no less than thirty days before the  
7 period of probation will expire. Probation officers shall  
8 coordinate their work with other social welfare agencies which  
9 offer services of a corrective nature operating in the area to  
10 which they are assigned.

11 Sec. 15. Section 907.7, unnumbered paragraphs 1 and 2,  
12 Code 1997, are amended to read as follows:

13 The length of the probation shall be for such term as the  
14 court ~~may~~ shall fix but not to exceed five years if the  
15 offense is a felony or not to exceed two years if the offense  
16 is a misdemeanor.

17 The length of the probation shall not be less than one year  
18 if the offense is a misdemeanor and shall not be less than two  
19 years if the offense is a felony. However, the court or the  
20 administrative parole and probation judge, if section 907.8A  
21 applies, may subsequently reduce the length of the probation  
22 if the court or the administrative parole and probation judge  
23 determines that the purposes of probation have been fulfilled.  
24 The purposes of probation are to provide maximum opportunity  
25 for the rehabilitation of the defendant and to protect the  
26 community from further offenses by the defendant and others.

27 Sec. 16. Section 907.8, unnumbered paragraph 3, Code 1997,  
28 is amended to read as follows:

29 ~~Jurisdiction of~~ Except as otherwise provided in section  
30 907.8A, the court shall retain jurisdiction over these persons  
31 ~~shall remain with the sentencing court.~~ Jurisdiction may be  
32 transferred to a court in another jurisdiction, or to the  
33 administrative parole and probation judge under section  
34 907.8A, if a person's probation supervision is transferred to  
35 a judicial district department of correctional services in a

1 district other than the district in which the person was  
2 sentenced.

3 Sec. 17. NEW SECTION. 907.8A SIXTH JUDICIAL DISTRICT --  
4 DETERMINATION OF ISSUES DURING PROBATIONARY PERIOD.

5 1. Except for those persons who are granted a deferred  
6 judgment or deferred sentence, for each adult, and each  
7 juvenile who has been prosecuted, convicted, and sentenced as  
8 an adult, who is released on probation by the court in the  
9 sixth judicial district, the jurisdiction of the sentencing  
10 court shall cease upon approval by the sentencing court of the  
11 conditions established by the judicial district department of  
12 correctional services. If a person is granted a deferred  
13 judgment or deferred sentence, jurisdiction shall be retained  
14 by the court.

15 2. All issues relating to whether the probationer has  
16 violated or fulfilled the terms and conditions of probation,  
17 including but not limited to express violations of a specific  
18 term of probation, new violations of the law, and changes of  
19 the term of probation as provided in sections 907.7, 908.11,  
20 and 910.4, which would otherwise be determined by the court,  
21 shall be determined instead by an administrative parole and  
22 probation judge. The administrative parole and probation  
23 judge, who shall be an attorney, shall be appointed by the  
24 board of parole, notwithstanding chapter 17A. The costs of  
25 employing the administrative parole and probation judge shall  
26 be borne by the board of parole.

27 A probation hearing conducted by an administrative parole  
28 and probation judge shall be conducted in the same manner as  
29 hearings regarding revocations or modifications of or  
30 discharge from parole. The hearing may be conducted  
31 electronically. The probation officer shall notify the county  
32 attorney at least five days prior to any probation hearing.  
33 The interests of the state shall be represented by the  
34 probation officer at the probation hearing, unless the county  
35 attorney or the county attorney's designee elects to assist

1 the probation officer. The board of parole, the department of  
2 corrections, and the clerk of the district court in the sixth  
3 judicial district shall devise and implement a system for the  
4 filing of documents and records of probation hearings  
5 conducted under this section. The system shall allow for the  
6 electronic filing of records and documents where electronic  
7 filing is practicable.

8 3. Appeals from orders of the administrative parole and  
9 probation judge which pertain to the revocations or  
10 modifications of or discharge from probation shall be  
11 conducted in the manner provided in rules adopted by the board  
12 of parole.

13 Sec. 18. Section 907.9, Code 1997, is amended to read as  
14 follows:

15 907.9 DISCHARGE FROM PROBATION.

16 1. At Except as otherwise provided in section 907.8A, at  
17 any time that the court determines that the purposes of  
18 probation have been fulfilled, the court may order the  
19 discharge of a person from probation.

20 2. At any time that a probation officer determines that  
21 the purposes of probation have been fulfilled, the officer may  
22 order the discharge of a person from probation after approval  
23 of the district director, and notification of the sentencing  
24 court, the administrative parole and probation judge if  
25 section 907.8A applies, and the county attorney who prosecuted  
26 the case.

27 3. The sentencing judge, ~~unless the judge is no longer~~  
28 ~~serving or is otherwise unable to, or, if section 907.8A~~  
29 applies, the administrative parole and probation judge, may  
30 order a hearing on its own motion, or shall order a hearing  
31 upon the request of the county attorney, for review of such  
32 discharge. If the sentencing judge is no longer serving or  
33 unable to order such hearing, the chief judge of the district  
34 or the chief judge's designee shall order any hearing pursuant  
35 to this section, if section 907.8A does not apply. Following

1 the hearing, the court or the administrative parole and  
2 probation judge shall approve or rescind such discharge. If a  
3 hearing is not ordered within thirty days after notification  
4 by the probation officer, the person shall be discharged and  
5 the probation officer shall notify the state court  
6 administrator of such discharge.

7 4. At the expiration of the period of probation, ~~in-cases~~  
8 ~~where-the-court-fixes-the-term-of-probation,~~ the court or, if  
9 section 907.8A applies, the administrative parole and  
10 probation judge, shall order the discharge of the person from  
11 probation, and the court or administrative parole and  
12 probation judge shall forward to the governor a recommendation  
13 for or against restoration of citizenship rights to that  
14 person. A person who has been discharged from probation shall  
15 no longer be held to answer for the person's offense. Upon  
16 discharge from probation, if judgment has been deferred under  
17 section 907.3, the court's criminal record with reference to  
18 the deferred judgment shall be expunged. The record  
19 maintained by the state court administrator as required by  
20 section 907.4 shall not be expunged. The court's record shall  
21 not be expunged in any other circumstances.

22 5. A probation officer or the director of the judicial  
23 district department of correctional services who acts in  
24 compliance with this section is acting in the course of the  
25 person's official duty and is not personally liable, either  
26 civilly or criminally, for the acts of a person discharged  
27 from probation by the officer after such discharge, unless the  
28 discharge constitutes willful disregard of the person's duty.

29 Sec. 19. Section 908.11, Code 1997, is amended to read as  
30 follows:

31 908.11 VIOLATION OF PROBATION.

32 1. A probation officer or the judicial district department  
33 of correctional services having probable cause to believe that  
34 any person released on probation has violated the conditions  
35 of probation shall proceed by arrest or summons as in the case

1 of a parole violation.

2 2. The Except as otherwise provided in sections 907.8 and  
3 907.8A, the functions of the liaison officer and the board of  
4 parole shall be performed by the judge or magistrate who  
5 placed the alleged violator on probation if that judge or  
6 magistrate is available, otherwise by another judge or  
7 magistrate who would have had jurisdiction to try the original  
8 offense.

9 3. If the probation officer proceeds by arrest and section  
10 907.8A does not apply, any magistrate may receive the  
11 complaint, issue an arrest warrant, or conduct the initial  
12 appearance and probable cause hearing if it is not convenient  
13 for the judge who placed the alleged violator on probation to  
14 do so. The initial appearance, probable cause hearing, and  
15 probation revocation hearing, or any of them, may at the  
16 discretion of the court be merged into a single hearing when  
17 it appears that the alleged violator will not be prejudiced  
18 thereby by the merger.

19 4. If the person who is believed to have violated the  
20 conditions of probation was sentenced and placed on probation  
21 in the sixth judicial district under section 907.8A, or  
22 jurisdiction over the person was transferred to the sixth  
23 judicial district as a result of transfer of the person's  
24 probation supervision, the functions of the liaison officer  
25 and the board of parole shall be performed by the  
26 administrative parole and probation judge as provided in  
27 section 907.8A.

28 5. If the probation officer proceeds by arrest and section  
29 907.8A applies, the administrative parole and probation judge  
30 may receive the complaint, issue an arrest warrant, or conduct  
31 the initial appearance and probable cause hearing. The  
32 initial appearance, probable cause hearing, and probation  
33 revocation hearing, or any of them, may, at the discretion of  
34 the administrative parole and probation judge, be merged into  
35 a single hearing when it appears that the alleged violator

1 will not be prejudiced by the merger.

2 6. If the violation is established, the court or the  
3 administrative parole and probation judge may continue the  
4 probation with or without an alteration of the conditions of  
5 probation. If the defendant is an adult the court may hold  
6 the defendant in contempt of court and sentence the defendant  
7 to a jail term while continuing the probation, order the  
8 defendant to be placed in a violator facility established  
9 pursuant to section 904.207 while continuing the probation, or  
10 revoke the probation and require the defendant to serve the  
11 sentence imposed or any lesser sentence, and, if imposition of  
12 sentence was deferred, may impose any sentence which might  
13 originally have been imposed. The administrative parole and  
14 probation judge may revoke the probation and require the  
15 defendant to serve the sentence which was originally imposed.  
16 The administrative parole and probation judge may grant credit  
17 against the sentence, for any time served while the defendant  
18 was on probation. The continuation or revocation of probation  
19 by an administrative parole and probation judge is not a  
20 contested case as defined in section 17A.2.

21 Sec. 20. Sections 906.16, 908.4, 908.5, 908.6, 908.7,  
22 908.10, and 908.10A, Code 1997, are amended by striking from  
23 the sections the words "administrative parole judge" and  
24 inserting in lieu thereof the words "administrative parole and  
25 probation judge".

26 Sec. 21. EFFECTIVE DATE. Sections 2 and 7 through 11 of  
27 this Act, being deemed of immediate importance, take effect  
28 upon enactment.

29 EXPLANATION

30 This bill makes a variety of changes relating to criminal  
31 justice. A new section 124.401C is created to provide for an  
32 additional penalty of five years of confinement for persons  
33 who manufacture methamphetamine, its salts, isomers, or salts  
34 of isomers, in the presence of a minor, in the residence of a  
35 minor, in a residence where minors can reasonably be expected

1 to be present, or in a room offered to the public for  
2 overnight accommodation.

3 Code section 657.2, which lists several items deemed to be  
4 nuisances, is amended to include violations of prohibitions  
5 against the rental or sale of hard-core pornography and  
6 prohibitions against public indecent exposure in certain  
7 establishments and the knowing dissemination or exhibition of  
8 obscene material to a minor from a place of business.

9 Code section 724.8 is amended to prohibit persons who are  
10 subjects of a restraining order or protective order from being  
11 eligible for professional or nonprofessional permits to carry  
12 weapons. Code section 724.13 is amended to require revocation  
13 of any permits if any of the conditions required for issuance  
14 of the permit have ceased to exist. Currently, revocation is  
15 discretionary on the part of the issuing officer. Code  
16 section 724.15 is amended to prohibit persons who are subjects  
17 of a restraining order or protective order from being eligible  
18 for an annual permit to own a pistol or revolver and to  
19 provide procedures for issuing officers to follow in  
20 invalidating permits.

21 The obscenity chapter, Code chapter 728, is amended to  
22 prohibit the exhibition or dissemination of hard-core  
23 pornography, in addition to the existing prohibition against  
24 the rental or sale of such pornography, and to prohibit any  
25 place of business which is required to obtain a sales tax  
26 permit to allow or permit, within the establishment, the  
27 actual or simulated public performance of any sex act; the  
28 exposure of genitals, buttocks, or female breasts of any  
29 waiter or waitress; the exposure of genitals or female breast  
30 nipples of any entertainer; persons who expose their genitals,  
31 pubic hair, or anus to remain within the establishment; or a  
32 minor to engage or perform in a live act in a manner intended  
33 to arouse or satisfy the sexual desires or prurient interests  
34 of patrons, to engage in simulated or actual performance of  
35 sex acts, or to expose their genitals, buttocks, female

1 breasts, pubic hair, or anus. The advertisement that any  
2 prohibited activity is permitted within the place of business  
3 is also prohibited. Holders of liquor licenses or beer  
4 permits or the owners, managers, or persons exercising direct  
5 control over licensed premises are also prohibited from  
6 allowing or permitting the display of moving pictures, films,  
7 or pictures depicting any sex act or displaying pubic hair,  
8 anus, or genitals upon or in the licensed premises.

9 Violations of the new requirements for businesses required to  
10 obtain sales tax permits will result in six-month suspensions  
11 of all permits and licenses issued as a prerequisite to doing  
12 business. The bill creates new Code section 728.16, which  
13 provides that persons who operate places of business in  
14 violation of the new requirements or who knowingly disseminate  
15 or exhibit obscene material to a minor are deemed to be  
16 operating a public nuisance under chapter 657. All of the new  
17 obscenity and public nuisance changes are effective upon  
18 enactment of this bill.

19 The bill creates new Code section 903B.1, which provides  
20 that persons who are convicted of certain enumerated "serious  
21 sex offenses" may, on a first conviction, and shall, on a  
22 second or subsequent conviction, be required to undergo  
23 hormonal intervention therapy by the court or board of parole.  
24 If the person has been confined, the treatment is to commence  
25 before the person is released. If the person was not confined  
26 at the time of sentencing, a plan for commencement of  
27 treatment is to be developed and included in the presentence  
28 investigation report. "Serious sex offenses" include sexual  
29 abuse in the first, second, or third degree, lascivious acts  
30 with a child, assault with intent to commit sexual abuse,  
31 sexual exploitation by a counselor, and sexual exploitation of  
32 a minor.

33 The bill authorizes probation supervision and revocation  
34 functions to be performed in the sixth judicial district by  
35 administrative parole and probation judges for persons for

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1 whom the court has suspended sentence. Under the provisions,  
2 the jurisdiction of the court over adults, and juveniles  
3 sentenced as adults, who have been granted probation,  
4 terminates once the conditions of probation are approved. All  
5 subsequent hearings regarding the probation are to be  
6 conducted by an administrative parole and probation judge who  
7 is to be appointed by the board of parole. If probation is  
8 transferred, jurisdiction over the person is also transferred  
9 to the sixth judicial district. For persons who received  
10 deferred judgments or sentences, jurisdiction remains with the  
11 court until a sentence is imposed or probation discharged.

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SENATE FILE 503

AN ACT

RELATING TO CRIMINAL JUSTICE, BY PROVIDING FOR ENHANCED PUNISHMENT FOR MANUFACTURING METHAMPHETAMINE IN THE PRESENCE OF MINORS, PROVIDING RESTRICTIONS ON PUBLIC NUDITY AND ACTUAL OR SIMULATED PUBLIC PERFORMANCE OF SEX ACTS IN CERTAIN ESTABLISHMENTS, AUTHORIZING PROBATION SUPERVISION AND REVOCATION BY ADMINISTRATIVE PAROLE AND PROBATION JUDGES IN THE SIXTH JUDICIAL DISTRICT, PROVIDING RESTITUTION FOR DEATH OF A VICTIM OF A CRIME, AND PROVIDING PENALTIES AND AN EFFECTIVE DATE.

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

Section 1. NEW SECTION. 124.401C MANUFACTURING METHAMPHETAMINE IN PRESENCE OF MINORS.

1. In addition to any other penalties provided in this chapter, a person who is eighteen years of age or older and who either directly or by extraction from natural substances, or independently by means of chemical processes, or both, unlawfully manufactures methamphetamine, its salts, isomers, and salts of its isomers in the presence of a minor shall be sentenced up to an additional term of confinement of five years.

2. For purposes of this section, the term "in the presence of a minor" shall mean, but is not limited to, any of the following:

- a. When a minor is physically present during the activity.
- b. When the activity is conducted in the residence of a minor.
- c. When the activity is conducted in a building where minors can reasonably be expected to be present.
- d. When the activity is conducted in a room offered to the public for overnight accommodation.

e. When the activity is conducted in any multiple-unit residential building.

Sec. 2. Section 728.1, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. "Place of business" means the premises of a business required to obtain a sales tax permit pursuant to chapter 422, the premises of a nonprofit or not-for-profit organization, and the premises of an establishment which is open to the public at large or where entrance is limited by a cover charge or membership requirement.

Sec. 3. Section 728.5, Code 1997, is amended to read as follows:

728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN ESTABLISHMENTS.

~~A holder of a liquor license or beer permit or any An~~ owner, manager, or person who exercises direct control over ~~any licensed premises defined in section 123-37, subsection 20~~ a place of business required to obtain a sales tax permit shall be guilty of a serious misdemeanor under any of the following circumstances:

1. If such person ~~allow~~ allows or ~~permit~~ permits the actual or simulated public performance of any sex act upon or in such ~~licensed premises~~ place of business.

2. If such person ~~allow~~ allows or ~~permit~~ permits the exposure of the genitals or buttocks or female breast of any person who acts as a waiter or waitress.

3. If such person ~~allow~~ allows or ~~permit~~ permits the exposure of the genitals or female breast nipple of any person who acts as an entertainer, whether or not the owner of the ~~licensed premises~~ place of business in which the activity is performed employs or pays any compensation to such person to perform such activity.

4. If such person ~~allow~~ allows or ~~permit~~ permits any person to remain in or upon the ~~licensed premises~~ place of business who exposes to public view the person's genitals, pubic hair, or anus.

~~5--If such person allow or permit the displaying of moving pictures, films, or pictures depicting any sex act or the display of the pubic hair, anus, or genitals upon or in such licensed premises.~~

6 5. If such person advertises that any activity prohibited by this section is allowed or permitted in such licensed premises place of business.

7 6. If such person allows or permits a minor to engage in or otherwise perform in a live act intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons. However, if such person allows or permits a minor to participate in any act included in subsections 1 through 4, the person shall be guilty of an aggravated misdemeanor.

~~Provided that the~~ The provisions of this section shall not apply to a theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances contained in this section were permitted or allowed as part of such art exhibits or performances.

Sec. 4. Section 728.8, Code 1997, is amended to read as follows:

728.8 SUSPENSION OF LICENSES OR PERMITS.

Any person who knowingly permits a violation of section 728.2, 728.3, or 728.5, subsection 7 6, to occur on premises under the person's control shall have all permits and licenses issued to the person under state or local law as a prerequisite for doing business on such premises revoked for a period of six months. The county attorney shall notify all agencies responsible for issuing licenses and permits of any conviction under section 728.2, 728.3, or 728.5, subsection 7 6.

Sec. 5. Section 907.2, unnumbered paragraph 2, Code 1997, is amended to read as follows:

Probation officers employed by the judicial district department of correctional services, while performing the

duties prescribed by that department, are peace officers. Probation officers shall investigate all persons referred to them for investigation by the director of the judicial district department of correctional services which employs them. They shall furnish to each person released under their supervision or committed to a community corrections residential facility operated by the judicial district department of correctional services, a written statement of the conditions of probation or commitment. They shall keep informed of each person's conduct and condition and shall use all suitable methods prescribed by the judicial district department of correctional services to aid and encourage the person to bring about improvements in the person's conduct and condition. Probation officers shall keep records of their work and, unless section 907.8A applies, shall make reports to the court when alleged violations occur and within no less than thirty days before the period of probation will expire. If section 907.8A applies, the probation officers shall make the reports of alleged violations to the administrative parole and probation judge within no less than thirty days before the period of probation will expire. Probation officers shall coordinate their work with other social welfare agencies which offer services of a corrective nature operating in the area to which they are assigned.

Sec. 6. Section 907.7, unnumbered paragraphs 1 and 2, Code 1997, are amended to read as follows:

The length of the probation shall be for such term as the court may shall fix but not to exceed five years if the offense is a felony or not to exceed two years if the offense is a misdemeanor.

The length of the probation shall not be less than one year if the offense is a misdemeanor and shall not be less than two years if the offense is a felony. However, the court or the administrative parole and probation judge, if section 907.8A applies, may subsequently reduce the length of the probation

if the court or the administrative parole and probation judge determines that the purposes of probation have been fulfilled. The purposes of probation are to provide maximum opportunity for the rehabilitation of the defendant and to protect the community from further offenses by the defendant and others.

Sec. 7. Section 907.8, unnumbered paragraph 3, Code 1997, is amended to read as follows:

Jurisdiction-of Except as otherwise provided in section 907.8A, the court shall retain jurisdiction over these persons shall-remain-with-the-sentencing-court. Jurisdiction may be transferred to a court in another jurisdiction, or to the administrative parole and probation judge under section 907.8A, if a person's probation supervision is transferred to a judicial district department of correctional services in a district other than the district in which the person was sentenced.

Sec. 8. NEW SECTION. 907.8A SIXTH JUDICIAL DISTRICT -- DETERMINATION OF ISSUES DURING PROBATIONARY PERIOD.

1. Except for those persons who are granted a deferred judgment or deferred sentence, for each adult, and each juvenile who has been prosecuted, convicted, and sentenced as an adult, who is released on probation by the court in the sixth judicial district, the jurisdiction of the sentencing court shall cease upon approval by the sentencing court of the conditions established by the judicial district department of correctional services. If a person is granted a deferred judgment or deferred sentence, jurisdiction shall be retained by the court.

2. All issues relating to whether the probationer has violated or fulfilled the terms and conditions of probation, including but not limited to express violations of a specific term of probation, new violations of the law, and changes of the term of probation as provided in sections 907.7, 908.11, and 910.4, which would otherwise be determined by the court, shall be determined instead by an administrative parole and

probation judge. The administrative parole and probation judge, who shall be an attorney, shall be appointed by the board of parole, notwithstanding chapter 17A. The costs of employing the administrative parole and probation judge shall be borne by the board of parole.

A probation hearing conducted by an administrative parole and probation judge shall be conducted in the same manner as hearings regarding revocations or modifications of or discharge from parole. The hearing may be conducted electronically. The probation officer shall notify the county attorney at least five days prior to any probation hearing. The interests of the state shall be represented by the probation officer at the probation hearing, unless the county attorney or the county attorney's designee elects to assist the probation officer. The board of parole, the department of corrections, and the clerk of the district court in the sixth judicial district shall devise and implement a system for the filing of documents and records of probation hearings conducted under this section. The system shall allow for the electronic filing of records and documents where electronic filing is practicable.

3. Appeals from orders of the administrative parole and probation judge which pertain to the revocations or modifications of or discharge from probation shall be conducted in the manner provided in rules adopted by the board of parole.

Sec. 9. Section 907.9, Code 1997, is amended to read as follows:

907.9 DISCHARGE FROM PROBATION.

1. At Except as otherwise provided in section 907.8A, at any time that the court determines that the purposes of probation have been fulfilled, the court may order the discharge of a person from probation.

2. At any time that a probation officer determines that the purposes of probation have been fulfilled, the officer may

order the discharge of a person from probation after approval of the district director, and notification of the sentencing court, the administrative parole and probation judge if section 907.8A applies, and the county attorney who prosecuted the case.

3. ~~The sentencing judge, unless the judge is no longer serving or is otherwise unable to, or, if section 907.8A applies, the administrative parole and probation judge,~~ may order a hearing on its own motion, or shall order a hearing upon the request of the county attorney, for review of such discharge. If the sentencing judge is no longer serving or unable to order such hearing, the chief judge of the district or the chief judge's designee shall order any hearing pursuant to this section, if section 907.8A does not apply. Following the hearing, the court or the administrative parole and probation judge shall approve or rescind such discharge. If a hearing is not ordered within thirty days after notification by the probation officer, the person shall be discharged and the probation officer shall notify the state court administrator of such discharge.

4. At the expiration of the period of probation, ~~in cases where the court fixes the term of probation,~~ the court or, if section 907.8A applies, the administrative parole and probation judge, shall order the discharge of the person from probation, and the court or administrative parole and probation judge shall forward to the governor a recommendation for or against restoration of citizenship rights to that person. A person who has been discharged from probation shall no longer be held to answer for the person's offense. Upon discharge from probation, if judgment has been deferred under section 907.3, the court's criminal record with reference to the deferred judgment shall be expunged. The record maintained by the state court administrator as required by section 907.4 shall not be expunged. The court's record shall not be expunged in any other circumstances.

5. A probation officer or the director of the judicial district department of correctional services who acts in compliance with this section is acting in the course of the person's official duty and is not personally liable, either civilly or criminally, for the acts of a person discharged from probation by the officer after such discharge, unless the discharge constitutes willful disregard of the person's duty.

Sec. 10. Section 908.11, Code 1997, is amended to read as follows:

908.11 VIOLATION OF PROBATION.

1. A probation officer or the judicial district department of correctional services having probable cause to believe that any person released on probation has violated the conditions of probation shall proceed by arrest or summons as in the case of a parole violation.

2. Except as otherwise provided in sections 907.8 and 907.8A, the functions of the liaison officer and the board of parole shall be performed by the judge or magistrate who placed the alleged violator on probation if that judge or magistrate is available, otherwise by another judge or magistrate who would have had jurisdiction to try the original offense.

3. If the probation officer proceeds by arrest and section 907.8A does not apply, any magistrate may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing if it is not convenient for the judge who placed the alleged violator on probation to do so. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may at the discretion of the court be merged into a single hearing when it appears that the alleged violator will not be prejudiced thereby by the merger.

4. If the person who is believed to have violated the conditions of probation was sentenced and placed on probation in the sixth judicial district under section 907.8A, or

jurisdiction over the person was transferred to the sixth judicial district as a result of transfer of the person's probation supervision, the functions of the liaison officer and the board of parole shall be performed by the administrative parole and probation judge as provided in section 907.8A.

5. If the probation officer proceeds by arrest and section 907.8A applies, the administrative parole and probation judge may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may, at the discretion of the administrative parole and probation judge, be merged into a single hearing when it appears that the alleged violator will not be prejudiced by the merger.

6. If the violation is established, the court or the administrative parole and probation judge may continue the probation with or without an alteration of the conditions of probation. If the defendant is an adult the court may hold the defendant in contempt of court and sentence the defendant to a jail term while continuing the probation, order the defendant to be placed in a violator facility established pursuant to section 904.207 while continuing the probation, or revoke the probation and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed. The administrative parole and probation judge may revoke the probation and require the defendant to serve the sentence which was originally imposed. The administrative parole and probation judge may grant credit against the sentence, for any time served while the defendant was on probation. The order of the administrative parole and probation judge shall become a final decision, unless the defendant appeals the decision to the board of parole within the time provided in rules adopted by the board. The appeal

shall be conducted pursuant to rules adopted by the board and the record on appeal shall be the record made at the hearing conducted by the administrative parole and probation judge.

Sec. 11. NEW SECTION. 910.3B RESTITUTION FOR DEATH OF VICTIM.

1. In all criminal cases in which the offender is convicted of a felony in which the act or acts committed by the offender caused the death of another person, in addition to the amount determined to be payable and ordered to be paid to a victim for pecuniary damages, as defined under section 910.1, and determined under section 910.3, the court shall also order the offender to pay at least one hundred fifty thousand dollars in restitution to the victim's estate. The obligation to pay the additional amount shall not be dischargeable in any proceeding under the federal Bankruptcy Act. Payment of the additional amount shall have the same priority as payment of a victim's pecuniary damages under section 910.2, in the offender's plan for restitution.

2. An award under this section does not preclude or supersede the right of a victim's estate to bring a civil action against the offender for damages arising out of the same facts or event. However, no evidence relating to the entry of the judgment against the offender pursuant to this section or the amount of the award ordered pursuant to this section, shall be permitted to be introduced in any civil action for damages arising out of the same facts or event.

3. An offender who is ordered to pay a victim's estate under this section is precluded from denying the elements of the felony offense which resulted in the order for payment in any subsequent civil action for damages arising out of the same facts or event.

Sec. 12. Sections 906.16, 908.4, 908.5, 908.6, 908.7, 908.10, and 908.10A, Code 1997, are amended by striking from the sections the words "administrative parole judge" and inserting in lieu thereof the words "administrative parole and probation judge".

Senate File 503, p. 11

Sec. 13. EFFECTIVE DATE. Sections 2 through 4 of this Act, being deemed of immediate importance, take effect upon enactment.

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MARY E. KRAMER  
President of the Senate

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RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 503, Seventy-seventh General Assembly.

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MARY PAT GUNDERSON  
Secretary of the Senate

Approved May 7, 1997

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TERRY E. BRANSTAD  
Governor