perform abatement measures. This section does not apply to a person performing the testing or abatement on a building which the person owns, or to a person performing testing or abatement without compensation.

4. For the purposes of this section, radon abatement systems shall be classified as mechanical ventilation systems.

Sec. 2. Section 136B.2, subsection 2, Code 1989, is amended to read as follows:

2. A person certified or credentialed pursuant to section 136B.1 shall, within thirty days of the provision of any radon testing services or abatement measures or at the request of the department prior to testing or abatement, disclose to the department the address or location of the building, the name of the owner of the building where the services or measures were or will be provided, and the results of any tests or abatement measures performed.

Sec. 3. Section 136B.3, Code 1989, is amended to read as follows:

136B.3 TESTING AND REPORTING OF RADON LEVEL.

The department shall from time to time perform inspections and testing of the premises of a property to determine the level at which it is contaminated with radon gas or radon progeny as a spot-check of the validity of measurements or the adequacy of abatement measures performed by persons certified or credentialed under section 136B.1. Following testing the department shall provide the owner of the property with a written report of its results including the concentration of radon gas or radon progeny contamination present, an interpretation of the results, and recommendation of appropriate action. A person certified or credentialed under section 136B.1 shall also be advised of the department's results, discrepancies revealed by the spot-check, actions required of the person, and actions the department intends to take with respect to the person's continued certification or credentialing.

Sec. 4. Section 136B.4, unnumbered paragraph 1, Code 1989, is amended to read as follows:

The department shall establish a fee schedule to defray the costs of the certification ~~program~~ and credentialing programs established pursuant to section 136B.1 and the testing conducted and the written reports provided pursuant to section 136B.3.

Approved May 26, 1989

CHAPTER 225

LAW ENFORCEMENT-RELATED PROGRAMS, INCLUDING SUBSTANCE ABUSE, YOUTH, INCOME TAX, AND COMMUNICATION INTERCEPTION PROGRAMS

H.F. 780

AN ACT relating to substance abuse treatment and narcotics law enforcement, making certain appropriations, providing penalties, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 80E.1 DRUG ENFORCEMENT AND ABUSE PREVENTION COORDINATOR.

1. A drug enforcement and abuse prevention coordinator shall be appointed by the governor, subject to confirmation by the senate, and shall serve at the pleasure of the governor. The governor shall fill a vacancy in the office in the same manner as the original appointment was made. The coordinator shall be selected primarily for administrative ability. The coordinator shall not be selected on the basis of political affiliation and shall not engage in political activity while holding the office. The salary of the coordinator shall be fixed by the governor.

2. The coordinator shall:

a. Coordinate and monitor all statewide narcotics enforcement efforts, coordinate and monitor all state and federal substance abuse treatment grants and programs, coordinate and monitor all statewide substance abuse prevention and education programs in communities and schools, and engage in such other related activities as required by law. The coordinator shall work in coordinating the efforts of the department of corrections, the department of education, the Iowa department of public health, the department of public safety, and the department of human services. The coordinator shall assist in the development and implementation of local and community strategies to fight substance abuse, including local law enforcement, education, and treatment activities.

b. Submit an annual report to the governor and general assembly by November 1 of each year concerning the activities and programs of the coordinator and other departments related to drug enforcement, substance abuse treatment programs, and substance abuse prevention and education programs. The report shall include an assessment of needs with respect to programs related to substance* treatment and narcotics enforcement.

c. Submit an advisory budget recommendation to the governor and general assembly concerning enforcement programs, treatment programs, and education programs related to drugs within the various departments. The coordinator shall work with these departments in developing the departmental budget requests to be submitted to the legislative fiscal bureau and the general assembly.

Sec. 2. NEW SECTION. 80E.2 DRUG ABUSE PREVENTION AND EDUCATION ADVISORY COUNCIL ESTABLISHED – MEMBERSHIP – DUTIES.

1. An Iowa drug abuse prevention and education advisory council is established which shall consist of the following nine members:

a. The drug enforcement and abuse prevention coordinator, who shall serve as chairperson of the council.

b. The director of the department of corrections, or the director's designee.

c. The director of the department of education, or the director's designee.

d. The director of the Iowa department of public health, or the director's designee.

e. The commissioner of public safety, or the commissioner's designee.

f. The director of the department of human services, or the director's designee.

g. A prosecuting attorney.

h. A licensed substance abuse treatment specialist.

i. A law enforcement officer.

The prosecuting attorney, licensed substance abuse treatment specialist, and law enforcement officer shall be appointed by the governor, subject to senate confirmation, for four-year terms beginning and ending as provided in section 69.19. A vacancy on the council shall be filled for the unexpired term in the same manner as the original appointment was made.

2. The council shall make policy recommendations to the appropriate departments concerning the administration, development, and coordination of programs related to substance abuse education, prevention, and treatment.

3. The members of the council shall be reimbursed for actual and necessary travel and related expenses incurred in the discharge of official duties. Each member of the council may also be eligible to receive compensation as provided in section 7E.6.

4. The council shall meet at least quarterly throughout the year.

5. A majority of the members of the council constitutes a quorum, and a majority of the total membership of the council is necessary to act in any matter within the jurisdiction of the council.

Sec. 3. NEW SECTION. 80E.3 NARCOTICS ENFORCEMENT ADVISORY COUNCIL.

1. An Iowa narcotics enforcement advisory council is established which shall consist of the following eight members:

a. The drug enforcement and abuse prevention coordinator who shall serve as chairperson.

b. Two members representing the Iowa association of chiefs of police and peace officers.

*Substance abuse probably intended

c. Two members representing the Iowa state policemen's association.

d. Two members representing the Iowa state sheriffs' and deputies' association.

e. The commissioner of public safety, or the commissioner's designee.

Members under paragraphs "b", "c", and "d" shall be appointed by the governor, subject to senate confirmation, for four-year terms beginning and ending as provided in section 69.19. These members shall not be serving as an officer within their respective associations at the time of appointment or at any time while serving on the advisory council. Appointments shall be made on the basis of experience, knowledge, and ability in the field of narcotics enforcement. A vacancy on the council shall be filled for the unexpired term in the same manner as the original appointment was made. No more than four members shall belong to the same political party. The members of the council shall be reimbursed for actual and necessary travel and related expenses incurred in the discharge of official duties. Each member of the council may also be eligible to receive compensation as provided in section 7E.6.

2. The council shall adopt rules pursuant to chapter 17A.

3. The council shall recommend policy for the operation and conduct of the narcotics enforcement division of the department of public safety.

4. The council shall recommend policy changes and alternatives to the drug abuse prevention and education advisory council established in section 80E.3.

5. A majority of the members of the council constitutes a quorum, and a majority of the total membership of the council is necessary to act in any matter within the jurisdiction of the council.

Sec. 4. There is appropriated from the general fund of the state to the office of the governor for the fiscal year commencing July 1, 1989, and ending June 30, 1990, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For salary, support, maintenance, and miscellaneous purposes of the drug enforcement and abuse prevention coordinator:

..... $ 50,000

Sec. 5. The governor's alliance on substance abuse, created pursuant to executive order number 32 and in accordance with the federal Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, is transferred from the Iowa department of public health to the drug enforcement and abuse prevention coordinator and shall be under the control and supervision of the coordinator. All state funds shall be transferred to the coordinator and the coordinator shall be responsible for the preparation of federal grant applications for specific grant programs under the federal Anti-Drug Abuse Act of 1986, and the implementation and monitoring of grant programs pursuant to regulations adopted pursuant to the federal Anti-Drug Abuse Act of 1986.

Sec. 6. Notwithstanding any other provisions of law, the treasurer of state before making allotments of the moneys within the Iowa plan fund pursuant to section 99E.32, subsection 1, for the fiscal year beginning July 1, 1989, shall transfer to the Iowa narcotics enforcement advisory council the following amount, to be used for the purposes designated:

For the administration of a drug enforcement training program for law enforcement officers, as defined in section 80B.3, subsection 3, including, but not limited to, training for the detection of gang and juvenile activity and the apprehension of gang members and juvenile delinquents, subject to the limitation that the council shall not pay for more than fifty percent of the cost of training of any officer, including salary and other benefits, with the remaining fifty percent to be paid by the law enforcement officer's local jurisdiction:

..... $ 300,000

As a condition, limitation, and qualification of this appropriation, the law enforcement officers to be trained under this program shall be selected by the Iowa narcotics enforcement advisory council in closed session. The record of the closed session is exempt from chapter 22. When the council has reached a decision, it shall convene in open meeting and announce such decision. No more than four law enforcement officers participating in this training shall be employed by law enforcement agencies located in the same county. The training program shall be for

a period of one year and an officer participating in this program shall perform, after receiving initial instruction and training at the law enforcement academy, duties as directed by the department of public safety within the narcotics enforcement division relating to the department's responsibility for the enforcement of all laws and rules relating to any controlled substance or counterfeit substance as provided in sections 80.27 through 80.34.

Sec. 7. There is appropriated from the general fund of the state to the office of the attorney general for the office of the prosecuting attorneys training coordinator for the fiscal year beginning July 1, 1989, and ending June 30, 1990, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For the development and administration of a drug enforcement and prosecution training program for prosecuting attorneys as defined in section 13A.1, subsection 4, and for not more than the following full-time equivalent positions:

.....	$	100,000
.....	FTEs	1.0

Sec. 8. There is appropriated from the general fund of the state to the department of public safety for the fiscal year beginning July 1, 1989, and ending June 30, 1990, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

1. For the division of narcotics for the salaries and support of the following additional full-time equivalent positions:

.....	$	839,680
.....	FTEs	14.0

As a condition, limitation, and qualification of this appropriation, the division shall employ an additional ten full-time special agents and an additional four full-time support/clerical staff.

2. For the division of criminal investigation and bureau of identification for equipment and salaries and support for the following additional full-time equivalent positions:

.....	$	153,288
.....	FTEs	4.0

As a condition, limitation, and qualification of this appropriation, the division shall employ an additional four full-time lab technicians for the criminalistic laboratory.

3. For the division of criminal investigation and bureau of identification, for the purchase and use of deoxyribonucleic acid recording equipment for purposes of DNA profiling, and not more than the following full-time equivalent positions:

.....	$	59,024
.....	FTEs	2.0

Sec. 9. There is appropriated from the general fund of the state to the department of corrections for the fiscal year beginning July 1, 1989, and ending June 30, 1990, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For substance abuse treatment programs within the correctional institutions and the community-based correctional programs:

.....	$	940,000

As a condition, limitation, and qualification of this appropriation, $91,000 shall be used for the licensed substance abuse programs at the correctional facilities at Clarinda and Mt. Pleasant for the employment of an additional three full-time counselors; $424,000 shall be used to provide staffing and support for twenty-five additional beds at the correctional facility at Newton for an intensive thirty-day substance abuse treatment program for parole and work release violators who have identified substance abuse problems, and for employment of four additional correctional officers, one additional transport officer, four additional counselors, and a half-time nurse; $425,000 shall be used for the expansion of the treatment alternatives to street crime program currently existing in the first, fifth, and sixth judicial district departments of correctional services and for developing this program in the remaining judicial district departments of correctional services; and the department of corrections in consultation with the division of substance abuse in the Iowa department of public health shall conduct an assessment

and evaluation of an attitude, motivation, and education program for offenders or ex-offenders, and submit a report of the findings of the assessment and evaluation to the general assembly on or before March 1, 1990.

Sec. 10. Section 123.46, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Upon the expiration of two years following conviction for a violation of this section, a person may petition the court to exonerate the person of the conviction, and if the person has had no other criminal convictions, other than simple misdemeanor violations of chapter 321 during the two-year period, the court shall order the person exonerated of the offense and the record expunged. Upon entry of an order exonerating the person of the conviction, the record of the conviction shall be expunged by the clerk of the district court.

Sec. 11. Section 204.401, subsections 1 and 2, Code 1989, are amended by striking the subsections and inserting in lieu thereof the following:

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance.

a. Violation of this subsection, with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "B" felony, and notwithstanding section 902.9, subsection 1, shall be punished by confinement for no more than fifty years and a fine of not more than one million dollars:

(1) More than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than five kilograms of a mixture or substance containing a detectable amount of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) More than fifty grams of a mixture or substance described in subparagraph 2 which contains cocaine base.

(4) More than one hundred grams of phencyclidine (PCP) or one kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) More than ten grams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD).

(6) More than one thousand kilograms of a mixture or substance containing a detectable amount of marijuana.

b. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "B" felony, and in addition to the provisions of section 902.9, subsection 1, shall be punished by a fine of not less than five thousand dollars nor more than one hundred thousand dollars:

(1) More than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than five hundred grams but not more than five kilograms of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) More than five grams but not more than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than ten grams but not more than one hundred grams of phencyclidine (PCP) or more than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) Not more than ten grams of lysergic acid diethylamide (LSD).

(6) More than one hundred kilograms but not more than one thousand kilograms of marijuana.

c. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "C" felony, and in addition to the provisions of section 902.9, subsection 3, shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars:

(1) One hundred grams or less of a mixture or substance containing a detectable amount of heroin.

(2) Five hundred grams or less of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) Five grams or less of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) Ten grams or less of phencyclidine (PCP) or one hundred grams or less of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) More than fifty kilograms but not more than one hundred kilograms of marijuana.

(6) Any other controlled substance, counterfeit substance, or simulated controlled substance classified in schedule I, II, or III.

d. Violations of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in schedule IV or V is an aggravated misdemeanor. However, violations of this subsection involving less than fifty kilograms of marijuana, is a class "D" felony, and in addition to the provisions of section 902.9, subsection 4, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars.

e. A person in the immediate possession or control of a firearm while participating in a violation of this subsection shall be sentenced to two times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

f. A person in the immediate possession or control of an offensive weapon, as defined in section 724.1, while participating in a violation of this subsection, shall be sentenced to three times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

2. If the same person commits two or more acts which are in violation of subsection 1 and the acts occur in approximately the same location or time period so that the acts can be attributed to a single scheme, plan, or conspiracy, the acts may be considered a single violation and the weight of the controlled substances, counterfeit substances, or simulated controlled substances involved may be combined for purposes of charging the offender.

Sec. 12. Section 204.406, Code 1989, is amended by striking the section and inserting in lieu thereof the following:

204.406 DISTRIBUTION TO PERSON UNDER AGE EIGHTEEN.

1. A person who is eighteen years of age or older who:

a. Unlawfully distributes a substance listed in schedule I or II, which is a narcotic or cocaine, to a person under eighteen years of age commits a class "B" felony and shall serve a minimum

term of confinement of five years. However, if the substance was distributed in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school, the person shall serve a minimum term of confinement of ten years.

b. Unlawfully distributes a controlled substance other than a narcotic or cocaine listed in schedule I, II, or III to a person under eighteen years of age who is at least three years younger than the violator commits a class "C" felony.

c. Unlawfully distributes a controlled substance listed in schedule IV or V to a person under eighteen years of age who is at least three years younger than the violator commits an aggravated misdemeanor.

2. A person who is eighteen years of age or older who:

a. Unlawfully distributes a counterfeit substance listed in schedule I or II which is a narcotic or cocaine, or a simulated controlled substance represented to be a narcotic or cocaine classified in schedule I or II, to a person under eighteen years of age commits a class "B" felony. However, if the substance was distributed in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school, the person shall serve a minimum term of confinement of ten years.

b. Unlawfully distributes a counterfeit substance other than a narcotic or cocaine listed in schedule I, II, or III, or a simulated controlled substance represented to be any substance listed in schedule I, II, or III, to a person under eighteen years of age who is at least three years younger than the violator commits a class "C" felony.

c. Unlawfully distributes a counterfeit substance listed in schedule IV or V, or a simulated controlled substance represented to be a substance listed in schedule IV or V, to a person under eighteen years of age who is at least three years younger than the violator commits an aggravated misdemeanor.

3. It is unlawful for a person to deliver a controlled substance to another person in order to act with, enter into a common scheme or design with, conspire with, or recruit the other person for the purpose of delivering a controlled substance to one or more persons under eighteen years of age. A person who violates this subsection with respect to a controlled substance classified in schedule I, II, III, IV, or V is guilty of a class "D" felony.

Sec. 13. Section 204.410, Code 1989, is amended to read as follows:

204.410 ACCOMMODATION OFFENSE.

In a prosecution for unlawful delivery or possession with intent to deliver marijuana, if the prosecution proves that the defendant violated the provisions of section 204.401, subsection 1, by proving that the defendant delivered or possessed with intent to deliver one ounce or less of marijuana, the defendant is guilty of an accommodation offense and rather than being sentenced as if convicted for a violation of section 204.401, subsection 1, paragraph ~~"b"~~ "d", shall be sentenced as if convicted of a violation of section 204.401, subsection 3. An accommodation offense may be proved as an included offense under a charge of delivering or possessing with the intent to deliver marijuana in violation of section 204.401, subsection 1. This section does not apply to hashish, hashish oil, or other derivatives of marijuana as defined in section 204.101, subsection 17.

Sec. 14. Section 204.413, unnumbered paragraph 1, Code 1989, is amended to read as follows:

A person sentenced pursuant to section 204.401, subsection 1, paragraph "a", ~~or~~ "b", "c", "e", or "f", shall not be eligible for parole until the person has served a minimum period of confinement of one-third of the maximum indeterminate sentence prescribed by law.

Sec. 15. NEW SECTION. 256.40 FINDINGS.

It is the intent of the general assembly that greater collaboration and coordination is necessary among state agencies in addressing the many challenges faced by Iowa in assuring the full development of the state's youth into the productive work force necessary for the twenty-first century. Public policy attention must be placed upon the needs of at-risk adolescents and adolescents in at-risk communities. Iowa youth are at risk of a variety of personal and social problems including drug abuse and dependency, adult criminal activities, school dropout, juvenile

delinquency, adolescent suicide, and adolescent pregnancy, all of which can lead to adult unemployment and welfare dependency. Approaches to such adolescent problems should be dealt with in a comprehensive and coordinated fashion that involves the family, schools, community programs serving youth, and the private sector in providing positive youth alternatives. The state should play a significant role in aiding in such collaborative efforts within local communities.

Sec. 16. NEW SECTION. 256.41 YOUTH 2000 COORDINATING COUNCIL CREATED.

A youth 2000 coordinating council is created within the department of education. The council consists of the following persons:

1. The director of the department of education, or the director's designee.
2. The administrator of the division of job training and entrepreneurship assistance of the department of economic development, or the administrator's designee.
3. The administrator of the division of children, youth and families in the department of human rights, or the administrator's designee.
4. The administrator of the division of substance abuse of the Iowa department of public health, or the administrator's designee.
5. The administrator of the division of criminal and juvenile justice planning in the department of human rights, or the administrator's designee.
6. The administrator of the division of children and youth programs within the department of human services, or the administrator's designee.
7. The president of the Iowa association of school boards, or the president's designee.
8. The president of the Iowa state education association, or the president's designee.
9. The drug enforcement and abuse prevention coordinator shall serve as an ex officio and nonvoting member.

Sec. 17. NEW SECTION. 256.42 COUNCIL RESPONSIBILITIES.

The youth 2000 coordinating council shall do all of the following:

1. Identify ways in which state agencies can coordinate the delivery of state services for youth within local communities, including ways in which local schools can coordinate services with other youth services programs.
2. Identify ways in which state policy should be modified to provide for greater collaboration in addressing youth problems and provide greater efficiency in meeting youth needs.
3. Identify program models for use in local communities for after school and summer youth employment efforts involving public-private partnerships to serve as alternatives to school dropout and drug use by youth.
4. Assist the department of education in providing oversight and assistance to the school-based youth services education program established pursuant to 1989 Iowa Acts, House File 535.
5. Subject to the availability of funds for this purpose, award community planning grants for collaborative efforts to establish local drug prevention and youth development programs.
6. Provide assistance to local communities and the Iowa department of public health in using substance abuse prevention funds available through federal and foundation funding sources.
7. Seek outside funding support for statewide and regional workshops and conferences on collaborative efforts to address youth problems.
8. Serve as a clearinghouse on collaborative efforts to provide youth development opportunities for at-risk youth and youth in at-risk communities.
9. Report annually to the governor on public policy options available in Iowa to reduce the use of drugs by Iowa's youth and to address other important youth issues.

Sec. 18. Section 422.7, subsection 12, paragraphs a, b, and c, and unnumbered paragraph 2, Code 1989, are amended by striking the paragraphs.

Sec. 19. Section 422.7, subsection 12, Code 1989, is amended by adding the following new paragraphs:

NEW PARAGRAPH. a. A handicapped individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has a physical or mental impairment which substantially limits one or more major life activities.

(2) Has a record of that impairment.

(3) Is regarded as having that impairment.

NEW PARAGRAPH. b. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 246, division IX.

NEW PARAGRAPH. c. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1 applies.

NEW UNNUMBERED PARAGRAPH. The amount of the additional deduction is equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs "a", "b", and "c" who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is allowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

Sec. 20. Section 422.35, subsection 6, unnumbered paragraph 1, and paragraphs a, b, and c, Code 1989, are amended by striking the paragraphs.

Sec. 21. Section 422.35, subsection 6, Code 1989, is amended by adding the following new paragraphs:

NEW UNNUMBERED PARAGRAPH. If the taxpayer is a small business corporation, subtract an amount equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs "a", "b", and "c" who were hired for the first time by the taxpayer during the tax year for work done in this state:

NEW PARAGRAPH. a. A handicapped individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has a physical or mental impairment which substantially limits one or more major life activities.

(2) Has a record of that impairment.

(3) Is regarded as having that impairment.

NEW PARAGRAPH. b. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 246, division IX.

NEW PARAGRAPH. c. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1 applies.

Sec. 22. NEW SECTION. 808B.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Aggrieved person" means a person who was a party to an intercepted wire communication or oral communication or a person against whom the interception was directed.

2. "Contents", when used with respect to a wire communication or oral communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purpose, or meaning of that communication.

3. "Court" means a district court in this state.

4. "Electronic, mechanical, or other device" means a device or apparatus which can be used to intercept a wire communication or oral communication other than either of the following:

a. A telephone or telegraph instrument, equipment, or facility, or any component of it which is either of the following:

(1) Furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of the subscriber's or user's business.

(2) Being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of the officer's duties.

b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal hearing.

5. "Intercept" or "interception" means the aural acquisition of the contents of a wire communication or oral communication through the use of an electronic, mechanical, or other device.

6. "Investigative or law enforcement officer" means a peace officer of this state or one of its political subdivisions or of the United States who is empowered by law to conduct investigations of or to make arrests for criminal offenses, the attorney general, or a county attorney authorized by law to prosecute or participate in the prosecution of criminal offenses.

7. "Oral communication" means an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception, under circumstances justifying that expectation.

8. "Special state agent" means a sworn peace officer member of the department of public safety.

9. "Wire communication" means a communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, furnished or operated by a person engaged as a common carrier in providing or operating the facilities for the transmission of communications.

Sec. 23. NEW SECTION. 808B.2 UNLAWFUL ACTS — PENALTY.

1. Except as otherwise specifically provided in this chapter, a person who does any of the following commits a class "D" felony:

a. Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, a wire communication or oral communication.

b. Willfully uses, endeavors to use, or procures any other person to use or endeavor to use an electronic, mechanical, or other device to intercept any oral communication when either of the following applies:

(1) The device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication.

(2) The device transmits communications by radio, or interferes with the transmission of radio communications.

c. Willfully discloses, or endeavors to disclose, to any other person the contents of a wire communication or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire communication or oral communication in violation of this subsection.

d. Willfully uses, or endeavors to use, the contents of a wire communication or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire communication or oral communication in violation of this subsection.

2. a. It is not unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a communications common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of employment while engaged in an activity which is a necessary incident to the

rendition of service or to the protection of the rights or property of the carrier of the communication. However, communications common carriers shall not use service observing or random monitoring except for mechanical or service quality control checks.

b. It is not unlawful under this chapter for a person acting under color of law to intercept a wire communication or oral communication, if the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

c. It is not unlawful under this chapter for a person not acting under color of law to intercept a wire communication or oral communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing a criminal or tortious act in violation of the Constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.

3. An operator of a switchboard, or an officer, employee, or agent of a communications common carrier, whose facilities are used in the transmission or interception of a wire or oral communication shall not disclose the existence of any transmission or interception or the device used to accomplish the transmission or interception with respect to a court order under this chapter, except as may otherwise be required by legal process or court order. Violation of this subsection is a class "D" felony.

Sec. 24. NEW SECTION. 808B.3 COURT ORDER FOR INTERCEPTION BY SPECIAL AGENTS.

The attorney general shall authorize and prepare any application for an order authorizing the interception of wire communications or oral communications. The attorney general may apply to any district court of this state, or request that the county attorney in the district where application is to be made deliver the application of the attorney general, for an order authorizing the interception of wire communications or oral communications, and the court may grant, subject to this chapter, an order authorizing the interception of wire communications or oral communications by special state agents having responsibility for the investigation of the offense as to which application is made, when the interception may provide or has provided evidence of the commission of felony offenses involving dealing in controlled substances, as defined in section 204.101, subsection 6.

Sec. 25. NEW SECTION. 808B.4 PERMISSIBLE DISCLOSURE AND USE.

1. A special state agent who, by any means authorized by this chapter, has obtained knowledge of the contents of a wire communication or oral communication, or has obtained evidence derived from a wire communication or oral communication, may disclose the contents to another investigative or law enforcement officer to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

2. An investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of a wire communication or oral communication or has obtained evidence derived from a wire communication or oral communication may use the contents to the extent the use is appropriate to the proper performance of the officer's official duties.

3. A person who has received, by any means authorized by this chapter, any information concerning a wire communication or oral communication, or evidence derived from a wire communication or oral communication intercepted in accordance with this chapter may disclose the contents of that communication or derivative evidence while giving testimony under oath or affirmation in a criminal proceeding in any court of the United States or of this state or in any federal or state grand jury proceeding.

4. An otherwise privileged wire communication or oral communication intercepted in accordance with, or in violation of, the provisions of this chapter does not lose its privileged character.

5. If a special state agent, while engaged in intercepting a wire communication or oral communication in the manner authorized, intercepts a communication relating to an offense other than those specified in the order of authorization, the contents of the communication, and the

evidence derived from the communication, may be disclosed or used as provided in subsections 1 and 2. The contents of and the evidence derived from the communication may be used under subsection 3 when authorized by a court if the court finds on subsequent petition that the contents were otherwise intercepted in accordance with this chapter. The petition shall be made as soon as practicable.

Sec. 26. NEW SECTION. 808B.5 APPLICATION AND ORDER.

1. An application for an order authorizing or approving the interception of a wire communication or oral communication shall be made in writing upon oath or affirmation to a court and shall state the applicant's authority to make the application. An application shall include the following information:

a. The identity of the special state agent requesting the application, the supervisory officer reviewing and approving the request, and the approval of the administrator of a division of the department of public safety under whose command the special state agent making the application is operating or the administrator's designee.

b. A full and complete statement of the facts and circumstances relied upon by the applicant to justify the belief that an order should be issued, including details as to the particular offense that has been, is being, or is about to be committed, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, a particular description of the type of communications sought to be intercepted, and the identity of the person, if known, committing the offense and whose communications are to be intercepted.

c. A full and complete statement as to whether other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

d. A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will subsequently occur.

e. A full and complete statement of the facts concerning all previous applications known to the individuals authorizing and making the application, made to any court for authorization to intercept, or for approval of interceptions of, wire communications or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the court on those applications.

f. If the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

2. The court may require the applicant to furnish additional testimony or documentary evidence in support of the application.

3. Upon application the court may enter an ex parte order, as requested or as modified, authorizing interception of wire communications or oral communications within the territorial jurisdiction of the court, if the court finds on the basis of the facts submitted by the applicant all of the following:

a. There is probable cause for belief that an individual is committing, has committed, or is about to commit a felony offense involving dealing in controlled substances, as defined in section 204.101, subsection 6.

b. There is probable cause for belief that particular communications concerning the offense will be obtained through the interception.

c. Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.

d. There is probable cause for belief that the facilities from which, or the place where, the wire communications or oral communications are to be intercepted are being used, or are about

to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted.

4. Each order authorizing the interception of a wire communication or oral communication shall specify all of the following:

a. The identity of the person, if known, whose communications are to be intercepted.

b. The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted.

c. A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which the communication relates.

d. The identity of the agency authorized to intercept the communications, and of the person requesting the application.

e. The period of time during which interception is authorized, including a statement as to whether the interception shall automatically terminate when the described communication has been first obtained.

5. Each order authorizing the interception of a wire communication or oral communication shall, upon request of the applicant, direct that a communications common carrier, landlord, custodian, or other person shall furnish to the applicant all information, facilities, and technical assistance necessary to accomplish the interception inconspicuously and with a minimum of interference with the services that the carrier, landlord, custodian, or person is giving to the person whose communications are to be intercepted. Any communications common carrier, landlord, custodian, or other person furnishing facilities or technical assistance shall be compensated by the applicant at the prevailing rates.

6. An order entered under this section shall not authorize the interception of a wire communication or oral communication for a period longer than is necessary to achieve the objective of the authorized interception, or in any event longer than thirty days. The thirty-day period shall commence on the date specified in the order upon which the commencement of the interception is authorized or ten days after the order is entered, whichever is earlier. An extension of an order may be granted, but only upon application for an extension made in accordance with subsection 1 and the court making the findings required by subsection 3. The period of extension shall be no longer than the authorizing court deems necessary to achieve the purposes for which it was granted and in no event longer than thirty days. Every order and its extension shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this section and sections 808B.1 through 808B.4, 808B.6, and 808B.7, and shall terminate upon attainment of the authorized objective, or in any event in thirty days.

7. If an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the court which issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. The reports shall be made at intervals as the court requires.

8. The contents of a wire communication or oral communication intercepted by a means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of a wire communication or oral communication under this subsection shall be done in a way which will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions of it, the recordings shall be made available to the court issuing the order and shall be sealed under the court's directions. Custody of the recordings shall be in accordance with the court order. Recordings shall be kept for five years and shall then be destroyed unless it is necessary to keep the recordings due to a continued legal process or court order, but the recordings shall not be kept for longer than ten years. Duplicate recordings may be made for disclosure or use pursuant to section 808B.4, subsections 1 and 2. The presence of a seal, or a satisfactory explanation for its absence, is a prerequisite for the disclosure or use of the contents of

a wire communication or oral communication or evidence derived from a communication under section 808B.4, subsection 3.

Applications made and orders granted under this chapter shall be sealed by the court. Custody of the applications and orders shall be in accordance with the directives of the court. The applications and orders shall be disclosed only upon a showing of good cause before a court and shall be kept for five years and shall then be destroyed unless it is necessary to keep the applications or orders due to a continued legal process or court order, but the applications and orders shall not be kept for longer than ten years.

A violation of this subsection may be punished as contempt of court.

9. Within a reasonable time, but not longer than ninety days, after the termination of the period of an order or its extensions, the court shall cause a notice to be served on all persons named in the order or the application which includes the following:

a. The names of other parties to intercepted communications if the court determines disclosure of the names to be in the interest of justice.

b. An inventory which shall include all of the following:

(1) The date of the application.

(2) The date of the entry of the court order and the period of authorized, approved, or disapproved interception, or the denial of the application.

(3) Whether, during the period, wire or oral communications were or were not intercepted.

The court, upon the filing of a motion by a person whose communications were intercepted, shall make available to the person or the person's attorney for inspection the intercepted communications, applications, and orders. On an ex parte showing of good cause to a court, the service of the inventory required by this subsection may be postponed.

10. The contents of an intercepted wire communication or oral communication or evidence derived from the wire communication or oral communication shall not be received in evidence or otherwise disclosed in a trial, hearing, or other proceeding in a federal or state court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized. This ten-day period may be waived by the court if it finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information. If the ten-day period is waived by the court, the court may grant a continuance, or enter such other order as it deems just under the circumstances.

11. An aggrieved person in a trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this state, may move to suppress the contents of an intercepted wire communication or oral communication, or evidence derived from the wire communication or oral communication, on the grounds that the communication was unlawfully intercepted, the order of authorization under which it was intercepted was insufficient on its face, or the interception was not made in conformity with the order of authorization. The motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire communication or oral communication, or evidence derived from the wire communication or oral communication, shall be treated as having been obtained in violation of this chapter.

12. An appeal by the attorney general from an order granting a motion to suppress or from the denial of an application for an order of approval shall be pursuant to section 814.5, subsection 2.

Sec. 27. NEW SECTION. 808B.6 REPORTS TO STATE COURT ADMINISTRATOR.

1. Within thirty days after the denial of an application or after the expiration of an order granting an application, or after an extension of an order, the court shall report to the state court administrator all of the following:

a. The fact that an order or extension was applied for.

b. The kind of order or extension applied for.

c. The fact that the order or extension was granted as applied for, was granted as modified, or that an application was denied.

d. The period of interceptions authorized by the order, and the number and duration of any extensions of the order.

e. The offense specified in the order or application, or extension of an order.

f. The identity of the prosecutor making the application and the court reviewing and approving the request.

g. The nature of the facilities from which or the place where communications were to be intercepted.

2. In January of each year, the attorney general and the county attorneys of this state shall report to the state court administrator and to the administrative offices of the United States district courts all of the following:

a. The fact that an order or extension was applied for.

b. The kind of order or extension applied for.

c. The fact that the order or extension was granted as applied for, was granted as modified, or that an application was denied.

d. The period of interceptions authorized by the order, and the number and duration of any extensions of the order.

e. The offense specified in the order or application, or extension of an order.

f. The nature of the facilities from which or the place where communications were to be intercepted.

g. A general description of the interceptions made under such order or extension, including:

(1) The approximate nature and frequency of incriminating communications intercepted.

(2) The approximate nature and frequency of other communications intercepted.

(3) The approximate number of persons whose communications were intercepted.

(4) The approximate nature, amount, and cost of personnel and other resources used in the interceptions.

h. The number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made.

i. The number of trials resulting from such interceptions.

j. The number of motions to suppress made with respect to such interceptions, and the number granted or denied.

k. The number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions.

l. The information required by paragraphs "b" through "f" with respect to orders or extensions obtained in a preceding calendar year and not yet reported.

m. Other information required by the rules of the administrative offices of the United States district courts.

3. In March of each year the state court administrator shall transmit to the general assembly a full and complete report concerning the number of applications for orders authorizing the interception of wire communications or oral communications and the number of applications, orders, and extensions granted or denied during the preceding calendar year. The report shall include a summary and analysis of the data required to be filed with the state court administrator by the attorney general, county attorneys, and the courts.

Sec. 28. NEW SECTION. 808B.7 CONTENTS OF INTERCEPTED WIRE OR ORAL COMMUNICATION AS EVIDENCE.

The contents or any part of the contents of an intercepted wire communication or oral communication and any evidence derived from the wire communication or oral communication shall not be received in evidence in a trial, hearing, or other proceeding in or before a court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a state, or political subdivision of a state if the disclosure of that information would be in violation of this chapter.

Sec. 29. NEW SECTION. 808B.8 CIVIL DAMAGES AUTHORIZED — CIVIL AND CRIMINAL IMMUNITY — INJUNCTIVE RELIEF.

1. A person whose wire communication or oral communication is intercepted, disclosed, or used in violation of this chapter shall:

a. Have a civil cause of action against any person who intercepts, discloses, or uses or procures any other person to intercept, disclose, or use such communications.

b. Be entitled to recover from any such person all of the following:

(1) Actual damages, but not less than liquidated damages computed at the rate of one hundred dollars a day for each day of violation, or one thousand dollars, whichever is higher.

(2) Punitive damages upon a finding of a willful, malicious, or reckless violation of this chapter.

(3) A reasonable attorney's fee and other litigation costs reasonably incurred.

2. A good faith reliance on a court order shall constitute a complete defense to any civil or criminal action brought under this chapter.

3. A person whose wire communication or oral communication is intercepted, disclosed, or used in violation of this chapter may seek an injunction, either temporary or permanent, against any person who violates this chapter.

Sec. 30. NEW SECTION. 808B.9 REPEAL.

This chapter is repealed effective July 1, 1994.

Sec. 31. The legislative council is requested to establish an interim study committee to study illegal drug activities in the state of Iowa and efforts to combat this growing problem. If established, the study committee shall study the appropriate aid to be provided to state and local law enforcement agencies for the apprehension of persons engaged in unlawful activities relating to drugs, the proper role for state government in coordinating these enforcement activities, the treatment of substance abusers, the relationship between the use of illegal drugs and the commission of criminal offenses not related to illegal drugs in Iowa, and other related matters. The study committee should report its findings and recommendations to the legislative council and the general assembly by January 15, 1990.

Sec. 32. Section 204.414, Code 1989, is repealed.

Sec. 33. Sections 18 through 21 of this Act apply retroactively to January 1, 1989, for tax years beginning on or after that date.

Sec. 34. Section 5 of this Act is effective July 1, 1990.

Approved May 26, 1989

CHAPTER 226

HARASSMENT

H.F. 672

AN ACT relating to harassment and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 708.7, Code 1989, is amended to read as follows:

708.7 HARASSMENT.

1. A person commits harassment when, with intent to intimidate, annoy or alarm another person, the person does any of the following:

~~1~~ a. Communicates with another by telephone, telegraph, or writing without legitimate purpose and in a manner likely to cause the other person annoyance or harm.