

Reprinted 3/79

FEB 16 1979

HOUSE FILE 368

Place On Calendar

By COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT

(Formerly House File 166)

Passed House, Date 3-2-79 (p. 150) Passed Senate, Date _____
Vote: Ayes 86 Nays 4 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to police activity in gathering evidence
2 which does not constitute the crime of solicitation.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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368

H-3275

HOUSE FILE 368

- 1 Amend House File 368 as follows:
- 2 1. Page 1, line 3, by striking the word
- 3 "employed" and inserting in lieu thereof the word
- 4 "employed".
- 5 2. Page 1, line 4, by striking the words "by
- 6 directed by" and inserting in lieu thereof the word
- 7 "by".
- 8 3. Page 1, line 11, by striking the first word
- 9 "the" and inserting in lieu thereof the words "the
- 10 an".

H-3275 FILED *Adopted 3/2 (p. 150)*
MARCH 1, 1979

BY PELTON of Clinton

JO 2/73

1 Section 1. Section seven hundred four point eleven
2 (704.11), Code 1979, is amended to read as follows:

3 704.11 POLICE ACTIVITY. A peace officer or person employed
4 by directed by any police agency who joins in the participation
5 of a crime by another person solely for the purpose of
6 gathering evidence leading to the prosecution of such other
7 person shall not be guilty of that crime or of the crime of
8 solicitation as set forth in section seven hundred five point
9 one (705.1) of the Code, provided that all of the following
10 are true:

- 3275- 11 1. He or she is not the instigator of the criminal
12 activity.
- 13 2. He or she does not intentionally injure a nonparticipant
14 in the crime.
- 15 3. He or she acts with the consent of ~~his-er-her~~ superiors,
16 or the necessity of immediate action precludes ~~his-er-her~~
17 obtaining such consent.
- 18 4. His or her actions are reasonable under the
19 circumstances.

20 Sec. 2. This Act, being deemed of immediate importance,
21 shall take effect from and after its publication in The Cedar
22 Rapids Gazette, a newspaper published in Cedar Rapids, Iowa,
23 and in the Telegraph Herald, a newspaper published in Dubuque,
24 Iowa.

25 EXPLANATION

26 The bill amends the provision of the criminal code dealing
27 with undercover agents to clarify when an agent is not
28 criminally responsible for the crime of solicitation.

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Judiciary
Ramsey, Chairperson
Kudart
Willits

3/7
No Pass per 3367
4/3 (p. 1066)

HOUSE FILE 368

By COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT

(As Amended and Passed by the House)

Passed House, Date 4-30-79 (p. 1910) Passed Senate, Date 4-17-79 (p. 1223)

Vote: Ayes 72 Nays 15 Vote: Ayes 32 Nays 10

Approved June 10, 1979

A BILL FOR

1 An Act relating to police activity in gathering evidence

2 which does not constitute the crime of solicitation.

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

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SENATE AMENDMENT TO HOUSE FILE 368

H-3991

1 Amend House File 368 as amended, passed and
2 reprinted by the House as follows:

3 1. Page 1, by striking lines 3 and 4 and inserting
4 in lieu thereof the following:

5 "704.11 POLICE ACTIVITY. A peace officer or
6 person employed-by acting as an agent of or directed
7 by any police agency who joins participates in the
8 participation commission of a crime".

9 2. Page 1, by inserting after line 18 the follow-
10 ing paragraph:

11 "This section is not intended to preclude
12 the use of undercover or surveillance persons by law
13 enforcement agencies in appropriate circumstances and
14 manner. It is intended to discourage such activity
15 to tempt, urge or persuade the commission of offenses
16 by persons not already disposed to commit offenses of
17 that kind."

18 3. Page 1, by striking lines 19 through 23.

H-3991 FILED
APRIL 19, 1979

RECEIVED FROM THE SENATE
House concurred 4/30 (p. 1910)

1 Section 1. Section seven hundred four point eleven
2 (704.11), Code 1979, is amended to read as follows:

3 704.11 POLICE ACTIVITY. A peace officer or person employed
4 by any police agency who joins in the participation of a crime
5 by another person solely for the purpose of gathering evidence
6 leading to the prosecution of such other person shall not
7 be guilty of that crime or of the crime of solicitation as
8 set forth in section seven hundred five point one (705.1)
9 of the Code, provided that all of the following are true:

- 10 1. He or she is not the an instigator of the criminal
- 11 activity.
- 3367-12 2. He or she does not intentionally injure a nonparticipant
- 13 in the crime.
- 14 3. He or she acts with the consent of ~~his-or-her~~ superiors,
- 15 or the necessity of immediate action precludes ~~his-or-her~~
- 16 obtaining such consent.
- 17 4. His or her actions are reasonable under the
- 18 circumstances.

19 Sec. 2. This Act, being deemed of immediate importance,
20 shall take effect from and after its publication in The Cedar
21 Rapids Gazette, a newspaper published in Cedar Rapids, Iowa,
22 and in the Telegraph Herald, a newspaper published in Dubuque,
23 Iowa.

24 EXPLANATION

25 The bill amends the provision of the criminal code dealing
26 with undercover agents to clarify when an agent is not
27 criminally responsible for the crime of solicitation.

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HOUSE FILE 368

S-3367

- 1 Amend House File 368 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 1, by striking lines 3 and 4 and inserting
4 in lieu thereof the following:
5 "704.11 POLICE ACTIVITY. A peace officer or
6 person employed-by acting as an agent of or directed
7 by any police agency who joins participates in the
8 ~~participation~~ commission of a crime".
9 2. Page 1, by striking line 12 and inserting in
10 lieu thereof the following:
11 "2. He or she does not intentionally with criminal
12 intent injure a nonparticipant".
13 3. Page 1, by inserting after line 18 the follow-
14 ing paragraph:
15 "This section is not intended to preclude
16 the use of undercover or surveillance persons by law
17 enforcement agencies in appropriate circumstances and
18 manner. It is intended to discourage such activity
19 to tempt, urge or persuade the commission of offenses
20 by persons not already disposed to commit offenses of
21 that kind."
22 4. Page 1, by striking lines 19 through 23.

S-3367 FILED - ^{amended} adopted 4/17 BY COMMITTEE ON JUDICIARY
APRIL 3, 1979 (p. 1222-3) LUCAS J. DeKOSTER, CHAIRPERSON
2 - Lost (p. 1223)