

Reprinted 3/26/86

MAR 12 1986  
Place On Calendar

HOUSE FILE 2460  
BY COMMITTEE ON JUDICIARY  
AND LAW ENFORCEMENT

(Formerly House Study Bill 674)

Passed House, Date 3-24-86 (p. 981) Passed Senate, Date 4-4-86 (p. 1050)  
Vote: Ayes 93 Nays 0 Vote: Ayes 46 Nays 0  
Approved April 28, 1986 (p. 1856)

A BILL FOR

- 1 An Act relating to the disposition of seizable and forfeitable
- 2 property, and providing penalties.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HOUSE FILE 2460

H-5513

- 1 Amend House File 2460 as follows:
- 2 1. Page 2, by inserting after line 19 the
- 3 following:
- 4 "4. The definitions contained in subsections 1
- 5 through 3 shall not apply to violations of chapter 321
- 6 or 321B."

H-5513 FILED MARCH 21, 1986  
*Adopted 3/24 (p. 981)*

BY PETERSON of Carroll

HF 2460

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1 Section 1. Section 80.39, subsection 1, Code Supplement  
2 1985, is amended to read as follows:

3 1. Personal property, except for ~~property-subject-to~~  
4 ~~forfeiture~~, motor vehicles subject to sale pursuant to section  
5 321.89, and seizable or forfeitable property subject to  
6 disposition pursuant to chapter 809A 809, which personal  
7 property is found or seized by, turned in to, or otherwise  
8 lawfully comes into the possession of the department of public  
9 safety and which the department does not own, shall be  
10 disposed of pursuant to this section. If by examining the  
11 property the owner or lawful custodian of the property is  
12 known or can be readily ascertained, the department shall  
13 notify the owner or custodian by certified mail directed to  
14 the owner's or custodian's last known address, as to the  
15 location of the property. If the identity or address of the  
16 owner cannot be determined, notice by one publication in a  
17 newspaper of general circulation in the area where the  
18 property was found is sufficient notice. Publication A  
19 published notice may contain multiple items.

20 Sec. 2. Section 602.8102, subsection 129, Code Supplement  
21 1985, is amended to read as follows:

22 129. Carry out duties relating to the disposition of  
23 seized property as provided in chapter 809A 809.

24 Sec. 3. NEW SECTION. 809.1 DEFINITIONS.

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

27 1. "Seizable property" means any of the following:

28 a. Property which is relevant in a criminal prosecution or  
29 investigation.

30 b. Property defined by law to be forfeitable property.

31 c. Property which if not seized by the state poses an  
32 imminent danger to a person's health, safety, or welfare.

33 2. "Forfeitable property" means any of the following:

34 a. Property which is illegally possessed.

35 b. Property which has been used or is intended to be used

1 to facilitate the commission of a criminal offense or to avoid  
2 detection or apprehension of a person committing a criminal  
3 offense.

4 c. Property which is acquired as or from the proceeds of a  
5 criminal offense.

6 d. Property offered or given to another as an inducement  
7 for the commission of a criminal offense.

8 3. "Seized property" means property taken or held by any  
9 law enforcement agency without the consent of the person, if  
10 any, who had possession or a right to possession of the  
11 property at the time it was taken into custody. Seized  
12 property does not include property taken into custody solely  
13 for safekeeping purposes or property taken into custody with  
14 the consent of the owner or the person who had possession at  
15 the time of the taking. If consent to the taking of property  
16 was given by the person in possession of the property and  
17 later withdrawn or found to be insufficient, the property  
18 shall then be returned or the property shall be deemed seized  
19 as of the time of the demand and refusal.

20 Sec. 4. NEW SECTION. 809.2 NOTICE OF SEIZURE.

21 The officer taking possession of seized property shall make  
22 a written inventory of the property and deliver a copy of the  
23 inventory to the person from whom it was seized. The  
24 inventory shall include the name of the person taking custody  
25 of the seized property, the date and time of the seizure, and  
26 the law enforcement agency seizing the property.

27 Sec. 5. NEW SECTION. 809.3 APPLICATION FOR RETURN OF  
28 SEIZED PROPERTY.

29 1. Any person claiming a right to immediate possession of  
30 seized property may make application for its return in the  
31 office of the clerk of court for the county in which the  
32 property was seized.

33 2. The application for the return of seized property shall  
34 state the specific item or items sought, the nature of the  
35 claimant's interest in the property, and the grounds upon

1 which the claimant seeks to have the property immediately  
2 returned. Mere ownership is insufficient as grounds for  
3 immediate return. The written application shall be specific  
4 and the claimant shall be limited at the judicial hearing to  
5 proof of the grounds set out in the application for immediate  
6 return. The fact that the property is inadmissible as  
7 evidence or that it may be suppressed is not grounds for its  
8 return. If no specific grounds are set out in the application  
9 for return, or the grounds set out are insufficient as a  
10 matter of law, the court may enter judgment on the pleadings  
11 without further hearing.

12 3. The claimant shall cause a copy of the application to  
13 be delivered to the county attorney.

14 Sec. 6. NEW SECTION. 809.4 HEARING -- APPEAL.

15 An application for the return of property shall be set for  
16 hearing not less than five nor more than thirty days after the  
17 filing of the application and shall be tried to the court.

18 All claims to the same property shall be heard in one  
19 proceeding unless it is shown that the proceeding would result  
20 in prejudice to one or more of the parties. If the total  
21 value of the property sought to be returned is less than five  
22 thousand dollars, the proceeding may be conducted by a  
23 magistrate or a district associate judge with appeal to be as  
24 in the case of small claims. In all other cases, the hearing  
25 shall be conducted by a district judge, with appeal as  
26 provided in section 809.12.

27 Sec. 7. NEW SECTION. 809.5 DISPOSITION OF SEIZED  
28 PROPERTY.

29 1. Seized property which is no longer required as evidence  
30 or for use in an investigation may be returned to the owner  
31 without the requirement of a hearing, provided that the  
32 person's possession of the property is not prohibited by law  
33 and there is no forfeiture claim filed on behalf of the state.  
34 The seizing agency or prosecuting attorney shall send notice  
35 by regular mail to the last known address of any person having

1 an ownership or possessory right in the property stating that  
2 the property is released and must be claimed within thirty  
3 days. Such notice shall state that if no written claim for  
4 the property is made upon the seizing agency within thirty  
5 days after the mailing of notice, the property shall be deemed  
6 abandoned and disposed of accordingly. In the event that  
7 there is more than one party who may assert a right to  
8 possession or ownership of the property, the seizing agency  
9 shall not release the property to any party until the  
10 expiration of the date for filing claims unless all other  
11 claimants execute a written waiver. In the event that there  
12 is more than one claim filed for the return of property under  
13 this section, at the expiration of the period for filing  
14 claims the seizing agency or prosecuting attorney shall file a  
15 copy of all such claims with the clerk of court and the clerk  
16 shall proceed as if such claims were filed by the parties  
17 under section 809.3. In the event that no owner can be  
18 located or no claim is filed under this section, the property  
19 shall be deemed abandoned and the seizing agency shall become  
20 the owner of such property and may dispose of it in any  
21 reasonable manner.

22 2. Upon the filing of a claim and following hearing by the  
23 court, property which has been seized shall be returned to the  
24 person who demonstrates a right to possession, unless one or  
25 more of the following is true:

26 a. The possession of the property by the claimant is pro-  
27 hibited by law.

28 b. There is a forfeiture notice on file and not disposed  
29 of in favor of the claimant prior to or in the same hearing.

30 c. The state has demonstrated that the evidence is needed  
31 in a criminal investigation or prosecution.

32 3. The court shall, subject to any unresolved forfeiture  
33 hearing, make orders appropriate to the final disposition of  
34 the property including, but not limited to, the destruction of  
35 contraband once it is no longer needed in an investigation or

1 prosecution.

2 Sec. 8. NEW SECTION. 809.6 FORFEITURE OF PROPERTY.

3 Title to and responsibility for forfeitable property vests  
4 in the state at the time of seizure. Once forfeitable  
5 property is seized, no right to the property may be  
6 transferred by anyone other than the state unless the seizure  
7 and forfeiture is declared by the court to be a nullity.  
8 Property which may not legally be possessed is forfeited to  
9 the state by its seizure without further filing of a notice of  
10 forfeiture.

11 Sec. 9. NEW SECTION. 809.7 SEIZURE OF FORFEITABLE  
12 PROPERTY.

13 Forfeitable property may be seized whenever and wherever  
14 the property is found within this state. Forfeitable property  
15 may be seized by a peace officer or county attorney or by the  
16 attorney general. Forfeitable property may be seized by  
17 taking custody of the property or by serving upon the person  
18 in possession of the property a notice of forfeiture. If the  
19 court finds that forfeiture to the state is warranted, an  
20 order transferring ownership to the state shall be entered and  
21 the property shall be delivered to the attorney general as the  
22 attorney general directs.

23 Property which has been seized for forfeiture, and is not  
24 already secured as evidence in a criminal case, shall be  
25 safely secured or stored by the agency which caused its  
26 seizure unless directed otherwise by the attorney general.

27 Sec. 10. NEW SECTION. 809.8 NOTICE OF FORFEITURE.

28 1. The county attorney or attorney general shall file with  
29 the clerk of the district court for the county in which the  
30 property was seized a notice of forfeiture setting forth a  
31 description of the property claimed to be forfeited to the  
32 state, the grounds upon which the state claims that the  
33 property has been forfeited, the date and place of seizure,  
34 and the name of the person from whom the property was seized.

35 2. The claim shall be filed not later than one year after

1 the date upon which the state learned that the property was  
2 forfeitable or not later than six months after the property  
3 was seized, whichever is later. Failure to file within that  
4 time terminates the state's right to claim a forfeiture of the  
5 property.

6 3. The state shall cause a copy of the notice of  
7 forfeiture to be delivered to all known persons affected by  
8 the forfeiture. Notice shall be by certified mail or by such  
9 method of service set out in division III of the rules of  
10 civil procedure.

11 Sec. 11. NEW SECTION. 809.9 CLAIM FOR RETURN OF  
12 FORFEITABLE PROPERTY.

13 1. A person claiming an ownership right in property  
14 claimed to be forfeited to the state may make application for  
15 its return in the office of the clerk of court for the county  
16 in which the property was seized. The application shall be  
17 filed within thirty days after the receipt of the notice of  
18 forfeiture, and failure to file the application within this  
19 time period terminates the interest of the person.

20 2. An application for the return of forfeitable property  
21 shall state the specific item or items sought, the nature and  
22 the source of the claimant's interest in the property, and the  
23 grounds upon which the claimant seeks to avoid forfeiture.  
24 The written application shall be specific and the claimant  
25 shall be limited at the judicial hearing to proof of the  
26 grounds set out in the application. The fact that the  
27 property is inadmissible as evidence or that it may be  
28 suppressed is not grounds for its return.

29 3. The claimant shall cause a copy of the application to  
30 be delivered to the attorney for the state.

31 Sec. 12. NEW SECTION. 809.10 HEARING -- CLERK'S ORDER.

32 1. If no application for the return of forfeitable  
33 property is timely made pursuant to section 809.9, upon  
34 application of the attorney for the state, the clerk shall  
35 enter an order transferring title to the state.

1     2. If an application for the return of forfeitable  
2 property is timely made pursuant to section 809.9, the claim  
3 shall be set for hearing and the hearing shall be held not  
4 less than five or more than thirty days after the filing of  
5 the claim and shall be tried to the court. All claims to the  
6 same property shall be heard in one proceeding unless it is  
7 shown that the proceeding would result in prejudice to one or  
8 more of the parties. If the total value of the property  
9 sought to be returned is less than five thousand dollars, the  
10 proceeding may be conducted by a magistrate or a district  
11 associate judge with appeal to be as in the case of small  
12 claims. In all other cases, the hearing shall be conducted by  
13 a district judge, with appeal as provided in section 809.12.

14     3. Upon a finding by the court that the property is  
15 forfeitable, the court shall enter an order transferring title  
16 to the property to the state.

17     Sec. 13. NEW SECTION. 809.11 PROCEDURES AT HEARING.

18     1. Forfeiture is a civil proceeding. At the hearing the  
19 burden is on the state to prove by a preponderance of the  
20 evidence that the property is forfeitable. However,  
21 forfeiture is not dependent upon a prosecution for, or  
22 conviction of, a criminal offense and forfeiture proceedings  
23 are separate and distinct from any related criminal action.

24     2. Court appointed counsel, at the state's expense, is not  
25 available in forfeiture proceedings. The attorney general or  
26 county attorney may represent the state in all forfeiture  
27 proceedings.

28     3. The costs for a forfeiture action shall be as in the  
29 case of criminal actions filed by the county attorney.  
30 However, no costs for filing shall be assessed in a proceeding  
31 where no claim for return has been made.

32     4. The court may assess costs against a losing party or  
33 apportion costs against the parties.

34     Sec. 14. NEW SECTION. 809.12 APPEALS.

35     1. An appeal from a judgment of seizure or forfeiture by a

1 district judge shall be made within thirty days after the  
2 entry of a judgment order. The appellant, other than the  
3 state, shall post a bond of a reasonable amount as the court  
4 may fix and approve, conditioned to pay all costs of the  
5 proceedings if the appellant is unsuccessful on appeal. The  
6 appellant, other than the state, may be required to post a  
7 supersedeas bond or other security, as the court finds to be  
8 reasonable, in order to stay the operation of a forfeiture  
9 order.

10 2. If property forfeitable under this chapter is needed as  
11 evidence in a criminal proceeding, it shall be retained under  
12 the control of the prosecuting attorney, or the prosecuting  
13 attorney's designee, until such time as its use as evidence is  
14 no longer required.

15 Sec. 15. NEW SECTION. 809.13 DISPOSITION OF FORFEITED  
16 PROPERTY.

17 1. Any person having control over forfeited property shall  
18 communicate that fact to the attorney general or the attorney  
19 general's designee.

20 2. Forfeited property not needed as evidence in a criminal  
21 case shall be delivered to the department of justice, or, upon  
22 written authorization of the attorney general or the attorney  
23 general's designee, the property may be destroyed, sold, or  
24 delivered to an appropriate agency for disposal in accordance  
25 with this section.

26 3. Forfeited property may be used by the department of  
27 justice in the enforcement of the criminal law. The  
28 department may give, sell, or trade property to any other  
29 state agency or to any other law enforcement agency within the  
30 state if, in the opinion of the attorney general, it will  
31 enhance law enforcement within the state.

32 4. Forfeited property which is not used by the department  
33 of justice in the enforcement of the law may be requisitioned  
34 by the department of public safety or any law enforcement  
35 agency within the state for use in enforcing the criminal laws

1 of this state. Forfeited property not requisitioned may be  
2 delivered to the director of the department of general  
3 services to be disposed of in the same manner as property  
4 received pursuant to section 18.15.

5 5. Notwithstanding subsection 1, 2, 3, or 4, forfeited  
6 property which is:

7 a. A controlled substance or a simulated, counterfeit, or  
8 imitation controlled substance shall be disposed of as  
9 provided in section 204.506.

10 b. A weapon or ammunition shall be deposited with the  
11 department of public safety to be disposed of in accordance  
12 with the rules of the department. All weapons or ammunition  
13 may be held for use in law enforcement, testing, or comparison  
14 by the criminalistics laboratory, or destroyed.

15 c. Material in violation of chapter 728 shall be  
16 destroyed.

17 d. Property subject to the rules of the conservation  
18 commission shall be delivered to that commission for disposal  
19 in accordance with its rules.

20 Sec. 16. NEW SECTION. 809.14 NONFORFEITABLE INTERESTS --  
21 PURCHASE OF FORFEITED INTERESTS.

22 1. Property shall not be forfeited under this chapter to  
23 the extent of the interest of an owner, other than a joint  
24 tenant, who had no part in the commission of the crime and who  
25 had no knowledge of the criminal use or intended use of the  
26 property. However, if it is established that the owner  
27 permitted the use of the property under circumstances in which  
28 a reasonable person should have inquired into the intended use  
29 of the property and that the owner failed to do so, there is a  
30 rebuttable presumption that the owner knew that the property  
31 was intended to be used in the commission of a crime.

32 2. Upon receipt of forfeited property the attorney general  
33 shall permit any owner or lienholder of record having a  
34 nonforfeitable property interest in the property the  
35 opportunity to purchase the property interest forfeited. If

1 the owner or lienholder does not exercise the option under  
2 this subsection within thirty days the option is terminated,  
3 unless the time for exercising the option is extended by the  
4 attorney general.

5 3. A person having a valid, recorded lien or property  
6 interest in forfeited property, which has not been repurchased  
7 pursuant to subsection 2, shall either be reimbursed to the  
8 extent of the nonforfeitable interest or to the extent that  
9 the sale of the item produces sufficient revenue to do so,  
10 whichever amount is less. The sale of forfeited property  
11 should be conducted in a manner which is commercially  
12 reasonable and calculated to provide a sufficient return to  
13 cover the costs of the sale and reimburse any nonforfeitable  
14 interest. The validity of a lien or property interest is  
15 determined as of the date upon which property becomes  
16 forfeitable.

17 4. This section does not preclude a civil suit by an owner  
18 of an interest in forfeited property against the party who, by  
19 criminal use, caused the property to become forfeited to the  
20 state.

21 Sec. 17. NEW SECTION. 809.15 COMBINING PROCEEDINGS.

22 In cases involving seized property and forfeitable  
23 property, the court may order that the proceedings be combined  
24 for purposes of this chapter.

25 Sec. 18. NEW SECTION. 809.16 RULEMAKING.

26 The attorney general may adopt, amend, or repeal rules  
27 pursuant to chapter 17A to carry out the provisions of this  
28 chapter.

29 Sec. 19. Chapters 127 and 809A, Code 1985 and Code  
30 Supplement 1985, and sections 204.505 and 204A.6, Code 1985,  
31 are repealed.

32 EXPLANATION

33 This bill modifies existing statutory law relating to the  
34 seizure and forfeiture of property related to criminal  
35 activity as follows:

1 Section 1 makes a corrective amendment to section 80.39 to  
2 acknowledge the enactment of the new chapter tentatively  
3 numbered 809.

4 Section 2 makes a corrective amendment to the duties of the  
5 clerk of court.

6 Sections 3 through 18 create a new chapter 809 relating to  
7 the seizure and forfeiture of property which:

8 1. Provides definitions for the terms "seizable property",  
9 "forfeitable property", and "seized property" as used in the  
10 new chapter.

11 2. Requires notice to be given upon the seizure of  
12 property.

13 3. Provides a system for applications for the return of  
14 seized property.

15 4. Sets out the procedures for hearings and appeals on  
16 seized property.

17 5. Provides a mechanism for the return of seized property.

18 6. Provides the procedure for the forfeiture of seized  
19 property.

20 7. Provides for the seizure of forfeitable property.

21 8. Requires notice to be given upon the seizure of for-  
22 feitable property.

23 9. Provides a system for applications for the return of  
24 forfeitable property.

25 10. Sets out the system of hearings and appeal on property  
26 forfeiture.

27 11. Provides the requirements relating to the disposition  
28 of forfeited property.

29 12. Provides for the disposition of nonforfeitable prop-  
30 erty rights and liens.

31 13. Allows the court to combine seizure and forfeiture ac-  
32 tions where appropriate.

33 14. Authorizes the attorney general to adopt rules neces-  
34 sary to carry out the provisions of the new chapter.

35 Section 19 repeals chapters and sections of the Code no  
36 longer necessary due to the provisions of the new chapter 809.

Sen. Judiciary 3/25 To Pass 3/28 (p. 933)

HOUSE FILE 2460  
BY COMMITTEE ON JUDICIARY  
AND LAW ENFORCEMENT

(As Amended and Passed by the House March 24, 1986)

Passed House, Date 4-10-86 (p. 1375) Passed Senate, Date 4-4-86 (p. 1054)  
Vote: Ayes 97 Nays 0 Vote: Ayes 76 Nays 0  
Approved April 28, 1986 (p. 1856)

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HOUSE FILE 2460

S-5513

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3 1. Page 4, line 2 by inserting after the word  
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5 is less than fifty dollars, or certified mail, if the  
6 value of the property is equal to or greater than  
7 fifty dollars."  
8 2. Page 6, by striking lines 26 through 28, and  
9 inserting the following: "The written application  
10 shall be specific and amendments to the application  
11 shall be liberally permitted, including an amendment  
12 to conform to proof at the close of all evidence. The  
13 fact that the". *Adopted 4/4 (A150)*

S-5513 Filed April 1, 1986

BY MANN

SENATE AMENDMENT TO HOUSE FILE 2460

H-5739

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H-5739 FILED APRIL 8, 1986

RECEIVED FROM THE SENATE

*House amendments 4/8 (p. 1374)*

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7 property is found or seized by, turned in to, or otherwise  
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10 disposed of pursuant to this section. If by examining the  
11 property the owner or lawful custodian of the property is  
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8 3. "Seized property" means property taken or held by any  
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10 any, who had possession or a right to possession of the  
11 property at the time it was taken into custody. Seized  
12 property does not include property taken into custody solely  
13 for safekeeping purposes or property taken into custody with  
14 the consent of the owner or the person who had possession at  
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16 was given by the person in possession of the property and  
17 later withdrawn or found to be insufficient, the property  
18 shall then be returned or the property shall be deemed seized  
19 as of the time of the demand and refusal.

20 4. The definitions contained in subsections 1 through 3  
21 shall not apply to violations of chapter 321 or 321B.

22 Sec. 4. NEW SECTION. 809.2 NOTICE OF SEIZURE.

23 The officer taking possession of seized property shall make  
24 a written inventory of the property and deliver a copy of the  
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35 2. The application for the return of seized property shall

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15 be delivered to the county attorney.

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20 All claims to the same property shall be heard in one  
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30 PROPERTY.

31 1. Seized property which is no longer required as evidence  
32 or for use in an investigation may be returned to the owner  
33 without the requirement of a hearing, provided that the  
34 person's possession of the property is not prohibited by law  
35 and there is no forfeiture claim filed on behalf of the state.

1 The seizing agency or prosecuting attorney shall send notice  
2 by regular mail to the last known address of any person having  
3 an ownership or possessory right in the property stating that  
4 the property is released and must be claimed within thirty  
5 days. Such notice shall state that if no written claim for  
6 the property is made upon the seizing agency within thirty  
7 days after the mailing of notice, the property shall be deemed  
8 abandoned and disposed of accordingly. In the event that  
9 there is more than one party who may assert a right to  
10 possession or ownership of the property, the seizing agency  
11 shall not release the property to any party until the  
12 expiration of the date for filing claims unless all other  
13 claimants execute a written waiver. In the event that there  
14 is more than one claim filed for the return of property under  
15 this section, at the expiration of the period for filing  
16 claims the seizing agency or prosecuting attorney shall file a  
17 copy of all such claims with the clerk of court and the clerk  
18 shall proceed as if such claims were filed by the parties  
19 under section 809.3. In the event that no owner can be  
20 located or no claim is filed under this section, the property  
21 shall be deemed abandoned and the seizing agency shall become  
22 the owner of such property and may dispose of it in any  
23 reasonable manner.

24 2. Upon the filing of a claim and following hearing by the  
25 court, property which has been seized shall be returned to the  
26 person who demonstrates a right to possession, unless one or  
27 more of the following is true:

28 a. The possession of the property by the claimant is pro-  
29 hibited by law.

30 b. There is a forfeiture notice on file and not disposed  
31 of in favor of the claimant prior to or in the same hearing.

32 c. The state has demonstrated that the evidence is needed  
33 in a criminal investigation or prosecution.

34 3. The court shall, subject to any unresolved forfeiture  
35 hearing, make orders appropriate to the final disposition of

1 the property including, but not limited to, the destruction of  
2 contraband once it is no longer needed in an investigation or  
3 prosecution.

4 Sec. 8. NEW SECTION. 809.6 FORFEITURE OF PROPERTY.

5 Title to and responsibility for forfeitable property vests  
6 in the state at the time of seizure. Once forfeitable  
7 property is seized, no right to the property may be  
8 transferred by anyone other than the state unless the seizure  
9 and forfeiture is declared by the court to be a nullity.  
10 Property which may not legally be possessed is forfeited to  
11 the state by its seizure without further filing of a notice of  
12 forfeiture.

13 Sec. 9. NEW SECTION. 809.7 SEIZURE OF FORFEITABLE  
14 PROPERTY.

15 Forfeitable property may be seized whenever and wherever  
16 the property is found within this state. Forfeitable property  
17 may be seized by a peace officer or county attorney or by the  
18 attorney general. Forfeitable property may be seized by  
19 taking custody of the property or by serving upon the person  
20 in possession of the property a notice of forfeiture. If the  
21 court finds that forfeiture to the state is warranted, an  
22 order transferring ownership to the state shall be entered and  
23 the property shall be delivered to the attorney general as the  
24 attorney general directs.

25 Property which has been seized for forfeiture, and is not  
26 already secured as evidence in a criminal case, shall be  
27 safely secured or stored by the agency which caused its  
28 seizure unless directed otherwise by the attorney general.

29 Sec. 10. NEW SECTION. 809.8 NOTICE OF FORFEITURE.

30 1. The county attorney or attorney general shall file with  
31 the clerk of the district court for the county in which the  
32 property was seized a notice of forfeiture setting forth a  
33 description of the property claimed to be forfeited to the  
34 state, the grounds upon which the state claims that the  
35 property has been forfeited, the date and place of seizure,

1 and the name of the person from whom the property was seized.

2     2. The claim shall be filed not later than one year after  
3 the date upon which the state learned that the property was  
4 forfeitable or not later than six months after the property  
5 was seized, whichever is later. Failure to file within that  
6 time terminates the state's right to claim a forfeiture of the  
7 property.

8     3. The state shall cause a copy of the notice of  
9 forfeiture to be delivered to all known persons affected by  
10 the forfeiture. Notice shall be by certified mail or by such  
11 method of service set out in division III of the rules of  
12 civil procedure.

13     Sec. 11. NEW SECTION. 809.9 CLAIM FOR RETURN OF  
14 FORFEITABLE PROPERTY.

15     1. A person claiming an ownership right in property  
16 claimed to be forfeited to the state may make application for  
17 its return in the office of the clerk of court for the county  
18 in which the property was seized. The application shall be  
19 filed within thirty days after the receipt of the notice of  
20 forfeiture, and failure to file the application within this  
21 time period terminates the interest of the person.

22     2. An application for the return of forfeitable property  
23 shall state the specific item or items sought, the nature and  
24 the source of the claimant's interest in the property, and the  
25 grounds upon which the claimant seeks to avoid forfeiture.  
26 The written application shall be specific and the claimant  
27 shall be limited at the judicial hearing to proof of the  
28 grounds set out in the application. The fact that the  
29 property is inadmissible as evidence or that it may be  
30 suppressed is not grounds for its return.

31     3. The claimant shall cause a copy of the application to  
32 be delivered to the attorney for the state.

33     Sec. 12. NEW SECTION. 809.10 HEARING -- CLERK'S ORDER.

34     1. If no application for the return of forfeitable  
35 property is timely made pursuant to section 809.9, upon

1 application of the attorney for the state, the clerk shall  
2 enter an order transferring title to the state.

3 2. If an application for the return of forfeitable  
4 property is timely made pursuant to section 809.9, the claim  
5 shall be set for hearing and the hearing shall be held not  
6 less than five or more than thirty days after the filing of  
7 the claim and shall be tried to the court. All claims to the  
8 same property shall be heard in one proceeding unless it is  
9 shown that the proceeding would result in prejudice to one or  
10 more of the parties. If the total value of the property  
11 sought to be returned is less than five thousand dollars, the  
12 proceeding may be conducted by a magistrate or a district  
13 associate judge with appeal to be as in the case of small  
14 claims. In all other cases, the hearing shall be conducted by  
15 a district judge, with appeal as provided in section 809.12.

16 3. Upon a finding by the court that the property is  
17 forfeitable, the court shall enter an order transferring title  
18 to the property to the state.

19 Sec. 13. NEW SECTION. 809.11 PROCEDURES AT HEARING.

20 1. Forfeiture is a civil proceeding. At the hearing the  
21 burden is on the state to prove by a preponderance of the  
22 evidence that the property is forfeitable. However,  
23 forfeiture is not dependent upon a prosecution for, or  
24 conviction of, a criminal offense and forfeiture proceedings  
25 are separate and distinct from any related criminal action.

26 2. Court appointed counsel, at the state's expense, is not  
27 available in forfeiture proceedings. The attorney general or  
28 county attorney may represent the state in all forfeiture  
29 proceedings.

30 3. The costs for a forfeiture action shall be as in the  
31 case of criminal actions filed by the county attorney.  
32 However, no costs for filing shall be assessed in a proceeding  
33 where no claim for return has been made.

34 4. The court may assess costs against a losing party or  
35 apportion costs against the parties.

1     Sec. 14. NEW SECTION. 809.12 APPEALS.

2     1. An appeal from a judgment of seizure or forfeiture by a  
3 district judge shall be made within thirty days after the  
4 entry of a judgment order. The appellant, other than the  
5 state, shall post a bond of a reasonable amount as the court  
6 may fix and approve, conditioned to pay all costs of the  
7 proceedings if the appellant is unsuccessful on appeal. The  
8 appellant, other than the state, may be required to post a  
9 supersedeas bond or other security, as the court finds to be  
10 reasonable, in order to stay the operation of a forfeiture  
11 order.

12    2. If property forfeitable under this chapter is needed as  
13 evidence in a criminal proceeding, it shall be retained under  
14 the control of the prosecuting attorney, or the prosecuting  
15 attorney's designee, until such time as its use as evidence is  
16 no longer required.

17     Sec. 15. NEW SECTION. 809.13 DISPOSITION OF FORFEITED  
18 PROPERTY.

19    1. Any person having control over forfeited property shall  
20 communicate that fact to the attorney general or the attorney  
21 general's designee.

22    2. Forfeited property not needed as evidence in a criminal  
23 case shall be delivered to the department of justice, or, upon  
24 written authorization of the attorney general or the attorney  
25 general's designee, the property may be destroyed, sold, or  
26 delivered to an appropriate agency for disposal in accordance  
27 with this section.

28    3. Forfeited property may be used by the department of  
29 justice in the enforcement of the criminal law. The  
30 department may give, sell, or trade property to any other  
31 state agency or to any other law enforcement agency within the  
32 state if, in the opinion of the attorney general, it will  
33 enhance law enforcement within the state.

34    4. Forfeited property which is not used by the department  
35 of justice in the enforcement of the law may be requisitioned

1 by the department of public safety or any law enforcement  
2 agency within the state for use in enforcing the criminal laws  
3 of this state. Forfeited property not requisitioned may be  
4 delivered to the director of the department of general  
5 services to be disposed of in the same manner as property  
6 received pursuant to section 18.15.

7 5. Notwithstanding subsection 1, 2, 3, or 4, forfeited  
8 property which is:

9 a. A controlled substance or a simulated, counterfeit, or  
10 imitation controlled substance shall be disposed of as  
11 provided in section 204.506.

12 b. A weapon or ammunition shall be deposited with the  
13 department of public safety to be disposed of in accordance  
14 with the rules of the department. All weapons or ammunition  
15 may be held for use in law enforcement, testing, or comparison  
16 by the criminalistics laboratory, or destroyed.

17 c. Material in violation of chapter 728 shall be  
18 destroyed.

19 d. Property subject to the rules of the conservation  
20 commission shall be delivered to that commission for disposal  
21 in accordance with its rules.

22 Sec. 16. NEW SECTION. 809.14 NONFORFEITABLE INTERESTS --  
23 PURCHASE OF FORFEITED INTERESTS.

24 1. Property shall not be forfeited under this chapter to  
25 the extent of the interest of an owner, other than a joint  
26 tenant, who had no part in the commission of the crime and who  
27 had no knowledge of the criminal use or intended use of the  
28 property. However, if it is established that the owner  
29 permitted the use of the property under circumstances in which  
30 a reasonable person should have inquired into the intended use  
31 of the property and that the owner failed to do so, there is a  
32 rebuttable presumption that the owner knew that the property  
33 was intended to be used in the commission of a crime.

34 2. Upon receipt of forfeited property the attorney general  
35 shall permit any owner or lienholder of record having a

1 nonforfeitable property interest in the property the  
2 opportunity to purchase the property interest forfeited. If  
3 the owner or lienholder does not exercise the option under  
4 this subsection within thirty days the option is terminated,  
5 unless the time for exercising the option is extended by the  
6 attorney general.

7 3. A person having a valid, recorded lien or property  
8 interest in forfeited property, which has not been repurchased  
9 pursuant to subsection 2, shall either be reimbursed to the  
10 extent of the nonforfeitable interest or to the extent that  
11 the sale of the item produces sufficient revenue to do so,  
12 whichever amount is less. The sale of forfeited property  
13 should be conducted in a manner which is commercially  
14 reasonable and calculated to provide a sufficient return to  
15 cover the costs of the sale and reimburse any nonforfeitable  
16 interest. The validity of a lien or property interest is  
17 determined as of the date upon which property becomes  
18 forfeitable.

19 4. This section does not preclude a civil suit by an owner  
20 of an interest in forfeited property against the party who, by  
21 criminal use, caused the property to become forfeited to the  
22 state.

23 Sec. 17. NEW SECTION. 809.15 COMBINING PROCEEDINGS.

24 In cases involving seized property and forfeitable  
25 property, the court may order that the proceedings be combined  
26 for purposes of this chapter.

27 Sec. 18. NEW SECTION. 809.16 RULEMAKING.

28 The attorney general may adopt, amend, or repeal rules  
29 pursuant to chapter 17A to carry out the provisions of this  
30 chapter.

31 Sec. 19. Chapters 127 and 809A, Code 1985 and Code  
32 Supplement 1985, and sections 204.505 and 204A.6, Code 1985,  
33 are repealed.

34

35

*now*  
*HF 2460*

HSB 674

Judiciary & Law Enforcement

HOUSE FILE 2460  
BY (PROPOSED COMMITTEE ON  
JUDICIARY AND LAW  
ENFORCEMENT BILL)

Study Bill 674

Judiciary and Law Enforcement: Peterson of Carroll, Chair; Hammond and McKean.

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

**A BILL FOR**

1 An Act relating to the disposition of seizable and forfeitable  
2 property, and providing penalties.

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

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1 Section 1. Section 80.39, subsection 1, Code Supplement  
2 1985, is amended to read as follows:

3 1. Personal property, except for property-subject-to  
4 forfeiture, motor vehicles subject to sale pursuant to section  
5 321.89, and seizable or forfeitable property subject to  
6 disposition pursuant to chapter 809A 809, which personal  
7 property is found or seized by, turned in to, or otherwise  
8 lawfully comes into the possession of the department of public  
9 safety and which the department does not own, shall be  
10 disposed of pursuant to this section. If by examining the  
11 property the owner or lawful custodian of the property is  
12 known or can be readily ascertained, the department shall  
13 notify the owner or custodian by certified mail directed to  
14 the owner's or custodian's last known address, as to the  
15 location of the property. If the identity or address of the  
16 owner cannot be determined, notice by one publication in a  
17 newspaper of general circulation in the area where the  
18 property was found is sufficient notice. Publication A  
19 published notice may contain multiple items.

20 Sec. 2. Section 602.8102, subsection 129, Code Supplement  
21 1985, is amended to read as follows:

22 129. Carry out duties relating to the disposition of  
23 seized property as provided in chapter 809A 809.

24 Sec. 3. NEW SECTION. 809.1 DEFINITIONS.

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

27 1. "Seizable property" means any of the following:

28 a. Property which is relevant in a criminal prosecution or  
29 investigation.

30 b. Property defined by law to be forfeitable property.

31 c. Property which if not seized by the state poses an  
32 imminent danger to a person's health, safety, or welfare.

33 2. "Forfeitable property" means any of the following:

34 a. Property which is illegally possessed.

35 b. Property which has been used or is intended to be used

1 to facilitate the commission of a criminal offense or to avoid  
2 detection or apprehension of a person committing a criminal  
3 offense.

4 c. Property which is acquired as or from the proceeds of a  
5 criminal offense.

6 d. Property offered or given to another as an inducement  
7 for the commission of a criminal offense.

8 3. "Seized property" means property taken or held by any  
9 law enforcement agency without the consent of the person, if  
10 any, who had possession or a right to possession of the  
11 property at the time it was taken into custody. Seized  
12 property does not include property taken into custody solely  
13 for safekeeping purposes or property taken into custody with  
14 the consent of the owner or the person who had possession at  
15 the time of the taking. If consent to the taking of property  
16 was given by the person in possession of the property and  
17 later withdrawn or found to be insufficient, the property  
18 shall then be returned or the property shall be deemed seized  
19 as of the time of the demand and refusal.

20 Sec. 4. NEW SECTION. 809.2 NOTICE OF SEIZURE.

21 The officer taking possession of seized property shall make  
22 a written inventory of the property and deliver a copy of the  
23 inventory to the person from whom it was seized. The  
24 inventory shall include the name of the person taking custody  
25 of the seized property, the date and time of the seizure, and  
26 the law enforcement agency seizing the property.

27 Sec. 5. NEW SECTION. 809.3 APPLICATION FOR RETURN OF  
28 SEIZED PROPERTY.

29 1. Any person claiming a right to immediate possession of  
30 seized property may make application for its return in the  
31 office of the clerk of court for the county in which the  
32 property was seized.

33 2. The application for the return of seized property shall  
34 state the specific item or items sought, the nature of the  
35 claimant's interest in the property, and the grounds upon

1 which the claimant seeks to have the property immediately  
2 returned. Mere ownership is insufficient as grounds for  
3 immediate return. The written application shall be specific  
4 and the claimant shall be limited at the judicial hearing to  
5 proof of the grounds set out in the application for immediate  
6 return. The fact that the property is inadmissible as  
7 evidence or that it may be suppressed is not grounds for its  
8 return. If no specific grounds are set out in the application  
9 for return, or the grounds set out are insufficient as a  
10 matter of law, the court may enter judgment on the pleadings  
11 without further hearing.

12 3. The claimant shall cause a copy of the application to  
13 be delivered to the county attorney.

14 Sec. 6. NEW SECTION. 809.4 HEARING -- APPEAL.

15 An application for the return of property shall be set for  
16 hearing not less than five nor more than thirty days after the  
17 filing of the application and shall be tried to the court.  
18 All claims to the same property shall be heard in one  
19 proceeding unless it is shown that the proceeding would result  
20 in prejudice to one or more of the parties. If the total  
21 value of the property sought to be returned is less than five  
22 thousand dollars, the proceeding may be conducted by a  
23 magistrate or a district associate judge with appeal to be as  
24 in the case of small claims. In all other cases, the hearing  
25 shall be conducted by a district judge, with appeal as  
26 provided in section 809.12.

27 Sec. 7. NEW SECTION. 809.5 DISPOSITION OF SEIZED  
28 PROPERTY.

29 1. Seized property which is no longer required as evidence  
30 or for use in an investigation may be returned to the owner  
31 without the requirement of a hearing, provided that the  
32 person's possession of the property is not prohibited by law  
33 and there is no forfeiture claim filed on behalf of the state.  
34 The seizing agency or prosecuting attorney shall send notice  
35 by regular mail to the last known address of any person having

1 an ownership or possessory right in the property stating that  
2 the property is released and must be claimed within thirty  
3 days. Such notice shall state that if no written claim for  
4 the property is made upon the seizing agency within thirty  
5 days after the mailing of notice, the property shall be deemed  
6 abandoned and disposed of accordingly. In the event that  
7 there is more than one party who may assert a right to  
8 possession or ownership of the property, the seizing agency  
9 shall not release the property to any party until the  
10 expiration of the date for filing claims unless all other  
11 claimants execute a written waiver. In the event that there  
12 is more than one claim filed for the return of property under  
13 this section, at the expiration of the period for filing  
14 claims the seizing agency or prosecuting attorney shall file a  
15 copy of all such claims with the clerk of court and the clerk  
16 shall proceed as if such claims were filed by the parties  
17 under section 809.3. In the event that no owner can be  
18 located or no claim is filed under this section, the property  
19 shall be deemed abandoned and the seizing agency shall become  
20 the owner of such property and may dispose of it in any  
21 reasonable manner.

22 2. Upon the filing of a claim and following hearing by the  
23 court, property which has been seized shall be returned to the  
24 person who demonstrates a right to possession, unless one or  
25 more of the following is true:

26 a. The possession of the property by the claimant is pro-  
27 hibited by law.

28 b. There is a forfeiture notice on file and not disposed  
29 of in favor of the claimant prior to or in the same hearing.

30 c. The state has demonstrated that the evidence is needed  
31 in a criminal investigation or prosecution.

32 3. The court shall, subject to any unresolved forfeiture  
33 hearing, make orders appropriate to the final disposition of  
34 the property including, but not limited to, the destruction of  
35 contraband once it is no longer needed in an investigation or

1 prosecution.

2 Sec. 8. NEW SECTION. 809.6 FORFEITURE OF PROPERTY.

3 Title to and responsibility for forfeitable property vests  
4 in the state at the time of seizure. Once forfeitable  
5 property is seized, no right to the property may be  
6 transferred by anyone other than the state unless the seizure  
7 and forfeiture is declared by the court to be a nullity.  
8 Property which may not legally be possessed is forfeited to  
9 the state by its seizure without further filing of a notice of  
10 forfeiture.

11 Sec. 9. NEW SECTION. 809.7 SEIZURE OF FORFEITABLE  
12 PROPERTY.

13 Forfeitable property may be seized whenever and wherever  
14 the property is found within this state. Forfeitable property  
15 may be seized by a peace officer or county attorney or by the  
16 attorney general. Forfeitable property may be seized by  
17 taking custody of the property or by serving upon the person  
18 in possession of the property a notice of forfeiture. If the  
19 court finds that forfeiture to the state is warranted, an  
20 order transferring ownership to the state shall be entered and  
21 the property shall be delivered to the attorney general as the  
22 attorney general directs.

23 Property which has been seized for forfeiture, and is not  
24 already secured as evidence in a criminal case, shall be  
25 safely secured or stored by the agency which caused its  
26 seizure unless directed otherwise by the attorney general.

27 Sec. 10. NEW SECTION. 809.8 NOTICE OF FORFEITURE.

28 1. The county attorney or attorney general shall file with  
29 the clerk of the district court for the county in which the  
30 property was seized a notice of forfeiture setting forth a  
31 description of the property claimed to be forfeited to the  
32 state, the grounds upon which the state claims that the  
33 property has been forfeited, the date and place of seizure,  
34 and the name of the person from whom the property was seized.

35 2. The claim shall be filed not later than one year after

1 the date upon which the state learned that the property was  
2 forfeitable or not later than six months after the property  
3 was seized, whichever is later. Failure to file within that  
4 time terminates the state's right to claim a forfeiture of the  
5 property.

6 3. The state shall cause a copy of the notice of  
7 forfeiture to be delivered to all known persons affected by  
8 the forfeiture. Notice shall be by certified mail or by such  
9 method of service set out in division III of the rules of  
10 civil procedure.

11 Sec. 11. NEW SECTION. 809.9 CLAIM FOR RETURN OF  
12 FORFEITABLE PROPERTY.

13 1. A person claiming an ownership right in property  
14 claimed to be forfeited to the state may make application for  
15 its return in the office of the clerk of court for the county  
16 in which the property was seized. The application shall be  
17 filed within thirty days after the receipt of the notice of  
18 forfeiture, and failure to file the application within this  
19 time period terminates the interest of the person.

20 2. An application for the return of forfeitable property  
21 shall state the specific item or items sought, the nature and  
22 the source of the claimant's interest in the property, and the  
23 grounds upon which the claimant seeks to avoid forfeiture.  
24 The written application shall be specific and the claimant  
25 shall be limited at the judicial hearing to proof of the  
26 grounds set out in the application. The fact that the  
27 property is inadmissible as evidence or that it may be  
28 suppressed is not grounds for its return.

29 3. The claimant shall cause a copy of the application to  
30 be delivered to the attorney for the state.

31 Sec. 12. NEW SECTION. 809.10 HEARING -- CLERK'S ORDER.

32 1. If no application for the return of forfeitable  
33 property is timely made pursuant to section 809.9, upon  
34 application of the attorney for the state, the clerk shall  
35 enter an order transferring title to the state.

1 2. If an application for the return of forfeitable  
2 property is timely made pursuant to section 809.9, the claim  
3 shall be set for hearing and the hearing shall be held not  
4 less than five or more than thirty days after the filing of  
5 the claim and shall be tried to the court. All claims to the  
6 same property shall be heard in one proceeding unless it is  
7 shown that the proceeding would result in prejudice to one or  
8 more of the parties. If the total value of the property  
9 sought to be returned is less than five thousand dollars, the  
10 proceeding may be conducted by a magistrate or a district  
11 associate judge with appeal to be as in the case of small  
12 claims. In all other cases, the hearing shall be conducted by  
13 a district judge, with appeal as provided in section 809.12.

14 3. Upon a finding by the court that the property is  
15 forfeitable, the court shall enter an order transferring title  
16 to the property to the state.

17 Sec. 13. NEW SECTION. 809.11 PROCEDURES AT HEARING.

18 1. Forfeiture is a civil proceeding. At the hearing the  
19 burden is on the state to prove by a preponderance of the  
20 evidence that the property is forfeitable. However,  
21 forfeiture is not dependent upon a prosecution for, or  
22 conviction of, a criminal offense and forfeiture proceedings  
23 are separate and distinct from any related criminal action.

24 2. Court appointed counsel, at the state's expense, is not  
25 available in forfeiture proceedings. The attorney general or  
26 county attorney may represent the state in all forfeiture  
27 proceedings.

28 3. The costs for a forfeiture action shall be as in the  
29 case of criminal actions filed by the county attorney.  
30 However, no costs for filing shall be assessed in a proceeding  
31 where no claim for return has been made.

32 4. The court may assess costs against a losing party or  
33 apportion costs against the parties.

34 Sec. 14. NEW SECTION. 809.12 APPEALS.

35 1. An appeal from a judgment of seizure or forfeiture by a

1 district judge shall be made within thirty days after the  
2 entry of a judgment order. The appellant, other than the  
3 state, shall post a bond of a reasonable amount as the court  
4 may fix and approve, conditioned to pay all costs of the  
5 proceedings if the appellant is unsuccessful on appeal. The  
6 appellant, other than the state, may be required to post a  
7 supersedeas bond or other security, as the court finds to be  
8 reasonable, in order to stay the operation of a forfeiture  
9 order.

10 2. If property forfeitable under this chapter is needed as  
11 evidence in a criminal proceeding, it shall be retained under  
12 the control of the prosecuting attorney, or the prosecuting  
13 attorney's designee, until such time as its use as evidence is  
14 no longer required.

15 Sec. 15. NEW SECTION. 809.13 DISPOSITION OF FORFEITED  
16 PROPERTY.

17 1. Any person having control over forfeited property shall  
18 communicate that fact to the attorney general or the attorney  
19 general's designee.

20 2. Forfeited property not needed as evidence in a criminal  
21 case shall be delivered to the department of justice, or, upon  
22 written authorization of the attorney general or the attorney  
23 general's designee, the property may be destroyed, sold, or  
24 delivered to an appropriate agency for disposal in accordance  
25 with this section.

26 3. Forfeited property may be used by the department of  
27 justice in the enforcement of the criminal law. The  
28 department may give, sell, or trade property to any other  
29 state agency or to any other law enforcement agency within the  
30 state if, in the opinion of the attorney general, it will  
31 enhance law enforcement within the state.

32 4. Forfeited property which is not used by the department  
33 of justice in the enforcement of the law may be requisitioned  
34 by the department of public safety or any law enforcement  
35 agency within the state for use in enforcing the criminal laws

1 of this state. Forfeited property not requisitioned may be  
2 delivered to the director of the department of general  
3 services to be disposed of in the same manner as property  
4 received pursuant to section 18.15.

5 5. Notwithstanding subsection 1, 2, 3, or 4, forfeited  
6 property which is:

7 a. A controlled substance or a simulated, counterfeit, or  
8 imitation controlled substance shall be disposed of as  
9 provided in section 204.506.

10 b. A weapon or ammunition shall be deposited with the  
11 department of public safety to be disposed of in accordance  
12 with the rules of the department. All weapons or ammunition  
13 may be held for use in law enforcement, testing, or comparison  
14 by the criminalistics laboratory, or destroyed.

15 c. Material in violation of chapter 728 shall be  
16 destroyed.

17 d. Property subject to the rules of the conservation  
18 commission shall be delivered to that commission for disposal  
19 in accordance with its rules.

20 Sec. 16. NEW SECTION. 809.14 NONFORFEITABLE INTERESTS --  
21 PURCHASE OF FORFEITED INTERESTS.

22 1. Property shall not be forfeited under this chapter to  
23 the extent of the interest of an owner, other than a joint  
24 tenant, who had no part in the commission of the crime and who  
25 had no knowledge of the criminal use or intended use of the  
26 property. However, if it is established that the owner  
27 permitted the use of the property under circumstances in which  
28 a reasonable person should have inquired into the intended use  
29 of the property and that the owner failed to do so, there is a  
30 rebuttable presumption that the owner knew that the property  
31 was intended to be used in the commission of a crime.

32 2. Upon receipt of forfeited property the attorney general  
33 shall permit any owner or lienholder of record having a  
34 nonforfeitable property interest in the property the  
35 opportunity to purchase the property interest forfeited. If

1 the owner or lienholder does not exercise the option under  
2 this subsection within thirty days the option is terminated,  
3 unless the time for exercising the option is extended by the  
4 attorney general.

5 3. A person having a valid, recorded lien or property  
6 interest in forfeited property, which has not been repurchased  
7 pursuant to subsection 2, shall either be reimbursed to the  
8 extent of the nonforfeitable interest or to the extent that  
9 the sale of the item produces sufficient revenue to do so,  
10 whichever amount is less. The sale of forfeited property  
11 should be conducted in a manner which is commercially  
12 reasonable and calculated to provide a sufficient return to  
13 cover the costs of the sale and reimburse any nonforfeitable  
14 interest. The validity of a lien or property interest is  
15 determined as of the date upon which property becomes  
16 forfeitable.

17 4. This section does not preclude a civil suit by an owner  
18 of an interest in forfeited property against the party who, by  
19 criminal use, caused the property to become forfeited to the  
20 state.

21 Sec. 17. NEW SECTION. 809.15 COMBINING PROCEEDINGS.

22 In cases involving seized property and forfeitable  
23 property, the court may order that the proceedings be combined  
24 for purposes of this chapter.

25 Sec. 18. NEW SECTION. 809.16 RULEMAKING.

26 The attorney general may adopt, amend, or repeal rules  
27 pursuant to chapter 17A to carry out the provisions of this  
28 chapter.

29 Sec. 19. Chapters 127 and 809A, Code 1985 and Code  
30 Supplement 1985, and sections 204.505 and 204A.6, Code 1985,  
31 are repealed.

32 EXPLANATION

33 This bill modifies existing statutory law relating to the  
34 seizure and forfeiture of property related to criminal  
35 activity as follows:

1 Section 1 makes a corrective amendment to section 80.39 to  
2 acknowledge the enactment of the new chapter tentatively  
3 numbered 809.

4 Section 2 makes a corrective amendment to the duties of the  
5 clerk of court.

6 Sections 3 through 18 create a new chapter 809 relating to  
7 the seizure and forfeiture of property which:

8 1. Provides definitions for the terms "seizable property",  
9 "forfeitable property", and "seized property" as used in the  
10 new chapter.

11 2. Requires notice to be given upon the seizure of  
12 property.

13 3. Provides a system for applications for the return of  
14 seized property.

15 4. Sets out the procedures for hearings and appeals on  
16 seized property.

17 5. Provides a mechanism for the return of seized property.

18 6. Provides the procedure for the forfeiture of seized  
19 property.

20 7. Provides for the seizure of forfeitable property.

21 8. Requires notice to be given upon the seizure of for-  
22 feitable property.

23 9. Provides a system for applications for the return of  
24 forfeitable property.

25 10. Sets out the system of hearings and appeal on property  
26 forfeiture.

27 11. Provides the requirements relating to the disposition  
28 of forfeited property.

29 12. Provides for the disposition of nonforfeitable prop-  
30 erty rights and liens.

31 13. Allows the court to combine seizure and forfeiture ac-  
32 tions where appropriate.

33 14. Authorizes the attorney general to adopt rules neces-  
34 sary to carry out the provisions of the new chapter.

35 Section 19 repeals chapters and sections of the Code no  
36 longer necessary due to the provisions of the new chapter 809.

HOUSE FILE 2460

AN ACT  
RELATING TO THE DISPOSITION OF SEIZABLE AND FORFEITABLE PROP-  
ERTY, AND PROVIDING PENALTIES.

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

Section 1. Section 80.39, subsection 1, Code Supplement 1985, is amended to read as follows:

1. Personal property, except for property ~~subject to forfeiture~~, motor vehicles subject to sale pursuant to section 321.89, and seizeable or forfeitable property subject to disposition pursuant to chapter 809A 809, which personal property is found or seized by, turned in to, or otherwise lawfully comes into the possession of the department of public safety and which the department does not own, shall be disposed of pursuant to this section. If by examining the property the owner or lawful custodian of the property is known or can be readily ascertained, the department shall notify the owner or custodian by certified mail directed to the owner's or custodian's last known address, as to the location of the property. If the identity or address of the owner cannot be determined, notice by one publication in a newspaper of general circulation in the area where the property was found is sufficient notice. Publication a published notice may contain multiple items.

Sec. 2. Section 602.8102, subsection 129, Code Supplement 1985, is amended to read as follows:

129. Carry out duties relating to the disposition of seized property as provided in chapter 809A 809.

Sec. 3. NEW SECTION. 809.1 DEFINITIONS.

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

1. "Seizable property" means any of the following:
  - a. Property which is relevant in a criminal prosecution or investigation.
  - b. Property defined by law to be forfeitable property.
  - c. Property which if not seized by the state poses an imminent danger to a person's health, safety, or welfare.
2. "Forfeitable property" means any of the following:
  - a. Property which is illegally possessed.
  - b. Property which has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense.
  - c. Property which is acquired as or from the proceeds of a criminal offense.
  - d. Property offered or given to another as an inducement for the commission of a criminal offense.
3. "Seized property" means property taken or held by any law enforcement agency without the consent of the person, if any, who had possession or a right to possession of the property at the time it was taken into custody. Seized property does not include property taken into custody solely for safekeeping purposes or property taken into custody with the consent of the owner or the person who had possession at the time of the taking. If consent to the taking of property was given by the person in possession of the property and later withdrawn or found to be insufficient, the property shall then be returned or the property shall be deemed seized as of the time of the demand and refusal.

4. The definitions contained in subsections 1 through 3 shall not apply to violations of chapter 321 or 321B.

Sec. 4. NEW SECTION. 809.2 NOTICE OF SEIZURE.

The officer taking possession of seized property shall make a written inventory of the property and deliver a copy of the inventory to the person from whom it was seized. The inventory shall include the name of the person taking custody

of the seized property, the date and time of the seizure, and the law enforcement agency seizing the property.

Sec. 5. NEW SECTION. 809.3 APPLICATION FOR RETURN OF SEIZED PROPERTY.

1. Any person claiming a right to immediate possession of seized property may make application for its return in the office of the clerk of court for the county in which the property was seized.

2. The application for the return of seized property shall state the specific item or items sought, the nature of the claimant's interest in the property, and the grounds upon which the claimant seeks to have the property immediately returned. Mere ownership is insufficient as grounds for immediate return. The written application shall be specific and the claimant shall be limited at the judicial hearing to proof of the grounds set out in the application for immediate return. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return. If no specific grounds are set out in the application for return, or the grounds set out are insufficient as a matter of law, the court may enter judgment on the pleadings without further hearing.

3. The claimant shall cause a copy of the application to be delivered to the county attorney.

Sec. 6. NEW SECTION. 809.4 HEARING -- APPEAL.

An application for the return of property shall be set for hearing not less than five nor more than thirty days after the filing of the application and shall be tried to the court. All claims to the same property shall be heard in one proceeding unless it is shown that the proceeding would result in prejudice to one or more of the parties. If the total value of the property sought to be returned is less than five thousand dollars, the proceeding may be conducted by a magistrate or a district associate judge with appeal to be as in the case of small claims. In all other cases, the hearing

shall be conducted by a district judge, with appeal as provided in section 809.12.

Sec. 7. NEW SECTION. 809.5 DISPOSITION OF SEIZED PROPERTY.

1. Seized property which is no longer required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, provided that the person's possession of the property is not prohibited by law and there is no forfeiture claim filed on behalf of the state. The seizing agency or prosecuting attorney shall send notice by regular mail, if the value of the property is less than fifty dollars, or certified mail, if the value of the property is equal to or greater than fifty dollars, to the last known address of any person having an ownership or possessory right in the property stating that the property is released and must be claimed within thirty days. Such notice shall state that if no written claim for the property is made upon the seizing agency within thirty days after the mailing of notice, the property shall be deemed abandoned and disposed of accordingly. In the event that there is more than one party who may assert a right to possession or ownership of the property, the seizing agency shall not release the property to any party until the expiration of the date for filing claims unless all other claimants execute a written waiver. In the event that there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency or prosecuting attorney shall file a copy of all such claims with the clerk of court and the clerk shall proceed as if such claims were filed by the parties under section 809.3. In the event that no owner can be located or no claim is filed under this section, the property shall be deemed abandoned and the seizing agency shall become the owner of such property and may dispose of it in any reasonable manner.

2. Upon the filing of a claim and following hearing by the court, property which has been seized shall be returned to the person who demonstrates a right to possession, unless one or more of the following is true:

- a. The possession of the property by the claimant is prohibited by law.
  - b. There is a forfeiture notice on file and not disposed of in favor of the claimant prior to or in the same hearing.
  - c. The state has demonstrated that the evidence is needed in a criminal investigation or prosecution.
3. The court shall, subject to any unresolved forfeiture hearing, make orders appropriate to the final disposition of the property including, but not limited to, the destruction of contraband once it is no longer needed in an investigation or prosecution.

Sec. 8. NEW SECTION. 809.6 FORFEITURE OF PROPERTY.

Title to and responsibility for forfeitable property vests in the state at the time of seizure. Once forfeitable property is seized, no right to the property may be transferred by anyone other than the state unless the seizure and forfeiture is declared by the court to be a nullity. Property which may not legally be possessed is forfeited to the state by its seizure without further filing of a notice of forfeiture.

Sec. 9. NEW SECTION. 809.7 SEIZURE OF FORFEITABLE PROPERTY.

Forfeitable property may be seized whenever and wherever the property is found within this state. Forfeitable property may be seized by a peace officer or county attorney or by the attorney general. Forfeitable property may be seized by taking custody of the property or by serving upon the person in possession of the property a notice of forfeiture. If the court finds that forfeiture to the state is warranted, an order transferring ownership to the state shall be entered and the property shall be delivered to the attorney general as the attorney general directs.

Property which has been seized for forfeiture, and is not already secured as evidence in a criminal case, shall be safely secured or stored by the agency which caused its seizure unless directed otherwise by the attorney general.

Sec. 10. NEW SECTION. 809.8 NOTICE OF FORFEITURE.

1. The county attorney or attorney general shall file with the clerk of the district court for the county in which the property was seized a notice of forfeiture setting forth a description of the property claimed to be forfeited to the state, the grounds upon which the state claims that the property has been forfeited, the date and place of seizure, and the name of the person from whom the property was seized.

2. The claim shall be filed not later than one year after the date upon which the state learned that the property was forfeitable or not later than six months after the property was seized, whichever is later. Failure to file within that time terminates the state's right to claim a forfeiture of the property.

3. The state shall cause a copy of the notice of forfeiture to be delivered to all known persons affected by the forfeiture. Notice shall be by certified mail or by such method of service set out in division III of the rules of civil procedure.

Sec. 11. NEW SECTION. 809.9 CLAIM FOR RETURN OF FORFEITABLE PROPERTY.

1. A person claiming an ownership right in property claimed to be forfeited to the state may make application for its return in the office of the clerk of court for the county in which the property was seized. The application shall be filed within thirty days after the receipt of the notice of forfeiture, and failure to file the application within this time period terminates the interest of the person.

2. An application for the return of forfeitable property shall state the specific item or items sought, the nature and the source of the claimant's interest in the property, and the

grounds upon which the claimant seeks to avoid forfeiture. The written application shall be specific and amendments to the application shall be liberally permitted, including an amendment to conform to proof at the close of all evidence. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return.

3. The claimant shall cause a copy of the application to be delivered to the attorney for the state.

Sec. 12. NEW SECTION. 809.10 HEARING -- CLERK'S ORDER.

1. If no application for the return of forfeitable property is timely made pursuant to section 809.9, upon application of the attorney for the state, the clerk shall enter an order transferring title to the state.

2. If an application for the return of forfeitable property is timely made pursuant to section 809.9, the claim shall be set for hearing and the hearing shall be held not less than five or more than thirty days after the filing of the claim and shall be tried to the court. All claims to the same property shall be heard in one proceeding unless it is shown that the proceeding would result in prejudice to one or more of the parties. If the total value of the property sought to be returned is less than five thousand dollars, the proceeding may be conducted by a magistrate or a district associate judge with appeal to be as in the case of small claims. In all other cases, the hearing shall be conducted by a district judge, with appeal as provided in section 809.12.

3. Upon a finding by the court that the property is forfeitable, the court shall enter an order transferring title to the property to the state.

Sec. 13. NEW SECTION. 809.11 PROCEDURES AT HEARING.

1. Forfeiture is a civil proceeding. At the hearing the burden is on the state to prove by a preponderance of the evidence that the property is forfeitable. However, forfeiture is not dependent upon a prosecution for, or conviction of, a criminal offense and forfeiture proceedings are separate and distinct from any related criminal action.

2. Court appointed counsel, at the state's expense, is not available in forfeiture proceedings. The attorney general or county attorney may represent the state in all forfeiture proceedings.

3. The costs for a forfeiture action shall be as in the case of criminal actions filed by the county attorney. However, no costs for filing shall be assessed in a proceeding where no claim for return has been made.

4. The court may assess costs against a losing party or apportion costs against the parties.

Sec. 14. NEW SECTION. 809.12 APPEALS.

1. An appeal from a judgment of seizure or forfeiture by a district judge shall be made within thirty days after the entry of a judgment order. The appellant, other than the state, shall post a bond of a reasonable amount as the court may fix and approve, conditioned to pay all costs of the proceedings if the appellant is unsuccessful on appeal. The appellant, other than the state, may be required to post a supersedeas bond or other security, as the court finds to be reasonable, in order to stay the operation of a forfeiture order.

2. If property forfeitable under this chapter is needed as evidence in a criminal proceeding, it shall be retained under the control of the prosecuting attorney, or the prosecuting attorney's designee, until such time as its use as evidence is no longer required.

Sec. 15. NEW SECTION. 809.13 DISPOSITION OF FORFEITED PROPERTY.

1. Any person having control over forfeited property shall communicate that fact to the attorney general or the attorney general's designee.

2. Forfeited property not needed as evidence in a criminal case shall be delivered to the department of justice, or, upon written authorization of the attorney general or the attorney general's designee, the property may be destroyed, sold, or

delivered to an appropriate agency for disposal in accordance with this section.

3. Forfeited property may be used by the department of justice in the enforcement of the criminal law. The department may give, sell, or trade property to any other state agency or to any other law enforcement agency within the state if, in the opinion of the attorney general, it will enhance law enforcement within the state.

4. Forfeited property which is not used by the department of justice in the enforcement of the law may be requisitioned by the department of public safety or any law enforcement agency within the state for use in enforcing the criminal laws of this state. Forfeited property not requisitioned may be delivered to the director of the department of general services to be disposed of in the same manner as property received pursuant to section 18.15.

5. Notwithstanding subsection 1, 2, 3, or 4, forfeited property which is:

a. A controlled substance or a simulated, counterfeit, or imitation controlled substance shall be disposed of as provided in section 204.506.

b. A weapon or ammunition shall be deposited with the department of public safety to be disposed of in accordance with the rules of the department. All weapons or ammunition may be held for use in law enforcement, testing, or comparison by the criminalistics laboratory, or destroyed.

c. Material in violation of chapter 728 shall be destroyed.

d. Property subject to the rules of the conservation commission shall be delivered to that commission for disposal in accordance with its rules.

Sec. 16. NEW SECTION. 809.14 NONFORFEITABLE INTERESTS -- PURCHASE OF FORFEITED INTERESTS.

1. Property shall not be forfeited under this chapter to the extent of the interest of an owner, other than a joint

tenant, who had no part in the commission of the crime and who had no knowledge of the criminal use or intended use of the property. However, if it is established that the owner permitted the use of the property under circumstances in which a reasonable person should have inquired into the intended use of the property and that the owner failed to do so, there is a rebuttable presumption that the owner knew that the property was intended to be used in the commission of a crime.

2. Upon receipt of forfeited property the attorney general shall permit any owner or lienholder of record having a nonforfeitable property interest in the property the opportunity to purchase the property interest forfeited. If the owner or lienholder does not exercise the option under this subsection within thirty days the option is terminated, unless the time for exercising the option is extended by the attorney general.

3. A person having a valid, recorded lien or property interest in forfeited property, which has not been repurchased pursuant to subsection 2, shall either be reimbursed to the extent of the nonforfeitable interest or to the extent that the sale of the item produces sufficient revenue to do so, whichever amount is less. The sale of forfeited property should be conducted in a manner which is commercially reasonable and calculated to provide a sufficient return to cover the costs of the sale and reimburse any nonforfeitable interest. The validity of a lien or property interest is determined as of the date upon which property becomes forfeitable.

4. This section does not preclude a civil suit by an owner of an interest in forfeited property against the party who, by criminal use, caused the property to become forfeited to the state.

Sec. 17. NEW SECTION. 809.15 COMBINING PROCEEDINGS.

In cases involving seized property and forfeitable property, the court may order that the proceedings be combined for purposes of this chapter.

Sec. 18. NEW SECTION. 809.16 RULEMAKING.

The attorney general may adopt, amend, or repeal rules pursuant to chapter 17A to carry out the provisions of this chapter.

Sec. 19. Chapters 127 and 809A, Code 1985 and Code Supplement 1985, and sections 204.505 and 204A.6, Code 1985, are repealed.

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DONALD D. AVENSON  
Speaker of the House

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ROBERT T. ANDERSON  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2460, Seventy-first General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved April 28, 1986

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TERRY E. BRANSTAD  
Governor