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SENATE FILE 455

BY COMMITTEE ON JUDICIARY

Formerly SSB 294
Approved 3/15/85 (p. 214)

FILED MAR 15 1985

Passed Senate, Date 3-22-85 (p. 976) Passed House, Date 4-17-85 (p. 1652)
Vote: Ayes 45 Nays 0 Vote: Ayes 97 Nays 0
Approved May 28, 1985

A BILL FOR

1 An Act relating to the seizure and forfeiture of property
2 which is obtained in violation of the law, unlawful to
3 possess, used or possessed with criminal intent,
4 relevant to a criminal prosecution, or which is the
5 proceeds of criminal activity.

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

7
In compliance with a written request received March 13, 1985, a fiscal note for SENATE FILE 455 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 455 reorganizes the existing statutory language dealing relating to the seizure and forfeiture of property related to criminal activity. The bill defines seizable property, sets out procedures for proceedings pertaining to seized property, and authorizes the attorney general to adopt rules necessary to carry out the provisions of the new chapter.

The economic impact of this bill depends on the amount of criminal activity leading to potential forfeitures. Additionally, the forfeiture laws on the books are not uniformly applied; therefore, there are no statewide statistics on the number of cases or the dollar amounts of forfeited property. It is expected that this bill will result in more forfeitures by reducing the costs by streamlining the procedure, increasing revenue to the state. A new clerical position in the Attorney-General's office may be needed, depending upon the number of forfeiture cases.

Source: Department of Justice, Office of Attorney-General (LSB 2326S, JMN)

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87 455

1 Section 1. Section 80.39, subsection 1, Code 1985, is
2 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, ~~weapons-subject-to-disposition-pursuant-to-section~~
6 ~~691-97~~, and ~~seized~~ seizable or forfeitable property subject to
7 disposition pursuant to chapter 809, which personal property
8 is found or seized by, turned in to, or otherwise lawfully
9 comes into the possession of the department of public safety
10 and which the department does not own, shall be disposed of
11 pursuant to this section. If by examining the property the
12 owner or lawful custodian of the property is known or can be
13 readily ascertained, the department shall notify the owner or
14 custodian by certified mail directed to the owner's or
15 custodian's last known address, as to the location of the
16 property. If the identity or address of the owner cannot be
17 determined, notice by one publication in a newspaper of
18 general circulation in the area where the property was found
19 is sufficient notice. Publication notice may contain multiple
20 items.

21 Sec. 2. Section 331.427, subsection 1, unnumbered para-
22 graph 1, Code 1985, is amended to read as follows:

23 Except as otherwise provided by state law, county revenues
24 from taxes and other sources for general county services shall
25 be credited to the general fund of the county, including
26 revenues received under sections 84.21, 98.35, 98A.6, 101A.3,
27 101A.7, 110.12, 123.36, 123.143, 176A.8, 247A.10, 321.105,
28 321.152, 321.192, 321G.7, 331.554, subsection 6, 341A.20,
29 364.3, 368.21, 422.65, 422.100, 422A.2, 428A.8, 430A.3,
30 433.15, 434.19, 441.68, 445.52, 445.57, 533.24, 556B.1,
31 567.10, 583.6, ~~809-67~~ 906.17, and 911.3, and the following:

32 Sec. 3. Section 602.8102, subsection 129, Code 1985, is
33 amended to read as follows:

34 129. Carry out duties relating to the disposition of
35 seized property as provided in ~~sections-809-2-and-809-3~~ chap-

1 ter 809.

2 Sec. 4. NEW SECTION. 809.1 DEFINITIONS.

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

5 1. "Seizable property" means all or part of any property
6 subject to seizure in the execution of a search warrant, ar-
7 rest warrant, or arrest without warrant including, but not
8 limited to, the following:

9 a. Property which has been obtained in violation of the
10 law.

11 b. Property, the possession of which is unlawful.

12 c. Property used or possessed with the intent to be used
13 as a means of committing a public offense or concealed to
14 prevent an offense from being discovered.

15 d. Property relevant and material as evidence in a
16 criminal prosecution.

17 2. "Forfeitable property" means all or part of any prop-
18 erty subject to forfeiture to the state including, but not
19 limited to, the following:

20 a. Seizable property which has been seized and not
21 returned pursuant to sections 809.2 through 809.5.

22 b. Property which is proceeds of or which may be traced to
23 the proceeds of the commission of a public offense.

24 c. Money, coin, currency, negotiable instruments, valuable
25 minerals, or other similar items of value used as or in lieu
26 of currency, found in close proximity to seizable property or
27 in close proximity to any record of the importation,
28 manufacture or distribution of seizable property.

29 d. Property subject to forfeiture under any other statute
30 or provision of law.

31 Sec. 5. NEW SECTION. 809.2 NOTICE OF SEIZURE OF SEIZABLE
32 PROPERTY.

33 1. When seizable property is seized pursuant to this
34 chapter, a notice of seizure shall be filed promptly with the
35 clerk of the district court for the county in which the

1 property was located when seized. The notice shall state the
2 time and place where the seizure occurred and set forth the
3 names of any persons from whom the property was seized and the
4 names of any persons believed by the seizing officer to have
5 an interest in the property. The notice shall contain a
6 complete list of all property seized and describe the property
7 with as much particularity as practicable.

8 2. Within seventy-two hours of receiving a notice of
9 seizure, the clerk shall mail a copy of the notice to the
10 attorney general and cause to be served upon each person
11 listed in the notice a copy of the notice and a statement that
12 a person affected by the seizure has a right to file a claim
13 for the return of the property.

14 Sec. 6. NEW SECTION. 809.3 CLAIM FOR RETURN OF SEIZABLE
15 PROPERTY.

16 1. A person claiming a right to possession of seizable
17 property seized pursuant to this chapter may make application
18 for its return in the office of the clerk of court for the
19 county in which the property was seized. The application
20 shall be filed within thirty days after receipt of the notice
21 of seizure, and failure to file the application within this
22 time period shall terminate the interest of the person.

23 2. The application for the return of seizable property
24 shall state the specific item or items sought, the nature of
25 the claimant's interest in the property, and the grounds upon
26 which the claimant seeks to have the property returned. The
27 fact that the property is inadmissible as evidence or that it
28 may be suppressed is not grounds for its return.

29 3. The claimant shall cause a copy of the application to
30 be served upon all persons listed in the notice of seizure,
31 the county attorney, and the attorney general.

32 4. If an application for the return of seizable property
33 is not timely made pursuant to this section, upon application
34 of the county attorney or the attorney general the clerk shall
35 enter an order forfeiting the property to the state.

1 Sec. 7. NEW SECTION. 809.4 HEARING -- APPEAL.

2 An application for the return of seizable property shall be
3 set for hearing not less than five or more than thirty days
4 after the filing of the application and shall be tried to the
5 court. If the total value of the property sought to be re-
6 turned meets the appropriate jurisdictional limit, the
7 proceeding may be conducted by a magistrate or a district
8 associate judge with appeal to be as in a case of small
9 claims. In all other cases, the hearing shall be conducted by
10 a district judge, with appeal as provided in section 809.12.

11 Sec. 8. NEW SECTION. 809.5 RETURN OF SEIZABLE PROPERTY.

12 1. Seizable property which is not required for evidence or
13 use in an investigation may be returned by the officer to the
14 person from whom it was seized without the requirement of a
15 hearing, provided that the person's possession of the property
16 is not prohibited by law.

17 2. If, upon a hearing pursuant to section 809.4, it is de-
18 termined that the right of possession is in favor of the
19 claimant, the court shall order the return of the property,
20 subject to both of the following:

21 a. The claimant's possession of the property is not pro-
22 hibited by law.

23 b. The property is not needed as evidence in a judicial
24 proceeding, or if needed, satisfactory arrangements have been
25 made for its return for use as evidence. If the proceedings
26 have not been completed, the court shall make satisfactory
27 arrangements for the return of the property upon the
28 completion of the proceedings.

29 Sec. 9. NEW SECTION. 809.6 NONRETURNED SEIZED PROPERTY.

30 Property which is seized but not returned pursuant to sec-
31 tions 809.2 to 809.5 is presumed to be forfeit and shall be
32 proceeded against as provided in sections 809.13 and 809.14.

33 Sec. 10. NEW SECTION. 809.7 SEIZURE OF FORFEITABLE
34 PROPERTY.

35 Forfeitable property shall be seized whenever and wherever

1 the property is found within this state. Forfeitable property
2 may be seized by a peace officer or county attorney or by the
3 attorney general. Forfeitable property may be seized by
4 serving upon the person in possession of the property a notice
5 of forfeiture. The notice of forfeiture constitutes a lien
6 against the property until disposition is ordered by the
7 court. If the court finds that forfeiture to the state is
8 warranted, an order transferring ownership to the state shall
9 be entered and the property shall be delivered to the attorney
10 general as the attorney general directs. If the court finds
11 that forfeiture is unwarranted, the lien upon the property
12 shall be removed.

13 Sec. 11. NEW SECTION. 809.8 NOTICE OF SEIZURE OF
14 FORFEITABLE PROPERTY.

15 1. When property is seized pursuant to section 809.7, a
16 notice of seizure shall be filed promptly with the clerk of
17 the district court for the county in which the property was
18 located when seized. The notice shall state the time and
19 place where the seizure occurred and shall set forth the names
20 of any persons from whom the property was seized and the names
21 of any persons believed by the seizing officer to have an
22 interest in the property. The notice of seizure shall contain
23 a complete list of all property seized and describe the
24 property with as much particularity as practicable.

25 2. Within seventy-two hours of receiving a notice of
26 seizure of forfeitable property, the clerk shall mail a copy
27 of the notice to the attorney general and cause to be served
28 on each person listed in the notice a copy of the notice and a
29 statement that a person affected by the seizure has a right to
30 file a claim for the return of the property.

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

33 1. A person claiming a right to possession of forfeitable
34 property seized pursuant to sections 809.7 and 809.8 may make
35 application for its return in the office of the clerk of court

1 for the county in which the property was seized. The
2 application shall be filed within thirty days after receipt of
3 the notice of seizure, and failure to file the application
4 within this time period shall terminate the interest of the
5 person.

6 2. The application for the return of forfeitable property
7 shall state the specific item or items sought, the nature of
8 the claimant's interest in the property, and the grounds upon
9 which the claimant seeks to have the property returned. The
10 fact that the property is inadmissible as evidence or that it
11 may be suppressed is not grounds for its return.

12 3. The claimant shall cause a copy of the application to
13 be served upon all persons listed in the notice of seizure,
14 the county attorney, and the attorney general.

15 Sec. 13. NEW SECTION. 809.10 FORFEITURE.

16 1. If an application for the return of forfeitable
17 property is not timely made pursuant to section 809.9, upon
18 application of the county attorney or the attorney general the
19 clerk shall enter an order forfeiting the property to the
20 state.

21 2. If an application for the return of forfeitable
22 property is timely made pursuant to section 809.9, the claim
23 shall be set for hearing and the hearing shall be held not
24 less than five or more than thirty days after the filing of
25 the claim and shall be tried to the court. If the total value
26 of the property sought to be returned meets the appropriate
27 jurisdictional limit, the proceeding may be conducted by a
28 magistrate or a district associate judge with appeal to be as
29 in a case of small claims. In all other cases, the hearing
30 shall be conducted by a district judge, with appeal as
31 provided in section 809.12.

32 Sec. 14. NEW SECTION. 809.11 PROCEDURES AT HEARING.

33 1. At the hearing, the burden is upon the state to prove
34 by clear and convincing evidence that the property is for-
35 feitable. However, forfeiture is not dependent upon a

1 prosecution for, or conviction of, a criminal offense and
2 forfeiture proceedings are separate and distinct from any
3 related criminal action.

4 2. Court appointed counsel, at the state's expense, is not
5 available in forfeiture proceedings. The attorney general
6 shall represent the state in all forfeiture proceedings but
7 may, at the attorney general's discretion, direct that the
8 county attorney of the county in which the seizure of the
9 property occurred shall serve in place of the attorney
10 general.

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

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

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

21 Sec. 15. NEW SECTION. .809.12 APPEALS.

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

32 2. If property forfeitable under this chapter is needed as
33 evidence in a criminal proceeding, it shall be retained under
34 the control of the prosecuting county attorney, or the county
35 attorney's designee, until such time as its use as evidence is

1 no longer required.

2 Sec. 16. NEW SECTION. 809.13 DISPOSITION OF FORFEITED
3 PROPERTY.

4 1. Upon a final determination by a court that property is
5 forfeited, the court shall enter an order that the ownership
6 of the property be transferred to the state. The court shall
7 also order that the person having control over the property
8 deliver the property to the department of justice, or if no
9 person has control over the property, the court shall
10 authorize the department of justice to take measures necessary
11 to provide for the delivery of the property to the department.

12 2. Forfeited property delivered to the department of jus-
13 tice may be used in the enforcement of the law. The
14 department may give, sell, or trade property which is not
15 subject to subsection 4 to other state agencies or to any
16 other law enforcement agency within the state if, in the
17 opinion of the attorney general, it will enhance law
18 enforcement within the state.

19 3. Forfeited property which is not used by the department
20 of justice in the enforcement of the law and which is not
21 property subject to subsection 4, may be requisitioned by the
22 department of public safety for use by a state or local law
23 enforcement agency or by the director of the department of
24 general services to be disposed of in the same manner as
25 property received pursuant to section 18.15.

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

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

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

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

3 Sec. 17. NEW SECTION. 809.14 NONFORFEITABLE INTERESTS --
4 PURCHASE OF FORFEITED INTERESTS.

5 1. Property shall not be forfeited under this chapter to
6 the extent of the interest of an owner, other than a joint
7 tenant, who had no part in the commission of the crime and who
8 had no knowledge of the criminal use or intended use of the
9 property. However, if it is established that the owner
10 permitted the use of the property under circumstances in which
11 a reasonable person should have inquired into the intended use
12 of the property and that the owner failed to do so, there is a
13 rebuttable presumption that the owner knew that the property
14 was intended to be used in the commission of a crime.

15 2. Upon receipt of forfeited property the attorney general
16 shall permit any owner or lienholder of record having a
17 nonforfeitable property interest of fifty percent or more in
18 the property the opportunity to purchase the property interest
19 forfeited. If the owner or lienholder does not exercise the
20 option under this subsection within thirty days the option
21 shall be terminated, unless the time for exercising the option
22 is extended by the attorney general.

23 3. A person having a valid, recorded lien or property
24 interest in forfeited property shall either be reimbursed to
25 the extent of the nonforfeitable interest or to the extent
26 that the sale of the item produces sufficient revenue to do
27 so, whichever amount is less. The sale of forfeited property
28 should be conducted in a manner which is commercially
29 reasonable and calculated to provide a sufficient return to
30 cover the costs of the sale and reimburse any nonforfeitable
31 interest. The validity of a lien or property interest is
32 determined as of the date upon which the property becomes
33 forfeitable.

34 4. This section does not preclude a civil suit by an owner
35 of an interest in forfeited property against that party who,

1 by criminal use, caused the property to become forfeited to
2 the state.

3 Sec. 18. NEW SECTION. 809.14 COMBINING PROCEEDINGS.

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

7 Sec. 19. NEW SECTION. 809.15 RULEMAKING.

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

11 Sec. 20. NEW SECTION. CUMULATIVE EFFECT.

12 The provisions of this chapter are intended to be
13 cumulative and in addition to other actions or proceedings
14 against seizable or forfeitable property otherwise provided by
15 statute.

16 Sec. 21. Sections 691.9 and 728.13 are repealed.

17 Sec. 22. Chapter 809, Code 1985, is repealed and sections
18 4 through 20 of this Act are enacted as a new chapter 809.

19 EXPLANATION

20 This bill modifies existing statutory law relating to the
21 seizure and forfeiture of property related to criminal
22 activity as follows:

23 Section 1 makes a corrective amendment to section 80.39 to
24 acknowledge the repeal of section 691.9 (relating to the
25 seizure and forfeiture of weapons or ammunition).

26 Section 2 makes a corrective amendment to section 331.427
27 to acknowledge the fact that revenue relating to criminal
28 forfeiture will no longer be credited to the general fund of a
29 county.

30 Section 3 makes a corrective amendment to the duties of the
31 clerk of court (in relation to new responsibilities imposed by
32 this Act).

33 Sections 4 through 20 create a new chapter relating to the
34 seizure and forfeiture of property which:

- 35 1. Provides definitions for the terms "seizable property"

1 and "forfeitable property" as used in the new chapter.

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

4 3. Provides a system for applications for the return of
5 seized property.

6 4. Sets out the procedures for hearings and appeals on
7 seized property.

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

9 6. Provides for the seizure of forfeitable property.

10 7. Requires notice to be given upon the seizure of
11 forfeitable property.

12 8. Provides a system for applications for the return of
13 forfeitable property.

14 9. Sets out the procedures for hearings and appeals on
15 property forfeiture.

16 10. Provides the requirements relating to the disposition
17 of forfeited property.

18 11. Provides for the disposition of nonforfeitable
19 property rights or liens.

20 12. Allows the court to combine seizure and forfeiture
21 actions where appropriate.

22 13. Authorizes the attorney general to adopt rules
23 necessary to carry out the provisions of the new chapter.

24 14. Provides that the provisions of the chapter are
25 cumulative and in addition to other seizure or forfeiture
26 provisions in the Code.

27 Section 21 repeals sections of the Code relating to the
28 repealed chapter 809.

29 Section 22 repeals chapter 809 and inserts the new chapter
30 created by this bill in its place.

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Sen Judiciary, 3/27/85

Senate File 455

Judiciary and Law Enforcement: Jay, Chair; Lageschulte and Siegrist.

Do Pass 4/11/85

SENATE FILE 455

BY COMMITTEE ON JUDICIARY

(AS AMENDED AND PASSED BY THE SENATE MARCH 22, 1985)

Passed Senate, Date 4-24-85 (p. 1623) Passed House, Date 4-17-85 (p. 1652)

Vote: Ayes 47 Nays 0 Vote: Ayes 97 Nays 0

Approved May 28, 1985

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10 and which the department does not own, shall be disposed of
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2 time and place where the seizure occurred and set forth the
3 names of any persons from whom the property was seized and the
4 names of any persons believed by the seizing officer to have
5 an interest in the property. To identify persons who may have
6 an interest in the property, the seizing officer or the county
7 attorney shall make a reasonable examination of any
8 appropriate records regarding the property to ascertain
9 whether liens or interests in the property currently exist.
10 The notice shall contain a complete list of all property
11 seized and describe the property with as much particularity as
12 practicable.

13 2. Within seventy-two hours of receiving a notice of
14 seizure, the clerk shall mail a copy of the notice to the
15 attorney general and cause to be served upon all lienholders
16 of record and each person listed in the notice a copy of the
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20 hearing, provided that the person's possession of the property
21 is not prohibited by law.

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23 termined that the right of possession is in favor of the
24 claimant, the court shall order the return of the property,
25 subject to both of the following:

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27 hibited by law.

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29 proceeding, or if needed, satisfactory arrangements have been
30 made for its return for use as evidence. If the proceedings
31 have not been completed, the court shall make satisfactory
32 arrangements for the return of the property upon the
33 completion of the proceedings.

34 Sec. 9. NEW SECTION. 809.6 NONRETURNED SEIZED PROPERTY.

35 Property which is seized but not returned pursuant to sec-

1 tions 809.2 to 809.5 is presumed to be forfeit and shall be
2 proceeded against as provided in sections 809.13 and 809.14.

3 Sec. 10. NEW SECTION. 809.7 SEIZURE OF FORFEITABLE
4 PROPERTY.

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

14 Sec. 11. NEW SECTION. 809.8 NOTICE OF SEIZURE OF
15 FORFEITABLE PROPERTY.

16 1. When property is seized pursuant to section 809.7, a
17 notice of seizure shall be filed promptly with the clerk of
18 the district court for the county in which the property was
19 located when seized. The notice shall state the time and
20 place where the seizure occurred and shall set forth the names
21 of any persons from whom the property was seized and the names
22 of any persons believed by the seizing officer to have an
23 interest in the property. To identify persons who may have an
24 interest in the property, the seizing officer or the county
25 attorney shall make a reasonable examination of any
26 appropriate records including, but not limited to, the records
27 of the secretary of state, county treasurer, county recorder
28 and the clerk of court regarding the property to ascertain
29 whether liens or interests in the property currently exist.
30 The notice of seizure shall contain a complete list of all
31 property seized and describe the property with as much
32 particularity as practicable.

33 2. Within seventy-two hours of receiving a notice of
34 seizure of forfeitable property, the clerk shall mail a copy
35 of the notice to the attorney general and cause to be served

1 upon all lienholders of record and each person listed in the
2 notice a copy of the notice and a statement that a person
3 affected by the seizure has a right to file a claim for the
4 return of the property.

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

7 1. A person claiming a right to possession of forfeitable
8 property seized pursuant to sections 809.7 and 809.8 may make
9 application for its return in the office of the clerk of court
10 for the county in which the property was seized. The
11 application shall be filed within thirty days after receipt of
12 the notice of seizure, and failure to file the application
13 within this time period shall terminate the interest of the
14 person.

15 2. The application for the return of forfeitable property
16 shall state the specific item or items sought, the nature of
17 the claimant's interest in the property, and the grounds upon
18 which the claimant seeks to have the property returned. The
19 fact that the property is inadmissible as evidence or that it
20 may be suppressed is not grounds for its return.

21 3. The claimant shall cause a copy of the application to
22 be served upon all persons listed in the notice of seizure,
23 the county attorney, and the attorney general.

24 Sec. 13. NEW SECTION. 809.10 FORFEITURE.

25 1. If an application for the return of forfeitable
26 property is not timely made pursuant to section 809.9, upon
27 application of the county attorney or the attorney general the
28 clerk shall enter an order forfeiting the property to the
29 state.

30 2. If an application for the return of forfeitable
31 property is timely made pursuant to section 809.9, the claim
32 shall be set for hearing and the hearing shall be held not
33 less than five or more than thirty days after the filing of
34 the claim and shall be tried to the court. If the total value
35 of the property sought to be returned meets the appropriate

1 jurisdictional limit, the proceeding may be conducted by a
2 magistrate or a district associate judge with appeal to be as
3 in a case of small claims. In all other cases, the hearing
4 shall be conducted by a district judge, with appeal as
5 provided in section 809.12.

6 Sec. 14. NEW SECTION. 809.11 PROCEDURES AT HEARING.

7 1. At the hearing, the burden is upon the state to prove
8 by clear and convincing evidence that the property is for-
9 feitable. However, forfeiture is not dependent upon a
10 prosecution for, or conviction of, a criminal offense and
11 forfeiture proceedings are separate and distinct from any
12 related criminal action.

13 2. Court appointed counsel, at the state's expense, is not
14 available in forfeiture proceedings. The attorney general
15 shall represent the state in all forfeiture proceedings but
16 may, at the attorney general's discretion, direct that the
17 county attorney of the county in which the seizure of the
18 property occurred shall serve in place of the attorney
19 general.

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

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

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

30 Sec. 15. NEW SECTION. 809.12 APPEALS.

31 1. An appeal from a judgment of seizure or forfeiture by a
32 district judge shall be made within thirty days after the
33 entry of a judgment order. The appellant, other than the
34 state, shall post a bond of a reasonable amount as the court
35 may fix and approve, conditioned to pay all costs of the

1 proceedings if the appellant is unsuccessful on appeal. The
2 appellant, other than the state, may be required to post a
3 supersedeas bond or other security the court finds to be
4 reasonable in order to stay the operation of a forfeiture
5 order.

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

11 Sec. 16. NEW SECTION. 809.13 DISPOSITION OF FORFEITED
12 PROPERTY.

13 1. Upon a final determination by a court that property is
14 forfeited, the court shall enter an order that the ownership
15 of the property be transferred to the state. The court shall
16 also order that the person having control over the property
17 deliver the property to the department of justice, or if no
18 person has control over the property, the court shall
19 authorize the department of justice to take measures necessary
20 to provide for the delivery of the property to the department.

21 2. Forfeited property delivered to the department of jus-
22 tice may be used in the enforcement of the law. The
23 department may give, sell, or trade property which is not
24 subject to subsection 4 to other state agencies or to any
25 other law enforcement agency within the state if, in the
26 opinion of the attorney general, it will enhance law
27 enforcement within the state.

28 3. Forfeited property which is not used by the department
29 of justice in the enforcement of the law and which is not
30 property subject to subsection 4, may be requisitioned by the
31 department of public safety for use by a state or local law
32 enforcement agency or by the director of the department of
33 general services to be disposed of in the same manner as
34 property received pursuant to section 18.15.

35 4. Notwithstanding subsection 1, 2, or 3, forfeited

1 property which is:

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

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

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

12 Sec. 17. NEW SECTION. 809.14 NONFORFEITABLE INTERESTS --
13 PURCHASE OF FORFEITED INTERESTS.

14 1. Property shall not be forfeited under this chapter to
15 the extent of the interest of an owner, other than a joint
16 tenant, who had no part in the commission of the crime and who
17 had no knowledge of the criminal use or intended use of the
18 property. However, if it is established that the owner
19 permitted the use of the property under circumstances in which
20 a reasonable person should have inquired into the intended use
21 of the property and that the owner failed to do so, there is a
22 rebuttable presumption that the owner knew that the property
23 was intended to be used in the commission of a crime.

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

32 3. A person having a valid, recorded lien or property
33 interest in forfeited property, which has not been repurchased
34 pursuant to subsection 2, shall either be reimbursed to the
35 extent of the nonforfeitable interest or to the extent that

1 the sale of the item produces sufficient revenue to do so,
2 whichever amount is less. The sale of forfeited property
3 should be conducted in a manner which is commercially
4 reasonable and calculated to provide a sufficient return to
5 cover the costs of the sale and reimburse any nonforfeitable
6 interest. The validity of a lien or property interest is
7 determined as of the date upon which the property becomes
8 forfeitable.

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

13 Sec. 18. NEW SECTION. 809.15 COMBINING PROCEEDINGS.

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

17 Sec. 19. NEW SECTION. 809.16 RULEMAKING.

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

21 Sec. 20. NEW SECTION. CUMULATIVE EFFECT.

22 The provisions of this chapter are intended to be
23 cumulative and in addition to other actions or proceedings
24 against seizable or forfeitable property otherwise provided by
25 statute.

26 Sec. 21. Sections 691.9 and 728.13 are repealed.

27 Sec. 22. Chapter 809, Code 1985, is repealed and sections
28 4 through 20 of this Act are enacted as a new chapter 809.

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1 Amend Senate File 455 as follows:

- 2 1. Page 3, line 5, by inserting after the word
3 "property." the following: "To identify persons who
4 may have an interest in the property, the seizing
5 officer or the county attorney shall make a reasonable
6 examination of any appropriate records regarding the
7 property to ascertain whether liens or interests in
8 the property currently exist."
9 2. Page 3, line 10, by inserting after the word
10 "upon" the words "all lienholders of record and".
11 3. Page 5, by striking lines 5 through 7, and
12 inserting the following: "of forfeiture. If the
13 court finds that forfeiture to the state is".
14 4. Page 5, by striking lines 10 through 12, and
15 inserting the following: "general as the attorney
16 general directs."
17 5. Page 5, line 22, by inserting after the word
18 "property." the following: "To identify persons who
19 may have an interest in the property, the seizing
20 officer or the county attorney shall make a reasonable
21 examination of any appropriate records including, but
22 not limited to, the records of the secretary of state,
23 county treasurer, county recorder and the clerk of
24 court regarding the property to ascertain whether
25 liens or interests in the property currently exist."
26 6. Page 5, line 28, by striking the word "on" and
27 inserting the following: "upon all lienholders of
28 record and".
29 7. Page 9, line 17, by striking the words "of
30 fifty percent or more".
31 8. Page 9, line 24, by inserting after the word
32 "property" the following: ", which has not been
33 repurchased pursuant to subsection 2,".

S-3429 Filed March 20, 1985 By MANN

Adopted 3/22 (p. 975)

S-3423

SENATE FILE 455

- 1 Amend Senate File 455 as follows:
2 1. Page 3, line 5, by inserting after the word
3 "property." the following: "To identify persons who
4 may have an interest in the property, the seizing
5 officer or the county attorney shall make a reasonable
6 examination of any appropriate records regarding the
7 property to ascertain whether liens or interests in
8 the property currently exist."
9 2. Page 3, line 10, by inserting after the word
10 "upon" the words "all lienholders of record and".
11 3. Page 5, by striking lines 5 through 7, and
12 inserting the following: "of forfeiture. If the
13 court finds that forfeiture to the state is".
14 4. Page 5, by striking lines 10 through 12, and
15 inserting the following: "general as the attorney
16 general directs."
17 5. Page 5, line 22, by inserting after the word
18 "property." the following: "To identify persons who
19 may have an interest in the property, the seizing
20 officer or the county attorney shall make a reasonable
21 examination of any appropriate records regarding the
22 property to ascertain whether liens or interests in
23 the property currently exist."
24 6. Page 5, line 28, by striking the word "on" and
25 inserting the following: "upon all lienholders of
26 record and".
27 7. Page 9, line 17, by striking the words "of
28 fifty percent or more".
29 8. Page 9, line 24, by inserting after the word
30 "property" the following: ", which has not been
31 repurchased pursuant to subsection 2,".

S-3423 Filed March 20, 1985 By MANN

W/B 3/22/85 (p. 774)

SENATE FILE 455

H-3858

1 Amend Senate File 455 as amended, passed and
2 reprinted by the Senate as follows:

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

5 Sec. ____ . NEW SECTION. 702.24 NONLETHAL
6 ELECTRONIC DEVICE.

7 "Nonlethal electronic device" means a device which
8 by electronic pulse or current is capable of
9 immobilizing a victim temporarily but is not capable
10 of inflicting death or serious injury upon a human
11 being.

12 Sec. ____ . Section 708.2, subsection 3, Code 1985,
13 is amended to read as follows:

14 3. Any other assault, except as otherwise
15 provided, is a simple misdemeanor. However, if while
16 committing an assault that would otherwise be
17 punishable under this subsection a person uses or
18 threatens to use a nonlethal electronic device or a
19 weapon or device which by chemical means temporarily
20 immobilizes another, the person is guilty of an
21 aggravated misdemeanor if the victim is a peace
22 officer in the performance of the peace officer's duty
23 and a serious misdemeanor if the victim is any other
24 person.

25 Sec. ____ . Section 719.1, Code 1985, is amended to
26 read as follows:

27 719.1 INTERFERENCE WITH OFFICIAL ACTS.

28 A person who knowingly resists or obstructs anyone
29 known by the person to be a peace officer or fire
30 fighter, whether paid or volunteer, in the performance
31 of any act which is within the scope of the lawful
32 duty or authority of that officer or fire fighter,
33 whether paid or volunteer, or who knowingly resists or
34 obstructs the service or execution by any authorized
35 person of any civil or criminal process or order of
36 any court, commits a simple misdemeanor. However, if
37 a person commits an interference with official acts,
38 as defined in this section, and in so doing inflicts
39 bodily injury other than serious injury, that person
40 commits a serious misdemeanor. If a person commits an
41 interference with official acts, as defined in this
42 section, and in so doing inflicts or attempts to
43 inflict serious injury, or displays a dangerous
44 weapon, as defined in section 702.7, or a nonlethal
45 electronic device or is armed with a firearm, that
46 person commits an aggravated misdemeanor. The terms
47 "resist" and "obstruct", as used in this section, do
48 not include verbal harassment unless the verbal
49 harassment is accompanied by a present ability and
50 apparent intention to execute a verbal threat

H-1852

Page Two

1 physically.

2 Sec. _____. Section 724.1, subsection 8, paragraph
3 c, Code 1985, is amended to read as follows:

4 c. Any device which is not designed or redesigned
5 for use as a weapon; any device which is designed
6 solely for use as a signaling, pyrotechnic, line-
7 throwing, safety, or similar device; any nonlethal
8 electronic device; or any firearm which is
9 unservicable by reason of being unable to discharge a
10 shot by means of an explosive and is incapable of
11 being readily restored to a firing condition.

12 Sec. _____. Section 724.22, Code 1985, is amended by
13 adding the following new subsections:

14 NEW SUBSECTION. 7. A person who sells, loans,
15 gives, or makes available a nonlethal electronic
16 device to a minor commits a simple misdemeanor.

17 NEW SUBSECTION. 8. A minor who possesses a
18 nonlethal electronic device commits a simple
19 misdemeanor.

20 Sec. _____. Section 724.26, Code 1985, is amended by
21 adding the following new unnumbered paragraph:

22 NEW UNNUMBERED PARAGRAPH. A person who is
23 convicted of a felony in any state or federal court
24 and who subsequently possesses, receives, or
25 transports or causes to be transported a nonlethal
26 electronic device commits a simple misdemeanor.

27 Sec. _____. NEW SECTION. 724.28 SHOCKING DEVICES
28 FOR CONTROL OF LIVESTOCK.

29 This chapter does not prohibit the possession or
30 transportation by a farmer, rancher, livestock
31 transporter, livestock breeder, livestock salesyard
32 owner, or any of their employees, of any shocking
33 device designed exclusively to move or control
34 livestock, or the use of such a device for the purpose
35 of moving or controlling livestock."

36 2. Title page, line 1, by striking the words "the
37 seizure and forfeiture of".

38 3. Title page, line 5, by striking the word
39 "activity." and inserting the following: "activity,
40 to the seizure and forfeiture of such property and to
41 the sale, possession and use of certain classes of
42 such property, and providing penalties."

43 4. By renumbering as necessary.

H-1852 FILED APRIL 17, 1985 BY McINTEE of Black Hawk
CLIP OF ORDER (p. 1652)

SENATE FILE 455

H-3847

1 Amend Senate File 455 as amended, passed, and re-
2 printed by the Senate as follows:

3 1. Page 4, by inserting after line 5, the fol-
4 lowing:

5 "5. Seized property which was stolen or otherwise
6 obtained in violation of the law may be returned to
7 the owner, if the owner was not the person from whom
8 the property was seized, without hearing if all of the
9 following are true:

10 a. The identity of the owner is not in question.

11 b. The owner's right to possess the property is
12 not in question.

13 c. The possession of the property is not pro-
14 hibited by law.

15 d. One of the following is also true:

16 (1) Criminal charges have not been filed and are
17 not being contemplated regarding the theft of the
18 property.

19 (2) Evidence regarding the property is not to be
20 introduced in any proceeding.

21 (3) If evidence regarding the property is to be
22 introduced, all of the following are true:

23 (a) The property has been photographed in such a
24 manner as to fairly show the nature and condition of
25 the property.

26 (b) The photographs are available for use in any
27 subsequent proceeding.

28 (c) If the value of the property is in excess of
29 one hundred dollars, the county attorney has notified
30 the attorney for any person against whom the evidence
31 regarding the property may be used of the intention to
32 return the property following its being photographed
33 and the person's attorney either exercised or waived
34 an opportunity to examine the property within fourteen
35 days.

36 (4) If the property may be introduced as evidence,
37 it is of such a nature that it is not easily alterable
38 without detection and arrangements satisfactory to
39 both the county attorney and the attorneys for any
40 persons against whom evidence regarding the property
41 may be used have been made for its return for use as
42 evidence."

H-3847 FILED APRIL 16, 1985 BY JAY of Appanoose

SENATE FILE 455

H-3845

1 Amend Senate File 455 as amended, passed, and re-
2 printed by the Senate as follows:

3 1. Page 4, by inserting after line 5, the fol-
4 lowing:

5 "5. Notwithstanding the provisions of this section
6 to the contrary, seized property which was stolen or
7 otherwise obtained in violation of the law may be re-
8 turned to the owner, if the owner was not the person
9 from whom the property was seized, without hearing if
10 all of the following are true:

11 a. The identity of the owner is not in question.

12 b. The owner's right to possess the property is
13 not in question.

14 c. The possession of the property is not pro-
15 hibited by law.

16 d. One of the following is also true:

17 (1) Criminal charges have not been filed and are
18 not being contemplated regarding the theft of the
19 property.

20 (2) Evidence regarding the property is not to be
21 introduced in any proceeding.

22 (3) If evidence regarding the property is to be
23 introduced, all of the following are true:

24 (a) The property has been photographed in such a
25 manner as to fairly show the nature and condition of
26 the property.

27 (b) The photographs are available for use in any
28 subsequent proceeding.

29 (c) If the value of the property is in excess of
30 one hundred dollars, the county attorney has notified
31 the attorney for any person against whom the evidence
32 regarding the property may be used of the intention to
33 return the property following its being photographed
34 and the person's attorney either exercised or waived
35 an opportunity to examine the property within fourteen
36 days.

37 (4) If the property may be introduced as evidence,
38 it is of such a nature that it is not easily alterable
39 without detection and arrangements satisfactory to
40 both the county attorney and the attorneys for any
41 persons against whom evidence regarding the property
42 may be used have been made for its return for use as
43 evidence."

H-3845 FILED APRIL 16, 1985 BY JAY of Appanoose

Adopted 4/17/85 (p 1651)

3884

HOUSE AMENDMENT TO
SENATE FILE 455

1 Amend Senate File 455 as amended, passed, and re-
2 printed by the Senate as follows:

3 1. Page 4, by inserting after line 5, the fol-
4 lowing:

5 "5. Notwithstanding the provisions of this section
6 to the contrary, seized property which was stolen or
7 otherwise obtained in violation of the law may be re-
8 turned to the owner, if the owner was not the person
9 from whom the property was seized, without hearing if
10 all of the following are true:

11 a. The identity of the owner is not in question.

12 b. The owner's right to possess the property is
13 not in question.

14 c. The possession of the property is not pro-
15 hibited by law.

16 d. One of the following is also true:

17 (1) Criminal charges have not been filed and are
18 not being contemplated regarding the theft of the
19 property.

20 (2) Evidence regarding the property is not to be
21 introduced in any proceeding.

22 (3) If evidence regarding the property is to be
23 introduced, all of the following are true:

24 (a) The property has been photographed in such a
25 manner as to fairly show the nature and condition of
26 the property.

27 (b) The photographs are available for use in any
28 subsequent proceeding.

29 (c) If the value of the property is in excess of
30 one hundred dollars, the county attorney has notified
31 the attorney for any person against whom the evidence
32 regarding the property may be used of the intention to
33 return the property following its being photographed
34 and the person's attorney either exercised or waived
35 an opportunity to examine the property within fourteen
36 days.

37 (4) If the property may be introduced as evidence,
38 it is of such a nature that it is not easily alterable
39 without detection and arrangements satisfactory to
40 both the county attorney and the attorneys for any
41 persons against whom evidence regarding the property
42 may be used have been made for its return for use as
43 evidence."

New
SF 455

SSB 294
Judiciary

SENATE/HOUSE FILE 455

BY (PROPOSED COMMITTEE ON
JUDICIARY AND COMMITTEE ON
JUDICIARY AND LAW ENFORCE-
MENT BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the seizure and forfeiture of property
2 which is obtained in violation of the law, unlawful to
3 possess, used or possessed with criminal intent,
4 relevant to a criminal prosecution, or which is the
5 proceeds of criminal activity.

6 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 1985, is
2 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, weapons-subject-to-disposition-pursuant-to-section
6 ~~691-97~~, and seized seizable or forfeitable property subject to
7 disposition pursuant to chapter 809, which personal property
8 is found or seized by, turned in to, or otherwise lawfully
9 comes into the possession of the department of public safety
10 and which the department does not own, shall be disposed of
11 pursuant to this section. If by examining the property the
12 owner or lawful custodian of the property is known or can be
13 readily ascertained, the department shall notify the owner or
14 custodian by certified mail directed to the owner's or
15 custodian's last known address, as to the location of the
16 property. If the identity or address of the owner cannot be
17 determined, notice by one publication in a newspaper of
18 general circulation in the area where the property was found
19 is sufficient notice. Publication notice may contain multiple
20 items.

21 Sec. 2. Section 331.427, subsection 1, unnumbered para-
22 graph 1, Code 1985, is amended to read as follows:

23 Except as otherwise provided by state law, county revenues
24 from taxes and other sources for general county services shall
25 be credited to the general fund of the county, including
26 revenues received under sections 84.21, 98.35, 98A.6, 101A.3,
27 101A.7, 110.12, 123.36, 123.143, 176A.8, 247A.10, 321.105,
28 321.152, 321.192, 321G.7, 331.554, subsection 6, 341A.20,
29 364.3, 368.21, 422.65, 422.100, 422A.2, 428A.8, 430A.3,
30 433.15, 434.19, 441.68, 445.52, 445.57, 533.24, 556B.1,
31 567.10, 583.6, ~~809-67~~, 906.17, and 911.3, and the following:

32 Sec. 3. Section 602.8102, subsection 129, Code 1985, is
33 amended to read as follows:

34 129. Carry out duties relating to the disposition of
35 seized property as provided in sections-~~809-2-and-809-3~~ chap-

1 ter 809.

2 Sec. 4. NEW SECTION. 809.1 DEFINITIONS.

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

5 1. "Seizable property" means all or part of any property
6 subject to seizure in the execution of a search warrant, ar-
7 rest warrant, or arrest without warrant including, but not
8 limited to, the following:

9 a. Property which has been obtained in violation of the
10 law.

11 b. Property, the possession of which is unlawful.

12 c. Property used or possessed with the intent to be used
13 as a means of committing a public offense or concealed to
14 prevent an offense from being discovered.

15 d. Property relevant and material as evidence in a
16 criminal prosecution.

17 2. "Forfeitable property" means all or part of any prop-
18 erty subject to forfeiture to the state including, but not
19 limited to, the following:

20 a. Seizable property which has been seized and not
21 returned pursuant to sections 809.2 through 809.5.

22 b. Property which is proceeds of or which may be traced to
23 the proceeds of the commission of a public offense.

24 c. Money, coin, currency, negotiable instruments, valuable
25 minerals, or other similar items of value used as or in lieu
26 of currency, found in close proximity to seizable property or
27 in close proximity to any record of the importation,
28 manufacture or distribution of seizable property.

29 d. Property subject to forfeiture under any other statute
30 or provision of law.

31 Sec. 5. NEW SECTION. 809.2 NOTICE OF SEIZURE OF SEIZABLE
32 PROPERTY.

33 1. When seizable property is seized pursuant to this
34 chapter, a notice of seizure shall be filed promptly with the
35 clerk of the district court for the county in which the

1 property was located when seized. The notice shall state the
2 time and place where the seizure occurred and set forth the
3 names of any persons from whom the property was seized and the
4 names of any persons believed by the seizing officer to have
5 an interest in the property. The notice shall contain a
6 complete list of all property seized and describe the property
7 with as much particularity as practicable.

8 2. Within seventy-two hours of receiving a notice of
9 seizure, the clerk shall mail a copy of the notice to the
10 attorney general and cause to be served upon each person
11 listed in the notice a copy of the notice and a statement that
12 a person affected by the seizure has a right to file a claim
13 for the return of the property.

14 Sec. 6. NEW SECTION. 809.3 CLAIM FOR RETURN OF SEIZABLE
15 PROPERTY.

16 1. A person claiming a right to possession of seizable
17 property seized pursuant to this chapter may make application
18 for its return in the office of the clerk of court for the
19 county in which the property was seized. The application
20 shall be filed within thirty days after receipt of the notice
21 of seizure, and failure to file the application within this
22 time period shall terminate the interest of the person.

23 2. The application for the return of seizable property
24 shall state the specific item or items sought, the nature of
25 the claimant's interest in the property, and the grounds upon
26 which the claimant seeks to have the property returned. The
27 fact that the property is inadmissible as evidence or that it
28 may be suppressed is not grounds for its return.

29 3. The claimant shall cause a copy of the application to
30 be served upon all persons listed in the notice of seizure,
31 the county attorney, and the attorney general.

32 4. If an application for the return of seizable property
33 is not timely made pursuant to this section, upon application
34 of the county attorney or the attorney general the clerk shall
35 enter an order forfeiting the property to the state.

1 Sec. 7. NEW SECTION. 809.4 HEARING -- APPEAL.

2 An application for the return of seizable property shall be
3 set for hearing not less than five or more than thirty days
4 after the filing of the application and shall be tried to the
5 court. If the total value of the property sought to be re-
6 turned meets the appropriate jurisdictional limit, the
7 proceeding may be conducted by a magistrate or a district
8 associate judge with appeal to be as in a case of small
9 claims. In all other cases, the hearing shall be conducted by
10 a district judge, with appeal as provided in section 809.12.

11 Sec. 8. NEW SECTION. 809.5 RETURN OF SEIZABLE PROPERTY.

12 1. Seizable property which is not required for evidence or
13 use in an investigation may be returned by the officer to the
14 person from whom it was seized without the requirement of a
15 hearing, provided that the person's possession of the property
16 is not prohibited by law.

17 2. If, upon a hearing pursuant to section 809.4, it is de-
18 termined that the right of possession is in favor of the
19 claimant, the court shall order the return of the property,
20 subject to both of the following:

21 a. The claimant's possession of the property is not pro-
22 hibited by law.

23 b. The property is not needed as evidence in a judicial
24 proceeding, or if needed, satisfactory arrangements have been
25 made for its return for use as evidence. If the proceedings
26 have not been completed, the court shall make satisfactory
27 arrangements for the return of the property upon the
28 completion of the proceedings.

29 Sec. 9. NEW SECTION. 809.6 NONRETURNED SEIZED PROPERTY.

30 Property which is seized but not returned pursuant to sec-
31 tions 809.2 to 809.5 is presumed to be forfeit and shall be
32 proceeded against as provided in sections 809.13 and 809.14.

33 Sec. 10. NEW SECTION. 809.7 SEIZURE OF FORFEITABLE
34 PROPERTY.

35 Forfeitable property shall be seized whenever and wherever

1 the property is found within this state. Forfeitable property
2 may be seized by a peace officer or county attorney or by the
3 attorney general. Forfeitable property may be seized by
4 serving upon the person in possession of the property a notice
5 of forfeiture. The notice of forfeiture constitutes a lien
6 against the property until disposition is ordered by the
7 court. If the court finds that forfeiture to the state is
8 warranted, an order transferring ownership to the state shall
9 be entered and the property shall be delivered to the attorney
10 general as the attorney general directs. If the court finds
11 that forfeiture is unwarranted, the lien upon the property
12 shall be removed.

13 Sec. 11. NEW SECTION. 809.8 NOTICE OF SEIZURE OF
14 FORFEITABLE PROPERTY.

15 1. When property is seized pursuant to section 809.7, a
16 notice of seizure shall be filed promptly with the clerk of
17 the district court for the county in which the property was
18 located when seized. The notice shall state the time and
19 place where the seizure occurred and shall set forth the names
20 of any persons from whom the property was seized and the names
21 of any persons believed by the seizing officer to have an
22 interest in the property. The notice of seizure shall contain
23 a complete list of all property seized and describe the
24 property with as much particularity as practicable.

25 2. Within seventy-two hours of receiving a notice of
26 seizure of forfeitable property, the clerk shall mail a copy
27 of the notice to the attorney general and cause to be served
28 on each person listed in the notice a copy of the notice and a
29 statement that a person affected by the seizure has a right to
30 file a claim for the return of the property.

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

33 1. A person claiming a right to possession of forfeitable
34 property seized pursuant to sections 809.7 and 809.8 may make
35 application for its return in the office of the clerk of court

1 for the county in which the property was seized. The
2 application shall be filed within thirty days after receipt of
3 the notice of seizure, and failure to file the application
4 within this time period shall terminate the interest of the
5 person.

6 2. The application for the return of forfeitable property
7 shall state the specific item or items sought, the nature of
8 the claimant's interest in the property, and the grounds upon
9 which the claimant seeks to have the property returned. The
10 fact that the property is inadmissible as evidence or that it
11 may be suppressed is not grounds for its return.

12 3. The claimant shall cause a copy of the application to
13 be served upon all persons listed in the notice of seizure,
14 the county attorney, and the attorney general.

15 Sec. 13. NEW SECTION. 809.10 FORFEITURE.

16 1. If an application for the return of forfeitable
17 property is not timely made pursuant to section 809.9, upon
18 application of the county attorney or the attorney general the
19 clerk shall enter an order forfeiting the property to the
20 state.

21 2. If an application for the return of forfeitable
22 property is timely made pursuant to section 809.9, the claim
23 shall be set for hearing and the hearing shall be held not
24 less than five or more than thirty days after the filing of
25 the claim and shall be tried to the court. If the total value
26 of the property sought to be returned meets the appropriate
27 jurisdictional limit, the proceeding may be conducted by a
28 magistrate or a district associate judge with appeal to be as
29 in a case of small claims. In all other cases, the hearing
30 shall be conducted by a district judge, with appeal as
31 provided in section 809.12.

32 Sec. 14. NEW SECTION. 809.11 PROCEDURES AT HEARING.

33 1. At the hearing, the burden is upon the state to prove
34 by clear and convincing evidence that the property is for-
35 feitable. However, forfeiture is not dependent upon a

1 prosecution for, or conviction of, a criminal offense and
2 forfeiture proceedings are separate and distinct from any
3 related criminal action.

4 2. Court appointed counsel, at the state's expense, is not
5 available in forfeiture proceedings. The attorney general
6 shall represent the state in all forfeiture proceedings but
7 may, at the attorney general's discretion, direct that the
8 county attorney of the county in which the seizure of the
9 property occurred shall serve in place of the attorney
10 general.

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

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

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

21 Sec. 15. NEW SECTION. 809.12 APPEALS.

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

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

1 Sec. 16. NEW SECTION. 809.13 DISPOSITION OF FORFEITED
2 PROPERTY.

3 1. Upon a final determination by a court that property is
4 forfeited, the court shall enter an order that the ownership
5 of the property be transferred to the state. The court shall
6 also order that the person having control over the property
7 deliver the property to the department of justice, or if no
8 person has control over the property, the court shall
9 authorize the department of justice to take measures necessary
10 to provide for the delivery of the property to the department.

11 2. Forfeited property delivered to the department of jus-
12 tice may be used in the enforcement of the law. The
13 department may give, sell, or trade property which is not
14 subject to subsection 4 to other state agencies or to any
15 other law enforcement agency within the state if, in the
16 opinion of the attorney general, it will enhance law
17 enforcement within the state.

18 3. Forfeited property which is not used by the department
19 of justice in the enforcement of the law and which is not
20 property subject to subsection 4, may be requisitioned by the
21 department of public safety for use by a state or local law
22 enforcement agency or by the director of the department of
23 general services to be disposed of in the same manner as
24 property received pursuant to section 18.15.

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

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

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

35 c. Material in violation of chapter 728 shall be

1 destroyed.

2 Sec. 17. NEW SECTION. 809.14 NONFORFEITABLE INTERESTS --
3 PURCHASE OF FORFEITED INTERESTS.

4 1. Property shall not be forfeited under this chapter to
5 the extent of the interest of an owner, other than a joint
6 tenant, who had no part in the commission of the crime and who
7 had no knowledge of the criminal use or intended use of the
8 property. However, if it is established that the owner
9 permitted the use of the property under circumstances in which
10 a reasonable person should have inquired into the intended use
11 of the property and that the owner failed to do so, there is a
12 rebuttable presumption that the owner knew that the property
13 was intended to be used in the commission of a crime.

14 2. Upon receipt of forfeited property the attorney general
15 shall permit any owner or lienholder of record having a
16 nonforfeitable property interest of fifty percent or more in
17 the property the opportunity to purchase the property interest
18 forfeited. If the owner or lienholder does not exercise the
19 option under this subsection within thirty days the option
20 shall be terminated.

21 3. A person having a valid, recorded lien or property
22 interest in forfeited property shall either be reimbursed to
23 the extent of the nonforfeitable interest or to the extent
24 that the sale of the item produces sufficient revenue to do
25 so, whichever amount is less. The validity of a lien or
26 property interest is determined as of the date upon which the
27 property becomes forfeitable.

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

32 Sec. 18. NEW SECTION. 809.14 COMBINING PROCEEDINGS.

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

1 seized property.

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

3 6. Provides for the seizure of forfeitable property.

4 7. Requires notice to be given upon the seizure of
5 forfeitable property.

6 8. Provides a system for applications for the return of
7 forfeitable property.

8 9. Sets out the procedures for hearings and appeals on
9 property forfeiture.

10 10. Provides the requirements relating to the disposition
11 of forfeited property.

12 11. Provides for the disposition of nonforfeitable
13 property rights or liens.

14 12. Allows the court to combine seizure and forfeiture
15 actions where appropriate.

16 13. Authorizes the attorney general to adopt rules
17 necessary to carry out the provisions of the new chapter.

18 14. Provides that the provisions of the chapter are
19 cumulative and in addition to other seizure or forfeiture
20 provisions in the Code.

21 Section 21 repeals sections of the Code relating to the
22 repealed chapter 809.

23 Section 22 repeals chapter 809 and inserts the new chapter
24 created by this bill in its place.

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SENATE FILE 455

AN ACT

RELATING TO THE SEIZURE AND FOREITURE OF PROPERTY WHICH IS OBTAINED IN VIOLATION OF THE LAW, UNLAWFUL TO POSSESS, USED OR POSSESSED WITH CRIMINAL INTENT, RELEVANT TO A CRIMINAL PROSECUTION, OR WHICH IS THE PROCEEDS OF CRIMINAL ACTIVITY.

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

Section 1. Section 80.39, subsection 1, Code 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, ~~weapons-subject to disposition-pursuant-to-section 691-97~~ and seized seizable or forfeitable property subject to disposition pursuant to chapter 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 notice may contain multiple items.

Sec. 2. Section 311.427, subsection 1, unnumbered paragraph 1, Code 1985, is amended to read as follows:

Except as otherwise provided by state law, county revenues from taxes and other sources for general county services shall be credited to the general fund of the county, including

revenues received under sections 84.21, 98.35, 98A.6, 101A.3, 101A.7, 110.12, 123.36, 123.143, 176A.8, 247A.10, 321.105, 321.152, 321.192, 321G.7, 331.554, subsection 6, 341A.20, 364.3, 368.21, 422.65, 422.100, 422A.2, 428A.8, 430A.3, 433.15, 434.19, 441.68, 445.52, 445.57, 533.24, 556B.1, 567.10, 583.6, ~~809-67~~ 906.17, and 911.3, and the following:

Sec. 3. Section 602.8102, subsection 129, Code 1985, is amended to read as follows:

129. Carry out duties relating to the disposition of seized property as provided in ~~sections-809-2-and-809-3~~ chapter 809.

Sec. 4. NEW SECTION. 809.1 DEFINITIONS.

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

1. "Seizable property" means all or part of any property subject to seizure in the execution of a search warrant, arrest warrant, or arrest without warrant including, but not limited to, the following:

- a. Property which has been obtained in violation of the law.
- b. Property, the possession of which is unlawful.
- c. Property used or possessed with the intent to be used as a means of committing a public offense or concealed to prevent an offense from being discovered.
- d. Property relevant and material as evidence in a criminal prosecution.

2. "Forfeitable property" means all or part of any property subject to forfeiture to the state including, but not limited to, the following:

- a. Seizable property which has been seized and not returned pursuant to sections 809.2 through 809.5.
- b. Property which is proceeds of or which may be traced to the proceeds of the commission of a public offense.
- c. Money, coin, currency, negotiable instruments, valuable minerals, or other similar items of value used as or in lieu

of currency, found in close proximity to seizable property or in close proximity to any record of the importation, manufacture or distribution of seizable property.

d. Property subject to forfeiture under any other statute or provision of law.

Sec. 5. NEW SECTION. 809.2 NOTICE OF SEIZURE OF SEIZABLE PROPERTY.

1. When seizable property is seized pursuant to this chapter, a notice of seizure shall be filed promptly with the clerk of the district court for the county in which the property was located when seized. The notice shall state the time and place where the seizure occurred and set forth the names of any persons from whom the property was seized and the names of any persons believed by the seizing officer to have an interest in the property. To identify persons who may have an interest in the property, the seizing officer or the county attorney shall make a reasonable examination of any appropriate records regarding the property to ascertain whether liens or interests in the property currently exist. The notice shall contain a complete list of all property seized and describe the property with as much particularity as practicable.

2. Within seventy two hours of receiving a notice of seizure, the clerk shall mail a copy of the notice to the attorney general and cause to be served upon all lienholders of record and each person listed in the notice a copy of the notice and a statement that a person affected by the seizure has a right to file a claim for the return of the property.

Sec. 6. NEW SECTION. 809.3 CLAIM FOR RETURN OF SEIZABLE PROPERTY.

1. A person claiming a right to possession of seizable property seized pursuant to this chapter 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 receipt of the notice

of seizure, and failure to file the application within this time period shall terminate the interest of the person.

2. The application for the return of seizable 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 returned. 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 served upon all persons listed in the notice of seizure, the county attorney, and the attorney general.

4. If an application for the return of seizable property is not timely made pursuant to this section, upon application of the county attorney or the attorney general the clerk shall enter an order forfeiting the property to the state.

5. Notwithstanding the provisions of this section to the contrary, seized property which was stolen or otherwise obtained in violation of the law may be returned to the owner, if the owner was not the person from whom the property was seized, without hearing if all of the following are true:

- a. The identity of the owner is not in question.
- b. The owner's right to possess the property is not in question.
- c. The possession of the property is not prohibited by law.
- d. One of the following is also true:
 - (1) Criminal charges have not been filed and are not being contemplated regarding the theft of the property.
 - (2) Evidence regarding the property is not to be introduced in any proceeding.
 - (3) If evidence regarding the property is to be introduced, all of the following are true:
 - (a) The property has been photographed in such a manner as to fairly show the nature and condition of the property.

(b) The photographs are available for use in any subsequent proceeding.

(c) If the value of the property is in excess of one hundred dollars, the county attorney has notified the attorney for any person against whom the evidence regarding the property may be used of the intention to return the property following its being photographed and the person's attorney either exercised or waived an opportunity to examine the property within fourteen days.

(4) If the property may be introduced as evidence, it is of such a nature that it is not easily alterable without detection and arrangements satisfactory to both the county attorney and the attorneys for any persons against whom evidence regarding the property may be used have been made for its return for use as evidence.

Sec. 7. NEW SECTION. 809.4 HEARING -- APPEAL.

An application for the return of seizable property shall be set for hearing not less than five or more than thirty days after the filing of the application and shall be tried to the court. If the total value of the property sought to be returned meets the appropriate jurisdictional limit, the proceeding may be conducted by a magistrate or a district associate judge with appeal to be as in a 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. 8. NEW SECTION. 809.5 RETURN OF SEIZABLE PROPERTY.

1. Seizable property which is not required for evidence or use in an investigation may be returned by the officer to the person from whom it was seized without the requirement of a hearing, provided that the person's possession of the property is not prohibited by law.

2. If, upon a hearing pursuant to section 809.4, it is determined that the right of possession is in favor of the claimant, the court shall order the return of the property, subject to both of the following:

a. The claimant's possession of the property is not prohibited by law.

b. The property is not needed as evidence in a judicial proceeding, or if needed, satisfactory arrangements have been made for its return for use as evidence. If the proceedings have not been completed, the court shall make satisfactory arrangements for the return of the property upon the completion of the proceedings.

Sec. 9. NEW SECTION. 809.6 NONRETURNED SEIZED PROPERTY.

Property which is seized but not returned pursuant to sections 809.2 to 809.5 is presumed to be forfeit and shall be proceeded against as provided in sections 809.13 and 809.14.

Sec. 10. NEW SECTION. 809.7 SEIZURE OF FORFEITABLE PROPERTY.

Forfeitable property shall 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 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.

Sec. 11. NEW SECTION. 809.8 NOTICE OF SEIZURE OF FORFEITABLE PROPERTY.

1. When property is seized pursuant to section 809.7, a notice of seizure shall be filed promptly with the clerk of the district court for the county in which the property was located when seized. The notice shall state the time and place where the seizure occurred and shall set forth the names of any persons from whom the property was seized and the names of any persons believed by the seizing officer to have an interest in the property. To identify persons who may have an interest in the property, the seizing officer or the county attorney shall make a reasonable examination of any

appropriate records including, but not limited to, the records of the secretary of state, county treasurer, county recorder and the clerk of court regarding the property to ascertain whether liens or interests in the property currently exist. The notice of seizure shall contain a complete list of all property seized and describe the property with as much particularity as practicable.

2. Within seventy-two hours of receiving a notice of seizure of forfeitable property, the clerk shall mail a copy of the notice to the attorney general and cause to be served upon all lienholders of record and each person listed in the notice a copy of the notice and a statement that a person affected by the seizure has a right to file a claim for the return of the property.

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

1. A person claiming a right to possession of forfeitable property seized pursuant to sections 809.7 and 809.8 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 receipt of the notice of seizure, and failure to file the application within this time period shall terminate the interest of the person.

2. The application for the return of forfeitable 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 returned. 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 served upon all persons listed in the notice of seizure, the county attorney, and the attorney general.

Sec. 13. NEW SECTION. 809.10 FORFEITURE.

1. If an application for the return of forfeitable property is not timely made pursuant to section 809.9, upon application of the county attorney or the attorney general the clerk shall enter an order forfeiting the property 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. If the total value of the property sought to be returned meets the appropriate jurisdictional limit, the proceeding may be conducted by a magistrate or a district associate judge with appeal to be as in a 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. 14. NEW SECTION. 809.11 PROCEDURES AT HEARING.

1. At the hearing, the burden is upon the state to prove by clear and convincing 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 shall represent the state in all forfeiture proceedings but may, at the attorney general's discretion, direct that the county attorney of the county in which the seizure of the property occurred shall serve in place of the attorney general.

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 or service 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.

5. 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. 15. 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 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 county attorney, or the county attorney's designee, until such time as its use as evidence is no longer required.

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

1. Upon a final determination by a court that property is forfeited, the court shall enter an order that the ownership of the property be transferred to the state. The court shall also order that the person having control over the property deliver the property to the department of justice, or if no person has control over the property, the court shall authorize the department of justice to take measures necessary to provide for the delivery of the property to the department.

2. Forfeited property delivered to the department of justice may be used in the enforcement of the law. The department may give, sell, or trade property which is not

subject to subsection 4 to other state agencies 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.

3. Forfeited property which is not used by the department of justice in the enforcement of the law and which is not property subject to subsection 4, may be requisitioned by the department of public safety for use by a state or local law enforcement agency or by the director of the department of general services to be disposed of in the same manner as property received pursuant to section 18.15.

4. Notwithstanding subsection 1, 2, or 3, 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.

Sec. 17. 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 shall be 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 the property becomes forfeitable.

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

Sec. 18. NEW SECTION. 809.15 COMBINING PROCEEDINGS.

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

Sec. 19. 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. 20. NEW SECTION. CUMULATIVE EFFECT.

The provisions of this chapter are intended to be cumulative and in addition to other actions or proceedings

against seizable or forfeitable property otherwise provided by statute.

Sec. 21. Sections 691.9 and 728.13 are repealed.

Sec. 22. Chapter 809, Code 1985, is repealed and sections 4 through 20 of this Act are enacted as a new chapter 809.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 455, Seventy-first General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved May 28, 1985

TERRY E. BRANSTAD
Governor